THE SONG OF DEBORAH: A LEGAL-ECONOMIC ANALYSIS

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INTRODUCTION

The Song of Deborah in the Book of Judges records a stunning victory won by a coalition of Israelite tribes under Deborah and Barak over a powerful army led by the Canaanite Sisera.[1] The Song is widely viewed by biblical scholars as among the most ancient of all the biblical material;[2] by its own terms, it describes a period very early in the history of the Israelite occupation of the Promised Land, a time when, there being "no king in Israel,"[3] the common life of the tribes was organized in a loose confederacy under the guidance of "judges"—inspired leaders who would rise up to rescue the Israelites when they faced aggression from other peoples.[4] Deborah was one of these judges—and unusually, a woman as well.

This Article applies tools of legal-economic analysis to understand the function of the Song of Deborah in the life of Ancient Israel.[5] I argue that the text served a number of important norm-

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[1] *See Judges* 5:1-:31. The Song is reproduced in translation as an appendix to this Article.

[2] *See, e.g.,* J. ALBERTO SOGGIN, JUDGES: A COMMENTARY 80 (1981).

[3] *Judges* 19:1.

[4] *See generally* ROBERT G. BOLING, JUDGES (1975).

[5] This Article is part of a broader project in which I use legal-economic methodology to analyze the historical meaning of ancient biblical texts. *See generally* Geoffrey P. Miller, *Contracts of Genesis,* 22 J. LEGAL STUD. 15 (1993) [hereinafter Miller, *Genesis*]; Geoffrey P. Miller, *J As Constitutionalist: A Political Interpretation of Exodus 17:8-16 and Related Texts,* 70 CHI.-KENT L. REV. 1829 (1996) [hereinafter Miller, *Exodus*], *reprinted in* ANCIENT LAW: THE NEW LEARNING (James Lindgren et al. eds., forthcoming 1997); Geoffrey P. Miller, *The Legal-Economic Approach to Biblical Interpretation,* 150 J. INSTITUTIONAL & THEORETICAL ECON. 755 (1994) [hereinafter Miller, *Legal-Economic*]; Geoffrey P. Miller, *Ritual and Regulation: A Legal-Economic Interpretation of Selected Biblical Texts,* 22 J. LEGAL STUD. 477 (1993) [hereinafter Miller, *Ritual*]; Geoffrey P. Miller, *Verbal Feud in the Hebrew Bible: Judges 3:12-30 and 19-21,* 55 J. NEAR E. STUD. 105 (1996) [hereinafter Miller, *Judges*].

The Song of Deborah has not previously been analyzed from the perspective of legal-economic theory. There is, however, a substantial literature on the Song of Deborah in contemporary scholarship, much of it quite valuable. *See, e.g.,* GÖSTA W. AHLSTRÖM, THE HISTORY OF ANCIENT PALESTINE 379-81 (1993); ROBERT ALTER, THE

creating and norm-enforcing functions in the society. In its original form, the Song of Deborah was most probably an oral recordation, in a kind of intertribal account book, of how different groups complied with a norm of mutual support during a time of military exigency. The Song, along with other texts now lost, filled the important social functions of cataloging and keeping straight the obligations of the parties to a loose military alliance. The Song itself is couched in a poetic form suitable for easy memorization in an oral culture. Thus, the Song facilitated the continuation of a socially useful organization when no military force was needed.

Over time, the importance of the specific historical information recorded in the Song of Deborah became attenuated, and the Song—modified by its extended passage within an oral tradition—may well have assumed a broader role, a role that assured its preservation in the culture even while other texts with similar functions were lost. It came to epitomize the nature of the norms applicable to all the Israelite tribes within the framework of a tribal confederacy. The Song of Deborah stood, as it were, as a type of constitution or foundational text of the political system in which it arose.

Eventually, the various groups living in the hill country of Canaan coalesced into a nation-state, and the constitutional function of the Song was superseded.[6] A version of the Song was recorded,

WORLD OF BIBLICAL LITERATURE 41-43 (1992); MIEKE BAL, DEATH & DISSYMMETRY: THE POLITICS OF COHERENCE IN THE BOOK OF JUDGES 206-17, 227-29 (1988) [hereinafter BAL, DEATH]; MIEKE BAL, MURDER AND DIFFERENCE: GENDER, GENRE, AND SCHOLARSHIP ON SISERA'S DEATH 15-36 (Matthew Gumpert trans., 1988); NORMAN K. GOTTWALD, THE TRIBES OF YAHWEH: A SOCIOLOGY OF THE RELIGION OF LIBERATED ISRAEL 1250-1050 B.C.E., at 117-19, 503-07 (1979); VICTOR H. MATTHEWS & DON C. BENJAMIN, SOCIAL WORLD OF ANCIENT ISRAEL, 1250-587 B.C.E., at 87-95 (1993); SUSAN NIDITCH, WAR IN THE HEBREW BIBLE: A STUDY IN THE ETHICS OF VIOLENCE 113-17 (1993); James S. Ackerman, *Prophesy and Warfare in Early Israel: A Study of the Deborah-Barak Story*, 220 BULL. AM. SCH. ORIENTAL RES. 51 (1975); Marc Brettler, *The Book of Judges: Literature As Politics*, 108 J. BIBLICAL LITERATURE 395, 406 (1989); J. Blenkinsopp, *Ballad Style and Psalm Style in the Song of Deborah: A Discussion*, 42 BIBLICA 61, 61-76 (1961); Michael D. Coogan, *A Structural and Literary Analysis of the Song of Deborah*, 40 CATH. BIBLICAL Q. 143, 143-66 (1978); A.D.H. Mayes, *The Historical Context of the Battle Against Sisera*, 19 VETUS TESTAMENTUM 353, 353-60 (1969); D.F. Murray, *Narrative Structure and Technique in the Deborah-Barak Story (Judges IV:4-22)*, 30 SUPPLEMENTS TO VETUS TESTAMENTUM 155, 155-89 (1979); J. David Schloen, *Caravans, Kenites, and Casus Belli: Enmity and Alliance in the Song of Deborah*, 55 CATH. BIBLICAL Q. 18, 18-38 (1993).

[6] On the establishment of a nation-state, see generally ROBERT B. COOTE & KEITH W. WHITELAM, THE EMERGENCE OF EARLY ISRAEL IN HISTORICAL PERSPECTIVE (1987); FRANK S. FRICK, THE FORMATION OF THE STATE IN ANCIENT ISRAEL (1985); Israel Finkelstein, *The Great Transformation: The "Conquest" of the Highlands Frontiers and the Rise of the Territorial State, in* THE ARCHAEOLOGY OF SOCIETY IN THE HOLY LAND 349,

however, by the author (or authors) of the great national epic of the Israelite people.[7] By recording the Song of Deborah as part of the national epic, the author in a sense authenticated the epic itself. The author, moreover, may have seen the Song as serving a polemical purpose within the framework of an established nation-state. The political function of the Song was no longer that of enforcing a tribal confederacy, but rather that of illustrating the defects of the confederacy form of government when contrasted with its more powerful and stable successor, the monarchy.

Thus, I will suggest that the Song of Deborah served three separate functions in the life of the people by the time a version of the song was recorded in the Bible:

I.   Originally, the Song of Deborah, along with similar texts, served as a ledger in an oral culture for the recordation of inter-tribal military obligations.

II.   Later, it came to epitomize—and therefore to embody in some constitutional sense—the overall structure of obligation and cooperation that constituted the tribal confederacy.

III. Finally, the Song was recorded in writing in the national epic of the Israelite people because it was a central part of the cultural background, and because, within the social conditions of the monarchy, it carried an implicit message about the superiority of the monarchy as a form of government as compared with its predecessor, the tribal confederacy.

This Article is structured as follows. I introduce the idea of confederacy as a form of social organization and discuss the

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349-65 (Thomas E. Levy ed., 1995).

[7] The topics of when the biblical text was recorded in writing and how much of the written text is based on oral tradition are two of the leading problems in the scholarship on the Hebrew Bible. There has never been a consensus on the degree to which the Bible is a purely literary product, without a substantial prehistory in oral tradition, on the one hand, or a written recordation of a primarily oral text, on the other. Julius Wellhausen's early work viewed the text as essentially literary creations. *See* JULIUS WELLHAUSEN, PROLEGOMENA TO THE HISTORY OF ANCIENT ISRAEL (World Pub. 1973) (1883). This view was eventually superseded by the position that many biblical texts did evolve out of an earlier oral tradition, an insight developed most prominently by Hermann Gunkel. *See* HERMANN GUNKEL, THE LEGENDS OF GENESIS, THE BIBLICAL SAGA AND HISTORY (W.H. Carruth trans., Schocken Books 1964) (1901). The literature on the question of oral versus written traditions is vast; the leading general authority is still WALTER J. ONG, ORALITY AND LITERACY: THE TECHNOLOGIZING OF THE WORD (1982). For purposes of this Article, I suggest only that there was an oral tradition in Ancient Israel and that the Song of Deborah in all probability developed in the oral form prior to being recorded in the written Biblical text.

fundamental problem of defection and cooperation that, in a sense, defines the confederate form. I then present the setting of the tribal confederacy as described in the Book of Judges, evaluated in light of archaeological discoveries in the Canaanite highlands. I examine the Song of Deborah itself and consider the extent to which it bears out the predictions of the theoretical model. Finally, I discuss the possible evolution of the Song within the overall biblical corpus. The Article argues that the Song of Deborah was a device by which norms of mutual cooperation were established, promulgated, and enforced in the society in which the text developed.

I. LEGAL-ECONOMIC ANALYSIS OF CONFEDERACIES

Many social organizations take the form of affiliations of autonomous entities in which different groups are required to perform their obligations at different times and which are not enforced by any state claiming a monopoly in the use of coercive force. I will call these loose organizations, for want of a better word, "confederacies" or "alliances."

Consider, for example, a political coalition or umbrella organization. Such organizations are typically made up of separate, autonomous groups, each with its own membership and objectives; the coalition works because the constituent groups share certain common interests that can be furthered by mutual support. Because support for the umbrella organization is purely voluntary, and because different issues are likely to impact constituent groups in different ways, there is always the possibility that one of the groups whose interests are not affected, or adversely affected, in a particular case will defect rather than bear the costs of contributing to the common effort. If that group defects, however, it cannot reasonably expect cooperation from others in the future when an issue arises that affects the defector more than other groups. What maintains this type of organization is the anticipation by all groups that, regardless of whether their interests are directly implicated by any particular issue, they can expect to need the cooperation of others. Therefore, they fulfill their obligations to the group even in situations where the short term costs of complying outweigh whatever benefits the constituents obtain.[8]

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[8] For a fascinating account of cooperation among ranchers in Shasta County, California, together with valuable theoretical analysis, see ROBERT C. ELLICKSON,

It is not difficult to identify other voluntary coalitions in which cooperation is ensured by the long-term, repeated nature of the enterprise. Consider, for example, the norms of the labor movement, under which union members do not cross picket lines set up by other unions. There is no legal requirement to respect picket lines, and the members of the nonstriking union may suffer some reduction in pay if they adhere to the norm. Yet they do adhere to the norm, in part for the obvious reason that they expect that, if they were to go on strike, they could count on members of other unions to respect their picket lines.

Another type of confederacy is a group of states joined in a loose association for economic or military advantage. One of the most famous of these systems is the American States under the Articles of Confederation. *The Federalist Papers*, indeed, contain a classic account of the difficulties faced by a confederate form of government as compared with the advantages of the proposed union.[9]

Similar norms can be found in international relations. Countries may commit themselves to providing mutual support and may embody their commitments in treaties that have the ostensible form of law. Yet treaties can be, and are, broken, and there is no international court that can force a country to adhere to its treaty obligations. Despite the fact that international treaties are largely unenforceable, they command a fairly high degree of compliance. The norms of international cooperation cause countries to come to the aid of other countries, in large measure because they want to be able to count on other countries helping them, should the need arise.

Norms of mutual support and help underlie less public modalities of cooperation as well. Consider marriage. The promise to love and honor in the traditional marriage vow is made "for better or for worse," "in sickness and in health." A marriage is a cooperative enterprise for mutual support, and it is rare that both partners in a marriage need help at the same time. Spouses give support to one another in the expectation that they can count on help themselves in the future. Many of the features of the unraveling of marriage in divorce can be understood as consequences of the

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ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES (1991).

    [9] *See* THE FEDERALIST Nos. 15-17, 21-22 (Alexander Hamilton), Nos. 18-20 (James Madison & Alexander Hamilton) (discussing the inadequacies of the confederation in preserving the peace and tranquility of the people).

breakdown of the norm of mutual support and of the deleterious effect on cooperation that occurs when the expectation of repeated interactions is replaced by the anticipation of a final and permanent separation.

While marriage is the most obvious interpersonal arrangement in which norms of cooperation play a fundamental role, all forms of friendship display similar features. Indeed, the importance of mutual cooperation is stressed in folk sayings on the subject of friendship—the derision accorded to the fair-weather friend is explicitly due to the fact that the person fails to come through in a pinch, whereas the adage "a friend in need is a friend indeed" can be understood as emphasizing the fact that those who provide help to a friend can expect true friendship (or at least a reliable return of the favor) in the future.

A feature that pervades all of these arrangements is the fact that they have duration. They persist over time—often long periods of time. It is, indeed, this temporal dimension that gives rise to the arrangements in the first place. If an exchange of favors could take place simultaneously, each party could monitor the other's performance and refuse to perform if he or she observed the other party's default. The need for an ongoing relationship arises only when one party has to perform based on trust that the other party will carry through his or her obligations at a later date. Moreover, other things being equal, the longer the duration of a relationship, the greater benefits it offers. We may assume that in many cases the parties to a relationship will tend to find themselves in need of support on a random basis; they anticipate that they will require help at some point in the future but they cannot predict when. In such cases, a relationship that has the promise of long duration enhances the probability that a performing party will in the future be able to draw on the obligation and receive a return of help; if the relationship lasted only a short time, the party asked to perform first might never find himself or herself in need and might therefore never receive a return on his or her investment.

As an arrangement for mutual support extends in time, however, the limitation of memory becomes an issue. The strategy of cooperation in these games, which all take the form of iterated prisoner's dilemmas, works only if the parties remember who has cooperated and who has defected in the past.[10] Without memory,

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[10] *See generally* ROBERT AXELROD, THE EVOLUTION OF COOPERATION (1984) (discussing the prisoner's dilemma and the conditions that can foster cooperation

there is no reason to cooperate because cooperation will not necessarily be rewarded or defection penalized. The game breaks down into a simple prisoner's dilemma in which defection is the optimal strategy for the party who is asked to provide support. Thus, for these arrangements to be self-sustaining, there must exist some reliable and durable mechanism for recording events of cooperation and defection during the lifetime of the organization.

Another feature of confederacies is that, for at least some of them, *publicity* will be an important device for ensuring cooperation, and therefore for maintaining the organization through time. This may be important, for example, when there are three or more participants in the group and the parties' abilities to monitor other parties' performance varies depending on the circumstances. In such a case, the party who needs help will typically have a better ability to monitor the performance of the other parties than the helping parties will have to monitor one another. Then, it would make sense for the party being helped to publicize the performance of all the helping parties (although the recipient of help may not want to overstress the extent to which it owes a debt of gratitude to others in the confederacy).

Publicity can also be important for the information it provides third parties who are not already part of the group. Presumably, the participants in a group may wish to enter other cooperative arrangements. To the extent that their record of performing (or not performing) their obligations within an existing group is publicized outside the group, third parties receive information about whether or not a particular party can be relied upon to perform in another context. This sort of publicity not only facilitates the formation of other groups, but also enhances the probability of cooperation in the original group, because the impact on other existing or potential groups enhances both the sanction for defection and the rewards for performance in the original setting.

Publicity can take the form of a record of whether or not a particular individual has cooperated in a particular case. More generally, a person's record of cooperation or defection can become crystallized in the form of a reputation, which is the judgment of a broader community of a person's character or ability. Reputation has certain advantages over raw data about whether a person or entity has cooperated or defected in a given case. Reputation

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among individuals, organizations, and nations).

evaluates a person's behavior in many different settings, not just a single incident; it can thus offer a more balanced picture than a single account can. Extreme cases both good and bad can be excluded, and events can be weighted according to their importance and to whether they occurred recently or in the past. Mitigating factors can be considered. Moreover, because reputation represents the judgment of the community as a whole, it tends to be more reliable than the report of a single individual, who may or may not accurately assess the actual situation. Reputation is important in various social and business settings and provides an incentive to individuals and firms to cooperate even when doing so would not be in their immediate short-term self-interest.[11]

Cooperation is likely to be supported by social norms that go beyond the expectation of future support by other groups.[12] The prevailing culture in a particular region is likely to provide additional incentives to cooperate in socially beneficial arrangements, incentives not directly tied to an expectation of future support from other participants in the group.

Such cultural norms are likely to include religious values and beliefs. Belief in a god or gods can induce cooperation even when an individual's immediate, or even long-term, self-interest can best be served by defecting. An alternative way of thinking about the effect of religion is that it can alter the structure of self-interest. For example, if a person has sworn an oath before the deity that he or she will do a particular thing, the person may decide to perform the oath simply out of fear of angering the god, quite apart from whatever adverse consequences other people would impose for defecting.[13]

A society's culture is also likely to establish desirable status categories that can be achieved by compliance and lost through defection. In many societies, these categories are defined along a continuum of honor. People seek the high status that comes with a reputation for acting honorably and eschew behaviors that could

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[11] *See* George A. Akerlof, *A Theory of Social Custom, of Which Unemployment May Be One Consequence*, 94 Q.J. ECON. 749, 750 (1980) (discussing how fear of reputation loss induces people to avoid violating customs, including inefficient customs).

[12] On the emergence of norms and their role in encouraging social cooperation, see generally JON ELSTER, THE CEMENT OF SOCIETY (1989); EDNA ULLMANN-MARGALIT, THE EMERGENCE OF NORMS (1977); Robert Axelrod, *An Evolutionary Approach to Norms*, 80 AM. POL. SCI. REV. 1095 (1986).

[13] On the importance of oaths, vows, and other promises to the deity in the culture of Ancient Israel, see generally Miller, *Genesis, supra* note 5, at 23-29.

be judged dishonorable. Honor can also come to be an end in itself, so that people may seek to act in honorable ways and avoid dishonorable ones, even though their behavior is not observable by others. Norms of honor can be internalized, and thus become part of a person's structure of self-esteem; a person who has thoroughly internalized the norm feels diminished in value if he or she acts dishonorably.

Norms of honor are likely to assume heightened importance in settings where the state, with its dispute-resolving and norm-creating apparatus of police, courts, and the like, is weak or absent—for example, in territories dominated by traditional clan authority (traditional Mediterranean villages or Bedouin culture);[14] or in certain elite cultural segments whose members claim dispensation from ordinary civil authority as to relations among themselves.[15]

II. THE SETTING OF A TRIBAL CONFEDERACY

I now turn to an evaluation of the social setting for the Iron Age I period, before the establishment of a monarchy in Ancient Israel. The Book of Judges presents the tribes of Israel existing in a confederacy of the sort analyzed above.[16] Each tribe is portrayed as having a degree of autonomy, but also as being linked with other

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[14] *See* JACOB BLACK-MICHAUD, FEUDING SOCIETIES (1975); JULIAN PITT-RIVERS, THE FATE OF SHECHEM (1977); Julian Pitt-Rivers, *Honour and Social Status, in* HONOUR AND SHAME: THE VALUES OF MEDITERRANIAN SOCIETY 21, 24 (J.G. Peristiany ed., 1966).

[15] *See* Warren F. Schwartz et al., *The Duel: Can These Gentlemen Be Acting Efficiently?*, 13 J. LEGAL STUD. 321, 322-25 (1984) (noting that in many cultures, dueling was an accepted means for resolving affairs of honor among members of the aristocracy but was considered inappropriate for lower classes).

[16] I will not venture into the treacherous waters of speculating exactly who the "Israelites" were. For a sampling of the discussion, see generally GÖSTA W. AHLSTRÖM, WHO WERE THE ISRAELITES? (1986); GOTTWALD, *supra* note 5; GEORGE E. MENDENHALL, THE TENTH GENERATION (1973). It does not matter, for purposes of this Article, whether the Israelites were ethnically distinctive refugees from Egyptian persecution, as in traditional accounts; Canaanite pioneers, as in some more recent theories; or militant peasant revolutionaries, as in Gottwald's Marxian-inspired view. It does appear that people living in the hill country of Canaan had a different economic base and quality of life than their city-dwelling neighbors, and thus that there would be cultural differences and economic conflicts between city and country populations regardless of whether the "Israelites" constituted a distinctive ethnic group. For a discussion of urban-rural differences, see ISRAEL FINKELSTEIN, THE ARCHAEOLOGY OF THE ISRAELITE SETTLEMENT (1988); Lawrence E. Stager, *Archaeology, Ecology, and Social History: Background Themes to the Song of Deborah*, 40 SUPPLEMENTS TO VETUS TESTAMENTUM 221, 222-23 (1988) (discussing "striking contrasts between the hills and plains" and noting that Canaanites were comparatively wealthier than their Israelite counterparts in the highland settlements).

tribes by obligations of mutual defense and support. These obligations became operative during times of military exigency, when a heroic "judge" would arise out of the people, muster the tribes, fight off a powerful enemy, and restore peace to the land.[17]

The Bible's history of Israel in premonarchic times must be evaluated with caution, given that much of the text reflects the ideological and tendentious views of later authors.[18] Reconstruction of the actual situation is difficult because of the paucity of extra-biblical evidence on the nature of social relationships in the region. From a methodological point of view, the most that we can hope for is a model that satisfies four minimum criteria: (a) consistency with itself (the model should not be based on conflicting premises or posit events or situations that could not coexist); (b) consistency with the text (the model should not contradict statements made in the Bible, at least not without good reason); (c) consistency with extrabiblical evidence (the model should not contradict the findings of archaeology or of other indicators of the social or economic conditions); and (d) consistency with human nature (the model should not be premised on individuals acting in ways that are contrary to ordinary human behavior as it is observed in other settings).

These four criteria are loose enough to admit a range of possible interpretations; within this range, the choice of interpretations is necessarily open. At the same time, these criteria do have bite: their rigorous application casts doubt on interpretations that posit human behavior being fundamentally different in those days. Ancient Israel was unique in that it was the crucible in which developed certain institutions that, in turn, evolved into major religions of today. But there is no reason to believe that the people

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[17] *See, e.g., Judges* 3:9 (Othniel); *Judges* 3:15-:30 (Ehud); *Judges* 6-8 (Gideon); *Judges* 10:6-12:10 (Jephthah); *Judges* 13-16 (Samson).

[18] The fact that the Bible reflects these views of authors writing at a time later than the events in question is common ground shared by nearly all secular biblical scholars. For modern works that pay special attention to this feature of the biblical text, see, for example, Niels P. Lemche, *Early Israel: Anthropological and Historical Studies on the Israelite Society Before the Monarchy*, 37 SUPPLEMENTS TO VETUS TESTAMENTUM (Frederick H. Cryes trans., 1985); P.K. McCarter, Jr., *The Apology of David*, 99 J. BIBLICAL LITERATURE 489, 494-95 (1980); Keith W. Whitelam, *The Symbols of Power: Aspects of Royal Propaganda in the United Monarchy*, 49 BIBLICAL ARCHAEOLO-GIST 166, 168 (1986) (concluding that propaganda was used to legitimize the royal rule of the Davidic monarchy and noting that the "narrative complex in 1 Samuel 9 to 1 Kings 2 represents an official interpretation of events in defense of David aimed at an elite audience in the main centers of power").

of those days were fundamentally different from people today. They fought, cooperated, loved, hated, worked, played, strove for prestige and wealth, and desired a better life for their children. In short, they behaved as human beings have always behaved, subject to the technological, ideological, and social constraints within which they lived. To be creditable, any model of Ancient Israel must accept that the inhabitants of the region were no less and no more human than were people at other times and places.

Some earlier twentieth century scholars, notably Martin Noth, have portrayed the Israelite tribes as operating in a system analogous to the Greek Amphictionic leagues, with well-organized social, military, and cultic obligations built on a twelve-tribe schema.[19] The amphictionic hypothesis is oversimplified as a description of actual social and political conditions.[20] It is contradicted by the Book of Judges itself, which does not disclose a tidy system of support for a centralized cult sanctuary, but instead describes the tribes as entering into unstable and shifting alliances, bickering over territories, failing to support each other in times of need, and even engaging in civil war.[21] Nevertheless, the existence of a loose alliance or confederacy of groups organized for purposes of mutual support in military emergencies appears plausible, even if the actual practice was complex and confused.

There is little reason to doubt the Bible's contention that there was a substantial period in which no king ruled in the land outside the small city-states. This was the Iron Age I period, extending from roughly 1200 to 1000 B.C.E.[22] Egyptian power in the region ended, for all practical purposes, in about 1200 B.C.E. as a result of the invasion of the Sea Peoples. As far as can be seen from the extrabiblical sources, the area as a whole was free from overarching state control during the period in question.[23]

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[19] *See* MARTIN NOTH, THE HISTORY OF ISRAEL 85-108 (1958) (discussing Israel's twelve-tribe system and the institutions of that system, including common worship, festivals, religious ceremonies, the judicial office, divine law, punishment of transgressors, tribal militia, and social order).

[20] Many modern scholars reject the amphictionic hypothesis, at least in the strong form proposed by Noth. Andrew Mayes, for example, observes that the analogy is "doubtful," even "illegitimate." Andrew D.H. Mayes, *Sociology and the Old Testament, in* THE WORLD OF ANCIENT ISRAEL: SOCIOLOGICAL, ANTHROPOLOGICAL AND POLITICAL PERSPECTIVES 39, 52-53 (R.E. Clements ed., 1989).

[21] *See, e.g., Judges* 19-21 (describing civil war between Benjamin and the other tribes).

[22] I use "B.C.E." (Before the Common Era) in place of the more conventional, but religiously loaded, term "B.C."

[23] *See generally* J. MAXWELL MILLER & JOHN H. HAYES, A HISTORY OF ANCIENT

It is also plausible, as the Bible claims, that political authority would have been exercised principally along clan or tribal lines in those days. Any society lacking centralized institutions that claims a monopoly in the use of force is likely to organize itself this way. The clan grouping provides a structure of authority based on natural family ties, facilitates the sharing of tasks (such as the construction of buildings or agricultural facilities), and promotes mutual self-defense. Clan groupings are observed throughout the world in societies without a nation-state, and there is no reason to suppose that the situation was different in Ancient Israel.

The exact nature of the kinship groups referred to in the Song of Deborah cannot be reconstructed with certainty. A number of groups referred to at other points in the Bible as "tribes" (*shevet* or *matteh*) are instanced in the Song (for example, Zebulun or Naphtali). The Song, however, does not use the standard terms for tribes. The only subdivision referred to in a generic sense is Zebulun, designated an "*'am*" (a people). The omission of the generic terms for tribes in the Song might be taken to indicate that in the premonarchic days in which the Song may have developed, social groupings were not as firmly structured along tribal lines as they would be under the later administrative apparatus of the monarchy.[24] It seems unlikely, given the social setting of the premonarchical period, that peoples would have been organized into broad social units exercising strong governmental powers. Social ties were probably most important at the family and village level, with broader kinship or geographical groups exercising a less pervasive and more sporadic influence.[25] The nature of the social groups that play a role in the Song of Deborah need not concern us overly much, however. Clearly, some type of groups organized across a relatively extended geographic territory were involved, and it is not necessary to be more specific in order to present a legal-economic rationale for key elements in the text.

Demographic and technological developments of the time affected the tribes' incentives to enter into defensive alliances. The period between 1200 and 1000 B.C.E. was one of rapid settlement

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ISRAEL AND JUDAH 80-119 (1986).

[24] Moreover, even if the social groups referred to in the Song were tribes in the sense used elsewhere in the Bible, this leaves open the question of what, exactly, these tribes were.

[25] *See, e.g.,* MILLER & HAYES, *supra* note 23, at 91-93.

in the hill country.[26] The increase in population would have been accompanied by heightened competition for land and other resources and, thus, would have been conducive to social conflict as well as to collective solutions.[27] Settlers might have found it useful to form alliances with neighboring groups in order to protect their rights against new groups.

The technology of terrace agriculture may also have played a role in the social dynamics of the times. By building terraces to level off sloping fields, farmers could reduce erosion, place more land under cultivation, and increase yield. Indeed, terracing may have been one of the factors responsible for the population growth in the region in the first place.[28]

Terrace agriculture required the construction of retaining walls to hold back the soil in the terraces. This capital investment by the farming communities evidently generated significant profits to repay the initial expenditure. But capital investment also invited expropriation. Terraced fields were more valuable than unworked fields and, accordingly, presented an attractive prize. The danger to the small farming communities was not one of raiding and brigandage; these communities lacked the spoils of war that raiders or brigands would have desired. The danger, rather, was that of eviction by other in-migrants who wanted to obtain the benefits of the existing settlers' work.

Each individual community would have been weak militarily. The villages were small and had essentially no defenses.[29] They were not surrounded by massive walls. The only massive works that these communities typically erected were the retaining walls themselves, which had little or no defensive function. In a situation like this, it would have been only natural for the villagers to enter

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[26] *See, e.g.,* Finkelstein, *supra* note 6, at 361-62.

[27] For a discussion of why collective solutions arise as a resource becomes more valuable, see Harold Demsetz's description of how Native Americans responded collectively by establishing property rights in hunting territories when European demand caused the value of furs to increase. *See* Harold Demsetz, *Toward a Theory of Property Rights,* AM. ECON. REV., May 1967, at 347.

[28] *See* G.W. Ahlström, *Where Did the Israelites Live?,* 41 J. NEAR E. STUD. 133, 133-34 (1982); W.G. Dever, *How to Tell a Canaanite from an Israelite, in* THE RISE OF ANCIENT ISRAEL 25, 25-56 (Hershel Shanks et al. eds., 1992). The idea that terracing was an important factor in the settlement process is disputed in Finkelstein, *supra* note 6, at 364.

[29] *See* Stager, *supra* note 16, at 221-34 ("Real fortification walls were rare. . . . Most villages relied upon their hilltop position and the surrounding terraced slopes for defense.").

into understandings of mutual defense with neighboring villagers whose livelihoods would also be threatened by the possibility of attack by hostile, land-hungry groups. Small-scale alliances would have been established, probably based on kinship lines. These alliances could gradually have expanded out to encompass more and more territory.

It appears plausible that these alliances would have been established on a religious foundation. The benefits of religion in encouraging cooperation would have been particularly cogent in the stateless society of Ancient Israel.[30] Religious sanction enhanced the enforceability of contracts in situations in which formal legal enforcement was weak or lacking. Hence, the military alliance would have been structured on a religious basis—more out of practical necessity than piety.

In summary, it appears plausible that in the days before the monarchy, the highlanders maintained a loose alliance for mutual defense, an alliance that was grounded in self-interest, but that also depended for its effective functioning on religious sanction and norms of honor.[31]

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[30] As I have argued in prior work, executory contracts—agreements the performance of which by one or both parties is due to take place some time in the future—would have been difficult to enforce in these stateless times. *See* Miller, *Genesis, supra* note 5, at 16-17.

[31] The confederacy does not appear to have been unique to Ancient Israel; several of Israel's neighbors appeared to have gone through a similar phase during their social and economic development. A number of areas settled by Aramaean peoples at roughly the same period developed a confederacy form of government. These included, in the recorded sources: Aram-Zobah, which flourished about the time of the rise of the Israelite monarchy; Aram-Damascus, in the ninth century B.C.E.; and Arpad, in the mid-eighth century B.C.E. *See generally* A. Malamat, *The Aramaeans, in* PEOPLES OF OLD TESTAMENT TIMES 134, 141-47 (D.J. Wiseman ed., 1973). It is possible that Aramaean confederacies were established, at about the same time as the settlement period recorded in the Book of Judges, in Canaan's immediate neighboring territories of Moab, Ammon, and Edom, lands that were being settled by Aramaean immigrants during this period. Indeed, there is reason to believe that the hill country of Canaan was itself settled by in-migrating Aramaean peoples, among others. The Bible itself records an Aramaean influence in the region: Abraham comes to Canaan from Harran, in the territory settled by Aramaeans, and Jacob's wives come from Aram-naharaim in the same region. *See Genesis* 11:32, 24:10. It is possible that the initial impetus for the development of a confederacy form of social organization in Canaan proper came from Aramaean cultural influence.

III. THE SONG OF DEBORAH IN THE TRIBAL CONFEDERACY

I now turn to a more specific analysis of the Song of Deborah, analyzed in light of the theory of the economic function of confederacies presented above. There are actually two versions of the story in the Book of Judges: one, the poetic account found in *Judges 5*, and the other, a prose account in *Judges 4*. Most critics view the poem in *Judges 5* as quite early.[32] The analysis presented here is consistent with an early dating for the text because it suggests purposes that the text may have served in the life of the people during the early monarchy and premonarchical period. This Article analyzes the poem in *Judges 5*.

A. *The Constraint of Orality*

The analysis of confederacies presented above suggests that any alliance of tribes, clans, or other groups for mutual defense would have functioned well only if there existed some reliable method for recording the history of the participating groups in coming to the aid of their partners. In the absence of such a historical record, groups would not have information as to whether or not they could rely upon others based on past performance. Such information would be vitally important because, if a particular group understood it could rely upon its neighbors, it could then adjust its primary behavior accordingly—for example, by building terraces or by foregoing investments in defensive technology, such as pits in which to hide grain or other valuables.

Even more importantly, the reliable public recording of the compliance record of the participating groups would have been crucial to the establishment and continuation of the alliance in the first place. Without such a historical recording system in place, groups that were not subject to military pressure in a particular instance would know that they could defect without having to pay the price later. Moreover, all parties would understand this ex ante. All parties would know that they could not confidently rely on their colleagues for support in a crisis. Possessing such information, they would have little incentive to agree to a military alliance in the first place, and any agreement that they might enter into would not be bonded by a sincere commitment of performance.

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[32] *See, e.g.,* J. ALBERTO SOGGIN, JUDGES: A COMMENTARY 80 (1981).

Thus, the existence of a recording system or tribal account ledger of past performance would have been crucial. It would, moreover, have been essential that such information be embodied generally in the culture rather than simply retained in individual memories. First, the actual instances of military exigency probably were not that frequent. The time distortion of the far future gives the period in question the feel of constant conflict and warfare because cataclysms rank among the events important enough to be encoded in the historical record. For the most part, however, the residents of the area no doubt lived in a condition of relative peace. Military emergencies might have happened, say, every thirty years. Especially given the short life expectancy of the times, this is a long time for information to be retained in individual memory. Moreover, for an alliance to be effective, the memory must record not only the most recent conflict, but all conflicts. For information to be reliably recorded, therefore, it would have to be embodied in the broader culture and passed on from one generation to the next, rather than retained only in individual memories.

A second reason why the information would have to be embodied in the broader culture is that memory is not only fallible and short, but also subject to the distorting effects of self-interest. Let us say that one group decided to defect in a given case. Even at the time of action, human nature supplies plentiful excuses and rationalizations. In the Iron Age, as in the present, the alchemy of human imagination could only too readily transform the base metal of self-interest into altruistic gold. Although there is no cure for the tendency to justify oneself and blame others, the problem can be mitigated if the events in question are recorded in a public medium of broad distribution. The public review of such information is likely to weed out the most egregiously self-serving accounts and to introduce a degree of balance in judgment.

A final reason why it would behoove an alliance to disseminate a historical record in a broader culture is that the record might reach parties who contemplate an incursion or raid on the territory under the right conditions. Members of the alliance would want the record to be disclosed to potential enemies because enemies, observing the existence of a well-functioning system for recording intertribal obligations, would conclude that they might encounter a cohesive resistance from affiliated groups if they did initiate hostilities. Ironically, a public record of past defaults by one or another of the affiliated groups would not be a sign of weakness, but of strength, because it would indicate that the confederacy was

maintaining its records in good order and that the members of the confederacy would do their share rather than risk disapprobation from peers and potential loss of their rights to future protection.

These problems of memory and historical record occur in all societies and present difficulties for all forms of confederacy. In developed societies, even in ancient times, the problems were addressed by means of an official archive of written records.[33] In Ancient Israel before the establishment of a monarchy, however, an official archive of this sort was not possible. The culture lacked the institutions ordinarily necessary for the functioning of such a record, including a capital city, a king, and courts with the power to interpret and apply the law. Moreover, the hill country of Canaan, where the society of Ancient Israel developed, was almost certainly home to an oral rather than a written culture.[34] Other than a few Bronze Age cities, such as Jerusalem or Shechem, the territory at the time was rural rather than urban, with most settlements taking the form of tiny hamlets of a few dozen souls.[35] Literacy in such a culture would not have been at a premium, and there is little evidence that reading and writing were widespread.

In an oral culture, the problem of maintaining a historical record is particularly severe because the necessary information cannot be written down and referred to as needed. It must be maintained in the memories of individuals and passed reliably from one generation to the next. Storage of information in human memories is costly because of limited capacity. We thus expect to observe a compression of meaning in oral cultures—an economy of expression that reflects the costs of recordation more than the demands of aesthetics. We can expect to observe information coded in mnemonic forms, such as narratives, stories, or poems, which are easier to recall than dry facts. There is reason to suppose that a significant amount of the early biblical material reflects these demands of information storage in an oral tradition.[36] Finally, the

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[33] Several official archives have been unearthed in Mesopotamia, which have yielded a rich store of clay tablets containing business, legal, and other records that the culture needed to preserve in authoritative form. A fascinating biblical account of the importance of the central archive in the legal and political life of an ancient nation-state is found in *Ezra* 6, which describes an official search of the Persian state archives that uncovered a memorandum of King Cyrus authorizing the reconstruction of the Temple; it is apparent that the written record itself was deemed authoritative and that memories of the decree were insufficient.

[34] *See* Miller, *Genesis, supra* note 5, at 17 n.7.

[35] *See* AHLSTRÖM, *supra* note 5, at 349-54.

[36] For analysis of compression of meaning and mnemonic form in early legally

existence of an oral culture provides an additional reason for the public dissemination of information; the greater the number of people who know a particular text, the less the likelihood that the text will be altered by any one individual.

When we turn to the Song itself, we find that the text is in a number of respects consistent with the predictions of theory. Most significantly, it is a poem. The use of rhythm, chiasmus, imagery, repetition, parallelism, and poetic phrasing facilitates memorization (compare the poem in *Judges 5* with the prose account in *Judges 4*). It is plausible that the text itself, which is in the form of a vaunt sung by the victorious prophetess, would have been memorized and performed most particularly by women; this would have lent drama and interest to the performance, while at the same time drawing on female as well as male memories for key cultural information.

The text also gives us some information as to how the Song was propagated in the culture and how the accuracy of the recordation was maintained. Much of the early biblical literature appears to have developed in an oral tradition in which itinerant performers played an important part.[37] In the Song of Deborah, we meet these artists face-to-face, setting up at a community well: "Hark, the sound of the players striking up in the places where the women draw water!"[38] The subject of the performance is indicated as well: "It is the victories of the Lord that they commemorate there, his triumphs as the champion of Israel."[39] One can almost hear excited children running to summon their elders.

In addition to performers, information would have been carried to remote villages of the hill country by travelers, especially merchants, who could enhance their welcome if they proved to be adept entertainers. The Song calls on such travelers to attend to its message—and presumably to pass it along as they went from place to place: "You that ride your tawny she-asses, that sit on saddle-cloths, and you that take the road afoot, ponder this well."[40]

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oriented texts, see Miller, *Genesis, supra* note 5, at 21; for discussion of the same rhetorical principles in cultic regulation, see Miller, *Ritual, supra* note 5, at 480-81. The general economic analysis of rhetoric in an oral tradition is set forth in Miller, *Legal-Economic, supra* note 5.

[37] On the folklore origins of biblical texts, see SUSAN NIDITCH, UNDERDOGS AND TRICKSTERS: A PRELUDE TO BIBLICAL FOLKLORE 17-22 (1987).

[38] *Judges* 5:11.

[39] *Id.*

[40] *Id.* 5:10.

The text also calls on "kings" and "princes."[41]   Why would
Deborah demand that foreign leaders listen to her vaunt?   As
already noted, it was in the interest of the tribal confederacy for the
existence of a ledger of cooperators and defectors to be made
known to outsiders who might be tempted to invade.[42]   Deborah is
warning the kings and princes of Canaan not to make the same
mistake that Sisera made in thinking that his chariots could easily
defeat an Israelite peasant army.

B. *The Historical Record*

As would be expected in light of the theory presented above, the
principal part of the text contains a form of a ledger in which the
performance of the different tribes in answering the call to arms is
recorded and assessed.   We find a list of the tribes that responded:
Ephraim,   Benjamin,   Manasseh   (Machir),   Issachar,   Zebulun,
Naphtali.[43]   Those that answered are praised.[44]   Those that did not
respond are listed also: Reuben, Gilead (named here as a separate
tribe but possibly identical with Gad),[45] Dan, and Asher.[46]   An
unknown group, Meroz, is cursed for not coming.[47]   One impor-
tant tribe, Judah, is not mentioned at all.

What are we to make of this list?   In an important analysis,
Lawrence Stager argues that the nonparticipating tribes opted out
because of their economic dependence on settled populations:
Gilead and Reuben were nomadic pastoralists that depended on
trade with the surrounding urban centers, and Asher and Dan were
seafaring tribes also bound by ties to coastal Canaanite or Philistine
settlements.[48]   The tribes that did participate, on the other hand,
were more economically self-sufficient and therefore had less to lose
by a breakdown of relations with the surrounding Canaanite
centers.[49]

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[41] *Id.* 5:3.
[42] *See supra* text preceding note 33.
[43] *See Judges* 5:14-:18.
[44] *See id.* 5:2, 9.
[45] For the possible relationship between Gilead and Gad, see Lawrence E. Stager,
The Song of Deborah: Why Some Tribes Answered the Call and Others Did Not, 15
BIBLICAL ARCHAEOLOGY REV. 52, 53 (1989).
[46] *See Judges* 5:16-:17.
[47] *See id.* 5:23.
[48] *See* Stager, *supra* note 45, at 63.
[49] *See id.* at 62; Stager, *supra* note 16, at 224.

Stager's insightful hypothesis provides a convincing explanation for why some tribes did not participate. In addition to the presence (or absence) of relations with the surrounding non-Israelite centers, however, geography played a role—a point that is perfectly consistent with Stager's theory. This role was a conflict over trade routes, as the Song itself indicates;[50] the struggle was evidently for control over the most important highway linking Egypt with the Beqa Valley, and thence to locations in Mesopotamia.[51] Naphtali, Zebulun, and Issachar, located in the vicinity of Mount Tabor, were directly threatened by the Canaanite incursion.[52] Not surprisingly, they participated. Benjamin, Machir, and Ephraim, also participants, were fairly close geographically, and were probably linked to those three by closer economic and political ties than were the tribes that did not participate.[53]

Two tribes did not come because they were coastal entities that, apparently, were not threatened by a Canaanite raid into the interior even though their territories were fairly close to the battle: Dan "tarr[ied] by the ships" and Asher "lingered by the sea-shore."[54] Gilead remained "camped beyond Jordan"—east of the action.[55] And Reuben, far to the south, was split into factions and chose to "linger by the cattle-pens to listen to the shrill calling of the shepherds."[56] Judah and the lesser tribes of Simeon are not mentioned at all—they were either so far away to the south that the obligations of the confederacy were not binding, or they were not part of the confederacy at all.

Why would the Song of Deborah publicize widespread opting-out, if its function was to enhance the effective functioning of the organization and to provide warning to potential enemies to keep away? For the reason already noted: although the existence of defections might be seen as a sign of weakness, the promulgation and propagation of a text in which the defectors are identified and

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[50] *See Judges* 5:6 ("[I]n the days of Shamgar of Beth-anath, in the days of Jael, caravans plied no longer; men who had followed the high roads went round by devious paths.").

[51] *See* DAVID A. DORSEY, THE ROADS AND HIGHWAYS OF ANCIENT ISRAEL 94-95 (1991).

[52] *See* MILLER & HAYES, *supra* note 23, at 99 map 8.

[53] *See id.* at 94-100.

[54] *Judges* 5:17.

[55] *Id.*

[56] *Id.* 5:15-:16.

criticized was a mark of strength because it indicated that defection would not go unpunished or cooperation unrewarded.

IV. SUBSEQUENT USES OF THE TEXT

So far, I have argued that the Song of Deborah constituted a form of recordation in an oral ledger-book of the rights and obligations that arose out of a particular battle in the life of Ancient Israel. It is quite evident, however, that the Song must have served broader purposes. Over the course of the tribal confederacy there must have been a number of battles, each of them recorded in some fashion. Indeed, the Bible contains other accounts of battles in which some tribes participated and others did not; the most important is the story of Gideon, where Asher, Zebulun, Naphtali, and Ephraim join Manasseh in combating the Amalekites and the Midianites.[57] Most probably, these and other accounts of battles now lost were woven together in historical song-cycles that itinerant troubadours would perform as they moved from place to place. Although such histories are now lost, there is evidence that at one time the account books were kept with some regularity. The Bible speaks of a Book of Jashar,[58] which appears to have been a collection or anthology of poems commemorating important events in the Israelite confederation, and also a Book of the Wars of Yahweh,[59] which contained, among other things, a boundary list for the Northern tribes. Although our knowledge of this book is extremely rudimentary, it appears to have been concerned with maintaining the regularity of relationships among the northern tribes, and thus to have fulfilled the general function of an account ledger of intertribal rights and obligations.

Why would the Song of Deborah have been retained when most of the other accounts were lost? It is possible that at some point during the history of Ancient Israel the Song of Deborah became so well known in the society, and achieved such prestige, that its function as a ledger-entry for a particular battle became superseded. It would have been convenient for the residents of the hill country

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[57] *See Judges* 6:33-:40. According to this story, however, all the tribes who received the call to battle responded; Gideon did not summon the nonparticipants. See also the story of Jephthah, who failed to summon the Ephraimites (to their displeasure after the fact) on the ground that "had I appealed to you for help, you would not have saved us." *Judges* 12:2.

[58] *See* JOSHUA 10:13.

[59] *See* NUMBERS 21:14-:15.

to share authoritative texts that set forth the nature of their obligations toward one another. Such texts would have had a function similar to that of a constitution in modern societies, in that they would have been deeply embedded in the culture and would have defined fundamental political powers and responsibilities. Given the obvious importance of the Song of Deborah, as evidenced by its preservation in an oral tradition and its subsequent placement in the national epic, it is plausible that the Song itself played this constitutional role. If all the tribes of the hill country accepted the authenticity, legitimacy, and prestige of the Song, then the Song itself would have an important role in encouraging participation in intertribal obligations in future cases.

By the time of the monarchy, however, this constitutional role for the Song would again have become superseded. Indeed, the kings of Israel and Judah had every reason to undermine and disparage the preexisting political regime. The tribal confederacy would have been inconvenient to the monarchy on several counts. First, it validated the authority of judges, who were self-appointed, charismatically endowed leaders who arose from among the populace. No king ruling according to dynastic succession would relish the continuation of this sort of office, even in the imagination of the people, much less in reality.

A second reason why the Israelite kings would have wanted to downplay the value of the judges is that the institution of the judge was dependent for its functioning on the cooperation of tribes, and thus, implicitly, on the authority of the tribal elders. The monarchy, with its centralizing focus, would have been hostile to any system that enhanced the authority of tribal elders, whose role was naturally in tension with the power of a king.

Finally, royal ideology would have been hostile to the era of the judges simply because, to the extent that the society was seen as functioning adequately without a king, this perception undermined one important argument for the legitimacy of the kingship as a social institution.

Given these considerations, why did the author of the national epic elect to include hero stories about the judges, and, in particular, why did this author reproduce the Song of Deborah? The answer appears to be two-fold.

First, the epic needed to gain acceptance and legitimacy from the people, and the people would have expected to hear the familiar stories of Israelite folk heroes in any authoritative history. Thus, the author had no real choice but to include some of these stories.

The Song of Deborah, which appears to be the most ancient and probably the best loved of the stories, would naturally have been among those selected for inclusion. Moreover, by including the Song of Deborah and other well-known tales, the author of the epic was able to claim some of the prestige and legitimacy that the culture already attached to the stories. The Song of Deborah had the function, therefore, of helping to self-authenticate the national epic.

A second reason for including these stories is somewhat more subtle. The Book of Judges as a whole tells the reader that while victories may come to the tribal confederacy, they were inevitably followed by more peril. Trade was again threatened. Brigandage or invasion were not eradicated by the tribal confederacy.[60] Although the battles described in the Book of Judges are, for the most part, stunning victories for the Israelites, any sophisticated audience at the time of its creation would have seen that the Israelite confederacy had proved a military disaster. The audience would understand, from an evaluation of the stories in the Book of Judges as a whole, that external threats can only be realistically suppressed by a standing army, something that was lacking in the period of the Judges but that was possible in the days of David and Solomon and their successors.

Thus, the implicit message of the Song of Deborah, as incorporated into the Book of Judges by an author associated with the Israelite monarchy, is that the tribal confederacy did a poor job of protecting the people. The elite classes to whom this message was principally addressed would have understood the Song, in the context of the times, as an argument in favor of the kingship and against the confederacy.

Thus, the Song of Deborah, along with the other hero stories in the Book of Judges, can be understood as being embedded in the national epic for purposes quite different from those that animated its original creation and propagation in the culture. The Book of Judges can be analogized to the American *Federalist Papers*, which analyze confederacies at length in order to demonstrate the superiority of a centralized, powerful nation state. This thesis, however, requires substantiation through evaluation of texts other

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[60] Thus, foreign aggressors repeatedly rise up to threaten the Israelites in the period of the Judges. *See, e.g., Judges* 3:7-:9 (Cushan-rishathaim); *Judges* 3:12 (Eglon); *Judges* 4 (Jabin); *Judges* 6 (Median); *Judges* 11:4 (Ammon); *Judges* 13 (Philistines).

than the Song of Deborah, and accordingly takes us past the limits of analyzing this particular text.

CONCLUSION

This Article has analyzed the Song of Deborah from the standpoint of legal-economic theory. I argue that this text, like others that must have been extant in the society at the time, arose as an oral recordation in a sort of cultural ledger-book of the rights and duties of Israelite tribes within a loose alliance for military support. The text illustrates a number of features whose presence would be predicted by legal-economic theory. It is couched in mnemonic form suitable for easy recordation in the culture. It contains injunctions that it receive widespread publicity, as would be necessary if it were to serve its purpose of facilitating the continued existence of the tribal alliance. Later in the history of Ancient Israel, the Song may have come to serve a broader purpose than merely recording tribal participation or nonparticipation in a particular battle; it may have come to constitute, in some culturally embedded fashion, the obligations of the entire Israelite society to provide help and assistance to one another in times of military exigency. Thus, the Song could have operated in a fashion loosely analogous to a constitution of the society.

After the establishment of a monarchy in the region, the Song appears to have undergone a further transformation. The tribal confederacy was superseded and, indeed, had become antithetical to the rule of the Israelite monarchs. ·The Song, however, was embedded in the national epic of the Israelite people, along with other material, as a means of authenticating and lending prestige to the text. The Song, moreover, appears within the framework of the Book of Judges as part of an argument against the efficacy of the tribal confederacy as a form of social organization, because in the absence of a strong central authority and a standing army, the confederacy was constantly and repeatedly threatened by military aggression from without. These arguments, I believe, satisfy the criteria for interpretation set out earlier in this Article: They are consistent with themselves, the text of the Bible, the findings of modern archaeology, and general patterns of human behavior.[61] Overall, I have tried to show that legal-economic theory can offer a useful perspective on the historical functions of this fascinating

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[61] *See supra* text following note 18.

biblical text. The tools of legal-economic analysis allow us to understand the Song of Deborah as an important mechanism by which norms were established, transmitted, and enforced in the society of ancient Israel.

APPENDIX

BOOK OF JUDGES: THE SONG OF DEBORAH[62]

5   That day Deborah and Barak son of Abinoam sang this song:

2   For the leaders, the leaders in Israel,
        for the people who answered the call,
        bless ye the LORD.
3   Hear me, you kings; princes, give ear;
        I will sing, I will sing to the LORD.
        I will raise a psalm to the LORD the God of Israel.
4   O LORD, at thy setting forth from Seir,
        when thou camest marching out of the plains of Edom,
        earth trembled; heaven quaked;
        the clouds streamed down in torrents.
5   Mountains shook in fear before the LORD, the lord of Sinai,
        before the LORD, the God of Israel.
6   In the days of Shamgar of Beth-anath,
        in the days of Jael, caravans plied no longer;
        men who had followed the high roads
        went round by devious paths.
7   Champions there were none,
        none left in Israel,
        until I, Deborah, arose,
        arose, a mother in Israel.
8   They chose new gods,
        they consorted with demons.
        Not a shield, not a lance was to be seen
        in the forty thousand of Israel.
9   Be proud at heart, you marshals of Israel;
        you among the people that answered the call,
        bless ye the LORD.
10   You that ride your tawny she-asses,
        that sit on saddle-cloths,
        and you that take the road afoot,
            ponder this well.

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[62] THE NEW ENGLISH BIBLE 274-76 (1970) (footnotes omitted). This translation is reprinted with permission from THE NEW ENGLISH BIBLE © Oxford University Press and Cambridge University Press 1961, 1970.

11   Hark, the sound of the players striking up
        in the places where the women draw water!
        It is the victories of the LORD that they commemorate there,
        his triumphs as the champion of Israel.
12   Down to the gates came the LORD's people:
                'Rouse, rouse yourself, Deborah,
                rouse yourself, lead out the host.
                Up, Barak! Take prisoners in plenty,
                son of Abinoam.'
13   Then down marched the column and its chieftans,
        the people of the LORD marched down like warriors.
14   The men of Ephraim showed a brave front in the vale,
        crying, 'With you, Benjamin! Your clansmen are here!'
        From Machir down came the marshals,
        from Zebulun the bearers of the musterer's staff.
15   Issachar joined with Deborah in the uprising,
        Issachar stood by Barak;
        down into the valley they rushed.
        But Reuben, he was split into factions,
        great were their heart-searchings.
16   What made you linger by the cattle-pens
        to listen to the shrill calling of the shepherds?
17   Gilead stayed beyond Jordan;
        and Dan, why did he tarry by the ships?
        Asher lingered by the sea-shore,
        by its creeks he stayed.
18   The people of Zebulun risked their very lives,
        so did Naphtali on the heights of the battlefield.

19   Kings came, they fought;
        then fought the kings of Canaan
        at Taanach by the waters of Megiddo;
        no plunder of silver did they take.
20   The stars fought from heaven,
        the stars in their courses fought against Sisera.
21   The Torrent of Kishon swept him away,
        the Torrent barred his flight, the Torrent of Kishon;
                march on in might, my soul!
22   Then hammered the hooves of his horses,
        his chargers galloped, galloped away.
23   A curse on Meroz, said the angel of the LORD;
        a curse, a curse on its inhabitants,

because they brought no help to the LORD,
no help to the LORD and the fighting men.

24   Blest above women be Jael,
the wife of Heber the Kenite;
blest above all women in the tents.

25   He asked for water: she gave him milk,
she offered him curds in a bowl fit for a chieftan.

26   She stretched out her hand for the tent-peg,
her right hand to hammer the weary.
With the hammer she struck Sisera, she crushed his head;
she struck and his brains ebbed out.

27   At her feet he sank down, he fell, he lay;
at her feet he sank down and fell.
Where he sank down, there he fell, done to death.

28   The mother of Sisera peered through the lattice,
through the window she peered and shrilly cried,
'Why are his chariots so long coming?
Why is the clatter of his chariots so long delayed?'

29   The wisest of her princesses answered her,
yes, she found her own answer:

30   'They must be finding spoil, taking their shares,
a wench to each man, two wenches,
booty of dyed stuffs for Sisera,
booty of dyed stuffs,
dyed stuff, and striped, two lengths of striped stuff—
to grace the victor's neck.'

31   So perish all thine enemies, O LORD;
but let all who love thee be like the sun rising in strength.

The land was at peace for forty years.