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## In the Wilderness: Moses as Lawgiver and Founder

“How small Sinai appears when Moses stands upon it! That peak is only the pedestal for Moses’ feet, while his head towers up to heaven where he speaks with God. God forgive my sin, but at times it seemed to me that the Mosaic God was only a gleaming reflection of Moses himself, whom He so much resembles in his wrath and love.”

Heinrich Heine, *Confessions*<sup>1</sup>

Prelude: Divine Punishment or Political Necessity?

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Prelude: Divine Punishment or Political Necessity?

If the stories of the patriarchal families in the Book of Genesis are unified by the plot of a divine plan, that design operates almost entirely behind the backs of the individual characters, whose experiences, desires and goals, actions and interactions are fully drawn on the human plane. In the Books of Exodus and Numbers, those two planes intersect in the epic tale that centers on the figure of Moses in his complex and evolving relation to God. Within the frame of his almost mythical rescue at birth and the anticipation of his mysterious death, the narrative traces the emergence of Moses as a reluctant liberator and his development as a lawgiver who founds a people by forging their enduring identity. In this epic tale, Machiavelli finds the grounds to hold up Moses, along with other ancient figures of myth and history, as a most excellent model of “those who have become princes by their own virtue and not by fortune.”

Perhaps that is a questionable designation of Moses, Machiavelli admits, “as he was a mere

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<sup>1</sup> “This great figure,” Heine begins, “has made quite an impression on me. What a giant! I can’t imagine that Og, king of Bashan, was any bigger.” And he concludes, “It would be a great sin, it would be anthropomorphism, to equate God and his prophet—but the similarity is striking” (*Confessions* (1854), trans. by Peter Heinegg [Joseph Simon Publisher, 1981], 53-54). Michael Fishbane refers to the passage in his Introduction to Martin Buber’s book, *Moses: The Revelation and the Covenant* (Atlantic Highlands, NJ: Humanities Press International, 1988), 4.

executor of things that had been ordered for him by God”; and yet, he continues, Moses “should be admired if only for that grace which made him deserving of speaking with God.”<sup>2</sup> This intrinsic character, which makes Moses worthy of the role God assigns him, unfolds in the sequence of actions and experiences narrated in Exodus and Numbers, through which the founder learns what his great task requires. Three crucial moments highlight this development: the crisis of the golden calf; Moses’ return to God after that event for a second transmission of the law; and finally his exclusion from the promised land at the end of the journey. My reflections on those moments are guided by three thinkers—Machiavelli, Maimonides, and Plato—whose thought can shed light, I find, on the biblical narrative, while being illuminated, in turn, by the example Moses provides, in different aspects of his role as founder.<sup>3</sup>

In the first place, Moses must lead a group of individuals just released from slavery and without the habits of freedom, with no structure of association and no land of their own, compelled to wander through the wilderness facing hunger and thirst, external enemies and internal dissension, with little confidence in themselves or their guide and barely any understanding of their destination and its meaning. Such extraordinary conditions are bound to engender crises that might call for cold-blooded decisions and ruthless deeds, which would test the prudence and determination of a leader. This is the Moses Machiavelli holds up as the

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<sup>2</sup> *The Prince* Ch. 6 (trans. with intro. by Harvey Mansfield [Chicago: University of Chicago Press, 1985], 22). Cf. note 34 below.

<sup>3</sup> This raises the important question of whether and how the Hebrew Bible can or should be approached with philosophic questions in mind. See Yoram Hazony’s arguments against locating the Hebrew Bible on exclusive side of a dichotomy between revelation and reason, in *The Philosophy of Hebrew Scripture*, beginning with the Introduction (Cambridge University Press, 2012). Hazony refers to the methodological comments of several political philosophers whose work aims at understanding the political teachings of the biblical texts (283 n. 13). Leon Kass, included among them, introduces his reading of Genesis as an attempt to discover its account of “what is first,” not just temporally but in all ways, including “how first or best to live” (*The Beginning of Wisdom* [NY: Free Press, 2003], 11). Of course, coming to the Bible with philosophic issues in mind does not settle the question of how the biblical authors understand and evaluate philosophy. “One can approach the text in a spirit of inquiry,” Kass observes, “even if one comes as a result to learn the limitations of such philosophic activity” (15).

exemplar of someone prepared to undertake whatever action is needed in order to establish his laws and orders.<sup>4</sup>

Leading the journey through the wilderness, however, is only one stage of Moses' role as founder; his ultimate challenge is to forge the enduring identity of a people through the divine law he promulgates. It is his experience as a ruler in crisis that leads Moses to realize the knowledge he needs if he is to accomplish his task as lawgiver. The nature and function of that knowledge is the issue Maimonides takes up in his interpretation of the questions Moses addresses to God as he prepares to receive the divine law a second time and learns that the response he seeks can come only from the back of a withdrawing God.<sup>5</sup>

For the law to take hold requires, finally, the departure of Moses the lawgiver, on the model of the withdrawing God who is understood to be the source of that law.<sup>6</sup> This is a theme Plato develops in the dialogue devoted to the question, What is the statesman?. The pursuit of that question leads to a myth about two epochs in cosmic history, one in which a god governs the universe, another in which he withdraws and leaves the world, especially the human world, on its own. As the dialogue unfolds, that mythical image is echoed in a political account, in which the statesman with knowledge, who must be present on the spot to control every situation, is replaced by the legislator who must depart in deference to the sovereign law he leaves behind.<sup>7</sup> In the biblical epic, Moses leads the Hebrew people through forty years of wandering in the wilderness only to be excluded in the end from entrance into the promised land. The absence of

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<sup>4</sup> See *Discourses on Livy* III.30.1 together with notes 33 and 39 below.

<sup>5</sup> See Ex. 33:22-23 and *The Guide of the Perplexed* I.54 together with note 35 below.

<sup>6</sup> As Aaron Wildavsky remarks, "Nothing is more important for understanding Moses (including his lessons in leadership) than the meaning of the one thing he does not do—go to the Promised Land" (*Moses as Political Leader*, foreword by Yoram Hazony [Jerusalem: Shalem Press, 2005 (1984)], 174).

<sup>7</sup> See Plato *Statesman* 271d-273b and 295a-e together with note 42 below.

the founder and legislator would exhibit, in the Platonic understanding of things, a political necessity of life under the law; in the biblical narrative, it is presented as God's punishment for a lack of faith Moses displays at a particular moment of weakness.

Yet at certain moments in the narrative, Moses himself is portrayed as a leader who grasps the political necessity he faces and the action it calls for, but also the need to present it as a matter of divine punishment. In the critical golden calf episode, his determination of what the extreme situation requires can be justified for his followers, it seems, only by an appeal to divine authority.<sup>8</sup> After a very detailed and dramatic account of these events, the chapter suddenly ends with the bare statement: "And the Lord smote the people because they made the calf, which Aaron made" (32:35). In juxtaposing this claim, for which no further evidence is supplied in the narrative, with the preceding dramatization of Moses in action, the text calls for two distinct threads of interpretation—one in terms of an individual human agent acting on his understanding of political necessity, the other in the moral-theological language of divine punishment. How is the relation between these to be understood? Or must God's punitive action itself be re-interpreted in light of the larger divine plan within which this narrative is embedded?<sup>9</sup> And how, then, is Moses' role as founder and legislator to be viewed in that framework? These are the questions to which the biblical text leads us, if not by the intention of a single author, by the internal dialogue that its layers of composition have produced.<sup>10</sup>

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<sup>8</sup> See the discussion in connection with note 31 below. On this reading, the biblical text itself implicitly raises the question Michael Walzer asks: "How much room for politics can there be when God is the ultimate ruler? How much room is there for prudential decision-making in a nation that lives under divine command and divine protection? (*In God's Shadow: Politics in the Hebrew Bible* [New Haven: Yale University Press, 2012], xi. There are, perhaps, common grounds for the analogous question: How much room for philosophy can there be when God is the ultimate source of wisdom?

<sup>9</sup> See note 30 below on this theme in Homer's *Odyssey*.

<sup>10</sup> This would, of course, be a one-sided "dialogue," in which later authors reflect on the thought of earlier ones. The Bible may consist of "memories of ancient histories," even "memories of memories," in Leo Strauss's version

## II. Stranger in a Strange Land

Moses may be the founder of the Hebrew people, but its origin lies in Abraham, exiled from his father's house by God's command and directed to a land where his offspring are to become a great nation with a great name (Gen. 12:1). Precisely as the father of a nation, Abraham cannot be the founder, or this people would be defined solely by its status as an extended family; if the principle of its identity is to be determined in some essential way by the law, the founder must be the lawgiver. Now, Abraham as an individual does look fit for that role at one moment. When God decides to share His deliberation about dealing with Sodom and Gomorrah, Abraham confronts Him: Would a just God sweep away the righteous with the wicked? Would He destroy the whole city if there were fifty righteous individuals in it (18:23-24)? Abraham argues his way down to ten, but cannot save the city; still, in the process he establishes a principle of right and negotiates with God to live up to it. This Abraham looks altogether different, however, from the one who accepts God's incomprehensible demand to sacrifice his son, the son born miraculously in fulfillment of a divine promise.<sup>11</sup> And there is something disconcerting in the story of that submission: God sends an angel to stop Abraham

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of the phrase he borrows from Machiavelli, but its layers of composition can be seen as "deepenings through meditation of the primary experiences," which could be uncovered by starting from the problems we encounter on the uppermost layer of the biblical text ("Jerusalem and Athens: Some Preliminary Reflections," *Studies in Platonic Political Philosophy* [Chicago: University of Chicago Press], 150-151).

One important form of the Bible's internal dialogue is illustrated by Calum Carmichael's studies of the way "the lawgivers of the Pentateuch formulated biblical laws in relation to biblical narratives" (*Law, Legend, and Incest in the Bible: Leviticus 18-20* [Ithaca: Cornell University Press, 1997], 9. Cf. among many other examples, Carmichael's introduction to *Women, Law, and the Genesis Traditions* (Edinburgh: Edinburgh University Press, 1979).

<sup>11</sup> In the story of Sodom and Gomorrah (and only on this occasion?), we hear God thinking to Himself: "Shall I hide from Abraham that which I am doing, seeing that Abraham shall surely become a great and mighty nation and all the nations of the earth shall be blessed in him?" (Gen.18:17-18). Through his conversation with God, Kass notes, "Abraham is to become God's partner, as it were, in executing political justice" (*The Beginning of Wisdom*, 321). In this context, Abraham represents what Hazony calls an 'outsider's ethics,' "which encourages a critique even of things that appear to be decreed by God in the name of what is genuinely beneficial to man" (24; cf. 249-250). But it is hard to imagine a more radical contrast than the one between the Abraham who negotiates with God about what justice requires and the Abraham who accepts the divine command to sacrifice his son.

from carrying out the deed—He does not appear Himself and never again speaks with Abraham after this event.<sup>12</sup> Is it possible that Abraham’s obedient faith is a failure of the test imposed on him? If the aim of this trial were to pick out the potential lawgiver, perhaps that requires someone ready to hold God up to a standard of humanly comprehensible justice and rationality. Abraham’s descendants will have to endure four hundred years of enslavement before the time is ripe for the emergence of the individual who can take on that role.<sup>13</sup>

Like many legendary tales, the story of Moses begins with an ironic rescue and change of identity: Pharaoh’s edict of death to all sons of the Hebrew slaves brings about the removal of Moses from his natural family and transference to the royal family, which nurtures the future liberator it fears.<sup>14</sup> To begin playing out his role in the grand scheme of the divine plan, Moses must depart from his adoptive home before returning on his mission. But this departure, even if it belongs to a greater plan, results from a deed that displays the distinctive character of the man. “And it came to pass in those days, when Moses was grown up, that he went out unto his brethren, and looked on their burdens, and he saw an Egyptian smiting a Hebrew, one of his brethren”—it is not clear whether Moses knows that shared identity. “He looked this way and

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<sup>12</sup> When God sets out to test Abraham, He speaks directly to him: “‘Abraham’; and he said: ‘Here am I’ (22:1). Those words are echoed when Abraham is held back from carrying out the deed: “‘Abraham, Abraham.’ And he said: ‘Here am I.’” (22:11), but then in the voice of the angel of the Lord, which highlights the withdrawal of God Himself. On the role of the angel of the Lord in the exodus narrative, see note 19 below.

<sup>13</sup> God gives Abraham a glimpse of that distant future: “Know of a surety that thy seed shall be a stranger in a land that is not theirs, and shall serve them; and they shall afflict them four hundred years” (Gen. 15:13). One of the most striking features of the Book of Genesis is the way this divine plan disappears from view: Abraham, if he even remembers his mysterious vision, never reports it to anyone, and it is revealed to no one else by God.

Commenting on the many occasions in the Bible when 40 and 400 appear, Robert Sacks discerns a pattern: these numbers imply “a time of waiting in which nothing happens, and yet a time without which nothing could happen” (*A Commentary on the Book of Genesis* [Lewiston NY: Edwin Mellen Press, 1990], 59).

<sup>14</sup> Freud reviews the standard plot analyzed by Otto Rank in *Der Mythos von der Geburt der Helden* in order to point out the peculiar contrary development in the story of Moses, where the child abandoned by a birth family of humble origin is rescued by a royal family rather than the other way around. For Freud this observation becomes evidence for his argument that Moses is in fact an Egyptian, transformed by the biblical story into a Jew (*Moses and Monotheism*, trans. Katherine Jones [NY: Vintage Books, 1939], 7-15).

that way,” the report continues, “and when he saw that there was no man, he smote the Egyptian, and hid him in the sand” (Ex. 2:11-12). Moses may act boldly out of anger at injustice, yet he looks first, acting with some caution or prudence. Still, his deed does not go unnoticed. The very next day, when he discovers two Hebrew men fighting each other and tries to stop them, one charges: “Who made thee a ruler and a judge over us? Thinkest thou to kill me, as thou didst kill the Egyptian?” (2:14). The simple sequence of this story—foreign oppression replaced by internal dissension—foreshadows precisely the pattern of the challenges Moses faces on the path ahead.

Forced to flee from Egypt, Moses reaches Midian, where he finds the seven daughters of the priest at the well and drives off the shepherds who are preventing them from watering their flocks. Taken, perhaps, to be an Egyptian of some rank, he earns the hand of one of the girls in marriage, and names their first born son Gershom for, he explains, “I have been a stranger (*ger*) in a strange land” (2:22). In his birthplace he was already a stranger in a strange land, and his return there is only to lead out the group that is not yet a people of God, to a homeland that is not their birthplace but an ancient promise for the distant future. He learns of that mission while watching the flock of his father-in-law on Mt. Horeb (Mt. Sinai?): Moses first finds God, or God finds him, in the place, as God promises, that will mark the peak moment of their association (3:12, cf. Deut. 5:2).

Coming upon a bush ablaze with flames but not consumed, in which the unseen angel of the Lord is present, Moses is filled with wonder and draws aside to look. Only at that point—impressed by Moses’ curiosity?— does God take the place of His angel and call out: “‘Moses, Moses.’ And he said, ‘Here am I’” (3:6). The words echo God’s last exchange with a human

being, over four hundred years earlier, when he called out to Jacob in a dream (Gen. 46:2).<sup>15</sup> God announces Himself—“I am the God of thy father, the God of Abraham, the God of Isaac, and the God of Jacob”—and Moses hides his face (3:6): his first reaction is fear,<sup>16</sup> but his unwillingness to look is a premonition of the truth of the hidden God, which he has yet to learn. God explains that he has heard the cry of the children of Israel and chosen Moses to bring them forth out of Egypt. Moses responds, “Who am I?” (3:11), humbled presumably by the magnitude of the task; but his question, quite literally, is an expression of wonder about his own identity, which coincides with the question of the identity of the divine being who has called out to him. While God assures him that He will be at his side, Moses immediately begins thinking about the political problem of legitimating his authority: if he tells the children of Israel he has been sent by “the God of your fathers,” what is he to say when they ask, What is His name? The political problem turns into the ontological question, What is God?, when God responds to Moses’ query by naming Himself with the formula of His mystery: “I shall be what I shall be,” *ehyeh-asher-ehyeh*). Moses is to tell the children of Israel “‘I shall be’ (‘I am’) hath sent me unto you’ (3:14): he must take on the role of leader, depending on the support of a God who cannot be mastered by human knowledge of name or nature.<sup>17</sup> Moses understandably protests his insufficiency. Even when God shows him the magic that should convince the people, he realizes the insufficiency of such signs and expresses his worry: “I am not a man of words... I am slow

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<sup>15</sup> “It is as if the two conversations merge,” Sacks remarks, “and the intervening years suddenly disappear” (*A Commentary on the Book of Genesis*, 389). The original model is the speech addressed to Abraham, not by God, however, but by the angel of the Lord (see Gen. 22:11 and note 12 above).

<sup>16</sup> The angel of the Lord stopped Abraham who had shown his fear of God (*ke-yerah elohim*, Gen. 22: 12), just as Moses now fears (*yarah*) to look on God (Ex. 3:6); but does Moses ever again express this reaction?

<sup>17</sup> Yet before Moses even responds, God discloses to him the name that marks His particular identity: “Thus shalt thou say unto the children of Israel: YHVH, the God of your fathers, the God of Abraham, the God of Isaac, and the God of Jacob hath sent me unto you” (3:15). The biblical text thus raises the question of the relation between the particular God of this people, who has made promises to their ancestors, and the elusive God, who will be gracious to whom He will be gracious (Ex. 33:19).



of speech and of a slow tongue” (4:10). God promises, “I will be thy mouth”; but Moses only provokes His anger by continuing to insist that there are others more fitting. In the process, however, he seems to be responsible for inspiring a new plan in God’s mind: Aaron, the brother of Moses, can be his spokesman. Now if, as God Himself observes, Aaron is the prophet, Moses would stand in the place of God (4:16, 7:1).<sup>18</sup> God concludes his first exchange with Moses by acknowledging how much He will be hidden behind His human representative.

In the court of Pharaoh, however, where Moses and Aaron begin their mission, they are nothing but the means for God’s implementing of His design, and that design seems to aim at the display of God’s power as much as the liberation of the Hebrew people.<sup>19</sup> God informs Moses of his plan in advance: He will inflict destruction on Pharaoh and the Egyptians for refusing to let the Hebrew people go, then repeatedly harden Pharaoh’s heart each time he repents so he will refuse once again, all in order to exhibit to the fullest His great signs and wonders (4:21-23, 7:3-5).<sup>20</sup> The account that follows—the sequence of ten plagues, culminating in the drowning of Pharaoh and all his charioteers—involves God’s most intense intervention in human history

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<sup>18</sup> Spinoza begins his account of prophecy by referring to Exodus 7:1 where, on his reading, God says to Moses “Behold I constitute you the God of Pharaoh as it were, or the one who acts in the role of God” (*Theologico-Political Treatise* I.1.4, trans. Martin Yaffe [Newburyport, MA: Focus Publishing, 2004], 1).

<sup>19</sup> David Daube discerns in the story of God’s liberation of the Hebrew slaves the motif of change of master common in many ancient systems of law, where someone redeemed from slavery by a relation would become the slave of that person. God’s sending Moses to deliver the Israelites fits the ancient model of a powerful protector at home using the services of a messenger to negotiate for the release of a captive abroad (*The Exodus Pattern in the Bible* [London: Faber and Faber, 1963], 42-44). God distances Himself even further from the people when He sends His angel in His place. After the golden calf episode, God offers Moses His assurance that He will send an angel to lead the way to the promised land, but the offer is in the form of a threat: He Himself will not be present, God explains, “lest I consume thee in the way” (Ex. 33:3).

<sup>20</sup> Moses is informed at the beginning of what he will have to convey to Pharaoh in the end: “Thus saith the Lord: Israel is My son, My first-born. And I have said unto thee: Let My son go, that he may serve Me; and thou hast refused to let him go. Behold, I will slay thy son, thy first-born” (4: 22-23). The theme introduced with the command to Abraham to sacrifice his “only son” returns in God’s final plague on the Egyptians—the slaying of the first-born sons—which repays Pharaoh for the edict of death to all the male children of the Hebrew slaves. “Ultimately,” Robert Sacks comments, “the debt of the first-born is transformed into the service which the sons of Levi pay by their role in the Temple” (see Num. 3:12-13, and *A Commentary on the Book of Genesis*, 172-173).

since the creation of the universe and the flood that made possible a new beginning. Divine miracles may be the sole way of explaining liberation after four centuries of enslavement by a powerful oppressor. It is only once the children of Israel find themselves wandering in the wilderness that God begins to recede, and Moses becomes more than an intermediary.<sup>21</sup>

## II. Crisis and Re-Ascent

Life in the wilderness is haunted by the constant danger of hunger and thirst, and the people, with no understanding of the destiny that brought them there, look back nostalgically to their enslavement: “Would that we had died by the hand of the Lord in the land of Egypt, when we sat by the flesh-pots, when we did eat bread to the full” (Ex. 16:3)!<sup>22</sup> Their “murmuring” goes on until the very end. It is not overcome by the dramatic experience that marks the climax of the journey, which comes surprising early: “In the third month after the children of Israel were gone forth out of the land of Egypt, the same day came they into the wilderness of Sinai” (19:1). While the people encamp before the mountain, Moses goes up and hears God issuing His promise: if the children of Israel keep His covenant, they will be unto Him a kingdom of priests and a holy nation (19:6).<sup>23</sup> In three days, God announces, He will descend to the top of the

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<sup>21</sup> In an article on “The Significance of the *Afikoman*,” Daube comments on the amazing feature of the Haggadah: “To what lengths the transmitters of the liturgy went in eliminating anything that might smack of a human mediator is shown by the complete suppression of the name of Moses. What a *tour de force*: to weave legends, prayers, hymns around the Exodus without once making mention of the figure that dominates the biblical account” (*New Testament Judaism: Collected Works of David Daube* Vol. 2, ed. by Calum Carmichael [Berkeley: Robbins Collection Publications, 2000], 427).

<sup>22</sup> God intervenes with the miracle of manna from heaven to save the children of Israel from starvation, but at the same time as a test: they are to gather the gift of food each day and nothing is to be stored up, except on the sixth day, for the seventh is a day of rest (Ex. 16). Fulfillment of the command would confirm their utter dependence on God, and their dependence on God is the source of the authority of Moses. It is Moses who comes up with the order to keep an omerful of the manna throughout the generations, to preserve the memory of the bread with which God fed them in the wilderness (16:33): God may have furnished a miracle, but Moses turns it into one of the rituals that will stamp this people with their identity.

<sup>23</sup> Just before the transmission of the divine law, the possibility—and perhaps the limits—of a purely human basis for political organization is considered. Moses’ father-in-law, Jethro, the stranger from Midian, finds Moses wearing himself out as judge of every dispute that arises; he advises him to pick out a group of decent men and

mountain and Moses is to go up until they reach a meeting point.<sup>24</sup> On the appointed day, the mountain resounds with thunder and flashes with lighting, a great horn sounds out, and the people tremble (19:16). God begins speaking—no audience is specified—starting with the fundamental principle: I am the Lord thy God, who brought thee out of the land of Egypt, out of the house of bondage. Thou shalt have no other gods before Me (20:1-3). At the end the people perceive the thunder and lightning and the sound of the horn—nothing is said about hearing the words of God’s speech.<sup>25</sup> For the people the revelation is a theatrical display, which induces terror. They beg Moses to be their intermediary, standing between them and the divine presence. Accepting that role, Moses enters into solitary communion with God on the mountain top for forty days and forty nights, until finally he is given the law, in the form of two tables of stone “written with the finger of God” (31:18).<sup>26</sup>

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establish a hierarchical order—rulers of thousands, rulers of hundreds, rulers of fifties, and rulers of ten, so that Moses himself would be left with only the greatest matters (18:21-22). However reasonable this formal arrangement, it abstracts from the content of the law or the basis of the judgments involved.

<sup>24</sup> The account of the bounds to be set around the people to keep them from the overwhelming divine presence is particularly complicated in regard to the status of the priests (19:12). God first calls Moses up to the peak and orders that the priests who come near the Lord are to sanctify themselves (19:21-22). Moses then reminds God of the limits He had already set, and God proceeds to draw the line at Moses and Aaron, while the priests are to remain below with the people (19:23-24). In the end, Moses ascends alone to the company of God.

<sup>25</sup> In the Gathering at Mt. Sinai, Maimonides argues, the people heard only the “great voice,” but not the articulation of speech, which they have to learn from Moses. To understand what that “great voice” means, Maimonides cites a Talmudic text (B.T., Makkoth, 24a): “They heard ‘I’ and ‘Thou shalt have’ from the mouth of the Force.” These are the opening words of the first two commandments, which convey two truths—the existence of the deity and his being one; and those truths, according to Maimonides, are grasped by the intellect alone, with no prophetic revelation required, while all the rest of the commandments belong to the class of generally accepted opinions or those transmitted by tradition (*The Guide of the Perplexed* I.33, trans. Shlomo Pines [Chicago: University of Chicago Press, 1963], 364).

<sup>26</sup> The divine commandments on the two tables of stone are supplemented in the following chapters by the concrete ordinances (*meshpatem*) that Moses is to set before the people (21:1). After presenting the code, God promises to give Moses the tables of stone and torah and mitzvah which *He* has written, in order for Moses to teach them (24:12). But just before that, we are told that *Moses* wrote all the words of the Lord, and read the book of the covenant in the hearing of the people (24:4-7). Cf. note 37 below.

The extended association of Moses and God on Mt. Sinai has a counterpart in Plato’s *Laws*, which begins its examination of divine law with a question about the most ancient Greek law: the source of the Cretan code lies in the regular meetings, according to an obscure Homeric description, of the legendary lawgiver Minos with the god Zeus, in a cave to which the interlocutors of the dialogue are walking as they converse (624a-625b).

While Moses is absorbed in private converse with God, the narrative takes us to the camp below, to witness conditions in the absence of the leader: the tension between the demands on Moses as ruler of a people in a period of crisis and Moses as transmitter of the divine law could not be captured more vividly.<sup>27</sup> Gathered around Aaron, the people demand “Make us a god. This Moses, who brought us out of the land of Egypt, we know not what has become of him” (32:1). With the withdrawal of Moses, there is not even a memory of God or His role in the liberation from slavery. Aaron puts up no resistance to the people’s demand: out of the golden ornaments they give him, he fashions a molten calf and declares, “This is thy God, Oh Israel, who brought thee out of the land of Egypt” (32:4). The backsliding of the people in the absence of their leader is a rejection of the fundamental principle of the law Moses has just received from God—“Thou shalt have no other gods before Me.”

Back on the mountain top, God, Who sees from afar, orders Moses to go down: “*Thy* people that *thou* brought out of the land of Egypt... have turned aside quickly out of the way which I commanded them.” Let Me alone, God demands “that My wrath may wax hot against them and that I may consume them, and I will make of thee a great nation” (32:10). Moses ignores the offer for special treatment, now and on all the repeated occasions when God proposes it.<sup>28</sup> He confronts God with the masterful rhetoric a wise minister would use with an all-powerful tyrant: “Why doth Thy wrath wax hot against *Thy* people, that *Thou* hast brought forth

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<sup>27</sup> While we are listening to a lengthy and detailed report (for seven chapters) of God’s technical instructions to Moses about the production of the tabernacle and the altars, the curtains and veils, the priestly garments, and the performance of the sacrifices deed (Ex. 24-31), we must imagine Aaron in the camp below gathering golden ornaments for the molten calf.

<sup>28</sup> Daube notes that, according to a Rabbinic tradition, Moses offered to die, or even did die, in order to save the lives of the worshippers of the golden calf; this exemplifies the pattern of intercession, Daube proposes, that appears in the notion of all sinners being gathered and saved in Jesus (*New Testament and Rabbinic Judaism* [Arno Press, 1973], 12).

with great power and a mighty hand?” (32:11). He appeals first to God’s self-interest in his own reputation—the Egyptians will say this all-powerful God brought His people forth only to slay them in the mountains—and then reminds God of the demands of justice, which bind Him to the promises He made to Abraham, Isaac, and Jacob.

Moses assuages the wrath of God but only, apparently, to embody it himself when he descends and sees the people dancing round the golden calf. His anger waxes hot (32:19)—in the same words God just said of Himself—and he dashes the tables of stone to pieces. Moses, who had complete presence of mind when hearing of these events from God, is aroused to anger now when he sees the scene with his own eye; or is it possible that his passionate reaction is only an imitation of divine wrath? It proves, in any case, to be of the greatest benefit, since the destruction of the tables of the law will necessitate starting over again in colloquy with God, which Moses will undertake with a far deeper understanding of his task. At the moment he grinds the idol to dust and strews it in water, which he makes the children of Israel drink: in the desert they drank bitter water, or none at all, now the bitter water they drink is the remains of their false god. Turning then to Aaron, Moses offers him a way out, asking what the people did to him that he should bring such a sin upon them. Aaron absolves himself from all responsibility: I cast their gold ornaments into the fire and “there came out this calf” (32:24). Moses does not say a word. This is not about his brother, who in any case may still be a necessary ally. Facing *the* crisis of his life as leader and founder,<sup>29</sup> Moses takes a stand in the gate of the camp and makes a declaration: “Whoso is on the Lord’s side, let him come unto me.” And the narrative continues, “all the sons of Levi gathered themselves together unto him” (32:26).

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<sup>29</sup> The importance of this moment is highlighted by Maimonides’ claim: “The first intention of the Law as a whole is to put an end to idolatry” (*The Guide of the Perplexed* III.29, 517).

In the report of the demand for the golden calf, no division of the people was mentioned. Moses creates it now. He speaks as if he is splitting off the innocent from the guilty, but we heard of none who were innocent: those on the Lord's side prove to be those on the side of Moses, that is, his own tribe, which allies itself with him against all the rest.<sup>30</sup> Moses begins speaking to his fellow Levites, "Thus saith the Lord, the God of Israel"—but we were just witnesses to his exchange with God and heard nothing of the order Moses now issues:<sup>31</sup> "Put ye every man his sword upon his thigh," he commands his tribesmen, "and go to and fro from gate to gate throughout the camp, and slay every man his brother, and every man his companion, and every man his neighbor" (32:27). What Moses instigates is not the punishment of the guilty by the innocent: it is civil war—fratricide on a grand scale.<sup>32</sup> That is the necessary condition, at this decisive moment, if he is to usher in a new order, with the promulgation of the divine law, and not give up his mission altogether. The account reaches a terse conclusion: "And the sons of

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<sup>30</sup> In Homer's *Odyssey*, Athena comes to Odysseus, when he has returned to his home in beggar's disguise, prepared to punish the suitors; the goddess urges him to circulate among them gathering food, to learn which are righteous and which lawless, yet even so, Homer announces, "she was not minded to save one of them from ruin" (360-364). Odysseus needs to discover the moral differences among the suitors not, as he might have wanted, to punish the unjust and reward the just, but rather, to learn a lesson from Athena about the politically necessary action required to establish a new regime. Seth Benardete traces this theme running through the poem as a whole (*The Bow and the Lyre: A Platonic Reading of the Odyssey* [Lanham, MD: Rowman & Littlefield, 1997], 12, cf. 75, 126). It is striking that, in the case of Odysseus and Athena, it is the human agent who thinks in moral terms and the divine figure who recognizes political necessity.

<sup>31</sup> Since evidence for God's command or advice is so conspicuously absent from the narrative, one is tempted to say that Moses is represented, in Platonic terms, employing a "noble lie" (*Republic* 414b-c). Cf. James Diamond's analysis of the debate provoked by the passage in Leviticus (10:3) where Moses addresses Aaron after the mysterious death of his two sons by appealing to what God said, which seems to have no evidence in the context ("The First Debate over Religious Martyrdom," *Jewish Review of Books* vol. 4 no. 2, summer 2013: 37).

<sup>32</sup> Fratricide is the primordial form of civil war, and the nature of the city rooted in fratricide is first indicated by the story of Cain: after murdering his brother, he becomes a wanderer on earth, yet settles the first city, east of Eden in Nod, the land of wandering (4: 12 and 16). Like Romulus, Cain "commits the paradigmatic crime of the political founder," Kass observes, "for the aspiration to supremacy and rule entails necessarily the denial and destruction of radical human equality, epitomized in the relationship of brotherhood" (*The Beginning of Wisdom*, 147).

Levi did according to the word of Moses; and there fell of the people that day about three thousand men” (32:27-28).<sup>33</sup>

On the day following the massacre, Moses tells the people that he will return to God and try to make atonement for their sin: we wonder why he did not make that effort as his first response to the crisis. When he does confront God, Moses entreats Him to forgive this wayward people, or else, he enjoins, “Blot me out of Thy book which Thou hast written” (32:30-32). Just as Moses refused God’s offer to make of him a new nation, God refuses Moses’ offer of self-sacrifice and insists instead on punishment of the guilty: “Whosoever has sinned against Me, him will I blot out of my book.” This warning looks as if it is confirmed at the end of the episode, when we are told that the Lord smote the people, because they made the calf, which Aaron made (32:35). Yet this ambiguous ascription of responsibility raises a question about the justice of God’s requital, which apparently does not affect Aaron, who has many years of life ahead. In any case, the deed referred to is never described in the biblical narrative: the bare statement about God’s smiting of those who betrayed Him cannot help but look like an expression of unease at the vivid preceding account of three thousand killed, where Moses appears to act on his own, establishing the authority of himself and his tribe, by appealing to the authority of God.

After the turning point of the golden calf episode, God is no longer willing to be present Himself with the people, lest, He warns Moses, “I consume them in the way” (33:3). The children of Israel mourn at being abandoned. Moses, on the other hand, is engaged at the very same time in his most intimate association with God, in the tent of meeting outside the camp. In

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<sup>33</sup> Reading the Bible “judiciously,” Machiavelli finds Moses to be the exemplar of the founder compelled to kill “infinite men” if he wants his laws and orders to go forward. See *Discourses on Livy* III.30.1 and note 39 below. Machiavelli’s reading the Bible *sensatamente* means, as Christopher Lynch puts it, interpreting the biblical text “in light of what can be known of politics and war by means of human reason” (“Machiavelli on Reading the Bible Judiciously,” *Political Hebraism: Judaic Sources in Early Modern Political Thought*, eds. Gordon Schochet, Fania Oz-Salzberger, and Meirav Jones [Jerusalem and NY: Shalem Press, 2008], p.30).

almost shocking words, we hear that God speaks with Moses “face to face, as a man speaks to his friend” (Ex. 33:11). (Speaking face to face is perhaps not the same as seeing God face to face.) Moses comes to this extended encounter shaped by the political experiences that have forced him to recognize his own ignorance. To fulfill his task as lawgiver, he now desires knowledge of the ultimate reality from which the law is in some way derived, or which it in some way reflects. “If I have found grace in Thy sight,” Moses reminds God, “show me now Thy ways, that I may know Thee, to the end that I may find grace in Thy sight; and consider that this nation is Thy people” (33:13). It is, as Machiavelli saw, *because* he has already found favor in God’s eyes—because his intrinsic character has been recognized—that Moses expects God to reveal His ways to him.<sup>34</sup> Yet Moses seeks this revelation *in order that* he might find grace in the eyes of God—grace, that is, on a new basis, on the grounds of knowledge. Now, this is not purely theoretical knowledge, desired for its own sake; it is knowledge Moses realizes he needs if his nation to become the people of God, which is possible only if its identity is molded through a body of law laid down by one who understands God’s ways.

God does not initially address Moses’ plea for knowledge, but only pledges His support: “My presence (*paneh*) shall go with thee.” If not, Moses warns God, “do not carry us up at all” (33:14-15): he is still concerned, as he was at the beginning, with the political problem of appearing in the eyes of those he governs to have divine support. But when God confirms His promise to be present, Moses is emboldened and makes another appeal to God to reveal Himself: “Show me, I pray Thee, Thy glory” (33:18). In the two requests Moses puts forward for divine

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<sup>34</sup> When Machiavelli holds up Moses, along with Cyrus, Romulus, and Theseus, as most excellent models of “those who have become princes by their own virtue and not by fortune” (*The Prince* Ch. 6), his justification actually amounts to a rather precise reading of Exodus 13:3. In fact, Moses turns out to be *the* model when Machiavelli observes that a consideration of Cyrus and the others who acquired or founded kingdoms would show that their particular actions and orders “appear no different from those of Moses, who had so great a teacher” (22-23).



revelation, Maimonides finds a difference of great significance. The glory of God, he argues, is the essence and true reality of the divine, but that is not what God reveals; instead, God offers to make all His goodness pass before Moses as a belated response to Moses' first request, to be shown God's ways. For these ways are the attributes of His actions—merciful, gracious and long-suffering; and while they might characterize divine action, such attributes would not flow from the same essence as in a human being who displayed them. Yet is precisely knowledge of these ways of God that the lawgiver requires; for the attributes of divine action provide a model to be emulated in the governance of cities.<sup>35</sup>

Maimonides separates God's willingness to display His goodness—His ways—from a refusal to reveal His glory. In the biblical text, God's offer to display His goodness is immediately linked with a promise to proclaim the name of the Lord (YHVH), which in turn brings the declaration of His inscrutable being: "I will be gracious to whom I will be gracious and will show mercy on whom I will show mercy" (33:19). The knowledge Moses thought he needed cannot be granted, at least not in the way he hoped: "Thou canst not see My face (*paneh*)," God warns, "for man shall not see Me and live" (33:20). This is not a threat of punishment, but an acknowledgment of the way things are. Moses is offered a second best alternative: he will be placed in a cleft of the rock, where he can see God's back as His glory passes by (33:22-23). There is no direct contemplation of God's face, only the vision of His

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<sup>35</sup> Moses needs this knowledge in order to mold a people, in the words Maimonides puts into his mouth, "for the government of which I need to perform actions that I must seek to make similar to Thy actions in governing them" (*The Guide of the Perplexed* I. 54, 125). Maimonides' claim that God's ways are not the moral qualities of his essence, but only resemble actions in us that proceed from moral qualities recalls Aristotle's implication in the *Ethics* about the philosopher, whose actions might resemble those of the morally virtuous person, but without flowing, strictly speaking, from a moral disposition, as actions chosen solely for their own sake, as noble or beautiful. (See my remarks in *Aristotle's Dialogue with Socrates: on the Nicomachean Ethics* [Chicago: University of Chicago Press, 2008], especially pp. 129, 202).

back as He withdraws.<sup>36</sup> Now, the hiddenness of God may be necessary for the subject who is to obey the commandments and prohibitions of the law. But what about the lawgiver? Would he not need knowledge of the principles and purposes of the law? There is, in any case, no more direct path to such knowledge, as Moses now learns, than the trace of a departing God.

The forty days and forty nights Moses spent in solitary association with God before his great political trial is now repeated (34:28, cf. 24:11). In the end, God tells him, “Write thou these words, for after the tenor of these words I have made a covenant with thee and with Israel” (34:27). In his first colloquy with God, before the incident of the golden calf, Moses was a recipient of the tables of stone “written with the finger of God” (31:18). Now Moses himself seems to be the writer and God only the inspiration.<sup>37</sup> When Moses descends from the mountain his face gives forth beams of light: the potentially blinding glory of God is now reflected in the lawgiver. Originally, the people were awestruck by the thunder and lightning of God’s descent. Now they are terrified by the beaming face of Moses, and he must veil himself, concealing his presence from them as much as God did from him (34:30-35).

### III. Withdrawal

The doubling of Moses’ encounter with God for the transmission of the law frames the episode of the golden calf—the high point of his experience as lawgiver frames the low point for the children of Israel. Their experience of neediness and anxiety is focused, in the Book of Exodus, on the most basic level of existence: they have been brought out of slavery, they fear,

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<sup>36</sup> See Hazony’s reflections on the limited and imperfect understanding of God’s nature to which Moses, as a human being, is restricted (*The Philosophy of Hebrew Scripture*, 244-248). The danger of attempting to contemplate the face of God directly recalls the danger Plato’s Socrates discovers, in the attempt to contemplate the beings directly, which would blind the soul just as looking directly at the sun blinds one’s eyes (*Phaedo* 99d-100a).

<sup>37</sup> In the first verse of Ex. 34, Moses was ordered only to hew the two tables of stone on which God would write the words from the original tables that were broken. The ambiguity about the actual writer of the words of the law—God or Moses— extends through the whole account (cf. note 26 above).

only to die of hunger and thirst in the wilderness. When the narration continues in the Book of Numbers it takes on an even darker tone. A sense of weariness weighs on everyone. Beyond hunger, thirst, frustration and exhaustion a new set of challenges emerges. Moses must deal not only with a slavish people, but at the same time with a rebellious elite. In responding to the worship of the golden calf, Moses pitted the tribe of Levites against all the others; now he faces resentment against his authority on the part of his fellow tribesmen, at one point his own brother and sister.<sup>38</sup>

This situation comes to a climax in the rebellion of Korah, one of the “princes” of the Levites, who, with two fellow conspirators, followed by two-hundred fifty men of renown, leads a charge against the political authority of Moses and the priestly authority of Aaron. All the congregation are holy, they protest; it’s bad enough that you brought us into the wilderness to kill us, must you then make yourself a prince over us (16:13)? The very complicated story that follows looks like an especially terrifying case of political necessity being translated into divine punishment: not only are Korah and his partners, with their wives and children, swallowed up by a miraculous opening of the earth, not only are the two-hundred fifty others, who offered up strange incense, consumed by a fire from the Lord, but events reach a catastrophic conclusion with a plague that takes 14,700 lives! To whatever extent Moses can be held responsible, this disaster fueled by envy, looks like the target of Machiavelli’s comment: “Whoever reads the Bible judiciously will see that since he wishes his laws and his orders to go forward, Moses was forced to kill infinite men who, moved by nothing other than envy, were opposed to his plans.”<sup>39</sup>

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<sup>38</sup> When Miriam and Aaron speak out against Moses because of the Cushite woman he married, God responds by confirming the unique status of His relation to Moses: with other prophets he appears in a vision or a dream, with Moses he communicates “mouth to mouth,” not in dark speeches (Num. 12:7-8).

<sup>39</sup> *Discourses on Livy* III.30.1, trans. Harvey Mansfield and Nathan Tarcov [Chicago: University of Chicago Press, 1996], 280. Referring to Exodus 32.21-26, 27-28, and mentioning Numbers 16, Leo Strauss remarks, “According to Machiavelli, Moses did these things on his own authority; according to the Bible it is not clear whether he did them

The princes of the people may resent the authority of Moses and Aaron, but at the same time they share in the slavishness that makes the whole generation unfit for entry into the new land. A striking illustration is provided by the story of the spy mission to Canaan. God orders Moses to send out twelve men, one prince from each tribe, to investigate the land of Canaan, which He will be giving to the children of Israel. Moses embellishes the order: they are to carry out reconnaissance of the people, whether strong or weak, few or many, the cities, whether in camps or strongholds, the land, whether fat or lean, and to bring back the fruit growing there, presumably to display its richness (13:17-20); he exhorts them, finally, to be of good courage, as if anticipating, and trying to stave off in advance, the outcome of the expedition. Indeed, when they return after forty days, the princes are demoralized. Two, Joshua and Caleb, try to inspire confidence—the land of milk and honey will be theirs if the Lord delights in them; but all the others spread terror and despair with their report that the inhabitants of the new land are giants, while they felt like grasshoppers. Angered at their lack of trust, God threatens once again to destroy this people and save only Moses, while Moses once again exhorts God to think of His reputation and to remember his self-proclaimed loving-kindness (14:11, 19). God compromises:

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on his own authority or by the authority of God,” (*Thoughts on Machiavelli* [Glencoe: The Free Press, 1958], 325 n. 165). Cf. Christopher Lynch, “Machiavelli on Reading the Bible Judiciously,” p. 52 n. 42.

The complicated account of the rebellion of Korah repeatedly raises the question of the relation between God’s plan and Moses acting on his own. When Korah first confronts him and Aaron, Moses comes up with the warning: “In the morning the Lord will show who are His, and who is holy.” And Moses himself devises the test for that demonstration by ordering Korah and his company to burn incense in their fire-pans, which would put Aaron’s priestly authority into question (16:5-7). God hears of the rebellion and initially tells Moses and Aaron to separate themselves from all the others, “That I may consume them in a moment,” but the brothers fall on their faces and persuade God not to be angry with the whole congregation for the sin of one man (16:20-22). God then orders Moses to have all the rest of the people move away from the dwellings of Korah and his two fellow conspirators (16:23-24); but it is Moses who comes up with the idea for a testimony to his own authority when he announces that the earth will open and swallow up the rebels, even if God brings the deed to pass (16:28-31). At the same time, a mysterious fire from the Lord consumes the 250 men allied with the conspirators, presumably as a punishment for burning incense in their own fire-pans (17:5), though it was Moses who originally commanded that action (16:16-17). Whatever control Moses may have exerted at the beginning, in the end events acquire a force of their own, exemplified by the divine plague that can only be stopped by Aaron burning incense after death has come to 14,700 (17:11-15).

He will not destroy the people, but those who doubted Him are now condemned to forty years in the wilderness (14:32-34). No one over twenty years old is to enter the promised land (14:29).<sup>40</sup>

A people so imbued with the habits of slavery that even the most elite see themselves as grasshoppers cannot be the subjects of the new order in a new land. Once again, political necessity is translated into moral terms, as a matter of divine punishment for lack of faith.

The exclusion of the original generation from the new land with a new order has its counterpart in the fate of the founder. The critical event is recounted in Chapter 20 of the Book of Numbers. At this very dark moment, the wanderers have reached the wilderness of Zin. In the beginning of the chapter, we hear that Miriam died there and was buried; at the end, Aaron ascends to a mountain top where he is stripped of his priestly garments and dies; in between, Moses is warned of his imminent death. Once again there is no water and the people, full of fear and bitterness, blame their leaders. God appears and orders Moses to take his rod, assemble the whole congregation, and before their eyes, speak to the rock, which will give forth water. Moses takes the rod and gathers the congregation, as commanded, but then expresses all his frustration and exhaustion: “Hear now, ye rebels. Are we to bring you forth water out of this rock?” Moses smote the rock with his rod twice, we are told, and water came forth. God immediately appears and addresses Moses and Aaron: “Because ye believed not in Me, to sanctify Me in the eyes of the children of Israel, therefore ye shall not bring this assembly into the land which I have given them” (20:7-12).<sup>41</sup>

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<sup>40</sup> In Plato’s *Republic*, Socrates suddenly tells his interlocutors that the condition for the best city to come into being would be the exclusion of everyone over the age of ten (VII. 540e-541a).

<sup>41</sup> In Numbers 27:12, Moses meets God on top of the mountain of Abarim, where he is told to behold the land to be given to the children of Israel but reminded that he will not enter it because he rebelled in the wilderness of Zin. The account of that event in Numbers ends with the remark, “These are the waters of Meribah, where the children of Israel strove with the Lord, and He was sanctified in them” (20:13). That would make it the same as, or at least a repetition of, the incident narrated in the Book of Exodus, where Moses was in fact commanded by God to smite the

Now, it does seem as if Moses has lost patience with his people and trust in the power of God, or frustration with his dependence on it. He has, after all, or will have spent forty years hearing these complaints, until the age of one hundred and twenty. But for that reason, among others, there is something disturbing in the disparity between his momentary lapse and the divine punishment it provokes, barring Moses from the destination to which all his labors have led. And yet, however questionable the justice of that punishment may be, it coincides perfectly with a fundamental necessity: if the divine law is to have sovereign authority, the lawgiver cannot be present as a potential source of appeal behind its back.<sup>42</sup> Moses seems to recognize this necessity. He does not protest his fate as a punishment that outweighs the crime, but instead offers God political advice: Let a man be set on the congregation who will go out before them and come in before them, so the congregation won't be like sheep without a shepherd (Num. 27:12). The people must have a ruler, but it cannot be the founder. In imitation of God's concealment of Himself, the lawgiver and founder must withdraw and leave behind what he has founded, as the last chapter of Deuteronomy confirms: Moses the servant of the Lord died in Moab and "no man knoweth of his sepulcher unto this day" (34:5). Yet Deuteronomy ends with

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rock for water (17:1-7). (Almost a repetition: in Numbers Moses strikes the rock twice—perhaps as evidence that he did not hit it by accident?)

What Moses' deed puts into question, Psalm 114 suggests, is the power of the miraculous as such:

Tremble, thou earth, at the presence of the Lord  
At the presence of the God of Jacob;  
Who turned the rock into a pool of water;  
The flint into a fountain of waters.

<sup>42</sup> Herodotus reports on the Athenian legislator Solon, who departed from Athens for ten years after promulgating his code of law, with the order that none of the laws could be changed in his absence (*Inquiries* 1.29).

The Eleatic Stranger in Plato's *Statesman* first holds up the ideal of rule by the statesman with knowledge, who would be present on the spot to solve all problems. But he begins to undermine that starting point by first imagining a doctor about to go abroad for a long time, who realizes he must write reminders for his patients in his absence, then wondering what would happen if that doctor, or someone like him, were to return sooner than expected (295c). The argument for the necessity of rule by law, however imperfect, which requires the departure of the all-controlling statesman, is prepared for in the stranger's myth about the end of the Age of Cronus, when "the helmsman of the all, just as if he had let go of the handle of the rudder, stood apart and withdrew to his own surveying-post, and a fated and inborn desire reversed once more the cosmos" (272d-e).

an astonishing statement, which indicates why the absence of the lawgiver and founder is so necessary: “There hath not arisen a prophet since in Israel like unto Moses, whom the Lord knew face to face; in all the signs and wonders... and in all the mighty hand, and in all the great terror which Moses wrought in the sight of all Israel (34:10): Moses, not God?!