A table of contents for *Irish Biblical Studies* can be found here:

# Moses and Mendenhall in Traditio-Historical Perspective

*Robert D. Miller II*

George Mendenhall's ideas about the encounter between the Israelites and Yahweh at Sinai in Exodus 19- 34 and the use of "treaty" motifs therein have defined the discussion of this passage for many scholars. The theories of Mendenhall may be used as a starting point for examining Sinai in traditio-historical perspective. His arguments cannot be accepted without major qualification, nor can they be rejected; Mendenhall's position still has much to offer. Furthermore, "cult" may provide a means of explaining the transmission of the "treaty" tradition connected with Sinai

The episode involving the theophany at Mt. Sinai stands out in the biblical text as a tradition of momentous proportions. The theophany, and the accompanying law-giving in the form of the Ten Commandments, has survived as a focal theme in the theology of post-biblical Judeo-Christian religion, as well. Despite the apparent centrality of Sinai, however, much debate exists as to the precise position of the tradition in the text.

The incident at Sinai comprises a good portion of the book of Exodus: from chapter 19 through 34, at least, and in a sense through the entire rest of the book. It records an encounter between the Israelites, led by Moses, and Yahweh that takes place at Mt. Sinai. Central to the text as it stands is the giving of the law, which takes place in this context. Beyond this, there is disagreement among scholars as to how the tradition fits into the tradition history of the Pentateuch and the Old Testament as a whole. George Mendenhall stands out as a figure whose ideas about the Sinai event may be viewed as a pole of opinion to which the work of other scholars may be related. It is thus worthwhile to examine the

theories of Mendenhall, and to use them as a starting point for examining Sinai in traditio-historical perspective

This paper will first summarize the positions of Mendenhall, both as outlined by the scholar himself and as elaborated by later adherents. The salient criticisms of each position will then be outlined, along with the refutations given to these criticisms. Finally, some attempt at synthesis will be made, suggesting some possible considerations which might enlighten the issue.

Mendenhall began by observing that the covenant at Sinai is regarded by a major portion of the biblical tradition as community-making, as foundational for Israelite identity[1]. Even Martin Noth agrees with this analysis[2]. Mendenhall's hypothesis is that the Sinai covenant was the instrument whereby diverse clans were bonded into a single sociopolitical entity[3]. The Sinai covenant was, in a literal sense, constitutional for Israel. Only by such a covenanting could a heterogeneous community expand to include new groups, and have a basis for responsibility for new laws. The Ethical Decalogue, or rather an *Urdekalog* of only commands and prohibitions, was the text of this Sinai covenant[4]. It contained the stipulations of Yahweh -- stipulations which defined justice, not law, for the community: they provided the basis for later laws[5]. As such, the Ethical Decalogue allows for maximum self-determination on the part of the human community, imposing, in fact, only two

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[1] George Mendenhall, *Law and Covenant in Israel and the Ancient Near East* (Pittsburgh: The Biblical Colloquium, 1955), p. 5.

[2] Martin Noth, *The Laws in the Pentateuch and Other Studies*, ET (Philadelphia: Fortress Press, 1967), p. 37; *A History of Pentateuchal Traditions*, ET (Engelwood Cliffs, NJ, 1972), p. 61.

[3] Mendenhall, *Law and Covenant*, p. 5.

[4] Mendenhall, *Law and Covenant*, pp. 5-6.

[5] Mendenhall, *Law and Covenant*, pp. 5-6.

obligations: the Sabbath and the honoring of parents. It was Mendenhall's contention that the Israelite community had to have been founded this way, unless one fell back on the tradition of Genesis that the Israelites were all related[6]. Either law and order and the definition of justice originated organically within a homogeneous group -- a huge extended family, which Mendenhall rejected, or the heterogeneous group had to be constitutionally covenanted at Sinai[7].

In a corollary study (and in fact a separate article; Mendenhall's *Law and Covenant in Israel and the Ancient Near East,* 1955, was a fusing of two 1954 articles in *Biblical Archaeologist,* "Ancient Oriental and Biblical Law," and "Covenant Forms in Israelite Tradition"), Mendenhall analyzed the form this covenant constitution takes. He found first that only treaties resemble the Sinai covenant, more specifically Hittite suzerainty treaties of 1400-1200 B.C.[8]. These Hittite suzerainty treaties were found to show the same mixture of apodictic and casuistic laws found in Exodus 21-23, and the same structure as the Sinai covenant. Mendenhall explicitly spelled out the structural parallels[9], and Klaus Baltzer elaborated even further the extensive correspondence between the Hittite treaties and the Exodus 19[10]. The parallels included the structure of identification of covenant giver and historical prologue (Exod 20:2); stipulations (the Ten Commandments); provision for deposit and periodic public reading, witnesses, blessings and curses (all elsewhere in the tradition); ratification ceremony (Exodus 24);

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[6]Mendenhall, *Law and Covenant,* p. 5.

[7]George Mendenhall, *The Tenth Generation* (Baltimore: The Johns Hopkins University Press, 1973), p. 21.

[8]Mendenhall, *Law and Covenant,* p. 7.

[9]Mendenhall, *Law and Covenant,* pp. 32-38.

[10]Klaus Baltzer, *The Covenant Formulary,* ET (Oxford: Oxford University Press, 1971), pp. 27-29.

and formal procedures for violation of the covenant. Walter Beyerlin expanded this analysis to show parallels such as the notion of the clauses of the treaty as the words of the author, the written record of the treaty, affirmation of obligations, and several other small-scale parallels[11].

Joshua 24 was found to likewise follow the Hittite suzerainty treaty pattern, in fact even more closely than in Exodus[12]. It was proposed, however, that the text in Joshua 24 had been edited by a later editor who was unfamiliar with the now outdated Hittite suzerainty form. The text was that of a new covenant for a new group. The reason Sinai was not mentioned was that it was irrelevant. Joshua 24 was the extension of the Sinai covenant to tribes who were not present at Sinai, and was thus also community-making[13].

Mendenhall hinted that the treaty form was not exactly "Hittite." It was merely the common suzerainty treaty of the time, probably originating in Mesopotamia, for which Hittite treaties just happened to be the best attested[14]. Later scholars have affirmed and expanded this suggestion. It is clear that this was not the "Hittite" treaty form, but rather the "standard international treaty convention of the period,"[15] especially common in Syria[16]. Thus the appellation

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[11]Walter Beyerlin, *Origins and History of the Oldest Sinai Traditions*, ET (Oxford: Oxford University Press, 1965), pp. 54-62.

[12]Hans-Joachim Kraus, *Worship in Israel*, Trans. G. Buswell (Oxford: Basil Blackwell , 1966), pp. 138-40; Baltzer *The Covenant Formulary*, pp. 19-27.

[13]Kraus, *Worship in Israel*, pp. 136-37.

[14]Mendenhall, *Law and Covenant*, p. 28.

[15]R. A. F. MacKenzie, *Faith and History in the Old Testament* (New York: The MacMillan Company, 1963), p. 46.

"Hittite" is best dropped, and "LB suzerainty treaties" is a better term.

Mendenhall used this second of his arguments, the parallel with LB suzerainty treaties, to support his first argument about the nature and centrality of Sinai. By Neo-Assyrian times the LB suzerainty treaty forms did not exist, and the Neo-Assyrian forms were much different[17]. So the Sinai covenant must date from the Late Bronze Age. This was in keeping with Mendenhall's conclusion that the 8th-century prophets presupposed the covenant[18] and the Ethical Decalogue[19].

Mendenhall's ideas have found extensive following[20]. Even Gerhard von Rad accepts the treaty parallel for the Sinai episode[21].

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[16]Hayim Tadmor, 'Treaty and Oath in the Ancient Near East,' pp. 128-52 in *Humanizing America's Iconic Book*, ed. G. M. Tucker and D. A. Knight (Society of Biblical Literature Centennial Publications, Chico, CA, Scholars Press, 1982), p. 130.

[17]Kenneth Kitchen, *The Bible in its World* (Downers Grove, IN: Eisenbrauns, 1977), p. 80; Tadmor 'Treaty and Oath.'

[18]Mendenhall, *Law and Covenant*; W. T. Koopmans, *Joshua 24 as Poetic Narrative* (Journal for the Study of the Old Testament Supplement 93, Sheffield: JSOT Press, 1990), p. 459.

[19]Dewey Beegle, *Moses, The Servant of Yahweh* (Ann Arbor: Pryor Pettengill Press, 1979), p. 234.

[20]These include Klaus Baltzer (*The Covenant Formulary*), Walter Beyerlin (*Origins and History*, p. 54), Kenneth Kitchen (*The Bible and Its World*, pp. 75-85), H. Huffmon ('The Exodus, Sinai and the Credo,' *Catholic Biblical Quarterly* 27 (1965):101-13), Delbert Hillers (*Covenant: The History of a Biblical Idea* (Seminars in the History of Ideas 1, Baltimore: The Johns Hopkins University Press, 1969), Arvid Kapelrud ('Some Recent Points of View on the Time and Origin of the Decalogue,' *Studia Theologica* 18 (1965):87), Dewey Beegle (*Moses*, pp. 204-209), James Muilenberg ('The Form and Structure of the Covenantal Formulation,'

Many criticisms have been raised against Mendenhall. First, scholars have posed serious textual problems for the Sinai episode as used by Mendenhall. The Ethical Decalogue is central to Mendenhall's treaty. Even without its Priestly reworking, which Mendenhall grants[22], many have argued that the Ethical Decalogue was originally independent[23]. Mowinckel thought it was late, dating after the prophets but before the Exile[24]. Likewise, Alt saw it as a sign of the decay of apodictic laws: "the Decalogue deliberately renounces a part of the customary literary form and phraseology in order to fulfil a need which the other lists could not cope with adequately within their stylistic limits, and which indeed they had raised the more urgently by their very incompleteness."[25] Nevertheless, to Mendenhall's defense, there are some who see the Ethical Decalogue as E, and as a part of the entire Sinai complex[26]. T. Thompson sees the Ethical Decalogue as a variant theophany tradition, not connected with Exodus 19 and 20:18-23:19, but as

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*Vetus Testamentum* 9 (1959):347-65), David Noel Freedman, and William Moran (Dennis McCarthy, *Old Testament Covenant* (Oxford: Basil Blackwell Press, 1972), pp. 13-15.

[21] Gerhard von Rad, *Old Testament Theology*, trans. D. M. G. Stalker (New York: Harper & Row, Publishers, 1962), vol. 1, p. 132.

[22] D. Patrick, *Old Testament Law* (Atlanta: John Knox Press, 1985), p. 36.

[23] Beyerlin *Origins and History*, p. 12.

[24] Sigmund Mowinckel, *Le Decalogue* (Paris: Librairie Felix Alcan, 1927), p. 161.

[25] Albrecht Alt, *Essays on Old Testament History and Religion* (Anchor Books, Garden City: Doubleday & Co, Inc., 1968), p. 158

[26] R. E. Clements, *Prophecy and Covenant* (Studies in Biblical Theology 43, London: SCM Press Ltd., 1965, repr. 1969), p. 74.

doing exactly what Mendenhall suggested: an account of a foundational, constitutional covenant which in contrast to the other tradition downplays "Torah" and is not a fulfillment of what Jethro began[27].

Furthermore, Thompson says this variant tradition also accounts for Exod 24:2-8[28]. This challenges McCarthy's and Nicholson's objection that Exod 24:3-8 is an independent strand, and cannot therefore be the ratification of the covenant[29]. In fact, McCarthy is in the minority in separating Exod 24:3-8 from the main JE narrative[30].

There is also a problem with Exodus 20:22-23:33, which Mendenhall sees as paralleling the LB suzerainty treaty mixture of apodictic and casuistic laws[31]. This is the Covenant Code. Beyerlin holds that it has no connection with the actual Sinai tradition, "and was only brought into a loose connection with it later."[32]

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[27]Thomas Thompson, *The Origin Tradition of Ancient Israel* (JSOTSup 55, Sheffield: JSOT Press, 1987), vol. 1, pp. 151, 185.

[28]Thompson, *The Origin Tradition* , pp. 151, 185.

[29]D. McCarthy, *Treaty and Covenant*, rev. ed. (Analecta Biblica 21, Rome: Pontifical Biblical Institute, 1978), p. 266; E. W. Nicholson 'The Antiquity of the Tradition in Exodus XXIV 9-11,' *Vetus Testamentum* 25 (1975):69.

[30]Beyerlin *Origins and History*, p. 16-17; E. W. Nicholson, 'The Covenant Ritual in Exodus 24:3-8,' *Vetus Testamentum* 32 (1982):74; J. P. Hyatt, 'Were There an Ancient Historical Credo in Israel and an Independent Sinai Tradition?' pp. 152-70 in *Translating & Understanding the Old Testament*, ed. H. T. Frank and W. L. Reed (Nashville: Abingdon Press, 1970).

[31]Mendenhall, *Law and Covenant*, pp. 32-38.

[32]Beyerlin *Origins and History*, p. 1; also Patrick, *Old Testament Law*, p. 64; A. Phillips, *Ancient Israel's Criminal Law* (Oxford: Oxford University

Nevertheless, Mendenhall is interested in form criticism and traditions history, and not in source criticism. Form criticism must by definition begin with narratives as they exist, and so Mendenhall should be viewed as doing a different sort of project from those who would criticize him for his mixing of sources. There are those, however, who criticize him from a traditions history angle, as well. Some would argue that covenant is a late tradition, following L. Perlitt. But even Perlitt admits that covenant theology existed prior to the prophets, only that it fully develops with the Deuteronomist in the early Exile[33]. D. McCarthy rejects even that argument of Perlitt[34].

Some have argued that Sinai is not a covenant at all, yet alone a treaty[35]. "The Sinai texts do not show the covenant form."[36] Graham Davies says one cannot tell if covenant was used to describe Israel's relationship to Yahweh at the stage of the Sinai pericope[37]. Brevard Childs sees no evidence of covenant in J's account of Sinai[38]. Much of this is a debate over terminology. Arvid Kapelrud, while denying it is covenant, sees the Sinai episode

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Press, 1970), pp. 20-33. T. Thompson also separates the Covenant Code from the other traditions ( *The Origin Tradition* , p. 189).

[33]Koopmans, *Joshua 24*, p. 71.

[34]McCarthy, *Treaty and Covenant*, p. 23; the same is true for Sperling (Koopmans, *Joshua 24*, p. 80).

[35]Kapelrud, 'Some Recent Points,' p. 84.

[36]McCarthy, *Old Testament Covenant*, p. 57.

[37]Graham I. Davies, 'Sinai, Mount,' *Anchor Bible Dictionary* (Garden City: Doubleday & Co., Inc., 1992), vol. 6, p. 49.

[38]Brevard Childs, *The Book of Exodus* (Old Testament Library, Louisville: The Westminster Press, 1974), p. 348.

as community-forming, constitutional, and justice-defining[39], which sounds like what Mendenhall meant by covenant. M. D. Guinan has shown that Sinai is emphatically covenant[40].

The crux of the challenge to Mendenhall is in his use of the LB suzerainty treaties as analogy. Many elements which belong in the treaties are missing from the Sinai covenant, namely the witnesses, the deposit in a sanctuary, and the blessings and curses[41]. It is also questionably whether the opening clause of the Ethical Decalogue is really a historical prologue[42].

Mendenhall and his supporters argue that these are elsewhere in the Mosaic tradition. The witnesses may be the forces of nature (Deut 32:1; Isa 1:2; Jer 2:12; Mic 6:1-2)[43]. In fact, nature as witness is acceptable in a LB treaty, but not in a Neo-Assyrian one[44]. Additionally, Joshua 24 has both a stone as a witness[45] and the people as witnesses against themselves[46]. The deposit of the law in the Ark is found in Deuteronomy 10 and 1 Kgs 8:9. The blessings

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[39]Kapelrud, 'Some Recent Points,' p. 84.

[40]M. D. Guinan, 'Mosaic Covenant,' *Anchor Bible Dictionary* (Garden City: Doubleday & Co., Inc., 1992), vol. 4, p. 906.

[41]E. W. Nicholson, *God and His People* (Oxford: Clarendon Press, 1986), p. 58.

[42]Nicholson, *God and His People*, p. 68.

[43]Beyerlin *Origins and History*, p. 60; Hillers, *Covenant*, pp. 53-54; Beegle, *Moses*, p. 211.

[44]George Mendenhall and Gary Herion, 'Covenant,' *Anchor Bible Dictionary* (Garden City: Doubleday & Co, Inc., 1992), vol. 1, p. 1181.

[45]Beegle, *Moses*, p. 211.

[46]Koopmans, *Joshua 24*, p. 406

and curses are found explicit in Deuteronomy 28 and 31[47]. They may also be implied by the apodictic nature of the Ethical Decalogue[48]. Or they may be implied by the blood ritual in Exodus 24[49]. The opening clause of the Ethical Decalogue need not function alone as the historical prologue; the events of the Exodus are narratively presupposed.

This by no means answers the criticism. If Exodus 19, rather than 20:1-2, is the historical prologue, it is "an entirely different character from the historical prologue in the treaties,"[50] it is theophany. It has been argued that the Ethical Decalogue cannot be treaty stipulations, because treaty stipulations are usually casuistic, not apodictic[51]. The treaties have no mediators in the sense that Moses is for Sinai[52]. The matter of ratification, if it is that, in Exodus 24 is unlike the LB suzerainty treaties. Exodus 24 has two traditions. In vv 3-8 is a communion sacrifice and blood rite[53], of which the blood rite is central and earlier, and the sacrifice is derivative[54]. It is rather unique with its twofold sprinkling of blood and use of young men instead of priests[55]. Perhaps these young

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[47]Mendenhall, *Law and Covenant*; Beegle, *Moses*, p. 212.

[48]Beyerlin, *Origins and History*; Kapelrud, 'Some Recent Points,' p. 86.

[49]Hillers, *Covenant*, p. 53; Beegle, *Moses*, pp. 206, 212.

[50]Nicholson, *God and His People*, p. 69.

[51]E. Gerstenberger, 'Covenant and Commandment,' *Journal of Biblical Literature* 84 (1965):42, 46.

[52]Childs, *The Book of Exodus*, p. 348.

[53]Nicholson, *God and His People*, p. 69.

[54]Nicholson, 'The Covenant Ritual,' p. 81.

[55]Beyerlin *Origins and History*, p. 38.

men are cultic officials as in 1 Sam 2:13[56]. The other tradition is a Bedouin meal, reminiscent of the patriarchs[57]. Nicholson argues that there is no meal here, that "beheld God, and ate and drank" in v 11 means "beheld God and lived."[58] Noth believed that the meal was the older tradition[59], Nicholson that the blood rite was oldest (and older than Exodus 19)[60]. In any event, none of these rituals appear in the LB suzerainty treaties.

On a more ideological level, "The covenantal relationship between God and an entire people is unparalleled,"[61] as is its preoccupation with individual behavior and the internal life of human relationships[62]. But Mendenhall argues that it is only in the LB suzerainty treaties that such preoccupation would be possible, and not in later Neo-Assyrian treaties[63].

As for Joshua 24, where less treaty elements are missing[64], one runs into dating problems. Mendenhall acknowledges this, suggesting

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[56]Nicholson, 'The Covenant Ritual,' p. 81.

[57]Beyerlin *Origins and History*, p. 34.

[58]E. W. Nicholson, 'The Origin of the Tradition in Exodus XXIV 9-11,' *Vetus Testamentum* 26 (1976):149, 151.

[59]Noth, *The Laws in the Pentateuch*, p. 39.

[60]Nicholson, 'The Antiquity of the Tradition,' p. 70.

[61]Nahum Sarna, 'The Covenant at Sinai,' pp. 102-103 in *Exodus* (Jewish Publication Society Commentary Series, Philadelphia: Jewish Publication Society, 1991), p. 102.

[62]Sarna, 'The Covenant at Sinai,' p. 102; Gerstenberger 'Covenant and Commandment,' 47.

[63]Mendenhall and Herion, 'Covenant,' p. 1182.

[64]Baltzer *The Covenant Formulary*, pp. 27-28.

that such late authorship of the final form may be the reason why only curses are present (blessings are absent in Neo-Assyrian treaties[65]).

An even stronger criticism against Mendenhall's analysis has been made by those who acknowledge that some treaty parallels exist with the Sinai covenant, but that those are explainable in light of Neo-Assyrian treaties. In other words, this criticism is aimed at Mendenhall's conclusion regarding the date of the Sinai tradition. Despite his earlier statement that "Treaties in this form [LB] . . . seem to have ceased to be commonly used,"[66] McCarthy later argues that the elements of treaties are the same from Eannatum of Lagash down to Esarhaddon[67], and so cannot be used to date. The treaty form was at once too uniform over time and too varied within a given period to be used as Mendenhall intends. "The diversity of treaty texts entailed that there was not a single, unambiguous form with which to draw comparisons."[68]  Several instances have been pointed out already where the treaty form is characteristically different from LB to Neo-Assyrian, and more will be said on this below.

The conclusion of many is that Mendenhall's construct "In reality . . . has yielded little that is of permanent value. The resemblance is . . . merely superficial."[69]  On the other hand, some would say "the evidence that Israel uses the treaty-form . . . is irrefragable. There is not another literary form from among those of the ancient Near East

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[65]Mendenhall and Herion, 'Covenant,' p. 1185.

[66]D. McCarthy, 'Covenant in the Old Testament,' *Catholic Biblical Quarterly* 27 (1965):221.

[67]McCarthy, *Treaty and Covenant*, pp. 7, 122; contra Tadmor 'Treaty and Oath.'

[68]Koopmans, *Joshua 24*, p. 457.

[69]Nicholson, *God and His People*, p. 81.

which is more certainly evident in the Old Testament,"[70] but disagree on what period treaties are being paralleled.

In this, some have attempted to rewrite Mendenhall on his behalf, using his groundwork for a new construct. McCarthy[71] proposes that at its earliest stage, covenant meant ritual (Exod 24:1-11, or at least vv 3-8). Later it came to be a verbal affirmation (Exod 19:3b-8[72]). Finally, the treaty pattern of the Neo-Assyrian loyalty oath was implanted on covenant (Deut 4:44-26:19; 28[73]). Koopmans has found this construct to be weak, particularly on the dating of the last two steps, and on the nature of the "verbal affirmation."[74]

Another post-Mendenhall model is that of Weinfeld[75]. In this covenant is first law and observance of the specific laws (Exod 24:3-8). Next the notion of the suzerainty treaty as model for covenant arises (Joshua 24, where the treaty elements are more complete) -- the generic treaty structure which is common to the entire 2nd and 1st millennia. Finally, the Deuteronomic author had both of these traditions available and mixed the two, putting them into a homiletic oratory. Since at his time the Neo-Assyrian loyalty oaths were the only treaties known to him, he thought that was what

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[70]McCarthy, *Old Testament Covenant,* p. 14 = 'Covenant in the Old Testament,' p. 221.

[71]McCarthy, *Treaty and Covenant.*

[72]The pericope is possibly Deuteronomic, as per Muilenberg 'The Form and Structure,' p. 351, or Deuteronomistic, as per Childs, *The Book of Exodus,* p. 348.

[73]Nicholson, *God and His People,* pp. 60, 64.

[74]Koopmans, *Joshua 24,* p. 459.

[75]Moshe Weinfeld, *Deuteronomy and the Deuteronomic School* (Oxford: Clarendon Press, 1972).

the treaty analogy meant[76]. Koopmans finds this also weak, an attempt by Weinfeld to show that Deuteronomy was closer to treaties than Joshua 24[77]. It is, in fact, more likely that the Deuteronomic author had no covenant, and the Deuteronomist tried to relate the Deuteronomic laws to the treaty form he saw in the Sinai texts (possible LB) by writing the treaty form into the book of Deuteronomy using the treaty form he knew, the Neo-Assyrian[78].

Mendenhall's work, his original two articles, was really working toward two different goals with two different methodologies. In the first, Mendenhall the biblical scholar was trying to identify the signification of the Sinai covenant in the text[79]. Nevertheless, Mendenhall was preoccupied with Biblical Theology and was writing at the height of that movement. He sought to identify theologies of central tenets of "biblical religion" or "Israelite religion" for use in modern theology. The second article was Mendenhall the historian of ancient Israel, attempting to reconstruct the past as best as possible, using the biblical text as one source among many.

Some final observations can be made regarding the Sinai tradition using each of the two Mendenhalls as a framework, first on covenant in traditio-historical perspective and then on covenant in history. Covenant is a multifaceted idea. It is descriptive norms (as Weinfeld) **and** shared experience of *Heilsgeschichte* (as von Rad's credos) **and** formal structure (as Mendenhall's treaties) **and** ritual

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[76]Nicholson, *God and His People,* pp. 67-68.

[77] Koopmans, *Joshua 24,* p. 459.

[78]A. D. H. Mayes, *Deuteronomy* (New Century Bible Commentary, Grand Rapids: Eerdmans Publ. Co., 1981), p. 69.

[79]Mendenhall and Herion, 'Covenant,' p. 1179.

act (as von Rad). Mendenhall now argues this[80]. Covenant is also an interaction characterized by *Şedaqa*, which is also legislative -- and in fact, the later, the more legislative (contra Weinfeld). It is a motive for justice[81] -- as with Hosea and Jeremiah, not a source for law[82].

Given this understanding of covenant, it is interesting to note that all law sets -- the Ethical Decalogue (Exodus 20), Ritual Decalogue (Exod 34:17-26), Covenant Code (Exodus 21-23), Deuteronomic Code (Deut 5:6-21), Dodecalogue of Curses (Deut 27:15-26), Holiness Code (Leviticus 9), and Priestly Code (Exod 35:1-3; Leviticus 1-16; 27; Numbers 5-6) -- all join themselves to Sinai, either explicitly or by imagery and language. Thus, law is the response to covenant[83]. This is the place of the tradition in the text; one should not go further as Huffmon does and start talking about Law and Gospel in the Pentateuchal tradition[84].

As for the second Mendenhall, the reasonable proposition may be made that historical reconstruction is a legitimate goal for the historian. This is in no way a "historicist" endeavor, as "objective" history has not been the aim of any serious historian since von Ranke. The historian makes a culturally bound, tropologically bound, effort to create a past in keeping with the evidence that exists. One cannot ignore the Hittite material as presented by Mendenhall, Beyerlin, and Baltzer. Furthermore, one cannot

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[80]Mendenhall and Herion, 'Covenant,' p. 1180.

[81]As Mendenhall, *Law and Covenant*, pp. 5-6.

[82]Cf. Johannes Pedersen, *Israel: Its Life and Culture* (London: Oxford University Press, 1926), vol. 1, pp. 304-305, whose understanding of covenant is at times refreshing amidst modern commentators; also compare Nicholson, *God and His People*.

[83]Childs, *The Book of Exodus*, pp. 382-83.

[84]Huffmon , 'The Exodus,' p. 113.

criticize Mendenhall the historian for failing to perform textual analysis in a way he never intended to utilize. He most certainly can be criticized on his own terms. For instance, he assumed that a society must be constituted either genealogically or covenantally[85]. This is anthropologically wrong[86].

As for the other criticisms raised against his construct, Mendenhall (and Herion) throws the entire question open again with his 1992 article "Covenant" in the *Anchor Bible Dictionary*. Mendenhall argues that only a modern Westerner would expect strict formal correspondence between the LB suzerainty treaties and a parallel in the biblical text. "The author (or editor) responsible for its final canonical shape did not believe that he had to pattern the *text* of the Sinai covenant deliberately after the LB suzerainty treaties (if he even knew what they were)."[87] Yes, there are holes in the structural correspondence, but what is noteworthy is that there are some correspondences at all. Elements which scholars have been at a loss to explain aside from the LB suzerainty treaty analogy.

As already mentioned, Mendenhall points out that in Neo-Assyrian treaties there is no nature as witness[88], no historical prologue or deposit or public reading, no pretense for transcendent moral or ethical formulation[89], no blessings[90] -- all of which are associated with the definition of covenant rooted in the Sinai tradition. "What

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[85]Mendenhall, *Law and Covenant*, p. 5.

[86]See Elman Service, *Origins of the State and Civilization* (New York: W. W. Norton & Company, Inc., 1975) for the many ways societies can integrate.

[87]Mendenhall and Herion, 'Covenant,' p. 1184.

[88]Mendenhall and Herion, 'Covenant,' p. 1181.

[89]Mendenhall and Herion, 'Covenant,' p. 1182.

[90]Mendenhall and Herion, 'Covenant,' p. 1182.

is surprising in that later milieu [of the redactor or Yahwistic or Deuteronomistic author] is that any blessings were enumerated at all, something that could not have been predicted from the structure and content of the Assyrian loyalty oaths. It is difficult to imagine how an Israelite scribe of that time could *invent* the covenant idea and include *blessings*."[91] Also foreign to the Neo-Assyrian treaties are the ideas held in common by the LB treaties and the Sinai tradition, "e.g., the motif of a relationship based on gratitude and a sense of obligation to values shared by the suzerain and vassal alike."[92]

Both Mendenhall and Weinfeld hold that later authors/redactors did not recognize the earlier treaty forms in the traditions they received. They reinterpreted according to what they knew, Neo-Assyrian treaties. This is why elements of the Neo-Assyrian treaty form superimpose over the LB suzerainty treaty form. Should this be surprising that authors/redactors would do this? Not at all; in fact, they have no choice. They are bound to the language of the time. They are not laboriously bound to form, making them mechanistic authors/redactors. But language is societally imposed, and they cannot change that. If one follows a historical chain pragmatic theory, then language is used only as it historically has come to be accepted as descriptive of reality[93]. Now, unless meaning is only an idea associated with the expression in the author's mind or the audience's minds (and this post-structuralist theory is a valid option), then meaning is determined by use in the language

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[91]Mendenhall and Herion, 'Covenant,' p. 1184.

[92]Mendenhall and Herion, 'Covenant,' p. 1187.

[93]A. Akmajian, R. A. Demers, and R. M. Harnish, *Linguistics* (Boston: MIT Press, 1981), p. 247; the alternative is a descriptive pragmatic theory where language really does somehow objectively describe reality, but this is never true for analogy in any case.

community. Language is a part of style[94]. So the later authors could not help but use current definitions of "treaty" when transmitting the tradition and defining "covenant."[95] At one time, the word "treaty," and "covenant," signified a concept visible in LB suzerainty treaties. At another, it could only signify what is visible in the Neo-Assyrian loyalty oaths. If there are elements in the biblical tradition about covenant which do not fit the latter, Neo-Assyrian, definition, how can one account for them? "If these traditions did not ultimately derive from the LB/early Iron Age, from whence did the later Israelite scribes derive these motifs [re. the historical chain pragmatic theory], and why would their later audiences find them meaningful [re. post-structuralist theory]?"[96] The tropes which are not at home with the semantic world of the authors/redactors must come from intertextuality. That is, the only other place the author could define the signification of his language other than his own culture is the textual tradition he is authoring within – 'deeply embedded within the traditions.'[97] That is how the LB covenant definition can be preserved.

It remains to establish whether the meaning from the Hittite world or Assyrian world was ever the same in Israel. Of course it was not -- tropes cannot be understood by the comparative method[98], and that is what Mendenhall is saying when he criticizes the modern, Western mind set in this respect. Nevertheless, Mendenhall has

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[94]Clifford Geertz, *Local Knowledge* (New York: Basic Books, 1983); Robert Darnton, *The Kiss of Lamourette* (New York: W. W. Norton and Company, 1990).

[95]Mendenhall and Herion, 'Covenant,' p. 1183.

[96]Mendenhall and Herion, 'Covenant,' p. 1184.

[97]Mendenhall and Herion, 'Covenant,' p. 1187.

[98]Shemaryahu Talmon, 'The 'Comparative Method' in Biblical Interpretation,' *Congress Volume Göttingen* (Vetus Testamentum Supplement 29, Leiden: E. J. Brill, 1978) p. 320.

shown that the meaning has transferred to some extent. If the meaning of "covenant" in the Sinai tradition does relate with the LB suzerainty meaning of "treaty," and then is preserved intertextually, then this preservation could take many forms. What is observable at the end of this "black box" of tradition is some of the formal elements and some of the ideology, although in no cases is it ideology which could not be expected from the internal biblical tradition. That is, perhaps the tradition did not preserve a covenant idea without a form, as so many have argued, but rather preserved a form without the idea[99]. Perhaps only cult can preserve a form so long[100]. Cultic language is conservative, and often preserves forms for extended times long after secular language has changed.

Hans-Joachim Kraus[101] has shown that "there is perhaps some sort of ritual in Israel which followed a sequence rather like that of the ancient Hittite treaty ... there is an analogy between the sequence of events of the Israelite ritual and of the parts of the Hittite treaty."[102] This is no "covenant renewal ceremony," or at least it need not be[103], but rather some ritual that follows the sequence of the LB suzerainty treaties. In fact, this is the strongest connection with the Hittite treaties, as McCarthy has shown[104]. McCarthy, following Henning Graf Reventlow, suggests that both the covenant that both treaty and the covenant apodictic law were cultic, and had different,

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[99]Baltzer *The Covenant Formulary*, p. 90.

[100]Baltzer *The Covenant Formulary*, p. 89.

[101]Kraus, *Worship in Israel*.

[102]McCarthy, *Old Testament Covenant*, p. 16 = 'Covenant in the Old Testament,' p. 225.

[103]See Nicholson, 'The Origin of the Tradition,' p. 7.

[104]McCarthy, *Old Testament Covenant*, p. 16.

parallel developments from a single ritual underlying them both[105]. Yet perhaps it is possible that a ritual underlies the text of the Sinai pericope, and not the ritual described in Exodus 24. This ritual might be the earliest form of the Sinai covenant (as McCarthy), and this ritual goes back to the form of the LB suzerainty treaties (contra McCarthy). At a later stage, the text may have been added to either justify the ritual (which may not even have been Israelite[106]), or to explicate the ritual as covenant, or to connect an extant Sinai tradition with the treaty cult. "There can be no doubt that covenant was connected with cult"[107]; "characteristic features of the ceremonial rehearsal ... might have influenced the tradition to a large extent, ... affected the structure of the whole account as well as the individual phrases."[108] If ritual could shape the language and structure, as Kraus argues, it could surely be the origin of the language and structure. It could be that covenant shifted from rite to pledge as according to McCarthy and Nicholson[109], or it could be that the rite may not even have been covenant at the earliest stage, especially if Childs is correct about the vagueness of covenant in the Sinai pericope[110]. As to the origins of this now utterly unidentifiable "treaty cult" which used the LB suzerainty treaty form as its liturgy, such must remain elusive. Kraus points out that, if Shechem is connected, there is a vague tradition of the worship of

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[105]McCarthy, *Old Testament Covenant*, p. 16 n. 14.

[106]Cf. Gerhard von Rad, *The Problem of the Hexateuch and Other Essays*, trans. E. Dicken (Edinburgh: Oliver & B., 1966), p. 38 and below.

[107]McCarthy, *Old Testament Covenant*, p. 57.

[108]Kraus, *Worship in Israel*, p. 137.

[109]Nicholson, *God and His People*, p. 64.

[110]Childs, *The Book of Exodus*, p. 348.

an El Berit at Shechem in Judges 9:46[111]. Perhaps this holds some answers.

This essay has attempted to examine the positions of Mendenhall and his detractors. It has been shown that the original arguments cannot be accepted without major qualification, nor can they be rejected. It is maintained that Mendenhall's position still has much to offer, particularly as re-articulated in Mendenhall and Herion, 'Covenant.' Finally, some forays have been made in looking at cult as a means of transmitting the tradition -- forays that are admittedly musing at best. The tradition history of the Sinai covenant remains a topic about which much can yet be learned and explored.

<div align="right">Robert D. Miller II</div>

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[111]Kraus, *Worship in Israel*, p. 140.