

LAW AND COVENANT ACCORDING TO THE BIBLICAL WRITERS

by

KRISTEN L. COX

(Under the Direction of Richard Elliott Friedman)

ABSTRACT

The following thesis is a source critical analysis of the law and covenant in the Torah of the Hebrew Bible. Specifically I analyze the presentation of the Israelite Covenant in the Sinai Pericope and in Deuteronomy. I present the argument that, while the biblical writers are influenced by the formula of the ancient Near Eastern treaty documents, they each present different views of what happened at Sinai and what content is contained in the law code which was received there.

INDEX WORDS: Covenant, Treaty, Law, Israelite law, Old Testament, Hebrew Bible, Torah, Sinai Pericope, Israelite Covenant, Abrahamic Covenant, Davidic Covenant, Noahic Covenant, Suzerain-vassal treaty, Royal grant, ancient Near Eastern law codes

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DEDICATION

I dedicate this work to my all of my family. My mother has been my source of strength every day. My father who passed away my freshman year continues to be my source of inspiration for hard work, integrity and perseverance. My brother has encouraged me every step of the way. My Nana is my biggest supporter and a wonderful comfort through my challenges. All of my grandparents have contributed to my success. I would like to thank all of these special people for believing in me and supporting me through every trial and triumph.

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TABLE OF CONTENTS

	Page
ACKNOWLEDGEMENTS	v
LIST OF TABLES	viii
CHAPTER	
1 WHAT IS THE LAW?	1
Israel's law code: the covenant	3
Treaty and covenant in the ancient Near East	5
Suzerain-vassal treaty and obligatory covenant	8
Royal grant and promissory covenant	12
The Israelite Covenant versus the Abrahamic and Davidic covenants	18
A different view of Sinai/Horeb	20
Is there one law or many?	22
2 THE BIBLICAL WRITERS' PRESENTATION OF THE LAW	25
The E Source	27
The J Source	35
The P Source	37
The D Source	44
3 THE LAW ACCORDING TO WHOM?	47
Independent Source: Exodus 20:1-17, The Ten Commandments	47
D: Deuteronomy 5:6-18, The Ten Commandments	49

J: Exodus 34:14-26, The Ten Commandments	53
E: Exodus 20:22-23:33, The Covenant Code	55
P: Exodus 25-31, 35-40 The Testimony.....	56
4 CONCLUSION.....	63
BIBLIOGRAPHY.....	66

LIST OF TABLES

	Page
Table 1: The Law of J, E, P and D Compared	58

Chapter 1: What is the law?

The law is a crucial and defining part of ancient Israelite religion. The central form of law in the Torah is the covenant. Many covenants appear in the Hebrew Bible between God and humans. God promises Noah to never destroy the earth again by flood (Gen 9:11). Abraham is told that his descendants will become a mighty nation under God in the land of Canaan. The Israelites meet their God and establish their nationhood upon making a covenant with YHWH at Sinai (Exodus 19-34). The Israelite Covenant contains Israel's top ten laws: the Decalogue or the Ten Commandments. These ten laws are special, but, nonetheless, an ancient Israelite was expected to uphold many more laws. The Davidic Covenant establishes the Davidic dynasty. The Abrahamic (Genesis 15 and 17), Israelite (Exodus 20; 34 and Deuteronomy 5) and Davidic (Psalms 89; 132 and 2 Samuel 7) covenants are specifically significant to Israel as God's people chosen to be granted special rewards and to uphold the law. Each of these covenants is important because they establish the relationship with YHWH, and the Israelite Covenant establishes the law under YHWH. The Israelite Covenant is different because it is not an unconditional covenant but a covenant that requires action on behalf of all of Israel. Humans do not have to do anything to ensure that God will not destroy the earth again with a flood. Abraham's descendants will inherit the land eternally. Some texts say that the Davidic dynasty is eternal (2 Sam 7:13, 16; 23:5; Pss 89:4, 29, 30-37). Once the Israelites enter into the Israelite Covenant with YHWH on Sinai, then they must uphold the law so that "it would be good for them and for their children forever" (Deut 5:26).

The Torah is a reference to the first five books of the Hebrew Bible and all of the law thereof. The Torah is also called the Pentateuch from Greek, the Five Books of Moses in tradition, or חמש in Hebrew. The root of “torah” is ירה meaning “to throw” or “to shoot.” The feminine noun תורה is defined as “direction, instruction, law.” The entire corpus of biblical Israelite law was written by various authors over a period of around five hundred years, and this process produced various concepts of the law of the Torah. Sometimes *the law* refers specifically to the Ten Commandments revealed at Sinai/Horeb, and most often it refers to all the laws in the Torah.¹ This would include the various law codes and covenants in the first five books such as the covenant of circumcision in Genesis 17, the Covenant Code in Exodus 21- 23, the Sotah in Numbers 5, the plethora of laws in Leviticus (about food, sacrifice, clothing, purity, morality, etc.), the Deuteronomic Law Code in Deuteronomy 12-26, etc.

The five books of the Torah are a mixture of narrative, poetry and law. The law has two categories and two types: ritual or ethical and apodictic or casuistic. Ritual laws govern the relationship between humans and God such as laws concerning the priests or apostasy. Ethical laws govern the relationship between humans and humans such as laws about murder, marriage and theft. Apodictic law uses the second person singular imperative: “Thou shalt... Thou shalt not...”² Casuistic law, or case law, uses conditional terms: “If you do X, then you shall...”³ The law is never given apart from the narrative, and the concept of covenant is the foundation of the law and how Israel defines her relation to God.⁴ In his *Commentary on the Torah*, Richard Elliott Friedman says,

¹ “The law” or התורה refers only to the Ten Commandments.

² D. J. McCarthy, *Treaty and Covenant* (Rome: Biblical Institute Press, 1978), 61.

³ *Ibid.*, 47.

⁴ Richard Elliott Friedman, *Commentary on the Torah* (New York: HarperCollins, 2001), 235.

“Covenant binds the legal and narrative texts together.”⁵ The Israelite Covenant stands out above the other law codes because it occurs in the largest unit of the Torah (the stay at Sinai/Horeb)⁶ and because it appears three times in the Torah: Exodus 20, Exodus 34 and Deuteronomy 5.

Israel's law code: the covenant.

Covenant is a feminine noun in Hebrew, ברית . A ברית between equal men is an alliance, a treaty, or a league. It can also be an ordinance, constitution or agreement between monarchs and subjects. A ברית between God and man is defined as “a divine constitution or ordinance with signs and pledges.” George E. Mendenhall and Gary A. Herion write in their entry, “Covenant,” in the *Anchor Bible Dictionary*, “Covenant in the Bible is the major metaphor used to describe the relationship between God and Israel (the people of God).”⁷ Mendenhall and Herion define covenant as: “an agreement enacted between two parties in which one or both make promises under oath to perform or refrain from certain actions stipulated in advance.”⁸ The covenants in the Hebrew Bible share striking similarities. The Noahic, Abrahamic and Israelite covenants share the following common elements:

- 1) One man or people interacts with God.
- 2) God's name is known as something different to each man.
- 3) God gives a promise.
- 4) God gives a sign for the promise.

⁵ Friedman, “Torah,” 607.

⁶ Friedman, “Torah,” 607.

⁷ George E. Mendenhall and Gary A. Herion, “Covenant,” in *Anchor Bible Dictionary*, vol. 1, ed. David Noel Freedman, (New York: Doubleday, 1990), 1179.

⁸ Ibid.

The Noahic covenant appears in Genesis 6-9. God destroys the earth with a flood, and He makes a covenant with Noah to never repeat this act again. The sign of the Noahic Covenant is the rainbow. The Abrahamic Covenant appears in Genesis 15 (J) and 17 (P). God promises Abraham that he will have many descendants who will include kings, own the land and continue to have a relationship with God. The sign of the Abrahamic Covenant is male circumcision on the eighth day of life. The Israelite Covenant appears in the Sinai Pericope of Exodus 19-34. It is sometimes called the Sinaitic Covenant or the Mosaic Covenant, but here it will be called the Israelite Covenant. Once Moses leads the people across the Red Sea and into the wilderness, they enter into a more intimate relationship with God. The people begin a faith like relationship with God where they know He exists because His presence is always in front of them in a column of cloud or fire.⁹ He is always reminding them of His existence. He is very involved but He is also distant at times to see if the people will trust Him. The law mediates this relationship by providing a standard code of conduct for the people to follow in order to be obedient to YHWH. The Israelites' stay at Sinai/Horeb is one of or possibly *the* most important scene of the Bible. The giving of this covenant marks the beginning of the *nation* of Israel as it now has God's law to govern itself. The sign of the Israelite Covenant is the Sabbath.

The Sinai/Horeb event contains the three greatest revelations of God in the Bible. In Friedman's *The Hidden Face of God*, he explains how the exodus generation has continual awareness of the divine presence which culminates in the three greatest revelations of God to humans in the entire Bible.¹⁰ These are the revelation of God's

⁹ Richard Elliott Friedman, *The Hidden Book in the Bible* (San Francisco: HarperSanFrancisco, 1998), 15.

¹⁰ Richard Elliott Friedman, *The Hidden Face of God* (San Francisco: HarperSanFrancisco, 1995), 14-15.

voice which comes down in fire on the mountaintop (Exod 19:11-22), the small group who share a vision of God's feet (Exod 24:9-11), and the ultimate experience of Moses seeing God's form pass by him on Mount Sinai (Exodus 34). The laws given at Sinai/Horeb establish the standards of morality and loyalty God expects from Israel in return for blessing in the land.

Treaty and covenant in the ancient Near East.

Israel's use of the covenant formula is not unique. Scholars such as Eichrodt and Wellhausen¹¹ wrote on the impact of the idea of covenant on Hebrew Bible theology in the eighteenth century, but it would not be until the early 20th century that scholars would discover other ancient Near Eastern covenants that impacted the ancient Israelite covenants. In the 1950s three scholars discovered the striking similarity between Hittite suzerain-vassal treaties and biblical covenants. E. Bickermann was the first scholar to publish his findings in 1951.¹² Bickermann made his discovery at the same time and independently of two other scholars: G. E. Mendenall and K. Baltzer.¹³ It was soon discovered that treaty was a document form used all over Mesopotamia and Asia Minor for national and international diplomacy dating from a time much earlier than Israel.¹⁴ D. J. Wiseman comments in *Archaeology and Old Testament Study*, "[This] literary genre continued with no basic change throughout the ancient Near East, including Palestine, for two millennia."¹⁵ Many more scholars have written on the covenant, but four scholars

¹¹ Wellhausen famously wrote his theory on the prophets before the law in his book, *Prolegomena to the History of Ancient Israel*, and he, therefore, thought that the idea of a covenant between YHWH and Israel was a very late development sometime shortly before the exile. (This is also stated in his *Geschichte Israels* (Berlin, 1878), vol. 1, pp. 434, n. 1).

¹² McCarthy, *Treaty and Covenant*, 2.

¹³ Friedman, *Commentary*, 234.

¹⁴ McCarthy, *Treaty and Covenant*, 4.

¹⁵ David Winton Thomas, ed. *Archaeology and Old Testament Study, Jubilee Volume of the Society For the Old Testament Study, 1917-1967* (Oxford: Clarendon Press, 1967), 120.

will be highlighted in particular due to their enormous impact on thinking and rethinking the covenant in the Hebrew Bible. Those scholars are G. E. Mendenhall, Moshe Weinfeld, K. Baltzer and D. J. McCarthy.

The seminal work is that of George E. Mendenhall, *Law and Covenant in Israel and the Ancient Near East*. Mendenhall argues that the Israelite Covenant form and Israel's formation as a nation parallels the Hittite Empire (1450-1200 BCE) and treaty form, but the Hittites received the tradition of treaty from its eastern neighbors going back to Old Sumerian texts of the third millennium BCE.¹⁶ Mendenhall cites V. Korosec's work on the various Hittite treaties which yields a classification of two types: suzerain-vassal treaties and parity treaties (of which the suzerain-vassal treaty is the basic form). Suzerain-vassal treaties are between unequals (the suzerain and the vassal), but the parity treaties are between equals (two suzerains or two kingdoms). The elements of these two types of treaties are similar in content and have come to be known as the *covenant formulary*.¹⁷ Mendenhall goes on to describe the six to nine common elements of the suzerain-vassal treaty and compares it to the text of the Decalogue and Joshua 24. He concludes that the function of the Decalogue in the form of a suzerain-vassal treaty was to unite the tribes under one system of religious obligation to their suzerain, YHWH.¹⁸

Moshe Weinfeld explains in his "The Covenant of Grant in the Old Testament and in the Ancient Near East," that there are two types of covenants in the Old

¹⁶ George E. Mendenhall, *Law and Covenant in Israel and the Ancient Near East* (Pittsburgh: Biblical Colloquium, 1955), 10.

¹⁷ *Ibid.*

¹⁸ *Ibid.*, 30.

Testament: obligatory and promissory.¹⁹ The Israelite Covenant is obligatory in that God provided past action so humans must now be obligated to provide future action. The Abrahamic and Davidic Covenants are covenants of promissory or grant because God promises a future commitment based upon the humans' previous merit. Moshe Weinfeld says, "Two types of official judicial documents had been diffused in the Mesopotamian cultural sphere from the middle of the second millennium onwards: the political treaty [also called the suzerain-vassal treaty]... and the royal grant."²⁰ He cites extensive research to show that the Israelite Covenant (obligatory) reflects the literary typology and functionality of the suzerain-vassal treaties of the ancient Near East, and the Abrahamic and Davidic Covenants (promissory or grant) reflect the typological and functionality of the royal grant formulae of the ancient Near East.²¹ Therefore, the structure and purpose of the suzerain-vassal treaty and royal grant formularies are so similar to that of the obligatory and promissory covenant formularies, respectively, that a clear relationship exists between covenant in the Hebrew Bible and treaty and grant in the ancient Near East.

Klaus Baltzer's *The Covenant Formulary* also examines the structure of the treaty formulary from Hittite treaties and compares it to the covenant formulary of the Hebrew Bible, but he goes further in his analysis to include Jewish, early Christian, Ugaritic and Akkadian texts as well. He compares the ancient Near Eastern treaties to Joshua 24, to the covenant formulary in the Sinai Pericope, and to the covenant formulary in Deuteronomy. Baltzer adds insight into other biblical texts where he also sees the

¹⁹ Moshe Weinfeld, "The Covenant of Grant in the Old Testament and in the Ancient Near East," *Journal of the American Oriental Society* 90 (1970): 184.

²⁰ Weinfeld, "The Covenant Grant," 184-5.

²¹ *Ibid.*, 184.

following signs of the covenant formulary: the renewal,²² the ratification²³ and the recitation of the covenant.²⁴ Baltzer concludes stating that the covenant formulary has a “close association” to ancient Near Eastern international treaties but in the Hebrew Bible the treaty appears in the literary form inside the narrative. He also concludes, as Mendenhall and Weinfeld do, that the Hebrew Bible’s covenant narrative does not always exactly match the treaty formulary but sustains a similar form. Mendenhall, Weinfeld and Baltzer have similar views of the comparative nature of treaty and covenant which is accepted by many scholars, but D. J. McCarthy takes a different view that needs to be explored further. First the normative view of close association will be discussed.

Suzerain-vassal treaty and obligatory covenant.

The suzerain-vassal treaty formula is almost an exact parallel to that of the obligatory covenants of Sinai, Shechem and the Plains of Moab. The abundance of treaty materials from the ancient Near East yields a great number of comparisons. In Klaus Baltzer’s *The Covenant Formulary*, he analyses some Ugaritic international treaties from Ras Shamra archives and fifteen Hittite treaties between Hittite kings (Suppiluliumas to Tuthaliyas IV) of the 14th and 13th centuries BCE and their vassals.²⁵ Although variations exist, he outlines a common structure. The following outline displays Baltzer’s presentation of the suzerain-vassal treaty along with the corresponding biblical parallels in the Sinai Pericope:²⁶

(1) Preamble: introduction of the suzerain.

²² Exod 34; Neh. 9-10; Ezra 9-10; Daniel 9:4b-19; and occasions of covenant renewal (et al.).

²³ Josh 23; 1 Sam 12; Deut 31 – Josh 1; 1 Chr 22-29; 2 Kings 11.

²⁴ Deut 31:9ff; Neh 8:1, 12,13; Baltzer includes the Mishna (Sota vii. 8) comment on the recitation of several verses in Deuteronomy on the Feast of Booths (p 86).

²⁵ Klaus Baltzer, *The Covenant Formulary* (Philadelphia: Fortress, 1971. German edition, 1964), 9.

²⁶ *Ibid.*, 10.

- a. Exod 20:2 (I),²⁷ “I am YHWH, your God...” (repeated in Deut 5:6).
- b. Exod 19:3b (E), “...and YHWH called to him from the mountain...”
- c. Exod 29: 46, “And they will know that I am YHWH, their God... I am YHWH, their God.”

(2) Historical Prologue: description of the previous relationship between the suzerain and the vassal.

- a. Exod 19:4 (E), “You’ve seen what I did to Egypt, and I carried you on eagles’ wings and brought you to me.”
- b. Exod 20:2b (I) , “... who brought you out from the land of Egypt, from a house of slaves.”
- c. Exod 29:46b (P), “...who brought them out from the land of Egypt for me to tent among them...”

(3) Statement of substance concerning the future relationship of the partners to the treaty: requires loyalty on behalf of the vassal and makes provision for the treaty document.

- a. Exod 19:5-6a (E), “And now if you’ll listen to my voice and observe my covenant, then you’ll be a treasure to me out of all the peoples, because all the earth is mine. And you’ll be a kingdom of priests and a holy nation to me...”
- b. Exod 31:11b (P), “... According to everything that I’ve commanded you, they shall do.”

²⁷ I will use the letter “I” to refer to Exodus 20:1-17, because it is an originally independent document that has been slightly edited and inserted by the redactor.

- c. There is no provision for the treaty document in the Sinai Pericope, but instructions to place the tablets of the Testimony in the ark do appear in the continued P Sinai account in Exod 40:20 (although this is not instructed by God explicitly).

(4) Specific stipulations: usually conditional statements as well as imperatives for basic allegiance and requirements.

- a. Exod 20:3-5a (I), “You shall have no other gods before my face. You shall not make a statue or any form... You shall not bow down to them, and you shall not serve them. Because I, YHWH, your God, am a jealous God...”
- b. Exod 20:7-17(I): commandments three through ten.
- c. Exodus 21-23 (E): The Covenant Code.²⁸
- d. Exodus 25-31 (P): The Tabernacle Pericope.²⁹

(5) Witnesses: invocation upon the gods to witness the treaty and to guarantee the adherence of the stipulations.

(6) Blessings and Curses: the gods bestow blessings for those who adhere and bestow curses for those who break the treaty.

Baltzer concludes that the stylistic and literary nature of the Hittite treaties confirms that the “technique of composing such treaties was already highly developed in the chancelleries of the Hittite court.”³⁰ Although they are the earliest documents available, the comparison is not limited to the Hittite treaties. Friedman and Baltzer comment on the expansion of the Hittite treaties in later texts from the Babylonian and

²⁸ Specifics about the Covenant Code are addressed in chapter two and three.

²⁹ Specifics about the Tabernacle Pericope are addressed in chapter two and three.

³⁰ Baltzer, *Covenant Formulary*, 10.

Assyrian periods taking the formula into the first millennium BCE and, therefore, much closer to the time period of the biblical writers.³¹ Those treaties include that of Marduk-Zakir-Sumi I of Babylonia, Samsi-Adad V of Assyria (ca. 823-810), Esarhaddon of Assyria, Baal of Tyre (677), and others.³² Many of these texts are more fragmented than those of the Hittite treaties, but, nonetheless, they prove a continued tradition of treaty formula in the ancient Near East which provides more evidence for the comparative nature to that of the biblical covenant formulary.

The covenant formulary appearing in the Sinai Pericope (Exodus 19-34) includes the following: the preamble (19:3b; 20:2a), the historical prologue (19:4; 20:2b), the stipulations (19:5-6a; 20:3-5a; 21-23; 20:7-17), and an additional element of an oath (19:8). The Shechem Covenant in Joshua 24 contains all the elements of the common structure of the suzerain-vassal treaty and the additional element of an oath (24:16, 21, 22, and 24). The covenant at the Plains of Moab in Deuteronomy remarkably contains all the elements of the suzerain-vassal treaty with the additional elements of the oath (29:9-28) and the duplicates (17:18 and 19; 31:25-26; 27:8).³³ The remarkable difference between the suzerain-vassal treaties and these three covenants is the additional element of oath appears in all three which adds a stronger commitment to the treaty on behalf of the vassal in the biblical text. This is precisely the essence of the obligatory nature of the Israelite Covenant. In Exodus 19:8 the people promise with one voice to obey all that God speaks and Moses reports this to God. In Joshua 24 the people also speak with one voice to confirm their obedience to serve God alone. This element of oath in

³¹ Baltzer, *Covenant Formulary*, 15.

³² *Ibid.*

³³ All of the information about the comparisons between the suzerain-vassal treaties and the covenants at Sinai, Shechem and the Plains of Moab come from the comparisons of the scriptural parallels noted by Mendenhall, Weinfeld, McCarthy and Friedman.

Deuteronomy is a much more elaborate speech about the sincere commitment that Israel and future generations of Israelites promise to uphold, and it includes the severe consequence of God's wrath for those who break the oath. Therefore, in comparing the obligatory covenants of Israel in parallel to the suzerain-vassal treaties of the ancient Near East it is clear that the biblical writers, to an extent, use the popular ancient treaty form, but they also take it further in an effort to demonstrate a stronger bond between their suzerain, YHWH, and themselves as His vassal.

Royal grant and promissory covenant.

The royal grant formulary found in the Babylonian *kudurru* (boundary stones),³⁴ Hittite,³⁵ Syria-Palestine³⁶ and Neo-Assyrian³⁷ documents are most comparable in function and type to the Abrahamic and Davidic Covenants. Wiseman notes that the 18th and 17th century BCE Syrian-Palestinian documents from Mari and Alalah in Aram are written in a Semitic Aramean and Canaanite dialect almost identical to that of the biblical patriarchs.³⁸ Wiseman goes on to say that many city-states and tribes during the early second millennium BCE established boundaries and interaction with treaties or covenants.³⁹ The Assyrian grants contain the most similar terminology to that of the Abrahamic and Davidic promissory covenants.⁴⁰ The grant of Ashurbanipal to his servant Bulta has identical phrases and formulations to the promises of Abraham and

³⁴ Weinfeld, "The Covenant of Grant," 185.

³⁵ McCarthy, *Treaty and Covenant*, 183. The grant of Tudhaliyas IV to Ulmi-Teshub of Dattasa.

³⁶ D. J. Wiseman, *Illustrations from Biblical Archaeology* (London: Tyndale Press, 1958). The grant of abba-AN of Yamhad to Yarimlim of Alalah.

³⁷ Weinfeld, "The Covenant of Grant," 185. The grant of Ashurbanipal to Baltya.

³⁸ Wiseman *Illustrations*, 27. His evidence for this is lacking and it is doubtful that one could know what dialect the biblical patriarchs spoke.

³⁹ *Ibid.*, 30.

⁴⁰ Weinfeld, "The Covenant of Grant," 185-6. Shared phrases include "keeping guard," or "keep my charge," "with his whole heart," "walked with loyalty," "stood before me in truth" and "serving perfectly."

David.⁴¹ From the Neo-Assyrian period, an excellent example of the royal covenant was discovered on a tablet at Nimrud of a treaty between Esarhaddon of Assyria and vassals including Manasseh, king of Judah (dating to 672 BCE).⁴² Manasseh swore to worship the Assyrian god, Ashur, as his own god or suffer the curses listed in the treaty.⁴³ This is an excellent example of how ancient Israel and Assyria made use of the popular covenant formulary for political sanctions. The Bible does not mention the covenant between Esarhaddon and Manasseh, but it does mention Manasseh's apostasy in 2 Kings 21 and 2 Chronicles 33.

Weinfeld defines the royal grant as an obligation of the king to protect the vassal because the vassal has merited such protection by his previous deeds and loyalty to the king.⁴⁴ Abraham and David represent the loyal vassals in the covenants of grant. Abraham is noted for being obedient to God's voice, laws and commandments (Gen 26:5) even to the point of nearly sacrificing his son (Gen 22:16,18). David is constantly referred to as the one who went after God "with all his heart" (1Kgs 14:8) or who "walked before you in truth, loyalty, and uprightness of heart" (1Kgs 3:6). Abraham and David's obedience to the law merit the promise of the land and kingship respectively in the covenants.

The royal grant typically appears in international exchanges and demonstrates the following common elements with the comparison in the Abrahamic and Davidic Covenants respectively provided below:⁴⁵

⁴¹ Weinfeld, "The Covenant of Grant," 185.

⁴² Wiseman, *Illustrations*, 66.

⁴³ *Ibid.*

⁴⁴ Weinfeld, "The Covenant of Grant," 185.

⁴⁵ The outline is a combination of evidence by McCarthy (*Treaty and Covenant*), Baltzer (*The Covenant Formulary*), Weinfeld ("The Covenant of Grant") and Friedman ("Torah").

(1) Preamble: introduction of the suzerain and the vassal, usually includes a gift from the suzerain to the vassal.

a. Abrahamic: “I am YHWH...” (Gen 15:7 J); “I am El Shaddai” (Gen 17:1 P).

b. Davidic: “Thus says YHWH of hosts...” (2 Sam 7:8).

(2) Historical Prologue: description of the previous relationship between suzerain and vassal usually describing the merit or loyalty of the vassal to the suzerain.

a. Abrahamic:

i. Regarding YHWH: “... who brought you out of Ur of the Chaldees, to give you this land to inherit it” (Gen 15:7 J).

ii. Regarding Abraham: “ He believed YHWH, and He counted it to him for righteousness” (Gen 15:6 J).

b. Davidic:

i. Regarding YHWH: “I took you from the pasture, from following the flock, to be ruler of my people Israel, and I have been with you wherever you went, and have cut down all your enemies before you...” (2 Sam 7: 8-9a).

ii. Regarding David: “Who am I my Lord YHWH and who is my family that you have brought me this far?” (2 Sam 7:18b).

Other verses outside of 2 Samuel 7 report David’s merit as YHWH’s servant in loyalty and in battle (1 Sam 25:28; 1 Kgs 3:6, 14; 9:4; 25:28).

(3) Stipulations: the vassal is granted reward and the suzerain promises protection.

a. Abrahamic:

- i. He will have many offspring: "... one who will come out of your insides: *he* will take possession from you" (Gen 15:4) and "Look at the skies and count the stars... that is how your seed will be" (Gen 15:5).
- ii. Land: "I've given this land to your seed, from the river of Egypt to the big river, the river Euphrates" (Gen 15:18, 7; 17:2b).
- iii. Dynasty of Kings: "And I'll make you very, very fruitful and make you into nations and kings will come out of you." (Gen 17: 6; cf also vv 2, 4, 5, 16, 20).
- iv. Continuous Relationship with God: "And I'll establish my covenant between me and you and your seed after you for their generations as an eternal covenant, to become God to you and to your seed after you. And I'll give you and your seed after you the land where you're residing, all the land of Canaan, as an eternal possession, and I'll become a God to them" (Gen 17:7-8; cf. also vv 9-10).

b. Davidic:

- i. Great renown: "...I will give you great renown like that of the greatest men on earth." (2 Sam 7:9b).

- ii. Secure home for Israel: “I will establish a home for my people Israel and will plant them firm, so that they shall dwell secure and shall tremble no more...” (2 Sam 7:10a).
- iii. Safety from enemies: “... I will give you safety from all you enemies” (2 Sam 7:11; cf. also vv 9-10).
- iv. House for David: “... YHWH will establish a house for you” (2 Sam 7: 11b)
- v. Eternal kingship: “Your house and your kinship shall ever be secure before you; your throne shall be established forever” (2 Sam 7:16) and “... I will establish his royal throne forever” (2 Sam 7:13b). This stipulation of unconditional Davidic kingship is also supported by the following verses: 2 Sam 23:5 and Ps 89:5, 29, 30-37. An opposite tradition of a Davidic kingship conditional upon keeping the law is supported in 1Kgs 2:4; 8:25 and Ps 132:12. In Baruch Halpern’s *The First Historians*, he explains that all of the conditional passages refer to the Davidic dynasty’s hold of the throne of Israel, but all of the unconditional passages refer to the Davidic hold of the throne of Judah in Jerusalem.⁴⁶

(4) Document clause or provision for the document: the document is placed somewhere special or holy.

(5) God list of witnesses: divine (and human) witnesses are invoked.

⁴⁶ Baruch Halpern, *The First Historians: The Hebrew Bible and History* (San Francisco: Harper and Row, 1988), 161.

- (6) Blessings and curses: the gods (witnesses) are guarantors of bestowing blessings for those who uphold the grant and curses for those who do not.⁴⁷
- (7) Oath: suzerain swears to uphold the grant.
- a. Abrahamic: It is not stated in Genesis 15 or 17 that YHWH swears an oath to Abraham but it is stated as such in multiple other places in the Torah (Gen 22:16; 24:7; Exod 13:5; 33:11; Num 32:11; Deut 1:35; 7:8, 12, 13; 8:18; 9:5; 10:11; 11:9; 28:11; 34:4).
 - b. Davidic: The oath does not appear in 2 Samuel 7 but is affirmed in Ps 89:4, 36, 50 and in Ps 132:11.
- (8) Specifications of granted territories: suzerain describes the boundaries of the grant.
- a. Abrahamic: "... from the river of Egypt, to the great river, the river Euphrates" (Gen 15:18 J) and "all of the land of Canaan" (Gen 17:8 P)
 - b. Davidic: no appearance of granted territories but the conditional and unconditional aspects of what David's line would retain are detailed above in the stipulations element.
- (9) Adoption: suzerain names the vassal his son and/or heir.
- a. Abrahamic: no appearance of adoption in Genesis 15 and 17, but William H. C. Propp notes, "All Israel is sometimes regarded as Yahweh's foster child."⁴⁸
 - b. Davidic: "I will be a father to him, and he will be a son to me" (2 Sam 7:14) and "[David] shall say to Me, 'You are my father, my God, the

⁴⁷ Baltzer, *Covenant Formulary*, 14-15.

⁴⁸ William H. C. Propp, *Anchor Bible: Exodus 1-18* (New York: Doubleday 1998), 157.

rock of my deliverance” (Ps 89:27). An extension of this is made to all Davidic kings in Ps 2:6-8.⁴⁹

These common elements of the royal grant formulary only differ in form from the suzerain-vassal treaty formulary in the addition of the last three elements: oath, specifications of granted territories and adoption. The element of oath was also added to the covenants which compared to the suzerain-vassal treaty formula (see reason above). The geographical boundaries are defined because land is usually bestowed upon the vassal as a gift and adoption is used as a sign of the intimate compact between the two parties. In comparing the royal grant formulary and the Abrahamic and Davidic Covenants it is apparent that the following three elements are missing: provisions for the grant document, witnesses and the blessings and curses. Friedman notes the reason for this being that the Abrahamic and Davidic Covenants are theological in nature rather than political like the royal grants.⁵⁰ The theological nature of the Israelite Covenant does exist in the theophanies of YHWH and in his communication with Moses and the people, but the primary function of the Israelite Covenant is to present the law for all of Israel to follow to demonstrate their obedience to the suzerain, YHWH. The biblical covenants appear in mixed forms that do not always perfectly align with one or another of the formularies of the ancient Near Eastern treaties.

The Israelite Covenant versus the Abrahamic and Davidic Covenant.

The primary difference between the Israelite Covenant and the Abrahamic and Davidic Covenants is the difference in obligation. The Israelite Covenant is modeled after the suzerain-vassal treaty in which the vassal enters into the covenant by committing

⁴⁹ William H. C. Propp, *Anchor Bible: Exodus 1-18*, 157.

⁵⁰ Friedman, “Torah,” 607.

to fulfill the stipulations as an obligation to the suzerain. The obligation is initiated because the suzerain has shown prior warrant for obligation (usually noted in the historical prologue). The Abrahamic and Davidic Covenants are modeled after the royal grant in which the suzerain obligates himself to provide for the vassal because the vassal demonstrated prior obedience. The Abrahamic Covenant is fulfilled: Abraham and Sarah give birth to Isaac, Isaac's son Jacob (Israel) fathers the twelve tribes of Israel, they conquer the land, and the Israelites continue to have a relationship with God. But eventually the primary issue of land ownership is lost: the Northern Kingdom of Israel is lost to the Assyrians in 722 BCE, the Temple in Jerusalem is destroyed, and the people of Judah are exiled by the Babylonians in 587 BCE. They are granted return by the Persians in 536 BCE and rebuild the Temple in ca. 520- 515 BCE, but it is destroyed again by the Romans in 70 CE. By the time the Romans banned the Jews from Jerusalem in 135CE, the Jews cease to be a majority in the land. The fulfillment of the Davidic Covenant is a complicated issue of which there is not room (nor intent) to discuss here, but the throne over Judah in Jerusalem is ruled by a Davidic king for nearly 500 years in the biblical period until the time of the Babylonian Exile (587BCE).

While the Davidic dynasty and sole ownership of the original territories of Israel and Judah are lost by the end of the Biblical period and beginning of rabbinic Judaism, the law did continuously rule socio-political and religious life throughout the biblical and rabbinic periods of Judaism. The core of the law is the law codes, and the most central law code is the Ten Commandments. Two pieces of evidence support its centrality: it appears three times in the Torah (albeit in different forms) and its first commandment against apostasy is the most referenced sin of Israel. David Noel Freedman calls the Ten

Commandments the “epitome of the covenant, a summary of the rules by which all Israel is to live under the sovereign rule of God.”⁵¹ The Ten Commandments appears in Exodus 20, Exodus 34 and Deuteronomy 5. Freedman also makes the point that it is not only the repetition but the positions of the Ten Commandments that make them the “core and center of the covenant”: it appears in the beginning and end of the journey of deliverance from Egypt to the promised land, and it appears at the center of the nine book literary structure called the primary history (Genesis through Kings).⁵² The first commandment to worship YHWH alone and no other god is repeatedly violated by the Israelites, and apostasy is the most frequent violation noted by the prophets. Therefore, since the Ten Commandments are so critical to the foundation of the most pervasive part of Judaism, the law, then it is necessary to analyze the giving of this law code to ancient Israel. While tradition attributes the giving of the first law code to the Ten Commandments at Sinai/Horeb, is this really what the biblical authors present individually? Is there a different view of Sinai/Horeb among them?

A different view of Sinai/Horeb.

D. J. McCarthy’s *Treaty and Covenant* (first edition) came out in 1963 one year before Baltzer’s *The Covenant Formulary*, but it is in McCarthy’s second edition (1971) that he doubts the strict comparison of biblical covenant to ancient Near Eastern treaties. After his chapters on Hittite parity and vassal treaties, he concludes there is “variety within a general uniformity...however the uniformity was not rigid.”⁵³ He analyzes new

⁵¹ David Noel Freedman, “The Secret Progress of Israel’s Sins.” In *Divine Commitment and Human Obligation: selected writings of David Noel Freedman*, vol. 1: History and Religion, 457-469. Edited by John R. Huddleston (Grand Rapids: William B. Eerdmans Publishing Company, 1997), 460.

⁵² *Ibid.*, 461.

⁵³ McCarthy, *Treaty and Covenant*, 81.

material from Syria and Assyria such as texts from the excavations at Alalah,⁵⁴ texts from Nimrud (including a treaty text from the Assyrian empire), and the publication of the largest Sefire stele. These new findings confirm for McCarthy his original thought about the basic consistency in treaty forms for international agreements throughout the pre-Hellenic near East, but he has a different view of how the covenant formulary affected the composition of the Sinai Pericope.⁵⁵ He recognizes the difficult source issue in the Sinai Pericope that scholars grapple with, and he concludes: “We are dealing with traditions of diverse ages which have been combined to produce a complex view of the Sinai Covenant, but which, because they are diverse traditions give us insight into different concepts of covenant and even into a certain growth in the idea, if not a strict sequence of causal development.”⁵⁶ McCarthy thinks that these diverse traditions are more focused on theophany (J and E) and ritual (P and Dtr) than on the legal stipulations of a treaty.⁵⁷ He does not completely reject the idea of covenant as a state or action between YHWH and Israel existing in the Sinai Pericope, but he denies any organized structure reflecting the treaty formulary. He summarizes his point: “Sinai thus combines many views of covenant, but none of them seems to reflect the genre of treaty. What is emphasized is the role of the mediator and the definition of the covenant in the commands which proclaim the divine will (and this might recall the stipulations of the treaties).”⁵⁸ McCarthy’s first point on the Israelite covenant not reflecting legal stipulations seems to ignore the fact that in ancient Israel religion and law coincide.

⁵⁴ Thomas, *Archaeology and Old Testament*, 120. Summary of Alalakh comments: Alalakh was formally owned by Hammurabi of Yamhad’s son, Abba’el, but was given to a west-Semitic ruling family after they revolted against Abba’el. The giving of Alalakh was confirmed in a treaty or covenant text in the same form as the Hittite covenants.

⁵⁵ McCarthy, *Treaty and Covenant*, 7.

⁵⁶ *Ibid.*, 273-4.

⁵⁷ *Ibid.*, 274.

⁵⁸ *Ibid.*, 276.

Therefore, ritual laws are legal stipulations because Israel defines its relationship with YHWH in legal terms. Therefore, his point of the covenant not reflecting the *genre* of treaty is a non-argument.

This review of scholarship on treaty and covenant has laid the groundwork for this study of covenant in the Bible, but it is the present writer's intent to take a new approach by digging deeper into McCarthy's suggestion that the biblical authors viewed the most important event in the Hebrew Bible in very different ways. When the verses of the Sinai Pericope are separated out according to their source(s) (J, E, P or I) and compared to one another and that of the Deuteronomist's account in Deuteronomy 5 it becomes apparent that the sources painted different pictures of what occurred at Sinai/Horeb and of what was the first law given to Israel.

Is there one law or many?

The idea of covenant is not unique, but the question is: do the biblical writers of the Torah all have the same idea of what is the Israelite Covenant and thus what is the most important law code of Israel? The answer is no. The writers of J, E, P and D, do not have the same idea of what is the Israelite Covenant. Furthermore, they have overlapping and sometimes completely different laws in their individual sources and law codes. In addition to this, the redactor sometimes inserts other independent documents of law that are also overlapping and sometimes different. Therefore, in order to understand what the biblical authors viewed as the Israelite Covenant will require an examination of the individual sources and their presentations of law in the Torah.

Chapter 2: The biblical writers' presentation of the law.

The central law code of the entire corpus of law in the Torah is the Israelite Covenant of the Ten Commandments at Sinai/Horeb. The event that Moses and the Israelites experience at Mount Sinai/Horeb is crucial to understanding how God begins his relationship with Israel in legal terms. Unfortunately, the story of Sinai and the Ten Commandments is very complicated and mysterious. The Sinai Pericope in Exodus 19-34 is a conflated text including verses attributed to J, E, P and an independent source.⁵⁹ The Deuteronomist's account of Sinai occurs in Deuteronomy 5. Scholars have long questioned whether the Exodus tradition and the Sinai tradition were originally conjoined or whether their connection was a late development.⁶⁰ In his book, *Sinai and Zion*, Jon D. Levenson says, "We know nothing about Sinai, but an immense amount about the traditions concerning Sinai."⁶¹ We do not even know the geographic location of the mountain, although many speculations of the mountain being in the Sinai Peninsula, southern Palestine, Transjordan and even Saudi Arabia exist.⁶² The sources even differ on the name of the mountain. In J and P it is called Sinai, but in E and D it is called Horeb.⁶³ But they differ on much more than this. An analysis of the sources independent of one another shows that the four writers of the Torah have less in common about their

⁵⁹ Unless otherwise noted, all source identifications are according to Richard Elliott Friedman's, *The Bible with Sources Revealed*, (San Francisco: HarperSanFrancisco, 2003).

⁶⁰ Philip B. Harner, "Exodus, Sinai and Hittite Prologues" *Journal of Biblical Literature*, vol. 85, no. 2 (1966): 233.

⁶¹ Jon D. Levenson, *Sinai and Zion: An entry into the Jewish Bible* (New York: Winston Press, 1985), 17.

⁶² Davies, G. I. "Sinai, Mount," in *Anchor Bible Dictionary*, vol. VI, 47-49, edited by David Noel Freedman (New York: Doubleday, 1990), 48.

⁶³ *Ibid.*

views of what happens at Sinai/Horeb and of what law is given than is evident at first glance.

Common characteristics do exist among the four main sources: J, E, P, and D. They each have the giving of the law occur at a mountain. It is not surprising that they all use the image of YHWH on the mountain because “the mountainous character of El’s abode” had long been asserted in Canaanite religion, and the mythic pattern of the Mount of God flowing with the cosmic rivers is used several times in the Bible (Gen 2:10-14; Ezek 47:1-12; Joel 4:18; Zech 14:8; Isa 33:20-22).⁶⁴ They each have the three main characters present: God, Moses and the Israelites. Moses is pictured in J, E, P and D as the prophet, leader, and intercessor for God and the people because the people are afraid of God.

The basic appearances of the story are similar, but there is one major difference. In three of the four sources of the Torah God uses Moses to report the law to the people, but in one source it is God speaking directly to the people. The authors of J, E and P go to various lengths to explain that the people fear YHWH on the mountain and need Moses to intercede. All three report God singling Moses out for special interaction with Him. In Deuteronomy, Moses’ speech to the people reports that God himself spoke the law to the people. This is a major conflicting viewpoint. Why does the Deuteronomist report this differently? This question is just the beginning of discovering that the authors of J, E, P and D have very different views of the Israelite Covenant. The fact that Moses speaks the law and not God in J, E, and P is not easily observed in the combined text. Perhaps it is not surprising that Moses speaks the law to the people in J, E, and P. He is

⁶⁴ Frank Moore Cross, *Canaanite Myth and Hebrew Epic* (Cambridge: Harvard University Press, 1973 second edition), 37-39.

after all the first prophet of Israel. What is odd is that the Deuteronomist would not depict Moses as giving the law when the following two things are true about the Deuteronomist: he is from the Shilonite priesthood who traced its lineage to Moses, and he wrote after the authors of J, E and P where the tradition is that Moses gives the law.⁶⁵ He most likely has access to or is familiar with RJE and possibly P. Perhaps this signifies that the Deuteronomist has a different idea of the intimacy between God and the people in the giving of the covenant. Or perhaps the Deuteronomist has read RJE and/or P where it is less clear that Moses speaks the law to the people rather than God. Either way the understanding of God speaking the law to the people at Sinai/Horeb is only the product of J, E, and P having been combined and redacted, because originally J, E, and P have Moses giving the law to the people. Each source must be analyzed individually to detail what happens at the defining moment of the beginning of Israel and God's relationship.

The E Source.

The E source begins the Sinai Pericope at Exod 19:2b with the Israelites camped opposite the mountain of God. E does not depict Moses or God giving the Ten Commandments because E has no Ten Commandments. The Ten Commandments in Exodus 20 does not belong to E. In Friedman's *The Bible with Sources Revealed*, he says, "[Exodus 20] is likely to be an independent document, which was inserted here by the redactor."⁶⁶ E picks up after the insertion of the Ten Commandments in 20:18 – 24:15a. E contains the Covenant Code of law, which has only Moses hearing and reporting the law to the Israelites. The term "Covenant Code" is derived from the term

⁶⁵ Richard Elliott Friedman, *Who Wrote the Bible?* (San Francisco: HarperSan Francisco, 1996), 146, 124.

⁶⁶ Friedman, *Sources Revealed*, 153.

ספר הברית in Exod 24:7, “And he took *the scroll of the covenant* and read in the people’s ears. And they said, ‘We’ll do everything that YHWH has spoken, and we’ll listen.’” In the original E text Moses goes to the nimbus to speak with God after the people are afraid to speak with Him themselves. Immediately God says to Moses, “You shall say this to the children of Israel,” (20:22), and God speaks the Covenant Code to Moses (Exodus 21-23). The verses that are considered to be the Covenant Code are debated: William Propp suggests either 21:1-23:22 or even just God’s promise to Israel in 23:-20-23 and Friedman suggests 21:1-23:19.⁶⁷ It seems most probable that 20:22 through 23:33 is the text of the Covenant Code because it begins and ends with a casuistic law against apostasy which is how Exodus 20; 34; and Deuteronomy 5 also begin.⁶⁸

In E God speaks the law only to Moses and never to the people directly. The following five verses make it explicit in E that Moses speaks the law to the people:

- (i) Exod 19:7, “And Moses came and called the people’s elders and set before them all these words that YHWH had commanded him.”
- (ii) Exod 19:9, “And Moses told the people’s words to YHWH.”
- (iii) Exod 21:1 God says, “And these are the judgments that you shall set before them.”
- (iv) Exod 24:3, “And Moses came and told the people all of YHWH’s words and all the judgments.”
- (v) Exod 19:6b, “These are the words that you shall speak to the children of Israel.”

⁶⁷ William H. C. Propp *Anchor Bible: Exodus 20-40*. (New York: Doubleday, 2006), 295. Friedman 2001, 154.

⁶⁸ Spinoza suggests 20:22-23:33.

It is not surprising that E gives Moses the role of lawgiver and a special relationship with YHWH as the one who talks with Him. Friedman says, “E is a source which particularly emphasizes Moses as its hero...E also especially develops Moses’ personal role in the liberation from slavery.”⁶⁹ Friedman goes on to say, “The author of E was a Shiloh Levite possibly descended from Moses.”⁷⁰ According to Josh 18:1, Shiloh was a northern religious center with a tabernacle housing the ark with the Ten Commandments Moses received at Sinai, and it was run by a family identified by some as having Mushite descent.⁷¹ Clearly E has a particular interest in Moses as the hero, the leader of the priesthood and the law giver. For E the point is not that the people cannot or do not hear God. They hear God speak something, but they do not hear God *speak the law*.

What the people hear God say or do is unclear in E. In the beginning of the Sinai Pericope in Exod 19:5 God tells Moses to say to the people, “And now, if you’ll listen to my voice and observe my covenant, then you’ll be a treasure to me out of all the peoples, because all the earth is mine.” This does not seem to be a literal voice but rather an idiom for agreement to the covenant. The people always speak to God through Moses either in agreement or discord. The people agree in 19:8 after Moses reported God’s words: “And all the people responded together, and they said, ‘We’ll do everything that YHWH has spoken.’ And Moses brought back the people’s words to YHWH.” Since Moses reports the agreement to God, it is evident that God and the people are not in direct communication. Whatever the people do hear as they near the mountain terrifies them.

E emphasizes the storm cloud imagery of YHWH on the mountain. This is a common biblical image which is used in J and P as well. In his *Canaanite Myth and*

⁶⁹ Friedman, *Who Wrote the Bible?*, 71-72.

⁷⁰ *Ibid.*, 72.

⁷¹ *Ibid.*, 37.

Hebrew Epic, Frank Moore Cross says, “In early Israel, as late as the tenth century B.C., the storm theophany or derivative language was a frequent means of describing Yahweh’s mode of revelation. It returned to popularity in the sixth century in proto-apocalyptic and persisted into full-blow apocalyptic.”⁷² Israel’s poetic literature used theophanies of God as a divine warrior and/or storm god quite a bit (Psalms 18; 29; 68; 77; 89; 97; 114; Exodus 15; Judges 5; Deuteronomy 33; 2 Samuel 22), and this imagery was drawn from the Canaanite mythic description of the theophany of the storm God, Ba’al.⁷³ Israel’s prose epic has the “primary locus and normative form” of the theophany of YHWH at Sinai.⁷⁴ God says He is going to come to Moses in a mass of cloud so that the people will hear when He is speaking to Moses. In E this is pictured as God speaking so that Moses can hear, but the people seem only to hear the rumbling of the clouds and the horn which could equate to the reverberation of God’s voice. Exodus 19:16b describes the people hearing the thunder and horn and seeing the lightning and cloud. They are afraid, and Moses brings them to the foot of the mountain (toward God). Exod 19:19 says, "And the sound of the horn was getting much stronger. Moses would speak, and God would answer him in a voice." It does not say that God speaks the law to the people. The people can only hear the horn, but Moses can understand God's voice. The horn sound is possibly God's voice audible to humans, but when Moses hears it he understands it in the form of his language. Either way the whole scene is very mysterious and odd.

⁷² Frank Moore Cross, *Canaanite Myth and Hebrew Epic* (Cambridge: Harvard University Press, 1973), 169.

⁷³ *Ibid.*, 147.

⁷⁴ *Ibid.*, 163.

The storm imagery of YHWH prevents the Israelites from wanting to have intimate contact with YHWH. Exod 19:19 says, “And the sound of the horn was getting much stronger, Moses would speak, and God would answer him in a voice.” Since it is “God would answer *him*,” it is unclear in this verse whether or not the people can actually hear God’s voice answering Moses. What clarifies this scene further is the statement the people make in 20:19 to Moses saying, “You speak with us so we may listen, but let God not speak with us or else we’ll die.” Moses is designated by the people as the brave conduit because God already chose him as their prophet and leader out of Egypt. The Israelites do not come close enough to the mountain to converse with or see God in E. In Exod 19:2b Israel’s location is described as “camped there opposite the mountain.” That is to say, at the start of the reception of the law, Israel is opposite or separated by an unknown distance from God. E never says that Moses and the Israelites are at Mt. Sinai. E simply calls it ‘the mountain’ or the ‘Mountain of God.’ E is not concerned about the place name, but, rather, the idea that God is on the mountain and “all the earth is [God’s]” (19:5). The distance between YHWH and the Israelites is made farther throughout E’s account, but Moses is pulled in two directions. He is drawn closer to YHWH as His prophet and closer to the people as he acts as their conduit.

Exodus 24 does report an intimate moment when a specific group of Israelites have a vision below God’s feet of a sapphire brick structure (24:10-11). At the beginning of chapter 24 God tells Moses, Aaron, Nadab, Abihu and seventy of Israel's elders to come up and bow *at a distance*. All but Moses are always kept at an appropriate distance from God’s position atop the mountain. Exod 24:2 specifically says, “Moses will come over alone to YHWH.” Moses reports the law to the people. Moses performs the

covenant ceremony of offering bulls on the altar and reading the covenant to the people. Then Moses, Aaron, Nadab and Abihu and the seventy elders see a vision of God, but they never hear his voice. YHWH then tells Moses to come up to him so that he can receive the tablets of the commandments which God has made. This is odd for two reasons. First, isn't Moses already up on the mountain with the others when they have the vision? If so, why does God tell him to come up again? The second oddity is the fact that God says He wrote out the instructions and the commandments in verse twelve when Moses already did that in verse four. To the first oddity, it might be suggested that God is continually going back up the mountain. Since the people have rejected the opportunity to draw near to God, He retreats. This supports an ongoing theme discussed in Friedman's, *The Hidden Face of God*, where God continually interacts with humans in the beginning, but Israel turns away from God, and God becomes more hidden as he "disappears in the Bible."⁷⁵ God speaks to many humans before Exodus, but after Moses becomes the first prophet of Israel, God speaks to the community only through the prophets for the rest of the Bible.⁷⁶

The second oddity concerns the "scroll of the covenant" written by Moses and the "stone tablets and the instruction and the commandment" written by God. This is a complex issue in the E source. Again, in the original E source, the Ten Commandments do not appear, but the covenant made at the mountain in E is that of the Covenant Code. Whatever is written on the tablets in E is most likely not the Ten Commandments. At the end of Exodus 21 Moses goes up the mountain to God, and God speaks the judgments to Moses. In Exod 24:3 Moses tells the people all of YHWH's judgments, writes them

⁷⁵ Friedman, *Hidden Face*, 7.

⁷⁶ *Ibid.*, 17.

down (v 4) and performs the covenant ceremony (vv 4-8). The covenant ceremony seals the agreement the people make after hearing the covenant code in 24:7 : “We’ll do everything that YHWH has spoken, and we’ll listen.” In 24:12 Moses goes back up the mountain after the shared vision of God to receive the “stone tablets and the instruction and the commandment” which God writes.

The E source ends in 24:15, “And Moses went up the mountain,” and it picks up again in chapter 32 with the infamous Golden Calf episode. The people tire awaiting Moses’ return and ask Aaron to make gods for them (32:1). When YHWH becomes aware of what the people are doing He says He will finish them off and make a new nation out of Moses. Moses reminds God of His history with Israel in Egypt and the Abrahamic Covenant, and God revokes His decision to destroy Israel. Moses’ anger flares when he returns to the people, sees their apostasy, and destroys the tablets. Exod 32:15-16 details the tablets referenced in 24:12 saying, “And Moses turned and went down from the mountain. And the two tablets of witness were in his hand, tablets written from their two sides: from this side and from this side they were written. And the tablets: they were God’s doing. And the writing: it was God’s writing, inscribed on the tablets.” Again, it is unclear exactly what is on the tablets. The only clear reference to what is written is in 24:12, “the instruction and the commandments.” The instruction and commandments could be different from the Covenant Code that Moses wrote in 24:4.

There are two possibilities for what the stone tablets in E could have contained. One possibility is that they contained the Ten Commandments. With this possibility it must be assumed that the account found in Exodus 34 is the redactor either fixing the problem of Moses destroying the tablets in E where in J they are an important relic that

lie in the ark, or that originally E did have Moses remake the tablets and the redactor eliminated a possible doublet in E by allowing Exodus 34 to explain away this overlap. As a principle of source criticism, one does not want to accuse the redactor of cutting something to fix a problem. There are many extant contradictions in the text. Since the tablets are destroyed in E, one might ask: “What is in the ark?” But, the ark never appears in E. Thus in the original E source the problem of “what is in the ark?” does not exist, and, therefore, the fact that the tablets are destroyed is not a problem. So if the tablets that Moses destroys in E contained the Ten Commandments, then they are lost forever in E.

Due to the importance of the law code in E, it is unlikely that a law code written on the tablets by the hand of God would be destroyed, forgotten and never remade. Therefore, the more likely possibility of what the stone tablets in E contained is the Covenant Code that was revealed to Moses in Exodus 21-23. Chapters 21-23 contain a combined 100 verses. The stone tablets that God wrote on are described in 32:15-16 as God’s writing on both sides of the two tablets. One might question whether all 100 verses could fit on four sides of the stone tablets, but the size of the tablets is never mentioned. They are probably a size that Moses is able to carry down the mountain, but specific measurements are not given. Since they are in God’s writing, then it is presumably possible for God to write all the verses on the tablets. Pondering about the size of God’s handwriting aside, it makes the most sense for the destroyed tablets to have contained the Covenant Code because it solves the problem of the tablets never being remade in E. If it is the Covenant Code that was on the tablets that Moses destroyed, then the law given to Moses on the mountain of God is not lost. Moses has another copy.

He has the scroll which he wrote the Covenant Code on when he received it from God. How else will the priests or anyone else know how to uphold the law which they covenanted with YHWH? Ultimately, the presence of the law code in E is a cliffhanger. The E verses identified in the Torah after the Golden Calf incident never again mention the law, the stone tablets or the covenant.⁷⁷ The Levites and the Tent of Meeting are mentioned, and it might be assumed that they are following the Covenant Code, but it is not clear from the text as it stands.⁷⁸

The J Source.

The J account of the Israelite Covenant at Mt. Sinai is in Exodus 19, 24 and 34 with the main text of the covenant in chapter 34. In chapter 19, J contains imagery similar to that of E, but with God descending on the mountain in the image of a smoking fire rather than a storm cloud. The author of J calls the mountain Sinai and describes it as a very dangerous situation. God prepares the people to envision him in Exod 19:11, “Be ready for the third day, because on the third day YHWH will come down on Mount Sinai before the eyes of all the people.” God tells Moses to warn the people to draw near to see but not to touch the mountain until the blowing of the horn or else they will die (the other Israelites are responsible for stoning them to death). The people must be consecrated, wash their clothes, and not draw near to a woman. The people all do this, but in the end the situation is quite odd. YHWH and the people are quite ambiguous about having an intimate encounter with one another. YHWH comes down in a smoking fire on top of the

⁷⁷ The E verses are as follows: Exodus 33; Numbers 11 (tentatively E); 12; 21:4b-9; 22:3-24:25.

⁷⁸ The Levites are mention in Exod 32:26-29 as killing three thousand men associated with the Golden Calf incident. The Tent of Meeting is mentioned in Exod 33:7 when Moses moves it outside the camp, which is odd because the Tent is not even built until Exodus 36 which is P. The Tent of Meeting is also mentioned in Numbers 11 and 12 as Moses gathers the elders in the tent because the people complain about their hunger.

mountain and tells Moses to not let the people “break through to YHWH” but to let the priests who consecrate themselves come up to YHWH. When Moses tells God, “The people are not able to go up to Mount Sinai because you warned us saying, ‘Limit the mountain and consecrate it,’” then YHWH tells Moses to not allow the people or the priests to break through. So only Moses freely goes up on the mountain alone to see and to speak with YHWH for forty days and forty nights (Exod 24:18b).

When J starts again in Exodus 34 God tells Moses to present himself before YHWH alone with two tablets. At this point, God puts even more distance between him and the people. He demands the people be far from the mountain: “Let no man be seen in all of the mountain...” (Exod 34:3b). Moses obeys and receives the most intimate vision of God in the whole Bible. YHWH passes in front of him and calls out to Moses the most quoted passage in the Bible itself which describes the essence of God. Friedman says, “This formula, expressed in the moment of the closest revelation any human has of God in the Bible, is the closest the Torah comes to describing the nature of God. Although humans are not to know what the essence is, they can know what are the marks of the divine personality: mercy, grace.”⁷⁹ Prior to this moment YHWH has been a hidden God only revealed in a fear invoking fire in J (and heard in the storm and the horn in E). But here YHWH appears to Moses in the most intimate of ways. After YHWH dictates the covenant to Moses, He instructs Moses to write the words of the covenant (Exod 34:27b). Since he is alone with YHWH on the mountain receiving the covenant, Moses writes the commandments on the tablets to serve as the proof and reference of the law. In J, the Israelite Covenant is the Ten Commandments of Exod 34:14-26 which are written on the tablets. The Ten Commandments in J are a different version of the Ten

⁷⁹ Friedman, *Commentary*, 290-91.

Commandments than appear in Exodus 20 and Deuteronomy 5. The author of J has a different idea than the authors of E, P or D about what commandments are the most important; the differences are compared in part three.

The P Source.

The Priestly account of the event at Sinai is not the giving of the Ten Commandments, but it is, rather, a document called the Testimony (Hb., עֵדוּת). The Testimony contains the instructions for the priesthood and for building the tabernacle. It is assumed from the reading of Exod 31:18 that the Ten Commandments are revealed to Moses on Sinai in the P source, but there is no evidence for that. The Ten Commandments never appear in the P Sinai revelation. After Moses goes into the cloud on Mt. Sinai in P (Exod 24:18a), God instructs him on how to build the Tabernacle with its various measurements and decor and how to establish the priesthood through Aaron in Exod 25:1-31:17.

The P author's account of Sinai is not in the chronological form of a covenant comparative to the royal grant or the suzerain-vassal treaty, but it does have many elements of the suzerain-vassal treaty. The author of P does consider it a covenant because the word "covenant" is used in 31:16 to describe the Sabbath day as the sign of the eternal covenant referring to all the previous instructions about the Tabernacle and the priesthood. There is no *preamble* or *historical prologue* in the beginning, but there is an historical reference to YHWH's suzerainty in 29:46, "And they will know that I am YHWH, their God, who brought them out from the land of Egypt for me to tent among them. I am YHWH, their God." There is a statement of substance (31:11b) and instructions for the provision of the document (40:20). The abundance of specific

stipulations appears in Exodus 25-31, and the majority are in the form of apodictic law: “You shall make this...” and “You shall do thus...” There are blessings (25:8; 29:37; 29:43-45) and curses (30:33; 30:38; 31:14-15). The Sabbath day is the only casuistic law and the only commandment in the Tabernacle Pericope which is within the Sinai Pericope that overlaps with J and E’s laws given in the Sinai Pericope. Therefore, it seems that the term “covenant” is referring to the establishment of the laws of the priesthood and the Tabernacle described in Exodus 25-30 and not the Ten Commandments in J, the Ten Commandments in Exodus 20, nor the Covenant Code. It is possible that the covenant also includes the laws in Leviticus. The Holiness Code (Lev 12-26) contains most of the laws of the Decalogue. As the text stands, Moses finishes the work of building the Tabernacle in Exod 40:33, YHWH’s glory fills the Tabernacle (Exod 40:34), and the last verses of Exodus speak of the Israelites continuing to travel the wilderness if YHWH’s cloud is lifted (Exod 40:36-8). Leviticus begins, “And he called to Moses, and YHWH spoke to him from the Tent of Meeting, saying ‘Speak to the children of Israel. And you shall say to them...’” The text does not say where they Israelites are located, but it is apparent that the Tent of Meeting is standing. It must have taken some time to build the Tabernacle and all of its parts, and the laws in Leviticus are definitely given from inside the already constructed Tent of Meeting. Therefore, it seems as if the “covenant” in Exod 31:16 probably does not refer to all of these laws which are given at another point in time. Perhaps the “covenant” made at Sinai in P is symbolic of any law given to the Israelites by God at that time or in the future, but that is not explicit in the text. Therefore, the two tablets of the Testimony to Moses probably contain the

laws of the Tabernacle Pericope, and it is sealed with the Sabbath as the sign of the eternal covenant.

The “two tablets of the Testimony” in Exod 31:18 are stored in the ark in the Tabernacle (Exod 40:20). P is the only source that uses this term “the Testimony” (Hb., תְּעֻדָה), but admittedly this verse’s source identification is highly debated.⁸⁰ William H.C. Propp discusses 31:18 in his *The Anchor Bible Exodus 19-40* to highlight the difficult understanding of what the “two tablets of the Testimony” are and to which source they belong. Exod 31:18 reads, “And when He finished speaking with him in Mount Sinai, He gave the two tablets of the Testimony to Moses, tablets of stone, written by the finger of God.” Propp reports that the majority of scholars assign the Tabernacle Pericope to P (Exodus 25-31; 35-40), but controversy exists over 31:18.⁸¹ There are three options for source identification of this verse: it is either all P, P and E, or it is the redactor. The first option of a completely P pericope from 25:1-31:18 would follow along the principle of source criticism to not separate sources unless there is sufficient evidence. Friedman attributes the entire verse to P.⁸² His evidence is the following: “The phrase ‘finger of God’ occurs in another P passage (Exod 8:15) but never in J or E. The reference to the ‘testimony’ also is characteristic of P. Further, the mountain is referred to as Sinai, which occurs only in P and J, never in E or D. This passage connects to the next P passage, Exod 34:29.”⁸³ Moses comes down from Mount Sinai with the two tablets of Testimony in his hands and from 34:29 until the end of chapter 40 the people carry out the building of the Tabernacle, the ark, the altar and all the priestly garments.

⁸⁰ Friedman, *Sources Revealed*, 173.

⁸¹ Propp, *Exodus 19-40*, 365-6.

⁸² Friedman, *Sources Revealed*, 173.

⁸³ *Ibid.*

Another possibility that Propp and Holzinger propose is that Exod 31:18 is a conflated P and E verse. They agree that the first part of the verse “sounds Priestly,” but they argue that the second part, “the stone tablets, written by the finger of God” has other source parallels.⁸⁴ They cite Deut 9:10, “And YHWH gave me the two tablets of stones, written by the finger of God, and on them were all the words that YHWH had spoken with you at the mountain from inside the fire in the day of the assembly.” Friedman argues that the Deuteronomist is *referencing* P by using the phrase “finger of God” which is a sign that D is written later and the author of D was familiar with P.⁸⁵ Friedman gives another P reference to the “finger of God” in Exod 8:15.⁸⁶ Propp’s argument is less convincing. He recalls an E verse in Exod 24:12 which refers to the “stone tablets” and an E verse in Exod 32:16 which refer to God’s writing on the tablets.⁸⁷ The author of P is writing later than the authors of J or E and is familiar with the idea that the stone tablets in the Tabernacle were holy artifacts because they are attributed to God’s word on Sinai, but the point is that the author of P has a different idea of what is on the tablets. Friedman’s argument for the uniquely P phrases of “finger of God” and “Testimony to Moses” is more convincing. The terms “Testimony to Moses” or “the Testimony” never appear in J, E or D. Other terms related to “the Testimony” appear only in P such as the “tablets of the Testimony,” the “Ark of the Testimony,” and the “Tabernacle of the Testimony.”

⁸⁴ Propp, *Exodus 19-40*, 366-7

⁸⁵ Friedman, *Sources Revealed*, 325.

⁸⁶ Propp claims in *The Anchor Bible Exodus 19-40* on p 367 that his source identification for Exodus 8:15 is E, but upon further investigation this is not his identification. In Propp’s *The Anchor Bible Exodus 1-18* on page 288, he attributes Exodus 8:15 to the Priestly writer. This is either a mistake in his second volume or he changed his source analysis of the verse.

⁸⁷ Propp, *Exodus 19-40*, 367.

The third option Propp supposes is that the whole verse is composed by the redactor “in order to smooth the transition to the non-Priestly Golden Calf account” of Exodus 32.⁸⁸ It is a logical possibility since in all of Exodus 25-31 and 35-40 God tells Moses to speak all of the instructions and not write them down. The reading of the law would be even more important if the tablets were going to be stored within the ark inside the Holy of Holies where no one but the priests can enter. The ark is called the “ark of the Testimony” in Exod 25:33, 34 and after Exodus 31 in Exod 40:3.⁸⁹ This title could mean that the ark houses the Testimony of the instructions for the priesthood and Tabernacle. Placing these instructions in the Holy of Holies could be a symbolic sanctification of the priesthood. The problem with attributing 31:18 to the redactor is that 34:29 references “the two tablets of the Testimony” so this verse would also have to be attributed to the redactor (at least partially). Again, it is preferential in principles of source criticism to be cautious about using the redactor to fix problems in the text out of respect for the authors and the text.

The priesthood is a very important stratum of Israelite religion to the author of P, and he uses the most important event of Sinai to emphasize its prominence beginning with the election of Aaron as the high priest. While Aaron is designated as the start of the priestly line, he does not trump Moses. Only Moses receives the instructions from God, and he then dictates the law to the priests. Aaron’s prominence in the P stories at Sinai is another clue as to why the Sinai revelation in P could be the covenant of the

⁸⁸ Propp, *Exodus 19-40*, 367.

⁸⁹ In Exodus 37:1-9 is the description of Bezalel making the ark and it is not called “the ark of the Testimony” but just “the ark.” This might seem to discount the theory that “the ark of the Testimony” is the author P’s idea of the tablets being contained in the ark. It does not due to the fact that 35:1-39:31 is the description of the building of the Tabernacle, altar and ark and none of them are referred to with any reverent title during the construction descriptions.

priesthood and not the Ten Commandments. The author of P first refers to “the Testimony” in Exod 16:34 when describing God’s providing of the manna from heaven. This is one of the three items which are eventually placed by the Testimony in the Tabernacle in P: the manna, the incense and Aaron’s staff.⁹⁰ Moses is not the only one with direct communication to God in P. God speaks only to Moses about the instructions of the Tabernacle in P, but the author of P has an additional intention of honoring Aaron in those instructions by consecrating him and his family lineage as the priestly class. He speaks to Moses *and Aaron* after God appoints Aaron to be Moses’ prophet in Exod 7:1. It is nothing new to suggest that Aaron has a special place in P, but it is essential to follow the trail of Aaron’s involvement at Sinai in P to compare the meaning and significance of the differences in presentation of the covenants among the sources.

The author of P was most likely an Aaronid priest who took the liberty to degrade Moses in his alternative Torah.⁹¹ Moses’ place in tradition is upheld, but his character is less developed and is scarred by the P story of Moses’ greatest offense of disobeying God in Numbers 20.⁹² P’s author, unlike the authors of J, E and D, present God speaking to Aaron directly. While the authors of J and E use the phrase “And Yahweh said unto Moses...”, the author of P includes uses of the phrase, “And Yahweh said unto Moses *and unto Aaron...*”⁹³ The Deuteronomist only mentions Aaron three times in all of Deuteronomy: his death is mentioned twice (Deut 10:6; 32:50) and God’s anger towards him for making the Golden Calf is mentioned once (Deut 9:20).

⁹⁰ Friedman, *Commentary*, 225.

⁹¹ Friedman, *Who Wrote the Bible?*, 198.

⁹² *Ibid.*

⁹³ *Ibid.*, 190.

In P the Israelites arrive in the wilderness three months after the Exodus (19:1) from Egypt, and YHWH's glory settles on Mount Sinai in the appearance of a cloud and a consuming fire (Exod 24:15b-18a). YHWH calls only Moses to go up the mountain and into the cloud to speak with Him. This is an intimate event because Moses is described as standing in the cloud, and, therefore, he is near the glory of YHWH. P contains God's instructions to Moses on how to build the ark, the Tabernacle, the altar, the priestly garments, decor for the Tabernacle and how to sanctify Aaron and his sons for the priesthood. The only commandment in the P version of God and Moses' conversation on Mt. Sinai is to keep the Sabbath day holy with no work (Exod 31:12-17). Then in 31:18 Moses comes down from the mountain with the two tablets of the Testimony. In Exod 34:32 Moses dictates to Aaron and the people what God spoke to him.

In P, Aaron and his sons are the only legitimate priests.⁹⁴ They are made priests in Exod 28:1; the author of P is focused on centralization of worship in order to support the legitimate priesthood. The dating of P is hotly debated among scholars. Recent linguistic scholarship done by Avi Hurvitz in his book, *A Linguistic Study of the Relationship between the Priestly Source and the Book of Ezekiel*, and source critical scholarship by Menahem Haran and R. E. Friedman has proposed a more likely date to be in the pre-exilic era.⁹⁵ Friedman notes that P was most likely written between 722-609 BCE and more specifically during the reign of Hezekiah (ca. 700 BCE).⁹⁶ The matter of centralization was key for Hezekiah, and he supported the Aaronids over the Levites as

⁹⁴ Friedman, *Who Wrote the Bible?*, 211.

⁹⁵ R. N. Whybray. *The Making of the Pentateuch: A Methodological Study*. Journal for the Study of the Old Testament Supplement Series 53 (Sheffield: Sheffield Academic Press, 1987), 231.

⁹⁶ Friedman, *Who Wrote the Bible?*, 210-11.

the legitimate priests for the central Temple in Jerusalem. Therefore, if P was written by an Aaronid priest during Hezekiah's process of centralization in which he allowed the Aaronids to have control over the Temple in Jerusalem, then it would not be strange for the Priestly writer to want to picture the tablets given at Sinai which are placed in the holiest room of the Temple to have written on them God's words sanctifying Aaron and his descendants as the rightful priesthood.

The D Source.

D is the only source which presents God speaking the law directly to the people. The authors of J, E, and P all present Moses as the direct mediator of the law, with the addition of Aaron playing a more significant role in P. Looking only at the Ten Commandments in Deuteronomy 5, it is somewhat unclear as to what the Deuteronomist is reporting about the event at Horeb. Deuteronomy 5:4 says that YHWH spoke to the Israelites "face-to-face," but in Deut 5:5 Moses clarifies the statement: "I was standing between YHWH and you at that time to tell you YHWH's word because you were afraid on account of the fire, and you didn't go up in the mountain." Then Deuteronomy 5:6-18 lists the Ten Commandments nearly verbatim to Exodus 20 (those exceptions are discussed in part three). These verses sound like the people do not hear God speak the law since Moses tells them YHWH's word. There is a possibility that Deut 5:5 is an insertion by the redactor to align with the J and E versions of the Sinai/Horeb revelation where the people do not hear God speak the law because they are scared. Evidence for this being an insertion is because there are five other occurrences in Deuteronomy which explicitly say that the Israelites did hear YHWH speak the covenant to them. Those five examples are Deut 4:12, 13, 33, 36 and 5:21 (all Dtr1). Specifically Deut 4:13 says,

“And He told you His covenant that He commanded you to do, the Ten Commandments, and He wrote them on two tablets of stone.” In Deuteronomy it is clear that the stone tablets in the ark have written on them the Ten Commandments. What about all the other laws? Deuteronomy 4:14 says, “And YHWH commanded me at that time to teach you laws and judgments, for you to do them in the land to which you’re crossing to take possession of it.” This same concept of Moses teaching the “laws and judgments” is in Deut 4:5: “See: I’ve taught you laws and judgments as YHWH, my god, commanded me to do so within the land...” Therefore, Dtr1 envisions YHWH speaking the Ten Commandments in the Israelite Covenant to the Israelites from within the fire on Mount Horeb, but Moses is required to teach the rest of the laws to the Israelites that God teaches him alone on the mountain.

The Deuteronomist is very adamant in describing the intimate interaction between God and Israel at Horeb in several verses. He says in Deut 4:33, “Has a people heard God’s voice speaking from inside a fire the way you heard it and lived?” This was apparently a terrifying event. In 4:36, “From the skies He had you hear His voice in order to discipline you, and on earth He showed you His great fire, and you heard His words from inside the fire.” This description is an image of God in both the skies and the fire so that the Israelites are aware that He is not the sky god or the fire god, but He is YHWH the supreme God. After the Ten Commandments are given, the awe of hearing God’s voice is again stated in 5:21, “And you said, ‘Here, YHWH, our God, has shown us His glory and His greatness, and we’ve heard His voice from inside the fire. This day we’ve seen that God may speak to a human and he lives.’” The idea of humans and God

interacting in this intimate and particular way was extremely important for the Deuteronomist to emphasize.

The question becomes why did the Deuteronomist depict this direct God-to-Israel communication of the Ten Commandments when the authors of J, E and P never report God speaking the law directly to the Israelites? Most likely it is because the Deuteronomist read the combined text where it is much less clear that God only speaks the Ten Commandments to Moses. Or perhaps over time Moses' receiving of the Ten Commandments as the representative of Israel was less emphasized to the point that the memory of God giving the commandments only to Moses who taught it to the Israelites faded into the memory of God giving all of Israel the law. The Deuteronomic Law Code (Dtn) in Deuteronomy 12-26 is unclear whether a prophet (Moses or another?) is speaking to the people or whether God is speaking in third person to the Israelites. Friedman says, "[Dtn] is an old, independent document that was used by the Deuteronomistic historian in the Dtr1 edition of the work."⁹⁷ It begins in 12:1: "These are the laws and the judgments that you shall be watchful to do in the land that YHWH, your fathers' God, has given you to take possession of it, every day that you're living in the land." Again, the distinction here is that this law code is the laws and judgments and not the Ten Commandments. Since Dtn is a much older document, perhaps the tradition of Moses as lawgiver was not yet established. As far as the giving of the law at Sinai/Horeb, all of the sources (J, E, P, and D) have Moses giving law, but only in D does God give the Ten Commandments to Israel.

⁹⁷ Friedman, *Sources Revealed*, 330.

Chapter 3: The Law According To Whom?

In chapter two it is argued that the different writers of the Torah present different ideas about what occurs at Sinai/Horeb and what exactly the Israelite Covenant is which is written on the tablets of stone. Now it is necessary to define what law each writer presents as being given at Sinai/Horeb and why.

Independent Source: Exodus 20:1-17, The Ten Commandments.

The original independent document begins in Exod. 20:2 and ends in Exod. 20:17.

The text is as follows:

I am YHWH, your God, who brought you out from the land of Egypt, from a house of slaves. You shall not have other gods before my face. You shall not make a statue or any form that is in the skies above or that is in the earth below or that is in the water below the earth. You shall not bow to them, and you shall not serve them. Because I, YHWH, your God, am a jealous God, counting parents' crime on children, on the third generation, and on the fourth generation for those who hate me, but practicing kindness to thousands for those who love me and for those who observe my commandments. You shall not bring up the name of YHWH, your God, for a falsehood, because YHWH will not make one innocent who will bring up His name for a falsehood. Remember the Sabbath day, to make it holy. Six days you shall labor and do all your work, and the seventh day is a Sabbath to YHWH, your God. You shall not do any work: you and your son and your daughter, your servant and your maid and your animal and your alien who is

in your gates. *Because for six days YHWH made the skies and the earth, the sea, and everything that is in them, and He rested on the seventh day. On account of this, YHWH blessed the Sabbath day and made it holy.* Honor your father and your mother, so that your days will be extended on the land that YHWH, your God, is giving you. You shall not murder. You shall not commit adultery. You shall not steal. You shall not testify against your neighbor as a lying witness. You shall not covet your neighbor's house. You shall not covet your neighbor's wife or his servant or his maid or his ox or his ass or anything that your neighbor has.⁹⁸

This text has become the most recognized of the three versions of the Ten Commandments. In fact, most Jews and Christians probably do not even realize that three versions of the Ten Commandments appear in the text, and when asked where to find the Ten Commandments they would most likely reference Exodus 20. Interestingly enough, this text cannot be identified with J, E, P or D. It was most likely placed here by the redactor.⁹⁹ Friedman proposes in *Who Wrote the Bible?* that the redactor was an Aaronid priest arranging the documents using the Priestly source as a framework for the entire Torah during the Second Temple period.¹⁰⁰ The redactor was doing his work of arranging the texts in the 5th century BCE. That is to say, he was working years after the tradition of the Ten Commandments began and years after the authors of J, E, P and D lived and died. There are two possible reasons for the redactor's insertion of these particular Ten Commandments in Exodus 20. He either collected what he considered to be the most important laws and inserted them into the Sinai/Horeb story as the original

⁹⁸ This translation is from Friedman's *The Bible With Sources Revealed*, 153-4.

⁹⁹ *Ibid.*, 153.

¹⁰⁰ Friedman, *Who Wrote the Bible?*, 218-223.

law code or he inserted an old document which had been in existence since long before the author of J or the Deuteronomist included their preferred versions. The formula of Exodus 20:1-17 does correspond to the suzerain-vassal treaty form just as Deut 5:6-18 does. It is difficult to tell who is copying whom in this case. Whatever the reason behind the redactor's insertion of Exod 20:1-17, it is clear that this gives more clout to the thesis statement concerning the different views about the law of Israel and what happened at Sinai/Horeb. Admittedly, the independent document appearing in Exodus 20 does not have any narrative included. Perhaps it did, but the redactor did not choose to put it in. That will likely never be known.

D: Deuteronomy 5:6-18, The Ten Commandments.

The D version of the text is as follows:

I am YHWH, your God, who brought you out from the land of Egypt, from a house of slaves. You shall not have other gods before my face. You shall not make a statue, any form that is in the skies above or that is in the earth below or that is in the water below the earth. You shall not bow to them, and you shall not serve them. Because, I, YHWH, your God, am a jealous God, counting parents' crime on children and on the third generation and on the fourth generation of those who hate me, but practicing kindness to thousands for those who love me and for those who observe my commandments. You shall not bring up the name of YHWH, your God, for a falsehood, because YHWH will not make one innocent who will bring up His name for a falsehood. Observe the Sabbath day, to make it holy, as YHWH, your God commanded you. Six days you shall labor and do all your work, and the seventh day is a Sabbath to YHWH, your God. You

shall not do any work: you and your son and your daughter and your servant and your maid and your *ox and your ass or any animal* and your alien who is in your gates – *in order that you servant and your maid will rest like you. And you shall remember that you were a slave in the land of Egypt and YHWH, your God, brought you out from there with a strong hand and an outstretched arm. On account of this, YHWH, your God, has commanded you to do the Sabbath day.*

Honor your father and you mother, *as YHWH, your God, commanded you*, so that your days will be extended and so that it will be good for you on the land that YHWH, your God, is giving you. You shall not murder. And you shall not commit adultery. And you shall not steal. And you shall not testify against your neighbor as a *false* witness. And you shall not covet your neighbor's wife, and you shall not long for your neighbor's house, *his field*, or his servant or his maid, his ox or his ass or anything that your neighbor has.

The Deuteronomist's version of the Ten Commandments is almost identical to that of Exodus 20. The words that are not identical are italicized. Most of the differences are minor, such as the addition of the phrase "as YHWH, your God, commanded you" in the commandment to honor your father and mother, the use of "false" (Hb., שוא) instead of "lying" (Hb., שקר) witness, or the addition of "his field" (Hb., שדה) in the commandment not to covet. The most significant difference occurs in the reasons given in the commandment to keep the Sabbath day holy. This line is italicized and underlined in the text above. In Exod 20:11 the reason is as follows: "Because for six days YHWH made the skies and the earth, the sea, and everything that is in them, and He rested on the seventh day. On account of this, YHWH blessed the Sabbath day and made it holy."

This reason recalls the creation story in Gen 2:1-3 (P). God ceased or stopped (Hb., שבת) his work on the seventh day. Therefore, the seventh day of every week is “the Sabbath” (Hb., השבת). Exod 20:11 emphasizes sanctification of time in honor of the cosmic significance of God ceasing the work of creation on the seventh day of the week. The reason given in Deut 5:15 to keep the Sabbath day holy is as follows: “And you shall remember that you were a slave in the land of Egypt and YHWH, your God, brought you out from there with a strong hand and an outstretched arm. On account of this, YHWH, your God, has commanded you to do the Sabbath day.” The Deuteronomist is recalling the historical significance of the Exodus from Egypt. This phrase is similar to the preamble and historical prologue in Deut 5:6 but emphasizes the Israelites’ obligation to YHWH by adding the following phrase: “...brought you out from there with a strong hand and an outstretched arm. On account of this, YHWH, your God, has commanded you to do the Sabbath day.” The theological question that arises from these differences is, “Did God change his mind about the reason for the Sabbath?” The source critical question that arises is, “Why do the different authors give different reasons?” The theological question is not the concern of the present writer, but possible answers to the source critical question may lead to more understanding of the biblical writers’ differing opinions of the law.

Again, the author of Exodus 20 is unknown, so there is no indication of his or her intent. In general, it is probably impossible to identify intent in authorship, but it is apparent that one of the main concerns of the author of Deuteronomy is Egypt. He considers the Exodus and Egypt to have major implications for the future of Israel. The additions of Dtr2 written in exile, according to Friedman, frame the Deuteronomistic

History from Deuteronomy to 2 Kings as “the story of the people of Israel from Egypt to Egypt.” In his article, “From Egypt to Egypt: Dtr1 and Dtr2,” Friedman writes, “Egypt is plainly fundamental to the perspective of Dtr1; and so, in the full Dtr2 edition, Egypt becomes a constant and ominous presence, the setting of the last and worst of the Deuteronomic curses.”¹⁰¹ Ultimately, the commandment to keep the Sabbath day holy in order to remember the Israelites slavery in Egypt is also a warning against breaking the covenant, which would cause the Israelites to suffer the curse of returning to Egypt in Deuteronomy 28. The last curse is Deut 28:68, “And YHWH will bring you back to Egypt... and you’ll sell yourselves there to your enemies as slaves and as maids, and none will buy.” This is eventually what happens to the Israelites. In the time after the Babylonians destroy the Temple the prophet Jeremiah warns the people in Jer 42:19 that God says, “Do not go to Egypt,” but the people call Jeremiah a liar and flee to Egypt with Jeremiah (Jer 43:1-7). Therefore, Dtr2 possibly inserted the different reason for upholding the Sabbath as a reminder that God rescued them from slavery in Egypt in order that they might be free and worship him in the land that was promised to them. They must obey the commandments in order to not return to Egypt (possibly enslavement there) and to not be abandoned by God. But, God does abandon the Israelites because they break the covenant, and they are left to hope for repentance and restoration.¹⁰²

¹⁰¹ Richard Elliott Friedman, “From Egypt to Egypt: Dtr1 and Dtr2.” In *Traditions in Transformation: Turning-Points in Biblical Faith* (Frank Moore Cross *Festschrift*). Ed. by B. Halpern and J. Levenson (Winona Lake, Ind.: Eisenbrauns, 1981), 167-192.

¹⁰² Friedman, “From Egypt to Egypt,” 192.

J: Exodus 34:14-26, The Ten Commandments.

The author of J presents a very different version of the Ten Commandments from that of Exodus 20 and Deuteronomy 5. The text is as follows:

For you shall not bow down to another god – because YHWH: His name is Jealous, He is a jealous God – that you not make a covenant with the resident of the land, and they will prostitute themselves after their gods and sacrifice to their gods, and he will call to you, and you will eat from his sacrifice. And you will take some of his daughters for your sons, and his daughters will prostitute themselves after their gods and cause your sons to prostitute themselves after their gods. You shall not make molten gods for yourself. You shall observe the Festival of Unleavened Bread. Seven days you shall eat unleavened bread, which I commanded you, at the appointed time, the month of Abib; because in the month of Abib you went out of Egypt. Every first birth of a womb is mine, and all your animals that have a male first birth, ox or sheep. And you shall redeem an ass's first birth with a sheep, and if you do not redeem it then you shall break its neck. You shall redeem every firstborn of your sons. And none shall appear before me empty-handed. Six days you shall work, and in the seventh day you shall cease. In plowing time and in harvest, you shall cease. And you shall make a Festival of Weeks, of the firstfruits of the wheat harvest, and the Festival of Gathering at the end of the year. Three times in the year every one of your males shall appear before the Lord YHWH, God of Israel. For I shall dispossess nations before you and widen your border, and no man will covet your land while you are going up to appear before YHWH, your God, three times in the year. You shall not offer

the blood of my sacrifice on leavened bread. And the sacrifice of the Festival of Passover shall not remain until the morning. You shall bring the first of the firstfruits of your land to the house of YHWH, your God. You shall not cook a kid in its mother's milk.

This version of the Ten Commandments is sometimes referred to as the ritual Decalogue. It contains only ritual laws, which are laws concerning the relationship between humans and God.¹⁰³ Three of the commandments in this version of the Ten Commandments correspond to commandments found in Exodus 20 and Deuteronomy 5, but the other seven are different commandments. The three commandments that correspond are the following: keep the Sabbath, have no other gods, and do not make statues/molten gods. The seven commandments that are different are ritualistic rather than ethical, such as the following: celebrate the Festival of Unleavened bread, the Festival of Gathering and the Harvest, the Festival of Passover, appear before God three times a year, gather the firstfruits for offering, do not offer the blood of a sacrifice on leavened bread, and do not cook a kid in its mother's milk. These are all laws about sacrifice, offerings, and worship of God.¹⁰⁴ What is astonishing about the seven commandments that do not appear in the Ten Commandments of Deuteronomy 5 and Exodus 20 is that they all appear in the Covenant Code. The Covenant Code has eight of the commandments of Exodus 20 and Deuteronomy 5. It does not contain the commandments to not commit adultery and to not steal. Although the Covenant Code has many more laws than any of the Ten Commandments, it has more laws in common with Exodus 20 and Deuteronomy 5 than Exodus 34. This could mean that the Covenant Code was an older document than

¹⁰³ Friedman, "Torah," 607.

¹⁰⁴ Table 1 below compares the three versions to one another as well as to the Covenant Code in E and the Tabernacle Pericope in P.

Exodus 20. It is most certainly older than Deuteronomy 5. It is possible that the authors of Exodus 20 and Exodus 34 might have been narrowing down the laws of the Covenant Code into a more structured, simplified, and apodictic law code.

E: The Covenant Code.

The Covenant Code in E is usually attributed to Exodus 21-23.¹⁰⁵ It is more likely that the Covenant Code begins at Exod 20:22. The reason it is usually assumed to start in Exodus 21 is because 21:1 begins as follows: “And these are the judgments that you shall set before them.” The following verses until the end of Exodus 23 contain ordinances for worship such as festival worship (Unleavened Bread, Harvest and Gathering) and ritual purity, as well as case laws about slavery, murder, violence, treatment of animals, theft, sacrifice, money lending, blaspheme, lying, etc. The laws are a mix of social, ethical, purity, and ritual law. There is a blessing (23:25) and several curses or justifications of death (21:14, 15, 16, 17; 22:18). There is no preamble or historical prologue.

If the Covenant Code actually begins in 20:22, then there is an historical prologue: “And YHWH said to Moses, ‘You shall say this to the children of Israel: You have seen that I have spoken with you from the skies.’” There is no need for a preamble or an introduction to YHWH because the Israelites already know it is God speaking to Moses as is indicated in 20:19. The first law that Moses reports to the Israelites is, “You shall not make gods of silver with me, and you shall not make gods of gold for yourselves.” The law against having other gods or making idols is the first and second law of the Ten Commandments in Exodus 20, Exodus 34 and Deuteronomy 5.

Therefore, since ancient Israel used the suzerain-vassal treaty and/or royal grant formula

¹⁰⁵ Propp calls this the “First Code” because it is the first law-code standing in the Torah (but not the oldest) (304).

as a guideline for making covenants with YHWH, then it is more likely that the Covenant Code in E begins in Exod 20:22. Propp also agrees that this could be the beginning of E's law written on the tablets as is discussed in chapter two. He comments on Exod 20:23, "I take the following laws as the likely content of E's tablets, displaced in the redacted text by the Decalogue."¹⁰⁶ The Covenant Code was most likely not written by the author of E because it was probably an independent document originally.¹⁰⁷ There is no way to know if or how the author of E edited it, but he uses the Covenant Code as his source for the law given at the mountain of God. This is most likely the most important law code for E's author because it is sealed with a ritual sacrifice (Exod 24:5-8) and written on the stone tablets by the hand of God. The ritual sacrifice of the bull has been described as a "covenantal meal" which symbolizes Israel's new "vassalage under YHWH."¹⁰⁸

P: Exodus 25-31, 35-40 The Testimony.

In chapter two of this thesis it is proposed that P has no Ten Commandments, but, rather, the giving of the law on Sinai is that of the Testimony. The Testimony is probably the instructions for establishing the priesthood and building the Tabernacle which are given in Exodus 25-31 and then carried out in Exodus 35-40. Exodus 25-31, 35-40 is entitled the Tabernacle Pericope in Propp's commentary, and he notes, "[It] is widely regarded as the parade example of the Priestly Source – for its vocabulary, its style, its tone and its ideology."¹⁰⁹ These chapters are full of the details of the priesthood and the Tabernacle. Exodus 25 instructs the Israelites on how the ark, cherubs and atonement

¹⁰⁶ Propp, *Exodus 19-40*, 182.

¹⁰⁷ Friedman, *Sources Revealed*, 154.

¹⁰⁸ Propp, *Exodus 19-40*, 308.

¹⁰⁹ *Ibid.*, 365-6.

dais are to be made. This is the throne of YHWH because God says to Moses in Exod 25:22, “And I shall meet with you there and speak with you from above the atonement dais, from between the two cherubs that are on the Ark of the Testimony, everything that I shall command you to the children of Israel.” This would be the most holy place on earth for an Israelite priest. Only the priests and Moses are allowed in the Tabernacle, and Moses speaks to God in the Holy of Holies.

The author of P’s main focus is to honor the Aaronid priesthood and to declare it the only rightful priesthood. Exodus 28 and 29 establish the Aaronid priesthood. Exodus 29:44-45: “And I shall make the Tent of Meeting and the altar holy, and I shall make Aaron and his sons holy to function as priests for me. And I shall tent among the children of Israel, and I shall be God to them.” The author of P is following JE and writing in response to the E story that degrades Aaron by associating him with the Gold Calves (Exodus 32).¹¹⁰ In fact, in Numbers 25 the author of P writes a story that an Israelite man and a Midianite woman go into the Tabernacle in front of Moses and the whole congregation, and Phinehas kills the both of them while Moses does nothing. Phinehas, Aaron’s grandson, is rewarded with a covenant that grants him “eternal priesthood” (Num 25:13). Therefore, not only does the author of P have the holiest place on earth containing tablets with the Testimony that says the Aaronids are established as priests by God, the author of P goes on to say that Aaronids are eternally the priests of YHWH. It is logical to conclude that the author of P’s primary concern for the Sinai revelation is not to give laws concerning the people, but to give laws concerning the Tabernacle and the Aaronid priesthood. P is full of laws that include the Ten

¹¹⁰ Friedman, *Who Wrote the Bible?*, 190.

Commandments and many more, but the author of P's focus at Sinai is on establishing Aaron as the first high priest of Israel.

TABLE 1: The Law of J, E, P and D Compared.

	Exodus 20 & Deuteronomy 5	Exodus 34	Covenant Code	Tabernacle Pericope
All Share	Sabbath	Sabbath	7 th day of rest	Sabbath
Shared by 3	No other gods	No other gods	No other gods	
Shared by 2: Exod 20/Deut 5 and the Covenant Code	No statues Do not take God's name in vain Honor your mother and father Do not murder Do not steal Do not be a false witness	No molten gods	No silver or gold gods Do not blaspheme God's name Do not curse or strike your mother and father Do not kill Fines for stealing Do not bring false report and do not lie	
Exodus 34 and the Covenant Code		Festival of Unleavened Bread, Festival of Harvest, Festival of Gathering Three appearances before God each year Do not offer the blood of sacrifice on leavened bread Bring the firstfruits to God's house	Festival of Unleavened Bread, Festival of Harvest, Festival of Gathering Three appearances before God each year Do not offer the blood of sacrifice on leavened bread Bring the firstfruits to God's house	

Exodus 34 and Tabernacle Pericope		Do not cook a kid in its mother's milk The sacrifice of the Festival of Passover shall not remain until the morning	Do not cook a kids in its mother's milk The fat of my festival shall not remain until the morning Make an altar for burnt offerings	Make an altar of acacia wood
Independent Material	Do not commit adultery Do not covet		Treatment of Hebrew slaves ¹¹¹ Daughters sold as maids Violence against neighbors Quarrelling Violence against slaves Striking a pregnant woman accidentally during a fight Ox-goring Injury to another person's animal Arson and grazing to another's field	Make the ark and the poles for the ark Place the Testimony tablets in the ark Instructions for making the Tabernacle and its parts such as the atonement dais, golden cherubs, table, menorah, curtains, the covering, a pavilion, and a courtyard. Instructions for making Aaron and his sons the priests and for making their garments such as their robes, the breast plate, the ephod and

¹¹¹ The independent material in the Covenant Code is mainly in the form of case law or casuistic. For the sake of space I have just indicated the subject matter of each case.

			Deceiving a virgin Do not allow witches to live No bestiality	the headdress Instructions for anointing the Tabernacle, the priests, the altar and the ark
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Chapter 4: Conclusion.

J, E, P and D are different sources by different authors who had many different ideas about the laws of Israel. Their individual ideas about the first law given to the Israelites on their way out of Egypt, through the wilderness, and into the promised land can be distinguished by separating their individual accounts. Those different ideas become more apparent when the conflated Sinai Pericope is separated by the sources that compose it and those sources are compared side by side with the Deuteronomist's version in Deuteronomy 5. Separating the sources brings awareness that the redactor had to make choices about how to construct such a story. The redactor was a genius who formed a synthesis of sources into a single tapestry of ancient Israelite history, religion, and law.

Studying the law of ancient Israel and even Judaism today has taken up many lifetimes of devotion and careful training. The rabbis have continued to expand upon the written and, according to tradition, oral law that was given to Moses at Sinai. It is frequently said, wherever there are two rabbis, there are three opinions. Possibly, that sentiment existed at the time of the redactor's work of trying to present a single, yet inclusive, history of Israel. The giving of the first law was one of the most crucial pieces of his work. His task was to write a narrative of the most important event in Israel's history, and he had before him several literary works. It would be difficult for him to eliminate any of them because these laws were a part of the history of the religion. He could not place them side by side because they painted different pictures of the first law

of Israel. In his effort to have a unified narrative, he wove them together masterfully among over sixty chapters in Exodus, Leviticus, Numbers and Deuteronomy. Although the result of his work has been to understand God as directly giving the laws to the Israelites, this does not seem to be the original understanding of all of the authors.

The authors of J, E, and P all present Moses giving all the laws and judgments to the people. They each have many different ideas of what laws are given at Mt. Sinai/Horeb. The author of J had his or her own version of the Ten Commandments in Exodus 34 which are more focused on ritual than ethics. The redactor inserted another version of the Ten Commandments in Exodus 20 that has come to be the more well-known version. This version is about the principles of the relationship between God and humans, as well as the principles of the relationship between humans and humans. The author of E most likely considered the Covenant Code to be the law given at Mt. Horeb and possibly even written on the two tablets. The author of P does not have any Ten Commandments but, rather, has what he calls the Testimony. The Testimony is possibly the instructions given in the Tabernacle Pericope for building the Tabernacle and establishing the Aaronid priesthood. The author of P might have considered the Testimony written on the tablets to be that of the Tabernacle Pericope in Exodus 25-31. Finally, the Deuteronomist, the latest writer, is the only one to present God speaking the Ten Commandments directly to the people. Each of these authors had different intentions behind the law code he or she presented as the Israelite Covenant, the law code that was given at the birth of Israel as a nation under YHWH, and most of those intentions cannot be known. The preservation of the different versions of the Israelite Covenant suggests that all of these laws had to be constructed into a unified story of Israel's first experience

of God. Whatever happened at Sinai/Horeb was so critical to the development of Israel as a religion and a nation that it had to be attached to the memory of Sinai/Horeb as God's first meeting place with all of Israel.¹¹² The words that God spoke there would be forever remembered as Israel's first covenant and Israel's first intimate interaction with the divine.

There is one law that every author of the sources of the Torah emphasizes in its first law code given to Israel, and that law that appears in every source is to keep the Sabbath day holy. The authors of I, J, E, P, and D all include this law. The authors of J and E give no reason for this law, and that come as no surprise because the law does not usually give reasons for doing any law.¹¹³ But I, P, and D do contain a reason for keeping the Sabbath. The author of P gives three reasons to keep the Sabbath day holy: (1) "because it is a sign between me and you through your generations: to know that I, YHWH, make you holy," (2) "because it is a holy thing to do. One who desecrates it shall be put to death," and (3) "because it is a sign forever, because for six days YHWH made the skies and the earth, and in the seventh day He ceased and was refreshed."¹¹⁴ The author of D says the reason for keeping the Sabbath is: "you shall remember that you were a slave in the land of Egypt and YHWH, you God, brought you out from there with a strong hand and an outstretched arm."¹¹⁵ The author of the Independent Document of Exodus 20 recalls creation just as the author of P does: "Because for six days YHWH made the skies and the earth, the sea and everything that is in them, and He rested on the

¹¹² Levenson, *Sinai and Zion*, 17-18.

¹¹³ Exod 34:21 (J) and Exod 23:12 (E).

¹¹⁴ Exod 31:13, 14, 16, and 17.

¹¹⁵ Deut 5:15.

seventh day.”¹¹⁶ This law also implies the most common law among the sources and probably the most important: you shall worship no other god but YHWH. J, E D and I all have this law in the Israelite Covenant. The author of P does not include it in the Tabernacle Pericope given at Sinai, but, rather, it is already implied. Evidence for this is in Exod 29:45-46: “And I shall tent among the children of Israel, and I shall be God to them. And they will know that I am YHWH, their God, who brought them out from the land of Egypt for me to tent among them. I am YHWH, their God.” The law against idols appears in P in Leviticus 26:1 and is immediately followed by the law to observe the Sabbath. Therefore, the law that every author of the sources that compose the Torah thought to be important enough to be in the first law of Israel was a day of rest to remember the awesomeness of God, to sanctify time, to worship God, to be grateful to God, and to devote oneself to God. From the very beginning of God’s relationship with Israel, He asks her to enter into a covenant with Him so that he might be her only God and she would be His beloved, obedient and gracious child devoted only to Him.

¹¹⁶ Exod 20:11. Friedman notes in *Sources Revealed* that this verse is probably insertion by the redactor, 153.

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