

Violence in Legal Procedures (Deut 16:18-17:13)

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*There's so many different worlds
So many different suns
And we have just one world
But we live in different ones*
(Mark Knopfler, Brothers in Arms, 1985)

Deuteronomy's Violence

Deuteronomy has been quite typically mentioned in connection with violence. The target of the violence is of course 'the others', for example, Non-Israelites, as in the special case of the ban against the cities given to Israel 'as an inheritance' (Deut 20:16-18), or as in the case of regular war with other cities (Deut 20:10-15). But in Deuteronomy it is also the people of Israel, who becomes the target of violence, even more often than the Canaanites – the main texts are Deut 9 (Moses' recapitulation of the golden calf episode), Deut 28 (the covenant curses), and Deut 32:19-22 in the Song of Moses. And even an Israelite city can become a subject to the ban, that is, its complete destruction, including the annihilation of all of its inhabitants (Deut 13:12[13]-18[19]).¹

Besides being (sometimes, not always) the target of God's wrath and violence as a nation, the Israelites are quite often the target of violence in the process of the administration of justice as individuals.² Since Deuteronomy presents all the law of Israel as the divine law given by God himself, this legal violence also becomes, at least partially, divine violence against individuals among his people.

In this chapter we will concentrate on the question of legal violence in the legal code of Deuteronomy, specifically on legal violence in Deuteronomy 16:18-17:13. This will be done with reference to the work of Robert M. Cover, a modern legal scholar, who has made the issue of legal violence a central point in his significant contribution to the study of legal theory.

Nomos and Narrative

According to Cover 'we inhabit a *nomos*', which is described as a world of right and wrong that we create.³ In such *nomos* the institutions of law represent just one small aspect. Cover's important point is that legal prescriptions exist within

¹ Cf. Niditch 1993, 20. See also the recent treatment of violence in Deuteronomy in Block 2015, 31–50.

² A special case being family violence, on which see Reeder, 2012.

³ Cover 1983, 4; emphasis original.

the narratives that give them their meaning. Cover explicitly refers to the Bible and its integration of legal and narrative texts, but his main point is that the law and the narrative operate in the same way even where such close connection is not so apparent: 'For every constitution there is an epic, for each decalogue a scripture.'⁴ In its narrative context, 'the law becomes not merely a system of rules to be observed, but a world in which we live.'⁵ A very important point connecting the law and the narrative is made by Cover in the following statement:

Law may be viewed as a system of tension or a bridge linking a concept of a reality to an imagined alternative – that is, as a connective between two states of affairs, both of which can be represented in their normative significance only through the devices of narrative.⁶

The law then has a mediating function between the imagined vision and the reality 'unredeemed' in light of that vision. The law is a way how at least partially that vision can be made real – and at the same time kept separate from reality.⁷ The key role here belongs to the narrative: it is not enough only to know the norms and the precepts, we also need to integrate them with what really happens in life, what we think should or might happen. The prominent tool to achieve this is the narrative.⁸

To summarise, the law makes sense as one part of the *nomos* – that is, a world created by the idea of right and wrong that comes from customs, narratives, history, stories, etc. The function of the narrative within this *nomos* is to form the vision of the perfect, to provide the broad meaning. The narrative can also be used to 'play' with the set of values, with the idea of right or wrong. The narrative can show how the law can or cannot be applied in certain situations by certain narrative characters. The function of the law is to show how this vision could somehow be reached in the present world. Cover's point is of great importance – it says basically that we really cannot understand the law apart from its wider context, that we cannot separate the law of certain community from its narratives. Also, it says that the law is always an imperfect, 'unredeemed' attempt to make at least part of the vision available in this world.

In order to be able to describe various levels of commitments to the given *nomos*, Cover introduces a distinction between the *paideic* and the *imperial* *nomos*. The *paideic* *nomos* is understood with reference to Joseph Caro as 'world-creating'.⁹ It is the product of strong forces, strong commitments, the corpus into which one is educated. Interestingly, according to Cover, '[L]aw as Torah is pedagogic'.¹⁰ On the other hand, the *imperial* *nomos* is described as

⁴ Ibid.

⁵ Ibid., 5.

⁶ Ibid., 9.

⁷ Literally Cover speaks of law which 'rescues us from the eschatology'; *ibid.*, 10.

⁸ Ibid.

⁹ Ibid., 12.

¹⁰ Ibid., 13.

‘world maintaining’. In it ‘the norms are universal and *enforced* by institutions. They need not be taught at all, as long as they are effective... Interpersonal commitments are weak...’¹¹ The difference between these two types of *nomos* directly relates to the problem of violence. The weakness of interpersonal commitments in the imperial type of *nomos* is its important feature. Since in the imperial *nomos* it is desired to include as many people as possible, each with various and different sets of values, it is important to find the least common denominator and to use the force and legal violence in as few cases as possible. Both of these *nomoi* are important – the *paideic* is understood as less stable, creating more and more legal meanings, ‘never only one but always many worlds are created by the too fertile forces of *jurisgenesis*’.¹² That is why the ‘imperial’ forces are necessary – without them the co-existence of multiple ‘*paideic*’ communities would hardly be possible.¹³

What is Deuteronomy?

With Cover’s ideas on *nomos* in mind it is instructive to refer to the discussion in biblical scholarship regarding the nature of Deuteronomy. In this discussion some arguments were voiced and some aspects of Deuteronomy identified which bring us remarkably close to the aspects attributed to the narrative-legal *nomos* of Robert Cover.

It was Gerhard von Rad who described Deuteronomy as ‘not divine law in codified form, but preaching about the commandments’,¹⁴ or as ‘law preached’.¹⁵ However, S. Dean McBride criticised his and other similar attempts to suppress the legal aspects of Deuteronomy, and to see its genre (*torah*) mainly as a piece of didactic-moralistic writing.¹⁶ He did not deny its parenetic

character, but at the same time wanted to keep in the foreground the normative and prescriptive features associated with the term *torah*.¹⁷ According to McBride, however, Deuteronomy also differs from other biblical legal texts (as well as from other ancient Near Eastern legal texts) ‘in its concern to empower a broad constituency of the community whose integrity and political independence it seeks to protect’.¹⁸ This is expressed, for example, by the

¹¹ Ibid.; emphasis by Robert Cover. See also an interesting reference to Karl Barth on pp. 13 and 14.

¹² Ibid., 16.

¹³ By this distinction Cover does not intend to describe different types of society, since ‘no normative world has ever been created or maintained wholly on either the *paideic* or the imperial mode’. Cf. *ibid.*, 14.

¹⁴ Rad 1953, 15.

¹⁵ Ibid., 16.

¹⁶ McBride 1987, 229–44. When rebutting von Rad’s thesis about the form of Deuteronomy, he refers (n. 9, p. 232 and n. 10, p. 233) to the first volume of von Rad’s *Old Testament Theology*.

¹⁷ Ibid., 232.

¹⁸ Ibid., 237.

reference in Deuteronomy to ‘all Israel’, and by insisting on both ‘personal and communal obedience’.¹⁹ The text in Deut 16:18-17:13 is crucial ‘for the preservation of political stability’, and texts like Deut 10:17-19 affirm the ‘egalitarian justice... the crux of theocratic government’.²⁰ Therefore, McBride prefers to understand Deuteronomy primarily as a constitutional text.²¹

Some were not persuaded by McBride’s explanation of Deuteronomy as a constitution for a theocratic society and kept emphasising the homiletic and didactic aspects of Deuteronomy. For Dennis Olson the understanding of Deuteronomy as a constitution missed the didactic aspects of this book:

A constitution is not so much taught as it is legislated and enforced. The present book of Deuteronomy does not legislate as much as it teaches.²²

Patrick Miller tried to peacefully connect and integrate these two perspectives on Deuteronomy as equally important aspects of the book.²³ The central position, according to Miller, belongs to the Decalogue (a ‘constitution per se’), and further specifications are provided by the Deuteronomic Code.²⁴ But Miller agrees also with the strong presence of catechetical motifs, namely referring to seventeen instances of the use of the verb לָמַד (‘teach’) in Deuteronomy, which otherwise does not appear in the Pentateuch. To the same category belong the hortatory style of Deuteronomy, appeals to the memory, the use of illustrations, and other similar facets of this book.²⁵ Miller argues against Olson, that Deuteronomy actually is a constitution not only ‘legislated and enforced’, but also one to be ‘taught and learned.’²⁶ Miller is also quoting Braulik’s insightful observation regarding Deuteronomy as being a ‘theoretic-systematic expression of Israel’s symbolic universe’.²⁷ Further in his article Miller also speaks not only of ‘*learning the polity* of a community’s life’, but also of ‘*learning the story* and the basic tenets of the political order of the community’s life’.²⁸

The continuing discussion regarding the form of Deuteronomy suggests that the idea of law as developed by Cover’s concept of *nomos* might help explain some of its aspects. Mainly it is the concept of *nomos* as a rather complicated system of law, ethics, narrative, and a combination of both legal and didactic aspects. The didactic aspect of Deuteronomy perhaps could be understood as an analogy

¹⁹ Ibid., 239.

²⁰ Ibid.

²¹ See also the argumentation of Norbert Lohfink: Lohfink 1993, 336–52. According to Lohfink, the constitutional model of Deuteronomy should become a model for power distribution in the (Roman Catholic) church.

²² Olson 1994, 10. Quoted from: Miller 2005, 132.

²³ Miller 2005, 133.

²⁴ Ibid., 134.

²⁵ Ibid., 135–36.

²⁶ Ibid., 136.

²⁷ Ibid. The quotation is from Braulik 1999, 15.

²⁸ Miller 2005, 139.

of Cover's paideic type of nomos; at the same time, some parts of Deuteronomy (as well as other parts of the Torah) can be seen from the perspective of the 'imperial' type of nomos. So, for example, with reference to Deut 9:1-10:11 and 10:12-12:1, McBride speaks of 'the basic requirements of personal and communal obedience, upon which a national future depends',²⁹ which seems to reflect paideic aspects ('personal and communal obedience') with the imperial ones ('a national future'). Or similarly, McBride speaks of a 'confession of personal fidelity to God' (paideic aspect) combined with a 'petition for God's renewed blessing on the nation (imperial aspect) as a whole (Deut 26:12-15)', all being in the context of celebration (paideic aspect).³⁰

The Problem of Nomos and Violence

The problem of legal violence had surfaced already in Cover's essay 'Nomos and Narrative' around the distinction between the imperial and paideic nomos. And, according to Cover, this issue is inherently very complicated. 'Judges are people of violence', since they must assert the only valid law at the given moment and 'destroy or try to destroy the rest'.³¹ At the same time, 'judges are also people of peace',³² because by their decisions they regulate conflicting claims, which 'permits a life of law rather than violence'.³³ This tension from the perspective of judges is analysed in the concluding sections of Cover's 'Nomos and Narrative' from various points of view.

Cover investigated the problem of legal violence more specifically in his essay 'Violence and Word'.³⁴ He is interested mainly in the real physical 'homicidal potential'³⁵ of legal process. 'The judges deal pain and death',³⁶ writes Cover. By this he means first of all that legal interpretation as 'practical activity' in a special institutional context makes or often forces other people to act in a certain way – legal interpretation is incomplete without the following violence.³⁷ This kind of violence is 'utterly real' in contrast to any kind of violence found in literature, art, or poetry.³⁸ Cover concentrates on three aspects of legal interpretation which relate to the problem of violence:

- Legal interpretation is practical activity – people must act according to the judicial word;³⁹

²⁹ McBride 1987, 239.

³⁰ Ibid., 243.

³¹ Cover 1983, 53.

³² Ibid., 53.

³³ Ibid., 53.

³⁴ Cover 1986b, 1601–29.

³⁵ Ibid., 1610.

³⁶ Ibid., 1609.

³⁷ Ibid., 1613.

³⁸ Ibid., 1609.

³⁹ As to the practical aspect of law, especially in its relationship to literature, see Peters, 2005, 442–453. Cf. also Cover 1986a, 821 *et passim*.

- Legal interpretation is incomplete without violence within a system – within such institutional violence people act in an ‘agentic state’,⁴⁰ that is, they understand the responsibility for legal violence to lie with somebody else or with the system as a whole;
- Legal interpretation must pay attention to the ‘effective organization of violence’⁴¹ – the system must be able to apply even a violent sentence meaningfully.

Therefore, Cover concludes, legal interpretation is never free from the following action (especially violent): it must be capable of violence, but it also must be aware of its practical application. So, for example, a judge must take into consideration what happens with the sentenced person after the sentence is passed.⁴² Cover offered an illustration of the ‘agentic state’ in which justice operates in the process of capital punishment in the United States. The violence of the warden, the guards, and the executioner relates back to the decision of the judge. On the other hand, the judge does not carry out the execution her or himself in this system. The whole process including appellations makes sure the decision is never carried out by a single person. Cover speaks of social cooperation⁴³ – so the judge is both separated from and at the same time connected with the following violence. This institutional frame for violence ensures that it is understood as something different from personal vengeance. ‘Legal interpretation takes place in a field of pain and death’.⁴⁴ Legal interpretation cannot be understood apart from the violence it generates. Cover is not necessarily pleased by this situation. However, he prefers to see the violence at the centre of the law, rather than seeing it let loose, free of ‘the collective decision rules and the individual efforts to achieve outcomes through those rules’.⁴⁵

⁴⁰ Cover 1986b, 1614; with reference to Milgram 1974.

⁴¹ Cover 1986b, 1616.

⁴² In his essay Cover refers to the decision of Judge Stern United States Court for Berlin in *United States v. Tiede*. Judge Stern refused to send Tiede to the prison for skyjacking since the status of the Court and its capacity to supervise the future fate of the sentenced Tiede was uncertain. Cf. Cover 1986b, 1619–21.

⁴³ Ibid., 1625.

⁴⁴ Ibid., 1601.

⁴⁵ Ibid., 1628. Cover’s view on legal violence has been criticised by Austin Sarat. Cover, according to Sarat, sees law’s violence as the only alternative to much more destructive violence outside the frame of the law. Sarat is critical at this point: ‘Like many liberal theorists, he does so by imagining the world without that ordering violence as a disorderly world and by describing the world of law’s violence as an orderly and ordering one’; Sarat 1995, 260. See also a similar critique by Jason A. Beckett: Beckett 2011, 3–39. It seems to me, however, that this critique is an example rather of the vision, and not the reality, with which Cover is dealing.

Nomos and Violence in Deuteronomy 16:18-17:13

In this part we want to relate the above observation of Robert Cover regarding legal violence to the book of Deuteronomy, especially to the passage in Deuteronomy 16:18-17:13. We will attempt to relate this legal passage to other aspects of Deuteronomic nomos and see if such connections shed any light on the legal violence expressed by this text. We also want to apply various aspects of Cover's analysis of legal violence in the process of interpretation of Deuteronomy 16:18-17:13.

The passage is placed in the central part of the Deuteronomic code, introducing a section on 'public authority and leadership', that is, the laws concerning judges, king, levitical priests, and prophets in Deut 16:18-18:22.⁴⁶

Deut 16:18-17:13 can be divided into four sections:

1. Setting Up the Judges, Instructions for the Judges (16:18-20);
2. Three Cultic Prohibitions (16:21-17:1), being
 - a) Against the Ashera (16:21),
 - b) Against the Sacred Pillar (16:22),
 - c) Against the Sacrifice of a Blemished Animal (17:1);
3. Judicial Procedure in a Typical Case – the Case of Idolaters (17:2-7);
4. Judicial Procedure for Extraordinary Cases – the Central Court (17:8-13).

The passage starts as apodictic law (Deut 16:18-20; 16:21-17:1). In Deut 17:2-13 the genre changes into the casuistic legal genre.⁴⁷ The apodictic part of the text, besides the cultic prohibitions to which we will return later, commands the judges to be loyal to the principles of justice and of equality of Israelites before justice regardless of their social status. The first case is concerned with a breach of the covenant with Israel's God by an individual, which should be investigated by the local judges and, if proven, punished by the death penalty. The second case presents a situation which is beyond the competence and capacity of the local judges and in which the central court must be consulted and obeyed. If not, the death penalty is the consequence.

As we can see, this text starts with the requirement of justice for every Israelite, but both of the following cases hypothetically lead to the death sentence, a prime demonstration of legal violence. It does not come as total surprise, but still the question is pressing: What is the place of legal violence in this text, or in the whole of the Torah? Does the text offer some awareness or even some reflection regarding the possibly problematic aspects of the death penalty in this

⁴⁶ Clements 1998, 2:416. Christensen speaks here of the 'center section of the central core (12:1-26:15) of the book of Deuteronomy' with reference to Deut 16:18-21:9; Christensen 2001, 353.

⁴⁷ Von Rad doubted 'the genuine casuistic statute' of this section. Cf. Rad 1966, 117.

case or in general? How can this text be related to our current theological and legal thinking? Does this text simply show the inferiority of biblical law to that of our modern society? Can it somehow be explained, without being explained away?

The first section of our passage starts with the instruction to set up the judges and officers and with a general proclamation regarding justice. The passage is bracketed by the expression ‘the Lord, your God’ as a giver of the land and its cities. This is an important reference to the narrative aspects of Israel’s (and also deuteronomic) *nomos*. The application of justice in Israel is inseparably connected with the person of the God of Israel. The legal principles formulated in this passage are presented as a matter of religious and national identity with practical consequences for the prosperity and well-being of the people (‘so that you may live and inherit the land’). This reference to God’s acts is in some way similar to the introduction to the Decalogue; only there it refers back to the past event of exodus (Deut 5:6 // Exod 20:2). The reference in the Decalogue is to the past acts of God on behalf of Israel; here in this text the emphasis is on the present and present-future⁴⁸ act of giving the land by God.

The responsibility for implementing justice is with the whole people, who are addressed in Deut 16:18 by the 2nd person singular. So, while the prophet and also the levitical priests are established directly by God, the people must be involved and responsible for establishing the judges and the officers. This makes justice a matter for each individual.⁴⁹ Notably, the judges are not selected by the king, which suggests independence of the judges from the executive power of the king according to Deuteronomy.⁵⁰

Moreover, the rhetoric of the whole passage somewhat blurs the distinction between the agenda of the judges and the responsibility of the people: the grammatical forms of the 2nd masculine singular are used with reference to the people in Deut 16:18, and also in the admonition in 16:19-20. In 16:19 it is most likely that the judges are being addressed,⁵¹ but in verse 20 the reference seems to be more general, for the mention of inheriting the land includes the people as well. So even if the proper conduct of justice primarily falls under the responsibility of officers and judges, this does not mean the people can fully delegate their responsibility to them. So, according to this legal philosophy, the judges are established by (and are presumably somehow responsible to) the people of Israel – the community of individuals who should understand that

⁴⁸ The present-future aspect is expressed by construction with the participle: נָתַן לָךְ (‘is giving to you’, or ‘is going to give you’; Deut 16:18, 20).

⁴⁹ Strictly grammatically and probably historically this would concern each adult male. To the rhetoric and theology of 2nd person singular address in Deuteronomy, cf. McConville 2002b, 19–36.

⁵⁰ Also, the king should be elected by the people, according to Deut 17:14, but in that case the reference to ‘all the nations’ creates clearly negative connotations.

⁵¹ McConville 2002a, 286.

proper judicial institutions and procedures are directly connected with their well-being in a God-given land.

The main concern of the law-giver here is the proper administration of justice. The judges are ‘to make just judgments’ (מִשְׁפֹּט צֶדֶק; Deut 16:18), and seek justice exclusively (צֶדֶק צֶדֶק תִּרְדּוּ; Deut 16:20). The key terms מִשְׁפֹּט and צֶדֶק point to the basic legal and judicial values. It may be the case that מִשְׁפֹּט refers to the specific case and its adjudication, whereas צֶדֶק to a more general and more abstractly conceived quality of such a process (‘justice’).⁵² Both of those aspects will be the focus of the following two cases, described in Deut 17:2-13.

Since justice is placed under the responsibility of human judges according to this text, the proper realisation of justice depends on the qualities of the appointed judges. This is the reason why clear senses, wisdom, and proper speech and deeds are required of judges, and should not be blinded or twisted by bribes – the text thus reflects on the utmost responsibility of human agents in the area of justice. The negative possibility of twisted law seems to be an important theme of the passage.

The three prohibitions of cultic character in Deut 16:21-17:1 present a classic problem in the interpretation of this legal text.⁵³ Many find its place in the current context quite problematic, as expressed, for example, by Bautsch: ‘While Deut. 16.21–17.1 forms a literary unit, it fits uneasily into its context of 16.18–18.22 in Deuteronomy.’⁵⁴ But even if we understand these verses as a proof of some later tradition, the question of the relationship of seemingly incongruent paragraphs of the current text must be asked. A persuasive answer to this question has been provided by Bernard Levinson. He doubts that Deut 16:18 actually starts a dramatically new section. Levinson argues that ‘the editors [of Deuteronomy] deliberately interweave the two subject areas, cultus and justice, in order to mark their inner coherence’.⁵⁵ It is not only a matter of superficial correspondence; Levinson argues for a deep relationship between the matters of cult and justice in Deuteronomy, which reflects the concern of authors and redactors of Deuteronomy to work out the implication of cultic centralisation for the area of cult and for the judicial procedures.⁵⁶ These observations support the idea that law is a complex network of values derived from stories, religion, history, etc. In Deuteronomy the law and its authority fully depend on God as the law-giver. The apodictic formulae in 16:21-17:1 relate to the identity of this law-giver, and they provide the key reference to the will of God as the person who establishes the community and its order.

⁵² Ibid., 287.

⁵³ For a recent treatment of this text see Bautsch 2016, 321–36.

⁵⁴ Ibid., 324.

⁵⁵ Levinson is referring to the parallel structure of Deut 12:1-16:17 (cultus); 16:18-20 (justice); 16:21-17:1 (cultus); 17:2-7,8-13 (justice): Levinson 1997, 136.

⁵⁶ Ibid. See also McConville 2002a, 288 for a similar understanding of the text.

In this first casuistic section of the passage we explicitly encounter the issue of legal violence. The presentation of the case begins with references to the basic aspects of the deuteronomic nomos, among which belong the God-giveness of ‘the gates’, the special relationship of the community to their God through the covenant, which makes Israel responsible to God’s law both collectively and individually. God is the source of the evaluation; therefore, the crime is described by the cultic expression ‘abomination’ (תועבה; Deut 17:4) – the same as is used in Deut 17:1 regarding the offering of an animal with a defect.⁵⁷

The case presents a crime which would probably be quite clear to the implied reader of Deuteronomy. The breach of the covenant,⁵⁸ worshiping other gods and so on, would quite understandably be worthy of the death penalty as, for example, in the case of espionage or treason.⁵⁹ The interest of the legislator seems to be mainly with the judicial procedure itself, hence the designation of the passage as procedural law, or ‘adjective law’.⁶⁰

Legal violence is in a certain way limited by the prescribed procedure. The emphasis is on the ‘thorough inquiry’⁶¹ of the judges, which underscores the human responsibility in the process of establishing justice. Similarly, great responsibility is expected from the witnesses. They are mentioned in the prominent position in the presentation of the case (vv. 6-7) as those who play a key role during the trial and also at the execution. This is the critical moment concerning legal violence in our text: the witnesses cannot avoid the violence brought about by their testimonies; indeed, they are reminded that their testimony has the dimension of ‘pain and death’, as Robert Cover would have it. This seems to be an important principle in the deuteronomic legislation, as can be seen in Deut 13:16[15].

This legal case as a piece of adjective law formulates some principles of a judicial procedure, such as the thorough inquiry necessary for the evaluation of the case, the fact that the result of the investigation must be ‘the true and certain case’ (אמת נכון הדבר; Deut 17:4), and the process requires the testimony of at least two or (perhaps better) three witnesses. It is implied that the absence of any of these aspects from the process would not allow the case to stand. It is explicitly stated that the availability of only one witness is insufficient. In such a case, the guilt cannot be accepted as beyond any reasonable doubt. It is clear

⁵⁷ Block 2015, 37.

⁵⁸ Explicit reference to the covenant appears in Deut 17:2 where the worship of other gods is described as transgressing the covenant (עבר ברית). Such a thing is described as ‘what is evil in the sight of the Lord’ (Deut 17:2), thus evaluating the deed from God’s perspective.

⁵⁹ Craigie 1976, 250.

⁶⁰ Levinson 1997, 118, 121, 124ff. See also McConville 2002a, 283.

⁶¹ ודרשת היטב והנה אמת נכון הדבר (Deut 17:4). Cf. the parallel in Deut 13:15. We have observed a similar interest in human ability and clarity of judgment in the introductory part of this passage, in Deut 16:19.

that such requirements significantly limit the use of legal violence, which is the death penalty in this particular case.

The role of the witness, that is, the involvement of the witness in the projected execution, is quite different from how the violence is handled in Western judicial procedures. The witness in Deuteronomy has to accept full responsibility for the given testimony, and for the resulting violence by taking part in it personally.

This aspect is further developed in a closely related law in Deut 19:15-21. It starts with an apodictic instruction in v. 15 regarding the number of witnesses. The principle of two or three witnesses is here formulated as a general law that is valid for any accusation. The following case develops a hypothetical situation of a false witness. A similar formulation paying attention to the proper investigation (דרש היטב) appears here similar to the case in Deut 17 (Deut 19:18 // 17:4). The punishment for the false witness must be the same as that which threatened the falsely accused person.

The emphasis on the role of the witness both in Deut 17:2-7 and in the separate law in 19:15-21 testifies to the process of reflection in Deuteronomy on legal violence, and in any possible practical situation give significant advantage to the defendant.

The procedural character of the second case is even more obvious. It deals with various cases in which the local court might reach its limits – at least the first case ('bloodshed') being concerned with the capital crime.⁶² In such a situation the responsible person⁶³ should consult the special central court.⁶⁴ The authority of the place is based on its being a place chosen by God (17:8,10). However, the role of God in the judicial process is not specified. The focus is rather on the role of the human agents: the local judge should come to the chosen place of the court and inquire (דרש). The levitical priests and the judge will announce the judgment (דבר המשפט). The terminology in Deut 17:11 seems to emphasise the rational aspects of the judicial process, that is, the articulated 'instruction/law' (תורה) and communicated 'judgment' (משפט).

From the point of view of legal violence, the emphasis is on the highest responsibility for carrying out this 'word' or 'judgment'. Whoever (including the local judge, or a local community member) would not act according to this central judgment would have to be executed. The function of this execution is parallel to the function of removing the idolatrous person in Deut 17:7 – 'purge the evil from Israel' (17:12 // 17:7). This is quite a strong formulation, making

⁶² Rad 1966, 118.

⁶³ Addressed in 2nd masculine singular, presumably the judge, but see the discussion above.

⁶⁴ As most commentators note, this is not an appellate court; it is rather a court for a different type of cases (i.e., 'exceptional cases').

a parallel between the paradigmatic crime of idolatry⁶⁵ and the lack of respect for the decision of the central court. It is also interesting that possibly even the judge is threatened by the death penalty (17:12): the legal violence here is directed towards the judges or other active participant of the judicial process, not to the original criminal, but to whoever would somehow want to boycott the act of justice.

The Violent Nomos of Deuteronomy?

It is obvious that Deuteronomy 16:18-17:13 makes room for legal violence. In the present study we hope to have shown that the passage actually reflects on the violent aspects of law in a specific way. Categories of Robert Cover's work regarding nomos and violence in law seem helpful in this respect.

First, the legal violence is presented in the context of strife for justice within the people of Israel. Justice is presented as a core value, directly related to important aspects of Israel's nomos: God is the original law-giver of Israel, God is the one who requires justice. God is the one who gives the land to Israel, so that the people can live there as the people of justice. Loyalty to God is the key element of this narrative-legal world. The legal violence mentioned in the text is understood as the means of protection of the community and its values.

In the story of Israel at this specific point, everything depends on the proper worship of the only God in a God-given land. At stake is not the free choice of an individual, but the existence of the whole people – this is a perspective quite different from that of a nomos of modern Western secular society. Israel's nomos is not that of a religiously pluralistic society; religious tolerance is not desirable, and it makes no sense at this point of the story.⁶⁶

Also, Robert Cover's concept of law as a mediator between the vision and reality is important and helpful. This is both a strength and a weakness of legal thought and practice. The vision of deuteronomic nomos is that of the people of Israel chosen by God, entering in the covenant with God, living in a God-given land and worshiping one God. The law brings contact with unredeemed reality. What should be done when an individual intentionally breaks the covenant? The execution of such a person may be viewed as tragic and terrible by moderns. Still, at the given point, it can be understood as the only way to keep the integrity of the whole people, as stopping the crime from spreading throughout the community: 'So you shall purge the evil from Israel' (Deut 17:12).

The negative aspects of legal violence, however, are taken seriously. The two cases emphasise the correct procedure to be followed, thus practically limiting

⁶⁵ The idolatry is not only a paradigmatic crime in the preceding case, but, of course, also the paradigmatic sin of Israel in Exodus and Deuteronomy, and, therefore, an important point of reference in the legal and narrative *nomos* of the Old Testament/Tenak.

⁶⁶ The community behind Deuteronomy clearly saw 'cultic diversity and theological pluralism as prime threats to national cohesiveness'; McBride 1987, 240.

the applicability of legal violence. In the first case the emphasis is on the thorough inquiry during the investigation and on reaching the conclusion regarding the criminal act beyond any reasonable doubt, and, not least, based on the testimony of more than one witness. The second case is concerned with the functioning of the central court for difficult cases. Here the legal violence is directed against those who would not want to respect the conclusions of the central court. We might speculate if the very idea of the central court could be meant to limit the legal violence (or the abuse of law) on the level of local courts. In effect, the legal violence is not suppressed or treated as non-existent; rather, it is admitted, given a place, but also realistically restricted and limited.

As already mentioned above, Cover himself at one point describes the world of Torah as *paideic nomos*. The listeners to Deuteronomy are presented as those who listen to the words of the Torah from their childhood, for whom loyalty to the Torah equals loyalty to one's parents, family, clan... Strong commitment to the *nomos* of the Torah is assumed, especially when a person wants to live as a member of such a community. At the same time, Deuteronomy presents the picture of Israel as a governed society, as a state – and the *paideic* values of the community become also its imperial values.

The problem for the modern reader is that religious values are considered as a fully personal and private question, part of a *paideic nomos* of an individual. A person in a modern society can choose if his or her religious commitment is going to be stronger or weaker. The imperial *nomos* of a modern society tells the story of religious freedom or even religious ambivalence – the modern state is not in general kept together by shared religious ideas or religious praxis.⁶⁷ As readers of Deuteronomy we must be aware of our different perspective. We would need to find a similar type of commitment valid in our societies – both deeply inculcated in most individuals and also understood as a critical value for the survival of the nation if we wanted to compare it with the laws of Deuteronomy.⁶⁸

⁶⁷ Even though the question of religious and national identity becomes more and more pressing in many areas.

⁶⁸ Such a commitment might perhaps be the idea of loyalty to the nation during war, loyalty to democracy, etc.