

## The Zekenim, or Council of Elders.

DAVID WERNER AMRAM, COUNSELLOR AT LAW.

PHILADELPHIA, PA.

IT is my purpose in this paper to trace the history of the most ancient public organization known to us through Biblical sources. The council of elders began in the most remote period of the history of the nomadic Hebrews as a tribal council of the heads of the patriarchal families. After the settlement of the nomads in Palestine the organization of the elders adapted itself to the new conditions imposed by the agricultural life of the people, and the town or village council succeeded the tribal council. Its functions were judicial and executive. It was the sole authority in all matters affecting the common welfare of the community, and recognized no superior. It was a purely local authority, the scope of its activities being limited by the territorial confines of the community. It continued to exist, with functions more or less modified, down to the last days of the Jewish state, and it became the archetype of various institutions during the regal and post-exilic periods. It will be shown herein that the term "elders," as used in the Bible, has no uniform signification. The "elders of the towns," the "elders of the king," the "elders of the priests," the "elders of Israel," the "seventy elders" of Moses, — all these are bodies readily distinguishable from each other, but generally confounded. Finally, I have attempted to indicate that the *Ecclesia Magna*, that *crux historicorum*, is the legitimate successor of the council of elders, and bears some definite relation to the council of "elders of Israel" and the "seventy" of Moses.

In the primitive Hebrew nomadic family all powers were vested in the patriarch, whose rule was absolute and extended over all the members of his family. In the course of time, when the nomads became agriculturists, contiguity with other families developed some sort of inter-familial custom, which modified the ancient undisputed sway of the patriarch. Furthermore, their dwelling together developed common interests which had to be regulated by common consent. Every man could no longer do what was right in his own eyes, for his

right was limited by the equal right of other men in the community. It was soon discovered that personal security and peaceable possession of property are more easily assured to him who respects the person and property of others ; and this simple doctrine became a rule of action, enforceable under penalty of the communal displeasure. Thus arose early customs and a system of consuetudinary law.

Authority was exercised among the nomads by the heads of the families of the tribe ; and when these settled down to agricultural life, their jealousy of their ancient rights and their love of freedom prevented the rise of despots among them. Whenever the necessities of warfare required the concentration of authority in one hand, the community chose its chief and conferred power upon him, with the condition that he must resign his authority when the war was ended. By the term "community" we do not mean all the individuals, but only the heads of the families. Each family was a corporation, with the patriarch as its president, who sat with the other heads of the families, and formed with them a council of elders. This council of elders was the community. It was composed of the old men, the fathers, and not necessarily of the oldest men of the town.<sup>1</sup>

The councils of elders formed the beginnings of lawful public authority. A common inheritance of legal ideas, influenced by a common environment, produced something like uniformity in the customs and laws of the various communities. Upon this ancient organization of the council of elders was established the system of jurisprudence and the administration of affairs which prevailed until the exile, and which has continued in the dispersion down to our own times. It was a system of case-law built upon a foundation of custom.

There was no limit to the number composing the council of elders, this being determined entirely by the size of the community. The number seventy, which appears several times in the Bible, will be shown hereafter to have no importance in this respect, and no inference can be drawn from it as to the number of the council of elders in the regal and pre-regal days.<sup>2</sup>

As the patriarch represented his family and was responsible for its actions, so the council of elders represented the community, exercised all the communal powers, enforced all communal rights, and was burdened with the communal responsibilities.

When the kings became strong and enlightened enough to interfere

<sup>1</sup> The term "elder" corresponds to *paterfamilias*.

<sup>2</sup> I believe that the number seventy had a definite relation to the constitution of the *Ecclesia Magna*.

directly in the affairs of the several communities of the kingdom, royal judges and sheriffs (שפטים ושטרנים) were appointed; and these royal officials, exercising authority in the king's name, limited the powers of the ancient councils of elders.

After the captivity, when the kingship had disappeared in the ruins of the state, the council of elders survived and became the archetype of the Ecclesia Magna and the Sanhedrin of the last chapters of Jewish history in Palestine.

The institution of the elders was never destroyed; it continued as the source of law and authority in Israel from the earliest days to the latest. It formed the model for the royal councils, and seems to have influenced the organization of the priesthood. It was formally acknowledged by the sanhedrial authorities as the legitimate basis for their organization.

Separation of legislative, judicial, and executive functions is a late stage in civilization; but although no such separation existed in the days of the elders, it will be convenient for us to consider their functions separately so far as it is possible to differentiate them.

Legislation was foreign to the councils of elders. They administered the common law of the community. In course of time old law was changed, no one knew how. In later times legislation was held responsible for the changes, but the truth is that the changes were produced by minute differences in the application of general principles to particular cases. The uninterrupted interpretation of old laws in a living community under changing conditions of life in the course of time interpreted them out of existence.

The evidences for the judicial authority of the elders and for their method of administering justice are found chiefly in the Book of Deuteronomy. The cases there cited all show how the common law as interpreted by the elders gradually controlled, and eventually destroyed, the old family law under which the head of the family was the arbiter of the destinies of his dependents and exercised unlimited control over their persons.

Questions arising out of the taking of human life soon fell under the control of the elders. The blood-feud was the primitive means of doing justice during the time when family law prevailed; the punishment of the slayer was a private family matter, in which persons not of the family of the slayer and the slain had no interest. The endless chain of murders which it entailed could not be tolerated in a peaceable agricultural community, and public opinion acting through the elders sought to regulate it.

Ancient customs are not abolished ; they are regulated and modified by common law until they finally disappear, or survive in symbolic acts or formulae. The various steps in the history of the punishment of the slayer may be traced as follows : First, it was a private matter affecting only the family whose representative took vengeance. Then it became a matter cognizable by the community in which the crime was committed, and the council of elders aided in discovering and punishing the slayer. Eventually, upon the establishment of the kingdom, the slayer was hunted down throughout the kingdom. The final stage, in which the crime is international in character, has been reached only in modern times, when extradition has supplanted sanctuary.

The first step in the regulation of the blood-feud was to determine the guilt of the slayer, to protect him if innocent, and to allow the avenger to kill him if guilty.<sup>3</sup>

In the account of the procedure in the Book of Joshua (Josh. 20<sup>1-9</sup>) the murderer is not admitted to the city of refuge until the elders of that city have heard his case *ex parte*, and if in their opinion a *prima facie* case of innocence is made out, he is admitted and guarded until the elders of the town in which the crime was committed have tried him. Upon the application of the elders of his own town the elders of the city of refuge deliver him for trial and punishment. This shows the influence of the national idea among the Hebrews, for the elders of one community recognize principles of comity in their dealings with the elders of other communities.

In case the murdered man was found in the open field, the elders of the surrounding towns joined in an investigation, and if they were unable to discover the murderer, they ascertained the nearest town by actual measurement, upon the theory that this would give the territorial limit within which the murder took place. This having been ascertained, all the elders of this town joined in a ceremony of expiation (Deut. 21<sup>4-9</sup>). Blood was shed for blood, and the responsibility for the crime was warded off by a solemn declaration of innocence.<sup>4</sup>

<sup>3</sup> The private nature of the crime is still recognized, for the slayer is handed over to the avenger to be killed (Deut. 19<sup>11-13</sup>). He was not stoned by the whole community as in other cases.

<sup>4</sup> It is probable that when the dead man was found within the limits of the town the elders of that town performed the ceremony of expiation, the preliminary inquiry being, of course, omitted. This ceremony of expiation bears the marks of great antiquity, and when the Deuteronomic Code was framed was still

In the case of the rebellious son we have a pertinent illustration of the interference of common law with the ancient absolute right of the patriarch over his own (Deut. 21<sup>18-21</sup>). The right of the father to inflict capital punishment on his son is at an end, for the matter has become subject to the jurisdiction of the elders. The son is now recognized as a member of the community for certain purposes, and not merely as a member of his father's family. He must be brought to the town gate for trial, and it is the sentence of the elders that condemns him to death and the hand of the people that kills him. There is no mention here of any "judges" or "priests" or other authorities; none but the elders of the town have jurisdiction of the case; the record does not even know of the existence of any other authorities.

Similarly in the case of the slanderer, the elders are the only authorities known to the record (Deut. 22<sup>13-21</sup>). This is also a family matter taken out of the domain of family law and made a *quasi*-public matter requiring the intervention of the elders. They try the case; fine the slanderer, if his charge is unfounded; and if the woman is guilty, condemn her to death.

In all of the cases thus far cited the elders have interfered with the family law when human life is involved in the issue. It is probable that in this branch of the law they interfered more readily because of the important consequences to the individual as well as to the community.

We have an illustration of their action in civil matters. When the case of the חלוצה came before them (Deut. 25<sup>5-10</sup>), they summoned the brother-in-law to perform his duty toward the widow,

in force. Since the kingdom was at that time well organized, royal judges sat along with the elders in all the towns for the trial of causes. Hence the addition of the words "and thy judges" in Deut. 21<sup>2</sup>. That these judges are the royal judges seems to have been preserved by a Rabbinical tradition, in *Talmud Babli*, *Sanhedrin*, 14 b: זקניך וקניך ושופטיך (Deut. 21<sup>2</sup>), "וזנאי וקניך ושופטיך" ר' אליעזר בן יעקב אימר "וזנאי וקניך ושופטיך" זו סנהדרין ושופטיך זה מלך וכזן גדול: מלך דכתיב "מלך במשפט יעמד ארץ" (Deut. 17<sup>9</sup>) "כזן גדול דכתיב "ובאת אל הכהנים הורים ואל השופט" (Prov. 29<sup>4</sup>): i.e. Rabbi Eliezer ben Jacob says: "Then thy elders and thy judges shall come forth" (Deut. 21<sup>2</sup>). The elders are the Sanhedrin and the judges are the king and the high priest. The king, as it is written: "The king by judgment establisheth the land" (Prov. 29<sup>4</sup>). The high priest, as it is written: "And thou shalt come unto the priests, the Levites, and unto the judge" (Deut. 17<sup>9</sup>). This tradition seems to have preserved the fact of the comparatively late origin of the *shophetim* and of the high priest, and of the antiquity of the council of elders, the "Sanhedrin."

and in their presence the penalty for refusal was inflicted upon him.<sup>5</sup>

The elders being strictly local functionaries, their executive duties were primarily connected with matters of merely local interest, such as the regulation of landmarks and boundary lines, the maintenance of order, the attestation of formal acts. No important matters involving title or possession of property were concluded without their presence; they were the official witnesses. They preserved the traditions of the people (Deut. 32<sup>7</sup> Joel 1<sup>2</sup>). They were the living storehouses of the ancient customs and of the common law of their communities, and by a fiction similar to that known to English law they carried all the law in their breast, drawing in all cases upon a theoretically inexhaustible stock of precedents and decisions. They knew the judgment (Job 32<sup>9</sup>), their age and great experience gave them wisdom (Ps. 119<sup>100</sup>) and entitled them to special honor (Lev. 19<sup>32</sup>).<sup>6</sup>

The elders sit at their official place of meeting for the purpose of attending to the business of the community. It may be presumed that they had regular meeting days, but whether this be the case or not, it is apparent that they were within reach of any one requiring their attendance. When Boaz redeemed the inheritance of Elimelech, it had to be done in the presence of the elders at the gate. The account of this legal ceremony (Ruth 4<sup>1-11</sup>) seems to point to the fact that the number of the elders was indefinite and that a quorum might

<sup>5</sup> Another link in the argument for the antiquity of the "elders" as compared with the "judges" may be cited — the "matter of controversy" treated of in the beginning of the twenty-fifth chapter of Deuteronomy immediately before the case of the חל־צַדִּיקָה. In that record the *shophet* is the sole judge, and he directs the infliction of forty stripes as a punishment. The late institution of the *shophetim* is attested by Deut. 16<sup>18</sup>, but nowhere do we find any record of the establishment of councils of elders; they existed from time immemorial. It is fair to argue also that the ceremony of חל־צַדִּיקָה is a much older institution than the punishment by forty stripes. The former is connected with the elders and the latter with the royal judges. Indeed the infliction of punishment with the rod or lash smacks of oriental despotism, and is not to be associated with the free life in the ancient pre-regal days. In those days a freeman was punished by the *lex talionis* or by a fine, and only slaves were beaten (Ex. 21<sup>21</sup>); but when the kingdom was well established, the relation of king and subject became that of master and slave, and royal justice punished the subject as the master punished his slave (cf. 1 Sam. 8<sup>11-17</sup>).

<sup>6</sup> The praise of the virtuous woman is not complete without reference to the distinction that she confers on her husband who sits with the elders of the land (Prov. 31<sup>23</sup>). The garments which she has made for him make him well known in the gates.

consist of ten of them. The people who were standing about when the formalities were concluded were likewise called upon to witness, but it seems that the elders in attendance who had been specially summoned were the official witnesses, the others being merely supplementary.

As the official heads of the town the elders of Bethlehem came forth to welcome Samuel (1 Sam. 16<sup>4</sup>).<sup>7</sup> In the conduct of affairs with other communities the elders were the representatives of their own community. We have seen how the elders of the different towns together investigated the case of the murdered man whose slayer is unknown. The elders of the town of Gibeon sent out their emissaries for the purpose of concluding a treaty with Joshua. These emissaries spoke in the name of the elders and of all the inhabitants (*senatus populusque*). The elders were the government, which had authorized them to speak for it and the community which they represented (Josh. 9<sup>11</sup>).

In time of war the elders retained their authority, though they usually conferred the military headship on some man of distinguished prowess. The wars of the pre-regal days in Palestine were mostly petty tribal conflicts and did not have the far-reaching effects of the wars under the kings. Hence in the early days we do not find that highly organized military establishment which afterward became necessary. Often the elders retained charge of affairs during the war and apparently did not elect a leader. When Nahash the Ammonite besieged Jabesh Gilead, the elders of the town treated with him, secured an armistice, and sent for help to the neighboring Israelitish tribes (1 Sam. 11<sup>3</sup>).

Gideon on his return from his successful pursuit of Zebah and Zalmunnah punished the elders of the town of Sukkoth. It seems from the whole narrative that Gideon considered the elders to be the representative and responsible heads of the community, and it was because they had refused to help him that he took his revenge.<sup>8</sup> The

<sup>7</sup> ודררו לקראתו means "and they hastened toward him." There is nothing in the story to warrant the translation "they trembled." They simply greeted with acclamation the well-known seer who honored their town with his presence.

<sup>8</sup> In Judg. 8<sup>16</sup> it was the שרים (v.<sup>8</sup>) who refused him bread, and they are later on called the אנשי סכית (v.<sup>8</sup>). This term is properly applicable to the elders, they were *the* men of the town. The *sarim* were the chief men of the elders, either their appointees or their military officers. The number here is curious, seventy and seven. Were there seventy elders and seven *sarim*? The *sarim* who are here mentioned may have been the chief military men, who were chosen by the elders, and who after the wars had retained a certain preëminence which may have become hereditary.

erection of the military leader is shown in the case of Jephthah. On being invited to assume the headship he declined to accept it until he had the official assurance that after the war he would not have to lay down his office but would remain their civil ruler, their **שׂר**. To this the elders of Gilead agreed, and it was in this manner that the idea of kingship probably originated among the Hebrews.<sup>9</sup>

The necessity for the concentration of authority in time of danger was no doubt taught the people by sore experience. An illustration of this was given when the elders of Israel suffered an ignominious defeat at the hands of the Philistines (1 Sam. 4<sup>3</sup>) because of the lack of effective military organization. It was experiences like these that paved the way for the kingship. Other neighboring nations had preceded the Hebrews on the road to monarchy, and their successes in their enterprises must have strongly contrasted with the many reverses of Israel, which had no strong hand to rule and to guide its military affairs.

The choice of temporary military leaders was, as we have seen, one of the duties of the elders of the towns in time of war. When, however, the war became general, and especially when foreign foes threatened the land, the selection of different chieftains by the various communities naturally weakened them and produced discord instead of union. The need of one strong leader for all the people brought the various communities of Israel into closer union and led to the election of a king. The war with Sisera proved the difficulty of uniting the tribes against the common foe without a strong central power. Thus danger, acting conjointly with other influences, led to the monarchy. The old nomadic separateness in the course of time gave way to a feeling of union promoted by long contiguity of settlement in the land, and intermarriage led to the breaking down of the ancient tribal boundaries. The times now called for the right man to be king. With Saul begins a new chapter in the history of Israel.

It is probably true that the dangers of the kingship were not unknown to the people, and that the old deep feeling of freedom bred amid the wandering life of the nomads rebelled against the authority of one man. They had enough examples of petty chieftains who had arrogated rights and powers which the ancient constitution of the people had not contemplated, but the real or apparent necessity of the times overrode all such considerations, and the people

<sup>9</sup> In Judg. 11<sup>5-11</sup> the military chieftain is termed the **קַיִן**; he is also the **שׂר**, in contradistinction to the **שׂר**, who seems to have been the civil head.



chose their king. "And there was a king (elected) in Jeshurun, when the assembly (עַם יִשְׂרָאֵל) met, all the tribes of Israel together" (Deut. 33<sup>d</sup>). Their defeat and subjection by the Philistines united them, and at their meeting at Ramah, having taken counsel concerning the affairs of the nation, they concluded that the king was their only hope against their enemy.<sup>10</sup>

Saul had proven his skill and valor against the Ammonites and perhaps in other unrecorded campaigns. It is to be presumed that, when the chief men of the land gathered to choose a king, they would not select an unknown youth, but would look among the approved warriors for their leader.

After the death of Saul David was chosen by the elders of the various towns of Judah in congress assembled, while Ishbosheth, the son of Saul, was hailed king by the rest of Israel. Abner, an adherent of the house of Saul, conspired against Ishbosheth and addressed the elders of Israel for the purpose of turning them toward David (2 Sam. 3<sup>17</sup>), and after the death of Ishbosheth the elders of Israel went to Hebron and chose David as their king (2 Sam. 5<sup>1-3</sup>).<sup>11</sup>

The establishment of the monarchy did not change the status of

<sup>10</sup> The reason given in 1 Sam. 8<sup>1-6</sup> is entirely insufficient to account for the election of the king. The existence of two corrupt judges in the extreme south of Judah could never have been the leading motive for the election of a king over all Israel by a great assembly of the tribes. Verse <sup>b</sup> suggests the truer reason: "Give us a king to rule us like the other nations," a strong man to rid us of our foes and to establish order in the land. The "elders of Israel," who are mentioned in v. <sup>4</sup> as the active parties, are in v. <sup>10</sup> referred to as the עַם, like the "עַם יִשְׂרָאֵל" in Gen. 23<sup>7</sup>, where only the council of the Hittites is meant. The elders were *the* people, the people of Israel as they are called in 1 Sam. 8<sup>22</sup>. The reference to the sons of Samuel, whose corruption is assigned as the reason for the election of the king, might have been written in the interest of one of the kings. When the kingship had been firmly established and the king began to interfere in the internal affairs of the kingdom, he appointed judges to sit in the towns with the elders. The uniform administration of the law and the supplanting of the local courts by his appointees would add to his might and renown. May not this tradition of the corrupt sons of Samuel have been used by the later kings to oust the elders and to substitute their own judges? The plea that the elders were corrupt would, if found true in a few cases, serve as an ample excuse for a general reform of the whole system of administering justice in the kingdom.

<sup>11</sup> The passage in Deut. 33<sup>d</sup> will again be recalled. All the tribes of Israel went to Hebron to David, and there the elders (probably it was they who constituted the עַם יִשְׂרָאֵל) elected David their king. He then entered into a covenant with them before they anointed him, probably fixing the limitations of his sovereignty and his relations with the ancient authorities of the land who had chosen him.

the councils of elders in the towns of the kingdom. It was the business of the king to wage war, build fortresses and palaces, raise taxes for these purposes and for the purpose of furnishing him with funds with which to enjoy the luxuries of peace. All other affairs of the kingdom were conducted as before by the local authorities. There were no laws made for the kingdom other than the laws governing the organization of the troops, nor did the kings interfere with the administration of the laws of the several communities in their kingdom. It is a remarkable fact that no king except David is recorded to have made laws, and it is only when we consider that the king was the war-lord that we can understand this fact. David is credited with the authorship of one law, regulating the division of the spoils of war, and this before he became king (1 Sam. 30<sup>23-25</sup>). Beyond the occasional visit of the tax gatherers and the recruiting officers, the people in the towns and villages of the kingdom hardly felt any change in their affairs after the monarchy had been established. Their councils of elders continued to administer their laws and to regulate their affairs. Of course they now had an appeal to the king; not that there was any legal process of appeal, but that the king's power was great enough to interfere occasionally with the decisions of the elders.<sup>12</sup> In his own city the king was the overlord and personally sat in judgment. In Num. 22<sup>4-7</sup> the elders of Moab and Midian go out as the king's emissaries.

Saul recognized the importance of the elders when he begged Samuel to show him honor before the elders of his people (1 Sam. 15<sup>30</sup>), *i. e.* the elders of Benjamin, or perhaps the elders of his town. It is not at all clear that there were elders of the tribes organized like the elders of the towns. On important occasions the elders of the tribe may have acted conjointly, but they did not form an organization like the town elders. It is more likely that the elders of the tribes were merely the town elders gathered for some special purpose and for a time acting together. When David sends of the spoils of war to the elders of Judah, the explanation is immediately made that these are the elders of the various towns enumerated in the text and the elders of all the places where David and his men were wont to go (1 Sam. 30<sup>26-31</sup>; see also 2 Sam. 19<sup>11 f.</sup>).

There is no evidence that the rulers of the northern kingdom ever attempted to do away with the administration of the elders in their respective communities. We have no record of any general system

<sup>12</sup> See the case of the woman of Tekoah (2 Sam. 14<sup>11</sup>).

of legal procedure such as is recorded of the kingdom of Judah. As late as the reign of Ahab the trial of cases was left to the local tribunals, the elders; witness the trial of Naboth (1 Kings 21<sup>8</sup>). It is true that in this case the elders were intimidated by the king's power, but their right to act as judges seems not to be questioned.

In a similar manner Jehu terrorized the elders of Samaria, and while ostensibly inviting them to choose a king from among the sons of Ahab, really compelled them to elect him king after having killed the sons of Ahab (2 Kings 10<sup>1.5.7</sup>).<sup>13</sup>

In the southern kingdom the organization of the courts of law is ascribed by a late chronicler to King Jehoshaphat (2 Chron. 19<sup>5</sup>). The system there outlined has marked resemblance to the system of organization mentioned in Deuteronomy (Deut. 16<sup>18.19</sup>. 17<sup>8.9</sup>). The *shophetim* appointed by the kings sat with the elders, but the records give no positive indication how far they interfered with the authority of the elders. In Isaiah's time, at least one hundred years after Jehoshaphat, the elders were still the responsible heads of the community (Is. 3<sup>14</sup> 24<sup>23</sup>), and when King Josiah, only one generation before the destruction of the first temple, promulgated the new law found in the temple, he summoned the elders of Jerusalem and of the towns of Judah as the representatives of their communities (2 Kings 23<sup>1</sup> 2 Chron. 34<sup>29</sup>). The trial of Jeremiah affords us a glimpse into the condition of affairs at the very end of the monarchy (Jer. 26<sup>8-17</sup>). The trial took place in the capital, where the king could freely assert his royal will and pleasure, and where, according to the report of this trial, it seems that the elders had been entirely superseded as judges by the king's officers. The elders are mentioned in the narrative, but only as bearing testimony in Jeremiah's favor by citing a similar case which occurred during the reign of King Hezekiah.

Mention is sometimes made in the narratives of the time of the kings of a body called the *וְקֵנֵי יִשְׂרָאֵל*. *A priori* we should say that such a body could not have existed at that time. In the pre-regal days, when the tribes were but lately arrived in the land and still preserved the old tribal spirit, and later, when the various communities of the land lived without a king, each man doing what was right in his own eyes, such an organization as the "elders of Israel," by its name obviously intended to be a body representing all the people,

<sup>13</sup> During the siege of Samaria the elders of that city sat with Elisha, probably conferring with him concerning the affairs of the city or receiving a divine oracle. Or was Elisha in Dothan?

was manifestly impossible. When we turn to the evidence for this organization in the time of the kings, we find that the term is used to denominate temporary and extraordinary assemblages of the elders of the different towns, as when Ahab summoned the elders of his kingdom to meet and confer with him concerning the invasion of the kingdom by Benhadad (1 Kings 20<sup>7-8</sup>). It is thus used by the chronicler when he speaks of the elders of Israel accompanying David to escort the ark from the house of Obed Edom to Jerusalem (1 Chron. 15<sup>25</sup>), and of their presence at the dedication of the temple by King Solomon (2 Chron. 5<sup>2-4</sup>).<sup>14</sup>

The use of the term "elders of Israel" in connection with the rebellion of Absalom shows quite clearly that it was not intended to signify a body of the elders of all Israel. Absalom had a following consisting of only a small party in the kingdom of Judah, (2 Sam. 17<sup>4, 15</sup>).

The ancient and honorable title of "elders" was adopted by the men of the king's household. His advisers and the high officers forming his court and attending his person became known as the "king's elders" or the "elders of the king's house." These functionaries, who came into existence at the time of the monarchy, were merely titular elders, and are not to be confounded with the elders of the town councils. The זקני בית המלך were in fact a higher order of servants, somewhat like the lords who attended the person of the feudal sovereign, and who even considered their offices, usually associated with inferiority of station, a mark of distinction. Thus the king had his butler and his baker and his chamberlains, all of whom were high officials, and who, though occupying menial positions in the king's house, were considered noblemen by the less favored freemen. These were the elders of the house. Thus Eliezer was the elder of Abraham's household (Gen. 24<sup>2</sup>). Pharaoh had his elders of the house, who are stated to be his servants (Gen. 50<sup>7</sup>) and are distinguished from the elders of Egypt. If this narrative of Joseph in Egypt is not an accurate representation of conditions in

<sup>14</sup> See also 1 Kings 8<sup>1-3</sup>. The late authorship of the Book of Chronicles may account for this term "elders of Israel." Written after the exile, when, as we shall see, "elders of Israel" was the title of the elders of the little community that had been reestablished upon the ruins of the kingdom, it is not at all remarkable that the term is used of the elders of former times, who to the writer must have appeared as a body similar to the one with which he was familiar. In 1 Chron. 21<sup>16</sup> he speaks of the elders who were with David at the threshing-floor of Ornan the Jebusite. These may be understood similarly, or may be taken to be the elders of Jerusalem.

Egypt, but reflects conditions in Palestine, it becomes all the more important for our argument. It shows the distinction between the titular elders of the king's house and the real elders of the land.<sup>15</sup>

David and Solomon had their *וְקַנֵּי הַבַּיִת* who were their intimate councillors, and, no doubt, the other kings both of Israel and of Judah had similar bodies of men attached to their persons (2 Sam. 12<sup>17</sup> 1 Kings 12<sup>6-13</sup> 2 Chron. 10<sup>6-13</sup>). The officers who tried Jeremiah are said to have come from the king's house to the house of the Lord for the purpose of hearing the case (Jer. 26<sup>10</sup>).

We find the term "elders of the priests" used on two occasions, Is. 37<sup>2</sup> (= 2 Kings 19<sup>2</sup>) and Jer. 19<sup>1</sup>, first when King Hezekiah sent his officers and the elders of the priests to Isaiah for advice, and again, when Jeremiah took the elders of the priests and of the people to the gate for the purpose of declaring to them the fate of the nation. It must be presumed that the priests had some sort of organization, probably framed upon the model of the ancient councils of elders.<sup>16</sup>

After the destruction of the city and the captivity of the king and the people the old constitution seems to have been destroyed, and the old landmarks of law, religion, and society seem to have been swept away. But, as soon as the exiles had established themselves in their home in the "*golah*," the beginnings of organization were made. Monarchy was out of question, there could be no *regnum in regno*, and a king without land and without kingdom was an impossibility. The priesthood had not lost its importance, yet without a temple it was deprived of its principal field of activity. The only authorities that could be transplanted without losing their strength were the elders, and we find that the "elders of Israel" in the *golah* were the heads of the people. It is the elders who are spoken of in the visions of Ezekiel, in the Lamentations, and in the epistle of Jeremiah to the exiles. In the exile the people were the "people of Israel," without the distinction of tribe and community that may have existed before, and their chiefs became the "elders of Israel." It is probable that the elders of Israel as a governing body first came into existence during the exile. They are at times referred to as the elders of Judah, the great majority of the exiles giving the name of their old kingdom to the whole community in

<sup>15</sup> In Ps. 105<sup>22</sup> the elders are mentioned as the king's advisers whom Joseph teaches wisdom. In Job 12<sup>17-21</sup> they are enumerated among the notables.

<sup>16</sup> The above references by no means prove that the priests copied the organization of the elders; in their organization, as in other bodies, seniority no doubt conferred certain distinction and preëminence.

Babylonia. Indeed, *a priori* it would be expected that during the period of seventy years and more of exile, when the people were thrown together as one community, the old barriers that locality and tribal descent created in Palestine would be swept away. The people must have become conscious that they were one nation, sharing a common exile and looking toward a common future, and this feeling must have united them as nothing else could have done. They were then no longer men of Jerusalem, or of Hebron, or of Bethlehem, but men of Israel or men of Judah, terms which began to be used interchangeably and soon became synonymous. And, of course, the change of name of the people would change the title of the elders. It was the elders of Judah who were in consultation with Ezekiel, and to whom he related his vision, and it was seventy "elders of the house of Israel" whom he saw sacrificing to idols.<sup>17</sup>

We know little of the constitution of the council of elders during the exile. The surviving members of the nobility, of the royal family, and of the chief priestly families probably were among the leaders of the people, and with other leading heads of families formed the "elders of Israel."<sup>18</sup> In the Book of Lamentations the *sarim*, priests, and elders are spoken of as the heads of the community; the kingdom is no more. The elders no longer sit at the gate to attend to the business of their several communities, but they sit on the ground in mourning at the destruction of Jerusalem. They are honored neither by their own people nor by the invader, and finally succumb to the sufferings entailed by the siege (Lam. 5<sup>14</sup> 2<sup>10</sup> 4<sup>16</sup> 5<sup>13</sup> 1<sup>19</sup>). "The law has perished from the priest and counsel from the elders."<sup>19</sup>

In the epistle of Jeremiah, they are termed זקני הגולה and with the priests and prophets formed the heads of the community in exile

<sup>17</sup> In Ezek. 8<sup>1</sup> 11. 12<sup>9</sup> the term זקני בית ישראל is used for the first time. It seems to be a term including the notion of the elders of the towns and the elders of the king. Here Israel's house is the term used. Israel as a theocratic commonwealth has succeeded to the monarchy. In other passages Ezekiel speaks of the elders as זקני ישראל Ezek. 14<sup>1</sup> 20<sup>1-3</sup>, and he refers to the elders of Gebal in Phoenicia as we have been accustomed to speak of the council of elders of the towns of Judah (Ezek. 27<sup>9</sup>).

<sup>18</sup> May not the beginnings of the Ecclesia Magna and the Sanhedrin have been made here? Like these bodies, the various orders had their representation in the chief governing body of the exiles.

<sup>19</sup> The reference to the elders in this passage seems to indicate that the king's elders are meant. In the parallel passage in Jeremiah 18<sup>18</sup> the "elder" becomes the "sage."

(Jer. 29<sup>1</sup>). Thus we have seen how the captivity welded the people together, and how out of the remnants of the old town elders was formed the body known as the "elders of the *golah*" and then the "elders of Judah" or the "elders of Israel." These were the men who afterward returned to reconstruct the state, and they carried back into Palestine the new form that the old organization of the elders had assumed. It was the archetype of the great governing bodies, the Ecclesia Magna and the Sanhedrin, which succeeded each other in unbroken succession.

It is probably true that among those who remained in Palestine and had not been carried into captivity the old form of local government remained. We shall find traces of the old town elders after the return, but the practical government of the little state was never henceforth taken from the "elders of Israel" at Jerusalem, except through royal usurpation.

After the return from the captivity we at first hear little of the elders. The appointee of the Persian king is the governor of the commonwealth, and the priestly organization exercises important influence in political affairs. After reading of שָׂרִים and סִנְיִים in the narrative of *Ezra* we are suddenly reminded of the elders. The elders and the *sarim* are the ones who have issued the summons to the "sons of the captivity" to gather together at Jerusalem (*Ezra* 10<sup>8</sup>). The compactness of the community is indicated by the fact that it could be summoned and could assemble within three days. The elders are the "elders of Israel" at the capital, who act conjointly with the *sarim*. A trace of the old town elders is found in the 14th verse. The זְקֵנִים and the שֹׁפְטִים of each town are summoned to appear at the capital. The latter are the old royal judges who survived the destruction of the state and who were not deported.<sup>20</sup>

If the prophecy of Joel is post-exilic, we have in it important evidence of the government of the community. It speaks of priests and elders as the only authorities. The prophet addresses the elders as the heads of the community and the bearers of its traditions, and he summons them to the house of God to pray for help (*Joel* 1<sup>1-2, 14</sup>).<sup>21</sup>

<sup>20</sup> The *sarim* who were sworn by *Ezra* (10<sup>6</sup>) were not the *sarim* of Israel but of the priests and Levites; the rest of the people are simply referred to as "all Israel." As it is manifestly improbable that the whole people were sworn, this may be taken to refer to the elders of Israel, who as the heads of the community could by their oaths bind their constituents.

<sup>21</sup> In the passages 2<sup>16</sup> and 3<sup>1</sup> the term "elders" seems to have been used in the sense of old men and not in its technical legal signification.

Were these elders of post-exilic days the men who constituted the Great Synagogue? Every community requires some form of government. We find that during the time of Ezra the elders were still among the governors of the community, and it is probable that the tenacity of this old institution which amid many destructive influences preserved it in former days carried it down to the time of the Sanhedrin. If so, why not under the name of *כנסת הנזירים*? Was it the session of the elders referred to in Psalm 107<sup>32</sup>? Was its number eventually fixed at seventy? These are questions that perhaps cannot be answered with certainty, but we are not left entirely without evidence on the subject.

We are now prepared to consider the several references to the elders in the Pentateuch other than those already discussed. These were references to the elders of the towns, and not the elders of all Israel. The references now to be considered are to the "elders of all Israel" and to the "seventy elders" of Moses. What do we know of the "elders of all Israel"? Only this, — that at certain times, in periods of great danger or in matters of public importance, the elders of the different communities were called together to confer concerning the common weal. But of an institution regularly organized and existing at all times we have had no evidence until we considered the period of the exile. Is it fair to argue from this fact that the portions of the Pentateuch containing references to the "elders of all Israel" cannot have been pre-exilic in their present literary form? If this is not assumed, how can the reference to the "elders of Israel" be accounted for? We do not see any solution except the theory that this institution was fully organized in Egypt, existed in the desert, and then was lost upon entering Canaan. For such a theory we can find no evidence.

The writers who gave us the books of the Pentateuch in their present form conceived of the people existing under one head and organization in a compact community such as existed in post-exilic times. They have projected their conception into the distant past, thereby assigning to the institution an antiquity which it by no means enjoyed.<sup>22</sup> All the references in Deuteronomy and Joshua, with the exception of those already considered, can be understood only upon this theory.<sup>23</sup>

<sup>22</sup> I do not venture to enter the field of literary criticism. Its paths are too devious to be trodden by any one except the trained philologist. I have endeavored to build up my argument from a study of the institution, and not of the literary value of the documents in which the references to it appear.

<sup>23</sup> In Deut. 5<sup>20</sup> the elders are mentioned together with the *ro'shim* of the tribes.



In all the passages referred to in note <sup>23</sup>, and in other passages to be referred to hereafter, a common characteristic is the lack of any reason for the existence of the "elders of Israel." They are introduced without any apparent necessity, and they do nothing; all the work is done by Moses, by Joshua, or by the priests. Is this because the leading figures in the scene are of such magnitude that all others fall into insignificance? Then why did the writer introduce the elders in minor parts? The solution of this problem seems to be as follows: The writer had a mass of traditions of Moses and his wondrous deeds from which to construct his narrative. He was not able entirely to throw off the influence of the conditions of his own times in which the elders of Israel at Jerusalem were the protagonists; hence he introduced the elders as the coadjutors of Moses and Joshua; and having mentioned them as such, was content to follow the ancient traditions which naturally ascribed to Moses and Joshua the greatest part of the work to be done. The fact that the elders are given nothing to do in the narrative seems to be a fair reason for considering their introduction into the narrative as *ex post facto*.

When Moses commanded the law to be inscribed on stones the elders are said to have joined in the issuing of the command (Deut. 27<sup>1</sup>); but the command is in the first person singular, and in the following verses (Deut. 27<sup>9-11</sup>) the elders are ignored entirely.

On another occasion Moses calls the elders of the tribes and the **שׁוֹטְרִים** together to instruct them (Deut. 31<sup>28</sup>); and to the priests and to all the elders he confided the law, directing them to instruct the people in it periodically that it might not be forgotten (Deut. 31<sup>9-13</sup>). Such gatherings were unknown before the time when King Josiah assembled the people to promulgate the new law found in the temple.

Once in the Priestly Code the elders are mentioned as having received a law concerning sacrifices (Lev. 9<sup>1</sup>). Although Moses is said to have called Aaron and his sons and the elders of Israel together for this purpose, the entire charge is to Aaron alone. A very remarkable passage prescribes a sin-offering for the sin of the entire **עַדָּה**. If the entire **עַדָּה** sins, the **קָהָל** offers a sacrifice and the elders of the **עַדָּה** place their hands upon the head of the sacrificial animal to make atonement. If the **עַדָּה** is the whole congregation of Israel, then the **קָהָל** is a body of its selectmen, and the elders of the **עַדָּה**

If there were any tribal officials in post-exilic days, it must have been as survivals in name, not in fact. In Deut. 29<sup>9</sup> the same point arises. See also Josh. 23<sup>3</sup>, 24<sup>1</sup>, 24<sup>21</sup>, Judg. 2<sup>7</sup>, Josh. 7<sup>9</sup>, 8<sup>10-22</sup>.

seems to be a term synonymous with קהל. At any rate, the reference is to a community organized as the community in post-exilic times, under a central government, with a highly organized priesthood, and a body of selectmen at the head of the community who make expiation for its wrongdoings, even as the elders of the towns made expiation for the blood shed in their boundaries.<sup>24</sup>

In the story of the Exodus we find the same problem. It is difficult to understand what part the elders played in that great drama. God tells Moses (Ex. 3<sup>16-18</sup>) to gather the elders of Israel in Egypt and go with them before Pharaoh to ask for the freedom of the people. Moses and Aaron gather the elders and tell them all that God has said (Ex. 4<sup>29</sup>), and then the elders are completely forgotten and Moses and Aaron go before Pharaoh without them (Ex. 5<sup>1</sup>). Afterward they are instructed in the manner of offering the Passover sacrifice (Ex. 12<sup>21</sup>), and the miracle of obtaining water from the rock is performed in the presence of some of them (Ex. 17<sup>5-6</sup>). They take part in the holy meal with Jethro (Ex. 18<sup>12</sup>), but immediately afterward they are again forgotten, for in the account of the organization of the judicial system to relieve Moses from the task of judging all the people, we find no reference to the elders; and yet we know that they were the ancient judges than whom none were more legitimate. Moses does not so recognize them nor does Jethro, and the latter does not allude to them when advising Moses how to select his associate judges. What then were the functions of the "elders of Israel" in Moses' time? They had none at all, for they were a figment of the imagination of the writer who projected back into Moses' time an institution that did not exist until after the exile.<sup>25</sup>

Up to this point we have heard nothing of the number of the elders except in the vision of Ezekiel, where there appear to have been seventy, and in the reference to the elders and *sarim* of Sukkoth who together were seventy and seven. In all the other references given the number seventy is either entirely precluded by the context, or is a matter of indifference, and in none of them is the number seventy requisite to the sense of the passage. In the reference in Ezekiel there is no fixed institution of seventy elders, but merely a reference to seventy *of the* elders of Israel. In Ex. 24<sup>1, 9, 10, 11, 14</sup> Moses is told to take Aaron, Nadab, and Abihu and seventy *of the*

<sup>24</sup> Does this body of elders of the זקנים reflect the Ecclesia Magna? See Judg. 21, especially v. 16. Is the reference in Lev. 19<sup>8</sup> to the member of the supreme council, the Ecclesia Magna, or is it merely an injunction to honor old age?

<sup>25</sup> See also Ex. 19<sup>7</sup> and Num. 16<sup>25</sup>.

elders of Israel and go up with them to God ; this is done, the elders see God and are not harmed. These elders also have no active functions ; on the contrary, when Moses goes up into the mountain to get the two tablets of stone, he appoints Aaron and Hur as temporary heads during his absence and directs the elders to refer their business to them. He apparently does not recognize them as men in authority.

The seventy previously referred to were *of* the elders but were not a body organized with seventy as their fixed number. Here we have the beginning of the idea of a council of seventy not yet definitely and finally formulated. But when we turn to the account of the seventy in Num. 11<sup>16-17, 24-30</sup> we are at once struck with the difference. Here the seventy are a body of elders, picked men, who are chosen by God to act with Moses and relieve him of the burden of his work, and perform some of his duties. Of Jethro's system there is no suggestion in this passage ; it is ignored as completely as the elders are ignored in it. This body of seventy is conceived by the writer to have been organized as a fixed number with great solemnity, and with the divine spirit specially given to them to be the chief men of Israel and assume the burden of its affairs.

This, I think, is the *Ecclesia Magna*, for which the writer thus finds a sacred and ancient origin.