

Law and Order in Judges 19-21

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Introduction: Evaluating the Nation's Behavior

A synchronic reading of Judg 19–20 shows that the narrative is placed in a structure of crime and punishment.¹ The obvious question is, therefore, whether justice was done, in the sense of applying appropriate retribution and restoring peace and harmony to the community.² The answer to this question affects the evaluation of the nation's behavior, which contributes not only to understanding the meaning of the narrative, but also to clarifying the link between the narrative and the pro-monarchy comment that envelops the text (19:1; 21:25).³ If the nation took appropriate action, the comment is foreign to the narrative; but if their behavior was inappropriate, supporting a change in form of government should come as no surprise, although the

¹ The ramifications of the punishment are listed in Judg 21. Even if different traditions are at the root of this three-part narrative, its final version links the different part linguistically, causally, and thematically, creating cohesiveness. See: Robert H. O'Connell, *The Rhetoric of the Book of Judges*, VTSup 63 (Leiden: Brill, 1996), 244–252; Daniel I. Block, *Judges* NAC 6 (Nashville: Publishing Group, 1999), 520; K. Lawson Younger, *Judges*, NIV Application Commentary (Grand Rapids: Zondervan, 2002), 347; Susan Niditch, *Judges: A Commentary*, OTL (Louisville: Westminster John Knox, 2008), 190; Barry G. Webb, *The Book of Judges*, NICOT (Grand Rapids: Eerdmans, 2012), 454; Serge Frolov, *Judges*, FOTL (Grand Rapids: Eerdmans, 2013), 310.

² While the definition above is generally accepted, the term 'justice' (צדק) lends itself to a myriad of nuances depending on the specific context. See: Jacob S. Licht, "צדק," *Encyclopaedia Biblica* (vol. 6; Jerusalem: Mosad Bialik, 1981), 678–686, here 681–682 (Hebrew); Temba L.J. Mafico, "Just, Justice," *ABD* 3:1127–1129; second interpretation in *HALOT* 3:1005.

³ Talmon's suggestion to view the word 'king' here as denoting 'judge' is unlikely, since the comment seems to support monarchy. See: Shemaryahu Talmon, *King, Cult, and Calendar in Ancient Israel: Collected Studies* (Jerusalem: Magnes, 1986), 44, 47–52, and similarly Lillian R. Klein, *The Triumph of Irony in the Book of Judges*, JSOTSup, 14 (Sheffield: Almond, 1988), 14, and critique by O'Connell, *Judges*, 289 n. 3 and Gregory T.K. Wong, *Compositional Strategy of the Book of Judges*, VTSup, 111 (Leiden: Brill, 2006), 200–201.

specific aspect of leadership failure should be identified to understand in what manner the appointment of a king would provide a solution.⁴

Some evaluate the nation's behavior positively, stating that the people acted as a cohesive body, taking responsibility for the crime that was committed, working toward defending morality and maintaining an appropriate value system.⁵ Yairah Amit went so far as to claim that this was "an unprecedented example of the efficient functioning of tribal frameworks in the Era of Judges."⁶ This would result in a lack of correlation between the story and the pro-monarchy comment, which is not inherent to the narrative.⁷

Conversely, others claim that the text is highly critical of the nation for actions that resulted in a civil war and encouraged the abduction of women.⁸

⁴ Shapira noted that the biblical formula "everyone did as he pleased" is not always negative; it can be neutral, and at times even positive. He believed the ambiguous nature of the phrase attests to the positive potential of the Judges' reign, which failed in the final narratives of the book, but this is a solitary and localized occurrence. Even if his assertion regarding the formula is correct, here the formula is used as negative criticism of the nation. See: Amnon Shapira, "In those days there was no king in Israel; everyone did as he pleased (Judges 21:25): Was There Really Anarchy?," *Democratic Values in the Hebrew Bible* (Tel-Aviv: Hakibbutz Hameuchad, 2009), 240–260 (Hebrew).

⁵ Yairah Amit, *The Book of Judges: The Art of Editing*, tr. Jonathan Chipman; Biblical Interpretation Series 38 (Leiden: Brill, 1998), 338–339; J. Alberto Soggin, *Judges*, OTL (Philadelphia: Westminster, 1981), 280; Andrew D.H. Mays, "Deuteronomistic Royal Ideology in Judges 17–21," *BibInt* 9 (2001): 241–258, here 254–255; Cynthia Edenburg, *Dismembering the Whole: Composition and Purpose of Judges 19–21*, Ancient Israel and its Literature 24 (Atlanta: SBL Press, 2016), 22; Shapira, "In those days there was no king in Israel," 242–244.

⁶ Yairah Amit, *Judges*, Mikra LeYisra'el (Tel-Aviv and Jerusalem: Am Oved and Magnes, 1999), 312 (Hebrew). See also Amit, *The Art of Editing*, 338: "The community of Israel appears in this chapter as a unified and well-run organization."; *ibid.* 341: "The days of the judges are depicted as an ideal reality in terms of the central tribal organization."

⁷ Many of the scholars who followed this approach suggested that the pro-monarchy comment intended to connect chs. 17–18 with chs. 19–21. See Martin Noth, "The Background of Judges 17–18," in *Israel's Prophetic Heritage: Essays in Honor of James Muilenberg*, ed. Bernhard W. Anderson and Walter Harrelson (London: SCM, 1962), 68–85, here 79; Amit, *Judges*, 281. See a more comprehensive survey in Cynthia Edenburg's dissertation, *The Story of the Outrage at Gibeah (Judg. 19–21): Composition, Sources and Historical Context* (Ph.D. diss., Tel Aviv University, 2003), 11–12 (Hebrew).

⁸ Joshua A. Berman, *Narrative Analogy in the Hebrew Bible: Battle Stories and their Equivalent Non-Battle Narratives*, VTSup 103 (Leiden: Brill, 2004), 71; Trent C. Butler, *Judges*, WBC 8 (Nashville: Thomas Nelson, 2009), 441; Wong, *Compositional Strategy*, 194–195; Frolov, *Judges*, 317–31; Rachel Reich, *The Outrage at Gibeah: Judges xix–xxi – A Literary Analysis* (Jerusalem: Rubin Mass Publishing House, 2016), 147 (Hebrew); David J.H. Beldman, *The Completion of Judges: Strategies of Ending in Judges 17–21*, Siphut 21 (Winona Lake: Eisenbrauns, 2017), 32–33.

Scholars who adopted this approach assumed that the pro-monarchy comment is congruous with the story, but debate whether the king mentioned in this formula is human or divine, and whether the solution is the powerful centralized force of monarchy, or mending the relationship between the nation and God.⁹

In this paper I wish to contribute to the analysis of this matter by suggesting a new reading in the key scene of the story: the gathering at Mizpah (20:1–13), where the transition from crime to punishment occurs, and decisions are made by the nation that move the plot forward.¹⁰ The reading suggested here uncovers the legal features that contribute to the design of the scene as a judicial event, and reexamines the nation's actions from a legal perspective. In light of this, the nation's functioning will be reassessed, the expectations from the king mentioned in the pro-monarchy comment will be clarified, and its conceptual link to the story will be explicated.

The Mizpah scene was discussed in various analyses of chs. 19–21. The gathering is generally perceived as a military event,¹¹ and the judicial aspects of the scene were only partially noted and given little attention.¹² While a

⁹ For the approach that views this in relation to a human king, see Hans-Winfried Jüngling, *Richter 19 – Ein Plädoyer für das Königtum*, AnBib 84 (Rome: Biblical Institute, 1981), 292–293; William J. Dumbrell, “In Those Days There Was No King In Israel; Every Man Did What Was Right In His Own Eyes’: The Purpose of the Book of Judges Reconsidered,” *JSOT* 25 (1983): 23–33; Stuart Lasine, “Guest and Host in Judges 19,” *JSOT* 29 (1984): 37–59, here 50; Phyllis Trible, *Texts of Terror* (Philadelphia: Fortress Press, 1984), 84; Niditch, *Judges*, 191. With nuanced differences that emphasize the spiritual element of monarchy, see O’Connell, *Judges*, 10. For the approach that God is the king, and that faithlessness led to the deterioration described in Judg. 19–21, see Block, *Judges*, 59, 476–477; Wong, *Compositional Strategy*, 215–223; Beldman, *The Completion of Judges*, 119–122.

¹⁰ Edenburg, *Judges 19–21*, 20–21.

¹¹ E.g., Block, *Judges*, 549–552; Butler, *Judges*, 441; Webb, *Judges*, 474.

¹² Jüngling (*Richter 19*, 264–269) noted that the story exemplifies the Deuteronomistic laws regarding thorough investigation of the charge (Deut 13:15, 17:4, 19:18) and eradicating evil (Deut 13:6, 17:7, 19:19) and cf. O’Connell (*Judges*, 252–253) who believed this was an implementation of Deut 13:13–19. Susan Niditch (“The ‘Sodomite’ Theme in Judges 19–20,” *CBQ* 44 [1982]: 365–378, here 371–372) posited that the tribes strove for justice, in contrast with the people of Benjamin, but she did not note the legal aspect of investigation. Conversely, Frolov (*Judges*, 313–14) briefly suggested that restoring justice is not the issue at the center of the story. Lasine (*Guest and Host*, 50) noted that the nation “was blind to the

number of scholars noted that the scene reflects a judicial inquiry,¹³ they failed to address the entirety of judicial elements that contribute to the design of the text as a public trial, and the ramifications of this view on (a) the meaning of the scene; (b) the evaluation of the nation's actions; and (c) the relationship between the story and the pro-monarchy comment - which are the essence of this study.¹⁴

I should note that my suggestion is a literary reading directed at the final version of the text, which is especially congruent with the narrative in Judg 19–21, that includes many unrealistic elements,¹⁵ as per Walzer's formulation: "my subject is not what really happened, but what the biblical writers report and how they report it."¹⁶

The Judicial Nature of the Scene at Mizpah

Military Arrangements and Public Trial

A number of elements in the text indicate that the scene in Mizpah intends to describe preparation for battle: a) the military description of the soldiers: "four hundred thousand foot-soldiers bearing arms" (20:2);¹⁷ b) the phrase "presented themselves" (יִתְּצִבוּ) (20:2) is often used in the Bible as a response to a call to arms (e.g. 1 Sam 17:17; Jer 47:14; Hab 2:1); c) The phrase "advice and counsel" in the Levite's response (20:7) which appears elsewhere in the

law," but his focus was primarily on the Levite and the host, and he did not expand on the matter.

¹³ Robert R. Wilson, "Israel's Judicial System in the Preexilic Period," *JQR* 74 (1983): 229–248, here 239–240; Raymond Westbrook, "Biblical Law," in *An Introduction to the History and Sources of Jewish Law*, ed. Neil S. Hecht et al., (Oxford: Clarendon Press, 1996), 1–17, here 2; Edenburg, *The Story of the Outrage at Gibeah*, 286–287, and nuanced similarly, Reich, *The Outrage at Gibeah*, 78.

¹⁴ Perhaps due to the fact that examining the legal aspects primarily served to clarify the formation of the story; see especially Edenburg (*The Story of the Outrage at Gibeah*, 277–286, 289–295), who focused on the links between the story and the City of Idolaters (Deut. 13:13–19) and laws regarding sexual misconduct, that she believed indicated the layers of the story. Similarly, see Jüngling, *Richter 19*, 264–269.

¹⁵ The unrealistic details include, among others, enormous typological numbers, the victory over Benjamin despite the gross discrepancy in numbers, and the absence of injuries among fighters on both sides in all three battles.

¹⁶ Michael Walzer, *In God's Shadow: Politics in the Hebrew Bible* (New Haven and London: Yale University Press, 2012), xvi.

¹⁷ All translation of biblical verses taken from NRSV unless otherwise specified.

context of war (2 Kgs 18:20; Isa 37:5); d) The religious nature of the gathering “before the Lord” (20:1), implying that this is a holy war;¹⁸ and e) The war that follows the gathering (20:14–48).

However, the event can also be read as a public trial. While the Bible does not include a unified detailed legal order of conduct, and never describes a full trial,¹⁹ there are numerous accounts and descriptions of the principles of justice, judicial procedures, appropriate conduct demanded of judges, and sometimes, legal proceedings.²⁰ Therefore, linguistic and thematic elements that characterize a legal inquiry in the Bible may be reconstructed, and some of these elements are included in the Mizpah scene, and will be introduced below.²¹ It is noteworthy that the identification of the legal elements that contribute to the design of the scene as a legal inquiry do not contradict its design as a military event, but rather indicate a dual nature

¹⁸ Susan Niditch believed the holy war reflects the biblical perception that destroying an enemy as *herem* is the equivalent of sacrificing the enemy to God, as a means of procuring divine assistance. See Susan Niditch, *War in the Hebrew Bible: A Study in the Ethics of Violence* (New York: Oxford University Press, 1993), 42. This interpretation is relevant to the text in Judg. 20–21, since the *herem* terminology appears in the context of destroying the tribe of Benjamin (20:48), and see the discussion regarding *herem* below. According to Thomas B. Dozeman (*God at War: Power in the Exodus Tradition* [New York: Oxford University Press, 1996], 5–7) the biblical term “holy war” reflects a theological perception regarding God’s role in the war, which has two primary expressions: first as a unilateral force, where God acts independently, and second as a relational power, with human involvement in the victory. In the text of Judg. 20–21 a holy war would, of course, reflect the second facet.

¹⁹ See Simeon Chavel, “Biblical Law,” in *The Literature of the Hebrew Bible: Introductions and Studies, Vol. I*, ed. Zipora Talshir (Jerusalem: Yad Ben Zvi Press, 2011), 227–272, here 227 (Hebrew); Pietro Bovati, *Re-Establishing Justice: Legal Terms, Concepts and Procedures in the Hebrew Bible*, trans. Michael J. Smith, JSOTSup, 105 (Sheffield: Sheffield Academic Press, 1994), 168, 225; Hans Jochen Boecker, *Law and the Administration of Justice on the Old Testament*, trans. Jeremy Moser (Minneapolis: Augsburg, 1980), 28.

²⁰ These testimonials appear in biblical law (e.g. Lev 19:15; Deut 16:18–20; Deut 17:8–13; Deut 24:16–17), prose (e.g. Exod 18:13–17; Deut 1:9–18; 1 Kgs 21:1–13; Jer 26; Ruth 4:2, 11), prophecy (e.g. Jer 5:28; Amos 5:15–16; Zech 7:9, 8:13), poetry (Pss 92:4; 82:2–3; 122:5) and wisdom (e.g. Job 9–10; Prov 31:9). Some of these texts, alongside other sources, will be discussed below.

²¹ My analysis is founded primarily on the works of Wilson, “Israel’s Judicial System”; Bovati, *Re-Establishing Justice*; Westbrook, “Biblical Law”; Ze’ev Falk, *Hebrew Law in Biblical Times: An Introduction*, 2nd ed. (Provo and Winona Lake: Brigham Young University Press and Eisenbrauns, 2001); Raymond Westbrook and Bruce Wells, *Everyday Law in Biblical Israel: An Introduction* (Louisville: Westminster John Knox Press, 2009).

as a simultaneous preparation for war and legal inquiry.²² Tying together the legal inquiry and the preparation for war reflects on the nature of the inquiry, and I will address this matter below.

Legal Elements in the Scene

A legal inquiry is conducted following a conflict between two sides that are engaged in a relationship – in other words, are committed to common rules, laws or norms, which were violated in a certain situation.²³ The rape and death of the concubine were certainly an indication of severe violation, and the comment in 20:4 that the Levite is “the husband of the woman who was murdered” brings to the surface the severity of the sin: murder. A legal inquiry demands foreknowledge of the law or norm that was violated,²⁴ and such knowledge is expressed by the elderly host (19:23), the Levite (20:6) and the tribes (20:10), who all claim that the deed done was an “outrage” (נבלה).²⁵

The nation was gathered by means of the cadaver being cut by the Levite and sent throughout the country,²⁶ a similar episode both in themes and

²² Similar to Butler’s comment (*Judges*, 439–440) that the gathering at Mizpah includes legal, religious, and military components, but he believed that the military aspect was dominant. See also Edenburg (*The Story of the Outrage at Gibeah*, 52–53) who noted ambiguity in the military description.

²³ Bovati, *Re-Establishing Justice*, 30.

²⁴ Bovati, *Re-Establishing Justice*, 69–70.

²⁵ The word נבלה appears thirteen times in the Bible, and expresses not only a severe action, but also damage to the fabric of society. See Anthony Philips, “NEBALAH – A Term for Serious Disorderly and Unruly Conduct,” *VT* 25 (1975): 237–241; J. Märböck, “*nābāl, nebālā*,” *TDOT* 9:157–171 here 167.

²⁶ Sending the cut cadaver was perceived as a ritual act that was not originally linked with the twelve tribes of Israel, but rather to an ancient myth that attributes significance to the number twelve, manifesting in twelve body parts, twelve meal offerings served to gods in ritual ceremonies, and more. See: Theodor H. Gaster, *Myth, Legend, and Custom in the Old Testament*, vol. 2 (New York: Harper & Row Publishers, 1969), 444. Niditch (*Judges*, 194) was aware of the sacrificial motif related to the dismemberment of the concubine into twelve parts, but reasonably suggested that it should be viewed as a symbol of the political entity in Israel, that will be dismembered in the civil war following the concubine’s murder.

language to Saul's gathering of the nation by sending the pieces of the oxen (1 Sam 11:7–8):²⁷

ויקח צמד בקר וינתחהו וישלח בכל גבול ישראל ויפל פחד יהוה על העם ויצאו כאיש אחד He took a yoke of oxen, and cut them in pieces and sent them throughout all the territory of Israel Then the dread of the LORD fell upon the people, and they came out as one (1 Sam 11:7)	וינתחה לעצמיה לשנים עשר נתחים וישלחה בכל גבול ישראל ויצאו כל בני ישראל ותקהל העדה כאיש אחד [...] he cut her into twelve pieces and sent her throughout all the territory of Israel (Judg 19:29) [...] and the congregation assembled in one body before the LORD at Mizpah (Judg 21:1)
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However, in this case sending the concubine's cadaver is not only a means of gathering the nation for military action, but also forensic evidence of sorts, similar to the cadaver being brought to the owner by the shepherd (Exod 22:12), to Potiphar's wife presenting Joseph's garment (Gen 39:13–18), and to the virgin's bloodstained gown being presented by the maiden's father (Deut 22:17).

²⁷ Many have noted the strong links between Judg 19:29 and 1 Sam 11:12. See among others, Charles F. Burney, *The Book of Judges* (London: Rivingtons, 1918), 445; Soggin, *Judges*, 282. However, scholars differ on the diachronic direction of the links. In an intertextual-synchronic reading there is no significance to the direction, since the emphasis is on the identification of the analogy by the reader, who compares the texts simultaneously. See Ellen Van Wolde, "Text in Dialogue with Texts: Intertextuality in the Ruth and Tamar Narratives," *BibInt* 5 (1997): 1–28 here 6–7. Regarding another facet of the parallel between Saul and the Levite, see below.

The parts of the cadaver were sent with a message: “Consider it, take counsel, and speak out” (שימו לכם עליה עצו ודברו) (19:30) and a similar call appears again in the Levite’s cry: “give your advice and counsel here” (הבו (לכם דבר ועצה הלם) (20:7).²⁸ The biblical root *y’c* (יעץ) often appears in a legal context (Isa 14:26, 19:12, 17; Jer 49:20, 30, 50:4; Ezek 11:2), and here, too, can be interpreted as the Levite’s call for the nation to judge the situation with legal implications. The Levite therefore describes the crime, brings evidence that it was committed, and calls on the nation to judge, which is the first stage of legal inquiry.²⁹ In Niditch’s formulation, the Levite’s call is to “impose justice.”³⁰

If we are to accept the claim that the Levite calls for a trial, he must assume that the nation has authority to judge his case, and issue sanctions against the offenders. The Bible offers judicial authority to the national leadership referred to as *’ēdā* (עדה) (Num 35:12 and Josh 20:1–6) and *kāhāl* (קהל) (Ezek 23:35–37). Both terms appear in our story (20:1, 2).³¹ Perhaps the *’ēdā* here replaces the local judges, and the Levite turned to this authority

²⁸ Some claimed that the statement in 19:20 was made by “anyone who could see” (e.g. Webb, *Judges*, 471 n. 50). Others, following the Septuagint, suggested that the statement was made by the Levite’s messengers, and that this is the message that accompanies sending out the parts of the corpse; see Cheryl A. Brown, *Judges*, NIBC 5 (Peabody: Hendrickson, 2000), 421; John Gray, *Judges*, NCBC (Grand Rapids: Eerdmans, 1986), 352–353. I believe the similarity between the statement in 19:30 and the Levite’s demand in 20:7 indicates that this is the Levite’s messages, and this conclusion is reinforced by the fact that it is hard to comprehend that the cadaver was sent out without a message from the Levite.

²⁹ Isaac Leo Seligmann, “The Formulation of Legal Proceedings in Biblical Hebrew Vocabulary,” in *Studies in Biblical Literature*, ed. Avi Hurvitz, Sara Japhet, and Emanuel Tov (Jerusalem: Magnes, 1992), 245–268, here 253 (Hebrew).

³⁰ Niditch, *War in the Hebrew Bible*, 69.

³¹ The *’ēdā* has jurisdiction in the case of murder (Num 35:9–34, and in parallel Josh 20:1–6), and Ezek 16:38–41, 23:45–47 reflects the authority of the *kāhāl* in cases of murder and adultery. The *’ēdā* has legal jurisdiction in other situations as well according to Lev 24:10–14 and Num 15:26–32. See: D. Levi and Jacob Milgrom, “*’ēdā*,” *TDOT* 10:468–481 here 472. For a suggested development of the authority of the *’ēdā* as a legal entity, see Falk, *Hebrew Law*, 37–38. The fact that the *’ēdā* is also mentioned in military contexts (e.g. Num 32:4; Josh 22:12, 16) reinforces the suggestion that the gathering at Mitzpah was simultaneously military and legal in nature.

because he was unable to achieve a just trial from the local judicial system;³² this point will be addressed later.

The beginning of the verse describes the gathering of the nation at Mizpah formulated similarly to the opening of the trial in Jeremiah: וַתִּקְהַל (Jer 26:9). Both gatherings are simultaneously military and legal in nature.³³ The use of the root *yšb* (יָשַׁב) in 20:2 also indicates a legal occasion, similar to the use of this root in 1 Sam 12:7 and Exod 18:14. Note that the *'ēdā* gathers “to the Lord” (20:1), an expression repeated a number of times in the story (20:1, 21:5 [twice], 21:8). According to the interpretations that view the event as preparation for war, the mention of God specifies that this is a holy war, but this might also be an indication of a legal inquiry, since justice is done in the name of God, and maintaining justice is often linked with the Temple and/or religious ceremony (Deut 17:8–11, 19:17; Josh 24:25; Ps 122:5).³⁴

The actual inquiry is expressed in the nation’s demand, “Tell us, how did this criminal act come about?” (20:3). The Levite’s response opens with the word וַיֵּעַן which is a clear indication of legal testimony in the Bible (e.g. Exod 20:13; Deut 19:16, 19:18), and verifies the fact that the Levite provides a testimony of the events from his perspective.³⁵ The Levite concludes his testimony with a plea to the nation that includes the word דָּבַר (20:7), which often appears in biblical texts in the context of a legal verdict.³⁶ This word is

³² Westbrook and Wells, *Everyday Law*, 38.

³³ Bovati (*Re-Establishing Justice*, 229–230) additionally argues that “gathering” in Jeremiah is not a threat to Jeremiah, but rather an expression of arranging a public trial, where the nation plays a significant role. He claims that in this case the representatives of the nation function in a similar capacity to a modern-day jury, which explains the partnership of the people in the execution of the death sentence (Lev 24:23; Num 15:35–36; Deut 17:7, 21:21, 22:21). See also Leslie C. Allen, *Jeremiah: A Commentary*, OTL (Louisville: Westminster John Knox, 2008), 299.

³⁴ Falk, *Hebrew Law*, 5; Hector Avalos, “Legal and Social Institutions in Canaan and Ancient Israel,” *CANE* 1:619.

³⁵ See Bruce Wells, *The Law of Testimony in the Pentateuchal Code*, BZABR 4 (Wiesbaden: Harrassowitz, 2004), 27.

³⁶ See Bovati, *Re-Establishing Justice*, 207, 212, 355.

repeated by the nation (20:9) and is a sign of the nation's verdict and statement of the required punishment.

The punishment is death to the perpetrators, and the nation demands their extradition: תנו את האנשים בני הבליעל אשר בגבעה ונמיתם ("Now then, hand over those scoundrels in Gibeah so that we may put them to death") (20:13a). This is a clear legal formulation, used in the extradition of a murderer to the blood avenger by the elders (Deut 19:12), as well as in the trial for Israel in Ezek 16:39: ונתתי אתך בידם ("I will deliver you into their hands"). The culmination of the trial is expressed by the phrase ונבערה רעה מִיִּשְׂרָאֵל ("purge the evil from Israel") (20:13b), which often denotes the conclusion of legal proceedings in the Bible (e.g. Deut 17:7, 12, 19:13, 19, 21:22:21, 24).³⁷

These elements indicate that while the scene at Mizpah is designed as a military scene, it is also designed as a public legal inquiry, and we should therefore examine whether the trial followed appropriate conduct. Was this a just trial? Were the offenders punished for their crime? Before clarifying this point, I would like to address the complexity of the crime at Gibeah, and the challenge faced by the nation.

The Complex Nature of the Crime at Gibeah

Many scholars have noted the fact that the death of the concubine is not explicitly mentioned in the story in Judg 19.³⁸ This detail is important for our discussion, since lack of clarity regarding the time of death leads to doubts as to the identity of the murderer.³⁹ On the one hand the wicked men at Gibeah

³⁷ Avalos, "Legal and Social Institutions," 621.

³⁸ E.g. Robert Polzin, *Moses and the Deuteronomist: A Literary Study of the Deuteronomistic History*, vol.1 (New York: Seabury, 1980), 200; Tribble, *Texts of Terror*, 79; J. Cheryl Exum, *Fragmented Women: Feminist (Sub)versions of a Biblical Narratives*, JSOTSup 163 (Sheffield: Sheffield Academic Press, 1993), 180. Block, *Judges*, 552–554. See recently Yael Shemesh, *Mourning in the Bible: Coping with Loss in Biblical Literature* (Tel-Aviv: Hakibbutz Hameuchad, 2015), 224 n. 55 (Hebrew).

³⁹ Noted particularly by Block, *Judges*, 552–554.

seem to be the murderers, due to the two signs that the concubine was found dead in the morning: a) the fact that she was fallen on the doorstep “with her hands on the threshold” (19:27); and b) the lack of response to the Levite, “but there was no answer” (19:28).⁴⁰ However, the absence of an explicit reference to her death stands out on the backdrop of the theme of *falling* and *death* in other stories in the Book of Judges (3:25, 4:22), raising the possibility that she was not yet dead at this stage. It is therefore possible that the Levite is the concubine’s murderer, because the use of the verb “seized” (וִיחֹזֵק) during the dissection of the body indicates a forceful grasp, perhaps due to the objection of the still-living concubine.⁴¹ This possibility is reinforced by the use of the same word to describe the Levite forcefully sending the concubine out into the hands of the aggressive mob: “So the man seized (וִיחֹזֵק) his concubine, and put her out to them” (19:25a).⁴² The ambiguity regarding the identity of the murderer is not only in the description of the crime in ch. 19, but also in the gathering at Mizpah, in which the Levite is referred to as “the husband of the woman who was murdered” (20:4), preventing the clarification of the murderer’s identity on the one hand, but assuming intentional premeditated murder on the other.⁴³ In any event, even if the wicked men did not murder the concubine, they are

⁴⁰ Therefore Lasine (“Guest and Host,” 4) and Pamela Tamarkin Reis (“The Levite’s Concubine: New Light on A Dark Story,” *SJOT* 20 [2006]:125–146, here 144) believe she died at this point, as did the Septuagint which added the fact of her death to the text.

⁴¹ The use of the root *hʒq* (חֹזֵק) in *hifil* in rape stories is an indication of the victim’s resistance (Deut 22:25; 1 Sam 13:1). According to Tribble (*Texts of Terror*, 79–80) the phrase “he took the knife” (19:29) indicates that the knife was ready in the Levite’s hands, and he is therefore more likely to be the murderer; but cf. Erik Eynikel, “Judges 19–21, an ‘appendix,’” *CV* 47 (2005):101–115, here 108.

⁴² The verb “seized” (וִיחֹזֵק) may refer to the host, and see David Moster, “The Levite of Judges 19–21,” *JBL* 134 (2015):721–730, here 727. Exum (*Fragmented Women*, 183) acknowledges the ambiguity of v. 25, but believes, as many others, that it is more likely that the verse is referring to the Levite; see also Boling, *Judges*, 276; Webb, *Judges*, 468; Reis, “The Levite’s Concubine,” 138 n. 42, Lasine, “Guest and Host,” 48.

⁴³ While the root *rʃh* (רָצַח) is sometimes related to inadvertent murder, it is primarily used in the context of intentional murder (Exod 20:13; Deut 5:17) and see Block, *Judges*, 553, who posits that the root *rʃh* here indicates suspected murder.

guilty of her brutal rape, and conversely, if the Levite is not the murderer, surely he is a direct accomplice to the rape and murder of the concubine.⁴⁴

All this indicates that the case being judged was complex, requiring careful and wise consideration of the identity of the culprits, the extent of their responsibility, and their punishment. In the next section I will examine whether this was indeed the case in the Mizpah trial.

The Legal Deficiencies in the Inquiry at Mizpah

Legal justice is not an abstract ideal in the Bible, but rather a practical objective of the trial.⁴⁵ Administering justice is directly linked with punishing the culprits, and according to Greenberg, in the case of damaging another person, biblical criminal law requires punishment without an option of vicarious punishment or pardon. The reason underlying this system is that the law is attributed to God, and transgressing the law is against Divine will, especially in the case of the murder of a person created in God's image.⁴⁶

Judging justly requires inquiring the truth and identifying the guilty parties; to this end, the judges are held to high moral standards and are expected to be objective and to maintain appropriate legal procedures.⁴⁷ The Bible often describes the qualities expected of judges, and the requirement of impartial and honest distribution of justice (e.g. Exod 18:21, 23:2–3; Lev

⁴⁴ Lasine ("Guest and Host," 49) assumes that the Levite is the primary culprit. Block (*Judges*, 553) also writes that the Levite may not be the victim, but rather the murderer.

⁴⁵ B. Johnson, "šedeq," *TDOT* 12:239–264 here 247, and additional references there; Bovati, *Re-Establishing Justice*, 215.

⁴⁶ Moshe Greenberg, "Some Postulates of Biblical Criminal Law," in *Yehezkel Kaufmann Jubilee Volume; Studies in Bible and Jewish Religion Dedicated to Yehezkel Kaufmann on the Occasion of His Seventieth Birthday*, ed. Menahem Haran (Jerusalem: Magnes, 1960), 5–28. Weinfeld also believes that biblical law is attributed to God, contrary to Mesopotamian law, which belongs to the secular government; see Moshe Weinfeld, "The Perception of Law in and outside of the Bible," *Beit Mikra* 8 (1963): 58–63, here 63 (Hebrew). Boecker (*Law and the Administration of Justice*, 37–38) argues that the purpose of biblical law is to mediate disagreements so that people may live in peace with each other, not necessarily for the purpose of justice; however, in our case, at least, the Levite is not local, and therefore it is likely that the primary goal here is achieving justice and punishing the offenders.

⁴⁷ As Bovati wrote (*Re-Establishing Justice*, 214): "It is precisely this objectivity of the jurisdictional body which allows the law to impose itself even with force, without altering the relationship between individuals endowed with liberty."

19:15, 35–36; Deut 16:18–20, 19:18, 24:14; Prov 17:23, 18:5, 28:21; Job 34:19).⁴⁸ Did the trial at Mizpah live up to these standards? A long list of deficiencies in the Mizpah trial indicates that justice was not administered in this case:

1. The first deficiency is the bias of the other tribes against Benjamin, contrary to the demand to be unbiased in judgment: “You must not distort justice; you must not show partiality; and you must not accept bribes” (Deut 16:19).⁴⁹ This prejudice is expressed in the fact that the tribes prepared for war before the inquiry took place, and the legal inquiry was conducted while the soldiers were already armed for battle (20:2).⁵⁰ The enormous number of soldiers is typological, indicating from a literary perspective that the tribes initially intended to wage war on the entire tribe of Benjamin, and not only against the city Gibeah, which would not have necessitated such a large army. The military preparation (20:8–11) also precedes sending the messengers to Benjamin (20:12–13). In fact, the text is constructed of two parts, both of which open with arrangements for war, only then followed by an inquiry or appeal to the people of Benjamin, as demonstrated in the following charts:⁵¹

Part 1 (20:1–7)	
Preparing for Battle	1–2
Benjamin’s Response	3 a

⁴⁸ According to Alexander Rofé (*Introduction to Deuteronomy: Part 1 and Further Chapters* [Jerusalem: Akademon, 1988], 85 [Hebrew]) the distribution of these instructions across the Bible attests to a widespread principle across eras and societies. See also Moshe Eilat, *Samuel and the Foundation of Kingship in Ancient Israel* (Jerusalem: Magnes, 1998), 57 (Hebrew).

⁴⁹ See similarly Deut 1:17; Exod 23:3, 6; Lev 19:15.

⁵⁰ See similar distinction by Reich, *The Outrage at Gibeah*, 90, and Yoshiyahu (Yoshi) Fargeon, “Why, o Lord, do you lead us astray?: God’s Involvement in Lying and Deception in the Biblical Narrative (Ph.D. Diss. Bar-Ilan University, 2014), 84 (Hebrew).

⁵¹ Some scholars claimed that the order of events is distorted and attests the distortion to a layered redaction. See survey in Block, *Judges*, 563; Edenburg, *Dismembering the Whole*, 22–31. However, the parallelism between the events reinforces the impression that this is a deliberate literary device. Regarding the literary devices that contribute to the cohesiveness of ch. 20, see Philip E. Satterthwaite, “Narrative Artistry in the Composition of Judges XX 29 ff,” *VT* 42 (1992): 80–89.

Addressing Benjamin and Legal Inquiry	3b-7
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Part 2 (20:8-13)	
Preparing for Battle	8 -11
Addressing Benjamin and Legal Inquiry	12 -13a
Benjamin's Response	13 b

Various components in the two parts are linked, attesting to a recurring pattern:

Preparing for Battle – Part 1	Preparing for Battle – Part 2
ויצאו כל בני ישראל ותקהל העדה כאיש אחד Then all the People of Israel came out as one (20:1)	ויקם כל העם כאיש אחד All the people got up as one (20: 8)

ויתיצבו פנות כל העם כל שבטי ישראל ארבע מאות אלף איש The chiefs of all the people, of all the tribes of Israel four hundred thousand (20:2)	ולקחנו עשרה אנשים למאה לכל שבטי ישראל ומאה לאלף We will take ten men of a hundred throughout all the tribes of Israel and a hundred of a thousand, and a thousand of ten thousand (20:10)
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Benjamin's Response – Part 1	Benjamin's Response – Part 2
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וישמעו בני בנימין כי עלו בני ישראל Now the Benjaminites heard that the people of Israel had gone (20:3)	ולא אבו בנימין לשמע בקול אחיהם בני ישראל But the Benjaminites would not listen to their kinsfolk, the people of Israel (20:13b)
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Addressing Benjamin – Part 1	Addressing Benjamin – Part 2
ויאמרו בני ישראל דברו איכה נהיתה הרעה הזאת And the People of Israel said “Tell us, how did this criminal act come about?” (20:3)	וישלחו שבטי ישראל אנשים מה הרעה הזאת אשר נהיתה בכם The tribes of Israel sent men

	through all the tribe of Benjamin, saying, “What crime is this that has been committed among you”? (20:12)
ויקמו עלי בעלי הגבעה אותי דמו להרג ואת פילגשי ענו ותמת כי עשו זמה ונבלה בישראל The lords of Gibeah rose up against me, They intended to kill me, and they raped my concubine and she died (20:5); for they have committed a vile outrage in Israel (20:6b)	ועתה תנו את האנשים בני בליעל אשר בגבעה ונמיתם ונבערה רעה מישראל Now then, hand over those scoundrels in Gibeah, so that we may put them to death and purge the

	evil from Israel (20:13)
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This clarifies the reason behind Benjamin's antagonistic response in both cases: they avoided the congregation in Mizpah and refused to extradite the criminals from Gibeah because the nation was prepared for war against them *before* the details of the crime had even been investigated. In fact, the People of Israel address the Benjaminites through threat, not as impartial judges or mediators; they are clearly biased, siding with the Levite. This fact does not clear Benjamin of guilt, but certainly points to a deficit in the nation's legal inquiry.⁵²

2. The second deficit is the failure to clarify the Levite's testimony, as required in legal proceedings: "you make a thorough inquiry" (Deut 17:4); "and the judges shall make a thorough inquiry" (Deut 19:18).⁵³ The direct quote of the Levite in 20:4–6 emphasizes this point, by encouraging comparison between the Levite's version of the story and the narrator's, revealing inaccuracies in the Levite's description as well as blatant lies regarding the events at Gibeah.⁵⁴ This creates anticipation for an investigation to determine the responsibility of all parties involved in the concubine's death. This expectation goes unrealized in the story.⁵⁵ The verb *היה*, which appears in the nation's statement "What crime is this

⁵² The narrator criticizes Benjamin's refusal to turn in the culprits by creating an analogy to the elderly host (Judg 19:22). See Reich, *The Outrage at Gibeah*, 92.

⁵³ For the interpretation of the root *drš* (דרש) in these instances as "inquire," see third explanation of the word in *HALOT* 1: 233.

⁵⁴ Many scholars have noted the differences between the narrator's description and the Levite's testimony, including: a) The Levite's accusation of the "Lords of Gibeah" *בעלי גבעה* (20:5), while the narrator places the responsibility on the specific culprits *בני בליעל* (19:22). b) The Levite claims that the mob threatened to kill him (20:5), while according to the narrator their intention was to rape him (19:22). c) The Levite implies that the rapists murdered the concubine, by juxtaposing the death to the rape, "and they raped my concubine and she died" (20:5), despite the narrator's ambiguity on this point. d) The Levite omits the fact that he sent the concubine out to the mob, removing any responsibility for her death from himself.

⁵⁵ It is possible that passing judgement based on the testimony of one witness is also problematic, since the requirement of two witnesses is stated in biblical law (Num 35:30; Deut 17:6, 19:15) and narrative (1 Kgs 21:10), while here the verdict was reached based on the sole testimony of the Levite. However, in Deut 19:16–21 the possibility of a single witness is presented, so this statement cannot be determined unequivocally. Westbrook and

that has been (נהיתה) committed among you?” (20:12b), often signifies a conclusion that emerges from an inquiry, and attests to the nation’s decision with regard to the guilty parties, despite the fact that the Levite is not investigated.⁵⁶ The analogy between the complete annihilation of Gibeah and the law of an idolatrous city (Deut 13:13–18) emphasizes the absence of legal inquiry here, in contrast with the expectation of the judges there: “then you shall inquire and make a thorough investigation” ודרשת וחקרת ושאלת היטב (Deut 13:15).⁵⁷

3. The third deficit is the collective punishment against the tribe of Benjamin. Greenberg claimed that collective punishment was just in this case, due to the religious desecration of the oath taken before God at Mizpah.⁵⁸ However, the oath only refers explicitly to the marriage with Benjamin and sentences to death those who do not participate in the battle (21:1, 5), not to the decision to annihilate the entire tribe through a practice reminiscent of *herem*; this decision was indeed made at Mizpah, but was not directly related to the oath.⁵⁹ Others

Wells (*Everyday Law*, 43) believe the demand for two witnesses stems from the fact that the accuser was often the witness, and at least one more person was required to verify his testimony; this theory is corroborated by our story. Rofé (*Introduction to Deuteronomy*, 69) views this contradiction as testimony to various layers of redaction; however, Peter C. Craigie (*The Book of Deuteronomy*, NICOT [Grand Rapids: Eerdmans, 1976], 269 n. 17) and Duane L. Christensen (*Deuteronomy 1:1–21:9 revised*, WBC [Nashville: Thomas Nelson Publishing, 2001], 430) believe the case in Deut 19:16–21 is an exception.

⁵⁶ Bovati, *Re-Establishing Justice*, 251–252.

⁵⁷ Both stories include the phrase אנשים בני בליעל (Deut 13:14 // Judg 19:22, 20:13), killing all inhabitants of the city (Deut 13:16 // Judg 20:48), burning the city (Deut 13:17 // Judg 20:48), and the term כליל (Deut 13:17 // Judg 20:40). A number of scholars pointed to this analogy, and O’Connell (*Judges*, 256–257) discussed it at length, but did not relate to the essential difference between the stories, and only wrote about the similarities.

⁵⁸ Greenberg, “Some Postulates of Biblical Criminal Law,” 23–25. He believed collective punishment is justified by the Bible in cases of direct offense against God, as in the case of Achan (Josh 7) and the sons of Saul (2 Sam 21), but each one is an extreme exception to the rule.

⁵⁹ While the modern reader has difficulty accepting the practice of *herem* that requires absolute destruction, the Bible legitimizes this ideal for specific objectives and under certain conditions, when there is a divine edict to this end, or when the nation takes an oath that indicates that God agrees to a *herem*. See Philip D. Stern, *The Biblical Herem: A Window on Israel’s Religious Experience* (Atlanta: Scholars Press, 1991), 135. It is noteworthy that while the episode describing the slaughtering of the Benjaminites utilizes terminology related to *herem*, the oath is absent from this episode, and the word *herem* is not mentioned. Conversely, the root *hrm* is mentioned in the story in the context of slaughtering the people of Jabesh-Gilead and sparing the virgins for the surviving Benjaminites (21:11), perhaps to

- suggest that killing the Benjaminites is justified because they were infected by the evildoers, just as Achan's trespass infected and brought a death sentence upon anyone who came in contact with him (Josh 7:24–25).⁶⁰ However, the comparison between religious excommunication, which is contagious by nature, and aiding and abetting criminals, seems unwarranted.⁶¹ Here too, the analogy to an Idolatrous City (Deut 13:13–18) reinforces the impression that this was a case of a deficient legal process: Deut 13 emphasizes the collective sin (Deut 13:14),⁶² while here the text distinguished between the wicked men and the rest of the Benjaminites (20:13), eliminating the justification of indiscriminant punishment. The case of the Benjaminites is therefore an example of inappropriate and unlawful collective punishment.⁶³
4. The fourth deficit is the absence of punishment and the exemption of the Levite from responsibility for the death of the concubine. In light of the biblical perception that murder is a religious sin, the Levite's evasion of punishment indicates that justice was not served in this case, since if the culprit was not

indicate that the 'ēdā slaughtered the people of Benjamin unlawfully, not with an official edict of excommunication.

⁶⁰ Niditch, *War in the Hebrew Bible*, 70. According to this position, the Achan story expresses not only the ritual facet of *herem* but also its utilization as a means to achieving divine justice, and the story in Judges shares this facet. It reflects the understanding that “the uncleanness passes from the guilty ones to the members of their family or to their town” (70).

⁶¹ The infectious nature of the religious excommunication is reflected in Josh 7:24–25 and in Deut 7:26. See Samuel E. Loewenstam, “חרם,” *Encyclopaedia Biblica* 3 (Jerusalem: Mosad Bialik, 1965), 290–292, here 291 (Hebrew); Moshe Greenberg, “*herem*,” *EncJud* 9:10–13 here 10. Stern (*The Biblical Herem*, 148) asserts that even in the case of Achan, the *herem* is not necessarily believed to be contagious; rather, the idea of human interaction with *herem*, which is God's possession, is inconceivable, and leads to the destruction of everything that come in close contact with the *herem*. Also according to Niditch, who links the two stories based on the *herem* as a means to achieving divine justice (n. 60 above), it is not easy to justify the collective murder of a group that is part of the nation, and difficult to understand how divine justice is achieved through this act.

⁶² Jeffrey H. Tigay, *Deuteronomy: Introduction and Commentary*, Vol. 1, Mikra LeYisra'el (Tel-Aviv and Jerusalem: Am Oved and Magnes, 2016), 390–391 (Hebrew). See also discussion therein emphasizing this point in the description of the Dead Sea Scrolls and in rabbinic commentary.

⁶³ While the analogy is incomplete, it is possible that killing the entire tribe of Benjamin is similar to the murder of the Priests of Nob (1 Sam 22:19) and sons of Nabot (2 Kgs 9:26), brought by Greenberg (“Biblical Criminal Law,” 34 n. 39) as examples of unjust collective punishment. See also Yehezkel Kaufmann, *Commentary on the Book of Judges* (Jerusalem: Kiryat Sepher, 1978) 280 (Hebrew).

punished, there is no distinction between justice and wrongdoing.⁶⁴ Alternatively, perhaps in a case where punishment would lead to a more severe outcome than the crime itself, pardon should have been sought for the sake of preventing bloodshed;⁶⁵ but the nation did not choose this path, and instead only punished the Benjaminites.

In addition to these deficits, the nation implements legal distortions that are apparent in the solutions proposed for the remaining men of Benjamin: (a) Killing the men of Jabesh-Gilead in order to take their women for the Benjaminites is seemingly supported by the nation's oaths (21:1, 5),⁶⁶ but keeping the women alive would exclude them from the fulfillment of the oath and constitute straying from the letter of the law of *herem*. This is not a legal solution, but rather a breach of the law stated by the nation itself.⁶⁷ Moreover, there is an attempt to rectify the injustice to the Benjaminites by additional injustice and loss of life, and this ratification can hardly be viewed as distribution of justice.⁶⁸ (b) Keeping the second oath does not attest to lawfulness, since it merely intends to solve the problem of the Benjamin refugees by craftily undermining the first oath, for no one suggested punishing Jabesh-Gilead until the Benjamin refugee problem arose.⁶⁹ (c) The elders' solution of grabbing the dancing maidens in Shiloh offers legal justification for violence toward the maidens, in anticipation of the argument with their fathers and brothers (21:21). The elders' claim is that there is no violation of the oath, since they are not willingly offering their daughters and sisters. This legal deception does not reflect justice, and the clumsy formulation exposes the weakness of the claim.⁷⁰ The use of the negative

⁶⁴ Bovati, *Re-Establishing Justice*, 85: "without sanctions, there would be no way of indicating the essential difference between justice and injustice. The way 'crime pays' is what brings most into question a juridical system..."

⁶⁵ As expressed, for example, in David's avoiding civil war in 2 Sam 19:22–24.

⁶⁶ For possible explanations of the description of oaths only in the context of solutions for Benjamin and not earlier see Niditch, *Judges*, 208.

⁶⁷ Niditch, *War in the Hebrew Bible*, 71.

⁶⁸ See Kaufmann, *Judges*, 299; Butler, *Judges*, 456.

⁶⁹ Niditch, *Judges*, 208.

⁷⁰ For a detailed discussion of the cumbersome style of 21:22 and various suggestions for interpretation, see Kathrine E. Southwood, *Marriage by Capture in the Book of Judges: An*

verbs חָטַף (*ḥṭp*) (21:21) and גָּזַל (*gzl*) (21:23) indicates the narrator's criticism of the elders who in effect authorize sexual violence toward these maidens using legal claims, seemingly righting a wrong with another wrong.⁷¹

In light of all this, it is not surprising to find responses by the nation and God to the distorted justice achieved at Mizpah and its disastrous results. The nation turns to God conceivably because they feel uncertain about the verdict, and were hoping for divine approval (20:18).⁷² While God approves initiating the battle (20:18, 23), the nation is defeated in the first two battles, perhaps to teach them a lesson in reciprocation: the nation misused its legal authority toward evil, leading to a long string of mistakes, and God utilized His authority to mislead and punish them.⁷³

The nation ultimately regrets the results of the war and asks God, לָמָּה ("Why has it come to pass that today there should be one tribe lacking in Israel?") (21:3), a similar formulation to the question asked during the inquiry, דַּבְּרוּ אֵיכָה נִהְיָתָה ("Tell us, how did this criminal act come about?") (20:3). This analogy was noted by Berman, who claimed that the similarity between the questions indicates that this is more than just a consultation with God; it is also an admission of guilt.⁷⁴ Continuing this idea, the analogy to the question

Anthropological Approach, Society for Old Testament Study Monographs 1 (Cambridge: Cambridge University Press, 2017), 164–170.

⁷¹ The verb *ḥṭp* (חָטַף) appears only here and in Ps 10:9, coupled with the verb *ʾrb* (אַרַב); the negative connotation there verifies the criticism of the elders here.

⁷² Wilson, "Israel's Judicial System," 239.

⁷³ Nahmanides wrote on Gen 19:8: "that both parties deserve to be punished, for Benjamin went astray by not taking care to punish or reprimand the evildoers, and Israel wage war unlawfully." See similarly Arnold Ehrlich, *Mikra Ki-Peshutô* (New York: Ktav Publishing House, 1969), 94–95 (Hebrew), and Fargeon, *God's Involvement in Lying and Deception*, 91.

⁷⁴ Berman, *Narrative Analogy*, 73–77.

that opened the legal inquiry in practice indicates that the nation's specific sense of guilt relates to that inquiry.⁷⁵

In summary of the discussion thus far, the story seems to reflect a long line of legal deficiencies that attest to the failure of the tribal legal system to judge this case fairly. We may now examine the purpose and meaning of the narrative and the pro-monarchy comment in light of this conclusion.

The Purpose of the Narrative and the Pro-Monarchy Comment

It is a common position among scholars that the purpose of the story in Judges 19–21 was to defame Saul's line and/or the tribe of Benjamin, and create sympathy for David's line and/or the tribe of Judah, by besmirching the people of Gibeah and Jabesh-Gilead on the one hand, and glorification of the Judeans on the other.⁷⁶ However, this suggestion was rejected by Amnon Shapira, who asserted that Saul was elected by God, and that objecting to a man based on his ethnic origin is contrary to the biblical principle that prefers choice to birthright.⁷⁷ This reasonable assertion is further supported by three additional reasons.

First, if the story intended to defame Saul's line and support David's, one would expect a dichotomous design of clear conflict between good and evil, which ascribes the figures identified with Saul's line as clearly negative, and conversely the figures associated with David's line as positive, even perfect.

⁷⁵ The nation's regret stems from their comprehension after the fact, and one may therefore assume that they doubted the considerations that led to the difficult result. Block (*Judges*, 570) claimed that the regret was over the anger that overrode logical consideration, but the long detailed description devoted to the time preceding the battle weakens the claim that they were working out of momentary outrage, and reinforces the suggestion that the problem was with the legal process. Regarding the odd response of the nation crying about their success after fighting three fierce battles and chasing Benjamin to their utter destruction, see Edenburg, *The Story of the Outrage at Gibeah*, 92.

⁷⁶ This position was previously suggested in the nineteenth century (e.g. M.G. Güdemann, "Tendenz und Abfassungszeit der Letzen Capitel des buches der Richter," *MGWJ* 18 [1869]:357–368) and adopted by many, including Bretler, *Judges*, 89 and Frolov, *Judges*, 323–324. Amit (*Judges*, 341–345) emphasized the hidden polemic in the story against the House of Saul; and, with slight variations, Edenburg (*Dismembering the Whole*, 327–328) suggested that the story undermines the legitimacy of the tribe of Benjamin by describing it as reclusive and covering up for a sinful city.

⁷⁷ Amnon Shapira, "In those days there was no king in Israel: everyone did as he pleased (Judges 21:25): Was There Really Anarchy?," *Proceedings of the World Congress of Jewish Studies* 12 (1997):125–141, here 129–130.

The story of Ruth is a clear case of creating sympathy for David's line: Ruth is exemplary and legitimizes David's monarchy.⁷⁸ But our story includes no such figures. The nation is criticized by the narrator and is punished in the first two battles, and Judah is mentioned specifically in this context (20:18), so it seems unlikely that the purpose of the text is to glorify David's tribe.⁷⁹

Additionally, the only figure in the story directly compared to Saul was the Levite; however, this is a contrast analogy, since Saul dissected the cattle and sent it across Israel to enlist the nation for the purpose of saving the people of Jabesh-Gilead from the hands of Ammon. He acted under divine inspiration (1 Sam 11:6), rallied the entire nation, and subsequently merited widespread public appreciation (1 Sam 11:12).⁸⁰ The Levite rightfully demanded that justice be done in this case, but contrary to Saul, enlisted the nation without divine inspiration, by sending out the dismembered body of a human, which ultimately led to a civil war and near annihilation of the tribe of Benjamin.⁸¹

⁷⁸ E.g. Jonathan Grossman's analysis of Ruth throughout his book: *Ruth: Bridges and Boundaries*, Das Alte Testament im Dialog 9 (Bern: Peter Lang, 2016), especially 24.

⁷⁹ Additionally, the Judean father-in-law from Bethlehem is not portrayed as a perfect character, but rather as a flawed one, since he delayed the guests, and caused the plotline of their late departure. Note also the use of the word 'seized' (וַיִּחְזֹק) with regard to the father-in-law (19:4), similar to the use of this word regarding sending the concubine out to the wicked men (19:25) and the dissection of her corpse by the Levite (19:29).

⁸⁰ The positive design of Saul's character in this narrative is assisted by his description as a judge-savior, similar to Gideon, and based on the reversed chiasm of the story, that opens with the rejection of Saul (1 Sam 10:27), but ends with the recognition of his leadership (1 Sam 11:12). See Shimon Bar Efrat, *Samuel I*, Mikra LeYisra'el (Tel Aviv and Jerusalem: Am Oved and Magnes, 1996), 153–154 (Hebrew). P. Kyle McCarter (*1 Samuel*, AB 8 [Garden City: Doubleday, 1980], 205–207) claims that the purpose of the story is to demonstrate Saul's movement from a theoretical monarch to a king in reality, and hypothesizes that this is the first story about an Israelite king due to the victory over Jabesh Gilead. The verdict regarding the positive evaluation of Saul in this story affects the assessment of the characters in light of the analogy; see a similar methodology in Gregory T.K. Wong, "Ehud and Joab: Separated at Birth," *VT* 56 (2006): 399–412. Therefore, I disagree with Marc Brettler ("The Book of Judges: Literature as Politics," *JBL* 108 [1989]: 395–418, here 413–41), Raymond De-Hoop ("Saul the Sodomite: Genesis 18–19 as the Opening Panel of a Polemic Triptych on King Saul," in *Sodom's Sin: Genesis 18–19 and Its Interpretation*, ed. Ed Noort and Eibert Tigchelaar [Leiden: Brill, 2004], 17–26, here 24), and Sara Milstein ("Saul the Levite and his Concubine," *VT* 66 [2016]: 95–116, here 101–102) who believe the analogy sheds negative light on Saul's character.

⁸¹ See Lasine, "Guest and Host," 41–43; Webb, *Judges*, 473–474.

Furthermore, while the wicked men (בני בליעל) who raped the concubine are from Gibeah, Saul's city, their title is in fact reminiscent of the wicked men (בני בליעל) who *opposed* Saul (1 Sam 10:27). If the author had wished to present a polemic against Saul, he would have compared the most negative character in the story to Saul, instead of a character hurt by the people of his city, and it is unlikely that he would create connective threads to those who opposed Saul's leadership, instead of to Saul himself.

I believe the focal point of the story is the judicial problem, which serves as a justification for monarchy. The story in Judg 19 describes a heinous crime that attests to moral deterioration; however, the purpose of the story is not the deterioration, but rather the tribal judicial system's inability to cope with a severe case as described in ch. 20. In fact, this is a litmus test for the functionality of legal mechanisms and the nation's ability to uncover the truth, punish the culprits, and let justice prevail. This is because a utopian society is one without crime; but in reality a good society is not judged by the absence of crime, but rather by the existence of a strong and fair legal system that can distribute justice appropriately.

According to the Bible, the pre-monarchy society maintained a local judicial system, reflected in the description of Moses's legal system (e.g. Exod 18:13–27; Deut 1:9–18), in the laws regarding judges in cities (e.g. Deut 16:18–19), and narratives describing such a reality (e.g. Ruth 4:2, 9–11).⁸² It seems the type of crime described in Judg 19 should be addressed on the family-local plane, as indicated by Deut 19:12, 22:13–29 and 2 Sam 14:5–7.⁸³ However, our story makes no mention of any judge or local judicial system; while some leaders are referenced, the emphasis is on the nation as a

⁸² See Chavel, "Biblical Law," 231–232. The relationship between the decentralized system and the national system is not entirely clear, and Jeffrey H. Tigay (*Deuteronomy: A Commentary*, Vol. 2 XVI:18–XXIV:12, Mikra LeYisra'el [Tel Aviv and Jerusalem: Am Oved and Magnes, 2016], 455 [Hebrew]) assumes the national system did not function as an appeals court, but rather only in difficult cases where guilt was difficult to determine, or where the implementation of the law was unclear.

⁸³ See Edenburg, *The Story of the Outrage at Gibeah*, 45 n. 26.

collective, and the section includes an inordinate variety of names to describe the nation compared with other small biblical units. These include שבטי ישראל, בני ישראל, איש ישראל, העם, קהל עם האלוהים, עדה.⁸⁴ The multiple collective names attest to a weakness of the leaders that are mentioned: פנות כל העם (20:2), זקני העדה - the Elders (20:28), and פינחס בן אלעזר - the Priest (20:28), and כל העם (21:16).

The group named פנות העם mentioned in the gathering at Mizpah are probably the tribal leaders.⁸⁵ However, it is the collective body that opens the legal inquiry: “Then the People of Israel (בני ישראל) said: Tell us, how did this criminal act come about?” (20:3). The Levite related to the collective as well: “Now, all you People of Israel (בני ישראל), speak up and tell me what you have decided to do” (20:7). The dominance of the collective body is emphasized later as well, when addressing the Benjaminites (20:3); when turning to God regarding the initial two attacks (20:18, 27); and when addressing the refugees after the battle ended (21:13). Phinehas son of Elazar son of Aaron

⁸⁴ עדה (20:1; 21:10, 13, 16), בני ישראל (20:1, 2, 3, 7, 13, 14, 17, 19, 23, 24, 26, 27, 30, 32, 35; 21:5, 6, 24), איש ישראל (20:11, 17, 20, 22, 33, 36, 38, 39, 41, 48; 21:1), העם (20:2, 8, 10, 16, 22, 26, 31; 21:2, 4, 9, 15), שבטי ישראל (20:2, 10, 12; 21:5, 8, 15 – six times), קהל (20:1, 2; 21:5, 8). Various suggestions attempted to explain the groups identified with עדה, איש ישראל, and קהל. Some scholars consider the *’ēdā* a form of primitive democracy. See for example Thorkild Jacobsen, “Primitive Democracy in Ancient Mesopotamia,” *JNES* 2 (1943): 159–172; Jacob Milgrom, “Priestly Terminology and the Political and Social Structure of Pre-Monarchic Israel,” *JQR* 69 (1979): 65–77. It has also been suggested that the *’ēdā* reflects a historical institution that ceased to exist after the split of the monarchy; see Milgrom, “Priestly Terminology,” 65–68; Moshe Weinfeld, *From Joshua to Josiah: Turning Points in the History of Israel from the Conquest of the Land until the Fall of Judah* (Jerusalem: Magnes, 1992), 100–108 (Hebrew); but cf. Edenburg, *The Story of the Outrage at Gibeah*, 166, who believes this is referring to a late institution. The phrase איש ישראל may refer to the leadership (e.g. Josh. 9:6), but according to Hanoch Raviv (*The Elders in Ancient Israel: A Study of a Biblical Institution* [Jerusalem: Magnes, 1983], 42 [Hebrew]), איש ישראל is the active age group of the descendants of the tribal patriarchs. However, this term generally reflects a collective term for the people (e.g. Deut 27:14, 29:9; Judg 7:8, 23, 9:55; 1 Sam 13:6, 14:22, 24, 17:24, and others), and this seems to be the meaning of the term in our story; see Edenburg, *The Story of the Outrage at Gibeah*, 188.

⁸⁵ Similarly, see 1 Sam 14:38; Isa 19:13; possibly also Zech 10:4 turns to the leadership due to the context.

the Priest does not appear in the Mizpah gathering, and the first two times God is asked; he is only introduced the third time (20:27–28). The elders (זקני) (העדה) are first mentioned in the suggestion to grab the dancing maidens in Shilo (21:16), and this later appearance emphasizes their absence from the Mizpah gathering and the alternative suggested solutions.⁸⁶ Their absence demands explanation because the elders are described as the leadership that replaced Joshua in the introduction to the Book of Judges (2:7), they play a key role in the story of Jephthah (Judg 11:5–11), and in the opening units of the Book of Samuel (e.g. 1 Sam 4:3; 1 Sam 8:4). One would expect the elders to lead the nation through this crisis; instead, their actions led to additional violence.

Moreover, the three types of leadership listed in the chapter – the heads of the tribes, the priest, and the elders – are each attributed legal authority in a variety of biblical texts, and would be expected to lead the nation to a just conclusion in the complex case of the concubine's rape and murder.⁸⁷ Their

⁸⁶ The leadership of the elders may be hinted in the actions of the 'ēdā (20:1; 21:10, 13), since it is likely that the representatives of the 'ēdā are the elders, or the tribal leaders. See Levi and Milgrom, "'ēdā," 474; Weinfeld, *From Joshua to Josiah*, 100–101. However, the use of 'ēdā instead of elders specifically emphasizes the collective body.

⁸⁷ According to Deut 1:13–17, Moses appointed judges selected from the tribal leadership. The elders play a central role in the judicial system according to Deut 19:11–12, 21:18–21, 22:13–19, 25:5–10, and Ruth 4:1–12, and see Moshe Weinfeld, "Elders," *EncJud* 6:294–296; Keith W. Whitelam, *The Just King: Monarchical Judicial Authority in Ancient Israel*, JSOTSup 12 (Sheffield: JSOT Press, 1979), 42–44; Gary N. Knoppers, "Rethinking the Relationship between Deuteronomy and the Deuteronomistic History: The Case of the Kings," *CBQ* 63 (2001): 393–415, here 397–398. It is noteworthy that according to Moshe Weinfeld (*Deuteronomy and the Deuteronomistic School* [Winona Lake: Eisenbrauns, 1992], 234) the role of the elders in the judicial system according to the Deuteronomist is primarily linked with crimes affecting tribe and family, as in the case of the rape of the concubine at Gibeah, a crime linked to a specific city. The priestly breastplate of judgment with the 'ūrīm and tumīm (Exod 28:15–30; Lev 8:8) indicates a priestly involvement in the judicial system, and referencing the Temple and altar in a legal context (e.g. Exod 21:6; 22:8) also indicates a priestly authority, or at least mediation, in the judicial process. See: Bernard M. Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation* (New York: Oxford University Press, 1997), 111–116; According to Deut 17:8–9, 19:17, 21:5, the priests have a permanent position in the judicial system, probably based on human logic and not ritual means, and see Tigay, *Deuteronomy Vol. 2*, 457. For an expanded description of the pro-monarchy judicial institutions and an explanation of the changes to the judicial system after the concentration of worship, see the fourth chapter in Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation*.

involvement is alluded to in the text, but the multiple collective pronouns emphasize the leadership vacuum of these leadership systems, and their failure to administer justice in this case.

In light of all this, it seems that the pro-monarchy note is inherently related to our story, expressing anticipation that the king will inaugurate a better legal system, and that changing the form of government will lead to a fundamental amendment of the failed traditional legal systems.⁸⁸ The king mentioned here is a human king, since acknowledging judgment as one of the primary roles of the king is expressed broadly throughout the Bible (e.g. 2 Sam 8:15, 12:11–14, 14:1–17; 1 Kgs 3:9a; 2 Kgs 15:5), and one of the characteristics of an ideal king is the ability to judge fairly (Isa 11:4; Ps 72:2; Prov 29:4, 14). For the purpose of this paper, it is noteworthy that the judgment motif is prominent in the narrative describing the request for a king in 1 Sam 8. The exposition of the story describes the appointment of Samuel's sons as judges (1 Sam 8:1–2), and the stated reason for requesting a king is the failure of Samuel's sons in their judicial role (1 Sam 8:3).⁸⁹

⁸⁸ Justifying the monarchical system seemingly contradicts the anti-monarchy position that emerges from Gideon's refusal to rule (Judg 8:23) and from the Abimelech episode (Judg 9) (E.g. Amit, *The Art of Meaning*, 93–95; Wong, *Compositional Strategy*, 191–192); but based on the reading suggested here, the positive attitude toward monarchy relates to the monarchical system as a post-factum solution, and does not necessarily support monarchy as an ideal system of government. Another explanation of the contradiction is that the Abimelech narrative and Yotam's parable criticize Abimelech and not monarchy in general; see Elie Assis, *Self Interest or Communal Interest: The Stories of Three Leaders in the Book of Judges* (Tel Aviv: Miskal, 2006), 117–118 (Hebrew); Gordon K. Oest, *Legitimacy, Illegitimacy, and the Right to Rule: Windows on Abimelech's Rise and Demise in Judges 9*, LHBOTS 546 (New York: T&T Clark, 2011), 232.

⁸⁹ Bernard M. Levinson ("The Reconceptualization of Kingship in Deuteronomy and the Deuteronomistic History's Transformation of Torah," *VT* 51 [2001]:511–534, here 519) believes the narrative emphasizes this aspect in particular, since the king himself is required to invoke justice by conducting the trial. According to his position (Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation*, 139–140) the judgment motif is presented as the primary motivation for requesting a king, while the need for a military leader is secondary in 1 Sam 8. It is noteworthy that in the nation's words (1 Sam 8:5), which are repeated in the narrator's description of Samuel's response (1 Sam 8:6), there is use of the root *špt* which might indicate governance in general, but also the root *dyn* and the context supports this denotation. See Levinson, "The Reconceptualization of Kingship," 519, and discussion of the root *špt* in 1 Sam. 8:5 in David Toshio Tsumura, *The First Book of Samuel*, NICOT (Grand Rapids: Eerdmans, 2007), 249.

Additional parallels between 1 Sam. 8 and the story in Judg 19–21 attest to the fact that the texts relate to one another:

1. Both relate to the absence of monarchy: “In those days when there was no king in Israel” (Judg 19:1, 21:25) // “appoint for us, then, a king” (1 Sam 8:5).
2. Both emphasize the all-encompassing nature of the gathering: “Then all the Israelites came out, from Dan to Beer-sheba, including the land of Gilead, and the congregation assembled in one body before the LORD at Mizpah” (Judg 20:1); “The chiefs of all the people, of all the tribes of Israel, presented themselves in the assembly of the people of God, four hundred thousand foot-soldiers bearing arms” (20:2) // “Then all the elders of Israel gathered together and came” (1 Sam 8:4).
3. Both refer to the Exodus in a nearly identical formulation: “Thus shall you say to all the Israelites, ‘Has such a thing ever happened since the day that the Israelites came up from the land of Egypt until this day?’” (Judg 19:30) // “just as they have done to me, from the day I brought them up out of Egypt to this day” (1 Sam 8:8).
4. Both episodes end with the nation returning to their homes: “So the Israelites departed from there at that time by tribes and families, and they went out from there to their own territories” (Judg 21:24) // “Samuel then said to the people of Israel, ‘Each of you return home’” (1 Sam 8:22).

Nihan noted that the appointment of Samuel’s sons as judges reflects his attempt to establish a local judicial system that correlates with the Deuteronomistic law.⁹⁰ In light of the connections between the stories one might say the failure in this area in 1 Sam 8 is a continued failure of the legal system in Judg 19–21, and that in both stories the king is perceived as an alternative judicial authority. Thus, in the broader context, the background

⁹⁰ Christophe Nihan, “Rewriting Kingship in Samuel: 1 Samuel 8 and 12 and the Law of the King (Deuteronomy 17),” *HBAI* 2 (2013): 315–350, here 324.

for the appointment of a king is found in the final chapters of the book of Judges.⁹¹

This may explain God's ideological objection to the nation's petition for a king and, conversely, his acquiescing on a practical plane in 1 Sam 8:1-7. The monarchy is not an ideal form of government, since it counters the biblical perception of God's governance.⁹² Ultimately, however, the form of governance is only a means to an end, and was therefore permitted due to the circumstances for the purpose of attaining a just society. The conclusion that emerges from this analysis is that the pro-monarchy comment is deeply connected with the judicial failure expressed in Judg 19-21, reflecting a perception that the king is expected to "administer justice and equity to all his people" (2 Sam 8:15) and to possess "an understanding mind to govern [the] people, able to discern between good and evil" (1 Kgs 3:9a).

⁹¹ This was suggested by Kaufmann (*Judges*, 22, 56-57), who also believed 1 Sam 1-12 was originally part of the Book of Judges, and only separated in a later stage of redaction. See also Yair Zakovitch, "The Associative Arrangement of the Book of Judges and Its Use for the Recognition of Stages in the Formation of the Book," in *The Isaac Leo Seligmann Volume*, ed. Yair Zakovitch and Alexander Rofé (Jerusalem: Rubenstein, 1983), 83-161, here 178 (Hebrew).

⁹² Many scholars believe the monarchical system is generally opposed to God's rule, and is therefore not ideal, but rather the result of various realistic constraints. See briefly in McCarter, *1 Samuel*, 160-162, and elaborately in Amnon Shapira, *Jewish Religious Anarchism, Does the Jewish Religion Sanctify the State Rule?: Chapters in the History of an Idea, from Biblical and Rabbinical Times, through Abravanel and up to the Modern Era* (Ariel: Ariel University Press, 2015), 65-89 and Elie Assis, "Divine Versus Human Leadership: An Examination of Joshua's Succession," in *Saints and Role Models in Judaism and Christianity*, ed. Marcel Poorthuis and Joshua J. Schwartz; *Jewish and Christian Perspectives*, vol. VII (Leiden: Brill, 2004), 25-42.