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### Reading As A Disclosure Of The Thoughts Of The Heart: Proto-Halakhic Reuse And Appropriation Between Torah And The Prophets

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ABSTRACT

READING AS A DISCLOSURE OF THE THOUGHTS OF THE  
HEART: PROTO-HALAKHIC REUSE AND  
APPROPRIATION BETWEEN TORAH  
AND THE PROPHETS

by

Kenneth Bergland

Adviser: Richard Davidson, Ph.D.

ABSTRACT OF GRADUATE RESEARCH

Dissertation

Andrews University

Seventh-day Adventist Theological Seminary

Title: READING AS A DISCLOSURE OF THE THOUGHTS OF THE HEART:  
PROTO-HALAKHIC REUSE AND APPROPRIATION BETWEEN TORAH  
AND THE PROPHETS

Name of researcher: Kenneth Bergland

Name and degree of faculty chair: Richard Davidson, Ph.D.

Date completed: March 2018

How should we then live? This has been the guiding question throughout the study. In a world that offers a myriad of answers to this one question, I have sought the answer in the Bible, more specifically in the Hebrew part of the Bible. Instead of asking the straightforward question as to how the Bible can function as norm for contemporary ethics, the following discussion is based on the assumption that an authentic reading and appropriation of the text needs both to understand and to emulate the ways in which the biblical authors read the Bible. While scholars have examined separately biblical law, reuse within the Bible, and the memorization of revered texts in the ANE, I have tried to

combine these three areas in an attempt to clarify how biblical authors read normative texts.

This study is divided into three parts: in the first part, I argue that Torah is best characterized as normative covenantal instruction, and that Torah and the Latter Prophets (hereafter Prophets) participated in a scribal culture that did not conform to our standards of literary exactness. In the second part, I have selected four cases where we find parallels between Torah and the Prophets: (1) Divorce and Remarriage in Deut 24:1–4 and Jer 3:1–10, (2) Sabbath Instructions in Exod 20:8–11; Deut 5:12–15 and Jer 17:19–27, (3) Manumission Instructions in Exod 21:2–11; Lev 25:10, 39–46; Deut 15:12–18; and Jer 34:8–22, and (4) Fasting in Lev 16; 23; 25 and Isa 58:1–14. Finally, I discuss Jer 7 and Ezek 18 as these cases display a different type of reuse than the preceding four. I have limited myself to cases where reuse and direction of dependence can be demonstrated with reasonable confidence, in order to give an adequate basis for a discussion of how normative texts were appropriated in each of the specific cases. In the third part, I include a hermeneutical and philosophical reflection on reading as a disclosure of the thoughts of the heart.

Repetition with variation is typical in texts that reuse a normative text. Neither conflict nor harmony can adequately explain this phenomena. In the borrowing text, we rather see a close reading that reads its source(s) expansionistically. There is an interpretative response interwoven with the reading along with various trajectories the borrowing author would have viewed as indicated in the very source(s) themselves. We find a challenge both to a literalistic reading that confines meaning to the plain sense of the text on the one hand, and to a more free or creative reading not fully responsible to

the text on the other. The cases studied attest to the importance of an immersion into the normative texts in order to clarify how we should live; these cases also demonstrate the need for finding new life through texts and forms of life that creatively reuse the biblical text while all the while staying rooted in the ancient words.

Andrews University  
Seventh-day Adventist Theological Seminary

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A Dissertation  
Presented in Partial Fulfillment  
of the Requirements for the Degree  
Doctor of Philosophy

by  
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March 2018

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## LIST OF ABBREVIATIONS

AB	Anchor Bible
ABD	<i>Anchor Bible Dictionary</i>
ANE	Ancient Near East
BBB	Bonner biblische Beiträge
BBR	<i>Bulletin of Biblical Research</i>
BC	Book of the Covenant
BibInt	Biblical Interpretation Series
BTB	<i>Biblical Theology Bulletin</i>
BZ	<i>Biblische Zeitschrift</i>
BZABR	Beihefte zur Zeitschrift für Altorientalische und Biblische Rechtsgeschichte
CBQ	<i>Catholic Biblical Quarterly</i>
COS	<i>The Context of Scripture</i>
D	Deuteronomy
FAT	Forschungen zum Alten Testament
HALOT	<i>The Hebrew and Aramaic Lexicon of the Old Testament</i>
HB	The Hebrew Part of the Bible, traditionally called the Old Testament or Hebrew Bible
HI	Holiness Instruction
HThKAT	Herders Theologischer Kommentar zum Alten Testament
HUCA	<i>Hebrew Union College Annual</i>
ICC	International Critical Commentary
JATS	<i>Journal of Adventist Theological Society</i>
JBL	<i>Journal of Biblical Literature</i>
JBS	Jerusalem Biblical Studies
JNES	<i>Journal of Near Eastern Studies</i>
JSOT	<i>Journal for the Study of the Old Testament</i>

JSOTSup	Journal for the Study of the Old Testament Supplement Series
LAI	Library of Ancient Israel
LHBOTS	Library of Hebrew Bible/Old Testament studies
NIVAC	<i>The NIV Application Commentary: From Biblical Text ... to Contemporary Life</i>
OTL	The Old Testament Library
OTS	Old Testament Studies
RBS	Resources for Biblical Study
SAAS	State Archives of Assyria Studies
SBL	Society of Biblical Literature
SBLDS	Society of Biblical Literature Dissertation Series
SBTS	Sources for Biblical and Theological Study
SJSJ	Supplements to the Journal for the Study of Judaism
SSN	Studia Semitica Neerlandica
StBibLit	Studies in Biblical Literature
VT	<i>Vetus Testamentum</i>
VTSup	Supplements to Vetus Testamentum
WBC	Word Biblical Commentary
ZABR	<i>Zeitschrift für Altorientalische und Biblische Rechtsgeschichte</i>
ZAW	<i>Zeitschrift für die Alttestamentliche Wissenschaft</i>

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YHWH—last, but first—, you have once more guided and drawn me to your heart. My prayer is that the following will be to your glory alone!

## INTRODUCTION

וּזְכַרְתָּ אֶת־כָּל־הַדְרֹךְ אֲשֶׁר הִלִּיכָה יְהוָה אֱלֹהֶיךָ זֶה אַרְבָּעִים שָׁנָה בַּמִּדְבָּר לְמַעַן עֲנֹתָהּ לְנִסְתָּהּ לְדַעַת אֶת־  
אֲשֶׁר בְּלִבָּךְ הִתְשַׁמֵּר מִצְוֹתוֹ אִם־לֹא: וַיַּעֲנֶה וַיִּרְעַבְהָ וַיֹּאכַלְהָ אֶת הַמָּן אֲשֶׁר לֹא־יָדַעְתָּ וְלֹא יָדְעוּן אֲבֹתֶיךָ  
לְמַעַן הוֹדִיעָךָ כִּי לֹא עַל־הַלֶּחֶם לִבְדּוֹ יְהִיֶה הָאָדָם כִּי עַל־כָּל־מוֹצֵא פִי־יְהוָה יְהִיֶה הָאָדָם: שְׂמַלְתָּהּ לֹא  
בָלְתָה מֵעֲלִיָּה וְרַגְלָהּ לֹא בָצְקָה זֶה אַרְבָּעִים שָׁנָה: וַיְדַעְתָּ עִם־לִבָּךְ כִּי כֹאֲשֶׁר יִיסֵר אִישׁ אֶת־בְּנוֹ יְהוָה  
אֱלֹהֶיךָ מִיִּסְרָךְ:

Remember the entire way which YHWH your God made you walk these forty years in the desert, in order that he might humble you and test you to know what was in your heart, whether you would keep his commandments or not. He humbled and starved you, and fed you manna, which neither you or your fathers knew, in order to make you know that man does not live by bread alone, but man lives by all that proceeds from the mouth of YHWH. Your clothing upon you did not wear out and your foot did not swell these forty years. Know then in your heart that as a man disciplines his son so YHWH your God disciplines you (Deut 8:2–5; cf. Exod 15:25; 16:4; Deut 8:16).

אַחַת דִּבֶּר אֱלֹהִים שְׁתִּים־זוֹ שָׁמַעְתִּי

One thing God spoke, two things I heard (Ps 62:12).

ὁ δὲ εἶπεν αὐτοῖς: διὰ τοῦτο πᾶς γραμματεὺς μαθητευθεὶς τῇ βασιλείᾳ τῶν οὐρανῶν ὅμοιός ἐστιν ἀνθρώπῳ οἰκοδεσπότῃ, ὅστις ἐκβάλλει ἐκ τοῦ θησαυροῦ αὐτοῦ καινὰ καὶ παλαιά.

And he said to them: “Therefore every scribe who has been trained by the kingdom of heaven is like the owner of a house, who brings out of his treasure what is new and old” (Matt 13:52; cf. 5:17).

How then shall we live? This basic question has driven the following study. But I have not attempted to answer it by setting forth a moral theory or code of conduct. The course I will pursue is more indirect. If there is a normative standard for how life ought to

be lived in a meaningful way, this standard needs to come from outside of ourselves, outside of human communities, and outside of this world. Otherwise normativity will only be relative to these temporal and thus changeable entities. Experiences, convictions, and choices might lead us to searching in conflicting directions for the desired normativity. In what follows I have tried to clarify how such normativity might look if we search for it in the Hebrew part of the Bible (hereafter HB). More precisely, I have not simply asked what answers it may provide for specific questions on conduct. Rather, I have placed a main focus upon how the various authors responsible for the HB read and appropriated other normative texts. Wittgenstein famously wrote: “We feel that even if *all possible* scientific questions be answered, the problems of life have still not been touched at all.”<sup>1</sup> Maybe we are entitled to paraphrase Wittgenstein, and say that we feel that even if *all possible moral and exegetical* questions could be answered when approached objectively, the problems of life have still not been touched upon at all. It follows that we can approach HB as either a spectator or a participant.<sup>2</sup> Objectivist analysis tends to leave the problems of life untouched even when it discusses morality and theology. The aim in the following is to seek an alternative to this objectivist tendency to remain distant from life; and, instead, to let life itself be touched—my life, and hopefully the reader’s as well.

Further, I have no pretensions of setting forth a theory about normativity in the HB. This study is not meant to be comprehensive. Even if I had constraints neither on

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<sup>1</sup> Ludwig Wittgenstein, *Tractatus Logico-Philosophicus*, trans. C. K. Ogden (London: Routledge, 1922), 187 (6.52).

<sup>2</sup> Cf. Hans Skjervheim, *Deltakar og tilskodar og andre essays* (Oslo: Aschehoug, 1996), 71–87.

time nor space, I would choose to place the emphasis differently. It is more important to immerse ourselves in the texts in order to clarify how we should live, and let them, in turn, penetrate our life, my life. The aim is not a theory, but a way of life. The study therefore does not conclude as a theory does; instead, it can only be brought to an end within life itself.

This study is divided into three parts. In the first part I address the phenomenon of repetition with variation in reuse between Torah and the Latter Prophets (hereafter Prophets).<sup>3</sup> This first part consists of three chapters, reviewing and reflecting on three issues that have a particular bearing when analyzing the evidence for reuse and attempting to conceptualize the appropriation of normative texts in the HB. The first part, and the topic of the first chapter, is a brief survey of the scholarly debate on the question of reuse between Torah and the Prophets. The second chapter raises the question as to how Torah itself is to be characterized. The third chapter asks how the scribal culture Torah and the Prophets participate in may help us understand the reuse of texts. I argue

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<sup>3</sup> In the following I will use ‘Torah’ with particular reference to the instructive material in the Pentateuch, and ‘Pentateuch’ as a reference to the books of Genesis—Deuteronomy. Even if both ‘Pentateuch’ and ‘Torah’ can be said to be anachronistic designations of the instructive material, since תורה is used within the Pentateuch to designate parts of its material, as I will show later, ‘Torah’ used for the collection of instructive material in the Pentateuch is at least biblically anachronistic, in the sense that it is what later biblical authors call the collection. By speaking of the instructive material in the Pentateuch, an objection may be that all of the Pentateuch was intended to be instructive (cf. 2 Tim 3:16). While this is true, I should therefore specify that by speaking of “the instructive material of Torah” I mean the material having an imperative or jussive function in Torah, the material often designated as the ‘law’. So this is a reference to a specific body of text, even if later generations also viewed other parts of Torah, if not the entire corpus as “instructive material.”

While it is common to speak of ‘legal discrepancy’ or ‘apparent legal discrepancy’ between the different instructions in Torah, the first postulates an actual discord between the legal corpora of Torah while the second postulates that behind its appearance there is really an accord. In order to suspend such judgments of the textual material, acknowledging the limitations of our understanding, I rather prefer more neutral phenomenological descriptions like legal ‘dissimilarity,’ ‘dissimilitude,’ ‘differences,’ ‘diversity,’ ‘variation,’ ‘inconsistency,’ and ‘tension.’

that this reuse seems to be part of a text-supported memorized reuse, where memorization and embodiment of the revered texts constitute a cultural backbone. Chapter two and three both begin with a survey of the debates on the Ancient Near East (ANE) material, before moving on to a discussion of how to understand the biblical passages in light of this comparative background. The intention here is neither to enter into the discussion of ANE sources, nor be exhaustive regarding the biblical material, but simply to situate the analysis of proto-halakhic reuse relative to its cognitive milieu;<sup>4</sup> highlighting key issues that, hopefully, will help us to be more attentive readers when we encounter the textual phenomena in the concrete cases in the second part of this study.

I argue that the characterization of Torah as covenantal instruction, and the acknowledgment of the scribal culture of memorized reuse both help us to understand why reuse of normative texts between Torah and the Prophets does not conform to our standards of literary exactness. It is therefore a call for caution before entering the discussion of the concrete cases in this study.

In the second part, I have selected four cases of parallels between Torah and the Prophets: (1) Divorce and Remarriage in Deut 24:1–4 and Jer 3:1–10, (2) Sabbath Instructions in Exod 20:8–11; Deut 5:12–15 and Jer 17:19–27, (3) Manumission Instructions in Exod 21:2–11; Lev 25:10, 39–46; Deut 15:12–18; and Jer 34:8–22, and (4) Fasting in Lev 16; 23; 25 and Isa 58:1–14. To me these appear to be relatively clear cases of reuse between the Torah and the Prophets where the direction of dependence can be established satisfactorily. In my view, they illustrate well the phenomena of repetition

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<sup>4</sup> I speak of proto-halakhic in contrast to halakhic reuse, where the former refers to biblical reuse and the latter to later Jewish reuse.

with variation in proto-halakhic reuse and appropriation. Having provided textual arguments for a case of reuse and direction of dependence, I proceed to an analysis of how the normative text is appropriated by the later biblical author in the specific case.

The procedure for selecting the above mentioned passages proceeded as follows: First, since the delimitation between so-called ‘ethical’ and ‘cultic’ instructions is not actually as clear as it is often presented (something I will discuss further in chapter two) I chose instead to limit my discussion to the instructive material of Torah as follows: the Decalogue and the Book of the Covenant (BC) in Exodus (Exod 20:1–17; 21:2–23:19), the Holiness Code (Lev 18:1–26:2), and the Decalogue and collection of specific instructions in Deuteronomy (Deut 5:6–18; 12:1–26:19).<sup>5</sup> Second, I proceeded by asking what passages in the Prophets had such strong parallels that a case of reuse can be established between the Torah and Prophets.<sup>6</sup> If such evidence could be provided, I then proceeded to a discussion of the indicators of a direction of dependence. Finally, if I felt that both a case for reuse and the direction of dependence could be established with a satisfactory degree of confidence, I then proceeded to the question of appropriation. Since this latter step is at the heart of the present study, with the other two as preliminary steps, I chose to raise the bar both for determining what cases could be considered as cases of reuse and for identifying the direction of dependence. Beginning, initially, from a longer

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<sup>5</sup> I will not include the admonitions, blessings and curses as part of the primary textual material (Exod 23:20–33; Lev 26:3–46; Deut 27–28). While my selection of texts could be said to belong to the ethical category, in my first chapter I will discuss the textual basis for differentiating ethical from cultic material.

<sup>6</sup> My focus will not be upon assigning absolute dates to the various biblical passages under study, but rather clarify the relative chronology between individual passages on the basis of internal textual evidence. Cf. Benjamin Kilchör, *Mosetora und Jahwetora: Das Verhältnis von Deuteronomium 12–16 zu Exodus, Levitikus und Numeri*, ed. Eckart Otto. BZAR 21 (Wiesbaden: Harrassowitz Verlag, 2015), 3.

list, this was reduced to the above four cases. These are discussed in chapters four to seven. Building from the four most clear cases of reuse, in chapter eight, I will use Jer 7:1–15 and Ezek 18 in order to reflect upon cases of more elusive reuse between Torah and the Prophets. Given the phenomena of repetition with variation as found in the four cases, how should we relate to parallels between Torah and the Prophets where the evidence for reuse and a clear direction of dependence is less available? Some scholars are confident that there is evidence for literary dependence in cases of elusive reuse while others deny that adequate evidence does exist in such cases for identifying reuse. I will offer a middle position where I show that both views need to be somewhat modified.

Given that I have limited myself to the instructive material in Torah and the Prophets, it was therefore the degree of confidence as to reuse and direction of dependence that guided me to select these cases. While the cases cover a certain spectrum of moral themes, how a normative text was appropriated was emphasized rather than a range of possible topics. Having selected the six cases I allowed myself to organize them according to the most natural sequence: the cases including passages from Jeremiah are given in synchronic jeremianic order; the case including Isa 58 follows as it fits well the case involving Jer 34 and, finally, I discuss Jer 7 and Ezek 18 last as these display a different type of reuse than the preceding four.

The third part of this study, is a hermeneutical reflection upon reading as a disclosure of the thoughts of the heart. I am here drawing on more contemporary authors, Søren Kierkegaard and Ludwig Wittgenstein in particular, to uncover resonances with the reflections in the previous chapters.

The Masoretic text (MT) will form the basis of the following study, including

discussions of other manuscripts where relevant. This should not be understood as a claim to the chronological priority of the version reflected in MT, but rather a pragmatic choice as a starting point of the discussion.<sup>7</sup> When referring to parts of verses, I will follow the practice of placing divisions between clauses, instead of on the basis of the cantillation marks. The advantage of this is that it relates more to the ancient consonantal text.

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<sup>7</sup> I find myself agreeing with Cassuto and Greenberg as they emphasize that the role of the commentator is to explain the present composition as we have it, even if this does not exclude a pre-history of the text (Moshe Greenberg, *Ezekiel 1–20: A New Translation with Introduction and Commentary*, Anchor Bible (AB) 22 (New York: Doubleday, 1983), 18–27; Umberto Cassuto, *A Commentary on the Book of Exodus*, trans. Israel Abrahams (Jerusalem: Magnes Press, 1997), 186). Cf. also Pakkala’s study showing how the phenomena of omission complicates source critical approaches (Juha Pakkala, *God’s Word Omitted: Omissions in the Transmission of the Hebrew Bible*, *Forschungen zur Religion und Literatur des Alten und Neuen Testaments* 251 (Göttingen: Vandenhoeck and Ruprecht, 2013)).



## PART ONE

## CHAPTER 1

### A HISTORICAL SURVEY OF THE DEBATE ON THE RELATIVE PRIORITY OF TORAH AND THE PROPHETS

The following is not a study of the question of reuse within Torah itself.<sup>1</sup> Nor is it

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<sup>1</sup> For studies on reuse within Torah see for example Bernard M. Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation* (New York: Oxford University Press, 1997); Bernard M. Levinson, *Legal Revision and Religious Renewal in Ancient Israel* (Cambridge: Cambridge University Press, 2008); Jeffrey Stackert, *Rewriting the Torah: Literary Revision in Deuteronomy and the Holiness Legislation*, eds. Bernd Janowski, Mark S. Smith and Hermann Spieckermann. Forschungen zum Alten Testament (FAT) 52 (Tübingen: Mohr Siebeck, 2007); Kilchör, *Mosetora und Jahwetora*.

A key question in the present scholarly debate is the direction of dependence between the BC, Holiness Instruction (HI), and Deuteronomy—especially the relation between the two latter. The scholarly consensus is that the BC is the oldest law, with the exception of Van Seters arguing it is the youngest (John Van Seters, *A Law Book for the Diaspora: Revision in the Study of the Covenant Code* (Oxford: Oxford University Press, 2003)). Further, the majority of scholars also see a reuse of at least the BC in Deuteronomy. For authors who have more recently argued for a direct literary dependence of Deuteronomy upon the BC, see Norbert Lohfink, “Zur deuteronomischen Zentralisationsformel,” *Bib* 65 (1984): 297–329; Eckart Otto, “Aspects of Legal Reforms and Reformulations in Ancient Cuneiform and Israelite Law,” in *Theory and Method in Biblical and Cuneiform Law: Revision, Interpolation and Development*, ed. Bernard M. Levinson (Sheffield: Sheffield Academic, 1994), 160–96; Norbert Lohfink, “Fortschreibung? Zur Technik von Rechtsrevisionen im deuteronomischen Bereich, erörtert an Deuteronomium 12, Ex 21,2–11 und Dtn 15,12–18,” in *Das Deuteronomium und seine Querbeziehungen*, Schriften der Finnischen Exegetischen Gesellschaft 62 (Göttingen: Vandenhoeck and Ruprecht, 1996), 127–71; Levinson, *Deuteronomy*.

There are some dissenting voices like Kaufmann not seeing any literary influence at all between the legal corpora (Yehezkel Kaufmann, *The Religion of Israel: From Its Beginnings to the Babylonian Exile*, trans. Moshe Greenberg (Chicago: The University of Chicago Press, 1960), 153–211). See esp. pp. 166–71, 208–9. He wrote: “Each of the three codes of the Torah is to be regarded as an independent crystallization of Israel’s ancient juristic-moral literature. The evolutionary sequence and literary dependence assumed by Wellhausen has no foundation” (Kaufmann, *The Religion of Israel*, 170). And again, “not a single peculiarity of one legal corpus has insinuated itself into either of the others” (Kaufmann, *The Religion of Israel*, 171). For him the similarities between the legal corpora of the Torah should not be understood as influence between them, but each should be understood as an “independent development . . . immediately linked to the ancient Near Eastern tradition; each is a primary Israelite formulation of elements of that common tradition” (Kaufmann, *The Religion of Israel*, 171). On the question of chronological priority of P over D see Kaufmann, *The Religion of Israel*, 153–211. Weinfeld expressed a related view, arguing in relation to P and D “that the divergencies between the two schools stem from a difference in their sociological background rather than from a difference in their chronological setting. The problem at hand concerns two different ideologies arising from two different circles but not necessarily from two distinct historical periods” (Moshe Weinfeld, *Deuteronomy and the Deuteronomistic School* (Winona Lake, IN: Eisenbrauns, 1992), 180). He tries to show that “the law of P, and the theological conception underlying it,

are much older than those of D. D changes and reworks the traditional institutions and attitudes of P” (Weinfeld, *Deuteronomy and the Deuteronomistic School*, 180n). Again, the similarities are explained as rooted in a common tradition, rather than literary influence between the two compositions. Other authors who see no dependence between D and HI, and may also dispute a dependence between BC and HI as well, are L. E. Elliott-Binns, “Some Problems of the Holiness Code,” *Zeitschrift für die Alttestamentliche Wissenschaft [ZAW]* 67 (1955): 29–30; Rosario Pius Merendino, *Das deuteronomische Gesetz: Eine literarkritische, gattungs- und überlieferungsgeschichtliche Untersuchung zu Dt 12–26*, Bonner Biblische Beiträge (BBB) 31 (Bonn: P. Hanstein, 1969), 401–2; Jan Joosten, *People and Land in the Holiness Code: An Exegetical Study of the Ideational Framework of the Law in Leviticus 17–26* (Leiden: Brill, 1996), 159; Baruch J. Schwartz, “‘Profane’ Slaughter and the Integrity of the Priestly Code,” *Hebrew Union College Annual (HUCA)* 67 (1996): 38–42; John S. Bergsma, *The Jubilee from Leviticus to Qumran: A History of Interpretation* (Leiden: Brill, 2007), 41, 51, 137–47, 163n–64n. Rofé argues for at least three stages in the development of D, with a later stage trying “to reconcile the contradictions between D’s laws and those of the Pentateuch’s other legal compilations” (Alexander Rofé, “The Book of Deuteronomy. A Summary,” in *Deuteronomy: Issues and Interpretations*, Old Testament Studies [OTS] (London: T&T Clark, 2002), 8). Bettenzoli argues for seeing the development of HI and D as a mutual influence over time (Gisuseppe Bettenzoli, “Deuteronomium und Heiligkeitsgesetz,” *Vetus Testamentum [VT]* 34 (1984): 397–98).

The major scholarly discussion is written on the reuse between the so-called Priestly source and/or the HI on one side and Deuteronomy on the other side. The scholarly default position has been Wellhausen’s, namely that the so-called priestly material (P) was written after Deuteronomy (D), and that the direction of dependence therefore goes from D to H. Since Baentsch many have seen the direction of dependence as going from Deuteronomy to the HI (Bruno Baentsch, *Das Heiligkeits-Gesetz Lev XVII–XXVI* (Erfurt: Hugo Günther, 1893), 76–80). Scholars who see the HI as reusing Deuteronomy are Alfred Cholewiński, *Heiligkeitsgesetz und Deuteronomium*, Analecta Biblica 66 (Rome: Biblical Institute, 1976); Stephen A. Kaufman, “Deuteronomy 15 and Recent Research on the Dating of P,” in *Das Deuteronomium: Entstehung, Gestalt und Botschaft*, ed. Norbert Lohfink (Leuven: University Press, 1985), 276; Eckart Otto, *Theologische Ethik des Alten Testaments* (Stuttgart: Kohlhammer, 1994), 234–53; Eckart Otto, “Das Heiligkeitsgesetz Leviticus 17–26 in der Pentateuchredaktion,” in *Altes Testament, Forschung und Wirkung: Festschrift für Henning Graf Reventlow*, eds. Peter Mommer and Winfried Thiel (Frankfurt am Main: Peter Lang, 1994), 65–80; Eckart Otto, “Innerbiblische Exegese im Heiligkeitsgesetz Levitikus 17–26,” in *Levitikus als Buch*, eds. Heinz-Josef Fabry and Hans-Winfried Jüngling (Berlin: Philo, 1999), 125–96; Eckart Otto, “Das Heiligkeitsgesetz zwischen Priesterschrift und Deuteronomium,” *Zeitschrift für Altorientalische und Biblische Rechtsgeschichte [ZABR]* 6 (2000): 330–40; Klaus Grünwaldt, *Das Heiligkeitsgesetz Leviticus 17–26: Ursprüngliche Gestalt, Tradition und Theologie* (Berlin: De Gruyter, 1999), 376; Christophe Nihan, “The Holiness Code between D and P. Some Comments on the Function and Significance of Leviticus 17–26 in the Composition of the Torah,” in *Das Deuteronomium zwischen Pentateuch und Deuteronomistischem Geschichtswerk*, eds. Eckart Otto and Reinhard Achenbach (Göttingen: Vandenhoeck and Ruprecht, 2004), 523–35, 554n; Bernard M. Levinson, “The Birth of the Lemma: The Restrictive Reinterpretation of the Covenant Code’s Manumission Law by the Holiness Code (Leviticus 24:44–46),” *Journal of Biblical Literature (JBL)* 124 (2005): 630; Stackert, *Rewriting the Torah*, 16, cf. 69–70.

Some are more influenced by Kaufmann’s claim that Deuteronomy was composed after Leviticus. Scholars who see Deuteronomy as reusing the HI are Sara Japhet, “The Relationship between the Legal Corpora in the Pentateuch in Light of Manumission Laws,” in *Studies in the Bible*, ed. Sara Japhet, ScrHier (Jerusalem: Magnes, 1986), ; Michael Fishbane, *Biblical Interpretation in Ancient Israel* (Oxford: Oxford University Press, 1988); Weinfeld, *Deuteronomy and the Deuteronomistic School*, 180–83; Georg Braulik, “Die dekalogische Redaktion der deuteronomischen Gesetze. Ihre Abhängigkeit von Leviticus 19 am Beispiel von Deuteronomium 22,1–12; 24,10–22; 25,13–16,” in *Bundesdokument und Gesetz: Studien zum Deuteronomium* (Freiburg: Herder, 1995), 1–25; Georg Braulik, “Weitere Beobachtungen zur Beziehung zwischen dem Heiligkeitsgesetz und Deuteronomium 19–25,” in *Das Deuteronomium und seine Querbeziehungen*, ed. Timo Veijola (Helsinki: Finnische Exegetische Gesellschaft, 1996), 23–55; Jacob Milgrom, *Leviticus 1–16: A New Translation with Introduction and Commentary*, AB (New York: Doubleday, 1991), 8–9; Jacob Milgrom, *Leviticus 17–22: A New Translation with Introduction and*

a study of reuse between the different prophetic books and passages.<sup>2</sup> My focus will rather be upon reuse, direction of dependence, and appropriation between Torah and the Prophets.

Many studies on the relation and reuse between parallel passages within Torah and between Torah and other books of the HB have been undertaken in order to clarify source critical issues.<sup>3</sup> Julius Wellhausen famously argued in his *Prolegomena* (1885) that the prophets preceded the law. He writes:

The prophets have notoriously no father (1 Sam. 10:12), their importance rests on the individuals; it is characteristic that only names and sketches of their lives have reached us. . . . The representative men are always single, resting on nothing outside themselves. . . . They do not preach on set texts; they speak out of the spirit which judges all things and itself is judged of no man. Where do they ever lean on any other authority than the truth of what they say; where do they rest on any other foundation than their own certainty? . . . This gives rise to a synthesis of apparent contradictions: the subjective in the highest sense, which is exalted above all ordinances, is the truly objective, the divine. . . . But their creed is not to be found in any book. It is barbarism, in dealing with such a phenomenon, to distort its physiognomy by introducing the law.<sup>4</sup>

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*Commentary*, AB (New York: Doubleday, 2000), 1357–61; Kilchör, *Mosetora und Jahwetora*.

<sup>2</sup> For studies on reuse between the prophetic books see for example James D. Nogalski, *Literary Precursors to the Book of the Twelve*, ed. Otto Kaiser. Beihefte zur Zeitschrift für Altorientalische und Biblische Rechtsgeschichte (BZABR) 217 (Berlin: Walter de Gruyter, 1993); Nogalski, *Redactional Processes in the Book of the Twelve*; Patricia Kathleen Tull Willey, “Remember the Former Things’: The Recollection of Previous Texts in Isaiah 40–55” (Ph.D. diss., University of Texas, 1996); Benjamin D. Sommer, *A Prophet Reads Scripture: Allusion in Isaiah 40–66* (Stanford, CA: Stanford University Press, 1998); Richard L. Schultz, *Search for Quotation: Verbal Parallels in the Prophets*, *Journal for the Study of the Old Testament Supplement Series* [JSOTSup] 180 (Sheffield: Sheffield Academic Press, 1999); James D. Nogalski et al., *Two Sides of a Coin: Juxtaposing Views on Interpreting the Book of the Twelve/the Twelve Prophetic Books* (Piscataway, NJ: Gorgias, 2009).

<sup>3</sup> For an overview of the source-critical debates see Walther Zimmerli, *The Law and the Prophets: A Study of the Meaning of the Old Testament*, trans. R. E. Clements (New York: Harper & Row, 1965), 31–45; Levinson, *Legal Revision*, 89–181.

<sup>4</sup> Julius Wellhausen, *Prolegomena to the History of Israel*, trans. J. Sutherland Black and Allan Menzies (Edinburgh: Adam & Charles Black, 1885), 397–99. Fishbane writes: “A primary factor in Wellhausen’s multi-levelled argument was that if in fact the law came first, one would hardly expect the occurrence of prophecy at all” (Fishbane, *Biblical Interpretation in Ancient Israel*, 292).

Wellhausen criticized attempts to defend a traditional understanding of biblical chronology by referring to a few instances indicating the precedence of the law to the prophets.<sup>5</sup> As is well known, Wellhausen's thesis has dominated the scholarly world ever since. In this way, the prophets were proclaimed to be the founders of the religion of Israel.<sup>6</sup>

Those arguing for the precedence of the prophets relative to Torah nevertheless encounter the same dilemma as those arguing for the reverse chronological order: why are there so few relatively certain cases of reuses between Torah and the Prophets if one was the foundational document of the other? Moreover, this dilemma is not solved by dating the Torah after the Prophets. If the prophets founded the religion of the law, we should expect to find more parallels between the two corpora of texts. Furthermore, if the Torah was based on the prophets, why is there so little evidence for such a direction of dependence? Yehezkel Kaufmann argued against Wellhausen based on the absence of references to the prophets in the Torah. Contrary to Wellhausen and his associates he concluded as follows: "The Torah cannot be understood as a later outgrowth of prophetic faith. Literary prophecy cannot, then, be considered the fountainhead or 'ideal source' of Israelite monotheism. The development of Israelite faith was, indeed, more ramified and

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<sup>5</sup> Wellhausen, *Prolegomena*, 5, 11–12.

<sup>6</sup> That Wellhausen's basic outline is still accepted by many scholars is illustrated by Kratz' recent repetition of his ideas: "Sie [die Propheten Israels] hatten das Gesetz (noch) nicht zum Fundament, aber sie machten es dazu. So wurden sie—nicht dem Begriff, aber der Sache nach—zu den 'Begründern der Religion des Gesetzes' (Julius Wellhausen)" (Reinhard G. Kratz, *Die Propheten Israels* (München: Verlag C. H. Beck, 2003), 18. See also pp. 13, 17). More recently Lyons has written that Wellhausen's theory of the prophetic originality is today regarded generally as naïve (Michael A. Lyons, *From Law to Prophecy: Ezekiel's use of the Holiness Code*, eds. Claudia V. Camp and Andrew Mein. Library of Hebrew Bible/Old Testament studies [LHBOTS] 507 (London: T&T Clark, 2009), 39).

intricate than either tradition or modern criticism has recognized.”<sup>7</sup> And speaking of the ‘Torah-group’ Kaufmann states: “From the viewpoint of the evolution of Israelite religion this stratum belongs not after, but before literary prophecy. It is the literary product of the earliest stage of Israelite religion.”<sup>8</sup> Zimmerli wrote:

Whilst Wellhausen is still correct in removing the cultic legislation of the Priestly Document from the time of Moses, it has nevertheless become evident that early Israel did not lack a formulated law. On the contrary, after Israel settled in the land, there began a lively process of interchange between different traditions of law, which was full of tension. Admittedly the law in the form given to it by the Priestly Document is later than the prophets, but the prophets themselves belonged to a people who traced their origin to the proclamation of the law. Not only were they familiar with it in the form of oral instruction of *torah*, as Wellhausen accepted, but as a divine law, formulated in awesome statutes and recited at regular intervals in the name of Yahweh.<sup>9</sup>

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<sup>7</sup> Kaufmann, *The Religion of Israel*, 165. On the same page, he summarizes: “1. in the historical books of the Torah-group, literary prophecy is never mentioned; 2. in none of the books of the Torah-group is there an awareness of the ideas originated by literary prophets regarding the history of Israel, the relation of morality to cult, and eschatology; 3. the idea of a central chosen sanctuary, one of the pervading themes of the Torah literature, is absent in pre-Deuteronomic prophecy. The Josianic reform has, therefore, no roots in literary prophecy, though it does in the Torah literature.” Schwartz shows that Kaufmann’s position on the relation between Torah and the prophets stemmed from his view of monotheism as an original and radical rejection of paganism, not simply an outgrowth of it, a revolution and not an evolution (Baruch J. Schwartz, “The Pentateuch as Scripture and the Challenge of Biblical Criticism: Responses among Modern Jewish Thinkers and Scholars,” in *Jewish Concepts of Scripture: A Comparative Approach*, ed. Benjamin D. Sommer (New York: New York University Press, 2012), 224–25. Cf. pp. 226–27).

According to Kaufmann the archetypal national sins addressed in Torah are “the cultic defection of the golden calf, and the lack of faith in YHWH shown in the episode of the spies (Num. 13–14; Deut-1:22ff.)” (Kaufmann, *The Religion of Israel*, 159. Cf. p. 157, 161). On the other side, the prophets place morality at center stage: “The great new doctrine of prophecy was the primacy of morality over the cult. . . . Whether or not the prophets objected to sacrifice on principle, it is plain that they considered morality the essence of religion and valued it over the cult” (Kaufmann, *The Religion of Israel*, 160). Cf. Schwartz, “The Pentateuch as Scripture,” 226.

<sup>8</sup> Kaufmann, *The Religion of Israel*, 166.

<sup>9</sup> Zimmerli, *The Law and the Prophets*, 42. For others arguing for the early origins of Torah see also e.g. Eduard Nielsen, *Oral Tradition: A Modern Problem in Old Testament Introduction* (London: SCM, 1954), 52–53; George E. Mendenhall, “Covenant Forms in Israelite Tradition,” *Biblical Archaeologist* 17 (1954): 26–46, 50–76; George E. Mendenhall, *Law and Covenant in Israel and the Ancient Near East* (Pittsburgh, PA: The Biblical Colloquium, 1955); James Barr, “Some Semantic Notes on the Covenant,” in *Beiträge zur Alttestamentlichen Theologie: Festschrift für Walther Zimmerli zum 70. Geburtstag*, eds. Herbert Donner, Robert Hanhart and Rudolf Smend (Göttingen: Vandenhoeck & Ruprecht, 1977), 23–58; Jacob Milgrom, *Numbers [Ba-midbar]: The Traditional Hebrew Text with the New JPS Translation*, JPS Torah Commentary (Philadelphia: Jewish Publication Society, 1990), xxxii–xxxvii; Milgrom, *Leviticus 1–16*, 3–13; Jacob Milgrom, *Leviticus: A Book of Ritual and Ethics*, CC

A more recent trend is to see mutual influence between Torah and the prophets, dating the corpora to overlapping periods of composition. Both Rom-Shiloni and Schmid have pointed to this view as the solution to the entrenched debate over the priority of Torah or the Prophets.<sup>10</sup>

Michael Fishbane's ground-breaking work, *Biblical Interpretation in Ancient*

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(Minneapolis, MN: Fortress, 2004), 1–6; Kenneth A. Kitchen and Paul J. N. Lawrence, *Treaty, Law and Covenant in the Ancient Near East Part 1: The Texts* (Wiesbaden: Harrassowitz Verlag, 2012), xx–xi; Kenneth A. Kitchen and Paul J. N. Lawrence, *Treaty, Law and Covenant in the Ancient Near East Part 2: Text, Notes and Chromograms* (Wiesbaden: Harrassowitz Verlag, 2012), 251–68. John Day also argues that the prophets antedated the law, claiming that the prophets reused the law (John Day, “Inner-biblical Interpretation in the Prophets,” in *The Place Is Too Small for Us: The Israelite Prophets in Recent Scholarship*, ed. Robert P. Gordon, Sources for Biblical and Theological Study [SBTS] 5 (Winona Lake, IN: Eisenbrauns, 1995), 230–31).

Albrecht Alt's distinction between apodictic and casuistic laws in his article, published in 1934, was accepted by many scholars (Albrecht Alt, “Die Ursprünge des Israelitischen Rechts [1934],” in *Kleine Schriften zur Geschichte des Volkes Israel*, ed. Martin Noth [München: Beck'sche, 1959], 278–332). Cf. Richard Victor Bergren, *The Prophets and the Law* (Cincinnati: Hebrew Union College-Jewish Institute of Religion, 1974); Ernst Würthwein, “Amos-Studien,” *ZAW* 62 (1950), 10–53. In contrast, Raymond Westbrook exposed the false and unfounded historical presuppositions behind this and similar models. According to him the earliest cuneiform records, dating back to the early third millennium, “reveal a highly organized legal system.” Based on comparative studies of ANE legal sources, he argues for a more restricted view of legal reforms than what is commonly accepted (Raymond Westbrook, “What Is the Covenant Code?,” in *Law from the Tigris to the Tiber: The Writings of Raymond Westbrook*, eds. Bruce Wells and Rachel Magdalene (Winona Lake, IN: Eisenbrauns, 2009), 103, 107). He wrote: “Only three categories of reform are recorded in [the royal proclamations of reform]: retrospective cancellation of debts, reorganization of the royal administration, and the fixing of prices . . . Any reforms, therefore, that are attributed to differences between law codes will only be credible if they fall within those three categories.” Westbrook also showed how we find apodictic laws in the Laws of Hammurabi §36–40, Laws of Eshunna §15–16 and 51–52, Hittite Law §56 and Middle Assyrian Laws A §40, and that it therefore cannot be an Israelite invention as claimed by Alt (Westbrook, “What Is the Covenant Code?,” 103, 107). Cf. David P. Wright, *Inventing God's Law: How the Covenant Code of the Bible Used and Revised the Laws of Hammurabi* (New York: Oxford University Press, 2009), 323 for an argument that the apodictic laws actually might depend on LH, and that both the apodictic and casuistic laws belong to a single composition. Even if we find apodictic laws in ANE legal collections, the dominant form is still the casuistic. Using the casuistic form, Torah nevertheless uses the apodictic form more frequent when compared to other ANE law collections.

<sup>10</sup> Dalit Rom-Shiloni, “Introduction,” in *The Formation of the Pentateuch*, eds. Jan C. Gertz et al., FAT 111 (Tübingen: Mohr Siebeck, 2016), 831–32, 837; Konrad Schmid, “The Prophets after the Law or the Law after the Prophets? Terminological, Biblical, and Historical Perspectives,” in *The Formation of the Pentateuch*, eds. Jan C. Gertz et al., FAT 111 (Tübingen: Mohr Siebeck, 2016), 848, 850. For earlier similar views see Bettenzoli, “Deuteronomium und Heiligkeitsgesetz,” 397–98; Rofé, “The Book of Deuteronomy. A Summary,” 8.

*Israel* (1988), stirred considerable scholarly debate concerning inner-biblical exegesis.<sup>11</sup>

In his analysis of the legal reuse in the prophetic literature, he opens by stating: “Any discussion which purports to consider the relationship between the prophets and the legal materials of the Pentateuch must inevitably come up against the conundrum as to their relative priority.”<sup>12</sup> Fishbane’s own study of inner-biblical exegesis opened a new perspective to the old question about the relation between Torah and the prophets.

While scholars for a long time have been aware of the prophets’ reuse of other biblical materials in their oracles, the complexities of the question still haunt the field. Richard Schultz’s comment on reuse within the prophetic corpus is also applicable to parallel passages between Torah and the prophets:

Parallel passages represent an important component of prophetic rhetoric which must be reckoned with in any attempt to assess the nature of the prophetic task and the

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<sup>11</sup> Fishbane, *Biblical Interpretation in Ancient Israel*.

<sup>12</sup> Fishbane, *Biblical Interpretation in Ancient Israel*, 292. Fishbane writes that “legal exegesis” in the HB reflect “a concern with scrutinizing the content of laws for real or anticipated deficiencies; a concern with contradictions among the inherited cases; a concern with making the law comprehensive and integrated; and a concern with making the law workable and practicable” (Fishbane, *Biblical Interpretation in Ancient Israel*, 164). Cf. pp. 220–21. Kitchen finds that “prophetic appeal to that covenant is explicit in all three of the ‘great’ prophets, and in four of the Twelve. . . . It is special pleading simply to emend out of these texts anything “covenantal” that would fall before 621, merely to distort the data to fit in with an imaginary late-seventh-century date for Deuteronomy (as many do, following Wellhausen)” (Kenneth A. Kitchen, *On the Reliability of the Old Testament* (Grand Rapids, MI: Eerdmans, 2003), 377). For other studies on the relative chronology between Torah and the Prophets, see Hans Walter Wolff, *Das Zitat im Prophetenspruch: Eine Studie zur prophetischen Verfündigungsweise* (München: Chr. Raiser Verlag, 1937); Udo Rütterswörden, “Es gibt keinen Exegeten in einem gesetzlosen Land (Prov 29,19 LXX): Erwägungen zum Thema: Der Prophet und die Thora,” in *Prophetie und geschichtliche Wirklichkeit im alten Israel*, eds. Rüdger Liwak and Siegfried Wagner (Stuttgart: Verlag W. Kohlhammer, 1991), 326–47; Weinfeld, *Deuteronomy and the Deuteronomistic School*, 320–61; David M. Carr, *Writing on the Tablet of the Heart: Origins of Scripture and Literature* (Oxford: Oxford University Press, 2005), 143–56, 167. Fischer speaks of Jeremiah’s “creative handling” (“kreativen Umgang”) of his sources (Georg Fischer, “Der Einfluss des Deuteronomiums auf das Jeremiabuch,” in *Deuteronomium: Tora für eine neue Generation*, eds. Georg Fischer, Dominik Markl and Simone Paganini (Wiesbaden: Harrassowitz, 2011), 254). He writes that “Jer Dtn als Quelle verwendet und in freier Gestaltung verandert” (Fischer, “Der Einfluss des Deuteronomiums auf das Jeremiabuch,” 259). For him this freedom is also related to Jeremiah questioning Torah at certain points (Fischer, “Der Einfluss des Deuteronomiums auf das Jeremiabuch,” 265).



relationship between distinct prophetic writings. However, despite the considerable scholarly effort already devoted to the study of such passages, little progress has been made. Little or no consensus has emerged regarding what distinguishes a quotation from a mere verbal coincidence or vague reminiscence or which criteria are most useful for correctly identifying, explaining the origin of, and assessing the significance of literary borrowing.<sup>13</sup>

He also makes the sobering comment that “the disagreement over methodology [of prophetic quotations] . . . reflects not so much the subjectivity of scholarly approaches as the complexity of the phenomenon of quotation. Any hopes of a simplistic solution to the problem of prophetic quotation should be dispelled immediately.”<sup>14</sup>

Evidence from linguistics also points in the direction of the chronological precedence of Torah over the prophets. Contrary to theories conflating the history of biblical Hebrew,<sup>15</sup> a perspective that easily lends itself to a late dating of Torah and the prophets, some linguists have begun to argue that several of the prophets show signs of belonging to the period of classical biblical Hebrew,<sup>16</sup> while transitional prophets like Jeremiah and Ezekiel seem to use a later language than legal compositions in the Torah.<sup>17</sup>

Further, in cases where reuse can be established with a degree of certainty, a

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<sup>13</sup> Schultz, *Search for Quotation*, 18.

<sup>14</sup> Schultz, *Search for Quotation*, 215.

<sup>15</sup> Cf. Ian Young and Robert Rezetko, *Linguistic Dating of Biblical Texts*. 2 vols. (London: Equinox, 2008).

<sup>16</sup> Tania Notarius, “The System of Verbal Tenses in Archaic and Classical Biblical Poetry (in Hebrew) (Ph.D. diss., Hebrew University, 2007); Jan Joosten, *The Verbal System of Biblical Hebrew: A New Synthesis Elaborated on the Basis of Classical Prose*, Jerusalem Biblical Studies [JBS] 10 (Jerusalem: Simor, 2012), 378–80, 419–21.

<sup>17</sup> Avi Hurvitz, *A Linguistic Study of the Relationship between the Priestly Source and the Book of Ezekiel: A New Approach to an Old Problem* (Paris: Gabalda, 1982); Aaron D. Hornkohl, “The Language of the Book of Jeremiah and the History of the Hebrew Language (Hebrew)” (Ph.D. diss., Hebrew University, 2011); Aaron D. Hornkohl, “Biblical Hebrew: Periodization,” in *Encyclopedia of Hebrew Language and Linguistics*, ed. Geoffrey Khan, (2013), 1–11.

question is whether the borrowing passage should be understood as intended to replace or complement the source.<sup>18</sup> Relevant for the present study, we can mention the supersessionists, who argue that a later instruction reused a previous legislation in order to usurp its authority in a program nevertheless intended to modify the previous legislation and introduce legal revisions.<sup>19</sup> Complementarians, stressing a more synchronic reading, find legal dissimilitude best explained as differences in the intention and context of the various laws.<sup>20</sup>

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<sup>18</sup> Cf. Kilchör, *Mosetora und Jahwetora*, 30; Joshua A. Berman, “Supersessionist or Complementary? Reassessing the Nature of Legal Revision in the Pentateuchal Law Collections,” *JBL* 135, no. 2 (2016): 201–22; Joshua A. Berman, *Inconsistency in the Torah: Ancient Literary Convention and the Limits of Source Criticism* (New York: Oxford University Press, 2017), 171–72.

<sup>19</sup> Levinson and Stackert are examples of those arguing for a usurping supersessionism (e.g. Levinson, *Deuteronomy*; Bernard M. Levinson, “The Manumission of Hermeneutics: The Slave Laws of the Pentateuch as a Challenge to Contemporary Pentateuchal Theory,” in *Congress Volume Leiden 2004*, Supplements to Vetus Testamentum [VTSup] 109 (Leiden: Brill, 2006), 281–324; Levinson, *Legal Revision*; Bernard M. Levinson, “Zedekiah’s Release of Slaves as the Babylonians Besiege Jerusalem: Jeremiah 34 and the formation of the Pentateuch,” in *The Fall of Jerusalem and the Rise of the Torah*, ed. Peter Dubovsky, Dominik Markl, and Jean-Pierre Sonnet (Tübingen: Mohr Siebeck, 2016), 313–27; Stackert, *Rewriting the Torah*, 138–41, 211–24).

<sup>20</sup> Christophe Nihan writes: “H was never composed simply in order to *replace* the earlier codes, but rather to *complete* them. In some instances, H merely *supplements* the Decalogue, the CC, D or P. . . . Elsewhere, H’s redactor attempts to *harmonize* contradictory instructions, suggesting the necessity of a unified interpretation of such laws” (Christophe Nihan, *From Priestly Torah to Pentateuch: A Study in the Composition of the Book of Leviticus*, FAT 2/25 (Tübingen: Mohr Siebeck, 2007), 549). Chirichigno, Schenker, Bergsma, and Kilchör can be taken as examples of complementarians stressing a more synchronic reading of the legal discrepancies. In regard to the manumission instructions, studied further in chapter six, Chirichigno has argued that Lev 25 addressed the *pater familias* in contrast to Exod 21 and Deut 15, and they should thus be understood as addressing different groups (G. C. Chirichigno, *Debt-Slavery in Israel and the Ancient Near East*, JSOTSup 141 (Sheffield: JSOT, 1993), 186–357). Schenker proposes that the manumission laws can be seen as complementary on the basis that they deal with distinct situations in regard to the familial status of the respective person subject to servitude (Adrian A. Schenker, “The Biblical Legislation on the Release of Slaves: The Road from Exodus to Leviticus,” *Journal for the Study of the Old Testament [JSOT]* 78 [1998]: 23–24, 32–38). Bergsma takes an intermediate position between the complementarians and supersessionists, arguing that H was written during the tribal period and D during the monarchy, believing D was meant to replace H, while at the same time emphasizing arguments that hold open the door of a possible synchronic complimentary role as they address two different groups, the Hebrews and Israelites (Bergsma, *The Jubilee from Leviticus to Qumran*, 43–48, 139–47). Kilchör has argued that Lev 25 and Deut 15 both were composed out of a concern for providing for the released slave so her (or she) would not immediately end in slavery again (Kilchör, *Mosetora und Jahwetora*, 137–56).

The following two chapters address more general issues. In the first I consider the question of how to characterize Torah and argue that it is best understood as normative covenantal instruction. In the third chapter, I address the question of identifying the scribal culture to which Torah belongs and argue that it seems to have been a culture in which memorized reuse was common. Both of these points add up to a helpful model for how to approach the phenomenon of repetition with variation of normative texts in the HB where we typically find exact correspondence combined with innovation.

## CHAPTER 2

### TORAH AS COVENANTAL INSTRUCTION

#### **The Legislative Concept of Law and the ANE**

Scholars have assumed that the cuneiform law collections found at the beginning of the 20<sup>th</sup> century were legislation in the classical or modern sense. The key question was whether they should be understood as codification or reform.<sup>1</sup> Later, several scholars questioned whether the codification or reform debate actually represented a correct understanding of ANE law. The consensus today is that cuneiform law was written for purposes other than legislative ones.<sup>2</sup> According to this view, ANE legal practice

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<sup>1</sup> Westbrook, “Origins of Legislation,” 73.

<sup>2</sup> Shalom Paul says that “one absolute, all-binding, normative law code never existed in Mesopotamia” (Shalom M. Paul, *Studies in the Book of the Covenant in Light of Cuneiform and Biblical Law* (Leiden: Brill, 1970), 9). This can be accounted for by the absence of a legislative concept of law in ancient Mesopotamia. At this point I would like to briefly summarize some of the important claims about the concept of law in Mesopotamia. First of all, Greenberg famously wrote that “in Mesopotamia the law was conceived of as the embodiment of cosmic truths (*kīnātum*, sing. *kittum*). Not the originator, but the divine custodian of justice was Shamash, ‘the magistrate of gods and men, whose lot is justice and to whom truths have been granted for dispensation’. The Mesopotamian king was called by the gods to establish justice in his realm; to enable him to do so Shamash inspired him with ‘truths’. In theory, then, the final source of the law, the ideal with which the law had to conform was above the gods as well as men; in this sense ‘the Mesopotamian king . . . was not the source of the law but only its agent’. However, the actual authorship of the laws, the embodying of the cosmic ideal in statutes of the realm, is claimed by the king” (Moshe Greenberg, “Some Postulates of Biblical Criminal Law,” in *Yehezkel Kaufman Jubilee Volume: Studies in Bible and Jewish Religion Dedicated to Yehezkel Kaufmann on the Occasion of His Seventieth Birthday*, ed. Menahem Haran (Jerusalem: Magnes Press, 1960), 9). Paul wrote in a similar way about LH: “The ultimate goal of the law collection was to give tangible evidence to the gods that the king was a *šar mēšarim*. This could best be done by compiling a corpus to which he added his own reforms and amendments, thereby furnishing justice and equity to the four corners of the earth. . . . Their primary purpose was to lay before the public, posterity, future kings, and, above all, the gods, evidence of the king’s execution of his divinely ordained mandate to have been ‘the Faithful Shepherd’ and the *šar mēšarim*” (Paul, *Studies in the Book of the Covenant*, 25–26). The closest we come to our concept of the law of the land is then in the royal edict. It was the king’s word that had legislative force. Greenberg writes that “the

functioned on the basis of custom rather than legal codes. This is relevant to the present study because it also raises the question as to whether biblical law had a legislative

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immediate sanction of the laws is by the authority of the king. Their formulation is his, and his too . . . is the final decision as to their applicability” (Greenberg, “Some Postulates of Biblical Criminal Law,” 10). Raymond Westbrook found that “unlike the law-codes, the reform edicts *were* normative legislation. The text lays down a series of rules that come into force as a specific point in time and have to be obeyed by the courts. If the law codes had had the same effect, we would expect similar references to them as to the edicts, at least in the Old Babylonian period, when there is ample source-material. Instead, there is silence” (Westbrook, “Origins of Legislation,” 88–89). Westbrook has suggested that ANE law was understood as expressing “an ideal of justice” and “principles of social justice” to be followed, even as functioning correctively if practice deviated from them (Raymond Westbrook, “The Female Slave,” in *Law from the Tigris to the Tiber: The Writings of Raymond Westbrook*, eds. Bruce Wells and Rachel Magdalene (Winona Lake, IN: Eisenbrauns, 2009), 151). Eckhart Frahm has recently stated similar ideas (Eckhart Frahm, *Babylonian and Assyrian Text Commentaries: Origins of Interpretation* (Münster: Ugarit-Verlag, 2011), 241). For the propagandistic function of ANE law collections see Jean Bottéro, *Mesopotamia: Writing, Reasoning and the Gods* (Chicago: University of Chicago Press, 1992), 156–84. As both Bernard Jackson and Bernard Levinson have pointed out, a challenge with Westbrook’s theory is “the absence in the trial records of any reference to either the ‘Law Codes’ or the primary sources to which they are claimed to refer” (Bernard S. Jackson, *Wisdom-Laws: A Study of the Mishpatim of Exodus 21:1-22:16* (Oxford: Oxford University Press, 2006), 15). Cf. Levinson, *Legal Revision*, 24–25. Westbrook himself concedes that “there is no direct evidence” for his claim that the literary law collections “were a reference work for consultation by judges when deciding difficult legal cases” (Westbrook, “Origins of Legislation,” 10). Be that as it may, in sum we can here say that there is a consensus today that the Mesopotamian law collections were composed for other reasons than legislative ones, even if scholarly opinion varies on how exactly then to understand them. It is more common to see legal practice as based on customs rather than prescriptive texts, with legal texts reflecting social customs instead of being the source of legal practice (Michael LeFebvre, *Collections, Codes, and Torah: The Re-Characterization of Israel’s Written Law*, LHBOTS (New York: T&T Clark, 2006), 15, 18). Cf. e.g. B. Landsberger, “Die babylonischen termini für Gesetz und Recht,” in *Symbolae ad iura orientis antiqui pertinentes Paulo Koschaker dedicatae*, ed. J. Friedrich et al., *Studia et documenta ad iura orientis antiqui pertinentia* (Leiden: Brill, 1939), 219–34; J. J. Finkelstein, “Ammisaduqa’s Edict and the Babylonian ‘Law Codes,’” *Journal of Cuneiform Studies* 15 (1961): 91–104; W. F. Leemans, “King Hammurapi as Judge,” in *Symbolae ivridicae et historicae Martino David dedicatae. 2. Iura orientis antiqui*, ed. J. A. Ankum et al. (Leiden: Brill, 1968), 107–29; Paul, *Studies in the Book of the Covenant*; Bernard S. Jackson, *Studies in the Semiotics of Biblical Law*, JSOTSup 314 (Sheffield: Sheffield Academic Press, 2000); Raymond Westbrook, “The Character of Ancient Near Eastern Law,” in *A History of Ancient Near Eastern Law*, eds. Raymond Westbrook and Gary M. Beckman (Leiden: Koninklijke Brill NV, 2003), 1–90; LeFebvre, *Collections, Codes, and Torah*; Joshua A. Berman, “The History of Legal Theory and the Study of Biblical Law,” *Catholic Biblical Quarterly (CBQ)* 76 (2014). For studies on ANE court procedures see Adam Falkenstein, *Die Neusumerischen Gerichtsurkunden*, *Abhandlungen der Bayerischen Akademie der Wissenschaften Neue Folge* (Munich, 1956–57); Roy E. Hayden, “Court Procedure at Nuzu” (Ph.D. diss., Brandeis University, 1962); Eva Dombradi, *Die Darstellung des Rechtsauftrags in den altbabylonischen Prozeßurkunden*, *Freiburger altorientalischen Studien* 1–2 (Stuttgart: Steiner, 1996); Remko Jas, *Neo-Assyrian Judicial Procedures*, *State Archives of Assyria Studies [SAAS]* (Helsinki: Helsinki University Press, 1996); John D. Fortner, “Adjudicating Entities and Levels of Legal Authority in Lawsuit Records of the Old Babylonian Era” (Ph.D. diss., Hebrew Union College-Jewish Institute of Religion, 1997); Klaas R. Veenhof, “The Relation between Royal Decrees and Law Collections in the Old Babylonian Period,” *Jaarbericht van het Vooraziatisch-Egyptisch Genootschap Ex Oriente Lux* 35–36 (1997–2000); Shalom E. Holtz, *Neo-Babylonian Court Procedure* (Leiden: Brill, 2009).

function.<sup>3</sup> Westbrook summarizes the differences between what he calls ‘legislation’ and ‘academic treatise’ as follows:

Legislation is an authoritative source of law; the courts are bound to obey its precepts. That binding quality begins at a certain point in time, when the legislation is promulgated. And once promulgated, the text of the legislation takes on a life of its own—the text is the exclusive source of the law. For this reason, the courts must pay great attention to the wording of the text, interpret its meaning, and cite it in their decisions. Even if the legislation does not change the existing law but merely codifies it, the effect is to exclude reliance on the earlier sources.

An academic treatise on the law may be good evidence of what the law is, but it is not an authoritative source. The treatise in describing the law in effect refers the court to the real authoritative sources thereof, whether they be statute, precedent, or custom. The date of the treatise is therefore of less significance; there is no particular point in time at which it comes into effect. And its text has no independent value. Courts need not cite it or pay attention to its wording, since they are essentially looking beyond it to the source that it reflects.<sup>4</sup>

These two concepts of law will therefore differ in how they reuse the legal texts.

Within a legislative concept of law, reuse is more likely to include exact wording and quotation. On the other hand, in what Westbrook calls the ‘academic treatise,’ exact wording and citation is less likely to occur in reuse.<sup>5</sup> Therefore the question of reuse is

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<sup>3</sup> Cf. LeFebvre, *Collections, Codes, and Torah*, 15, 18, 31.

<sup>4</sup> Westbrook, “Origins of Legislation,” 74. For helpful discussions on legislative and non-legislative views of ANE law collections, see LeFebvre, *Collections, Codes, and Torah*, 1–30; J. Bottéro, “Le ‘Code’ de Hammu-rabi,” *Annali della Scuola Normale Superiore di Pisa classe di lettere e filosofia* 12, no. 2 (1982): 409–44; Anne Fitzpatrick-McKinley, *The Transformation of Torah from Scribal Advice to Law* (Sheffield: Sheffield Academic Press, 1999), 81–112. For how Westbrook altered his view between his 1985 “Biblical and Cuneiform Law Codes” and 1989 “Cuneiform Law Codes and the origins of Legislation” see Fitzpatrick-McKinley, *The Transformation of Torah*, 96. A helpful discussion of ANE legal reforms see Otto, “Aspects of Legal Reforms,” 163–82. Otto’s study challenges a static concept of ‘common law’ in the ANE: “Assyrian, Babylonian and Hittite legal history show that the legal sentences did not form a static ‘common law’ but had a history of continuous reformulations. These scholarly refinements reflect the continuous reforming of law in society” (Otto, “Aspects of Legal Reforms,” 182). For ANE legal revisions and how the legal collections were based on an already existing legal custom see Marc Van De Mieroop, *Philosophy before the Greeks: The Pursuit of Truth in Ancient Babylonia* (Princeton: Princeton University Press, 2016), 145, 161, 171. For how oral law/tradition regulated Mesopotamian social life, not LH, see Bottéro, “Le ‘Code’ de Hammu-rabi,” 441. Cf. Fitzpatrick-McKinley, *The Transformation of Torah*, 18.

<sup>5</sup> We could here also have used the distinction between statutory and common-law, as Berman

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does. Berman explains how a statutory approach to law sees the relationship between law and texts as straightforward, in that “the law itself is contained in a *codified* text.” Further, it entails “two cardinal elements”: “(1) *The law emanates from a sovereign*. It is issued by a lawmaker, such as a king or a legislative body. Moreover, the law is laid down by the lawmaking body and is imposed upon the citizenry. (2) *The law is a finite, complete system*. Only what is written in the code is the law. The law code supersedes all other sources of law that preceded the formulation of the code, and no sources of authority have validity apart from the code itself.” In contrast, there is the common-law system where “the law is not found in a written code that serves as the judges’ point of reference and delimits what they may decide. Adjudication is a process whereby the judge concludes the correct judgment based on the mores and spirit of the community and its customs. . . . No particular formulation of the law is final. As a system of legal thought, the common law is consciously and inherently incomplete, fluid, and vague. Key here is the role that sanctioned texts play in determining the law. When decisions and precedents were collected and written down, these texts did not become the source of law, but rather a resource for later jurists to consult” (Berman, “The History of Legal Theory,” 21–22). Berman is drawing from Hurowitz’ study of the *King of Justice* in his article Victor Avigdor Hurowitz, “Hammurabi in Mesopotamian Tradition,” in *An Experienced Scribe Who Neglects Nothing”: Ancient Near Eastern Studies in Honor of Jacob Klein*, eds. Yitschak Sefati et al. (Bethesda: CDL, 2005), 497–532. As will be seen, however, neither ‘statutory law’ nor ‘common law’ describes Torah adequately. Mastnjak proposes a distinction between an ‘authoritative’ text and a ‘prestigious’ text (Nathan Mastnjak, *Deuteronomy and the Emergence of Textual Authority in Jeremiah* (Tübingen: Mohr Siebeck, 2016), 135–36). I will argue below that Torah can be adequately understood as ‘normative covenantal instruction’ within the HB.

Westbrook finds the origins of the legislative concept in Drakon’s (ca. 620 BC) and Gortyn’s (first half of the 5<sup>th</sup> century) laws in Athens. In previous ancient law collections he finds “the concept of a point in time at which the law comes into effect” to be lacking. Beside the ancient law codes there was a second source of law in the ANE, namely the edict. In the edict the time at which the law comes into effect is present. This characteristic of the edict Westbrook sees as being combined with the concept of a law code in lines 19–20 in the law of Drakon and col. XI 19–23 of the Laws of Gortyn, transforming the ancient law codes into a legislative concept of law (Westbrook, “Origins of Legislation,” 94–95). Van De Mieroop finds an imprint of Babylonian legal collections on Gortyn’s laws (Van De Mieroop, *Philosophy before the Greeks*, 206), in contrast to Gagarin (Michael Gagarin, *Writing Greek Law* (Cambridge: Cambridge University Press, 2008), 145–75). The latter also argues that the purpose of Greek law was to make laws available to the population and that it was little used for litigations. For how Gortyn’s laws and the Twelve Tablet format were replaced by a later emphasis upon legal oratory and legal philosophy in Greece and Rome see pp. 153–54.

Aristotle pointed out three reforms by Solon that laid the foundation of democracy: “first and most important, the prohibition of loans on the security of the debtor’s person; secondly, the right of every person who so willed to claim redress on behalf of any one to whom wrong was being done; thirdly, the institution of the appeal to the jury-courts; and it is to this last, they say, that the masses have owed their strength most of all, since, when the people are master of the voting-power, it is master of the constitution (*Ath.pol.* 9)” (Aristotle, “Constitution of Athens,” in *The Complete Works of Aristotle: The Revised Oxford Translation*, ed. Jonathan Barnes. 2 vols. (Princeton, NJ: Princeton University Press, 1984), 2345–46). According to Ostwald the first point “created the minimal social and economic prerequisite for the common man’s exercise of citizenship,” the second “constituted a major step toward the advancement of popular power,” and the third provided “a check against the arbitrary administration of justice on the part of the aristocratic establishment” (Martin Ostwald, *From Popular Sovereignty to the Sovereignty of Law: Law, Society, and Politics in Fifth-Century Athens* (Berkeley: University of California Press, 1986), 14–15). Ostwald has argued that legal innovation in 5<sup>th</sup> century Athens can be described as the growth of popular sovereignty followed by a reaction against it, resulting in the sovereignty of law (Ostwald, *From Popular Sovereignty to the Sovereignty of Law*, xxii). In order to “achieve legislation in the modern sense,” however, still one more step was needed, “namely the analytical method of classical Greek philosophy, which enabled lawmakers to express the rules in abstract general categories and to define terms” (Westbrook, “Origins of Legislation,” 95). Cf. LeFebvre, *Collections, Codes, and Torah*, 18–23. For how jurisprudence functioned in early Athens and Pharaonic Egypt without the legal institutions and procedures

dependent on what concept of law may be in use within the biblical material. As will be seen, Torah does not fit nicely within either the concept of ‘legislation’ or ‘academic treatise’.

Speaking of lexical, divinatory, and legal revisions in Mesopotamia Van De Mieroop writes: “The primacy of the Babylonian scholarly text also explains its instability. A text was never finished; its interpretation was never complete. Scholarship did not, as is often claimed, stand still; it continued by exploring existing writings further. Manuscripts show constant additions and subtractions, and although modern scholars often seek to reconstruct an authoritative canonical format, they admit it is a chimera.”<sup>6</sup>

Van De Mieroop has argued that we find a common hermeneutic behind Babylonian lexical, divinatory, and legal lists. He writes:

The list was not just a device of fictional literary creativity, it was the foundation of intellectual creativity in general. Everything could be and was explored in lists, using a methodology that was fully coherent within the list structure. Details were altered, specifications added, and the polysemy of the elements used to write them down was investigated in all its possibilities. The Babylonians did not create order in the universe by investigating its component parts; they created order in lists and applied the results to the universe. The text preceded reality. It had a primary status. Moreover, lists generated entries according to their internal principles and allowed for an almost unbounded creativity. They functioned in the same reality as the world outside them, naturally, but they were not limited by the parameters of that reality. In lexicography, written words were invented that were meaningless outside the list but completely valid within its structure. In divination, occurrences were explored that were physically impossible but again wholly meaningful within their list context. In law, the list-making behavior may have been more sober but the same underlying

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standard today, see Christopher Eyre, *The Use of Documents in Pharaonic Egypt* (Oxford: Oxford University Press, 2013); Adriann Lanni, *Law and Order in Ancient Athens* (New York: Cambridge University Press, 2016).

<sup>6</sup> Van De Mieroop, *Philosophy before the Greeks*, 221. For ANE scribal creativity see pp. 25–26, 30, 47–49, 54, 57–58, 75, 103, 111, 119, 138, 196, 199–201, 203, 221–22.



principles governed, and entries were created within the codes according to their internal logic.<sup>7</sup>

According to Mieroop, and against those claiming that ANE legal collections were based on empirical cases, the legal elaboration was driven by its own literary logic.<sup>8</sup> Significant for the present study is also the difference in reuse between the reuse in divinatory and legal corpora:

There is, however, a striking difference between divinatory and legal writings in their practical use. While in reports diviners repeated omens verbatim and used them as the basis of their professional recommendations, no law paragraph was ever quoted in preserved legal writings, which are very extensive for the Old Babylonian period and include court decisions. There are only two cases in which an allusion is made to stipulations written ‘on the stele,’ and there is never an explicit reference to paragraphs of law.<sup>9</sup>

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<sup>7</sup> Van De Mieroop, *Philosophy before the Greeks*, 221.

<sup>8</sup> Van De Mieroop writes: “The clusters show that individual laws were grouped together using two basic principles: opposition and pointillism. The first was very simple, as in many cases the premises could be changed to create the reverse situation. . . . Far from all cases display such pairing, but the principle of opposition, so dominant in omens, was important in laws as well. More prominent in laws was the principle of pointillism: every paragraph was but one example in a series of options that together painted a full and nuanced picture. Knowledge was thus cumulative, with each law gaining meaning because of its association with others surrounding it. Sequences were generated in two ways, either by adding new conditions or by following paradigmatic series” (Van De Mieroop, *Philosophy before the Greeks*, 165–66). And again: “Although the organization of the laws appears confusing to modern audiences, the sequence of laws in Near Eastern codes was not irrational or primitive. It was based on elements of Babylonian logic that were not legal in our sense of the term but rooted in daily practice, social hierarchy, and even word association” (Van De Mieroop, *Philosophy before the Greeks*, 169). Cf. pp. 163–64, 190. For the similarity between lexical, divinatory, and legal lists see pp. 98, 136, 155, 158, even if he also sees dissimilarity in the absence of relative clauses in the divinatory texts (p. 11), in that the cultural influence of the legal collections outlived that of lexical and divinatory lists (p. 155), the legal collections having less creativity and unrealistic entries compared to the other two given that they dealt with “present and mundane affairs” (pp. 167, 169). For the organization of the legal materials see pp. 163–65, 168. For the priority of the linguistic over the ontological see pp. 78, 120, 132, 187–89, 192, 198. For how the omens can be understood as the gods writing in cosmos as their text, and how understanding text for them became a key to understand reality see p. 196. It reminds us of Derrida’s oft misunderstood “il n’y a pas de hors-texte” (“there is no outside-text”) (Jacques Derrida, *Of Grammatology*, trans. Gayatri Chakravorty Spivak (Baltimore, MA: John Hopkins University Press, 1997), 158).

<sup>9</sup> Van De Mieroop, *Philosophy before the Greeks*, 172–73. And further: “The approach to law was more restrained, but followed the same principles. Far fewer legal paragraphs were strung together, and on the whole thematic associations alone structured their order: bodily parts, social hierarchies, numbers, etcetera” (Van De Mieroop, *Philosophy before the Greeks*, 189). Cf. Bottéro, *Mesopotamia: Writing, Reasoning and the Gods*.

If we move to Egypt, what immediately strikes us is the lack of attested law collections there. Scholars have debated whether or not Egypt had a written code or collection of laws.<sup>10</sup> In court, however, the goal of a legal process was “fundamentally an attempt to reach a result that both parties involved in a controversy are willing to accept.”<sup>11</sup> Relevant for the question of reuse of law, McDowell writes that “laws and precedents are not cited in the preserved records of local court sessions. This is partly by chance, since both were quoted in disputes before the oracle and before the court of the temple, but mostly because the laws or customs involved were familiar to all concerned; the problem was to discover whether they had been breached.”<sup>12</sup>

Nevertheless, the Egyptian non-legislative concept of *ma ‘at* seems relevant for the question of how to conceptualize Torah. Versteeg writes:

To the ancient Egyptians, the concept *ma ‘at* was a central overriding principle in law. *Ma ‘at* represented a universal harmony and order—the way that things are supposed to be. *Ma ‘at* became the focal point of the legal system. *Ma ‘at* represented the natural order and balance of life in ancient Egypt. It had a religious, ethical, and moral

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<sup>10</sup> Russ VerSteeg, *Law in Ancient Egypt* (Durham, NC: Carolina Academic Press, 2002), 7. He writes: “Although the ancient Egyptians had a functional legal system, it appears that they had little in the way of written law until about the eighth century B.C. Even then, the written law may not have been statutory, in the modern sense” (VerSteeg, *Law in Ancient Egypt*, 17). Cf. 53, 67, and 109. Egypt is not the only case where we lack a legal collection, however. Neither in Iran or Syria have any ANE legal collections turned up (Van De Mieroop, *Philosophy before the Greeks*, 150). Kitchen writes: “The ‘legal’ contents of Exodus, Leviticus, Numbers, and Deuteronomy has little in common with the social system of Egypt—but a great deal in common with the law collections and customs of the largely Semitic Near East” (Kitchen, *On the Reliability of the Old Testament*, 298). Cf. Aristide Théodorides, “The Concept of Law in Ancient Egypt,” in *The Legacy of Egypt*, ed. J. R. Harris (Oxford: Clarendon, 1971), 291–322; Jan Assmann, “Zur Verschriftung rechtlicher und sozialer Normen im Alten Ägypten,” in *Rechtskodifizierung und soziale Normen im interkulturellen Vergleich*, ed. Hans-Joachim Gehrke (Tübingen: Gunter Narr Verlag, 1994), 68.

<sup>11</sup> VerSteeg, *Law in Ancient Egypt*, 26.

<sup>12</sup> Andrea McDowell, *Jurisdiction in the Workmen's Community of Deir El-Medīna* (Leiden: Nederlands Instituut voor het Nabije Oosten, 1990), 166.

connotation. It was the guiding principle for all aspects of life and represented the values that all people sought.<sup>13</sup>

And he continues: “*Ma’at* was ethical, moral, religious, and legal truth rolled into one.

*Ma’at* represented equilibrium.”<sup>14</sup> According to Assmann, the *ma’at* literature should not be classified simply as wisdom-literature. According to him, the concept of *ma’at* brings morality and justice, social norms and judicial laws closely together.<sup>15</sup> As will be seen

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<sup>13</sup> VerSteege, *Law in Ancient Egypt*, 21. Cf. p. 6, 22. Cf. John A. Wilson, “Authority and Law in Ancient Egypt,” *JAOSup* 17 (1954): 1–7; James P. Allen, *Middle Egyptian: An Introduction to the Language and Culture of Hieroglyphs* (Cambridge: Cambridge University Press, 2014), 147–49. Fitzpatrick-McKinley argues for a close analogy between the classic Indian concept of *dharma* and biblical Torah (Fitzpatrick-McKinley, *The Transformation of Torah*, 113–18), claiming that “torah is best understood on the basis of an analogy with the Indian concept of *dharma*” (Fitzpatrick-McKinley, *The Transformation of Torah*, 146), basing herself particularly upon Robert Lingat, *The Classical Law of India*, trans. J. Duncan M. Derrett (California: University of California Press, 1973) and Bernard S. Jackson, “From *Dharma* to Law,” *The American Journal of Comparative Law* 23 (1975). But claiming *dharma* to be the “best” analogy should seriously be questioned when we have closer cultural parallels like Egyptian *ma’at* and Babylonian *kittum*. Given that Torah itself explicitly makes an Egyptian link it makes sense to begin a comparison with *ma’at*, and then move to other analogies with a certain cultural proximity, like the Mesopotamian *kittum*, before making other comparisons.

<sup>14</sup> VerSteege, *Law in Ancient Egypt*, 36. Assmann defines *ma’at* as “connective justice,” explaining it as “the principle that forms individuals into communities and that gives their actions meaning and direction by ensuring that good is rewarded and evil punished” (Jan Assmann, *The Mind of Egypt: History and Meaning in the Time of the Pharaohs* (New York, NY: Metropolitan Books, 2002), 128). For an analogy to Moses as the ‘prophet of Torah,’ cf. the vizier acquiring the title “Prophet of *Ma’at*” in the 5<sup>th</sup> Dynasty (VerSteege, *Law in Ancient Egypt*, 40). Since Deir El-Medina has given us an exceptional insight into ancient Egyptian jurisprudence (cf. McDowell, *Jurisdiction*), it can be mentioned that the ancient name of the city was *Set Ma’at*, “the place of *Ma’at*,” and the inhabitants there called “servants” of the place of *Ma’at* (Leonard H. Lesko, *Pharaoh’s Workers: The Villagers of Deir El Medina* (Ithaca, NY: Cornell University Press, 1994), 7).

<sup>15</sup> Assmann writes that the category of ‘wisdom-literature’ is instructive (“aufschlußreich”) as it underlines the intercultural literary phenomena of wisdom-literature in Mesopotamia, Israel, as well as Egypt. But it is also misleading (“irreführend”) as it obscures the close connection between social norms and legal norms (Assmann, “Verschriftung rechtlicher und sozialer Normen,” 71). He writes on the same page: “Das ägyptische Wort *Ma’at* bezieht sich auf semantische Felder, die wir im deutschen mit Recht, Gerechtigkeit, Richtigkeit, Wahrheit, Ordnung umschreiben können. *Ma’at* ist eine regulative Idee, an der sich sowohl die Rechtsprechung der Richter, als auch die Unterweisung der sogenannten Weisheitslehrer orientieren soll. *Ma’at* ist also der Oberbegriff aller Gesetze und Vorschriften, nach denen sich die Richter bei der Rechtsprechung, die Priester bei der Kultausübung, die Beamten bei der Verwaltung und – dieser Punkt ist entscheidend – jeder Ägypter in einer verantwortlichen Lebensführung zu richten haben. . . . Der ägyptische Begriff *Ma’at* stellt daher Moral und Recht, soziale Normen und juristische Gesetze in einen viel engeren Zusammenhang, als der ägyptologische Begriff ‘Weisheitsliteratur’ das erkennen läßt.” Further, he defines *ma’at* as *iusiustitia connectiva*, i.e. as what keeps the world together, morally together (Assmann, “Verschriftung rechtlicher und sozialer Normen,” 72–73). And again: “Die Normen der *Ma’at* stehen zu den Ordnungen des ‘Gegebenen’ bzw. ‘dieser Welt’ nicht in Widerspruch, sondern sind vielmehr mit ihnen identisch” (Assmann, “Verschriftung rechtlicher und sozialer Normen,” 74). It is at this point he

below, there may, therefore, be an analogy between Torah and *ma'at* in that distinctions between the ethical, religious, and legal may prove artificial, or at least secondary.<sup>16</sup>

While the pharaoh was closely associated with *ma'at*, and even seen as an incarnation of *ma'at*,<sup>17</sup> as with Torah, the entire people were expected to live according to *ma'at*. In Egypt we also find a division between local courts and a form of centralized court, again analogous to the judiciary prescribed in Torah, as will be seen below.<sup>18</sup> If we take the term “oracle” (from Latin *ōrāre*, “to speak”) in the general sense of divine speech, we can also see an analogy between the use of oracles by the judiciary in Egypt with the use of oracles by the judiciary in the Torah.<sup>19</sup>

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sees the major difference between Torah as an extraterritorial revelation and *ma'at* as the given world-order: “Der fundamentale Unterschied zu Ägypten liegt darin, daß diese Gebote *nicht* die Normen des Gegebenen sind. Die Gebote stamen vom Sinai, sie gehören einer extraterritorialen, geoffenbarten und gewissermaßen ‘gesetzten’ Ordnung an” (Assmann, “Verschriftung rechtlicher und sozialer Normen,” 75). Cf. how Assmann also finds the inscription of social norms in the Book of the Dead (Assmann, “Verschriftung rechtlicher und sozialer Normen,” 81–85). For Assmann’s more elaborate study of *ma'at* see Jan Assmann, *Ma'at: Gerechtigkeit und Unsterblichkeit im Alten Ägypten* (München: C. H. Beck, 2006).

<sup>16</sup> Assmann, “Verschriftung rechtlicher und sozialer Normen,” 67.

<sup>17</sup> Assmann, “Verschriftung rechtlicher und sozialer Normen,” 66–70; Richard Jastrow, “Egypt: Old Kingdom and First Intermediate Period,” in *A History of Ancient Near Eastern Law*, ed. Raymond Westbrook (Leiden: Brill, 2003), 99. For a more elaborate analysis of *ma'at* see Assmann, *Ma'at: Gerechtigkeit und Unsterblichkeit im Alten Ägypten*. For how Assmann differentiates between different types of legal texts, see Assmann, “Verschriftung rechtlicher und sozialer Normen,” 62–66, 70.

<sup>18</sup> VerSteeg, *Law in Ancient Egypt*, 37–38, 45, 52, 84. For a helpful analysis of the local court at Deir El-Medina see McDowell, *Jurisdiction*. Cf. Eckart Otto, “Das altägyptische Strafrecht,” in *Altorientalische und biblische Rechtsgeschichte: Gesammelte Studien*, BZABR 8 (Wiesbaden: Harrassowitz, 2008), 330–40.

<sup>19</sup> VerSteeg, *Law in Ancient Egypt*, 58–61; McDowell, *Jurisdiction*, 107–41. For how Egyptian and Athenian authorities had limited opportunities to enforce legal verdicts, and how jurisprudence to some extent depended on the consent of involved parties, see Eyre, *The Use of Documents in Pharaonic Egypt*, 102; Lanni, *Law and Order in Ancient Athens*. For how the gods, not just the judicial system, would sanction breach of the moral order, and how this relates to the use of the oath and ordeal in ANE legal texts, see Karel van der Toorn, *Sin and Sanction in Israel and Mesopotamia*, *Studia Semitica Neerlandica* [SSN] (Assen: Van Gorcum, 1985), 45. See also p. 52. Cf. Fitzpatrick-McKinley, *The Transformation of Torah*, 134–41.

It may be that ANE law should be understood as “custom dressed up as precedent,” as Westbrook suggested,<sup>20</sup> but at this point I will leave unsettled the many questions and debates in recent scholarly literature on how best to characterize ANE law.<sup>21</sup> While comparative studies might help us see new aspects of the HB, the biblical passages always need to be read and understood on their own terms. Too often concepts and interpretations from the literature of the surrounding nations are projected upon the biblical text, without paying sufficient attention to issues of divergence and uniqueness

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<sup>20</sup> Westbrook, “Origins of Legislation,” 91.

<sup>21</sup> For studies on the concept of ANE law and comparative studies see e.g. Samuel Sandmel, “Parallelomania,” *JBL* 81 (1962): 1–13; Bottéro, “Le ‘Code’ de Hammu-rabi,” 409–44; Raymond Westbrook, *Studies in Biblical and Cuneiform Law* (Paris: J. Gabalda, 1988); Meir Malul, *The Comparative Method in Ancient Near Eastern and Biblical Legal Studies* (Kevelaer: Butzon & Bercker, 1990); William W. Hallo, “Compare and Contrast: The Contextual Approach to Biblical Literature,” in *The Bible in the Light of Cuneiform Literature: Scripture in Context III*, eds. William W. Hallo, Bruce William Jones and Gerald L. Mattingly, *Ancient Near Eastern Texts and Studies* 8 (Lewiston: Edwin Mellen, 1990), 1–30; Shemaryahu Talmon, “The Comparative Method in Biblical Interpretation: Principles and Problems,” in *Literary Studies in the Hebrew Bible: Form and Content: Collected Studies* (Jerusalem: Magnes, 1993), 11–49; Victor Avigdor Hurowitz, *Inu Anum šīrum: Literary Structures in the Non-Judicial Sections of Codex Hammurabi* 15 (Philadelphia: Occasional Publications of the Samuel Noah Kramer Fund, 1994); Westbrook, “The Character of ANE Law,” 1–90; Noel K. Weeks, *Admonition and Curse: The Ancient Near Eastern Treaty/Covenant Form as a Problem in Inter-Cultural Relationships*, JSOTSup 407 (London: T&T Clark, 2004); Shalom M. Paul, *Studies in the Book of the Covenant in Light of Cuneiform and Biblical Law* (Eugene, OR: Wipf & Stock, 2006); Westbrook, “Origins of Legislation,” 73–95; Westbrook, “What Is the Covenant Code?,” 97–118; Victor Avigdor Hurowitz, “What Was Codex Hammurabi and What Did it Become?,” *MAARAV* 18 (2013): 89–100. For the tension between source critical approaches and comparative studies see Weeks, *Admonition and Curse*, 140, 154. Hallo writes: “The fact that we cannot always be sure of the place, the date, or the direction of the borrowing does not invalidate either the comparative or the contextual approach: modern literary criticism properly investigates literary parallels without necessarily or invariably finding the exact route by which a given idea passed from one author to another. And given the fragmentary nature of the ancient record, the answers cannot always be forthcoming” (Hallo, “Compare and Contrast,” 6). And relevant for the present study of prophetic texts in the HB: “Biblical prophecy is utterly different from any cuneiform genre by virtue of authorship, structure, and content” (Hallo, “Compare and Contrast,” 12). In Talmon’s call “for the definition of a set of rules which should serve biblical scholars as a guideline in their pursuit of comparative studies,” he nevertheless sets forth the following principle as a starting point: “The interpretation of biblical features—whether of a sociopolitical, cultic, general-cultural, or literary nature—with the help of innerbiblical parallels should always precede the comparison with extrabiblical materials” (Talmon, “The Comparative Method in Biblical Interpretation,” 48).

between the two.<sup>22</sup> For the present purposes we can ask the following: Does Torah bear marks of being composed according to a legislative concept of law or not where the wording itself gives the precise demarcation between sanctioned and acceptable conduct,<sup>23</sup> even if it can be modified and altered at a later stage? If not, how should it best be characterized? Is it simply reflecting custom, or is it also intervening in and modifying custom? And is it simply descriptive of legal tradition where tradition rather than the text is normative, or is the text itself viewed as normative? Also, is the text open to revisions or not? How should we understand the finality of Torah in light of e.g. Deut 4:2; 13:1? How should we understand differing legal formulations in the HB? Should they be understood as ‘legal reforms’ that can be organized into an evolutionistic diachrony or rather more as reflections on divine instructions without altering previous formulations? Can prophetic legal statements be understood as receiving the force of public law? All of

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<sup>22</sup> As we now turn to the question of how to characterize Torah as such, we can begin with a warning against “illegitimate totality transfer” in comparative studies, to borrow a phrase James Barr coined in relation to biblical linguistics. James Barr explained “illegitimate totality transfer” to occur when “the total series of relations in which [a word] is used in the literature . . . is read into a particular case as its sense and implication there” (James Barr, *The Semantics of Biblical Language* (London: SCM Press, 1991), 218). Cf. also Meir Malul and William Hallo who has stressed the need of noticing both similarities and differences between ANE and the biblical legal material (Malul, *The Comparative Method*; Hallo, “Compare and Contrast,” 1–30). Malul writes: “In most cases one can determine only the existence of a connection, without being able to determine its direction, nature, or type” (Malul, *The Comparative Method*, 91). Weeks has also warned against “the allure of grand evolutionary theses,” arguing that “the native tradition tends to be more enduring than borrowings.” He sees “a common inheritance directed into particular forms in local centres. Some of these local traditions have tantalizing similarities but, as emphasized, similarity may have diverse causes” (Weeks, *Admiration and Curse*, 175–76, 181–82).

<sup>23</sup> Discussing the difference between a law-book and wisdom-laws, Jackson stated that while Deuteronomy could be understood more as a collection of wisdom-laws, “it is less obvious in the case of the earliest legal collection, the *Mishpatim* or Covenant Code of *Exodus* 21–22, which may originally have been intended as a statement of positive law if not a statute of which the wording was verbally binding” (Jackson, “From Dharma to Law,” 505. *Italics original*). Later, Jackson argues in his *Wisdom-Laws* that also BC should be considered wisdom-laws.

these questions should be kept in mind when we analyze the specific cases of reuse in the next chapter.

### Characterization of Torah as Covenantal Instruction

As we move to the question how Torah should be positively characterized, I will discuss three claims particularly relevant for the present study: Torah as legislative, Torah as immutable, and Torah as normative. Given the danger of starting from anachronistic premises, I will first ask whether any of these claims can be falsified based on the textual evidence.<sup>24</sup> Since the question of how to characterize Torah is not the main

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<sup>24</sup> We can here remind of Karl Popper's theory of testability, or falsifiability. He writes: "(1) It is easy to obtain confirmations, or verifications, for nearly every theory—if we look for confirmations. (2) Confirmations should count only if they are the result of risky predictions; that is to say, if, unenlightened by the theory in question, we should have expected an event which was incompatible with the theory—an event which would have refuted the theory. (3) Every 'good' scientific theory is a prohibition: it forbids certain things to happen. The more a theory forbids, the better it is. (4) A theory which is not refutable by any conceivable event is non-scientific. Irrefutability is not a virtue of a theory (as people often think) but a vice. (5) Every genuine test of a theory is an attempt to falsify it, or to refute it. Testability is falsifiability; but there are degrees of testability: some theories are more testable, more exposed to refutation, than others; they take, as it were, greater risks. (6) Confirming evidence should not count except when it is the result of a genuine test of the theory; and this means that it can be presented as a serious but unsuccessful attempt to falsify the theory. (I now speak in such cases of 'corroborating evidence.')

(7) Some genuinely testable theories, when found to be false, are still upheld by their admirers—for example by introducing ad hoc some auxiliary assumption, or by reinterpreting the theory ad hoc in such a way that it escapes refutation. Such a procedure is always possible, but it rescues the theory from refutation only at the price of destroying, or at least lowering, its scientific status. (I later described such a rescuing operation as a 'conventionalist twist' or a 'conventionalist stratagem.')

(Karl R. Popper, *Conjectures and Refutations: The Growth of Scientific Knowledge* (London: Routledge, 2002), 47–48). See also Karl R. Popper, *The Logic of Scientific Discovery* (New York: Harper Torchbooks, 1968), 112–45, 265–81. And he sums up as follows: "One can sum up all this by saying that *the criterion of the scientific status of a theory is its falsifiability, or refutability, or testability*" (Popper, *Conjectures and Refutations*, 48). It is a danger, as Popper himself pointed out, that the *explanatory power* of the theories like those of Marx, Freud, and Adler makes the one initiated in them see "the world [as] full of *verifications* of the theory, Whatever happen always confirm it" (Popper, *Conjectures and Refutations*, 45. Cf. pp. 46–47, 51, 294, 345). In *The Logic of Scientific Discovery* he also pointed out that falsifiability is always relative and a question of degree when comparing theories (Popper, *The Logic of Scientific Discovery*, 112). He formulated his view in explicit contrast to the early Wittgenstein's *Tractatus Logico-Philosophicus* (1921) and the Vienna Circle for whom "*verifiability, meaningfulness, and scientific character all coincide*" (Popper, *Conjectures and Refutations*, 52). For the early Wittgenstein all meaningful propositions were truth functions of atomistic propositions that could be verified by empirical observations. He distinguished these from meaningless philosophical or metaphysical propositions that could not be verified by empirical observations (Wittgenstein, *Tractatus Logico-Philosophicus*, 5; 6.53; 6.54). While this is not meant as a full endorsement of Popper for biblical

question in the present study, but is included in order to shed light on the character of reuse found between Torah and the Prophets, the following can, therefore, only be a preliminary discussion. If falsification of any of the three claims does not seem possible in this present study, future studies might be necessary to clarify these questions. If such an eventuality occurs, I will summarize positive evidence that might corroborate the claim, in order to draw tentative conclusions in the present study.

The three claims of Torah as legislative, immutable, and normative can be formulated as follows in terms that have the potential for falsification on textual grounds:

1. *The legislative concept of Torah:* Torah is to be understood as the ultimate source in Pentateuchal legislation for civil law.<sup>25</sup> It established a “rule of law” by not appealing to any ‘higher court’ than itself as text; the exact wording of Torah is the final reference for the court to pass a verdict even if its formulation can be supplemented or modified at a later stage. An appeal to a ‘higher court’ beyond the legal formulations of Torah and a standard other than Torah for the court would thus falsify this claim.
2. *The immutability of Torah:* Torah should be understood as prohibiting alteration of any or all of its prescriptions. Legal revision within Torah or by later authors will not in itself falsify this claim. A form of legal revision is legal innovation, and since legal innovations can be understood as elaboration or reapplication, this would not necessarily entail a rejection of previous prescriptions. We will need to find clear

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studies, he raises the question how many cherished theories in the study of the HB also follow a verificationist approach. Much of the below is admittedly also focusing on positive evidence of various claims, but I have tried to formulate myself in terms of falsifiability where I have seen this to be possible.

<sup>25</sup> In the following I will reserve the terms ‘legislation’ and ‘legislative’ for this claim, while using the terms ‘legal’ and ‘law’ in a broader sense not necessarily restricted to the legislative concept of Torah.



evidence for a rejection of previous prescriptions, replacing them with new or no further prescriptions, in order to falsify the claim of the immutability of Torah.

3. *The normative concept of Torah*: Torah should be seen as normative and prescriptive in the domains of cultic, civil, and/or moral law, prescribing what ought to be, defining values, and making cultic, civil, and moral judgments. The absence of such would falsify this claim. As in #2, demonstrable rejection of previous prescriptions would also falsify this claim. Here it is also helpful to distinguish between the self-presentation of Torah and later reception. Lack of evidence that later authors took Torah as normative would make problematic the claim that it enjoyed normative status in its reception history.

### The Legislative Model of Torah Falsified

The textual material appears to falsify the legislative model of Torah, but this is not the place to provide a comprehensive survey of the various scholars who interpret

Torah as legislative. Fishbane can be taken as a representative example. He argued that

the biblical law collections may best be considered as prototypical compendia of legal and ethical norms rather than as comprehensive codes. Even if jurists made quasi-statutory, analogical, or referential uses of some of these ordinances, the publication of agglomerate collections primarily served to make available digests of the divine requirements of ‘justice and righteousness’ which served as the contractual basis for the Israelite covenant. The received legal codes are thus a literary expression of ancient Israelite legal wisdom: exemplifications of the ‘righteous’ laws upon which the covenant was based.<sup>26</sup>

Thus far, Fishbane could be seen as following a trajectory where Torah is perceived in similar terms to those denying that Torah should be understood according to a legislative

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<sup>26</sup> Fishbane, *Biblical Interpretation in Ancient Israel*, 95.

model. But he nevertheless continues claiming that the instructions take the form of legislation, finding that there are

inherent limitations in a comparison between the ancient Near Eastern and biblical legal corpora. For while the biblical corpora are, as noted, also incomprehensive in scope and frequently imprecise in formulation, the fact remains that the biblical collections are presented as divine revelation and the basis for covenantal life. The priests must teach these laws (e.g. Lev. 10:10–11; Mal. 2:7); the judges are enjoined to follow them (e.g. Deut. 16:18–20; 2 Chron. 19:6–10); the kings are held accountable to their enforcement; and the prophets repeatedly exhort their observance. In addition, the covenantal laws are the basis for many citations, precedents, and cross-references . . . . Accordingly, despite the fact that the biblical legal corpora are formulated as prototypical expressions of legal wisdom, *the internal traditions of the Hebrew Bible present and regard the covenantal laws as legislative texts.*<sup>27</sup>

As will be argued below, instead of reverting to a legislative model for interpreting the phenomena observed by Fishbane, a better model seems to be seeing Torah as non-legislative normative covenantal instruction. We will see that “the judges are [not] enjoined to follow them,” i.e. the legal collections as we have them. While a legislative model operates by external control of the population through the court, Torah rather stresses a model where the people are guided individually through appropriation of its covenantal instructions into their own hearts.

The question also occurs as to whether Torah was to be used as the lawbook in Israelite courts? In the debate whether ANE and biblical law was legislative, the litmus

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<sup>27</sup> Fishbane, *Biblical Interpretation in Ancient Israel*, 96 (italics original). Cf. Michael Fishbane, “Revelation and Tradition: Aspects of Inner-Biblical Exegesis,” *JBL* 99 (1980): 346. More recently, Simeon Chavel appears simply to assume that Torah should be understood as “statutory law” (Simeon Chavel, *Oracular Law and Priestly Historiography in the Torah* (Tübingen: Mohr Siebeck, 2014), 242–43, 247, 260, 263–64). Berman also critiques Levinson for implicitly adhering to a concept of statutory law when reading biblical law (Berman, “The History of Legal Theory,” 31). See also Benjamin D. Sommer, *Revelation and Authority: Sinai in Jewish Scripture and Tradition* (New Haven: Yale University Press, 2015). Cf. LeFebvre, *Collections, Codes, and Torah*, 50–53 for Phillips also arguing that the Decalogue was legislative, and the criticism of Phillips on this point.

test seems to be whether or not it had a function in the court.<sup>28</sup> We find some substantial indicators in the instructions given specifically to judges that this was not the case (see Exod 18:21–22; 23:1–8; Lev 19:15–16; Deut 1:16–17; 16:19–20; 25:1; cf. 2 Chr 19:6–10).<sup>29</sup> Torah, as such, is nowhere explicitly said to be a legal source in ancient Israelite jurisprudence. It is not seen as an autonomous legal source with sufficiently

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<sup>28</sup> Cf. LeFebvre, *Collections, Codes, and Torah*, 31–54. For a discussion on the difference between the legislative and adjudicative type of texts in Torah, see Rolf P. Knierim, “The Problem of Ancient Israel’s Prescriptive Legal Traditions,” *Seimeia* 45 (1989): 7–25. Depending on Gurvitch, he defines the following characteristics of ‘law’ in contrast to a moral instruction: “The meaning of these descriptions of the characteristics of law, related to our specific problem, can be summarized as follows: first, a prohibition or command can be law, just as it can be an ethical imperative, but it is not by definition a non-law; second, law has an imperative structure the legal nature of which depends on the societally regulated adjudicability of duties of some and claims by others, i.e. on the social guarantee of that imperative structure; and third, laws do not have to be formulated casuistically. They can, but do not have to be accompanied by definitions of consequences (‘constraints’)” (Knierim, “Ancient Israel’s Prescriptive Legal Traditions,” 21). Phillips wrote: “The only adequate definition of a crime is that conduct which the state prohibits” (Anthony Phillips, *Ancient Israel’s Criminal Law: A New Approach to the Decalogue* (Oxford: Basil Blackwell, 1970), 2). To this definition Knierim asks how we can know “which of the Old Testament prohibitions . . . were issued as state-laws?” (Knierim, “Ancient Israel’s Prescriptive Legal Traditions,” 21). As argued below, by taking the self-claim of the instructive material seriously, we should not confuse the divine instruction of Torah with state laws. Depending on Schulz, Knierim points out that we should be careful with making a too strong distinction between law and ethics in ancient Israel, as the two to some extent merged for the clan (Knierim, “Ancient Israel’s Prescriptive Legal Traditions,” 21–22). While I here argue that a legislative reading should not be imposed upon the instructive material of Torah, later I will also problematize designating it as ethical. Both terms might be anachronistic, and it is just as problematic to argue that it is a matrix of the two. Cf. Otto, “Aspects of Legal Reforms,” 185–86 showing that talion law was not enforced, at least not according to the evidence, just as ANE law lacks evidence of being enforced in court. See his pp. 160–63.

<sup>29</sup> Commenting on Deuteronomy’s instructions regarding the different offices: “No single institution, therefore, can claim to be ‘prior’ to another in its antiquity, status, privilege, or closeness to divinity. The new vision rejects all conventions of rank and hierarchy” (Bernard M. Levinson, “The First Constitution: Rethinking the Origins of Rule of Law and Separation of Powers in Light of Deuteronomy,” *Cardozo Law Review* 27, no. 4 (2006): 1884). While the prophets and priests are exclusively chosen by God, the king mutually by God and the people, “the judiciary, however, is chosen exclusively by human agents” (Joshua A. Berman, *Created Equal: How the Bible Broke with Ancient Political Thought* (Oxford: Oxford University Press, 2008), 80).

Levinson argues that already in Deuteronomy we find the first expression in legal history of the idea of the separation of powers and the rule of law. Further, “these visionary thinkers sought to safeguard the rule of law by establishing an independent judiciary. . . . the political experiment represented by *Deuteronomy* was without precedent either in the Near East or in ancient Israel itself” (Levinson, “The First Constitution,” 1887). Given that judges are not instructed to judge according to Torah, the “rule of law” in Israelite judiciary is unclear. To me it seems clear that we find the “rule of law” in the textual material itself in the sense of the normativity of the covenantal instructions, as argued below. To speak of the “rule of law” beyond this would need to be closely nuanced.

comprehensive formulations to regulate and sanction the conduct of the people.<sup>30</sup> As Patrick has pointed out, it is a striking fact that none of the instructions for judges speak of consulting and judging according to Torah. Instead the judges are admonished to judge according to the more general  $\text{דָּרַשׁ}$  (“justice”).<sup>31</sup>

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<sup>30</sup> According to Berman “judges, perforce, must have also engaged a comprehensive oral law, or set of unwritten norms and social customs” (Berman, *Created Equal*, 84). As mentioned above, for how jurisprudence functioned in early Athens and Pharaonic Egypt without the legal institutions and procedures standard today, the studies of Lanni and Eyre are helpful. Lanni, *Law and Order in Ancient Athens* shows that even if the legal system in Athens did not have public prosecutors, and the court’s ability to enforce verdicts, the legal system nevertheless functioned surprisingly well. This should caution us in assuming some kind of ‘malfunction’ of ancient and biblical legal systems simply because they lacked our legal institutions and functioned differently. A similar situation is seen in Pharaonic Egypt, where the legal system functioned on a more personal level, without the formal institutions we are accustomed to. Cf. Eyre, *The Use of Documents in Pharaonic Egypt*. In the following I will argue that given that Torah was intended to be embodied by all the people, including the judges, the possibility is strong that Torah influenced the ancient Israel judiciary. Since all the people were supposed to memorize and embody Torah, something that would also apply to the judges, Torah would likely at least indirectly affect Israelite jurisprudence, even if it is not explicitly referred to in the instructions given specifically to judges (Exod 18:21; 23:1–8; Lev 19:15–16; Deut 1:16–17; 16:19–20; 25:1). Bruce Wells concludes his study on the laws of testimony stating that “not all of the laws in the Pentateuchal codes may be of use to the legal historian, but the codes do not have to be excluded as a legal-historical source, as some have suggested. They do not have to be mined only for wisdom and ideology. They can still be used for law. And, as this study has attempted to demonstrate, this is especially true of the Pentateuchal laws on testimony” (Bruce Wells, “The Law of Testimony in the Pentateuchal Codes” [Ph.D. diss., John Hopkins University, 2002], 247). He finds “an indirect connection between biblical law and Israelite/judahite law” (Bruce Wells, “What is Biblical Law? A Look at Pentateuchal Rules and Near Eastern Practice,” *CBQ* 70 [2008], 224). And again: “At the outset, it must be recognized that, in the final form of the biblical text, the pentateuchal codes seem to have a religious purpose as they relate to issues of covenant, community, and purity. Scholars have articulated this purpose in various ways, but most agree that biblical law, as it is presented in the Pentateuch, functions to promote a religious agenda rather than to establish a full-fledged legal system. In some respects, though, it is important that a discussion of whether the provisions in the Pentateuch constitute law precede an analysis of the religious function of biblical law. It is possible, for instance, that the codes or parts of the codes were self-contained entities at one time, before they were incorporated into the larger sections in which we now find them” (Wells, “What is Biblical Law?,” 225–26. Cf. pp. 226–32 for a good overview of the different ways to characterize Torah. For how he himself sees Torah as “legally descriptive treatises” see pp. 242–43). In his study of the legal use of documents in Pharaonic Egypt, Eyre points out two opposites in how a society can function legally: “One pole here is the image of a purely face-to-face society, in which transactions could only function through the personal interaction of interested parties, and in their presence. The opposite is a purely bureaucratic society, in which all business is transacted impersonally, on the basis of documents, or indeed electronically” (Eyre, *The Use of Documents in Pharaonic Egypt*, 7). Cf. p. 9, 94. As in Egypt, the impression left by the ancient Israelite judiciary is that it operated more on a face-to-face personal basis.

<sup>31</sup> Cf. Dale Patrick, *Old Testament Law* (Atlanta: John Knox, 1985), 191. Cf. pp. 197–98. Nevertheless, Patrick claimed that the laws “were designed to inculcate the concepts and principles of Israelite law for judges and the community at large,” seeing “the framer of a biblical lawbook” as writing for “practitioners of the law” (Dale Patrick, “Studying Biblical Law as a Humanities,” *Semeia* 45 (1989):

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33, 42. Cf. Fitzpatrick-McKinley, *The Transformation of Torah*, 82 for others with a similar view). According to Anthony Phillips the law collections “are not so much instructions to the judiciary as sermons to the nation. Rather than legal codes establishing a judicial system, these collections constitute theological literary works concerned with the maintenance of Israel’s election” (Anthony Phillips, *Essays on Biblical Law*, JSOTSup 344 (London: Sheffield Academic Press, 2002), 13).

Patrick further argued that during the reforms of Josiah we see an emergence of a prescriptive approach to biblical law, which for him consists primarily in “an identification of the text with the law” (Patrick, *Old Testament Law*, 189–90, 200). Westbrook saw the “transformation to true prospective legislation” in the 7<sup>th</sup> century B.C., more specifically in Deut 15:1–11, which he saw as expressing “a different intellectual climate” testifying to a transition into a prescriptive model, and which composition he dates to this time (Westbrook, “Origins of Legislation,” 92–94). Contra Westbrook on Deut 15, LeFebvre claims that prospective and cyclical cultic calendars were not unique to the HB, but “what was unique about Israel was its tendency to incorporate such cultic cycles into its law collections” (LeFebvre, *Collections, Codes, and Torah*, 79. Cf. my criticism below of seeing a distinction between the cultic and ethical as primary in the legal material). He also claims that the prospective element in the ‘release’ (הַצִּטָּוָה) of Deut 15 does not signal Westbrook’s “transformation to true prospective legislation,” “a different intellectual climate,” or a “fundamental innovation” (Westbrook, “Origins of Legislation,” 92–93), but is already found in the command to ‘release’ (הַצִּטָּוָה) the land every seventh year in Exod 23:10–11 (LeFebvre, *Collections, Codes, and Torah*, 81). For further discussions cf. LeFebvre, *Collections, Codes, and Torah*; Westbrook, “Origins of Legislation,” 97–118; Berman, “The History of Legal Theory,” 19–39. Bergsma, *The Jubilee from Leviticus to Qumran*, 23, 27 argue that LH 117 shows a similar prescriptive element as that found in Deut 15. In other words, the origin of prescriptivism should most likely not be dated to Deut 15 and 7<sup>th</sup> century Greek Law, as Westbrook does, but is already found in this early analogy.

Against Patrick and Westbrook, LeFebvre has also pointed out that during Josiah’s reforms we see a dissimilitude between the regulations of Torah and the royal edicts, indicating that it was still the royal edict that functioned as the law of the land. According to him Josiah’s reforms can therefore not be taken as a point of transition into a legislative concept of law (LeFebvre, *Collections, Codes, and Torah*, 59–63).

Several scholars have argued for a transformation of Israelite law to prescriptivism in the Persian era (Frank Crüsemann, *The Torah: Theology and Social History of Old Testament Law* (Edinburgh: T&T Clark, 1996), 336–37; Cassuto, *A Commentary on the Book of Exodus*, 262; James W. Watts, *Reading Law: The Rhetorical Shaping of the Pentateuch*, The Biblical Seminar (Sheffield: Sheffield Academic Press, 1999), 138–43; Jackson, *Semiotics of Biblical Law*, 142; Peter Frei, “Persian Imperial Authorization: A Summary,” in *Persia and Torah: The Theory of Imperial Authorization of the Pentateuch*, ed. James W. Watts (Atlanta: Society of Biblical Literature [SBL], 2001), 12, 38; Carr, *Writing on the Tablet of the Heart*, 171; Chad L. Eggleston, “See and Read All These Words”: *The Concept of the Written in the Book of Jeremiah*, Siphut: Literature and Theology of the Hebrew Scriptures 18 (Winona Lake, IN: Eisenbrauns, 2016), 158). We have already seen how Westbrook finds the first indications of a transition to a legislative concept of Torah in the 7<sup>th</sup> century. It is, however, with Ezra he sees the real transition to the legislative view of Torah (Westbrook, “Biblical Law,” in *Law from the Tigris to the Tiber*, vol. 2, 302). For Bernard Jackson there are two converging factors resulting in a legislative concept of Torah. First, Jackson having distinguished the didactic and ritual functions of Torah, which I shall discuss more below, sees Ezra as combining “the traditional ritual reading of the religious reform with a didactic function: the words should not only be read out, they should also be explained” (Jackson, *Semiotics of Biblical Law*, 141). Here he refers to Neh 8:7–8. It is in this context that he sees “the transformation of the biblical legal collections into ‘statutory’ texts” (Jackson, *Semiotics of Biblical Law*, 142). Second, by using “a *berit* with God as guarantor . . . an element of continuity is introduced, the continuity that attaches to the (divine) person of the guarantor.” For Jackson this “appears to provide a basis for explaining the emergence of the idea of enduring law in ancient Israel” (Jackson, *Semiotics of Biblical Law*, 162).

Again, LeFebvre questions the evidence for claiming that Persia endorsed Torah as legislative, since “Persia itself did not have a prescriptive law code” (LeFebvre, *Collections, Codes, and Torah*, 98). He points to several points of dissimilarity between Torah and Ezra’s legislative measures (LeFebvre, *Collections, Codes, and Torah*, 105–28). LeFebvre thus does not find the alleged evidence to support the

Second, I do agree with Patrick in that  $\text{רָצוּ}$  cannot be limited to a literalistic reading of Torah.<sup>32</sup> But he continues: “During the period in which the legal texts were

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claim that a legislative concept of Torah arose either in Josiah’s Judah nor in the Persian period Israel. He concludes by arguing that we, instead, need to go to the Hellenistic period to find this transition: “Instead of identifying periods of incipient legislation in Israel, what scholars have identified in these two periods are turning points in the *content* and *esteem* of Torah. . . . An important implication of the findings thus far is to challenge the current consensus on the timing of Torah’s prescriptivization. These findings push the period for Israel’s recasting of the Torah as legislation *into the Hellenistic era*. In many ways, this is actually a ‘common sensical’ conclusion. Prescriptive legislation is known to have been innovated in classical Greece” (LeFebvre, *Collections, Codes, and Torah*, 143). For a similar view see Fitzpatrick-McKinley, *The Transformation of Torah*, 21, 147–48. As Fitzpatrick-McKinley summarizes, according to Lingat’s study of the classical law of India there are three areas that influence “the gradual increase in the juridical content and technique of these originally non-legal, sacred moral texts . . . : the association of dharmic texts with royal authority, the impact of writing and the influence of foreign conquerors” (Fitzpatrick-McKinley, *The Transformation of Torah*, 147. Cf. Lingat, *The Classical Law of India*). According to Fitzpatrick-McKinley it is especially the two first points that explain the recharacterization of Torah into a legislative model, but the reference to for example Deut 17:19 and Prov 25:1 does not seem to provide adequate evidence for the theory of “royal patronage . . . of torah-wisdom scribes in ancient Israel” (Fitzpatrick-McKinley, *The Transformation of Torah*, 150). Cf. pp. 146–77.

In the following I have not entered the question whether Torah should be seen as normative in the cultic domain. The narrative of Lev 10 for example, and the ensuing dialogue between Moses and Aaron could be taken as evidence of a particularism in following the exact wording of the cultic Torah-instruction given, even if it would need to be studied whether this is a reference to the oral or written instruction, and what role the written cultic instructions are assigned within Torah.

In the Yabneh Yam letter we hear of a harvester who complains to his master that his mantle is stolen. In the words of Fitzpatrick-McKinley, “he points out that his rights of ownership had been violated; he does not point out that Pentateuchal law had been broken,” (Fitzpatrick-McKinley, *The Transformation of Torah*, 93) even if Pentateuchal legislation specifically prohibits such an act (Exod 22:25–27; Deut 24:10–13).

<sup>32</sup> Schmid has argued that the word-group  $\text{רָצוּ}$  in the pre-exilic HB denotes a historically progressing world-order, unifying aspects like justice, wisdom, nature, war, cult, and finds a concrete form in the monarchy (Hans Heinrich Schmid, *Gerechtigkeit als Weltordnung: Hintergrund und Geschichte des alttestamentlichen Gerechtigkeitsbegriffes* (Tübingen: Mohr (Siebeck), 1968), 166, 169). For a discussion on how  $\text{רָצוּ}$  in the HB relates to other ANE concepts of a comprehensive world-order like Egyptian *Ma’at* see Schmid, *Gerechtigkeit als Weltordnung*, 23–66, 171–73. As noted above, Assmann would disagree with Schmid here. While he agrees that *ma’at* represents a given world-order, Torah differs in being special revelation (Assmann, “Verschriftung rechtlicher und sozialer Normen,” 75).

The Greek concept of  $\lambda\acute{o}\gamma\omicron\varsigma$  is also of interest in a comparative study, as it resonates with some of the key terms in ancient Israel and the ANE regarding a universal order. In Craig S. Keener’s discussion of the  $\lambda\acute{o}\gamma\omicron\varsigma$  in the Prologue of the Gospel according to John, he argues that  $\lambda\acute{o}\gamma\omicron\varsigma$  there should be understood as Torah: “Playing on the link between Torah and Wisdom, the Fourth Gospel presents the Logos of its prologue as Torah” (Craig S. Keener, *The Gospel of John: A Commentary* (Grand Rapids, MI: Baker Academic, 2003), 360). John’s  $\lambda\acute{o}\gamma\omicron\varsigma$  is therefore relevant for the present discussion as he claims that Christ is the Incarnated Torah. Keener writes: “Although Torah could be said to consist of commandments, its sense is broader than code or custom, denoting instruction and revelation” (Keener, *John*, 355–56). He surveys the use of  $\lambda\acute{o}\gamma\omicron\varsigma$  in Gnosticism, Hellenistic philosophy, Philo, extra-biblical Palestinian sources. Even if he finds more parallels between the latter Jewish sources in this list and John’s  $\lambda\acute{o}\gamma\omicron\varsigma$ , he does not find them to be strong enough to legitimate speaking of influence (Keener, *John*, 339–50). Contra Rudolf

being composed, the law of God was an unwritten law, that is, the principles and concepts constituting ancient Israel's understanding of justice and righteousness."<sup>33</sup>

While he sees the ultimate reference of law as "the sense of justice shared by the legal community" constituting "the fundamental norms of the social order,"<sup>34</sup> I would rather argue that the transcendent reference in Torah, as we have it, seems rather to be YHWH himself. In that sense, the transcendent reference of the court is "unwritten," as it refers to YHWH. But Torah is his hortatory or paraenetic instruction, the written formulation of his character.<sup>35</sup> If we look at the instructions given to judges the reference is not to the

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Bultmann, *The Gospel of John: A Commentary*, trans. G. R. Beasley-Murray (Oxford: Blackwell, 1971), 28). Cf. Keener, *John*, 340–42, 346–47, 349–50.

<sup>33</sup> Patrick, *Old Testament Law*, 218.

<sup>34</sup> Patrick, *Old Testament Law*, 192, 198.

<sup>35</sup> In contrast to Mesopotamian law, where "the final source of the law, the ideal with which the law had to conform was above the gods as well as men" (Greenberg, "Some Postulates of Biblical Criminal Law," 9), "in the biblical theory the idea of the transcendence of the law receives a more thoroughgoing expression. Here God is not merely the custodian of justice or the dispenser of 'truths' to man, he is the fountainhead of the law, the law is a statement of his will. The very formulation is God's; frequently laws are couched in the first person, and they are always referred to as 'words of God', never of man. Not only is Moses denied any part in the formulation of the Pentateuchal laws, no Israelite king is said to have authored a law code, nor is any king censured for so doing. The only legislator the Bible knows of is God; the only legislation is that mediated by a prophet (Moses and Ezekiel)" (Greenberg, "Some Postulates of Biblical Criminal Law," 11). Greenberg here formulated a key characteristic of Torah, but should be slightly modified in light of the observations of Cassuto and LeFebvre, showing that persons in authority in ancient Israel could pass laws and regulations, even if they should be seen as 'secular law,' or better as 'human law,' in contrast to Torah as divine instruction. In texts like 1 Sam 30:24–25; Isa 10:1; Jer 34:8ff, Cassuto found a basis for seeing a secular, or royal, law in ancient Israel (Cassuto, *A Commentary on the Book of Exodus*, 260–1). See also the discussion in LeFebvre, *Collections, Codes, and Torah*, 55–145.

Fitzpatrick-McKinley discusses and criticizes various theories of how Torah should be seen as a rational response to social change, and summarizes: "The emphasis of Yhwh as the source of Israel's torah was not the result of, nor is it immediately related to, social and economic developments. It is a statement of the reality of Israel's torah which was at least an implicitly characteristic of it from the beginning" (Fitzpatrick-McKinley, *The Transformation of Torah*, 177. Cf. pp. 23–53). Berman writes: "The nature of biblical law codes, it may be posited, is different from those of the ancient Near East. Only in the Bible is law presented as divine revelation, and only in the Bible do laws appear as treaty stipulations between a sovereign and a vassal. Moreover, we find that biblical law is often expressed in a paranetic or sermonic style, and is interwoven with narrative, homily, and hortatory passages, all uncharacteristic of ancient Near Eastern law" (Berman, *Created Equal*, 84–85. Cf. p. 59). A similar statement is found in Cassuto, *A Commentary on the Book of Exodus*, 259–60. Sonnet writes: "Far from reactivating mythological

“legal community” and “the fundamental norms of the social order.” The chosen judges are described as “fearers of God” (יִרְאֵי אֱלֹהִים, Exod 18:21), thus placing God as the prime reference. Again, in Lev 19:16 the reference is YHWH (אֲנִי יְהוָה). And Deut 1:17 could hardly make the ultimate reference of the court clearer declaring that “the judgment belongs to God” (הַמִּשְׁפָּט לְאֱלֹהִים הוּא). The double reference to “the land which God is giving you” (אֶשְׂרָר יְהוָה אֱלֹהֵיךָ נָתַן לְךָ) in Deut 16:18–20, is again a reminder that the judges judge on behalf of God in his land. The concept of “unwritten law” is thus not necessary, and relieves us of the conjectural reasoning of trying to reconstruct what it might be. Rather, we have the written Torah and a transcendent reference beyond it, YHWH, who constitute the final authority in all manners of life and justice.

Third, the above also concurs with LeFebvre’s point that oracle in the person of Moses the prophet, as YHWH’s representative, stood at the center of the Israelite judiciary (Exod 18:13–27).<sup>36</sup> Still, as pointed out by others, it can not be assumed that the

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representations, the reference to a writing God rather highlights the rational discursiveness of God’s revelation” (Jean-Pierre Sonnet, *The Book within the Book: Writing in Deuteronomy*, eds. R. Alan Culpepper and Rolf Rendtorff. Biblical Interpretation Series [BibInt] [Leiden: Brill, 1997], 51. Cf. pp. 49–50). Finally, our available evidence is too meager to conclude that Torah was “unwritten” in the period when it was “being composed,” as Patrick claims. I will return to the question of orality and writing below. Cf. Fitzpatrick-McKinley, *The Transformation of Torah*, 19.

For how it was rather rare in the ANE to see all the participants involved, both the speaker and messenger, as involved in the writing process like we see it with God authoring the Decalogue tablets and Moses the messenger also authoring, cf. Martti Nissinen, “Spoken, Written, Quoted, and Invented: Orality and Writtenness in Ancient Near Eastern Prophecy,” in *Writings and Speech in Israelite and Ancient Near Eastern Prophecy*, eds. Ehud Ben Zvi and Michael H. Floyd, Symposium Series 10 (Atlanta: SBL, 2000), 241.

<sup>36</sup> LeFebvre, *Collections, Codes, and Torah*, 40–47. Cf. Fishbane, “Revelation and Tradition,” 344. The use of אֱלֹהִים in Exod 21:6 and יְיָ אֱלֹהֵינוּ in 22:8 are ambivalent and have received much attention. It is variously argued to be an oracular judgment (William Henry Propp, *Exodus 19–40: A New Translation With Introduction and Commentary*, Anchor Yale Bible (New Haven: Yale University Press, 2008), 125; Wright, *Inventing God’s Law*, 252–58. Cf. Fishbane, *Biblical Interpretation in Ancient Israel*, 237–38n), oath (O. Loretz, “Ex 21,6; 22,8 und angebliche Nuzi-Parallelen,” *Bib* 41 (1960): 173; Fitzpatrick-McKinley, *The Transformation of Torah*, 139; Paul, *Studies in the Book of the Covenant*, 90–91), ordeal (Julian Morgenstern, “The Book of the Covenant Part 2,” *HUCA* 7 (1930): 112–13), or simply



‘high court’ in Deut 17:8–13 would consult with an oracle.<sup>37</sup> In all the four actual legal

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the court (e.g. Cassuto, *A Commentary on the Book of Exodus*, 267, 286). Cf. David Andrew Teeter, *Scribal Laws: Exegetical Variation in the Textual Transmission of Biblical Law in the Late Second Temple Period* (Tübingen: Mohr Siebeck, 2014), 128, 131). This discussion cannot be settled here.

<sup>37</sup> Rofé writes that Deuteronomy “does not assign the priest any role of inquiring of YHWH, through the Urim and Thummim or by any other means. According to the constitutional collection of laws, YHWH speaks to the people only by means of *the prophet*. Unresolved legal cases are presented not to the divinity, but to a human judge for decision” (Alexander Rofé, “The Organization of the Judiciary in Deuteronomy (Deut. 16.18–20; 17.8–13; 19.15; 21.22–23; 24.16; 25.1–3),” in *The World of the Aramaeans I: Biblical Studies in Honour of Paul-Eugène Dion*, eds. P. M. Michèle Daviau, John W. Wevers and Michael Weigl, JSOTSup 324 (Sheffield: Sheffield Academic Press, 2001), 99). Berman writes that the priests receive a more prominent judicial role in Deuteronomy: “In other books of the Pentateuch, priests are not assigned a regular judicial role, and become involved only when cases need to be resolved by sacral means: oaths (Exod 22:7–10), ritual ordeal (Num 5:11–31), and Urim and Thummim (Exod 28:29–30). Yet in Deuteronomy, priests play a local judicial role in civil and criminal cases (19:17; 21:5)” (Berman, *Created Equal*, 65). He continues to deny the common assumption that the rationale for the priestly inclusion in the ‘high court’ was their oracular role: “Of all the cultic roles and tasks, the capacity to receive communication from the divine is the most sublime. Yet in Deuteronomy, the power to receive the oracle is mentioned with regard to the priest only once, at 33:10. In more explicit fashion, it is the domain of the prophet, who transmits God’s commands and who correctly foretells events (18:9–22). Some assume that the role of the priests as the members of the supreme tribunal in difficult matters of law (17:8–13) in fact rests on the assumption that they consult oracular means. Yet this is nowhere stated explicitly, and as we have seen, priests are not the sole members of the high tribunal: it includes as well ‘the judges of that time’ (17:9, 12). There is an enormous difference between the priestly power to adjudicate on the basis of oracular divination, such as the Urim and Thummim, and the priestly power in Deuteronomy to adjudicate on the basis of interpretation and application of the law and the examination of evidence. Divination by means of the Urim and Thummim is almost by definition a process that can have no control, no oversight, no inspection. . . . Divination has the potential to be an exclusionary source of power, par excellence. By contrast, authority that is rooted in the interpretation of a public text written in a language that is accessible to a wide audience limits the potential for domination by the priests, because their pronouncements may ultimately be measured against the spirit of the text itself” (Berman, *Created Equal*, 66–67). And again: “What Deuteronomy emphasizes is that justice is determined by the interpretation and application of law alone” (Berman, *Created Equal*, 69). Berman also points out that the זִקְנֵי (“elders” or “chieftains”) and הַקָּהָל (“assembly”), prevalent in the wilderness wanderings, are not even mentioned in Deuteronomy. Deuteronomy neither has much to say about the tribes (Berman, *Created Equal*, 74, 77). Cf. Christie G. Chadwick, “Archaeology and the Reality of Ancient Israel: Convergences between Biblical and Extra-biblical Sources for the Monarchic Period” (Ph.D diss., Andrews University, 2015), 15–28. Thus, the high court in Deut 17 replaces Moses as the ‘high court’ in Exod 18, but his oracular role is largely maintained by subsequent prophets, even if priests served in some oracular capacity as well. While Berman seems to be correct in pointing out the lack of an explicit reference to the oracle in Deut 17:8–13, it nevertheless does not seem clear that the ‘high court’ would primarily consult and interpret the Torah. This likewise lacks explicit formulations in Deut 17:8–13. The passage simply does not give us any information about how the ‘high court’ would make its decisions. Given that Deut 16:18–20; 17:8–13 is the only Pentateuchal law about the appointment of judges, Rofé asks why the author of Deuteronomy saw the need to include this instruction: “The novelty seems to lie precisely in the fact of their being appointed. It seems likely that before this law was enacted, judgment was entrusted to individuals whose authority arose from their spontaneous recognition by the people” (Rofé, “The Organization of the Judiciary in Deuteronomy,” 95). Cf. Eckart Otto, “שֹׁפֵט,” eds. G. Johannes Botterweck, Helmer Ringgren and Heinz-Josef Fabry, TDOT 15 (Grand Rapids, MI: Eerdmans, 2006), 359–405.

It may be appropriate here also to include some observations on the role of the king in regards to

cases mentioned in Torah we see the centrality of the oracular judgment: in the case of the blasphemer (Lev 24:10–23, esp. vv. 12–14), the case of the Second Passover (Num 9:1–14, esp. vv. 8–14), the case of the Sabbath breaker (Num 15:32–36, esp. vv. 34–35), and the case of Zelophehad’s daughters’ land inheritance (Num 27:1–11, esp. vv. 5–6. Cf. 36:1–12).<sup>38</sup> In all these cases the incompleteness of the legal instructions in Torah

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Torah and the judiciary. LeFebvre comments on Deut 17:18–20 in comparative perspective: “There are instances in the wider ancient Near East of wisdom texts intended for the instruction of princes. Also, Hammurabi expected subsequent rulers to read his law compilation: ‘May any king who will appear in the land in the future, at any time, observe the pronouncements of justice that I inscribed upon my stela . . .’ (LH 48.59–49.17). Nowhere in the ancient Near Eastern materials, however, is there an instance of a king enjoined to write out a law book for himself (and one which contains limiting instructions on his own reign). He who in other nations is chief law teacher, has for Israel become the first law student. Like the preceding four stipulations, the book-reading stipulation is intended to make Israel’s king ‘like his brothers’ (vv. 19–20; cf. 6:6–9; 11:18–21). In other words, study of the law book is (for Deuteronomy) a non-kingly activity. This is so much the case that calling the king to daily law-book study is expected to keep him on a peer level with the general public in the land” (LeFebvre, *Collections, Codes, and Torah*, 90). For the king as the model Israelite and arch Torah-reader see Sonnet, *The Book within the Book*, 71, 73, 78, 234. Jackson writes about the formative purpose of Torah according to Deut 17 in that “the leader is conceived to be in possession of a written *sefer*, and that *sefer* is presented as a source of meditation/learning that affects the character in such a way as to lead to success. Though the term *chakhmah* is not used in either source, there is a clear association here with wisdom thinking. Whether the purpose is ultimately juridical is less clear” (Jackson, *Semiotics of Biblical Law*, 134. Cf. p. 132 for his comments on Deut 17).

Cf. the chapter on the judicial oracle in Deir El-Medina in McDowell, *Jurisdiction*, 58–61. According to McDowell the oracle or vizier, and never the court, decided all disputes about property ownership in ancient Egypt. In addition, the oracle was consulted in cases where the court could not be applied, as identifying a thief and determining a disputed price on goods (McDowell, *Jurisdiction*, 118). The use of the oracle or vizier for determining questions of private property in Deir El-Medina might be related to the special status there due to the service of its inhabitants for the royal necropolis (McDowell, *Jurisdiction*, 122–23). Cf. p. 126–27, 132–33. She explains that in Egypt “it became a common practice to submit dilemmas of even the most trivial sort to divine judgement” (McDowell, *Jurisdiction*, 107). Cf. Chavel, *Oracular Law*. See also my review, Kenneth Bergland, review of *Oracular Law and Priestly Historiography in the Torah*, by Simeon Chavel, *Bulletin of Biblical Research (BBR)* 25 (2015): 557–58.

For the process of identifying Achan in Josh 7 see the process of identifying a thief in Deir El-Medina (McDowell, *Jurisdiction*, 109, 133). See also McDowell, *Jurisdiction*, 114 for how the overlap in areas of jurisdiction and power between oracle and *knbt*, the ‘secular court,’ has puzzled scholars. Within Exod 18 the differentiation between the ordinary court and the oracle was between הַדָּבָר הַגָּדוֹל (“major issues,” Exod 18:22) and הַדָּבָר הַקָּטָן (“difficult cases,” 18:26) on the one side, and הַדָּבָר הַקָּטָן (“the minor issues,” 18:22, 26) on the other. In Deut 17:8 the high court is consulted כִּי יִפְלֵא מִמֶּךָ דָּבָר (“if a case is too baffling [lit. ‘too wonderful’] for you,” Deut 17:8).

<sup>38</sup> Relevant for the case of Zelophehad’s daughters, see VerSteege, *Law in Ancient Egypt*, 105 for female ownership in Egypt. And for a female’s plea to receive her fair share of her father’s inheritance see McDowell, *Jurisdiction*, 135.

appears to call for additional oracular judgment. It may be that these four cases are mentioned exactly because of the oracular judgment involved.

The combination of reference to YHWH as a transcendent ground for Torah, the use of oracular judgment in ‘difficult’ cases, and lack of reference to Torah in the instructions to judges all mitigate against a legislative model for Torah.<sup>39</sup> It therefore seems warranted to conclude that Torah does not appear to fit the legislative model. Literalistic reuse is therefore not needed, as in a classic or modern court, where the law-book is quoted *verbatim* as the “exclusive source of the law.”<sup>40</sup> This accounts for the fluidity we find in legal reuse both within the Torah itself and in other passages of the HB. On the other hand, we often find a second and simultaneous phenomenon in the very same passages containing fluid legal reuse in HB that also needs to be accounted for, namely a significant amount of parallels in the form of lexemes, phrases, and concepts. We thus find combined both exact correspondence

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<sup>39</sup> LeFebvre sums up some questions that might be good to keep in mind when we approach our concrete cases: “Is it [the law citations in the biblical literature] being cited as legislation for social regulation? Is it being referenced as an eminent didactic guide? Or is it being held up as a ritual symbol? Furthermore, if cited in places as legislation, is that legislative use indication of an emerging approach to law or a long-standing practice?” (LeFebvre, *Collections, Codes, and Torah*, 50). LeFebvre also concludes: “At least these two point can be confidently accepted: (1) a legislative use of law writings cannot be demonstrated from the Hebrew literature; and, (2) non-legislative uses of law writings can be demonstrated from the Hebrew literature” (LeFebvre, *Collections, Codes, and Torah*, 38–39). And again: “A legislative use of law writing cannot be shown for ancient Israel. Non-legislative uses for law writings can” (LeFebvre, *Collections, Codes, and Torah*, 50). While Berman might be correct in claiming that both Torah and Greek law subordinate all public institutions to law (Berman, *Created Equal*, 62), a difference nevertheless seems to be that Torah is not the final legal reference. While the role of the oracle might not be as prominent in Deuteronomy as in Exodus–Numbers, even here YHWH is the transcendent reference of Torah (Deut 1:17; 16:18–20) and the prophetic privilege of being his spokesman is retained (Deut 18:15–22). The comparison between Torah and Greek law would need further refinement than what is possible here.

<sup>40</sup> Westbrook, “Origins of Legislation,” 74.

and creative freedom in proto-halakhic reuse in the HB.<sup>41</sup>

It is, of course, not only the instructive material of Torah that is reused, and neither is it only here that we find a more ‘fluid’ or creative reuse. We are used to finding free reuse of poetry and narrative. It could, therefore, be said that the real surprise is not finding fluid reuse of other genres, but that Torah, as well, appears to be reused more freely than we might expect. A comparable phenomenon may be the reuse of unfulfilled prophecies. Here we would certainly not expect fluidity in cases predictive of the future, but, rather, precise wording. Thus, reuse of legal material and prophecy can be compared, and, perhaps, they can mutually inform one another.<sup>42</sup> This, naturally, leads us to a discussion as to whether Torah is to be understood as immutable.

### The Immutability of Torah

The immediate question is how we should relate to the two claims mentioned above; namely, the normativity and the immutability of Torah. In the following section, “Torah as Normative Covenantal Instruction,” I will argue that Torah appears to be perceived as normative even though it is non-legislative in character. The claim of the immutability of Torah is more complex, and it will not be addressed in full here. The

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<sup>41</sup> I here borrow terminology from Rom-Shiloni, “Compositional Harmonization,” 938–39, who also acknowledging this dual phenomenon in legal reuse.

<sup>42</sup> Cf. Fishbane, “Revelation and Tradition,” 356–59. Cf. Felipe Masotti, “Oracular Reuse: Inner-Biblical Reuse of Oracles in Exilic and Post-Exilic Temple Eschatology” (Ph.D. diss., Andrews University, (forthcoming)). Greenberg discussed the phenomena of Ezekiel’s own reuse of his failed prophecies regarding Tyre (Moshe Greenberg, *Ezekiel 21–37: A New Translation with Introduction and Commentary*, AB 22A (New York: Doubleday, 1997), 616–18). See also Fishbane commenting on the same phenomena in Fishbane, *Biblical Interpretation in Ancient Israel*, 476–77. A difference here is that while several of the passages I am studying regarding legal reuse indicate that ordinary people should have read Torah in an expansionistic fashion, I know of no similar expectation regarding prophetic material. Here the elaborations are solely possible through divine revelation.

following case studies will, however, shed light on this question. In principle, it should be sufficient to demonstrate a revision of one instruction from Torah in order to falsify the claim of the immutability of Torah *in toto*. But strictly speaking, this would only show the mutability of the one particular instruction in question. The immutability of the rest of the corpus could still, theoretically, be maintained.

Levinson has argued that the formulations in Deut 4:2 and 13:1 imply that Deuteronomy closes itself ‘canonically’ and prohibits any further supplements or modifications. For him the “intent is to preclude both literary and doctrinal innovation by safeguarding the textual status quo.”<sup>43</sup> He explains that “the essence of a canon is that it be stable, self-sufficient, and delimited” and “biblical law is rhetorically constructed to be infallible and error free.”<sup>44</sup> According to him a dilemma arises between the fixity and sufficiency of the canon and later applications: “With such fixity and textual sufficiency as its hallmarks, how can a canon be made to address the varying needs of later generations of religious communities?”<sup>45</sup> Berman critiques Levinson at this point:

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<sup>43</sup> Levinson, *Legal Revision*, 14. See pp. 12–15. For Hittite analogies to Deut 4:2; 13:1, see Weeks, *Admission and Curse*, 78–79. Kaufmann pointed out that loyalty to the instructions and their ideas was essential, even if there was a freedom to modify them in new contexts: “Only the assumption then that by then the elements of the Torah has become fixed and hallowed is adequate to explain the reluctance of the compilers to revise and emend” (Kaufmann, *The Religion of Israel*, 210). Cf. pp. 171–72, 211 as well.

<sup>44</sup> Levinson, *Legal Revision*, 12, 46.

<sup>45</sup> Levinson, *Legal Revision*, 14. Cf. Michael Fishbane, “Varia Deuteronomica,” *ZAW* 84 (1972): 200. Carasik writes: “In the case of a code of law, the prohibition of addition or subtraction means that no new laws will ever be needed, and no current law will become obsolete. To be sure, wisdom will be needed to apply the laws to future situations that may arise: הָבֹר לָכֶם אֲנָשִׁים חֲכָמִים וְנֹבְנִים וְיָדְעִים, ‘Get yourselves wise, understanding, knowledgeable people’ (to serve as judges; Deut 1:13). But wise interpretation of existing law will always be sufficient: ‘I commanded you at that time all the things which you must do’ (Deut 1:18)” (Michael Carasik, *Theologies of the Mind in Biblical Israel*, Studies in Biblical Literature [StBibLit] 85 (New York: Peter Lang, 2006), 208). Cf. Alex P. Jassen, *Scripture and Law in the Dead Sea Scrolls* (New York: Cambridge University Press, 2014) showing how the prophets open the possibility of new instructions. Should this be seen as ‘new instruction’ or simple wisdom to apply the already existing instructions? In dialogue with Levinson, Sommer argues that a participatory model of revelation reduces

Levinson disavows viewing biblical law as legal codes. Yet Levinson ascribes to the authors of these legal texts a theology whereby the clauses of the law collections are immutable forms due to their divinity. Implicitly, then, Levinson is suggesting that the two codes [the Covenant Code and Deuteronomy] are mutually exclusive, which is to read into them statutory assumptions about the nature and authority of the texts at hand.<sup>46</sup>

We cannot simply assume that innovation was intended to be legal revision. It is well known that ancient authors intentionally inscribed themselves within a longer tradition; often reusing former revered texts and assigning themselves a more secondary role.<sup>47</sup> We, therefore, need to ask why the biblical authors chose innovation instead of exact correspondence. As will be argued in the following, some prophetic texts introduce innovations without any suggestion that the innovations should entail rejection of previous instruction. If we examine instances of legal revision, we must also question whether these should be understood in terms of continuity or discontinuity: as in, do new instructions supersede previous ones or appropriate former instruction in new settings?

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the otherwise posed tension between divine immutable revelation and human hermeneutics: “The emphasis of participatory theology on the human voice encourages us to realize that covenantal law always involves dialogue. The possibility that law may evolve—whether because new human voices enter the dialogue or because God corrects a misinterpretation of the divine will—is ever present. Further, the fact that the Bible frequently portrays God as changing God’s mind encourages considerable doubt as to whether law given by this deity really is unchanging” (Sommer, *Revelation and Authority*, 245).

<sup>46</sup> Berman, “The History of Legal Theory,” 31. Cf. also p. 32. Sommer writes: “The Pentateuch does not function as a prescriptive code, simply because a self-contradictory and incomplete legal anthology cannot so function” (Sommer, *Revelation and Authority*, 172). While the contradictions and limitations of Torah lead him to a non-legislative concept of Torah, he nevertheless accepts a source critical solution to the observed contradictions and limits of Torah.

It makes sense to see the prohibition against adding or changing in Deut 4:2 and 13:1, as a prohibition against changing *this very document*. Given that the book itself modifies Exodus–Numbers, and I here side with those seeing D as dependent on and reusing the other legal corpora in Torah, the book itself seems to invite future legal innovations. At the same time, the supplementation of the book—seen most clearly with the account of the death of Moses in Deut 34—raises the question how later redactors could feel entitled to such supplementation in the face of the prohibition in Deuteronomy itself against such redactional activity? Cf. Sonnet’s discussion of the book of Moses being redacted into and supplemented in the book of Deuteronomy (Sonnet, *The Book within the Book*).

<sup>47</sup> Cf. Harold Bloom, *The Anxiety of Influence: A Theory of Poetry* (Oxford: Oxford University Press, 1997).

But we should not simply assume that innovations are a sign of a need to be original in a modern sense. As already argued by others, comparing the textual fluidity of ANE treaties may shed light on similar fluidity in the Torah covenant, as both may be seen as part of a common legal tradition.<sup>48</sup>

For James Watts the repetition seen between the instructions in BC, HI, and D is typical of Torah's rhetoric insofar as it aids memorization and functions persuasively:

This depiction of Pentateuchal law in the form of a threefold (at least) repetition creates the impression of a unified Mosaic law and obscures the contradictions contained within it . . . . The rhetorical force of this large-scale repetitive structure thus motivates allegiance and obedience to the law while hiding but not harmonizing the different traditions that it contains.<sup>49</sup>

While adhering to a source critical division, Watts' suggestion of an intentional repetition and variation in the instructive material, as a mnemonic device, is here worth considering. He continues: "Repetitions of law in the Pentateuch frequently involve variation as well, ranging from differences in wording and alternative motive clauses to contradictory instructions and differences in punishments mandated for the same offense."<sup>50</sup>

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<sup>48</sup> Cf. Amnon Altman, *The Historical Prologue of the Hittite Vassal Treaties: An Inquiry into the Concepts of Hittite Interstate Law*, Bar-Ilan Studies in Near Eastern Languages and Culture (Ramat Gan: Bar-Ilan University, 2004); Weeks, *Admiration and Curse*; Joshua A. Berman, "Histories Twice Told: Deuteronomy 1–3 and the Hittite Treaty Prologue Tradition," *JBL* 132 (2013): 229–50; Berman, *Inconsistency in the Torah*, 81–103.

<sup>49</sup> Watts, *Reading Law*, 71. And again: "The juxtaposition of three major Hebrew codes in the Pentateuch displays a remarkable tolerance for legal ambiguity and change" (Watts, *Reading Law*, 136). But while the unified composition of the somewhat repetitive legal corpora "obscures the contradictions contained within it," it is also true that it highlights the variation and tensions.

<sup>50</sup> Watts, *Reading Law*, 73. He mentions the variations in the Sabbath commandments (Exod 20:11; 23:12; 31:13–17; Lev 19:3, 30; 26:2; Deut 5:15), reparations for theft (Exod 21:37–22:3; Lev 6:5), and the altar laws (Exod 20:24; Lev 17; Deut 12:13–15) as examples. On the following page, he criticizes the inadequate explanations in evolutionary models for the dual phenomena of repetitions and variations in the instructive material: "Developmental hypotheses, however, leave half the question unanswered: though they account for the origins of contradictions, they do not explain why such differences were acceptable to

Eckart Otto reflects on the quest for coherent texts, relevant for the treatment of legal variation, as follows:

Incoherencies in given texts have caused critical exegetes over the past three hundred years to look for coherent texts behind the given text, for consistent sources. Ultimately, however, they have had to admit that the sources of the documentary hypothesis are not at all coherent. Consequently, the source-division continued, and new sources such as J<sup>1</sup>, P, J<sup>S(Sondergut)</sup> and JE<sup>S</sup> were created. Source criticism became a *recursus ad infinitum*, because literary-critical reduction of the text hardly lead to basic texts of convincing coherence. . . . this was nothing more than modernization of the ancient allegorical interpretation of the Bible, which searched for a dogmatic truth behind the text.<sup>51</sup>

He is equally critical of both source critical approaches and traditional approaches, both insisting on presenting coherent texts. As a third alternative, he proposes seeing the legal tensions as authorially intended:

With this in mind, let us turn things around: if there are tensions on the level of language and contents in the given text, we should not simply try to dissolve these tensions by literary-critical means, by dismembering the text, by reconstructing a literary-historical diachrony of the text. Rather we should ask whether it could be that the ancient authors deliberately left tensions in the text, knowing exactly what they were doing, whether they deliberately did not smooth the text, which would have been easy for them to do, or whether they even deliberately and systematically brought tensions into the text.<sup>52</sup>

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the earliest hearers and readers of the Pentateuch. The latter problem requires that attention be paid to the literary and rhetorical conventions shaping contradictions in the law collections.” Cf. Eggleston, “*See and Read All These Words*”, 160.

<sup>51</sup> Eckart Otto, “A Hidden Truth Behind the Text or the Truth of the Text: At a Turning Point of Biblical Scholarship Two Hundred Years after De Wette’s *Dissertatio critico exegetica*,” in *Die Tora Studien Zum Pentateuch: Gesammelte Aufsätze*, BZABR 9 (Wiesbaden: Harrassowitz, 2009), 3. Again, he writes: “Historical-critical exegetes normally use tensions, contradictions and other inconsistencies in the given text as reason for reconstructing texts behind text, and it was the result of the Enlightenment that these texts behind the given text were interpreted diachronically as the historically real texts. The more indications of inconsistencies the given text shows, the more hands seem to have formed it, the deeper the literary history of the text is supposed to be diachronically. . . . This approach overlooks, however, the fact that the involvement of multiple hands in the formation of a text does not necessarily mean more incoherence of the final text – many hands tend to improve a text’s coherence, smoothing out the tensions and contradictions” (Otto, “A Hidden Truth Behind the Text,” 4).

<sup>52</sup> Otto, “A Hidden Truth Behind the Text,” 5. Cf. pp. 5–6 where he criticizes both the “literary-critical analysis” and the “unhistorical synchronic analysis.” Instead, he proposes “a third way of integrating diachrony and synchrony in the interpretation of a given text, and understand tensions and



For him the texts combine the synchronic and diachronic within themselves, lending “a hermeneutical transparency to the given text which tells the reader: *tua res agitur* [‘it concerns you’].”<sup>53</sup> To me, Otto’s suggested ethical dimension to literary dissimilitude in the HB raises several questions. Should we simply assume that our standard of literary coherence was the literary standard in the ancient world, and that if a text appears to lack coherence (as we would define ‘coherence’) that it must, by necessity, be identified as having been composed by different hands all driven by differing ideological commitments? Might it not also be possible that cognitive dissonance created by passages in the HB was, instead, part of an intentional ancient literary strategy? And if so, what might that strategy be? One possibility is that the authors were trying to confront the reader ethically by encouraging the reader to examine moral problems himself. It might also be the case that the ancient authors were simply not troubled by incongruities and dissimilitudes in the same way as we are? But it borders on arrogance to assume they were incapable of recognizing the various tensions and dissimilitudes that appear so glaring to us. I see no reason to accept the postulate that “the premodern reader of the final form of the text” was “constitutionally unable to become aware of the self-contradictions the text contains.”<sup>54</sup> A more likely scenario is that we have become blind

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inconsistencies as consciously and deliberately left in the text to enable the reader to realize that a given text functions on two levels—namely, at the time of narration, that is, at the time when the text was written down, and the narrated time, that is, in the Pentateuch, the time of Moses.”

<sup>53</sup> Otto, “A Hidden Truth Behind the Text,” 8.

<sup>54</sup> Sommer, *Revelation and Authority*, 74. Again, a further discussion would take us outside the present task. I will allow me just some few comments on Sommer’s argumentation. It is worth pondering why the Pentateuch in its final form “gives no indication that its laws need to be reconciled” (Sommer, *Revelation and Authority*, 224). Given that “Jewish thought is famously dialogical in nature” (Sommer, *Revelation and Authority*, 23), and that thinkers up until Rosenzweig, Heschel, and Sommer himself have

to certain literary techniques, because we insist upon on a concept of literary coherence that did not exist in ancient times? It follows that the more incoherence and dissimilitude we find—and here source criticism has helped to point these out—the more pressing the questions becomes, as the phenomenon of literary tension and dissimilitude seem rather pervasive in the HB. The possibility also exists that the rough voyage the texts often gives us, with undercurrents, waves, and shifting winds, was actually a necessary function of a literary strategy intended to stimulate moral reflection on the part of the reader. If this is the case, it follows that we should not force the texts into calm and smooth waters, either through speculative source criticism or extra-textual harmonizations in a doomed quest to find coherence and harmony behind all the apparent or real incongruities and tensions we find in the text. Maybe the dire straits of the texts not only speak *tua res agitur*, but also functions as a test in order to help us to determine the ethical posture of our heart (לְנִסְתֶּךָ לְדַעַת אֶת־אֲשֶׁר בְּלִבְכֶּךָ, Deut 8:2) as readers? Suffice it to say that what comes across to us as a primitive inability to achieve textual coherence,

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been able to think in such a dialogical manner, why is it that only the original authors and original readers are excluded from such good company? Why do we need to postulate that “the premodern reader of the final form of the text” was “constitutionally unable to become aware of the self-contradictions the text contains” (Sommer, *Revelation and Authority*, 74)? Premodern readers in the Middle Ages including the rabbinic authors of the period, and even biblical authors themselves clearly saw tensions or ‘dialogical elements’ in the Pentateuch in need of serious attention, even if they did not separate them into different sources as modern readers do. Plato’s dialogues and Kierkegaard’s dialectics are well-known examples of authors being able to write in a dialogical fashion. May it not be that dialogical thinking is to be seen already in “the most ancient Jewish understandings of revelation and the law” (Sommer, *Revelation and Authority*, 120)? Might it be that the Pentateuchal texts were written in a form to create a dialogue, in which we as readers are drawn into it by this very intriguing material? The sheer number of readers the Bible has had through the ages up until now is profound testimony of its effectiveness to create dialogue. See my own review of *Revelation and Authority: Sinai in Jewish Scripture and Tradition*, by Benjamin D. Sommer, *BBR* 26 (2016): 381–83. Cf. Shalom Carmy, “Concepts of Scripture in Mordechai Breuer,” in *Jewish Concepts of Scripture: A Comparative Introduction*, ed. Benjamin Sommer (New York: New York University Press, 2012), 267–79. This said, I am aware that I am vacillating between explaining the phenomena as if the ancients thought differently about contradiction than us, or whether they were not as concerned about it as us. This needs further study.

or a lamentable failure on the part of the biblical authors to recognize obvious discrepancies would probably have been perceived very differently by the ancient authors simply because they had different literary models and rhetorical aims than we do. We should not automatically assume that they should have held to our literary norms.<sup>55</sup>

Before proceeding, let me specify once more that while it is common to speak of ‘legal discrepancy’ or ‘apparent legal discrepancy’ between the different instructions in Torah, the first postulates an actual discord between the legal corpora of Torah while the second postulates that behind its appearance there is a likely accord. In order to suspend such judgments of the textual material, acknowledging the limitations of our understanding, I rather prefer more neutral phenomenological descriptions like legal ‘dissimilarity,’ ‘dissimilitude,’ ‘differences,’ ‘diversity,’ ‘variation,’ ‘inconsistency,’ and ‘tension.’ These terms seem to help us describe different aspects of a recurring phenomenon in the HB, allowing, as well, for a more nuanced description of the variations between cases, and the perspectives we decide to adopt with each case.

Rendsburg has also recently discussed the phenomena of polyproposton, or repetition with variation, as he calls it.<sup>56</sup> While focusing on phraseological variation in

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<sup>55</sup> For the classic discussion of the principle of non-contradiction in occidental thought, see Aristotle, “Metaphysics,” Book IV, 1584–99. For a more recent discussion, see Graham Priest et al., eds., *The Law of Non-Contradiction: New Philosophical Essays* (Oxford: Oxford University Press, 2004).

<sup>56</sup> In Paul Delnero’s extensive study of variation in Sumerian compositions, with particular focus upon the Decad collection, he writes: “Many of the literary works that were composed in Sumerian are known primarily from copies that were produced during the Old Babylonian Period (ca. 1900–1700 B.C.E.). The copies of these compositions, which, with few exceptions, have typically survived in an average of ten to fifty, but in some instances, as many as 200 duplicates, rarely, if ever, contain completely identical versions of the same text” (Paul Delnero, “Variation in Sumerian Literary Compositions: A Case Study Based on the Decad” (Ph.D. diss., University of Pennsylvania, 2006), v).

Torah, his study exposes a literary strategy of intentional variation that might also help us understand semantic variation and dissimilitude between the legal corpora in Torah and reuse of normative texts between Torah and the Prophets. He notes that this type of study has received only scant attention in scholarship: “Of the various literary devices that have been identified by scholars of ancient Near Eastern literature, the least recognized, it appears to me, is the technique of polyprosopon, or repetition with variation.”<sup>57</sup> Knut Heim studied variant repetition in the book of Proverbs. According to him, “*The creative combination of repetition with variation is the very essence of Hebrew poetry.*”<sup>58</sup> This raises the question whether repetition with variation is also the norm in Hebrew prose, specifically in proto-halakhic reuse in the HB. Rendsburg confirms such a suspicion: “The norm in all these texts, as elsewhere in the Bible, is not to repeat the wording or phraseology in verbatim fashion but to modify the language in some minor way. To my mind, this procedure alters the very nature of the text, transforming what could have been

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<sup>57</sup> Gary A. Rendsburg, “Repetition with Variation in Legal-Cultic Texts of the Torah,” in *Marbeh Hokmah: Studies in the Bible and the Ancient Near East in Loving Memory of Victor Avigdor Hurowitz*, eds. S. Yona et al. (Winona Lake, IN: Eisenbrauns, 2015), 436. Among others he mentions the following studies as having addressed the issue: Hurowitz, *Inu Anum širum: Literary Structures in the Non-Judicial Sections of Codex Hammurabi*; Shamir Yona, “Repetition and Variation in Biblical Texts,” *UF* 37 (2005): 729–40; Scott B. Noegel and Gary A. Rendsburg, *Solomon's Vineyard: Literary and Linguistic Studies in the Song of Songs*, SBL Ancient Israel and Its Literature (Atlanta: SBL, 2009); Knut Heim, *Poetic Imagination in Proverbs: Variant Repetitions and the Nature of Poetry*, ed. Richard S. Hess. BBRSup 4 (Winona Lake, IN: Eisenbrauns, 2012); Gary A. Rendsburg, “Variation in Biblical Hebrew Prose and Poetry,” in *Built in Wisdom, Established by Understanding: Essays on Biblical and Near Eastern Literature in Honor of Adele Berlin*, ed. Maxine L. Grossman (Bethesda, MD: University Press of Maryland, 2013), 197–226. On the morphological level, see Robert J. Ratner, “Morphological Variation in Biblical Hebrew Rhetoric,” *Maarav* 8 (1992): 143–59; Jaakov Levi, *Die Inkongruenz im biblischen Hebräisch* (Wiesbaden: Harrassowitz, 1987).

<sup>58</sup> Heim, *Poetic Imagination in Proverbs*, 636. Italics original. It is here tempting to draw the analogy with variation over a theme in classical music. Cf. David M. Carr, *The Formation of the Hebrew Bible: A New Reconstruction* (Oxford: Oxford University Press, 2011), 29–31.

a dry and laborious composition into a creative and imaginative literary product.”<sup>59</sup> And he sums up: “Our modern bias might suggest that legal writing (or legal-cultic writing) should be dry, cumbrous, and ponderous, with little or no literary creativity. In the case of ancient Near Eastern legal texts, however, the scribes/authors responsible for these compositions strove just as much as their colleagues responsible for belletristic material (myths, epics, narratives, etc.) to imbue their writing with literary flair.”<sup>60</sup> While Rendsburg argues that there might be a literary artistic intention behind phraseological variation,<sup>61</sup> I will argue that there may also be an ethical thrust behind semantic variation

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<sup>59</sup> Rendsburg, “Repetition with Variation,” 437.

<sup>60</sup> Rendsburg, “Repetition with Variation,” 463.

<sup>61</sup> Rendsburg explains the phenomena as virtuosic display (“the author jumbles the material to allow for the reader's admiration of his literary flair” [Rendsburg, “Repetition with Variation,” 445]) or to create an aesthetically appealing text robbed of tiresome monotonous repetition (“all in the interest of keeping the mind alert in the continual play of author → text → reader/ performer → listener/audience” [Rendsburg, “Repetition with Variation,” 450]). He even emphasizing the aesthetic oral appeal of phraseological variation (“served to create a composition characterized by the ebbs and flows of the written word in order to allow for maximum enjoyment at the oral/aural level” [Rendsburg, “Repetition with Variation,” 461]). He finds the phenomena to be omnipresent (“the author deliberately introduces variation at every level” [Rendsburg, “Repetition with Variation,” 447]), introduced “whenever possible” (Rendsburg, “Repetition with Variation,” 448). Contrary to source critical approaches seeing the signs of interpolations and multiple redactors in variation, Rendsburg even suggests that the repetition with variation between Lev 11 and Deut 14 might indicate an intentional reuse or unified redaction of the Pentateuch, where the author altered the material “so as not to repeat his source material verbatim” and “to ensure that repeated information did not reprise in verbatim fashion” (Rendsburg, “Repetition with Variation,” 459). Cf. pp. 443, 453, 458–59. Cassuto also explains the repetition with variation in prose as an artistic attempt to make the text more readable. In contrast to the audible effect of such variation upon the listener, as Rendsburg argues, Cassuto explains it in terms of the effect upon the reader: “Mostly, when the subject is not so technical, as in the case of the construction of the Tabernacle (Ex. 25–31, 35–40), or the offerings of the leaders (Num. 7:12–83), and it does not require meticulous exactitude of details, the repetitions in prose are not identical—word for word. Prose is intended to be read rather than to be heard, and the reader is not as keen as the listener on the repetition of words that he already knows by heart. On the contrary, the recurrence of the *ipsissima verba* may at times be a burden to him. Hence prose likes, artistically, to vary the expressions, or to abridge them, or to change their order, when it repeats any subject” (Umberto Cassuto, “Biblical and Canaanite Literature,” in *Biblical and Oriental Studies* (Jerusalem: Magnes Press, 1975), 2:31. Cf. pp. 29–32). See also Robert Gordis, “Quotations as a Literary Usage in Biblical, Oriental, and Rabbinic Literature,” *HUCA* 22 (1949): 157–219. For other relevant studies for the discussions of repetition in biblical narrative see Gordis, “Quotations as a Literary Usage in Biblical, Oriental, and Rabbinic Literature,” 157–219; Jerrold S. Cooper, “Symmetry and Repetition in Akkadian Narrative,” *Journal of American Oriental Society* 97, no. 4 (1977): 508–12; Yair Hoffmann,

that may inform what has been described as the artistic reuse of normative texts.<sup>62</sup>

Whether the author introduces legal variation in order to raise halakhic issues in a dialectical manner,<sup>63</sup> or variation becomes halachic because the passage itself in which it is embedded is already halachically tuned,<sup>64</sup> is a question that needs to be studied further.

In other words, while the phenomena of repetition with variation can be explained in various ways, how should it be understood within a halachic passage?

In his study of quoted direct speech George Savran finds that “in the narrative sections from Genesis through 2 Kings there are 97 occasions in which a character quotes one or more prior speeches . . . . Of these 97 instances 70 contain verifiable quotations and 31 have unverifiable quotations.”<sup>65</sup> Among these verifiable quotations he finds that the normal is repetition with variation: “As with other types of repetition in the Bible, verbatim repetition of the original speech, with no omissions or additions whatsoever, is an infrequent occurrence. There are only ten instances of this type of quoted direct

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“Between Conventionality and Stategy: On Repetition in Biblical Narrative (Hebrew),” *ha-Sifrut* 28 (1979): 89–99; Meir Sternberg, *The Poetics of Biblical Narrative: Ideological Literature and the Drama of Reading* (Bloomington, IN: Indiana University Press, 1985), 365–440; Robert Alter, *The Art of Biblical Narrative* (New York: Basic Books, 2011), 111–41; Delnero, “Variation in Sumerian Literary Compositions.”

<sup>62</sup> For a survey of the discussion whether phraseology can be changed without changing semantics, or whether the two are inseparable, see Savran, *Telling and Retelling*, 1–5.

<sup>63</sup> For the apparently intentional dialectical case of Prov 26:4–5 see Carr, *Formation of the Hebrew Bible*, 32–33.

<sup>64</sup> Rendsburg’s aesthetic explanation of repetition with variation raises the question whether it is neither the concept of Torah or memorized reuse, but an intentional literary artistry that created the variation also on the content level, even the dissimilarity between the legal corpora on the content-level? Is it reasonable to see aesthetics alone as trumping the coherence of the text? If so, we should be careful in interpreting legal variation in ethical rather than aesthetical terms.

<sup>65</sup> Savran, *Telling and Retelling*, 19. Cf. p. 16.

speech: Gen. 20:5; 26:9; 38:22; 44:25; Ex. 32:8; 1 Sam. 21:12; 29:5; 1 Kg. 18:11, 14; 22:18. Each of these discourses is very short (from two to seven words), increasing the statistical probability of literal repetition.”<sup>66</sup> He finds that

the overwhelming tendency of the narrator is to abridge the material repeated in quoted direct speech. . . . Given the almost normative occurrence of shortening in quoted direct speech, it can be difficult to determine whether or not the omission of certain details in quoted repetition is rhetorically significant. . . . These cases, and others like them, demonstrate the absence of any “automatic” connection between shortened quoted direct speech and simple stylistic convention on the one hand, and deliberate change in meaning on the other. . . . the context of the quotation in the story must be the final arbiter.<sup>67</sup>

According to Savran, the most frequent variation in narrative quoted direct speech is paraphrastic as found both in shortening and lengthening passages.<sup>68</sup> Again, there is no necessary correlation between phraseological and semantic change: “A certain amount of paraphrase is to be expected in quotations, but there is no absolute correlation between the type and extent of the paraphrase and any change in meaning of the quoted words. One must therefore examine not only the words with which a speaker quotes his source, but also the context, the tone of voice, and the purpose of the repetition.”<sup>69</sup> He also makes

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<sup>66</sup> Savran, *Telling and Retelling*, 29. Cf. p. 20.

<sup>67</sup> Savran, *Telling and Retelling*, 29, 31–32. Savran writes that it is not justified to assume that the limited cases of lengthened quoted direct speeches necessarily imply a change in meaning. For him “it is the context of the quotation that is the ultimate basis of such determinations” (Savran, *Telling and Retelling*, 33).

<sup>68</sup> The variations “range from the simplest kind of morphological variations in verbal forms, to the interchange of synonymous words and phrases, to complete changes in language and syntax” (Savran, *Telling and Retelling*, 33).

<sup>69</sup> Savran, *Telling and Retelling*, 35. Again he writes: “In terms of change in repetition, both conciseness and variation in language are high priorities in quoted direct speech. Quotations rarely appear in a form identical to their source, or with substantial additions tacked on by the quoter. But the significance of these changes (and the significance of verbatim repetition) can be assessed only in light of the context in which the quotation is placed” (Savran, *Telling and Retelling*, 36). Sternberg concludes on the same note: “It follows that the bearing and effect of variation can be determined only in context. This rule holds even for verbatim *via-à-vis* frankly

the interesting observation that even if quoted, direct speech normally contains variations from the source, “no character ever protests that he has been quoted incorrectly, even when his earlier words are repeated directly to him.”<sup>70</sup> This seriously questions the common assumption in present biblical scholarship that the slightest variation (in reuse) has major ideological, sociological, and/or source critical implications. Even if repetition with variation is “not necessarily fraught with the theological significance it has in legal and prophetic texts,” Savran nevertheless sees an analogy in this phenomenon between narrative, prophetic, and legal texts.<sup>71</sup> Sternberg lists the following forms of repetition with variation in biblical narratives: (1) expansion or addition, (2) truncation or ellipsis, (3) change of order, (4) grammatical transformation, and (5) substitution.<sup>72</sup> These phenomena do not seem unique to biblical narrative, but will be observed in the cases to be studied in the following chapter.

Rom-Shiloni uncovers the dual phenomena of exact and creative legal reuse in Jeremiah; this is relevant, as well, for the question of legal reuse in the HB in general.

She writes:

Two features of this rhetorical/literary technique within the book of Jeremiah (and prophecy in general) deserve special attention: the thoughtful *intentionality* behind

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deviant repetition” (Sternberg, *The Poetics of Biblical Narrative*, 393).

<sup>70</sup> Savran, *Telling and Retelling*, 75. And a little later: “It is probable that the character himself is aware of the change introduced by the quotation, that these characterizations exist both on the level of story (the character’s intention) and on the level of discourse” (Savran, *Telling and Retelling*, 80-81).

<sup>71</sup> Savran, *Telling and Retelling*, 112. Cf. p. 114 where he shows that there is clear overlap between quoted direct speech in narrative and legal material, in for example Deut 5:6–18 (Moses’ rehearsal of the Decalogue); 17:16; 18:16–20; 19:7. Carr sees “a certain magic attached in scriptural contexts to finding meaning in every non-understood variation of a line or saying” (Carr, *Formation of the Hebrew Bible*, 33).

<sup>72</sup> Sternberg, *The Poetics of Biblical Narrative*, 391–92.



the harmonizations and the prophet's *freedom* in creating harmonizations in what appear oftentimes to be virtuosic ways. The prophet clearly feels completely free to create these wordplays and thematic combinations purely to suit the context of his prophecy. Jeremiah utilizes these national narrative and legal traditions interpretively, in the most creative ways – making use of analogy, expansion, transformation, reversal, and many other techniques – to tap this treasury of traditions for his own message.<sup>73</sup>

And again, “the prophet pursues the double (and not easily cooperative) aims of preserving authoritative earlier traditions while creating new prophetic messages.”<sup>74</sup>

By way of summary, thus far, we can say that repetition with variation is regularly observed in various texts in the HB ranging from narrative and lyric to legal and prophetic texts. While such variation appears to be a widespread and common phenomenon in the HB, we should ask ourselves why such variation has become offensive to our modern critical sensibilities, and, also, to what extent we are entitled to insist upon modern standards of literary coherence as a critical basis for evaluating the relative quality of ancient texts? Might not our habit of imposing the literary norms of

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<sup>73</sup> Rom-Shiloni, “Compositional Harmonization,” 939. This dual phenomenon has also been pointed out by Watts, *Reading Law*, 11, 68–84. Watts claims that YHWH himself is presented in the Torah as the one initiating the tradition of interpretation and revision of his own laws, referring to the four legal cases in Torah in Lev 24:10–23; Num 9:6–14; 15:32–36; 27:1–11. He writes: “These cases not only illustrate the development of Israelite legal traditions. They also cast God as the principal instigator of change within law. In addition to giving the laws in the first place, YHWH reacts to new circumstances by enunciating underlying judicial principles, defining the scope of the law’s jurisdiction, developing alternative means for compliance, and expanding enfranchisement. Thus God establishes not only the laws but also the process of legal development. These case laws characterize YHWH as judge, legal interpreter and legal reformer, as well as law-giver” (Watts, *Reading Law*, 104–5). He writes: “Moses in Deuteronomy, like YHWH in Exodus–Numbers, gives voice to changing and incommensurate legal traditions. Contradiction in Pentateuchal law does not pose a conflict between YHWH and Moses so much as it authorizes legal change as a natural part of Torah” (Watts, *Reading Law*, 119). For the divine-human revision of laws see pp. 105–7, 118–21. For repetition with variation presented in Moses’ voice, in a human voice, in Deuteronomy see Sonnet, *The Book within the Book*, 47. For the iterative phenomena in biblical narrative see Sonnet, *The Book within the Book*, 199–200.

<sup>74</sup> Rom-Shiloni, “Compositional Harmonization,” 939. Cf. Konrad Schmid, *Schriftgelehrte Traditionsliteratur: Fallstudien zur innerbiblischen Schriftauslegung im Alten Testament* (Tübingen: Mohr Siebeck, 2011). For lack of correspondence also in ritual literature see Catherine Bell, *Ritual Theory, Ritual Practice* (Oxford: Oxford University Press, 2010), 137–40.

modernity on ancient texts expose us as severely restricted in terms of our ability to comprehend and, ultimately, interpret ancient literary texts? Does not this possibility test the modern reader's willingness to consider the extent to which we are willing and able to see and listen to the ancient texts, as opposed to merely insisting that they conform to our standards with the result that we end up with little more than a mass of mis-conjecture and baseless theory?<sup>75</sup>

Related here is the question of how texts were seen as authoritative in ancient times. Pakkala has challenged the assumption that the authoritative status of a text should be seen as equal to its unchangeability: "It is possible that the authoritativeness of texts has some correlation with the changes made to them. However, this correlation cannot be assumed to inevitably mean that authoritative equals unchangeable—whether this means additions, rewriting or omissions. It is possible that in some stages of its transmission a text remained authoritative precisely because it was changed."<sup>76</sup> Stackert helpfully distinguishes between two modes of conceptualizing textual authority. He writes that

it is important to contrast redaction/canonization with divine revelation as claims to textual authority. Specifically, the locus of authority differs between these two modes

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<sup>75</sup> Cf. Latin *conjectūra*, 'inferring, reasoning,' with 'conjecture' used for forming an opinion or theory without sufficient evidence and Greek *θεωρία*, 'a looking at, viewing, beholding.'

<sup>76</sup> Pakkala, *God's Word Omitted*, 86. Pakkala himself, however, seems to make the same assumption even when he is criticizing it (e.g. Pakkala, *God's Word Omitted*, 144, 363). See also pp. 19, 55–57, 73, 78, 89–90, 118–19, 121–22, 133, 362 for discussions on the stability and fluidity of the sources. Fishbane appears to be correct in pointing out a transition from inquiring God directly via oracle to "the post-deuteronomic development of the notion of scripture as a religious entity, mediating between God and man through its faithful study" (Fishbane, "Revelation and Tradition," 350. Cf. pp. 343, 359–60), even if as observed above this shift might be testified already in Deuteronomy itself. This transition can be studied through the semantic change of the verb *שׂרר* between CBH and LBH (Kenneth Bergland, "Interpretation of the Written: The Change of the Semantic Field of *שׂרר* and Appearance of *שׂרר*", 1–19). For how authorship was significant in the ANE only to authorize a text, cf. Karel van der Toorn, *Scribal Culture and the Making of the Hebrew Bible* (Cambridge, MA: Harvard University Press, 2007), 27; Eggleston, "See and Read All These Words", 66, 104.

of legitimation. In the case of divine revelation, the claim of authority is internal to the text itself: the very words of the deity are contained in that text. By contrast, the authority of canon is external to the texts canonized: it is not the text's own claim but rather a secondary authorization that legitimizes such a text.<sup>77</sup>

In my view, it seems clear that both in the Torah and the Prophets the claim to textual authority resides in the claim to contain divine revelation, not a claim of extrinsic canonicity, as described by Stackert.<sup>78</sup> This problematizes a canonical approach to inner-biblical reuse. Again and again we are reminded that they are the words of YHWH.<sup>79</sup> In

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<sup>77</sup> Stackert, *Rewriting the Torah*, 215. Ulrich's definition of 'an authoritative work' is clarifying: "An authoritative work is a writing which a group, secular or religious, recognizes and accepts as determinative for its conduct, and as of a higher order than can be overridden by the power or will of the group or any member. A constitution or law code would be an example" (Eugene Ulrich, "The Notion and Definition of Canon," in *The Canon Debate*, eds. Lee Martin McDonald and James A. Sanders (Peabody, MA: Hendrickson, 2002), 29). Cf. Carasik, *Theologies of the Mind*, 59–60; Jassen, *Scripture and Law*, 5–7, 41–67.

<sup>78</sup> For a critique of the commonly accepted idea of the authority of the HB as resting on extrinsic canonicity where the canon as a closed literary corpus gives canonical authority by the community and conceding a decisive role to the human and communal decision, and how this "fails to do justice to the character and claims of the Old Testament as word of God", see Meredith G. Kline, *The Structure of Biblical Authority* (Eugene, OR: Wipf and Stock, 1997), 23 and the following discussion. For an argument for an intrinsic canon approach see John C. Peckham, *Canonical Theology: The Biblical Canon, Sola Scriptura, and Theological Method* (Grand Rapids, MI: Eerdmans, 2016). While I agree with David Aaron in that the divine voice held a prime authority and that 'canonicity' in the sense of a closed corpus recognized by a community as such was a late invention, he does not seem to be precise or clear when reducing all textual authority to the concept of canon itself: "In Tanakh, there is never an appeal to the logic or perspective of some independent authoritative text. Indeed, the only authority depicted as in any sense external to the narrative is the divine voice. The concept of a canon, a set of privileged documents, must, by definition, postdate the biblical documents themselves. While it is commonly accepted that numerous passages reflect cognizance of earlier documents, either by emending them or by adopting them, no single passage ever attempts to interpret a historical phenomenon, or some idea in the abstract, by harmonizing some authoritative writ with reason" (David H. Aaron, *Biblical Ambiguities: Metaphor, Semantics, and Divine Imagery* (Leiden: Brill, 2002), 19). First of all, we should distinguish between the authority perceived to reside in a text as God's words on the one side, and the stabilization of a textual corpus and the authority attributed to a document in the reception history as an extrinsic canonization. It is the latter that should be understood as canon recognition. Aaron does not seem to adequately differentiate between the two. Further, as I will try to demonstrate in the following, there are several cases in the HB where we find a type of reuse indicating a perceived authority to reside in the source text, but not reflecting an attitude where the source text needs to be reproduced unaltered. And finally, the borrowing text may attempt to reconcile a perceived authoritative text with a historical situation, thus altering the authoritative source text in the process.

<sup>79</sup> Even if the book of Deuteronomy is couched in the words of Moses, the book presents the instructions as having originally been given by YHWH himself (Deut 1:3; 4:5, 14; 6:1, 17, 25; 10:13). Does Deut 4:14: *לְלַמֵּד אֶתְכֶם הַקְּיָיִם וְהַמִּשְׁפָּטִים* ("to teach you regulations and rulings") mean that Moses did not necessarily receive all the *הַקְּיָיִם וְהַמִּשְׁפָּטִים* ("regulations and rulings") directly from God, but that God gave

the narrative setting Moses wrote Torah over a 40 year period (beginning in Exod 24 and lasting until Deut 31/32), while divine revelation is presented as continuing all along this period. In a synchronic reading, YHWH is therefore seen as having supplemented and modified previous instructions, introducing some of the variation we now find between the legal corpora. The words in our passages are ultimately claimed to be the words of YHWH. And as is the case with reuse within Torah, so, also, with reuse between Torah and the Prophets; YHWH is claimed to reuse his own instructions. The initial giving of the instructions and their reuse are thus presented as having the same reference, namely YHWH. Fishbane's questions should here be kept in mind:

What would revelation have meant to the tradents, redrafters, or reformulators of older laws—that is, those who adjusted legal revelations to new ends? Is the projection of an incipient belief in the plenitude of meanings of a revelation, or the fluidity of context of diverse revelations, valid for this early stage of biblical exegesis? If so, then the exegete would have understood his task as one which merely unpacks that which is latent, or recombines that which is manifest, in 'Scripture'.<sup>80</sup>

However we read the reference to YHWH as the speaker and re-reader, if we allow that

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him a certain freedom to elaborate on the Ten Words? But then we have 4:5: רָאָה לַמִּדְבָּרִי אֶת־כֶּם הָקִים יְהוָה לַעֲשׂוֹת וּמִשְׁפָּטִים כְּאֲשֶׁר צִוֵּנִי יְהוָה אֱלֹהֵי לַעֲשׂוֹת (“See, I have taught you regulations and rulings, as YHWH my God commanded me to do”). The question is if רָאָה לַמִּדְבָּרִי אֶת־כֶּם הָקִים יְהוָה לַעֲשׂוֹת (“as YHWH my God commanded me to do”) should be understood as a command to teach וּמִשְׁפָּטִים וּמִקִּיָּם, rather than passing on וּמִשְׁפָּטִים that he had received from YHWH. For a further discussion see Nicholas Wolterstorff, *Divine Discourse: Philosophical Reflections on the Claim that God Speaks* (Cambridge: Cambridge University Press, 1995); Christine Hayes, *What's Divine about Divine Law? Early Perspectives* (Princeton: Princeton University Press, 2015). Levinson argues that the claim to be rooted in revelation, the “origin myth” as he calls it, “diverges from other ancient legal systems” (Levinson, “The First Constitution,” 1858). And again: “Israelite authors were well tutored in the topical and formal conventions of cuneiform law. They drew upon the Mesopotamian concept of a royal propounder of law but also radically transformed it in light of their own cultural and religious priorities. They transformed precedent by making the royal legislator of biblical law the nation’s divine monarch, Yahweh . . . The scribes responsible for the *Laws of Hammurabi* are equally concerned to account for the origins of the laws themselves. The scribes locate the laws not in cosmic history but in human history as the *ipsissima verba* of Hammurabi himself” (Levinson, “The First Constitution,” 1863–65). If we suspend judgment on the veracity of the claim to be based on divine revelation, at least it should be clear that this is the claim set forth by the textual material here under study.

<sup>80</sup> Fishbane, “Revelation and Tradition,” 360.

later tradents introduced variations and modifications, there seems to be no good reason to deny a similar literary strategy to the original authors.

The question of the immutability of Torah is further interlinked with the question of the mutability/immutability of YHWH himself.<sup>81</sup> Benjamin Sommer's statement is worthy of reflection: "The emphasis of participatory theology on the human voice encourages us to realize that covenantal law always involves dialogue. The possibility that law may evolve—whether because new human voices enter the dialogue or because God corrects a misinterpretation of the divine will—is ever present."<sup>82</sup> This brings us to the discussion of how to characterize Torah itself. I will argue that it should be understood as the covenantal instructions of dynamic YHWH to his dynamic people, creating a dynamic covenant adaptable to various circumstances and settings.

### Torah as Normative Covenantal Instruction

Above I argued that the evidence seems to corroborate a non-legislative model for Torah. Further, I briefly considered the immutability claim while leaving much of the matter unexamined, given the stated aims of this present study. In what follows, I will discuss the normative model for Torah. I will argue that Torah may best be understood as

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<sup>81</sup> For a critique of the concept of God as utterly immutable and timeless see Fernando Luis Canale, *A Criticism of Theological Reason: Time and Timelessness as Primordial Presuppositions*, Andrews University Seminary Doctoral Dissertation Series 10 (Berrien Springs, MI: Andrews University Press, 1987). For responses and discussions of Canale's argument for a temporal conception of God in contrast to the timeless conception, see Tiago Arrais et al., eds., *Scripture and Philosophy: Essays Honoring the Work and Vision of Fernando Luis Canale* (Berrien Springs, MI: ATS, 2016).

<sup>82</sup> Sommer, *Revelation and Authority*, 245. He continues: "Further, the fact that the Bible frequently portrays God as changing God's mind encourages considerable doubt as to whether law given by this deity really is unchanging." I am, however, not convinced this observation necessarily leads us to the conclusion of the mutability of Torah.

‘covenantal instruction,’ thus implying that Torah had a normative function in the passages under study. The lexeme *בְּרִית* (‘covenant’) is used in Exodus—Deuteronomy for a verbally explicated exclusive binding relation to exist between YHWH and his people Israel, represented either through their forefathers Abraham, Isaac, and Jacob or as a collective people.<sup>83</sup>

The reason it is important to establish the concept of covenantal instruction in a discussion of reuse is that it helps understand why we find the phenomena of legal reuse within Torah and the HB.<sup>84</sup> If only custom was seen as normative, it is less clear why we find literary legal reuse. If the Torah-instructions were not invested with some kind of normativity it is not clear why we find such significant parallels between the legal corpora within Torah, and later biblical authors. In other words, a non-legislative characterization helps us understand why legal reuse within Torah and the HB might be more fluid, innovative, and contradictory than what we are used to in classical and modern legal thought. On the other hand, the concept of covenantal instruction helps us understand why we, nevertheless, find significant literary reuse between the legal corpora within Torah, as well as between Torah and the Prophets. In what follows, I will focus on some observations of shared features by BC, HI, and D that support seeing them as covenantal instructions, and thus normative. I will attempt to duly note both similarities

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<sup>83</sup> The lexeme *בְּרִית* is attested in Exod 2:24; 6:4-5; 19:5; 23:32; 24:7-8; 31:16; 34:10, 12, 15, 27-28; Lev 2:13; 24:8; 26:9, 15, 25, 42, 44-45; Num 10:33; 14:44; 18:19; 25:12-13; Deut 4:13, 23, 31; 5:2-3; 7:2, 9, 12; 8:18; 9:9, 11, 15; 10:8; 17:2; 28:69; 29:8, 11, 13, 20, 24; 31:9, 16, 20, 25-26; 33:9.

<sup>84</sup> My approach contrasts with Wellhausen’s claim that a covenant concept was a rather late invention in the history of religion in Israel (Wellhausen, *Prolegomena*, 417-19). As mentioned other places in this study, Mendenhall, Kitchen, and Weeks have shown that to covenant-concepts finds ancient analogies. Dating texts late based on the presence of the covenant-concept is not warranted. Cf. C. J. Bredekamp, “The Covenant and the Early Prophets,” *The Old Testament Student* 4, no. 3 (1884): 123.

and differences significant for the present study. The intention is not to be exhaustive or comprehensive, but simply give some reasons why it seems best to characterize Torah as ‘covenantal instruction.’ And instead of separating out distinct points, and thus making a long list of points, I have rather tried to collect them together under main thematic headings.

First, Torah intervenes and modifies custom, and does not simply reflect and describe it. It amends, opposes, and confirms existing legal traditions according to Cassuto.<sup>85</sup> Torah can therefore not be seen as simply reflecting ‘common law.’ While archaeology can shed some light,<sup>86</sup> a challenge we have is that Torah itself is basically the only source we have for establishing the custom of its time. When speaking of modifying custom, it therefore has to be either on the basis of the internal evidence in Torah itself or on the basis of comparative material with other ANE cultures. The former depends on a degree of trust in the reliability of the biblical material itself, while the latter can necessarily only constitute indirect evidence.

As mentioned earlier, the text presents YHWH as the primary source for Torah, not custom. This contrasts with ANE laws where “the final source of the law, the ideal with which the law had to conform was above the gods as well as men,” while in Torah “God is not merely the custodian of justice or the dispenser of ‘truths’ to man, he is the

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<sup>85</sup> Cassuto, *A Commentary on the Book of Exodus*, 262–64. Cf. Fitzpatrick-McKinley, *The Transformation of Torah*, 117–41. The claim by van der Toorn, that the Israelite moral code “remained materially co-terminous with the moral views held by neighbouring civilizations,” might therefore need more refinement (van der Toorn, *Sin and Sanction*, 39).

<sup>86</sup> E.g. Philip J. King and Lawrence E. Stager, *Life in Biblical Israel*, Library of Ancient Israel (LAI) (Louisville, KY: Westminster John Knox, 2002); William Dever, *The Lives of Ordinary People in Ancient Israel: When Archaeology and the Bible Intersect* (Grand Rapids, MI: Eerdmans, 2012).

fountainhead of the law, the law is a statement of his will.”<sup>87</sup> Further, in ANE laws where “there is a complete separation of secular and religious law: *dīnu* (law), *kibsu* (moral rules), and *parṣu* (religious orders) are never combined in a single corpus.”<sup>88</sup> I will return

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<sup>87</sup> Greenberg, “Some Postulates of Biblical Criminal Law,” 9, 11.

<sup>88</sup> Paul, *Studies in the Book of the Covenant*, 8–9. For similar points see Mendenhall, “Covenant Forms in Israelite Tradition,” 64; Greenberg, “Some Postulates of Biblical Criminal Law,” 11; Kaufmann, *The Religion of Israel*, 171; Cassuto, *A Commentary on the Book of Exodus*, 263. Fitzpatrick-McKinley’s claim that “the mixture of cultic rules (rules of religious etiquette) and behavioural rules (ethics) in the Book of the Covenant is in conformity with the wisdom-moral teaching of the ancient Near East and would not have appeared as odd to the ancient compilers” (Fitzpatrick-McKinley, *The Transformation of Torah*, 141) thus seems to need some modification. Cf. also Greenberg’s article where he shows the difference between attitudes in ANE law and Torah in regard to life and monetary or other compensation for it (Greenberg, “Some Postulates of Biblical Criminal Law,” 5–28). Eckart Otto rejects the idea that ANE custom should be seen as a static entity. This complicates sweeping claims that simply identify ANE with Israelite morals. Otto summarizes writing: “Assyrian, Babylonian and Hittite legal history show that the legal sentences did not form a static ‘common law’ but had a history of continuous reformulations. These scholarly refinements reflect the continuous reforming of law in society” (Otto, “Aspects of Legal Reforms,” 182). And again: “Legal reform and reformulation of laws together represent decisive features of ancient Oriental and Israelite legal history. They represent ‘common law’ only in this respect: they were continuously changing laws—*leges semper reformandae et reformatae*—because they were a mirror of ever-changing human life in society. ‘Law is the life of man seen from a special side’ (Friedrich Carl von Savigny)” (Otto, “Aspects of Legal Reforms,” 196. Cf. 160–96). He also discusses the laws of bodily injury and idea of compensation, relating to Greenberg’s article.

Van De Mierop has pointed out that some of LH §1–41 can be seen as dealing with “state and religious matters,” while the rest with individuals (Van De Mierop, *Philosophy before the Greeks*, 148). For laws explicitly referring to the religious domain, see §§2, 6, 8, 9, 20, 23. Kaufmann wrote: “Israelite tradition knows of no secular legislative authority. Ideally, only the prophet, as the spokesman of YHWH, can legislate” (Kaufmann, *The Religion of Israel*, 171). According to Cassuto “the legal tradition of the ancient East was, in all its branches, secular, not religious. The sources of the law were on the one hand usage—*consuetudo*—and on the other, the king’s will. In all the aforementioned codes we observe that the law does not emanate from the will of the gods” (Cassuto, *A Commentary on the Book of Exodus*, 259–60). In texts like 1 Sam 30:24–25; Isa 10:1; Jer 34:8ff, Cassuto found a basis for seeing a secular, or royal, law (Cassuto, *A Commentary on the Book of Exodus*, 260–1). On this basis, he explains that “although the codes of the Eastern kings are also incomplete and do not include every branch of law, yet, when they deal with a given subject, they enter into all its details, and are not content with a few chance, unrelated notes.” This can be compared to how Torah seems to give examples on various topics without covering all possible scenarios. According to him Torah is based on “the premise that there are already in existence legal usages and secular statutes, and that the rulers have the right to enact more laws, only the Torah sets bounds to this right from a religious viewpoint.” Therefore, “Torah does not deal at all with several subjects that constitute basic legal themes: for example the laws of marriage, apart from forbidden relations and the reference to the marriage-price of virgins, which occurs incidentally; or with the laws of divorce, which are also mentioned only incidentally in order to forbid, on moral grounds, that a divorced woman who has married another man should return to her first husband” (Cassuto, *A Commentary on the Book of Exodus*, 262–3). For him the proper designation of the legal passages in Torah is “religious and ethical instructions in judicial matters” (Cassuto, *A Commentary on the Book of Exodus*, 262). Cassuto sums up: “The entire concern of the aforementioned [ANE] codes is to determine what is due to a person according to the letter of the law, according to abstract justice, whereas the Torah seeks on many an occasion, to go beyond



to this point below, discussing further the relation between the cultic and the ethical in Torah. For now, we can note that if tradition and custom constituted the sole normativity in ancient Israel rather than texts, it is not clear why we would find literary reuse of Torah. That we do find such reuse indicates that authors did see the Torah-text itself as providing some kind of normative source, at the very least as a literary reference.

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strictly legal requirements and to grant a man what is due to him from the ethical viewpoint and from the aspect of the love a man should bear his fellow, who is his brother, since both have One Heavenly Father” (Cassuto, *A Commentary on the Book of Exodus*, 263). Westbrook and Wells write in a similar fashion: “No law in the Bible deals directly with the central features of marriage. The few laws that discuss marriage are concerned with unusual cases and assume knowledge of the general rules” (Raymond Westbrook and Bruce Wells, *Everyday Law in Biblical Israel: An Introduction* (Louisville, KY: Westminster John Knox, 2009), 56). And more in general: “They are not, however, laws in any meaningful sense. They contain no sanctions, and there is no hint that they ever played a role in the Israelite courts” (Westbrook and Wells, *Everyday Law in Biblical Israel*, 13). And again: “While the Mishpatim regulate a few commercial contracts, the primary interest of the biblical law codes, as indeed of the prophets, in the law of contracts is in measures of social justice to temper their harsh application to the poor and weaker members of society” (Westbrook and Wells, *Everyday Law in Biblical Israel*, 108). Joshua Berman writes: “No particular formulation of the law is final. As a system of legal thought, the common law is consciously and inherently incomplete, fluid, and vague” (Berman, “The History of Legal Theory,” 21). This approach to Torah seems to reverberate in later rabbinic discussion (Hyam Maccoby, *Ritual and Morality: The Ritual Purity System and its Place in Judaism* (Cambridge: Cambridge University Press, 1999), 14). For similar observations see Patrick, *Old Testament Law*, 199.

Van De Mierop has argued that the Babylonian legal collections were developed on the basis of underlying linguistic principles in the Sumerian and Akkadian languages, more than empirically based court cases as often assumed. He characterizes their reasoning as “pointillistic, cumulatively exploring case by case” (Van De Mierop, *Philosophy before the Greeks*, 30, 73). Contra Fitzpatrick-McKinley, *The Transformation of Torah*, 39, 109–112, which refers to Schwienhorst-Schönberger’s study and views the cases as empirically based. Having pointed out the similarities between ANE omens and law collections, Van De Mierop tempers Cassuto’s claim that the ANE legal collections entered all the details of a subject, when they are compared to the creativity of Babylonian lexical and omen lists: “Divinatory writings dealt with the entire universe in all its aspects and aimed to encompass all conceivable possibilities. Their purview was unlimited and their authors displayed an unbounded creativity, producing a massive corpus of lengthy series of omens with tens of thousands of entries. In contrast, law codes were tied to the mundane and were rooted in the practicalities of daily life. They were much more sober, so to speak, more brief and more realistic. But they used the same methods of reasoning as lexical and divinatory lists and thus show us that the Babylonian search for truth, with its procedures that are very alien to us, was nevertheless pragmatic” (Van De Mierop, *Philosophy before the Greeks*, 83–84). Cf. pp. 167, 169, 172–73, 189. He also speculates as to the reason why omen lists seem to flourish after the decline of the legal collections: “It is possible that the idea of justice being guaranteed by the king gave way to one in which the gods took over this role. Omens were explicitly called legal verdicts by the gods. The decline of the law code may thus have been part of the end of the king’s divine status, which I argued could have inspired the divinatory series. This is pure conjecture, I admit” (Van De Mierop, *Philosophy before the Greeks*, 155). Cf. pp. 100, 111, 176–78, 181. Cf. Bottéro, “Le ‘Code’ de Hammu-rabi,” 409–44.

Second, whether Torah is written on a tablet (לִיָּה), scroll (סֵפֶר), pillar (מִצְבֵּה), or stone (אֲבִנִּי),<sup>89</sup> or whether it is read publically or spoken of privately, the didactic function seems predominant. Berman states that the didactic function “goes precisely to the heart of a proper understanding of biblical ‘law’: the treaty stipulations are themselves presented as a body of teaching. The purpose of biblical law is to shape and form the polity, not merely address cases and provide remedy.”<sup>90</sup> Bernard Jackson speaks of the “monumental function” and “ritual function of reading from a holy book,” as if the monument and ritual were separate functions. Even though Jackson concedes that “the narrative thus somewhat uneasily combines the monumental function of law inscribed on stone with the ritual function of reading from a holy book,”<sup>91</sup> this ‘unease’ rather seems to be a confusion between medium, event, and function on Jackson’s part. The monument should properly be understood as a medium and ritual as an event. As I will argue, in both cases, the didactic function appears to be at the core. Both the monument and ritual appear to have an instructional function with the judicial implications of the monumental stones and the written records serving as a witness against the people (cf. Deut 27:1–4; 31:25–26; Josh 8:32).<sup>92</sup> In my view, Jackson’s division into the monumental, archival,

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<sup>89</sup> In Deut 27:5–8 the Torah (הַתּוֹרָה הַזֹּאת) is written on the stones (אֲבִנִּים) of the altar (מִזְבֵּחַ). Cf. Weeks, *Admition and Curse*, 145. In Egypt, writing on stone was the most spectacular form of inscription (Eyre, *The Use of Documents in Pharaonic Egypt*, 6). Cf. p. 130, 142. For how the monument was used for ANE legal collections, and how the physical medium might even have determined the length of the collections see Van De Mieroop, *Philosophy before the Greeks*, 146–47, 167–68.

<sup>90</sup> Berman, *Created Equal*, 100.

<sup>91</sup> Jackson, *Semiotics of Biblical Law*, 128.

<sup>92</sup> For the idea of text as witness in Egypt see Eyre, *The Use of Documents in Pharaonic Egypt*, 100.

didactic, and ritual use of Torah lacks precision. First of all, the monumental and archival uses say less about function than they do about where Torah is inscribed and located.<sup>93</sup> Second, the ritual use of Torah could easily be seen as a subcategory of the didactic. One of the passages quoted by Jackson,<sup>94</sup> Deut 31:9–13, make this adequately clear. Twice in this passage the explicitly stated purpose of the ritual reading of Torah is that the people should learn, using the verb למד. Carasik supports understanding Deut 31:12–13 as referring to a didactic function of the ritual reading.<sup>95</sup> It therefore seems difficult to sustain a strict separation between the ritual reading and the didactic function of Torah. The reading of Torah is not “fulfilled by the act of public reading itself.”<sup>96</sup> Reading was a means for teaching the people the ways of YHWH. Even if the reading was not accompanied by “any interpretation or discussion of the text,”<sup>97</sup> the very act of public reading had a didactic function.<sup>98</sup> As far as I can see the inscription of Torah upon a

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<sup>93</sup> Of course, the archive preserves a text for future record (cf. Eyre, *The Use of Documents in Pharaonic Egypt*, 8). But while the archive itself is not a function in its own right, a text is put in an archive for future possible reference of various sorts. Thus, Torah placed in the archive might be understood as having a didactic function as well, specifically for future generations. Cf. Niditch on the archival intent of Deut 31:24–26 (Susan Niditch, *Oral World and Written Word: Ancient Israelite Literature*, ed. Douglas A. Knight. LAI (Louisville, KY: Westminster John Knox Press, 1996), 87).

<sup>94</sup> Jackson, *Semiotics of Biblical Law*, 139. As mentioned above, Fishbane saw that priests, judges, and kings were somehow obliged to be practitioners of Torah. For him this resulted in a legislative model of Torah (Fishbane, *Biblical Interpretation in Ancient Israel*, 96). As argued above, these observations do not need to lead to a legislative model.

<sup>95</sup> Carasik, *Theologies of the Mind*, 47. Cf. Deut 5:1, 31; 6:1 for the didactic aspect of Torah as well. For the idea of God disciplining his people see Deut 4:36; 11:2.

<sup>96</sup> Jackson, *Semiotics of Biblical Law*, 139.

<sup>97</sup> Jackson, *Semiotics of Biblical Law*, 141.

<sup>98</sup> According to Jackson it is first Ezra that “wishes to combine the traditional ritual reading of the religious reform with a didactic function: the words should not only be read out, they should also be explained,” referring to Neh 8:7–8 (Jackson, *Semiotics of Biblical Law*, 141). But in my view, the felt need for interpretation in later biblical books appears to be occasioned by the temporal and cultural distance of the original events and instructions narrated in Torah, rather than a later attribution of a didactic function to

monument, tablet, or written record seems to have had an instructional function—even for the illiterate who would need their contents to be read to them, with the judicial implications involved in this instruction also serving as a witness against the people. In commenting on Deuteronomy, and we could include the entire Torah, Daniel Block writes: “Although in later chapters Moses will integrate many prescriptions given at Sinai into his preaching, contrary to prevailing popular opinion Deuteronomy does not present itself as legislation, that is, a book of laws. This is prophetic preaching at its finest.” He then goes on to remind that תּוֹרָה is best rendered as ‘instruction.’ He sums up: “Recognizing the fundamentally covenantal character of Deuteronomy has extremely significant implications for the message we hear in the book.”<sup>99</sup> Anthony Phillips claims that “the law collections, with the exception of the *mišpāṭîm* of the Book of the Covenant (Exod. 21.12–22.16), are not so much instructions to the judiciary as sermons to the

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the ritual reading. Cf. Paul, *Studies in the Book of the Covenant*, 39; Bergland, “Interpretation of the Written,” 1–19. Watts writes: “Most references to reading portray the reading of law. The Hebrew Bible provides more information on the reading of law than on reading any other genre of its literature. . . . In Deut. 31.9, Moses writes ‘this law’. He then commands the Levites to read it to ‘all Israel every seventh year during the festival of booths (v. 11). The emphasis is clearly on instruction, ‘that they may hear and learn to fear YHWH your God and to keep all the words of this law to do them’ (v. 12)” (Watts, *Reading Law*, 15–16). And contrary to what has been plausible to many modern interpreters, Watts argued that for the ancient authors public reading of law was plausible: “In response to the question, How was law read in Israel?, the Hebrew Bible gives a definite answer: the whole law, or at least large portions of it, was read aloud in public. . . . Only in its Mosaic origins is biblical law depicted as the transcription of orally proclaimed law (Exod. 24.4; Deut. 31.9) and even then, its core is received in writing (Exod. 31.18; 34.1; Deut. 5.22; cf. Exod. 34.28). Thus modern intuitions of the implausibility of public readings do not correspond with the ancient writers’ notions of plausibility. Whatever the actual origins of Israel’s laws, the Bible depicts their oral proclamation as based on written text” (Watts, *Reading Law*, 22–23). He then gives references to “text-based performance” of law in Greece and Rome. He even argues “that much of Pentateuchal law was written or at least edited with such public readings in mind” (Watts, *Reading Law*, 29). According to Watts, the public reading of the Torah—pattern of narrative, law, and sanction was for the purpose of persuasion. He writes regarding the three legal collections in the Pentateuch: “Each of these presentations exhibits the characteristic features of ancient persuasive rhetoric . . . , namely the juxtaposition of story, list and divine sanction” (Watts, *Reading Law*, 49. Cf. esp. 32, 45, 52, 55, 61–62).

<sup>99</sup> Daniel I. Block, *The Gospel According to Moses: Theological and Ethical Reflections on the Book of Deuteronomy* (Eugene, OR: Cascade, 2012), 8.

nation. Rather than legal codes establishing a judicial system, these collections constitute theological literary works concerned with the maintenance of Israel's election."<sup>100</sup>

Further, Torah appears to have been intended for the general public, and thus not only serves an exclusive scribal elite. This confirms its didactic role for the whole nation.

Shalom Paul's characterization of the BC seems to me applicable to HI and D as well:

Publicity, not secrecy, is the hallmark of the law, which is proclaimed openly to the entire society and is not restricted to any professional class of jurists, lawyers, or judges. . . . Law in Israel is prospective and prescriptive not retrospective and descriptive. Though LH was frequently copied in scribal circles, there is no mention in the collection itself of making the law part of the public domain. In the Israelite society, on the other hand, law was not only proclaimed publicly at the very outset, but, in addition, a renewed proclamation was required once every seven years.<sup>101</sup>

Torah is not governed by an elitist "rhetoric of concealment."<sup>102</sup> It is written for the people and common man in general.<sup>103</sup>

Third, the terminology used within Torah to describe its own genre seems well summed up as 'covenantal instruction,' even if it must be admitted that this phrase is somewhat of an extra-textual construct, singling out the terms תּוֹרָה and בְּרִית as representative for the rest. Even if, statistically, they are not the dominant terms used in

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<sup>100</sup> Phillips, *Essays on Biblical Law*, 13.

<sup>101</sup> Paul, *Studies in the Book of the Covenant*, 38. Cf. p. 39. Arguing with James Watts, Roy Gane has claimed that the "didactic logic in Leviticus points away from the idea that the composition of the book took place within a strictly priestly scribal matrix during or originally directed toward the post-exilic period" (Roy E. Gane, "Didactic Logic and the Authorship of Leviticus," in *Current Issues in Priestly and related Literature: The Legacy of Jacob Milgrom and Beyond*, eds. Roy E. Gane and Ada Taggar-Cohen, Resources for Biblical Study [RBS] (Atlanta: SBL, 2015), 219–21). For the question about who receives the benefit, see as well Berman, *Created Equal*, 47.

<sup>102</sup> Levinson, *Legal Revision*, 48, 92. Cf. p. 80. See also Levinson, *Deuteronomy*, 6, 15–17, 20–22, 27, 30–33, 40–42, 46–48.

<sup>103</sup> Cf. Berman, *Created Equal*.

Torah for its self-designation, conceptually they seem to summarize the rest.<sup>104</sup>

It may come as a surprise to us that תּוֹרָה has a relatively low frequency, especially when taken into consideration that it is often used for individual portions of instruction. Leviticus and Numbers tend to speak of תּוֹרָה in terms of individual instructions<sup>105</sup> while Deuteronomy tends to use it to refer to the entire instructive corpus. In Gen 26:5; Exod 16:4, 28; 18:16, 20; Lev 26:46; and Deut 33:10 תּוֹרָה is used in the plural, indicating that its singular form is used to refer to individual instructions. For a

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<sup>104</sup> If we limit the textual parameters to the legal sections (Exod 18:1–23:33; Lev 1:1–27:34; Num 5:1–6:27; 15:1–41; 19:1–22; 27:1–30:17; 33:50–36:13; Deut 4:1–28:69) we can give the self-designation in Torah a statistical presentation. Key terminology here is דְּבָר (100), מִשְׁפָּט (65), מִצְוָה (54), חֻקָּה (39), תּוֹרָה (37), חֻק (35), קְרִיית (28). Among words used in the instructive sections of Torah to refer to its own genre דְּבָר and מִשְׁפָּט are the most frequently used. We would of course expect a high frequency of the word דְּבָר in a discourse setting such as this one, and many of the references are not to Torah as such. In 35 cases דְּבָר can be said to describe the genre or parts of Torah (Exod 20:1; (34:28); Lev 8:5, 36; 9:6; 10:7; 17:2; Num 15:31; 30:2-3; 36:6; Deut 4:2, 10, 12–13; 5:5, 22; 6:6; 9:10; 10:2, 4; 11:18; 12:28; 13:1; 15:2, 15; 17:19; 19:4; 24:18, 22; 27:3, 8, 26; 28:14, 58, 69). Both the BC in Exod 21:1 and Deut 12:1 call the legal section that follows: מִשְׁפָּטִים (the latter together with הַחֻקִּים) (Sonnet, *The Book within the Book*, 57. Cf. pp. 58, 157). For the use of דָּת in the *qere* in Deut 33:2 as LBH see Jan Joosten, “Diachronic Linguistics and the Date of the Pentateuch,” in *The Formation of the Pentateuch*, eds. Jan C. Gertz et al., FAT 111 (Tübingen: Mohr Siebeck, 2016), 343.

Exod 20:1 calls the Decalogue הַדְּבָרִים, implying that each command or unit in them is seen as a דְּבָר. The reference to the עֲשֶׂרֶת הַדְּבָרִים in Exod 34:28; Deut 4:13; and 10:4 confirms that each command is seen as a דְּבָר. For a helpful discussion of the various traditions on the division of the Decalogue, see Kilchör, *Mosetora und Jahwetora*, 42–52. Deut 5:5 introduce the Decalogue as אֶת־דְּבַר יְהוָה, taking דְּבַר יְהוָה as a collective designation of the entire decalogue collection. Thus, Deuteronomy uses דְּבַר in the singular to refer both to each of the ten instructions in the Decalogue and to the Decalogue as a whole. For the phrase הַדְּבָרִים הָאֵלֶּה or analogies in Deuteronomy see Deut 1:1; 4:30; 5:22; 6:6; 11:18; 12:28; 17:19; 22:17; 28:69; 30:1; 31:1, 28; 32:45. Sonnet made an observation about the specificity of the words being reused. Reuse is bound to specific words/instructions: “The use of the term דְּבָרִים (here, in the specific sense of ‘words’) is meaningful: the Mosaic teaching is not entrusted to the people’s care in its formality of ‘commandment, statutes and ordinances,’ but in its very wording. As such (in its literality), this teaching lends itself to be learned, taught, repeated and inscribed. The teaching that will pervade Israel’s time and space is, moreover, a defined teaching; it is determined as ‘these words’ that will be communicated within a unity of time, ‘this day’” (Sonnet, *The Book within the Book*, 57).

Cf. Kline, *The Structure of Biblical Authority* arguing that the Bible in its literary-legal form is a covenantal document.

<sup>105</sup> Lev 6:2, 7, 18; 7:1, 7, 11, 37; 11:46; 12:7; 13:59; 14:2, 32, 54, 57; 15:32; Num 5:29–30; 6:13, 21 (2x); 15:16, 29; 19:14. Cf. Exod 12:49.

general meaning of תּוֹרָה in the singular as referring to the entire instructive corpus see Exod 13:9; 24:12; Deut 1:5; 4:8, 44; 17:11, 18–19; 27:3, 8, 26; 28:58, 61; 29:20; 29:28; 30:10; 31:9, 11–12, 24, 26; 32:46; 33:4. In Deuteronomy it is likely that תּוֹרָה refers to Deuteronomy itself. In Deut 4:13 (אֶת־בְּרִיתוֹ אֲשֶׁר צִוָּה אֶתְכֶם לַעֲשׂוֹת עֲשֶׂרֶת הַדְּבָרִים) the covenant itself seems to be defined as the doing of the Ten Words. The תּוֹרָה in the construct הַתּוֹרָה in Num 19:2; 31:21 may also be understood as references to the entire instructive corpus.<sup>106</sup>

Fourth, the legal sections of Torah share features with ANE treaty, law, and covenant. It may be asked why we should not call Torah “treaty stipulations” or “treaty instructions,” rather than “covenantal instructions”?<sup>107</sup> But, instead of forcing Torah into other established genres in ANE literature, it appears more accurate to say that it shares features of law, treaty, and covenant. Kitchen writes: “Sinai is neither just law nor properly a treaty. It represents a *confluence* of these two, producing a further facet in group relationships, namely, social-political-religious covenant.”<sup>108</sup> Greenberg also saw

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<sup>106</sup> Cf. Daniel I. Block, *Deuteronomy, The NIV Application Commentary: From Biblical Text ... to Contemporary Life* [NIVAC] (Grand Rapids, MI: Zondervan, 2012), 36–37 for the terminology of self-presentation in Torah.

<sup>107</sup> Berman for example calls the instructions “treaty stipulations” (Berman, *Created Equal*, 84).

<sup>108</sup> Kitchen, *On the Reliability of the Old Testament*, 289. In *Treaty, Law and Covenant in the Ancient Near East* Kenneth A. Kitchen and Paul J. N. Lawrence demonstrate the form critical proximity between the legal sections of Torah and ANE legal texts, particularly Hittite treaties (Kitchen and Lawrence, *Treaty, Law and Covenant in the Ancient Near East Part 2: Text, Notes and Chromograms*, 259–65). Kitchen and Lawrence define treaties as “used to govern relations (parity or vassals) between separate groups, or group(s) and/or a significant individual,” laws as “a device for regulating conduct within a given society or social group,” and covenants “used to define relations between individuals on the purely human level, or between individual(s) and deity” (Kitchen and Lawrence, *Treaty, Law and Covenant in the Ancient Near East Part 1: The Texts*, xxii). Given the arguments above concerning the non-legislative concept of ANE law their definition of law might need refinement.

In *Treaty, Law and Covenant in the Ancient Near East* Kitchen and Lawrence explain how this three-volume tome grew out of G. E. Mendenhall’s publications in *The Biblical Archaeologist* 17 (1954), 26–46, 50–76 (reprinted as a booklet in 1955 as Mendenhall, *Law and Covenant in Israel and the Ancient*

Torah as a mixture of various genres based on the unique relation between God and his people: “The biblical law collections bear resemblance to the treaty and instruction form on the one hand and to the law collection on the other. God is at once a treaty partner and the proper King of Israel.”<sup>109</sup> Even if Weeks sees biblical covenant as a form of ANE treaties, he is cautious, even pessimistic in regard to comparing ANE treaties and biblical covenants: “As long as there is no consensus on dates there is no uniformly acceptable method of determining the origin and development of covenant concepts in Israel. In turn that means it is practically impossible to judge whether covenants in Israel have any relationship to treaties in the world outside.”<sup>110</sup> While I speak of Torah as ‘covenantal

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*Near East* where he argued for a structural parallel between the 14th/13th century Hittite treaties and the Sinai Covenant in the Book of Exodus. In contrast to George Mendenhall, who, building upon Korošec’s study of Hittite treaties (Viktor Korošec, *Hethitische Staatsverträge. Ein Beitrag zu ihrer juristischen Wertung* (Leipzig: T. Weichter, 1931)), first suggested a link between biblical covenants and Hittite treaties and saw reference to the exodus account as the equivalent to the historical prologues in Hittite treaties. Berman points out that Deuteronomy does not make frequent mention of the exodus account. Rather, for him Deuteronomy is closer to the land-grant treaty as described by Amnon Altman. He also finds an explanation for the historical variations between Deut 1–3 and earlier Pentateuchal traditions in the ‘diplomatic signaling’ of Hittite historical treaty prologues (Berman, “Histories Twice Told,” 232–33). Cf. Berman, *Inconsistency in the Torah*, 88–89. Christer Jönsson, “Diplomatic Signaling in the Amarna Letters,” in *Amarna Diplomacy: The Beginnings of International Relations*, eds. Raymond Cohen and Raymond Westbrook (Baltimore: The John Hopkins University Press, 2000), 191–204; Altman, *The Historical Prologue*; Weeks, *Admission and Curse*, 68–69, 74, 79–82). Cf. how Berman, *Created Equal*, 32–33 compares Exod 1–19 and the historical prologue of the Hittite treaties. The intention seems to try to avoid the limited historical element referred to in the prologue to the Decalogue in Exod 20:2, which Mendenhall used as basis for comparison with the historical prologue. But the question arises whether Exod 1–19 can be understood as a historical prologue proper to the instructions, or if the legal material is rather to be understood as embedded in the narrative? In other words, is the basis of the text the narrative (with legal material embedded) or the legal material (with the narrative as prologue)? Berman does not seem focused upon clarifying the relation between ‘historical prologue’ and instructive material, as much as showing that the historical references place the instructive material more in the context of moral and voluntary appeal to loyalty (cf. Berman, *Created Equal*, 38). Cf. the discussion below showing that the narrative and legal material cannot be separated.

<sup>109</sup> Moshe Greenberg, “Three Conceptions of the Torah in Hebrew Scriptures (1990),” in *Studies in the Bible and Jewish Thought* (Jerusalem: Jewish Publication Society, 1995), 15.

<sup>110</sup> Weeks, *Admission and Curse*, 139. Even if there can be strong parallels, according to him we should not simply conflate treaty and covenant (Weeks, *Admission and Curse*, 151–56). He nevertheless sees a common ethical concern in the historiographies of Israelite and Hittite covenants/treaties: “The basic historical texts of Israel not only embody covenants in which history is used to motivate. They are in



instruction’ it is not to deny the similarities with ANE law and treaties, but rather to choose a representative word for the various aspects of Torah—simultaneously signaling a certain uniqueness of Torah compared to other ANE literature. It is well-known that Torah might be the only case documenting a covenant between a people and its God.<sup>111</sup> Rather than reducing Torah to some of the genres known from other ANE literature, Stahl’s “anti-essentialist approach to genre in general, and to legal discourse in particular” may be preferable, seeing “biblical law as ambivalent, embedded communication.”<sup>112</sup> For my part I do not intend to claim that a certain genre and literary fluidity is unique to Torah.<sup>113</sup> Rather, my point here is that Torah needs to be treated as a unique corpus with unique characteristics, and ‘covenantal instruction’ seems adequate to describe it.

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themselves history written with a view to producing a motivation for obedience. . . There runs through biblical, as through Hittite, historiography the pedagogic use of history. An explanation of the formal relationship, if any, of covenant and treaty cannot avoid consideration of the relationship of historiographies” (Weeks, *Admition and Curse*). Cf. James K. Hoffmeier, *Ancient Israel in Sinai: The Evidence for the Authenticity of the Wilderness Tradition* (Oxford: Oxford University Press, 2005), 183–92. Weeks argues that the biblical covenant should be seen as a type of ANE treaties (Weeks, *Admition and Curse*, 8). He further writes: “The terminology of instructions is very similar to that of treaties” (Weeks, *Admition and Curse*, 86). Interestingly enough, in Egypt according to him “the instruction form belongs by right and origin not to pharaohs but to Egyptian officials” (Weeks, *Admition and Curse*, 110).

<sup>111</sup> For a discussion of a possible treaty between a ruler and a deity stemming from Lagash see Kenneth A. Kitchen, “Egypt, Ugarit, Qatna and Covenant,” *UF* 11 (1979): 462; Weeks, *Admition and Curse*, 19, 111, 122, 125, 130. Cf. Van De Mieroop, *Philosophy before the Greeks*, 151, 155, 175. Analogical to ANE treaty traditions, Weeks suggests that there might be a correlation between a moral sensitivity or need of moral justification and increased likelihood of entering into treaties: “States which conceptualize history and their external relations in moral terms are not only more likely to talk about treaties – they may be more likely to enter into treaties. . . attempts to depict the state’s cause as just are more likely to be accompanied by references to treaties” (Weeks, *Admition and Curse*, 22. Cf. p. 53).

<sup>112</sup> Nanette Stahl, *Law and Liminality in the Bible*, eds. David J. A. Clines and Philip R. Davies. *JSOTSup* 202 (Sheffield: Sheffield Academic Press, 1995), 21.

<sup>113</sup> Cf. Altman, *The Historical Prologue*; Weeks, *Admition and Curse*; Berman, “Histories Twice Told,” 229–50; Berman, *Inconsistency in the Torah*, 81–103.

Further, Torah is neither adequately described as either “retrospective,”<sup>114</sup> common law,”<sup>115</sup> “descriptive,”<sup>116</sup> or as the “moral advice of scribes.”<sup>117</sup> The biblical passages present Torah as normative instruction in a covenantal setting. While we seem to find a similarity between ANE law collections and Torah in that neither were referred to as source in their respective courts, the Torah-text clearly presents itself as source for covenantal instruction. As the text is intended to facilitate a dynamic and living covenantal relationship—a relationship that cannot be reduced to and comprehensively expressed by a static text—its didactic content stands interspersed with exemplary instruction to guide the people along the ways of YHWH.<sup>118</sup> As covenantal instruction it becomes normative, but as the covenantal relationship transcends the textual perimeters, as shown above, YHWH becomes the ultimate source. This calls for an expansionistic reading of Torah, because the application and appropriation of the text goes beyond a strictly literalistic reading.<sup>119</sup> This also allows for a more dynamic and innovative reuse than would be the case in a more literalistic reuse in a legislative model. From this it is

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<sup>114</sup> Westbrook, “Origins of Legislation,” 92.

<sup>115</sup> Berman, “The History of Legal Theory,” 39.

<sup>116</sup> LeFebvre, *Collections, Codes, and Torah*, 54.

<sup>117</sup> Fitzpatrick-McKinley, *The Transformation of Torah*, 21.

<sup>118</sup> Cf. Cassuto, *A Commentary on the Book of Exodus*, 262–3. For further discussion of the exemplary character of Torah, see above. Cf. Watts, *Reading Law*, 117 for the instructive character of Deuteronomy.

<sup>119</sup> Weingreen summarizes his characterization of Deuteronomy as a “proto-rabbinic” type of composition by stating: “the implication has been not that he [the deuteronomic legislator] was an innovator but rather the developer of already existing and effective legalistic processes” (Jacob Weingreen, *From Bible to Mishna: The Continuity of Tradition* (Manchester: Manchester University Press, 1976), 142).

clear that Westbrook's division between 'legislation' and 'academic treatise,'<sup>120</sup> mentioned above, is not adequate to classify Torah as such.

Fifth, the language of the Torah seems intended to create a personal interaction between YHWH and the reader/listener. The relatively frequent use of the 1<sup>st</sup> and 2<sup>nd</sup>-person in the legal material of Torah, in contrast to the dominant—if not exclusive—use of the 3<sup>rd</sup> person in other ANE law, create an immediate discursive and dialogical setting for the instructions.<sup>121</sup> Harry Hoffner for example wrote that “no laws in the Hittite collection are expressed in the second person, that is, ‘you shall (not) do such-and-such,’ although such a formulation can be found in texts of a legal nature outside the law

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<sup>120</sup> Westbrook, “Origins of Legislation,” 74.

<sup>121</sup> If we define Exod 18:1–23:33; Lev 1:1–27:34; Num 5:1–6:27; 15:1–41; 19:1–22; 27:1–30:17; 33:50–36:11; Deut 4:1–28:69 as the instructive material in Torah we get the following statistics: The PNG (Person, Number, Gender) distribution of verbs would be 1cs 5,06%, 2ms 18,16%, 2fs 0,08%, 3ms 47,49%, 3fs 9,78%, 1cpl 0,49%, 2mpl 11,97%, 2fpl 0%, 3mpl 6,19%, and 3fpl 0,79%. The PNG distribution of suffixes would be 1cs 5,46%, 2ms 20,84%, 2fs 0,75%, 3ms 33,24%, 3fs 11,54%, 1cpl 1,22%, 2mpl 12,36%, 2fpl 0%, 3mpl 13,62%, 3fpl 0,98%. Watts writes: “In the Book of the Covenant, apodictic laws (Exod. 20.23–26; 22.21–23.19, usually second-person singular, but occasionally plural—20.23; 22.20–21, 30 . . . surround a central core of third-person casuistic (‘if . . . then . . .’) legislation. . . . In the Holiness Code, sections dominated by laws in the second-person (Lev. 18–19; 23–24) and third-person (chs. 17; 20.1–16; 27) are interspersed with sections that mix third-person casuistic formulations with second-person apodictic commands (20.17–22.33; 25). . . . Deuteronomy, however, maintains a second-person form of address throughout that is consistent with its setting as a speech, but it varies between singular and plural and between apodictic and casuistic formulas” (Watts, *Reading Law*, 62–63). We can mention that the second-person is also used in Exod. 21.2, 14, 24; 22.17.

Some of this personalized language in Torah, using 1<sup>st</sup> and 2<sup>nd</sup> person might be better appreciated if Berman is correct in that each individual Israelite is posited as a subordinate king in which God enters a treaty (Berman, *Created Equal*, 41–42). Berman's point that the collective address establishes an interconnectedness between the members is worth pondering in light of modern individualism (Berman, *Created Equal*, 175). See also p. 174. Cf. Greenberg, “Three Conceptions of the Torah,” 14–15. According to Knohl there is a difference between the so-called *Priestly Torah* which never has God use יְיָ in contrast to the so-called *Holiness School* (Israel Knohl, *The Sanctuary of Silence: The Priestly Torah and the Holiness School* (Minneapolis: Augsburg Fortress, 1995), 169). Given that source critical divisions are up for debate in present scholarship, even if Knohl's claim should be correct, it does not alter the general observation above of the striking use of 1<sup>st</sup> and 2<sup>nd</sup> person in Torah when compared to other ANE legal material. Cf. Stackert, *Rewriting the Torah*, 14–15.

corpus, such as treaties or loyalty oaths.”<sup>122</sup> It would be necessary to survey each use of grammatical person in ANE legal sources to make more general claims.

Further, in his article “The Conflict between Value Systems and Social Control” (1975), Mendenhall criticized the reduction of biblical covenants to mere social and political systems of controlling a population.<sup>123</sup> As a well-known expert on ANE treaties and covenants he wrote:

To summarize the biblical concept of social control systems, any action induced by such systems that is based upon individual motivations of economic gain, prestige (publicity), or ambition for power has nothing to do with the Kingdom of God. . . . During that period there was gradually worked out in the crucible of historical experience the structure of a value system, usually in opposition to social control systems, that has been completely confused by repeated attempts to identify the two. This attempt to identify the merely historical control system with a transcendent rule of God must always founder upon the shoals of the religious ethic, but the natural instinct of corporate self-preservation that is the first law of political science virtually demands the destruction of the religious ethic.<sup>124</sup>

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<sup>122</sup> Harry A. Hoffner, Jr., “Hittite Laws,” in *Law Collections from Mesopotamia and Asia Minor*, ed. Martha T. Roth, Writings from the Ancient World Series 6 (Atlanta, GA: SBL, 1995), 216.

<sup>123</sup> For a similar criticism see Fitzpatrick-McKinley, *The Transformation of Torah*, 23–52.

<sup>124</sup> George E. Mendenhall, “The Conflict between Value System and Social Control,” in *Unity and Diversity: Essays in the History, Literature, and Religion of the Ancient Near East*, eds. Hans Goedicke and J. J. M. Roberts (Baltimore: John Hopkins University Press, 1975), 170. It is a question whether Mendenhall’s description is correct of non-biblical social structures as always to be understood as dominated by the idea of social control. Given the wisdom cultures of the ANE, the freedom of inner convictions does not seem entirely foreign in the ancient world. Cf. Fitzpatrick-McKinley, *The Transformation of Torah*, 113–45; van der Toorn, *Sin and Sanction*.

Further, even if the word ‘value’ is nowadays easily understood as an internal ground of motivation, it might not be the best terminology for describing the biblical material. The concept of ‘value’ as used today is a relatively modern concept, only a little over a century old. Before Lotze, Ritschl and Nietzsche philosophers hardly spoke of value. Up until their time the concept of ‘value’ had a relatively clear and well defined meaning: “Their meaning was once relatively clear and their use limited. ‘Value’ meant the worth of a thing, and ‘valuation’ meant an estimate of its worth. The worth in question was mainly economic or quasi-economic, but even when it was not, it was still worth of some sort – not beauty, truth, rightness, or even goodness. The extension of the meaning and use of the terms began in economics, or political economy, as it was then called. ‘Value’ and ‘valuation’ became technical terms central to that branch of economics which was labelled the theory of value” (William K. Frankena, “Value and valuation,” in *Sprangter to Zubri* (ed. Paul Edwards; *The Encyclopedia of Philosophy*; New York: The Macmillan Company & The Free Press, 1967), 229. Cf. William K. Frankena, “Value,” in *Dictionary of Philosophy* (ed. Dagobert D. Runes: Rowman & Littlefield Publishers, 1983), 346). Since the time of the mentioned three philosophers, ‘value’ has been seen in a much broader sense than merely in economic terms, and it is

He finds three major structural contrasts between these two alternatives in how they relate to (1) private and public matters, (2) the differences between covenant and law, and (3) value versus interests.<sup>125</sup> It is the second area that particularly interests us here. While law, what I above have called ‘legislation,’ attempts to socially control the population through external sanctions and incentives, covenant places the main emphasis upon individual and collective volition to live in a binding relationship with God, even if we also find external motivators, for example, in the blessings and curses.<sup>126</sup>

This also accords with the observations that Torah’s imperatives regarding specific mental states does not fit a legislative concept of law. Having surveyed the

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now one of the central questions of philosophy. Even if the concept of ‘value’ is a new one, the subject matter is still well known in the garb of the ‘idea of the good’, as Plato famously spoke of. Lotz writes: “With regard to the thing in question, actually philosophy always had dealt with the problem, but under the aspect of the good and its goodness (*bonum et bonitas*)” (Johannes B. Lotz, “Value,” in *Philosophical Dictionary* (eds. Walter Brugger and Kenneth Baker; Spokane, WA: Gonzaga University Press, 1972), 437). Cf. Frankena, “Value and valuation,” 229). The term usually translated with ‘good’ in the HB is טוב. Instead of using the term ‘value’ uncritically, this reminds us that we again need to be careful and conscious about what words we choose to describe the biblical material with. It would be preferable to use as close a translation as possible to the words used in the HB itself. This might prevent us from adopting modern terminology that later may preclude a fuller understanding of the terminological, and related ideological, universe of the biblical authors.

<sup>125</sup> Mendenhall, “The Conflict between Value System and Social Control,” 172–78.

<sup>126</sup> This is not the place to discuss how books like Ecclesiastes and Job problematize the idea of blessings and curses as a motivating factor. Suffice it here to state that the tension between relating to Torah on the basis of inner conviction versus either external coercion or incentive is already witnessed in Torah itself, attempting to evoke an individual and communally embrace of the covenantal life with YHWH while at the same time promising blessings and threatening with curses. For a helpful differentiation between a paradigm governed by the concepts of covenant versus law see Mendenhall, “The Conflict between Value System and Social Control,” 174–75. He described this Torah rhetoric as dialectical: “The material from Exodus 25 through Numbers 9 thus uses the rhetoric of story and list to develop a dialectical tension between the idealistic vision of a divine-human communion and realistic warnings of its dissolution due to popular disobedience and realistic warnings of its dissolution due to popular disobedience and official malpractice. The persuasive intent behind this pattern aims to inspire compliance with the legislative program by describing ideal communion with God and to discourage noncompliance by detailing past and future threats. The divine sanctions of Leviticus 26 combine both elements of the dialectic and transcends them with a wider promise of God’s covenant faithfulness” (Watts, *Reading Law*, 55). For how Plato objected to the use of sanction, and Aristotle to the use of story in persuasion—in contrast to the Torah, see Watts, *Reading Law*, 55.

general tendency in Deuteronomy to command attitudes and feelings, Carasik writes that “the psychological commands in general do not fit into our notion of an objective system of law.”<sup>127</sup> Weeks finds the use of terminology like ‘good,’ ‘love,’ ‘know,’ and ‘son’ as likely covenantal language.<sup>128</sup> Uncoerced willingness is expressed by terms like ‘love’ and ‘joy,’ both found in Israelite and ANE legal traditions.<sup>129</sup>

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<sup>127</sup> Carasik, *Theologies of the Mind*, 202. Cf. Carasik, *Theologies of the Mind*, 201, 213 where Carasik becomes somewhat inconsistent on the question of law and freedom. Cf. how Carasik discusses that the command to love is not merely ‘loyalty,’ but a real love (209–10). Also in the Exodus, with the Decalogue and BC (Exod 20:1–23:33) and Holiness Collection (Lev 17–26), we see that the instructions were not merely intended to be external controls, but also to address and appeal to the heart and emotions. The prohibition against coveting in the Tenth Word of the Decalogue (Exod 20:17) and the command to love one’s neighbor and the stranger (Lev 19:18, 34) are examples. Cf. also Carasik, *Theologies of the Mind*, 196–215. He writes: “One of the unusual features of Deuteronomy that is often overlooked, however, is that it has a *general* tendency to prescribe not merely activity, but attitude. That is, in addition to actions, the commandments in Deuteronomy cover not just memory but many other thoughts and emotions as well. The Israelites are enjoined to know, to revere, to love, and to rejoice, forbidden to fear, to covet and to take pity, all in just the same way as they are commended to observe the Sabbath or to pour off the blood from a slaughtered animal” (Carasik, *Theologies of the Mind*, 196–97). This he finds contrasting to the relatively rare injunctions to feel or think in other portions of the Pentateuch.

<sup>128</sup> Weeks, *Admition and Curse*, 160. Cf. William L. Moran, “The Ancient Near Eastern Background of the Love of God in Deuteronomy,” *CBQ* 25, no. 1 (1963): 77–87; Norbert Lohfink, “Hate and Love in Osee 9:15,” *CBQ* 25, no. 4 (1963): 417; Herbert B. Huffmon, “The Treaty Background of Hebrew Yāda’,” *Bulletin of the American Schools of Oriental Research* 181 (1966): 31–37.

<sup>129</sup> Yohanan Muffs, *Love and Joy: Law, Language and Religion in Ancient Israel* (New York: Jewish Theological Seminary of America, 1992), 124, 127, 148, 187. To love YHWH by walking in all his ways is the basic deuteronomistic ethos. Cf. Deut 10:12 (לֵלֶכֶת בְּכָל־דְרָכָיו וּלְאַהֲבָה אֹתוֹ וּלְעִבֹד אֶת־יְהוָה אֱלֹהֶיךָ (בְּכָל־לֵבְךָ וּבְכָל־נַפְשְׁךָ וּבְכָל־מְדִינָתְךָ)). Note the idea of a whole heart and soul loving and serving YHWH. This is the key as well to how to read the Torah, reading it in love and a mind to serve with a whole heart and soul. Cf. Berman, *Created Equal*, 34, 38 for similar points. In Torah the verb שָׂמֵחַ (“to be glad”) is used in a command to be joyful during the festivals in the following verses: Lev 23:40; Deut 12:7, 12, 18; 14:26; 16:11, 14; 26:11; 27:7. Num 10:10 uses the noun שְׂמֵחָה to describe the festivals as שְׂמֵחָתְכֶם (“your rejoicing”), and Deut 16:15 uses the adjective שְׂמֵחַ (“joyful”) to again speak of the festivals stating that וְהָיִיתָ אֹף שְׂמֵחַ (“and you shall surely rejoice”). At Deut 28:47 even warns that if the people fail to serve YHWH בְּשִׂמְחָה וּבְרֵטוֹב לֵבָב מְרֹב כָּל ( “in joy and gladness of heart for all”) they will fall under the curse of enemy hands. Cf. Deut 33:18. For an analogy to the attitude of obedience in Egypt, see Eyre, *The Use of Documents in Pharaonic Egypt*, 97. When Marduk aims at supremacy among the gods in *Enūma Elish* he desires to be elected by the gods “in joyful mood” (“Epic of Creation (*Enūma Elish*),” trans. Benjamin R. Foster (*The Context of Scripture [COS]* 1: 1.111:395 (61))). Walton has argued that Israelite religion is characterized by the more internalized aspects of morality in contrast to the more externalized focus in ANE ethics, the latter being more concerned about sustaining the cosmic order (John H. Walton, *Ancient Near Eastern Thought and the Old Testament: Introducing the Conceptual World of the Hebrew Bible* (Grand Rapids, MI: Baker Academic, 2006), 149–61). For a discussion of the use of anthropological categories like internal/external to describe the textual material of Torah, see below. Muffs elaborates: “It is

Sixth, the sanctions, including covenant curses (Lev 26; Deut 28), and the need to expiate sins in case of failure or breach of the covenantal relationship (e.g. Lev 4–5), indicate normativity.<sup>130</sup> While we do not find sanctions attached to all instructions, something that also problematize a legislative model, their presence in many cases support seeing Torah as normative.<sup>131</sup>

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as if to say that since all the goods in the world belong to the Divine, the only real contribution man can offer is the willingness with which he gives his contributions, and the alacrity with which he performs the act (cf. 1 Chr 29:14)” (Muffs, *Love and Joy*, 166). Muffs sees in Deut 15:10 “the concatenation of the three ideas” of (a) giving willingly, (b) according to one’s means, and (c) the concomitant blessing” (Muffs, *Love and Joy*, 179–81, 185). He suggests, “with due reservation, that the later the literature—be it legal, religious, or literary—the greater the stress on inner states of mind, and in legal contexts in particular, the great[er] the constitutive importance of intent and volition” (Muffs, *Love and Joy*, 145). On how the aspect of volition becomes more prominent in Chronicles see Muffs, *Love and Joy*, 183–84. Cf. Bernard S. Jackson, “Liability for Mere Intention in Early Jewish Law,” in *Essays in Jewish and Comparative Legal History* (Leiden: Brill, 1975), 202–34; Maccoby, *Ritual and Morality*, 80; Jassen, *Scripture and Law*, 132–33 on the regulation of the internal in Torah. The frequent use of motivation clauses in Torah is intended to persuade the listener/reader, to create a positive disposition. Paul commented that “since law serves as an instrument of education, a didactic aim is to be found only in biblical legislation. Thus, unlike most other ancient legal corpora, motive clauses are occasionally appended to both apodictic and casuistic injunctions. These explanatory, ethical, religious, and historical comments appeal to the conscience of the people and pedagogically aid and motivate them to observe the law” (Paul, *Studies in the Book of the Covenant*, 39). According to Greenberg, the publication of Torah is interlinked with the call of Israel “to live in dedication to God after the manner of priests” (e.g. Exod 22:30; Lev 20:26, and Deut 14:2), implying that Torah “is to function as a pedagogue, a trainer in a course of life” (Greenberg, “Three Conceptions of the Torah,” 14–15). For differences in the use of the motivation clauses within the legal corpora of Torah and Mesopotamian law see Rifat Sonsino, *Motive Clauses in Hebrew Law: Biblical Forms and Near Eastern Parallels*, ed. Douglas A. Knight. Society of Biblical Literature Dissertation Series [SBLDS] 45 (Chico, CA: Scholars Press, 1980), 221–23, 225. For further analyses of motivation clauses in Torah see Berend Gemser, “The Importance of the Motive Clause in Old Testament Law,” in *Congress Volume: Copenhagen, 1953*, ed. G. W. Anderson et. al., VTSup 1 (Leiden: Brill, 1953), 50–66; Bent Mogensen, *Israelitiske leverejler og deres begrundelse* (København: Gads Forlag, 1983); Watts, *Reading Law*, 65–67; Sonsino, *Motive Clauses in Hebrew Law*. Berman sees a contrast between the Pentateuch and the prophets/NT in their ethical outlook, given its own anthropology: “The Pentateuch has a fundamentally optimistic view of human nature—it expects that an entire nation can behave in exemplary fashion with regard to one another and with regard to their sovereign king, God” (Berman, *Created Equal*, 169). This relates to the focus upon keeping Torah, rather than studying Torah in the early books of the HB (Kent Aaron Reynolds, *Torah as Teacher: The Exemplary Torah Student in Psalm 119*, VTSup (Leiden: Brill, 2010), 182). Cf. my “Interpretation of the Written,” 1–19.

<sup>130</sup> For the sanction of כרת (“to cut off”) see Donald J. Wold, “The Meaning of the Biblical Penalty Kareth” (Ph.D. diss., University of California, Berkeley, 1978).

<sup>131</sup> Cf. Fishbane, *Biblical Interpretation in Ancient Israel*, 91–92; Fitzpatrick-McKinley, *The Transformation of Torah*, 116.

Seventh, with YHWH as the transcendent reference of the Torah-text and the ancient Israelite court, the text as YHWH's word is also imbued with normativity. As mentioned, in all four legal cases mentioned in the instructive material of Torah (Lev 24:10–23; Num 9:1–14; 15:32–36; 27:1–11) we find the centrality of the oracle. But these four cases also show the proximity of instruction and practice, again showing an assumed normativity of the instructions.<sup>132</sup> Past, present, and future instructions by YHWH receive a normative status. As we have seen above, YHWH stood as the transcendent reference of the covenant stipulations. Thus, law is not the absolute referent, but, instead, receives a contingent status. Strictly speaking, Torah does not present us with “the rule of law” but “the rule of YHWH.”<sup>133</sup> With YHWH as the transcendent referent, the inclusion of oracle (Lev 24:10–23; Num 9:1–14; 15:32–36; 27:1–11), oath before YHWH (e.g. Exod 22:8–10; Num 5:21),<sup>134</sup> and ordeal (Num 5:11–31) become understandable, even if they obscure the legislative model. While the instructions to judges do not admonish judging according to Torah, as discussed above, and while the inconsistency in providing procedures and sanction in the instructive material would

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<sup>132</sup> Cf. Fitzpatrick-McKinley, *The Transformation of Torah*, 110–11.

<sup>133</sup> For the idea of “rule by law” in Egypt see “The Eloquent Peasant,” trans. Nili Shupak (*COS* 1: 1.43:101 (104ff)).

<sup>134</sup> Cf. Fitzpatrick-McKinley, *The Transformation of Torah*, 137–39. A question is what role the oracle, oath before YHWH, and ordeal have in the book of Deuteronomy. The clearest cases are at least found in Exodus–Numbers. In the majority of cases the verb שָׁבַע (“to swear”) is used in Deuteronomy for God swearing to his people (Deut 1:8, 34–35; 2:14; 4:21, 31; 6:10, 18, 23; 7:8, 12–13; 8:1, 18; 9:5; 10:11; 11:9, 21; 13:18; 19:8; 26:3, 15; 28:9, 11; 29:12; 30:20; 31:7, 20–21, 23; 34:4). Exceptions are 6:13 and 10:20 where the people swear by the name of YHWH. The noun אִשְׁבֻּעָה (“oath”) is used only in 7:8, and here for the oath YHWH swore to the people. Further, we have no account of actual court cases as in Leviticus and Numbers. And as we have seen, the central role of the oracle in court as seen in Exod 18, seems to disappear in Deut 17, and is instead passed on to the line of prophets and their public indictments of the people.



make them problematic as a legislative document, the oracle, oath, and ordeal remind the reader of living in the divine courtroom, where blessings and curses—most clearly formulated in Lev 26 and Deut 28—function as divine sanctions.<sup>135</sup>

Eighth, it seems difficult to separate the instructive material from the narrative covenantal setting. Averbeck has made a convincing argument that the deliverance narrative permeates the entire instructive material of the BC: “Virtually at every turn, the rationale for the Law depends on the people’s deliverance from slavery in Egypt and its implications for the way that they must treat the poor and disadvantaged in Israel, including the resident alien.”<sup>136</sup> It thus becomes understandable why the manumission

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<sup>135</sup> Fitzpatrick-McKinley makes the following comment with regard to divine sanctions in relation to the oracle, oath, and ordeal: “Wisdom morality was to be observed not because it was backed up by a juridical body, courts and something akin to a policing force, but because ignoring the advice of the wisdom ideals could bring the curse and disapproval of the gods, resulting ultimately in the destruction of society. Observance of the moral stipulations, in contrast, would bring prosperity and blessings which were bestowed by the approving gods. It has been shown that, even prior to the Deuteronomic movement which placed all ‘law’ under Yhwh’s will and authorship, Israelite wisdom ideals were also protected by Yhwh. . . . It involved a making explicit of what had always been implicit: namely that order in creation could only be sustained through the observance of the torah rules which were viewed by the scribes as expressive of a cosmic reality. The emphasis of Yhwh as the source of Israel’s torah was not the result of, nor is it immediately related to, social and economic developments. It is a statement of the reality of Israel’s torah which was at least an implicitly characteristic of it from the beginning” (Fitzpatrick-McKinley, *The Transformation of Torah*, 177).

<sup>136</sup> Richard E. Averbeck, “The Egyptian Sojourn and Deliverance from Slavery in the Framing and Shaping of the Mosaic Law,” in *“Did I Not Bring Israel Out of Egypt?” Biblical, Archaeological, and Egyptological Perspectives on the Exodus Narratives*, eds. James K. Hoffmeier, Alan R. Millard and Gary A. Rensburg (Winona Lake, IN: Eisenbrauns, 2016), 157–58. Cf. 143–44. Averbeck also finds a literary framing in repetitions between Exod 19 and Deut 25 (Averbeck, “Framing and Shaping of the Mosaic Law,” 144–49). Sprinkle has argued that the placement of the manumission instructions at the beginning of the BC, in Exod 21:2–11, should be understood as rooted in the Exodus deliverance narrative. It contrasts with other ANE legal collections, which never give slave instructions such a prominent position (Joe M. Sprinkle, *The Book of the Covenant: A Literary Approach*, ed. David J. A. Clines and Philip R. Davies. JSOTSup 174 (Sheffield: JSOT Press, 1994), 62). For similar arguments seeing BC as linked to the surrounding narrative, see Wright, *Inventing God’s Law*, 322–23, 327, 332–45. Cf. Wright, *Inventing God’s Law*, 149–51 for an argument that the primacy of the concern for the poor in BC depends upon LH, and this concern again dictates the initial position of the slave-laws in BC. Otto also sees the concern for the poor as central to BC (Otto, “Aspects of Legal Reforms,” 189).

instructions introduce the BC. But Averbeck points out how manumission instructions also conclude the Sinai Instructions in Lev 25:39–55.<sup>137</sup> He sums it up succinctly with “there would be no Law without the exodus.”<sup>138</sup> This is not the place to enter into the discussion about the character of divine instructions prior to Sinai. Gen 26:5, for example, raises many questions in that direction. The point here is simply that given the

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<sup>137</sup> Averbeck writes: “Furthermore, not only does the Book of the Covenant begin with debt-slave law, but the whole of the laws given at Sinai also end with the debt-slave law in Lev 25:39-55, just before the blessings and curses of the covenant in Lev 26. This latter point is not often taken into account in discussions of the Sinaitic Law. Perhaps this is because the Laws of Hammurapi, for example, do indeed conclude with slave laws, so an ANE law collection ending this way is in fact not unique to the biblical Law, in contrast to the fact that no such collection begins with slave laws. Or perhaps it is because the overall canonical shape and frame of the Law is often not given full consideration; the emphasis tends toward the literary shape of the units of law within it. Or perhaps it is due to a combination of these and other factors. In any case, from the point of view of the text as it stands, Hebrew debt slave and release is ‘the beginning and end’ of the Law at Sinai, literally” (Averbeck, “Framing and Shaping of the Mosaic Law,” 158–59). He continues: “In reality, therefore, there are a good number of instances seeded through the Law in which the call for good and fair treatment of resident aliens is based on Israel’s past experience in Egypt. One could say that it is essential to the ethos of the whole Law, Exodus through Deuteronomy, from beginning to end, and in between. Whether laying foundations or coming to conclusions, the lawgiver gravitated toward the founding event and its implications for the good life in ancient Israel” (Averbeck, “Framing and Shaping of the Mosaic Law,” 161). Cf. p. 163.

<sup>138</sup> Averbeck, “Framing and Shaping of the Mosaic Law,” 166. Lohfink writes: “Der Pentateuch als ganzer präsentiert sich nicht als rhetorische Vermittlung von recht an seine Leser, und erst recht nicht als Rechtskodifizierung. Als ganzer ist er kein rechtsstiftender Sprechakt. Er ist eine Erzählung, Die Gestaltung als Erzählung ist auch keine Verkleidung einer Absicht, die sofort auf Rechtskodifizierung ginge” (Norbert Lohfink, “Prolegomena zu einer Rechtshermeneutik des Pentateuch,” in *Das Deuteronomium*, ed. Georg Braulik (Frankfurt am Main: Lang, 2003), 42). See also pp. 12–15 for a discussion on the relation between Exodus-Numbers and Deuteronomy. See also his Norbert Lohfink, “The Priestly Narrative and History,” in *Theology of the Pentateuch: Themes of the Priestly Narrative and Deuteronomy* (Edinburgh: T&T Clark, 1994), 136–72 where he discusses the historiography of the so-called ‘priestly’ narrative (P<sup>s</sup>), and concludes that its “vision is so differentiated that the former alternative of ‘law and history’ no longer exist” (p. 172). Watts writes: “The narrative context of Pentateuchal law confirms that the Torah is intended to be read as a whole and in order. Unlike law, narrative invites, almost enforces, a strategy of sequential reading, of starting at the beginning and reading the text in order to the end. The placement of law within narrative conforms (at least in part) the reading of law to the conventions of narrative” (Watts, *Reading Law*, 29. Cf. p. 11, 91). At the same time, according to him, “the relationships between legal collections do not seem to be governed primarily by narrative considerations” (Watts, *Reading Law*, 77. See also pp. 85–87). And Watts sums up the function of the motivation clauses used in Torah as follows: “Motive clauses create links between the lists of laws and the stories of the Pentateuch” (Watts, *Reading Law*, 66). For further analyses of motivation clauses in Torah see Gemser, “The Importance of the Motive Clause in Old Testament Law,” 50–66; Sonsino, *Motive Clauses in Hebrew Law*; Mogensen, *Israelitiske leveregler og deres begrundelse*; S. Amsler, “Les documents de la loi et la formation du Pentateuque,” in *Le Pentateuque en question*, ed. A. de Pury (Geneva: Labor et Fides, 1989), 242–43; Watts, *Reading Law*, 65–67.

way in which Torah is formulated, as we now have it, the covenantal instructions are inextricably intertwined with the exodus event. According to Joosten, “the theme of the Exodus underpins the entire discourse of H. . . . there is not one single subject treated in H that is not directly connected in some way with that momentous event from the past.”<sup>139</sup> Nihan has recently argued for the narrative coherence of the Exodus–Numbers account, simultaneously seeing the divisions into separate books as following the logic of the Pentateuchal narrative.<sup>140</sup> He observes that the so-called ‘formula of self-presentation’ (אֲנִי יְהוָה אֱלֹהֵיכֶם / אֲנִי יְהוָה) within the exhortations and laws themselves, found especially in Lev 17–26 but also in the other legal corpora, points to a close and inseparable relation between the instructive material and the narrative covenantal setting.<sup>141</sup>

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<sup>139</sup> Joosten, *People and Land in the Holiness Code*, 101. Cf. his discussion of this point on pp. 93–101.

<sup>140</sup> Nihan, *From Priestly Torah to Pentateuch*, 69–95. For an argument as to how the literary polyphonic discourse is connected to the narrative in the Pentateuch, see Stahl, *Law and Liminality in the Bible*. For other discussions on the relation between instructions and narrative in Torah see Gordon J. Wenham, *Story as Torah: Reading Old Testament Narrative Ethically* (Grand Rapids, MI: Baker Academic, 2004); Berman, *Created Equal*, 141, 149–51; Noel K. Weeks, *Sources and Authors: Assumptions in the Study of Hebrew Bible Narrative* (Piscataway, NJ: Gorgias Press, 2011). For other approaches, where the purely literary relations between law and narrative in Torah are emphasized, see Gershon Hepner, *Legal Friction: Law, Narrative, and Identity Politics in Biblical Israel*, StBibLit 78 (New York: Peter Lang, 2010); C. M. Carmichael, *Law and Narrative in the Bible* (Ithaca, NY: Cornell University Press, 1985). See Altman, *The Historical Prologue* for how the Hittite suzerain could impose a version of history upon his vassal subjects. It was a subjective historiography, not like ours aspiring to objectivity. History itself was legal, as argued by Jiří Moskala and Felipe Masotti, “The Hittite Treaty Prologue Tradition and the Literary Structure of the Book of Deuteronomy,” in *Exploring the Composition of the Pentateuch*, eds. L. S. Baker, Jr. et al., forthcoming). This might relate to the composition of Torah and the prophets, through which and whom God presents his own version of history to be accepted by his willing subjects. Cf. Mendenhall, “Covenant Forms in Israelite Tradition,” 45.

<sup>141</sup> Nihan writes: “As a matter of fact, it is worth noting that the reconstruction of an earlier form of Lev 17–26 entirely free from any reference to the wilderness setting is not only arbitrary, it was also never entirely successful. Even after removing all the elements manifesting most clearly this code’s dependence on P, such as the introductions to the divine speeches and any mention of Mt Sinai, the remaining material still presupposes a situation in which Israel has just left Egypt (cf. 18:3; further 22:33; 25:55; 26:13, 45) and is on the point of entering the promised land (cf. 18:3; 18:24–30; 20:22–26). Besides,

Ninth, passages outside the instructive material of Torah seems to corroborate a concept of Torah as normative covenantal instruction, such as the covenants in the patriarchal cycles (e.g. Gen 21:22–33; 26:26–31, 44–54) and the prophetic indictment of the people on the basis of Torah.<sup>142</sup>

While Torah should not be understood as legislative law, based on the above observations I will propose that a better characterization is to see it as normative covenantal instruction.<sup>143</sup> And again, the concept of covenantal instruction is important

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this narrative context is not limited to H's parenetic framework in Lev 18–25. Not only is it explicitly mentioned in some laws, in particular in Lev 25 (see 25:2ff., and further 19:23; 23:10), but it is consistently presupposed by the grand exhortation of Lev 26:3–45 describing life inside the settled land according to Israel's obedience or disobedience to Yahweh (cf. 26:3–13 and 14–39, and compare with Deut 28)" (Nihan, *From Priestly Torah to Pentateuch*, 400. Cf. p. 399). Cf. Joosten, *People and Land in the Holiness Code*, 94 for a cautious, but similar point. The following passages in Exodus–Deuteronomy include the phrase אָנִי יְהוָה אֱלֹהֵיכֶם / אָנִי יְהוָה: Exod 6:2, 6-8, 29; 7:5, 17; 8:18; 10:2; 12:12; 14:4, 18; 15:26; 16:12; 29:46; 31:13; Lev 11:44-45; 18:2, 4-6, 21, 30; 19:2-4, 10, 12, 14, 16, 18, 25, 28, 30-32, 34, 36-37; 20:7-8, 24, 26; 21:8, 12, 15, 23; 22:2-3, 8-9, 16, 30-33; 23:22, 43; 24:22; 25:17, 38, 55-26:2; 26:13, 44-45; Num 3:13, 41, 45; 10:10; 14:35; 15:41; 35:34; Deut 29:5. As will be easily seen from this distribution, within instructive material, the phrase is found predominantly in Leviticus.

<sup>142</sup> Cf. Berend Gemser, "The *Rîb*- or Controversy-Pattern in Hebrew Mentality," in *Wisdom in Israel and in the Ancient Near East*, eds. Martin Noth and D. Winton Thomas, VTSup 3 (Leiden: Brill, 1960), 120–37. In his dissertation from 1974 Bergren argued that an analysis of the individual passages show "that prophetic accusation presuppose a standard to which those whom the prophets accuse are bound" (Bergren, *The Prophets and the Law*, 49). He also shows how the audience to the prophets seemed to know their guilt in regard to the law (Bergren, *The Prophets and the Law*, 60-62). Having argued above that Torah was not presented as a source in the human court, the concept of covenantal lawsuit raises the question how Torah was used in a divine courtroom with the prophet presenting the divine accusation against the people. This discussion needs to be left for another occasion. The divine-prophetic diatribe against the people reusing Torah, seems to presuppose a normativity of Torah. For further studies on the concept of covenantal law-suit see Weeks, *Admition and Curse*, 159; Richard M. Davidson, "The Divine Covenant Lawsuit Motif in Canonical Perspective," *Journal of Adventist Theological Society (JATS)* 21, no. 1–2 (2010): 45–84; Shalom E. Holtz, "The Prophet as Summoner," in *A Common Cultural Heritage: Studies on Mesopotamia and the Biblical World in Honor of Barry L. Eichler*, ed. Grant Frame (Bethesda, MD: CDL Press, 2011), 19–34; Job Y. Jindo, "The Divine Courtroom Motif in the Hebrew Bible: A Holistic Approach," in *The Divine Courtroom in Comparative Perspective*, eds. Ari Mermelstein and Shalom E. Holtz, *BibInt* 132 (Leiden: Brill, 2015), 76–93. For how prophets are part of the divine courtroom, and how the divine courtroom appoints human rulers and judges for the maintenance of cosmic order see Jindo, "The Divine Courtroom Motif," 81–82.

<sup>143</sup> Fitzpatrick-McKinley's characterization of Torah as "moral advice of scribes," based on analogies with the Babylonian concept of *kittum* and the ancient Indian concept of *dharma* (Fitzpatrick-McKinley, *The Transformation of Torah*, 21), therefore becomes too weak a conceptualization to adequately explain the phenomena of Torah. There seems to be a normativity, even if this is not a

for the present study as it helps us understand the dual phenomena of close proximity and creativity in the reuse of Torah-instructions. The non-legislative character of covenantal instruction help us understand why we do not find the exact verbal reuse we would expect in a legislative model, and the normativity of the instructions help us understand

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legislative concept of Torah. The above observations also problematize calling it ‘retrospective,’ ‘common law,’ or ‘descriptive.’ None of these designations embrace all the mentioned points, nor is viewing it as ‘legislation’ adequate.

The closest analogy to Torah-instructions within the biblical material itself might be the parent instructing his or her child through the Wisdom literature (e.g. Prov 1–7). The difference would be that as YHWH was seen as standing above the parents, so Torah transcended the parents’ instructions. Deut 8:5 is here relevant: “And you shall consider in your heart that as a man disciplines his son, YHWH your God disciplines you” (וַיְדַעְתָּ עִם-לְבָבְךָ כִּי כַאֲשֶׁר יִסָּר אִישׁ אֶת-בְּנוֹ; הֲנִיָּה אֱלֹהֶיךָ מְיַסְרֶךָ). While scholars differ in the extent they conflate and contrast Torah and Wisdom, this question needs to be addressed elsewhere (cf. Nielsen, *Oral Tradition*; Peter H. Davids, *The Epistle of James: A Commentary on the Greek Text*, The New International Greek Testament Commentary (Grand Rapids, MI: Eerdmans, 1982), 52–53; Mogensen, *Israelitische leverejler og deres begrundelse*, 257, 260; Moshe Weinfeld, *Deuteronomy 1-11: A New Translation with Introduction and Commentary*, AB 5 (New York: Doubleday, 1991), 62–65; Weinfeld, *Deuteronomy and the Deuteronomistic School*, 244–319; Roland E. Murphy, “Wisdom in the OT,” in *Anchor Bible Dictionary (ABD)*, ed. David Noel Freedman (New York: Doubleday, 1992), 926; Jackson, *Semiotics of Biblical Law*, 70–92; Jackson, *Wisdom-Laws*, 23–39). However, if Fox is right in claiming about Proverbs that the individual precepts are pointers beyond Proverbs’ own precepts, then this resembles to a large extent the function of Torah as well: “The reason that the wisdom the author is seeking to impart is at once difficult and obvious is that it is not reducible to the book’s precepts. The author is aiming at a higher and harder goal: wisdom as a power. The knowledge of wisdom, once achieved, resides in the learner as a potential and must be activated by God in order to become the power of wisdom, an inner light that guides its possessor through life” (Michael V. Fox, *Proverbs 1-9: A New Translation with Introduction and Commentary*, AB 18A (New Haven: Yale University Press, 2008), 347). Watts writes: “Both law and wisdom seek to persuade hearers/readers of the urgency of practicing their teachings. Both, in other words, aim to instruct their audience in a way of life” (Watts, *Reading Law*, 64). And further, that “whereas Wisdom’s stereotypical setting is private instruction within the family, reading law is usually depicted as a public activity addressing the whole people” (Watts, *Reading Law*, 66). Cf. William P. Brown, “The Law and the Sages: A Reexamination of Tôrâ in Proverbs,” in *Constituting the Community: Studies on the Polity of Ancient Israel in Honor of S. Dean McBride Jr.*, eds. John T. Strong and Steven S. Tuell (Wiona Lake, IN: Eisenbrauns, 2005), 251–80; Bernd U. Schipper, “When Wisdom Is Not Enough! The Discourse on Wisdom and Torah and the Composition of the Book of Proverbs,” in *Wisdom and Torah: The Reception of 'Torah' in the Wisdom Literature of the Second Temple Period*, eds. Bernd U. Schipper and D. Andrew Teeter, SJSJ 163 (Leiden: Brill, 2013), 55–79. According to Fitzpatrick-McKinley the clearest evidence for an identification of wisdom and Torah is found in Ben Sirach (Fitzpatrick-McKinley, *The Transformation of Torah*). Benjamin G. Wright III comments on Sir 34:8: “Ben Sira connects fulfilling the law with wisdom and being faithful, all of which are set against the deceptive nature of dreams” (in Louis H. Feldman et al., eds., *Outside the Bible: Ancient Jewish Writings Related to Scripture* (Philadelphia: Jewish Publication Society, 2013), 2297n). See also Sir 39:1; Bar 3:29–4:1. According to Perdue we find a similar identification in the earlier Ps 19 and 119 (Leo G. Perdue, “Cosmology and the Social Order in the Wisdom Tradition,” in *The Sage in Israel and the Ancient Near East*, eds. J. G. Gammie and Leo G. Perdue (Winona Lake, IN: Eisenbrauns, 1990), 462). For the classic study of wisdom in ancient Israel see Gerhard von Rad, *Wisdom in Israel* (London: SCM, 1972).

why we nevertheless find a close attention to the formulations of the instructions. As we will see, the combination of exact correspondence and creativity is a hallmark rather than exception in the clearest cases of reuse between Torah and the Prophets.

I have argued that the concept of normative covenantal instruction seems to best account for the dual phenomena—often seen in the same passages—of creative and exact reuse. The rejection of a legislative model for Torah helps us understand why cases of reuse of Torah in the HB do not seem to belong to the literalistic type of reuse we are used to in modern law. In Torah’s covenantal character, YHWH, not the literary formulations themselves, becomes the ultimate reference. Therefore, the Torah-instructions do, therefore, not introduce a ‘rule of law,’ but find their origin and possible revisions with YHWH, and are thus contingent. Since the primary relation is between YHWH and his people where the instructions become an aid in this covenantal relationship, the final reference is not the instructions but YHWH. On the other hand, as the words of YHWH, the normativity of the instructions invite a close reading, and, at certain points, exact reuse of the Torah-instructions. The goal is a covenantal relationship between YHWH and his people, where the instructions function didactically to facilitate a holy and righteous way of life together with a holy and righteous God. They set the stage for the covenantal relationship by defining and indicating how it is to be lived out.

As the Torah-instructions are not only concerned with regulating external conduct, but also with instructing the people about how to live a covenantal form of life with YHWH, they invoke love, joy, and gratitude as motivations for covenantal obedience. Torah addresses the heart. The form of life lived after reading or listening to

the Torah-instructions thus also becomes a disclosure of the thoughts of the heart.<sup>144</sup>

Since the dynamics of this covenantal life cannot be reduced to just words and instruction, Torah takes the form of pointers and examples to this covenantal life. For example, Torah is thus not “fulfilled by the act of public reading itself.”<sup>145</sup> Rather, Torah is only fulfilled through covenantal forms of lives. Torah sets the frame of such a covenantal life, but does not exhaust it. And it is within this frame that room is found for literary originality and innovation, where implications of previous Torah-instructions or additional revelation fills in or paints for the first time a part of the picture not yet seen. As poets and authors have known for a long time, words and instructions can never exhaust the dynamics of a personal relationship, or, more specifically, a covenantal life. As healthy relations have a stable root in the known and familiar, creating a basis for adventuring into the unknown, legal reuse finds its ‘home’ in exact correspondence of lexemes, phrases, or concepts, but also opens for exploring the covenantal relation through literary creativity, invention, and even revision where needed.

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<sup>144</sup> As the character of the reader is disclosed in the reading, so Georg Savran makes the reverse point that the character of the speaker is disclosed in the writing: “Characterization is accomplished not by simple description but by drawing analogies between the repeated words and behaviors of various figures in the text and by judging the constancy of identity in the replication of thoughts and actions in speech, and the reverse” (Savran, *Telling and Retelling*, 5. Cf. p. 12, 49, 88, 92–93). And again: “It is unfortunate that there are so few cases of quoted direct speech in which a character presents, in essence, his thoughts about his thoughts, but self-consciousness is hardly a major facet of biblical characterization. Still, much of the fascination of biblical characters lies in the relative impenetrability of their personae in conjunction with activities, events, and a style of narration that invites, if not demands, interpretation of their motives” (Savran, *Telling and Retelling*, 51). Cf. Sternberg, *The Poetics of Biblical Narrative*, 388. Watts writes: “The stories that introduce lists of Mesopotamian and Israelite laws characterize the identity and authority of law-speaker through their past accomplishments, and the sanctions that conclude them characterize the speaker’s willingness to enforce their provisions. Direct second-person address within the codes reminds hearers and readers of their relationship to the speaker, while motive clauses link laws to the stories that precede them and the sanctions that follow. Repetition highlights the issues of most importance to the law-speaker, but contradiction raises questions about the speakers’ reliability” (Watts, *Reading Law*, 91. Cf. pp. 89–91).

<sup>145</sup> Jackson, *Semiotics of Biblical Law*, 139.

We may even claim that later literary compositions about covenantal forms of life have a creative imperative on the grounds that a mere repetition of Torah would be a poor expression of covenantal instructions. While rooted in the previous Torah-instructions, reuse needs to go beyond previous formulations, once more directing the readers and listeners to form lives in covenant with YHWH—even in settings not specifically addressed in Torah. Instead of seeing legal dissimilitude as a problem that needs a source-critical solution or harmonization, I want to propose instead that, given Torah as covenantal instruction and memorized reuse, such legal variation is something we should view as normative. Given the above characterization of Torah as normative covenantal instruction, we can now formulate the above contention in falsifiable terms: we should expect proto-halakhic reuse to be characterized by repetition with variation, or to put it differently, by the dual phenomenon of exact literary correspondence and literary creativity.<sup>146</sup> The potential for problematizing—maybe even falsification of—this model is therefore seen if we can find textual cases within the HB where legal material is reused *en toto* literalistically, as we are used to in a legislative concept of law, or at least such cases might problematize negating a legislative characterization of Torah. Legal innovation and revision itself will not falsify the model. Therefore, I argue that the typical

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<sup>146</sup> While most of the following cases appear to fit into this pattern of Torah being repeated with variation, we also realize that Jer 7 and Ezek 18—in many ways the simplest cases of reuse to be studied in this study—are also the most likely candidates for falsifying the above. This will be discussed further when discussing Jer 7 and Ezek 18. The relative exact reuse between the Decalogues of Exod 20 and Deut 5 would be a key case. But both in Deut 5, Jer 7, and Ezek 18 we find literary variation that does not corroborate a legislative model. Instead of speaking of a dual phenomenon, of both pointillistic exact reuse and creative reuse, it seems better to speak in terms of a continuum between these two poles, where a text might be more or less either—even showing differences within a specific passage itself. Still, variation in reuse should be seen as normal rather than as a problem in need of a solution.



pattern is pointillistic exact reuse, where this pointillism parallels the form of specific locutions or concepts borrowed from previous instructions, combined with a certain free and creative reuse of Torah. I suggest that this may better account for legal tensions in Torah than the typical source-critical or traditional harmonizations do.<sup>147</sup>

### The Distinction between Ethical and Cultic Instructions

Given the above, where we have seen that the combination of ethical and cultic material is unique to Torah in the ANE,<sup>148</sup> a question to be asked is therefore if a distinction between ‘ethical’ and ‘cultic’ instructions in Torah is justified? This question is particularly relevant for the following discussion, given that I will focus upon instructions typically classified as ethical. To begin answering this question I will take a

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<sup>147</sup> The above should also be qualified to some extent. As pointed out by Greenberg, the conception of Torah argued for above appears representative of how Torah is characterized within Torah itself and largely in the latter prophets. It is seen as “a body of divine instructions for the people at large (e.g. Exod. 24:12),” addressed to the people as a collective of individuals each held responsible (Greenberg, “Three Conceptions of the Torah,” 12–13). This contrasts with the conception found in the Book of Kings, where “the relationship between heaven and earth is narrowed simply to that between God and the kings,” where the king is held responsible for the covenantal disloyalty of the people (Greenberg, “Three Conceptions of the Torah,” 19–20). A third conception is that found most explicitly formulated in Jeremiah and Ezekiel, in passages like Jer 31:30–33 and Ezek 36:24–27, where the incapability of the people to live according to Torah is met with a divine intervention, inscribing Torah on the people’s hearts so they will live accordingly (Greenberg, “Three Conceptions of the Torah,” 19–20). Berman has argued that in Torah each individual Israelite takes the role of a vassal-king in the treaty relationship with God (Berman, *Created Equal*, 41–42). For the discussion of whether YHWH is or is not characterized as king in the Pentateuch see Watts, *Reading Law*, 101. Greenberg sees a possible transition from the conception in the Former Prophets into the Latter Prophets with “Elijah’s desire to reestablish the covenant between God and the people (18:37). . . . It may be a historical fact that with Elijah a turning point occurred because the subsequent classical prophets of the North (Amos, Hosea) continued to address the people and not primarily the king” (Greenberg, “Three Conceptions of the Torah,” 13.). This latter conception will be discussed further under “Scribal Enculturation and Embodied Torah.”

<sup>148</sup> Cf. Greenberg, “Some Postulates of Biblical Criminal Law,” 11; Kaufmann, *The Religion of Israel*, 171; Cassuto, *A Commentary on the Book of Exodus*, 259–63; Paul, *Studies in the Book of the Covenant*, 8–9. This is not the place to discuss the distinction between so-called ethical and civil laws. For an argument how these are likewise intermixed see Watts, *Reading Law*, 158.

brief look at two approaches for seeing a distinction between ritual and moral laws, represented by Jonathan Klawans and Benjamin Kilchör.<sup>149</sup>

Jonathan Klawans has outlined criteria to differentiate laws relating to ritual impurity from those concerning moral impurity. He has given three characteristics that identify ritual impurity laws: (1) “The sources of ritual impurity are generally natural and more or less unavoidable,” (2) “It is not a sin to contract these impurities,” and (3) “these impurities convey an impermanent contagion.”<sup>150</sup> By contrast, he outlines five characteristics of moral impurities: (1) they are a “direct consequence of sin,” (2) “there is no contact-contagion with moral impurity,” (3) “moral impurity leads to a long-lasting, if not permanent, degradation of the sinner and, eventually, of the land of Israel,”<sup>151</sup> (4) moral impurity cannot be ameliorated by rites of purification, and (5) while *טמא* is used for both ritual and moral impurity, *תוֹעֵבָה* and *הַנְּהַי* are used exclusively for moral impurity.<sup>152</sup>

Even though Klawans’ work forms a point of departure in distinguishing textually

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<sup>149</sup> Cf. how Patrick distinguishes cultic and ethical laws. His rationale is that the cultic laws deal with holiness, while the ethical laws with justice and righteousness (Patrick, *Old Testament Law*, 190). But in my view, this distinction is not sustainable. Both portions seem to deal with both holiness and justice/righteousness. Lev 19 for example, commonly acknowledged as a mixture of ethical and cultic instructions, opens with an admonition to be holy (19:2).

<sup>150</sup> Jonathan Klawans, *Impurity and Sin in Ancient Judaism* (Oxford: Oxford University Press, 2000), 23.

<sup>151</sup> Klawans writes: “With regard to the loci of impurity, certain sins can defile the land, while no ritual impurity can do so” (Klawans, *Impurity and Sin*, 37).

<sup>152</sup> Klawans, *Impurity and Sin*, 26. Moskala has analyzed the dietary laws of Gn 1–3; Lev 11; and Deut 14 and concludes that they belong to what he terms ‘natural/hereditary uncleanness,’ being linked to the creation order (Jiří Moskala, “The Laws of Clean and Unclean Animals in Leviticus 11: Their Nature, Theology, and Rationale (An Intertextual Study)” (Ph.D. diss., Andrews University, 1998)). For arguments against seeing moral impurity as metaphorical or figurative see Klawans, *Impurity and Sin*, 32–36. Cf. Maccoby, *Ritual and Morality*, 67, 92–94, 163, 202.

between moral and ritual laws, several arguments point to the interrelationship between them: (1) terminological overlap between laws relating to ritual and moral impurity in the word *טמא* being used for both systems, (2) the use of *תאֲזָחֶנּוּ* for the offering cleansing both from ritual and moral faults (Lev 4:2–3, 14; 5:1–8; 12:6; Num 6:14; 15:21–24, 27), (3) the close intermixture of so-called ethical and cultic material, as for example in Lev 19, and (4) borderline cases like the dietary laws (Lev 11; Deut 14:3–21),<sup>153</sup> Sabbath (e.g. Exod 20:8–11; Deut 5:12–15),<sup>154</sup> Levirate marriage (Deut 25:5–10), and Jubilee (Lev 25) that do not lend themselves easily to being characterized either as moral or cultic instructions. Klawans himself admits that he has not been able to conceptualize the overlap between the two systems, and for his purpose he is satisfied with emphasizing them as two separate systems:

There can be no doubt, of course, that the two systems overlap in various ways. . . . The systems of impurity should not be associated so closely and at the same time removed too far from their greater context. . . . In the end, one cannot eliminate the possibility that the two impurity systems are connected on some deeper level. Yet none of the arguments in favor of such a view is persuasive. . . . It is best, therefore, to take the two systems on their own terms, especially since they are too often confused as it is. For now, it is best to let the emphasis fall on the distinction that ought to be made between ritual and moral defilements.<sup>155</sup>

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<sup>153</sup> Cf. Klawans, *Impurity and Sin*, 32.

<sup>154</sup> Sabbath seems to belong to moral (Exod 20:10; Deut 5:14–15 and letting those subject to oneself rest), cultic (Num 28:9–10 with additional sacrifice and Exod 25:30; Lev 24:7–8 with change of bread), civil (Exod 31:14–15; 35:2; Num 15:32–36), as well as animal welfare (Exod 23:12 and ox/donkey refreshed). Cf. Roy E. Gane, *Old Testament Law for Christians: Original Context and Enduring Application* (Grand Rapids, MI: Baker Academic, 2017), 175. See also pp. 173–78.

<sup>155</sup> Klawans, *Impurity and Sin*, 38. The reason why Klawans seems satisfied with holding the two systems apart is that he sees them as belonging to two separate compositions: “a scholarly consensus views Leviticus as a composite work. Leviticus 1–16, roughly, stems from the priestly source (P), while Leviticus 17–26 (again, roughly) stems from the Holiness Code (H). Thus the two purity systems are articulated in two distinct literary constructs, and perhaps emerged in different milieus” (Klawans, *Impurity and Sin*, 41–42. For the relative chronology of the origin of the two systems see Klawans, *Impurity and Sin*, 35). For critiques of Klawans’ view see David P. Wright, *The Disposal of Impurity*, SBLDS 101 (Atlanta: Scholars Press, 1987); Maccoby, *Ritual and Morality*; Jay Sklar, *Sin, Impurity, Sacrifice, Atonement: The Priestly*

While Klawans makes a good case for seeing distinctions between the ritual and moral impurity systems, his analysis still leaves the question of how to understand the textual overlap between the two unresolved. His analysis is therefore not entirely satisfactory.

Other scholars have attempted to see a differentiation between ethical and cultic laws in the use of the lexemes *חֻקִּים* and *מִשְׁפָּטִים*. I will here take Benjamin Kilchör's discussion of this as representative. Following Dillmann, Weinfeld wrote: "The *mišwah* seems to correspond to the basic stipulation of allegiance known to us from the treaties, or rather loyalty oaths, in the ancient Near East." He saw Deut 5–11 as "devoted" to and to "constitute" the *מִצְוָה*, in the meaning of a "basic demand for loyalty", while *חֻקִּים* *וְהַמִּשְׁפָּטִים* as beginning in 12:1.<sup>156</sup> According to Braulik, *מִצְוָה* included both the paraenetic (Deut 6–11) and legal corpora (Deut 12–26).<sup>157</sup> Kilchör brings the discussion of Weinfeld and Braulik on *מִצְוָה* together with discussion of other scholars claiming that the *חֻקִּים* refer to cultic regulations and *מִשְׁפָּטִים* to judicial matters.<sup>158</sup>

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*Conceptions*, Hebrew Bible Monographs 2 (Sheffield: Sheffield Phoenix Press, 2005); Saul M. Olyan, *Social Inequality in the World of the Text: The Significance of Ritual and Social Distinctions in the Hebrew Bible* Journal of Ancient Judaism Supplements 4 (Göttingen: Vandenhoeck & Ruprecht, 2011). Cf. Israel Knohl's thesis that the HS broadened the scope of holiness to integrate ethics and ritual in one sphere (Knohl, *The Sanctuary of Silence*).

<sup>156</sup> Weinfeld, *Deuteronomy 1-11*, 326–27.

<sup>157</sup> Georg Braulik, "Die Ausdrücke für 'Gesetz' im Buch Deuteronomium," *Biblica* 51 (1970): 56.

<sup>158</sup> Kilchör summarizes: "Die מצוה beinhaltet also die חֻקִּים und משפטים, ist aber grosser als jene und umfasst auch die paränetischen Kapitel Dtn 6–11. Die חֻקִּים und משפטים beginnen mit Dtn 12,1, wobei der Zweiteilung חֻקִּים und משפטים die Zweiteilung von Dtn 12,2–26,15 in Gesetze, die auf die Kultzentralisation bezogen sind (Dtn 12–18) und solche, die es nicht sind (Dtn 19–26) entsprechen dürfte. חֻקִּים bezeichnet die Kultsatzungen, משפטים die Rechtsordnung" (Kilchör, *Mosetora und Jahwetora*, 6. Cf. p. 329). Cf. Gordon H. Matties, *Ezekiel 18 and the Rhetoric of Moral Discourse*, SBLDS 126 (Atlanta, GA: Scholars Press, 1990), 179; Christoph Levin, "Über den 'Color Hieremianus' des Deuteronomiums," in *Das Deuteronomium und seine Querbeziehungen*, ed. Timo Veijola (Göttingen: Vandenhoeck & Ruprecht,

There are some challenges with making this claim the rationale for singling out the ‘ethical’ instructions in this present study. First, the מִשְׁפָּטִים of the BC (Exod 21:1; 24:3) include also cultic regulations (22:19, 28–30; 23:14–19; cf. 21:6; 22:7–8, 10, 17, 27; 23:10–13, 25–33), and thus blurs the mentioned distinction between חֻקִּים and מִשְׁפָּטִים. Neither is it clear how the HI fit into this picture. A case for making a distinction between חֻקִּים and מִשְׁפָּטִים as referring to separate collections of cultic and ethical instructions only seems possible for the book of Deuteronomy, and even there it is based on a conjectural claim that חֻקִּים correspond to Deut 12–18 and מִשְׁפָּטִים to Deut 19–26. Clear evidence seems wanting.

Second, a further challenge with using חֻקִּים and מִשְׁפָּטִים to demarcate cultic and ethical laws is that they are not used consistently in the legal material. Key passages speaking of מִשְׁפָּטִים and חֻקִּים/חֻקֵּי are Exod 15:25 (cf. 24:12); Lev 18:4–5, 26, 19:37; 20,22; 25:18; 26:15, 43, 46; Num 9:3; 35:29<sup>159</sup>; Deut 4:1, 5, 8, 14; 5:1; 11:32–12:1; 26:16. But besides the singular uses of the terms we also find them with some variation in other couplets (חֻקִּים/חֻקֵּי and מִצְוֹת [Exod 15:26; Lev 26:3 Deut 4:40; 6:2; 10:13; 27:10; 28:15, 45; 30:10]; מִשְׁפָּטִים and מִצְוֹת [Num 36:13]), and triplets (חֻקֵּי, מִצְוֹת, and תּוֹרָה [Gen 26:5]; מִצְוֹת, חֻקִּים/חֻקֵּי, and מִשְׁפָּטִים [Deut 5:31; 6:1; 7:11; 8:11; 26:17; 30:16]; and מִצְוֹת, עֲדוּת, and חֻקִּים [Deut 6:17]; עֲדוּת, חֻקִּים, and מִשְׁפָּטִים [Deut 4:45; 6:20]), and quatrains (חֻקֵּי, מִשְׁפָּטִים, מִצְוֹת, and בְּרִית [Lev 26:15]; חֻקֵּי, מִשְׁפָּטִים, מִצְוֹת, and מִשְׁמֶרֶת [Deut 11:1]).

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1996), 118; Udo Rüterwörden, “Die Dekalogstruktur des Deuteronomiums - Fragen an eine Annahme,” in *Die Zehn Worte. Der Dekalog als Testfall der Pentateuchkritik*, ed. Christian Frevel (Freiburg: Herder, 2005), 114; Jack R. Lundbom, *Deuteronomy. A Commentary* (Grand Rapids, MI: Eerdmans, 2013), 235.

<sup>159</sup> In Num 35:29 we find the construct חֻקֵּי מִשְׁפָּטִים. Should this combination be understood as an amalgamation of cultic and civil law, in that the life-span of the high priest becomes the temporal limit for how long a non-premeditated murderer needs to stay in a city of refuge?

Given such variation it seems difficult to insist that the **דקיק** are the cultic laws while **משפטי** the ethical laws.

Third, in the Sinaitic and post-Sinaitic passages where it seems possible to decide based on the context whether **קח** refers to cultic or non-cultic regulations, Exodus–Deuteronomy seems to use **קח** consistently for cultic regulations (Exod 29:28; 30:21; Lev 6:11, 15; 7:34; 10:11, 13–16; 24:9; Num 18:8, 11, 19; 30:17; Deut 16:12; cf. Gen 47:21; Exod 12:24), even if there are some pre-Sinaitic passages where **קח** seems to be used of other regulations than strictly cultic (Gen 47:26; Exod 5:14; 18:16, 20). On the other side, **משפטי** seems to be used primarily for what we would term ethical instructions in both pre- and post-Sinaitic passages (Gen 18:19, 25; 40:13; Exod 15:25; 21:1, 9, 31; 23:6; 24:3; Lev 19:15, 35; 24:22; 25:18; 26:15, 43, 46; Num 27:5, 11; 35:12, 24, 29; Deut 1:17; 5:1, 31; 10:18; 16:18–19; 17:8–9, 11; 19:6; 21:17, 22; 24:17; 25:1; 27:19; 32:4, 41; 33:10, 21), but there are some uses of **משפטי** with regulations that pertain to the cultic domain (Exod 26:30; Lev 5:10; 9:16; Num 9:3, 14; 15:16, 24; 29:6, 18, 21, 24, 27, 30, 33, 37; Deut 18:3) and the breastpiece of judgment (**משפטי חן**) used for oracular judgment (Exod 28:15, 29–30; Num 27:21). In Deut 12–26, even if **קח** is only used in 16:12 and thus in the cultic section Deut 12–18, based on the use of **משפטי** for regulations in Deut 16:18–19 and 17:8–9, 11 it is not possible to maintain that **דקיק** is consistently characteristic of Deut 12–18 and **משפטי** to Deut 19–26.

Therefore, we seem to be forced back to the observation that the combination of ‘cultic’ and ‘ethical’ material in Torah is unique in the ANE. Paul Shalom writes regarding ANE sources: “There is a complete separation of secular and religious law: *dīnu* (law), *kibsu* (moral rules), and *parṣu* (religious orders) are never combined in a

single corpus. Legal rules, moreover, have no didactic purpose; they do not serve as a goal for pedagogic instruction.”<sup>160</sup> This contrasts to Torah according to Cassuto, where we find “religious and ritual regulations alongside legal ordinances without differentiation, which is not the case . . . in codes of the neighbouring nations.”<sup>161</sup> Again, this is supported by Kaufmann: “Peculiar to Israel was the organic blend of what elsewhere constituted three separate realms: the judicial, the moral, and the religious.”<sup>162</sup> Such comparative uniqueness of Torah deserves serious reflection. Before separating cultic and ethical laws, the phenomenon of their combination in Torah deserves proper attention. Whether they originally belonged to two separate sources or not, the fact that we find them already combined is unique when compared to ANE sources. According to Greenberg, it is YHWH as the transcendent referent in Torah—discussed above as an essential part of the biblical concept of covenantal instruction—that explains the intermingling of ‘ethical’ and ‘cultic’ material in Torah.<sup>163</sup>

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<sup>160</sup> Paul, *Studies in the Book of the Covenant*, 8–9.

<sup>161</sup> Cassuto, *A Commentary on the Book of Exodus*, 263. Matties writes: “In both Priestly and Ezekiel traditions, holiness is undifferentiated in terms of ethical and cultic actions” (Matties, *Ezekiel 18*, 202).

<sup>162</sup> Kaufmann, *The Religion of Israel*, 171. Cf. William W. Hallo, “New Moons and Sabbaths: A Case Study in the Contrastive Approach,” *HUCA* 48 (1977): 16; Berman, *Created Equal*, 100.

<sup>163</sup> Greenberg writes that “in the biblical theory the idea of the transcendence of the law receives a more thoroughgoing expression. Here God is not merely the custodian of justice or the dispenser of ‘truths’ to man, he is the fountainhead of the law, the law is a statement of his will. The very formulation is God’s; frequently laws are couched in the first person, and they are always referred to as ‘words of God’, never of man. Not only is Moses denied any part in the formulation of the Pentateuchal laws, no Israelite king is said to have authored a law code, nor is any king censured for so doing. The only legislator the Bible knows of is God; the only legislation is that mediated by a prophet (Moses and Ezekiel). This conception accounts for the commingling in the law corpora of religious and civil law and for the even more distinctively biblical combining of legal enactments and moral exhortations. The entire normative realm, whether in law or morality, pertains to God alone. So far as the law corpora are concerned there is no source of norm-fixing outside of him. Conformably, the purpose of the laws is stated in somewhat different terms in the Bible than in Babylonia. To be sure, observance is a guarantee of well-being and prosperity (Exod.

Maccoby writes: “Ritual is about holiness, not about morality; yet it is also about morality at a second remove, for holiness is for the sake of morality.”<sup>164</sup> And in the reverse, moral failure is dealt with through cultic cleansing (e.g. Lev 4–5). A question is whether the distinction between life and death helps us to understand better the interrelation of ‘ethical’ and ‘cultic’ elements in biblical law. Casting the question in such existential terms, life in Torah is defined as a holy and righteous life with a holy and righteous God (e.g. Lev 19). Instead of creating and imposing terminology such as ‘cultic’ and ‘ethical’ and making them primary in our description of biblical law, beginning with concepts like ‘life’ and ‘death’, ‘holiness’ and ‘righteousness,’ might prove more fruitful in understanding the interrelation between the various instructions. The danger inherent to making a distinction between cultic and moral instructions is that we might lose the larger and more vital sense of a life lived in communion with a holy and righteous God. The two need to be kept in a constant dialectic, as each paints distinct yet complementary perspectives of life lived with YHWH. It is not a question of neglecting one for the other, not even of discarding their distinct domains. This is not to deny that they can be distinguished to a certain degree and said to describe different

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23:20ff.; Lev. 26; Deut. 11:13ff., etc.), but it is more: it sanctifies (Exod. 19:5; Lev. 19) and is accounted as righteousness (Deut. 6:25). There is a distinctively religious tone here fundamentally different in quality from the political benefits guaranteed in the cuneiform law collections” (Greenberg, “Some Postulates of Biblical Criminal Law,” 11). As noted above, Greenberg should here only be modified by the observations of Cassuto and LeFebvre, showing that persons in authority in ancient Israel could pass laws and regulations, even if they should be seen as ‘secular law,’ or better as ‘human law,’ in contrast to Torah as divine instruction (cf. Cassuto, *A Commentary on the Book of Exodus*, 260–1; LeFebvre, *Collections, Codes, and Torah*, 55–145). See also the discussion in LeFebvre, *Collections, Codes, and Torah*, 55–145.

<sup>164</sup> Maccoby, *Ritual and Morality*, 204. Of course, we could ask if holiness is for the sake of morality or vice versa. This needs to be left for another discussion.



aspects of the life with YHWH. Still, we always need to keep in mind that the two are fundamentally united in the covenantal instructions of Torah.<sup>165</sup>

In the end, maybe a separation between the cultic and ethical laws is unavoidably anachronistic.<sup>166</sup> As previously explained, I have chosen to primarily speak of proto-

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<sup>165</sup> For a discussion making the concepts of life and death central to an understanding of the so-called cultic laws, see Maccoby, *Ritual and Morality*. He writes regarding the importance of retaining a distinction between ritual and morality, while not neglecting one for the other: “Yet neither the Hebrew Bible nor the rabbinic literature supports the abandonment of the distinction between ritual and morality” (Maccoby, *Ritual and Morality*, viii). And again: “A question for the twenty-first century is whether the erosion of ritual leads to a more focused morality or to the return of the demons” (Maccoby, *Ritual and Morality*, vii).

Karel van der Toorn finds two categories throughout the ANE: what he calls ethics and etiquette, where the latter deals with proper behavior in regards to the gods—typically cultic matters (van der Toorn, *Sin and Sanction*, 27). On this basis, Fitzpatrick-McKinley finds that “the mixture of cultic rules (rules of religious etiquette) and behavioural rules (ethics) in the BC is in conformity with the wisdom-moral teaching of the ancient Near East and would not have appeared as odd to the ancient compilers” (Fitzpatrick-McKinley, *The Transformation of Torah*, 140–41). While this might be true, the distinction between ‘ethics’ and ‘etiquette’ are just different names for the more common distinction between ‘ethics’ and ‘cult’. Further, Fitzpatrick-McKinley’s conflation of ANE wisdom-moral teachings and BC seems to ignore the uniqueness of Torah in combining the two categories into one document. Clearly, their combination seemed more natural in an Israelite tradition when compared to other ANE traditions. Westbrook and Wells wrote: “In ancient legal systems, where deities were regarded as part of the system and divine sanctions were deemed as efficacious as human sanctions, the distinction between law and morality cannot be so sharply defined” (Westbrook and Wells, *Everyday Law in Biblical Israel*, 3).

Christophe Nihan has pointed out how attempts to divide the material of Leviticus between ‘cultic laws’ and ‘holiness laws,’ or maybe we could say ‘moral laws,’ and between ‘law’ and ‘narrative’ have not proven to be satisfactory (Nihan, *From Priestly Torah to Pentateuch*, 77–78). This also corroborates seeing Torah as covenantal instruction. Further: “The two pairs sacred/profane and clean/unclean are not equivalent but form the basic coordinates of the entire cultic system of Leviticus” (Nihan, *From Priestly Torah to Pentateuch*, 93). And again: “As the center of a social and moral order that is divinely instituted, the sanctuary, with its internal divisions and boundaries, is the model, or even the scale, of all ethics: only inadvertent (בשגגה) transgressions of this divine order may be forgiven, while deliberate transgressions have no place in the community” (Nihan, *From Priestly Torah to Pentateuch*, 615). See also pp. 31, 69–79, 108–10 for the larger literary and narrative unit the laws are inseparable from. For others who have also pointed out how the cultic and moral materials are intertwined see Christopher J. H. Wright, *Living as the People of God: The Relevance of Old Testament Ethics* (Leicester: Inter-Varsity Press, 1983), 152; Milgrom, *Leviticus 1–16*, 50; Milgrom, *Leviticus*, 6; Paul Grimley Kuntz, *The Ten Commandments in History: Mosaic Paradigms for a Well-Ordered Society* (Grand Rapids, MI: Eerdmans, 2004), 6–9; Roy E. Gane, *Leviticus, Numbers*, ed. Terry Muck. NIVAC (Grand Rapids, MI: Zondervan, 2004), 309; Roy E. Gane, “Covenant of Love: Syllabus for OTST620 Study of Covenant, Law, and Sabbath in the Bible,” (Berrien Springs, MI: Seventh-day Adventist Theological Seminary Andrews University, 2007), 70.

<sup>166</sup> Martin Heidegger tried to revitalize a pre-socratic understanding of man, where ethics was not understood as a human product but something received from what man (*Dasein*) belongs to (Martin Heidegger, *Brev om humanismen*, trans. Eivind Tjønneland (Oslo: Cappelen, 2003), 46). Emmanuel Lévinas was influenced by Heidegger, but argued that ethics does not find its grounds in what man belongs to, but rather what man is separate from, what is different from us. For Lévinas ‘ethics’ is no longer one of

halakhic reuse, i.e. the reuse of instructions addressing the question of how to walk in YHWH's ways. Still, the emphasis upon laws that are commonly called 'ethical' is apparent. The most reasonable justification for such a delimitation is grounded upon purely textual, rather than conceptual, parameters. I have chosen to focus on parallel passages between a selection from Torah (Decalogues in Exod 20 and Deut 5, the BC, HI and Deut 12–26) and the Prophets. Whether the passage would be classified as cultic or moral is therefore downplayed. We will see how the prophets often bring so-called 'cultic' passages into the 'ethical' domain. For them, as well, there appears to be a fundamental connection between the two.

### **Indicators of Reuse and Direction of Dependence**

Above I have argued that Torah should primarily be understood as normative covenantal instruction. This helps us understand the repetition with variation in proto-halakhic reuse. I have also argued that there is an inner dynamic or dialogue between a holy and righteous life and the holy and righteous YHWH, and that we cannot artificially and reductively separate 'ethical' and 'cultic' instructions. This gives us a key to understand the interplay between 'cultic' and 'ethical' elements in proto-halakhic reuse. They belong together in a covenantal dialectic.

Given the combined phenomenon of close correspondence and creativity in proto-

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the classic disciplines of philosophy. He maintains that the 'Other' constitutes the original difference, and thus precedes all reflection. Thus Lévinas called ethics a 'first philosophy.' Cf. my Kenneth Bergland, "Den andre i det samme" (Cand. phil. thesis, University of Oslo, 2003). Cf. Martin Heidegger's discussion on the pre-socratic concept of ethics in his "Letter on Humanism." Emanuel Levinas has also challenged the understanding of ethics as one of the disciplines within philosophy, and instead called for viewing ethics as a First Philosophy. Cf. my Kenneth Bergland, "Den andre i det samme." Levinas reveals a need for further awareness and study within biblical studies of the history of western ethics and how our ethical concepts influence our understanding of Hebrew cultic moral instruction.

halakhic reuse, we must, nevertheless, begin by establishing clear linguistic evidence of reuse before moving on to consider the direction of dependence or influence.

Furthermore, without a firm basis for claiming literary reuse and direction of dependence between parallel passages, we cannot move on to the vital questions regarding the manner of appropriation, and the creative or inventive reuses of a literary source.

Meir Malul distinguished between four types of possible sources for parallel passages:<sup>167</sup>

1. *Direct connection*: A direct dependence of text B (borrower) upon text A (contributor). The question here is how to establish the direction of dependence.
2. *Mediated connection*: Text B does not borrow from text A, but text C (mediating text or collection of texts) which in turn draws from text A.
3. *Common source*: Text B<sup>1</sup> and B<sup>2</sup> both borrow from a common text A.
4. *Common tradition*: Text B<sup>1</sup> and B<sup>2</sup> exhibit similar traits that can be attributed to a common tradition, be it literary, religious, legal, historiographic, etc.. This may resemble phenomenon 3, but is differentiated on the basis of the nature of the connection.

In the following I will focus on direct literary dependence and reuse, meaning that it is points 1–3 that will be of interest. In regard to point 3 it is of course a major question whether the alleged common source is extant or simply hypothetical.<sup>168</sup>

Regarding the question as to whether we should have a list of criteria or indicators for direction of dependence and reuse, we find that some scholars are reluctant to do so while others are more

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<sup>167</sup> Malul, *The Comparative Method*, 89–91. He writes on p. 91: “It is not always possible to provide an answer to all the above-raised questions and to reach fine distinctions as to the nature and type of connection. In most cases one can determine only the existence of a connection, without being able to determine its direction, nature, or type. Also, in the actual process of comparison, it is not necessary that each of the above questions suggest itself separately; it is more natural that all, or most, of them are under study all the time, and one has to bear them in mind and examine the sources under comparison in their light.”

<sup>168</sup> Cf. Kilchör, *Mosetora und Jahwetora*, 40.

affirmative. Jeffrey Stackert belongs to the former group, and writes:

Though my analysis considers many of the measures developed by other scholars in their considerations of literary dependence among various ancient texts, I have chosen not to apply any existing set of criteria for characterizing the legal revisions examined here. Instead, I will focus upon the particularities of each example of proposed literary reuse, and my method of analyzing legal parallels will grow out of these textual comparisons. Put differently, this study presumes no litmus tests for determining literary dependence. While my analysis exhibits a certain methodological consistency . . . , it also confirms that the contingencies of each example of revision necessitate a slightly different approach.<sup>169</sup>

Richard Schulz reminds us that “no criteria are adequate to prove infallibly that borrowing has occurred in one direction rather than the other.”<sup>170</sup> We are unavoidably dealing with “degrees of probability.”<sup>171</sup>

While a reluctance for establishing criteria for reuse and direction of dependence is understood, at the same time, we are not well served by failing to reflect upon what textual elements should constitute a strong case for reuse and direction of dependence. Without such reflection a reader might find specific or isolated parallels very convincing that in a more general light would appear weak. As Carr formulates it: “Any such tools must still be used with care by someone conscious of a broad range of data and texts relevant to the case at hand. Still, as we have seen – not all tools used by scholars in the past appear equally useful. At the minimum, we should start with tools that have some justification in clear or relatively clear cases of dependence. The burden of proof lies on those who would argue for a wholly intuitive approach.”<sup>172</sup> What, at times, appears to be

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<sup>169</sup> Stackert, *Rewriting the Torah*, 25.

<sup>170</sup> Schultz, *Search for Quotation*, 112.

<sup>171</sup> Schultz, *Search for Quotation*, 231.

<sup>172</sup> David M. Carr, “Method in Determination of Direction of Dependence: An Empirical Test of Criteria Applied to Ex 34:11–26 and Its Parallels,” in *Gottes Volk am Sinai. Untersuchungen zu Ex 32–34*

intractable disagreement over reuse and direction of dependence between HI and D illustrates the danger of operating without a generally agreed-upon set of textual principles regarding direction of dependence.

Rather than imposing ‘criteria’ as a set of rules to which literary parallels need to conform to in order to be determined as verifiable cases of reuse and direction of dependence, I rather adopt certain ‘indicators’ that can aid us in becoming more sensitive to textual phenomena that might imply reuse and the direction of dependence. The sensitivity to the unique characteristics of each passage and parallel, of which Stackert speaks, should be a constant reminder as we deal with the various passages. Literary dependence can take subtle forms, and it is necessary to exercise sensitivity to textual nuances.<sup>173</sup> There is a case to be made for not establishing rigid sets of criteria or checklists in order to determine literary reuse and direction of dependence prior to a close reading of the texts. Our limited knowledge of ANE literary reuse, the infancy of studies on ANE and inner-biblical literary reuse, and the fluidity and elusiveness of literary influence and reuse are all reasons we should be careful not to pre-determine or set in stone what inner-biblical reuse should look like.

I would also point out that there has been a reciprocal and dynamic relationship between the analysis of the parallel passages, and the question as to how to determine which cases actually represent instances of reuse and direction of dependence. As

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*und Dtn 9–10*, eds. Matthias Köckert and Erhard Blum (Gütersloh: Gütersloher, 2001), 126.

<sup>173</sup> Cf. Kilchör, *Mosetora und Jahwetora*, 34–35; Richard B. Hays, *Echoes of Scripture in the Letters of Paul* (New Haven: Yale University Press, 1989), 29–32.

Tooman states, “It should be stressed, however, that my evaluation of the data was not driven entirely by my methodology. The methodology was, in equal measure, informed by the data. In other words, the criteria discussed below were used as *preliminary criteria*.”<sup>174</sup> It follows that there has been a kind of circularity in the process of identifying the indicators of reuse and direction of dependence, given that the objective or “preliminary” criteria are, themselves, identified by on-going observations of reuse and direction of dependence in the textual material. These observations are, in turn, used to identify further cases of reuse which, again, can expose further possible indicators of reuse and direction of dependence. It follows that the emergence of such indicators of reuse and direction of dependence assumes a process of trial and error in which some indicators have been invalidated when tested against concrete textual cases, while other indicators appear to stand such tests in an open ended process of gradual elimination or affirmation.

For purposes of establishing the direction of dependence, I concur with Benjamin Kilchör’s following six principles:<sup>175</sup>

1. No model of textual composition should be presupposed.

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<sup>174</sup> William A. Tooman, *Gog of Magog: Reuse of Scripture and Compositional Technique in Ezekiel 38–39* (Tübingen: Mohr Siebeck, 2011), 24.

<sup>175</sup> Kilchör, *Mosetora und Jahwetora*, 35–36. For an earlier version of this lists see Benjamin Kilchör, “The Direction of Dependence between the Laws of the Pentateuch: The Priority of a Literary Approach,” *Ephemerides Theologicae Lovanienses* 89 (2013): 4. Here he writes: “Any theory about the relationship of the different laws and legislations in the Pentateuch should start with comparisons of all available texts on a *literary* level. Any approach that starts either from theories won out of the narratives of the Pentateuch or from religio-historical development models as well as any approach that starts not by comparing *all* available texts, is less objective than the approach presented here” (Kilchör, “The Direction of Dependence,” 13).

2. No theory of the history of religion should be used to determine the direction of dependence. A theory of the history of religion should be determined by a study of the text, not the reverse.<sup>176</sup>
3. The study of direction of dependence should take as its departure the final form of the text, not a reconstruction of a text that is not attested among the manuscripts.<sup>177</sup>
4. Given a case where more than two passages are parallel, all should be studied together in determining the direction of dependence.
5. The literary relationships between two texts should be determined prior to the relationship of their content, since observations on content in principle can be explained in both directions.
6. Attention should be given to context to see whether the order of texts could be explained through the order of one or more other texts.

A close and broad reading of the textual material is thus primary, while the reader attempts to bracket out presuppositions—whatever they might be—that might hinder him or her from seeing the whole picture.

I have found the grouping of what I prefer to call “indicators” of reuse and direction of dependence proposed by Michael Lyons and William Tooman to also be

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<sup>176</sup> Kilchör quotes Stackert at this point: “My historical determinations, however, are based upon the *available* evidence, i.e., the texts themselves, and not upon a reconstructed history of Israel and its religion. While the latter may appear helpful for interpreting texts, and may even be useful in the formulation of theories concerning the relationship between the legal corpora, to rely upon a reconstruction of the history of Israel and its religion is to rely upon a scholarly construct and not upon real, tangible evidence. The most reliable foundation, therefore, from which to proceed is one that is squarely centered in the biblical text itself. Moreover, if the relationship between the pentateuchal legal corpora can be established at the literary level, reconstructions of Israelite history can proceed from such analyses with greater certainty” (Stackert, *Rewriting the Torah*, 19). Cf. Kilchör, *Mosetora und Jahwetora*, 36.

<sup>177</sup> Kilchör here gives another thoughtful quote, this time by Van Seters: “I do not believe that redactors should be at the arbitrary disposal of exegetes in order to solve problems of compositional history that are inconvenient to one’s theory. That some redactional activity is evident within the law codes I am quite willing to affirm. But invoking the presence of redactional activity in any particular text may not be the only or the best explanation of its compositional history. This means that I do not begin the investigation of the compositional history of CC by an analysis of its structure and the form critical differentiation of its individual units. This may be useful at some stage, but it has so consistently prejudiced the whole inner-biblical comparison of codes that it should be postponed. Pattern seems to be much more in the eye of the beholder than intrinsic to the document. There can be no compositional history of CC until its relationship with DC and HC, as well as other relevant texts of the Old Testament, is clearly established” (John Van Seters, “Cultic Laws in the Covenant Code and their Relationship to Deuteronomy and the Holiness Code,” in *Studies in the Book of Exodus. Redaction – Reception – Interpretation*, ed. Marc Vervenne, BETL (Leuven: University Press, 1996), 312).

helpful,<sup>178</sup> even if I have also found it necessary to modify them somewhat based on my analysis of the concrete textual cases that I have considered. If we are sensitive to the nuances and unique features of the individual passages we are studying,<sup>179</sup> the following indicators can be helpful for establishing a case of reuse:

1. *Uniqueness*: an element, i.e. a lexeme, morpheme, or syntax, is unique to the two parallel passages.
2. *Distinctiveness*: an element may not be exclusive to two parallel texts, but it is demonstrable that it is specifically associated with a particular antecedent text.<sup>180</sup>
3. *Inversion*: According to ‘Seidel’s law’ inversion may be a sign of reuse.<sup>181</sup>
4. *Availability of options*: if various ways of formulating an idea is attested in a language, a shared specific formulation may indicate reuse.
5. *Thematic correspondence*: similar subject, theme, or argument between two passages.
6. *Multiplicity*: extensive parallels, even of common elements, may add support to a case for reuse.

For the direction of dependence I use the following indicators:

1. *Reference to a source*: one passage introduces the parallels with a citation formula or some kind of indication that it is borrowing from a source text, a text with a profile significantly similar to the parallel text.
2. *Modification*: one of the passages appropriates another passage by modifying it to its own context.
3. *Lack of integration*: elements might also be insufficiently integrated in the borrowing text. Person, number, gender and other syntactical issues might remain unaltered, creating syntactical disruptions in the dependent text.<sup>182</sup>

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<sup>178</sup> Lyons, *From Law to Prophecy*, 47–75; Tooman, *Gog of Magog*, 23–35.

<sup>179</sup> Cf. Stackert, *Rewriting the Torah*, 25.

<sup>180</sup> There seems to be a certain overlap between ‘distinctiveness’ and ‘thematic correspondence’. The former sees how a lexeme is used semantically in context, or in other words, how the lexeme is used thematically.

<sup>181</sup> Literary structure might also be an indicator for identifying a case of reuse. In the following we will study Jer 7 and Ezek 18, where the internal structure of the passage seems to support seeing the individual allusive elements as reuse. This relates to Seidel’s law, as the order of elements might play a part. Both parallel order and reversed order might be of significance.

<sup>182</sup> Some scholars use PNG(Person, Number, Gender)-shifts as argument for direction of dependence. Cf. Stackert, *Rewriting the Torah*, 47, 126, 128, 146–47, 152, 161; Jacob Milgrom, *Leviticus 23–27: A New Translation with Introduction and Commentary*, AB (New York: Doubleday, 2001), 2155–



4. *Conflation and recombination*: if one passage appears to enrich parallels from one or more other passages in the HB, may indicate dependence of the former upon the sources that are conflated and/or recombined.<sup>183</sup>
5. *Lexical dependence*: a lexeme or phrase might not be used by an author any other place than where the text parallels another, indicating influence from the source text.
6. *Conceptual dependence*: the meaning and implications of one text might not be understandable unless information from the other is supplied.
7. *Linguistic dating*: as language may differ between texts clearly belonging to different periods, and some characteristics of a language may disappear or occur over time, use of linguistic elements to date texts to different periods can be an aid in establishing the relative chronology between parallel texts.<sup>184</sup>
8. *Metaphor and wordplay*: when a case of reuse has already been established, and one of the texts uses a concept metaphorically that is meant literally in the other text, this might indicate that the former is dependent on the latter. Further, if reuse between two passages is established, word play in one of the texts on key concepts in the other could indicate dependence.
9. *Multiplicity*: the accumulation of several indicators of a direction of dependence pointing in the same direction strengthen the overall argument.

Simply put, when studying parallel passages to determine whether there is a case for reuse, we are always looking to assess the degree of similarity. But, once a case for reuse has been identified, it is especially important to also note the dissimilarities, since it is the dissimilarities that often prove most helpful in determining the direction of dependence.

In this chapter I have focused on how to characterize the instructive material of the Torah. I have argued that by employing the concept of covenantal instruction, we are

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56; Kilchör, *Mosetora und Jahwetora*, 140. For the phenomena of PNG-shifts in Hittites treaties see Weeks, *Admition and Curse*, 71, 87, 139–40.

<sup>183</sup> Cf. Carr, “Method in Determination of Direction of Dependence,” 126. In some cases conflation can just as well be explained as an elaboration by the other text. Then conflation/elaboration is only an indicator of reuse, not direction of dependence. In other cases, it may be difficult to explain it as an elaboration. In such cases it seems reasonable to explain it as a conflation, and as an argument for the direction of dependence. The clearest case of such conflation is seen when two sources are combined in a third, in a manner that cannot be reasonably explained as having the other direction of dependence. But there might also be examples of conflation from only one source text. This is the reason why in the second part of this study I will list conflation sometimes as an indicator of reuse and other times as an indicator of the direction of dependence.

<sup>184</sup> Cf. relevant studies by Avi Hurvitz, Aaron Hornkohl and Jan Joosten in the bibliography.

better prepared to appreciate both the close parallels or similarities as observed in cases of reuse, and, also, the evidence of creative or free innovation in proto-halakhic reuse. In the next chapter I turn to what can be gleaned from the textual material in order to understand how ancient authors and readers related to the various means whereby revered texts were received. I will argue that the practice of memorization and embodiment of revered texts also help us understand the purpose of the dual phenomenon of close correspondence and creativity in proto-halakhic reuse.

## CHAPTER 3

### SCRIBAL ENCULTURATION AND EMBODIED TORAH

“Why should I memorize something  
I can so easily get from a book?”  
(Albert Einstein)

In the previous chapter I argued that the legal material of Torah should best be understood as normative covenantal instruction. I argued that the concept of normative covenantal instruction seems to best account for the dual phenomenon—often seen in the same passages—of creative and exact reuse. It can also be described as repetition with variation. Instead of explaining this phenomenon by means of source criticism as representing different redactional layers by scribes with different standards for reuse, or, alternatively, through more traditional harmonizations that reduce the multifaceted perspective of the texts to a unified ideological system, I have rather suggested that it should be understood as reflecting the characterization of Torah as normative covenantal instruction.

By rejecting the legislative model as an appropriate standard for Torah, we can better understand why cases of reuse of Torah in the HB do not belong to the literalistic type of reuse we are accustomed to in applications of modern jurisprudence. In Torah’s covenantal character, YHWH becomes the ultimate reference, not the literary formulations themselves. The Torah-instructions do therefore not introduce a “rule of law,” but find their origin, transcendental referent, and even possible revisions with

YHWH, thus they are contingent upon YHWH. Put differently, the individual Israelite is primarily obliged to maintain his covenantal relation to YHWH; the instructions function didactically to facilitate a holy and righteous way of life together with a holy and righteous God. The instructions are never an end in themselves. The goal is a covenantal form of life between YHWH and his people not a praxis of law-keeping for its own sake.

In the following I would like to propose that this dual phenomenon of exact repetition with creative variation belongs to an integrated scribal technique and along an exact-creative reuse continuum. A scribe would thus be entitled—and even expected—to move freely in-between the two poles of exact and creative reuse. Of course, an ancient Israelite scribe and reader would likely not think in terms of such poles, since we see that the normative literary strategy in ancient times was repetition with variation. Our own preferred modern standard for exact quotation clearly does not find expression in the HB. It therefore would appear that we should not be put-off or bothered by creative reuse when we discover it alongside relatively exact reuse in the HB.<sup>1</sup> Furthermore, if we accept that repetition with variation was normative in the HB, it follows that a new burden of proof rests upon those who insist that a phraseological variation represents an ideological or sociological conflict behind two passages.<sup>2</sup>

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<sup>1</sup> Even in cases of extensive *verbatim* citation in the HB, like the Decalogues (Exod 20; Deut 5) and the parallels between Kings and Chronicles, we do find alterations, as well. These examples rather tend to confirm the claim that biblical scribes did not feel constrained to reproduce their source *verbatim*. Rather, the norm appears to have involved the alteration of the source where the scribe saw this was needed. It therefore seems reasonable to take modification as the norm in reuse in the HB, and we should rather be surprised when we do find extensive exact reuse and then ask what special reasons the scribe might have had for doing so—the reverse of our expectation according to modern biblical criticism.

<sup>2</sup> I will return to the question of the relation between phraseological variation and semantic variation.

While it would be problematic to attempt to identify a case of reuse without a certain degree of substantial evidence in the form of parallel lexemes or phrases; this does not mean it is assumed that all cases of reuse must strictly conform to a pre-determined set of objective criteria. Nevertheless, I will exclude less clear cases from consideration on the practical grounds that they would not provide the requisite basis for securing a scholarly consensus. It therefore appears advisable to limit the discussion to cases of relatively clear exact reuse since it is at this end of the exact-creative continuum of reuse where we find the clearest indicators of reuse.

In addition to examining the question as to how Torah should be characterized, as in the previous chapter, I want also to approach the dual phenomenon from the question of the literary culture of ancient Israel. This makes relevant the question as to how scribes worked with revered texts and how their audience would perceive and receive their literary productions. We will see how revered texts were to be memorized and embodied, again shedding light on how we find creative and exact reuse of Torah. I believe this complements the discussion of the dual phenomenon of reuse in the previous chapter.

I will begin with a brief survey of scribal enculturation in the ANE, before I turn to the question of orality, writing, and memorization in ancient Israel. My aim is again not to be exhaustive or comprehensive, but rather to include observations that might sensitize us, as readers, to the literary culture that informed the cases of reuse that will be discussed in the present study. Additionally, in a way similar to how I identified possible ‘indicators’ for reuse and dependence direction as found in the previous chapter, I will end this section by discussing possible indicators for memorized covenantal instruction.

## Scribal Enculturation in the ANE

David Carr has argued that the ANE scribal culture both in Mesopotamia and Egypt was to use written texts as an aid to preserve, memorize, and be initiated into the culture represented by the ancient revered texts.<sup>3</sup> In Plato's *Phaedrus* we find a reflection on the relation between writing and memory, placed in the mouth of Socrates. He recounts how the inventor god Theuth came to the supreme god Thamus to present his inventions, the art of writing as one of them:

The story goes that Thamus said much to Theuth, both for and against each art, which it would take too long to repeat. But when they came to writing, Theuth said: "O King, here is something that, once learned, will make the Egyptians wiser and will improve their memory; I have discovered a potion for memory and for wisdom." Thamus, however, replied: "O most expert Theuth, one man can give birth to the elements of an art, but only another can judge how they can benefit or harm those who will use them. And now, since you are the father of writing, your affection for it has made you describe its effects as the opposite of what they really are. In fact, it will introduce forgetfulness into the soul of those who learn it: they will not practice using their memory because they will put their trust in writing, which is external and depends on signs that belong to others, instead of trying to remember from the inside, completely on their own. You have not discovered a potion for remembering, but for reminding; you provide your students with the appearance of wisdom, not with its reality. Your invention will enable them to hear many things without being properly taught, and they will imagine that they have come to know much while for the most part they will know nothing. And they will be difficult to get along with, since they will merely appear to be wise instead of really being so."<sup>4</sup>

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<sup>3</sup> Carr, *Writing on the Tablet of the Heart*. For memorization of dharma, indicated by the form of composition, see Lingat, *The Classical Law of India*, 18. Cf. Fitzpatrick-McKinley, *The Transformation of Torah*, 149. Projecting our concepts of the relative instability of an oral culture in contrast to a written, many have questioned the ability to preserve texts orally over time. Recent studies have shown the possible stability of oral transmission. E.g. Nielsen, *Oral Tradition*, 18–19; Albert Lord, *The Singer of Tales* (Cambridge, MA: Harvard University Press, 1960); Frank H. Polak, "Book, Scribe, and Bard: Oral Discourse and Written Text in Recent Biblical Scholarship," *Prooftexts* 31, no. 1–2 (2011): 132. See also Niditch, *Oral World and Written Word*, 4–9, 78–88; Carr, *Writing on the Tablet of the Heart*, 6–7.

<sup>4</sup> Plato, "Phaedrus," in *Plato: Complete Works*, ed. John M. Cooper (Indianapolis, IN: Hackett, 1997), 551–52 (274c–75b). Cf. §275d as well. Socrates continues a little later, comparing the 'seed' of the "just, noble, and good" to a farmer planting his seed, stating that the author "won't be serious about writing them in ink, sowing them, through a pen, with words that are as incapable of speaking in their own defense as they are of teaching the truth adequately. . . . When he writes, it's likely he will sow gardens of letters for the sake of amusing himself, storing up reminders for himself 'when he reaches forgetful old age' and for

Thamus' warning is uncomfortably symptomatic of our educational systems these days; reminders without memory, knowledge without wisdom, and fame without virtue. The question to be addressed here, however, is whether or not there is a necessary mutual exclusion between memory and writing. When for example Deut 6:6–9 and 11:18–19 encourage to keep the Torah-instructions on the heart and inscribe them on hand, forehead, and objects in the external surrounding, does this signal Torah's own undoing? Does the composition of Torah undermine the living memory of Torah? Does Torah's wisdom regarding how to live become more distant with its own inscription, and, likewise, does the inscription of covenantal instructions degrade the actual covenantal relationship? Whether Plato's or the Torah's understanding of writing aids or detracts from memory is not the question here. As will be argued below, according to ANE and biblical culture, memory and writing do not seem to be perceived as mutually exclusive practices, instead writing appears to be used as an *aide-memoire* in order to further a text-supported living memory and embodiment of a Torah-form of life.<sup>5</sup>

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everyone who wants to follow in his footsteps, and will enjoy seeing them sweetly blooming. . . . But it is much nobler to be serious about these matters, and use the art of dialectics. The dialectician chooses a proper soul and plants and sows within it discourse accompanied by knowledge—discourse capable of helping itself as well as the man who planted it, which is not barren but produces a seed from which more discourse grows in the character of others. Such discourse makes the seed forever immortal and renders the man who has it as happy as any human being can be” (Plato, “Phaedrus,” 553 (276c–77a)). While authors the HB and Plato might thus have different views of the efficiency of texts as *aide-memoire*, there nevertheless seems to be a commonality in the dialectical approach of the two aiming at producing fruits in the characters of persons from the verbal seeds sown.

<sup>5</sup> Regarding the idea of development or not with the invention of writing, Nielsen's comment is worth pondering: “Cult and religion are always rather immune to technical improvements, are always wedded to tradition” (Nielsen, *Oral Tradition*, 24). Carasik picks up the debate on the relationship between writing, orality, and memory, and describes writing as possibly relating to memory in opposite ways: “As a method of processing information, writing may be the ally of memory or its enemy” (Carasik, *Theologies of the Mind*, 56). William W. Hallo supports the claim that writing can support memory in that “the fixation of the order [of the alphabet] . . . was in fact a mnemonic device which helped the rapid spread of the West Semitic system of writing” (William W. Hallo, “Isaiah 28:9–13 and the Ugaritic Abecedaries,” *JBL* 79 (1958): 335).

In the following I try to describe the presuppositions that appear to inform proto-halakhic reuse of Torah in order to better understand the dual phenomenon of exact and creative reuse of the instructive material. It appears to be the case that the biblical authors saw writing as a necessary aid to memorizing or learning by heart previous instructions, contrary to Plato, as will be explained further.

We can begin with a few statements taken from Mesopotamian compositions describing its scribal culture. The Mesopotamian *edubba*, i.e. the scribal school, is evoked in a riddle found in some of their educational texts:

A house based on a foundation like the skies,  
A house one has covered with a veil like a (secret), tablet box,  
A house set on a base like a ‘goose’,  
One enters it blind,  
Leaves it seeing.  
Answer: The School.<sup>6</sup>

The “opened eyes” were conceived in terms of forming humanity within, as a Sumerian student says to his teacher: “Master god who (shapes?) humanity, my god you (verily) are Like a puppy you have opened my eyes, you have formed humanity in me.”<sup>7</sup> Gadd finds this statement to reflect “the intellectual snobbery of the scribes” even denying “the name

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<sup>6</sup> Miguel Civil, “Sumerian Riddles: A Corpus,” *Aula Orientalis* 5 (1987): 20. Carr, *Writing on the Tablet of the Heart*, 31 renders the last lines as “With eyes closed one enters it, With opened eyes one comes out, Riddle answer: the Edubba.”

<sup>7</sup> In the original publication of this text Van Dijk renders it as follows: “Maître, dieu! qui [. . . ] à l’homme, vous êtes mon dieu! Comme un petit chien vous m’avez ouvert les yeux, vous avez formé en moi l’Homme! (humanitatem mihi fecisti!)” (J. J. A. van Dijk, *La Sagesse Suméro-Accadienne: Recherches sur les Genres Littéraires des Textes Sapientiaux* (Leiden: Brill, 1953), 24). Here I give the translation in C. J. Gadd, *Teachers and Students in the Oldest Schools: An Inaugural Lecture Delivered on 6 March 1956* (London: School of Oriental and African Studies of the University of London, 1956), 15–16. Cf. Carr, *Writing on the Tablet of the Heart*, 17. Relevant for the question of social control and sanctions, as touched upon in the previous chapter, the use of physical abuse seems to have been a common ingredient in Mesopotamian educational philosophy (Gadd, *Teachers and Students*, 22).



of men” to “the laity, untutored masses.”<sup>8</sup> I’ll return to the question of scribal elitism below. In Mesopotamian educational culture the ideal appears to have been to learn revered texts thoroughly; to know them by heart. In the “Erra and Ishum” we read: “The scribe who learns it [i.e. the present text] will survive even in enemy country, and will be honored in his own, In the shrine of craftsmen where they ever proclaim my name, I shall make them wise [Lit. ‘I shall make them open their ears’].”<sup>9</sup> The same ideal is found in tablet VII of “Enūma Elish,” where pondering the fifty names of Marduk is encouraged: “The wise and knowledgeable should ponder (them) together, The Master should repeat, and make the pupil understand.”<sup>10</sup> This corroborates the idea of repetition and reflection of compositions whether written or oral. In Assurbanipal’s hymn for Shamash the ideal of memorizing—or learning by heart—the revered texts is made more explicit: “Whoever learns this text by heart and honors the judge of the gods, Shamash may he bring into esteem his [words], make good his command over the people.”<sup>11</sup>

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<sup>8</sup> Gadd, *Teachers and Students*, 13.

<sup>9</sup> “Erra and Ishum,” trans. Stephanie Dalley (*COS* 1: 1.113:416). Cf. Nielsen, *Oral Tradition*, 19. Even if we have above seen that LH was not used as source in court, still in the epilogue we find an encouragement to read the collection out to a plaintiff: “Let any wronged man who has a lawsuit come before the statue of me, the king of justice, and let him have my inscribed stela read aloud to him, thus may he hear my precious pronouncements and let my stela reveal the lawsuit for him; may he examine his case, may he calm his (troubled) heart, (and may he praise me)” (Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor*, WAW (Atlanta, GA: SBL, 1995), 134).

<sup>10</sup> “Epic of Creation (*Enūma Elish*),” *COS* 1 1.111:402. Cf. Nielsen, *Oral Tradition*, 20.

<sup>11</sup> “An Assurbanipal Hymn for Shamash,” trans. Alasdair Livingstone (*COS* 1: 1.143:474). Cf. Nielsen, *Oral Tradition*, 20. On the lack of innovation among Assurbanipal’s scribes see Fitzpatrick-McKinley, *The Transformation of Torah*, 169. For how Hammurabi in the prologue of LH is called an *emqum*, a wise man, a designation usually used for scribes rather than judges, see F. R. Kraus, “Ein zentrales Problem des altmesopotamischen Rechts: Was ist der Kodex Hammurabi?,” *Genava* 8 (1960): 284–90; Jackson, “From Dharma to Law,” 497; Roth, *Law Collections from Mesopotamia and Asia Minor*, 79; Fitzpatrick-McKinley, *The Transformation of Torah*, 114–15.

Speaking of “Erra and Ishum” and “Enūma Elish,” we find the mention of the divine book Tablet of Destinies, so craved by the gods due to its potency. Eggleston claims that the descriptions here portray the gods as authors and editors and the divine books as open for revision: “Scribes portrayed divine books such as the Tablets of Destinies as documents in flux, open for revision when their divine holders deemed such a course of action necessary. . . . In spite of the fact that the tablet was ‘unchangeable,’ the king prays for divine favor in the shape of a beneficial inscription.”<sup>12</sup> He quotes Marduk from “Erra and Ishum”: “Babylon, whom I have taken in my hands like the Tablet of Destinies and will not deliver to anyone else.”<sup>13</sup> Also relevant is the mention in “Enūma Elish” of Tiamat who illegitimately gave Qingu the Tablet of Destinies (I:157, II:43, III:47, 105), and how Marduk took it away from him (IV:121), finally stating (V:69–70): “[The tablet] of destinies, which he [Marduk] took from Qingu and brought away, As the foremost gift he took away, he presented (it) to Anu.”<sup>14</sup> Also in “The Akkadian Anzu Story” we hear of the monstrous bird Anzu stealing the Tablet of Destinies from Enlil. Regarding the motivation for his usurping of divine power he states: “I myself will take the gods’ Tablet of Destinies and gather the assignments of all the gods. I will win the throne, be the master of the offices! I will give command to all the Igigi!”<sup>15</sup> This is exactly what he does much to the terror of the gods. Although not made

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<sup>12</sup> Eggleston, *See and Read All These Words*, 84.

<sup>13</sup> “Erra and Ishum,” *COS* 1 1.113:413.

<sup>14</sup> “Epic of Creation (*Enūma Elish*),” *COS* 1 1.111:393–99.

<sup>15</sup> “The Akkadian Anzu Story,” trans. Marianna Vogelzang (*COS* 3: 3.147:328).

explicit in the narrative, the possessor of the Tablet of Destinies appears to be able to edit the tablet and thus able, as well, to determine the destinies of both gods and men. As will be seen, this concept of fluidity within divine texts is also relevant for Torah and its historical trajectory.<sup>16</sup>

The following passages from Egypt also stress memorization and embodiment of revered texts. In the Egyptian “Satirical Letter,” describing an educated scribe, it is written: “You are, of course, a skilled scribe at the head of his fellows, and the teaching of every book is incised on your heart.”<sup>17</sup> Even if the description is here given in satirical terms, it illustrates how a scribal ideal was to have books written on one’s heart. In the Egyptian *Instruction of Any* we find that Any asked his son to memorize written wisdom, to “study the writings, put them on your heart” (20.4–5). At the same time the instruction ends with a reflection by Any’s son, Khonsuhotep, where he points out how memorization without understanding and embracing them is deficient:

The son, he understands little  
When he recites the words in the books.  
But when your words please the heart,  
The heart tends to accept them with joy.  
Don’t make your virtues too numerous,  
That one may raise one’s thoughts to you;  
A boy does not follow the moral instructions,  
Though the writings are on his tongue!<sup>18</sup>

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<sup>16</sup> For a study of literary variation in Sumerian compositions see (Delnero, “Variation in Sumerian Literary Compositions,” 1848–49).

<sup>17</sup> As translated by Carr, *Writing on the Tablet of the Heart*, 8. Hans-Werner Fischer-Elfert, *Die satirische Streitschrift des Papyrus Anastasi I: Übersetzung und Kommentar* (Wiesbaden: Harrassowitz, 1986), 94 renders it: “Du bist doch der erfahrene Schreiber an der Spitze seiner Kollegen. Die Lehre aller Bücher ist eingraviert in dein Herz.”

<sup>18</sup> “Instruction of Any,” trans. Miriam Lichtheim (*COS* 1: 114). Cf. Carr, *Writing on the Tablet of the Heart*, 75. This also relates to Muffs’ point in *Love and Joy*, discussed in the previous chapter, showing the importance of a voluntary embrace of the instructions of Torah. Cf. Michael V. Fox, “Wisdom and the

A scribe's task therefore consisted not only of inscribing a text on clay tablets, skin, papyrus, or other material, but also on one's own lips and heart.<sup>19</sup> Orality and writing functioned together so the scribe could both transmit but also perform and embody the treasured tradition.<sup>20</sup>

Carr writes: "Prospective members of the ruling class were inducted into that class through having these cultural texts 'in their heart'. Doing so made one, for the first time, into a full human being."<sup>21</sup> As with the Mesopotamian student mentioned above, it seems to have been an ideal in both Mesopotamia and Egypt that having the revered texts memorized initiated one into true humanity. In other words, the one who knew the cultural 'canon' was seen as belonging to true humanity. Carr finds differences between Egypt and Mesopotamia, whereas with Egypt "we find a culture that is, if anything, even more textually oriented than the cultures of ancient Mesopotamia. . . . Indeed, writing had immense prestige in Egypt. It was seen as a means of overcoming the faults of memory and as a tool from the gods."<sup>22</sup> And given the philosophical discussion about the visual versus the audible, the lack of any skepticism in Egypt towards writing is worth noting: "There is no Egyptian critique of writing, such as that found in Chinese or Greek

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Self-presentation of Wisdom Literature," in *Reading from Right to Left: Essays on the Hebrew Bible in Honour of David J. A. Clines*, eds. J. Cheryl Exum and H. G. M. Williamson, JSOTSup 373 (Sheffield: Sheffield Academic Press, 2003), 153–72.

<sup>19</sup> Nielsen, *Oral Tradition*, 28.

<sup>20</sup> Carr, *Writing on the Tablet of the Heart*, 7, 18. Cf. pp. 53, 74. For more on the Egyptian scribal culture see Alan H. Gardiner, "The Mansion of Life and the Master of the King's Largess," *The Journal of Egyptian Archaeology* 24, no. 1 (1938): 83–91; Eyre, *The Use of Documents in Pharaonic Egypt*, 9–10, 21.

<sup>21</sup> Carr, *Writing on the Tablet of the Heart*, 64.

<sup>22</sup> Carr, *Writing on the Tablet of the Heart*, 63.

philosophical systems. Indeed, other cultures, like Greece, saw Egypt as the prototypical written culture, occasionally lampooning Egyptian claims to textually based wisdom.”<sup>23</sup>

While memorization and embodiment belong to the question of how a text is received, relevant for the following is also the manner in which Egyptian legal texts were composed as a *procès verbal*, i.e. presented as a dictate of an oral discourse. Eyre writes:

The primary role of an Egyptian document, in legal process, was one of witness: a *procès verbal*, transcribing oral declarations and an aide-memoire, with no more and possibly less force than an oral witness. The document as a written instrument—as guarantee of a transaction—is a much stronger use of writing. A direct development from the aide-memoire, it marks a strong culture of formal process, and a legal-administrative system with a high degree of functional impersonality.<sup>24</sup>

This raises the question whether in ancient Israel prophetic speech (orality) was invested with greater authority than the written record of those same speeches in Torah and the Prophets even as the written record still retained its legal force? We cannot answer this question here. What we do observe are further parallels to Torah. First, the result is a more fluid concept of genre due to the focus on continuous recitation. Genre-distinctions tended to be blurred, as the primary focus was upon a faithful record of what was said.<sup>25</sup> Second, the manner in which writing creates a more impersonal and distant relationship

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<sup>23</sup> Carr, *Writing on the Tablet of the Heart*, 64. For memorized public presentation in Greece, see Yehoshua Gitay, “Deutero-Isaiah: Oral or Written?,” *JBL* 99, no. 2 (1980): 191.

<sup>24</sup> Eyre, *The Use of Documents in Pharaonic Egypt*, 101. The question about the relation between how the text was perceived and how the scribal culture was, both need more elaborate studies than what is here possible.

<sup>25</sup> Eyre, *The Use of Documents in Pharaonic Egypt*, 44. Eyre writes: “Egyptian words do not so much define specific genres, or classes of documents, but focus on the written result of oral declarations and administrative process. For instance, the common term *mity*, literally ‘copy’, refers at least as often to ‘copying out’ an oral declaration—a *procès verbal*—as the copy of another written text” (Eyre, *The Use of Documents in Pharaonic Egypt*, 35–36). Cf. Deut 17:18 and the copy the Israelite king is to write for himself (וְנָתַתְּ לְךָ אֶת־מִשְׁנֵה הַתּוֹרָה הַזֹּאת עַל־סֵפֶר מִלְּפָנֵי הַכֹּהֲנִים הַלְוִיִּם).

from the immediate *face à face* encounter, is paralleled by the movement in the HB from the immediate personal encounter between YHWH and his prophet to the more impersonal quest into the words of YHWH and his prophets in the reception history of Torah. Interpretation and appropriation become an increasing preoccupation.<sup>26</sup> Third, the frequent use of 2ms characterizes the *procès verbal* of letters, a form we saw in the previous chapter that dominates Torah-instructions.<sup>27</sup> Fourth, the royal decree as a *procès verbal* both authorized its bearer and the decree itself, and it could function as a written instrument and an archival record.<sup>28</sup> Again, this parallels the authorization of Moses (e.g.

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<sup>26</sup> Cf. Bergland, “Interpretation of the Written,” 1–19.

<sup>27</sup> Eyre writes: “The writer visualizes himself speaking to his correspondent, and this vocabulary of oral communication reflects how the letters were used. Address is direct to the correspondent, so that even in reported speech there is a tendency to refer to the addressee with second person pronouns” (Eyre, *The Use of Documents in Pharaonic Egypt*, 95). Cf. pp. 15, 90, 92, 94, 101, 106, 108, and 117 for further discussions of the concept of *procès verbal*.

<sup>28</sup> Eyre writes: “The royal decree, committed to writing, served partly as a symbol of authorization for its bearer, and partly as a *procès verbal* of the decree. It had within it the potential for both use as a written instrument and for archival record as documentary proof, but there is a strong element of hindsight in these definitions. In practice it was simply a royal letter of instruction: an assertion of hierarchical authority for particular actions” (Eyre, *The Use of Documents in Pharaonic Egypt*, 101). He sums up his studies as follows: “The value of written text lay explicitly in the role it played in preserving knowledge, but in practice the medium of writing was key to extended memorizing, and the knowledge it represented was the key to oral communication and social hierarchy, and not the publication or dissemination of knowledge through reference. This seems to be as true a reflection of the culture of documents as of cultural texts in the pharaonic period” (Eyre, *The Use of Documents in Pharaonic Egypt*, 353–54). For the document as *aide memoire* cf. pp. 12, 31, 45, 47, 49, 51, 252.

Here Kitchen’s observations are also pertinent. Having studied prophecy in the ANE, he concludes: “Thus, throughout the centuries, across the biblical world, the firsthand external evidence shows clearly and conclusively that the record of prophecies among contemporaries and their transmission down through time was *not* left to the memories of bystanders or to the memory-conditioned oral transmission – and modification – by imaginary ‘disciples’ of a prophet or their equally imaginary successors for centuries before somebody took the remnants at a late date to weave them into books out of whole new cloth, having little or nothing to do with a reputed prophet of dim antiquity whose very name and existence might thus be doubted. For the mass of highly ingenious guesswork and scholarly imagination along these lines, poured out of the presses for over a century now, and never more than in recent decades, there is not one respectable scintilla of solid, firsthand evidence. Not one . . . The fact is that the ultimate test of prophecy was its fulfilment. Thus an accurate, independent, and permanent record of prophecies was needed, to stand as lasting witness for when possible fulfilment might occur or be required to be checked” (Kitchen, *On the Reliability of the Old Testament*, 392-93). And again: “So the picture is of individual prophecies quite promptly written down, which subsequently can be brought together into collective tablets for future

Exod 19:9) and the instructions in Torah, to assert the normative authority of the instructions given by YHWH.

Some space should also be given to the phenomenon of scribal elitism. As seen above, memorization of revered texts was perceived as an initiation into true humanity.<sup>29</sup>

In contrast to the egalitarian focus in passages like Deut 6:6–9; 11:18–20,<sup>30</sup> where everyone was called upon to be educated in the revered texts, Carr points out the elitism of ANE scribal culture:

The literacy that most counted in these ancient societies often was not a basic ability to read and write. Rather it was an oral-written mastery of a body of texts. Moreover, this “literacy” was something that *separated* the members of an elite from their contemporaries. Such mastery of written texts, then, was not widespread. For it to perform its social function, it had to be a limited competency used to mark off a cultural and (often) social elite.<sup>31</sup>

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reference” (Kitchen, *On the Reliability of the Old Testament*, 391). Schellenberg on her side sees a difference in practice between Mesopotamian and Israelite prophecy: “The prophetic texts from ancient Mesopotamia differ from the OT ones in that they remain close to the oral prophets and the situations that triggered a recording of their messages” (Annette Schellenberg, “A 'Lying Pen of the Scribes' (Jer 8:8)? Orality and Writing in the Formation of Prophetic Books,” in *The Interface of Orality and Writing: Speaking, Seeing, Writing in the Shaping of New Genres*, eds. Annette Weissenrieder and Robert B. Coote, Biblical Performance Criticism Series (Eugene, OR: Cascade Books, 2015), 289). Cf. 292. As with other comparative material, it is not clear how this applies to the HB, and here we can only note a disagreement on the question of the timespan between oral performance and written composition for the prophets of the HB.

<sup>29</sup> According to Carr, the king, not the scribe, was seen as embodying the *me* (Sumerian “order”), and as “the fullest humanity in the Sumerian-Akkadian world” (Carr, *Writing on the Tablet of the Heart*, 31). Greenberg writes that the king should embody the cosmic ideal: “However, the actual authorship of the laws, the embodying of the cosmic ideal in statutes of the realm, is claimed by the king” (Greenberg, “Some Postulates of Biblical Criminal Law,” 9).

<sup>30</sup> Cf. Stackert’s claim that the Torah instructions were only “reflecting not the historical *realia* of ancient Israelite social practice but instead a particular intellectual engagement with the religious and cultural (textual) tradition. Those who attempt to reconstruct actual, historical practice through these texts fail to recognize their scholastic nature *and that of their legal patrimonies*” (Stackert, *Rewriting the Torah*, 164). For a similar perspective see Fitzpatrick-McKinley, *The Transformation of Torah*, 23–53.

<sup>31</sup> Carr, *Writing on the Tablet of the Heart*, 13. Italics original. Cf. 12–13, 65–66, 68, 82, 103–4, 108–9. For scribal elitism in ancient Greece, see Carr, *Writing on the Tablet of the Heart*, 103–4, 108–9. Berman as well sees a scribal elitism in ANE in contrast to the Pentateuch emphasizing that all should be familiar with its instruction (Berman, *Created Equal*, 111). See also Gadd, *Teachers and Students*, 23.

Frank Polak criticizes Carr for looking too narrowly at the educational centers, arguing that ancient texts had a cultural and religious role that went beyond the scribal elite. He writes that, “of course, the authors and poets of written texts were members of an educated elite. But this does not mean that their work was confined to and nourished by the matrix of scribal instruction and curriculum alone.”<sup>32</sup> It is not possible to discuss the issue of scribal elitism and the popularity of the revered texts thoroughly here. There appears, however, to be a close parallel between the family setting of instruction in Torah (e.g. Deut 6:4–9, 20–25), and the ANE scribal schools which were often located in private quarters and which frequently involved a kind of informal apprenticeship of children to parents.<sup>33</sup>

As pointed out by Jack Goody, memorized law tends to a “greater flexibility” than written law, given the potential for greater fluidity in its oral context. He continues: “Writing greatly increases the amount of information held in store, and in this sense enhances the potentialities of the human mind, it also makes the problem of erasure much more difficult, in other words, deletion represents the other side of the storage coin.”<sup>34</sup> A relevant question here is whether the ancient authors felt as restrained as we do when faced with the possibility of modifying an existing written source when reusing it in a

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<sup>32</sup> Polak, “Book, Scribe, and Bard,” 131. For a similar perspective see Van De Mieroop, *Philosophy before the Greeks*, 82–83, 198–99, 206–7. Gagarin has made an argument that Greek law was written for the population at large, thus going counter to an elitism (Gagarin, *Writing Greek Law*).

<sup>33</sup> Gadd, *Teachers and Students*, 22–23, 25; Assmann, “Verschriftung rechtlicher und sozialer Normen,” 74–76; Carr, *Writing on the Tablet of the Heart*, 53, 65–67, 82.

<sup>34</sup> Jack Goody, *The Logic of Writing and the Organization of Society* (Cambridge: Cambridge University Press, 1986), 136. Cf. Fitzpatrick-McKinley, *The Transformation of Torah*, 72, 75.



new composition. This may be just another instance of the anachronistic fallacy. It is not clear that the biblical authors felt the kind of strictures against modifying their sources that Goody identifies.<sup>35</sup> While we have seen that Plato problematizes Goody's assumption that writing "enhances the potentialities of the human mind," the following study will indicate that biblical authors did not share Plato's skepticism towards writing as a medium to enhance memory. It may therefore not be possible to describe ancient attitudes to writing, orality, and memory in a uniform manner. In contrast to Plato, writing for the biblical authors did not seem to be perceived as being in conflict with orality or, indeed, as competing with it. Rather, writing was a *procès verbal* of and an *aide-memoire* to the covenantal instructions, complementing their oral performance and execution. Carasik writes: "Writing preserves information which re-enters the memory when it is spoken out loud."<sup>36</sup> Writing becomes the medium by which memory is invoked.

By using the notion of 'language-game,' borrowed from the Austrian philosopher Ludwig Wittgenstein,<sup>37</sup> I would like to propose that memorization of revered texts came to be constitutive of the language-game of the ANE scribes. Through the program or literary strategy of 'placing texts on the heart,' locutions from source texts could easily be reused exactly or creatively in new literary compositions. Revered texts would enjoy

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<sup>35</sup> Cf. Pakkala, *Omitting God's Word*.

<sup>36</sup> Carasik, *Theologies of the Mind*, 65. On p. 66 he speaks of "the activation of written text in the mind by speaking."

<sup>37</sup> Ludwig Wittgenstein, *Philosophical Investigations*, trans. G. E. M. Anscombe (Oxford: Blackwell, 1968).

renewed life via new literary adaptations by becoming part of the ‘language-game’ of a scribe. The woodenness often associated with the visual consultation of texts might not have been necessary, as they could recall them from memory—even playfully and extemporaneously combining passages from different sources into a new matrix.<sup>38</sup>

### **Orality, Writing, and Memory in Torah and the Prophets**

In the well-known Lachish letter 3, we find archaeological and extra-biblical evidence for the ideal of memorization of texts in ancient Israel. Here a military official writes that not only is he fully capable of reading, but he is also capable of performing a detailed recollection of the content of what he has read: “And now, please explain to your servant the meaning of the letter which you sent to your servant yesterday evening. For your servant has been sick at heart ever since you sent (that letter) to your servant. In it my lord said: ‘Don’t you know how to read a letter?’ As Yahweh lives, no one has ever tried to read me a letter! Moreover, whenever any letter comes to me and I have read it, I can repeat it down to the smallest detail.”<sup>39</sup>

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<sup>38</sup> Cf. Niditch, *Oral World and Written Word*, 7, 111–13, 117, 120, 122, 128, 134; Carr, *Writing on the Tablet of the Heart*, 40.

<sup>39</sup> “Lachish 3: Complaints and Information,” trans. Dennis Pardee (*COS* 3: 79). Cf. Nielsen, *Oral Tradition*, 55–56 on the need to show care not to postulate a general literacy in Israel on the basis of the letter. Niditch comments that the official is proud of “his oral-world ability to repeat the letter verbatim after having read it only once, a skill typical of those who rely on reading less than we do” (Niditch, *Oral World and Written Word*, 53). For scholars arguing for an early literacy in ancient Israel see Gabriel Barkay, “Iron Age II–III,” in *The Archaeology of Ancient Israel*, ed. Amnon Ben-Tor (New Haven: Yale University Press, 1992), 302–73; Eggleston, “*See and Read All These Words*”, 39, 43. Cf. Niditch, *Oral World and Written Word*, 39ff. For the possibility of writing in the Late Bronze Age and Moses writing Torah, see Hoffmeier, *Ancient Israel in Sinai: The Evidence for the Authenticity of the Wilderness Tradition*, 178–81. Cf. Weeks on the possibility of an oral stage of composition (Weeks, *Admission and Curse*, 144). For an argument that the oral-written dichotomy should not be understated, see Schniedewind, *How the Bible Became a Book*, 11–17.

My present purpose is not to draw up a historiography of the relation between oral and written culture in ancient Israel, i.e. to determine whether any of the books in the HB were originally composed orally or in writing.<sup>40</sup> The following is not a comprehensive

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<sup>40</sup> The question of the relative development of orality and writing in ancient Israel relate to the traditional claim that Hebrew thought is more oral while Greek thought more visual. Hans W. Wolff writes in his classic book on anthropology in the HB: “Since human life is reasonable life, the hearing ear and the properly directed tongue are the essential organs for man. . . . Thus the supreme importance of the ear and of speech for true human understanding is unmistakable” (Hans Walter Wolff, *Anthropology of the Old Testament*, trans. Margaret Knohl (London: SCM, 1974), 75). Cf. Torleif Boman, *Hebrew Thought Compared with Greek* (London: W. W. Norton & Company, 1970), 58–68, 74–122. James Barr refuted many of the claims in this approach (James Barr, *Biblical Words for Time*, Studies in Biblical Theology (London: SCM Press Ltd, 1962); Barr, *The Semantics of Biblical Language*). Carasik points to the untenability of Wolff’s view, pointing out that mere statistics (ראה (“to see”) is used 1299 times in the HB compared to שמע (“to hear”) used 1159), indicating such a claim does not hold against the evidence (Carasik, *Theologies of the Mind*, 37). He is even willing to reverse the traditionally claimed relation between seeing and hearing in the HB, stating “that in the Israelite understanding of how we acquire knowledge about the world, seeing, and not hearing, had the central place” (Carasik, *Theologies of the Mind*, 38). And again: “Seeing was by far the most important sense, according to all biblical understandings of the mind” (Carasik, *Theologies of the Mind*, 52). He sums up: “The distinction between the ‘Hebrew’ and ‘Greek’ methods of learning about the world vanishes into nothingness. In the view of the biblical writers, the real distinction is between דעה—that knowledge whose ultimate source is God—and knowledge that is ‘created’ by some other source” (Carasik, *Theologies of the Mind*, 43). See also Jacques Ellul, *The Humiliation of the Word*, trans. Joyce Main Hanks (Grand Rapids, MI: Eerdmans, 1985), 5–47.

Carr says he is not familiar with “a single artistic image of a Mesopotamian scribe working with more than one text” (Carr, *Writing on the Tablet of the Heart*, 40). He claims that the role of texts shifted sometime between the second and first millennium B.C., where in the second millennium “writing appears to have played a supporting role alongside other modes of textual performance and transmission,” while “by the first millennium, texts increasingly serve another role as well: as authoritative reference points for the checking of scribal memory” (Carr, *Writing on the Tablet of the Heart*, 38). Karel van der Toorn challenges Niditch’s and Carr’s claim that there is no evidence of scribes working with multiple manuscripts simultaneously (van der Toorn, *Scribal Culture*, 140). While Niditch has emphasized the inextricability of orality and writtenness in an especially forceful way, her notion of an oral-literate continuum nevertheless creates an unnecessary polarity. Why must a text be more oral than literate or vice versa? No simple distinction between written text and spoken word may be maintained, especially when a spoken or read text is in view. Moreover, the question of whether a text may be recognized as originally oral or originally written remains vexed, since scribes could easily imitate spoken rhetorical forms in the literature they produced. Even if the claim by Sigmund Mowinckel and the ‘Scandinavian schools’ that an oral tradition largely explains the textual parallels in the prophets has not gained general support among scholars, their theory of schools of disciples preserving and developing traditions around individual prophets has. Had they been correct about the oral tradition it could have “terminated the quest for prophetic quotation” (Schultz, *Search for Quotation*, 50–52).

Here we can also note Eggleston’s critique of Niditch for operating with a too polarized view between orality and writing, in his opinion: “While she has emphasized the inextricability of orality and writtenness in an especially forceful way, Niditch’s notion of an oral-literate continuum nevertheless creates an unnecessary polarity. Why must a text be more oral than literate or vice versa? No simple distinction between written text and spoken word may be maintained, especially when a spoken or read text is in view. Moreover, the question of whether a text may be recognized as originally oral or originally written remains vexed, since scribes could easily imitate spoken rhetorical forms in the literature they

survey of the scholarly discussions on the topic. It suffices to show that there is an analogy between ANE text-supported memorized reuse and the type of reuse found in the passages to be studied. Furthermore, it is not important here to identify the sociological context of this text-supported memorized reuse,<sup>41</sup> or to determine whether literacy and a text-supported oral culture was a phenomenon limited to a scribal elite or found, as well, in a wider population in ancient Israel.<sup>42</sup> I will limit myself to what seems most helpful for a better appreciation of the relation between orality, memorization, and writing as found in the passages to be studied, even though I will, occasionally, touch upon questions deserving far more discussion than is possible here. I will briefly and generally discuss references to orality, memorization, and writing in the books under study here, Exodus, Leviticus, Deuteronomy, Isaiah, Jeremiah, and Ezekiel.<sup>43</sup>

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produced” (Eggleston, *See and Read All These Words*, 33). Cf. 133.

<sup>41</sup> Cf. Nielsen, *Oral Tradition*, 16, 32; Carr, *Writing on the Tablet of the Heart*, 4–8, 73–74, 95–96, 104–106, 126–28, 132–33, 138, 144–47, 149, 288, 303–4 for the interplay between writing and orality in the ANE. Nielsen differentiates between two types of interplay between writing and orality, namely first “a writing down of the tradition while it is still flourishing, so that the two methods of transmission run side by side, possibly so that the written one represents an aid or support of the oral one,” and second the theoretical possibility that “one long chain of tradition stretching through many generations with one or more links that have been entirely of a written nature, so that the oral tradition has been broken off for shorter or longer periods” (Nielsen, *Oral Tradition*, 34–35. Cf. p. 28). Nielsen on p. 28 refers to Widengren’s *Literary and Psychological Aspects of the Hebrew Prophets* p. 91n who claimed “that the texts—which were perhaps often dictated, and possibly sometimes from memory—were nevertheless always written, and that this was the way in which they were transmitted; and further, that the practice of committing texts to memory was certainly in existence in Mesopotamian education, but that this tells us nothing about the real transmission of the texts, ‘for these were handed down from one generation to the next in written form’.” Widengren’s observation seems appropriate and should temper too strong statements on the orality of the ANE cultures. Still, Nielsen is correct in pointing out that there is evidence for transmission by dictation, among them in Jer 36:4, 18 (Nielsen, *Oral Tradition*, 29).

<sup>42</sup> For studies on the sociological background of the prophetic books see e.g. Polak, “Book, Scribe, and Bard,” 118–40; Schellenberg, “A “Lying Pen of the Scribes” (Jer 8:8)?,” 285–309. Cf. Fitzpatrick-McKinley, *The Transformation of Torah*, 23–53; van der Toorn, *Scribal Culture*, 11–14.

<sup>43</sup> Carasik distinguishes between books where writing is prominent, while memory plays a minor role (Book of Kings, Ezra, Esther, and Daniel), books where reference to memory is common, but those to writing sparse (Genesis, Isaiah, Psalms, Job, Ecclesiastes), and those where both writing and memory play

Susan Niditch argues that we also find in the biblical material evidence of reuse based on memorized texts.<sup>44</sup> She finds this question to be related both to the question of literary reuse (which she calls ‘intertextuality’) within the HB and the composition of the Pentateuch: “This approach to recurring biblical language not only challenges the scholar to look in new ways at biblical intertextuality but also raises questions about the whole source-critical enterprise.”<sup>45</sup>

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a prominent role (Exodus, Deuteronomy, Jeremiah, and Nehemiah) (Carasik, *Theologies of the Mind*, 57–72). Niditch writes: “Perhaps the most important writing in all of Jewish tradition that underscores the tensions and continuities between oral and literate mentalities is the Torah itself. Surely the Bible’s most prominent act of dictation is when Moses is commanded by God to write down the commandments on tablets (Ex. 24:4; 34:28), the ‘words of the Torah on a writing surface’ (*sēper*, a more generic term than ‘tablet’ or ‘scroll’; Deut. 31:24). . . . these images of Moses as God’s scribe do lie closer to the literate end of the continuum than God’s own writing. On the other hand, attitudes to written Torah evidence the oral mentality as well, especially in the various echoes or imitations of the first setting down of the law. One thinks, for example, of Deut 27:3” (Niditch, *Oral World and Written Word*, 86).

<sup>44</sup> Niditch argues that archaeological finds, or lack thereof, inform us about the scribal culture in ancient Israel: “Lengthy texts—a collection of prophecies or some version of the narrative that runs from Genesis to Numbers—are difficult to use. A lengthy papyrus or leather scroll may be rather heavy when unopened, unwieldy when fully opened. Indeed we have no evidence that Israelites used long tables either to write or to read and we assume that for either activity only a small portion of the scroll would be exposed at one time. This being the case one faces a real challenge if one wants to turn efficiently to a passage in the middle of a scroll, or if one wishes to compare two passages. One cannot simply turn to the tenth folio to reach a particular passage or use a bookmark to move back and forth between texts. . . . Hence Dawson’s suggestion that references to passages from books in antiquity, even the citing of specific texts, are frequently from memory” (Niditch, *Oral World and Written Word*, 76). Cf. p. 61). For Niditch’s critique of the common assumption among biblicists that a “literate mentality shapes the Bible,” cf. Niditch, *Oral World and Written Word*, 109–10.

<sup>45</sup> Niditch, *Oral World and Written Word*, 19. On the basis of this written-oral scribal culture, where the scribes would more or less know the revered texts by heart, Niditch questions the concept of textuality presupposed in the Documentary Hypothesis, finding it to impose foreign concepts of text and redaction upon the composition of the Torah: “At the heart of documentary hypothesis, either Wellhausen’s or modern versions that tend to date the sources later in the monarchic or postmonarchic period, is the cut-and-paste image of an individual pictured like Emperor Claudius of the PBS series, having his various written sources laid out before him as he chooses this verse or that, includes this tale not that, edits, elaborates, all in a library setting. If the texts are leather, they may be heavy and need to be unrolled. Finding the proper passage in each scroll is a bit of a chore. If texts are papyrus, they are read held in the arm, one hand clasping or ‘supporting’ the ‘bulk’ of the scroll, while the other unrolls. Did the redactors need three colleagues to hold J, E, and P for him? Did each read the text out loud, and did he ask them to pause until he jotted down his selections, working like a secretary with three tapes dictated by the boss?” (Niditch, *Oral World and Written Word*, 113). Cf. also pp. 7, 111–13, 117, 120, 122, 128, 134. Carr writes in a similar fashion, critiquing biblical scholarship that presumes that the biblical texts we know “form stable data on the basis of which they can reconstruct highly precise differentiations of potential precursor

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literary strata, relationships of literary dependence of various texts on one another, and the presence of more or fewer groups of secondary additions. On the contrary, building on studies of ancient literatures near and far, we would be on much firmer ground to see in our *various* editions of Hebrew Scriptural texts the distillate of a transmission-historical process, shaped to varying extents by the exigencies of memory and performance. To exaggerate somewhat, it is as if past scholars presupposed that earlier layers of biblical texts were written in stone, when in fact it is more likely they were written in (or at least accessed and reproduced by means of) the shifting sands of memory. As a result, we have far less data in our present text(s) for the hypothetical reconstruction of the Bible's prehistory than we might presuppose or wish" (Carr, *Formation of the Hebrew Bible*, 36). Cf. Carr, *Writing on the Tablet of the Heart*, 40. See also Pakkala, *God's Word Omitted*. Karel van der Toorn challenges Niditch's (and Carr's) claim that there is no evidence of scribes working with multiple manuscripts simultaneously, referring to editorial activity attested in Mesopotamia from the end of the second millennium B.C. (van der Toorn, *Scribal Culture*, 140).

To me Carasik's criticism of Niditch, leaning on a review by Robert C. Culley contrasting oral and literate 'mentalities', appear imprecise (Carasik, *Theologies of the Mind*, 8). She explains that 'oral register' "refers not to modes of composition but to the style of compositions whether the works were created orally or in writing, whether they are performed or read to oneself" (Niditch, *Oral World and Written Word*, 10). Niditch does not see a basis for demonstrating that a text originally was composed orally. Instead she prefers to speak of an "oral register," where a given text shows more or less evidence in the oral or written end of an oral-literary continuum (Niditch, *Oral World and Written Word*, 78–107). Cf. pp. 10, 120, 125. When analyzing biblical texts she claims it is possible to uncover an oral register or oral aesthetics having left marks on the written composition of the biblical texts. There are two ways in which to analyze and demonstrate the "oral register" and an "oral-literary continuum," significant for detecting memorized and embodied Torah: (1) We can look at how the biblical authors describe the relation between orality and written compositions; and (2) we can be attentive to indications of such an "oral register" and "oral-literary continuum" in the written compositions of the HB. Cf. Niditch, *Oral World and Written Word*, 6; Raymond F. Person, *From Conversation to Oral Tradition: A Simplest Systematics for Oral Tradition* (New York: Routledge, 2016), 11. William M. Schniedewind operates with an oral-written dichotomy, writing about "the movement from orality to textuality, from a pre-literate toward a literate society" (William M. Schniedewind, *How the Bible Became a Book: The Textualization of Ancient Israel* (Cambridge: Cambridge University Press, 2004), 1). Lord also saw a dichotomy between the "written technique" and "oral technique," denying the possibility of an intermediate "'transitional' technique" between the two (Lord, *The Singer of Tales*, 129; Albert Lord, *The Singer Resumes the Tale* (Ithaca, NY: Cornell University Press, 1995), 212–37). Cf. Nielsen, *Oral Tradition*, 12; Patrick, *Old Testament Law*, 189. Schniedewind's view is seen as problematic by Polak: "Since Schniedewind does not attend to how the style and language of the written text is affected by its presumed oral background, his account of the transition from oral to written remains problematic" (Polak, "Book, Scribe, and Bard," 121. Cf. p. 130). And arguing against Schniedewind's claim of a rather late transition to written culture, Polak writes concerning the Mesha Stele: "Notably, unlike most Assyrian royal inscriptions, this stele includes a few instances of direct discourse. If written narrative did exist in Moab, which was an Israelite dependency for two generations, one can hardly maintain that in Israel and Judah such narrative could not yet have taken on 'a written garb' [Schniedewind, *How the Bible Became a Book*, 63] in the period preceding Hezekiah. Thus, in the present reviewer's opinion, the symbiosis of oral and written literature probably antedates the eighth century by far, and was much more fruitful for narrative in writing than indicated by the book [i.e. Schniedewind's] at hand" (Polak, "Book, Scribe, and Bard," 121–22). For scholars criticizing false dichotomies between orality and writing, see Egbert Bakker, "How Oral is Oral Composition?," in *Signs of Orality: The Oral Tradition and Its Influence in the Greek and Roman World*, ed. E. Anne MacKay (Leiden: Brill, 1999), 31–32; Michael H. Floyd, "'Write the Revelation!' (Hab 2:2): Reimagining the Cultural History of Prophecy," in *Writings and Speech in Israelite and Ancient Near Eastern Prophecy*, eds. Ehud Ben Zvi and Michael H. Floyd, SBL Symposium Series 10 (Atlanta: SBL, 2000), 103; David Berliner, "The Abuses of Memory: Reflections on the Memory Boom in Anthropology," *Anthropological Quarterly* 78, no. 1 (2005): 197–211; Carr, *Writing on the Tablet of the Heart*, 6–7.

Both Berman and Paul have emphasized how Torah is presented as being publicized in ancient Israel. Berman states that this publication also had a mimetic function:

Literacy in ancient Israel was probably always the purview of professional scribes. But passages in Deuteronomy, Exodus, and the prophetic writings of the eighth and seventh centuries suggest that such texts should be produced for the masses, read to them, remembered by them, and transmitted by them. . . . Whereas in Mesopotamia and in Egypt writing was turned inward as a guarded source of power, in Israel it was turned outward and reflected the Bible's egalitarian impulse. The dissemination of such texts to the masses through writing and reading accords with other biblical emphases—the domestication of national religion, the shift from a cult of objects to a cult of words and ideas, and the rise of a national vernacular literature.<sup>46</sup>

And as I have already indicated, Paul finds that “publicity, not secrecy, is the hallmark of the law, which is proclaimed openly to the entire society and is not restricted to any professional class of jurists, lawyers, or judges.”<sup>47</sup> While the scribal elite were all expected to memorize authoritative texts in the ANE, the Mesopotamian kings were seen as the custodian of cosmic truths, and Pharaoh as incarnating *ma'at*,<sup>48</sup> in Torah the entire

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<sup>46</sup> Berman, *Created Equal*, 11–12. Cf. pp. 114–16, 124–25. As in Lev 19:15–16 and Deut 16:19–20 the judges in the Egyptian *The Tale of the Eloquent Peasant* are exhorted to “ignore class distinctions and to concentrate, rather, on what is right” (VerSteeg, *Law in Ancient Egypt*, 29). But why was not a system set up to teach all the people literacy if they were all to know Torah? Berman answers: “Today we would assume that literature is available only to the literate, but in premodern times this was hardly the case. Those who were exposed to texts and shaped by them numbered far more than those who had the actual capacity to read them” (Berman, *Created Equal*, 116). He reminds us here that קָרָא in BH means both “to call” and “to read,” while the two are separate in our terminology (Berman, *Created Equal*, 117). Having denied that Torah should be understood “as a rational response to social change” (cf. esp. Fitzpatrick-McKinley, *The Transformation of Torah*, 23–53), Fitzpatrick-McKinley argues instead that “these torah texts were influenced more by a literary tradition shared by Israel's neighbours and mediated through the scribal schools than by any special Israelite practical knowledge common to all Israelites” (Fitzpatrick-McKinley, *The Transformation of Torah*, 142. Cf. p. 146). Levinson writes “that there should be any attempt at all to reflect on the origins of the system for administering justice represents a distinctively Israelite concern” (Levinson, “The First Constitution,” 1866).

<sup>47</sup> Paul, *Studies in the Book of the Covenant*, 38. Cf. p. 39.

<sup>48</sup> For the Mesopotamian kings as the custodian of cosmic truths see Greenberg, “Some Postulates of Biblical Criminal Law,” 9; Van De Mieroop, *Philosophy before the Greeks*, 100, 111, 155, 176–78, 181. And for Pharaoh as incarnating *ma'at* see

people were expected to memorize and inscribe Torah on the heart. However, as we have already seen, a clear distinction between scribal elitism in the ANE and Israel's literary egalitarianism might not be as clear as suggested by Berman. Nevertheless, a core feature of the biblical text shows a clear emphasis upon the popular dissemination of texts. Greenberg makes a similar point regarding the prophetic assumption that Torah was presented orally and publically to the people and that the people knew the Torah. He writes: "Publication is manifestly of the essence of lawgiving."<sup>49</sup> According to Greenberg, the publication of Torah is interlinked with the priestly form of life all of Israel is called upon to live: "Israel as a whole is to live in dedication to God after the manner of priests" (e.g. Exod 22:30; Lev 20:26, and Deut 14:2). Thus, Torah "is to function as a pedagogue, a trainer in a course of life."<sup>50</sup>

In the following I will briefly survey the question of orality, writing, and memory in the six books containing the passages here under study, namely Exodus, Leviticus, Deuteronomy, Isaiah, Jeremiah, and Ezekiel.

## Exodus

I will begin with the Book of Exodus. We find mention of writing at several

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Assmann, "Verschriftung rechtlicher und sozialer Normen," 66–68.

<sup>49</sup> Greenberg, "Three Conceptions of the Torah," 14–15.

<sup>50</sup> Greenberg, "Three Conceptions of the Torah," 16. He then goes on to explain how Deuteronomy more than the other Pentateuchal books explicates how public instructions should take place. It situates the primary locus of instruction in the family (Deut 6; 11), then speaks of the instruction of the king (Deut 17), and finally the public reading every seventh year (Deut 31) (Greenberg, "Three Conceptions of the Torah," 17–18). He contrasts this with e.g. LH, which even if displayed public, was limited to an elite able to read it.



points in Exodus (Exod 17:14; 21:14; 24:4, 7; 34:1, 27–28; 39:30).<sup>51</sup> In Exod 17:14, after the Israelites had defeated the Amalekites, YHWH instructs Moses: כָּתַב זֹאת וְזָכְרוֹן בְּסֵפֶר (‘‘Write this memory in a book, and recite [lit. ‘place’] it in the ears of Joshua: ‘I will utterly wipe out the memory of Amalek under the heavens’’; cf. Deut 25:17–19). There is a fascinating irony in this passage; namely, a memory employed to wipe out another memory, as it were. Further, it is a written document to be placed audibly in the ears of Joshua.<sup>52</sup>

In the above we also saw how the different instructive corpora of Torah all frequently use the 2. sing. discursive address. Torah-instructions are given to the individual Israelite, represented by the head of the household. In Exod 18:20 we read: וְהִזְכַּרְתָּה אֲתָהֶם אֶת־הַחֻקִּים וְאֶת־הַתּוֹרוֹת וְהוֹדַעְתָּ לָהֶם אֶת־הַדְּרֹךְ יֵלְכוּ בָּהּ וְאֶת־הַמַּעֲשֵׂה אֲשֶׁר יַעֲשׂוּן (‘‘and enjoin upon them the regulations and instructions, and make known to them the way they are to go and the actions they are to do’’). Jethro here states that Moses should continue to enjoin (וְהִזְכַּרְתָּה) the laws and instructions upon the people. Even if Moses functions as the Torah-expert, all the people are to be instructed in them. LeFebvre writes referring to Exod 18: ‘‘It is not for judicial guidance that Moses formulates these law teachings; it is for the guidance of the public: ‘You will warn *them* [i.e. the people] about the statutes and the laws and teach *them* the way in which they should walk . . .’ (v. 20).’’<sup>53</sup> And Paul puts it as follows: ‘‘Law, then, becomes a body of teaching directed to

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<sup>51</sup> Cf. Nielsen, *Oral Tradition*, 41–42, 45.

<sup>52</sup> Berman refers to Exod 13:8–9 as evidence for ‘‘the use of text in the education of children’’ (Berman, *Created Equal*, 125), but to me it is not clear that a text strictly need to be implied in this case.

<sup>53</sup> LeFebvre, *Collections, Codes, and Torah*, 46. Italics original. He writes: ‘‘It was, after all, ‘to the sons of Israel’ (not to the elders or judges) that Moses was said to address the precepts noted by

the entire community. Each member of the community knows prospectively of his individual and communal obligations. Since law serves as an instrument of education, a didactic aim is to be found only in biblical legislation. . . . God desires ‘men who confirm them inwardly.’”<sup>54</sup>

Further, in Exod 24:7 we read: וַיִּקְרָא סֵפֶר הַבְּרִית וַיִּקְרָא בְּאָזְנֵי הָעָם (“And he [Moses] took the Book of the Covenant and read it in the ears of the people”). If nothing else, the immediate writing down of the content of the BC followed by a public reading fits the concept of a text-supported oral instruction.<sup>55</sup>

I have already mentioned the concept in the ANE of gods as authors and divine texts as editable. In Torah this aspect appears even more apparent than it does in the ANE. Commenting on Exodus, Eggleston writes: “Indeed, one of the most important interactions YHWH has with Israel takes place in writing at Mount Sinai. There, in the delivery of the two tablets, YHWH is the writer par excellence. None other than Moses himself describes the scribal activity of YHWH when, in an intercessory plea on Israel’s

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Westbrook. It might actually be suspected that these statements of law were composed for *popular* instruction rather than judicial education” (LeFebvre, *Collections, Codes, and Torah*, 34). He continues: “Laws are published for national exhortation, but are not assigned to the court as legislation” (LeFebvre, *Collections, Codes, and Torah*, 47).

<sup>54</sup> Paul, *Studies in the Book of the Covenant*, 39.

<sup>55</sup> I do not find Carasik’s argument from the alleged “impracticality of scattering blood ‘upon the people’ [Exod 24:8] and of leaving half the blood to congeal in bowls while a long text is read” a strong basis for claiming “that it was the *concept* of reading the written text aloud in a ritual situation that was significant” (Carasik, *Theologies of the Mind*, 65). Likewise I find his claim strained that in Exod 34 “it is the existence of the tablets that is important, not their contents. . . . the written tablets are nothing more than props” (Carasik, *Theologies of the Mind*, 65). Do these passages really give a basis for saying much about the importance of writing relative to orality? In the moral document *The Eloquent Peasant* we find a combination of narrative frame and wisdom sayings (“The Eloquent Peasant,” *COS* 1 1.43:98), interesting as we compare with Torah combining narrative and instruction.

behalf, he tells YHWH to ‘wipe me out of the record (ספר) that you have written’ (Exod 32:32).<sup>56</sup> In certain cases, YHWH can apparently also edit his ‘Tablet of Destinies’ (cf. Deut 32:26).

## Leviticus

Moving to the book of Leviticus, we note the absence of the root כתב (“to write”), except in the prohibition against making any incision (כְּתָבָת) on the body in Lev 19:28. In contrast the opening words of Leviticus is וַיִּקְרָא אֶל־מֹשֶׁה וַיְדַבֵּר יְהוָה אֵלָיו מֵאֵתֶלֶת מוֹעֵד וַיִּקְרָא אֶל־מֹשֶׁה וַיְדַבֵּר יְהוָה אֵלָיו מֵאֵתֶלֶת מוֹעֵד (‘‘And he called to Moses and YHWH spoke to him from the tent of meeting, saying’’).<sup>57</sup> This opening passage is the only time in the book the verb קרא (“to call”) is used of YHWH, possibly indicating YHWH’s summons from the somewhat distant tent of meeting for Moses to appear before him. Otherwise the typical pattern is the use of the word דבר in the phrase וַיְדַבֵּר יְהוָה אֶל־מֹשֶׁה לֵאמֹר (‘‘And YHWH spoke to Moses, saying’’) or variants.<sup>58</sup>

Frank Polak has recently published a paper on the syntactic-stylistic aspects of the so-called ‘Priestly’ source in Torah. He distinguishes between syntactical features characteristic of ‘‘voiced, lean, brisk style (VoLB)’’ and the ‘‘intricate elaborate style

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<sup>56</sup> Eggleston, *See and Read All These Words*, 86. See also p. 87 on YHWH as writer. Cf. Watts, *Reading Law*, 104–7, 118–21.

<sup>57</sup> Cf. the proclamations (קרא) by the people of holy convocations in Lev 23:2, 4, 21, 37, or liberty on such a holy convocation (25:10).

<sup>58</sup> Lev 1:1; 4:1; 5:14, 20; 6:1, 12, 17; 7:22, 28; 8:1; 10:8; 11:1; 12:1; 13:1; 14:1, 33; 15:1; 16:1; 17:1; 18:1; 19:1; 20:1; 21:16, 24–22:1; 22:17, 26; 23:1, 9, 23, 26, 33; 24:1; 24:13; 25:1; 27:1. Cf. Lev 10:12, 19; 23:44; 24:23. Leviticus uses only the root זכר (‘‘to remember’’) for YHWH remembering his covenant with the people (Lev 26:42, 45).

(IES)". Voiced, Lean, Brisk style is "characterized by the predominance of extremely short paratactic clauses, consisting of predicate with implicit subject (and/or object suffix), or predicate with one additional slot, such as explicit subject, object or indication of place/time, subordinate clauses are rare and so are noun groups."<sup>59</sup> He further subdivides VoLB into type-1 and type-2 style: "I distinguish between the type-1 style (48–60% short clauses), and the type-2 style (39–47% short clauses)."<sup>60</sup> Intricate Elaborate Style is "characterized by the low frequency of short paratactic clauses (around 25–35% of the text) and the high frequency of subordinate clauses and long noun groups."<sup>61</sup> He summarizes:

On the one hand, several text groups reveal a mixture of two styles. A number of sections in these groups are characterized by syntactic-stylistic patterns that are close to spontaneous spoken language and thus suggest oral roots or close contacts with the oral arena, such as, in narrative, Gen 1; 9; 17; Lev 9–10; Num 4; and in the parenetic-cultic-legal realm, Lev 11–13; 18–21; 25–27. However, these groups also include large sections in an intricate, elaborate style that is characteristic of the scribal desk: in narrative Gen 6–8; 28:1–9; Exod 6–7; and in the parenetic-cultic-legal sphere: Exod 12; Lev 14–15; 17; 22–24.

Other groups of texts are strongly dominated by the intricate style, but nevertheless reveal certain signs of underlying orality. I find these features in the cultic precepts (Lev 1–4; 16) and the instructions for the *miškān* (such as Exod 25; 28; 29).<sup>62</sup>

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<sup>59</sup> Frank H. Polak, "Syntactic-Stylistic Aspects of the So-Called 'Priestly' work in the Torah," in *Le-ma'an Ziony: Essays in Honor of Ziony Zevit*, eds. Frederick E. Greenspahn and Gary A. Rendsburg (Eugene, OR: Wipf and Stock, 2017), 349. For writing in Numbers, see Num 5:23; 11:26; 17:17–18; 21:14; 33:2. Cf. Cf. Nielsen, *Oral Tradition*, 41–42, 45.

<sup>60</sup> Polak, "Syntactic-Stylistic Aspects," 350.

<sup>61</sup> Polak, "Syntactic-Stylistic Aspects," 350. The question occurs if it is preferable to operate with his three suggested categories, thus enabling classification of different passages into these categories, or whether we should instead speak in terms of an oral-written continuum, like Niditch, where a specific text shows more or less of "spontaneous spoken discourse" and an "elaborate style."

<sup>62</sup> Polak, "Syntactic-Stylistic Aspects," 345–46. For how Polak sees different socio-cultural backgrounds behind the styles, see pp. 352–53.

And more specifically for the HI:

Both H and the Purity Code include significant VoLB sections, both in the type-1 style (Lev 11:2–8; 13; 18–19; 21; 27) and the type-2 style (ch. 20; 25; 26:1–33). Other passages are dominated by the intricate style: ch. 11:9–47; 12; 14–15; 17; 22–24; 26:34–45.<sup>63</sup>

### Deuteronomy

We now come to the most significant book in Torah for the question of orality, writing, and memory, namely Deuteronomy. Like the more oral discourse representative of Exodus–Leviticus, Sonnet has argued that Deuteronomy as well presents itself primarily as an oral document. As with Leviticus, the opening of Deuteronomy stresses the oral delivery of the content:

“These are the words that Moses spoke (דבר)” (Deut 1:1). Deuteronomy’s opening ushers in a distinctively oral communication. . . . In Deuteronomy’s scheme, as can be surmised from Deut 1:1, (oral) speech is the leading medium. Speech is to be understood here as “represented speech,” that is, as Deuteronomy’s way of (re)presenting Moses’ ultimate “words.” . . . Outside of the Bible, for instance, no mention has been found indicating that, in the ancient Near East, collections of laws were promulgated orally (“orally” meaning here “without the mediation of a written record”). Yet Moses does precisely that, conveying orally, without any written reminder, an extensive collection of laws (that YHWH revealed to him at Horeb forty years ago!).<sup>64</sup>

This is an important point, where Moses’ speeches do not seem to have been accompanied by a written reminder. Here the text is not presented as an *aide-memoire*, but a *procés verbal*. According to Sonnet, Deuteronomy therefore presents itself largely

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<sup>63</sup> Polak, “Syntactic-Stylistic Aspects,” 372. Cf. pp. 361–63 also for a summary.

<sup>64</sup> Sonnet, *The Book within the Book*, 27–28. Cf. pp. 96, 112. He writes: “Since a narrative text presumably delivers what it promises, it is in Deuteronomy’s narrative, and not behind it, that the rationale for the combination of oral and written media is primarily to be sought” (Sonnet, *The Book within the Book*, 8). Cf. Block, *Deuteronomy*, 36–37.

as oral performance later written down.<sup>65</sup> We could, however, ask the question whether Moses' instructions themselves might have been memorized oral performance? It is not clear whether we can answer this question based on the text of Deuteronomy itself.

Deuteronomy can be divided into Moses' three speeches (Deut 1:1–43; 4:44–26:19; 29:2–31:13, with some material in-between [27:1–29:1]), the Song of YHWH (31:14–32:47), and Moses' benediction (32:48–34:12).<sup>66</sup> In other words, Deuteronomy itself is presented as an oral speech, transmitted to us in written form. We find the mention of the Ten Words written on tablets being archived inside the ark (4:13; 5:22; 10:1–5), a monumental instruction of “this Torah” (הַתּוֹרָה הַזֹּאת, 27:1–4, 8–10), “this Torah” having been written down in “this book” (הַתּוֹרָה הַזֹּאת הַכְּתוּבִים בְּסֵפֶר הַזֶּה, 28:58), curses of the covenant written (אֲלוֹת הַבְּרִית הַכְּתוּבָה) in this book of Torah (בְּסֵפֶר הַתּוֹרָה, 29:19–20, 26), YHWH's commandments and decrees written in this book of Torah (הַתּוֹרָה הַזֶּה, 29:19–20, 26), YHWH's commandments and decrees written in this book of Torah (מִצְוֹתַי וְחֻקֹּתַי הַכְּתוּבִים בְּסֵפֶר הַתּוֹרָה הַזֶּה, 30:10), the writing down of “this Torah” (הַתּוֹרָה הַזֹּאת) to be read every seventh year to all the people at the Feast of Booths (Deut 31:9–13), the writing down by Moses of the Song of YHWH as he also taught them the song itself (Deut 31:19, 22, 30), and the completion of “this Torah”

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<sup>65</sup> Sonnet, *The Book within the Book*, 173–74. Sonnet claims that the first time in Deuteronomy Moses is said to author a text is in Deut 31:9 (Sonnet, *The Book within the Book*, 135. Cf. p. 249), even if writing is mentioned before in the book. He also observes that Deuteronomy does not refer to itself as Torah, but as referring to the Torah given orally (Sonnet, *The Book within the Book*, 258). He also argues that the book of Deuteronomy aims at overcoming Moses, in order to speak to later generations (Sonnet, *The Book within the Book*, 145–46).

<sup>66</sup> Given the point made above, that Torah prefers the 2ms address, Sonnet writes that in Deuteronomy (and presumably in Exodus–Leviticus as well) this is an address directed at Moses' contemporaries, and not at the readers as such: “No doubt, the reader will learn countless lessons from Moses' address, but never as the prophet's direct addressee. Moses never turns to Deuteronomy's reader, even when he mentions future addressees, ‘who [are] not there with us’ (29:14)” (Sonnet, *The Book within the Book*, 11).

(הַתּוֹרָה הַזֹּאת) being archived beside the ark (Deut 31:24–26).<sup>67</sup>

As we saw in the case of Exod 18, the focus upon the people knowing the instructions is again found in Deut 5:1: וַיִּקְרָא מֹשֶׁה אֶל-כָּל-יִשְׂרָאֵל וַיֹּאמֶר אֲלֵהֶם שְׁמַע יִשְׂרָאֵל וַיִּקְרָא מֹשֶׁה אֶת-הַחֻקִּים וְאֶת-הַמִּשְׁפָּטִים אֲשֶׁר אָנֹכִי דֹבֵר בְּאָזְנֵיכֶם הַיּוֹם וּלְמַדְתֶּם אֹתָם וְשִׁמְרְתֶם לַעֲשׂוֹתָם (“And Moses called upon all Israel and said to them: Hear, Israel, the laws and rules which I speak in your ear today! Learn them and observe them so as to do them!”). Deuteronomy does not sponsor a scribal elitism which would reserve intimate knowledge of the revered texts for the social elite.<sup>68</sup> It lays the foundation for a common knowledge of Torah among the individual members of all classes within society. As McConville states: “The aim of Torah is to create a righteous community.”<sup>69</sup>

In all of the instructive corpora of Torah we see an emphasis upon embodiment of its instructions through enactment in lived life. While the personal knowledge of Torah found throughout the instructive material might have implied memorization, and the responsibility of parents to educate their children in Torah, this mandate for memorization is explicitly stated in Deut 6 and 11.<sup>70</sup> Both Deut 6:6–9 and 11:18–21

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<sup>67</sup> Cf. Deut 6:9; 11:20; 17:18 as well. For more detailed discussions on orality, writing, and memory in Deuteronomy see Nielsen, *Oral Tradition*, 41–42, 45, 57–58; Carasik, *Theologies of the Mind*, 66–68, 72–73, 81–82, 181–215.

<sup>68</sup> The “continuous study of the law” as prescribed to the leaders of the people in Deut 17:19 and Josh 1:8 is here also relevant (Watts, *Reading Law*, 21), as an extended meditation resulting in a thorough knowledge of the Torah.

<sup>69</sup> J. G. McConville, *Deuteronomy*, Apollos Old Testament Commentary 5 (Leicester, England: Apollos, 2002), 43. According to Sonnet the king is supposed to be Torah’s arch reader: “The ‘royal law’ casts the king as the model Israelite . . . the Torah’s arch reader” (Sonnet, *The Book within the Book*, 71. Cf. pp. 73, 78, 234).

<sup>70</sup> Cf. Carasik, *Theologies of the Mind*, 196–97.

testify that the goal is an inscription on the heart and in actions of each individual member of the community, not just a literate elite (cf. Prov 3:1, 3; 7:1, 3; 22:18).<sup>71</sup> Sonnet points out that the resumption of the reception injunctions in Deut 11:18–21 and forms an *inclusio* with 6:6–9.<sup>72</sup>

While Deut 6 and 11 speak of having the words upon one’s heart (עַל־לִבְכֶּךָ . . . וְשִׁמְתֶם אֶת־דְּבָרֵי אֱלֹהֵי וְהָיוּ הַדְּבָרִים הָאֵלֶּה 6:6), placing them upon one’s heart and person (עַל־לִבְכֶּם וְעַל־נַפְשְׁכֶם 11:18) and imprinting them on one’s children (וְשִׁנַּנְתֶּם לְבָנֵיכֶם 6:7),<sup>73</sup>

<sup>71</sup> And as already mentioned, instead of all the venerated texts in the ANE about ancient sages, bygone deities, and poems, Torah instructs the people to take Torah itself to heart, a conglomerate of various genres found in the ANE like narratives, instructions, and wisdom. Cf. Carr, *Writing on the Tablet of the Heart*, 54–55, 141–42.

<sup>72</sup> Sonnet, *The Book within the Book*, 69.

<sup>73</sup> “Take to heart these instructions with which I charge you this day. Impress them upon your children. Recite them when you stay at home and when you are away, when you lie down and when you get up. Bind them as a sign on your hand and let them serve as a symbol on your forehead; inscribe them on the doorposts of your house and on your gates” (Deut 6:6–9); “Therefore impress these My words upon your very heart: bind them as a sign on your hand and let them serve as a symbol on your forehead, and teach them to your children — reciting them when you stay at home and when you are away, when you lie down and when you get up; and inscribe them on the doorposts of your house and on your gates — to the end that you and your children may endure, in the land that the LORD swore to your fathers to assign to them, as long as there is a heaven over the earth” (Deut 11:18–21).

Deut 6:6–9 begins by instructing the 2ms to let the words of Torah be upon “your” heart (וְהָיוּ הַדְּבָרִים הָאֵלֶּה אֲשֶׁר אֲנִי מְצַוְךָ הַיּוֹם עַל־לִבְכֶּךָ). In Deut 11:18 we find an analogous instruction, instructing the 2mpl to place the words of Torah upon “your” heart and soul (וְשִׁמְתֶם אֶת־דְּבָרֵי אֱלֹהֵי עַל־לִבְכֶּם וְעַל־נַפְשְׁכֶם). Deut 6:7a continues with the instruction of the children (וְשִׁנַּנְתֶּם לְבָנֵיכֶם) always wherever one might be (וּבְשָׂבְתֶם וּבְעֹמְדֶם וּבְיֹשְׁבֵיכֶם וּבְיָצֵאתְכֶם וּבְבָיְתֵיכֶם וּבְיִשְׁעֵיכֶם). Deut 11:18b, however, continues with binding these words upon one’s hand and having them as a sign upon one’s forehead (וְהָיוּ לְאֹת עַל־יָדְכֶם וְהָיוּ לְטוֹטְפֹת בֵּין עֵינֵיכֶם), bringing the statements upon having the Torah upon one’s heart, soul, hand, and forehead together. We here see an inversion between the two passages, as Deut 6:8 now gives the binding upon one’s hand and forehead (וְהָיוּ לְטוֹטְפֹת בֵּין עֵינֵיכֶם), while 11:19 gives the command to instruct one’s children (וְלִמַּדְתֶּם אֹתָם אֶת־בְּנֵיכֶם לְדַבֵּר בָּם) always wherever one might be (וּבְשָׂבְתֶם וּבְעֹמְדֶם וּבְיֹשְׁבֵיכֶם וּבְיָצֵאתְכֶם וּבְבָיְתֵיכֶם וּבְיִשְׁעֵיכֶם). The instruction to write them on the doorpost and gates are then added in parallel in Deut 6:9 (וּבְשָׂעֲרֵיכֶם וּבְיִשְׁעֵיכֶם) and 11:20 (וּבְשָׂעֲרֵיכֶם וּבְיִשְׁעֵיכֶם). Deut 11:18–21 adds a motive clause, “to the end that you and your children’s days will multiply upon the land which YHWH swore to give to your fathers, as long as there is a heaven over the earth”, not found in Deut 6:6–9.

For the understanding of the *hapax legomena* וְשִׁנַּנְתֶּם as piel in the sense of “repeat” see Weinfeld, *Deuteronomy 1-11*, 330, 332–33; Carasik, *Theologies of the Mind*, 50, 182. Cf. André Lemaire, “Education (Israel),” in *ABD*, ed. David Noel Freedman (New York: Doubleday, 1992), 2:305–12. Cf. Carr on the



what we would locate as their inner dimensions, there is also a strong focus upon more ‘external’ acts, like speaking about them (וְדַבַּרְתָּ), teaching one’s children to speak them (וְלַמְדַתֶּם אֹתָם אֶת־בְּנֵיכֶם לְדַבֵּר בָּם), binding as a sign (וּקְשַׁרְתֶּם/וּקְשַׁרְתֶּם, 6:8; 11:18), having them as a symbol (וְהָיוּ, 6:8; 11:18), and writing (וּכְתַבְתֶּם, 6:9; 11:20) upon more ‘external’ objects. It therefore seems more precise to speak of ‘memorization’ of texts in order to ‘appropriate,’ ‘embody,’ and ‘enact’ them in lived life, instead of speaking of an ‘internalization’ of Torah. Care should be exercised if using the term ‘internalization,’ as this presupposes an anthropological distinction between the ‘internal’ and ‘external.’<sup>74</sup> In these passages we also see an interplay of the oral and written Torah, the spoken and the inscribed, as discussed above.<sup>75</sup> The immediate goal is a memorized Torah that becomes an embodied Torah that, in turn, results in a living Torah.<sup>76</sup>

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difference between Deut 6 and 11 (Carr, *Writing on the Tablet of the Heart*, 135).

<sup>74</sup> Niditch speaks of “internalizing Israelite ethics” (Niditch, *Oral World and Written Word*, 100). Cf. Sonnet’s “interiorization of the Mosaic teaching” (Sonnet, *The Book within the Book*, 58). For a discussion of the development of the internal/external distinction in the history of ideas see Charles Taylor, *Sources of the Self: The Making of the Modern Identity* (Cambridge: Cambridge University Press, 1989). Cf. Block, *The Gospel According to Moses*, 6 where he speaks of the reading of Deuteronomy intended to result in a lived life, “embodying the covenant fidelity.” For how Jesus becomes the perfect embodiment of Torah, see Block, *The Gospel According to Moses*, 11–12; Keener, *John*, 339–63. Commenting on Deut 6:4–9 and Deut 11:13–21 in relation to literacy, Niditch writes: “The words, moreover, are to be repeated and spoken. The oral world provides their elaborate and living context” (Niditch, *Oral World and Written Word*, 100).

<sup>75</sup> Underlining the symbiotic relationship between the written and spoken Torah in Deut 6:6–9, Carasik makes the following observations: “First, the אִוֶּת and the טַטְפַת represent writing as a symbolic, not a literal, reminder. It is the existence and display of the writing that serves to remind, not the reading of its contents. Second, in accordance with a pervasive concern in Deuteronomy, the commandments must be ‘on your mind’ (עַל־לִבְכֶּךָ). Here, though the word זָכַר is not used . . . , writing is put directly in the service of awareness. Its purpose is to make sure that one is actually thinking about the commandments” (Carasik, *Theologies of the Mind*, 66–67). Deut 30:6, 10 echo lexemes and themes particularly from Deut 6 and 11.

<sup>76</sup> Cf. Niditch, *Oral World and Written Word*, 70, 99; Carr, *Writing on the Tablet of the Heart*, 121. For other passages discussed by Niditch showing the interplay between orality and writing see Exod 17:14–16 (Niditch, *Oral World and Written Word*, 84–85); Deut 27:3; 31:19, 24–26 (Niditch, *Oral World and Written Word*, 86–87); Josh 1:8 (Niditch, *Oral World and Written Word*, 95). Fishbane writes: “The cultural archive must become a living voice, and the written formulations must become direct address;

Above I argued that the function of ritual uses of Torah according to Deut 31:9–13 were primarily didactic. The public recitation of Torah therefore has a similar purpose as the private recitation and inscription mentioned in Deut 6:6–9 and 11:18–21. The didactic media used are both orality and writing. The people hear the public reading of “this Torah” (הַתּוֹרָה הַזֹּאת; 31:9, 11) for the purpose that they may “hear and learn so they will fear YHWH your God and observe to do all the words of this Torah” (לְמַעַן יִשְׁמְעוּ; 31:12). And their children who “do not know will hear and learn to fear YHWH your God” (לֹא־יָדְעוּ יִשְׁמְעוּ; 31:13) just as their parents do.

Carasik comments: “The written and the oral fuse for the purpose of transmitting and preserving דעת. Only in the combination of the two can the past live on reliably in present awareness. . . . writing augments living memory rather than obviating it.”<sup>77</sup> In this way “Deuteronomy presents its own teaching as providing the ability of cultural self-replication.”<sup>78</sup> This “idea that the laws must be the basic content of the mind, to be maintained through the ages by transmission from one generation to the next, is

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one’s life and the life-world presented in the text must coincide in a dynamic way” (Michael Fishbane, *Sacred Attunement: A Jewish Theology* (Chicago: The University of Chicago Press, 2008), 63).

Just one caveat here. Even if some see in Deut 6:6–9 a basis to argue for a general literacy in the Israelite population, the text of course only states what the goal is, not what was actual practice became. Still, Sonnet is correct in that the text does project a covenantal world where “the people is capable of writing” (Sonnet, *The Book within the Book*, 56).

<sup>77</sup> Carasik, *Theologies of the Mind*, 68. Thus, Deuteronomy seems to see a complementary role of memory and writing, contrary to Plato in Phaedrus quoted above. Cf. Niditch, *Oral World and Written Word*, 87–88; Sonnet, *The Book within the Book*, 70. On how the people should acquire an analogous fear as the Sinai generation according to Deut 31 see Sonnet, *The Book within the Book*, 145. Cf. p. 181.

<sup>78</sup> Carasik, *Theologies of the Mind*, 181.

fundamental to Deuteronomy.”<sup>79</sup> We could add that while Deut 6 and 11 emphasize oral recitation of the instructions to the children, invoked by written representations of these instructions, Deut 31 focuses upon reciting the instructions to the people and children.<sup>80</sup>

In the previous chapter I discussed how Deuteronomy invokes responses in love and joy by the people.<sup>81</sup> Here I want to point out how the disposition of the heart is to be disclosed. According to Sonnet the heart is the “faculty of memory.”<sup>82</sup> Memorization and imprinting Torah on the heart, however, is not an end in itself. “Taking Torah to heart” is a means, not an end. Rather, it should lead to them being embodied and then lived. Moreover, Deuteronomy speaks of testing the people to expose what is truly in their heart. In Deut 13 we find that the false prophets will be a test to the people in order to see what is truly in their hearts. 13:4 states that “YHWH your God is testing you to know if you love YHWH your God with all your heart and all your soul” (מִנְסֶה יְהוָה אֱלֹהֵיכֶם אֶתְכֶם (לְדַעַת הַיְשָׁכֶם אֲהַבִּים אֶת־יְהוָה אֱלֹהֵיכֶם בְּכָל־לִבְבְּכֶם וּבְכָל־נַפְשְׁכֶם). As Carasik states, “God is *curious*, he wants to *know*.”<sup>83</sup> The false prophet will test whether the people will follow YHWH’s prohibition against serving other gods or not. Deut 8:2 makes the link between the test, the heart, and obedience even clearer: “Remember the entire way which YHWH

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<sup>79</sup> Carasik, *Theologies of the Mind*, 183. He also finds Deut 31 to form an *inclusio* with 4:10, both presenting the book itself as something to be heard, learned, and taught the children (Carasik, *Theologies of the Mind*, 186). The audio-visual encounter at Horeb is retold, and thus made cognitive consciousness, to the children. The immediateness of the visual encounter is reproduced through the oral retelling (Carasik, *Theologies of the Mind*, 183, 195).

<sup>80</sup> In Deut 32:46 we find another encouragement to memorize all of Torah. Cf. Sonnet, *The Book within the Book*, 179.

<sup>81</sup> Cf. Muffs, *Love and Joy*, 121–93; Carasik, *Theologies of the Mind*, 201, 213.

<sup>82</sup> Sonnet, *The Book within the Book*, 158.

<sup>83</sup> Carasik, *Theologies of the Mind*, 210.

your God made you walk these forty years in the desert, in order that he might humble you and test you to know what was in your heart, whether you would keep his commandments or not” ( וְזָכַרְתָּ אֶת־כָּל־הַדְּרָוֹת אֲשֶׁר הִלִּיכָה יְהוָה אֱלֹהֶיךָ זֶה אַרְבָּעִים שָׁנָה בַּמִּדְבָּר (לְמַעַן עֲנֹתָהּ לְנִסְתָּהּ לְדַעַת אֶת־אֲשֶׁר בְּלִבְכֶּךָ הֲתִשְׁמַר מִצְוֹתַי אִם־לֹא is truly in the hearts of the people. With the heart as the locus where Torah truly belongs, this testing will therefore disclose whether the heart really harbors Torah or not. Having spoken of the delight YHWH will take in blessing the people with what is good, Moses in Deut 30:10–14 turns to a focus upon Torah, speaking of how the written word should be heard, and how “the word is very close to you [כִּי־קְרוֹב אֵלֶיךָ הַדְּבָר מְאֹד], in your mouth and in your heart [בְּפִיךָ וּבְלִבְכֶּךָ], to observe it.”<sup>84</sup>

### Isaiah

Having looked at the question of orality, writing, and memory in the Torah, I now turn to the prophets, more precisely Isaiah, Jeremiah, and Ezekiel.<sup>85</sup> I will begin with Isaiah. Mowinckel writes: “Isaiah provides the earliest information about a prophet writing something or having something written. In two cases he had a symbolic, enigmatic prediction written on a tablet to prove that he had predicted the coming event (Isa 8:1–8; 30:7–8).”<sup>86</sup> In Isa 8:16–18 we read:

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<sup>84</sup> A similar focus is found in the prophets. Cf. Isa 8:16; Jer 31:31–34. While Jer 31:31–34 picks up the idea of inscribing Torah on the heart from Deut 6:6–9, 20–25; 11:18–21; these Deuteronomistic passages place the responsibility for the embodiment of Torah upon the individual Israelites, while God takes this responsibility upon himself in Jeremiah. It is possible that Jeremiah found this idea in Deut 30:4.

<sup>85</sup> For a general discussion of orality, writing, and quotation in ANE prophecy see Nissinen, “Spoken, Written, Quoted, and Invented,” 235–71.

<sup>86</sup> Sigmund Mowinckel, *The Spirit and the Word: Prophecy and Tradition in Ancient Israel*, trans. K. C. Hanson (Minneapolis: Fortress, 2002), 54. For the close parallels between Isa 36–39 and 2 Kgs 18–

Bind up the testimony, seal the instruction [תּוֹרָה] among my students [בְּלִמְדָּי]. And I will wait for YHWH, who is hiding his face from the house of Jacob, I will hope in him. Behold, I and the children whom YHWH gave me as signs and portents in Israel from YHWH of hosts, the one dwelling on Mount Zion.

As pointed out by Carr, it is not clear whether the students were Isaiah's own children or mere students, but this injunction is nevertheless analogous to the emphasis in Deuteronomy upon training the next generation in Torah. Further, it is clear from the passage that the "educational process" indicated "was both written and oral."<sup>87</sup>

Having commented on the relative frequency of terms such as זָכַר ('to remember') and שָׁכַח ('to forget') when compared, for example, to Genesis, Carasik writes: "Second Isaiah, at least, certainly dates from a time and a milieu where awareness of writing must have been commonplace. Yet the preservation of factual data was no part of what interested this prophet. . . . there is a focus not on facts (for whatever purpose), but on awareness."<sup>88</sup> Given "a high level of complexity in his use of sources," Sommer has challenged the common assumption among scholars that the so-called Deutero-Isaiah was originally delivered orally and later committed to writing. He also argues that it is

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21 see Mowinckel, *The Spirit and the Word*, 58–59. Schellenberg refers to the following references to writing in the book of Isaiah: Isa 4:3; 8:1; 10:1, 19; 29:11–12, 18; 30:8; 37:14; 39:1; 44:5; 50:1; 65:6 (Schellenberg, "A 'Lying Pen of the Scribes' (Jer 8:8)?" 294).

<sup>87</sup> Carr writes: "First, such 'instruction' and 'torah' mentioned in Isa 8:16, 20, was often written as well as oral in the ancient world, and 8:16 uses metaphors for handling scrolls—'wrap up' and 'seal'—to talk of the process of inculcating this teaching in students. Second, this passage is itself a written text, following on an authorizing other written texts. Indeed, the passage occurs toward the conclusion of an often-positing early collection of Isaianic prophecy, the testimony book (Isa 6–8). . . . Moreover, there is another Isaiah text, Isaiah 30:8, that refers explicitly to the writing of prophecy amid references to the people's rejection of the prophet's prophecy as a rejection of the instruction/torah of YHWH (30:9–11), who is the true teacher (30:20) and wise one (31:2)" (Carr, *Writing on the Tablet of the Heart*, 144. Cf. 145).

<sup>88</sup> Carasik, *Theologies of the Mind*, 62. Cf. pp. 61, 85–86. For the oral/written debate regarding the so-called Deutero-Isaiah see Gitay, "Deutero-Isaiah," 185–88. For further discussions on the question of the oral and written in the classical prophets, see Menahem Haran, "From Early to Classical Prophecy: Continuity and Change," *VT* 27 (1977): 385–97.

possible that Deutero-Isaiah reused sources from memory:

It initially seems likely that he knew his sources in written form. Deutero-Isaiah repeatedly displays knowledge of a large number of passages from his sources. It follows that his knowledge was based on collections to which he could have made frequent references, and such a reference work, one assumes, must have been written. But this assumption is not incontrovertible. . . . It is not inconceivable that Deutero-Isaiah memorized earlier prophetic collections or that he studied them, and referred to them, in an oral form. . . . Stylistic features (especially the split-up pattern and identical word order) and the length of some passages to which he alludes indicate a high level of complexity in his use of sources. . . . Thus, while one should not discount the possibility that Deutero-Isaiah knew his sources as oral texts, it remains more likely that he consulted them in written form. Of course, these two possibilities are not incompatible.<sup>89</sup>

Yehoshua Gitay wrote a thoughtful article on the question of whether prophetic texts should be classified as originally having been composed orally or in writing. He contends that the criteria often used to argue either side are not unequivocal, since ancients tended to write their compositions with the intention that they be read publicly and thus received orally. Instead pursuing further the oral/written question, he proposes that a study of ancient rhetorics would be a more fruitful approach:

A study of DI [Deutero-Isaiah] shows that phenomena considered to be characteristic of oral composition are found in his prophecy. However, these characteristic phenomena are not peculiar just to oral literature and may be employed also in written composition. In any event, the question of oral or written composition is not the proper question for such a literature as DI's. That is because in the ancient period even written material was designed to be heard and to be read in public. The writer's goal was to reach the audience through hearing devices. Consequently, even writers employed in their work the devices utilized in oral performance. Hence, the question should not be: DI oral or written? The proper question has to be: What are the rhetorical means utilized in DI's work and through which the prophet, speaking or writing, tried to appeal to his audience?<sup>90</sup>

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<sup>89</sup> Sommer, *A Prophet Reads Scripture*, 170–71.

<sup>90</sup> Gitay, "Deutero-Isaiah," 197. He writes: "His prophecies [Deutero-Isaiah's] are clearly designed and presented in speech-form. . . . As a rule, poetic address is always in the form of speech-address" (Gitay, "Deutero-Isaiah," 188). And again: "In modern culture, it is rather easy to distinguish between written and oral literature. . . . In ancient times this was not the situation since even written material was written to be heard. . . . That means that an author who knew that his writing was to be heard could not ignore the

## Jeremiah

As Deuteronomy was the most significant book for the question of orality, writing, and memory in Torah, Jeremiah occupies a similar position in the prophetic literature.<sup>91</sup> This is also reflected in the cases to be studied in part two, where both Deuteronomy and Jeremiah will play major roles. Regarding orality in Jeremiah, Annette Schellenberg writes:

In the call narrative of Jeremiah, for example, one learns that Jeremiah is called by YHWH to “speak” (דבר pi.) everything he commands (cf. Jer 1:7), and it is Jeremiah’s “mouth” (פי) in which God puts his words (cf. 1:9). The prophet is asked by God to “speak” (אמר) to the people and to “proclaim in the hearing of Jerusalem” (באזני ירושלים + קרא; cf. 2:2; similarly 11:6; 17:19f; 19:2; 26:2). Through the voice of Jeremiah the words of God are delivered orally, as are additional words from the prophet himself. Accordingly, these words are often introduced with a call to “hear”. While the verb “to hear/listen” (שמע) often is synonymous with “to pay attention” and “to obey” in the book of Jeremiah and other OT writings, its basic meaning still reflects the understanding that words of God and humans were received through hearing, i.e. orally.<sup>92</sup>

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techniques employed by oral literature in order to reach his audience” (Gitay, “Deutero-Isaiah,” 191–92). According to Gitay on p. 195 this would also result in an attempt to treat the audience (and oneself as author) as participants of a dialogue, using 1. and 2. person forms, as observed occurring frequently in Torah as well. For a rhetorical analysis of Torah see Watts, *Reading Law*.

<sup>91</sup> Cf. Schellenberg, “A “Lying Pen of the Scribes” (Jer 8:8)?,” 286n.

<sup>92</sup> The high frequency of the lexeme דבר in Jeremiah speaks to the discursive setting of the book. Cf. Georg Fischer, *Jeremia 1–25*, Herders Theologischer Kommentar zum Alten Testament (HThKAT) (Freiburg: Herder, 2005), 75; Schellenberg, “A “Lying Pen of the Scribes” (Jer 8:8)?,” 287. For a discussion on the relation between דבר and תורה in the book of Jeremiah, see Udo Rüterswörden, “Es gibt keinen Exegeten in einem gesetzlosen Land (Prov 29,18 LXX): Erwägung zum Thema: Der Prophet und die Thora,” in *Prophetie und geschichtliche Wirklichkeit im alten Israel*, ed. R. Liwak and S. Wagner (Stuttgart: Kohlhammer, 1991), 334; Christl Maier, *Jeremia als Lehrer der Tora: Soziale Gebote des Deuteronomiums in Fortschreibungen des Jeremiabuches* (Göttingen: Vandenhoeck and Ruprecht, 2002), 302–4, 353–55; Eggleston, “See and Read All These Words”, 113–14). Fischer writes: “Jer ist das Buch, das mit 158 Belegen (von 1159 im AT) bei weitem am meisten Vorkommen von שמע, hören’ aufweist. . . . Kein anderes Buch der Bibel zeigt so häufig und massiv wie Jer Verfehlungen gegen diese Grundforderung des Hörens auf Gottes durch die Propheten vermitteltes Reden auf” (Fischer, “Der Einfluss des Deuteronomiums auf das Jeremiabuch,” 264). This is significant for understanding the oral register of Jeremiah. Cp. this with Jeremiah also being the HB book that most clearly writes about writing.

Further, she organizes the passages mentioning writing in Jeremiah into four groups: (1) two prophetic letters (29:1–23, 24–32), (2) scrolls with collections of Jeremiah’s oracles (25:13; 30:2; 36:2, 28, 32; 45:1; 51:60), legal documents (3:8; 32:10–16, cf. 32:44), and writing metaphors (17:1, 13; 22:30; 31:33).<sup>93</sup> In part two I will take a closer look at the case of the סֵפֶר פְּרִי־הַתָּה (“bill of divorce”) in Jer 3:8, and also touch upon the סֵפֶר הַמִּקְנָה (“deed of purchase”) signed in Jer 32 as it strengthens the Jubilee background of Jer 34.

Eggleston does not claim it is possible to prove that the book of Jeremiah was intended for public reading, but that it is “the more plausible possible context in which one can understand the book.”<sup>94</sup> He writes: “In Jeremiah, one finds a prophet-priest who is not only a speaker but frequently also a writer. This is especially true of the second half of Jeremiah (chaps. 26–52), where the personification of the prophet increasingly points toward this role.”<sup>95</sup> If so, this raises the interesting question of why then we find the strongest cases of legal reuse in the first part of the book. As this is not a study of the book of Jeremiah *per se*, I will not attempt an answer here. Further studies of reuse in the book of Jeremiah might want to pursue this question. Building on Watts’ study discussed above, Eggleston observes that rhetorical repetition and variation might better explain the supposed ‘incoherent’ composition of the book of Jeremiah than traditional source-

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<sup>93</sup> Schellenberg, “A “Lying Pen of the Scribes” (Jer 8:8)?,” 292–94. Eggleston writes: “There are numerous audiences in the book of Jeremiah, but their primary characteristic is that they are most often at worship. Moreover, those who receive texts in Jeremiah do not commonly read on their own but instead have texts read to them by scribes. Audiences hear the word of YHWH as conscious receivers of a word whose oral transmission comes via a written counterpart” (Eggleston, “*See and Read All These Words*”, 8).

<sup>94</sup> Eggleston, “*See and Read All These Words*”, 161.

<sup>95</sup> Eggleston, “*See and Read All These Words*”, 76. For Eggleston on the textual aurality of the Book of Jeremiah, see pp. 151–53.



critical explanations do: “Repetition and variation in the book of Jeremiah may also indicate an original context of public reading and indeed may provide the simplest explanation for the book of Jeremiah’s ‘incoherent’ composition.”<sup>96</sup>

Jer 36 is one of the most elaborate cases showing the scribal culture in which the HB participated. Jeremiah receives a word from YHWH (v. 1), and is immediately commanded to “take a scroll and write on it all the words” which YHWH spoke to him (v. 2).<sup>97</sup> Then these same words are to be orally communicated to the people since they might listen (אִילֵי יִשְׁמְעוּ; v. 3). Baruch, Jeremiah’s scribe, writes on the scroll all the words YHWH spoke to the prophet by dictation from the mouth of Jeremiah (מִפִּי יְרֵמְיָהוּ; v. 4). Jeremiah is banned from and unable to go to the Temple, so he sends Baruch instead to read in the scroll (וְקִרְאתָ בְּמִגְלָה) he has written by dictation of Jeremiah (אֲשֶׁר־כָּתַבְתָּ־מִפִּי אֶת־דְּבָרֵי יְהוָה) in the ears of the people and all Judah (בְּאָזְנֵי הָעָם . . . בְּאָזְנֵי כָל־יְהוּדָה) (vv. 8–10). Michaiah hears all the words of YHWH from the scroll (וַיִּשְׁמַע מִכַּיְהוּ בֶן־גְּמַרְיָהוּ בֶן־שָׁפָן אֶת־) (v. 11), and reports them to the royal officials (vv. 12–13). These again take action and have Baruch read the words a second time to them (vv. 14–15). As the words create fear, they realize their responsibility to report the words to the king (v.

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<sup>96</sup> Eggleston, *See and Read All These Words*, 160. He writes: “Additional human parties interrupt the YHWH-prophet-audience pattern of transmission, as the written word provides a further intermediary between the original prophetic pronouncement and its audience. This is especially the case in the second half of the book of Jeremiah, where the audience shifts from one that hears a word that typically exists as an oral pronouncement to an audience that hears a publicly proclaimed text” (Eggleston, *See and Read All These Words*, 138).

<sup>97</sup> Mowinckel understood the purpose of the scroll in Jer 36:1–2 as an *aide-memoire*: “The recording then was to serve as a support to memory, as ‘the words’ on a special occasion were to be recited to the cultic congregation” (Mowinckel, *The Spirit and the Word*, 55).

16). They inquire of Baruch regarding the composition of the scroll (v. 17). Baruch answers that he wrote by dictation from the mouth of Jeremiah, and even specifies that he wrote with ink (מִפִּי יִקְרָא אֵלַי אֶת כָּל־הַדְּבָרִים הָאֵלֶּה וְאֲנִי כָתַב עַל־הַסֵּפֶר בְּדִי; v. 18). The officials instruct Baruch and Jeremiah to hide (v. 19), leave the scroll in the chamber of Elishama, and rush off to the king and report “all the words in the ears of the king” (וַיִּגִּידוּ בְּאָזְנֵי הַמֶּלֶךְ אֶת כָּל־הַדְּבָרִים; v. 20). “All the words” (כָּל־הַדְּבָרִים) might indicate it was an exact oral reproduction, while it may also simply have been a summary.<sup>98</sup> The king orders the scroll brought to him and the scroll is read out loud a third time, now by Yehudi (v. 21).<sup>99</sup> But as the king listens he cuts off piece by piece what has been read from the scroll and throws it into the fire (vv. 22–23). In contrast to the first group of officials, neither the king nor his other officials fear when they hear the words read, even when the first officials plead with the king not to burn the scroll (v. 24–25).

Niditch writes: “But, of course, in this world of inspired improvisation and memorization, the contents of the scroll have not been destroyed; they are in Jeremiah’s mind and mouth.”<sup>100</sup> Even if the king seems to attribute a magical power to the scroll

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<sup>98</sup> Cf. Eggleston, “*See and Read All These Words*”, 144.

<sup>99</sup> For the use of written documents in the transmission of a prophetic message, and how Jer 36 fits in to the pattern of similar letters at Mari, cf. Nissinen, “Spoken, Written, Quoted, and Invented,” 249.

<sup>100</sup> Niditch, *Oral World and Written Word*, 105. Cf. Fischer who claims that the book of Jeremiah shows evidence of partaking in a developed scribal culture, testified through its reuse of sources (Fischer, *Jeremiah 1–25*, 74).

The differences between the MT and LXX in Jeremiah has been much studied. Some have seen MT and LXX as stemming from the two versions of the book mentioned in Jer 36. If so, and this is a major ‘if,’; the differences between the two versions could also be studied in light of the question how memorized reuse might produce certain textual variations. For references in the book of Jeremiah to earlier versions of itself and its compositional process, see Jer 25:13; 29:1; 30:2; 36:2,28,32; 45:1; 51:60. Cf. Schellenberg, “A “Lying Pen of the Scribes” (Jer 8:8)?,” 303.

itself,<sup>101</sup> and therefore burns it to undo its message, he also needs to kill those in whom the words reside, Jeremiah and Baruch.<sup>102</sup> The words not only reside in writing, they are alive and in the memory of persons. But YHWH hides them (v. 26). At the command of YHWH, Jeremiah, with the help of Baruch, is able to reproduce a similar scroll, once more by dictation of Jeremiah (מִפִּי יִרְמְיָהוּ), with all the words of the former scroll that was burned (כָּל-דְּבָרֵי הַסֵּפֶר אֲשֶׁר שָׂרַף יְהוֹיָקִים מֶלֶךְ-יְהוּדָה בְּאֵשׁ) even adding some more words this time, likely including the judgment upon Jehoiakim and his sons mentioned in vv. 29–31 (וְעוֹד נוֹסֵף עֲלֵיהֶם דְּבָרִים רַבִּים כְּהֵמָּה) (v. 32).<sup>103</sup> The details of Jer 36 appear to be written to underline the respective roles of writing and orality in the book of Jeremiah. They also demonstrate the practice of the memorized text and the openness to augmenting an existing instruction. As Carasik puts it, “a written text . . . is simultaneously akin to a living and growing thing.”<sup>104</sup> This chapter also emphasizes the autonomy of the scrolls of Jeremiah as part of an

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<sup>101</sup> Cf. Carasik, *Theologies of the Mind*, 70. For a similar magical view of text see Jer 29:24:32; 51:59–64 (Carasik, *Theologies of the Mind*, 71–72; Schellenberg, “A “Lying Pen of the Scribes” (Jer 8:8)?,” 294). Referring to the letter in Jer 29 Schellenberg claims that “with its ‘oral’ style the letter shows how easy it is to imitate an oral communication in writing” (Schellenberg, “A “Lying Pen of the Scribes” (Jer 8:8)?,” 293). Gitay has pointed out that Jer 29:29, as well as 2 Kgs 20:12–13, show that the normal was for a written composition to be read out aloud (Gitay, “Deutero-Isaiah,” 193).

<sup>102</sup> Cf. Nielsen, *Oral Tradition*, 69, 72–73, 76, 77–78.

<sup>103</sup> Carasik writes: “Note that God condemns the king not for failing to heed him, but for burning the scroll” (Carasik, *Theologies of the Mind*, 70).

<sup>104</sup> Carasik, *Theologies of the Mind*, 71. Given his view of Torah as representing a more fixated view of the text, something I have questioned above, he contrasts the concept of Torah as represented in the narrative about the discovery of the Scroll of Torah in 2 Kgs 22 with Jer 36: “The different resolutions of the two stories point to the differing notions of Torah on the one hand and prophecy on the other. In the one, God’s word is fixed and preserved, but detached from the immediate experience of revelation. In the other, it retains the immediacy of theophany, but also its volatility” (Carasik, *Theologies of the Mind*, 71). In my opinion LeFebvre has adequately shown that Torah was not perceived as fixated in 2 Kgs 22 (LeFebvre, *Collections, Codes, and Torah*, 55–95).

increased focus upon texts that, in turn, affects us as we read through the book.<sup>105</sup>

Jer 8:8–9 has been much discussed among scholars as well. It reads:

אֵיכָה תֹאמְרוּ חֲכָמִים אֲנַחְנוּ וְתוֹרַת יְהוָה אִתָּנוּ אֲכַן הִנֵּה לְשֹׁקֵר עָשָׂה עֵט שֹׁקֵר סִפְרִים:  
הַבִּישׁוּ חֲכָמִים חֲתוּ וַיִּלְכְּדוּ הִנֵּה בְדַבְרֵי יְהוָה מֵאֲסוּ וְחֲכַמְתֶּם-מָה לָּהֶם:

“How can you say: ‘We are wise and the Torah of YHWH is with us’? Surely, for a lie has the lying pen of the scribes labored! The wise shall be put to shame, they shall be dismayed and captured. See, they have rejected the word of YHWH. What wisdom do they then have?”<sup>106</sup>

Many have interpreted these verses as operating with a dichotomy between the oral word of YHWH versus the written word of the scribes.<sup>107</sup> Schniedewind takes it as a “protest against the authority of the written texts that were understood as subverting oral tradition and the authority of the prophet.”<sup>108</sup> Schellenberg does not find any of these claims convincing. She offers a more straightforward reading of the passage: “The question of orality and writing is not important at this point. Lies can be spread with all different means of communication, besides orally . . . and in

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<sup>105</sup> Eggleston, *See and Read All These Words*, 97. See also p. 68, 144. This resonates with Sonnet’s similar point in Deuteronomy, with an increased focus upon the role of the text itself towards the end of the book. Cf. Otto, “Jeremia und die Tora,” 526–31.

<sup>106</sup> Fischer points out that Jer 8:8 might be a reversal of Deut 4:6, 8 (Fischer, “Der Einfluss des Deuteronomiums auf das Jeremiabuch,” 253). Commenting on Jer 43:1–7; 45, Eggleston writes: “Unlike false prophets whose oracles come from their own heart and are therefore immediately available (23:16), Jeremiah receives an oracle ten days after the peoples’ request” (Eggleston, *See and Read All These Words*, 68).

<sup>107</sup> E.g. Robert P. Carroll, “Inscribing the Covenant: Writing and the Written in Jeremiah,” in *Understanding Poets and Prophets: Essays in Honour of George Wishart Anderson*, ed. A. G. Auld, JSOTSup 152 (Sheffield: Sheffield Academic Press, 1993), 61–76; Karel van der Toorn, “From the Mouth of the Prophet: The Literary Fixation of Jeremiah’s Prophecies in the Context of the Ancient Near East,” in *Inspired Speech: Prophecy in the Ancient Near East; Essays in Honor of H. B. Huffmon*, eds. J. Kaltner and L. Stulman (T&T Clark: Edinburgh, 2004), 199. Cf. Edward Silver, “The Prophet and the Lying Pen: Jeremiah’s Poetic Challenge to the Deuteronomistic School” (Ph.D. diss., The University of Chicago, 2009); Schellenberg, “A “Lying Pen of the Scribes” (Jer 8:8)?,” 285.

<sup>108</sup> Schniedewind, *How the Bible Became a Book*, 117. Cf. Schellenberg, “A “Lying Pen of the Scribes” (Jer 8:8)?,” 285.

writing (cf. 8:8; 29:24–32) also in symbolic actions (cf. 28:10–11).”<sup>109</sup>

Schellenberg points out that Jer 26:17–19 refers to what might be a memorized reuse of a former prophetic passage by the elders of the land.<sup>110</sup> The literal quotation here of Mic 3:12 might also be understood as a reuse reflecting a fixation through writing even if here we also find a minor variation (with עִיִּין (“heap of ruins”) in Mic 3:12 and עִיִּים (“heaps of ruins”) in Jer 26:18).

The idea of embodied Torah is also represented in the well-known promise of Jer 31:31–33. Here YHWH promises that he will place his Torah in their midst and write it upon their heart (וְנָתַתִּי אֶת-תּוֹרָתִי בְקִרְבְּךָ וְעַל-לִבְּךָ אֶכְתָּבֶנָּה, 31:33). Carasik comments: “Writing upon the heart—that is, into the mind—eliminates the impermanence of memory without reducing it to a text which can be folded up and stored away, lost or forgotten. Instead, a Torah that is written on the heart marries the permanence of writing

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<sup>109</sup> Schellenberg, “A “Lying Pen of the Scribes” (Jer 8:8)?,” 307. Cf. Fischer arguing that Jeremiah possibly assume a written version of Torah (Georg Fischer, “ותפשי התורה לא ידעוני”: The Relationship of the Book of Jeremiah to the Torah,” in *The Formation of the Pentateuch*, eds. Jan C. Gertz et al., FAT 111 (Tübingen: Mohr Siebeck, 2016), 891–912). Graffy points out that “Jer 8,8, shows the structure of quotation followed by refutation” (Adrian Graffy, *A Prophet Confronts His People: The Disputation Speech in the Prophets* (Rome: Biblical Institute Press, 1984), 6).

Eggleston writes that Jer 8:8 is “notoriously difficult to translate” and how “scribes can be a threat to the chain of transmission unless their words are carefully controlled, as they are in the narrative of Jeremiah 36 by the dictation model of transmission from prophet to scribe. Jer 8:8, then, demonstrates the need for a careful chain of transmission from the divine to the written word” (Eggleston, “*See and Read All These Words*”, 63, 65). And he continues: “With the lone exception of Jer 8:8, the tradents of Jeremiah depict scribes such as themselves as valid participants in the transmission of God’s word to the world” (Eggleston, “*See and Read All These Words*”, 70). Nissinen writes: “Since meanings of words emerge within a sociolinguistic context, there is no repetition of a message without an interpretative adaptation corresponding to the perception of the ones who are supposed to hear it. The intermediaries, addressees, and interpreters of the prophetic messages, hence, are not mere instruments and objects of the divine word, but active participants whose needs and preferences keep the process advancing. Without their participation there is no meaningful message to be heard and heeded, no communication, no prophecy” (Nissinen, “Spoken, Written, Quoted, and Invented,” 270–71).

<sup>110</sup> Cf. Schellenberg, “A “Lying Pen of the Scribes” (Jer 8:8)?,” 305.

to the awareness of the mind.”<sup>111</sup> This raises the question whether the writing upon the heart in Jer 31 should be understood exclusively in terms of memorization as a cognitive strategy, or if it should not rather be viewed as a process of intimate learning whereby the divine agency counters mere human agency such that the process of reading is described as God writing upon the heart.

Carasik summarizes orality, writing, and memory in Exodus, Deuteronomy, and Jeremiah. He finds an

increasing reliance, from Exodus through Deuteronomy to Jeremiah, on the preservation of God’s word in written form. At the same time, we saw an increasing reluctance to let a written text substitute for vital awareness of what the text contains. In Exodus, it was enough to inscribe the commandments on stone tablets. In Deuteronomy, they must be presented in the voice of Moses, on the plains of Moab just before the Israelites enter the land; Moses is also given the poem of Deuteronomy 32 to write down, teach to the people and “put it in their mouth” (Deut 31:19). In Jeremiah, we saw that the message had power that outlasted the destruction or disappearance of the medium that carried it. Indeed, the physical destruction of the text would do no more than portend the power inherent in the word.<sup>112</sup>

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<sup>111</sup> Carasik, *Theologies of the Mind*, 72. For the idea of remembering and forgetting in Jeremiah see p. 79, 85–86. Fischer writes on Jer 31: “The inscription of his תורה on the heart ‘overwrites’ the sin engravings of Jer 17:1, and it also signifies that God goes beyond the writing of his commandments on scrolls or stones on Mount Sinai (Exod 24:4; 31:18)” (Fischer, “The Relationship of the Book of Jeremiah to the Torah,” 898). Cf. Greenberg, “Three Conceptions of the Torah,” 19–20; Schellenberg, “A “Lying Pen of the Scribes” (Jer 8:8)?,” 308–9; Eggleston, “*See and Read All These Words*”, 101.

<sup>112</sup> Carasik, *Theologies of the Mind*, 88. Wellhausen wrote: “It is a thing which is likely to occur, that a body of traditional practice should only be written down when it is threatening to die out, and that a book should be, as it were, the ghost of a life which is closed” (Wellhausen, *Prolegomena*, 405). While Eggleston takes Wellhausen as representing the view of writing as degeneration, this stands in contrast to the creativity I find in biblical reuse. Eggleston writes further, how Wellhausen is challenged by Jeremiah: “Jeremiah is said to have been an ally of Josiah and thus must have supported the legal codification behind 2 Kings 22–23. How can the prophet be both a supporter of prophetic inscription and a powerful speaker full of religious power?” (Eggleston, “*See and Read All These Words*”, 21). Note how Wellhausen tried to avoid this problem.

For further studies on writing, orality, and memory in the book of Jeremiah see J. Andrew Dearman, “My Servants the Scribes: Composition and Context in Jeremiah 36,” *JBL* 109, no. 3 (1990): 403–21; Carroll, “Inscribing the Covenant: Writing and the Written in Jeremiah,” 61–76; Robert P. Carroll, “Manuscripts Don’t Burn—Inscribing the Prophetic Tradition: Reflections on Jeremiah 36,” in *Dort Ziehen Schiffe dahin: Collected Communications to the XIVth Congress of the International Organization for the Study of the Old Testament*, ed. G. L. Prato, International Organization for the Study of the Old Testament 28 (New York: Peter Lang, 1996), 61–76; Paul J. Griffiths, *Religious Reading: The Place of Reading in the*

## Ezekiel

The final book I will look at in this chapter is Ezekiel. Eggleston writes: “Ezekiel, of course, remains the most well-known prophetic writer. The prophet eats the scroll (Ezek 2:9–3:11) and thereby ingests the word of YHWH in written and not spoken form. His particular, peculiar vision of the prophetic word is that of a written word. Ezekiel’s prophecy is *Schriftgelehrte*, informed by and commenting upon the texts he himself has already received.”<sup>113</sup> Ezekiel’s swallowing the scroll in Ezek 2:9–3:11 supplies a good example of the idea of embodying YHWH’s words.<sup>114</sup> Ezek 2:9 is the only time in the book the term סֵפֶר is used, in the phrase מִגִּלְת־סֵפֶר. Thrice Ezekiel is instructed to speak to Israel. In 3:1 he is instructed to eat the scroll and then to go to speak to the house of Israel (אֲכֹל אֶת־הַמְּגִלָּה הַזֹּאת וְלֵךְ דַּבֵּר אֶל־בֵּית יִשְׂרָאֵל). As Polak puts it: “When Ezekiel has to swallow a scroll, it is in order to speak (Ezek. 2:9–3:3).”<sup>115</sup> In 3:4 he is again instructed to speak to the house of Israel “my words” (לֵךְ־בֹּא אֶל־בֵּית יִשְׂרָאֵל וְדַבֵּרְתָּ )

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*Practice of Religion* (New York: Oxford University Press, 1999); Phillip Davies, “Pen of Iron, Point of Diamond’ (Jer 17.1): Prophecy as Writing,” in *Writings and Speech in Israelite and Ancient Near Eastern Prophecy*, eds. E. Ben Zvi and M. H. Floyd (Atlanta: Scholars Press, 2000), 65–81; Silver, “The Prophet and the Lying Pen: Jeremiah’s Poetic Challenge to the Deuteronomistic School,”; Georg Fischer and Norbert Lohfink, “Das Jeremiabuch als Spiegel der Schrift- und Lesekultur in Israel,” *ZKT* 132, no. 1 (2010): 25–46.

<sup>113</sup> Eggleston, “*See and Read All These Words*”, 76. For references to writing in the book of Ezekiel see Schellenberg, “A “Lying Pen of the Scribes” (Jer 8:8)?,” 294.

<sup>114</sup> Cf. Niditch, *Oral World and Written Word*, 83. See Carasik, *Theologies of the Mind*, 85–87 on Ezek 16.

<sup>115</sup> Polak, “Book, Scribe, and Bard,” 133. Comparing how Jeremiah and Ezekiel are entrusted with YHWH’s words, Nielsen writes: “To be sure there is a characteristic difference between the way in which Jeremiah is entrusted with the words of YHWH, and the way in which Ezekiel is charged with them (Jer. 1.9; Ezek. 2.8–3.9)” (Nielsen, *Oral Tradition*, 61). Nielsen does not state explicitly what he refers to, but seems to be thinking of the contrast between passages like Jer 1:9, הִנֵּה נִתְּנִי דְבָרִי בְּפִיךָ (“Behold, I place my words in your mouth”), and Ezek 2:8–3:9.

בְּדַבְרֵי אֱלֹהִים), presumably those contained in the scroll just eaten. And finally, he is instructed to “receive in your hear” (קַח בְּלִבְבְּךָ) and “hear with your ears” (וּבְאָזְנֶיךָ שְׁמַע) all the words of YHWH, thus embodying them as he speaks them to the exiles:

וַיֹּאמֶר אֵלַי בְּיוֹ-אָדָם אֶת-כָּל-דְּבָרֵי אֲשֶׁר אִדְבַּר אֵלַיךָ קַח בְּלִבְבְּךָ וּבְאָזְנֶיךָ שְׁמַע: וְלֹא בֹא אֶל-הַגּוֹלָה אֶל-בְּנֵי עַמֶּךָ וְדַבַּרְתָּ אֲלֵיהֶם וְאָמַרְתָּ אֲלֵיהֶם כֹּה אָמַר אֲדֹנָי יְהוִה אֱמַר: שְׁמַעוּ וְאִם-יִקְדָּלוּ:

And he said to me: “Son of man, all my words which I speak to you receive in your heart and hear with your ears. And go, approach the exiles, to the sons of your people, and speak to them and say to them: ‘Thus says the Lord YHWH,’ whether they hear or refuse.”

Analogous to Jeremiah’s writing Torah on the heart (Jer 31:30–33), Ezek 36:24–27 speaks of YHWH making the people walk in his rules and do his judgments (וַעֲשִׂיתִי וְעָשִׂיתֶם).<sup>116</sup> Ezekiel is not as explicit as Jeremiah on inscribing Torah on the heart, but YHWH does promise in the same context that “I will give you a new heart and place a new spirit in your midst” (וְנָתַתִּי לְכֶם לֵב חָדָשׁ וְרוּחַ וְנָתַתִּי לְכֶם לֵב חָדָשׁ וְרוּחַ) (v. 26). The two passages could therefore be said to reflect a similar idea.

In Ezek 9:2, 11 one of the divine executioners is described as a scribe, having a writing case at his waist.<sup>117</sup> And it is only those who have a mark (תָּו) in the forehead that are spared according to 9:4. In Ezek 13:9 we find the notion of erasing the false prophets from the register of the house of Israel. Graffy writes: “One of the notable features of the speeches of the prophet Ezekiel is the frequency with which he reports what the people are saying and goes on to refute their opinion. Proud words of those left

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<sup>116</sup> Cf. Greenberg, “Three Conceptions of the Torah,” 19–20.

<sup>117</sup> Cf. Greenberg, *Ezekiel 1-20*, 176.



in Jerusalem receive unambiguous replies. Despondent laments of the exiles are answered by words of encouragement.”<sup>118</sup> According to Polak’s analysis, the Temple

Vision contain both oral and scribal elements:

One may also note that the mini-legislation of Ezekiel contains both oral and scribal elements. The scribal affiliation is obvious in the sections concerning the Levites (Ezek 44:1–14), and the sacrifices (Ezek 46:1–15). Some VoLB [voiced, lean, brisk style] traces may be discerned in the sections concerning the altar (43:18–27), the proposals for priestly clothing and behavior (44:16–31), and the legislation concerning the landed property of the *nāšī’* and the cooking boils (46:16–24). Still, in view of the figures for grouped nouns, elaborate clauses and hypotaxis (particularly complex hypotaxis), the profile of these sections fits the IES [intricate elaborate style], and thus the Judean corpus.<sup>119</sup>

Generally speaking, the memorization and embodiment of covenantal instructions, discussed above, resulted in active participation by later tradents. They did not remain mere observers. The irony is that their vested interest in preserving allegiance to the covenantal instructions could well have invited innovation and creative reuse of the instructions themselves in order to once more make them alive to the audience. Fishbane puts it as follows: “They were, in fact, both students of and even believers in the materials which they transmitted, and so were far from simple bystanders in matters relating to their clarity, implication, or application.”<sup>120</sup> And McKinley-Fitzpatrick writes in a similar fashion, emphasizing how embodied text imply innovation:

While the wisdom-torah rules may have been internalized by generations of scribes and rabbis, and eventually by the population as a whole, such internalization is never

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<sup>118</sup> Graffy, *A Prophet Confronts His People*, 1. He continues: “This prophetic device, though common in Ezekiel, is by no means limited to him. This technique has often been given the name ‘disputation speech’, but this term is used for other kinds of speech besides the clearly recognisable sequence of quotation of the people and refutation of their words.”

<sup>119</sup> Polak, “Syntactic-Stylistic Aspects,” 375.

<sup>120</sup> Fishbane, *Biblical Interpretation in Ancient Israel*, 37.

straightforward but involves renewed interpretations of the original intentions of the original author/s. New interpretations of the original authors' intentions may result in renewed understanding of the function and meaning of the original rules. The texts in themselves may remain in their original verbal form, but how they are interpreted and internalized (by scribes, rabbis and the population as a whole) will always be in a state of change.<sup>121</sup>

### Indicators of Memorized Reuse

A study of biblical rhetorical strategies may prove more fruitful than insisting on either an original oral or written composition, as pointed out by Gitay and Watts. Niditch and Polak have argued that texts in the HB should be understood within a matrix of characteristics often associated with oral performance and written compositions.<sup>122</sup> Biblical authors seem to have composed their written compositions by using oral rhetoric devices in order to accommodate the intended public reading for which their works were written. In the following, the key question is not that of orality versus writing *per se*. We are rather looking for significant textual indicators that reveal the scribal culture in which reuse occurred, more specifically memorized reuse, in order to help us understand the

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<sup>121</sup> Fitzpatrick-McKinley, *The Transformation of Torah*, 181. Cf. p. 174. For studies on variation in the Late Second Temple Period see Helmer Ringgren, "Oral and Written Transmission in the O.T.: Some Observations," in *Studia Theologica*, 1949), 34–59; Shemaryahu Talmon, "Aspects of the Textual Transmission of the Bible in the Light of the Qumran Manuscripts," *Scripta Hierosolymitana* 4 (1961); Shemaryahu Talmon, "Synonomous Readings in the Textual Traditions of the Old Testament," *Scripta Hierosolymitana* 8, no. 8 (1961); Edward L. Greenstein, "Misquotation of Scripture in the Dead Sea Scrolls," in *The Frank Talmage Memorial Volume*, ed. Barry Walfish (Haifa: Haifa University Press, 1993), 71–83; Raymond F. Person, Jr., "The Ancient Israelite Scribe as Performer," *JBL* 117, no. 4 (1998): 601–9; Teeter, *Scribal Laws*.

<sup>122</sup> According to Niditch there are two ways in which to analyze and demonstrate the "oral register" and an "oral-literary continuum," significant for detecting memorized and embodied Torah: (1) We can look at how the biblical authors describe the relation between orality and written compositions; and (2) we can be attentive to indications of such an "oral register" and "oral-literary continuum" in the written compositions of the HB. Cf. Niditch, *Oral World and Written Word*, 6. Cf. Person, *From Conversation to Oral Tradition*, 11.

dual phenomenon of exact and creative reuse found in the textual material.<sup>123</sup> Memorized reuse might be indicated by a scribal culture in which oral performance of a literary composition, where the ANE orator frequently seems to have memorized the text, was the standard. Looking for indicators of memorized reuse presuppose “the idea that traditions transmitted via memorization manifest a different sort of variation from traditions transmitted in a purely literary context.”<sup>124</sup> Visual errors like random omissions, haplography (“writing once”), homoioteuton (“identical ending”), homoioarcton (“identical beginning”), dittography (“writing twice”), some doublets, or interchange of similar letters are examples of unintentional visual errors of the copyist regularly observed by text critical studies.<sup>125</sup> It is therefore not these types of phenomena we are looking for. Following Milman Parry’s study of variants in Homeric literature, Carr rather draws attention to “good variants”. While the above-mentioned text-critical variants do “not make sense,” by looking for indicators of memorized reuse we are, in effect, looking exclusively for variants that do “make sense.”<sup>126</sup>

Based on previous research it is possible to describe some possible indicators of

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<sup>123</sup> Ian Hunter has shown how the human brain is not able to retain memorization of a text longer than 50 words without written or other type of support (Ian M. L. Hunter, “Lengthy Verbatim Recall (LVR) and the Myth and Gift of Tape-Recorder Memory,” in *Psychology in the 1990's*, ed. P. Niemi (Amsterdam: North Holland, 1984), 425–40; Ian M. L. Hunter, “Lengthy Verbatim Recall: The Role of Text,” in *Psychology of Language*, ed. A. Ellis (Hillsdale, NJ: Erlbaum, 1985), 207–35). Cf. Carr, *Writing on the Tablet of the Heart*, 7; Carr, *Formation of the Hebrew Bible*, 16–17 .

<sup>124</sup> Carr, *Formation of the Hebrew Bible*, 13.

<sup>125</sup> Cf. Emanuel Tov, *Textual Criticism of the Hebrew Bible* (Minneapolis: Fortress, 2001), 236–58.

<sup>126</sup> Carr, *Formation of the Hebrew Bible*, 13. Cf. p. 17–18. See also Milman Parry, “Studies in the Epic Technique of Oral Verse-Making. I. Homer and Homeric Style,” *Harvard Studies in Classical Philology* 41 (1930): 73–147, here esp. 75–76.

memorized reuse. As with the indicators of literary reuse and direction of dependence, they do not constitute a univocal criteria proving memorized reuse. Rather, they are *indicators* of probable or likely memorized reuse of a source text. The indicators of memorized reuse can be classified as a subcategory of the more general indicators of reuse mentioned above. The question here is therefore whether it is possible to detect a specific type of literary reuse, namely reuse based on recollections of the source text from memory, in contrast to reuse based on visual consultation of a source text. It is important here to distinguish between a text written to facilitate easy memory, using for example “formulae, rhyming, link of text to music and movement, use of overarching themes, memory techniques, and so on,”<sup>127</sup> from a borrowing text reusing a source text from memory. The reason why memorized reuse is of interest in this study is because it might help us to better understand the repetition with variation found in our passages. If the source text was committed to memory, the scribe would be able to cite it exactly or nearly exactly, as well as create a play upon lexemes and concepts from different memorized sources.<sup>128</sup> The indicators of memorized reuse can be listed as follows:

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<sup>127</sup> Carr, *Writing on the Tablet of the Heart*, 7.

<sup>128</sup> Compare the following with Delnero’s list of “the types of errors that are likely to have resulted while copying from memory” in Sumerian compositions: “1) Significant omissions, additions, or substitutions (i.e. variants involving more than one sign, grammatical element, or lexeme). 2) Mechanical errors such as dittography, haplography, metathesis, and paralepsis. 3) Incorrect divisions of words or forms (fusion and separation). 4) Errors resulting from confusion between graphemes that look similar, elements or parts of forms that were pronounced alike, or lexemes that have an analogous meaning. 5) Mistakes that were influenced by signs, elements, forms, or lexemes, that bear resemblance to the intended sign, element, form, or lexeme occurring either in close proximity within the same composition, or in an identical context in another composition (inversion/metathesis, preservation, and anticipation)” (Delnero, “Variation in Sumerian Literary Compositions,” 1849–50). To me it is not clear that all these phenomena necessarily should be understood as errors likely resulting from a setting where the source was copied from memory. They could also be explained as resulting from errors

1. *Modifications of lexemes or phrases in similar contexts*: Where parallel passages bearing marks of literary reuse may use alternate lexemes or phrases in similar contexts.<sup>129</sup> A scribe may have introduced variants from the original composition, while still seeing himself as faithful to it.<sup>130</sup> These variants may not in themselves be significant, but they testify to reuse of texts that are memorized rather than visually consulted.<sup>131</sup>
2. *Word-order alteration*: A borrowing text may alter the word or phrase order while preserving much the same meaning.<sup>132</sup>
3. *Amalgamation/blending of source texts*: A new composition may weave together previous texts in dynamic ways, thus presupposing an intimate familiarity with the source texts.<sup>133</sup> Of course, this sort of blending is also possible in cases of reuse based on visual consultation of a source. But it seems reasonable to assume that a blending based upon a visual consultation of the source would be less dynamic.
4. *Omissions presupposing the source text is memorized*: A radical example is where Carr mentions an early manuscript with texts from the Hebrew prophets that have been found, where only the first word of each verse is given followed by the first letter of each succeeding word.<sup>134</sup> The manuscript clearly presupposes that

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while visually reading or audibly listening to a text read aloud.

<sup>129</sup> Carr, *Writing on the Tablet of the Heart*, 42. This memorized mastery of revered text had an effect on how they reused such texts. An indication of such memorized reuse is that it is “not incorporated precisely. Though the scribe may well have had virtually total recall of the tradition, he (or she) was not consulting one tablet after another in order to copy various parts into the new composition. Rather he was composing a new work out of a store of older works that constitute the authorized building blocks of the new. He was not ‘exegeting’ or ‘citing’ older works in the way a later biblical interpreter might do. Rather, the scribe was trained from the outset to think by means of blocks of tradition and express himself through those tools” (Carr, *Writing on the Tablet of the Heart*, 36).

<sup>130</sup> Carr, *Writing on the Tablet of the Heart*, 41.

<sup>131</sup> Carr, *Writing on the Tablet of the Heart*, 159. Cf. p. 79. Carr writes: “In cases like these, the Mesopotamian scribes were not always pouring over earlier manuscripts to make sure they had written each word and phrase exactly correctly (though they did occasionally claim to have done so). Rather, the textual data suggests that in crucial cases they reproduced texts from memory, with startling, though not exact, verbal accuracy. And, as in the case of musical performance, each scribal reproduction of the text is unique, while being recognized by native speakers and audiences as “the same”” (Carr, *Writing on the Tablet of the Heart*, 44). As Carr and Niditch points out this has consequences for textual criticism (Carr, *Writing on the Tablet of the Heart*, 44, 292; Niditch, *Oral World and Written Word*, 75–76). Cf. also p. 292.

<sup>132</sup> Carr, *Formation of the Hebrew Bible*, 33.

<sup>133</sup> Carr: “Many Egyptian and Mesopotamian texts are a patchwork of distant and closer echoes of other texts, a product of an educational system where people learn to write new texts by internalizing ancient ones” (Carr, *Writing on the Tablet of the Heart*, 159).

<sup>134</sup> Carr, *Writing on the Tablet of the Heart*, 4–5. For this document and a comment on it see Ernst Würthwein, *The Text of the Old Testament: An Introduction to the Biblia Hebraica* (Grand Rapids, MI: Eerdmans, 1994), 170–71. Würthwein writes there: “This manuscript is also remarkable for presenting the

whoever would read it would actually know the text largely by heart, only using it as a reminder. For the present study, this point can be formulated as follows: lexical or conceptual dependence on a source text, where information from this text needs to be supplied for the borrowing text to make sense, might therefore not only be an indicator of the direction of dependence, as argued above, but also of memorized reuse.

5. *Oral register*: As mentioned above, it appears anachronistic to insist on classifying the Torah and the prophets as originally composed as oral or written compositions.<sup>135</sup> While the compositions were written out, they still participated in an oral culture where the normal expectation would be that all compositions would enjoy a public reading. Thus, biblical authors seem to have intentionally incorporated oral rhetorical devices in their writing. This complicates any attempt to draw a strict differentiation between orality and writing in biblical texts. The following indicators are not, therefore, meant to maintain a distinction between a possible oral versus written stage of the compositions under study. All the same, remaining sensitive to what Niditch calls the “oral register” in the reading of our texts can help us to retain a sense of the importance of orality in the scribal culture, where oral performance of a written composition would often have presumed memorization on the part of the orator. It is within this context that I supply some possible indicators of the “oral register” in a given text:<sup>136</sup>
  - a. *Relatively simple syntactic structure, reference, and clause length*: While a literary composition appears to involve more complicated uses of language practice, oral and memorized reuse may tend to more simple language for mnemonic purposes.<sup>137</sup> However, as discussed above, we

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Hebrew text in an *abbreviated* form. Only the first word of each verse is written in full, and each of the following words is represented by a single (not always the first) letter together with vowel point and accent. . . . They were probably designed as memory aids for synagogue lectors and school students.” He refers to the older claims by Felix Perle and G. R. Driver that argue that “abbreviations were the cause of corruption in numerous passages in the pre-Masoretic text of the Bible.” Carr writes: “Indeed, classicists long ago noted that the oldest Greek manuscripts, written as they are all in capitals and without word separation or other marks, were constructed for reading by people who had already mastered the relevant text. . . . most manuscripts in the Greek context were not designed to provide a first-time introduction to a given textual tradition but instead stood as a permanent reference point for an ongoing process of largely oral recitation” (Carr, *Writing on the Tablet of the Heart*, 4). The same lack of word separators are of course testified in the DSS as well. For other possible marks of orality like organization of text into blocks, sometimes indicated by initial red marks or words, lack of vowels, see Carr, *Writing on the Tablet of the Heart*, 77–78. Cf. Pakkala, *God's Word Omitted*.

<sup>135</sup> Cf. Ruth Finnegan, “What is Orality—if Anything?,” *BMGS* 14 (1990): 130–49; Davies, “Pen of Iron, Point of Diamond’ (Jer 17.1): Prophecy as Writing,” 65–81; Eggleston, “*See and Read All These Words*,” 33, 71n, 72, 133, 171.

<sup>136</sup> Nielsen, *Oral Tradition*, 36; Niditch, *Oral World and Written Word*, 10–11. Even if all these features do not have to be present in any given text composed in the oral register, these indicators help us be more attentive to the phenomena in case we come across it. Cf. Niditch, *Oral World and Written Word*, 14.

<sup>137</sup> Cf. Frank H. Polak, “The Oral and the Written: Syntax, Stylistics and the Development of

need to be careful not to underestimate the stability an oral culture can achieve in transmitting culturally revered texts.

- b. *Repetition*: Repetition unifies a work and reiterates essential messages and themes. While repetition is typical of orally composed works, it can also be found in texts participating in a text-supported oral culture.<sup>138</sup>
- c. *Use of formulas and epithets*: An author might use standardized formulas or epithets that are current in a given culture to express similar ideas or images. An epithet evokes “a full range of a character’s personality in the tradition, qualities beyond those emphasized in the context at hand.”<sup>139</sup>
- d. *Use of wordplay, proverbs, and dirge*: Oral sayings or play upon well-known sayings in a culture.<sup>140</sup>
- e. *Wiederaufnahme as an adaptation of oral restarts*: In conversations a speaker might repeat a word or words within an utterance to catch the attention of the addressee, to overlap the speech when having gotten such attention, or in relation to the speaker having interrupted him or herself with an interjection and parenthetical comment.<sup>141</sup>
- f. *PNG shifts as indicating an actual discourse setting*: Abrupt Person-Number-Gender(PNG) shifts can disrupt the readability of a text. Lack of textual markers to identify speaker and audience may indicate that the author was so absorbed in an actual discourse (possibly while recording it or imagining it) that he simply forgot to identify the speaker and the

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Biblical Prose Narrative,” *Journal of the Ancient Near Eastern Society* 26 (1998): 59, 61, 101, 349–51.

<sup>138</sup> Niditch mentions three different types of repetition: (1) Repetition of sentences, like “And God said, ‘Let there be *x*,’ and “And God called the *x* *y*. And there was evening and there was morning, the *n*th day” in Gen 1, (2) Repetition of full sentences, where a narrative for example has one participant giving a message then afterwards repeated by a second participant, and (3) the use of *Leitwort*, or key word (cf. Niditch, *Oral World and Written Word*, 13). Cf. Carr, *Writing on the Tablet of the Heart*, 105.

<sup>139</sup> Niditch, *Oral World and Written Word*, 16–17. See pp. 14–17 for her discussion of formulas and epithets. For the character of the author being disclosed through repetition see also Savran, *Telling and Retelling*, 5, 12, 49, 88, 92–93; Sternberg, *The Poetics of Biblical Narrative*, 388; Watts, *Reading Law*, 97. Cf. Carr, *Writing on the Tablet of the Heart*, 105 on formulaic density as indicator of orality.

<sup>140</sup> Niditch, *Oral World and Written Word*, 38. See also all of the discussion in her chapter 2.

<sup>141</sup> Person, *From Conversation to Oral Tradition*, 142–43, 158–62. Person writes how *Wiederaufnahme* was initially believed to give signs of different sources and redaction, while such an approach is now seen as more problematic (Person, *From Conversation to Oral Tradition*, 160). He argues that structurally literary *Wiederaufnahme* and restarts in conversation may have the exact same structure, and *Wiederaufnahme* should not be taken as a redactional marker (Person, *From Conversation to Oral Tradition*, 160–61, 163). And he concludes: “The question as to the origin of *Wiederaufnahme* now has an obvious answer: the ancient authors and redactors simply adapted, most likely unconsciously, a feature common in their everyday conversation (that is, restarts) to serve much the same purpose” (Person, *From Conversation to Oral Tradition*, 160–61, 163). Ring compositions (also called *chiasm*) has often been taken as a sign of a literate culture. Person, however, finds that such conclusions are unwarranted. Instead he argues that ring composition should be understood “as a ‘literary’ adaptation of restarts, although one that is more elaborate” than *Wiederaufnahme* (Person, *From Conversation to Oral Tradition*, 164).

audience. It could also be the case that he simply took their identities for granted with the result that the identity of the speaker and audience were not made sufficiently clear in the text.<sup>142</sup>

6. *Accumulation*: it may become problematic to determine whether a single variation reflects memorized reuse or not. It is rather the accumulation of evidence in a given passage that indicates memorized reuse, just as with the indicators of reuse and direction of dependence.<sup>143</sup> This is why I have included a brief survey of the relevant books above. It is in this light that we will discuss the relevant variations in the passages to be studied below.

It is interesting to note that there is a certain overlap between the indicators of memorization reuse and the indicators of reuse and direction of dependence mentioned above; specifically, in instances of modification—exactly the phenomenon that has created so much debate regarding legal reuse in Torah. Being aware of such indicators can make us more attentive to scribal reuse in ANE contexts. When we come across similar phenomena in the biblical material we should ask ourselves whether it might indicate memorized reuse there as well.

The concept of covenantal instruction argued above attempts to account for the dual phenomenon both of a certain exact repetition with creative variation. I have also argued that Torah belonged to a scribal culture where text-supported memorized reuse was commonly practiced. This, too, allows for a degree of fluidity, as a scribe would usually not visually consult a manuscript when reusing it in later compositions, but rather reuse it from memory. Again, this would easily result in a blending of both fluidity and close parallels between source text and borrowing text. These two approaches to legal

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<sup>142</sup> Cf. Carr, *Writing on the Tablet of the Heart*, 98. For a discussion on PNG shifts in the book of Jeremiah see Oliver Glanz, *Understanding Participant-Reference Shifts in the Book of Jeremiah: A Study of Exegetical Method and Its Consequences for the Interpretation of Referential Incoherence* (Leiden: Brill, 2013), 346–47. For PNG shifts in the Dead Sea Scrolls see Noam Mizrahi, “Liturgy, Hebrew of the Dead Sea Scrolls,” in *Encyclopedia of Hebrew Language and Linguistics*, ed. Geoffrey Khan (Leiden: Brill, 2013), 2:560.

<sup>143</sup> Cf. Carr, *Formation of the Hebrew Bible*, 27.



reuse in Torah question former attempts to explain legal dissimilitude in Torah by either source criticism or harmonization. Yet, the concept of ‘embodied covenantal instruction’ may not be adequate to explain all aspects of cases of legal reuse in Torah. In several cases there is simply not enough evidence at present to support strong conclusions. Thus, in such cases, our readings cannot avoid a certain tentativeness. But I do want to suggest that ‘embodied covenantal instruction’ as well as ‘text-supported memorized reuse’ provide a more adequate way of approaching the dual phenomenon of simultaneous exact and creative reuse between the legal corpora in the Torah, and between the Torah and the rest of the HB, than is often found in the current discussions.

## PART TWO

## CHAPTER 4

### DIVORCE AND REMARRIAGE IN DEUT 24:1–4

### AND JER 3:1–10

#### Introduction

Since Winfried Thiel's two-volume work *Die deuteronomistische Redaktion von Jeremia*, the majority of scholars see Jer 3:1–10 as dependent upon Deut 24:1–4.<sup>1</sup>

However, the textual support provided for this claim is often weak.<sup>2</sup> The purpose of the

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<sup>1</sup> Winfried Thiel, *Die deuteronomistische Redaktion von Jeremia 1–25*, Wissenschaftliche Monographien zum Alten und Neuen Testament [WMANT] 41 (Neukirchen-Vluyn: Neukirchener Verlag, 1973), especially 280–82; Winfried Thiel, *Die deuteronomistische Redaktion von Jeremia 26–45: Mit einer Gesamtbeurteilung der deuteronomistischen Redaktion des Buches Jeremia*, WMANT 52 (Neukirchen-Vluyn: Neukirchener Verlag, 1981).

<sup>2</sup> Cf. Fishbane, "Revelation and Tradition," 351; William L. Holladay, *Jeremiah I: A Commentary on the Book of the Prophet Jeremiah, Chapters 1–25*, Hermeneia (Philadelphia: Fortress, 1986), 112–16; Fishbane, *Biblical Interpretation in Ancient Israel*, 307–12; Fischer, *Jeremia 1–25*, 185; Georg Fischer, *Jeremia: Der Stand Der Theologischen Diskussion* (Darmstadt: Wissenschaftliche Buchgesellschaft, 2007), 134–36; Jack R. Lundbom, *Jeremiah 1–20: A New Translation with Introduction and Commentary*, AB 21A (New York: Yale University Press, 2008), 300–301, 303–4, 307; Mastnjak, *Textual Authority in Jeremiah*, 165–72; Schmid, "Compositional Harmonization," 849. Fischer sees all the books of Torah as available to the author of Jeremiah, with strong ties to Exodus and particularly Deuteronomy (Fischer, *Jeremia 1–25*, 68. Cf. 71. According to him the book of Jeremiah values and orients itself in light of this tradition. He mentions the Sabbath restrictions in Jer 17:19–27 and the manumission of slaves in Jer 34:8–22 as strong examples of this (Fischer, *Jeremia 1–25*, 68). For representatives of those who do not see reuse and dependence between Jer 3:1–5 and Deut 24:1–4, but rather a common legal inheritance, see T. R. Hobbs, "Jeremiah 3:1–6 and Deuteronomy 24:1–4," ZAW 86 (1974): 23–29; James D. Martin, "The Forensic Background to Jeremiah 3:1," VT 19 (1969): 82–92; Edwin Firmage, "Jeremiah, Deuteronomy, and the Priestly Corpus: Origins & Dating (Unpublished work)," 62–64. Firmage sees the connection between Jer 3 and Deut 24 as "common law," i.e. a common source, while he sees Jer 3 to explicitly borrow from Hos 1:2–4; 2:9–25; 3:1. His arguments are only thematic, and therefore rather loose. Davidson points out differences between Jeremiah's and Hosea's description (Richard M. Davidson, *Flame of Yahweh: Sexuality in the Old Testament* (Peabody, MA: Hendrickson, 2007), 414). For studies on the relation between Hosea and Deuteronomy, and how this may relate to Jeremiah, see Weinfeld, *Deuteronomy and the Deuteronomistic School*, 366–70; Carsten Vang, "God's Love According to Hosea and

following discussion is to evaluate the textual basis for claiming that Jer 3:1–10 reuses and depends upon the prohibition against a husband remarrying his formerly divorced wife in Deut 24:1–4 and to demonstrate how the latter is incorporated into the line of thought of the former. For scholars who view Deuteronomy as having developed gradually from the 7<sup>th</sup>–8<sup>th</sup> century and into the 6<sup>th</sup> century and the book of Jeremiah as having developed from the 6<sup>th</sup> century and into the Persian period, it is not immediately clear which was the original text and which was the borrowing text.<sup>3</sup> First, I want to argue that a case for reuse between Jer 3:1–10 and Deut 24:1–4 can be made. Second, I will point out textual indicators for why Jer 3:1–10 seems to be dependent upon Deut 24:1–4, and not vice versa. Third, I will explain the role that Deut 24:1–4 seems to play in Jer 3:1–10.

John Bright commented that the book of Jeremiah “makes, at least on first trial, extremely difficult reading,” and that one’s impression is that it is “a hopeless hodgepodge thrown together without any discernible principle of arrangement at all.”<sup>4</sup> Stulman finds that the prose and poetry of Jeremiah work dialectically such that the wild and untamed poetry is tamed and codified by the prose. The poetry “testifies to the disintegration of all social and cosmic structures,” while the prose testifies to God’s

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Deuteronomy: A Prophetic Reworking of a Deuteronomic Concept?,” *Tyndale Bulletin* 62, no. 2 (2011): 173–94; Carsten Vang, “When a Prophet Reads Moses: On the Relationship between the Book of Hosea and Deuteronomy,” in *Sepher Torah Mosheh: Studies in the Composition and Interpretation of Deuteronomy*, eds. Daniel I. Block and Richard L. Schultz (Peabody, MA: Hendrickson, 2017).

<sup>3</sup> Konrad Schmid, *The Old Testament: A Literary History*, trans. Linda M. Maloney (Minneapolis: Fortress, 2012), 99–103, 126–30, 138–39, 169–74.

<sup>4</sup> John Bright, *Jeremiah: A New Translation with Introduction and Commentary*, AB (New York: Doubleday, 1965), lvi.

restoration of the order of morality amid this chaos.<sup>5</sup> He sums up:

While the prose discourses, for instance, achieve ample structure and ideological coherence, they still never wholly domesticate the turbulent and dangerous world of the poetry. Orderly prose arrangements cannot silence the dissonant and discordant screams of protest and pain. Nor can they nullify the chaotic and liminal state of the text. This ‘failure’, I suggest, attests in the first place to the wild and undomesticated God who refuses to be imprisoned by any closed system. It likewise attests to the bold courage of the developing prose tradition which looks moral ambiguity and gratuitous suffering right in the eye without flinching. And so, there is no cover-up in Jeremiah. No denial of the many faces of evil. As a result, the text’s jumbled appearance and disturbing character in many respects leave their indelible mark on the final form of the book.<sup>6</sup>

Jeremiah 2:1–4:4 appears to be a single literary unit within the book of Jeremiah with the dominant theme of calling the people to repent and return.<sup>7</sup> In Jer 2, God has accused the people of having turned away from him. Judah has whored both with gods (see הַבְּעָלִים in 2:23), apparently on the ‘bare heights’ (הַרְפָּיִם in 3:2) and with foreign

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<sup>5</sup> Stulman summarizes his analysis of what he calls the first scroll (Jer 1–25) as follows: “The first and lasting impression rendered by the Jeremianic poetry of the first scroll is its jumbled and dissonant character. It is wild, untamed verse that testifies to the disintegration of all social and cosmic structures. . . . the so-called ‘C’ material of Jeremiah 1–25 introduces equilibrium and stabilization into this messy world and witnesses univocally to order and *nomos* (while at the same time reflecting its own sense of contingency and danger). . . . ‘C’ tames and ‘codifies’ the wild and multiphonic voices of the poetry” (Louis Stulman, *Order Amid Chaos: Jeremiah as Symbolic Tapestry* (Sheffield: Sheffield Academic Press, 1998), 52). Cf. p. 101. According to him, the ‘C’ material “insists that Judah has *rejected the prophetic word* spoken by Jeremiah, who is represented as the last in the succession of spokespersons that originated with Moses” (Stulman, *Order Amid Chaos*, 53). In this perspective it is also easier to understand why Jeremiah reuses Moses as his predecessor. Cf. Louis Stulman, *The Prose Sermons of the Book of Jeremiah: A Redescription of the Correspondences with the Deuteronomistic Literature in the Light of Recent Text-critical Research*, SBLDS 83 (Atlanta, GA: Scholars Press, 1986), 56–58.

<sup>6</sup> Stulman, *Order Amid Chaos*, 187. Cf. pp. 20–21. On a note of what can be learned from Jeremiah for today he writes: “Indeed, the many distorted postures of evil, the randomness of suffering, and the deafening silence of God should never be denied or covered up. Easy answers and airtight systems only trivialize and anesthetize us to our fissured and troubled world. In a bold act of faith and with no collapse of moral courage, the book of Jeremiah offers neither. Its enduring testimony bears witness to order *amid* chaos and to a suffering God who sculpts new beginnings and fresh shapes out of the rubble of fallen worlds” (Stulman, *Order Amid Chaos*, 188).

<sup>7</sup> Fischer, *Jeremia 1–25*, 184; Lundbom, *Jeremiah 1–20*, 299. Stulman sees Jer 2:1–6:30 as on macro-structural unit (Stulman, *Order Amid Chaos*, 19, 31).

nations such as Egypt and Assyria (2:18, 36).<sup>8</sup> As we come to Jer 3, God informs the people that there are some problems attached to their returning, illustrated through a metaphorical use of certain standards relating to remarriage after a divorce has taken place. In 3:12, God nevertheless says he does not “bear a grudge for all time,”<sup>9</sup> thus opening an invitation for the people to return. In 3:22 he further encourages the people to turn back. At the end of this literary unit, in 4:1–2, God holds up the Abrahamic promise (“Nations shall bless themselves by you”) on the condition that the people return to God (“If you return, O Israel” and “if you return to me”). Thus, 3:1–10 seems not so much to emphasize the legal difficulties associated with God’s acceptance of the people, as it illustrates how far God is willing to go in order to receive his people back, as communicated by the metaphorical reuse of the restrictions upon return after divorce in Deut 24:1–4.<sup>10</sup> Rather than a negative thrust, the passage in context is characterized by an invitation to and hope in the possibility of a return. Jer 3:1–10 should not, therefore, be seen as a legal exegesis of Deut 24:1–4. Rather, it employs the instruction relating to

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<sup>8</sup> See Christl M. Maier, *Daughter Zion, Mother Zion: Gender, Space and the Sacred in Ancient Israel* (Minneapolis: Fortress, 2008), 104. The rape of 3:2 is probably not done by the הַבְּעֻלִים, but rather by Egypt and Assyria (see Schmid, *The Old Testament*, 127). Stulman finds the descriptions to “become more scathing and passionate” as we proceed through Jer 2:1–4:4 (Stulman, *Order Amid Chaos*, 39).

<sup>9</sup> This comes as a response to the people in 3:5 asking whether God will bear a grudge for all time.

<sup>10</sup> McKane comments: “Although Yahweh in exiling her issued her with a bill of divorce, he is not bound by legal protocol as are husbands who divorce their wives” (William McKane, *A Critical and Exegetical Commentary on Jeremiah*, International Critical Commentary [ICC] [Edinburgh: T&T Clark, 1986], 66). Fishbane elaborates: “It is just because the meaning and force of the civil *Rechtspraxis* is not in doubt that the prophet is able to achieve such a striking theological tension and reversal. And yet it may be argued that Jeremiah is not at all innovative in implying a double standard of justice here—one civil, for humans, the other theological, for YHWH—but that he is merely giving a theological reflex to a common social-legal practice” (Fishbane, *Biblical Interpretation in Ancient Israel*, 311).

divorce and remarriage metaphorically to define the precise nature of the current relationship between God and his people.<sup>11</sup>

In chapter three I surveyed the views on orality, writing, and memorization in the books of Deuteronomy and Jeremiah. Here we can remind ourselves that Jer 3:8 mentions a written certificate of divorce, one of two uses of legal documents in the book of Jeremiah. The other is the *סִפְרֵי הַמִּקְנָה* (“deed of purchase”) signed in Jer 32:10–16; cf. 32:44.<sup>12</sup> I now turn to the analysis of the textual basis for speaking of a case of reuse between Deut 24 and Jer 3, and what indicators we find to determine the direction of dependence.<sup>13</sup>

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<sup>11</sup> Cf. Roy E. Gane, “Old Testament Principles Relating to Divorce and Remarriage,” *JATS* 12 (2001): 51; Fischer, “Der Einfluss des Deuteronomiums auf das Jeremiabuch,” 260. Since the discourse on divorce and return in Jer 3 is only metaphorical, it is not possible to state as Fischer does, that YHWH *de facto* violates his own law. The covenantal relationship between YHWH and his people is not identical, only analogical, to the relationship between the first husband and a wife.

David Aaron argues against those claiming that metaphor is necessary in order to speak of God, as well as those arguing that metaphor is an inbuilt structure of our language. In contrast he argues that metaphor is a rhetorical technique, presupposing a certain maturity in the understanding of language both on the part of author and reader. See Aaron, *Biblical Ambiguities*, 9–11, 13, 30–32, 101–24. He writes: “Some metaphors appear to be paradigmatic within biblical culture: tree imagery as indicative of stability and piety, the whoring wife as an allegory for religious waywardness, natural catastrophes as divine wrath, and so forth” (Aaron, *Biblical Ambiguities*, 13). In Jer 3 we find the metaphor of “the whoring wife as an allegory for religious waywardness.” Further, by its nature there is a certain “logical incongruity or nonequivalence” involved in a metaphor (Aaron, *Biblical Ambiguities*, 28). He argues that we should free ourselves from the binary question whether a statement is metaphoric/figurative or not, and rather accustom ourselves to “gradient judgment”: “Thus, instead of focusing exclusively on the question, Is that statement metaphorical or not? we can consider whether one comment is *more* metaphorical than another comment; put differently, we can discuss the *degree* to which a statement is metaphorical and what cases the metaphoricalness” (Aaron, *Biblical Ambiguities*, 29. Cf. p. 194. Italics original).

<sup>12</sup> Schellenberg, “A “Lying Pen of the Scribes” (Jer 8:8)?,” 293.

<sup>13</sup> This portion of Jeremiah is not attested in the Dead Sea Scrolls (DSS). The document giving the first verse of Jeremiah is 4QJer<sup>c</sup>, beginning with Jer 4:5. It is therefore outside the literary unit of Jer 2:1–4:4 that our passage belongs to. We do have four DSS documents covering parts of Deut 24:1–4. There are no significant variations for the present discussion between the manuscripts MT, 4QDeut<sup>a</sup>, 4QDeut<sup>f</sup>, and 4QDeut<sup>k2</sup>, except attesting [ ב ] לַאֲשֶׁה וּכְתָב [ ב ] where MT only has לַאֲשֶׁה, indicating some kind of writing. It is therefore primarily LXX that provides us with the textual variants for Jer 3:1–10 and Deut 24:1–4.

## A Case for Reuse

Table 1 gives an overview of parallels between Deut 24:1–4 and Jer 3:1–10.

*Distinctiveness:* First, the phrase סְפֵר כְּרִיתָתָה (“bill of divorce”) is only found in Deut 24:1, 3; Isa 50:1; and Jer 3:8. In the same contexts (Deut 24:1, 3–4; Isa 50:1; Jer 3:1, 8), we also find the *pi‘el* of שָׁלַח in a technical usage referring to dismissal of a wife.<sup>14</sup> Although

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<sup>14</sup> Cf. Francis Brown et al., “Brown-Driver-Briggs Hebrew and English Lexicon,” 1019; Ludwig Koehler et al., eds., *The Hebrew and Aramaic Lexicon of the Old Testament [HALOT]* (Leiden: E.J. Brill, 1999), 1514–15; Davidson, *Flame of Yahweh*, 394; Lundbom, *Jeremiah 1–20*, 301.

David Instone-Brewer points out that “there is no equivalent to the divorce certificate in any ancient Near Eastern culture outside Judaism” (David Instone-Brewer, *Divorce and Remarriage in the Bible: The Social and Literary Context* (Grand Rapids, MI: Eerdmans, 2002), 32).

I here allow myself a brief excursus to the Elephantine Documents of Wifehood as they might shed some light on the practice of divorce in Jewish communities. Porten and Szubin claim that שָׁנָא in the Elephantine Documents of Wifehood should not be identified with divorce (Bezalel Porten and Zvi Henri Szubin, “The Status of a Repudiated Spouse: A New Interpretation of Kraeling 7 (TAD B3.8),” *Israel Law Review* 35, no. 1 (2001): 57, 59–60; Bezalel Porten and Zvi Henri Szubin, “The Status of the Handmaiden Tamet: A New Interpretation of Kraeling 2 (TAD B3.3),” *Israel Law Review* 29, no. 1-2 (1995): 50–51; Bezalel Porten, “Elephantine and the Bible,” in *Semitic Papyrology in Context: A Climate of Creativity. Papers from a New York University Conference Marking the Retirement of Baruch A. Levine*, ed. Lawrence H. Shiffman (Leiden: Brill, 2003), 65; “Document of Wifehood (3.63),” trans. Bezalel Porten (*COS* 3:155n); “Document of Wifehood (3.70–71),” trans. Bezalel Porten (*COS* 3:172n). Botta, on the other hand, has argued that שָׁנָא constitutes an unqualifiedly divorce-clause (Alejandro F. Botta, *The Aramaic and Egyptian Traditions at Elephantine: An Egyptological Approach*, Library of Second Temple Studies 64 (New York: T&T Clark International, 2009), 59–60). A middle-position is argued by Nutkowicz to the effect that the public declaration of hatred cannot in itself be seen as constitutive of divorce. It is only an initial step in divorcing, but does not complete it (Hélène Nutkowicz, “Concerning the Verb *śn*’ in Judaeo-Aramaic Contracts from Elephantine,” *Journal of Semitic Studies* 52, no. 2 (2007): 219). In my view, the documents do not appear to reflect a common conception of שָׁנָא in their contemporary society (see my Kenneth Bergland, “Marriage, Hate and Death in the Elephantine Documents of Wifehood Compared to the Hebrew Bible,” 1–18). They are not only a reflection of contemporary values, but also a response to them. In a society where both polygamous and monogamous marriages existed, the parties—presumably especially the father or master of the woman—was intent on specifying the concrete terms that should govern in that particular marriage. In that sense, even if the documents do not exclude the possibility that the husband could take another wife, they prescribe that if he by doing this also demotes the woman mentioned in the document to a secondary status, that will be seen as an act of שָׁנָא. I have stated that further comparative studies would be needed in order to determine whether שָׁנָא should be seen as the technical legal term for divorce *per se*, or simply the initial step in the process leading to divorce. My preliminary conclusion is that שָׁנָא in the Elephantine documents of divorce should be seen as *de jure* the technical legal term for divorce. The verb שָׁנָא is used according to them in the sense of demotion to a secondary status in various relational contexts. It could be a preliminary stage to divorce when between husband and wife, but it is the terms תָּרַךְ (TAD B3.3:14) in our documents, and גָּרַשׁ and שָׁלַח among others in the biblical sources, that constitute expulsion and divorce *de facto* (for other biblical expressions for divorce see Davidson, *Flame of Yahweh*, 384n). I cannot enter into a full discussion of the inner-biblical



**Table 1. Deut 24:1–4 and Jer 3:1–10**

Deut 24:1–4	Jer 3:1–10
<p><sup>1</sup> כִּי־יִקַּח אִישׁ אִשָּׁה            וּבִעֻלָּה וְהָיָה אִמְּלָא            תִּמְצָא־חֵן בְּעֵינָיו כִּי־מִצָּא            בָּהּ עֲרוֹת דָּבָר וְכָתַב לָהּ            סֵפֶר כְּרִיתֻת וְנָתַן בְּיָדָהּ            וְשָׁלַחָהּ מִבֵּיתוֹ:  <sup>2</sup> וַיֵּצֵאָה מִבֵּיתוֹ וְהִלְכָה            וְהָיְתָה לְאִישׁ־אַחֵר:  <sup>3</sup> וְשָׁנְאָה הָאִישׁ הָאֲחֵרוֹן            וְכָתַב לָהּ סֵפֶר כְּרִיתֻת            וְנָתַן בְּיָדָהּ וְשָׁלַחָהּ מִבֵּיתוֹ            אוֹ כִּי יָמוֹת הָאִישׁ הָאֲחֵרוֹן            אֲשֶׁר־לָקַחָהּ לוֹ לְאִשָּׁה:  <sup>4</sup> לֹא־יִוָּכַל בְּעֻלָּה הָרִאשׁוֹן            אֲשֶׁר־שָׁלַחָהּ לְשׁוּב            לְקַחְתָּהּ לְהִיּוֹת לוֹ לְאִשָּׁה            אַחֵרִי אֲשֶׁר הִטְמָאָה כִּי־            תֹעֵבָה הוּא לִפְנֵי יְהוָה            וְלֹא תִחַטֵּא אֶת־הָאָרֶץ            אֲשֶׁר יְהוָה אֱלֹהֶיךָ נָתַן לָךְ            נְחֻלָּה: ס</p>	<p><sup>1</sup> לֵאמֹר            הֲנִי יִשְׁלַח אִישׁ אֶת־אִשְׁתּוֹ וְהִלְכָה מֵאִתּוֹ            וְהָיְתָה לְאִישׁ־אַחֵר הַיֹּשֵׁב אֵלָיָה עוֹד            הֲלוֹא חֲנוּף תַּחֲנֹף הָאָרֶץ הַזֹּאת            וְאֵת זִנִּית רַעִים רַבִּים וְשׁוּב אֵלַי נֹאמְרֵיהוּ:  <sup>2</sup> שְׂאִי־עֵינֶיךָ עַל־שָׁפִים וְרֵא אִיפֹה לֹא שָׁגַלְתָּ            עַל־דְּרָכִים יֹשְׁבֵת לָהֶם כְּעַרְבֵי בַמִּדְבָּר            וְתַחֲנִיפֵי אָרֶץ בְּזוֹנוֹתֶיךָ וּבְרַעְתֶּךָ:  <sup>3</sup> וַיִּמְנְעוּ רַבִּבִּים וּמִלְקוֹשׁ לֹא הָיָה            וּמִצָּח אִשָּׁה זֹנָה הָיָה לָךְ מֵאֵת הַכֶּלֶם:  <sup>4</sup> הֲלוֹא מֵעַתָּה קִרְאתִי לִי אָבִי אֱלוֹף נַעֲרֵי אֶתָּה:  <sup>5</sup> הֲיִנְטָר לְעוֹלָם אִם־יִשְׁמַר לְנִצָּחַן            הֲנֵה דִבַּרְתִּי וְתַעֲשִׂי הַרְעוֹת וְתֹכַל: פ  <sup>6</sup> וַיֹּאמֶר יְהוָה אֵלַי בְּיָמַי יֵאֻשְׁיֶהוּ הַמֶּלֶךְ הָרִאשִׁית אֲשֶׁר עָשִׂתָּה מִשְׁבָּה            יִשְׂרָאֵל הִלְכָה הִיא עַל־כִּלְיֵהָ גְבָהּ וְאֶל־תַּחַת כִּלְיֵהָ רַעֲנָן וְתִזְנֶי־            שָׁם: <sup>7</sup> וְאָמַר אַחֲרָי עֲשׂוֹתָה אֶת־כִּלְיֵהָ אֵלַי תִּשׁוּב וְלֹא־שָׁבָה            וְתִרְאֶה בְּגוֹדָה אַחֻתָּה יְהוּדָה: <sup>8</sup> וְאָרָא כִּי עַל־כִּלְיֵהָ אֲשֶׁר נֹאפָה            מִשְׁבָּה יִשְׂרָאֵל שְׁלַחְתִּיהָ וְאַתָּן אֶת־סֵפֶר כְּרִיתֻתֶיהָ אֵלָיָה וְלֹא יִרְאֶה            בְּגַדָה יְהוּדָה אַחֻתָּה וְתִלְךְ וְתִזְנֶן גַּם־הִיא: <sup>9</sup> וְהָיָה מִקֵּל זִנוּתָה וְתַחֲנֹף            אֶת־הָאָרֶץ וְתִנְאֹף אֶת־הָאָבֶן וְאַת־הָעֵץ: <sup>10</sup> וְגַם־בְּכָל־זֹאת לֹא־שָׁבָה            אֵלַי בְּגוֹדָה אַחֻתָּה יְהוּדָה בְּכָל־לְבָבָהּ כִּי אִם־בְּשִׁקָּר נֹאמְרֵיהוּ: פ</p>

<sup>1</sup> When a man takes a wife and marries her, but it happens that she does not find favor in his eyes because he found

<sup>1</sup> . . . saying:  
 If a man divorces his wife and she leaves him, And becomes [wife] to another man, can he return to her again?  
*Would this not certainly pollute the land?*  
 But you have whored with many lovers, so [can you] return to me? says

conceptions of marriage and divorce here. But we can note the comment by Porten and Szubin as they write: “The Philistines of Gerar ‘hated’ Isaac (Gen. 26:27), the leaders of Gilead ‘hated’ Jephthah (Ju. 11:7), Samson allegedly ‘hated’ his Philistine wife (Ju. 15:2), and God ‘hated’ his inheritance – Israel, Judah and Jerusalem (Jer. 12:7-8; Hos. 9:15; Is. 60:15). The term is often coupled with *šlh* ‘send away’ (Gen. 26:27), *grš*, ‘expel’ (Ju. 11:7; Hos. 9:15), *zb* ‘abandon’ (Jer. 12:7-8; Is. 60:15; cf. Ezek. 23:28-29), *ntš*, ‘desert’ (Jer. 12:7-8), or *m’s*, ‘spurn’ (Am. 5:21). When juxtaposed to ‘*hb*, ‘love’ (= promotion to status of primacy), it often conveys the meaning of demotion, reduction of status—Israel (Hos. 9:15), Esau vis-à-vis Jacob (Mal. 1:2-3), and the ‘hated’ wife vis-à-vis the ‘beloved’ wife. Though demoted, her children’s inheritance rights were preserved (Deut. 21:15-17), as was the inheritance vouchsafed to the ‘beloved’ of God (Prov. 8:21)” (Porten and Szubin, “The Status of a Repudiated Spouse,” 59). They also take Prov 30:21-23 and Jud 19:1-3 as confirmation of their argument (Porten and Szubin, “The Status of a Repudiated Spouse,” 64 and 66). I do not see that settling the pecuniary issues were constitutive of divorce as such. To me the hatred and going out seem to indicate divorce, while the pecuniary issues had to be resolved as an effect of the divorce (contra Nutkowicz, “Concerning the Verb *šn*,” 213-14).

Table 1 — *Continued.*

Deut 24:1–4	Jer 3:1–10
<p><i>something unseemly</i> with her, and he writes a <u>letter of divorce</u> to her and <u>gives</u> [it] in her hand, and he <u>sends</u> her from his house, <sup>2</sup> <u>and she leaves his house and she goes and becomes [the wife] of another man</u>, <sup>3</sup> then this <u>latter man</u> hates her, and writes her a <u>letter of divorce</u> and <u>gives</u> [it] in her hand, and he <u>sends</u> her from his house, or if the <u>latter man</u> who took her as wife dies; <sup>4</sup> the first husband, who <u>sent</u> her away, cannot <u>return</u> to take her to be his <u>wife</u>, after she <i>was defiled</i>. For this is an abomination for YHWH, and you must not <i>bring sin upon the land</i> which YHWH your God gives you as an inheritance.</p>	<p>YHWH.  <sup>2</sup> Lift your eyes to the bare heights and see: Where have you not been ravished?          You were sitting along roads [waiting] for them, as <i>an Arab in the desert</i>. And <i>you polluted the land</i> with your whoring and your wickedness.  <sup>3</sup> When showers were withheld and there was no late rain, you had the forehead of a whore. You refused to be ashamed.  <sup>4</sup> Have you not now called to me “My father! You are the companion of my youth?  <sup>5</sup> Does one hate forever? Does one guard forever?”? That is what you said. But you did evils, and you still can.  <sup>6</sup> Now YHWH said to me during the days of King Josiah: Have you seen what <i>faithless</i> Israel has done, going to every high mountain and under every green tree and whored there? <sup>7</sup> And I said: After she has done all this, she will <u>return</u> to me. But she did not return. Rather her treacherous sister, Judah, saw [her/it]. <sup>8</sup> And I viewed [it such], because of all which <i>faithless</i> Israel had committed adultery, I <u>sent</u> her away, and I <u>gave</u> her her <u>letter of divorce</u>. But treacherous Judah did not fear, and went away and whored she also. <sup>9</sup> And from all her whorings <i>she defiled the land</i>, and she committed adultery with the stone and with the tree. <sup>10</sup> And even in all this her treacherous sister, Judah, did not <u>return</u> unto me with all her heart, except with a lie, says YHWH.</p>

Isa 50:1 is similar to Deut 24 and Jer 3 in that it uses סָפַר כְּרִיתוֹת + the *piel* of שָׁלַח,<sup>15</sup> the closer similarity between the clauses וְהִלְכָה מֵאֶתוֹ וְהִיָּתְהָ לְאִישׁ־אֲחֵר in Jer 3:1 and וְהִלְכָה וְהִיָּתְהָ לְאִישׁ־אֲחֵר in Deut 24:2 provide a stronger basis for identifying possible reuse between them. These two sets of clauses are identical, with the exception of Jer 3:1 adding מֵאֶתוֹ. It is possible that this might relate to the presence of וַיִּצְצֶא מִבֵּיתוֹ in the preceding clause of Deut 24:2, both identifying the location from where the woman is

<sup>15</sup> The strongest evidence for reuse between Deut 24 and Isa 50 is the technical phrase סָפַר כְּרִיתוֹת, together with the *piel* of שָׁלַח. Further we find שָׁלַח + 3fs suffix in both cases (וְשָׁלְחָהּ in Deut 24:1, 3 and וְשָׁלְחָתֶיךָ and וְשָׁלְחָהּ in Isa 50:1). This possible reapplication should be studied further. The difference between the spelling of סָפַר כְּרִיתוֹת and סָפַר כְּרִיתָת might also be a sign of late dating, where LBH tended to spell out more the *matres lectionis*.

expelled. The two clauses  $\text{וְהִלְכָה מֵאֲתוֹ וְהִיְתָה לְאִישׁ־אֶחָד}$  in Jer 3:1 could either be seen as a possible conflation of the three clauses  $\text{וְהִלְכָה מִבֵּיתוֹ וְהִיְתָה לְאִישׁ־אֶחָד}$  in Deut 24:2, or the latter as an elaboration of the former.<sup>16</sup>

Second, we also find an indication in the LXX that the translators saw a reuse between Jer 3:1–10 and Deut 24:1–4. Jer 3:8 LXX reads  $\epsilon\iota\varsigma\ \tau\acute{\alpha}\varsigma\ \chi\epsilon\iota\rho\alpha\varsigma\ \alpha\upsilon\tau\eta\varsigma$  where MT has  $\text{אֶלְיָהּ}$ . If LXX rendered proto-MT here, similar to MT, this would not be a precise translation. Alternatively, perhaps the LXX had a different *Vorlage*. As the Greek can be retroverted into Hebrew with the phrase  $\text{בְּיָדָי}$ , it is difficult to ignore that this is the exact phrase we find in Deut 24:1 MT,<sup>17</sup> where LXX also has  $\epsilon\iota\varsigma\ \tau\acute{\alpha}\varsigma\ \chi\epsilon\iota\rho\alpha\varsigma\ \alpha\upsilon\tau\eta\varsigma$ . In this instance, the LXX translator seems to have recognized the reuse and to have taken the liberty to make the link even clearer. The fact that the prepositional phrase  $\text{בְּיָדָי}$  is not frequent in the HB<sup>18</sup> makes it even more likely that the translator of Jer 3:8 LXX recalled

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<sup>16</sup> Fishbane writes: “It is notable that the lexical variations between the Pentateuchal [Deut 24:1–4] and prophetic [Jer 3:1–5] passages of the MT occur in the hortatory-paraenetic conclusion, not in the technical and operative sections of the legal topos” (Fishbane, *Biblical Interpretation in Ancient Israel*, 308). Hobbs has a point when arguing that Jer 3:1 is characterized by non-legal language (Hobbs, “Jeremiah 3:1–6 and Deuteronomy 24:1–4,” 24), even if I would disagree that this rules out the possibility of dependence upon legal material. There is no reason why other genres could not reuse legal material as well. Also, James Martin’s criteria that Jer 3:1 needs to mirror the “exact legal wording” in Deut 24:1–4 including “all three of the legal conditions of the law” found there is too rigid a criteria for identifying reuse (Martin, “The Forensic Background to Jeremiah 3:1,” 88). As seen in chapter two, this rather seems to anachronistically project a legislative model upon ANE law. It is not unexpected that the clear hortatory context of the verse would flavor it. On the other side, Burke Long has shown against Hobbs that Jer 3:1 does reflect language found in legal disputes over the law (Burke O. Long, “The Stylistic Components of Jeremiah 3:1–5,” *ZAW* 88 (1976): 388–89).

<sup>17</sup> Even though  $\text{בְּיָדָי}$  is also used in Deut 24:3, it seems to me that Deut 24:1 was in the mind of the LXX translator. The close proximity between  $\beta\iota\beta\lambda\acute{\iota}\omicron\nu\ \acute{\alpha}\pi\omicron\sigma\tau\alpha\sigma\acute{\iota}\omicron\nu$  and  $\epsilon\iota\varsigma\ \tau\acute{\alpha}\varsigma\ \chi\epsilon\iota\rho\alpha\varsigma\ \alpha\upsilon\tau\eta\varsigma$  in Jer 3:8 LXX, just as with  $\text{כִּפְרֵי יִתְתֶּהּ}$  and  $\text{בְּיָדָי}$  in Deut 24:1 indicates this connection.

<sup>18</sup> Gen 39:12–13; Exod 15:20; 35:25; Deut 24:1, 3; Judg 4:21; Isa 51:18; Prov 14:1; Lam 1:17.

Deut 24:1.<sup>19</sup> It is of course possible that LXX had a *Vorlage* different from Jer 3:8 MT. Nevertheless, this does not undermine the observation in regard to reuse. Whether LXX altered a *Vorlage* similar to Jer 3:8 LXX to εἰς τὰς χεῖρας αὐτοῦ or had a Hebrew *Vorlage* with בְּיָדָהּ in Jer 3:8, the inclusion of this phrase seems to indicate that either the LXX translator or its Hebrew *Vorlage* included this additional link between Deut 24:1 and Jer 3:8 as compared to the MT.<sup>20</sup>

Third, the phrase אִישׁ אַחֵר + אִישׁ is found in Gen 29:19; Lev 27:20; Deut 20:5–7; 24:2; 28:30; 1 Sam 10:6; 2 Sam 18:26; 1 Kgs 20:37; Jer 3:1, but only in Deut 24:2 and Jer 3:1 is it in relation to the issue of marriage to “another man.” There might be a link between the curse אִשָּׁה תֵּאָרֵשׁ וְאִישׁ אַחֵר יִשְׁגְּלֶנָּה (“You shall betroth a woman, but another man ravish her”) in Deut 28:30 and וְהִלְכָה מֵאִתּוֹ וְהִיְתְּמָה לְאִישׁ אַחֵר . . . שְׂאִי-עֵינֶיךָ עַל-שָׂפָיִם וְרָאִי . . . לֹא שְׁגַלְתָּ (“and she leaves him and becomes [wife] to another man . . . Lift your eyes to the bare heights and see: Where have you not been ravished?”) in Jer 3:1–2, in the parallels between the phrase אִישׁ אַחֵר + אִישׁ and שָׂגַל. The link would, however, need to be stronger to give confidence to such a claim.

*Thematic correspondence:* Jer 3:1–10 MT seems to contain more parallels to Deut 24:1–4 than Jer 3:1–10 LXX does. Christl Maier points out that Jer 3:1–10 MT reflects Deut 24:1–4 in having the husband returning to the wife. This contrasts to Jer 3:1–10

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<sup>19</sup> A similar point has been made by McKane, *Jeremiah*, 65.

<sup>20</sup> Another difference here is that the phrase וְנָתַתְּ לָהּ is dropped and not reused in Jer 3. Thus, סָפַר does not become the indirect object of לָהּ as in Deut 24, but of וְנָתַתְּ + וְאֵלֶיהָ in Jer 3. This again means that the verb נתן (נָתַתְּ/וְנָתַתְּ) is not followed by the prepositional phrase בְּיָדָהּ as in Deut 24, but by וְאֵלֶיהָ in Jer 3. Further, in Jer 3:8 the סָפַר כְּרִיתְתִּיהָ receives the 3fs suffix, different from Deut 24.

LXX, where the woman returns to the husband.<sup>21</sup> I will come back to this difference below. For now, the important point is that the return of the husband to the former wife in Jer 3:1–10 MT again establishes a parallel with Deut 24:1–4.<sup>22</sup> Further, Lundbom points out that the MT’s idea of the defilement of the land in Jer 3:1–2, 9 MT also reflects the idea of the defilement of the land in Deut 24:2, in contrast to the LXX, which only views the woman as defiled.<sup>23</sup>

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<sup>21</sup> Commenting on the woman’s defilement in Jer 3:1 Craigie, Kelley, and Drinkard argue that it reflects more the legal tradition in Deut 24:1–4, while the LXX “reflects an attempt to continue the surface logic of the preceding lines” (Peter C. Craigie et al., *Jeremiah 1-25*, Word Biblical Commentary [WBC] 26 (Dallas, TX: Word Books, 1991), 49). Cf. William Holladay, “Elusive Deuteronomists, Jeremiah, and Proto-Deuteronomy,” *CBQ* 66 (2004): 65. Deut 24:4 uses the strange form *הַטְּמְאָה*. The expression *אַחֲרַי אֲשֶׁר הִטְמְאָהּ* (lit. “after which she was defiled”) implies that she was defiled by the second marriage, and if she then returns to the first husband it is *תּוֹעֵבָה* (“an abomination”) and *וְלֹא תִטְמְאָה אֶת־הָאָרֶץ* (“and brings sin upon the land”).

<sup>22</sup> Maier, *Daughter Zion, Mother Zion*, 105.

<sup>23</sup> Lundbom, *Jeremiah 1–20*, 301. Jonathan Klawans has shown that defilement of the land is particularly associated with moral impurity in contrast to ritual impurity: “Whereas ritual impurity results in an impermanent defilement, moral impurity leads to a long-lasting, if not permanent, degradation of the sinner and, eventually, of the land of Israel” (Klawans, *Impurity and Sin*, 26). See also p. 27 where he notes the mention of defilement of the land in Jer 3:1, though in a footnote he expresses uncertainty whether Jeremiah here is primarily thinking of idolatry or adultery. On the meaning of *הִנָּף* in Jer 3:1 as “a more extreme term,” with the idea of resisting the sacred, as compared to *טָמַא* in Deut 24:4, see Holladay, *Jeremiah 1–25*, 113. Num 35:33 is the only verse in Torah using *הִנָּף*. It is written in the context of murder: “You shall not pollute [*הִנָּף*] the land in which you live; for blood pollutes the land, and the land can have no expiation for blood that is shed on it, except by the blood of him who shed it. You shall not defile the land in which you live, in which I Myself abide, for I the LORD abide among the Israelite people” (Num 35:33–34). Might it be that Jeremiah chooses to use this word precisely because the overtones of permanent pollution that it has? As argued here, in Jer 3:1–10 I see idolatry and illegitimate political alliances as in the foreground, with adultery as a metaphor. Dalit Rom-Shiloni has recently made an argument that there is a link between *הִנָּף* + *אָרֶץ* in Jer 3:1–2, 9 and Num 35:33–34. To me it is not entirely clear whether she thinks the author of Jer 3 intentionally reused *הִנָּף* + *אָרֶץ* from Num 35, or whether the author simply exploited an ambivalence in a phrase that happen to be analogical to Num 35. She writes that “at a crucial point, the prophecy purposefully detached from its Deuteronomic source and chose Priestly terminology that opens up a whole different, and harsher, conceptual world. Hence, this unit suggests an intentional collation of D and P” (Rom-Shiloni, “Compositional Harmonization,” 928–29). She elaborates explaining that Jer 3 is “echoing the Priestly legal phraseology and terminology of Num 35:33–34,” instead of reusing the lexemes *טָמַא*, *הִטְמְאָה*, and *תּוֹעֵבָה* (“to defile,” “to bring sin,” and “abhorrent”)” from Deut 24 (Rom-Shiloni, “Compositional Harmonization,” 930–31). She finds both meaning of *הִנָּף* present in Jer 3:1–5, the verb used for sexual sins as sources of pollution in 3:1–2 and the concept of “to deceive, to behave hypocritically,” without the use of the term itself, in 3:4–5. She writes: “the Deuteronomic threat *וְלֹא אָרֶץ*, the double meaning of *הִנָּף*, and especially its Priestly connotations in relation to *אָרֶץ*

Holladay's comment on the use of שׁוּב in Jer 3:1 is also worth noting:

Jrm presses the verb “return” (שׁוּב) in the fourth colon beyond the usage in Deuteronomy. In Deut 24:4\* we read, “Her first husband . . . cannot turn (שׁוּב) to take her [i.e., cannot again take her] to be a wife to him”: the verb שׁוּב carries here the idiomatic meaning “do something again.” But Jrm says, “Would he (re)turn to her again?” Here is the adverb “again” (עוֹד), implied by שׁוּב in Deuteronomy, while שׁוּב carries its full value “(re)turn.” The result in Jrm’s metaphor is that Yahweh is the active agent, as the husband is in the Deuteronomic law, but the meaning of the verb here suggests a kind of humbling action on Yahweh’s part, as if Israel is the stable one and Yahweh contemplates moving back to her.<sup>24</sup>

Beyond such a possible reworking of שׁוּב in Jer 3:1 and dependence upon Deut 24, it may also be a further wordplay on שׁוּב in the rest of the passage. Could מְשֻׁבָּה יִשְׁרָאֵל in Jer 3:6, 8 also be a play on the verb שׁוּב from Deut 24? Note how the same consonantal form מְשֻׁבָּה

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(ההחניף/הנף), serve as the linguistic pivots between the Deuteronomic law and the Priestly contexts. These clear terminological connections show Jeremiah’s knowledge of P phrases, which he reframes in a legal context of sexual sin that seems much closer conceptually to the HL view of the land (Lev 18 and 20)” (Rom-Shiloni, “Compositional Harmonization,” 932). She then adds the disclaimer: “Although Jeremiah quotes the language of Deut 24:1–4, to the extent that we can safely assume that he refers to this specific Deuteronomic law of divorce in its present literary form, there is no way to presume that the prophet knows or uses the Priestly text of Num 35 or the HL passages of Lev 18 and 20” (Rom-Shiloni, “Compositional Harmonization,” 933). In her earlier article presenting a very similar discussion of Jer 3, Deut 24 and Num 35, this sentence pointed out Jeremiah’s knowledge of Priestly terminology and conceptions: “While we can safely assume that Jeremiah uses this specific Deuteronomic law of divorce in its present literary form; and we may furthermore assume that Jeremiah knows the Priestly terminology and conceptions and uses them; nevertheless, there is no way to argue that the prophet knows or uses the literary context of the Priestly source of Numbers 35” (Dalit Rom-Shiloni, “Actualization of Pentateuchal Legal Traditions in Jeremiah: More on the Riddle of Authorship,” *ZABR* 15 (2009): 266). As I understand her, she argues that the author of Jer 3:1–5 is familiar with the so-called Priestly terminology and conceptions of Lev 18; 20; and Num 35, but without reusing them intentionally in his composition of Jer 3:1–5. I do agree that an argument for reuse between Lev 18; 20; and/or Num 35 is too weak to make strong conclusions.

<sup>24</sup> Holladay, *Jeremiah 1–25*, 112–13. He continues on p. 113 arguing that this also becomes an argument for the priority of MT over LXX: “The perspective is so startling, given the status of women in the culture, that *G* reverses the gender references, μη ἀνακάμπτουσα ἀνακάμψει πρὸς αὐτὸν ἔτι, ‘Will she really return again to him?’ (הַשׁוּב תָּשׁוּב אֵלָיו עוֹד). *M* is thus clearly the *lectio difficilior* and is followed by *V* and *T* (*S* paraphrases a bit, translating “if she returns to him again,” and taking the fifth colon as a statement rather than a question). Many commentators (Cornill, Duhm, Giesebrecht, Rudolph) elect to follow *G* and emend the text to עוֹד תָּשׁוּב אֵלָיו; this reading is more “logical” but leaves unanswered how the *M* text could have arisen if secondary, unless by the most unlikely of *lapsus calami*. *M* is thus to be accepted; in the last colon the gender references are the expected ones, so that Jrm has directed the hearer to the assumption of parity between Yahweh and Israel in ‘turning.’” Fishbane writes that the phrase לְשׁוּב in Deut 24:4, where it means ‘return,’ “undergoes a semantic transformation [in Jer 3:1–5], and refers to *religious return*—or repentance—not palingamy” (Fishbane, *Biblical Interpretation in Ancient Israel*, 309).

is used in Jer 3:7, 10. The instruction in Deut 24 dealt with the possibility of a return (שוב). In Jer 3:7 YHWH expressed his desire for Israel to return (שָׁבָה/שוב), while they did not return. Likewise, in Jer 3:10 Judah is said not to have returned (שָׁבָה/שוב), with the result that the people in Jeremiah's days have become faithless (מִשְׁבָּה).

### Direction of Dependence

*Modification:* Having argued for a reuse between Deut 24:1–4 and Jer 3:1–10, I now turn to making the case for why I believe it was Jeremiah that borrowed from Deuteronomy, and not vice versa.<sup>25</sup> Firstly, there is something awkward about the sequence of actions in Jer 3:8. In Deut 24:1 we find the formulation וְכָתַב לָהּ סֵפֶר פְּרִיִתָתָהּ (‘‘and he shall write a letter of divorce to her and give it into her hand and send her from his house’’).<sup>26</sup> These same clauses, in identical form, are repeated in 24:3 in relation to the second husband's divorce of the woman. This repetition highlights these clauses as describing the technical procedure of divorce. The sequence of events here follows the natural and expected order. First the husband would write the bill

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<sup>25</sup> Michael Fishbane takes the disputed לְאָמַר in Jer 3:1 as a ‘citation formula’ introducing the reinterpretation of Deut 24:1–4 (Fishbane, *Biblical Interpretation in Ancient Israel*, 284, 307).

<sup>26</sup> Thiel sees little reuse of Deuteronomic language in Jer 3:6–12, but he takes the phrases סֵפֶר פְּרִיִתָתָהּ in 3:8 and בְּכָל-לֵבָבָה in 3:10 to indicate Jeremiah's dependence upon Deuteronomy (Thiel, *Jeremiah 1-25*, 88–89). Craigie, Kelley, and Drinkard emphasize the marital language and the use of the word שׁוּב as possible links, and finds it ‘‘unwise to press the opening analogy of marital law’’ any further than this (Craigie et al., *Jeremiah 1-25*, 51). But as I show, the links seem to go beyond such strict limitations. It could be asked whether the use of רְבִיבִים (see Deut 32:2) and מְלִקּוּשׁ (see Deut 11:14) in Jer 3:3 could be pointing back to Deuteronomic language.

Craigie, Kelley, and Drinkard deny that Jeremiah is dependent on Hosea as the latter writes about remarriage in the context of ‘‘an anticipation of the new covenant’’ while Jeremiah's focus is ‘‘on the possibility and necessity of repentance’’ (Craigie et al., *Jeremiah 1-25*, 51). Fishbane on his side sees influence from Hosea on Jeremiah at this point (Fishbane, *Biblical Interpretation in Ancient Israel*, 311–12).

of divorce, then give it to the wife, and finally send her off. But when we come to Jer 3:8 we read *שָׁלַחְתִּיהָ וְאָתַן אֶת־סֵפֶר כְּרִיתֻתֶיהָ אֵלֶיהָ* (“I sent her and I gave her letter of divorce to her”). Here the metaphorical wife, apostate Israel, is first sent off, and then given a bill of divorce. This could be an example of Seidel’s law of inversion,<sup>27</sup> in which case it would indicate Jeremiah’s reuse of Deut 24:1–4 due to the awkward sequence of events introduced in Jer 3:1–10 MT. I cannot see another reason for why he should alter an otherwise natural flow of events.<sup>28</sup> If this is a case of intentional inversion, I list it here as an indication of the direction of dependence rather than reuse, since the modification in the context of Jer 3:8 creates an awkward sequence.<sup>29</sup>

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<sup>27</sup> See M. Seidel, “Parallels between Isaiah and Psalms,” *Sinai* 38 (1955–56): 149–72, 229–40, 272–80, 333–55 (Hebrew). Cf. Levinson, *Deuteronomy*, 18–20; Nihan, “The Holiness Code between D and P. Some Comments on the Function and Significance of Leviticus 17–26 in the Composition of the Torah,” 96–97; Michael A. Lyons, “Marking Innerbiblical Allusion in the Book of Ezekiel,” *Biblica* 88 (2007): 245–46.

<sup>28</sup> Jan Joosten writes that a wayyiqtol following a qatal in discourse usually will take over the temporal perspective of the qatal, namely implying “an event time preceding the reference time” (Joosten, *The Verbal System of Biblical Hebrew*, 182). In that case we could expect that the qatal+wayyiqtol represented a sequence. Still, it is also possible to read the *וְאָתַן* of *שָׁלַחְתִּיהָ אֵלֶיהָ וְאָתַן אֶת־סֵפֶר כְּרִיתֻתֶיהָ* in the epexegetical (“in the sense that I gave her a bill of divorce”) or pluperfect (“having given her a bill of divorce”) sense. In both cases this clause would explicate what was seen as implicit in *שָׁלַחְתִּיהָ* (Bruce K. Waltke and M. O’Connor, *An Introduction to Biblical Hebrew Syntax* (Winona Lake, IN: Eisenbrauns, 1990), 551–53). This could be taken to weaken the use of these clauses to argue for the direction of dependence. Still, combined with the other evidence for reuse between Jer 3:1–10 and Deut 24:1–4 in other parts of the passages, and the reversal in verbal sequence between *וְאָתַן* and *שָׁלַח* in the two passages that invites an explanation. Further, reading *וְאָתַן* in an epexegetical or a pluperfect sense can be taken as compatible with the idea that the author of Jer 3:8 wanted to mark dependence on Deut 24 by inverting the sequence, while still retaining a logical sequence of events. Another possibility is to understand *שָׁלַח* in a literal sense in Deut 24:1 for sending off, but a technical sense in Jer 3:8 for divorce. If so, the altered order could make better sense. In Jer 3:8 the husband would first divorce his wife, by for example a public statement “You shall not be my wife,” and then afterward he would write her a divorce certificate and send her off. However we explain the altered verbal sequence in Jer 3:8, it is at least likely that it was meant as an intentional inversion of Deut 24:1.

<sup>29</sup> The additional verb *וַתִּזְכַּל* in Jer 3:5 has posed a challenge for interpreters. Why is it included? It is interesting to note that the apodosis of Deut 24:4 begins with *לֹא־יִזְכַּל*. Might it be that Jeremiah picks up this key word from Deut 24:4? There it introduces the prohibition. In Jer 3:5, however, it is used in the context of the liberties Judah has taken herself in proposing to return to YHWH despite her adultery. The



*Wordplay*: There seems to be a word play in Jer 3:2 that, as far as I can determine, has not been commented upon in the scholarly literature. In Deut 24:1 עֲרוֹת דָּבָר constitutes the legitimate ground for divorce. The debate regarding the meaning of this phrase by later commentaries is well known, and needs no recitation here.<sup>30</sup> In Jer 3:2 the

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evidence is not sufficient to be conclusive, but given the reuse between the two passages it is worth noting this possible additional link.

<sup>30</sup> Cf. Jacob Neusner, *The Rabbinic Traditions about the Pharisees before 70, Part 2: The Houses* (Eugene, OR: Wipf and Stock, 1971), 37–39; Fishbane, *Biblical Interpretation in Ancient Israel*, 309; Instone-Brewer, *Divorce and Remarriage*, 110–14. Richard Davidson takes the phrase עֲרוֹת דָּבָר as “sexual activity but less than illicit sexual intercourse” (Davidson, *Flame of Yahweh*, 392). Anthony Phillips takes the phrase to mean “anything else [than adultery] which the husband found distasteful in his wife” and as a phrase that “has no moral connotation” based on Deut 23:14. He adds that childlessness was probably the chief ground for divorce (Anthony Phillips, *Deuteronomy*, eds. P. R. Ackroyd, A. R. C. Leaney and J. W. Packer. The Cambridge Bible Commentary (Cambridge: Cambridge University Press, 1973), 160). Kenneth Kitchen mentions the provision made at the marriage between Laqipum with lady Hatala in the Assyrian ‘colony’ at Anatolian Kanesh where it said: “If within 2 years she does not produce children for him, she herself may buy a slave-woman. Then after she [the latter] has had a child by him, then he may sell her off where he wishes” (Kitchen, *On the Reliability of the Old Testament*, 325). In the somewhat later laws of Hammurabi, in LH §144 and 146, stipulations were also made for cases where a barren wife gave a slave-woman to her husband so that she could bear children for the couple (Roth, *Law Collections from Mesopotamia and Asia Minor*, 108–9). This practice is also attested with the patriarchs in the HB (Gen 16:1–4; 30:1–13). David Daube points out that divorce might not have been as easy as it might look in the eyes of modern exegetes (David Daube, *Studies in Biblical Law* (New York: Ktav, 1969), 305–6n6).

According to Deut 24:4 the woman “has been defiled” (הִטְמְאָה) by her second marriage. Jonathan Klawans summarizes this and similar cases as follows: “In these situations, the woman does not defile ritually, but she is still defiled in that she suffers a permanent and degrading change in status” (Klawans, *Impurity and Sin*, 29). Richard Davidson sees in the rare *hotpaal* form הִטְמְאָה an implication of the first husband divorcing his wife: “The first husband’s putting away of his wife has in effect caused her to defile herself in a second marriage in a similar way to committing adultery” (Davidson, *Flame of Yahweh*, 397). Eve Feinstein has surveyed and discussed the various interpretations of Deut 24:1–4 and the meaning of the phrase עֲרוֹת דָּבָר. The law has been interpreted as intended to prevent wife-swapping, divorce, or incest, unjust enrichment, as a protection of the second marriage, as a punishment for adultery, or as a restriction based on the analogy between this case and adultery. She finds these explanations wanting a satisfactory account of the different descriptions of why the two husbands divorce the wife, taking the protasis as normative, or reading too much into the instruction and phrases עֲרוֹת דָּבָר drawing illegitimate analogies from ANE sources or other biblical passages (Eve Levavi Feinstein, *Sexual Pollution in the Hebrew Bible* (Oxford: Oxford University Press, 2014), 54–64). Based on the reuse in Jer 3:1 she argues that reading Deut 24:1–4 as for example concerned with unjust enrichment through the dowry is untenable, and that Jer 3:1 in its context make it more likely that the law restricted the return to the first husband on analogy with adultery. She writes: “Jeremiah’s metaphorical use of the law assumes that the woman is prohibited to her first husband because of her sexual relationship with another man, not because of financial considerations. The prophet’s comparison is an argument *a minori ad majus*: If a man’s former wife is prohibited to him after having sex with a second man to whom she is legally married, for a wife to be reunited with her husband after committing adultery with many men would surely be worse” (Feinstein, *Sexual Pollution*, 60). Cf. McKane, *Jeremiah*, 63–64; Lundbom, *Jeremiah 1–20*, 301–302). And again: “The analogy that

promiscuous people are seen as כְּעַרְבֵי בַּמִּדְבָּר (“like an Arab in the desert”). Why this comparison? It is used as a simile to the preceding clause that describes the people, which reads עַל־דַּרְכֵימָם יֹשְׁבֹתָ לָהֶם (“you were sitting by roads [waiting] for them”). Prostitutes would typically sit waiting along roads (e.g. Gen 38:14; Prov 7:10–12).<sup>31</sup> The phrase כְּעַרְבֵי בַּמִּדְבָּר would therefore seem to have a sexual connotation. The consonantal and phonetic similarity to עֲרוֹת דָּבָר is striking. In both cases the phrases are used for something objectionable, possibly also a sexual offense. As Feinstein has shown, the phrase עֲרוֹת דָּבָר (lit. “naked thing”) in Deut 24:1 does not necessarily imply a fault with the wife, but rather something more general and unspecific that the husband found that he disliked in his wife. She says it might simply be understood as “buyer’s remorse”.<sup>32</sup> The phrase עֲרוֹת דָּבָר does not need to imply a real moral fault with the wife. It could even

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Jeremiah draws between the legal scenario of remarriage and the metaphorical scenario of adultery rests on the assumption that the effect of the two situations on a woman’s status vis-à-vis her husband is the same in essence, if not in severity” (Feinstein, *Sexual Pollution*, 63). Jer 3:1, 8 and Hos 2:4 both seem to see adultery, or the analogy to adultery, as the problem behind Deut 24:1–4. However, reading Deut 24:1–4 as addressing the analogy between adultery and the specific case of return of a divorced wife has the weakness that it is only restricting the first husband’s right to return his former and now divorced wife. If the case-law really addressed the problem of the analogy between adultery and the given case, we would expect that it would restrict any remarriage after divorce. However, it does not do so. This is a weakness Feinstein herself mentions: “Several commentators have called attention to the fact that the woman’s pollution appears to apply only to her first husband, since she is evidently free to marry any other man. In a sense, this is true: It is only from the perspective of the first husband that the woman can properly be described as having been polluted. However, this is not technical language, and it may not in fact have the function of demarcating a specific legal or ritual state that prohibits the woman to her first husband while permitting her to others. . . . The expression is rather of a rhetorical nature, suggesting to men that they ought to be repelled by sexual contact between their former wives and other men” (Feinstein, *Sexual Pollution*, 64–65). While addressing the objection, Feinstein’s explanation does really not answer it convincingly. The precise problem seen in the return of the wife to the first husband is still in want of an adequate explanation, even if the analogy with adultery—strengthened by Jer 3:1, 8 and Hos 2:4—seems to come closest.

<sup>31</sup> Fischer, *Jeremia 1–25*, 186; Lundbom, *Jeremiah 1–20*, 302.

<sup>32</sup> Cf. Feinstein, *Sexual Pollution*, 63. Cf. pp. 53–65. Cf. Anthony Phillips, *Deuteronomy*, eds. P. R. Ackroyd, A. R. C. Leaney and J. W. Packer. The Cambridge Bible Commentary (Cambridge: Cambridge University Press, 1973), 160.

simply indicate any kind of objection the husband found he had with his wife.<sup>33</sup> The use of the same phrase in Deut 23:15—even if it here seems to be an offense inherent in the object itself—does not justify seeing עֲרוֹת דָּבָר in Deut 24:1 as an inherent moral offense in the woman.

If we read Deut 24:1–4 in this manner, the word play in Jer 3:1 intensifies the situation on several levels. While the Deuteronomic instruction prohibits the husband

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<sup>33</sup> A major difference would be if we see עֲרוֹת דָּבָר in Deut 24:1 as constituting a legitimate legal ground for divorce, represented in the later thought of rabbi Hillel, or simply as descriptive. In the latter case, it would mean that the husband found something objectionable with his wife, without stating whether this was a legitimate legal ground for divorce or not. As Deut 24:1 belongs to the protasis of the instruction, I read it as the latter. The verse simply tells us that the husband found something objectionable with his wife and divorced her, without discussing the moral value of the husbands action or attributing a real moral offense to the wife. In *m. Git. 9:10* (Jacob Neusner, *The Mishnah: A New Translation* (New Haven: Yale University Press, 1988), 487) we read:

“A The House of Shammai say, “A man should divorce his wife only because he has found grounds for it in unchastity (דבר ערוה),

B “since it is said, Because he has found in her indecency in anything (ערוות דבר; Dt. 24:).”

C And the House of Hillel say, “Even if she spoiled his dish,

D “since it is said, Because he has found in her indecency in anything (ערוות דבר).

E Aqiba says, “Even if he found someone else prettier than she,

F “since it is said, And it shall be if she find no favor in his eyes (Dt. 24:1).”

The phrase posed two challenges to the rabbis: (1) עֲרוֹת (‘indecency/nakedness’) is in the construct rather than דָּבָר (‘matter’), and (2) דָּבָר (‘matter’) seems superfluous (cf. Instone-Brewer, *Divorce and Remarriage*, 111). The house of Shammai solved these challenges by reversing the order of the two words, placing דָּבָר in the construct (דָּבָר עֲרוֹת; “a matter of indecency”), while at the same time quoting עֲרוֹת דָּבָר from Deut 24:1 to show that they acknowledged how it appeared in the text (cf. Instone-Brewer, *Divorce and Remarriage*, 111). The house of Hillel on the other side took עֲרוֹת (‘indecency/nakedness’) and דָּבָר (‘matter’) as two separate grounds for divorce. They could be thinking of one out of two rabbinic assumptions about the biblical text: either (1) the principle of unusual form, in which an unusual construction or word was seen to contain a hidden meaning, or (2) the principle of no redundancy, which assumed that there was no superfluous or redundant phrases (Instone-Brewer, *Divorce and Remarriage*, 20–21). They therefore concluded that עֲרוֹת referred to ‘indecency,’ while דָּבָר referred to ‘any matter’. The ‘any matter’ would thus imply all other reasons beside adultery a husband might have for divorcing his wife. If we do not adopt Hillel’s reading of Deut 24:1 as normative, i.e. as providing legitimate grounds for divorce, I believe he was the closest when claiming that דָּבָר עֲרוֹת means “any matter.” Still, if we speak in normative terms, Shammai seems justified by Jesus in reading the legitimate grounds for divorce as more restricted. In general Jesus does not take Deut 24:1–3 as a command to divorce, but as a concession (Matt 5:31–32; 19:9; Mark 10:11–12; Luke 16:18). Cf. Craig S. Keener, *The Gospel of Matthew: A Socio-Rhetorical Commentary* (Grand Rapids, MI: Eerdmans, 2009), 465–66. Jesus rebuked the hard-heartedness of his contemporaries, and by taking the giving of a divorce certificate as an imperative, emphasised the protection of the woman.

from returning to a divorced wife that has, meanwhile, been married a second time; in Jer 3:1 the Judah-wife has been sexually promiscuous through contact with “many lovers” (רַעִים רַבִּים). Further, while עֲרוֹת דָּבָר in Deut 24:1 may be understood as no real fault on the wife’s side, in Jer 3:1 כְּעֵרְבִי בְּמִדְבָּר seems not only to imply sexual promiscuity and adultery, but also harlotry.<sup>34</sup> The sexual offences in Jer 3 are liable to capital punishment, in contrast to Deut 24 where the remarried wife has only become defiled. In other words, while both the first husband in Deut 24 and the YHWH-husband in Jer 3 have formally divorced their wives, Jer 3 reverses culpability as compared to Deut 24: Deut 24 can be read as the first husband having the sole responsibility for the dissolution of the relationship and pollution, with the wife as morally innocent, while in Jer 3 it is the Judah-wife that has the sole responsibility for the dissolution of the relationship and the pollution; the YHWH-husband is morally innocent. The LXX apparently misunderstood the root and took it as I עֲרַב (‘a raven’) rather than עֲרַבִּי (‘an Arab/Bedouin’), showing that the translator missed the point of the wordplay in Hebrew.<sup>35</sup>

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<sup>34</sup> It is also possible that the use of the words חַנָּף, שֹׁגֵל, רַעָה and זִנָּה in Jer 3:1–10 are intended as an elaboration of the sexual offense of עֲרוֹת דָּבָר in Deut 24:1. The LXX renders זִנָּה in Jer 3:2, 9 as πορνεία. This would also fit with Jesus’ rendering of עֲרוֹת דָּבָר in Deut 24:1 as πορνεία in Matt 19:9. Even if Matt 19:9 would need to be studied closer to see whether Jesus might also have had Jer 3:2, 9 in mind, we could at least say that Jer 3:1–10 LXX would provide Jesus with a Scriptural basis for taking עֲרוֹת דָּבָר in Deut 24:1 as πορνεία. Deuteronomy 24:3 LXX renders עֲרוֹת דָּבָר as ἄσχημον πρᾶγμα (“something shameful”). A question is if it may be a link between עֲרוֹת in Lev 18 and 20 on the one side and כְּעֵרְבִי בְּמִדְבָּר in Jer 3:1.

<sup>35</sup> I will here also include a brief discussion related to the question of whether MT or LXX represents the earlier version. Maier argues that LXX in Jer 3:1–10 preserves “an earlier version” of the text, just as the LXX “in Jeremiah often preserves an older version of the text”. She writes: “The MT of Jer 3:1 differs from the OG [LXX] in two instances that both allude to the rejection of remarriage in Deuteronomic law (Deut 24:1–4). Like Deut 24:4, Jer 3:1 (MT) states the question from the first husband’s point of view, ‘would he return to her?’ The second difference is that the Masoretic version declares the land to be the object of pollution, not the woman” (Maier, *Daughter Zion, Mother Zion*, 105). Emmanuel Tov sees two literary strata of Jeremiah, one represented by MT, Targums, Peshitta, and Vulgata and the other by LXX and 4QJer<sup>b,d</sup>. The latter is shorter by one-seventh and has at certain points a different order of

Jonathan Kline writes in his study of paranomasia, or allusive wordplay, in the

HB:

What constitutes similarity of sound? Paranomasia can be (1) homonymic (referring to words that sound identical and are spelled identically but differ in meaning; e.g. ‘bear’ as noun or verb) or (2) homophonic (referring to words that sound identical but differ in spelling and meaning; e.g., ‘bear’ and ‘bare’), or (3) can involve words that

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the text compared to the former. He sees the latter as an earlier version of the text, and the former as a later expansion (Emanuel Tov, *The Text-Critical Use of the Septuagint in Biblical Research*, JBS 8 (Jerusalem: Simor, 1997), 243–44). He does underline, however, that the variation in length between LXX and MT of Jeremiah (and Ezekiel) in itself is not an argument for which is the earlier (Tov, *Text-Critical Use of the Septuagint*, 261). Hornkohl writes that “the majority of those who have expressed an opinion on the topic [of the relative chronology between the MT and LXX of Jeremiah] maintain that the difference between the longer Masoretic version and the shorter Greek version stems from different Vorlagen, the Masoretic version basically reflecting a secondary, expanded edition of the Hebrew text behind the Greek of the Septuagint” (Hornkohl, “The Language of the Book of Jeremiah,” vi). Based on his own linguistic studies he concludes that “the results of the present study would seem to provide confirmation for the view that the material exclusive to the Masoretic text is (generally) of a later linguistic cast than the material common to both editions. However, the evidence also indicates that the literary expansion in question could not have been undertaken a great while after the composition of the material common to both versions, as both sets of material exhibit a linguistic profile characteristic of the late-pre-exilic, exilic, or early-post-exilic periods, i.e., of the 6th century B.C.E.” (Hornkohl, “The Language of the Book of Jeremiah,” vii). Cf. his translated and published dissertation in Aaron D. Hornkohl, *Ancient Hebrew Periodization and the Language of the Book of Jeremiah: The Case for a Sixth-Century Date of Composition* (Leiden: Brill, 2014), 356–73. Maier would understand the LXX version with the woman returning to the husband and the woman being polluted, not the land, as the earlier version. A discussion of the general relation between LXX and MT on Jeremiah goes beyond this study. For a discussion on the relation between MT Jer and LXX Jer see Emanuel Tov, *The Septuagint Translation of Jeremiah and Baruch: A Discussion of an Early Revision of the LXX of Jeremiah 29-52 and Baruch 1:1-3:8*, HSM (Missoula, MT: Scholars Press, 1976); Emanuel Tov, “The Literary History of the Book of Jeremiah in the Light of Its Textual History,” in *Empirical Models for Biblical Criticism*, ed. Jeffrey H. Tigay (Philadelphia: University of Pennsylvania Press, 1985), 211–41; Alexander Rofé, “The Arrangement of the Book of Jeremiah,” ZAW 101, no. 3 (1989): 390–98; Alexander Rofé, “The Arrangement of the Book of Jeremiah (MT and LXX) (in Hebrew),” *Beit Mikra* 56, no. 1 (2011): 126–37; Maier, *Jeremia als Lehrer der Tora*, 26–30, 252–54, 257–60. Here I will first just point out that Maier does acknowledge the dependence of MT Jer 3:1–10 upon Deut 24:1–4. Further, I see two reasons to question Maier’s preference of LXX in this passage as the earlier and more original. Firstly, ὡσεὶ κορώνη ἐρημωμένη in Jer 3:2 seems to be a clear case where LXX tries to translate a Hebrew Vorlage similar to MT כְּעֶרְבִי בְּמִדְבָּר. The image of ‘a deserted raven’ is somewhat obscure in the context of LXX. In contrast, the ‘Arab in the desert’ makes sense in the context of MT, as seen above. Recognizing that ‘a raven’ in Hebrew is עֹרֵב, close to the consonants of עֲרָבִי (‘an Arab’), makes clear that LXX tried to render a Hebrew text similar to MT. Given this we also see how the translator of LXX simply ignored the final yod of עֲרָבִי, reasonably read as a gentilic yod, as he did not find a way to account for it. Secondly, Maier seems to imply in the above quote that it was the later version, represented by MT, which reflected a priestly ideology closer to the text of Deut 24. Here I would only like to refer again to how LXX renders the MT אֲלֵיָהּ with εἰς τὰς χεῖρας αὐτῆς. As argued above, this connects Jer 3:8 LXX closer to the terminology used in Deut 24:1 in both MT and LXX. It would therefore be difficult to argue that it is MT that subsequently introduces the reuse and dependence of Jer 3:1–10 on Deut 24:1–4, in contrast to LXX representing an earlier version where this link was missing or much weaker.

sound similar but not identical and that differ in spelling and meaning (e.g., ‘bear’ and ‘pear’). These three categories are differentiated by increasing degrees of markedness: the first is unique in that examples can be identified only on the basis of semantics (but not visually or orally/aurally); examples of the second category can be identified on the basis of semantics as well as visually (though not orally/aurally); and examples of the third category can be identified on the basis of semantics, visually, and orally/aurally. Given these differences in markedness, a useful distinction can be made between homonymic paronomasia (the first category) and nonhomonymic paronomasia (the second and third categories).<sup>36</sup>

The phrase כַּעֲרָבִי בַמִּדְבָּר in Jer 3:2 sounds similar but differs in spelling and meaning from עֲרֹת דָּבָר in Deut 24:1. Thus, Jer 3:2 would belong to Kline’s third category.

Edward Greenstein defines wordplay in the HB as follows: “Use in proximity of words that display similarity of sound with dissimilarity of meaning.”<sup>37</sup> Kline refers to several recent studies that have demonstrated the phenomenon of allusive paronomasia to another passage not in its immediate context.<sup>38</sup> Reading כַּעֲרָבִי בַמִּדְבָּר in Jer 3:2 as a word play on עֲרֹת דָּבָר in Deut 24:1 would be an example of allusive wordplay crossing book boundaries within the HB. Greenstein elaborates further: “Because Hebrew words comprise a consonantal root interspersed with changing vocalic schemes, we generally demand of wordplay that at least half the consonants, usually two of the common root’s three, are identical or phonologically similar.”<sup>39</sup> This is fulfilled with two consecutive consonants ער followed by a possibly similar sound created by the consonants ג and כ

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<sup>36</sup> Jonathan G. Kline, *Allusive Soundplay in the Hebrew Bible* (Atlanta: SBL, 2016), 9.

<sup>37</sup> Edward L. Greenstein, “Wordplay, Hebrew,” in *ABD*, ed. David Noel Freedman (New York: Doubleday, 1992), 968. Regt stress that the words need to be in the same context: “Wordplay involves two (or more) words with different meanings, but almost coinciding in sound, that occur in the same context” (L. J. de Regt, “Wordplay in the OT,” in *The New Interpreter’s Dictionary of the Bible*, ed. Katharine Dob Sakenfeld (Nashville: Abingdon, 2006–9), 898).

<sup>38</sup> Kline, *Allusive Soundplay*, 11. Cf. p. 17. 24–29. He finds Sommer, *A Prophet Reads Scripture* especially noteworthy in this regard.

<sup>39</sup> Greenstein, “Wordplay, Hebrew,” 969.

between עֲרֹת and כְּעַרְבֵי, and the three consecutively following consonants דָּבַר in דְּבַר and בְּמִדְבָּר. That we have two lexemes that in addition follow in the same order in the two passages further strengthen the case. While a case like this without supportive evidence is weak, the similarity in consonants and order between the phrases together with additional evidence for reuse and direction of dependence mentioned in this chapter and a clear function of the paranomasia in Jer 3:2,<sup>40</sup> makes this a potentially strong case of allusive sound-play. We can therefore formulate this in more general terms: If a passage shows additional evidence of reuse from a specific source, then similarity in sound and/or spelling with a different meaning is a most likely a case of allusive paranomasia.

There might be another dimension as well to the possible wordplay of כְּעַרְבֵי בְּמִדְבָּר in Jer 3:2 and the much contested phrase עֲרֹת דְּבַר in Deut 24:1. It is also significant to note, especially given the Deuteronomic flavor of Jeremiah as a whole, that Deut 1:1 opens the book with describing Moses as addressing the people בְּמִדְבָּר כְּעַרְבָה (“in the desert, in the Arabah”). There are other verses using מִדְּבָר and עֲרָבָה together, referring to a similar location, but not in as tight a combination as in Deut 1:1.<sup>41</sup> A significant parallel is found in Jer 2:6, הַמּוֹלִיד אֶתְנוּ בְּמִדְבָּר בְּאֶרֶץ עֲרָבָה וְשׁוֹחָה, (“who led us in the wilderness, in a land of desert [עֲרָבָה] and pit”). This seems to evoke Deut 1:1 and

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<sup>40</sup> Kline writes: “The best way to demonstrate that a possible example of allusive paranomasia performs a clear function is to show that the word in the source text and its proposed patronym in the alluding texts are in *close proximity* with respect to the words or text-segment(s) that the alluding text reproduces from the source text and, even more importantly, that the *similarity in sound* and *difference in meaning* between the word in the source text and its proposed patronym in the alluding text combine to produce a striking effect in the message of the alluding text” (Kline, *Allusive Soundplay*, 29). See also p. 28.

<sup>41</sup> Cf. Deut 1:1; 2:8; Josh 12:8; 1 Sam 23:24; 2 Sam 17:16; Isa 35:1, 6; 40:3; 41:19; 51:3; Jer 2:6; 17:6; 50:12; Job 24:5.

the experience in the desert. Jer 17:6 also compares the people to someone living in desert and wilderness, but, again, not in as tightly construed a phrase as in Deut 1:1 and Jer 3:2. While *בְּמִדְבָּר כְּעַרְבֵי* in Jer 3:2 is the only place in the HB using *מִדְבָּר + עַרְבֵי*, likely playing on *עֲרֹת דָּבָר* in Deut 24:1, it may simultaneously be drawing from motifs of the people in the desert, *בְּמִדְבָּר בְּעַרְבָה*, from the opening passage of Deuteronomy (1:1). The question here is why Jer 3:2 and 17:6 describe the people in terms of being in the desert? While Jer 17:6 simply states that the people were in the desert, Jer 3:2 goes a step further and personalizes the term, giving it sexual connotation with an allusion to an Arab prostitute sitting waiting for lovers in the desert. The phrase *בְּמִדְבָּר כְּעַרְבֵי* in Jer 3:2 appears to simultaneously draw upon *בְּמִדְבָּר בְּעַרְבָה* in Deut 1:1 and *עֲרֹת דָּבָר* in Deut 24:1. If this is the case, it also means that Jer 3 very likely had a version of Deuteronomy similar to the received text we have, including the superscription of Deut 1:1–5.

*Conceptual dependence:* Jeremiah uses literal divorce between a man and his wife as a metaphor for the relationship between God and his people.<sup>42</sup> By definition,

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<sup>42</sup> For the common view that Jer 3:6–11 is a later addition see Mastnjak, *Textual Authority in Jeremiah*, 169–71. Lundbom calls Jer 3:6–11 “a ‘pusher’ on the surrounding oracles”. In his opinion “much of the vocabulary is quarried from 3:1–5” (Lundbom, *Jeremiah 1–20*, 306). In his terms we could thus speak of reuse and direction of dependence within the two sections in 3:1–11 itself. I am not convinced by his division between vv. 5 and 6. The parallels within Jer 3:1–11 that he mentions could also be taken as signifying the unity of this passage:

3:6 <i>whoring</i>	3:1 <i>you have whored</i>
3:8 <i>played the whore</i>	3:2 <i>your whorings</i>
3:9 <i>her whoring</i>	3:3 <i>a whore</i>
3:7 <i>she will return to me</i>	3:1 <i>will he return? ... would you</i>
<i>she did not return</i>	<i>return to me?</i>
3:8 <i>I sent her away</i>	3:1 <i>he sends away</i>
3:9 <i>she polluted</i>	3:1 <i>would not that land</i>
<i>the land</i>	<i>be greatly polluted?</i>
	3:2 <i>you have polluted the land</i>



metaphorical language is secondary. This in itself cannot establish that Jer 3:1–10 reused Deut 24:1–4, but the metaphorical use of divorce here presupposes that a certain norm in regard to divorce was well-known both by Jeremiah and his readers. Without such a norm as a benchmark for comparison, Jeremiah’s line of reasoning falls flat.<sup>43</sup> Given that there is reuse between these two passages, the metaphorical or creative use of technical terms in Jer 3:1–10 also found in Deut 24:1–4 could, therefore, be taken as support for saying that Jeremiah is the one borrowing from the norm expressed in Deuteronomy, and not vice versa.

### Appropriation

My line of argumentation began with evidence of reuse between Jer 3:1–10 and Deut 24:1–4. The close parallels between the clauses *וְהִלְכָה מֵאֵתוֹ וְהִיְתָה לְאִישׁ־אֲחֵר* in Jer 3:1 and *וְהִלְכָה וְהִיְתָה לְאִישׁ־אֲחֵר* in Deut 24:2, where both passages use the phrase *סֵפֶר כְּרִיתוֹת* (“bill of divorce”) and *piel* of *שָׁלַח* as a technical term for divorce, isolate the two passages and strongly indicate a literary relation between the two, with a possible conflation of *וְהִלְכָה מֵאֵתוֹ וְהִיְתָה לְאִישׁ־אֲחֵר* in Deut 24:2 by *וְהִלְכָה וְהִיְתָה לְאִישׁ־אֲחֵר* in Jer 3:1.

Once reuse between the two passages has been established, the next question concerns the direction of dependence. I have mentioned three main reasons for seeing Jeremiah as dependent upon Deuteronomy: (1) the awkward sequence of *שְׁלַחְתִּיהָ וְאָתָּן*

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<sup>43</sup> Craigie, Kelley, and Drinkard call Jer 3:1 a “paraphrase of the substance of the law also known in Deut 24:1–4” (Craigie et al., *Jeremiah 1-25*, 50).

אֶת־סִפְרֵי כְרִיתֶיהָ אֵלֶיהָ in Jer 3:8, (2) the wordplay of כְּעַרְבֵי בְמִדְבָּר in Jer 3:2 on עֲרוֹת דְּבָר in Deut 24:1, and (3) the metaphoric language in Jer 3:1–10 of the concept of divorce, used literally in Deut 24:1–4.<sup>44</sup> Even if we are required to use word play and metaphor with care when attempting to argue for the direction of dependence, the use of word play and metaphor in Jer 3:1–10 to employ key concepts found in Deut 24:1–4 does likely point to the former’s dependence on the latter. This would suggest that the author of Jer 3:1–10 was aware of a text like Deut 24:1–4, or something very similar to it, and not simply that the two passages shared a common legal inheritance.

Reuse of Deut 24:1–4 can be seen both in Jer 3:1–10 MT and LXX. Still, marked differences between the two manuscripts can also be observed. On the one hand, Jer 3:1–10 MT follows Deut 24:1–4 in having the first husband return to the wife, in contrast to the wife returning to the husband in LXX. The defilement of the land in Jer 3:1–2, 9 MT also reflects the idea of the defilement of the land in Deut 24:2, in contrast to LXX, which only regards the woman as defiled. On the other hand, the MT אֵלֶיהָ is rendered in Jer 3:8 LXX as εἰς τὰς χεῖρας αὐτῆς, which is also used in Deut 24:1 LXX. At this point the translator of Jer 3:1–10 LXX appears to have incorporated a phrase taken from Deut 24:1–4 LXX itself, instead of simply providing a literal translation of a text like Jer 3:1–10 MT.

According to Jer 3:1, it was God who formally divorced his people due to their adulterous behavior. It was not the fornication, itself, that constituted the divorce. The עֲרוֹת דְּבָר in Deut 24:1 did not necessarily imply a fault with the wife, but might simply

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<sup>44</sup> For how later prophets like Zechariah and Haggai “use pentateuchal traditions metaphorically” see Rom-Shiloni, “Compositional Harmonization,” 920n.

denote that the husband had come to dislike the wife for some reason. Through the word play in Jer 3:1 the situation is intensified. While the Deuteronomic instruction prohibits the husband to take back a divorced wife who meanwhile has been married a second time, in Jer 3:1 the Judah-wife has had sexual contact with “many lovers” (רעים רבים). Further, while עֲרוֹת דָּבָר in Deut 24:1 may be understood as entailing no real fault on the wife’s side, in Jer 3:1 בְּמִדְּבָר כַּעֲרָבִי denotes not only adultery but also harlotry—deserving of capital punishment (e.g. Deut 22:22). According to the analogy with Deut 24:1–4 the people in Jeremiah’s day would have deserved to be wiped out. But as a metaphor, used to place the situation in relief, YHWH is not legally bound to Deut 24:1–4 regarding how to treat the promiscuous Judah.

In Deut 24:4 the prohibition against bringing sin upon the land, וְלֹא תִחַטֵּיא אֶת־הָאָרֶץ, is directed against the male. By reusing Deut 24:1–4 the implication would be that the YHWH-husband, himself, would bring sin upon the land by taking back his people. Jeremiah, however, studiously avoids this connotation. First of all, in 3:1, 7, 10 it is the unfaithful people who are expected to return to God.<sup>45</sup> Further, while Jer 3:1 MT does follow the legal lead of Deut 24:4 in speaking about the impossibility of the husband returning to his divorced wife, as this would pollute the land (הָלֹוא תִּגְוַף תְּהַחַנֵּף הָאָרֶץ הַהִיא), in the rest of the passage the danger of polluting the land is defined in different terms. In 3:2 (וּמִתְחַנֵּפִי אֶרֶץ בְּנִוְתִיָּהּ וּבְרַעַ) and 3:9 (וּמִתְחַנֵּף אֶת־הָאָרֶץ) it is the adultery of the people

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<sup>45</sup> It would have been easier if Jer 3:1–10 MT rather rendered it like LXX, only speaking of the woman being defiled and the woman returning to the husband. But as Jer 3:1–10 MT appears to be bound by Deut 24:1–4 MT it needs circumspectly to avoid placing the blame on YHWH for the defilement of the land.

that has defiled the land. Jeremiah therefore places the sole blame for defiling the land upon the people.<sup>46</sup>

In Jer 3:4–5a the people invoke the first love of God, as in their initial walk in the wilderness together (cf. 2:2); thereby posing a rhetorical question in order to affirm that God will not rage against the people forever: “Do you not now call to me: ‘My father, you are the companion of my youth! Does one hate forever? Does one rage forever?’ That is what you said.” But in 3:5b, God exposes this as vain talk: “But you did evils, and had your way.” As Georg Fischer points out, not only have they acted promiscuously with multiple lovers and, therefore, deserve the capital punishment of Deut 22:22, but by appealing to God to take them back, they also become guilty of setting Deut 24:1–4 aside.<sup>47</sup> Still, as pointed out above, this is exactly what God says he must do and is willing to do; namely, to receive the divorced and unfaithful people back again.

When we compare the dating in v. 6 (“Now YHWH said to me during the days of King Josiah”) with the introductory statement in Jer 1:2, 3, “The word of the LORD came

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<sup>46</sup> It is possible that the LXX translator imported the scenario from Jer 3:6–11 MT, with the wife returning to the husband, into his rendering of 3:1 (μη ἀνακάμπτουσα ἀνακάμψει πρὸς αὐτὸν ἔτι). A difference, however, is that LXX only has the wife being defiled (οὐ μαινομένη μιανθήσεται ἡ γυνὴ ἐκείνη), as in Deut 24:4, not also the land. Jer 3:1–10 MT focus more upon the land being defiled. Hobbs argues that probably the “LXX reflects the original reading,” while the MT is a later edition (Hobbs, “Jeremiah 3:1–6 and Deuteronomy 24:1–4,” 23). He continues to argue that since Jer 3:1–5 “is from the early ministry of the prophet” it is unlikely “to have been directly dependent upon a written account of a law which had hardly, if at all, been published” (Hobbs, “Jeremiah 3:1–6 and Deuteronomy 24:1–4,” 24). But he does not provide convincing arguments for the choice regarding the relative priority of LXX over MT, and neither considers much of the evidence for reuse and direction of dependence provided in the above discussion. Holladay argues that since MT is the *lectio difficilior* it would be difficult to explain how it could have arisen as a secondary reading, and therefore prefers MT over LXX (Holladay, *Jeremiah 1–25*, 113). To Craigie, Kelley, and Drinkard “the differences between LXX and MT . . . more probably reflect the varieties between two textual traditions” (Craigie et al., *Jeremiah 1–25*, 49).

<sup>47</sup> Fischer, *Jeremia 1–25*, 185.

to him in the days of King Josiah son of Amon of Judah, in the thirteenth year of his reign, and throughout the days of King Jehoiakim son of Josiah of Judah, and until the end of the eleventh year of King Zedekiah son of Josiah of Judah, when Jerusalem went into exile in the fifth month” (NJPS, see also Jer 25:3), we find that the reference-time of 3:6 would be from the thirteenth year of Josiah to his death.<sup>48</sup> Edwin Thiele has dated Josiah’s reign to 641/40–609 BC and the beginning of Jeremiah’s ministry to 627 BC.<sup>49</sup> Saying that Jeremiah was dependent on Deuteronomy, would then place the composition of Deuteronomy, at least this part of Deuteronomy, prior to this time.

Even if Jer 3:1–10 assumes knowledge of Deut 24:1–4, it should not be understood as a legal exegesis of the latter. Pushing the legal connection too much creates a legal issue with the incest laws (Lev 18:6–7), the prohibition against marrying two sisters (Lev 18:18), in addition to the question of God possibly violating his own

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<sup>48</sup> Lundbom claims that Jer 3:6 is the only date given in chapters 1–20 (Lundbom, *Jeremiah 1–20*, 306). This is possible to claim only by ignoring 1:2–3. Fischer is more cautious and says that it is the only date given in chapters 2–20. He also suggests that the mention of king Josiah at this point, speaking of Judah and Israel, might be due to this king’s efforts (“Bemühungen”) to bring the nations together again as seen in 2 Kings 23:15–20 (Fischer, *Jeremia 1–25*, 188). Other references indicating Josiah’s attempted religious, and possibly political, unification of Israel and Judah are found in 2 Kings 23:22–23; 2 Chron 34:33; 35:17–18. Rofé writes: “The first collection contains visions, prophecies of judgment and laments, mostly undated: chs. 1–24. Its specific character comes to light, if one compares the Deuteronomistic sermons of 7,1–8,4; 11,1–13; 17,19–27; 18,1–12; 19,1–20,6 with those of chs. 25; 27; 29; 32: while the latter bear exact dates, the former give none!” (Rofé, “The Arrangement of the Book of Jeremiah,” 394).

<sup>49</sup> Edwin R. Thiele, *The Mysterious Numbers of the Hebrew Kings* (Grand Rapids, MI: Kregel Publication, 1983), 180–81, 217. Even if Lundbom finds it difficult to date the passage he sees no problems in dating this passage to the time of Josiah, despite that he sees vv. 6–11 as a later interpolation (Lundbom, *Jeremiah 1–20*, 308–9). The dating of Jer 3:1–10 on the basis of the historical information in v. 6 and the content of the context, is also supported by linguistic studies. Aaron Hornkohl concludes after having studied the linguistic phenomena in Jeremiah in light of diachronic dating of the book: “On the basis of a detailed examination of over forty linguistic features—representing the full spectrum of linguistic categories: orthography, phonology, morphology, syntax, and lexicon—the conclusion of the present study is that, though likely composite, the extant book of Jeremiah was written in a form of TBH, the literary medium employed in works composed in the span of time linking the First and Second Temple Period, probably approximately coterminous with the 6th century BCE” (Hornkohl, *Language of the Book of Jeremiah*, 371). Cf. Hornkohl, “The Language of the Book of Jeremiah,” v).

restrictions of return after a divorce, as Jer 3 describes both Israel and Judah as wives and daughters in this passage. If so, YHWH is presented as married to his daughter(s), who also happen to be sisters. Instead Jer 3 seems to use the law of divorce and remarriage from Deut 24:1–4 metaphorically for the relationship between God and his people. We should therefore not use Jer 3:1–10 to expound the legal meaning of the law in Deut 24:1–4. The reuse functions rather as a warning to Judah that exile threatens them similar to the way Israel was threatened before being exiled in 722 B.C. when God “divorced” the northern kingdom. Even more, the entire thrust of Jer 2:1–4:4 is a call to Judah to repent and return to God. It is an open invitation, describing how God is willing to cross expectations based on legal boundaries in Deut 24:1–4 to again welcome His people back.

## CHAPTER 5

### SABBATH INSTRUCTIONS IN EXOD 20:8–11; DEUT

#### 5:12–15 AND JER 17:19–27

#### Introduction

We now turn to the reuse between Exod 20:8–11; Deut 5:12–15 and Jer 17:19–27 dealing with Sabbath instructions. The majority of scholars see Jer 17:19–27 as reusing Deut 5:12–15, possibly also Exod 20:8–11.<sup>1</sup> Before discussing the relationship between Exod 20:8–11 and Deut 5:12–15 on the one hand and Jer 17:19–27 on the other, I will briefly discuss the variation between Exod 20:8–11 and Deut 5:12–15.

#### The Sabbath in the Versions of the Decalogue (Exod 20:2–17; Deut 5:6–21)

Table 2 gives an overview over parallels between Exod 20:1–11 and Deut 5:12–15. The parallels between Exod 20:2–17 and Deut 5:6–21 constitute striking examples of how not only uniqueness and distinctiveness can serve as indicators of reuse, but also how a significant accumulation of parallels between words and phrases that are common

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<sup>1</sup> E.g. Fishbane, *Biblical Interpretation in Ancient Israel*, 131–34; Jerry A. Gladson, “Jeremiah 17:19–27: A Rewriting of the Sinaitic Code?,” *CBQ* 62 (2000); Maier, *Jeremia als Lehrer der Tora*, 214–15, 223–25; Fischer, *Jeremia 1–25*, 565; Lundbom, *Jeremiah 1–20*, 806. For others that are not as clear on the reuse of Deut 5 in Jer 17 see Holladay, *Jeremiah 1–25*, 508–11; Craigie et al., *Jeremiah 1–25*, 237–39. Fischer claims that the plural of Jer 17:22 is closer to Lev 23:3, 28, 31; Num 29:7. Further, he also points out a parallel between the tree-metaphor in Jer 17:8 and Ps 1:3, a psalm known for its Torah-motif, even if he does not see it as possible to determine the direction of dependence (Fischer, *Jeremia 1–25*, 552–54). Cf. Holladay, *Jeremiah 1–25*, 489–90.

**Table 2. Exod 20:8–11 and Deut 5:12–15**

Exod 20:8–11	Deut 5:12–15
<p><sup>8</sup> זכור את־יום השבת לקדשו  <sup>9</sup> ששת ימים תעבד ועשית כל־מלאכתך  <sup>10</sup> ויום השביעי שבת ליהוה אלהיך לא־  תעשה כל־מלאכה אתה ובנך־ובתך עבדך  ואמתך ובהמתך וגרך אשר בשעריך  <sup>11</sup> כי ששת־ימים עשה יהוה את־השמים  ואת־הארץ את־הים ואת־כל־אשר־בם  וינח ביום השביעי על־כן ברך יהוה את־  יום השבת ויקדשהו:ס</p>	<p><sup>12</sup> שמור את־יום השבת לקדשו כאשר צוך יהוה  אלהיך  <sup>13</sup> ששת ימים תעבד ועשית כל־מלאכתך:  <sup>14</sup> ויום השביעי שבת ליהוה אלהיך לא תעשה  כל־מלאכה אתה ובנך־ובתך ועבדך־ואמתך  ושורך וחמרך וכל־בהמתך וגרך אשר בשעריך  למען ינוח עבדך ואמתך כמוך:  <sup>15</sup> וזכרת כי־עבד היית בארץ מצרים ויצאך יהוה  אלהיך משם ביד חזקה ובזרע נטויה על־כן צוך  יהוה אלהיך לעשות את־יום השבת:ס</p>
<p><sup>8</sup> Remember the Sabbath day to sanctify it. <sup>9</sup> Six days you shall labor, and do all your work, <sup>10</sup> but the seventh day is Sabbath to YHWH your God. You shall not do any work, you, or your son, or your daughter, your male servant, or your female servant, or your cattle, or the stranger within your gates. <sup>11</sup> For six days YHWH made the heavens and the earth, the sea, and all that is in them, and he rested on the seventh day. Therefore YHWH blessed the Sabbath day and sanctified it.</p>	<p><sup>12</sup> Guard the Sabbath day to sanctify it, as YHWH your God commanded you. <sup>13</sup> Six days you shall labor, and do all your work, <sup>14</sup> but the seventh day is Sabbath to YHWH your God. You shall not do any work, you, or your son, or your daughter, or your male servant, or your female servant, or your ox or your donkey, or any of your cattle, or the stranger within your gates, so that your male servant and female servant may rest like you. <sup>15</sup> And remember that you were a slave in the land of Egypt, and that YHWH your God brought you from there by a strong hand and with an outstretched hand. Therefore YHWH your God commanded you to practice the Sabbath day.</p>

in the HB can do the same. Here it is the almost identical use of common words in longer parallel constructions that offers the strongest argument for reuse. While the similarities between Exod 20:2–17 and Deut 5:6–21 establish a case of reuse, the differences between the two may be our best clue to establishing the direction of dependence. However, this is not the place to discuss this relation extensively. I will only point out a few observations in that regard as they relate to the question of reuse between Exod 20:8–11 and Deut 5:12–15 on one hand and Jer 17:19–27 on the other. For our present purposes, it is the differences between the two that constitute the prime basis for clarifying how Jer 17



possibly reuses the other two passages. Similar to my analysis of Jer 34, I have not found any evidence for a case of reuse between Exod 20 and Jer 17, except where we find similar parallels between Deut 5 and Jer 17.

Since there are additional arguments that there was literary reuse between Deut 5 and Jer 17, I have included the discussion about reuse between Exod 20 and Jer 17 under that of Deut 5 and Jer 17. In other words, since there are no reasons to claim exclusive reuse between Exod 20 and Jer 17, and since all the parallels between Exod 20 and Jer 17 can be explained as reuse between Deut 5 and Jer 17 at points where Exod 5 and Deut 5 are parallel, I subsume the discussion of Exod 20 under the discussion of the relation between Deut 5 and Jer 17.

The major differences in the two versions of the Decalogue are found between Exod 20:8–11 and Deut 5:12–15. For example, we find alternative lexemes at several places, besides *נָכוֹר* in Exod 20:8 and *שָׁמֹר* in Deut 5:12, *שָׁקַר* in Exod 20:16 while *שָׁאָה* in Deut 5:20, *תִּקְחֶם* in Exod 20:17 with *תִּתְּאוּנָה* in Deut 5:21. A couple of times Deut 5 adds a reference to YHWH's command, as *כִּי צִוָּה יְהוָה אֱלֹהֵיךָ* in 5:12, 16. Deuteronomy 5 also adds other words or phrases, as with *וְלִמְעַן יִיטֵב* in 5:16 and *שְׂדֵהוּ* in 5:21. Further, the order of *בֵּית* and *אֶשֶׁת* is the inverse in Exod 20:17 and Deut 5:21. We see an emphasis in both versions upon the 1cs voice of YHWH speaking at the beginning of the Decalogue (Exod 20:2–6; Deut 5:6–10). But afterward the 1cs voice disappears, and while the 3. person reference to YHWH can be seen throughout both versions of the Decalogue, it is interesting to note that *מִצְוָתוֹ* in Deut 5:10 comes at the exact point where the 1cs voice disappears in the Decalogue. The 3ms suffix in *מִצְוָתוֹ* in Deut 5:10 and *שָׁמֹר* in Exod 20:7 and Deut 5:11 should also be noted in regard to PNG-shifts.

## The differences between the Sabbath instructions in Exod 20:8–11 and Deut

5:12–15 can be summarized as follows:

1. Exod 20:8 opens with זָכוֹר in contrast to שָׁמֹר in Deut 5:12.
2. Deut 5:12 adds בְּאִשְׁרֵי צִוְיָהּ יְהוָה אֱלֹהֶיךָ.
3. While Exod 20:10 has עֲבָדְךָ, Deut 5:14 adds the waw in וְעֲבָדְךָ.
4. וְבַהֲמִתְּךָ in Exod 20:10 in contrast to וְכָל־בְּהֵמָתְךָ in Deut 5:12.
5. The major difference is found in the end of the Sabbath commands, between Exod 20:11 ( כִּי שֵׁשֶׁת־יָמִים עָשָׂה יְהוָה אֶת־הַשָּׁמַיִם וְאֶת־הָאָרֶץ אֶת־הַיָּם וְאֶת־כָּל־אֲשֶׁר־בָּם וַיָּנַח ) in contrast to Deut 5:14d–15 ( בַּיּוֹם הַשְּׁבִיעִי עַל־כֵּן בָּרַךְ יְהוָה אֶת־יוֹם הַשַּׁבָּת וַיְקַדְּשֵׁהוּ לְמַעַן יְנוּחַ עַבְדְּךָ וְאִמָּתְךָ כְּמוֹךָ: וְזָכַרְתָּ כִּי־עֶבֶד הָיִיתָ בְּאֶרֶץ מִצְרַיִם וַיִּצְאָךָ יְהוָה אֱלֹהֶיךָ מִשָּׁם ) (בְּיַד חֲזָקָה וּבְזֹרֵעַ נְטוּיָה עַל־כֵּן צִוְיָהּ יְהוָה אֱלֹהֶיךָ לַעֲשׂוֹת אֶת־יוֹם הַשַּׁבָּת).

While God is said to have rested on the seventh day after the six days of creation in Exod 20:11 (וַיָּנַח בַּיּוֹם הַשְּׁבִיעִי), it is the male and female slave that rest ‘like yourself’ on the seventh day after six days of work in Deut 5:14 (וְנוּחַ עַבְדְּךָ וְאִמָּתְךָ כְּמוֹךָ). While עַל־כֵּן in Exod 20:11 is used to ground YHWH’s further act of blessing (and sanctifying) the Sabbath because of his rest on the seventh day, in Deut 5:15 עַל־כֵּן is used to ground God’s command to do Sabbath (לַעֲשׂוֹת אֶת־יוֹם הַשַּׁבָּת), because (עַל־כֵּן) God led the people from Egypt with a mighty hand and outstretched arm. An irony here is that we are not to do (עָשָׂה) work on the Sabbath in Deut 5:14, but rather instead do (עָשָׂה) Sabbath in 5:15.

To me it seems that the narrative contexts of these two versions might explain the differences. To illustrate, the use of זָכַר in both versions (Exod 20:8; Deut 5:15) seems in both cases to evoke a reality rooted in a distant past. The narrative setting of Exod 20 is the recent exodus after a long slavery. The people appear during this period to have forgotten the Sabbath as rooted in creation. The זָכוֹר of 20:8 is thus meant to evoke the Sabbath as rooted in the distant creation past. We would have expected the slavery-exodus rationale for the Sabbath, as found in Deut 5:14c–15, to appear right after the

exodus itself in Exod 20. But instead attention is drawn to the Sabbath as rooted in creation. In Deut 5:15 וְזָכַרְתָּ is instead evoking the slavery-exodus motif, according to the narrative setting now 40 years in the past. As the Sabbath apparently at this point was a well-known practice, Deut 5:12 does not need to instruct the people to remember (זָכוֹר) the Sabbath as such, but rather to keep it (שָׁמֹר).<sup>2</sup> Instead, there is now a need to evoke the remembrance of the reality of their own slavery. As Deut 5:15 grounds the Sabbath in the exodus reality, it evokes the past reality of slavery (וְזָכַרְתָּ כִּי־עָבַדְתָּ הָיִיתָ בְּאֶרֶץ מִצְרַיִם), and elaborates on the link already found between עֲבָד and Sabbath in Exod 20:8–11.

The theme of service and slavery seems to inform all the changes made in the Deuteronomic version of the Sabbath instruction. It is possible that we here see an elaboration of a specific feature within the source text, namely Exod 20:8–11. The clause וְזָכַרְתָּ כִּי־עָבַדְתָּ הָיִיתָ בְּאֶרֶץ מִצְרַיִם (“as YHWH your God commanded you”) in Deut 5:12 further underlines that this portion is reusing a previous instruction, even if this clause, in itself, does not allow us to conclude it was specifically the Decalogue in Exodus that was being reused. Exod 20:9 reads וְעָבַדְתָּ וְעָשִׂיתָ כָּל־מְלַאכְתֶּךָ (“six days you shall labor (עָבַד) and do all your work”). It therefore establishes a link between the root עֲבָד and Sabbath instructions. עֲבָד belongs to the six days, and not the Sabbath. This section is kept in the Deuteronomic version in 5:13. Thus the basis for the link between עֲבָד and Sabbath is reused almost verbatim in Deut 5. All the modifications in Deut 5:12–15 can thus be explained as an intentional decision to elaborate this link. In general, we see a concern for the vulnerable in society in Deuteronomy. The author of Deut 5:12–15 reiterates this

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<sup>2</sup> מ<sup>Ex</sup>, ט<sup>A</sup>, ט<sup>Ex</sup>, PapNash has זָכוֹר in Deut 5:12, likely as a harmonization with Exod 20:8.

concern via its Sabbath instruction. I have already pointed out how the verb זכר in Exod 20:8 is replaced and moved to Deut 5:15 to underline this intent. Furthermore, the specification of ox and donkey besides all other animals (וְשׂוֹרֵךְ וְחֲמֹרֵךְ וְכָל־בְּהֵמָתֶךָ) in 5:14— probably an elaboration in Deut 5:14 upon the animals (וּבְהֵמָתֶךָ) mentioned in Exod 20:10—again stresses the idea of servitude, since these were the domestic beasts of burden. Moreover, although Deut 5:14 forbids the son, daughter, animals, stranger and servants from working, the passage reiterates and thus specifically highlights the command to give the male and female slave rest (לְמַעַן יָנוּחַ עַבְדְּךָ וְאִמָּתֶךָ כְּמוֹךָ), again stressing how the Sabbath gives freedom from servitude (מִן־עֲבָדָתִי<sup>Ex</sup>, מִן־עֲבָדָתִי<sup>Ex</sup>, מִן־עֲבָדָתִי<sup>Ex</sup>, PapNash does not have כְּמוֹךָ וְאִמָּתֶךָ כְּמוֹךָ). While the rationale for the Sabbath prohibitions is YHWH's creation on six days and rest on the seventh in Exod 20:11, in Deut 5:14 the purpose of keeping the Sabbath is the rest not of YHWH at creation, but of the male and female slaves every week (לְמַעַן יָנוּחַ עַבְדְּךָ וְאִמָּתֶךָ כְּמוֹךָ). It is thus clear that even if Deuteronomy elaborates on the list of animals that were supposed to rest on the Sabbath (וְשׂוֹרֵךְ וְחֲמֹרֵךְ וְכָל־בְּהֵמָתֶךָ) in Deut 5:14 compared to וּבְהֵמָתֶךָ in Exod 20:10), the iteration of the Sabbath commandment in Deut 5:14 clearly focuses on providing rest for male and female slaves. Thus, it is more economical to explain Deut 5:12–15 as reworking Exod 20:8–11 than the other way around.<sup>3</sup> This also seems to be a case of a living Torah where the author reusing Torah builds into his own composition elements of the source text, while at the same time taking the liberty to go beyond and elaborate what may have been

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<sup>3</sup> For recent arguments in this line of seeing the direction of dependence between Exod 20 and Deut 5 see Eckart Otto, *Deuteronomium 4,44–11,32*, HThKAT (Freiburg: Herder, 2012), 699–704; Kilchör, *Mosetora und Jahwetora*, 43–44.

understood as hints in the source text of a broader application.

### The Pedagogics and Memorization of the Decalogue in Deut 5

As Moses is introducing the following instructions he places them from the start in an educational context. He instructs the people וְלִמְדֵתֶם אֹתָם וּשְׁמַרְתֶּם לְעִשְׂתָּם (“and you shall learn them and guard them to keep them”) in Deut 5:1. And since the Decalogue immediately follows, the text itself clearly encourages learning the Decalogue. The instruction וְלִמְדֵתֶם אֹתָם (“and learn them”) seems to imply that the commandments should be learned thoroughly, if not also memorized (cf. Deut 6:6). David Carr finds the form of the Decalogue to be especially well adapted for memorization:

The Ten Commandments in Deuteronomy 5:6–21 are an excellent example of teaching structured for memorization. The rules focus on central values of ancient Israel. As Erhard Gerstenberger observed decades ago [*Wesen und Herkunft des apodiktischen Rechts*], their “apodictic” form most closely resembles that of gnomic instructions inside and outside Israel. In addition, the ordering of the list into ten items—however this is done in various streams of tradition—allows the beginning student to use his or her fingers to count off and see whether he or she has included all of the key elements of this fundamental instruction. This combination of elements—focus on central values, simplicity of form, and memorizability—has contributed to the ongoing use of the Ten Commandments in religious education up to the present, along with the focus on them as an icon of central values in contemporary cultural battles over the biblical tradition.<sup>4</sup>

### Jeremiah 17:19–27

In Louis Stulman’s argument for an interplay between the untamed poetry and the taming prose of the book of Jeremiah, he sees Jer 11:1–13 and 17:19–27 as prose discourses bracketing the section Jer 11:1–17:27. He finds that “these prose sermons

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<sup>4</sup> Carr, *Writing on the Tablet of the Heart*, 137.

provide a covenant framework for the macro-unit as a whole.”<sup>5</sup>

The majority of scholars see Jer 17:19–27 as a post-exilic supplement to the book. A minority see the passage as original with the prophet.<sup>6</sup> The “mosaic” of forms of Jer 17, as Thiel called it,<sup>7</sup> is taken by many scholars to indicate various compositional strata. Gladson, however, argues that the mention of fire in the the first oracle (17:1–4), with the fire kindled against the people forms an *inclusio* with the last verse of the chapter in v. 27, also mentioning the kindling of fire.<sup>8</sup> For Fischer, who corroborates this view and sees לֵב (“heart”) as a *Leitwort* with its attestation in Jer 17:1, 5, 9–10, the Sabbath (17:19–27) offers an anchor of rescue (“Rettungsanker”) against the deceptiveness of the human heart.<sup>9</sup> With the change from poetry to prose and a messenger formula, it seems

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<sup>5</sup> Stulman, *Order Amid Chaos*, 44. Christl Maier sees Jer 17:19–27 to a section demarcated by Jer 16:1 as the beginning and 17:27 as the end (Maier, *Jeremia als Lehrer der Tora*, 207). She further points out parallels between this section and other passages in Jeremiah, indicating an integral post-exilic composition (Maier, *Jeremia als Lehrer der Tora*, 223–24).

<sup>6</sup> While Jer 17:19–27 is usually considered as part of Mowinckel’s “C” material, and therefore post-exilic, Peter Craigie et al. point out that there is nothing in the passage indicating such a dating (Craigie et al., *Jeremiah 1-25*, 238–39). Holladay sees the passage as a later supplement, partly because we do not find a concern with the Sabbath and “kings of Judah” in the rest of the book (Holladay, *Jeremiah 1–25*, 509). Cf. Maier, *Jeremia als Lehrer der Tora*, 205, 211–18, 221, 224. Maier points out that there is a parallel between Jer 17 and 34 in their narrowing of a former instruction (Maier, *Jeremia als Lehrer der Tora*, 223). McKane concludes his overview of scholarly debate on the passage with emphasizing that whether the passage should be seen as exilic or post-exilic, it “reflects the importance attached to the Sabbath commandment in the post-exilic Jerusalem community and the belief that its future depended on whether or not it kept the Sabbath” (McKane, *Jeremiah*, 419). Cf. Weippert who sees a Jeremianic origin of Jer 17:19–27 as problematic (Helga Weippert, *Die Prosareden des Jeremiabuches* (Berlin: de Gruyter, 1973), 234n). For an overview of the scholarly debate on the question of dating Jer 17:19–27 see Gladson, “Jeremiah 17:19–27,” 34; Stulman, *The Prose Sermons of the Book of Jeremiah*, 72–73. Gladson himself sees strong indications for Jer 17:19–27 being a late addition to the book, even if he concludes that “the provenance of this oracle, in my opinion, must be left open” (Gladson, “Jeremiah 17:19–27,” 34–35).

<sup>7</sup> Thiel, *Jeremia 1-25*, 202–203.

<sup>8</sup> Gladson, “Jeremiah 17:19–27,” 34.

<sup>9</sup> Fischer, *Jeremia 1–25*, 544–45, 554–55, 566–70. Fischer writes: “Die Dynamik des Erwerbslebens und das eigene Gewinnstreben beinhalten die gefährliche Tendenz, sich alles Oblige unterordnen zu wollen. Gegen diese Bedrohung menschlicher Freiräume und der Gesellschaft hilft der Sabbat. Er ist Rettung angesichts des Überhandnehmens der Maximen von Profit, Ertrag und Nützlichkeit.

reasonable to take 17:19 as introducing a new section, even if connected to the context.<sup>10</sup>

The structure of Jer 17:19–27 can be outlined as follows<sup>11</sup>:

- 17:19 YHWH instructs Jeremiah to take his stand in the Gate of the Sons of the People and in the gates of Jerusalem
- 17:20 YHWH instructs Jeremiah there to call the attention of all, from the king and the rest of the people
- 17:21–27 The content of YHWH’s declaration
  - 17:21–22 Injunction to guard the Sabbath
  - 17:23 The rejection of Sabbath-instructions by the forefathers
  - 17:24–26 Promise of welfare for the nation if they will heed the Sabbath instructions
  - 17:27 Threat of destruction of city if they will not heed the Sabbath instructions

As we shall see the reuse of Torah is seen particularly in 17:21–22, 24, 27.

Jer 17:19–27 is presented as YHWH’s reported speech (cf. the messenger formula (יְהוָה אָמַר יְהוָה in Jer 17:19, 21 and נְאֻם־יְהוָה in Jer 17:24). In Jer 17:19–20 God commands Jeremiah to take up his stand in the Gate of the Sons of the People through which the kings of Jerusalem pass (בְּשַׁעַר בְּנֵי־עַם אֲשֶׁר יָבֹאוּ בּוֹ מֶלְכֵי יְהוּדָה וְאֲשֶׁר יֵצְאוּ בּוֹ) as well as all the rest of the city’s gates (וּבְכָל שַׁעְרֵי יְרוּשָׁלַם), to say: “Hear the word of YHWH, kings of Judah, and all of Judah, and all the inhabitants of Jerusalem entering through these gates” (שְׁמְעוּ דְבַר־יְהוָה מֶלְכֵי יְהוּדָה וְכָל־יְהוּדָה וְכָל־יְשֻׁבֵי יְרוּשָׁלַם הַבָּאִים בְּשַׁעְרֵים הָאֵלֶּה). Then comes the diatribe in 17:21–27 which will be the main focus in the following. 17:21 warns

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Der Verzicht darauf, die Welt völlig dem eigenen Planen und Machen zu unterwerfen, bewahrt ihr auch ihren Charakter als Schöpfung mit Eigenwert. In dem allem wird die Bereitschaft, den siebten Tag frei zu lassen, zum konkreten Zeichen des Vertrauens auf Gott . . . Dies mag gleichfalls erklären, warum der Sabbat eine so wichtige Stellung ebenso bei anderen Propheten einnimmt (u. a. Jes 56,2-6; Ez 20,12-24; Am 8,5). Der freie siebte Tag bleibt ein Geschenk Gottes an den Menschen” (Fischer, *Jeremia 1–25*, 570).

<sup>10</sup> Fischer, *Jeremia 1–25*, 563.

<sup>11</sup> Cf. Maier, *Jeremia als Lehrer der Tora*, 221–22.

against carrying a load on the Sabbath through those very gates.<sup>12</sup> The injunction השמרו (“Guard your lives”) in Jer 17:21 also sets a very existential tone of the following. It becomes a question of life and death.<sup>13</sup>

Jer 17:21–22 include five injunctions:

- (1) השמרו בנפשותיכם (“Guard your lives”)
- (2) ואל־תשאו מִשָּׂא בְיּוֹם הַשַּׁבָּת וְהִבֵּאתֶם בְּשַׁעְרֵי יְרוּשָׁלַם (“you shall not lift a load on the Sabbath day and bring it/enter the gates of Jerusalem”)<sup>14</sup>,
- (3) וְלֹא־תוֹצִיאוּ מִשָּׂא מִבֵּיתְכֶם בְּיּוֹם הַשַּׁבָּת (“and you shall not remove a load from your house on the Sabbath day”),
- (4) וְכָל־מְלָאכָה לֹא תַעֲשׂוּ (“and you shall not do any work”), and
- (5) וְקִדַּשְׁתֶּם אֶת־יּוֹם הַשַּׁבָּת (“but you shall sanctify the Sabbath day”).

It is only here in all of the speech that the prohibition against removing a load from one’s house (3) is mentioned. It is all summed up as according to YHWH’s command to the fathers (בְּאִשֶּׁר צִוִּיתִי אֶת־אֲבוֹתֵיכֶם). 17:24 includes three of these injunctions:

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<sup>12</sup> Fischer notes that some commandments in Torah receive special attention in the book of Jeremiah, like the Sabbath commandment (Fischer, “The Relationship of the Book of Jeremiah to the Torah,” 905). As mentioned above, others find this single mention of the Sabbath in the book of Jeremiah as a reason to take it as a later interpolation (e.g. Holladay, *Jeremiah 1–25*, 509). Cf. Ezek 20:10–26.

<sup>13</sup> Cf. Fischer, *Jeremia 1–25*, 564. A similar existential tone is set in Jer 17:25 for the city itself by the final remark in the blessing for obedience with וְיִשְׁבְּהָ הָעִיר־הַזֹּאת לְעוֹלָם (“and this city will remain forever”). Lundom points out that this goes beyond the message in Deuteronomy, only promising that people will “live long in the land” (Lundbom, *Jeremiah 1–20*, 807).

<sup>14</sup> Jeremiah 17:21 reads: וְלֹא־תשאו מִשָּׂא בְיּוֹם הַשַּׁבָּת וְהִבֵּאתֶם בְּשַׁעְרֵי יְרוּשָׁלַם (“and do not carry a load on the Sabbath and enter the gates of Jerusalem”). This could be read as two commands ( וְלֹא־תשאו מִשָּׂא and וְהִבֵּאתֶם בְּשַׁעְרֵי יְרוּשָׁלַם and בְּיּוֹם הַשַּׁבָּת, translated as “and do not carry a load on the Sabbath” and “or enter the gates of Jerusalem [with “with a load on the Sabbath” elliptically implied]”) or one command (“and do not carry a load on the Sabbath and bring them in the gates of Jerusalem”). 17:24, however, seems to make clear that they should be understood as one instruction, לְבִלְתִּי הִבִּיא מִשָּׂא בְשַׁעְרֵי הָעִיר הַזֹּאת בְּיּוֹם הַשַּׁבָּת (“not to bring a load in (through) the gates of this city on the Sabbath day”).

Peter Craigie et al. point out a possible word play in the passage on מִשָּׂא: “It is possible that this pericope hides an ironic word play. The word מִשָּׂא means both ‘burden’ and ‘oracle.’ Jeremiah uses the word both ways, meaning ‘oracle’ in 23:33 (2x), 34, 36 and 38 (3x). There might well be a bitter irony in that the people are breaking Sabbath observance by carrying burdens into the city and out of their houses, but simultaneously refuse to lift up or carry—or even hear—Yahweh’s oracle. Such a word play would be typical of Jeremiah’s style” (Craigie et al., *Jeremiah 1-25*, 239).



(2) לְבַלְתִּי הָבִיא מִשָּׂא בְשַׁעַרֵי הָעִיר הַזֹּאת בְּיוֹם הַשַּׁבָּת (“not to bring a load in (through) the gates of this city on the Sabbath day”),

(5) וּלְקַדֵּשׁ אֶת־יוֹם הַשַּׁבָּת (“to sanctify the Sabbath day”), and

(4) לְבַלְתִּי עֲשׂוֹת־כָּבֹה כָּל־מְלָאכָה (“not to do any work”).

17:27 only has two of these injunctions:

(5) לְקַדֵּשׁ אֶת־יוֹם הַשַּׁבָּת (“to sanctify the Sabbath day”), and

(2) וּלְבַלְתִּי שָׂאת מִשָּׂא וּבֹא בְשַׁעַרֵי יְרוּשָׁלַם בְּיוֹם הַשַּׁבָּת (“and not carry a load and enter the gates of Jerusalem on the Sabbath day”).

A question is whether the rejection by the people in 17:23, speaking in 3mpl, is referring to a rejection of the original command by the ancestors (cf. כְּאֲשֶׁר צִוִּיתִי אֶת־ in 17:22) or to a rejection of Jeremiah’s words by his contemporaries.<sup>15</sup> The conditionality in the continuation in 17:24 could be understood as indicating that 17:23 referred to the forefather’s rejection of YHWH’s original command in contrast to Jeremiah’s contemporaries who he admonishes to listen. It still seems to be an open question as to how the people will respond. The sentence וְהִיָּה אִם־שָׁמַעַתְּ מְעֹנִים אֵלַי נְאֻם־ (“But should you for sure listen to me, declares YHWH . . .”) in 17:24 therefore seem to support the reading that 17:23 is referring to a rejection of YHWH’s previous command by the ancestors as opposed to Jeremiah’s contemporaries rejecting his words.

Jeremiah 17:24 is the apodosis and condition—repeating the command not to bring a load through the city gates on the Sabbath, sanctifying the day, and not doing any work—upon which the blessing in 17:25 is promised, namely of kings and officials sitting on David’s throne passing the city’s gates, riding in chariots and on horses, together with the inhabitants of the city. Further, it is also

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<sup>15</sup> Jeremiah 17:23 LXX clearly takes it to refer to the contemporaries’ rejection, intensifying the situation by adding ὑπερ τοὺς πατέρας αὐτῶν (“more than their forefathers”).

promised that the city itself will be established forever.

Jer 17:26 further promises that the people of all of Judah (מְעַר־יְהוּדָה וּמִסְבִּיבוֹת ) will come to Jerusalem as their cultic center with burnt offerings, sacrifices, meal offerings, and frankincense (עוֹלָה וְזֶבַח וּמִנְחָה ) (וּלְבוֹנָה). If the people will abstain from carrying burdens in and out of Jerusalem on the Sabbath, the surrounding people will bring burdens, i.e. all kinds of sacrifices, to Jerusalem and the house of YHWH. In the reverse scenario (17:27), upon the condition that the people will not sanctify the Sabbath and instead carry a load through the city's gates, YHWH will make fire go forth that cannot be extinguished and consume the fortresses of Jerusalem. Thus, the flourishing of society is presented as contingent upon guarding the Sabbath.

### Orality, Writing, and Memorization in Jer 17

In Jer 17 there is a close relation between the oral and written words. The words YHWH spoke orally to Jeremiah (יְהוָה אָמַר יְהוָה אֵלַי in 17:19; יְהוָה אָמַר יְהוָה in 17:21)<sup>16</sup> are now recorded in written form. In 17:20 Jeremiah is commanded to pass YHWH's words on orally saying "and speak to them: 'Hear the word of YHWH'" (וְאָמַרְתָּ אֲלֵיהֶם שְׁמְעוּ ) (דְּבַר־יְהוָה). It is here also a reference to a past address by YHWH (כִּפְאֲשֶׁר צִוִּיתִי אֶת־אֲבוֹתֵיכֶם ) in 17:22. 17:23 makes it very clear that this was an oral address, reading "but they did not *hear*, nor *turn* their *ear*, but hardened their neck not to receive discipline" (וְלֹא שָׁמְעוּ וְלֹא ) (הֵטוּ אֶת־אָזְנוֹם וַיִּקְשׂוּ אֶת־עַרְפֹּם לְבַלְתִּי שְׁמוֹעַ וּלְבַלְתִּי קַחַת מוֹסֵר). The same oral address, as

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<sup>16</sup> Jer 17:19 LXX does not render אֵלַי.

Jeremiah is standing speaking in the gates, is now given to the present generation:

“However, if you verily *listen* to me, says YHWH” (וְהָיָה אִם-תִּשְׁמַעַתְּ תִשְׁמְעוּן אֵלַי יְהוָה) in 17:24 and “but they did not listen to me” (וְאִם-לֹא תִשְׁמְעוּ אֵלַי) in 17:27.<sup>17</sup> Whether our passage was written before or after this oral address in the gates is not stated.

Given that the following arguments are correct regarding Jer 17 reusing Deut 5, the interplay between oral and written words in this passage might very well inform us about how the prophet also related and perceived the Torah-text. The innovative elements in Jer 17 might simply be part of a text-supported memorized scribal culture, where Torah is not seen as sedimented and closed, but, rather, as a living and dynamic phenomena. Susan Niditch points to “the iconic function of writing” allowing a metaphoric play in the opening of Jer 17 upon the scribal paradigm we discussed in chapter 1: חטאת יהודה כתובה בעט ברזל בצפרן שמיר חרושה על-לוח לבם ולקרנות מזבחותיכם: (“The sin of Judah is written with a stylus of iron, engraved upon the tablet of their heart and the horns of your altars,” 17:1).<sup>18</sup>

### A Case for Reuse

Table 3 gives an overview over parallels between Deut 5:12–15 and Jer 17:19–27.

The parallels between Deut 5:12–15 and Jer 17:19–27 can be summed up as follows:

1. Both Deut 5:12 and Jer 17:21 open the divine discourse concerning the Sabbath with an admonition expressed through the verb שמר. Deut 5:12 has שמור את-יום השבת

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<sup>17</sup> אתה ידעת מוצא שפתי נכח פניך היתה (“you know what went out of my *lips*, it was before your face”) in Jer 17:16 is another reference to orality earlier in the chapter.

<sup>18</sup> Niditch, *Oral World and Written Word*, 86.

Table 3. Deut 5:12–15 and Jer 17:19–27

Deut 5:12–15	Jer 17:19–27
<p><sup>12</sup> <u>שמור את־יום השבת</u>  <u>לקדשו כאשר צוך יהוה</u>  אלהיך  <sup>13</sup> <u>ששת ימים תעבד</u>  ועשית כל־מלאכתך:  <sup>14</sup> <u>ויום השביעי שבת</u>  ליהוה אלהיך לא תעשה  כל־מלאכה<sup>19</sup> אתה ובנך־  ובתך ועבדך־ואמתך  ושורך וחמרך וכל־  בהמתך וגרך אשר  בשעריך למען ינוח  עבדך ואמתך כמוך:  <sup>15</sup> <u>וזכרת כי־עבד היית</u>  בארץ מצרים ויצאך  יהוה אלהיך משם ביד  חזקה ובזרע נטויה על־  כן צוך יהוה אלהיך  לעשות את־יום השבת:ס</p>	<p><sup>19</sup> כה־אמר יהוה אלי הלך ועמדת בשער בני־עם אשר יבאו בו  מלכי יהודה ואשר יצאו בו ובכל שערי ירושלם:  <sup>20</sup> ואמרת אליהם שמעו דבר־יהוה מלכי יהודה וכל־יהודה וכל  ישבי ירושלם הבאים בשערים האלה: ס  <sup>21</sup> כה אמר יהוה השמרו בנפשותיכם ואל־תשאו משא ביום השבת  והבאתם בשערי ירושלם:  <sup>22</sup> ולא־תוציאו משא מבתיכם ביום השבת וכל־מלאכה לא תעשו  וקדשתם את־יום השבת כאשר צויתי את־אבותיכם:  <sup>23</sup> ולא שמעו ולא הטו את־אזנם ויקשו את־ערפם לבלתי שמוע  ולבלתי קחת מוסר:  <sup>24</sup> והיה אם־שמע תשמעון אלי נאם־יהוה לבלתי הביא משא  בשערי העיר הזאת ביום השבת ולקדש את־יום השבת לבלתי  עשות־בה כל־מלאכה:  <sup>25</sup> ובאו בשערי העיר הזאת מלכים ושרים ישבים על־כסא דוד  רכבים ברכב ובסוסים המה ושריהם איש יהודה וישבי ירושלם  וישבה העיר־הזאת לעולם:  <sup>26</sup> ובאו מערי־יהודה ומסביבות ירושלם ומארץ בנימן ומן־השפלה  ומן־ההר ומן־הנגב מבאים עולה וזבח ומנחה ולבונה ומבאי תודה  בית יהוה:  <sup>27</sup> ואם־לא תשמעו אלי לקדש את־יום השבת ולבלתי שאת משא  ובא בשערי ירושלם ביום השבת והצתי אש בשעריה ואכלה  ארמנות ירושלם ולא תכבה: פ</p>

<sup>12</sup> Guard the Sabbath day to sanctify it, as YHWH your God commanded you. <sup>13</sup> Six days you shall labor, and do all your work, <sup>14</sup> but the seventh day is Sabbath to YHWH your God. You shall not do any work, you, or your son, or your daughter, your male servant, or your female servant, or your ox or your donkey, or any of your cattle, or the stranger within your gates, so that your male

<sup>19</sup> Thus said YHWH to me: “Go and stand in the People’s Gate, where the kings of Judah enter and where they go out, and in all the gates of Jerusalem. <sup>20</sup> And say to them: “Hear the word of YHWH, kings of Judah and all Judah, and all inhabitants of Jerusalem, who enter these gates! <sup>21</sup> Thus says YHWH: Guard your lives, and do not carry a load on the Sabbath day and enter the gates of Jerusalem. <sup>22</sup> And do not remove a load from your houses on the Sabbath day, nor do any work, and sanctify the Sabbath day, as I commanded your fathers. <sup>23</sup> But they did not listen nor turn their ear and stiffened their neck and did not listen nor accept discipline. <sup>24</sup> But if you for certain will listen to me, declares YHWH, not to bring a load by the gates of this city on the Sabbath day, but sanctify the Sabbath day, not to do any work on it, <sup>25</sup> then kings and princes sitting on the throne of David will enter by the gates of this city, riding in chariots and on horses, they and

<sup>19</sup> 4QDeut<sup>n</sup> adds “in it” (בו) by rendering it כל מלאכה בו כל מלאכה, similar to Ⓞ also adding ἐν αὐτῇ.

Table 3 — *Continued.*

Deut 5:12–15	Jer 17:19–27
servant and female servant may rest like you. <sup>15</sup> And remember that you were a slave in the land of Egypt, and that YHWH your God brought you from there by a strong hand and with an outstretched hand. Therefore YHWH your God commanded you to practice <u>the Sabbath day</u> (Deut 5:12–15).	their princes, a man of Judah, and the inhabitants of Jerusalem, and this city will remain forever. <sup>26</sup> And they will come from the cities of Judah and the surroundings of Jerusalem, and from the land of Benjamin, and from the Shephelah, and from the hill [country] and from the Negev, bringing burnt offering, and sacrifice, and grain offering, and frankincense, and bringing thank offering to the house of YHWH. <sup>27</sup> But if you will not listen to me <u>to sanctify the Sabbath day</u> , and not carry a load and enter by the <u>gates</u> of Jerusalem on <u>the Sabbath day</u> , I will make fire go forth in her <u>gates</u> and it will consume the palaces of Jerusalem, and it shall not be extinguished (Jer 17:19–27).

- (“guard the Sabbath day”) while Jer 17:21 הִשְׁמְרוּ בְּנַפְשׁוֹתֵיכֶם (“guard your lives”).
2. In both passages we find the phrase יוֹם הַשַּׁבָּת (אֶת-) (“the Sabbath day”). We find it in Deut 5:12, 15; Jer 17:21-22, 24, 27.<sup>20</sup>
  3. Both passages have a clause with piel of קָדַשׁ + שַׁבָּת as object. This combination is only found in Exod 20:8, 11; Deut 5:12; Jer 17:22, 24, 27; Ezek 20:20; 44:24; Neh 13:22.
  4. Both passages refer to a previous statement by YHWH concerning the Sabbath. We find כַּאֲשֶׁר צִוָּה יְהוָה אֱלֹהֶיךָ (“as YHWH your God commanded you”) in Deut 5:12 and כַּאֲשֶׁר צִוִּיתִי אֶת־אֲבוֹתֵיכֶם (“as I commanded your fathers”) in Jer 17:22.
  5. Finally, both passages use the lexeme שַׁעַר. In Deut 5:14 it is used to refer to the stranger within the gates (בְּשַׁעְרֵיךָ).<sup>21</sup> In Jer 17:19–27 שַׁעַר becomes a

<sup>20</sup> The phrase יוֹם הַשַּׁבָּת itself is not as common as could be expected in the HB. It only occurs in Exod 20:8, 11; 31:15; 35:3; Lev 24:8; Num 15:32; 28:9; Deut 5:12, 15; Jer 17:21-22, 24, 27; Ezek 46:1, 4, 12; Ps 92:1; Neh 10:32; 13:15, 17, 19, 22.

<sup>21</sup> LXX as ὁ προσήλυτος ὁ παροικῶν ἐν σοί (“the convert who dwells in your midst”) instead of אֲשֶׁר בְּשַׁעְרֵיךָ.

*Leitwort*. In Jer 17:19 it is used for the locations in which Jeremiah should preach (ובכלל שַׁעְרֵי יְרוּשָׁלַם/בְּשַׁעַר בְּנֵי-עַם), in 17:20 for the inhabitants of Jerusalem coming through the gates (הַבָּאִים בְּשַׁעְרֵים הָאֵלֶּה), in 17:21 for those bringing loads through Jerusalem’s gates on the Sabbath (וְהִבֵּאתֶם בְּשַׁעְרֵי יְרוּשָׁלַם), in 17:24 for a prohibition against bringing loads through the gates on the Sabbath (לְבַלְתִּי הֵבִיא מְשָׂא בְּשַׁעְרֵי הָעִיר ( הַיּוֹם הַזֶּה)), in 17:25 for a promise that if they will guard the Sabbath not to bring loads in through the gates on it, then kings and officers will enter through the gates (וּבָאוּ בְּשַׁעְרֵי הָעִיר הַזֹּאת), and in 17:27 for a threatened judgement of fire in the gates (וְהִצַּתִּי אֵשׁ בְּשַׁעְרֵיהָ וְאָכְלָהּ) if they do not heed the warning not to bring a load through the gates on the Sabbath (וּבֹא בְּשַׁעְרֵי יְרוּשָׁלַם בְּיוֹם הַשַּׁבָּת).<sup>22</sup>

I will discuss these parallels more in detail below in order to clarify to what extent they help us answer the questions regarding reuse and direction of dependence.

*Uniqueness*: אֶת-יּוֹם הַשַּׁבָּת לְקַדְּשׁוֹ כַּאֲשֶׁר צִוָּה יְהוָה אֱלֹהֶיךָ (“to sanctify the Sabbath day as YHWH your God commanded you”) in Deut 5:12 and וְקַדְּשֶׁתֶם אֶת-יּוֹם הַשַּׁבָּת כַּאֲשֶׁר וְצִוִּיתִי אֶת-אֲבוֹתֵיכֶם (“and you shall sanctify the Sabbath day as I commanded your fathers”) in Jer 17:22 are particularly close.<sup>23</sup> Piel of קָדַשׁ with שַׁבָּת as object + כַּאֲשֶׁר + צִוָּה is unique to these two passages in the HB.

*Distinctiveness*: First, piel of קָדַשׁ with שַׁבָּת as object is only found in Exod 20:8, 11; Deut 5:12; Jer 17:22, 24, 27; Ezek 20:20; 44:24; Neh 13:22. Of these only Exod

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<sup>22</sup> Cf. Kline showing that there is reuse and repetition with variation between Jer 17; 21; and 50 in regard to the idea of setting fire to the nation (Kline, *Allusive Soundplay*, 73–80).

<sup>23</sup> Cf. Mastnjak, *Textual Authority in Jeremiah*, 142.

20:8–11; Deut 5:12–14; Jer 17:17–22, 24 has piel of קדש with שַׁבַּת as object + עָשָׂה with כָּל־מְלָאכָה as object.<sup>24</sup> This shows a distinct usage of the lexical set in Exod 20:8–11; Deut 5:12–14; Jer 17:19–22. In all three cases sanctification of the Sabbath is defined as refraining from work on the Sabbath. To sanctify the Sabbath is explicitly defined in Jer 17:24 as not doing any work (וּלְקַדְּשׁ אֶת־יְיָ הַשַּׁבָּת לְבַלְתִּי עֲשׂוֹת־בָּהּ כָּל־מְלָאכָה). The same idea may be seen as more indirect and implied in the Decalogue. While neither Exod 20:8–9 nor Deut 5:12 define as explicitly as Jer 17:24 the meaning of לְקַדְּשׁוֹ—i.e. what it means to sanctify the Sabbath—in both cases לְקַדְּשׁוֹ is followed by the clauses שֵׁשֶׁת יָמִים וְעָבַד וַעֲשִׂיתָ כָּל־מְלָאכָתְךָ (“six days you shall labor and do all your work”). This may therefore be read as an elaboration on the meaning of לְקַדְּשׁוֹ in the Decalogues. Human sanctification of the Sabbath is seen at least in part to be practiced by refraining from work.

The idea of sanctification begins and ends the Sabbath commandment in Exod 20:8, 11, forming an *inclusio*. Exod 20:8 prescribes the practice of humans sanctifying the Sabbath, and 20:11 describes YHWH having done it. With the different rationale given for the Sabbath in Deut 5:12–15, the secondary mention of YHWH sanctifying the

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<sup>24</sup> In Lev 16 it is Yom Kippur being called שַׁבָּת (16:31), with the altar being cleansed, described with the piel of קדש (16:19), and the מְלָאכָה referring to the abstention from work. Both שַׁבָּת and קדש are therefore used differently than in Exod 20; 31; Deut 5; Jer 17. The situation is similar in Neh 13. The lexeme מְלָאכָה here refers to the work of the Levites and singers (13:10, 30). While piel of קדש with שַׁבָּת as object is found in Neh 13:22, מְלָאכָה refers to the work of the Levites and singers, and not the work to be abstained from on the Sabbath day (13:10, 30). שַׁבָּת is used about the seventh day, as in Exod 20; 31; Deut 5; Jer 17. The piel of קדש is used about sanctifying the Sabbath day, but this sanctification is described as guarding the city gates in 13:22 (שְׁמָרִים הַשַּׁעֲרִים), instead of being described as abstention from work. It seems to be an interesting play on שָׁמַר + שַׁבָּת + piel of קדש in comparison to Deut 5:12. In Deut 5:12 the Sabbath is to be guarded and sanctified, while in Neh 13:22 the Sabbath is to be sanctified by guarding the gates (וּבָאִים שְׁמָרִים הַשַּׁעֲרִים לְקַדְּשׁ אֶת־יְיָ הַשַּׁבָּת).

Sabbath is absent, and only the prescription for humans to sanctify the Sabbath is reused in Deut 5:12. The idea of sanctification of the Sabbath could thus be said to be more emphasized in Exod 20:8–11 than Deut 5:12–15.<sup>25</sup>

A question that can also be raised in this context is to what extent שמר can be used to establish a reuse between Deut 5:12–15 and Jer 17:19–27 in contrast to between Exod 20:8–11 and Jer 17:19–27.<sup>26</sup> It is true that the use of הִשְׁמָרוּ in Jer 17:21 evokes the opening word from Deut 5:12. But שמר with שָׁבַת as object is only found in Exod 31:13, 14, 16; Lev 19:3, 30; 26:2; Deut 5:12; Isa 56:2, 4, 6. Note that Jer 17:19–27 does not use שמר with שָׁבַת as object. The only time we find the verb שמר in this passage is in the imperative of הִשְׁמָרוּ בְּנִפְשׁוֹתֵיכֶם (“guard your lives”). Drawing a parallel between Deut 5:12 and Jer 17:21 based on שמר is thus largely based upon the syntactical role of the verb שמר in both passages, being the opening verb used for the basic admonition in both

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<sup>25</sup> The piel of קדש with שָׁבַת as object together with שָׁעַר is only found in Exod 20:8–11; Deut 5:12–14; Jer 17:19–27; Neh 13:19–22.

Given that volume of use is not a good indicator for direction of dependence, this evidence does not seem to warrant a claim that there is a reuse between Exod 20 and Jer 17 rather than between Deut 5 and Jer 17. Interestingly, 4QDeut<sup>n</sup> seems to add the final section of the Sabbath instruction in Exod 20:8–11 to its rendering of Deut 5:12–15. The LXX, Targums, Syriac Bible, and Vulgata also have לשמור in Deut 5:15, while in the MT and Samaritan Pentateuch (SP) we find לעשות. Instead of finishing with לעשות את־יום השבת לקדשו as in MT Deut 5:15, 4QDeut<sup>n</sup> replaces this with לעשות את־יום השבת לקדשו את השמים ואת הארץ את הים וכול אשר בהם וינוה ביום השביעי על כן ברך יהוה את יום השבת לקדשו. This addition, or similar additions, are also found in MT<sup>Ex</sup>, SP<sup>Ex</sup>, LXX<sup>Ex</sup>, but is missing in MT, SP, Targums, and Syriac Bible. LXX has καὶ ἀγαλλῆσαι αὐτόν. 4Q129 Phylactery B Deut 5:15 ends with אלוה[ה] יכזה לעשות את־יום השבת לקדשו, somewhat like a combination of אלוה יהוה in MT and אלוה יהוה in 4QDeut<sup>n</sup>. The first part resembles the opening of Deut 5:12 MT (שמור את־יום השבת לקדשו) while the rest Exod 20:11 (כי ששת־ימים עשה יהוה את־השמים ואת־הארץ את־הים ואת־כל־אשר־בהם וינח ביום השבת לקדשו) (השביעי על־כן ברך יהוה את־יום השבת ויקדשהו). 4Q134 Phylactery G is identical to Exod 20:11 MT, with only slight updating of orthography. The scribe of 4QDeut<sup>n</sup> thus seems to have conflated the two versions of the Sabbath instruction in Exod 20 and Deut 5. The formulation זכרתה כי עבד היית בארץ מצרים ויציאך יהוה אלוהיך משם ביד חזקה ובזרוע נטויה על כן צוך יהוה אלוהיך לשמור את יום השבת is found in 4QDeut<sup>n</sup>, MT, SP, LXX, Syriac Bible, and Vulgate, but missing in MT<sup>Ex</sup>, SP<sup>Ex</sup>, LXX<sup>Ex</sup>, PapNash.

<sup>26</sup> Cf. Fishbane, *Biblical Interpretation in Ancient Israel*, 132.



cases. It can be mentioned here that זָכַר is used in Jer 17:2 as well, even if in a different context.<sup>27</sup> The point here is that the simple presence or absence of terminology in this case is not determinative for the question of reuse. Given that שָׁמַר is used differently in Deut 5:12 and Jer 17:21, we should show caution in how we use שָׁמַר for the question of reuse.<sup>28</sup> By first establishing reuse on the basis of other and stronger arguments, we are allowed to emphasize the respective roles of שָׁמַר in the two passages.

*Thematic correspondence:* The obvious thematic correspondence regarding the Sabbath and rest is so prominent that it could go unremarked. In both passages there is a focus upon abstention from work. A related question here is whether Jer 17 can be said to reflect the creation mentioned in Exod 20:11 or the exit from slavery in Deut 5:14d–15. It does not seem to be a clear reference either way; Jeremiah 17 appears to be concerned with carrying loads, and, thus, is closer to the commercial concern in Neh 13. Therefore, before proceeding it would be useful to clarify the likely direction of dependence

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<sup>27</sup> As mentioned above there is an interesting use of the verbs שָׁמַר and זָכַר when we compare Exod 29:8–11 and Deut 15:12–15. It seems that in both cases זָכַר is used to evoke a reality rooted in a distant past. While זָכַר in Exod 20:8 is used to evoke the Sabbath rooted in this distant past, זָכַר in Deut 5:15 is instead used to evoke the slavery in Egypt, according to the narrative setting now 40 years in the past.

<sup>28</sup> Edwin Firmage’s observations regarding שָׁמַר in Deut 5 and Jer 17 are worth listening to, even if his denial of a link between the two passages goes too far: “Also unconvincing is the supposed parallel between Jer 17:21–22 (prose) and Deut 5:12–14. Departing somewhat from the original formulation of the commandment to honor the Sabbath (*zākôr* ‘*et-yôm hašabbāt lēqadšô*, Exod 20:8), Deuteronomy here tells the people to ‘keep the Sabbath day holy’ (*šāmôr* ‘*et-yôm hašabbāt lēqadšô*, literally ‘watch the Sabbath day to keep it holy’). Jeremiah, for his part, warns the people, ‘Take care (literally, ‘put a watch on yourselves’) and don’t carry burdens on the Sabbath day’ (*hišāmērū bēnapšôtēkem wē’al-tiš’û maššā’ bēyôm hašabbāt*). While both authors use the same verbal root, *šMR*, they do so with entirely different objects for that watchfulness, and the verb forms themselves are significantly different. In fact, *šāmar* and *nišmar* have nearly opposite meanings. *šāmar* is used of things one is careful *to do* (commandments, laws, etc.), while *nišmar* is used of things one is careful *to avoid*. . . . Far from establishing a link between the chapters, the use of the verb *šāmar/nišmar* suggests that Jeremiah is *not* basing himself on the Deuteronomic Decalogue” (Firmage, “Jeremiah, Deuteronomy, and the Priestly Corpus,” 66–67).

between Jer 17 and Neh 13, since parallels between the two have regularly appeared in scholarly discussions.

### Excursus on the Direction of Dependence between Jer 17 and Neh 13

Regarding Neh 13 it can be argued that it appears to depend on Jer 17 and not *vice versa*.<sup>29</sup> First, that there is reuse between the two passages is indicated by Jer 17 and Neh 13 being the only passages in the HB speaking of bringing a נִשְׂמָה (“goods”) to Jerusalem on the Sabbath (Jer 17:21-22, 24, 27; Neh 13:15, 19).<sup>30</sup> Jer 17:21–22 seems to have a broader scope than Neh 13, the latter focusing on commercial trade on the Sabbath. This is included in Jer 17, but the passage seems to formulate itself in more general terms about going in and out with any kind of load.

Second, direction of dependence is indicated by commercial activity being implicit in Jer 17 while this is explicated and clarified in Neh 13. We can state the relation in general terms as follows: Deut 5 speaks of not working on the Sabbath, possibly with the idea of not carrying a load for commercial purposes implicit. Jeremiah

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<sup>29</sup> For an overview over scholarship and discussion on the relative chronology between Jer 17 and Neh 13 see Maier, *Jeremia als Lehrer der Tora*, 218–21, 223. She herself is open to the possibility that Neh 13 was source to Jer 17, but I do not find the arguments for this direction of dependence convincing.

<sup>30</sup> While מ and 4QJer<sup>a</sup> have נִשְׂמָה in the singular, ט and ב give a plural form in Jer 17:21–22, 24, 27, except ב in 17:27 having a singular. For a helpful discussion on the meaning of נִשְׂמָה see Fishbane, *Biblical Interpretation in Ancient Israel*, 132n, 133n. And for an illuminating parallel to Exod 16 and bringing in manna see Fishbane, *Biblical Interpretation in Ancient Israel*, 133n.

The word נִשְׂמָה is used in three different ways in the Torah: (1) for the load carried by a donkey (Exod 23:5), (2) for the loads carried by the priest (Num 4:15, 19, 24, 27, 31-32, 47, 49), and (3) the load of the people carried by Moses (Num 11:11, 17; Deut 1:12). In none of the cases I can see a background to the use of נִשְׂמָה in Jer 17:19–27. Exod 23:5 may be a related situation with a donkey carrying the load. Such type of carrying a נִשְׂמָה by an animal is probably included in Jer 17, even if there seems to be no case for speaking of literary reuse between the passages.

17 speaks of not working on the Sabbath, making the prohibition against carrying a burden explicit and leaving implicit that this was for commercial purposes. Neh 13 speaks of not working on the Sabbath; making explicit the prohibition against carrying a burden for commercial purposes.

Third, Neh 13:18 mentions that the bringing in of goods to Jerusalem was the reason for the exile, while Jer 17:27 presents such punishment as a conditional future possibility if the people desecrate the Sabbath.<sup>31</sup> It therefore seems reasonable to see Neh 13 as the borrowing text, reusing Jer 17, and not *vice versa*.

### Direction of Dependence

*Reference to a source:* The clause כִּי־אָמַרְתִּי אֲתֹמְרֵיכֶם (‘‘as I commanded your

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<sup>31</sup> Cf. Fishbane, *Biblical Interpretation in Ancient Israel*, 131–32. Fishbane writes concerning the restrictions outlined in Jer 17:21–22: ‘‘These secondary restrictions thus serve two purposes. They explicate aspects of the general decalogical command against labour on the Sabbath day, and so restrict behaviour—by requiring that any and all burdens remain in the home—as to curtail any opportunity for the transport of goods to Jerusalem. While such transfer of goods would seem to be for the sake of sale, it must be noted that this particular element is not mentioned in Jer. 17:21–2. The fact that it is detailed in Neh. 13:15–16 (and 10:32) has prompted the view that Jeremiah forbade the transfer of burdens to Jerusalem for storage only, and that it was Nehemiah who exegetically applied this prohibition to sales’’ (Fishbane, *Biblical Interpretation in Ancient Israel*, 133). Cf. Loring W. Batten, *A Critical and Exegetical Commentary on the Books of Ezra and Nehemiah*, ICC (New York: Scribner, 1913), 294–98; Kaufmann, *The Religion of Israel*, 385; Jacob Martin Myers, *Ezra. Nehemiah*, AB 14 (New York: Doubleday, 1965), 178, 213–16; Niels-Erik A. Andreasen, *The Old Testament Sabbath: A Tradition-Historical Investigation*, Dissertation Series 7 (Missoula, MT: SBL, 1972); H. G. M. Williamson, *Ezra, Nehemiah*, WBC 16 (Waco, TX: Word Books, 1998), 334, 394–96; Fischer, *Jeremia 1–25*, 564; Jassen, *Scripture and Law*, 190–94. Batten points out that in Neh 13 Nehemiah was only concerned with buying and selling on the Sabbath day, not the harvesting taking place on the Sabbath day (Batten, *Ezra and Nehemiah*, 295). Jassen finds three fundamental modifications in Neh 13:15–19 of Jer 17:21–22, indicating the priority of the latter: (1) ‘‘The use of ‘carrying’ (תשא) with the ‘load’ in Jer 17:21b is modified in Neh 15:15b to ‘bringing’ (ומביאים), the same verbal root found in Jer 17:21c (והבאתם)’’, (2) ‘‘Neh 15:15b interjects a long list of items . . . that may not be carried (משא, ‘goods’). This passage adds the further qualification that this list is not exhaustive (וכל משא, ‘and all sorts of goods’), and (3) ‘‘The time frame indicated in Jer 17:21b (ביום השבת, ‘on the Sabbath day’) is transposed to the end of Neh 13:15c.’’ He concludes: ‘‘These three modifications should be understood as *Nehemiah*’s attempt to provide a functional definition for Jer 17:21–22 and the associated Sabbath prohibition’’ (Jassen, *Scripture and Law*, 193). Lundbom, *Jeremiah 1–20*, 802–4.

fathers”) in Jer 17:22 refers to a previous instruction,<sup>32</sup> even if we on this basis cannot determine whether the source was written or oral, much less identify which source it refers to. However, given the case for reuse above, we can note that it parallels כְּאֲשֶׁר צִוָּךְ (as YHWH commanded you) in Deut 5:12 itself.<sup>33</sup> In both passages YHWH is presented as the speaker of the Sabbath instruction. As with much of Deuteronomy, the divine speech is recounted in the voice of Moses, explaining the 3.-person referenceto YHWH in כְּאֲשֶׁר צִוָּךְ יְהוָה אֱלֹהֶיךָ (as YHWH commanded you) in Deut 5:12, in contrast to the more direct 1cs speech given with אֶת־אֲבוֹתֵיכֶם כְּאֲשֶׁר צִוִּיתִי אֶת־אֲבוֹתֵיכֶם in Jer 17:22 as in Jer 17:19–27 in general.

In Jer 17:22 we find the reference to a previous commandment כְּאֲשֶׁר צִוִּיתִי אֶת־ (as I commanded your fathers”). Similar statements are also found in the Deuteronomic Decalogue. In Deut 5:12, 16 we find the repeated clause כְּאֲשֶׁר צִוָּךְ יְהוָה אֱלֹהֶיךָ (as YHWH your God commanded you”). A similar formulation is also found in the more elaborated הַשְׁבֵּת הַשַּׁבָּת לַעֲשׂוֹת אֶת־יְהוָה אֱלֹהֶיךָ לְעֲשׂוֹת אֶת־יְהוָה אֱלֹהֶיךָ (therefore YHWH your God commanded you to practice the Sabbath day”) in Deut 5:15. In all four cases a clear reference to a previous instruction is stated. It implies that both Jer 17 and Deut 5 presuppose a previous command by YHWH. The construction כְּ + אֲשֶׁר + צוּה is rather common in the HB, found frequently both in Exodus and Deuteronomy.<sup>34</sup> This clause,

<sup>32</sup> Jeremiah 17:22 LXX renders it close to MT, καθὼς ἐνετείλαμην τοῖς πατράσιν ὑμῶν.

<sup>33</sup> In MT<sup>Ex</sup>, SP<sup>Ex</sup>, LXX<sup>Ex</sup>, PapNash does not have כְּאֲשֶׁר צוּךְ יְהוָה אֱלֹהֶיךָ.

<sup>34</sup> Gen 6:22; 7:5, 9, 16; 21:4; 47:11; 50:12; Exod 7:6, 10, 20; 12:28, 50; 16:24, 34; 23:15; 29:35; 31:11; 34:4; 39:1, 5, 7, 21, 26, 29, 31–32, 42–43; 40:16, 19, 21, 23, 25, 27, 29, 32; Lev 8:4, 9, 13, 17, 21, 29, 31, 34; 9:7, 10, 21; 10:15, 18; 16:34; 24:23; Num 1:19, 54; 2:33–34; 3:16, 42, 51; 8:3, 20, 22; 9:5; 15:36; 17:26; 20:9, 27; 26:4; 27:11, 22; 30:1; 31:7, 31, 41, 47; 32:25; 36:10; Deut 1:3, 19, 41; 4:5; 5:12, 16, 32; 6:25; 10:5; 12:21; 20:17; 24:8; 26:13–14; 30:2; 31:5; 34:9; Josh 1:7; 4:8, 10; 8:27, 31, 33; 10:40; 11:12,

therefore, does not help us to establish a bias towards Deut 5 in Jer 17. In Exodus-Numbers it is common to have יהנה as subject in such constructions, while a form of יהנה is more typical in Deuteronomy. Jeremiah only uses כְּאֲשֶׁר + צוּה twice, in Jer 13:5 (כְּאֲשֶׁר צוּה יְהוָה אוֹתִי) and 17:22 (כְּאֲשֶׁר צוּיַתִּי אֶת־אֲבוֹתֵיכֶם). The lexemes צוּה with אָב as complement is found in Judg 2:20; 3:4; 1 Kgs 8:58; 17:13; Ps 78:5; Jer 7:22; 11:4; 17:22; cf. 2 Kgs 21:8; Jer 13:5. However, even if it is not possible to say that כְּאֲשֶׁר צוּיַתִּי אֶת־אֲבוֹתֵיכֶם in Jer 17:22 necessarily has Exod 20 or Deut 5 in mind, at least it appears to refer to a command quite similar to them.<sup>35</sup>

Further, the book of Jeremiah only uses כְּאֲשֶׁר + צוּה twice, in Jer 13:5 (כְּאֲשֶׁר צוּה יְהוָה אוֹתִי) and 17:22 (כְּאֲשֶׁר צוּיַתִּי אֶת־אֲבוֹתֵיכֶם), while it is rather common in Deuteronomy.<sup>36</sup> If the argument of volume of use should be given any weight, it could be said that the frequency in Deuteronomy compared to the sparsity in Jeremiah indicates that Jer 17:22 is here influenced by Deut 5:12. However, the argument from volume in favor of reuse can go both directions. A borrowing text can reuse a particular locution only once or a few times when in the source text the locution is used frequently and vice versa. We observe that this locution is embedded within a larger parallel, אֶת־יּוֹם הַשַּׁבָּת וְקִדְשָׁתָם אֶת־יּוֹם הַשַּׁבָּת כְּאֲשֶׁר צוּיַתִּי in Deut 5:12 compared to אֶת־יּוֹם הַשַּׁבָּת וְקִדְשָׁתָם אֶת־יּוֹם הַשַּׁבָּת כְּאֲשֶׁר צוּיַתִּי in Jer 17:22. Since the clause אֶת־יּוֹם הַשַּׁבָּת וְקִדְשָׁתָם אֶת־יּוֹם הַשַּׁבָּת in Jer 17:22 seems

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15, 20; 13:6; 14:2, 5; 21:8; 1 Sam 13:14; 17:20; 25:30; 2 Sam 5:25; 9:11; 13:29; 24:19; 1 Kgs 9:4; 2 Kgs 11:9; 14:6; 16:16; 17:13, 34; 21:8; Jer 11:4; 13:5; 17:22; 26:8; 35:10, 18; 36:8; 38:27; 50:21; Ezek 9:11; 12:7; 24:18; 37:7, 10; Ruth 3:6; Esth 2:20; 3:12; 4:17; 8:9; Ezra 4:3; Neh 8:1; 1 Chr 6:34; 14:16; 15:15; 24:19; 2 Chr 7:17; 23:8; 25:4.

<sup>35</sup> The messenger formula יְהוָה אָמַר in Jer 17:21 should be taken as most likely an oral source in direct communication with Jeremiah, and is thus not relevant for our present discussion of sources.

<sup>36</sup> Deut 1:19; 4:5; 5:12, 16, 32; 6:25; 10:5; 12:21; 20:17; 24:8; 34:9.

dependent upon אֶת־יּוֹם הַשַּׁבָּת לְקַדְּשׁוֹ in Deut 5:12, as will be seen below, it therefore appears reasonable to see כְּאֲשֶׁר צִוִּיתִי אֶת־אֲבוֹתֵיכֶם in Jer 17:22 as dependent upon Deut 5:12. The clause לְקַדְּשׁוֹ כְּאֲשֶׁר צִוָּה יְהוָה אֱלֹהֵיךָ in Deut 5:12 would then refer to an instruction preceding it, likely Exod 20:8.

Second, I pointed out above the various parallel lexemes, phrases, and clauses between Deut 5:12–15 and Jer 17:19–27, with some of them constituting some of the basic terminology of the respective passages, as with אֶת־יּוֹם הַשַּׁבָּת (Deut 5:12, 15; Jer 17:21–22, 24, 27), the clause piel of קִדַּשׁ with שַׁבָּת as object (Deut 5:12; Jer 17:22, 24, 27), and finally the lexeme שָׁעַר (Deut 5:14; Jer 17:19–21, 24–25, 27). In all these cases the lexeme, phrase, or clause is only used once or twice in Deut 5 while it is repeated more frequently in Jer 17. One way, if not the only way, to explain this would be that Jer 17 reuses memorized lexemes, phrases, and clauses from Deut 5, integrating them in various ways in its own composition. As far as I can see these are used as is seen fit according to each respective context.

Of particular interest are the parallels between Deut 5:12–13 and Jer 17:21–22. These are summed up in Table 4. Here Jer 17:21–22 seems to split up the opening command in Deut 5:12, לְשׂוֹר אֶת־יּוֹם הַשַּׁבָּת, to introduce its own legal *novum* into the original passage (הַשְּׁמָרוּ בְּנַפְשׁוֹתֵיכֶם וְאִל־תִּשְׂאוּ מִשָּׂא בְיּוֹם הַשַּׁבָּת וְהִבֵּאתֶם בְּשַׁעֲרֵי יְרוּשָׁלַם וְלֹא־ תוֹצִיאוּ מִשָּׂא מִבְּתֵיכֶם).<sup>37</sup> Table 5 shows how it incorporates יּוֹם הַשַּׁבָּת into this legal *novum*. Here we see how Jer 17:21–22 split up the opening command in Deut 5:12, לְשׂוֹר אֶת־יּוֹם הַשַּׁבָּת, using בְּיּוֹם הַשַּׁבָּת at the end of each of the two interpolations to bring the reuse back

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<sup>37</sup> It is interesting to note that it is precisely the legal nova of Jer 17:21–22 that receive most attention in the DSS as mentioned by Jassen, *Scripture and Law*, 179.

**Table 4. Deut 5:12–15 and Jer 17:21–22**

Deut 5:12–13	Jer 17:21–22
<p><sup>12</sup> שְׁמֹר אֶת־יְוֹם הַשַּׁבָּת לְקַדְּשׁוֹ כַּאֲשֶׁר צִוָּךְ יְהוָה אֱלֹהֶיךָ <sup>13</sup> שֵׁשֶׁת יָמִים תַּעֲבֹד וַעֲשִׂיתָ כָּל־מְלֹאכֶתְךָ:</p>	<p><sup>21</sup> כֹּה אָמַר יְהוָה הַשְׁמְרוּ בְנַפְשׁוֹתֵיכֶם וְאַל־תִּשְׂאוּ מִשָּׂא בְיוֹם הַשַּׁבָּת וְהִבַּאתֶם בְּשַׁעְרֵי יְרוּשָׁלַם: <sup>22</sup> וְלֹא־תוֹצִיאוּ מִשָּׂא מִבֵּיתְכֶם בְּיוֹם הַשַּׁבָּת וְכָל־מְלֹאכָה לֹא תַעֲשׂוּ וְקִדְּשֶׁתֶם אֶת־יְוֹם הַשַּׁבָּת כַּאֲשֶׁר צִוִּיתִי אֶת־אֲבוֹתֵיכֶם:</p>
<p><sup>12</sup> Guard the Sabbath day to sanctify it, as YHWH your God commanded you. <sup>13</sup> Six days you shall labor, and do all your work . . . (Deut 5:12–13).</p>	<p><sup>21</sup> Thus says YHWH: Guard your lives, and do not carry a load on the Sabbath day and enter the gates of Jerusalem. <sup>22</sup> And do not remove a load from your houses on the Sabbath day, nor do any work, a sanctify the Sabbath day, as I commanded your fathers.</p>

**Table 5. Modifications in Jer 17:21–22**

Deut 5:12–13	Jer 17:21–22
<p><sup>12</sup> שְׁמֹר אֶת־יְוֹם הַשַּׁבָּת לְקַדְּשׁוֹ כַּאֲשֶׁר צִוָּךְ יְהוָה אֱלֹהֶיךָ <sup>13</sup> שֵׁשֶׁת יָמִים תַּעֲבֹד וַעֲשִׂיתָ כָּל־מְלֹאכֶתְךָ:</p>	<p><sup>21</sup> כֹּה אָמַר יְהוָה הַשְׁמְרוּ בְנַפְשׁוֹתֵיכֶם וְאַל־תִּשְׂאוּ מִשָּׂא בְיוֹם הַשַּׁבָּת וְהִבַּאתֶם בְּשַׁעְרֵי יְרוּשָׁלַם: <sup>22</sup> וְלֹא־תוֹצִיאוּ מִשָּׂא מִבֵּיתְכֶם בְּיוֹם הַשַּׁבָּת וְכָל־מְלֹאכָה לֹא תַעֲשׂוּ וְקִדְּשֶׁתֶם אֶת־יְוֹם הַשַּׁבָּת כַּאֲשֶׁר צִוִּיתִי אֶת־אֲבוֹתֵיכֶם:</p>

to bring the reuse back to Deut 5:12.<sup>38</sup> Then אֶת־יְוֹם הַשַּׁבָּת resumes, as a *Wiederaufnahme*,

the more direct reuse of שְׁמֹר אֶת־יְוֹם הַשַּׁבָּת לְקַדְּשׁוֹ כַּאֲשֶׁר צִוָּךְ יְהוָה אֱלֹהֶיךָ from Deut 5:12.

Thus, if we exclude the legal *novum* of Jer 17:21–22 we get a very similar structure as to

that of Deut 5:12. This is illustrated in Table 6:

<sup>38</sup> Further, as noted above we here also see a new use of שָׂעַר. In Deut 5:14 שָׂעַר is used to refer to the stranger within the gates (וְגֵרְךָ אֲשֶׁר בְּשַׁעְרֶיךָ), while in in Jer 17:21 it is used for those bringing loads through Jerusalem’s gates on the Sabbath (וְהִבַּאתֶם בְּשַׁעְרֵי יְרוּשָׁלַם). Neh 13 is even closer to the prohibition for the stranger inside the gates. The גֵר (“stranger”) mentioned in Jer 17. As a matter of fact, Jeremiah speaks relatively seldom of the גֵר (Jer 7:6; 14:8; 22:3).

**Table 6. The legal *novum* excluded from Jer 17:21–22**

Deut 5:12–13	Jer 17:21–22
שמור <sup>12</sup>	... השמרו <sup>21</sup>
את־יום השבת	... ביום השבת ...
לקדשו	... ביום השבת <sup>22</sup>
כֹּאֲשֶׁר צִוְּךָ יְהוָה אֱלֹהֶיךָ	וְכָל־מְלָאכָה לֹא תַעֲשׂוּ
שֵׁשֶׁת יָמִים תַּעֲבֹד <sup>13</sup>	וְקִדַּשְׁתֶּם אֶת־יוֹם הַשַּׁבָּת
וַעֲשִׂיתָ כָּל־מְלַאכְתְּךָ:	כֹּאֲשֶׁר צִוִּיתִי אֶת־אֲבוֹתֵיכֶם:

Further, it may also be that we should understand the inverted order created between וְעָשִׂיתָ כָּל־מְלַאכְתְּךָ in Deut 5:13 and וְכָל־מְלָאכָה לֹא תַעֲשׂוּ in Jer 17:22 as an intentional inversion to mark reuse, according to Seidel’s law of inversion.<sup>39</sup> This may explain why Jer 17:21–22 does not include שֵׁשֶׁת יָמִים תַּעֲבֹד from Deut 5:13, because it did not conform to the compositional logic used by the author when making Deut 5:12–13 ‘fan’ out into his own composition, only giving an inversion at the point where the more direct reuse is resumed.

The result of this reuse is that the source-reference in Jer 17:22 (כֹּאֲשֶׁר צִוִּיתִי אֶת־ (אֲבוֹתֵיכֶם)) comes at the end of this closely-knit reuse. This leaves the impression that all of the preceding is drawn from the older reused source. This again has created major disagreement among scholars over how to understand the character of the reuse in Jer 17:19–27. I will return to consider this debate below.

While I have found the prohibition against doing work on the Sabbath and sanctifying the day as likely having been borrowed from Deut 5:12–15, a further question

<sup>39</sup> A weakness in seeing Jer 17:21–22 as a case of Seidel’s law of inversion is that it is only one element that is inverted, and not the order of all the elements in this section.



to be pondered is whether Jer 17:21–22 might also have a literary precursor for what I have so far called the legal *novum* of this passage, וְאַל־תִּשְׂאוּ מִשָּׂא בְיוֹם הַשְּׂמֵרָה בְּנִפְשׁוֹתֵיכֶם וְלֹא־תוֹצִיאוּ מִשָּׂא מִבְּתֵיכֶם הַשְּׂבֵת וְהִבֵּאתֶם בְּשַׁעֲרֵי יְרוּשָׁלַם וְלֹא־תוֹצִיאוּ מִשָּׂא מִבְּתֵיכֶם. Possible candidates could be the instructions concerning manna in Exod 16, prohibiting its ingathering on the Sabbath, Num 15:32–36 with its sanctions against a man collecting wood, presumably intending to carry his load of wood back to his lodging-place to make a fire, and the prohibitions against doing one’s work in the Decalogues of Exod 20 and Deut 5.<sup>40</sup> None of these passages seem to contain strong links to the language used within Jer 17. However, if we combine the ideas of not gathering manna on the seventh day but remaining in one’s place from Exod 16, the sanctions against gathering wood on the Sabbath in Num 15, with the prohibition against doing one’s work on the Sabbath in the Decalogues of Exod 20 and Deut 5, we are not far from Jer 17:21–22’s prohibition against bringing loads in Jerusalem’s gates and out of one’s own homes. Even if the parallels, primarily thematic, do not give us a basis for claiming literary reuse, the claim כְּאֲשֶׁר צִוִּיתִי אֲבוֹתֵיכֶם (“as I commanded your fathers”) in Jer 17:22 at least refers to a previous instruction. Jasson has

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<sup>40</sup> We find a certain degree of parallels between Exod 16 and Jer 17: First, given that Jer 17:21–22 reuses Deut 5:12–15, why does it read הַשְּׂמֵרָה בְּנִפְשׁוֹתֵיכֶם and not something closer to הַשְּׂבֵת in Deut 5:12? In Exod 16 the people are first instructed to prepare the manna on the sixth day and keep (לְמִשְׁמֶרֶת עַד־הַבֹּקֶר), 16:23) it for the Sabbath, and then afterwards they are instructed to keep an omer of the manna for future generations (לְמִשְׁמֶרֶת לְדֹרֹתֵיכֶם), 16:32), and Moses instructs Aaron to execute it ( לְמִשְׁמֶרֶת ) (לְדֹרֹתֵיכֶם, 16:33), and Aaron does it (לְמִשְׁמֶרֶת), 16:34). Second, the context in both passages concern appropriate action and inaction on the weekly Sabbath. In Exod 16 the people should gather manna (מֶן) on the six days, a double portion on the sixth day, while each should remain in his place on the Sabbath ( שְׁבוּ ) (לְמִשְׁמֶרֶת, 16:29). In Jer 17 the people could bring loads (מִשָּׂא) in and out of the gates six days, but not on the Sabbath (וְלֹא־תוֹצִיאוּ מִשָּׂא מִבְּתֵיכֶם הַשְּׂבֵת וְהִבֵּאתֶם בְּשַׁעֲרֵי יְרוּשָׁלַם וְלֹא־תוֹצִיאוּ מִשָּׂא מִבְּתֵיכֶם, Jer 17:21–22). Another possible source for Jer 17:21–22 might be Num 15:32–36. Here a man was caught collecting wood on the Sabbath, and presumably intended to carry his load of wood back to his lodging-place to make a fire. While inquiring of YHWH what to do he was placed in custody (מִשְׁמֶרֶת, 15:34).



guarding the Sabbath as something external, since the Sabbath-obedience is tied to one's very existence.

In other words, if YHWH wanted to address a situation in Jeremiah's day where (1) the people were busying themselves with carrying various loads on the Sabbath, (2) where this could meet with sanctions like an enemy-attack—threatening the existence of the people (cf. 17:27), and (3) if he wanted to base this warning on themes from Exod 16; 20; Num 15; and Deut 5, then Jer 17:21–22 can be seen as an acceptable summary and adaptation of the basic idea in the Torah-passages. The formulations **הִשְׁמְרוּ בְּנַפְשׁוֹתֵיכֶם** (“and guard your lives”) and **וְאַל־תִּשְׂאוּ מִשָּׂא בְּיוֹם הַשַּׁבָּת וְהִבֵּאתֶם בְּשַׁעְרֵי יְרוּשָׁלַם וְלֹא־תוֹצִיאוּ** (“and do not lift a load on the Sabbath day and bring it in the gates of Jerusalem, and do not remove a load from your house”) in 17:21–22 seems to resonate at several points with locutions and themes in Exod 16; 20; Num 15; and Deut 5.

Third, I have already mentioned the inversion of the elements parallel to Deut 5 in Jer 17. In 17:21–22 we find the order:

- (1) **הִשְׁמְרוּ בְּנַפְשׁוֹתֵיכֶם** (“Guard your lives”)
- (2) **וְאַל־תִּשְׂאוּ מִשָּׂא בְּיוֹם הַשַּׁבָּת וְהִבֵּאתֶם בְּשַׁעְרֵי יְרוּשָׁלַם** (“you shall not lift a load on the Sabbath day and bring it/enter the gates of Jerusalem”)<sup>45</sup>,
- (3) **וְלֹא־תוֹצִיאוּ מִשָּׂא מִבְּתֵיכֶם בְּיוֹם הַשַּׁבָּת** (“and you shall not remove a load from your house on the Sabbath day”),
- (4) **וְכָל־מְלָאכָה לֹא תַעֲשׂוּ** (“and you shall not do any work”), and
- (5) **וְקִדַּשְׁתֶּם אֶת־יוֹם הַשַּׁבָּת** (“but you shall sanctify the Sabbath day”).

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<sup>45</sup> Jer 17:21 reads: **וְאַל־תִּשְׂאוּ מִשָּׂא בְּיוֹם הַשַּׁבָּת וְהִבֵּאתֶם בְּשַׁעְרֵי יְרוּשָׁלַם** (“and do not carry a load on the Sabbath and enter the gates of Jerusalem”). This could be read as two commands (**וְאַל־תִּשְׂאוּ מִשָּׂא בְּיוֹם הַשַּׁבָּת** and **וְהִבֵּאתֶם בְּשַׁעְרֵי יְרוּשָׁלַם**, translated as “and do not carry a load on the Sabbath” and “or enter the gates of Jerusalem [with “with a load on the Sabbath” elliptically implied]”) or one command (“and do not carry a load on the Sabbath and bring them in the gates of Jerusalem”). 17:24, however, seems to make clear that they should be understood as one instruction, **לֹא תָבִיאוּ מִשָּׂא בְּשַׁעְרֵי הָעִיר הַזֹּאת בְּיוֹם הַשַּׁבָּת** (“not to bring a load in (through) the gates of this city on the Sabbath day”).

It is the final two (4 and 5) that most closely parallel Deut 5, with the first three (1–3) with more loose links to the Sabbath instructions in Torah. In 17:24 we find a similar order:

(2) לְבַלְתִּי הָבִיא מְשָׂא בְשַׁעְרֵי הָעִיר הַזֹּאת בְּיוֹם הַשַּׁבָּת (“not to bring a load in (through) the gates of this city on the Sabbath day”),

(5) וּלְקַדֵּשׁ אֶת-יּוֹם הַשַּׁבָּת (“to sanctify the Sabbath day”), and

(4) לְבַלְתִּי עֲשׂוֹת-יָדָי כָּל-מְלָאכָה (“not to do any work”).

Again, the *novum* is placed at the beginning (2), with the two closer parallels to Deut 5 (5 and 4) following at the end of the list. In both Jer 17:21–22 and 17:24 the people are positively encouraged to observe the Sabbath. Interestingly, when in 17:27 the reverse situation is described—the consequences if the people do *not* observe the Sabbath—the order between the close parallels to Deut 5 and the *novum* is reversed:

(5) לְקַדֵּשׁ אֶת-יּוֹם הַשַּׁבָּת (“to sanctify the Sabbath day”), and

(2) וּלְבַלְתִּי שָׂאת מְשָׂא וּבֹא בְשַׁעְרֵי יְרוּשָׁלַם בְּיוֹם הַשַּׁבָּת (“and not carry a load and enter the gates of Jerusalem on the Sabbath day”).

Now the close parallel to Deut 5 (5) is given first, and then the *novum* (2) secondarily. It strengthens the case that both times the positive injunctions are given (17:21–22, 24) they are given in the same order, before the reverse order is given in the negative sanctions (17:27).<sup>46</sup> If this observation is correct, it may be an authorial technique, where the form

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<sup>46</sup> Lundbom writes: “Preaching a conditional covenant derives from Deuteronomy (Deut 8:18–20; 11:13–17), where blessings and curses for compliance and noncompliance are also present (11:26–28; and especially chap. 28)” (Lundbom, *Jeremiah 1–20*, 808). Peter Craigie et al. sees parallels between the sanction in Jer 17 and Amos: “The terminology Jeremiah uses to describe the destruction of Jerusalem is precisely what Amos uses in chaps. 1–2 for the destruction of the nations surrounding Israel and Judah (Amos 1:4, 7, 10, 12, 14, 2:2; 2:5; cf. Amos 1:14 for “kindle”). The only difference is that Jeremiah speaks of the fire against the gate, while Amos speaks of the fire against the wall” (Craigie et al., *Jeremiah 1–25*, 239). Cf. Hos 8:14. Might Amos 8:5 be a precursor to Jer 17? Cf. Jassen, *Scripture and Law*, 148. McKane does not see Amos 8:5 as warranting a pre-exilic dating of Jer 17:19–27 (McKane, *Jeremiah*, 417).

It can be objected to the proposed reading there that the order of elements between 17:21–22 and 17:24 as well is reversed. If this is emphasized, an alternative explanation to the one suggested here might be that the author simply prefers some kind of variation whenever possible.

and content go hand in hand. When a reverse situation is explained, the author reversed the order between his exact repetition and the creative variation as compared to his source(s).

### Appropriation

I have argued that Jer 17:19–27 introduces a slight legal *novum*. No previous Sabbath instruction—at least as attested in writing—specifically addressed the question of carrying and moving a מִשָּׂא on the Sabbath day. Two questions that need to be addressed are (1) how to understand this *novum* in relation to previous Sabbath instructions in the HB, and (2) whether what seems to be a reference to Deut 5:12–15 in Jer 17:21–22 (“as I [YHWH] commanded your fathers” (כִּאֲשֶׁר צִוִּיתִי אֶת־אֲבוֹתֵיכֶם)) can be said to represent or misrepresent the Torah-passage. Before entering this discussion, I will just point out that while there is a close resemblance between כִּאֲשֶׁר צִוִּיתִי אֶת־אֲבוֹתֵיכֶם in Jer 17:22, the two appear to have different references. While Deut 5:12 refers back to Exod 20:8–11, Jer 17:19–27 can be said to refer to both Exod 20:8–11 and Deut 5:12–15 or Deut 5:12–15 alone.

Michael Fishbane sees in כִּאֲשֶׁר צִוִּיתִי אֶת־אֲבוֹתֵיכֶם (“as I commanded your fathers”) in Jer 17:22 that “the general Pentateuchal prohibition of Sabbath work is expanded in new ways, and the entire result is presented as Sinaitic in origin.”<sup>47</sup> Commenting on the additions, or interpolations as he calls them, in Jer 17:21–22 to the Sabbath instruction of the Decalogues (Exod 20:8–11; Deut 5:12–15), he writes: “The effect of this

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<sup>47</sup> Fishbane, *Biblical Interpretation in Ancient Israel*, 132. Jassen follows Fishbane, see Jassen, *Scripture and Law*, 179.

interpolation into the deuteronomic citation is transformative. Not only has the original Sabbath law been expanded and made more comprehensive, but the innovations have been raised to the level of Sinaitic prohibitions, and thereby legitimized.”<sup>48</sup> He continues with an argument from silence: “The new teaching is thus authorized around a pseudo-citation from the Pentateuch (‘as I commanded’): for it is nowhere stated there that one is forbidden to bear burdens into Jerusalem on the Sabbath, or to take them from the private to the public domain.”<sup>49</sup> And finally,

As noted, the pseudo-citation in Jer. 17:21–2 gives the exegetical expansion to Deut. 5:12–14 Sinaitic, and so revelatory, status. Even more remarkable is the fact that the teaching given by Jeremiah is itself a divine revelation (‘thus says YHWH’, v. 21a), so that it is YHWH who putatively cites himself and his ancient teachings. . . . In sum, such a revelation by the Deity which presumptively cites regulations hitherto unrecorded as known and ancient is most remarkable. It points, at the very least, to the need in ancient Israel to camouflage and legitimate its exegetical innovations. . . . Indeed, inner-biblical legal exegesis contains many other instances whereby the old revelation is misrepresented to one degree or another; but there is none like Jer. 17:21–2 where exegetical innovations are so brazenly represented as a citation of the old revelation by YHWH himself.<sup>50</sup>

A question to be asked is if Jer 17 really is such a brazen pseudo-citation as Fishbane here claims? Does the כְּאֲשֶׁר צִוִּיתִי אֶת-אֲבוֹתֵיכֶם (“as I commanded your fathers”) in Jer 17:22 necessarily claim to be a Sinaitic instruction? This is nowhere clear. It is something that Fishbane simply assumes. According to him, the exact formulation is claimed to be Sinaitic instruction. Calling Jer 17:20–21 a “pseudo-citation” that “presumptively cites regulations hitherto unrecorded” imposes, anachronistically, our

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<sup>48</sup> Fishbane, *Biblical Interpretation in Ancient Israel*, 133.

<sup>49</sup> Fishbane, *Biblical Interpretation in Ancient Israel*, 133.

<sup>50</sup> Fishbane, *Biblical Interpretation in Ancient Israel*, 134. Bernard Levinson’s “rhetoric of concealment” when interpreting inner-Torah reuse seems to presuppose a similar understanding (Levinson, *Deuteronomy*, 20–21; Levinson, *Legal Revision*, 48).

standards for what is to be considered a citation proper. Further, it is based upon an argument from silence. The passage can be read in at least two ways that cast doubt on the definitiveness of Fishbane’s reading. First, we cannot discount the possibility that the author of Jer 17—even YHWH himself who is presented as the speaker in both passages—simply claimed to bring out what he saw as implicit in the previous instruction. Second, כַּאֲשֶׁר צִוִּיתִי אֶת־אֲבוֹתֵיכֶם in Jer 17:22 immediately follows after two cases of close reuse of Deut 5 ( וְכָל־מְלָאכָה לֹא תַעֲשׂוּ ( “and you shall not do any work”) and וְקִדְשִׁתֶּם אֶת־יְוֹם הַשַּׁבָּת ( “but you shall sanctify the Sabbath day”). Would it not be possible that the author was simply referring to these two when writing אֶת־אֲבוֹתֵיכֶם?

Jerry Gladson advocates the second reading of Jer 17:21–22, against Fishbane. He suggests that the *novum* is not claimed to be Sinaitic instruction, but that the text can be read to indicate that only the sanctification of the Sabbath and abstention from work were quoted. He writes

that the writer, instead of, in effect, “rewriting” the earlier halakic text to justify a new expansion of it, has placed the Deuteronomistic text side by side with fresh halakic expansions having their origins in a new prophetic revelation identified by “Thus said Yhwh.” The prophetic author or editor maintains that this lies in continuity with the earlier revelation which he identifies by the phrase, “as I commanded your fathers” (Jer 17:22).<sup>51</sup>

Gladson continues: “References to the Deuteronomistic Decalogue have now been

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<sup>51</sup> Gladson, “Jeremiah 17:19–27,” 37–38. Using quotation marks and italics for reuse of Deut 5 Gladson proposes the following reading: “Thus said Yhwh: ‘For the sake of your lives, take care that you do not bear a burden on the Sabbath Day or bring it into the gates of Jerusalem. And do not carry a burden out of your houses on the Sabbath or *‘do any work, but keep the sabbath day holy,’* as I commanded your ancestors . . . . But if you listen to me, says the Lord, and bring no burden by the gates of this city on the Sabbath Day, but *‘keep the sabbath day holy and do not work on it,’* then there shall enter by the gates of this city kings who sit on the throne of David, riding in chariots and on horses, they and their officials, the people of Judah and the inhabitants of Jerusalem; and this city shall be inhabited forever.’”

expanded or interpreted for a new situation by a further divine oracle; they have not been understood as casuistry originally included in the Deuteronomistic version of the Sinaitic Code. Construed in this way, such a reference is not a pseudo-citation at all.”<sup>52</sup> Gladson suggests the *possibility* of an alternate reading of Jer 17:21–22 than that offered by Fishbane; namely, that Jer 17:21–22 combines a new prophetic revelation with the reuse of locutions from Deut 5.<sup>53</sup> While to me it does not seem possible to determine whether or not כְּאֲשֶׁר צִוִּיתִי אֶת־אֲבוֹתֵיכֶם in Jer 17:22 was intended to refer only to the two last injunctions in 17:21–22 and not all five, I will rather focus on the first alternative reading, namely that the author is claiming to bring out what he saw as implicit in the previous instruction.

The ideas of the *novum* in Jer 17 could be gleaned from Exod 16 or Num 15:32–36, as already mentioned. In this case they would either be pre- or post-Sinai, rather than Sinaitic, but the *novum* in Jer 17 would have possible literary precursors. It may even be

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<sup>52</sup> Gladson, “Jeremiah 17:19–27,” 38. Gladson points out that in Fishbane’s approach “there is a great deal of subjectivity inevitably shaped by one’s understanding of the development of Hebrew literature. . . . He has not succeeded in overcoming the difficulties presented by an interpreter’s own biases. One’s own conceptions of the development of OT literature and of the history of Israel’s religion cast long shadows over the making of judgments about intratextuality” (Gladson, “Jeremiah 17:19–27,” 38). The question here is if it is realistic, even desirable, to attempt an escape away from a degree of subjectivity when reading the biblical text? He writes on the same page: “The distinction I am making is obviously a minor one, yet it calls attention to the crucial difficulty in discerning when a biblical author is quoting another passage carefully, according to the recension of that passage accessible to her or him, and when the author is glossing, annotating, or otherwise expanding the passage. Such a distinction may not have existed in the minds of the biblical writers and editors, at least not in as technical a sense as it does to us. Our distinctions—where we place the quotation marks—must usually be tentative and subject to differing opinion.”

<sup>53</sup> Gladson, “Jeremiah 17:19–27,” 37–38. Cf. Maier, *Jeremia als Lehrer der Tora*, 215. Gladson’s reading is supported by Mastnjak. He writes: “First, the legal innovation precedes the citation of Deut 5 and is immediately introduced only by the prophetic ‘thus says Yahweh.’ Second, Fishbane’s assumption that ‘just as I commanded your ancestors’ applies to the innovative Sabbath-stipulations is belied by the fact that this clause is subordinated directly to a main clause that replicates the command ‘to sanctify the Sabbath-day,’ which is drawn from the source-text” (Mastnjak, *Textual Authority in Jeremiah*, 143).



that the author of Jer 17 simply thought that a prohibition against carrying a burden was implied by the prohibition against doing one's work on the Sabbath in Deut 5. But it might also be that it is meant as a reformulation of what Jer 17 seemed implied in the prohibition against doing one's work on the Sabbath in Deut 5.<sup>54</sup> With respect, Fishbane's claim that "the old revelation is misrepresented" in an attempt to "camouflage" the innovations may be the result of a projection of Fishbane's own literary standards and conceptions upon the text. According to the self-testimonies of Deut 5 and Jer 17, both record YHWH's speech. Rather than excluding this possibility *per se*, and interpreting the passages accordingly, we should allow for the possibility that whoever wrote the two did so according to this presupposition with an appropriate compositional logic.

Michael LeFebvre has questioned Fishbane's conclusions from another angle, one that does seem to bring us into a more fruitful line of thought. He points out that there is an "insurmountable problem for the prescriptive theory of Hebrew law," both in Jer 17 and Neh 10.<sup>55</sup> I do agree with LeFebvre in that there are problems with Fishbane's focus upon the reuse of exact wording. On the other hand, I also find LeFebvre's own use of the term 'prescriptive' problematic. As I explained in my first chapter, as far as we know,

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<sup>54</sup> Christl Maier writes, commenting on Fishbane's claim that Jer 17 represents a "pseudo-citation": "Dieser Schluß ist nicht zwingend, da das erweiterte Sabbatgebot durch die Botenformel in Jer 17,21aα als Gottesrede ausgewiesen ist. Es handelt sich um eine innerbiblische Auslegung des Sabbatsgebots, die dieses zitierend aufgreift und aktualisierend interpretiert. Seine Legitimation bezieht das erweiterte Gebot aus der Autorität des gottgesandten Propheten Jeremia" (Maier, *Jeremia als Lehrer der Tora*, 215).

<sup>55</sup> LeFebvre, *Collections, Codes, and Torah*, 117. While admitting that the cuneiform collections (e.g. LH) were 'literary and non-legislative,' Michael Fishbane argues that, '*the internal traditions of the Hebrew Bible present and regard the covenantal laws as legislative texts*' (Fishbane, *Biblical Interpretation in Ancient Israel*, 96. Italics original).

Torah was seen as normative and therefore prescriptive. The literary reuse of Deut 5:12–15 and threatened punishment if the instruction is rejected in Jer 17:19–27 do seem to support a normative concept of Torah. But I agree with LeFebvre in that Torah was not legislative, in the sense that exact wording constitutes the final boundaries of legitimate and illegitimate actions—and literary reuse for that matter. Torah is normative, but expansions of it can be seen as conforming to a view of Torah as covenantal instruction, opening for the concept of Living and Embodied Torah where expansions and elaborations based on a close reading seem not only permissible, but exactly what one is supposed to do, as will be seen in the two following cases.

In Neh 10:30 the people are said to have taken an oath to follow “the Torah of God which was given by the hand of Moses” (תורת האלהים אשר נתנה ביד משה). In 10:32 they promise a similar—if slightly different—restriction on the Sabbath as in Jer 17, not to buy goods from peoples of the land on the Sabbath.<sup>56</sup> It should be noted that neither the prohibition against carrying loads in Jer 17 or the prohibition against buying goods in Neh 13 can be said to be in Torah itself. They are both legal *nova*, even if it may be argued that they only explicate what was already implicit in Torah, and are presented as given in Torah.<sup>57</sup> Does not a passage like Jer 17:19–27 show that an appropriation that

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<sup>56</sup> וְעַמֵּי הָאָרֶץ הַמְּבִיאִים אֶת־הַמְּקָחוֹת וְכָל־שִׂבְרֵי יוֹם הַשַּׁבָּת לְמַכּוֹר לֹא־נִקְחָ מֵהֶם בַּשַּׁבָּת וּבַיּוֹם קֹדֶשׁ (Neh 10:32).

<sup>57</sup> Why is it that Jer 17 chooses such a vague word as מַשָּׂא (“load”)? Is it because it sought to be all-inclusive? Later Second Temple Judaism clearly saw this term as something that needed clarification, as shown by Jassen (Jassen, *Scripture and Law*, 179, 184–86, 191–94, 199–200, 202–5, 214–15). Jassen summarizes as follows: “Jer 17:21–22 is lacking in many of the necessary details and thus the Second Temple and rabbinic texts reflect a careful exegetical modification of much of the content of Jer 17:21–22” (Jassen, *Scripture and Law*, 213). In some ways מַשָּׂא in Jer 17 and חֶפֶץ in Isa 58 (see my discussion on Isa 58) have a similar reception in Second Temple Judaism. Both terms were seen as too ambiguous for precise application, and were therefore extensively debated so as to clarify their precise meaning.

also contains a certain elaboration of a Torah passage was seen as legitimate, and can be presented as *כְּאֲשֶׁר צִוִּיתִי אֶת־אֲבוֹתֵיכֶם*, even if the authority of the *novum* stands and falls with the authority of Jer 17:19–27? Since YHWH is presented as the speaker, he presumably has the full right to expand his own Torah-instructions. As with all of the other cases studied here, Jer 17:19–27 cannot be said to read the Torah-passage against the grain of Torah itself, but rather it reads Torah in an expansionist manner to encompass new settings and address new circumstances that did not exist when the initial instruction was given. As covenantal instruction, Torah was not meant to be exhaustive in the sense that it could not be adapted in order to authoritatively deal with new situations; in this sense, its words were not final. But it constitutes the basic parameters of God's will for humanity which the reader, through close reading, needs to appropriate and embody via its words, so as to make them come alive by applying them to new situations not specifically addressed in the literal formulations of Torah.

This also raises the question whether we as readers, ancient or modern, are entitled as well to perform certain elaborations of Torah. In a close reading of the text seeking to faithfully appropriate Torah for our present context, are we not also required to embody and live Torah in concrete forms of life not foreseen by the horizon of the biblical authors themselves? And can we claim a *כְּאֲשֶׁר צִוָּה יְהוָה אֱלֹהֵינוּ* (Deut 5:12) for such appropriations? If *כְּאֲשֶׁר צִוִּיתִי אֶת־אֲבוֹתֵיכֶם* in Jer 17:22 is understood as referring to all of the five preceding injunctions, it can be understood as implying that the people themselves should have understood that Jer 17's *novum* was implied by the previous instructions given, even if it was not formulated explicitly as such. Thus readers of Torah are not only responsible for particular appropriations we might make, but also for

implications of the Torah we should have seen.

On the other hand, it also seems that the personal disposition of the reader plays a significant role in what is read in a given text. Where some interpreters see continuity between Deut 5 and Jer 17, others see an intentional manipulation; might this not tell us as much about the reader as the text? It brings us back to the discussion of the heart earlier in Jer 17:9 which also raises the idea of reading as a disclosure of the thoughts of the heart. The question of Jer 17:9—who understands the heart?—finds an answer in 17:10, where God is declared as the searcher of hearts and kidneys.<sup>58</sup> In light of the profound deceptiveness of the heart (עַקֵּב הַלֵּב מִכָּל וְאָנָּשׁ הוּא מִי יִדְעֶנּוּ, 17:9) and the divine searcher of hearts and kidneys (אֲנִי יְהוָה חֹקֵר לֵב בַּחֲנוּן כְּלִיּוֹת וְלִתְתּוֹת לְאִישׁ כְּדַרְכּוֹ כְּפָרִי מֵעֵלְלָיו, 17:10), the question arises as to what implications this has for the idea of reading as a disclosure of the thoughts of the heart? Fischer sees לֵב (“heart”) as a *Leitwort* in Jer 17, with its attestation in Jer 17:1, 5, 9–10.<sup>59</sup> And according to Deuteronomy (Deut 6:6; 10:18), it was precisely the heart that was meant to contain Torah. With YHWH as searcher of the human deceptive heart, the only hope seen in the book of Jeremiah is the one found in Jer 31. YHWH himself needs to inscribe his Torah upon the human heart to change the ways of man; to change his manner of reading. Fischer writes on Jer 31: “The inscription of his תּוֹרָה on the heart ‘overwrites’ the sin engravings of Jer 17:1, and it also signifies that God goes beyond the writing of his

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<sup>58</sup> Cf. Fischer, *Jeremia 1–25*, 554–55.

<sup>59</sup> Fischer, *Jeremia 1–25*, 544, 554–55.

commandments on scrolls or stones on Mount Sinai (Exod 24:4; 31:18).”<sup>60</sup>

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<sup>60</sup> Fischer, “The Relationship of the Book of Jeremiah to the Torah,” 898. Cf. Greenberg, “Three Conceptions of the Torah,” 19–20; Carasik, *Theologies of the Mind*, 72; Schellenberg, “A “Lying Pen of the Scribes” (Jer 8:8)?,” 308–9; Eggleston, “*See and Read All These Words*”, 101.

## CHAPTER 6

### MANUMISSION INSTRUCTIONS IN EXOD 21:2–11; LEV

25:10, 39–46; DEUT 15:12–18; AND JER 34:8–22

#### **Introduction**

The discussion of the case of manumission instructions in Exod 21:2–11; Lev 25:10, 39–46; Deut 15:12–18 and Jer 34:8–22 follows thematically well after the previous chapter on the Sabbath instructions. The manumission instructions in the Pentateuch are related to the Sabbatical and Jubilee years. The idea of fair treatment of the socially vulnerable in the manumission instructions are thus linked to the cultic calendar, indicating the relationship between cult and morality once more. A similar link is seen in parallels between Lev 16; 23; 25 and Isa 58 to be discussed in the next chapter.

Since the days of Wellhausen, Jer 34 has occupied center stage in the question of the relation between the Pentateuch and Prophets, and more specifically the formation of the Pentateuch. For Wellhausen, “Jeremiah (xxxiv. 14) has not the faintest idea that the emancipation of the slaves must according to ‘law’ take place in the fiftieth year.”<sup>1</sup> In other words, the author of Jer 34 does not have “the faintest idea” about Lev 25.

Wellhausen saw the order of composition as Exod 21, Deut 15, Jer 34, and finally Lev

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<sup>1</sup> Wellhausen, *Prolegomena*, 120.

25. Since Jer 34 is used to date the so-called P source, this chapter according to Levinson has assumed the position of “an ‘Archimedean point’ in the relative dating of the Pentateuchal sources.”<sup>2</sup> Jer 34 warrants more treatment as compared to the other cases in this study, given the role Jer 34 has assumed in the discussion also of the relation between Torah and the Prophets. There are clear parallels between Jer 34 and Neh 5. But since Neh 5 only indirectly deals with the question of the relation between Torah and the Prophets and the direction of dependence rather seems to go from Jer 34 to Neh 5, I will not devote any extensive discussion to Neh 5 except where relevant for the present discussion.<sup>3</sup>

A key question that will be raised in the following is therefore whether Jer 34 shows traces of influence from Lev 25 or not, and if so, whether Lev 25 should be seen as a later redaction or part of the original composition of Jer 34. Generally, those admitting

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<sup>2</sup> Levinson, “Zedekiah's Release,” 319. Levinson made the same remark in his earlier article, Levinson, “The Manumission of Hermeneutics,” 283. For brief histories of scholarship on Jer 34 see Levinson, “The Manumission of Hermeneutics,” 283–84; Levinson, “Zedekiah's Release,” 313–18.

<sup>3</sup> Weinfeld argued that the manumission instructions in Torah are closer to the Mesopotamian *mīšarum*, while Neh 5 shows closer affinity with Solon's reform (Moshe Weinfeld, “Sabbatical Year and the Jubilee in the Pentateuchal Laws and their Ancient Near Eastern Background,” in *The Law in the Bible and in its Environment*, ed. T. Veijola (Helsinki: The Finnish Exegetical Society, 1990), 39–62). For a discussion of Weinfeld's arguments, see N. P. Lemche, “The Manumission of Slaves—The Fallow Year—The Sabbatical Year—The Jubel Year,” *VT* 26, no. 1 (1976): 38–59. Myers writes that Nehemiah “may have recalled the reprehensible action of the slaveholders in the time of Jeremiah (34:8 ff.)” (Myers, *Ezra, Nehemiah*, 131). Commenting on the relation between Neh 5 and the manumission instructions in Torah, Williamson writes: “Nehemiah acted immediately and absolutely, apparently, therefore, on his own authority and without invoking any of the specific legal stipulations. If the parallels noted with Lev 25 are conscious allusions, then we must conclude that Nehemiah acted within the spirit, not the letter of the law” (Williamson, *Ezra, Nehemiah*, 239). LeFebvre sums up his study of the relation between Neh 5 and its possible literary sources as follows: “Instead of citing texts as binding, he obliged the creditors by invoking: their fear of Yahweh and a divine curse (vv. 9, 12–13); their obligation as brother Jews (vv. 7–8); their national pride (v. 9); their own moral sensibilities (v. 9); and the pressure of public sensibilities (vv. 7, 13). Furthermore, the creditors never appeal to any text to defend their legal rights (“they could find not a word to answer,” v. 8). . . . the only prescriptive order emerging from the narrative *is the verdict stipulated by Nehemiah*” (LeFebvre, *Collections, Codes, and Torah*, 128. Italics original).

reuse of Lev 25 in Jer 34 see it as a later redactional layer. Present discussion on Jer 34 therefore centers around identifying the *ipsissima verba* of the prophet and later Deuteronomistic, possibly also priestly, redaction of the chapter. Levinson sums up present scholarship on Jer 34 as follows:

Thus, the various positions on Jer 34 seem to move within a single universe. The redactional issues are defined in terms of a single question: which verses are Jeremianic, and which are Deuteronomistic. The assumption is that Deuteronomy and its literary history are the only relevant considerations. All of the important challenges or modifications still move within this model and confirm its assumptions. The problem with these approaches is that they do not work. They explain away the evidence that most challenges their own explanatory model, and relegate the material that does not fit the model into problems of syntax, text-criticism or secondary expansion.<sup>4</sup>

As in the rest of this study, I will not concern myself with the question of the absolute dating of the passages under study. Thus, I am here not concerned with the question whether Jer 34 should be seen as a pre-exilic, exilic, or post-exilic text, even if I have not found anything in this chapter to preclude a compositional date close to the mentioned events.<sup>5</sup> Rather, my focus is upon clarifying the manner in which a biblical

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<sup>4</sup> Levinson, “Zedekiah's Release,” 318.

<sup>5</sup> Levinson has recently argued that Jer 34 reused Lev 25 and Deut 15 in its original composition, but questions whether Jer 34 should be seen as “a reliable historical witness to the circumstances leading to the destruction of Jerusalem at the hands of the Babylonian army,” and prefers to date that chapter to “scribal exegetical activity in the Persian period” (Levinson, “Zedekiah's Release,” 325). For a similar view, seeing Jer 34:8–22 as a later midrash on Lev 25 and Deut 15 that should not be taken as historically reliable, see Robert P. Carroll, *Jeremiah: A Commentary*, The Old Testament Library [OTL] (Philadelphia, PA: Westminster, 1986), 647–49. To me, diachronic linguistics seems to provide significant aid in periodization of biblical texts. Relevant for the present discussion is Hurvitz' argument for Leviticus belonging to Classical Biblical Hebrew (CBH) (Hurvitz, *A Linguistic Study*) and Hornkohl's argument that Jer MT belongs to Transitional Biblical Hebrew (TBH) (Hornkohl, *Language of the Book of Jeremiah*). For a general discussion on the significance of diachronic linguistics for the formation of the Pentateuch, see Joosten, *The Verbal System of Biblical Hebrew*, esp. pp. 377–410; Joosten, “Diachronic Linguistics,” 327–44. Joosten writes: “A first inference to be drawn from the diachronic framework is that the Pentateuch is to be regarded substantially as preexilic. Ascribing large parts of the Pentateuch to the Persian period, as is done routinely by many OT scholars, is impossible to reconcile with the linguistic data” (Joosten, “Diachronic Linguistics,” 336). And again: “The linguistic approach leads one to date the bulk of the Pentateuch to the preexilic period. Only some very few and obviously secondary passages may have been



author appropriates a normative text through proto-halakhic reuse. But in order to do this we need to establish the relative chronology of the passages in view, which also has indirect implications for the question of the formation of the Pentateuch and Hebrew Bible.

First, given the need for sensitivity to nuances when reading the Pentateuchal manumission instructions, and the dense discussions pertaining to these passages, I will begin with a survey of scholarly opinions on the question of reuse between Exod 21:2–11, Lev 25:10, 39–46, Deut 15:12–18, and Jer 34:8–22. Second, follows an analysis of Exod 21:2–11, Lev 25:10, 39–46, Deut 15:12–18, and Jer 34:8–22 separately, highlighting features of each passage in their respective contexts that are significant for the present discussion. I will especially focus on challenges to reading the manumission instructions in Torah as complementary from a synchronic perspective, since this highlights the dialectical reading of these instructions witnessed in Jer 34. Further, the ethnic ambivalence in the manumission instructions of Torah might be set in contrast to the exclusive focus upon Judahites in Jer 34. In both cases this might invite an expansionistic reading of the manumission laws, something I will argue is witnessed in Jer 34, even if Jer 34 itself has a more homogeneous ethnic focus. Third, given both the general agreement that Jer 34 reuses Deut 15, and the parallels between Exod 21:2–11, Deut 15:12–18, and Jer 34:8–22, I will discuss these passages together. I will argue that Jer 34 reuses Deut 15, while it is more doubtful whether there is reuse between Jer 34 and

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added after the Babylonian exile” (Joosten, “Diachronic Linguistics,” 340). And regarding the three prophetic texts considered in this study: “Notably, Jeremiah, Ezekiel, Isaiah 40–66, Job, and Lamentations appear to represent a type of transitional Hebrew standing between the two main corpora [CBH and LBH]” (Joosten, “Diachronic Linguistics,” 331).

Exod 21. Fourth, I will also argue that Jer 34:8–22 reuses Lev 25:10, 39–46, and that this reuse cannot be separated from the original layer of composition of Jer 34 without collapsing the passage itself. Fifth, and finally, I will discuss the question of how Jer 34 appropriates Lev 25 and Deut 15. I will argue that Jer 34 presents a sophisticated blend of Lev 25 and Deut 15, challenging several assumptions within the discussion on the relation between the Pentateuch and the Prophets, as well as the formation of the Pentateuch itself.

Survey of Scholarly Opinions on Reuse between  
Exod 21:2–11; Lev 25:10, 39–46;  
Deut 15:12–18 and Jer 34:8–22

We can begin with the debate around the relative chronology among the manumission instructions in the Pentateuch.<sup>6</sup> The scholarly consensus holds that Exod 21:2–11 is the oldest law.<sup>7</sup> The majority also see a reuse of at least Exod 21:2–6, if not also 21:7–11, in Deut 15:12–18.<sup>8</sup> The most debated question concerns the reuse and

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<sup>6</sup> That we find manumission instructions in all three legal corpora in Torah, in BC, HI, and D has contributed to giving these passages a prominent position in the debate on the relative chronology between the legal corpora in Torah (cf. John S. Bergsma, “The Biblical Manumission Laws: Has the Literary Dependence of H on D Been Demonstrated?,” in *A Teacher for All Generations: Essays in Honor of James C. VanderKam*, ed. Eric F. Mason, SJSJ. 2 vols. (Leiden: Brill, 2012), 65). Berman writes: “With the exception of the law prohibiting lending at interest, no other civil law is repeated as often throughout the Pentateuch as the law of manumission” (Berman, *Created Equal*, 104). Watts points out that repetition should not only be understood “for their mnemonic value . . . but also as a means of characterizing the speaker of law” (Watts, *Reading Law*, 97). The manumission laws thus not only serve to remind of compassionate treatment of financial dependents, but also contribute to characterizing YHWH himself.

<sup>7</sup> Van Seters argues that Deut 15 was the original, reused by Lev 25 and Jer 34, with Exod 21 as the youngest of the laws (Van Seters, *A Law Book for the Diaspora*, 82–95. See esp. pp. 83–84). See also his John Van Seters, “The Law of the Hebrew Slave,” *ZAW* 108 (1996): 534–46. For arguments against Van Seters see Levinson, “The Manumission of Hermeneutics,” 293–301; Bergsma, *The Jubilee from Leviticus to Qumran*, 38–39. Bergsma reminds us that the larger question of the relationship between BC, H, and D cannot be used to establish the direction of dependence between specific passages like Lev 25 and Deut 15 (Bergsma, *The Jubilee from Leviticus to Qumran*, 39–40).

<sup>8</sup> For authors who have more recently argued for a direct literary dependence of Deuteronomy

direction of dependence between Lev 25:39–46 and Deut 15:12–18. The scholarly default position has been Wellhausen’s, viewing a chronological influence between the different passages, where Exod 21:2–11 as the oldest law is adapted in Deut 15:12–18 to the Deuteronomic paradigm, Jer 34:8–22 reusing Deut 15 and simultaneously showing that the law was not enforced in Zedekiah’s day, and finally Lev 25:39–46 adapting the law by introducing a longer period in order to make it more applicable.<sup>9</sup> Kaufmann challenged such a chronological influence, proposing instead that the similarities should be understood as a shared common tradition with the various compositions relating independently to this tradition, with P being chronologically prior to D.<sup>10</sup> Others again

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upon the BC, see Lemche, “The Manumission of Slaves,” 45; Lohfink, “Zur deuteronomischen Zentralisationsformel,” 297–328; Lohfink, “Fortschreibung?,” 133–81; Fishbane, *Biblical Interpretation in Ancient Israel*, 21 In, 340; Otto, “Aspects of Legal Reforms,” 182–96; Levinson, *Deuteronomy*; Jeffrey H. Tigay, *Deuteronomy*, The JPS Torah Commentary (Jerusalem: Jewish Publication Society, 2003), 466; Levinson, “The Manumission of Hermeneutics,” 281–324; Kilchör, *Mosetora und Jahwetora*, 137–56. Interestingly, the manumission laws in Torah and Jer 34 do not receive a thorough discussion in Fishbane’s monumental *Biblical Interpretation in Ancient Israel*, and are at best mentioned only in passing.

<sup>9</sup> Cf. Japhet, “The Relationship between the Legal Corpora,” 67; Levinson, “Zedekiah’s Release,” 315–18. Since Baentsch many have seen the direction of dependence as going from Deuteronomy to the HI (Bruno Baentsch, *Das Heligkeits-Gesetz Lev XVII–XXVI* (Erfurt: Hugo Günther, 1893), 76–80). The following authors see the directions of dependence going from Deut 15 to Lev 25: Lemche, “The Manumission of Slaves,” 50–51; Hans G. Kippenberg, “Die Entlassung aus Schuldknechtschaft im antiken Judäa: Eine Legitimitätsvorstellung von Verwandtschaftsgruppen,” in *Vor Gott Sind Alle Gleich* (Dusseldorf: Patmos, 1983), 74–104; Stephen A. Kaufman, “A Reconstruction of the Social Welfare Systems of Ancient Israel,” in *In the Shelter of Elyon*, ed. W. B. Barrick and J. R. Spencer, JSOTSup 31 (Sheffield: JSOT Press 1984), 277–86; Kaufman, “Deuteronomy 15 and Recent Research on the Dating of P,” 273–76; Robert Gnuse, “Jubilee Legislation in Leviticus: Israel’s Vision of Social Reform,” *Biblical Theology Bulletin (BTB)* 15 (1985): 43–48; Arndt Meinhold, “Zur Beziehung Gott, Volk, Land im Jubel-Zusammenhang,” *Biblische Zeitschrift (BZ)* 29, no. 2 (1985): 245–61; Norbert Lohfink, “Gottes Reich und die Wirtschaft in der Bibel,” *IKaZ* 15, no. 2 (1986): 110–23; Yairah Amit, “The Jubilee Law—An Attempt at Instituting Social Justice,” in *Justice and Righteousness*, ed. H. G. Reventlow and Yair Hoffman (Sheffield: JSOT, 1992), 47–59; Rainer Albertz, “Die Tora Gottes gegen die wirtschaftlichen Sachzwänge,” *Ökumenische Rundschau* 44 (1993): 290–310; Heinz-Josef Fabry, “Deuteronomium 15,” *ZABR* 3 (1997): 92–111; Eckart Otto, “Programme der sozialen Gerechtigkeit,” *ZABR* 3 (1997): 26–63; Levinson, “The Birth of the Lemma,” 617–39; Levinson, “The Manumission of Hermeneutics,” 281–324; Nihan, *From Priestly Torah to Pentateuch*, 523–35, 554n; Stackert, *Rewriting the Torah*, 144–63, 209–10; Mark Leuchter, “The Manumission Laws in Leviticus and Deuteronomy: The Jeremiah Connection,” *JBL* 127 (2008): 635–40.

<sup>10</sup> Kaufmann, *The Religion of Israel*, 153–211. See esp- pp. 166–71, 208–9. He wrote: “Each of

have accepted the priority of P over D, but against Kaufmann argue for a reuse between the two, specifically, for our case, a reuse of Lev 25:39–46 in Deut 15:12–18.<sup>11</sup>

Moving to the relation between the manumission instructions in the Pentateuch and Jer 34, the majority of scholars see a dependence of Jer 34 upon Deut 15, even if this dependence is frequently regarded as a later deuteronomic redaction of the chapter.<sup>12</sup> A

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the three codes of the Torah is to be regarded as an independent crystallization of Israel's ancient juristic-moral literature. The evolutionary sequence and literary dependence assumed by Wellhausen has no foundation" (Kaufmann, *The Religion of Israel*, 170). And again, "not a single peculiarity of one legal corpus has insinuated itself into either of the others" (Kaufmann, *The Religion of Israel*, 171). For him the similarities between the legal corpora of the Torah should not be understood as influence between them, but each should be understood as an "independent development . . . immediately linked to the ancient Near Eastern tradition; each is a primary Israelite formulation of elements of that common tradition" (Kaufmann, *The Religion of Israel*, 171). On the question of the chronological priority of P over D see Kaufmann, *The Religion of Israel*, 153–211. For his comments on the manumission laws see pp. 168–69. Weinfeld expressed a related view, arguing in relation to P and D "that the divergencies between the two schools stem from a difference in their sociological background rather than from a difference in their chronological setting. The problem at hand concerns two different ideologies arising from two different circles but not necessarily from two distinct historical periods" (Weinfeld, *Deuteronomy and the Deuteronomic School*, 180). He tries to show that "the law of P, and the theological conception underlying it, are much older than those of D. D changes and reworks the traditional institutions and attitudes of P" (Weinfeld, *Deuteronomy and the Deuteronomic School*, 180n). Again, the similarities are explained as rooted in a common tradition, rather than literary influence between the two compositions. Other authors who see no dependence between D and HI, and may also dispute a dependence between BC and HI as well, are Elliott-Binns, "Some Problems of the Holiness Code," 29–30; Merendino, *Das deuteronomische Gesetz: Eine literarkritische, gattungs- und überlieferungsgeschichtliche Untersuchung zu Dt 12–26*, 401–2; Joosten, *People and Land in the Holiness Code*, 159; Schwartz, "'Profane' Slaughter and the Integrity of the Priestly Code," 38–42; Bergsma, *The Jubilee from Leviticus to Qumran*, 41, 51, 137–47, 163n–64n; Bergsma, "The Biblical Manumission Laws," 65–91. For the legacy of Kaufmann in Jewish scholarship see Schwartz, "The Pentateuch as Scripture," 223–27. Rofé argues for at least three stages in the development of D, with a later stage trying "to reconcile the contradictions between D's laws and those of the Pentateuch's other legal compilations" (Rofé, "The Book of Deuteronomy. A Summary," 8). Bettenzoli argues for seeing the development of HI and D as a complex process of mutual influence over time (Bettenzoli, "Deuteronomium und Heiligkeitsgesetz," 397–98). Seeing mutual influence between Torah and the prophets is a tendency that has gained some momentum in more recent scholarship. Jeffrey Tigay sees Deut 15 reusing Exod 21, but Lev 25 as representing a more independent system of relief for the poor (Tigay, *Deuteronomy*, 466–67).

<sup>11</sup> Weingreen, *From Bible to Mishna: The Continuity of Tradition*, 132–42; Schenker, "Biblical Legislation," 23–41; Japhet, "The Relationship between the Legal Corpora," 63–89; Milgrom, *Leviticus 23–27*, 2251–57; Bergsma, *The Jubilee from Leviticus to Qumran*, 139–40; Kilchör, *Mosetora und Jahwetora*, 137–56; Edwin Firmage, "Jeremiah, Deuteronomy, and the Metamorphosis of Israel (Unpublished work)," 1–64 (used by permission). On how Deuteronomy appears to be a dependent text, see Samuel Rolles Driver, *A Critical and Exegetical Commentary on Deuteronomy*, ICC 5 (Edinburgh: T. & T. Clark, 1902), xi–xiii.

<sup>12</sup> Bright, *Jeremiah*, 223–24; Nahum Sarna, "Zedekiah's Emancipation of Slaves and the

minority of scholars will also argue for a reuse of Lev 25 in Jer 34.<sup>13</sup> Commonly a reuse

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Sabbatical Year,” in *Orient and Occident: Essays Presented to Cyrus H. Gordon on the Occasion of his Sixty-fifth Birthday*, ed. Jr. Harry A. Hoffner (Neukirchen-Vluyn: Neukirchener, 1973), 145; Weippert, *Die Prosareden des Jeremiabuches*, 92–93; Lemche, “The Manumission of Slaves,” 52; McKane, *Jeremiah*, 882–84; Adrian A. Schenker, “Die Freilassung der hebräischen Sklaven nach Dtn 15,12 und Jer 34,8–22,” in *Recht und Kult im Alten Testamen: Achtzehn Studien* (Göttingen: Vandenhoeck and Ruprecht, 2000), 150; Maier, *Jeremia als Lehrer der Tora*, 269–70; Van Seters, *A Law Book for the Diaspora*, 83; Jack R. Lundbom, *Jeremiah 21–36: A New Translation with Introduction and Commentary*, AB 21B (New York: Doubleday, 2004), 261; Bergsma, *The Jubilee from Leviticus to Qumran*, 163; Leuchter, “The Manumission Laws,” 635–53; Berman, “The History of Legal Theory,” 35; Dalit Rom-Shiloni, ““On the Day I Took Them out of the Land of Egypt”: A Non-Deuteronomistic Phrase within Jeremiah's Conception of Covenant,” *VT* 65 (2015): 642; Mastnjak, *Textual Authority in Jeremiah*, 146–52, 177–78; Klaas A. D. Smelik, “The Inner Cohesion of Jeremiah 34:8–22, on the Liberation of Slaves During the Siege of Jerusalem, and Its Relation to Deuteronomy 15,” in *Torah and Tradition: Papers Read at the Sixteenth Joint Meeting of the Society for Old Testament Study and the Oudtestamentisch Werkgezelschap, Edinburgh 2015*, eds. Klaas Spronk and Hans Barstad (Leiden: Brill, 2017), 239–50. Cf. Innocenzo Cardellini, *Die biblischen 'Sklaven'-Gesetze im Lichte des keilschriftlichen Sklavenrechts: Ein Beitrag zur Tradition, Überlieferung und Redaktion der alttestamentlichen Rechtstexte* (Bonn: Peter Hanstein, 1981), 313, 317–19; Fischer, *Jeremia 1–25*, 68, 71. Holladay sees a “citation of the law of the release of Hebrew slaves in v 14 paraphrases Deut 15:1 and 12,” but at the same time he does not find Jer 34 to “reflect directly any single extant formulation of the law” found in Exod 21, Lev 25, nor Deut 15 (William L. Holladay, *Jeremiah 2: A Commentary on the Book of the Prophet Jeremiah, Chapters 26–52*, Hermeneia (Minneapolis: Fortress, 1989), 238). Chavel only sees a reuse between Jer 34:14 and Deut 15:12, or at least “Jer 34.14 reflects a previous version of Deut. 15.12,” even if this parallel belongs to a later author (Simeon Chavel, “Let My People Go! Emancipation, Revelation, and Scribal Activity in Jeremiah 34.8–14,” *JSOT* 76 (1997): 78. Cf. p. 83, 87). Georg Fischer writes concerning the reuse of Torah in Jeremiah: “diese anthologisch, mosaikhaft, in kombinierender Weise zu einer etgenen Synthese gestaltet. Diese Technik lasst sich nahezu das ganze Buch hindurch beobachten” (Fischer, “Der Einfluss des Deuteronomiums auf das Jeremiabuch,” 247). And again, he is arguing “that the whole Torah (Genesis–Deuteronomy, in a form very close to the Masoretic Text) predates Jer and serves as a source for it” (Fischer, “The Relationship of the Book of Jeremiah to the Torah,” 900). Cf. p. 903–4. Fischer sees all the books of Torah as available to the author of Jeremiah, with strong ties to Exodus and particularly Deuteronomy (Fischer, *Jeremia 1–25*, 68). And again: “Daß Jer auf andere biblische Bücher zugreift, bedeutet eine Wertschätzung dieser Traditionen und eine Orientierung an ihnen als tragende Basis des gemeinsamen Glaubens” (Fischer, *Jeremia 1–25*, 71). According to him the book of Jeremiah values and orients itself in light of this tradition. Cf. how he sees Jeremiah as familiar with all the books of Torah (Fischer, *Jeremia 1–25*, 68). He mentions the Sabbath restrictions in Jer 17:19–27 and the manumission of slaves in Jer 34:8–22 as examples of this (Fischer, *Jeremia 1–25*, 71). For a more recent survey of scholarly opinions on the relative dependence between Deuteronomy and Jeremiah see Mastnjak, *Textual Authority in Jeremiah*, 2–12. Cf. Weinfeld, *Deuteronomy and the Deuteronomistic School*, 359–61; Holladay, *Jeremiah 26–52*, 53–63. In his study of reuse of Torah in Jeremiah, and accepting the view of a secondary Deuteronomistic editing of the book of Jeremiah, Mastnjak has also found that “allusions to prophecy and curses of Deut 28 were a primary, though not exclusive, preoccupation of DtrJ,” while “the pre-DtrJ poetic traditions show a more sustained interest in the legal corpora [Deut 12–26]” (Mastnjak, *Textual Authority in Jeremiah*, 135).

<sup>13</sup> Fischer, *Jeremia 1–25*, 68, 71; Fischer, *Jeremia 26–52*, 242–61; Bergsma, *The Jubilee from Leviticus to Qumran*, 160–70; Bergsma, “The Biblical Manumission Laws,” 88–89; Leuchter, “The Manumission Laws,” 650; Rom-Shiloni, ““On the Day I Took Them out of the Land of Egypt”: A Non-Deuteronomistic Phrase within Jeremiah's Conception of Covenant,” 642; Levinson, “Zedekiah's Release,” 313–27. Weinfeld also argued for a reuse of Lev 25 and Deut 15 in Jer 34, but he was not concerned whether it was composed by the prophet, a member of his school, or an editor (Weinfeld, “Sabbatical Year

of Lev 25 is seen as a later redactional layer in Jer 34.<sup>14</sup> Lemche expressed the claim that Jer 34, and Neh 5, “were put into effect without any reference or allusion to a Sabbatical Year or a Jubel Year. Zidkiah’s and Nehemiah’s laws should be judged as unique phenomena.”<sup>15</sup>

Finally, the question occurs as to whether the borrowing text should be understood as intended to replace or complement its source. This question is particularly relevant in a study of Jer 34. As relevant for the present study we note the supersessionists, who argue that a later instruction reused a previous legislation in order to usurp its authority in a program, nevertheless, intended to modify the previous legislation and introduce legal revisions.<sup>16</sup> Complementarians, however, stress a more synchronic reading, finding legal dissimilitude to be best explained as differences in the intention and context of the various laws.<sup>17</sup> Berman voices what seems like an

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and the Jubilee,” 41). As Levinson, “Zedekiah's Release,” 319n puts it, “he fails to consider the consequence of his analysis.” In his 2006-article, Levinson pointed out the lack of studies on the implication of Jer 34 for the debate on the relation between the manumission laws in the Torah (Levinson, “The Manumission of Hermeneutics,” 292). Mastnjak has recently denied a reuse of Lev 25 in Jer 34 (Mastnjak, *Textual Authority in Jeremiah*, 147–48).

<sup>14</sup> For representative scholars arguing that the parallels between Jer 34 and Lev 25 represent a later priestly redaction of Jer 34 see Chavel, “Let My People Go!,” 71–95; Maier, *Jeremia als Lehrer der Tora*, 249–81, esp. 280; Leuchter, “The Manumission Laws,” 649–51. For a critique of Chavel’s and Maier’s views see Levinson, “Zedekiah's Release,” 317–18, 323–24. Cf. Bergsma, *The Jubilee from Leviticus to Qumran*, 163.

<sup>15</sup> Lemche, “The Manumission of Slaves,” 56.

<sup>16</sup> Levinson and Stackert are examples of those arguing for a usurping supersessionism (e.g. Levinson, *Deuteronomy*; Levinson, “The Manumission of Hermeneutics,” 281–324; Levinson, *Legal Revision*; Levinson, “Zedekiah's Release,” 313–27; Stackert, *Rewriting the Torah*, 138–41). I here borrow the terms ‘supersessionist’ and ‘complementarians’ from Berman, “Supersessionist or Complementary?,” 201–22. Cf. Berman, *Inconsistency in the Torah*, 171–91.

<sup>17</sup> Chirichigno, Schenker, Bergsma, and Kilchör can be taken as examples of complementarians stressing a more synchronic reading of the legal discrepancies in the manumission instructions. Chirichigno has argued that Lev 25 addressed the *pater familias* in contrast to Exod 21 and Deut 15, and they should thus be understood as addressing different groups (Chirichigno, *Debt-Slavery*, 186–357). Schenker

intermediate position between the two which stresses the diachronic aspect and concedes that later laws were meant to replace former ones, while, nevertheless, seeing the later revision as complementary to and acknowledging the authority of the former:

The prescriptions in the various corpora are data from which to reason. Indeed, as authors revised the collections, they certainly intended to invalidate former normative practices. But that did not entail a rejection of the authority of that text. Rather the earlier prescription was seen to be fulfilled through its reapplication to meet a new challenge. This, for complementarians, is the reason that lemmatic citation and expansion are so ubiquitous throughout this legal literature. A revised legal text is a new formulation and new application of an old, revered norm.<sup>18</sup>

As argued below, the evidence seems to point to Jer 34:8–22 reusing both Lev 25:10, 39–46 and Deut 15:12–18. As a biblical author reading the manumission instructions, Jer 34 might therefore inform us as to how early readers of the manumission instructions viewed the question of replacement or complementation between the various instructions in the Pentateuch. I will argue that the proto-halakhic reuse in Jer 34 created a dialectic between Lev 25 and Deut 15, without resolving tensions between them, but

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proposes that the manumission laws can be seen as complementary on the basis that they deal with distinct situations in regard to the familial status of the respective person subject to servitude (Schenker, “Biblical Legislation,” 23–24, 32–38). Bergsma argues that HI was written during the tribal period and D during the monarchy, holding open the possibility of a synchronic complementary role as they address two different groups, the Hebrews and Israelites (Bergsma, *The Jubilee from Leviticus to Qumran*, 43–48, 139–47). Kilchör has argued that Lev 25 and Deut 15 both were composed out of a concern for providing for the released slave so he (or she) would not immediately end in slavery again (Kilchör, *Mosetora und Jahwetora*, 137–56). Jonathan Kline writes: “the authors of the alluding texts appear to have sought not (primarily) to undermine the tradition they inherited but rather *to mine it for incipient meanings that they believed could only be understood in the light of new circumstances*” (Kline, *Allusive Soundplay*, 6. Italics original).

<sup>18</sup> Berman, “Supersessionist or Complementary?,” 211. Cf. Berman, *Inconsistency in the Torah*, 179. See also his Berman, “The History of Legal Theory,” 35–36. Fishbane writes that “legal exegesis” in the HB reflect “a concern with scrutinizing the content of laws for real or anticipated deficiencies; a concern with contradictions among the inherited cases; a concern with making the law comprehensive and integrated; and a concern with making the law workable and practicable” (Fishbane, *Biblical Interpretation in Ancient Israel*, 164). Cf. pp. 220–21. Others see the manumission instructions of the Pentateuch as representing the polyphonic voice of God creating dialectics. Cf. Carmy, “Concepts of Scripture in Mordechai Breuer,” 272–75. Cf. the “seventy faces of Torah” as described in Midrash *Numbers Rabba* 13:15.

drew on both in an attempt to show *tua res agitur* (“this concerns you”).<sup>19</sup>

### Exod 21:2–11<sup>20</sup>

Table 7 gives Exod 21:2–11 MT with a translation.

At first glance Exod 21:2–11, Lev 25:39–46, and Deut 15:12–18 seem to represent quite distinct traditions. In Exod 21:2–11 we find an instruction on the release of Hebrew slaves. No reason is mentioned for entrance into slavery, even if it is reasonable to assume it relates to some kind of economic crisis.<sup>21</sup> The focus concerning both the male (21:2–6) and female (21:7–11) slave is upon conditions of release from slavery. Here the male slave is released every seventh year,<sup>22</sup> while the female slave is

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<sup>19</sup> The basic sense in which I use the word ‘dialectic’ here should not be confused with the dialectical method of Johann Fichte and Georg W. F. Hegel. Explicitly, Jer 34 does not appear to create a synthesis between Lev 25 and Deut 15. It simply places them in a dialogue, drawing elements from each in the process. Eckart Otto’s discussion of how to view the sources of the Pentateuch, would here be an analogy: “What methodological alternatives do we have today? One option is the aforementioned literary-critical analysis, with its attendant consequence of a dismembered given text becoming a literary patchwork. The other option, an unhistorical synchronic analysis, is not more convincing. Adherents of this approach try to argue away these tensions, presupposing that there are no real inconsistencies in the given text. I prefer a third way of integrating diachrony and synchrony in the interpretation of a given text, and understand tensions and inconsistencies as consciously and deliberately left in the text to enable the reader to realize that a given text functions on two levels—namely, at the time of narration, that is, at the time when the text was written down, and the narrated time, that is, in the Pentateuch, the time of Moses” (Otto, “A Hidden Truth Behind the Text,” 5–6). He argues that the author left these marks to tell the reader *tua res agitur* (Otto, “A Hidden Truth Behind the Text,” 6, 8). While this to a certain extent might be correct, I nevertheless see a stronger ethical element in the legal inconsistency, enabling the type of ethical dialectics to be observed in Jer 34.

<sup>20</sup> Exod 21:2 is attested in 1QExod, frgs. 5–6, Exod 21:4–5 in 1 QExod, frg. 7, and Exod 21:5–6 in 4QpaleoExod<sup>m</sup>, col. XXII, but neither show significant variations for the present study. Cf. Teeter, *Scribal Laws*, 128, 131.

<sup>21</sup> Cf. how Exod 22:2 prescribes slavery in case a thief is not able to pay the compensation. See also 2 Kgs 4:1; Amos 2:6; 8:6; Isa 50:1; Neh 5:5; Prov 22:7.

<sup>22</sup> I agree with those who claim that the Sabbatical year in Exod 21:2–6 seems to be based on an individual cycle (e.g. Wellhausen, *Prolegomena*, 116–17; Schenker, “Die Freilassung der hebräischen Sklaven,” 152). As I point out below, the case of Deut 15:12–18 could be taken as both an individual cycle and a national cycle. It is at least clear that Jer 34:14 takes it as following a national cycle, merging Deut 15:1, 12.



**Table 7. Exod 21:2–11**

<p>2 כי תקנה עבד עברי שש שנים יעבד ובשבעת יצא לחפשי חנם: 3 אם־בגפו יבא בגפו יצא אם־בעל אשה הוא ויצאה אשתו עמו: 4 אם־אדניו יתן־לו אשה וילדה־לו בנים או בנות האשה וילדיה תהיה לאדניה והוא יצא בגפו: 5 ואם־אמר יאמר העבד אהבתי את־אדני את־אשתי ואת־בני לא אצא חפשי: 6 והגישו אדניו אל־האלהים והגישו אל־הדלת או אל־המזוזה ורצע אדניו את־אזנו במרצע ועבדו לעלם: 7 וכי־ימכר איש את־בתו לאמה לא תצא כצאת העבדים: 8 אם־רעה בעיני אדניה אשר־לא יעדה והפדה לעם נכרי לא־ימשל למכרה בבגדו־ב: 9 ואם־לבנו ייעדנה כמשפט הבנות יעשה־לה: 10 ואם־אחרת יקח־לו שארה כסותה וענתה לא יגרע: 11 ואם־שלוש־אלה לא יעשה לה ויצאה חנם אין כסף: 23: ס</p>	<p><sup>2</sup> If you buy a Hebrew slave, he shall serve six years and exit free in the seventh, without payment. <sup>3</sup> If he entered alone he shall exit alone. If he was the husband of a wife his wife shall exit with him. <sup>4</sup> If his master gives him a wife and she has borne him sons or daughters, the wife and her children belongs to her master, but he can exit alone. <sup>5</sup> But if the slave verily says, “I love my master, my wife and my children, I will not exit free,” <sup>6</sup> his master shall draw him to God, and he shall draw him near to the door or the doorpost, and his master shall pierce his ear with an awl, and he shall serve him forever. <sup>7</sup> And if a man sells his daughter as a female slave she shall not go out as the male slaves go out. <sup>8</sup> If she is displeasing in her master’s eyes, who do not designate her then he shall allow her to be ransomed. He is not authorized with regard to foreign people to sell her, in his treacherous dealing with her. <sup>9</sup> And if he designates her for his son he shall do to her according to the ordinances of daughters. <sup>10</sup> If he takes for himself another (woman) he shall not reduce her food, her clothing or her oil. <sup>11</sup> And if he does not do these three to her, then she shall exit free without money.</p>
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either released on the grounds that she is ransomed because her master does not designate her for marriage with himself or she is not given the three provisions of food, clothing, and oil and can exit without compensation (21:8, 10–11). According to my analysis the arguments for claiming that the female slave in 21:7–11 *de facto* became a wife are erroneous, and that she became a concubine inconclusive.<sup>24</sup>

In Exod 23:10–11 a seventh-year rest is commanded for the land, providing food for the poor among the people and wild animals. It has been seen as the background to Lev 25, especially 25:2–7. This literary relation is however not of direct relevance to Jer 34, and will not be discussed in the following.

<sup>23</sup> LXX ἀνευ ἀργυρίου. Here both MT and LXX might be somewhat ambiguous. Does it mean that she will go free without having to pay any silver, or that she is sent free without being provided with any silver? If the latter, it is directly countered in Deut 15:12–18 commanding abundant provisions.

<sup>24</sup> Cf. Kenneth Bergland, “Does the Case-Law of the Female Slave (Exod 21:7–11) Give a Right to Divorce?” (paper presented at Adventist Theological Society. Atlanta, GA, Nov 18, 2015). LXX

represents those readings of Exod 21:7–11 seeing the passage to imply some kind of marital relation between the female slave and her master. LXX clearly takes the MT  $\text{הָעֶדְיָה לֹא־רָשָׁהּ}$  in 21:8 as implying a betrothal, rendering it as  $\eta\tilde{\nu}\ \alpha\tilde{\upsilon}\tau\tilde{\omega}\ \kappa\alpha\theta\omega\mu\omicron\lambda\omicron\gamma\eta\sigma\alpha\tau\omicron$  (translated by Brenton as “she has betrothed herself to him”). And in the same verse, LXX  $\eta\theta\acute{\epsilon}\tau\eta\sigma\epsilon\nu\ \acute{\epsilon}\nu\ \alpha\tilde{\upsilon}\tau\eta\tilde{\iota}$  may be understood as a less serious offense (Brenton renders it as “he has trifled with her”) than the treachery implied by MT  $\text{בְּבִגְדוֹ־בָהּ}$  (“in his dealing treacherously with her”). LXX  $\tau\acute{\alpha}\ \delta\acute{\epsilon}\omicron\upsilon\tau\alpha$  appears to be less specific than the MT  $\text{הַשֶּׁמֶן}$  (“food”) in 21:10, and can be rendered more as “necessaries” (Brenton). And in the same verse, LXX  $\tau\eta\tilde{\nu}\ \omicron\mu\lambda\iota\alpha\nu\ \alpha\tilde{\upsilon}\tau\eta\tilde{\varsigma}$  can be rendered as “her companionship” (Brenton), indicating some kind of intimate relationship. There are several reasons why I do not believe Exod 21:7–11 MT should be read as implying a marital relation between the master and female slave. First, a text-syntactic analysis of the passage shows that the *weqatal*s  $\text{הָעֶדְיָה}$  in 21:8 and  $\text{הַצֵּן־הָהוּא}$  in 21:11 highlight the essential points in the instruction, namely the two permissions granted the female slave for freedom if she is not married either to her master or his son. The law therefore seems intended to regulate the conditions of the release of the female slave, analogous to 21:2–6, not marital issues. Second, the Masora, LXX, Targum and Vulgate emend the  $\text{לֹא־יָעַדָּהּ}$  (21:8) with the 3ms suffix  $\text{לוֹ}$ . The presupposition behind this emendation appears to be that the master already had designated the female slave for himself. But if this presupposition is not accepted, there is no reason for the emendation. The phrase  $\text{לוֹ} + \text{לָקַח}$  appears to be the technical phrase for taking a wife or concubine, and not the  $\text{יָעַד}$  of vs. 8-9. Cf. Lev 18:18; 20:14,21; 21:7,13-14; Num 12:1; Deu 21:11; 22:13-14; 23:1; 24:1,3,5; 25:5. Westbrook explains that we should expect the further specification in the phrases “to take a wife” or “to take for marriage” if it was a question of becoming the wife (Westbrook, “The Female Slave,” 168). This would be an additional argument for not seeing the master as having married the female slave. Third,  $\text{בְּבִגְדוֹ־בָהּ}$  in 21:8 the text clearly state that the female slave had become the victim of some kind of treachery. The lexeme  $\text{יָעַד}$  in 21:8 seems to refer to designating a female slave for concubinage. The treachery must thus consist in not giving her this legal status. Mal 2:14 is a relevant parallel: “But you say: ‘Because of what?’ Because YHWH testify between you and the wife of your youth, who you acted treacherously toward ( $\text{בְּבִגְדָתָהּ בָּךְ}$ ), and she is your companion and your covenanted wife.” Here the context is clearly divorcing a married wife. To me we do not seem entitled to project the meaning in Mal 2:14 upon Ex 21:8. The contexts are different. In the latter, it is an issue of a female slave becoming her master’s concubine, while in the former it rather seems to be a marriage between two free individuals. The time-span between the two passages could also allow for a semantic change of the  $\text{בָּהּ} + \text{בִּגְד}$  phrase. Jer 3:20 and Lam 1:2 provide two interesting instances of  $\text{בִּגְד}$ . In Jer 3:20 the woman treats her  $\text{רַעַי}$  with treachery. Here he could be both a fiancé and husband, possibly simply a lover. In Lam 1:2 the plural  $\text{רַעֵיךָ}$  appears to be non-marital sexual partners. Based on this we could understand Exod 21:8 as implying that the master might have had sexual relations with her, without designating her to become his wife or concubine. A master was expected to take a female slave as concubine if he used her sexually. As Westbrook explains this was due to the need to regulate the status of possible offsprings (Westbrook, “The Female Slave,” 155). But here I rather prefer to see the reason behind the accusation of treachery as an implicit reference to contract stipulations put in place when she was sold to her master, where it would possibly have been stated that she was intended to become his concubine. The treachery does therefore not imply an actual engagement or marriage but refers to contractual stipulations. Fourth,  $\text{עֲנָה}$  in the phrase  $\text{וְעֲנָתָהּ}$  in 21:10 is a *hapax legomenon*. It has traditionally been taken to mean ‘sexual intercourse,’ ‘intimacy,’ and ‘cohabitation.’ For various interpretations of  $\text{עֲנָה}$  and an argument that it means ‘sexual intercourse’ see Etan Levine, “On Exodus 21,10; ‘Onah and Biblical Marriage,” *Zeitschrift für Altorientalische und Biblische Rechtsgeschichte* 5 (1999): 138-50; Koehler et al., *HALOT*, 855; Brown et al., *BDB*, 773; Tikva Frymer-Kenski, “Anatolia and the Levant: Israel,” in *A History of Ancient Near Eastern Law*, ed. Raymond Westbrook (Leiden: Brill, 2003), 1004–5; Van Seters, *A Law Book for the Diaspora*, 91–92. The use of the verb  $\text{עָנָה}$  as suppression in the context of rape (Gen 34:2; 2 Sam 13:12, 14, 22, 32; Jud 19:24; 20:5; Lam 5:11) does not seem applicable in the context of Exod 21. The provision of the threefold food, oil and garment appears in various contexts in ANE sources, and seems to have developed into a stereotype. It seems more likely that  $\text{עֲנָה}$  should be understood as ‘oil’ on the analogy with ANE lists in similar context (“Piššatu,” *The Assyrian Dictionary of the Oriental Institute of the University of Chicago* P:430-33; Shalom

Bergsma argues that the ethnic label עִבְרִי is used for a larger group than exclusively ‘Israelites’ in the HB.<sup>25</sup> According to Gen 10:21, Shem was “the father of all the children of Eber (עֵבֶר),” and his descendant Abraham later receives the gentile designation עִבְרִי (Gen 14:13). Thus, Arabians, Edomites, Moabites, and Ammonites may all have been included in the term עִבְרִי, either as Abraham belonging to a larger group of עִבְרִי or as he gave birth also to other nations than the Israelites. Bergsma summarizes, stating that “when the whole range of uses of ‘Hebrew’ in the Bible are viewed together, it appears to be a term having both socio-economic and ethnic connotations, indicating an underclass which foreigners associated with slavery, but Israelites understood to be the branch of the Semitic peoples to which they belonged.”<sup>26</sup> While Bergsma appears to be

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M. Paul, “Exod 21:10 a Threefold Maintenance Clause,” *Journal of Near Eastern Studies [JNES]* 28 (1969): 50-51; Paul, *Studies in the Book of the Covenant*, 57-61; Benno Jacob, *The Second Book of the Bible: Exodus*, trans. Walter Jacob (New Jersey: Ktav, 1992), 627. Ecc 9:7-8 speak of four commodities (bread, wine, clothing and oil), while Hos 2:7 expand the list to six (bread, water, wool, linen, oil and drink). Even if these lists are longer than the tripartite list we find in Exod 21:10, the items are analogous. As “rations are the stuff of servants and dependants, not wives” (Westbrook, “The Female Slave,” 173), it seems best to take עֵבֶר as a reference to oil. The three provisions therefore support reading the case-law in a non-marital context. Fifth, the word הִנָּם, appearing in 21:11, is used in 32 cases in the HB. It is either used in the meaning “without economic compensation” (Gen 29:15; Exod 21:2, 11; Num 11:5; Isa 52:3, 5; Jer 22:13; 2 Sam 24:24; 1 Chron 21:24), “without cause, undeservedly” (Ezek 14:23; Job 1:9; 1 Sam 19:5; 25:31; Ps 35:7, 19; 69:5; 109:3; 119:161; Prov 1:11; 3:30; 23:29; 24:28; 26:2; Job 2:3; 9:17; 22:6; Lam 3:52), or “vainly” (Ezek 6:10; 14:23; Mal 1:10; Prov 1:17). The decisive point here is that in no case do we find הִנָּם in a context of ‘divorce,’ or even a marital context. There is no way this term can legitimately be understood as ‘divorce.’ In Exod 21:2 הִנָּם is also used, and here in the sense of freedom from slavery. It is only reasonable to see the same meaning of the term in 21:11. And sixth, given that there are good reasons to see Deut 15:12-18 as dependent on Exod 21:2-11, and the female slave in Deut 15 “was not a wife or concubine” (Bergsma, *The Jubilee from Leviticus to Qumran*, 136), weakens seeing her as such also in Exod 21:7-11. Cf. Gane, *Old Testament Law for Christians*, 110, 114, 140, 152, 312-15 who has recently argued that Exod 21:7-11 “involved a kind of marriage,” as a “servant concubinage.” However, I believe the observations made above also make this suggestion problematic. Further, while it is possible to read Exod 21:7-11 in the direction that the female slave became a concubine, I do not find the arguments for this conclusive.

<sup>25</sup> Bergsma, *The Jubilee from Leviticus to Qumran*, 43-48.

<sup>26</sup> Bergsma, *The Jubilee from Leviticus to Qumran*, 44-45.

correct in pointing out that עֲבָרִי likely refers to a larger ethnic group than Israelites alone, I am not able to follow the logic going from that עֲבָרִי *included* a broader group of Semitic peoples than the Israelites alone to a claim that it *excludes* the Israelites from the classification of עֲבָרִי in Exod 21 and Deut 15. Having pointed out that the term is used “predominantly in foreign contexts,”<sup>27</sup> he goes on to comment on the use of עֲבָרִי predominantly in the context of slavery, and exclusively so in the Pentateuchal instructions (i.e. in Exod 21:2 and Deut 15:12). He writes: “To intentionally ‘mark’ the ethnicity of an individual with a definition that exceeds the boundaries of the group (i.e. ‘Hebrew’) implies that the individual ‘marked’ is a member of the outer group (‘Hebrews’) but not the inner group (‘Israelite’).”<sup>28</sup> Bergsma uses this to remove the possible discrepancy between the manumission laws in Exod 21 and Deut 15 on one side and the Jubilee release in Lev 25 on the other side.<sup>29</sup> According to him, the עֲבָרִי in Exod 21 and Deut 15 are non-Israelites while Lev 25:39—43, 46 deals with indentured labor of native Israelites.

To me it seems more reasonable, on the basis of the use of עֲבָרִי in the HB, to conclude that Exod 21 and Deut 15 uses it to refer to Israelites,<sup>30</sup> but possibly also

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<sup>27</sup> Bergsma writes that עֲבָרִי is used “predominantly in foreign contexts, when (a) a foreigner (Philistine or Egyptian) is referring to the Israelites [Gen 39:14, 17; 41:12; Ex 1:16; 2:6, 13; 1 Sam 4:6, 9; 13:19; 14:11; 29:3], or (b) when Israelites are describing themselves to foreigners [Gen 40:15; Exod 1:19; 2:7; 3:18; 5:3; 7:16; 9:1, 13; 10:3; Jonah 1:9], or (c) when events are being viewed from a foreign (Egyptian or Philistine) perspective [Gen 43:32; Exod 1:15; 2:11, 13]” (Bergsma, *The Jubilee from Leviticus to Qumran*, 43).

<sup>28</sup> Bergsma, *The Jubilee from Leviticus to Qumran*, 45.

<sup>29</sup> Bergsma, *The Jubilee from Leviticus to Qumran*, 46, 100, 102, 134, 140. Cf. Christopher J. H. Wright, *Old Testament Ethics for the People of God* (Downers Grove, IL: InterVarsity, 2004), 158n.

<sup>30</sup> Wright, *Inventing God's Law*, 126 shows

individuals from kindred nations belonging to the same ancestral tree.<sup>31</sup> Thus, the Hebrew male slave in Exod 21:2 and Hebrew male and female in Deut 15:12 may refer to both Israelites and individuals from kindred nations. In Exod 21 the people have just been released from slavery, and it therefore seems appropriate that the BC begins with addressing the question of a possible future re-enslavement. Sprinkle has commented that contrary to the BC, we never find slave laws at the beginning of ANE legal collections:

The topic of ‘servitude’ does not introduce the other ancient Near Eastern ‘legal’ collections. The Laws of Hammurapi end rather than begin with slavery, though various laws deal with slaves (§§7, 15–20, 117–19, 146–47, 170–71, 175–76, 199, 205, 223, 226–27, 231, 252, 278–82). Likewise, the Laws of Eshunna, though they mention slaves throughout (§§15–16, 22–23, 31, 33–35, 40, 49–52, 55, 57), place the laws dealing most substantially with servitude at the end (§§49–52). The Middle Assyrian Laws rarely mention slaves (MAL A §§4, 40, 54, MAL C §§1, 3). Why, then, do Exodus’s civil regulations feature servitude at the beginning? An answer lies in the narrative context: Exodus 21 begins with servitude, just as does the prologue to the Decalogue in 20.2, in order to develop the central theme of the book of Exodus, deliverance from bondage.<sup>32</sup>

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that should be understood as a reference to an “Israelite.”

<sup>31</sup> While Hamilton’s discussion of עֲבָדִי in Exod 21 and Deut 15 resonates with Bergsma’s argument that it represents an underclass “in their status as slaves” or “their status as aliens who have migrated to a foreign country,” he nevertheless sees the term as including “any member of the Israelite community” (Jeffries M. Hamilton, *Social Justice and Deuteronomy: The Case of Deuteronomy 15*, SBLDS (Atlanta: SBL, 1992), 84). The term עֲבָדִי for him does not therefore apply only to the non-Israelites in Exod 21 and Deut 15. He does not specify that it might include non-Israelite persons from kindred nations, but his observation of an inclusive tendency in the BC toward the foreigner/sojourner can be taken as supportive evidence for such a contention. Referring to וְיָדַעְתָּ אֶת-נַפְשׁ הַגֵּר (“and you know the person of the foreigner”) in Exod 23:9, he writes: “To say that the sojourner within the community has the same identity as members of the community themselves had at one point of their own history . . . is to bring the sojourner within that community in an emotional sense even if the sojourner is still outside of it in a political sense” (Hamilton, *Social Justice and Deuteronomy*, 89–90). But in contrast to this “tendency toward inclusion” in BC, he sees the HI as focusing more on the definition of “the relationships which the actors have to one another” (Hamilton, *Social Justice and Deuteronomy*, 94). As will be argued below, it nevertheless seems possible to read HI as also opening a window to the inclusion of the foreigner. McConville also takes עֲבָדִי in Deut 15:12 as referring to an Israelite: “The term ‘Hebrew/Hebrew’ is here in apposition to ‘brother’, and should in this case be equated with ‘Israelite’” (McConville, *Deuteronomy*, 262). Cf. Averbeck, “Framing and Shaping of the Mosaic Law,” 154–55.

<sup>32</sup> Sprinkle, *The Book of the Covenant*, 62. Cf. Wright, *Inventing God's Law*, 149–51 arguing that the slave-law and its position at the beginning of BC draws from LH. As mentioned in chapter 1, Averbeck points out how manumission instructions also conclude the Sinai Instructions in Lev 25:39–55 (Averbeck,

Further, even if the text claims there were other ethnic groups following the Israelites at the Exodus (Exod 12:38; Lev 24:10; Num 11:4), the BC is presented to the בְּנֵי יִשְׂרָאֵל, “the sons of Israel” (Exod 20:19; 21:1). Nevertheless, Exod 21:2 uses the possible broader term עֲבָדֵי, including both Israelites and kindred nations. Thus, it is also possible that the father selling his daughter in 21:7 might have been from kindred nations, even if it would predominantly have been native Israelites. Since her master according to 21:7 is prohibited from selling the female slave to a foreign people ( לְעַם נְכַרִי לֹא-יִמְשַׁל ( לְמַכְרָהּ)), it seems safe to assume that she was not to be sold outside the Israelite community. And given that the contrast in 21:7 (לֹא תִצָּא קַצְאָת הָעֲבָדִים) primarily seems to be between the regulations for the male slave (21:2–6) and the female slave (21:7–11), and not seeing 21:2–6 as a general category for Hebrew slaves with 21:7–11 as an exception for Israelite female slaves, it seems natural to see the primary concern in 21:2–11 as with the “sons (and daughters) of Israel.”

Also, Deut 15 can be said to contain a degree of ambivalence. Besides the broader scope of the term עֲבָדֵי used in 15:12, the passage designates the male and female slave as “your brother” (אָחִיךָ). As pointed out by Bergsma, אָחִיךָ is also used in Deut 23:8 for the Edomite as a brother.<sup>33</sup> The phrase אָחִיךָ is therefore not necessarily limited to Israelites, but is also used of kindred nations in Deuteronomy.

Exod 21:2–11 is not concerned with the question of property. However, this does not entitle us to argue that property was not involved in Exod 21:2–11. The question of

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“Framing and Shaping of the Mosaic Law,” 158–59, 161, 163).

<sup>33</sup> Bergsma, *The Jubilee from Leviticus to Qumran*, 45n.

property is simply not addressed. It is also unclear whether “it expects debts to be remitted in the seventh year.”<sup>34</sup>

Lev 25:10, 39–46<sup>35</sup>

The chapter can be outlined as follows:<sup>36</sup>

- 25:1–2b Introduction of divine discourse
- 25:2c–7 The Sabbath year of rest for the land, during which the household will eat of the produce of the land from the six years prior to the Sabbath year.
- 25:8–17 The year of Jubilee with slave release, repossession of inheritance property, and a rest for the land.
- 25:18–22 The divine promise—on the condition that the people keep God’s decrees (25:18)—to provide sufficient abundance to bring them through the Sabbath and Jubilee years.
- 25:23–55 Implications of the Jubilee for the redemption of property
  - 25:23–24 Statement of general principle
  - 25:25–55 Stages of destitution
    - 25:25–28 The loss of lands
    - 25:29–34 The loss of home
    - 25:35–38 The loss of independence
    - 25:39–46 The loss of freedom to a native Israelite
      - 25:39–43 Slavery forbidden for Israelites
      - 25:44–46 Slavery permitted for non-Israelites
    - 25:47–55 The loss of freedom to a foreigner

Table 8 gives the Lev 25:10, 39–46 MT with a translation. In Lev 25:1–55 we find regulations regarding the economically vulnerable members of the population, rest of the land, and transfer of property in the setting of the Sabbath and Jubilee years. For the present study, it is Lev 25:39–46 that will be of special interest. The main concern in Lev

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<sup>34</sup> Tigay, *Deuteronomy*, 466. He continues: “it raises the possibility that debt-remission is an innovation in Deuteronomy” (Tigay, *Deuteronomy*, 466). And again: “It is also very unlikely that the remission of debts is operative in Leviticus [25]” (Tigay, *Deuteronomy*, 467).

<sup>35</sup> Lev 25:45–46 is attested in 4QLev<sup>b</sup>, frags. 27–28. In 25:46 MT hithpael יהתגבנהליתם is replaced with the hiphil ונהלתם. Otherwise there are no significant variants.

<sup>36</sup> Cf. Chirichigno, *Debt-Slavery*, 322; Milgrom, *Leviticus 23–27*, 2148–49; Bergsma, *The Jubilee from Leviticus to Qumran*, 84.

**Table 8. Lev 25:10, 39–46**

<p>10 וקדשתם את שנת החמשים שנה וקראתם דרור בארץ לכל־ישיביה יובל<sup>37</sup> הוא תהיה לכם ושבתם<sup>38</sup> איש אל־אחזתו ואיש אל־משפחתו<sup>39</sup> תשבו: . . .  <sup>39</sup> וכי־ימוך<sup>40</sup> אחיך עמך ונמכר־לך לא־תעבד בו עבדת עבד: <sup>40</sup> כשכיר כתושב יהיה עמך עד־שנת היבל יעבד עמך: <sup>41</sup> ויצא מעמך הוא<sup>41</sup> ובניו עמו ושב אל־משפחתו ואל־אחזת אבתיו ישוב: <sup>42</sup> כי־עבדי הם אשר־הוצאתי אתם מארץ מצרים לא ימכרו ממכרת עבד: <sup>43</sup> לא־תרדה בו בפרך ויראת מאלהיך: <sup>44</sup> ועבדך ואמתך אשר יהי־לך מאת הגוים אשר סביבתיכם מהם תקנו עבד ואמה: <sup>45</sup> וגם מבני התושבים הגרים עמכם מהם תקנו וממשפחתם אשר עמכם אשר הולידו בארצכם והיו לכם לאחזה:  <sup>46</sup> והתנחלתם אתם לבניכם אחריכם לרשת אחזה לעלם בהם תעבדו ובאחיכם בני־ישראל איש באחיו לא־תרדה בו בפרך: ס</p>	<p><sup>10</sup> and you shall sanctify the year of the fiftieth year. And you shall proclaim a release in the land to all who dwell in it. It shall be a jubilee for you, and each one of you shall return to his possession, and each one shall return to his family. . . . <sup>39</sup> And if your brother with you becomes poor, and is sold to you, you shall not make him serve the service of a slave. <sup>40</sup> He shall be with you like a hired worker, like a sojourner, he shall serve with you until the year of Jubilee. <sup>41</sup> And he shall exit from with you, he and his children with him. And he shall return to his family and he shall return to his ancestral property. <sup>42</sup> For they are my servants, whom I brought out from the land of Egypt. They shall not be sold according to the sale of a slave. <sup>43</sup> You shall not rule him ruthlessly, but fear your God. <sup>44</sup> However, your male slave and your female slave that you may have are from the peoples which are around you. From them you may buy a male slave and a female slave. <sup>45</sup> And even from the sojourning people with you, from them you may buy, and from their families which are with you, whom they give birth in your land. And they shall be to you a possession. <sup>46</sup> And you may inherit them to your children after you, to possess them as a property. Them you may make slaves forever. <sup>42</sup> But among your brothers, the sons of Israel, you shall not rule a man ruthlessly among his brothers.</p>
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<sup>37</sup> LXX ἐνιαυτὸς ἀφέσεως σημασία (“a year of release, a proclamation”). Note how both MT דרור and יובל are both rendered in LXX with ἄφεσις in 25:10.

<sup>38</sup> LXX καὶ ἀπελεύσεται εἰς ἕκαστος εἰς τὴν κτῆσιν αὐτοῦ can be rendered “and each one shall depart to his possession” (Brenton), while MT has וְשָׁבְתָם אִישׁ אֶל־אֲחֻזָּתוֹ (“and each shall return to his possession”). This difference is also seen in LXX ἀπελεύσεσθε (“you shall go away”) for MT תָּשָׁבוּ (“you shall return”) in this verse. This emphasis is also seen in LXX ἀπελεύσεται (“he shall go”) in 25:41. LXX ἀποδραμεῖται (“he shall hasten back”) is closer to MT יָשׁוּב in 25:21.

<sup>39</sup> LXX τὴν πατρίδα αὐτοῦ (“of his fatherland”) focus more upon the family land than the family as such as in MT מִשְׁפָּחָתוֹ (“his family”).

<sup>40</sup> LXX ταπεινωθῆ (“be lowered”) for MT יָמוּךְ (“become poor”).

<sup>41</sup> LXX does not have הוּא מֵעִמָּךְ (“he [shall exit] from you”), but adds τῆ ἀφέσει (“in the release”).

<sup>42</sup> For seeing לעלם as belonging to this clause and not the previous, indicating a reuse of לעלם in Exod 21:6, see Levinson, “The Birth of the Lemma,” 623–25; Levinson, “The Manumission of Hermeneutics,” 308–16. On how this can nevertheless not be used as argument that Lev 25:46 is trying to subvert Exod 21:6 see Averbeck, “Framing and Shaping of the Mosaic Law,” 172–73. For other text critical notes see Teeter, *Scribal Laws*, 133, 139.



25:39–46 seems to be upon the non-enslavement of Israelites (בְּנֵי־יִשְׂרָאֵל, v. 46) and the return of land to the member of the clan who had to sell himself due to economic failure. This seems to be more of a concern in this passage than the return of ancestral property as such, as will be discussed further below.

Exod 20:1–Lev 26:46 constitute in its literary setting the Sinai Instructions which were repeated and reformulated 40 years later in Deut 12–16 with the Moab Instructions.<sup>43</sup> As mentioned above, the placement of the manumission instructions at the beginning of the BC appears to be rooted in the deliverance narrative.<sup>44</sup> Averbeck points out how manumission instructions also conclude the Sinai Instructions in Lev 25:39–55:

Furthermore, not only does the Book of the Covenant begin with debt-slave law, but the whole of the laws given at Sinai also end with the debt-slave law in Lev 25:39-55, just before the blessings and curses of the covenant in Lev 26. This latter point is not often taken into account in discussions of the Sinaitic Law. Perhaps this is because the Laws of Hammurapi, for example, do indeed conclude with slave laws, so an ANE law collection ending this way is in fact not unique to the biblical Law, in contrast to the fact that no such collection begins with slave laws. Or perhaps it is because the overall canonical shape and frame of the Law is often not given full consideration; the emphasis tends toward the literary shape of the units of law within it. Or perhaps it is due to a combination of these and other factors. In any case, from the point of view of the text as it stands, Hebrew debt slave and release is ‘the beginning and end’ of the Law at Sinai, literally.<sup>45</sup>

According to Averbeck the question of slavery and treatment of the resident alien become key questions in the instructions.<sup>46</sup>

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<sup>43</sup> Lev 26:46 summarizes the preceding with the words אֵלֶּה הַחֻקִּים וְהַמִּשְׁפָּטִים וְהַתּוֹרָה אֲשֶׁר נָתַן יְהוָה בְּיַד מֹשֶׁה בְּהַר סִינַי בְּיַד־מֹשֶׁה (“These are the ordinances and judgments and instructions which YHWH gave on Mount Sinai by the hand of Moses, between himself and the sons of Israel”). Cf. Averbeck, “Framing and Shaping of the Mosaic Law,” 150.

<sup>44</sup> Cf. Sprinkle, *The Book of the Covenant*, 62.

<sup>45</sup> Averbeck, “Framing and Shaping of the Mosaic Law,” 158–59.

<sup>46</sup> Averbeck writes: “In reality, therefore, there are a good number of instances seeded through the Law in which the call for good and fair treatment of resident aliens is based on Israel’s past experience in

If the manumission instructions thus form an *inclusio* of the Sinai instructions, being placed at the beginning in Exod 21 and at the end in Lev 25, the question of how we deal with their respective legal dissimilitude intensifies. First I will reject the common harmonistic reading of seeing Lev 25 as dealing with the *pater familias* who has sold himself in contrast to Exod 21 and Deut 15 where a family-member was sold by the *pater familias*.<sup>47</sup> Second, I will describe how Jer 34 deals with such legal variation.

Regarding the claim that Lev 25 prescribes a case where the *pater familias* has sold himself in contrast to Exod 21 and Deut 15 where a family-member is sold by the *pater familias*, I will list several reasons why I do not believe this explanation finds adequate textual support. First, even if the daughter is sold by her father in Exod 21:7, this does not legitimate the claim that the same applied to the rest of the slave-laws of Exod 21:2–6 and Deut 15.<sup>48</sup> Second, regarding Chirichigno’s presupposition that an Israelite could not be sold by force but only by the *pater familias*, Schenker and Nihan have shown that forced slavery did occur in the HB (cf. Exod 22:2; 1 Sam 25:2; 2 Kgs 4:1; Neh 5:2–5).<sup>49</sup>

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Egypt. One could say that it is essential to the ethos of the whole Law, Exodus through Deuteronomy, from beginning to end, and in between. Whether laying foundations or coming to conclusions, the lawgiver gravitated toward the founding event and its implications for the good life in ancient Israel” (Averbeck, “Framing and Shaping of the Mosaic Law,” 161). Cf. p. 163. Given my rejection of the *pater familias* interpretation of Lev 25, as I will argue below, saying both Exod 21 and Lev 25 belong to the same legal unit intensifies the legal tension between the two. Jer 34 might show us a biblical way of dealing with such legal variation.

<sup>47</sup> Chirichigno, *Debt-Slavery*, 275–82, 328–36, 352–57; Bergsma, *The Jubilee from Leviticus to Qumran*, 47, 66, 100–102, 105, 128, 144–45; Bergsma, “The Biblical Manumission Laws,” 79–80.

<sup>48</sup> Nihan, *From Priestly Torah to Pentateuch*, 529–30n. Cf. Kilchör, *Mosetora und Jahwetora*, 142.

<sup>49</sup> Schenker, “Biblical Legislation,” 28–29; Nihan, *From Priestly Torah to Pentateuch*, 529n. Chirichigno claims that the niphal נָמַכְרָה in Lev 25:39 should be understood as a reflexive (‘to sell himself’),

Third, Schenker’s own proposal that the manumission laws can be seen as complementary on the basis that they deal with distinct situations in regard to the familial status of the respective person subject to servitude,<sup>50</sup> also seem difficult to sustain. While denying Chirichigno’s claim that Exod 21 deals with a case where a family-member is sold by the *pater familias*, he nevertheless maintains that Lev 25 deals with the case of the *pater familias*.<sup>51</sup> He is followed by Kilchör arguing that Lev 25 and Deut 15 respectively deal with a question not addressed by Exod 21, namely how the slave will provide for himself so as not to immediately end up in slavery again. According to Kilchör the solution in Lev 25 is the return to the ancestral land, while Deut 15 prescribes sending the slave off with abundant provisions.<sup>52</sup> While Kilchör seems correct in maintaining that Lev 25 and Deut 15 present different solutions to the same problem, does Lev 25 really give a basis for claiming it is dealing with the *pater familias*? While Exod 21:3–5 raises the question whether the slave had a family or not when entering slavery and instructs a similar status upon exit, Lev 25:41—as well as 25:54—only

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while the niphāl נִפְקָר in Deut 15:12 should be taken as a passive (‘to be sold’) (Chirichigno, *Debt-Slavery*, 276, 330–32). For critiques of this position see Schenker, “Biblical Legislation,” 31–32; Eckart Otto, review of *Debt-Slavery in Israel and the Ancient Near East*, by G. C. Chirichigno, *Bib* 76 (1995): 254–61.

<sup>50</sup> Schenker writes: “Exodus does not consider the case where a debt-slave is bought and sold together with his children, while Leviticus 25 precisely deals with this case. . . . Leviticus 25:39–41 thus fills the gap left open by Exod 21,2–3! This rule for the jubilee does not therefore apply to all categories of slaves, but only to that of married Israelites who have (male) children. Hence this law is a supplement to Exod. 21.2–4” (Schenker, “Biblical Legislation,” 33).

<sup>51</sup> Schenker, “Biblical Legislation,” 27, 32–33.

<sup>52</sup> Kilchör, *Mosetora und Jahwetora*, 141–53. Berman adds that “the capacity of the creditor to hold the servant for an extended period of time would provide incentive for him to invest in the worker and train him in a skill that would then translate into human capital he would take with him on his release” (Berman, *Created Equal*, 107). If the fallow year of Exod 23:11 was practiced, presumably as a national seven-year cycle in contrast to the individual cycle of the slave release in Exod 21:2–6, this would also mean that the released slaves—being among the poor—would be entitled to eat of the crop of the fallow land. If so, this would also contribute to “a good start” on their new life as free.

instructs the exit from servitude with one's children. In other words, this in itself is not sufficient basis for claiming that Lev 25:41 regulates the situation of a *pater familias*. Exod 21:3 could easily be read to support the contention that not only the wife, but also the children would follow the slave upon the release. The verse does not focus on the wife to the exclusion of the children, but basically regulates that one should leave in the same familial status one arrived. Conversely, even if Lev 25:41 only mentions the children, it seems reasonable to assume that also the wife would follow him upon release. Schenker might, therefore, put too much into the variation when writing: "Exodus does not consider the case where a debt-slave is bought and sold together with his children, while Leviticus 25 precisely deals with this case."<sup>53</sup> Lev 25 does not deal with the familial status of the slave when "bought and sold." There is nothing to exclude the possibility that he might have been without children and unmarried upon entry into servitude, and thus not a *pater familias*.<sup>54</sup> It only mentions that the subservient Israelite should leave with his children upon exit after 49 years. Given that 49 years significantly exceeds the average age of a generation, it is only reasonable to consider the possibility that he had no children when entering and that these were acquired during the 49 years. If he was a *pater familias* upon entry into servitude, he would presumably be the eldest male of the household. In that case, it is doubtful that many would survive the 49 years of servitude, if they entered servitude at the beginning of the jubilee cycle or near to it. If Lev 25:39–46 therefore presupposes that the subservient person is a *pater familias* upon

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<sup>53</sup> Schenker, "Biblical Legislation," 33.

<sup>54</sup> Contra Schenker, "Biblical Legislation," 37–38.

entry into servitude, the duration of 49 years before release would tend to make the applicability of the law in practical terms void in that case. Again, it is problematic to read Lev 25:39–46 as addressing the situation of the *pater familias* exclusively or predominantly.

Fourth, I have mentioned that the focus in Lev 25:39–46 does not seem to be upon the preservation of property within the clan as such, as much as the freedom of the released subservient person to return to his ancestral property, whether the property was sold or not.<sup>55</sup> Fifth, as I will argue below, Zedekiah’s covenant with the people as

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<sup>55</sup> Bergsma finds a parallel between Lev 25 and the ANE *kiddunti* and *adurarum*, where “the Levitical legislator regarded the Israelites as sacred slaves (hierodoules) and their land as a sacred precinct. As such, they enjoyed certain rights on analogy to the ancient Near Eastern institution of *kiddinutu*. Not having a king to proclaim edicts of *andurarum*, the legislator ensured the Israelites would enjoy such decrees periodically, by including them in the cycle of the cultic calendar” (Bergsma, *The Jubilee from Leviticus to Qumran*, 51). And again: “In the biblical narratives of the Exodus, the people of Israel are liberated from their obligations to Pharaoh in order to be entirely devoted to the service of YHWH. It is forbidden to enslave them, since they are already ‘slaves’ of God (Lev 25:42). Likewise, the land—distributed equitably among them (Num. 32, 34–36, Josh 13–21)—is holy and cannot be alienated (Lev 25:23). An institution is put in place to ensure that displaced citizens are eventually returned to their family and the possession of their inheritance (Lev 25:10). They are sacred slaves, hierodoules (Exod 19:6)” (Bergsma, *The Jubilee from Leviticus to Qumran*, 30). Cf. Tigay, *Deuteronomy*, 467. For Egyptian permission “to transfer property for the term of one’s life” see VerSteeg, *Law in Ancient Egypt*, 110. Bergsma sees Lev 25 as reflecting a tribal setting, and one’s neighbor might therefore also have been once literal brother (Bergsma, *The Jubilee from Leviticus to Qumran*, 141), in contrast to the more urban setting of Deut 15:1–18 which “presuppose a society that is more urban, nationalized, and economically developed than that of the Holiness Code. Accordingly, Deut 15 may belong to a later period in Israel’s history” (Bergsma, *The Jubilee from Leviticus to Qumran*, 138). This reading of Lev 25 is also reflected in his claim that its main focus is to preserve the tribal inheritance within the clan: “This implies that the system in Leviticus is designed to benefit families more than individuals. Even though an individual might not regain his freedom, his family eventually would. *This system seems to approach the problem from the perspective of tribal society* . . . . The aim of the law is to prevent the clan or tribe from losing part of its land, just as daughters who inherited their father’s land were required to marry within their tribe for this very reason. Leviticus’s law of manumission, likewise, aims to prevent any of the family units of the tribe from being reduced to permanent servitude. Exodus and Deuteronomy, by contrast, serve to protect individuals” (Bergsma, *The Jubilee from Leviticus to Qumran*, 64. Cf. 65, 69–70, 84–85). Cf. Berman, *Created Equal*, 90, 92, 99–100, 107 on the focus in Lev 25 to preserve land within the family, and Westbrook and Wells, *Everyday Law in Biblical Israel*, 119 on debt as “a chronic social problem throughout the ancient world.”

However, while it seems correct to claim that the *effect* of Lev 25:39–46 would be to preserve the tribal inheritance within the clan, it is nevertheless formulated so as to primarily *focus* upon the return of the individual that was forced to sell himself into service. Vice versa, the text does not strictly address the question of the return of the land. On the contrary, the passage might even be read as if the land was never sold, only the individual. Therefore, 25:41 simply states that the ‘brother’ return to his family and ancestral

described in Jer 34:8–10, 15 seems to reuse the manumission instruction in Lev 25:39–46. That it nevertheless modifies its reading of Lev 25 with the gender inclusive *הַעֲבָרִי* (Jer 34:9), likely borrowed from *הַעֲבָרִי* או *הַעֲבָרִיָּה* in Deut 15:12, shows that Lev 25 was read in the days of Zedekiah, or at least at the composition of Jer 34, as implying both Hebrew male and female slaves. While it is not certain that the author of Jer 34 believed that this was actually what Lev 25:39–46 meant, and that he possibly arrived at this reading rather by reading Lev 25:39–46 in light of Deut 15:12, at least he saw no problems in reading Lev 25:39–46 in gender inclusive terms. Therefore, Jer 34 does not perceive Lev 25:39–46 as restricted to the *pater familias* alone. On the contrary, Lev 25:39–46 is taken in Zedekiah’s covenant as a general manumission of all Judahite slaves.

Leviticus 25:39–46 differentiates between not enslaving “a brother who is with you” (*אֶחָיוּךָ עִמָּךָ*, 25:39), who has become economically vulnerable and forced to sell himself (25:39–43),<sup>56</sup> and the sojourner and his family who may be enslaved (25:44–

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property, *וְשָׁב אֶל־מִשְׁפַּחְתּוֹ וְאֶל־אֲחֻזַּת אֲבֹתָיו יָשׁוּב*, not his own property (*אֲחֻזָּתוֹ*). This does not mean that Lev 25 in general is not concerned with the return of property as such. On the contrary, this is exactly what we see in Lev 25:10, 13, 23–34. Note the similarity, but also slight modification, between *וְשָׁבְתָם אִישׁ אֶל־* *וְשָׁבְתָם אִישׁ אֶל־מִשְׁפַּחְתּוֹ וְאֶל־אֲחֻזַּת אֲבֹתָיו יָשׁוּב* in Lev 25:10 and *וְשָׁב אֶל־מִשְׁפַּחְתּוֹ וְאֶל־אֲחֻזַּת אֲבֹתָיו יָשׁוּב* in 25:41. While 25:10 speaks of *אֶל־אֲחֻזַּתוֹ*, 25:41 reads *וְאֶל־אֲחֻזַּת אֲבֹתָיו יָשׁוּב*. This slight difference seems to be highlighted when comparing 25:41 to the rest of the chapter. The emphasis upon a return to the ancestral property in the unique phrase in the HB *וְשָׁבְתָם אִישׁ אֶל־אֲחֻזַּת אֲבֹתָיו יָשׁוּב* of 25:41 strikes us when we compare with the idea of return to one’s own property in the rest of Lev 25 (*וְשָׁבְתָם אִישׁ אֶל־אֲחֻזַּתוֹ* in 25:10, 13, 25, 27–28, 32, *וְשָׁבְתָם אִישׁ אֶל־אֲחֻזַּתוֹ* in 25:24, and *וְשָׁבְתָם אִישׁ אֶל־אֲחֻזַּתוֹ* in 25:32–33, and *וְשָׁבְתָם אִישׁ אֶל־אֲחֻזַּתוֹ* in 25:45). My point is that the return of property does not seem to be the primary focus of 25:39–46, even if it may be an implied effect in cases where this applied. Cf. Nihan, *From Priestly Torah to Pentateuch*, 66 for a reference to scholars arguing that *וְשָׁבְתָם אִישׁ אֶל־אֲחֻזַּתוֹ* should be understood as the ‘right to usufruct’ in contrast to *וְשָׁבְתָם אִישׁ אֶל־אֲחֻזַּתוֹ* as ‘personal possession.’ The primary focus of 25:39–43 seems to be a response to the loss of the individual Israelite’s freedom to a native.

<sup>56</sup> Westbrook has argued that this should be called “famine slavery,” rather than “debt slavery” (Raymond Westbrook, *Law from the Tigris to the Tiber: The Writings of Raymond Westbrook* (Winona Lake, IN: Eisenbrauns, 2009), 178–80, 189–92). Cf. Gane, *Old Testament Law for Christians*, 290–93, 316.

46).<sup>57</sup> A sold kinsman should acquire the legal status of a hired worker, not the legal status of a slave.<sup>58</sup> As argued above, there seems to be an ambivalence in the use of עֲבָרִי in Exod 21:2 and Deut 15:12, where individuals of kindred nations might be included in the reference to עֲבָרִי besides the Israelites. It is also possible to see ambivalence as to the ethnic demarcations in Lev 25:39–46, even if this passage is often understood to make a clear distinction between the Israelite and non-Israelite. The אָחִיךָ עִמָּךְ (“your brother with you”) of Lev 25:39 is defined as אֶחְיֶיכֶם בְּנֵי־יִשְׂרָאֵל (“your brothers, sons of Israel”) in 25:46. While this seems to define the ‘brother’ as an ‘Israelite,’ the context of Lev 25 also seems to invite another reading. While עֲבָרִי in Exod 21 and Deut 15 might be taken to refer to a broader group than Israelites exclusively, possibly including kindred nations belonging to the same ancestral tree, it may also be possible to read Lev 25 as containing a similar ethnic ambivalence, despite its clear distinction between the ethnic Israelite (25:39–43) and non-Israelite (25:44–46).

Whether we read וְתוֹשֵׁב גֵר in 25:35 ( וְתוֹשֵׁב גֵר ) as open to the possibility that “your brother” (אָחִיךָ) might *de facto* be a

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<sup>57</sup> For a general discussion on the status of the alien in Israelite society see James K. Hoffmeier, *The Immigration Crisis: Immigrants, Aliens, and the Bible* (Wheaton, IL: Crossway, 2009), especially pp. 71–96.

<sup>58</sup> For the difference between the legal status of a slave and hireling see Milgrom, *Leviticus 23–27*, 2223. For the differentiation between the Israelite and non-Israelite, and a break with a tribal framework for a national in Lev 25, see Japhet, “The Relationship between the Legal Corpora,” 76–78, 80. In his comparative study of international law in the ANE, Ziskind found that “it is only in the Old Testament that a considerable body of law governing the status of the alien exists,” finding three significant divergences in Torah with other ANE material: (1) in the use of descriptive terminology of the various types of aliens (גֵר/נְכָרִי), (2) identifying them as a socially and legally recognizable class, and (3) a patronal system where an Israelite would be the patron of an alien (Jonathan Rosner Ziskind, “Aspects of International Law in the Ancient Near East” (Ph.D. diss., Columbia University, 1967), ii, 184–85).

“foreigner and sojourner” (i.e. “even if he is a foreigner and sojourner”)<sup>59</sup> or as treating the native Israelite *de jure* “as though he were a resident foreigner,”<sup>60</sup> this verse introduces a certain otherness, a foreignness, in the brother. As we come to 25:39 and again read the reference to “your brother” (אָחִיךָ), we might easily understand it in the broader sense of including some kind of otherness, be that as a foreigner treated as a native or a native treated as a foreigner. The link between 25:35 and 25:39 is further strengthened as both passages open with the identical clause, וְכִי־יִמְרוּךְ אָחִיךָ (“and if your brother becomes poor”).

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<sup>59</sup> An argument in support of this reading would be the lack of the comparative כּ in the phrase גֵּר וְתוֹשֵׁב in 25:35, in contrast to כְּשֶׁכִּיר כְּתוֹשֵׁב in 25:40. An observation by Nihan regarding 25:23b can be taken as supporting both alternative readings. Commenting on the complementarity of Lev 25:2–7 to Exod 23:10–11 he writes: “This is entirely consistent with the overall conception underlying ch. 25, according to which Israelite landowners are themselves resident aliens and dependent workers (גֵּרִים וְתוֹשְׁבִים) on Yahweh’s land (v. 23b). As legal exegesis of Exod 23:10–11, the legislation on the Sabbatical Year in Lev 25 thus act as a concrete reminder, every seven years, of this reality” (Nihan, *From Priestly Torah to Pentateuch*, 526). Accordingly, in Lev 25:23 the people of Israel are themselves considered to be strangers and resident workers, כִּי־גֵרִים וְתוֹשְׁבִים אֲתֶם עַמִּדִי. The same order on גֵּר and תוֹשֵׁב in Lev 25:23, 35 strengthen the contention that the author may have intended them to be co-read. The stranger and resident worker in Lev 25:35 could thus *de facto* be an Israelite, even if they *de jure* have the status of strangers and resident workers, as well as being a brother (אָח) who *de facto* and *de jure* are strangers and resident workers. Nihan continues: “The occurrence of the expression גֵּרִים וְתוֹשְׁבִים in v. 35b has often been regarded as a later and somewhat awkward interpolation, but it actually does make sense in this context. Since the former landowner now exploits his own estate for his creditor, the latter is required to support (הִזְקִיף Hiphil) him by treating him *as if he were a dependent worker*” (Nihan, *From Priestly Torah to Pentateuch*, 532. Italics original). And again: “*The legislation on slavery in Lev 25:39–55 and, more generally, the entire law of 25:8–55 now concretely illustrate the ultimate purpose of this process for the Israelites: to become dependent workers (v. 24[v. 23?]) on Yahweh’s estate, cultivating the land for him*” (Nihan, *From Priestly Torah to Pentateuch*, 535. Italics original). Whatever way we take it, it strengthens the contention here made that there is an ambivalence between the foreigner and native in Lev 25. Further, Levinson has pointed out that Lev 25, since it does not allow Israelites to be slaves, reapplies the provisions of Exod 21 to foreign nations (Levinson, “The Birth of the Lemma,” 620–23). This supports the claim that Lev 25 represents a studied negotiation of the relation between natives and foreigners. The way in which it is formulated might contain more sophistication than a superficial reading would detect.

<sup>60</sup> Milgrom argues that it should be rendered “(as though he were) a resident alien” (Milgrom, *Leviticus 23–27*, 2206–8). Milgrom sees the phrase as a hendiadys, “resident alien.” In a similar way, Schenker suggests it should be read as “in the condition of a stranger and sojourner” (Schenker, “Biblical Legislation,” 29).



When we come to 25:46, however, we find the formulation **וּבְאֵחֵיכֶם בְּנֵי־יִשְׂרָאֵל** (“but as for your brothers, the sons of Israel”), **אָח** is clearly used exclusively for the Israelite. While 25:46 would thus mark a closure of a possibility envisaged by a synchronic reading of 25:35 and 25:39, legitimating a distinction between the Israelite and resident alien based on 25:46, the verses 25:35 and 25:39 read together seem to invite those ready for it into a more radical reading. Leviticus 25:39–46 may thus be read on two levels. On the first level the differentiation between the native (25:39–43) and foreigner (25:44–46) is explicit. But on the second level there are also indicators in the text that appear to deconstruct this distinction, and invite the reader to treat the stranger and resident alien according to the release of 25:39–43. This would accord with Lev 19:34 admonishing the Israelite to treat the stranger as a native ( **כְּאֶזְרַח מִמֶּנּוּ יִהְיֶה לָכֶם הַגֵּר** ) (הַגֵּר אֶתְכֶם וְאֶהְבֶּתָּ לוֹ כְּמוֹדְךָ).<sup>61</sup> If **כְּשֹׁכֵר כְּתוֹשֵׁב** in 25:40 is to be understood as a hendiadys, as argued by Milgrom,<sup>62</sup> where **תוֹשֵׁב** is never used alone in the HB but always qualified by either **שֹׁכֵר** or **גֹּר/גֵּר** as in Lev 25:6, 23, 35, 40, 45, 47, the **תוֹשֵׁב** is always either a “resident foreigner” or “resident hireling.” Milgrom writes:

The resident hireling is not a *śākīr*, a day laborer who returns to his home and family each evening (19:13; Deut 24:14–15; Job 14:6), but a long-term employee who lives with his family on the landowner’s property (*haggārīm ‘immāk*, v. 6). . . . The resident hireling may be either Israelite . . . or non-Israelite. The exception is the verse under discussion: it would apply to only Israelites; non-Israelites may be treated as slaves (vv. 44–46), and the jubilee law does not pertain to them.<sup>63</sup>

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<sup>61</sup> Cf. Kaufmann who writes that for P the foreigner has assimilated to Israelite culture and religion (Kaufmann, *The Religion of Israel*, 206), and Milgrom writes that he is a permanent resident (Milgrom, *Leviticus 23–27*, 2221).

<sup>62</sup> Milgrom, *Leviticus 23–27*, 2221.

<sup>63</sup> Milgrom, *Leviticus 23–27*, 2221–2.

But instead of seeing 25:40 as an exception to the rule,<sup>64</sup> reading the verse as expressing ambivalence as to the distinction between the Israelite and non-Israelite, by seeing the Israelite servant as a hired worker and sojourner, (כְּשָׂכִיר כְּתוֹשֵׁב) suggests the possibility for a more radical reading.<sup>65</sup> Read in this manner, the enslavement of individuals from the surrounding nations in 25:44–46 might be read as a concession, rather than a prescription. At the same time it might be an invitation to rethink the relation to the foreigner in light of what is said about the native. Thus, the tension between 19:34 and 25:39–46 might not be as large as it appears at first glance.

Further, Ezek 47:22–23 could be read as picking up the tension between Lev 19:34 and 25:39–46 in regard to the stranger, thus including the stranger in the allotment

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<sup>64</sup> Deut 24:14, לֹא־תַעֲשֶׂק שָׂכִיר עֲנִי וְאֶבְיֹן מֵאַחֵיךָ אוֹ מִגֵּרְךָ אֲשֶׁר בְּאַרְצְךָ בִּשְׁעָרֶיךָ (“you shall not oppress a needy and poor hireling, whether your brother or your stranger, who is in the land, within your gates”), is another example of the idea of similar treatment of the native and foreign worker in Pentateuchal legislation.

<sup>65</sup> A question is whether we should view the manumission laws in Torah as idealistic or realistic? Patrick wrote: “The biblical lawbooks contain a healthy sampling of idealistic or utopian provisions. Even within the remedial law of the BC, one finds idealistic provisions, for example, granting a slave freedom for loss of a tooth (21:27). Most of Deuteronomy’s slave provisions are idealistic and would have brought the institution to an end if enforced. The Jubilee Year in the Holiness Code is thoroughly utopian. Such idealistic and utopian rulings would not have made their way into the lawbooks if the lawbooks were designed for practical application in judicial cases” (Patrick, *Old Testament Law*, 199). And Weinfeld: “In Israel, as in Mesopotamia, the collections of laws were edited by scribes whose object was to present the *desirable* rather than the actual and hence the gap between the laws and the legal documents, which reflected the actual reality. However, one cannot repudiate the real historical basis reflected in the pentateuchal laws of the Sabbatical year and the year of Jubilee, just as one cannot deny the actual reality standing behind the Mesopotamian laws” (Weinfeld, “Sabbatical Year and the Jubilee,” 42–43). Milgrom writes: “One should not confuse H’s Utopian ideals, which are far ahead of their time, with the socioeconomic problems that H is attempting to solve. The fact that H is more constructive than D is an indication of only H’s loftier vision, not its alleged lateness” (Milgrom, *Leviticus 23–27*, 2207). Maybe we could say that Lev 25:39–46 could be read in both a radical and idealistic fashion on one side, and a socioeconomically realistic manner on the other—and that the text was intentionally composed to hold both possible readings open? Compare the tension between what Hamilton describes as “the ideal portrait and the importance of observance” in Deut 15:4–6, claiming that “there shall be no needy among you,” with the “importance of observance” being carried over into 15:7–11, claiming that “there will never cease to be needy ones in your land” (Hamilton, *Social Justice and Deuteronomy*, 23).

of the land.<sup>66</sup> Besides Lev 19:34, the author of Ezek 47:22–23 could also have found support in the above suggested reading of 25:35, 39–40. In Jer 34:9, on the contrary, the ethnic ambivalence from the Pentateuchal manumission instructions is not perceived. Here the עֲבָרִי is specifically defined as בְּיַהֲוֹדִי אֶחָיִהוּ אִישׁ (“among Judahites, he is your brother”), and I find no hint that Jer 34 has the foreigner in view.<sup>67</sup> In Jer 34, Hebrew (עֲבָרִי/הָ/עֲבָרִי), vv. 9, 14) and Judahites (יְהוּדִי, v. 9) simply appear to be synonymous ethnic designations.

#### Deut 15:12–18

The following Table 9 gives Deut 15:12–18 MT with a translation.<sup>68</sup>

Deuteronomy 15:1–11 speaks of the seventh-year debt remission for Israelites (15:1–3), promising abundance (15:4–6), while encouraging loaning to the needy (15:7–11). Deut 15:12–18 speaks of a seventh-year release for both male and female slaves, providing them with abundant supplies as they go out (15:13–15).<sup>69</sup> In contrast to Exod 21:2–6 which seems to be an individual cycle, the links to the national cycle of Deut 15:1 and 31:9–11 for the שְׁמִטָּה make it possible to read Deut 15:12 as either

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<sup>66</sup> Cf. Lyons, *From Law to Prophecy*, 133–34.

<sup>67</sup> Cf. Hornkohl, *Language of the Book of Jeremiah*, 306. On inconsistency of gentilic reference in LXX see Hornkohl, *Language of the Book of Jeremiah*, 314.

<sup>68</sup> Deut 15:14–15 is attested in 1QDeut<sup>b</sup>, frg. 5 and Deut 15:15–18 in 4QDeut<sup>c</sup>, frgs. 28–30. In 15:14 the MT יהוה is replaced with אֱלֹהֵי in 1QDeut<sup>b</sup>, frg. 5, and in 15:15 instead of the MT אֲנֹכִי מִצִּוְיָהּ we find the more elaborate אֲנֹכִי מִצִּוְיָהּ לַעֲשׂוֹתָהּ in 1QDeut<sup>b</sup>, frg. 5. Cf. Teeter, *Scribal Laws*, 134, 136.

<sup>69</sup> For a discussion of the relation between the agricultural fallow and debt remission in Exod 23:10–11, Lev 25:2–7, and in Deut 15:1–18 see Bergsma, *The Jubilee from Leviticus to Qumran*, 131–32; Stackert, *Rewriting the Torah*, 118–22. For an argument that Deut 15:1–18 “formed the centre of the framework of the privilege laws in Deuteronomy” see Otto, “Aspects of Legal Reforms,” 194.

**Table 9. Deut 15:12–18**

<p>12 כִּי־יִמְכַר לְךָ אֶחִיךָ הָעִבְרִי אוֹ הָעִבְרִיָּה וְעַבְדְּךָ שֵׁשׁ שָׁנִים וּבִשְׁנֵה הַשְּׁבִיעִת תִּשְׁלַחֲנוּ חֲפָשִׁי מֵעִמְךָ: 13 וְכִי־תִשְׁלַחֲנוּ חֲפָשִׁי מֵעִמְךָ לֹא תִשְׁלַחֲנוּ רִיקָם: 14 הֶעֱנִיק תִּעְנִיק לוֹ מִצֹּאֲנֶךָ וּמִגֶּרְנֶךָ וּמִיִּקְבְּךָ אֲשֶׁר בֵּרַכְךָ יְהוָה אֱלֹהֶיךָ תִתֶּן־לוֹ: 15 וּזְכַרְתָּ כִּי עַבְדָּהּ בְּאֶרֶץ מִצְרַיִם וַיִּפְדֶּךָ יְהוָה אֱלֹהֶיךָ עַל־כֵּן אֲנִכִּי מִצֹּדֶק אֶת־הַדָּבָר הַזֶּה הַיּוֹם: 16 וְהָיָה כִּי־יֹאמֵר אֵלַי לֹא אֶצֵּא מֵעִמְךָ כִּי אֶהְבֶּךָ וְאֶת־בֵּיתְךָ כִּי־טוֹב לוֹ עִמְךָ: 17 וְלָקַחְתָּ אֶת־ הַמְרָצָע וְנָתַתָּה בְּאָזְנוֹ וּבִדְלֹתָ וְהָיָה לְךָ עַבְדָּ עוֹלָם וְאִם לֹא־מָתַךְ תַּעֲשֶׂה־כֵּן: 18 לֹא־יִקְשֶׁה בְּעֵינֶיךָ בְּשִׁלַּחְךָ אֶתוֹ חֲפָשִׁי מֵעִמְךָ כִּי מִשְׁנֵה שֹׂכֵר שֹׂכֵר עַבְדְּךָ שֵׁשׁ שָׁנִים וּבֵרַכְךָ יְהוָה אֱלֹהֶיךָ בְּכָל אֲשֶׁר תַּעֲשֶׂה: פ</p>	<p>12 If your brother is sold to you, a Hebrew man or woman, he shall serve you six years but in the seventh year you shall send<sup>70</sup> him free from yourself. 13 And when you send him free from yourself you shall not send him empty-handed. 14 Furnish him liberally from your flock and from your threshing floor and from your winepress, of that which YHWH your God blessed you you shall give him. 15 And remember that you were a slave in the land of Egypt, and YHWH your God redeemed you. Therefore, I command you this thing today. 16 And it shall be, if he says to you, “I do not want to exit from you, for I love you and your house,” because it is good for him with you, 17 then you shall take the awl and put it through his ear and into the door, and he shall be your male slave forever, and you shall do thus also to your female slave. 18 Do not be hard in your eyes when you are sending him away, free from you. For he has served you for six years the double wages of a hired worker. And YHWH your God will bless you in all that you do.</p>
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following an individual or national cycle.<sup>71</sup> Whether Jer 34:14 understood Deut 15:12 as

<sup>70</sup> Since שלח is used in Deut 15:12–13 three times, and since it has the meaning of ‘send’ in 15:13b instead of ‘set (free)’ as in the two previous cases, I prefer to render all three cases in a similar way, as ‘send.’

<sup>71</sup> A question here is whether or not we should see a basic contradiction between the מִקֵּץ שְׁבַע שָׁנִים of Deut 15:1 and שֵׁשׁ שָׁנִים וּבִשְׁנֵה הַשְּׁבִיעִת in 15:12. Besides Deut 15:1 and Jer 34:14, מִקֵּץ שְׁבַע שָׁנִים is also used in Deut 31:10 for the septennial reading of Torah at the Festival of Booths. It is here linked to the time of remission (בְּמִלְעֵד שְׁנַת הַשְּׁמִטָּה, cf. Deut 15:2, 9). Sarna has argued that the septennial cycle of manumission of slaves and reading of Torah coincided, implying a national cycle of the Deuteronomistic manumission as well (cf. Sarna, “Zedekiah’s Emancipation,” 147). Fischer explains that the two designations are used in Deut 15 and 31 in the sense of “in the seventh year,” an expression used in 15:12 (בְּשְׁנֵה הַשְּׁבִיעִת). According to him there may therefore not have to be a contradiction between שֵׁשׁ + עַבְדָּ and שֵׁשׁ שָׁנִים and מִקֵּץ שְׁבַע שָׁנִים: “Die Fügung ‘am Ende von sieben Jahren’ ist auch in Dtn 15,1 (für das Erlaßjahr) und 31,10 (für die Verlesung des Gesetzes im Sabbatjahr) belegt. Beide Male läßt es sich als Beendigung einer Zeitspanne verstehen, gleichbedeutend mit ‘im siebten Jahr’ oder ‘nach Ablauf von (vollen) sechs Jahren’, sodaß es mit der bald folgenden Zeitangabe (‘sechs Jahre’) nicht im Widerspruch stehen muß” (Fischer, *Jeremia 26–52*, 255). Cf. Bright, *Jeremiah*, 222; Holladay, *Jeremiah 26–52*, 238; Lundbom, *Jeremiah 21–36*, 563 taking a similar view. Cf. Levinson, *Deuteronomy*, 92 where he speaks of Deut 15:1, 12 as having a “common septennial cycle.” Others maintain that the debt remission of Deut 15:1 was a national cycle while the slave manumission an individual cycle (cf. Lemche, “The Manumission of Slaves,” 45; Weinfeld, “Sabbatical Year and the Jubilee,” 39–40; Chirichigno, *Debt-Slavery*, 282–86; McConville, *Deuteronomy*, 262; Tigay, *Deuteronomy*, 468; Levinson, “The Manumission of Hermeneutics,” 320;

representing a national cycle, and just wanted to make the point explicit by conflating the passage with Deut 15:1, or whether it understood the two to represent a national and individual cycle respectively while reworking Deut 15:12 into a national cycle by reusing 15:1, it seems clear that Jer 34:14 presents Deut 15:12 as a national cycle.<sup>72</sup> Providing abundantly for the released slave seems to be the main emphasis in the Deuteronomic manumission instruction.<sup>73</sup> There is, therefore, a strong thrust towards compassion for the needy in this passage.<sup>74</sup> While Exod 21:2–11 focuses on the conditions for the release of

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Leuchter, “The Manumission Laws,” 647). For the literary interconnectedness of Deut 15:1–11 and 15:12–18 see Hamilton, *Social Justice and Deuteronomy*, 25–31. For a discussion on the dating and understanding of the seven-year cycle see Otto Loretz, *Habiru-Hebräer: Eine soziolinguistische Studie über die Herkunft des Gentiliciums 'ibri vom Appellativum habiru*, BZAW (Berlin: de Gruyter, 1984); N. P. Lemche, “The Hebrew and the Seven Year Cycle,” *BN* 25 (1984); Van Seters, *A Law Book for the Diaspora*, 94–95.

<sup>72</sup> It seems clear at least that Jer 34:14 sees them, or takes them, as referring to the same timeframe (contra Chavel, “Let My People Go!,” 81–83 who sees a conflict between Deut 15 and Jer 34). Tigay writes that while Deut 15:1 seems to be a national cycle, while 15:12 an individual, in Jer 34 the two were “taken to be identical and that all servants were to be freed simultaneously, in the year of remission” (Tigay, *Deuteronomy*, 468). He explains that this ‘conflation’ might have been inspired by the two seven year cycles being juxtaposed in Deuteronomy based on an associative principle of organizing the laws. For a discussion of Jer 41:14 LXX see Maier, *Jeremia als Lehrer der Tora*.

<sup>73</sup> Cf. McConville, *Deuteronomy*, 263. According to Deut 15:1–11, in the Sabbath-year the people are to remit a loan to a neighbor, but in 15:3 they are allowed to exact a loan from foreigners. This reminds of the differentiation between the native and foreigner in Exod 21:8 and Lev 25:39–55. As they loan generously towards Hebrews and let go of the claim toward the loan in the Sabbath-year, God’s blessing will ensure that they have plenty to loan to other nations and get back their interest and loans manifold. Further, it will ensure that there will be no needy in the land (15:4), so there will really be no loss. But is there not an irony here? The blessing presupposes that they cancel loans in the Sabbath-year, while the blessing itself will eradicate the need of anyone to have to loan. So, if the people were loyal to the instruction, how could they then fulfill the condition for the blessing? May this paradoxically also be the key to the apparent contradiction between the presence and absence of the needy in the land mentioned in 15:4, 11? This again may be an example of where a socioeconomic realistic reading of the instruction is challenged by a more radical reading. Compare how Deut 15:6 here may be playing on the word מִשַׁל in מִשַׁל בְּבָגְדוֹ-בָּהּ (‘‘he is not entitled (מִשַׁל) to sell her to a foreign people in his treacherous dealing with her’’) from Exod 21:8 in the formulation וְיִמְשֻׁלְתָּ בְּגוֹיִם רַבִּים וְיִשַׁלְּךָ לָא (‘‘and you will dominate (מִשַׁל) many nations, but they shall not dominate (מִשַׁל) you’’). Deut 15:3 also mention the אֲתֵּי-הַנִּזְכָּרִי (‘‘the foreigner’’).

<sup>74</sup> Hamilton points out that in contrast to Exod 21:2–6, in Deut 15:16–17 “no attempt is made to spell out the circumstances which lie behind or create the desire for renouncing manumission. Only the attitude of the slave is spoken of, not the circumstances of that slave (married or not, childless or having children)” (Hamilton, *Social Justice and Deuteronomy*, 22). We can thus not set up a contrast between the

slaves, Deut 15:12–18 focuses on the duty of the master to treat the slaves generously upon release.<sup>75</sup>

### Jer 34:8–22

The following Table 10 gives the Jer 34:8–22 MT with a translation.

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familial circumstances of the subservient in Exod 21 and Lev 25 in contrast to Deut 15. The latter is simply not focusing on this question. Stackert explains the absence of the fallow year in Deut 15 as due to the absence of the fallow year in Exod 23:10–11 as well. He also points out that the ethical concerns of Deut 15 results in the passage not focusing upon agricultural issues (Stackert, *Rewriting the Torah*, 129–41).

<sup>75</sup> Cf. Lohfink, “Fortschreibung?,” 159–60. Some commentators see no order in the legal material of Deut 12–26. Others have argued that Deut 12–26 is structured according to the Decalogue. In this later view, Deut 15:1–18 can be seen as corresponding to the Fourth Word of the Decalogue concerning the Sabbath. Cf. Stephen A. Kaufman, “The Structure of the Deuteronomic Law,” *MAARAV* 1/2 (1978-79): 258–61; Bergsma, *The Jubilee from Leviticus to Qumran*, 130; Kilchör, *Mosetora und Jahwetora*, 41–70, 108–15, 126–56; Hamilton, *Social Justice and Deuteronomy*, 103–7; Chirichigno, *Debt-Slavery*, 258–61. Braulik places Deut 15:1–18 rather together with the Third Word (Georg Braulik, *Die deuteronomischen Gesetze und der Dekalog: Studien zum Aufbau von Deuteronomium 12–26* (Stuttgart: Katolisches Bibelwerk GmbH, 1991), 35–38. For other discussion on the Decalogue order of the instructions in Deuteronomy see Rütterswörden, “Die Dekalogstruktur des Deuteronomiums - Fragen an eine Annahme,” ; Georg Braulik, “Der unterbrochene Dekalog: Zu Deuteronomium 5,12 und 16 und ihrer Bedeutung für den deuteronomischen Gesetzeskodex,” *ZAW* 120 (2008); Otto, *Deuteronomium 4,44–11,32*, 689–704; Rofé, “The Arrangement of the Laws in Deuteronomy,” 55–77. Cf. Westbrook, “Origins of Legislation,” 95. For another approach to the order of instructions in Deuteronomy, mirroring the narrative material in Genesis to Numbers see E. Blum, *Studien zur Komposition des Pentateuch*, BZAW (Berlin: de Gruyter, 1990), 197–201. Westbrook dated the composition of Deuteronomy to the 7<sup>th</sup> century. While the ANE law according to him was retrospective, in Deut 15 and its debt-release he finds a “fundamental innovation” in biblical legal thinking toward a prospective concept of law. He sees a simultaneous rise of a legislative concept of law in both Athens and ancient Israel (Westbrook, “Origins of Legislation,” 92–93). For a criticism of Westbrook’s analysis of Deut 15 see LeFebvre, *Collections, Codes, and Torah*, 76–83. Contra Westbrook on Deut 15, LeFebvre claims that prospective and cyclical cultic calendars were not unique to the HB, but “what was unique about Israel was its tendency to incorporate such cultic cycles into its law collections” (LeFebvre, *Collections, Codes, and Torah*, 79). He also claims that the prospective element in the ‘release’ (שְׁמִטָּה) of Deut 15 does not signal Westbrook’s “transformation to true prospective legislation,” “a different intellectual climate,” or a “fundamental innovation” (Westbrook, “Origins of Legislation,” 92–93), but is already found in the command to ‘release’ (תִּשְׁמֹטְתָהּ) the land every seventh year in Exod 23:10–11. LeFebvre writes: “Supporting this view is the fact that the septennial release is not ‘new prospective legislation’ but actually goes back in principles to BC, where a cyclical ‘release’ (שְׁמִטָּה) was declared *for the land*: ‘Six years you shall sow your land and gather its produce, but the seventh year you shall leave it fallow (תִּשְׁמֹטְתָהּ), that the poor of your people may eat. . .’ (Exod 23:10–11). The stated purpose of that BC release was a concern for the poor. The Deuteronomic provision calls itself by the same title (שְׁמִטָּה) and incorporates the same concern for the poor (vv. 4–11). In other words, Deut is not creating a new statutory cycle; it is merely updating an existing release-law cycle. The Deuteronomic version of the release is *recast in terms of a royal debt release*” (LeFebvre, *Collections, Codes, and Torah*, 81–82).

**Table 10. Jer 34:8–22**

<p><sup>8</sup> הדבר אשר־יהיה אלי־ירמיהו מאת יהוה אחרי כרת המלך צדקיהו ברית את־כל־העם אשר בירושלם לקרא להם דרור: <sup>9</sup> לשלח איש את־עבדו ואיש את־שפחתו העברי והעבריה חפשים לבלתי עבד־בם ביהודי אחיהו איש<sup>76</sup>: <sup>10</sup> וישמעו כל־השרים וכל־העם אשר־באו בברית לשלח איש את־עבדו ואיש את־שפחתו חפשים לבלתי עבד־בם עוד וישמעו וישלחו<sup>77</sup>: <sup>11</sup> וישבו אחרי־כן וישבו את־העבדים ואת־השפחות אשר שלחו חפשים ויכבשום לעבדים ולשפחות: <sup>12</sup> ויהי דבר־יהוה אלי־ירמיהו מאת יהוה לאמר: <sup>13</sup> כה־אמר יהוה אלהי ישראל אנכי כרתי ברית את־אבותיכם ביום הוצאי אותם מארץ מצרים מבית עבדים לאמר: <sup>14</sup> מקץ שבע שנים תשלחו איש את־אחיו העברי אשר־ימכר לך ועבדך שש שנים ושלחתו חפשי מעמך ולא־שמעו אבותיכם אלי ולא הטו את־אזנם: <sup>15</sup> ותשבו אתם היום ותעשו את־הישר בעיני לקרא דרור איש לרעהו ותכרתו ברית לפני בבית אשר־נקרא שמי עליו: <sup>16</sup> ותשבו ותחללו את־שמי ותשבו איש את־עבדו ואיש את־שפחתו אשר־שלחתם חפשים לנפשם<sup>78</sup> ותכבשו אתם להיות<sup>79</sup> לכם לעבדים ולשפחות: <sup>17</sup> לכן כה־אמר יהוה אתם לא־שמעתם אלי לקרא דרור איש לאחיו<sup>80</sup> ואיש לרעהו הנני קרא לכם דרור</p>	<p><sup>8</sup>The word that came to Jeremiah from YHWH, after king Zedekiah cut a covenant with all the people that were in Jerusalem to proclaim release among them, <sup>9</sup> each one to send his slave free, and each one his maidservant, a Hebrew man or woman, that none enslave his brother among Judeans. <sup>10</sup> And all the officials and all the people that came into the covenant to send free each one his slave and maidservant, not to enslave again among them. And they heard and they sent away. <sup>11</sup> But afterward they turned around and returned the slaves and maidservant whom they sent free. And they subjected them to slaves and maidservants. <sup>12</sup> And the word of YHWH came to Jeremiah from YHWH, saying: <sup>13</sup> Thus says YHWH, the God of Israel: I, I made a covenant with your fathers when I brought them from the land of Egypt, from the house of slavery, saying: <sup>14</sup> At the end of seven years each one shall send his Hebrew brother, who was sold to you and served you for six years, you shall send him free from you. But your fathers did not listen to me and did not incline their ear. <sup>15</sup> But you, you turned one day, and you did what was right in my eyes to proclaim a release, each one to his neighbor. And you made a covenant before my face, in the house which is called by my name. <sup>16</sup> But you turned around and profaned my name by returning each man his slave and his maidservant whom you sent free for their life. <sup>17</sup> Therefore, thus says YHWH: You did not listen to me to proclaim a release, each one to his brother, and each one to his neighbor. Behold, I</p>
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<sup>76</sup> MT אָהִיּוּ אִישׁ is not rendered in LXX.

<sup>77</sup> Jeremiah 41:10 LXX does not render Jer 34:10 MT עוֹד וַיִּשְׁמְעוּ וַיִּשְׁלְחוּ, possibly because it saw it as redundant.

<sup>78</sup> Others render לְנַפְשָׁם in 34:16 as “according to their desire” (NRSV/ESV/NASB), “to go where they wished” (NIV), “at their pleasure” (KJV/YLT/OJPS), or omit the phrase (NJPS). Given the meaning “their life” (נַפְשָׁם) in 34:20–21 and the play on words in the chapter, linking sin and punishment, I prefer to render לְנַפְשָׁם in 34:16 as well as “for their life.” The phrase לְנַפְשָׁם could be read as implying they were released for lifetime. LXX does not render 34:20 MT מְבַקְשֵׁי נַפְשָׁם (“those seeking their life”) or 34:21 MT וּבְיַד מְבַקְשֵׁי נַפְשָׁם (“and in the hands of those seeking their life, and in the hands of . . .”).

<sup>79</sup> MT וַתִּכְבְּשׁוּ אֹתָם לְהִיּוֹת (“and they subjected them to be”) is not rendered in LXX.

<sup>80</sup> MT לְאָהִיו (“to his brother”) is not rendered in LXX.

Table 10 — *Continued.*

<p>נאם־יהוה<sup>81</sup> אלה־החרב אלה־הדבר<sup>82</sup> ואל־הרעב ונתתי אתכם לזועה<sup>83</sup> לכל ממלכות הארץ: <sup>18</sup> ונתתי את־האנשים העברים את־ברתי אשר לא־הקימו את־דברי הברית אשר כרתו לפני העגל<sup>84</sup> אשר כרתו לשנים ויעברו בין בתריו: <sup>19</sup> שרי יהודה ושרי ירושלם הסרסים והכהנים וכל עם הארץ העברים בין בתרי העגל: <sup>20</sup> ונתתי</p>	<p>proclaim a release for you, says YHWH, to the sword, to the pestilence and to the famine. And I will make you a horror for all the kingdoms of the earth. <sup>18</sup> I will make the men who transgressed my covenant, who did not fulfill the words of the covenant which they made before my face, the calf which they cut in two and passed between its parts: <sup>19</sup> The officials of Judah and the officials of Jerusalem, the eunuchs and the priests, and all the people of the land, who</p>
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<sup>81</sup> MT נאם־יהוה (“saying of YHWH”) is not rendered in LXX.

<sup>82</sup> MT אלה־הדבר is present in LXX as εις τὸν θάνατον (“into death”).

<sup>83</sup> MT לזועה is rendered in LXX as εις διασποράν (“to dispersion”).

<sup>84</sup> There is a discussion on whether the text should read הַעֲגֹל . . . וְנָתַתִּי אֶת־הָאֲנָשִׁים (“I will make the men . . . a calf”) or כְּעֵגֶל . . . וְנָתַתִּי אֶת־הָאֲנָשִׁים (“I will make the men . . . like the calf”). The latter reading, which has also been the common, lends itself to the idea that the rite of dividing the calf implied some kind of self-imprecation or self-curse. Cf. Carroll, *Jeremiah*, 645–46. John Bright has suggested that a simpler reading is to transpose “the young bull” after “they cut” and render it as “I will hand over the men who have transgressed my covenant, who did not keep the terms of the covenant which they made in my presence, when they cut the young bull in two and passed between its parts” (Bright, *Jeremiah*, 220). Gerhard Hasel sees the “acted-out curse rite” in the vassal treaty between Ashurniari V and Mati’lu of Arpad to “fit more or less the passage of Jer 34:18–19 but hardly the one of Gen 15:9–10, 17” (Gerhard F. Hasel, “The Meaning of the Animal Rite in Genesis 15,” *JSOT* 19 (1981): 69). On p. 64 Hasel rejects using Jer 34 as a key to understand the animal rite in Gen 15. Cf. also Arvid S. Kapelrud, “The Interpretation of Jeremiah 34, 18ff.,” *JSOT*, no. 22 (1982) responding to Hasel. Åke Viberg goes one step further than Hasel, denying even Jer 34:18–19 should be understood as a self-imprecation or self-curse, but rather simply as a covenant ratification. He writes: “The only thing that can be said for sure is that it is presupposed that breaking the covenant brings severe punishment. The legal function of dividing a calf and walking through the parts is, according to Jer 34:18, to ratify a covenant that has been made. There is no evidence from the text to imply a self-imprecatory sense of the act. There is also nothing that would indicate a sacrificial nature of the preparatory act of cutting up of the calf, Jer 34:18” (Åke Viberg, *Symbols of Law: A Contextual Analysis of Legal Symbolic Acts in the Old Testament* (Stockholm: Almqvist & Wiksell International, 1992), 62–63). For a similar view see Lundbom, *Jeremiah 21–36*, 564–66; Holladay, *Jeremiah 26–52*, 242–43. Cf. Weeks, *Admition and Curse*, 150. LXX has Ἐγὼ ἐθήμην διαθήκην (“I made a covenant”), and does not render the idea of ‘cutting’ a covenant (כְּרַתִּי בְרִית) in 34:13. Jeremiah 41:18 LXX has τὸν μόσχον ὃν ἐποίησαν ἐργάζεσθαι αὐτῷ (“the calf which they prepared to sacrifice with it” (Brenton)). LXX therefore does not contain the idea of cutting the calf in two. Further, 41:19 LXX has καὶ τὸν λαόν (“and the people”) instead of MT וְכָל עַם הָאָרֶץ הָעֹבְרִים בֵּין בְּתָרֵי הָעֵגֶל (“and all the people of the land who passed between the parts of the calf”). Discussing this case Maier sees a possible allusion (“Anspielung”) in Jer 34:18 to Gen 15 (Maier, *Jeremia als Lehrer der Tora*, 274. See also pp. 253, 259–60, 273–75). She also discusses a possible link in Jer 41:18 LXX to the image of the calf at Sinai in Exod 32 (pp. 273, 275–76).

Which בְּרִיתִי (“my covenant”) is precisely referred to in 34:18? Because of the description of passing through the halves of the calf, it is often read as referring to the בְּרִית in 34:8–10. But would YHWH speak of this as “my covenant”? Might 34:18 be referring to the covenant YHWH made (אֲנִי בְּרִיתִי), mentioned in 34:13?



Table 10 — *Continued.*

<p>אותם ביד איביהם וביד מבקשי נפשם והיתה נבלתם למאכל לעוף השמים ולבהמת הארץ: 21 ואת־צדקיהו מלך־יהודה ואת־שריו אתן ביד איביהם וביד מבקשי נפשמוביד חיל מלך בבל העלים מעליכם: 22 הנני מצוה נאמ־יהוה והשבתיים אל־העיר הזאת ונלחמו עליה ולכדוה ושרפה באש ואת־ערי יהודה אתן שוממה מאין ישב: פ</p>	<p>passed between the parts of the calf, <sup>20</sup>and I will give them in the hand of their enemies and in the hand of those seeking their life. And their corpses will be food for the birds of the heavens and the animals of the earth. <sup>21</sup>And Zedekiah, king of Judah, and his officials I will give in the hand of their enemies and in the hand of those seeking their life and in the hand of the army of the king of Babylon, having come up against them. <sup>22</sup> Behold, I command, says YHWH, and I bring them to this city, and they will fight against her and take her and burn her with fire. And I will make the cities of Judah a desolation, without inhabitants.</p>
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Some have claimed that Jer 34:8–22 does not belong to the original Jeremianic composition while others have found the passage to be appropriate to Jeremianic tradition.<sup>85</sup> Some see the initial prologue and longer sermon in Jer 34:8–22 as a Deuteronomistic supplement to a historical source, possibly a royal annal. Some have seen it as “an amalgam of various strands and motifs.”<sup>86</sup> My proposal will be similar to

<sup>85</sup> There are no fragments among the DSS for Jer 34:8–22. Jer 34:8–22 MT corresponds to Jer 41:8–22 LXX. For how “the LXX has to be considered a defective and inferior text” see Lundbom, *Jeremiah 21-36*, 558. For a discussion on the relation between Jer MT and Jer LXX see Tov, *The Septuagint Translation of Jeremiah and Baruch: A Discussion of an Early Revision of the LXX of Jeremiah 29-52 and Baruch 1:1-3:8*; Tov, “The Literary History of the Book of Jeremiah in the Light of Its Textual History,” 211–41; Rofé, “The Arrangement of the Book of Jeremiah,” 390–98; Rofé, “The Arrangement of the Book of Jeremiah (MT and LXX) (in Hebrew),” 126–37; Maier, *Jeremia als Lehrer der Tora*, 26–30, 252–54, 257–60. Relevant for our discussion and the reuse of Deut 15 in Jer 34 is Rofé’s comment: “When did the dominant arrangement of the Book of Jeremiah (disregarding chs. 30; 31; 33) come into existence? The clue to the answer lies in the second collection (chs. 25–36). Here Deuteronomistic sermons, such as chs. 25; 27; 29; 32; 34; 35, alternate with reports of events that were only partly affected by Deuteronomistic phraseology—chs. 26; 28; 36” (Rofé, “The Arrangement of the Book of Jeremiah,” 395).

<sup>86</sup> Carroll, *Jeremiah*, 648. It has been claimed that Jer 34:14 is a Deuteronomic gloss (Thiel, *Jeremia 26-45*, 38–43; Lemche, “The Manumission of Slaves,” 51–53; Raymond Westbrook, *Property and the Family in Biblical Law*, JSOTSup 113 (Sheffield: Sheffield Academic Press, 1991), 16n; LeFebvre, *Collections, Codes, and Torah*, 83–84. Contra Weippert, *Die Prosareden des Jeremiabuches*, 86–106; Lundbom, *Jeremiah 21-36*, 561). For a discussion on the compositional history of Jer 34:8–22 see Cardellini, *Die biblischen 'Sklaven'-Gesetze*, 313–15, 318–19; Holladay, *Jeremiah 26–52*, 238; Lundbom, *Jeremiah 21-36*, 557–58; Levinson, “Zedekiah’s Release,” 315–18. Lundbom writes: “The main difference between vv 8–11 and 12–22 is that the former is narrative and the latter a cluster of divine oracles, and nothing precludes both of them being written up at the same time” (Lundbom, *Jeremiah 21-36*, 558). Based

Smelik's recent article, where he suggests "that Jer 34:8–22 has an inner cohesion and that the phenomena which led other scholars to conclude that we are dealing here with a compilation of texts or a piece of poor writing, are, in fact, literary devices meant to grab the reader's attention."<sup>87</sup>

Jeremiah 34:8–22 is situated in the context of YHWH speaking to his prophet Jeremiah, in the middle of Nebuchadnezzar's attack upon Judah and Jerusalem (34:1–7). As pointed out by Levinson, the narrative "begins midway through the story," after Zedekiah and the people made the covenant, and after the people revoked it and re-enslaved their former slaves, and without recounting the reasons for either.<sup>88</sup> The siege on Jerusalem started in the 10<sup>th</sup> of Teveth in the ninth year of King Zedekiah (2 Kings 25:1; Jer 39:1; 52:4; Ezek 24:1–2). This date can be determined as January 15, 588 B.C.<sup>89</sup> Jeremiah 34:1–7 speaks of Jerusalem already under attack. It is likely during the siege of

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on the four messenger formulas found in Jer 34:13–22, Lundbom divides the passages into four oracles (I 34:13–16; II 34:17a; III 34:17b–21; IV 34:22) (Lundbom, *Jeremiah 21-36*, 556–57). In this division, oracles I and II are indictment and oracles III and IV judgment. More generally on the book of Jeremiah, Fischer has argued that Jeremiah should be seen as a complex unified composition (Fischer, *Jeremia 1–25*, 73).

<sup>87</sup> Smelik, "The Inner Cohesion of Jeremiah 34:8–22," 239. See also p. 240. In his article Smelik demonstrates "the author's deliberate choice not to provide all necessary information to the reader at once . . . . Instead, he distributes the data over the whole text, so that the reader gradually understands what has happened by combining the author's different clues, in this way, the reader has a role to play in understanding the meaning of the text" (Smelik, "The Inner Cohesion of Jeremiah 34:8–22," 239).

<sup>88</sup> Levinson, "Zedekiah's Release," 313–14.

<sup>89</sup> Sarna, "Zedekiah's Emancipation," 144; Thiele, *The Mysterious Numbers of the Hebrew Kings*, 190; Lisbeth S. Fried and David N. Freedman, "Was the Jubilee Observed in Preexilic Judah?," in *Leviticus 23–27: A New Translation with Introduction and Commentary*, AB 3B (New York: Doubleday, 2001), 2259, 2269. Keown comments regarding Jer 34:21–22: "The final two verses provide the only information regarding the time during Zedekiah's reign when the covenant was made and then broken. Judgment is pronounced when the Babylonian army is withdrawing from Jerusalem (v 21b). The most logical implication is that the covenant was made while the city was being besieged and that the people reneged and took back their slaves when the siege was lifted" (Gerald Lynwood Keown et al., *Jeremiah 26-52*, WBC 27 (Waco, TX: Word Books, 1995), 189).

Jerusalem that King Zedekiah took the initiative to release all the Hebrew slaves.<sup>90</sup> But a brief withdrawal of the Babylonian forces to meet an Egyptian relief force from Pharaoh Hophra might have given the people occasion to brazenly enslave their released slaves once more.<sup>91</sup>

According to Ezek 29:1, on the 12<sup>th</sup> of Teveth in the tenth year of Jehoiachin's exile, i.e. in January 587 B.C., the Egyptian relief campaign seems to have been imminent. Jeremiah 34:21–22 mentions the withdrawal (חֵיל מִלְּךָ בְּכַל הָעָלִים מֵעֲלֵיכֶם) 34:21) and return (וְהָשְׁבֹתִים אֶל־הָעִיר הַזֹּאת) 34:22) of the Babylonians. In other words, the emancipation of the slaves seems to have occurred in 588 B.C. and the re-enslavement in 587 B.C. after the arrival of the Egyptians.<sup>92</sup>

It is possible that Zedekiah's release took place in a sabbatical or Jubilee year,

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<sup>90</sup> Here we do not need to concern ourselves with the relation between economic, military, and religious motivations Zedekiah might have had for making the covenant. For a discussion of Zedekiah's possible motives see Bright, *Jeremiah*, 223; Chavel, "Let My People Go!," 71–73; Fischer, *Jeremia 26–52*, 252–53; Lundbom, *Jeremiah 21–36*, 558–60; Smelik, "The Inner Cohesion of Jeremiah 34:8–22," 246. For other historical cases where a king or masters chose to release slaves under a siege, see Moshé Anbar, "La libération des esclaves en temps de guerre: Jer 34 et ARM XXVI.363," *ZAW* 111 (1999): 245; Smelik, "The Inner Cohesion of Jeremiah 34:8–22," 239–50. Adrian Schenker proposes that Zedekiah's emancipation of the slaves took place in his accession year, in 598 B.C., and that the return of the Babylonians mentioned in Jer 34:17 would then refer to the siege in 588/87 B.C. (Schenker, "Die Freilassung der hebräischen Sklaven," 155–57). Together with the reuse of 'Stichworte,' Fischer concludes: "daß Dtn 15 Zidkija zu seinem Schritt inspirierte" (Fischer, *Jeremia 26–52*, 255. Italics original).

<sup>91</sup> The text does not tell us Zedekiah's role in the taking back of the slaves. It seems to be a broader group of leaders in the people being responsible for this turn. Cf. Fischer, *Jeremia 26–52*, 259. What could have triggered the general return and subjection of the released slaves in 34:11? After such a public release, how could they turn around? Was this a gradual, one by one act, or a sudden coordinated act? The narrative does not tell. Suggestions are therefore conjectural. Sarna proposes that the re-enslavement might have been due to a "need for manpower to work the neglected fields" (Sarna, "Zedekiah's Emancipation," 144). For the false hopes in Egyptian help and the predicted return of the Babylonians, see Jer 34:21–22; 37:5–11; Ezek 17:11–18; 29:1–12; 30:20–21. For the criticism of the social elite in Jer 34, see Fischer, *Jeremia 26–52*, 258.

<sup>92</sup> Sarna, "Zedekiah's Emancipation," 144–45. Sarna proposes the Autumn New Year festival as the most likely date for Zedekiah's emancipation (Sarna, "Zedekiah's Emancipation," 149).

even if more solid evidence and consensus as how to reckon sabbatical and Jubilee years seems wanting.<sup>93</sup> And it may even be that for Zedekiah immediate action was justified because of the neglect of a long overdue release, in which case neither establishing this nor the exact year of the manumission and re-enslavement are needed for the following discussion. It is noteworthy that Jer 34 itself does not claim that it was a sabbatical or

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<sup>93</sup> Cf. Cardellini, *Die biblischen 'Sklaven'-Gesetze*, 319–22 who argues 590/89 was a Sabbath year. Sarna argues on the basis of the biblical texts that 588/87 was a Sabbath year (Sarna, “Zedekiah’s Emancipation,” 149). Holladay sees the reading of Deuteronomy to have taken place during the Feast of Booths in the sabbatical year in September/October 587 and based on the Egyptian army approaching “in the spring or summer of 588,” he speculates whether Zedekiah’s release occurred during “the feast of weeks in late spring of 588.” Anyways, he concludes “that Zedekiah’s proclamation of emancipation was not connected (in either season or year) with the feast of booths in a sabbatical year” (Holladay, *Jeremiah* 26–52, 239). Fried and Freedman are more bold, arguing that it is possible to determine that the manumission of the slaves in Jer 34 took place on Tishri 10, or October 8, in 588 B.C., and that the re-enslavement would have occurred between December 29, 588 and February 24, 587 B.C. (Fried and Freedman, “Was the Jubilee Observed in Preexilic Judah?,” 2260). They also see that “the goal of both Jeremiah’s aborted trip to Anathoth [Jer 37:11–38:28] and Hanamel’s visit to the court of the guard [Jer 32:1–15] may be the same: to return the land to its original owner, as required by the jubilee laws (Lev 25:10)” (Fried and Freedman, “Was the Jubilee Observed in Preexilic Judah?,” 2261–64). Compare this with Rofé’s claim that Jer 30; 31; and 33 all were grouped around Jer 32 with Hanamel’s visit (Rofé, “The Arrangement of the Book of Jeremiah,” 395). If so, the clustering of Jer 30–33 around ch. 32 would strengthen the claim that the composer linked Jer 32 and 34 together, ch. 34 following immediately after this section. See also Fischer, *Jeremia* 26–52, 253 for a discussion of the time of Zedekiah’s release. Bergsma comments: “Additionally, the word דָּרוֹר by itself occurs in Ezek 46:17. Lev 25:10 is, of course, the seminal verse of the jubilee legislation, and, it will be argued, Ezek 46:17 and Isa 61:10 are both allusions to the jubilee. Thus, outside of Jer 34, דָּרוֹר occurs in the Bible only as a reference to the jubilee. This does not prove that Jer 34 also means to allude to the jubilee, but it makes it reasonable to suppose that it does. This is all the more the case since the only universal, simultaneous release of persons in bondage in the biblical legal corpora is Lev 25; Exod 21 and Deut 15 provide only for individual manumissions. In this respect, Zedekiah’s emancipation resembles the jubilee more closely than the regulations of Exod 21 or Deut 15, leading Fried and Friedmann to argue that 588–587 B.C.E. was a jubilee year. While Fried and Friedmann probably go beyond the evidence in making such an assertion, they are correct in noting that the phrase לְקַרְאֵ דָּרוֹר in Jer 34 is a jubilee allusion” (Bergsma, *The Jubilee from Leviticus to Qumran*, 164). If Wacholder is correct in that 513/12 B.C. was a Sabbatical year, this would make 591/90 B.C. also a Sabbatical year according to the same calendar (Ben Zion Wacholder, “The Calendar of Sabbatical Cycles During the Second Temple and the Early Rabbinic Period,” *HUCA* 44 (1973)). In a later article he suggested that 603/2 B.C.–555/54 B.C. constituted a Jubilee cycle (Ben Zion Wacholder, “Chronomessianism: The Timing of the Messianic Movements and Calendar of Sabbatical Cycles,” *HUCA* 46 (1975)). In both cases, Zedekiah’s manumission would be out of synchrony with either a Sabbatical or Jubilee year. The same applies to Douglas Waterhouse’s attempt to reconstruct the Sabbatical and Jubilee years. He concludes that 605/4 B.C. was both a Sabbatical and Jubilee year, with the closest Sabbatical years to Zedekiah’s release falling in either 591/90 B.C. or 584/83 B.C. (Douglas Waterhouse, “Is It Possible to Date the Sabbatical-Jubilee Years?,” 1–15).

Jubilee year.<sup>94</sup> To me it seems safest simply to say that the emancipation took place “at some period during Nebuchadnezzar’s siege of Jerusalem.”<sup>95</sup>

Jeremiah 34:8–11 presents YHWH’s address through Jeremiah as occasioned by the re-enslavement of Zedekiah’s covenant-released Hebrew slaves. The previous neglect of manumission in the sabbatical year implied in Jer 34:8–22, and the re-enslavement of the slaves, show that neither the sabbatical nor Jubilee manumission was necessarily

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<sup>94</sup> In fact, as pointed out by Fischer, the cultic offerings and calendar is absent from the Book of Jeremiah: “The entire legislation for cultic offerings is completely absent in Jer. . . . The major feasts – Pesach, Sukkot, and the Feast of Booths – are not mentioned, nor are the pilgrimages prescribed on these occasions. Similarly, Yom Kippur does not occur in Jer” (Fischer, “The Relationship of the Book of Jeremiah to the Torah,” 905). The silence as to a possible link between Zedekiah’s release and a Sabbatical or Jubilee year in Jer 34 therefore belongs to a more general pattern in the Book of Jeremiah not to mention the cultic calendar. We do not need to speculate as to whether Jeremiah intentionally omitted mentioning that Zedekiah’s release occurred in a Sabbath or Jubilee year, or whether the text simply reflects the fact that there was no such year coinciding with or occasioning Zedekiah’s release. What is to be observed here is simply that the text does not mention such a link.

<sup>95</sup> Sarna, “Zedekiah's Emancipation,” 144. We could ask why Jer 34 mentions a solemn covenantal ritual if it was only the implementation of the neglected Sabbath year? Would it not have been sufficient simply to refer to the Sabbath year? It is noteworthy that the text itself does not claim that Zedekiah’s manumission took place in relation to a Sabbath year, even if the rationale for a Sabbath year is referred to. Otto suggests that Jer 34:8ff follows the ANE *mīšarum*-edict, where the manumission depended on a royal decree (Otto, *Theologische Ethik des Alten Testaments*, 255). Contra Westbrook (Westbrook, *Property and the Family*, 16), LeFebvre has pointed out that Jer 34 does not testify to a “political coup” where “the Deuteronomic editor intended ‘to replace the untrustworthy royal prerogative’ with a written statute.” Instead, “the king is still upheld as the one who holds authority to pronounce release proclamations (vv. 8–10). He is, in fact, commended by Yahweh for having independently determined the circumstances warranting a release (v. 15). The only thing for which Zedekiah is rebuked is his going back on his דָּוָר proclamation (v. 16)” (LeFebvre, *Collections, Codes, and Torah*, 86). Cassuto wrote commenting on Jer 34: “It is obvious, that they would not have been permitted to bring them back to a state of servitude, had not the existing law given them the right to do this. It would seem that the state law of the time made no provision for the Hebrew slave to be freed after a given number of years, and whoever acquired a Hebrew slave acquired him forever. The Torah law, whose existence at the time is not in doubt, since the covenant was based upon it, was regarded as an ethical precept that was left to a person’s conscience in the name of religion. The covenant that was made on the initiative of king Zedekiah did not mean the enactment of a new civil law, but only a moral obligation, which the princes and the people accepted voluntarily, in order to fulfill the Torah precept. Had the king desired to promulgate a statute in this regard, there would have been no need for a covenant to have been made between the parts of the calf. His intention was doubtless to arrange a solemn religious ceremony to mark the acceptance of the obligation of the commandment that was ordained in the name of the Lord” (Cassuto, *A Commentary on the Book of Exodus*, 261). Cassuto therefore takes Zedekiah’s covenant as evidence of the moral thrust of the manumission, rather than seeing it as a legal revision or new legislation as such.

practiced in pre-exilic times (cf. Lev 26:34–35; 2 Chr 36:21).<sup>96</sup> YHWH’s first speech in 34:12–16 is a historical description in light of his former manumission instruction (34:13–14). YHWH’s second speech in 34:17–22 begins with the basic indictment of the people and then declares their punishment.<sup>97</sup> The prophetic words are presented as YHWH’s words (cf. 34:8, 12–13, 17). The majority view that Jer 34 reused Deut 15—a view I share—implies that YHWH in Jer 34 is presented as reusing his own instructions in Deuteronomy. Even if the book of Deuteronomy is couched in the words of Moses, the book presents the instructions as having originally been given by YHWH himself (Deut 1:3; 4:5, 14; 6:1, 17; 10:13). In Jer 34:14, YHWH therefore claims to have been the speaker of the words of Moses in Deut 15:12.<sup>98</sup> Jer 34 therefore presents itself as a case where YHWH reuses his own words.

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<sup>96</sup> Milgrom comments on the observance of sabbatical years in pre-exilic times: “On whether it was actually observed, however, there is ample room for doubt. There is no textual evidence that it was observed in pre-exilic times. To the contrary, the admonitions of Lev 26:34–35 (cf. 2 Chr 36:21) testify that the law was observed only in the breach. (The claim that Zedekiah’s release occurred in an actual sabbatical year [Sarna 1973] has been disputed [Lemche 1976: 51–53, 59] . . .). In any event, this text—whether it stems from pre-exilic or exilic times is inconsequential—proves that the law itself is older (Alt [1968: 165, n. 118] dates it to Israel’s settlement in Canaan)” (Milgrom, *Leviticus 23–27*, 2246). Cf. Otto, *Theologische Ethik des Alten Testaments*, 83, 105. Since “your fathers” (אֲבוֹתֵיכֶם) are described as the Exodus-generation in 34:13, the reference to the fathers not listening in 34:14 seems to refer to the same generation, and not generally the ancestors. Nevertheless, since the contrast is to the people in Zedekiah’s days in 34:15, who recently made a temporary release (וַתִּשְׁבּוּ אִתָּם הַיּוֹם), the impression left by the passage is that the Sabbatical or Jubilee manumissions were not practiced in Israel between the Exodus-generation and Zedekiah’s time either. For the structure of Jer 34:8–22, especially the prophetic introduction formula in 34:8 compared to the *Wiederaufnahme* in 34:12 cf. Smelik, “The Inner Cohesion of Jeremiah 34:8–22,” 240–41.

<sup>97</sup> Jer 34 also bears similarities to Neh 5; 13. Cf. Chavel, “Let My People Go!,” 93–94; Fischer, *Jeremia 1–25*, 70. As the present discussion focus on reuse between the manumission instructions in Torah and Jer 34, and not the view of slave release in the HB *per se*, and because it does not seem to be a dependence of either passage here under study on Neh 5, I choose here not to go more into a discussion of these similarities. The likely explanation for the parallels seems to be a reuse in Neh 5 of the manumission instructions and Jer 34.

<sup>98</sup> For a similar case see Jer 7:23 (Fischer, “The Relationship of the Book of Jeremiah to the Torah,” 904).

Jeremiah 34 shows evidence of the oral-written continuum discussed by Niditsch.<sup>99</sup> God speaks orally to Jeremiah and the words are presented as recorded in the written text we have.<sup>100</sup> When Zedekiah made a covenant with the people to release the Hebrew slaves, the words of the covenant may have been written down or transmitted orally, but are presented as initially proclaimed orally (34:8, 15, 17). The people heard the covenant (cf. the double *וַיִּשְׁמְעוּ* in 34:10). YHWH's instructions are presented as having been spoken orally, with *לֵאמֹר* (“saying”) in 34:13 introducing the quotation from Torah, even if 34:14 seems to be a reuse of the written formulations found in Deut 15:12. Further, the audible reception of YHWH's words through “listening” and the “ear”—or more precisely the lack thereof—in *וְלֹא־שָׁמְעוּ אֲבוֹתֵיכֶם אֵלַי וְלֹא הִטּוּ אָזְנוֹתָם* (“but your fathers did not listen to me nor turn their ear”) in 34:14 also indicate that the Torah instructions are perceived as being presented orally. Given the discussion of a text-supported oral culture of the present work, we should therefore bear in mind the ANE scribal culture when reading Jer 34 and take into account how this plays into the reuse of revered texts.

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<sup>99</sup> Cf. my discussion in the third chapter.

<sup>100</sup> Cf. *וַיְהִי דְבַר־יְהוָה אֵלַי־יְרַמְיָהוּ מֵאֵת יְהוָה לֵאמֹר*, in 34:8, *הִדְבֵּר אֲשֶׁר־הָיָה אֵלַי־יְרַמְיָהוּ מֵאֵת יְהוָה*, in 34:12, *הִנְנִי מִצְוֶה נְאֻם־יְהוָה*, in 34:17, *לְכֹן כֹּה־אָמַר יְהוָה אֲתֶם לֹא־שָׁמַעְתֶּם אֵלַי*, in 34:13, *כֹּה־אָמַר יְהוָה אֱלֹהֵי יִשְׂרָאֵל*, in 34:22.

There seems to be a redundancy here in Jer 34:12, *וַיְהִי דְבַר־יְהוָה אֵלַי־יְרַמְיָהוּ מֵאֵת יְהוָה לֵאמֹר*. It is specified that it was the word of YHWH and that YHWH spoke it. Why this double determination? Further, as if this was not enough, 34:13 begins with *כֹּה־אָמַר יְהוָה אֱלֹהֵי יִשְׂרָאֵל*. LXX does not render *מֵאֵת יְהוָה* in 34:12. It seems to have perceived it as redundant.

## Exod 21:2–11; Deut 15:12–18; and Jer 34:8–22

### A Case for Reuse

Table 11 gives an overview over parallels between Exod 21:2–11 and Jer 34:8–22, and Table 12 gives an overview over parallels between Deut 15:12–18 and Jer 34:8–22.

*Uniqueness:* First, the combination of the root עבד + שש שנים is only attested in Exod 21:2; Deut 15:12, 18; and Jer 34:14.<sup>101</sup> A question here is the precise time of the release. Exodus 21:2–11 and Deut 15:12–18 both advocate a six-year service (שש + עבד) and release in the seventh year. Jeremiah 34:14, however, speaks of the beginning of the manumission at the end of the seven years (מקץ שבע שנים). As many have since the phrase מקץ שבע שנים is also found in Deut 15:1, Jer 34:14 seems to insert this temporal phrase from Deut 15:1 into the quotation from Deut 15:12. The question is therefore whether these verses prescribe two different times for the release, either at the

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<sup>101</sup> It is something to be said for claiming that Deut 15:12–18 conflates Exod 21:2–6 and 21:7–11, and not only reuse 21:2–6. I will here limit the argumentation to only some few observations making this reading credible. First, and most obvious, is that Deut 15:12–18 dissolves the differentiation between the male and female slaves in Exod 21. The explicit inclusion of both the Hebrew male and female (העברי או העבריה) in Deut 15:12 can be read as a conflation of the instruction regarding the Hebrew male (Exod 21:2–6) and female (21:7–11) slave. Second, while Exod 21:2 opens with כי תקנה עבד עברי, Exod 21:7 opens with כי יימכר לך אהיך, including the same verb used in the opening קנה אהיך in Deut 15:12. Third, it might also be a relationship between מצאנה ומגרנה ומיקרה (‘‘from the sheep, and from the threshing floor, and the wine (or oil?) press’’) in Deut 15:14 and שארה כסותה וענתה (‘‘her food, her clothing, and her oil,’’ see above) in Exod 21:10. LXX renders קנה in Deut 15:14 as τῆς ληνοῦ, i.e. as ‘‘winepress.’’ From sheep you get clothing, and from the threshing floor food. Given this parallel between the first two elements in the triads of Exod 21:10 and Deut 15:14, may it be that there is a parallel also between ענה in Exod 21:10 and קנה in Deut 15:14? Either the author of Deut 15:14 may have intended to refer to the oilpress through the word קנה, or he took ענה in Exod 21:10 to be somehow related to wine, thus referring to a winepress through the word קנה. HALOT writes that קנה is usually rendered as ‘winepress’, but that it can also mean ‘oil press’ (Koehler et al., *HALOT*, 429–30). Speaking of Deut 15:12–18 on the one hand and Exod 21:2–6 and 21:7–11 on the other, I therefore agree with Levinson stating that ‘‘Deuteronomy folds both laws into a single law’’ (Levinson, ‘‘The Manumission of Hermeneutics,’’ 301).



**Table 11. Exod 21:2–11 and Jer 34:8–22**

Exod 21:2–11	Jer 34:8–22
<p><sup>2</sup> כי תקנה עבד עברי שש שנים יעבד ובשבעת יצא לחפשי חנם: . . . <sup>5</sup> ואם אמר יאמר העבד אהבתי את־אדני את־אשתי ואת־בני לא אצא חפשי: . . . <sup>7</sup> וכי־ ימכר איש את־בתו לאמה לא תצא כצאת העבדים: <sup>8</sup> אם־רעה בעיני אדניה אשר־לא יעדה והפדה לעם נכרי לא־ימשל למכרה בבגדו־בה:</p>	<p>. . . <sup>9</sup> לשלה איש את־עבדו ואיש את־שפחתו העברי והעבריה חפשים לבלתי עבד־בם ביהודי אחיהו איש: <sup>10</sup> וישמעו כל־השרים וכל־העם אשר־באו בברית לשלה איש את־עבדו ואיש את־שפחתו חפשים לבלתי עבד־בם עוד וישמעו וישלחו: <sup>11</sup> וישבו אחרי־כן וישבו את־העבדים ואת־השפחות אשר שלחו חפשים ויכבשום לעבדים ולשפחות: ס . . . <sup>14</sup> מקץ שבע שנים תשלחו איש את־אחיו העברי אשר־ימכר לך ועבדך שש שנים ושלחתו חפשי מעמך ולא־שמעו אבותיכם אלי ולא הטו את־אזנם: .  . <sup>16</sup> ותשבו ותחללו את־שמי ותשבו איש את־עבדו ואיש את־ שפחתו אשר־שלחתם חפשים לנפשם ותכבשו אתם להיות לכם לעבדים ולשפחות: ס . . .</p>
<p><sup>2</sup> If you buy a <u>Hebrew</u> slave, he shall <u>serve six years</u> and exit <u>free</u> in the seventh, without payment. . . . <sup>5</sup> But if the slave verily says, “I love my master, my wife and my children, I will not exit <u>free</u>,” . . . <sup>7</sup> And when a man <u>sells</u> his daughter as a female slave she shall not go out as the male slaves go out. <sup>8</sup> If she is displeasing in her master’s eyes, who do not designate her, then he shall allow her to be ransomed. He is not authorized with regard to foreign people to <u>sell</u> her, in his treacherous dealing with her.</p>	<p>. . . <sup>9</sup> each one to send his slave <u>free</u>, and each one his maidservant, a <u>Hebrew</u> male or female, that none enslave his brother among Judeans. <sup>10</sup> And all the officials and all the people that came into the covenant to send <u>free</u> each one his slave and maidservant, not to enslave again among them. And they heard and they sent away. <sup>11</sup> But afterward they turned around and returned the slaves and maidservant whom they sent <u>free</u>. And they subjected them to slaves and maidservants. . . . <sup>14</sup> At the end of seven years each one shall send his Hebrew brother, who <u>was sold</u> to you and <u>served</u> you for <u>six years</u>, you shall send him <u>free</u> from you. But your father did not listen to me and did not incline their ear. . . . <sup>16</sup> But you turned around and profaned my name by returning each man his slave and his maidservant whom you sent <u>free</u> for their life. And you subjected them to make them your slaves and maidservants.</p>

observed,<sup>102</sup> end of the sixth or at the end of the seventh year? I will return to this

<sup>102</sup> E.g. Levinson, “Zedekiah’s Release,” 320. Jer 34:14 LXX reads “Ὅταν πληρωθῆ ἕξ ἔτη (“When six years are accomplished” (Brenton)). The LXX avoids the confusion created by the MT מקץ שבע שנים in Jer 34:14 as to how this relates to the six-year service of the slave. In Deut 15:1 LXX we read Δι’ ἑπτὰ ἔτων ποιήσεις ἄφεσιν (“Every seven years thou shalt make a release” (Brenton)), so the reuse between Deut 15:1 and Jer 34:14 is not as clear as it is in MT.

I am not convinced by Leuchter’s arguments that מקץ שבע שנים in Jer 34:14 is a reuse of Deut 31:9–11 rather than Deut 15:1 (Leuchter, “The Manumission Laws,” 642–43). We have already seen that his first argument that Zedekiah’s release coincided with a Sabbatical year, and thus the septennial reading in Deut 31, is conjectural. Jeremiah 34 itself does not make such a link. Further, even if it was a Sabbatical

**Table 12. Deut 15:12–18 and Jer 34:8–22**

Deut 15:12–18	Jer 34:8–22
<p><sup>12</sup> כִּי־יִמְכַר לְךָ אֲחִיךָ הָעֶבְרִי אוֹ הָעֶבְרִיָּה וְעַבְדְּךָ שָׁשׁ שָׁנִים וּבִשְׁנֵה הַשְּׁבִיעִת תִּשְׁלַחְנוּ חֲפָשִׁי מֵעִמְךָ: <sup>13</sup> וְכִי־תִשְׁלַחְנוּ חֲפָשִׁי מֵעִמְךָ לֹא תִשְׁלַחְנוּ רִיקָם: . . . <sup>15</sup> וּזְכַרְתָּ כִּי עַבְדְּ הָיִיתָ בְּאֶרֶץ מִצְרַיִם וּפִדְךָ יְהוָה אֱלֹהֶיךָ עָלֶיךָ אֲנִי מִצְנֵן אֶת־הַדָּבָר הַזֶּה הַיּוֹם: <sup>16</sup> וְהָיָה כִּי־יֹאמֶר אֵלֶיךָ לֹא אֶצֵּא מֵעִמְךָ כִּי אַהֲבֶךָ וְאֶת־בֵּיתְךָ כִּי טוֹב לּוֹ עִמְךָ:</p>	<p>... <sup>9</sup> לִשְׁלַח אִישׁ אֶת־עַבְדּוֹ וְאִישׁ אֶת־שִׁפְחָתוֹ הָעֶבְרִי וְהָעֶבְרִיָּה חֲפָשִׁים לְבִלְתִּי עַבְד־בָּם בִּיהוּדֵי אֲחִיהוּ אִישׁ: <sup>10</sup> וַיִּשְׁמְעוּ כָל־הַשְּׂרִיִּם וְכָל־הָעָם אֲשֶׁר־בָּאוּ בְּבְרִית לִשְׁלַח אִישׁ אֶת־עַבְדּוֹ וְאִישׁ אֶת־שִׁפְחָתוֹ חֲפָשִׁים לְבִלְתִּי עַבְד־בָּם עוֹד וַיִּשְׁמְעוּ וַיִּשְׁלַחוּ: <sup>11</sup> וַיִּשׁוּבוּ אַחֲרֵי־כֵן וַיֵּשְׁבוּ אֶת־הָעַבְדִּים וְאֶת־הַשִּׁפְחוֹת אֲשֶׁר שְׁלַחוּ חֲפָשִׁים וַיִּכְבְּשׁוּם לְעַבְדִּים וּלְשִׁפְחוֹת: ס . . . <sup>13</sup> כֹּה־אָמַר יְהוָה אֱלֹהֵי יִשְׂרָאֵל אֲנִי כִרְתִּי בְרִית אֶת־אֲבוֹתֵיכֶם בְּיוֹם הוֹצֵאֵי אוֹתָם מֵאֶרֶץ מִצְרַיִם מִבֵּית עַבְדִּים לְאֹמֶר: <sup>14</sup> מִקֵּץ שִׁבְעַת שָׁנִים <sup>103</sup> תִּשְׁלַחוּ אִישׁ</p>

year, it is not clear why a reuse of Deut 31:9–11 should be preferred over that of 15:1 in Jer 34:14. Second, that both the reading in Deut 31 and release ritual in Jer 34 were public events, is a very weak argument for literary reuse. It is possible that Jer 34:14 reused Deut 15:1 exactly to clarify that it took the manumission release in Deut 15:12–18 as part of a national cycle, and therefore it would likely also be a public event. Further, the publicity in Jer 34 might just as well be connected to the declaration of Jubilee in Lev 25, as argued below. Third, Jer 34:14 reuses Deut 15:12 in the context of the release prescriptions, and incorporating Deut 15:1 would thus fit well in this context. When Jer 34:15–22 toward the end of the divine diatribe comes to the question of “life in the land” and its disruption, it rather seems to prefer a reuse of Lev 25:39–46; 26:25–26; Deut 28:25–26 as argued below. The link between “life in the land” in Deut 31:9–13 and disruption of this life in Jer 34:18–22 is vague. Fourth, Jer 34:8–22 does not seem to emphasize the importance of Levitical responsibilities, and even if Leuchter may be right about his reading of Jer 26–45, this again constitutes a very weak argument for reuse of the Levitical septennial reading of Torah in Deut 31. I therefore see no reason to accept Leuchter’s claim that Jer 34:14 reuses מִקֵּץ שִׁבְעַת שָׁנִים from Deut 31:9–11 rather than 15:1. On the contrary, as pointed out above, a reuse of Deut 15:1 fits better the setting of Jer 34:14. Jeremiah 34:14a can therefore not be seen as “a scribe advancing Levitical interests and authority” (Leuchter, “The Manumission Laws,” 645). The reason why “Jer 34:14a might very well read as a reference to the שְׁמִטָּה of Deut 15:1 rather than as an appeal to the Levitical charge of Deut 31:9–11” (Leuchter, “The Manumission Laws,” 646), is therefore simply because this seems to be the most likely candidate. There seems to be no reason to construct an interest-conflict between Lev 25:39–46; Deut 15:1, 12; 31:9–11; and Jer 34:14 on this basis. For a critique of Leuchter’s proposal on grammatical grounds see Mastnjak, *Textual Authority in Jeremiah*, 148–50.

Deut 31:10 might intend to say that the remission and reading of Torah would occur in the same Fall, and not necessarily during the same festival. But it seems to imply that the Festival of Booths also would be the occasion of the remission. According to Lev 25:9 the declaration of the Jubilee took place at the end of the Day of Atonement. Sarna claims Zedekiah’s emancipation would most likely have occurred during the New Year festival (Sarna, “Zedekiah’s Emancipation,” 148). Sarna writes: “It is apparent, therefore, that in Zedekiah’s day the provisions of Deut. 15:12 were interpreted in the context of the sabbatical year. The prescribed six year limit on debt-bondage was regarded as a maximum that would be reduced by the incidence of the sabbatical year” (Sarna, “Zedekiah’s Emancipation,” 148). This may differ from Exod 21:2–6 where the seventh-year release might have been reckoned based on the time of entry into slavery, and therefore an individual cycle. Cf. Teeter, *Scribal Laws*, 136.

<sup>103</sup> Cf. Deut 15:1.

Table 12 — *Continued.*

Deut 15:12–18	Jer 34:8–22
<p><sup>17</sup> ולקחת את־המרצע ונתתה באזנו ובדלת והיה לך עבד עולם ואף לאמתך תעשה־כן: <sup>18</sup> לא־יקשה בעינך בשלחך אתו <u>חפשי מעמך</u> כי משנה שכר שכיר <u>עבדך שש שנים</u> וברכך יהוה אלהיך בכל אשר תעשה: פ</p>	<p>את־אחיו העברי אשר־ימכר לך ועבדך <u>שש שנים</u> ושלחתו <u>חפשי מעמך</u> ולא־שמעו אבותיכם אלי ולא הטו את־אזנם: <sup>15</sup> ותשבו אתם היום ותעשו את־הישר בעיני לקרא דרור איש לרעהו ותכרתו ברית לפני בבית אשר־נקרא שמי עליו: <sup>16</sup> ותשבו ותחללו את־שמי ותשבו איש את־עבדו ואיש את־שפחתו אשר־שלחתם <u>חפשים</u> לנפשם ותכבשו אתם להיות לכם לעבדים ולשפחות: <sup>17</sup> לכן כה־אמר יהוה אתם לא־שמעתם אלי לקרא דרור איש לאחיו ואיש לרעהו הנני קרא לכם דרור נאם־יהוה אל־החרב אל־הזכר ואל־הרעב ונתתי אתכם לזועה לכל ממלכות הארץ: . . . <sup>22</sup> הנני מצוה נאם־יהוה והשבתי אתם אל־העיר הזאת ונלחמו עליה ולכדוה ושרפה באש ואת־ערי יהודה אתן שמה מאין ישוב: פ</p>
<p><sup>12</sup> If your <u>brother is sold to you</u>, a <u>Hebrew man</u> or <u>woman</u>, <u>he shall serve you six years</u> but in the <u>seventh year you shall send him free from you</u>. <sup>13</sup> And when you <u>send him free from you</u> you shall not <u>send him empty-handed</u>. . . . <sup>15</sup> And remember that you were a <u>slave in the land of Egypt</u>, and YHWH your God redeemed you. Therefore, <u>I command</u> you this thing today. <sup>16</sup> And it shall be, if he says to you, “I do not want to exit <u>from you</u>, for I love you and your house,” because it is good for him with you, <sup>17</sup> then you shall take the awl and put it through his <u>ear</u> and into the door, and he shall be your male slave forever, and you shall do thus also to your female slave. <sup>18</sup> Do not be hard <u>in your eyes</u> when you <u>are sending</u> him away, <u>free from you</u>. For he <u>has served</u> you for <u>six years</u> the double wages of a hired worker. And YHWH your God will bless you in all that you do.</p>	<p>. . . <sup>9</sup> each one <u>to send his slave free</u>, and each one his maidservant, a <u>Hebrew man</u> or <u>woman</u>, that none enslave his brother among Judeans. <sup>10</sup> And all the officials and all the people that came into the covenant <u>to send free</u> each one his <u>slave</u> and maidservant, not <u>to enslave</u> again among them. And they heard and they <u>sent away</u>. <sup>11</sup> But afterward they turned around and returned the <u>slaves</u> and maidservant whom they <u>sent free</u>. And they subjected them to <u>slaves</u> and maidservants. . . . <sup>13</sup> Thus says YHWH, the God of Israel: I, I made a covenant with your fathers when I brought them from <u>the land of Egypt</u>, from the house of slavery, saying: <sup>14</sup> <u>At the end of seven years</u> each one shall <u>send his Hebrew brother</u>, who <u>was sold to you and has served you</u> for <u>six years</u>, you <u>shall send him free from you</u>. But your fathers did not listen to me and did not incline their <u>ear</u>. <sup>15</sup> But you, you turned one day, and you did what was right in my eyes to proclaim a release, each one to his neighbor. And you made a covenant before my face, in the house which is called by my name. <sup>16</sup> But you turned around and profaned my name by returning each man his <u>slave</u> and his maidservant whom you sent <u>free</u> for their life. And you subjected them to make them your <u>slaves</u> and maidservants. <sup>17</sup> Therefore, thus says YHWH: You did not listen to me to proclaim a release, each one to his <u>brother</u>, and each one to his neighbor. Behold, I proclaim a release for you, says YHWH, to the sword, to the pestilence and to the famine. And I will make you a horror for all the kingdoms of the earth. . . . <sup>22</sup> Behold, <u>I command</u>, says YHWH, and I bring them to this city, and they will fight against her and take her and burn her with fire. And I make the cities of Judah a desolation, without inhabitants.</p>

question below.<sup>104</sup> Here we note that the combination of the root עבד + שש שנים is unique to Exod 21:2; Deut 15:12, 18; and Jer 34:14.

Second, it is only in Exod 21:2, 7–8; Deut 15:12; and Jer 34:9, 14 that we find the combination of the lexemes מכר + עברי. While מכר + עברי are used at different points in Exod 21:2, 7-8, only in Deut 15:12 and Jer 34:14 are they used within the same verse (כִּי־מִקֵּץ שְׁבַע שָׁנִים תִּשְׁלַחֻ אוֹ אִישׁ אֶת־אָחִיו הָעֶבְרִי in Deut 15:12 and אֲשֶׁר־יָמַכְר לָךְ הָעֶבְרִי אוֹ הָעֶבְרִיָּה in Jer 34:14). Further, the lexical set מכר + אָח + עברי is found in relative proximity only in Deut 15:12 and Jer 34:14. The combination is unique to these two cases. The lexical set מכר + אָח + עברי therefore indicates reuse between Deut 15 and Jer 34, rather than between Exod 21 and Jer 34. Even if Lev 25:39 also speaks of the dependent Hebrew as an אָח, nonetheless the unique combination of lexemes indicates reuse of Deut 15:12 at this point and not Lev 25:39.

Third, the phrase הָעֶבְרִי וְהָעֶבְרִיָּה in Jer 34:9 reminds of הָעֶבְרִי אוֹ הָעֶבְרִיָּה in Deut 15:12.<sup>105</sup> It is only within these two verses in the HB that we find the coupled-gender use

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<sup>104</sup> As expected the combinations of שְׁבַע + שָׁנָה or שְׁבִיעִי + שָׁנָה are so common in the HB that they do not seem to provide a basis for claiming reuse, but nevertheless do show a further parallel between Deut 15:12 and Jer 34:14.

<sup>105</sup> Levinson has pointed out that we also find the gender inclusive formula in Lev 25:44, with וְעֶבְדְּךָ וְאִמְתְּךָ. He uses this as an argument that Lev 25 was dependent on Deut 15, and not vice versa (Levinson, “The Birth of the Lemma,” 630, 636). But I find his argument weak, as it easily can be turned around as an argument for the reverse direction of dependence, with Deut 15 using the gender-inclusive language of Lev 25:44 in its reformulation of Exod 21:2–11. Both וְעֶבְדְּךָ וְאִמְתְּךָ in Lev 25:44 and the mention of עֶבֶד and אִמָּה in Deut 15:17 share a similarity to the gender-terminological division between the instruction for the male slave (עֶבֶד) in Exod 21:2–6 and female slave (אִמָּה) in respectively 21:7–11, with the more reworked formulation הָעֶבְרִי אוֹ הָעֶבְרִיָּה in Deut 15:12. Levinson might be correct in pointing out that Lev 25:43–46 seems to relocate the slavery of Hebrews (as in Exod 21:2–11) to non-Israelites (Lev 25:43–46). Deut 15:12–18 on its side is closer to Exod 21:2–11 in the acceptance of slavery of both Hebrew males and females. I would, however, not use any of these observations as argument for direction of dependence between Lev 25 and Deut 15.

of עֲבָרִי. This construction is therefore unique to these two verses. Once again Deut 15:12–16 is seen as a more likely source for Jer 34:8–22 than Exod 21:2–11.

Fourth, the lexical set שלח + הִפְשִׁי + מַעֲמָדָה is again unique to Deut 15:12–13, 18 and Jer 34:14.<sup>106</sup> The lexeme הִפְשִׁי has a significant accumulation in the three passages Exod 21:2–11; Deut 15:12–18; and Jer 34:8–22.<sup>107</sup> Exodus 21:26–27 and Isa 58:6 are the closest parallels besides these, as they also describe the release of a slave. The rest of the cases seem thematically too far removed from our present cases to indicate reuse.

*Distinctiveness:* First, the term עֲבָרִי is found 34 times in the HB.<sup>108</sup> It is of interest that only in Jer 34:9; 14 and Jon 1:9 is the term found in the Latter Prophets. Jon 1:9 is in a narrative setting, where the prophet Jonah identifies himself as a Hebrew. It could be

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<sup>106</sup> The lexical set שלח + הִפְשִׁי is used in Exod 21:26-27; Deut 15:12-13, 18; Isa 58:6; Jer 34:9-11, 14, 16; Job 39:3, 5. For how Deut 15:13–15 might draw upon Gen 29–31; Exod 3:21–22; 11:1–3 on the idea of not sending off slaves without provisions see Chirichigno, *Debt-Slavery*, 286–94; Stackert, *Rewriting the Torah*, 160; Carr, *Formation of the Hebrew Bible*, 269–70. Deut 15:12 reads תִּשְׁלַחְהוּ הִפְשִׁי מֵעֲמָדָה while Jer 34:14 has וְשִׁלַּחְתוּ הִפְשִׁי מֵעֲמָדָה. Note how מֵעֲמָדָה is also found in Lev 25:41; Deut 15:12–13, 16, 18. This construction in itself does not help us say much with clarity, much less simply עֲמָדָה in Lev 25:6 which Stackert uses as evidence in his argument. Further, Stackert’s claim that the order of עֲבָדָה, אָמָה, and שְׂכִיר given in Lev 25:6 and Deut 15:17–18 would indicate reuse is not convincing (Stackert, *Rewriting the Torah*, 124). While Lev 25:6 also include תּוֹשֵׁב in its list, Deut 15:17–18 does not give such a list. It is not clear why there would be a reuse between these two passages, and Stackert fails to explain why. The similarity in order therefore seems accidental. In my opinion it is not the order of the terms here that makes the strongest argument, but rather that the lexical set עֲבָדָה, אָמָה, and שְׂכִיר in close proximity only occur in Lev 25:6 and Deut 15:17-18 (cf. Sarna, “Zedekiah’s Emancipation,” 146). The similarity should likely be understood as shared theme, rather than direct literary reuse.

<sup>107</sup> The lexeme הִפְשִׁי is found in Exod 21:2, 5, 26-27; Deut 15:12-13, 18; 1 Sam 17:25; Isa 58:6; Jer 34:9-11, 14, 16; Ps 88:6; Job 3:19; 39:5. It is only Exod 21:2 and Deut 15:12–13 that combine הִפְשִׁי and שְׁבִיעִי, making the combination unique to Exod 21:2–11 and Deut 15:12–18. Neither Exod 21:2–11 nor Lev 25 uses שְׁלַח. The lexical set שלח + הִפְשִׁי is used in Exod 21:26-27; Deut 15:12-13, 18; Isa 58:6; Jer 34:9-11, 14, 16; Job 39:3, 5. Cf. Hornkohl, *Language of the Book of Jeremiah*, 305n on the translation of הִפְשִׁי in LXX.

<sup>108</sup> Gen 14:13; 39:14, 17; 40:15; 41:12; 43:32; Exod 1:15-16, 19; 2:6-7, 11, 13; 3:18; 5:3; 7:16; 9:1, 13; 10:3; 21:2; Deut 15:12; 1 Sam 4:6, 9; 13:3, 7, 19; 14:11, 21; 29:3; Jer 34:9, 14; Jonah 1:9. Bergsma writes: “The sole usage of the term in the prophets is found in Jer 34 (bis: vv. 9, 14) in which Jeremiah quotes the slave laws of Deuteronomy” (Bergsma, *The Jubilee from Leviticus to Qumran*, 44). This significant observation needs to be slightly modified by including Jonah 1:9 among the cases found in the Latter Prophets.

argued that עֶבְרִי is used in Gen 41:12 and Exod 2:6 is associated with slavery, as the contexts are the transfers of Joseph and the child Moses from the realm of servitude to freedom comparable to the release of the Hebrew slaves in Exod 3:18; 5:3; 7:16; 9:1, 13; 10:3. However, the use of the lexeme in a legal context in relation to the manumission of slaves is distinct to Exod 21:2; Deut 15:12; Jer 34:9, 14.

Second, we find אָחִיּוֹ בְיַהוּדֵי אֶתְּיָהוּ in Jer 34:9, אֶת־אֶחָיו הָעֶבְרִי in 34:14, and לְאָחָיו in 34:17, recalling the characterization of the ‘brother’ in Lev 25:39 (וְכִי־יָמוּךְ אֶחָיֶךָ עִמָּךְ). But Deut 15:12 also speaks of אֶחָיֶךָ הָעֶבְרִי אוֹ הָעֶבְרִיָּה אוֹ הָעֶבְרִיָּה, very close to אֶת־אֶחָיו הָעֶבְרִי in Jer 34:14. The combination עֶבְרִי + אָח is only found in Exod 2:11; Deut 15:11–12; and Jer 34:9, 14. Exodus 2:11 is found in the context of Moses seeing a “Hebrew man from his brothers” (אִישׁ־עֶבְרִי מֵאֶחָיו) being beaten by an Egyptian, and therefore in a different context than the ones found in Deut 15 and Jer 34. The combination עֶבְרִי + אָח describing one’s relationship to one’s Hebrew slave is therefore distinct to Deut 15:11–12 and Jer 34:9, 14. Therefore Jer 34’s use of אָח, and specifically עֶבְרִי + אָח in 34:14, supports the case for reuse between Deut 15:12 and Jer 34:14.

*Availability of options:* The combination הַפְּשִׁי + שְׁלַח is relatively rare in the HB.<sup>109</sup> In the passages here studied it is found in Deut 15:12–13, 18 and Jer 34:9–11, 14, 16. The manumission instructions in Exod 21 and Lev 25 prefer other formulations, even if הַפְּשִׁי + שְׁלַח is used in the BC in Exod 21:26–27 as compensation for inflicted bodily injury. The technical term for release in Exod 21:2–11; Lev 25:41–42; and Deut 15:16 is

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<sup>109</sup> Exod 21:26–27; Deut 15:12–13, 18; Isa 58:6; Jer 34:9–11, 14, 16; Job 39:3, 5. For the stress upon הַפְּשִׁי + שְׁלַח in Deut 15:12–13 see Stackert, *Rewriting the Torah*.

יצא, variously combined with הקפשי and/or הנם.<sup>110</sup> Given these possible ways of formulating manumission, Deut 15:12-13, 18 and Jer 34:9-11, 14, 16 chose to formulate themselves through the combination שלח + הקפשי.

*Thematic correspondence:* First, the differentiated treatment of the Hebrew male and female slave, as found in Exod 21:2–11, is not reflected in Jer 34:8–22. Like Deut 15:12–18, Jer 34:8–22 advocates a similar treatment of the Hebrew male and female slave. Further, Jer 34:8–22 advocates the abolition of slavery for both Hebrew male and female, contrary to the instruction both in Exod 21:2–11 and Deut 15:12–18. Whereas Exod 21:2, 5, 7—like Deut 15:17—speak of Hebrew עבד and אמה,<sup>111</sup> Jer 34:9, 16 speak of עבד and שפחה. So, Jer 34:8–22 shows thematic correspondence with Deut 15:12–18, even it also deviates from it at certain points.

Second, there is a thematic parallel between Lev 25:42; Deut 15:15; and Jer 34:13 regarding the exodus from Egypt as rationale for the manumission, something not found in Exod 21.<sup>112</sup> The reference to the exit from slavery and the house of slavery in Jer 34:13 (אנכי כרתתי ברית את־אבותיכם ביום הוצאתי אותם מארץ מצרים מבית עבדים לאמר) parallels the motivation clauses in Lev 25:42 and Deut 15:15. Here הוצאתי אותם מארץ מצרים in Jer

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<sup>110</sup> Exod 21:8 also uses the verb פדה for a second possibility of release for the female slave, namely redemption.

<sup>111</sup> Lev 25:42 speak of YHWH's עבד and 25:44 of foreigners as עבד and אמה.

<sup>112</sup> Cf. Bergsma, *The Jubilee from Leviticus to Qumran*, 163. Joosten has pointed out how Lev 25:42, 55 grounds the legislation in the Exodus-account, linking instruction and narrative together (Joosten, *People and Land in the Holiness Code*, 96–97). David Daube has argued that the Exodus-release was not simply a one-time historical event, but constituted a permanent institution where the people were legally transferred from being slaves under the rule of Pharaoh and the Egyptians to slaves under the rule of YHWH (David Daube, *The Exodus Pattern in the Bible*, All Souls Studies (London: Faber & Faber, 1962), 14).

34:13 seems closer to **עָבַד הָיִיתָ בְּאֶרֶץ מִצְרַיִם** in Lev 25:42, than **מִצְרַיִם** in Deut 15:15.<sup>113</sup> But it seems difficult to determine with a satisfactory degree of confidence from what passage Jer 34:13 might be reusing the formulation from, or if it might even be combining from various sources, since there are also strong parallels to Deut 29:24.<sup>114</sup> It may be an indication of a frozen formulation having its roots in the Torah-tradition. Or it may be a case of memorized or living Torah where the phrase has become so much part of the language-game of the author that it is reused and adapted to new formulations and contexts. In any case, it is an appropriate locution in the context of Jer 34 speaking of the release of slaves.<sup>115</sup>

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<sup>113</sup> Lohfink points out that we find the reference to the Egyptian slavery or status as former foreigner used seven times in Deuteronomy, in 5:15; 10:19; 15:15; 16:12; 24:18, 22 (Lohfink, “Fortschreibung?,” 153).

<sup>114</sup> Sarna claims that there is an “almost word for word” correspondence between Jer 34:13 ( **אָנֹכִי אֶת־בְּרִית יְהוָה אֱלֹהֵי אֲבוֹתַי בְּרִית אֶת־אֲבוֹתֵיכֶם בַּיּוֹם הַזֶּה הוֹצֵאתִי אֹתְכֶם מִמִּצְרַיִם מִבֵּית עֲבָדִים** ) and Deut 29:24 ( **אֶת־בְּרִית יְהוָה אֱלֹהֵי אֲבוֹתַי (אֲשֶׁר כָּרַת עִמָּם בְּהוֹצִיאֹו אֹתָם מִמִּצְרַיִם מִבֵּית עֲבָדִים מִצְרַיִם מִצְרַיִם מִצְרַיִם** ) (Sarna, “Zedekiah’s Emancipation,” 145). In Deut 29:24; 1 Kgs 8:21; Jer 31:32; 34:13 we find similar locutions. We do not need to establish the relation between these passages for the present purpose, but it suffices to say that there is a strong Deuteronomistic flavor to the formulation in Jer 34:13. The phrases **מִצְרַיִם מִבֵּית עֲבָדִים** with the verb **יָצָא** is found in Exod 20:2; Deut 5:6; 6:12; 8:14; 13:6, 11; Jer 34:13. The lexical set **יָצָא** + **אֶת** with suffix + **מִצְרַיִם** is found frequently in Leviticus, even if it is not unique to it (Exod 16:6, 32; 29:46; Lev 19:36; 22:33; 23:43; 25:38, 42, 55; 26:13, 45; Num 15:41; Deut 13:6; 29:24; Judg 2:12; 1 Kgs 8:21; Jer 7:22; 11:4; 34:13). The construction **יָצָא** + **מִצְרַיִם מִצְרַיִם מִצְרַיִם** is found in Exod 29:46; Lev 23:43; 25:42, 55; 26:45; Deut 29:24; Judg 2:12; 1 Kgs 8:21; Jer 7:22; 11:4; 34:13. The phrase **מִבֵּית עֲבָדִים** is relatively frequent in Deuteronomy, even if it is not unique to it either (Exod 13:3, 14; 20:2; Deut 5:6; 6:12; 7:8; 8:14; 13:6, 11; Josh 24:17; Judg 6:8; Jer 34:13; Mic 6:4). In the majority of cases it is found in the more elaborate formulation **מִצְרַיִם מִבֵּית עֲבָדִים** (Exod 20:2; Deut 5:6; 6:12; 8:14; 13:6, 11; Josh 24:17; Jer 34:13; Mic 6:4). Deut 13:6 and Mic 6:4 have minor variations.

<sup>115</sup> Cf. Fischer, *Jeremia 26–52*, 255. Fischer writes: “V 15 ist einer der seltenen Fälle, in denen Gott die Umkehr des Volkes V15 *bestätigt*. Wozu er in Jer 3 mehrfach eingeladen hatte, ist nun einmal wirklich erfolgt” (Fischer, *Jeremia 26–52*, 256. Italics original). Further, it is not only *that* the people repent, but also *how* they repent—implying Zedekiah’s *novum*—YHWH approves of. Fischer also claims that the formulation **הִשָּׁר בְּעֵינַי + עָשָׂה** is borrowed from Exod 15:26 (Fischer, *Jeremia 26–52*, 256). Sarna sees the locution as “characteristically Deuteronomistic (6:18; 12:25, 28; 13:19; 21:9)” (Sarna, “Zedekiah’s Emancipation,” 145). The consistent formulation in the Deuteronomistic passages is, however, **בְּעֵינַי + הִשָּׁר**. The modification would be **יְהוָה** being replaced with the 1cs suffix in Jer 34:15, fully possible given the divine discourse in which it occurs. Even if this is possible, the distribution of the locution raises the question whether we can be certain. The locution is found in Exod 15:26; Deut 12:8; Judg 17:6; 21:25; 1



*Multiplicity:* As the above evidence has indicated, the case for reuse between Deut 15:12–15 and Jer 34:8–22 appears to be much stronger than that between Exod 21:2–11 and Jer 34:8–22. Further, all the parallels between Exod 21:2–11 and Jer 34:8–22 seem to be best explained as parallels between Deut 15:12–18 and Jer 34:8–22, at points where Exod 21:2–11 and Deut 15:12–18 are parallel as well. Given the stronger evidence for reuse between Deut 15 and Jer 34, there is no reason to claim an exclusive reuse between Exod 21:2–11 and Jer 34:8–22.<sup>116</sup> Sarna finds the parallels between Jer 34 and Deut 15 to

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Kgs 11:33, 38; 14:8; 2 Kgs 10:30; Jer 34:15. We find the combination עָן + עָן + הַיָּשָׁר in 34 cases in the HB (Exod 15:26; Deut 12:8, 25, 28; 13:19; 21:9; Judg 17:6; 21:25; 1 Kgs 11:33, 38; 14:8; 15:5, 11; 22:43; 2 Kgs 10:30; 12:3; 14:3; 15:3, 34; 16:2; 18:3; 22:2; Jer 34:15; 40:4-5; 2 Chr 14:1; 20:32; 24:2; 25:2; 26:4; 27:2; 28:1; 29:2; 34:2), with a predominance of הַיָּשָׁר + הַיָּהוָה. The phrase הַיָּשָׁר בְּעֵינַי is found in 1 Kgs 11:33, 38; 14:8; 2 Kgs 10:30; Jer 34:15. Given this distribution I am not able to see that we can say with confidence that it is borrowed from a specific passage. It might be a frozen formula that Jer 34:15 uses.

The construction עָן + בְּרִית in the meaning “to transgress a covenant” is found in Deut 17:2, Josh 7:11, 15; 23:16; Jdg 2:20; 2 Kgs 18:12; Jer 34:18; Hos 6:7, 8:1, cf. Isa 24:5. The same construction in the meaning “to enter into a covenant” is found in Deut 29:11. Even if it is only in Deut 17:2 where it occurs in Torah in this sense, as Sarna points out (Sarna, “Zedekiah’s Emancipation,” 145), this does not entitle us to claim Jer 34:18 borrowed the locution from Deut 17:2. Given the reuse between Jeremiah and Hosea in other parts of the books, it might be possible that there is a relation here between Jer 34:18 and Hos 6:7, 8:1 as well. The evidence for a link between Jer 34 and Deut 17:2 is not conclusive at this point.

It is true that there are some unique syntactic and lexical features between אָשָׁר לֹא־יָקִים אֶת־דְּבָרֵי הַבְּרִית in Deut 27:26 and אָשָׁר לֹא־הִקִּימוּ אֶת־דְּבָרֵי הַבְּרִית in Jer 34:18 so as to warrant a possible influence (Sarna, “Zedekiah’s Emancipation,” 145), even if the formulation might also be seen as an idiomatic expression for confirming a promise. In Neh 5:13 we find a similar formulation (אָשָׁר לֹא־יָקִים (אֶת־הַדְּבָר הַזֶּה)).

<sup>116</sup> Contra Lundbom who sees Jer 34:14 as drawing from both Exod 21:2 and Deut 15:12 (Lundbom, *Jeremiah 21-36*, 563). Also, contra Levinson who argues for a possible reuse of Exod 21 in Jer 34: “While the available evidence is insufficient to definitely establish literary dependence, it may be that the legal harmonization in Jer 34 extends even further than D and H. The chapter may also be drawing upon the Covenant Code. More specifically, the presence of the noun עֶבֶד, ‘slave’, in Jer 34:9, which here applies to fellow Judean citizens, may reflect the nominal formulation of the protasis of the manumission law of the Covenant Code: כִּי תִקְנֶה עֶבֶד עִבְרִי שֵׁשׁ שָׁנִים יַעֲבֹד וּבִשְׁבַעַת יֵצֵא לְחַפְשֵׁי חָנָם (Exod 21:2). D avoids referring to the Israelite slave as an עֶבֶד except when discussing the possibility of permanent indenture (Deut 15:16–17a), in which the slave becomes technically an עֶבֶד עוֹלָם (“perpetual slave”). H, on the other hand, applies the nominal form only to a non-Israelite and forbids the noun’s application to in-group members of the community (Lev 25:39, 42, 46b). Accordingly, that Jer 34 employs the nominal form of ‘slave’ with fellow citizens, in a way that differs from the term’s use in the manumission laws of both D and H, may point to its having had access to the manumission law of the Covenant Code” (Levinson, “Zedekiah’s Release,” 323n). But the use of עָבָד in Jer 34 might also reflect the contemporary practice in the days of Zedekiah’s release, where Judahites were kept as regular slaves. This accords with the nominal

lead to “inescapable conclusions,” and sums up: “In the aggregate they exclude any possibility of the direct dependence of the events of Jer. 34 upon Ex. 21:1-11.”<sup>117</sup> We can therefore also leave the question of direction of dependence and appropriation between Exod 21:2–11 and Jer 34:8–22 aside. The importance of Exod 21:2–11 for the present study is therefore primarily as a possible source for Lev 25:39–46 and Deut 15:12–18, which do seem to stand in a relation to Jer 34:8–22. At the very least, the above analysis shows that there is nothing to indicate an exclusive relation between Exod 21:2–11 and Jer 34:8–22. On the other hand, the multiplicity of close parallels between Deut 15:12–18 and Jer 34:8–22 makes it relatively safe to claim there is a literary reuse between the two passages. We find a particular concentration of parallels between Deut 15:12 and Jer 34:9, 14.

### Direction of Dependence

*Reference to a source:* Significantly, Jer 34:13 speaks of a past covenant with the fathers, presenting 34:14 as a quotation of that covenant formulation.<sup>118</sup> Further, 34:14e–f

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form of עֶבֶד not being used in the quote in 34:14, therefore showing no sign of amalgamation with Exod 21. However, Lohfink like Levinson, also makes the correct observation that in Deut 15:12–18 the nominal term עֶבֶד is restricted to the case of עוֹלָם, when the slave voluntarily has chosen to remain with the master (Lohfink, “Fortschreibung?,” 162).

<sup>117</sup> Sarna, “Zedekiah’s Emancipation,” 145. Commenting on Deut 15 and Jer 34, Fischer writes: “Die Berührungen zwischen beiden Texten sind sehr eng: Es verbinden u.a. die Fügung ‘frei entlassen’ (gleich fünfmal in Jer 34,9–16), die Wörter ‘Diener/Sklave’, ‘Bruder’ sowie die Ausdrücke ‘Hebräer oder Hebräerin’ (alle bereits in v9) und ‘das siebte Jahr’ (Jer 34,14). Trotz aller Differenzen gibt es erstens keinen anderen Text außer Dtn 15, auf den es sich beziehen könnte. Und zweitens sind die Berührungen in ihrer Gesamtheit massiv und darin exklusiv” (Fischer, “Der Einfluss des Deuteronomiums auf das Jeremiabuch,” 262). And again: “Die Beziehungen zwischen der Vorschrift in Dtn 15, Sklaven frei zu lassen, und Jer 34, als ‘Realisierung’, sind *einzig* innerhalb des AT” (Fischer, “Der Einfluss des Deuteronomiums auf das Jeremiabuch,” 265).

<sup>118</sup> Jer 34:13 reads פֹּה־אָמַר יְהוָה אֱלֹהֵי יִשְׂרָאֵל אֲנִי כָרַתִּי כְרִית אֶת־אֲבוֹתֵיכֶם בְּיוֹם הוֹצֵאִי אוֹתָם מֵאֶרֶץ (“Thus says YHWH, the God of Israel: I made a covenant with your fathers in the

tells us that this covenant of manumission was rejected by the fathers.<sup>119</sup> Therefore, it seems reasonable to take Jer 34:14 as the borrowing text and Deut 15:12 as the source text.

*Modification:* If the author of Jer 34:14 was reusing Deut 15:12, what reason may he have had for eliminating the reference to the female slave found in Deut 15:12? Since Deut 15:12 reads *הָעֶבְרִיָּה אוֹ הָעֶבְרִי* and Jer 34:9 *וְהָעֶבְרִי וְהָעֶבְרִיָּה*, it is clear that both passages knew of the gender inclusive instruction.<sup>120</sup> Rather than any of them adding a reference to the female slave, a more appropriate question is what reason Jer 34:14 may have had for eliminating *הָעֶבְרִיָּה אוֹ*?<sup>121</sup> One possibility could be that the elimination in 34:14 might simply be explained as a short-hand reference to Hebrew male and female slaves, elliptically referring back to either 34:9 or Deut 15:12.<sup>122</sup>

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day I exited them from the land of Egypt, from the house of slavery, saying:”).

<sup>119</sup> Jer 34:14e–f reads *וְלֹא־שָׁמְעוּ אֲבוֹתֵיכֶם אֵלַי וְלֹא הִטּוּ אָזְנוֹתָם* (“but your fathers did not listen to me nor turn their ear”). Cf. Carroll, *Jeremiah*, 645 who makes a similar point, and also observes the difference between *בְּיוֹם* (“on that day”) in 34:13 referring to the past in contrast to *הַיּוֹם* (“today”) in 34:15 referring to the present right action of the people.

<sup>120</sup> While Deut 15:12 prefers *הָעֶבְרִי אוֹ הָעֶבְרִיָּה* (“the Hebrew male *or* female”) in its consideration of the various possible legal cases, Jer 34:9 seems to prefer *הָעֶבְרִי וְהָעֶבְרִיָּה* (“the Hebrew male *and* female”) as a gender-inclusive language for the release of both.

<sup>121</sup> Chavel argues that in Deut 15:12 “*אוֹ הָעֶבְרִיָּה*” entered the text secondarily,” disrupting syntax and indicates a later interpolation (Chavel, “Let My People Go!,” 86).

<sup>122</sup> For a similar reading see Levinson, “Zedekiah's Release,” 320–21n, contra Chavel, “Let My People Go!,” 86–87. Interestingly, as pointed out by Levinson (Levinson, “The Manumission of Hermeneutics,” 303), while Deut 15:12 refers to the female slave, the next reference to the female slave is found just after Deut 15:17c has come to the end of the reuse of the instruction regarding the male slave in Exod 21:6 on permanent indenture, and where Exod 21:7 then continues into the instruction regarding the female slave. Levinson sees Deut 15 as revising Exod 21: “This gender inclusiveness represents a conscious revision of a textual tradition that was originally oriented to the male slave alone, as is clear from the Hebrew: *כִּי־יִמְכַר לְךָ אֶחִיךָ הָעֶבְרִי אוֹ הָעֶבְרִיָּה* (Deut. 15:12a)” (Levinson, “The Manumission of Hermeneutics,” 301). As I have argued above, Deut 15:12–18 is best understood as a conflation of both the regulation of Hebrew male and female slaves in Exod 21:2–11. Levinson’s observation on Deut 15:17c can therefore be taken to support this view. Instead of explaining the disrupted syntax of Deut 15:12, with the masculine singular of *יִמְכַר*, *אָחִיךָ*, *וְעֶבְדְּךָ*, and *תִּשְׁלַחְהוּ* referring to both genders, *הָעֶבְרִי אוֹ הָעֶבְרִיָּה*, as layers of

*Integration:* First, there is a difference between the 2ms suffix of אָהִיּוּ הָעֶבְרִי in Deut 15:12 and the 3ms suffix of אָהִיּוּ הָעֶבְרִי in Jer 34:14, while Jer 34:14 and Deut 15:12 otherwise are consistent in using the 2ms to refer to the recipient of the instruction. While Deut 15:12 refers to the addressee as 2ms, in keeping with its surrounding syntax; Jer 34:14 for its part, however, is more mixed. It has the 2mpl (תִּשְׁלַחֵהוּ) altered to the 3ms (אָהִיּוּ), but in parallel passages it uses 2ms like Deut 15:12 to refer to the addressee (לָהּ, מִעַמָּךְ, וְשִׁלַּחְתָּהוּ, וְעַבְדְּךָ). When the parallels with Deut 15:12 cease, Jer 34:14 reverts to 2mpl again (אֲבוֹתֶיכֶם), which is more appropriate for its general syntax. At the point where Jer 34:14 claims to quote the previous instruction, it therefore seems to presuppose a *Vorlage* referring to the addressee in the 2ms as we find in Deut 15:12, except for the phrase אִישׁ אֶת־אָהִיּוּ הָעֶבְרִי.<sup>123</sup> This is, therefore, a case where PNG-shifts indicate reuse by Jeremiah. Jeremiah 34:14 adapts the person and number to accommodate the syntactic

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editing, it is better to understand it as a sign of reuse of different elements from Exod 21:2–11.

A complicating factor is the use of the dyad עֶבֶד and שִׁפְחָה in Jer 34:9–11, 16. Cardellini explains this as different sources (Cardellini, *Die biblischen 'Sklaven'-Gesetze*, 318). Fischer, however, sees the change as due either to a certain appropriateness in the context together with עֶבֶד or to indicate more the personal proximity of the female slave (Fischer, *Jeremia 26–52*, 253). Cf. Holladay also seeing context as determining the meaning of the terms (Holladay, *Jeremiah 26–52*, 240). The two lexemes Jer 34:9–16 used to refer to the female slave is הָעֶבְרִיָּה and שִׁפְחָה. The use of אָהִיּוּ in 34:14 does not seem to explain the elimination of terminology for the female slave, since אָהִיּוּ seems to be used both in 34:9, 17 as reference to both the male and female Hebrew slaves, as in Deut 15:12. The dyad found in 34:17 is אָהִיּוּ and רַע rather than הָעֶבְרִיָּה וְהָעֶבְרִי עֶבֶד or שִׁפְחָה and עֶבֶד. In general, the focus is primarily upon the slave belonging to one's own class of people, expressed through terms like הָעֶבְרִיָּה, הָעֶבְרִי, אָהִיּוּ, and רַע. Cf. Fischer, *Jeremia 26–52*, 254. Jeremiah 34:9 contains and thus introduces all the slave-terminology used in the passage except רַע. As already mentioned, the reason why Jer 34:14 only speaks of אָהִיּוּ הָעֶבְרִי, and does not use the lexemes otherwise found in the passage for referring to the female slave, seems to be that it is a short-hand reference or memorized reuse elliptically referring back to either 34:9 or Deut 15:12.

<sup>123</sup> It therefore seems unnecessary to postulate, as Chavel does, that “Jer 34.14 reflects a previous version of Deut. 15.12” (Chavel, “Let My People Go!,” 78. Cf. 81). Cf. Chavel, “Let My People Go!,” 78.

form given in Deut 15:12.<sup>124</sup> As to possible reasons for the shift to 3ms suffix in the phrase *אִישׁ אֶת־אֶחָיו הָעֶבְרִי* in Jer 34:14, Cardellini points out that the main difference between these two passages is that Deut 15:12 has the casuistic form while Jer 34:14 the apodictic.<sup>125</sup> So it may be that the author of Jer 34 found the phrase *אִישׁ אֶת־אֶחָיו הָעֶבְרִי* more appropriate for his apodictic form. Further, it may also be that we should understand the alteration to the 3ms suffix of *אֶחָיו הָעֶבְרִי* in Jer 34:14 as occasioned by the author recognizing that he is reusing a passage originally written to a past generation, and therefore originally referring to an audience different from his own, making the 3ms form feel more appropriate.<sup>126</sup> And Chavel might be correct in claiming that Jer 34:14's *אִישׁ אֶת־אֶחָיו*—as a modification of Deut 15:12's simpler *אֶחָיו*—is reusing and reworking the

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<sup>124</sup> Contra Glanz who claims that in the book of Jeremiah “the insertion of foreign text material is not responsible for causing PNG shifts” (Glanz, *Participant-Reference Shifts in the Book of Jeremiah*, 217). In his analysis of the “less than 2%” he finds to be an exception to this rule, the shifts in Jer 34:12 and its parallels to Deut 15:12 are not included. Commenting on the reuse of Deut 15:12 in Jer 34:14 Fischer on his side writes: “Die Beibehaltung der Redeweise in 2. Sg. im Kontext der Anrede mit 2. Pl. bei V 13.15 hebt den *Charakter als Zitat* noch mehr heraus” (Fischer, *Jeremia 26–52*, 255. Italics original). Holladay writes: “The forms of address in vv 13–17 are in general second-person plural; thus the shift to singular in (at least most of) v 14a is curious . . . . The shift is doubtless intentional; there are similar shifts within Deuteronomy, though not within Deut 15:1 or 12. It has been suggested that one function of the shifts of number in Deuteronomy was to mark citations of earlier material, and the shift here may have the same function” (Holladay, *Jeremiah 26–52*, 241). For the same point see Sarna, “Zedekiah's Emancipation,” 147. For PNG shifts in 41:8–22 LXX see Hornkohl, *Language of the Book of Jeremiah*, 119. Cf. Cardellini, *Die biblischen 'Sklaven'-Gesetze*, 317–18; Lohfink, “Fortschreibung?,” 133–36.

<sup>125</sup> Cardellini writes: “Der Unterschied Jer v.14aα zu Dtn v. 12aα rührt tatsächlich von dem Wechsel her, den die Gottesrede dem Text Jer v. 14aαβ aufgedrängt hat, denn während in Dtn v. 12aα die kasuistische Formulierung gebraucht ist, wird in Jer v. 14aα nur das von der apodiktische erforderlich. Wenn wir die Element der beiden Texte genau gegenüberstellen, dann erscheint als neues Element in Jer v. 14aα nur das von der apodiktischen Form verlangte” (Cardellini, *Die biblischen 'Sklaven'-Gesetze*, 317). This also explains why the casuistic formula *כִּי־יִמְכַר לְךָ אֶשְׁרֵי־יְמֹכָרְךָ* in Deut 15:12 is expressed as the relative clause *אִישׁ אֶת־אֶחָיו הָעֶבְרִי* in Jer 34:14.

<sup>126</sup> Cf. Fischer on how Jeremiah might alter his source in minor details and/or abbreviate it (Fischer, *Jeremia 1–25*, 2, 72).

formulation *אֵישׁ אֶת־עַבְדּוֹ וְאִישׁ אֶת־שִׁפְתּוֹ* in 34:10.<sup>127</sup> If so, Jer 34:14 could also be understood as a correction of the formulation of Zedekiah’s covenant, denying the concept of ownership implied in 34:10. Finally, it may simply be that the introduction of *אֵישׁ* in *אֵישׁ אֶת־אֶחָיו הָעֶבְרִי* of Jer 34:14 constrained the author to use the 3ms suffix of *אֶחָיו*. To me the evidence does not seem to be conclusive enough to choose between these alternatives.

Second, we notice a difference between the singular *הַפְּשִׁי* in Deut 15 and the plural *הַפְּשִׁים* in Jer 34. Of all the uses of *הַפְּשִׁי* in the HB (Exod 21:2, 5, 26-27; Deut 15:12-13, 18; 1 Sam 17:25; Isa 58:6; Jer 34:9-11, 14, 16; Ps 88:6; Job 3:19; 39:5) it is found only as a plural in Isa 58:6; Jer 34:9-11, 16. The plural form is used consistently in Jer 34:9-11, 16 for the gender inclusive focus of the passage.<sup>128</sup> Once, in Jer 34:14, exactly where we find the closest parallels to Deut 15:12, we find the only occurrence of the singular *הַפְּשִׁי* in Jer 34. Again a PNG-shift seems to indicate reuse, where the use of the singular of *הַפְּשִׁי* in 34:14 appears to support the claim that this verse is quoting from Deut 15:12.

*Lexical dependence:* Both Deut 15 and Jer 34 speak of the Hebrew (*הָעֶבְרִי* and *הָעֶבְרִיָּה*) slave. In the entire book of Jeremiah only Jer 34:9, 14 uses *הָעֶבְרִי* and/or *הָעֶבְרִיָּה*.<sup>129</sup> Otherwise the lexeme *יְהוּדִי* is preferred in the book and attested in 34:9 as

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<sup>127</sup> Chavel, “Let My People Go!,” 80.

<sup>128</sup> Contrast Deut 15:12 which also has the gender inclusive focus, but nevertheless formulates itself so as to take the singular *הַפְּשִׁי*.

<sup>129</sup> Cf. Hornkohl, *Language of the Book of Jeremiah*, 306, 312.

well.<sup>130</sup> The same is the case with Deut 15:12: only here do we find *הַעֲבָרִיָּה* and/or *הַעֲבָרִי* in the book. But if we go with those scholars who view Deut 15:12–18 as reusing Exod 21:2–11, we may have a straightforward solution. In Exodus *עֲבָרִי* is attested 14 times.<sup>131</sup> So given (1) that Deut 15:12–18 reuses Exod 21:2–11, and this explains the occurrence of *הַעֲבָרִי* and *הַעֲבָרִיָּה* in Deut 15:12, (2) that there are no convincing reasons that Jer 34 is reusing Exod 21:2–11 directly, and (3) that the book of Jeremiah otherwise prefers the term *יְהוּדִי* over *עֲבָרִי*, a reasonable reading seems to be that Deut 15 borrowed *עֲבָרִי* from Exod 21, and Jer 34 in turn borrowed it from Deut 15.

*Conflation:* Above I mentioned how Jer 34:14 seems to conflate Deut 15:1, 12, and how *וּבַשָּׁנָה הַשְּׁבִיעִת* and *מִקֵּץ שִׁבְעַת שָׁנִים* can possibly be understood in the sense of *בַּשָּׁנָה הַשְּׁבִיעִת*. Here I am interested in the conflation itself. While Deut 15:12 has *וּבַשָּׁנָה הַשְּׁבִיעִת*, we find *מִקֵּץ שִׁבְעַת שָׁנִים* in Jer 34:14. Interestingly, Deut 15:1 opens the instruction on the Sabbath year with the formula *מִקֵּץ שִׁבְעַת שָׁנִים*. In whatever way we construe the direction of dependence, the combination of elements common to Jer 34:14 and Deut 15:1, 12 at least points to a reuse between the two passages.<sup>132</sup>

There might be good reasons why Jer 34:14 conflates Deut 15:1, 12 in this

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<sup>130</sup> Cf. Jer 32:12; 34:9; 38:19; 40:11-12; 41:3; 43:9; 44:1; 52:28, 30. Cf. Smelik, “The Inner Cohesion of Jeremiah 34:8–22,” 240 making similar observations.

<sup>131</sup> Exod 1:15-16, 19; 2:6-7, 11, 13; 3:18; 5:3; 7:16; 9:1, 13; 10:3; 21:2.

<sup>132</sup> From this we have two options, either seeing Jer 34:14 as combining the elements from Deut 15:1, 12, or Deut 15 splitting up the elements found in Jer 34:14. As will be seen, I will argue for the former. Chavel seems to get confused about the *מִקֵּץ שִׁבְעַת שָׁנִים* in Jer 34:14 because he only focuses on the parallels with Deut 15:12 (Chavel, “Let My People Go!,” 81). As pointed out by LeFebvre, the author of Jer 34:14 “freely changes the provision in the way he cites it. He actually ‘mixes’ two laws into one: the *timing* of the Deut 15:1–11 *debt* release, and the *subjects* of the Deut 15:12–18 *slave* release” (LeFebvre, *Collections, Codes, and Torah*, 84).

manner. When we read Deut 15:1–11 we see parallels to Lev 25:39–46. In both cases there is a release of—or return to—property (Deut 15:2; Lev 25:41), and in both cases the unfortunate person is called one’s אָח (“brother”)<sup>133</sup> having become poor (Deut 15:7 using the adjective אָבְיָוֹן; Lev 25:39 using the verb מָוֶה), and so both imply a link between debt and servitude on one side, and remission of debt and manumission on the other.<sup>134</sup> It may be that the author of Jer 34:14 conflated Deut 15:1, 12 on the basis that Lev 25:39–46 offers a key to how themes in Deut 15:1–11 can be combined with those of 15:12–18.<sup>135</sup> Further, LeFebvre would appear to be correct when he states that the author, whom he sees as a redactor, “is not really concerned about the accurate timings of the release laws cited. He does not expect the law writing to define precisely when release proclamations are made. It is the principle *that* slaves (specifically, ‘your brother Hebrews’) be released at appropriate intervals that is in view.”<sup>136</sup>

*Linguistic dating:* The attestation of אָח in CBH texts, but absence in LBH texts,<sup>137</sup> in contrast to the absence of אָח in Torah, and attestation in texts dating to the

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<sup>133</sup> In the passages here under study, אָח is found in Lev 25:14, 25, 35-36, 39, 46-48; Deut 15:2-3, 7, 9, 11-12; Jer 34:9, 14, 17.

<sup>134</sup> Cf. Sarna, “Zedekiah's Emancipation,” 147. This link between debt and slavery is substantiated, as Sarna shows, by other biblical passages as Exod 22:2; 2 Kgs 4:1–7; Amos 2:6; 8:6; Isa 50:1; Neh 5:5; Prov 22:7.

<sup>135</sup> Cf. Mastnjak, *Textual Authority in Jeremiah*, 147; Rom-Shiloni, “Compositional Harmonization,” 919.

<sup>136</sup> LeFebvre, *Collections, Codes, and Torah*, 85.

<sup>137</sup> אָח is attested in Gen 14:13; 39:14, 17; 40:15; 41:12; 43:32; Exod 1:15-16, 19; 2:6-7, 11, 13; 3:18; 5:3; 7:16; 9:1, 13; 10:3; 21:2; Deut 15:12; 1 Sam 4:6, 9; 13:3, 7, 19; 14:11, 21; 29:3; Jer 34:9, 14; Jonah 1:9.



late CBH period, TBH and LBH, including Jeremiah and Jer 34:9 specifically,<sup>138</sup> also indicate that Deut 15 is the early text and Jer 34 the late.

### Lev 25:10, 39–46 and Jer 34:8–22

Given the general consensus that there is reuse of Deut 15:12 in Jer 34:14, while we at the same time observe a clear reworking of the order and meaning of the former in the latter, we should be sensitive to the possibility that Jer 34 might also choose to reuse Lev 25 creatively. As argued below, there is sufficient evidence to claim that Lev 25 was reused in the original composition of Jer 34. But again, we witness a sophisticated form of reuse that cannot be restricted to a direct quotation as such.

#### A Case for Reuse

The following Table 13 gives an overview over parallels between Lev 25:10, 39–46 and Jer 34:8–22.

*Uniqueness:* The lexical set קרא + דָּרוֹר + שׁוּב is unique to Lev 25:10, 13 and Jer 34:8, 11, 15-17, 22. Jeremiah 34:8, 15, 17 uses קרא + דָּרוֹר four times, while it is used only twice elsewhere in the HB, in Lev 25:10 and Isa 61:1.<sup>139</sup> This also gives a basis for comparing the key term שׁוּב in Lev 25:10, 13, 27-28, 41, 51-52 with

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<sup>138</sup> The lexeme יהודי is attested in 2 Kgs 16:6; 18:26, 28; 25:25; Isa 36:11, 13; Jer 32:12; 34:9; 38:19; 40:11-12; 41:3; 43:9; 44:1; 52:28, 30; Zech 8:23; Esth 2:5; 3:4, 6, 10, 13; 4:3, 7, 13-14, 16; 5:13; 6:10, 13; 8:1, 3, 5, 7-9, 11, 13, 16-9:3; 9:5-6, 10, 12-13, 15-16, 18-20, 22-25, 27-31; 10:3; Neh 1:2; 2:16; 3:33-34; 4:6; 5:1, 8, 17; 6:6; 13:23-24; 1 Chr 4:18; 2 Chr 32:18. Cf. Chavel, “Let My People Go!,” 89; Hornkohl, *Language of the Book of Jeremiah*, 305–14.

<sup>139</sup> Since Isa 61:1 speaks of a דָּרוֹר for the captives (לְשִׁבוּיִם), while Jer 34 for the Hebrew male and female slaves (יְהוּדֵי, נְהִיבֵי, עֶבֶד, and שְׁפָחָה), their respective context differ. I am not able to see a basis for claiming reuse between Isa 61:1 and Jer 34. Both rather seems to be reusing Lev 25.

**Table 13. Lev 25:10, 39–46 and Jer 34:8–22**

Lev 25:10, 39–46	Jer 34:8–22
<p><sup>10</sup> וקדשתם את שנת החמישים שנה וקראתם דרור בארץ לכל־ישיביה יובל הוא תהיה לכם ושבבתם איש אל־אחוזתו ואיש אל־משפחתו תשבּו:</p> <p>...  <sup>39</sup> וכי־ימוך אחיך עמך ונמכר־לך לא־תעבד בו עבדת עבד: <sup>40</sup> כשכיר כתושב יהיה עמך עד־שנת היבל יעבד עמך: <sup>41</sup> ויצא מעמך הוא ובניו עמו ושב אל־משפחתו ואל־אחזת אבתיו ישוב: ...</p>	<p><sup>8</sup> הדבר אשר־היה אלי־ירמיהו מאת יהוה אחר־י כרת המלך צדקיהו ברית את־כל־העם אשר בירושלם לקרא להם דרור<sup>140</sup>: <sup>9</sup> לשלח איש את־עבדו ואיש את־שפחתו העברי והעבריה חפשים לבלתי עבדבם ביהודי אחיהו איש: <sup>10</sup> וישמעו כל־השרים וכל־העם אשר־באו בברית לשלח איש את־עבדו ואיש את־שפחתו חפשים לבלתי עבדבם עוד וישמעו וישלחו: <sup>11</sup> וישבו אחרי־כן וישבו את־העבדים ואת־השפחות אשר שלחו חפשים ויכבשום לעבדים ולשפחות: ס. . . <sup>14</sup> מקץ שבע שנים תשלחו איש את־אחי העברי אשר־ימכר לך ועבדך שש שנים ושלחתו חפשי מעמך ולא־שמעו אבותיכם אלי ולא הטו את־אזנם: <sup>15</sup> ותשבּו אתם היום ותעשו את־הישר בעיני לקרא דרור איש לרעהו ותכרתו ברית לפני בבית אשר־נקרא שמי עליו: <sup>16</sup> ותשבּו ותחללו את־שמי ותשבּו איש את־עבדו ואיש את־שפחתו אשר־שלחתם חפשים לנפשם ותכבשו אתם להיות לכם לעבדים ולשפחות: ס <sup>17</sup> לכן כה־אמר יהוה אתם לא־שמעתם אלי לקרא דרור איש לאחיו ואיש לרעהו הנני קרא לכם דרור נאם־יהוה החרב אל־הדבר ואל־הרעב ונתתי אתכם לזועה לכל ממלכות הארץ: . . . <sup>22</sup> הנני מצוה נאם־יהוה והשבבתים אלי־העיר הזאת ונלחמו עליה ולכדוה ושרפה באש ואת־ערי יהודה אתן שממה מאין ישב: פ</p>
<p><sup>10</sup> and you shall sanctify the fiftieth year. And you shall <u>proclaim a release</u> in the land to all who dwell in it. It shall be a jubilee for you, and each one of you shall <u>return</u> to his possession, and each one shall <u>return</u> to his family. . . .  <sup>39</sup> And if your <u>brother</u> with you becomes poor, and is sold to you, you shall not make him serve the service of a slave. <sup>40</sup> He shall be with you like a hired worker, like a sojourner, he shall</p>	<p><sup>8</sup> The word that came to Jeremiah from YHWH, after king Zedekiah cut a covenant with all the people that were in Jerusalem to <u>proclaim release</u> among them, <sup>9</sup> each one to send his slave free, and each one his maidservant, a Hebrew male or female, that none enslave his <u>brother</u> among Judeans. <sup>10</sup> And all the officials and all the people that came into the covenant to send free each one his slave and maidservant, not to enslave again among them. And they heard and they sent away. <sup>11</sup> But afterward they <u>turned around</u> and <u>returned</u> the slaves and maidservant whom they sent free. And they subjected them to slaves and maidservants. . . . <sup>14</sup> At the end of seven years each one shall send his Hebrew <u>brother</u>, who was sold to you and served you for six years, you shall send him free from you. But your fathers did not listen to me and did not incline their ear. <sup>15</sup> But you, you <u>turned</u> one day, and you did what was right in my eyes to <u>proclaim a release</u>, each one to his neighbor. And you made a covenant before my face, in the house which is called by my name. <sup>16</sup> But you <u>turned around</u> and profaned my name by <u>returning</u> each man his slave and his maidservant whom you sent free at their life. And you subjected them to make them your slaves and maidservants. <sup>17</sup> Therefore, thus says YHWH:</p>

<sup>140</sup> While Jer 34:8 LXX reads καλέσαι ἄφεσιν (“to proclaim a release”), Lev 25:10 LXX reads διαβοήσετε ἄφεσιν (“to proclaim a release”). The reuse is therefore not as clear in the LXX as we shall see it is in the MT. Jeremiah 34:8–22 LXX seems to use more similar terminology to Deut 15:12–18 LXX, than Lev 25:10, 39–46 LXX.

Table 13 — *Continued.*

Lev 25:10, 39–46	Jer 34:8–22
<p>serve with you until the year of Jubilee. <sup>41</sup> And he shall exit from with you, he and his children with him. And he <u>shall return</u> to his family and he <u>shall return</u> to his ancestral property.</p>	<p>You did not listen to me to <u>proclaim a release</u>, each one to his <u>brother</u>, and each one to his neighbor. Behold, I <u>proclaim a release</u> for you, says YHWH, to the sword, to the pestilence and to the famine. And I will make you a horror for all the kingdoms of the earth. . . . <sup>22</sup> Behold, I command, says YHWH, and I <u>bring</u> them to this city, and they will fight against her and take her and burn her with fire. And I make the cities of Judah a desolation, without inhabitants.</p>

the occurrences of the same term in Jer 34:11, 15-16, 22.<sup>141</sup>

*Thematic Correspondence:* First, the most striking instance of thematic correspondence between Lev 25 and Jer 34 may be seen in the absolute abolition of slavery for Hebrews. In Lev 25 it is expressed negatively as לא־תֵעָבֵד בּוֹ עֶבֶדְתָּ עָבֵד in v. 39, and positively as יִמְכְּרוּ מִמִּכְרֹת עָבֵד, לא־ יִמְכְּרוּ בְּפָרְךָ, in v. 42, and positively as כְּשֶׁכִּיר כְּתוּשָׁב יִהְיֶה עִמָּךְ in v. 40. A similar norm is expressed twice in Jer 34, with לְבַלְתִּי עֲבָדֶבְכֶם בִּיהוּדֵי אֶחְיֶהוּ אִישׁ in Jer 34:9 and לְבַלְתִּי עֲבָדֶבְכֶם עוֹד in 34:10.

As discussed above, Lev 25:39–46 legitimizes a differentiated treatment of Israelites and non-Israelites, denying slavery of the former but permission to enslave the latter. Even if a more radical reading of Lev 25:39–49 in its literary context might be

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<sup>141</sup> LXX renders the opening verb in Jer 34:10 MT, וַיִּשׁוּבוּ, with ἐπεστράφησαν (“they turned around”). Cf. Shirley Lal Wijesinghe, *Jeremiah 34, 8–22: Structure and Redactional History of the Masoretic Text and of the Septuagint Hebrew Vorlage* (Colombo, Sri Lanka: Centre for Society and Religion, 1999), 17. LXX does not render the MT וַיִּשְׁמְעוּ וַיִּשְׁלַחוּ in 34:10. It is probably because the translator felt it was redundant, since the same idea was already expressed in 34:9, τὸ μὴ δουλεύειν ἄνδρα ἐξ Ἰουδα. MT וַיִּשׁוּבוּ אַחֲרֵיכֶן וַיִּשְׁבּוּ אֶת־הָעֲבָדִים וְאֶת־הַשְּׁפָחוֹת אֲשֶׁר שְׁלַחוּ הַכֹּהֲנִים in 34:11 is neither rendered in LXX. LXX appears to conflate 34:9–11, or if it should be seen as more original, represent a shorter version.

possible, as argued above, seeing in it an invitation to treat the foreigner as a native, both Lev 25 and Jer 34, nevertheless, share the absolute ban on enslavement of Israelites/Judahites. This is not found in Deut 15. As Levinson has correctly pointed out, Deut 15 avoids using עֶבֶד for the Hebrew subservient except for permanent indenture in the phrase עֶבֶד עוֹלָם.<sup>142</sup> But this restriction is nevertheless different from the absolute abolishment of Israelites/Judahites that we find in Lev 25 and Jer 34. While Jer 34:14 seems to be reusing Deut 15:12 advocating a release of all dependent Hebrews in the seventh year, Jer 34, nevertheless, appears to be conceptually framed around the abolition of slavery of Hebrews altogether found in Lev 25.<sup>143</sup>

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<sup>142</sup> Levinson, “Zedekiah's Release,” 323.

<sup>143</sup> The parallels between the reference to the exit from slavery and the house of slavery in Jer 34:13 and its parallels to the motivation clauses in Lev 25:42 and Deut 15:15 have been discussed above.

Bergsma writes that “Chavel’s denial that דָּרוֹר in Jer 34 alludes to the jubilee (“Let My People Go!” 75 n. 12) seems unnecessary, especially since he recognizes that the redactor of the passage (1) refers to the jubilee legislation elsewhere (i.e. Jeremiah 34:9b; “Let My People Go!” 88–93) and (2) that the word was taken as a reference to the jubilee by later biblical writers (i.e. in Neh 5:1–13; “Let My People Go!” 93–94). Chavel’s claim that ‘the term דָּרוֹר in Jer 34:8 coincidentally recalls the legislation of Lev 25’ (“Let My People Go!” 93) seems strained. The fact that Zedekiah’s emancipation was not actually a jubilee year ([‘the word דָּרוֹר’s] meaning [in Lev 25:10] differs greatly from Jer 34:8,’ idem) does not mean that the author of Jer 34:8–12 or even Zedekiah himself would have missed the resonances the event had with the ancient jubilee and taken advantage of the opportunity to cloak the event with jubilee language (so Fried and Freedman, “Jubilee Year,” 2257)” (Bergsma, *The Jubilee from Leviticus to Qumran*, 164n.). And further that “outside of Jer 34, דָּרוֹר occurs in the Bible only as a reference to the jubilee. This does not prove that Jer 34 also means to allude to the jubilee, but it makes it reasonable to suppose that it does. This is all the more the case since the only universal, simultaneous release of persons in bondage in the biblical legal corpora is Lev 25; Exod 21 and Deut 15 provide only for individual manumissions” (Bergsma, *The Jubilee from Leviticus to Qumran*, 164). Cf. Maier, *Jeremia als Lehrer der Tora*, 277 seeing some kind of a link between קָרָא + דָּרוֹר in Jer 34:8, 15, 17 and the Jubilee in Lev 25:10. An objection to the claim that Jer 34 reuses Lev 25 might be that Jer 34 does not reuse the key term יוֹבֵל from Lev 25. On the possibility that “the term יוֹבֵל had fallen out of general use” by the time we come to Ezekiel (and Jeremiah), see Bergsma, *The Jubilee from Leviticus to Qumran*, 61. Weinfeld comments on the semantics of the words for liberty in Akkadian and Hebrew: “The names for ‘liberty’ in both Akkadian and Hebrew are connected with the idea of free movement. The Akkadian name *mīšarum* is derived from *ešēru*, a verb which includes the meaning ‘to go straight ahead’, whereas *durārum* has the meaning ‘to roll without restraint’” (Weinfeld, “Sabbatical Year and the Jubilee,” 45). For parallels between Lev 25:41 and Num 35:28 cf. Stackert, *Rewriting the Torah*, 89. Basing himself upon Hartley, Bergsma writes: “As Hartley points out, Lev 25 makes use of several apparently ancient terms. Primary among these is the word יוֹבֵל itself. The meaning and etymology of this word are uncertain. It occurs only in Lev 25, 27, and Num 34. It does not occur in undisputed exilic

**Excursus: The Reuse of the Curse Formulas  
in Lev 26:25–26 and Deut 28:25–26 in  
Jer 34:17, 20**

The clearest case of intertwining Leviticus and Deuteronomy in Jer 34:12–22 is probably where it draws on the covenant curses from Lev 26:25–26 and Deut 28:25–26 in both Jer 34:17 and 34:20.<sup>144</sup> Levinson argues that the talionic element is a *novum* in Jer 34:

This major compositional idea of the chapter has no direct precedent in the Pentateuch. Granted, both Deuteronomy and the Holiness Code treat faithful observance of the whole Law as a general condition of the covenant (Deut 7:12; Lev 26:14–15). Yet neither source’s manumission law specifies a punishment for its infraction. Nor does either D or H explicitly connect *manumission* with *covenant*, let alone define failure to implement manumission as a cause of exile. In other words, the larger theological, conceptual and judicial perspective of Jer 34 cannot be explained simply in terms of D or H. However extensively it draws upon its literary sources and appears to quote them, the text is a new synthesis and a creative transformation of its sources.<sup>145</sup>

I agree with Levinson to the extent that we find creative composition in Jer 34.

Nevertheless, the link to Jer 34’s sources might be closer in the talionic aspect than his statement admits. It is true that Deuteronomy and Leviticus formulate themselves in

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or post-exilic literature in the Hebrew Bible; in Ezekiel’s reference to the jubilee year (Ezek 47:17) it is simply called “the year of release” (שנת דרור) perhaps indicating that by the time Ezekiel was composed, the term יובל had fallen out of general use. Significantly, however, the statement of Lev 25:10, “It [the fiftieth year] will be a Jubilee for you,” assumes that the reader/listener knows what a jubilee is, i.e. the text presupposes some prior knowledge of the meaning of יובל” (Bergsma, *The Jubilee from Leviticus to Qumran*, 61).

<sup>144</sup> Fischer has pointed out that Lev 26 and Deut 28 take a prominent position, when compared to other passages in their respective books, among passages preferably reused within the Book of Jeremiah (Georg Fischer, “Fulfillment and Reversal: The Curses of Deuteronomy 28 as a Foil for the Book of Jeremiah,” *Semitica et Classica* 5 (2012): 43–49; Fischer, “The Relationship of the Book of Jeremiah to the Torah,” 902–3, 908).

<sup>145</sup> Levinson, “Zedekiah’s Release,” 324. Cf. p. 314 as well. Levinson does, however, see the link between the exile and 49 years of Jubilee in the actual period of exile: “Moreover, this group will remain enslaved, as previously noticed, for the period of the jubilee (587–539/8 = 49 years)” (Levinson, “Zedekiah’s Release,” 324). Cf. Jer 25:11–12; 29:10; 2 Chr 36:21 speaking of 70 years of exile and slavery. In these texts a Jubilee cycle is therefore not envisioned for the exile, but rather ten Sabbatical years.

terms of faithfulness to the entire covenant. Nevertheless, Jer 34, and vv. 17 in particular, seems to ground its talionic discourse on the implications formulated in Lev 26 in a situation where the manumission instructions in Lev 25 are rejected. Jeremiah 34:17, 20 does not create the talionic element *ex nihilo*, but, rather, seems to explicate what is implied by reading Lev 25 and 26 together on the one hand, and Deut 15 and 28 together on the other. More specifically, both Jer 34:17 and 34:20 seem to draw one element each from both Lev 26:25–26 and Deut 28:25–26,<sup>146</sup> as illustrated by the following Table 14. Even if only **הָרָב** and **דָּבַר** are parallel on the lexical level between Lev 26:25–26 and Jer 34:17, the thematic link between the hunger of Lev 26:26 and **רָעַב** in Jer 34:17 is clear. They are further found in the same order in both passages. The combination of **הָרָב**, **דָּבַר**, and **רָעַב** is found predominantly in Jeremiah and Ezekiel.<sup>147</sup> The words are usually given

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<sup>146</sup> Bergsma has already pointed out the parallels between Lev 26:25–26 and Jer 34:17. He writes: “It is interesting to note that the punishments of v. 17 follow the pattern of punishments in Lev 26:25–26. In both texts the order of punishments is sword (**הָרָב**, Lev 26:25a), pestilence (**דָּבַר**, Lev 26:25b), and famine (**רָעַב**, Lev 26:26 [the word is not used in v. 26 but famine is described]), and the offense is covenant-breaking (cf. Lev 26:14–15, 25a; Jer 34:13–14, 18). If the author of Jer 34:17 is drawing on traditions from Lev 26—a chapter so closely related to the jubilee legislation, as noted above—it enhances the likelihood that the allusions to the jubilee elsewhere in the pericope are intentional” (Bergsma, *The Jubilee from Leviticus to Qumran*, 167–68). He also finds **וַתְּחַלְּלוּ אֶת־שְׁמִי** in Jer 34:16 to reuse this locution from Leviticus: “the expression **חָלַל שְׁמִי** (“profane my name,” v. 16) is an idiom from H (Lev 18:21; 19:12; 20:3; 21:6; 22:2, 32) which Ezekiel also borrows (Ezek 20:39; 36:20, 21, 22, 23) . . . This use of H language strengthens the plausibility that the wordplay on **לְקַרְא דְרוּר** and **שׁוֹב** is also drawing on H (i.e. Lev 25:10)” (Bergsma, *The Jubilee from Leviticus to Qumran*, 167). I will discuss further the wordplay on **קָרָא** + **דְרוּר** + **שׁוֹב** below. Here we can note that the locution **חָלַל שְׁמִי** with 1. person suffix occurs especially in Leviticus and Ezekiel, but also some other passages including Jer 34:16 (Lev 19:12; 20:3; 22:2, 32; Isa 56:6; Jer 25:29; 34:16; Ezek 20:9, 14, 22, 39; 36:20–23; 39:7; Amos 2:7). Cf. Holladay, *Jeremiah 26–52*, 241–42. Maier, *Jeremia als Lehrer der Tora*, 270–71, 277 notes the parallels, and sees this locution as “entstammt priestlicher Terminologie.” In addition, there are some occurrences of **חָלַל שְׁמִי** that are relevant as well (Lev 18:21; 21:6; Ps 74:7). Except Lev 19:12, where it is used of swearing in YHWH’s name, all the other occurrences are in a cultic context. In Jer 34:16 the setting is rather that of breaking the covenant entered in the name of YHWH, by re-enslaving the released slaves. It is of course a link between the cult and covenant in Torah, but we should note that the phrase is used differently in Leviticus and Jer 34:16. It might be a frozen phrase associated with Leviticus, that the author of Jer 34:16 used as part of his language-game interweaving locutions drawn from Leviticus.

<sup>147</sup> Jeremiah 14:12; 21:7, 9; 24:10; 27:8, 13; 29:17–18; 32:24, 36; 34:17; 38:2; 42:17, 22; 44:13;

**Table 14. Lev 26:25–26; Deut 28:25–26; and Jer 34:17, 20**

Lev 26:25–26	Jer 34:17, 20
<p>25 והבאתי עליכם חרב נקמת נקם־ברית ונאספתם אל־  עריכם ושלחתי דבר בתוככם ונתתם ביד־אויב:  26 בשברי לכם מטה־לחם ואפו עשׂר נשים לחמכם בתנור אחד  והשיבו לחמכם במשקל ואכלתם ולא תשבעו: ם</p>	<p>17 לכן כה־אמר יהוה אתם לא־  שמעתם אלי לקרא דרור איש לאחיו  ואיש לרעהו הנני קרא לכם דרור  נאם־יהוה אל־החרב אל־הדבר ואל־  הרעב ונתתי אתכם לזועה לכל  ממלכות הארץ: . . .  20 ונתתי אותם ביד איביהם וביד  מבקשי נפשם והיתה נבלתם למאכל  לעוף השמים ולבהמת הארץ:</p>
Deut 28:25–26	
<p>25 יתגך יהוה נגף לפני איביך בדרך אחד תצא אליו ובשבעה  דרכים תנוס לפניו והיית לזועה לכל ממלכות הארץ:  26 והיתה נבלתך למאכל לכל־עוף השמים ולבהמת הארץ  ואין מחריד:</p>	
<p>Lev 26:25 And I will bring a <u>sword</u> upon you, avenging the vengeance of the covenant. And if you gather to your cities, I will send <u>pestilence</u> in your midst, and you will be delivered <u>into the hand of your enemy</u>. 26 <i>When I break your supply of bread, ten women will bake your bread in one oven, and will ration your bread by weight, and you shall eat but not be satisfied.</i></p>	<p>Jer 34: 17 Therefore, thus says YHWH: You did not listen to me to proclaim a release, each one to his brother, and each one to his neighbor. Behold, I proclaim a release for you, says YHWH, to the <u>sword</u>, to the <u>pestilence</u> and to the <u>famine</u>. And I will make you a <u>horror for all the kingdoms of the earth</u>. . . . 20 and I will give them <u>in the hand of their enemies</u> and in the hand of those seeking their life. And their <u>corpses will be food for the birds of the heavens and the animals of the earth</u>.</p>

Ezek 5:12, 17; 6:11-12; 7:15; 12:16; 14:21; 1 Chr 21:12; 2 Chr 20:9. For discussions on how Ezekiel reuses Lev 26:25–26 see Lyons, *From Law to Prophecy*, 69, 72, 78–79, 82, 91, 94, 100, 113, 117–18, 120–21, 144, 150, 162–63, 183–84. For an extensive discussion of the triad, see Weippert, *Die Prosareden des Jeremiabuches*, 148–91. She seems correct in concluding that this should not be understood as a Deuteronomic reworking of Jer 34 (Weippert, *Die Prosareden des Jeremiabuches*, 191). Given that the triad is more likely a reuse of Lev 26:25–26, and that Jer 34 appears to reuse Deut 28:25–26, it is nevertheless tempting to see an awareness on the part of the author of Jer 34 of parallels between Lev 26:25–26 and Deut 28:20–24. Here also the lexemes דָּבַר (Deut 28:21) and חָרַב (Deut 28:22) are used. The burning heat, drought, blight, and mildew (Deut 28:22–24) would all affect agricultural production, and so indirectly lead to hunger. Since the triad stands out clearer in Lev 26:25–26, in the same order as in Jer 34:17, it seems more reasonable to see a link between these two passages, even if the resonances with Deut 28:20–24 should also be heard, especially given the reuse of other elements from Deut 28:25–26 in Jer 34:17, 20, as will be pointed out below.

in the order הָרֶב, רָעַב, and דָּבַר in the book of Jeremiah, except in 21:7 and 34:17. Only in 34:17 does it parallel the order found in Lev 26:25–26. Jeremiah 34:17 therefore seems dependent on Lev 26:5–26 here.<sup>148</sup>

The parallels between וְהָיְתָה גְבֻלְתְּךָ לְמֵאֲכָל לְכָל־עוֹף הַשָּׁמַיִם וּלְבְּהֵמַת הָאָרֶץ וְאִין מִחַרִּיד (‘‘And your body will be food for the birds of the heavens and for the beast of the earth, with none to frighten them off’’) in Deut 28:26 and וְנָתַתִּי אוֹתָם בְּיַד אִיְבֵיהֶם וּבְיַד מְבַקְשֵׁי (‘‘And I will give you into the hand of their enemies and into the hand of those seeking their life, and their body shall be food for the birds of the air and the beasts of the earth’’) in Jer 34:20 should also be mentioned. This locution is found in Deut 28:26; Jer 7:33; 16:4; 19:7; 34:20, and seems to be a reuse of Deut 28:26 in the book of Jeremiah.<sup>149</sup> Deut 28:26; Jer 16:4; and 34:20 all share the exact same clause, וְהָיְתָה גְבֻלְתְּךָ לְמֵאֲכָל לְעוֹף הַשָּׁמַיִם וּלְבְּהֵמַת הָאָרֶץ. The only minor difference is Deut 28:26 having לְכָל־עוֹף, while the Jeremianic passages read לְעוֹף. It might be a harmonization in the Jeremianic passages with וּלְבְּהֵמַת in the next phrase of Deut 28:26, only having the preposition ל without the noun כָּל. The case for a reuse here is also strengthened by the parallels between לְזַעֲזָה לְכָל מַמְלָכוֹת הָאָרֶץ (‘‘for a horror for all the kingdoms of the earth’’) in Deut 28:25 and לְזַנְעָה לְכָל מַמְלָכוֹת הָאָרֶץ (‘‘for a horror to all

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<sup>148</sup> P. D. Miller has pointed out that in Jer 34:8–22 ‘‘the judgment speech becomes almost a mosaic of themes and devices of poetic justice’’ where we see a close ‘‘correspondence of sin and punishment’’ (P. D. Miller, ‘‘Sin and Judgment in Jeremiah 34:17–19,’’ *JBL* 103, no. 4 (1984): 611). Cf. Lundbom, *Jeremiah* 21–36, 564.

<sup>149</sup> Cf. Maier, *Jeremia als Lehrer der Tora*, 277 commenting on the variations of this locution in the book of Jeremiah. Mastnjak also discusses the parallels between Deut 28:25–26 and Jer 15:3–4 and concludes: ‘‘It is important to emphasize that Jer 15:3–4 and Jer 34:17, 20 are the only texts in Jeremiah that allude to elements of both Deut 28:25 and 26, and that these texts are best explained as independent allusions to Deut 28:25–26’’ (Mastnjak, *Textual Authority in Jeremiah*, 105).



the kingdoms of the earth”) in Jer 34:17, even if there is a variation in the spelling of זַנְעָה/זַנְעָה between the two (cf. Isa 28:19; Jer 15:4; 24:9; 29:18; Ezek 23:46; 2 Chr 29:8).<sup>150</sup>

What we see here is that the author of Jer 34:17, 20 has drawn locutions from both Lev 26:25–26 and Deut 28:25–26 in both verses. In Jer 34:17, רָעַב, דָּבַר, and חָרַב parallels Lev 26:25–26, having חָרַב, דָּבַר, followed by the theme of famine, in the same order in both verses. Further, Jer 34:17 also appears to borrow the locution of being made a horror for the kingdoms of the earth (לְזַנְעָה לְכָל מַמְלָכוֹת הָאָרֶץ) from Deut 28:25. Likewise, Jer 34:20 seems to intertwine the curse formulas from Lev 26 and Deut 28. The phrase וְהִיְתָה נִבְלָתָהּ לְעוֹף הַשָּׁמַיִם וּלְבְהֵמַת הָאָרֶץ in Jer 34:20 parallels וְהִיְתָה נִבְלָתָהּ לְעוֹף הַשָּׁמַיִם וּלְבְהֵמַת הָאָרֶץ in Deut 28:26, and, given the likely reuse of Lev 26:25–26 in its entirety in Jer 34:17, it also appears reasonable to take the idea of being given into the hands of the enemy (אֵיב + בְּיַד + נָתַן) twice used in Jer 34:20–21 as borrowed from the same locution in Lev 26:25. Even if the locution אֵיב + בְּיַד + נָתַן is found several places in the HB,<sup>151</sup> the sense of YHWH giving over the people into the hands of the enemy as punishment for covenantal breach seems close in Lev 26:25 and Jer 20:5; 34:21 (cf. 2 Kgs 21:14), if not distinct.<sup>152</sup>

This leads me to conclude that Jer 34:17, 20 contain a sophisticated blend of the

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<sup>150</sup> Cf. Maier, *Jeremia als Lehrer der Tora*, 253; Holladay, “Elusive Deuteronomists,” 76.

<sup>151</sup> E.g. Lev 26:25; Deut 21:10; Josh 10:19; 21:44; Judg 3:28; 16:23-24; 1 Sam 24:5; 2 Kgs 21:14; Jer 20:4-5; 21:7; 34:20-21; 44:30; Lam 2:7.

<sup>152</sup> The locution אֵיב + בְּיַד + נָתַן is found in Jer 19:7; 21:7; 22:25; 34:20-21; 44:30; 46:26, and appears to be original in the book of Jeremiah.

course-formulas found in Lev 26:25–26 and Deut 28:25–26. The direction of dependence thus goes from Lev 26:25–26 and Deut 28:25–26 to Jer 34:17, 20.<sup>153</sup> It can be argued that since the reuse occurs in independent clauses in Jer 34:17, 20, the reuse of either Lev 26:25–26 or Deut 28:25–26 could have been easily added by a later redactor. However, the close interweaving of Lev 25 and Deut 15 in Jer 34 in general makes it more likely that the reuse of Lev 26:25–26 and Deut 28:25–26 in Jer 34:17, 20 is one more example of the phenomenon of interweaving of Leviticus and Deuteronomy in Jer 34.

The specific *novum* of Jer 34 can thus be formulated as explicating what seems implied when the manumission instructions and curses in Lev 25 and 26 and Deut 15 and 28 are read together,<sup>154</sup> with the talionic punishment being formulated in terms of the קרא + דָּרוֹר + שׁוּב found in Lev 25:10, 13.

#### Direction of Dependence

*Reference to a source:* While the neglect by the ancestors to give heed to YHWH's instructions (וְלֹא־שָׁמְעוּ אֲבוֹתֵיכֶם אֵלַי וְלֹא הִטּוּ אֶת־אָזְנוֹם) in Jer 34:14 is presented as a neglect of the Deuteronomic instruction in Deut 15:12–18, Jeremiah's contemporaries in Jer 34:17 are presented as neglecting to give heed to a release instruction strikingly similar to the one found in Lev 25:39–46 (לֹא־שָׁמַעְתֶּם אֵלַי לְקִרְאָה דָּרוֹר).<sup>155</sup> As seen above, it

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<sup>153</sup> Weippert, *Die Prosareden des Jeremiabuches*, 179; Maier, *Jeremia als Lehrer der Tora*, 271–72. Cf. Carr, “Method in Determination of Direction of Dependence,” 107–40 where he several times points out that conflation is a sign of a borrowing text.

<sup>154</sup> For the link between Lev 25 and 26 see Averbeck, “Framing and Shaping of the Mosaic Law,” 159.

<sup>155</sup> There is a similarity between לֹא־שָׁמַעְתֶּם אֵלַי (“you did not listen to me”) in Jer 34:17 and Ezek 18, a chapter we will look at in the following. Backtracking one's action, like in Ezek 18, can entirely undo one's previous actions. In this case, former Torah obedience when later recanted becomes nothing: “The

is reasonable to see קרא + דרור as linked to Lev 25:10. In Jer 34:8c we find the phrase לְקַרְא לָהֶם דְּרוֹר (“to proclaim a release to them”). The prepositional phrase לָהֶם does not have a referent here. If we go to Lev 25:10, however, we find the clause וְקִרְאוּתָם דְּרוֹר בְּאֶרֶץ לְכָל־יֹשְׁבֵיהָ (“and they shall proclaim a release in the land to all those dwelling in her”). It may thus be that the prepositional phrase לָהֶם in Jer 34:8 reflects influence from לְכָל־יֹשְׁבֵיהָ in Lev 25:10.<sup>156</sup> Even if the evidence for claiming that Zedekiah’s release occurred during a Jubilee year is not as strong as Fried and Freedman might want us to believe, their comment on Jer 34:17 is worth noting:

The statement that “you did not heed me” with reference to the release of slaves suggests that the release was in response to a long-standing law or tradition, and was not simply a hasty maneuver to gain YHWH’s good graces in a time of national emergency. It is not likely, furthermore, that YHWH was viewed as the sort of god who responded to hasty maneuvers. It seems more likely that he would be swayed the most by obedience to ancient tradition. It is not likely, therefore, that a release of slaves would effect a victory over the Chaldeans if Zedekiah was seen as introducing an innovation; rather, the universal release of slaves had to be viewed as being in conformity with ancient law. This suggests that there must have been a long-standing tradition of a jubilee year and that it was in conformity with the laws of this tradition that the release was made. This suggests that Zedekiah released the slaves at the start of a jubilee year in Judah.<sup>157</sup>

*Wordplay*<sup>158</sup>: As mentioned, the lexical set קרא + דרור + טוב is unique to Lev

25:10; Jer 34:15-17.<sup>159</sup> Table 15 gives an overview of what appears to be relevant uses of

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fact that the king and the people reneged on the covenant makes it seem as if they did not listen to Yahweh at all, putting their disobedience on the same level as that of earlier generations (v 14b)” (Lundbom, *Jeremiah 21-36*, 564).

<sup>156</sup> I am indebted to Carsten Vang for pointing out this possible link to me.

<sup>157</sup> Fried and Freedman, “Was the Jubilee Observed in Preexilic Judah?,” 2258.

<sup>158</sup> I here choose to discuss wordplay and linguistic dating prior to modification, as the latter makes more sense when addressed last.

<sup>159</sup> Holladay points out that Jer 34 does not reuse תַּעֲשֶׂה שְׁמִטָּה from Deut 15: “One wonders, then, whether the avoidance in the present passage of the phrase of Deuteronomy 15 (“make a release”) is

**Table 15. Lev 25:10, 41 and Jer 34:8, 11, 15–17, 22**

Lev 25:10, 41	Jer 34:8, 11, 15–17, 22
<p><sup>10</sup> וקדשתם את שנת החמשים שנה וקראתם דרור בארץ לכל־ישיביה יובל הוא תהיה לכם ושבַתם איש אל־אחזתו ואיש אל־משפחתו תִּשְׁבוּ: <sup>41</sup> . . . ויצא מעמך הוא ובניו עמו ושב אל־משפחתו ואל־אחזת אבתיו יִשׁוּב:</p>	<p><sup>8</sup> הדבר אשר־היה אל־ירמיהו מאת יהוה אחרי כרת המלך צדקיהו ברית את־כל־העם אשר בירושלם לקרא להם דרור: . . . <sup>11</sup> וישׁוּבו אחרי־כן וישׁבו את־העבדים ואת־השפחות אשר שלחו חפשים ויכבשום לעבדים ולשפחות: ס . . . <sup>15</sup> ותשבּו אתם היום ותעשו את־הישר בעיני לקרא דרור איש לרעהו ותכרתו ברית לפני בבית אשר־נקרא שמי עליו: <sup>16</sup> ותשבּו ותחללו את־שמי ותשבּו איש את־עבדו ואיש את־שפחתו אשר־שלחתם חפשים לנפשם ותכבשו אתם להיות לכם לעבדים ולשפחות: ס <sup>17</sup> לכן כה־אמר יהוה לא־שמעתם אלי לקרא דרור איש לאחיו ואיש לרעהו הנני קרא לכם דרור נאם־יהוה הִחָרַב אל־הדבר ואל־הרעב ונתתי אתכם לזועה לכל ממלכות הארץ: . . . <sup>22</sup> הנני מצוה נאם־יהוה והשבַתים אל־העיר הזאת ונלחמו עליה ולכדוה ושרפה באש ואת־ערי יהודה אתן שממה מאין ישב: פ</p>
<p><sup>10</sup> and you shall sanctify the fiftieth year. And you shall proclaim a release in the land to all who dwell in it. It shall be a jubilee for you, and each one of you shall return to his possession, and each one shall return to his family. . . . <sup>41</sup> And he shall exit from with you, he and his children with him. And he shall return to his family and he shall return to his ancestral property.</p>	<p><sup>8</sup> The word that came to Jeremiah from YHWH, after king Zedekiah cut a covenant with all the people that were in Jerusalem to proclaim release among them . . . <sup>11</sup> But afterward they turned around and returned the slaves and maidservant whom they sent free. And they subjected them to slaves and maidservants. . . . <sup>15</sup> But you, you turned one day, and you did what was right in my eyes to proclaim a release, each one to his neighbor. And you made a covenant before my face, in the house which is called by my name. <sup>16</sup> But you turned around and profaned my name by returning each man his slave and his maidservant whom you sent free at their life. And you subjected them to make them your slaves and maidservants. <sup>17</sup> Therefore, thus says YHWH: You did not listen to me to proclaim a release, each one to his brother, and each one to his neighbor. Behold, I proclaim a release for you, says YHWH, to the sword, to the pestilence and to the famine. And I will make you a horror for all the kingdoms of the earth. . . . <sup>22</sup> Behold, I command, says YHWH, and I bring them to this city, and they will fight against her and take her and burn her with fire. And I make the cities of Judah a desolation, without inhabitants.</p>

deliberate or whether the writer is simply using a synonymous phrase” (Holladay, *Jeremiah 26–52*, 238). Two observations. First of all, תַּעֲשֶׂה שְׁמִטָּה is found in Deut 15:1, and is therefore not the key passage Jer 34 reuses, even if we have seen above that Jer 34:14 reuses מִקֵּץ שְׁבַע־שָׁנִים from Deut 15:1. Second, it is possible to see Jer 34 as preferring to use קרא + דְּרוֹר from Lev 25 and שְׁלַח + חֲפָשִׂי from Deut 15:12–13, 18, instead of תַּעֲשֶׂה שְׁמִטָּה from Deut 15:1, or even שְׁמִטָּה + קרא from Deut 15:2, 9. For a reflection on the use of these phrases in Jer 34, see Holladay, *Jeremiah 26–52*, 240.

קרא + קרור and שוב in Lev 25:10, 41 and Jer 34:11, 15-16, 22 for the present study.

In Lev 25:10, 41 קרא + קרור is used for the proclamation of release and שוב for the return to one's own and ancestral property. In Jer 34:8 קרא + קרור has the expected meaning of proclaiming a release. However, already in its first use in our passage, in 34:11, שוב is given an unexpected meaning. We expect that the slaves will return (שוב) home to their inheritance property. But instead שוב is used twice in the two following clauses in 34:11 with other meanings. We find both their masters changing their mind (וַיִּשְׁבוּ אַחֲרֵי־כֵן), using qal (שוב) and forcing the slaves to return to slavery again (וַיִּשְׁבוּ) using hifil (שוב). Taken in isolation, each usage does not seem significant, but as we continue reading it is difficult to avoid the impression that there is an intentional word play here.<sup>160</sup>

Jeremiah 34:15 describes how the people had repented (qal שוב) from their fathers' sins and did what was right in proclaiming a release. But then 34:16 reverts to the theme of their turning back (qal שוב) from their right actions and returning (hifil שוב) the slaves.<sup>161</sup> With this subversion of שוב in regards to the release, YHWH then declares in

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<sup>160</sup> For examples of others who have recognized this wordplay see Weippert, *Die Prosareden des Jeremiabuches*, 94n; Carroll, *Jeremiah*, 645, 650; McKane, *Jeremiah*, 882; Fried and Freedman, "Was the Jubilee Observed in Preexilic Judah?," 2258; Lundbom, *Jeremiah 21-36*, 557; Bergsma, *The Jubilee from Leviticus to Qumran*, 165–68; Smelik, "The Inner Cohesion of Jeremiah 34:8–22," 241, 243. Cf. Maier, *Jeremia als Lehrer der Tora*, 255. For other possible wordplays in Jer 34, see Viberg, *Symbols of Law*, 61 commenting on כרת + קרית in 34:18, Maier, *Jeremia als Lehrer der Tora*, 275 on עבר and קעקרי in Jer 34:14, 18–19, and Smelik, "The Inner Cohesion of Jeremiah 34:8–22," 244 on עבר in Jer 34:18.

<sup>161</sup> Maier has found a symmetry between v. 11 and v. 16, commenting: "Die Abkehr der Sklavenbesitzer von der getroffenen Vereinbarung wird sowohl in V. 11 als auch in der Gottesrede V. 16 mit der Verbfolge שוב q. + שוב hif. + כבש ausgedrückt, ist also symmetrisch angeordnet" (Maier, *Jeremia als Lehrer der Tora*, 255). This symmetry strengthens the claim that there is an intentional use of שוב in Jer 34. McKane has claimed that there is a difference between שוב in Jer 34:15–16 MT and ἐπιστρέφω in Jer 41:15–16 LXX: "The different senses of שוב at vv. 15f. should be noticed. שוב (v. 15) means 'to turn in the right direction'—to turn over a new leaf; שוב (v. 16) means 'to turn in the wrong direction'—to renege

34:17 that he will subvert the meaning of קרא + דָּרוֹר. He will release them to the covenant curses of sword, pestilence, and famine in Lev 26:25–26. קרא + דָּרוֹר is then also formulated in terms of the covenantal curses of Lev 26:25–26, as pointed out above. Since the masters returned their slaves, YHWH declares that he will also subvert שׁוֹב (hifil) by surprisingly returning the enemies of the people back upon the city (34:22). It is a divine creative reading of Torah that takes its meaning in the opposite direction.<sup>162</sup> Given that the lexical set קרא + דָּרוֹר + שׁוֹב is unique to Lev 25 and Jer 34, that Lev 25 uses them in a plain sense while Jer 34 subverts the meaning of קרא + דָּרוֹר, and that the multiple meanings of שׁוֹב also functions as an intentional play on words, we can positively identify Jer 34 as the borrowing text.<sup>163</sup> Given the word play, the use of דָּרוֹר in

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or go back on one's word. Sept. has rendered these occurrences as if the sense were identical in both cases (ἐπέστρεψαν and ἐπεστρέψατε)" (McKane, *Jeremiah*, 872). But as far as I can see, ἐπέστρεψαν in v. 15 is used to describe a "turn in the right direction" in contrast to ἐπεστρέψατε in v. 16 in the sense "to turn in the wrong direction." Further, ἐπεστράφησαν in v. 10 is used analogous to שׁוֹב in MT v. 11 for the return of slaves. Despite some re-shuffling or shorter version in 41:10–11 LXX, the same meaning of the verb is preserved. Finally, in ἐπιστρέψω in 41:22 is used for God returning the enemies, just as with שׁוֹב in 34:22 MT. As far as I can see, the wordplay is found in Jer 41 LXX analogous to Jer 34 MT.

<sup>162</sup> For similar observations on reuse in the book of Ezekiel see Risa Levitt Kohn, *New Heart and A New Soul: Ezekiel, the Exile and the Torah*, eds. David J. A. Clines and Philip R. Davies. JSOTSup 358 (London: Sheffield Academic Press, 2002).

<sup>163</sup> Contra Maier, *Jeremia als Lehrer der Tora*, 265 claiming "Jer 34,8.15.17 werden als die älteste Belege für דָּרוֹר gewertet." Leuchter argues based on ANE comparative studies, where we find that the דָּרוֹר in other nations often occurred as a royal edict, that since it is used in Jer 34 in the context of a royal edict while this aspect is not present in Lev 25:10, this indicates that Jer 34 is the more original text and Lev 25:10 borrows the concept from Jer 34. To this can be said that this argument appears far weaker than the wordplay testified in Jer 34, indicating Jer 34 as the borrowing text. Further, regarding the assumption that we can simply assume the same legal practice across national and cultic borders in the ANE, this assumption has been effectively disproven by Weeks, *Admission and Curse*. Leuchter sums up his reasons for claiming a reuse of Jer 34 in Lev 25 as follows: "Leviticus 25 takes its thematic inspiration from a variety of features in Jeremiah 34: the general amnesty associated with the דָּרוֹר, the seven-year counting cycle of the מִקְץ formula, and that formula's potential allusion to the calendar-based שְׁמִטָּה of Deut 15:1" (Leuchter, "The Manumission Laws," 650). As argued in the above, none of these three arguments constitute strong and convincing arguments. Further, he ignores the evidence for conflation of Lev 25; 26 and Deut 15; 28 in Jer 34 as argued here. Rather, Leuchter often constructs his argument on rather speculative claims of the possible influence

Jer 34 should not be understood primarily as a loan from Akkadian *andurārum*, as sometimes suggested,<sup>164</sup> but, instead, primarily as an intentional reuse of Lev 25 even if this does not exclude an etymological and cultural link to the Akkadian *andurārum*.

*Linguistic dating*: even if the distribution of the lexeme כבש is found throughout the HB, the use of כבש (“subjugate”) for people seems to be more a LBH phenomena (cf. Est 7:8; Neh 5:5; 2 Chron 28:10). Hornkohl has shown how Jeremiah belongs to TBH, and we, therefore, find traits from both CBH and LBH. Jeremiah 34:11, 16 כבש used with people as object therefore fits this pattern.<sup>165</sup>

*Modification*: although Chavel sees elements from Lev 25 redacted into Jer 34 at a later stage, his discussion of לְבַלְתִּי עֲבָד־בָּם בְּיְהוּדֵי אֶחְיָהוּ אִישׁ in Jer 34:9 claims a sophisticated reworking and conflation of the beginning and end of Lev 25:39–46:

The phrase לְבַלְתִּי עֲבָד בָּם draws on the opening command of the slave laws in Lev. 25.39, לֹא תַעֲבֹד בּוֹ but adjusts it to conform to the circumstances of Zedekiah’s emancipation, which extended to maidservants, and to the syntax of Zedekiah’s proclamation. Thus לֹא תַעֲבֹד (apodosis) becomes לְבַלְתִּי עֲבָד (infinitive construct) to act as a motivational or definitional clause, while בּוֹ (singular) becomes בָּם (plural) to refer inclusively to maidservants as well as slaves. Then, taking from the end of the priestly legislation, the author of Jer. 34.9b collapsed the two units וּבְאֶחֶיכֶם בְּנֵי־יִשְׂרָאֵל and אִישׁ בְּאֶחָיו (Lev. 25.46) into one phrase that maintains a representative of each of the original elements אִישׁ, אָח, and a nationalistic designation. In a double example of Zeidel’s law, according to which citations appear in inverted form, this scribe reversed the regular order of אִישׁ בְּאֶחָיו and inverted the form of the construct

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between Lev 25; Deut 15; and Jer 34, with weak textual support.

<sup>164</sup> Cf. Lemche, “The Manumission of Slaves,” 52, 56–57.

<sup>165</sup> Hornkohl, *Language of the Book of Jeremiah*, 10, 51. The term כבש is not discussed in Avi Hurvitz, *A Concise Lexicon of Late Biblical Hebrew: Linguistic Innovations in the Writings of the Second Temple Period* (Leiden: Brill, 2014), but this is likely because the lexicon did not aim at being comprehensive. Cf. Hurvitz, *A Linguistic Study* for an argument for Leviticus being a pre-exilic composition based on the linguistic evidence. Likewise see Joosten, *The Verbal System of Biblical Hebrew*, 8, 378–79.

common to אחיך העברי (Deut. 15.12), אחיו העברי (Jer. 34.14), and אחיכם בני־ישראל (Lev. 25.46), while also updating the nationalistic designation to יהודי. When finally combined, the reworked elements produced the phrase, ביהודי אחיהו איש.<sup>166</sup>

He sums up: “In other words, Jer. 34.9b encapsulates the entire paragraph concerning slave laws in the Holiness Code by drawing on the language of its opening and closing verses.”<sup>167</sup> Table 16 underlines the parallels seen by Chavel.

**Table 16. Lev 25:39, 46b and Jer 34:9b**

Lev 25:39, 46b	Jer 34:9b
<p>וכי־ימוך אחיך עמך ונמכר־לך<sup>39</sup>  לֹא־תַעֲבֹד בּוֹ עֲבַדַּת עֶבֶד: . . .  ובאחיכם בני־ישראל איש באחיו לא־תרדה בו בפרך: ס<sup>46</sup></p>	<p>... לבלתי עבד־בם<sup>9</sup>  <u>ביהודי אחיהו איש:</u></p>

It is possible that the author of Jer 34:9 reworked Lev 25:39, 46 in this detailed manner, drawing from both the beginning and end of the slave release in Lev 25:39–46. If this is the case, it would illustrate the sophisticated scribal techniques used to compose Jer 34. Although it requires some fortitude to follow the argument, the syntactic analogy between לבלתי עבד־בם in Jer 34:9 and לֹא־תַעֲבֹד בּוֹ in Lev 25:39, and the double reversal of ביהודי אחיהו איש in Jer 34:9, placing אִשׁ at center to produce the phrase, is difficult to

<sup>166</sup> Chavel, “Let My People Go!,” 91. Cf. Leuchter, “The Manumission Laws,” 649–51. Levinson argues in a similar way, but strangely enough does not refer to Chavel’s article at this point (Levinson, “Zedekiah’s Release,” 321–22). Tongue in the cheek it is tempting to ask whether this is a ‘rhetorics of concealment’ of this reason? He also points out the parallel usage of עבד + ב in both Lev 25:39–46 and Jer 34:9 (Levinson, “Zedekiah’s Release,” 321n). This construction is less helpful to establish a case of reuse between the two passages, as it is not unique to the two and it is neither clear that it is distinct to them. But given that reuse between the two passages is already established, it adds to the parallels between the passages. Neither passage seems to rework the construction so as to help us determine direction of dependence.

<sup>167</sup> Chavel, “Let My People Go!,” 92.



ignore.<sup>168</sup> At the same time, if the author of לְבַלְתִּי עֲבַדְכֶם בַּיהוָה אֱלֹהֵי אִישׁ in 34:9 wanted to demonstrate proximity Lev 25:39–46, why did he not use a more explicit quotation as testified in the reuse by Jer 34:14 of Deut 15:12? Furthermore, both 34:9 in relation to Lev 25:39, 46 and 34:14 in relation to Deut 15:12 demonstrate a similar freedom to rework literary sources. With these precautions, I am, nevertheless, inclined to accept Chavel’s analysis as evidence of a possible sophisticated reworking of Lev 25:39, 46 in Jer 34:9. If accepted, this becomes a strong argument for the direction of dependence going from Lev 25:39–46 to Jer 34:9. Levinson writes:

To anticipate an objection, given that only Jer 34 and Lev 25 envision a universal manumission, it is worth asking whether the direction of dependence could run in the opposite direction. That is, could H have taken the idea of a universal release from Jeremiah? This is unlikely. The syntactically difficult formulation of Jer 34:9b, לְבַלְתִּי עֲבַדְכֶם בַּיהוָה אֱלֹהֵי אִישׁ, represents an exegetical précis of the beginning and end of the manumission law of the Holiness Code, summarizing and integrating its key components. This précis places Jer 34 in the reception history of the Holiness Code, not the other way around.<sup>169</sup>

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<sup>168</sup> For a critique of Chavel’s proposal see Mastnjak, *Textual Authority in Jeremiah*, 147–48.

<sup>169</sup> Levinson, “Zedekiah’s Release,” 323. Levinson also raises the question of “the two distinct justifications of manumission in Jer 34:9b and 14,” and resolves this by claiming that both Exod 21 and Deut 15 represent individual cycles of release, i.e. the seven-year release would be counted on the basis of the year of entrance into servitude of the individual slave. Thus, he finds Jer 34:14 to present a reformulation of Deut 15, based upon the idea of universal manumission in Lev 25: “The picture constructed in Jer 34:14 through exegetical reformulation of Deut 15 is very different: manumission occurs simultaneously every seventh year throughout the country. There is only one passage in biblical law that envisions a universal manumission: the Holiness Code jubilee legislation of Lev 25:39–46. Rather than postulating that the author of Jer 34 developed the idea of a universal release of slaves *ex nihilo*, it seems more reasonable that he was working with H as a literary precedent. In other words, the author who wrote the ‘Deuteronomic’ law of v. 14 must also have been drawing on H for his inspiration” (Levinson, “Zedekiah’s Release,” 323). As mentioned above, while Exod 21 seems to be based on an individual seven-year cycle of release, Deut 15:12–18 could be read as based either on an individual or national cycle. It is therefore possible that the author of Jer 34:14 simply clarifies how he read Deut 15:12–18 as representing a national cycle by reusing Deut 15:1. Possibly it may have been some discussion on this, and Jer 34:14 simply takes sides. In this case Lev 25 would not be necessary for arriving at the conflation of Deut 15:1, 12 in Jer 34:14. Alternatively, the author of Jer 34:14 recognized Deut 15:12–18 as based on an individual cycle, and intentionally reworked it into a national cycle based on Deut 15:1, as suggested by Levinson. The motivation for this might have been to stress the national responsibility of manumission, a responsibility initially taken in the narrative of Jer 34:8–11. Then Levinson might be right in claiming that

*Conflation*: Jer 34 appears to be a conflation of Lev 25 and Deut 15.<sup>170</sup> If we juxtapose the relevant three passages, with terminological parallels as discussed above between Jer 34 and Lev 25 underlined, parallels between Jer 34 and Deut 15 double underlined, and conceptual parallels between Jer 34 and Lev 25 in italics, we get the following in Table 17.

Given that modern commentators have easily identified the tension between Lev 25 and Deut 15, it would be folly to claim that the author of Jer 34 did not. Rather, the formulations in Jer 34 seem to be a studied negotiation between the two. The initial description of Zedekiah's covenant with the people is introduced with a locution from Lev 25 (לְקַרְא לָהֶם דְּרוֹר), then it is elaborated in locutions from Deut 15 (לְשַׁלַּח אִישׁ) (v. 8c), and finally conceptually formulated in harmony with the ban on enslaving Israelites from Lev 25 (לְבַלְתִּי עֲבָדְכֶם בְּיַהוּדֵי אֶרֶץ כְּנָעַן) (v. 9a), and finally conceptually formulated in harmony with the ban on enslaving Israelites from Lev 25 (לְבַלְתִּי עֲבָדְכֶם בְּיַהוּדֵי אֶרֶץ כְּנָעַן) (v. 9b). The people's response in 34:10 is similarly intertwining elements from both Lev 25 and Deut 15. The repeated phrase in 34:10c, לְבַלְתִּי עֲבָדְכֶם עוֹד, is conceptually close to Lev 25. Otherwise the verse reads according to the diction of Deut 15 (וַיִּשְׁמְעוּ כָּל־הַשָּׂרִים וְכָל־הָעָם אֲשֶׁר־בָּאוּ בְּבֵרִית לְשַׁלַּח אִישׁ אֶת־עַבְדּוֹ וְאִישׁ אֶת־שִׁפְחָתוֹ הַכְּפֹשִׁים . . . וַיִּשְׁמְעוּ: (34:10d)).<sup>171</sup> Finally, the people's reversal in 34:11 seems to be a combination of a play on

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the author of Jer 34:14 used the national cycle of Lev 25 to conflate Deut 15:1, 12. But the evidence seems inconclusive and should not be given weight.

<sup>170</sup> Cf. Bergsma, *The Jubilee from Leviticus to Qumran*, 164–5.

<sup>171</sup> While Jer 34:10a and 10c both begin with וַיִּשְׁמְעוּ, and this could be understood as a *Wideraufnahme*, in this case functioning as a repetition to indicate the resumption of the reuse of Deut 15, we also note that the final clause וַיִּשְׁלַח (34:10d) is left somewhat hanging in the air. It lacks the more elaborate Deuteronomistic formulation of שַׁלַּח + חֲפְזֵי and is instead to be understood elliptically referring back to the preceding clauses. This may indicate that the author of Jer 34:10 at this point was more concerned with the link to Deut 15 than formulating a complete narrative clause. Cf. how Jer 41:10 LXX

Table 17. Lev 25:39, 39–46; Deut 15:12–18; and Jer 34:8–22

Lev 25:10, 39–46	Jer 34:8–22
<p><sup>10</sup> וקדשתם את שנת החמשים שנה וקראתם דרוֹר בארץ לכל־יִשְׁבִּיָּה יובל הוא תהיה לכם ושבֹּתם אִישׁ אֶל־אֲחֻזְתּוֹ וְאִישׁ אֶל־מִשְׁפַּחְתּוֹ תִּשְׁבּוּ:</p> <p>...  <sup>39</sup> וְכִי־יִמּוֹךְ אַחֶיךָ עִמָּךְ וּנְמַכְרֶיךָ לֹא־תַעֲבֹד בּוֹ עֲבַדְתָּ עֲבָדָה: <sup>40</sup> כְּשֹׁכֵר כְּתוּשָׁב יִהְיֶה עִמָּךְ עַד־שְׁנַת הַיָּבֵל יַעֲבֹד עִמָּךְ: <sup>41</sup> וַיֵּצֵא מֵעִמָּךְ הוּא וּבְנָיו עִמּוֹ וְשָׁב אֶל־מִשְׁפַּחְתּוֹ וְאֶל־אֲחֻזַּת אֲבֹתָיו יֵשׁוּב: <sup>42</sup> כִּי־עֲבָדִי הֵם אֲשֶׁר־הוּצָאתִי אִתָּם מֵאֶרֶץ מִצְרַיִם לֹא יִמְכְּרוּ מִמְכַרְתָּ עֲבָדָה: ...</p> <p><sup>46</sup> וְהִתְנַחַלְתֶּם אִתָּם לְבָנֵיכֶם אַחֲרֵיכֶם לְרֵשֶׁת אַחֲזָה לְעַלְמָם בְּהֵם תַּעֲבֹדוּ וּבְאֲזוֹתֵיכֶם בְּנֵי־יִשְׂרָאֵל אִישׁ בְּאֲחֵיו לֹא־תִרְדֶּה בּוֹ בַּפֶּרֶךְ: ס</p>	<p><sup>8</sup> הַדָּבָר אֲשֶׁר־הָיָה אֶל־יִרְמְיָהוּ מֵאֵת יְהוָה אַחֲרֵי כִרְתֵּי הַמֶּלֶךְ צְדָקְיָהוּ בְרִית אֶת־כָּל־הָעָם אֲשֶׁר בִּירוּשָׁלַם לְקַרְא לְהֵם דְּרוֹר: <sup>9</sup> לְשַׁלַּח אִישׁ אֶת־עַבְדּוֹ וְאִישׁ אֶת־שִׁפְחָתוֹ הָעֵבְרִי וְהָעֵבְרִיָּה חֲפְשִׁים לְבִלְתִּי עֲבָד־כֶּם בִּיהוּדִי אַחֲיָהוּ אִישׁ: <sup>10</sup> וַיִּשְׁמְעוּ כָל־הַשָּׂרִים וְכָל־הָעָם אֲשֶׁר־בָּאוּ בְּבְרִית לְשַׁלַּח אִישׁ אֶת־עַבְדּוֹ וְאִישׁ אֶת־שִׁפְחָתוֹ חֲפְשִׁים לְבִלְתִּי עֲבָד־כֶּם עוֹד וַיִּשְׁמְעוּ וַיִּשְׁלַחוּ: <sup>11</sup> וַיָּשׁוּבוּ אַחֲרַיִךְ וַיֵּשְׁבוּ אֶת־הָעֲבָדִים וְאֶת־הַשִּׁפְחוֹת אֲשֶׁר שְׁלַחְתָּ חֲפְשִׁים וַיִּכְבְּשׁוּם לְעֲבָדִים וּלְשִׁפְחוֹת: ס ... <sup>13</sup> כֹּה־אָמַר יְהוָה אֱלֹהֵי יִשְׂרָאֵל אֲנֹכִי כִרְתִי בְרִית אֶת־אֲבוֹתֵיכֶם בְּיוֹם הוּצֵאתִי אֹתָם מֵאֶרֶץ מִצְרַיִם: <sup>172</sup> מִבַּיִת עֲבָדִים לֵאמֹר: <sup>14</sup> מִקֶּץ שִׁבְעַת שָׁנִים <sup>173</sup> תִּשְׁלַחוּ אִישׁ אֶת־אֲחֵיו הָעֵבְרִי אֲשֶׁר־יִמְכַר לְךָ וְעַבְדְּךָ שֵׁשׁ שָׁנִים וְשַׁלַּחְתּוֹ חֲפְשִׁי מֵעִמָּךְ וְלֹא־שָׁמְעוּ אֲבוֹתֵיכֶם אֵלַי וְלֹא הִטּוּ אֶת־אָזְנָם: <sup>15</sup> וְתִשְׁבּוּ אִתָּם הַיּוֹם וְתַעֲשׂוּ אֶת־הַיָּשָׁר בְּעֵינַי לְקַרְא דְּרוֹר אִישׁ לְרַעְהוֹ וְתִכְרַתּוּ בְרִית לְפָנַי בְּבֵית אֲשֶׁר־נִקְרָא שְׁמִי עָלָיו: <sup>16</sup> וְתִשְׁבּוּ וְתִחַלְלוּ אֶת־שְׁמִי: <sup>174</sup> וְתִשְׁבּוּ אִישׁ אֶת־עַבְדּוֹ וְאִישׁ אֶת־שִׁפְחָתוֹ אֲשֶׁר־שַׁלַּחְתֶּם חֲפְשִׁים לְנַפְשָׁם וְתִכְבְּשׁוּ אִתָּם לְהִיּוֹת לָכֶם לְעֲבָדִים וּלְשִׁפְחוֹת: ס <sup>17</sup> לִכֵּן כֹּה־אָמַר יְהוָה אִתָּם לֹא־שָׁמְעֶתֶם אֵלַי לְקַרְא דְּרוֹר אִישׁ לְאֲחֵיו וְאִישׁ לְרַעְהוֹ הַגְּנִי קְרָא לָכֶם דְּרוֹר נֹאם־יְהוָה אֶל־הַקְּרָב אֶל־הַדָּבָר וְאֶל־הָרַעַב: <sup>175</sup></p>
Deut 15:12–18	
<p><sup>12</sup> כִּי־יִמְכַר לְךָ אַחֶיךָ הָעֵבְרִי אוֹ הָעֵבְרִיָּה וְעַבְדְּךָ שֵׁשׁ שָׁנִים וּבְשָׁנָה הַשְּׁבִיעִת תִּשְׁלַחְנוּ חֲפְשִׁי מֵעִמָּךְ: <sup>13</sup> וְכִי־תִשְׁלַחְנוּ חֲפְשִׁי מֵעִמָּךְ לֹא תִשְׁלַחְנוּ רִיקָם: ... <sup>15</sup> וְזָכַרְתָּ כִּי עֲבָד הָיִיתָ בְּאֶרֶץ מִצְרַיִם וַיִּפְדֶּךָ יְהוָה אֱלֹהֶיךָ עַל־כֵּן אֲנֹכִי מְצוּךְ אֶת־הַדָּבָר הַזֶּה הַיּוֹם: <sup>16</sup> וְהָיָה כִּי־יֹאמַר אֵלֶיךָ לֹא אֶצְאָ מֵעִמָּךְ כִּי אֶהְבֶּךָ וְאֶת־בֵּיתְךָ כִּי־טוֹב לּוֹ עִמָּךְ: <sup>17</sup> וּלְקַחַת אֶת־הַמְרָצֵעַ וְנִתְתָּה בְּאֲזָנוֹ וּבִדְלַת וְהָיָה לְךָ עֲבָד</p>	

does not render Jer 34:10 MT וַיִּשְׁמְעוּ וַיִּשְׁלַחוּ, possibly because it saw it as redundant. Or did it also perceive וַיִּשְׁמְעוּ וַיִּשְׁלַחוּ as somewhat hanging in the air?

<sup>172</sup> Cf. the discussion above on מִצְרַיִם מִבַּיִת עֲבָדִים.

<sup>173</sup> From Deut 15:1.

<sup>174</sup> For a discussion of אֶת־שְׁמִי וְתִחַלְלוּ in Jer 34:16 as a reuse of a locution from Leviticus see above.

<sup>175</sup> For the triad קְרָב, דָּבָר, and רַעַב as a likely reuse of the covenant curses in Lev 26–25–26 see above.

Table 17 — *Continued.*

Deut 15:12–18	Jer 34:8–22
<p>עולם ואף לאמתך תעשה-כן: <sup>18</sup> לא-יקשה          בעינך בשלחך אתו חפשי מעמך כי משנה שֹׁכֵר          שכיר עבדך <u>שש שנים</u> וברכך יהוה אלהיך בכל          אשר תעשה: פ</p>	<p>ונתתי אתכם לזוּעָה לְכָל מַמְלֹכוֹת הָאָרֶץ<sup>176</sup>: . . .  <sup>20</sup> ונתתי אותם ביד איביהם<sup>177</sup> וביד מבקשי          נפשם והיתה נבלתם למאכל לעוף השמים          ולבהמת הארץ<sup>178</sup>: . . . <sup>22</sup> הנני מצוה נאם-יהוה          והשבתיים אל-העיר הזאת ונלחמו עליה ולכדוה          ושֹׁרְפָה באש ואת-ערי יהודה אתן שִׁמְמָה מאין          יֵשֵׁב: פ</p>

the verb שוב from Lev 25 and the locution שלה + חִפְשִׁי in Deut 15.

A question is whether any or all of the clauses with parallels to Lev 25 or Deut 15 could be removed from Jer 34:8–11, and still leave the passage meaningful? I suggest that this may be a useful test in order to determine whether the two passages were reused in the original composition of Jer 34 or not. To me it seems that there are no good reasons to prefer a reuse of Deut 15 over that of a reuse of Lev 25 in the original composition of Jer 34:8–11. Based on the analysis above, which has shown that each clause in 34:8c–11 contains likely reuse of either Lev 25 or Deut 15, to eliminate both Lev 25 and Deut 15 would leave us only with הַדְּבָר אֲשֶׁר-הָיָה אֶל-יְרֵמְיָהוּ מֵאֵת יְהוָה אֲחֵרֵי כָּל־הַמְּלָךְ צְדַקְיָהוּ בְּרִית הַדְּבָר אֲשֶׁר-הָיָה אֶל-יְרֵמְיָהוּ מֵאֵת יְהוָה אֲחֵרֵי כָּל־הַמְּלָךְ צְדַקְיָהוּ בְּרִית (“The word that came to Jeremiah from YHWH after the king Zedekiah made a covenant with all the people that were in Jerusalem”). First, we could ask whether some of the elements in 34:8c–11 could have been in an original

<sup>176</sup> For how ונתתי אתכם לזוּעָה לְכָל מַמְלֹכוֹת הָאָרֶץ is a likely reuse of Deut 28:25 see above.

<sup>177</sup> For how ונתתי אותם ביד איביהם is a likely reuse of Lev 26:25 see above.

<sup>178</sup> For how ונתתי אותם לזוּעָה לְכָל מַמְלֹכוֹת הָאָרֶץ is an exact parallel and likely reuse of the covenant curses in Deut 28:26 see the discussion above.

composition without reusing either Lev 25 or Deut 15? But then we would immediately be confronted with the need to explain how Jer 34:8–11 could be seen as original in regard to the use of such terminology or conception. Second, it would leave us entirely ignorant as to the occasion, purpose, content and implementation of Zedekiah’s covenant. Third, it is not clear that it would have contained the description of the people’s reversal in 34:11, and would therefore have been a deficient introduction to the divine indictment in 34:12–22. And if it was originally not an introduction to 34:12–22 it would be unclear why it was included at all in Jer 34. Fourth, since it would not be a meaningful literary unit in itself, but only function as a prologue to the divine indictment (34:12–22), which reuses elements from both Lev 25 and Deut 15, it would undermine the basis for removing such elements from 34:8–11 in the first place. It therefore seems reasonable to assume that there was at least a reuse of either Lev 25 or Deut 15 in the original composition of Jer 34:8–11.

If the clauses with parallels to Lev 25 are removed, לקרא להם דרור (“to proclaim among them a release”) in 34:8c, לבלתי עבדכם ביהודי אחיהו איש, (“that none enslave his brother among Judeans”) in 34:9b, לבלתי עבדכם עוד, (“that none enslave again among them”) in 34:10c, and the possible play on טוב from Lev 25 in 34:11a–b we would be left with the Deuteronomic content of the covenant, reading

הַדָּבָר אֲשֶׁר־הִנִּיחַ אֱלֹהֵי־יִשְׂרָאֵל מֵאֵת יְהוָה אֱחָדֵי כָּרַת הַמִּלְחָמָה צִדְקָתוֹ בְּרִית אֶת־כָּל־הָעָם אֲשֶׁר בִּירוּשָׁלַם . .  
 . לְשַׁלַּח אִישׁ אֶת־עַבְדּוֹ וְאִישׁ אֶת־שִׁפְתּוֹ הָעֵבְרִי וְהָעֵבְרִיָּה הַכְּפִשִׁים . . . וַיִּשְׁמְעוּ כָל־הַשָּׂרִים וְכָל־הָעָם  
 אֲשֶׁר־בָּאוּ בְּבְרִית לְשַׁלַּח אִישׁ אֶת־עַבְדּוֹ וְאִישׁ אֶת־שִׁפְתּוֹ הַכְּפִשִׁים . . . וַיִּשְׁמְעוּ וַיִּשְׁלַחוּ . . . אֲשֶׁר שְׁלַחוּ  
 הַכְּפִשִׁים וַיִּכְבְּשׂוּם לְעַבְדִּים וְלִשְׁפָחוֹת:

The word that came to Jeremiah from YHWH after king Zedekiah made a covenant

with all the people who were in Jerusalem . . . each one to send his slave and his maidservant, Hebrew male or female, free. . . . And all the officials and all the people, who had entered the covenant that each one send his slave and his maidservant free, heard . . . They heard and sent away. . . . who they sent away. And they subjected them to slaves and maidservants.

Taken in this way the passage would read procedurally well. But in Deut 15:12–13, 18 *שלח + חֲפְשֵׁי* follows an occasion, namely the six-year service. In this light, if the release in Jer 34:8–9 was based on Deut 15, it would have removed the occasion given in Deut 15 and instead rooted it in the royal edict. The secondary or dependent character of *שלח + חֲפְשֵׁי* in Deut 15 would thus be uprooted from its textual roots and transplanted into political soil. This is of course possible, given that Jer 34:8–11, as it now stands, grounds the Deuteronomic locution *שלח + חֲפְשֵׁי* in the royal edict and proclamation of release (*לְקַרְא לְהֵם דְּרוֹר*). The present form of the text, however, invites one to see Jer 34:8–11 as an active reworking of both Lev 25 and Deut 15. Denying this, and removing the elements parallel to Lev 25, would highlight the tension between 34:9 and 34:14. While the occasion in 34:9 would be the royal edict, in 34:14 it would be the seven-year release from Deut 15. We would still have to reconcile this tension in some way. And if this is admitted, then the likelihood of Jer 34:8–11 also reworking and incorporating Lev 25 increases. Furthermore, the proximity of *וּקְרָא תֵם דְּרוֹר* in Lev 25:10 and *קָרָא שְׁמֹטָה* in Deut 15:2 rather leads us to believe that the author of Jer 34 was actively reworking and conflating Lev 25 and Deut 15, through the phrase *לְקַרְא לְהֵם דְּרוֹר* (Jer 34:8c), echoing the locution from Lev 25:10, and immediately being defined by Jer 34:9a in terms of Deut 15 (*לְשַׁלַּח אִישׁ אֶת-עַבְדּוֹ וְאִישׁ אֶת-שִׁפְחָתוֹ הָעִבְרִי וְהָעִבְרִיָּה חֲפְשִׁים*). The infinitive construct of *לְקַרְא* (34:8c) and *לְשַׁלַּח* (34:9a) also invite the two clauses to be co-read.

For all that has been said above, the major issue with the removal of elements

from Lev 25 would be seen in 34:11. As argued above, it is likely that as the text now reads there is a play in 34:11a–b (. . . וַיָּשׁוּבוּ אֶת־הָעֲבָדִים וְאֶת־הַשְּׁפָחוֹת . . .) on שׁוּב from Lev 25. Either one would have to deny such a word play, or remove it from 34:11, rendering the verse incomprehensible. The syntax of the verse would be disrupted, leaving אֲשֶׁר שְׁלָחוּ הַכְּפָשִׁים hanging in the air. Re-enslavement is not prohibited according to Deut 15. Since Jer 34:8–11 MT formulates the problems with the re-enslavement in terms of Lev 25, without the clauses reusing Lev 25, we would remain ignorant about what the problem with the re-enslavement was.<sup>179</sup> Removing the clauses containing reuse of Lev 25 in Jer 34:8–11, would thus leave 34:8–11 a conundrum. It would not function well as an introduction to the divine indictment in 34:12–22.<sup>180</sup> Therefore, the reuse of Lev 25 in Jer 34:8–11 seems original to the composition of these verses.

If the clauses with parallels to Deut 15 are removed, לְשַׁלַּח אִישׁ אֶת־עַבְדּוֹ וְאִישׁ אֶת־אִשְׁתּוֹ, לְשַׁלַּח אִישׁ אֶת־עַבְדּוֹ וְאִישׁ אֶת־שְׁפָחוֹתָא (‘‘to send his slave and his maidservant, Hebrew male or female, free’’) in 34:9a, לְשַׁלַּח אִישׁ אֶת־עַבְדּוֹ וְאִישׁ אֶת־שְׁפָחוֹתוֹ הַכְּפָשִׁים (‘‘to send each his slave and his maidservant free’’) in 34:10c, וַיִּשְׁמְעוּ וַיִּשְׁלָחוּ (‘‘and they heard and they sent off’’)

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<sup>179</sup> Based on locutions from Deut 15 in Jer 34, and v. 14 in particular, one could claim that the people did not take back their previous slaves in Jer 34, but rather decided simply to continue the practice from Deut 15 of taking slaves and releasing them in the seventh year. If so, the Torah interpretation witnessed in Jer 34 would be even more poignant. Jeremiah 34 would then pitch Deut 15 against Lev 25. The people would have followed Deut 15, while the author of Jer 34 argued for a practice more aligned to Lev 25. But וַיָּשׁוּבוּ אֶת־הָעֲבָדִים וְאֶת־הַשְּׁפָחוֹת אֲשֶׁר שְׁלָחוּ הַכְּפָשִׁים (‘‘they brought back the slaves and maidservants which they had sent free’’) in 34:11 and וַתָּשׁוּבוּ אִישׁ אֶת־עַבְדּוֹ וְאִישׁ אֶת־שְׁפָחוֹתוֹ אֲשֶׁר־שְׁלָחוּם הַכְּפָשִׁים לְנַפְשָׁם (‘‘and each one brought back his slave and his maidservant which they sent free for their lives’’) in 34:16 read against this interpretation, since they specify that the people returned the same slaves that they had sent off.

<sup>180</sup> Levinson criticizes traditional literary criticism of Jer 34: ‘‘Absent the judgment oracle, the whole rationale for the inclusion of the account of the manumission and its reversal in the book of Jeremiah collapses. In other words, the very fact that a preexilic Jeremianic condemnation of the events narrated in the account cannot be clearly identified within the passage should begin to raise questions altogether about the rationale for the inclusion of such an incident in Jeremiah’’ (Levinson, ‘‘Zedekiah’s Release,’’ 319).

in 34:10d–e, and אֲשֶׁר שְׁלְחוּ הַכְּפָשִׁים (“who they sent free”) in 34:11c the passage would read

הַדָּבָר אֲשֶׁר-הִנִּיחָה אֱלֹהֵי-יִרְמְיָהוּ מֵאֵת יְהוָה אֶחָדִי כָּרַת הַמִּלְוָה צְדָקָתוֹהוּ בְּרִית אֶת-כָּל-הָעַם אֲשֶׁר בִּירוּשָׁלַם  
לְקִרְאָ לָהֶם דְּרוֹר . . . לְבִלְתִּי עֲבַד-בְּכֶם בִּיהוּדֵי אֶחָיְהוּ אִישׁ: וַיִּשְׁמְעוּ כָל-הַשָּׂרִים וְכָל-הָעָם אֲשֶׁר-בָּאוּ  
בְּבָרִית . . . לְבִלְתִּי עֲבַד-בְּכֶם עוֹד . . . וַיָּשׁוּבוּ אַחֲרֵי-כֵן וַיָּשׁוּבוּ אֶת-הָעֲבָדִים וְאֶת-הַשִּׁפְחוֹת . . . וַיִּכְבְּשׁוּם  
לְעֲבָדִים וְלִשְׁפָחוֹת:

The word that came to Jeremiah from YHWH after the king Zedekiah made a covenant with all the people who were in Jerusalem to proclaim a release . . . that none enslave his brother among Judeans. . . . And all the officials and all the people, who had entered the covenant . . . , heard . . . that none enslave among them again. But afterward they turned around and returned the slaves and maidservant . . . . And they subjected them to slaves and maidservants.

The problem with this formulation is that it presupposes that the reader knows that דְּרוֹר means a release of present slaves. This could be solved by claiming that this is a reuse of Lev 25, and that the reader would immediately recognize the release from there.<sup>181</sup> Both לְבִלְתִּי עֲבַד-בְּכֶם בִּיהוּדֵי אֶחָיְהוּ אִישׁ and לְבִלְתִּי עֲבַד-בְּכֶם עוֹד seem to function as absolute prohibitions; namely, they prohibit taking or holding Judahite slaves *per se*. Again, this could be taken as an imperative to release present slaves. But since no actual release of slaves is described, the return of the slaves in 34:11 comes as somewhat of a surprise. It could be understood as a lacuna in the text; a well-known phenomenon in biblical narrative,<sup>182</sup> but it would nevertheless leave us with a feeling that something essential is

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<sup>181</sup> It could also be explained as a common ANE knowledge that דְּרוֹר means a release of present slaves, something that may be a reasonable assumption. Cf. Moshe Weinfeld, *Social Justice in Ancient Israel and in the Ancient Near East* (Jerusalem: Magnes, 1995).

<sup>182</sup> Cf. e.g. Erich Auerbach, *Mimesis: The Representation of Reality in Western Literature*, trans. Willard R. Trask (Princeton, NJ: Princeton University Press, 2013), 3–23.



missing. It would manifestly not improve the clarity of the text to remove the Deuteronomic elements. Otherwise, we notice that reading Jer 34:8–11 as originally a reuse of Lev 25 without the elements of Deut 15 actually works better than the reverse.<sup>183</sup> On textual grounds, given the text as we have it, there is, therefore, no reason to prefer a reuse of Deut 15 over that of a reuse of Lev 25 in the original composition of Jer 34:8–11. Lundbom writes: “The integration of Deut 15:12 into the oracle is too complete for it to be secondary.”<sup>184</sup> While I agree that the reuse of Deut 15:12–18 is not secondary in Jer 34, I would also observe that the reuse of Lev 25:39–46 is not secondary either.

Proceeding to the divine indictment in 34:12–22, we find a similar challenge in removing either the elements parallel to Lev 25 or Deut 15. Here the reuse of Lev 15 and Deut 15 is attested more in separate sections. Even if a verse such as 34:14 contains a significant concentration of reuse from Deut 15, the intertwining of elements from Lev 25 and Deut 15 is not as condensed as in 34:8–11. As in Jer 34:8–11, again we find that the prescription to release the slaves in Jer 34:13–14 is predominantly formulated in terms of Deut 15, with no clear elements from Lev 15. On the other hand, the description of—and indictment against—the return of the slaves in Jer 34:15–22 is largely formulated in

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<sup>183</sup> While the people’s release of the slaves in 34:10 could be read nicely without the element parallel to Lev 25 ( . . . וַיִּשְׁמְעוּ כָּל־הַשְּׂרָיִים וְכָל־הָעַמִּים אֲשֶׁר־בָּאוּ בְּרִית לְשִׁלַּח אִישׁ אֶת־עַבְדּוֹ וְאִישׁ אֶת־שִׁפְחָתוֹ הַכְּפֹשִׁים . . . ), likewise the people’s return of the slaves in 34:11 could be read nicely without the element parallel to Deut 15 ( וַיָּשׁוּבוּ אַחֲרֵי־כֵן וַיָּשׁוּבוּ אֶת־הָעַבְדִּים וְאֶת־הַשִּׁפְחוֹת . . . וַיִּכְבְּשׁוּם לְעַבְדִּים וְלַשִּׁפְחוֹת ). But the narrative itself would be severely compromised by a removal of either the parallels to Deut 15 in 34:10 or the parallels to Lev 25 in 34:11. I therefore suggest that both the reuse of Lev 25 and Deut 15 should be seen as original to the composition of Jer 34:8–11.

It is also possible to imagine that elements were omitted from earlier compositions, but as Pakkala has pointed out, this would place any project trying to reconstruct the original composition in jeopardy, making them “much less certain” (Pakkala, *God’s Word Omitted*, 14).

<sup>184</sup> Lundbom, *Jeremiah 21-36*, 261.

terms of Lev 25 (Jer 34:15–22), with elements from Deut 15 taking a secondary role. Jeremiah 34:8–11 and 34:12–22, therefore, utilize consistent and distinct approaches to reusing Lev 25 and Deut 15: Jer 34:8–11 intertwines the two while Jer 34:12–22 keeps them more or less in separate sections. Since 34:8–11 and 34:12–22 are interdependent, with 34:8–11 providing the narrative setting and 34:12–22 the divine indictment, it would seem most reasonable to conclude that the same author wrote 34:8–22 but reused Lev 25 and Deut 15 differently in 34:8–11 as compared to 34:12–22.<sup>185</sup> As in 34:8–11, it would create disruption to remove either the reuse of Lev 25 or Deut 15 in 34:12–22.

*Summary:* The above evidence leads to the conclusion that the reuse of Lev 25 and Deut 15 was part of the original composition of Jer 34:8–22. Therefore, it is not “remixing the language of Zedekiah’s proclamation with the Deuteronomic legislation” that brings the author of Jer 34 to the understanding that the “Judean slaves must be—or should have been—released unconditionally and irrevocably.”<sup>186</sup> This thrust in Jer 34 is far better explained as an original reuse of Lev 25. It appears entirely unjustified for Chavel to ignore the possibility of a reuse of Lev 25 in the original composition of Jer 34 and then to insist that “a higher standard not called for in the original Deuteronomic

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<sup>185</sup> This observation counters Chavel’s claim, of seeing 34:9 and 34:14 as representing different redactional layers: “Given that the thrust of Jer. 34.14 purports to renounce the very premise of Zedekiah’s emancipation and demand that a higher principle undergird the covenant, it is unlikely that its author had a text that contained the reuse of the abolitionist ideas of the Holiness Code in Jer. 34.9b” (Chavel, “Let My People Go!,” 92). Also contra Maier, *Jeremia als Lehrer der Tora*, 260–61, 264. Since Lev 25 and Deut 15 are reused in more separate sections in Jer 34:12–22, in contrast to the closer intertwining of the two in 34:8–11, we simply would expect 34:14 to be a purer quote while 34:9 a more intermixed. This is exactly what we find. Levinson therefore seems closer when seeing “the two distinct justifications for manumission in Jer 34:9b and 14” as “an exegetical harmonization of the legal sources of the Pentateuch” (Levinson, “Zedekiah’s Release,” 323. See also p. 322), even if I am not able to follow him in seeing a reuse of the universal manumission from Lev 25:39–46 in Jer 34:14, as explained above.

<sup>186</sup> Chavel, “Let My People Go!,” 81.

legislation, demanding that the owner recognize his or her slave as a social equal” was the original creation of the author of Jer 34.<sup>187</sup> As argued above, the differences between the justification of manumission in 34:9b and 34:14 are best understood as different strategies of reuse by the same author. Jeremiah 34:8–11 on the one hand shows an alternating and much tighter knit reuse of Lev 25 and Deut 15, where Deut 15 is reused to describe the release and Lev 25 both the release and return. Jer 34:12–22 on the other hand largely relocates Deut 15 to the prescription for release in Jer 34:13–14, while 34:15–22 reuses Lev 25 more in the divine indictment against the people’s return of slaves.

Given the above discussion, it seems reasonable to conclude that the reuse of both Lev 25 and Deut 15 was found in the original composition of Jer 34:8–22.<sup>188</sup> As an amalgamation of both Lev 25 and Deut 15, Jer 34 would be the youngest of the three. I can therefore concur with Levinson as he writes:

The chapter truly becomes intelligible only once it is recognized that its author knew the Pentateuchal legal sources and exploited them to craft a brilliant exegetical homily on the cause of the Babylonian exile. His *halakic midrash* justifies the exile as punishment for covenantal transgression, for breach of Torah, now meaning an exegetical blend of the manumission laws of Deuteronomy and the Holiness Code. The chapter is a theodicy, one that presupposes not only the formation of the

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<sup>187</sup> Chavel, “Let My People Go!,” 85.

<sup>188</sup> I therefore challenge the common conception that blending of passages from Lev–Num and Deut necessarily is a mark of later redaction (cf. Carr, *Formation of the Hebrew Bible*, 29–31, 34, 40–48, 66–71, 91–98, 303, 347–49; Rom-Shiloni, “Compositional Harmonization,” 915). Berman writes: “If a later scribe indeed revised the text of Jeremiah 34 to favor a Holiness Code ideology of manumission, why would he allow the original references to manumission from Deuteronomy to remain elsewhere in the text? Some hypothesize that revered texts in the ancient world had a canonical status, so that deleting passages already present was not an option. But this hypothesis is self-contradictory. If a text is so revered that nothing may be erased, why may new materials be interjected into it?” (Berman, “The History of Legal Theory,” 35–36).

Pentateuch, but a sophisticated process of hermeneutics.<sup>189</sup>

And again: “In other words, this text is a *response* to the legal sources of the Pentateuch, not a *transition point* between them.”<sup>190</sup>

### Appropriation

Of course, it is possible to construct a complex theory of an original composition of Jer 34 as having been subsequently edited, thereby introducing elements from both Deut 15 and Lev 25 in later editorial stages.<sup>191</sup> It is also possible to claim a post-exilic

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<sup>189</sup> Levinson, “Zedekiah's Release,” 314–15. He also writes: “Equally present in the text, however, playing just as commanding a role as does the invading Babylonian army, is the Torah, made repeatedly evident through a tight weave of citations and allusions to biblical law” (Levinson, “Zedekiah's Release,” 313). Levinson takes Jer 34 as written *ex post facto*, after the fall of Jerusalem, and not *pre facto* as the chapter presents itself. Cf. Levinson, “Zedekiah's Release,” 319, 324–25. As mentioned, the absolute dating of Jer 34 is not my concern here, but in the present study I have not seen anything that would demand a late dating of Jer 34. It is thought-provoking to note how many biblical passages scholars claim to be significantly postdated not only the narrative reference time but also the narrated reference time. What is beyond dispute, at least, is that Jer 34 itself presents itself as a prediction of the coming judgement, rather than an explanation of the exile. The punishment in Jer 34:17, 20–22 do not even mention exile, and it is therefore difficult to see it as an *ex post facto* “aetiology of exile,” as Levinson calls it (Levinson, “Zedekiah's Release,” 324). Interestingly, Jer 34 does not formulate the sanctions in terms of slavery and exile as might be expected. We could have expected that since they re-enslaved their former slaves and did not let them return do their inheritance property as in Lev 25, they would themselves go into slavery and exile from their inherited land. Rather, Jer 34:17, 20–22 predict destruction through the sword, pestilence, and hunger. Note the contrast between Zedekiah being told he will go into exile in 34:3 and how he simply will be given into the hands of those seeking his life in 34:21. Levinson again: “The idea that Jeremiah as prophet delivers the crucial explanation for the exile as just punishment for Judah’s transgression of the covenant is also fully present in the final chapter of the Book of Chronicles (2 Chr 36). Strikingly, in this passage Jeremiah has been transformed into an exegetical prophet whose oracles presuppose Torah” (Levinson, “Zedekiah's Release,” 315). Based on the above, given that we already in Jer 34 find Jeremiah presented as “an exegetical prophet whose oracles presuppose Torah,” we cannot claim that this transformation first occurred in 2 Chr 36. Keown comments on Jer 34:21–22: “The lesson to be learned from this passage, according to R. Carroll (650), is that to violate even one stipulation of the Sinai covenant is to break the whole and to risk total destruction” (Gerald L. Keown, *Jeremiah 26–52* (vol. 27; WBC; Dallas: Word, Incorporated, 1998), 190). Cf. Carroll, *Jeremiah*, 650.

<sup>190</sup> Levinson, “Zedekiah's Release,” 319.

<sup>191</sup> Many see a conflict between the law cited in Jer 34:14 and the narrative of Jer 34:8–11, e.g. Lemche, “The Manumission of Slaves,” 51–52; Weinfeld, “Sabbatical Year and the Jubilee,” 40; Schenker, “Die Freilassung der hebräischen Sklaven,” 152. Cf. Weinfeld, *Deuteronomy and the Deuteronomistic School*, 320–61 for Weinfeld’s discussion of parallels between Deuteronomy and Jeremiah. Chavel writes: “Weinfeld enumerates a number of the unbridgeable discrepancies between Zedekiah's declaration of general release and the manumission demanded by the law in Deuteronomy 15” (Chavel, “Let My People

composition of Jer 34, admitting the reuse of Deut 15 and Lev 25 already in the original composition. But, given the text as we have it, neither would represent the most plausible or economical reading. The only possible utility of such theorizing would be to rescue some metatheory on the development of the religion of Israel à la Wellhausen. It is also possible to claim—based on the lack of exact correspondence between Lev 25 and Deut 15 on the one hand, and Zedekiah’s release in Jer 34 on the other—that Jer 34 simply “attempts to graft these laws onto existing conditions, but this incorporation was artificial.”<sup>192</sup> The most straightforward explanation—and therefore according to Occam’s razor the most preferable explanation—is to see Jer 34 originally composed as a sophisticated and creative reuse of Lev 25 and Deut 15. While an absolute dating of Jer 34 has not been my concern, there is nothing in the above discussion that requires us to question the narrative’s own historical claims. Jeremiah 34:8–22 can be read as one unit and as a response to real events during Zedekiah’s reign. The often claimed mismatch between Lev 25 and Deut 15 on the one hand and Zedekiah’s release in Jer 34 on the other is regularly pointed out, but this cavil appears to stem from the expectation, or should we say extra-textual assumption, that we should find an exact correspondence between source and borrowing text in proto-halakhic applications. But if we allow for a more creative reuse of normative texts, the reuse of Lev 25 and Deut 15 begins to make perfect sense within its own historical setting.

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Go!,” 74n). But as argued, these become unbridgeable only if one insists on a direct correspondence-model. In my opinion, this seems to be because they do not see the dialectic set up between Lev 25 and Deut 15 both in Jer 34:8–11 and 34:12–22, which is precluded by not allowing Lev 25 a role in the original composition of Jer 34.

<sup>192</sup> Weinfeld, “Sabbatical Year and the Jubilee,” 61.

Chavel is correct in pointing out that “the authority behind Zedekiah’s emancipation resides in Zedekiah himself, as the king of Judah, rather than in YHWH.”<sup>193</sup> Sarna formulates the issues involved even more poignantly:

Appropriately, the royal edict is repeatedly designated *d’rôr* (vv. 8, 15, 17), a technical term that, to judge from its other biblical usages and ancient Near Eastern analogies, is applicable only to an institution administered on a community-wide basis (Lev. 25:10; Is. 61:1-2; Ezek. 46:17). How is this to be reconciled with the indubitable fact that the legislation of Deut. 15 in its substance and literary formulation constituted the legal and theological foundation upon which rested the events that took place during the Babylonian siege of Jerusalem? This problem is exacerbated by another fact. Jeremiah himself acknowledges that Zedekiah’s enactment was in fulfillment of, and in accord with, the provisions of the Sinaitic covenant, which earlier generations had honored more in the breach than in the observance (vv. 13-14).<sup>194</sup>

Since Torah is covenantal instruction, there is an individual responsibility in how the passages are concretely applied. This relates to the characterization of Torah as discussed in the first chapter. As mentioned there, Torah was not perceived according to a legislative concept of law. Therefore, it did not have to be quoted verbatim. As with other ANE law collections, we see that the authority nevertheless rested in the decree of the

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<sup>193</sup> Chavel, “Let My People Go!,” 74. Berman writes on the periodic release prescribed in Lev 25 and Deut 15: “The Bible’s reformulation of these laws begins with a fundamental departure from the norms of the ancient Near East: the decoupling of these releases from the political order. What determined the occasion of a release proclamation elsewhere was a royal decision, timed to suit the needs of the king. The Bible, however, regulates these proclamations by mandating them on a periodic basis. The implications of this are far-reaching. For one thing, such periodic scheduling means that the release proclamations are taken out of the hands of the king, indeed, in biblical law the king has no hand in declaring or implementing the release of debt, the manumission of slaves, or the redemption of tribal lands” (Berman, *Created Equal*, 99). So is Zedekiah going beyond his rights, or is it justified in a situation where the upper class are not doing what they are supposed to? He continues: “Yet this goes precisely to the heart of a proper understanding of biblical ‘law’: the treaty stipulations are themselves presented as a body of teaching. The purpose of biblical law is to shape and form the polity, not merely address cases and provide remedy” (Berman, *Created Equal*, 100). Berman’s observations on the manumission instructions in Torah, however, only intensify our questions regarding the role of Zedekiah in Jer 34.

<sup>194</sup> Sarna, “Zedekiah’s Emancipation,” 147. Given the discrepancies between Deut 15 and Zedekiah’s covenant in Jer 34, Sarna writes that “at first glance there would seem to be no way of reconciling the action of Zedekiah with the legal provisions of Deut. 15” (Sarna, “Zedekiah’s Emancipation,” 146). Cf. Holladay, *Jeremiah 26–52*, 238–39.

king. LeFebvre has shown that the typical pattern in the HB is not to use a precise formulation from Torah as the basis for action, but rather a certain fluidity is regularly observed in the reuse of passages from Torah. Further, the authority of a political action was not primarily grounded in a legislative reference to Torah as the political law, but the authority was based on an edict by the king or governor, where the formulations might be strongly influenced by the instructions in Torah.<sup>195</sup> Given this general pattern in the HB, Zedekiah's role in Jer 34 loses its surprise factor and rather corroborates the pattern itself as yet another piece of evidence indicating a similar trend.

It follows, that Zedekiah's covenant in no way undermines the possibility of literary influence from Torah, nor does it deny the existence of Torah prior to the time of Zedekiah. Further, the interesting thing about Jer 34, in this regard, is that we, once more, encounter the pattern of repetition with variation in the reuse of Torah as observed earlier; namely, both a certain continuity and discontinuity and both an intentional reuse and creativity in how the Torah passages are appropriated by later authors.<sup>196</sup> Fischer calls it "einen *Doppelcharakter* mit Bezug auf die genannten Texte" in Jer 34.<sup>197</sup>

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<sup>195</sup> Cf. LeFebvre, *Collections, Codes, and Torah*, 55–145. LeFebvre writes "that the Zedekiah practice narrative employs Deut 15 as a religious/ethical exemplar, but not a legislative norm. This practice narrative shows that the Deuteronomy text's influence on debt release is theological nor statutory, and that the authority to proclaim actual release edicts *remains* in the hands of the king (Jer 34:8, 15)" (LeFebvre, *Collections, Codes, and Torah*, 86–87). However, I find LeFebvre's denial of a normative aspect of Torah at best as imprecise. Jeremiah 34 clearly takes Lev 25 and Deut 15 as normative texts, even the grounds upon which the entire nation will be handed over to extinction (Jer 34:20–22). That Zedekiah might have initiated the covenant does not detract from the normativity of Torah, even if this normativity is different in character than what is found in a legislative normativity.

<sup>196</sup> Cf. Fischer, "The Relationship of the Book of Jeremiah to the Torah," 908.

<sup>197</sup> Fischer writes: "Jer 34 zeigt einen *Doppelcharakter* mit Bezug auf die genannten Texte. Einerseits bezieht es sich auf sie, mit teils wortlichen Berührungen (z. B. mit Dm 15, *so Sarna*, *Emancipation 2000* [ursprünglich 1973], 298-300, als eine alte Interpretation dazu; oder mit Lev 25, auch *Chavel*, *Let* 1997, 89-91). Andererseits hebt es sich von seinen Vorlagen durch teils massive Differenzen ab,

Chavel does not explain this dual phenomenon, but simply avoids it by removing all the parallels to Torah through dubious critical means in order to claim that they were not part of the original composition but only added by a later redactor at a much later stage; he claims they were added even after Neh 5.<sup>198</sup> According to Chavel, “Only the legal citation in Jer. 34.14 bears any literary relationship to Deut. 15.12.”<sup>199</sup>

As the above analysis has not uncovered any good reasons to see an exclusive reuse between Exod 21 and Jer 34, given that all the parallels and a multiplicity of others are better explained as a reuse between Deut 15 and Jer 34, the following questions arise: Was the author of Jer 34:8–22 unaware of Exod 21:2–11? Is this because he viewed the later instructions in Deut 15:12–18 as replacing Exod 21:2–11, or might it even be that

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sodaß *Lemche* keine Verbindung mit Sabbat- oder Jubeljahr sieht (Manumission 1976, 56); im Unterschied dazu verknüpft *Sarna* (Emancipation 2000, 301) mit einem Sabbatjahr 588/7, und *Lundbom* deutet es als Freilassung anlässlich eines Jubeljahres (561). Daß die Entlassung für *alle* Sklaven zugleich erfolgt, steht gegen Dtn 15, das je individuell nach sechs Jahren deren Freigabe fordert (*Rudolph* 223) (Fischer, *Jeremia* 26–52, 252. Cf. p. 261).

<sup>198</sup> Chavel, “Let My People Go!,” 74–76. The text does not claim a conflict between Zedekiah’s and YHWH’s covenant, but rather their convergence. The hermeneutics of conflict is introduced by Chavel himself in his reading (Chavel, “Let My People Go!,” 77). Chavel comes across as quite confident in being able to reconstruct how a possible initial composition of Jer 34 would have looked like (e.g. Chavel, “Let My People Go!,” 80). Ironically Chavel comes around and acknowledges the reuse of both Deut 15 and Lev 25 in Jer 34 as we have it, and here I would agree with him. But he explains the parallels between Deut 15 and Jer 34 as an effort by “later hands” “to bring these texts into a stronger measure of conformity and mutual reference” and the parallels between Lev 25 and Jer 34 as “one scribe” (if so, why only one?) “adding a reference to Leviticus . . . to represent Zedekiah’s proclamation as an attempt to implement the radical, total abolition of Judaeian slavery” (Chavel, “Let My People Go!,” 88). Well, if the reuse of Lev 25 and Deut 15 in Jer 34 is acknowledged, Occam’s razor inclines us to simply pose the possibility that it was because Jer 34 originally used these passages. Chavel’s hypothetical and conjectural reasoning to make these parallels later interpolations distort Jer 34 more than the distortions he claims to find in the syntax of Jer 34 itself. Berman critiques Chavel asking: “If a later scribe indeed revised the text of Jeremiah 34 to favor a Holiness Code ideology of manumission, why would he allow the original references to manumission from Deuteronomy to remain elsewhere in the text? . . . If a text is so revered that nothing may be erased, why may new materials be interjected into it?” (Berman, “The History of Legal Theory,” 35–36).

<sup>199</sup> Chavel, “Let My People Go!,” 75n.



Exod 21:2–11 was not composed at the time of the composition of Jer 34:8–22 as Van Seters would claim?<sup>200</sup> These questions would easily lead to speculation, and it seems prudent to not exceed the extant evidence. Jeremiah 34 does not offer a basis for claiming that its author took a supersessionist view of Exod 21 and Deut 15. What we observe is simply a reuse of Deut 15 in Jer 34 with no evidence as to whether or not Exod 21 was consulted by the author.

The one relevant question, however, is whether the author of Jer 34:8–22 saw the manumission instructions as replacing one another, as seen in the relative relation between Lev 25:39–46 and Deut 15:12–18? In other words, does the author of Jer 34 take a supersessionist view in regard to Lev 25:39–46 and Deut 15:12–18? As far as I can see, the author of Jer 34 does not view the relation between Lev 25 and Deut 15 in a supersessionist manner, but rather creates a dialectic between the two.<sup>201</sup> The word

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<sup>200</sup> Van Seters, *A Law Book for the Diaspora*, 82–95.

<sup>201</sup> Earlier I was inclined to see Deut 15:12–18 as being reused more in phraseology, while Lev 25:39–46 more conceptually in Jer 34:8–22. It is especially the paraphrase of Deut 15:12 in Jer 34:14, together with the significant reuse of Deuteronomy in the book of Jeremiah as a whole, that may incline us to see Deuteronomy as predominant also in Jer 34. But the more I have looked at the evidence, the more I have become convinced that the author is treating the two in very similar fashion, intent upon placing them into a dialogue with each other, and that the differences we might observe in how the two are reused is more a question of syntax and rhetoric than a difference in how the author perceives the authority and centrality of the two. Still, I do see that Jer 34 could be read as giving a predominance to Deut 15 over Lev 25, à la Rofé's argument that in Josh 20 Num 35 take a predominance over—but is altered on the basis of—Deut 4:41–43 (Alexander Rofé, "Joshua 20: Historico-Literary Criticism Illustrated," in *Empirical Models for Biblical Criticism*, ed. Jeffrey H. Tigay (Philadelphia: University of Pennsylvania Press, 1985), ).

David T. Stewart's summary of his discussion of Lev 19 seem to resonate with the finds here on Jer 34: "Indigenous literary features allow us to step away from the theological position that all biblical laws are of equal importance (according to Schwartz). . . . Different contexts are sufficient to allow different nuances of meaning. Thus I would suggest, *contra* Nihan, that allusion to or citation of other biblical laws in Lev 19's compendium is not to harmonize them. It is also more, I think, than a simple memory aid. Literary allusion in Lev 19 is an aid to recollection that 'simultaneously activates' two or more texts and holds them in dialectical tension.

To say that Lev 19 is a 'mini-Torah' is to assert more than the existence of fifty-plus laws here. It is to say that the structure of the chapter embodies its own pedagogy of reading. Here one must not just read linearly, as one would if the text were read aloud. The structure pushes the reader to move back and

‘dialectic,’ borrowed from the Greek *διαλεκτική*, in this case would mean that Jer 34 sets up a discourse or conversation between Lev 25 and Deut 15 thereby counterposing their different viewpoints in order to establish a faithful proto-halakhic appropriation in the present situation.

While Exod 21 differentiates between the conditions of release for the male and female slaves, in Jer 34 no such difference is observed. While Exod 21 and Deut 15 regulate a septennial release, the former likely based on an individual cycle and the latter either an individual or a national cycle, Lev 25 prescribes a national cycle of release every 49 years, and Zedekiah’s covenant in Jer 34 prescribed an immediate national release of all Hebrew slaves. The immediacy of the release ignores both the sabbatical year cycle of Deut 15 and Jubilee cycle of Lev 25. While the royal covenant was the occasion of the immediate and absolute abolishment of slavery of Hebrews, both Deut 15 and Lev 25 are appealed to, respectively Lev 25 in 34:9b and Deut 15 in 34:14, to give the manumission a basis in Torah.<sup>202</sup>

Jeremiah 34:8–11 seems to alternate the reuse of Lev 25 and Deut 15 in a sophisticated manner.<sup>203</sup> The narrative of the release of the slaves is largely formulated in

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forth to its associations. This perturbs the reader, who must recollect past reading in order repeatedly to grapple with meaning, just as citing texts wrestle with prior texts. Thus it is to say, the structure of Lev 19 contains ‘directions’ for reading from its redactor/rabbi. Might not this spur one to meditate with delight on the Torah day and night?” (David T. Stewart, “Leviticus 19 as Mini-Torah,” in *Current Issues in Priestly and Related Literature: The Legacy of Jacob Milgrom and Beyond*, eds. Roy E. Gane and Ada Taggar-Cohen, RBS 82 (Atlanta: SBL, 2015), 323).

<sup>202</sup> Speculations whether Zedekiah’s release of the slaves might have coincided with a Sabbath or Jubilee year seem conjectural, even if it cannot be excluded.

<sup>203</sup> Smelik might be right that Jer 34 should be read as reusing catchwords and catchphrases, even if this does not need to undermine the historicity of the account as I have commented elsewhere: “Attempts to harmonize Jer 34 with the laws in the Torah in relation to debt slavery, however, appear to miss the point; they make no sense because we are dealing here with catchwords and catchphrases, not with an

terms of Deut 15 and Lev 25, while the return of the slaves is formulated only in terms of Lev 25. The same applies in Jer 34:12–22, but here the two are held more apart and largely reused in successive order, Deut 15 again for the release in 34:13–14 and Lev 25 for the talionic punishment for their neglect in 34:15–22.

While the tension between Jer 34:9 and 34:14 is often noted, and commonly interpreted as an indication of different sources,<sup>204</sup> we can now rather explain it in light of an original reuse of Lev 25 and Deut 15, where the author apparently did not see a need to harmonize or synthesize his sources. This dialectical approach in Jer 34 also explains why the author creates an interplay between Zedekiah's covenant with the people in the Temple (34:8–11, 15–17) and YHWH's covenant with their forefathers at Sinai (34:13–14).<sup>205</sup> Smelik argues that YHWH uses the pronoun *אֲנִי* in Jer 34:13 to emphasize the contrast between his covenant at Sinai and Zedekiah's covenant with the people.<sup>206</sup> It is part of an intentional juxtaposition of authoritative texts and historical events. In this perspective, the combination of authoritative texts prescribing a seven-year (Deut 15:1, 12–18) or 49-year (Lev 25:39–46) release cycle with the immediate release in Zedekiah's covenant is less problematic as well.

Jeremiah 34:8–22 can not be explained simply as a harmonization of Lev 25 and

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historical account of what actually happened in Jerusalem during the Babylonian siege" (Smelik, "The Inner Cohesion of Jeremiah 34:8–22," 250). The catchwords and catchphrases, or repetition with variation as I have called it elsewhere, should be understood in light of the author of Jer 34 alternating and creating a dialectic between Lev 25 and Deut 15.

<sup>204</sup> Cf. e.g. Chavel, "Let My People Go!," 92; Maier, *Jeremia als Lehrer der Tora*, 260–61.

<sup>205</sup> Maier sees a link between the reference to the forefathers in Jer 34 and the "Vatertora orientierten Haltung der Rechabiten in Jer 35" (Maier, *Jeremia als Lehrer der Tora*, 280).

<sup>206</sup> Smelik, "The Inner Cohesion of Jeremiah 34:8–22," 242.

Deut 15, but rather seems to create a dialectic between the two, apparently sensitive to their inconsistencies.<sup>207</sup> It does not see Lev 25 and Deut 15 as addressing different cases in order to see them as complementary, but brings the two together in order to support the royal covenant to release the Hebrew slaves and judge the people for retracting this action.<sup>208</sup> Instead of trying to synthesize or harmonize the two,<sup>209</sup> Jer 34 attempts to look at both in order to draw out their most far-reaching implications for the present situation—be that gender-inclusivity, absolute abolishment of Hebrew slaves, or talionic retribution for their neglect. Neither does it treat Lev 25 and Deut 15 in a supersessionist manner where one replaces the other, but reuses both, in tandem, for its own sophisticated rhetorical purposes.

Dalit Rom-Shiloni, in her study of reuse of “priestly and deuteronomic

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<sup>207</sup> This resonates with the finds of Rofé in his study of Josh 20 and Seeligmann in his study of Chronicles (Rofé, “Joshua 20: Historico-Literary Criticism Illustrated,” 131–47; I. L. Seeligmann, “Anfänge der Midraschexegese in der Chronik,” in *Gesammelte Studien zur Hebräischen Bibel*, ed. E. Blum (Tübingen: Mohr Siebeck, 2004), 31–54). Seeligmann writes regarding the Chronicler: “Selbstverständlich kennt er, wie sich auch im Verlauf unserer Untersuchung zeigte, keine Unterscheidung zwischen priesterlichen oder deuteronomistischen Quellen. Jedoch selbst da, wo er sich einer Spannung zwischen verschiedenen Tora-Stellen bewusst ist, kommt für ihn ein Eingriff in die Textformulierungen der Tora nicht in Frage; vielmehr versucht er sie lediglich durch Kombination auszugleichen” (Seeligmann, “Anfänge der Midraschexegese in der Chronik,” 54). Cf. Rom-Shiloni, “Compositional Harmonization,” 917.

<sup>208</sup> As mentioned earlier, Kilchör argues that Lev 25 and Deut 15 respectively deal with a question not addressed by Exod 21, namely how the slave will provide for him- or herself so as not to end in slavery immediately again. According to him, the solution in Lev 25 is the return to the ancestral land, while Deut 15 prescribes sending the slave off with abundant provisions (Kilchör, *Mosetora und Jahwetora*, 141–53). Jeremiah 34 could be taken to support this view, claiming that Jer 34 sees a common concern in Lev 25 and Deut 15. It does not, however, identify this common concern as sufficient provisions upon release of the slave. Instead, Jer 34 seems to see the common concern in Lev 25 and Deut 15 as securing the release of the subservient as soon as possible. Thus, Jer 34:8–11 prescribes an immediate release, without mentioning provisions for all the released slaves suddenly having their freedom returned.

<sup>209</sup> Because Jer 34 does not resolve the tension between Lev 25 and Deut 15, as for example in the difference between the Sabbatical and Jubilee year cycle, we are not entitled to call it a synthesis. Rather, it leaves the tension untouched, leaning upon them while simultaneously formulating a third prescription drawing upon both.

references” in Jer 2:3; 3; and 49:1–2, four qualities of what she calls ‘harmonization’:

In the wake of Rofé’s study of Josh 20, four distinctive qualities of harmonization as a literary technique may be recognized (although Rofé himself noted only the first two): (a) Harmonization is motivated by the need to reconcile contradictory (or at least different) statements and seems even more essential when legal traditions are involved. (b) There is no necessary ‘balance’ between the evoked traditions. One may be more explicitly or extensively referenced, the other(s) supplementary in nature. (c) The evoked texts may share common phrases that function as connecting ties. (d) The later author is free to combine his target texts in a way that enhances his own rhetorical aims, a procedure that may include coining his own phraseology. . . . From the standpoint of function, the collation of two or more independent literary or legal traditions into one combined text may serve different goals. Two of these functions have been thoroughly analyzed in previous scholarship. Within narrative passages, harmonizations function to resolve contradictions, discords, and/or gaps within the plot. Within a legal text, they are used to clarify or blend legal regulations in order to adapt these effectively to the author’s time and circumstances (e.g., Josh 20:1–9; Neh 8:13–18).<sup>210</sup>

To me Rom-Shiloni’s definition of ‘harmonization’ seems too broad and vague to be a useful tool.<sup>211</sup> For example, it would be negligent to call Jer 34 a harmonization of Lev 25 and Deut 15. Still, her four points are useful in terms of helping us to further valorize the dialectical features of Jer 34 already discussed. First, the author of Jer 34

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<sup>210</sup> Rom-Shiloni, “Compositional Harmonization,” 919. The article by Rofé that she refers to is Rofé, “Joshua 20: Historico-Literary Criticism Illustrated,” 131–47. Cf. also her seven summary points, Rom-Shiloni, “Compositional Harmonization,” 937–38. And then in a footnote referring to Fishbane, she also writes regarding blending of legal traditions: “According to Fishbane, *Biblical Interpretation* (see n. 13), 164–65, this is the major motivation behind the legal exegesis of Deuteronomy in reference to what he considered to be ‘earlier JE and P traditions.’ The blending of the earlier sources, according to Fishbane (220–221), reflects the Deuteronomic author’s attitude that they are equally authoritative, although they represent different traditions in relation to one and the same topic” (Rom-Shiloni, “Compositional Harmonization,” 919n). She formulates the author’s freedom with a good ‘Jeremianic’ pun: “What appears very plainly throughout is the prophet’s freedom in handling different legal traditions in their exact terminology and conceptions, which are for him as clay in the potter’s hand” (Rom-Shiloni, “Compositional Harmonization,” 933). Her following statement is also relevant for Jer 34: “if we consider these verses to be ‘authentic,’ we see Jeremiah, or his contemporary tradents, uniting Priestly terminology (and conceptions) with a Deuteronomic worldview and intertwining them in this prophecy to create entirely original meanings” (Rom-Shiloni, “Compositional Harmonization,” 927).

<sup>211</sup> Rom-Shiloni defines ‘harmonization’ as follows: “Harmonization (also called coordination, combination, collation, conflation, or blend) is usually treated as a scribal phenomenon in two different contexts – either as a technique of literary composition performed by authors and redactors or as part of the transmission process performed by scribes, tradents, and translators” (Rom-Shiloni, “Compositional Harmonization,” 914.).

does not seem to feel a “need to reconcile contradictory” statements in Lev 25 and Deut 15. For example, he leaves the obvious tension between the timeframe of the sabbatical and Jubilee years untouched. Rather, he goes beyond both passages by using one source to radicalize the other. Second, Jer 34:14 contains the clearest case of reuse, namely of Deut 15:1, 12. This could be taken as a basis for arguing that Deut 15 is given a more dominant role than Lev 25. However, as argued above, the situation rather seems to be one of alternating between the two sources so as to create a dialogue or dialectic between them. Third, even if קרא + דָּרֹר from Lev 25:10 and קרא + שְׁמִטָּה from Deut 15:2, 9, or the common lexeme אָס could be said to constitute possible bridges for the author of Jer 34 between Lev 25 and Deut 15, this is by no means evident. It makes more sense to see him as moving between his sources such that it is relatively clear, from clause to clause, whether it is Lev 25 or Deut 15 that is being reused. Fourth, and finally, we also can see a creative reuse in Jer 34 where the author is clearly not restricted to preserving an exact correspondence to his sources. While Rom-Shiloni’s points are perceptive and helpful, they would need modification and specification in light of Jer 34. Proto-halakhic reuse should not be seen as a homogenous approach with multiple qualities, but rather as allowing multiple and various literary strategies, depending on the intention of the author and message in a specific context. Rom-Shiloni basically appears to be saying much the same thing. She acknowledges the dual phenomenon of intentional and creative reuse, a phenomenon repeatedly witnessed in this study, as follows:

Two features of this rhetorical/literary technique within the book of Jeremiah (and prophecy in general) deserve special attention: the thoughtful *intentionality* behind the harmonizations and the prophet’s *freedom* in creating harmonizations in what appear oftentimes to be virtuosic ways. The prophet clearly feels completely free to create these wordplays and thematic combinations purely to suit the context of his

prophecy. Jeremiah utilizes these national narrative and legal traditions interpretively, in the most creative ways – making use of analogy, expansion, transformation, reversal, and many other techniques – to tap this treasury of traditions for his own message.<sup>212</sup>

Again: “The prophet pursues the double (and not easily cooperative) aims of preserving authoritative earlier traditions while creating new prophetic messages.”<sup>213</sup> Finally, having discussed reuse in narrative passages and legal texts, her comment on the prophetic literature seems right on the mark in light of Jer 34:

The prophetic literature suggests that a third, more sophisticated function may stand behind the harmonization of Pentateuchal traditions. Prophetic combinations of diverse Pentateuchal traditions develop neither out of a need to correct or smooth out narrative irregularities nor out of a need to establish or fine-tune legal regulations. Rather, prophets intentionally harmonize Pentateuchal traditions for the sake of their historical or metaphorical value; for the additional moral or ethical lesson that the Pentateuchal materials may be seen to convey; and to authorize their own messages via the evocation of familiar and authoritative traditions.<sup>214</sup>

The author of Jer 34:8–22 treats both Lev 25:39–46 and Deut 15:12–18 as authoritative sources with normative implications for the present. Nevertheless, he takes certain liberties in the reuse by never giving any extensive and exact quotation from either. Even the quote of Deut 15:12 in Jer 34:14 is freely modified. All the time we find alterations of the original passages; for example, minor changes in phrases, reordering the sequence of syntactic elements, and word play. Bergsma writes:

The covenant of emancipation instigated by Zedekiah does not, in fact, aim to fulfill any specific law of the Torah to the letter, but rather is an *ad hoc* enactment meant to fulfill the spirit of all of them, and the language used to describe the event draws from

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<sup>212</sup> Rom-Shiloni, “Compositional Harmonization,” 939.

<sup>213</sup> Rom-Shiloni, “Compositional Harmonization,” 939. For her references to Carr see Rom-Shiloni, “Compositional Harmonization,” 915n, 939. And for her reference to Levitt Kohn’s study of similar compositional techniques found in Ezekiel, see Rom-Shiloni, “Compositional Harmonization,” 940. Carr and Levitt Kohn are discussed in other chapters of this study.

<sup>214</sup> Rom-Shiloni, “Compositional Harmonization,” 920.

both Deut 15 and Lev 25. The fact that the emancipation does not accord exactly with any one legal text has been used to argue that the association between Zedekiah's covenant and the pentateuchal texts is only a product of later redactional activity: originally the event made no reference to older laws and was purely a political expedient. Such a conclusion is unwarranted. The slave release laws of the Covenant, Holiness, and Deuteronomic codes had been formulated for specific socio-cultural conditions that had long since ceased to obtain by the reign of Zedekiah, and no wooden one-for-one application of the laws was possible even if it were desired.<sup>215</sup>

Since it is uncertain whether the making of this covenant coincided with either a Jubilee or sabbatical year (Jer 34 makes no such claim) Zedekiah's concern rather seems to aim at alleviating the slaves neglect, and the possible divine retribution following such neglect, with the Babylonian armies literally at the gate. It is the immediacy of the abolition that strikes us. There was no waiting for a sabbatical or Jubilee year. Jer 34 signals an immediate abolition of Hebrew slaves for all time.

Still, the people are indicted for not having followed Lev 25 and Deut 15, and, therefore, it seems that the people are held responsible for having neglected instructions they could have followed. The divine indictment of Jer 34 appears to presuppose that obedience to Lev 25 and Deut 15 was a possibility for the people given their situation. Only in this way is it possible to understand the severe punishments.

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<sup>215</sup> Bergsma, *The Jubilee from Leviticus to Qumran*, 162. Holladay seems somewhat perplexed about the character of the reuse: "It is thus evident not only that the laws recorded variously in Exodus 21, Leviticus 25, and Deuteronomy 15 have undergone a complicated evolution but also that the specific application of the law referred to in the present passage of Jer uses phraseology that does not reflect directly any single extant formulation of the law" (Holladay, *Jeremiah 26–52*, 238). It seems most reasonable to pose a free reuse as the explanation, rather than "a complicated evolution" often caught up in conjectures. While I often admire Levinson's attention to details, in this case he as well might seem to make too much out of the lack of exact wording (Levinson, "Zedekiah's Release," 320–31). Understanding Jer 34 as reusing Lev 25 and Deut 15 according to what it saw as their intent and trajectory, manumits us as modern readers (to use Levinson's formulation, cf. Levinson, "The Manumission of Hermeneutics," 323–24) from being hung up in the lack of exact reuse of words, phrases, and semantics. Sarna writes: "In actual fact, no real contradiction between the Deuteronomist and Jer. 34 need be assumed, if the latter be understood to be reflecting an ancient interpretation of the intent of the former" (Sarna, "Zedekiah's Emancipation," 147).



Nevertheless, even if a *literal* observance seemed to be expected as realistic, a certain *novum* in Zedekiah’s covenant seems unproblematic—even approved by YHWH (Jer 34:15). Even if they later retracted their abolition of the Hebrew slaves, Jeremiah 34:15 actually confirms that the people temporarily did what was right—despite the variation between Zedekiah’s covenant and the instructions in Torah. In light of Deut 15, Zedekiah’s covenant goes ‘beyond the call of duty’ to release all Hebrew slaves. He neither waits for the time of a sabbatical year according to Deut 15 or a Jubilee year according to Lev 25.<sup>216</sup> Given that both could very likely have been neglected from the exodus until the time of Jeremiah’s contemporaries (Jer 34:14–15), it seems Zedekiah felt that any time was appropriate for their application and the sooner the better.<sup>217</sup> It is an immediate abolition of all Hebrew slavery in full accord with Lev 25. Given the absolute rejection of slavery of Hebrews in Lev 25, Zedekiah certainly did not need to wait for any cycle, whether a sabbatical or Jubilee year, but could implement the actions immediately. Although Lev 25 can be read as only prohibiting harsh treatment of Israeli slaves, thus endorsing a kind of ‘soft’ servanthood, Zedekiah clearly seems to read it in its most radical sense; namely, the entire and immediate abolition of all Hebrew slaves. He can, therefore, also be said to go “beyond the call of duty” in Lev 25, by applying the gender inclusive perspective of Deut 15 as well. Jeremiah 34 radicalizes Lev 25 and Deut 15 respectively by incorporating elements from the other legal passage, seen most clearly in

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<sup>216</sup> The use of *שוב + דָּרוֹר + קָרָא* from Lev 25:10, *מִקֵּץ שְׁבַע-שָׁנִים* from Deut 15:1, and the curse formulas from Lev 26:25–26 and Deut 28:25–26 also show that Jer 34 was not restricted to Lev 25:39–46 and Deut 15:12–18 but also took their contexts into consideration. Instead of drawing upon the blessings of Deut 15:18, Jer 34:17, 20 therefore seems to draw upon the curse-formula in Deut 28:25–26. For the use of the blessing-formula as motivation for individual instruction see Lohfink, “Fortschreibung?,” 153.

<sup>217</sup> Cf. Stackert, *Rewriting the Torah*, 56.

its seeming modification of Lev 25 through the gender inclusive language of Deut 15, and Deut 15 through the abolition of all Hebrew slavery *per se* from Lev 25. He does not interpret Lev 25 as only applicable to the *pater familias* or Hebrew males. In short, Jer 34 picks up the more radical aspects of both Lev 25 and Deut 15, reading the two in light of each other to reach the most radical possible application given the situation they found themselves in.

Further, the divine indictment in Jer 34 links Lev 25 and 26 in order to formulate a talionic principle for retracting Zedekiah's covenant and returning the slaves. By identifying the breach of Zedekiah's covenant and the covenant instructions in Lev 25 and Deut 15, the people will be exposed to the covenant curses of Lev 26:25–26 and Deut 28:25–26. The breach of the manumission instructions invokes the covenant curses (cf. Deut 7:12; Lev 26:14–15). Formulated differently, Lev 26 and Deut 28 are sanctions given for breach of the preceding instructions. The author of Jer 34 seems to see an association between Lev 25:39–46 and Deut 15:12–18 and link them with the covenant curses in Lev 26:25–26 and Deut 28:25–26. Since the people were not willing to let their slaves return to their families and their inheritance property, but, instead, returned them to enslavement, God will return the Babylonians to seek the people's lives (Jer 34:20–22).

What we see in Jer 34 seems to be an instance of a characteristic way of reading Torah instructions in the HB. Torah is neither manipulated, read idealistically, nor read as legislative law, but, rather, embraced as covenantal instruction and applied in it is most far-reaching and radical sense, so as to go beyond even the literal sense of the original

Torah-passages.<sup>218</sup> This evinces a willingness to follow all the ways of YHWH to the end. Muffs sees in Deut 15:10 “the concatenation of the three ideas” of (a) giving willingly, (b) according to one’s means, and (c) the concomitant blessing.<sup>219</sup> This relates to the legal concept of acting gladly in volition, an idea not present in our contemporary concepts of law. The willingness/unwillingness also become a key issue in Jer 34 with the initial release and then re-enslavement.<sup>220</sup>

While Lev 25 forbids enslaving Israelites, Jer 34 does not explicitly criticize past enslavement of Hebrews. The author of Jer 34 does not mention the ‘concession’ of Lev 25 to treat Israelites as hired laborers. Neither does he emphasize the right to enslave foreigners. There is no mention of foreign slaves at all. Further, no reference is given to the possibility of re-enslaving former slaves if they again fall into poverty as implied by Deut 15, something that would be an extenuating reading in light of the re-enslavement of slaves in Jer 34. Jeremiah 34 does not take advantage of the ‘loopholes’ in Lev 25 and

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<sup>218</sup> Levinson writes: “It denies that it is any way derivative. Far from presenting itself as a recondite or jejune rewriting of tradition, it presents itself rather as more original than the tradition it both revises and expands. Similarly, the superscription to Leviticus 25 locates the chapter at Sinai. In effect, H’s *ex post facto* revision of Deuteronomy ironically precedes the covenant at Moab both in hermeneutical time discover ourselves as readers and learn to see the text as the work of writers who were themselves readers, thinkers, and theologians. In mandating that critical engagement with the ancient text, the slave laws of the Pentateuch manumit their modern readers, להפשי חנם, into hermeneutics” (Levinson, “The Manumission of Hermeneutics,” 323–24). And on how Jer 34 is an innovation, see. p. 320. While I agree with Levinson in that Jer 34 represents an expansionistic reading, and as such a *novum*, we nevertheless see that the author stays within a trajectory envisioned through a dialectic between Lev 25 and Deut 15. I would therefore also deviate from Levinson’s oft repeated claim that legal dissimilitude necessarily implied a criticism and rejection of previous traditions, concealed or not. It is not clear that Jer 34 signals a “paradigm shift,” as Pakkala calls it (Pakkala, *God’s Word Omitted*, 362), but rather remains within the framework and trajectory outlined and indicated by the Torah-passages.

<sup>219</sup> Muffs, *Love and Joy*, 179–81, 185. On the volitional aspect of Deut 15:18 see Japhet, “The Relationship between the Legal Corpora,” 82–83.

<sup>220</sup> The initiative for the covenant seems to have come from Zedekiah. Cf. Sarna suggesting that וְשָׂמַח (v. 10) might imply that it was “accepted with some reluctance” (Sarna, “Zedekiah’s Emancipation,” 144).

Deut 15, but reads the texts according to their most far-reaching ethical implications. It is precisely this tendency in prophetic reuse of Torah that we have found in the other cases here, as well. We see a persistent challenging of conventional positions on the question of reuse between Torah and prophets that urges us as modern readers to undertake a more radical reading of the biblical passages for the good of our own lives.

Such an expansionistic reading could be explained as warranted when YHWH is the one who reuses his own texts, as claimed by Jer 34. In any case, it is the reading of Lev 25 and Deut 15 in Zedekiah's covenant with the people that sets the stage for the entire passage. An appropriate question here is whether YHWH approves of the *hermeneutics* of Zedekiah and the people, or if he merely approves of their action to release the slaves? It can be argued that וַתַּעֲשׂוּ אֶת־הַיְשׁוּר בְּעֵינַי (‘‘and you did what was right in my eyes’’) in 34:15 is only an approval of the people's actions (pl. of וַתַּעֲשׂוּ),<sup>221</sup> not the hermeneutics that inspired them. Still, the analogical use of Lev 25 and Deut 15 in the narrative section of Jer 34:8–11, when compared to the divine indictment, seems to place a divine stamp of approval upon the hermeneutics, as well, albeit indirectly. However, the approval is given to a specific hermeneutic isolated from action. The passage focuses upon what Zedekiah and the people do with this reading; how they use it to change their lived life. A faithful proto-halakhic reading is thus not simply words, but also a life that lives out those words in deeds.

Jeremiah 34 is therefore also significant in that it shows that an expansive reading

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<sup>221</sup> Lundbom writes: ‘‘and you did what is right in my eyes. Even though the release may have been done with mixed motives, it is said here to have been a right action’’ (Lundbom, *Jeremiah 21-36*, 564). It could here also be pointed out that according to Jer 34:18, the words of the covenant was not sufficient in itself. Hermeneutics needs to lead to action, a lived life, in order to be faithful reading.

of Torah is not limited to either YHWH or his prophet; instead, persons without any special spiritual giftedness are entitled to read Torah in such a manner and act upon it. An objection to this point might be that Zedekiah, as king, was entitled to such a reading because of his exalted status. However, the formulation in 34:8, אֶחָדֵי כָרַת הַמֶּלֶךְ צִדְקִיָּהוּ (‘‘after king Zedekiah made a covenant with all the people’’) does not specify who actually devised the reading. It only says that Zedekiah made a covenant with the people. While the passage therefore remains silent about who originally proposed the reading, the context clearly emphasizes the people’s responsibility for the reading to be put into action. Jeremiah 34:21 does not single Zedekiah out as having more responsibility in this regard than the people to the extent that they were to remain passive.<sup>222</sup> It could even be argued that Zedekiah and the princes are being punished less severely, only being given into the hands of those seeking their lives (34:21), while the people would be punished with death (34:20). The focus is upon the outcome of the covenant between Zedekiah and the people and not those who originally proposed the reading. Therefore, we cannot confidently speak of Zedekiah’s hermeneutic in this case. The author of Jer 34 presents both Zedekiah and the people as responsible for the actions they perform; actions he formulates in terms of a dialectic between Lev 25 and Deut 15. We will see that Isa 58 goes one step further and appears to hold all the people responsible to read Torah expansionistically. But this is not seen as clearly in Jer 34.

In Jer 34:14 the fathers are held responsible for the manumission instruction in Deut 15, and in Jer 34:17 the people of Zedekiah’s day are possibly held responsible for

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<sup>222</sup> Cp. this with the king as the model Israelite and arch Troah-reader in Deut 17:18–20 (Sonnet, *The Book within the Book*, 71, 73, 78, 234).

Lev 25:39–46, as argued above. But Zedekiah and his people are held responsible for the expansionistic reading only because they endorsed and covenanted upon it in Jer 34:8–10.<sup>223</sup> It would therefore be a stretch to claim that Zedekiah and the people in Jer 34 were expected or obliged to read Torah expansionistically. Still, when they had read it so and made a commitment to put it into action, as presented by the author of Jer 34, they are obliged by their resolution. In other words, as a base line the people are held morally responsible for YHWH's covenant instructions in the past (34:13, 17), but as Zedekiah and the people follow up the invitation in Torah to read the passages expansionistically, they are held responsible for the greater insight and higher commitment that result from such a reading. While Jer 34 can not be taken to support the claim that we, as readers, are expected to read Torah expansionistically, it can be taken as support that the 'commoner' is entitled to read Torah expansionistically and will be expected to act upon such a reading.<sup>224</sup> An expansionistic reading of Torah thus seems to contain a volitional element. It is voluntary to read it in such a way; it is not a moral obligation. While Torah seems to invite such a reading in the attitude of love (Deut 6:5–9), it could also be done in fear, as seems to have been the case with Zedekiah and his contemporaries in Jer 34 with the threat of the Babylonian armies at the city gates. The inherent danger of a volition driven

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<sup>223</sup> Since the obligation of the people is formulated in terms of Deut 15:12 in Jer 34:13–14, one could argue that they are held accountable to the less demanding requirement of the two, Lev 25 and Deut 15, since Deut 15 does not abolish Hebrew slavery as such and allows holding Hebrews as slaves between the Sabbatical years. Still, when the people fail to obey this instruction, they are nevertheless judged on the basis of the more demanding requirements of Lev 25 in Jer 34:15–22. Nevertheless, the exact formulations of punishment are drawn both from Lev 26:25–26 and Deut 28:25–26 in both Jer 34:17, 20.

<sup>224</sup> Besides the gender inclusive abolition of Hebrew slavery advocated by Jer 34, as modern readers we may therefore be entitled to read the ethnic inclusive language of Lev 19:34; 25:35; and Ezek 47:22–23 into the manumission legislation, as an argument for abolition of all slavery whatever form it may take nowadays.

by fear is also highlighted by Jer 34, where we learn of the regret on the part of the people for having released their slaves and the subsequent return of the slaves to their masters.

It must also be emphasized that this expansionistic reading is not a hermeneutic without any controls. It is rooted in a close reading of the text that encourages the reader to follow the text's lead in a walk that goes as far as possible with YHWH, whether the text is explicitly clear on or only indicates such a covenantal form of life. Significantly, an expansionist reading is not an undisciplined reuse of Torah instructions. Rather, Jer 34 stays within the framework and boundaries of the manumission instructions of Torah, but reads them expansively, i.e. reads them in their most far-reaching implications.

Perhaps we as modern readers should not be as concerned about legal variation found between the legal corpora of Torah, seeing how the biblical authors, themselves, do not seem to be troubled by what to us as modern readers may look like contradictions. Instead, we should try to learn the art of seeing legal variation as a fertile soil for creative appropriation within the parameters of the texts before us? Tensions create intellectual dissonance, and few things motivate serious thought more. The ongoing production of scholarly reflections on the manumission instructions in Torah—this essay included—is a testimony to the productivity of such tensions. By reading the fractures and incoherence of the passages in the spirit of wholehearted love toward YHWH, who communicates through them, and with a will to walk in his ways as far as they lead, we can enter the long line of faithful readers—both biblical and post-biblical.

## CHAPTER 7

### FASTING IN LEV 16; 23; 25 AND ISA 58:1–14

#### Introduction

That Lev 25 constitutes the background to Isa 61:1–2 is generally accepted, but that it should be seen as the background to Isa 58, as well, is less studied.<sup>1</sup> Some authors have seen a reuse of Lev 16; 23; 25 and Num 29 in Isa 58,<sup>2</sup> while others do not see such a connection.<sup>3</sup> What is the precise relation between the cultic passages relating to the Day

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<sup>1</sup> Cf. Thomas D. Hanks, *God So Loved the Third World: The Biblical Vocabulary of Oppression* (Maryknoll, NY: Orbis Books, 1983), 99.

<sup>2</sup> Cf. Hans Kosmala, “Form and Structure of Isaiah 58,” *Annual of the Swedish Theological Institute* 5 (1967): 80; Hanks, *God So Loved the Third World*, 97–104; Fishbane, *Biblical Interpretation in Ancient Israel*, 304–7; Kyung-Chul Park, *Die Gerechtigkeit Israels und das Heil der Völker: Kultus, Tempel, Eschatologie und Gerechtigkeit in der Endgestalt des Jesajabuches (Jes 56,1–8:58,1–14; 65,17–66, 24)*, *Beiträge zur Erforschung des Alten Testaments und des antiken Judentum* (Frankfurt am Main: Lang, 2003), 237–39; Bergsma, *The Jubilee from Leviticus to Qumran*, 195–98; Bohdan Hrobon, *Ethical Dimension of Cult in the Book of Isaiah*, BZAW 418 (Berlin: de Gruyter, 2010), 165, 202–5; Shalom M. Paul, *Isaiah 40–66: Translation and Commentary*, Eerdmans Critical Commentary (Grand Rapids, MI: Eerdmans, 2012), 480–81. Weinfeld is open to the possibility that the reference to the blowing of the shopfar in Isa 58:1 may be “an allusion to the blowing of the shopfar on the Day of Atonement of the Jubilee year” (Weinfeld, *Social Justice in Ancient Israel*, 18n). Fishbane only speaks of parallels between Isa 58 to Lev 16 and 23, not Lev 25 (Fishbane, *Biblical Interpretation in Ancient Israel*, 304–7). For how Isa 58 combines the Day of Atonement with descriptions of the Sabbatical Year and the Year of Jubilee see Park, *Die Gerechtigkeit Israels*, 237–38; Hrobon, *Ethical Dimension*, 202–205. Sloan gives three reasons for seeing the theme of Jubilee behind Isa 58:6: (1) The Jubiliary *sitz im Leben* of Isa 58 itself, (2) the inner-prophetic relationship to Isa 61:1–3, and (3) the use of the term ἄφεσις in the LXX of both passages, which according to P. Miller was the basis for Jesus merging the two passages together in Luke 4 (Robert Sloan, Jr., *The Favorable Year of the Lord: A Study of Jubiliary Theology in the Gospel of Luke* (Austin, TX: Schola, 1977), 40). Cf. p. 116. Cf. Patrick D. Miller, “Luke 4:16–21,” *Interpretation* 29, no. 4 (1975): 417–21; James A. Sanders, “From Isaiah 61 to Luke 4,” in *Luke and Scripture: The Function of Sacred Tradition in Luke-Acts*, eds. James A. Sanders and Craig A. Evans (Minneapolis: Fortress, 1993), 46–69.

<sup>3</sup> Leslie Hoppe thinks that “the fast which the prophet condemns in Isa 58 is probably the fast established to mourn the destruction of the Temple in 587 B.C. (cf., Zech 7:3, 5; 8:19)” (Leslie J. Hoppe, “Isaiah 58:1–12, Fasting and Idolatry,” *BTB* 13 (1983): 45). Kosmala sees the Day of Atonement as background to Isa 58, but does not mention a literary reuse from Leviticus (Kosmala, “Form and Structure



of Atonement and Year of Jubilee in Lev 16; 23; 25 and the issues of social justice in Isa 58? As far as I can see there are no chronological data linking Isa 58 to the Day of Atonement as such. It is more lexemes, phrases and themes that establish this link.

Lev 16; 23; 25

In contemporary scholarship it is typical to see Lev 1–16(17) as largely Priestly material (P), while Lev 17(18)–26 as largely Holiness material (H).<sup>4</sup> According to this

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of Isaiah 58,” 71, 78). Oswalt asks whether Isa 58 may be a polemic against Lev 16:31, but immediately refutes it (John N. Oswalt, *The Book of Isaiah Chapters 40–66* (Grand Rapids, MI: Eerdmans, 1998), 502), and points out a similar meaning of “affliction of soul” between Lev 16:29, 31 and Isa 58:10 (Oswalt, *Isaiah 40–66*, 497, 506). Otherwise he does not discuss the possibility of a reuse of Leviticus. Neither Claus Westermann, *Isaiah 40–66: A Commentary*, trans. David M. G. Stalker (Philadelphia, PA: Westminster, 1969), 333–42 argue for reuse of Leviticus in Isa 58. He does state that “vv. 13f. are a commentary on a single commandment, the fourth,” and take this to show that “vv. 13f. are an addition to vv. 1–12 dictated—just like 56.2—by zeal for this one commandment which has particular stress put upon it” (Westermann, *Isaiah 40–66*, 340). Cf. 341. Based on this he presumably sees the Decalogue as preceding Isa 58, even if he does not make a case for literary reuse other than thematic correspondence. He does see a link between Isa 58 and 61:1–2 (Westermann, *Isaiah 40–66*, 334, 338, 366–67). Cf. Edward J. Young, *The Book of Isaiah: The English Text, with Introduction, Exposition, and Notes* (Grand Rapids, MI: Eerdmans, 1972), 415–28 neither mentioning Lev 16; 23; or 25, or the Day of Atonement, as possible backgrounds of Isa 58.

<sup>4</sup> For a good overview over scholarship see Nihan, *From Priestly Torah to Pentateuch*, 1–19. He writes: “Actually, particularly in the Anglo-American exegesis, by far the most significant development in the analysis of Leviticus has been the gradual rise of more comprehensive approaches to this book which, in spite of their great diversity, have in common to be interested first and foremost in recovering the inner logic of the various priestly rituals. Seminal studies in this area have been the analysis of the animal classification of Lev 11 by M. Douglas in her epoch-making study of the notion of pollution, *Purity and Danger* (1966), which introduced more generally the analysis of the rituals of Leviticus in terms of ‘symbolic systems’; and, on a distinct but related path, the work of several Jewish scholars concerned with interpreting the P legislation as a comprehensive cultic system, with a coherence and rationale of its own. Distinctive of this approach are the works by M. Haran on Ex 25–31 and 35–40 . . . . It is not excessive to state that these studies have revolutionized the understanding of P’s legislation in many ways, either by making a case for an integrative reading of these laws (whereas earlier scholarship usually postulated an erratic conflation of various pieces of distinct origin) or by evincing the complex theological assumptions underlying certain laws which otherwise made little sense or even appeared arbitrary, such as the grades of sanctity identified by Haran in the description of the wilderness sanctuary, or the taxonomy of pollution analyzed by Milgrom and Wright in Lev 11–15, with its division into three primary categories of pollution (minor, major, and ‘extreme’) requiring different forms of seclusion from the community (one-day seclusion, seven-day, or expulsion from the camp). In the last two decades, this approach to Leviticus has also gradually made its way in Europe, and can be found in the work of various authors such as A. Marx in France, R. Rendtorff in Germany, or A. Schenker in Switzerland” (Nihan, *From Priestly Torah to Pentateuch*, 15–16).

model Lev 16; 23; and 25 would be located in two different textual corpora. There are however some arguments for seeing Leviticus as a more unified composition. Mary Douglas outlines Leviticus in a ring as follows,<sup>5</sup> as can be illustrated in Table 18:

**Table 18. Ring Construction of the Book of Leviticus**

		Second turn, Righteousness (Chap. 26)		
Latch (chap. 27) Holy Things				
<i>Exposition</i>			<i>Beginning of the Ending</i>	
Law of Offerings, sins, holy places, and holy things (chaps. 1–7)			Holy times, law of talion, Sabbath of the land, Jubilee (chaps. 23–25)	
(chaps. 8–10)			(chaps. 21–22)	
Consecration of Aaron and his sons, defilement of his sons			Defiled and blemished priests, defiled priest’s wife, blemished sacrificial animals	
(chaps. 11–17)				
Unclean and blemished things				
(chap. 18)	Regulation of sex, Molech	{	First turn (chap. 19) Righteousness	} (chap. 20) Molech, regulation of sex

Jacob Milgrom called Douglas’ model of a ring construction “the most commendable attempt to account for the organization of Leviticus.”<sup>6</sup> While this proposal

<sup>5</sup> Mary Douglas, “Poetic Structure in Leviticus,” in *Pomegranates and Golden Bells: Studies in Biblical, Jewish, and Near Eastern Ritual, Law, and Literature in Honor of Jacob Milgrom*, eds. David P. Wright, David Noel Freedman and Avi Hurvitz (Winona Lake, IN: Eisenbrauns, 1995), 253.

<sup>6</sup> Milgrom, *Leviticus*, 6. Cf. Gane, *Leviticus, Numbers*, 34.

sees Lev 23–25 as matching Lev 1–7, Lev 16 is seen as part of the larger section Lev 8–17 that matches Lev 21–22. It is therefore not clear how the three chapters would structurally belong together. Roy Gane, partly following William Shea, proposes a structure seeing Lev 16 as the center section of the book:<sup>7</sup>

- I. Sacrificial Worship (chs. 1–7)
- II. Description of Ceremonies That Founded the Ritual System (chs. 8–10)
- III. Purity Versus Impurity (chs. 11–15)
- IV. Purgation of Sanctuary and Camp on Day of Atonement (ch. 16)
- V. Holy (Sacrificial) Slaughter (ch. 17)
- VI. Community Holiness (chs. 18–20)
- VII. Special Holy Entities (chs. 21–27)

While this highlights the role of Lev 16, again there is no clear structural link to Lev 23 and 25. The link between these chapters therefore rather seems to be on the level of content rather than on the structural level.

Lev 25:1 begins with the phrase וַיְדַבֵּר יְהוָה אֶל־מֹשֶׁה בְּהַר סִינַי לֵאמֹר (“And the Lord spoke to Moses at Mount Sinai, saying”), marking the following as one discursive unit ending in Lev 26:46. It is only a thematic shift that indicates a new aspect as we come to v. 8. For our purpose, we can note the link between the sabbatical years and Jubilee year. The text as it now stands appears as intended to be viewed as one literary and legal unit. However, there have been numerous attempts to also see various compositional strata in this text. Summing up the major views, ending with Wenham and Levine who have not

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<sup>7</sup> Gane, *Leviticus, Numbers*, 31, 35–36. Cf. William Shea, “Literary Form and Theological Function in Leviticus,” in *The Seventy Weeks, Leviticus, and the Nature of Prophecy*, ed. Frank Holbrook, Daniel and Revelation Committee Series 3 (Washington, DC: Biblical Research Institute, 1986), 149. For other arguments for seeing Lev 16 as the literary center of the book of Leviticus see Wilfried Warning, *Literary Artistry in Leviticus* (Leiden: Brill, 1999).

made an attempt at a compositional analysis, Milgrom concludes: “I shall follow the last position, not because the identification of the literary strata is too difficult, but because the search for them – if they exist at all – is meaningless. The chapter, as is, flows logically and coherently. Even if the redactor had different sources before him, he welded them together in such an artistic and cogent sequence that it suffices to determine what he had in mind.”<sup>8</sup>

### Isa 58

There is no scholarly consensus as to the genre of Isa 58.<sup>9</sup> While the majority of scholars see 58:13–14 as a later addendum,<sup>10</sup> several scholars have argued that these two verses are an integral part of the chapter.<sup>11</sup> I will deal with these arguments below where they relate to the present discussion. Westermann has pointed out that since Isa 59 begins a new section and both Isa 56:1–2 and 58:13–14 mention the Sabbath, these seem to constitute the frame of Isa 56–58 as one literary unit.<sup>12</sup> Oswalt rather sees 58:1–59:21 as

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<sup>8</sup> Milgrom, *Leviticus 23–27*, 2150.

<sup>9</sup> Hrobon, *Ethical Dimension*, 167.

<sup>10</sup> E.g. John L. McKenzie, *Second Isaiah*, AB 20 (New York: Doubleday, 1968), 165; Fishbane, *Biblical Interpretation in Ancient Israel*, 304–7; Joseph Blenkinsopp, *Isaiah 56-66: A New Translation with Introduction and Commentary*, The Anchor Bible 19B (New York: Doubleday, 2003), 181. Cf. Blenkinsopp, *Isaiah 56-66*, 181.

<sup>11</sup> Kosmala, “Form and Structure of Isaiah 58,” 80; Gregory J. Polan, *In the Ways of Justice toward Salvation: A Rhetorical Analysis of Isaiah 56–59* (New York: Peter Lang, 1986), 225, 241; Brevard S. Childs, *Isaiah*, OTL (Louisville, KY: Westminster John Knox, 2001), 480–81; Park, *Die Gerechtigkeit Israels*, 225–28, 238–40, 247–49, 275–77; Hrobon, *Ethical Dimension*, 197–205; Paul, *Isaiah 40–66*, 493; Kline, *Allusive Soundplay*, 86n.

<sup>12</sup> Westermann, *Isaiah 40–66*, 340. Westermann, however, sees Isa 58 as containing “many disparate elements” with vv. 13–14 as “an addition” in the post-exilic period (Westermann, *Isaiah 40–66*, 333, 340–41). Cf. his various discussions on pp. 333–42. We could maybe also add the theme of righteousness and justice in 56:1–2 as reflected in Isa 58:6 (cf. Weinfeld, *Social Justice in Ancient Israel*, 221). Michael Barré has provided satisfactory reasons for why vv. 13–14 should be seen as part of the

one unit, with 58:1–14 depicting true religion, 59:1–15a speaking of the people’s failure, and 59:15b–21 portraying God’s action on behalf of his people.<sup>13</sup> The addressee seems to be the people as a community, or spokesmen of these (58:3).<sup>14</sup>

Isa 58 seems to have the following structure:

1. Isa 58:1: Prologue with divine imperatives to the prophet to call a solemn assembly, as the Day of Atonement (often rendered as the ‘Day of Atonement’), to make known to the people their sins.<sup>15</sup> The reference to Jacob forms an *inclusio* in the chapter with the reference to the same patriarch in 58:14.<sup>16</sup>

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original composition (Michael L. Barré, “Fasting in Isaiah 58:1–12: A Reexamination,” *BTB* 15 (1986): 95–96). Andreasen sees vv. 13–14 as likely to be part of the chapter as a whole on the basis of thematic links, seeing it as probably dated to 538–20 B.C. (Andreasen, *The Old Testament Sabbath*, 38–39). Cf. 253n, 269. Oswalt also comment that “the chapter is so unified that scholars find little agreement concerning its subdivisions” (Oswalt, *Isaiah 40–66*, 494). Cf. Polan, *In the Ways of Justice*, 275ff. For others seeing vv. 13–14 as separate and a later addition see Kosmala, “Form and Structure of Isaiah 58,” 69, 79–80. Kosmala dates the composition and additions to the exilic and/or post-exilic period (Kosmala, “Form and Structure of Isaiah 58,” 78). Even if he claims several additions and editions of the poem he nevertheless says that it “is undoubtedly one of the most highly finished ancient Hebrew compositions, and we are very fortunate that it has come down to us practically intact” (Kosmala, “Form and Structure of Isaiah 58,” 79).

Konrad Schmid explains how the conditionality in Isa 56–66 has commonly been used as argument to distinguish between Deutero-Isaiah (chs. 40–55) and Trito-Isaiah (chs. 56–66). In contrast to this he writes: “The traditional distinction between chapters 40–55 (‘Deutero-Isaiah’) and 56–66 (‘Trito-Isaiah’), if understood in the sense of two originally independent literary core traditions, can no longer be sustained” (Schmid, *The Old Testament*, 167). As “only chapters 56–59 are conceptually ‘Trito-Isaianic’ in the sense of new conditions placed on the proclamations of salvation” he concludes that only these chapters should be ascribed to a later ‘Trito-Isaiah,’ “as the prophecy of scribal tradents that never existed except as texts for a book” (Schmid, *The Old Testament*, 168). The distinctions are made on purely thematic or conceptual grounds, and it is legitimate to ask how sound such procedures are, as they unavoidable become subjective criteria for outlining a literary history.

<sup>13</sup> Oswalt, *Isaiah 40–66*, 493.

<sup>14</sup> I see no textual basis for claiming Isa 58 specifically criticises priests as Leslie Hoppe claims, and he does neither provide any evidence for this (Hoppe, “Isaiah 58:1–12, Fasting and Idolatry,” 45–46).

<sup>15</sup> The imperatives in clauses 1, 3, and 4 are all in the 2ms, thus being directed to the prophet rather than the people.

<sup>16</sup> Hanks, *God So Loved the Third World*, 103. Hanks claims it is because “Jacob was unfamous

2. Isa 58:2: God accuses the people for their pretentious and hypocritical religiosity.
3. Isa 58:3a–d: The people interrupt God’s speech to accuse Him of neglect, as He has not responded to their religious practice.<sup>17</sup>
4. Isa 58:3e–14d: God exposes the real intention behind the Day of Atonement by drawing the themes of social justice and compassion from the Jubilee year, and the purpose of the Day of Atonement and weekly Sabbath to give the other, as another needy human or as YHWH, the privilege otherwise reserved for one’s self.
  - a. Isa 58:3e–4d: God again takes up the accusation in 58:2 about the people’s pretentious and hypocritical religiosity.<sup>18</sup>
  - b. Isa 58:5: God exposes the false meaning of the Day of Atonement.
  - c. Isa 58:6a–9e: First set of protases and apodoses.<sup>19</sup>
    - i. Isa 58:6a–7e: Protasis 1 with the condition of living the true

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for having coveted and stolen his brother’s birthright and blessing” (Hanks, *God So Loved the Third World*, 100) that he is referred to in Isa 58:1. If so, and this would need more reflection, 58:14 might again refer to Jacob based on the inherited and apportioned land (cf. *בְּנֵי לֵילָא יִשְׁקָב*).

<sup>17</sup> Paul writes: “The nation accuses God of being inattentive to their pleas, despite, according to them, their genuine attempt to seek Him. They claim that they fulfill all their cultic obligations, yet the Lord remains unresponsive. In reply to their bitter complaint, however, the Deity Himself accuses the nation of hypocrisy and asserts that a true fast, i.e., “a fast acceptable to Him,” is not solely a series of prescribed perfunctory rituals, but must be accompanied by a true moral reversal and by addressing social injustice” (Paul, *Isaiah 40–66*, 480). It reminds of Prov 21:13 which reads: “The one who shuts his ear at the cry of the wretched, he also will cry and not be answered.”

<sup>18</sup> Cf. Paul, *Isaiah 40–66*, 483.

<sup>19</sup> Oswalt also sees what he calls three “if-then” stanzas in Isa 58 (Oswalt, *Isaiah 40–66*, 502, 508).

meaning of the Day of Atonement and Year of Jubilee.<sup>20</sup> It is possible to read this section as containing two protases, the first being introduced with the negative interrogative  $\text{לֹא־יָלֵן}$  in 58:6a and the second with the conditional particle  $\text{כִּי}$  in 58:7c.<sup>21</sup>

ii. Isa 58:8a–9e: Apodosis 1 with the blessings of one’s light, healing and righteousness and encounter with God. As 58:6a–7e contain two protases, likewise we find two apodoses in 58:8a–9e, both being introduced with the consequential particle  $\text{וְאָז}$  in 58:8a and 58:9a.<sup>22</sup>

d. Isa 58:9f–12f: Second set of protases and apodoses.

- i. Isa 58:9f–10b: Protasis 2 continuing with the condition of living the true meaning of the Day of Atonement and Year of Jubilee, introduced by  $\text{אֲנִי}$ .
- ii. Isa 58:10c–12f: Apodosis 2 with a repetition of the blessing of one’s light and intercourse with God, added with the blessings of being satisfied, watered like a garden and taking part in the

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<sup>20</sup> We find a structural similarity underlining the contrast between the false meaning of the Day of Atonement in 58:5, introduced with  $\text{צִוִּים אֲבִתְרֵהוּ}$   $\text{יְהִי־לָהּ צִוִּים אֲבִתְרֵהוּ}$ , and the true meaning of the Day of Atonement in 58:6–7, introduced with  $\text{צִוִּים אֲבִתְרֵהוּ}$   $\text{זֶה צִוִּים אֲבִתְרֵהוּ}$ .

<sup>21</sup> For  $\text{כִּי}$  and  $\text{אֲנִי}$  introducing conditional clauses see Waltke and O'Connor, *Biblical Hebrew Syntax*, 510, 636–67.

<sup>22</sup> For  $\text{וְאָז}$  following a protasis in an apodosis see Koehler et al., *HALOT*, 26.

iii. restoration of the ruins. Here the apodosis is introduced with a *weqatal* verb.<sup>23</sup>

e. Isa 58:13a–14c: Third set of protases and apodoses.

- i. Isa 58:13: Protasis 3 with the condition of setting self and one’s own business aside on the Sabbath and honoring and finding delight in the Sabbath. Again, the protasis is introduced by ׀ִ.
- ii. Isa 58:14a–c: Apodosis 3 with the blessing of finding one’s joy in YHWH and Him making one ride on the heights of the land and enjoying the inheritance of Jacob.<sup>24</sup> As mentioned, the reference to Jacob forms an *inclusio* in the chapter with the reference to the same patriarch in 58:1.<sup>25</sup> The apodosis is introduced by ׀ִ.

5. Isa 58:14f: Concluding discursive remark that these are the words from the mouth of YHWH.

It is the prologue in section 1, the people’s response in section 3, God’s accusation and exposition of the false Day of Atonement in sections 4a and 4b, and then afterwards in the protasis-sections that we find the material most clearly reusing elements from Lev 16, 23 and 25. One significant exception

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<sup>23</sup> Waltke and O’Connor writes: “If the protasis of a conditional clause has a non-perfective form with a contingent-future sense (after ׀ִ, ׀ִ etc.), the apodosis is introduced by *wəqatal*; the *waw* has the apparently archaic role of the ‘apodosis *waw*’” (Waltke and O’Connor, *Biblical Hebrew Syntax*, 526). A question is if we should understand the *weqatal* in 58:1 1a–b, d, 12a, c in a similar manner.

<sup>24</sup> Paul: “The reward of one who ‘calls the Sabbath ‘Delight’ (ענג) will be that he shall find his ‘delight’ (תענג) in the Lord” (Paul, *Isaiah 40–66*, 495).

<sup>25</sup> Hanks, *God So Loved the Third World*, 103.



to this is יְעֲנֶהּ יְיָ in 58:9b; I will return to this below.

### Orality and Writing in Isa 58

Isaiah 58 shows some indicators of the orality in manner in which it is written. Isa 58:1 opens with the exhortation to cry out loud (קָרָא בְּגֵרוֹן) and the words are preserved for us in written form. As argued below, this shows signs of literary dependence, and at the same time the creative play made between Lev 16; 23; 25 might be understood more in terms of living Torah. Westermann comments on Isa 58:1 and 61:1–3, quoting Volz: “At all events, both point to an activity by word of mouth on the part of the speaker here, even if in principle ch. 58 is to be thought of as a compilation in writing. ‘Everything suggests that the leader was speaking in public; perhaps in the synagogue at an assembly for fasting.’”<sup>26</sup> Further, the abrupt participant-reference shift in 58:3 is primarily indicated by the shift of person and number to 1cpl.<sup>27</sup> In the middle of YHWH’s discourse the people interfere by articulating their surprised question. While YHWH is still the speaker in v. 6a, from v. 8d and onwards YHWH is only spoken of in the third person, now in the prophet’s voice, with the one exception of the 1cs suffix יְקִדְשִׁי (“my holy (day)”) in v. 13b.<sup>28</sup> The MT text simply assume a discourse setting where the participants are known and the reader will know who speaks when to whom. The LXX

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<sup>26</sup> Quoted in Westermann, *Isaiah 40–66*, 334. Volz’ reference to the synagogue presupposes a post-exilic dating of Isa 58.

<sup>27</sup> Cf. my Kenneth Bergland, “Reading as a Disclosure of the Thoughts of the Heart,” in *Scripture and Philosophy: Essays Honoring the Work and Vision of Fernando Luis Canale*, eds. Tiago Arrais, Kenneth Bergland and Michael Younker (Berrien Springs, MI: ATS, 2016), 263–64.

<sup>28</sup> Cf. Westermann, *Isaiah 40–66*, 333. Westermann did not see v. 13 as part of the original composition, and this might be the reason he ignores יְקִדְשִׁי.

translator clearly sensed the abruptness of the Hebrew and added λέγοντες (“saying”), making it clear that the people spoken about in vv. 1–2 are now quoted.<sup>29</sup> But the MT does not give such cues. As 57:21 ends with the prophet speaking about God in the 3ms, it is not immediately clear who initially speaks to whom in 58:1–2. The participants are not introduced. Based on the content, we can identify the speaker as YHWH and the addressee as the prophet. To underline YHWH as speaker, 58:14 ends with כִּי פִי יְהוָה דִּבֶּר (“For the mouth of YHWH has spoken”).<sup>30</sup> All this indicates a discourse setting where the reader is almost assumed to be in the audience, visually identifying who is speaking to whom.

### A Case for Reuse

The following Table 19 gives an overview over the parallels between Lev 16; 23; 25; and Isa 58.

*Distinctiveness:* First, a key concept for establishing a case for reuse between Isa 58 and Lev 16; 23 is in II ענה in piel + נָפַשׁ.<sup>31</sup> We only find these used together in Lev

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<sup>29</sup> Oswalt also points out that the Targums do the same, cf. Oswalt, *Isaiah 40–66*, 493n.

<sup>30</sup> The ambiguity of דִּבֶּר דִּבֶּר in Isa 58:13 attracted much attention in Second Temple Judaism, as it was taken as the key passage for a Sabbath prohibition on speech, חַשְׁבֵּת understood as the weekly Sabbath rather than Yom Kippur. Jassen discusses the reuse or non-reuse of Isa 58:13 in CD 10:17–19; 4Q264a I I 5–8; Jub 2:29–30; 50:6–13; m. Shabb. 23:3; b. Shabb. 150a–b; t. Shabb. 17:9; y. Shabb. 15.3 15b–c; Leviticus Rabbah 34:16; Mishnat Rabbi Eli‘ezer 20; Mek. de-R. Shim‘on b. Yoḥai on Exod 35:2; Midr. ha-Gadol on Exod 20:10 (Jassen, *Scripture and Law*, 68–130 (esp. 100). He also discusses CD 10:20–21, 4Q264a I I 5–8, Mos. 2:211, Mekhilta Ba-Hodesh 7; Mekhilta Shabbata I; b. ‘Erub. 38b; Leviticus Rabbah 34:16; Pesiqta Rabbati 23:8; b. Shabb. 150a–b on the prohibition against thoughts of labor on the Sabbath as they relate to Isa 58:13 (Jassen, *Scripture and Law*, 131–71).

<sup>31</sup> Milgrom writes: “The *pi’el* of the root ‘*nh* is used to express the humbling or mishandling of an individual (Gen 16:6), of a nation by war or bondage (Gen 15:13), of a woman by cohabitation (Gen 34:2), or it connotes affliction by God as a discipline (Deut 8:2–3). The verb does not specify by itself the mode, subject, or object of affliction; these must be determined from the context” (Milgrom, *Leviticus 1–16*, 1054).

**Table 19. Lev 16; 23; 25 and Isa 58**

Lev 16:21, 29–31; 23:24, 27–28, 31–32; 25:9–10; Num 29:7	Isa 58:1–14
<p>Lev 16:21 וּסְמַךְ אֶהְרֵן אֶת־שְׁתֵּי יָדָיו עַל־  ראש השעיר החי והתודה עליו את־כל־  עונת בני ישראל ואת־כל־פְּשָׁעֵיהֶם לְכֹל־  חַטָּאתִם ונתן אתם על־ראש השעיר  ושלח ביד־איש עתי המדברה: . . .  16:29 והיתה לכם לחקת עולם בחדש  השביעי בעשור לחדש תַעֲנֹן אֶת־  נַפְשֵׁיכֶם וְכָל־מְלֵאכֶה לֹא תַעֲשֶׂן האזרח  והגר הגר בתוכם:  16:30 כִּי־בַיּוֹם הַזֶּה יִכְפֹּר עֲלֵיכֶם לְטַהֵר  אתכם מכל חַטָּאתֵיכֶם לִפְנֵי יְהוָה תַטְהַרוּ:  16:31 שַׁבַּת שַׁבְּתוֹן הִיא לָכֶם וְעֲנִיתֶם אֶת־  נַפְשֵׁיכֶם חַקַּת עוֹלָם: . . .  Lev 23:24 דַּבֵּר אֶל־בְּנֵי יִשְׂרָאֵל לֵאמֹר  בחדש השביעי באחד לחדש יהיה לכם  שַׁבְּתוֹן זִכְרוֹן תְּרוּעָה מִקְרָא־קֹדֶשׁ: . . .  23:27 אַךְ בַּעֲשׂוֹר לַחֲדָשׁ הַשְּׁבִיעִי הַזֶּה יוֹם  הַכִּפּוּרִים הוּא מִקְרָא־קֹדֶשׁ יִהְיֶה לָכֶם  וְעֲנִיתֶם אֶת־נַפְשֵׁיכֶם<sup>32</sup> וְהִקְרַבְתֶּם אֵשֶׁה  לַיהוָה:  23:28 וְכָל־מְלֵאכֶה לֹא תַעֲשֶׂן בַּעֲצֵם הַיּוֹם  הַזֶּה כִּי יוֹם כִּפּוּרִים הוּא לָכֶם עֲלֵיכֶם לִפְנֵי</p>	<p><sup>1</sup> קרא בגרון אל־תחשך כשופך הרם קולך והגד  לעמי פִּשְׁעֵם ולבית יַעֲקֹב חַטָּאתֵם:  <sup>2</sup> ואותי יום יום ידרשון ודעת דרכי יחפצון כגוי  אשר־צדקה עֲשֶׂה ומשפט אלהיו לא עזב  ישאלוני משפטי־צדק קרבת אלהים יחפצון:  <sup>3</sup> למה צמנו ולא ראית עֲנִינוּ נַפְשָׁנוּ<sup>33</sup> ולא תדע הן  ביום צמכם תמצאו־חֶפֶץ וְכָל־עַצְבֵיכֶם תִּנְגְּשׁוּ:  <sup>4</sup> הן לריב ומצה תצומו ולהכות באגרף רשע לא־  תצומו כיום להשמיע במרום קולכם:  <sup>5</sup> הכזה יהיה צום אבחרהו יום עֲנוֹת אדם נַפְשׁוֹ  הלכף כאגמן ראשו ושק ואפר יציע  הלזה תקרא־צום ויום רצון ליהוה:  <sup>6</sup> הלוא זה צום אבחרהו  פתח חרצבות רשע התר אגדות מוטה  ושלח רצוצים חפשים וכל־מוטה תנתקו:  <sup>7</sup> הלוא פרס לרעב לחמך ועניים מרודים תביא  בית  כִּי־תִרְאֶה עָרֶם וְכִסִּיתוּ<sup>34</sup> ומבשרך לא תתעלם:  <sup>8</sup> אז יבקע כשחר אורך וארכתך מהרה תצמח והלך  לפניך צדקך כבוד יהוה יאספק:  <sup>9</sup> אז תקרא ויהוה יענה תְּשׁוּעָה ויאמר הנני</p>

<sup>32</sup> Lev 16:29, 31; 23:32 are unattested in the DSS. 11QpaleoLev<sup>a</sup> supports MT Lev 23:27 by reading נַפְשֵׁיכֶם אֶת־[. . .]ועֲנִיתֶם־אֶת־. The LXX renders the Hebrew in Lev 16:29 as ταπεινώσατε τὰς ψυχὰς ὑμῶν (“ye shall humble your souls” (Brenton)) and as καὶ ταπεινώσατε τὰς ψυχὰς ὑμῶν (“ye shall humble your souls” (Brenton)) in Lev 16:31; 23:27, 32.

<sup>33</sup> Both 1QIsa<sup>a</sup> and 1QIsa<sup>b</sup> have the feminine plural of נַפְשָׁי by נַפְשׁוֹתֵינוּ / נַפְשׁוֹתֵינוּ, also attested in LXX with τὰς ψυχὰς and Vulgate with *animam*. As far as I can see the form נַפְשָׁתְנָא in Targum Jonathan can be both singular and plural of נַפְשָׁ. See Paul, *Isaiah 40–66*, 484. Again, I here only include text critical notes that are somehow relevant for the present discussion, and not discussed elsewhere in this chapter.

<sup>34</sup> 1QIsa<sup>a</sup> here adds בגד. This clarifies what the naked should be covered with, something implicit in MT and 1QIsa<sup>b</sup>. Paul comments: “When you see the naked, to clothe him—1QIsa<sup>a</sup> adds the word בגד (“clothing”), וְכִסִּיתוּ בגד, as in Ezek 18:7: “And clothed the naked (בגד יְכַסֶּה בַּגְד)” (cf. also Ezek 18:16). One may compare this to one of the reforms (*mīšarum*) initiated by Esarhaddon, king of Assyria, in which he declared: *mīrānīte lubuštu ulabbīšma*, “I provided the naked with clothing” (*CAD M/2:22*)” (Paul, *Isaiah 40–66*, 488).

Table 19 — *Continued.*

Lev 16:21, 29–31; 23:24, 27–28, 31–32; 25:9–10; Num 29:7	Isa 58:1–14
<p>יהוה אלהיכם: . . .  <sup>23:31</sup> כל-מלאכה לא תעשו חקת עולם  לדתיכם בכל משבתיכם:  <sup>23:32</sup> שבת שבתון הוא לכם ועניתם את-  נפשתיכם בתשעה לחדש בערב מערב  עד-ערב תשבתו שבתכם:פ. . .  <sup>Lev 25:9</sup> והעברת שופר תרועה בחדש  השבעי בעשור לחדש ביום הכפרים  תעבירו שופר בכל-ארצכם:  <sup>25:10</sup> וקדשתם את שנת החמשים שנה  וקראתם דרור בארץ לכל-ישיביה יובל  הוא תהיה לכם ושבתם איש אל- אחזתו  ואיש אל-משפחתו תשבו:  <sup>Num 29:7</sup> ובעשור לחדש השביעי הזה  מקרא-קדש יהיה לכם ועניתם את-  נפשתיכם כל-מלאכה לא תעשו:</p>	<p>אם-תסיר מתוכך מוטה שלח אצבע ודבר-און:  <sup>10</sup> ותפק לרעב נפשך ונפש נענה תשביע  וזרח בחשך אורך ואפלתך כזהרים:  <sup>11</sup> ונחך יהוה תמיד והשביע בצחצחות נפשך  ועצמתך יחליץ<sup>35</sup> והיית כגן רוה  וכמוצא מים אשר לא-יכזבו מימיו:  <sup>12</sup> ובנו ממך חרבות עולם מוסדי דור-ודור  תקומם  וקרא<sup>36</sup> לך גדר פרץ משבב נתיבות לשבת:  <sup>13</sup> ביום קדשי  וקראת לשבת ענג לקדוש יהוה מכבד  וכבדתו מעשות דרכיך ממצוא חפצך ודבר דבר:  <sup>14</sup> אז תתענג על-יהוה והרכבתך על-במותי  ארץ  והאכלתיך נחלת יעקב אביך כי פי יהוה דבר:  ס</p>

<sup>Lev 16:21</sup> And Aaron shall lay both his hands upon the head of the live goat, and confess over it all the iniquities of the sons of Israel and all their rebellions and all their sins. And he shall put them on the head of the goat, and send [it] away, by the hand of one ready,

<sup>1</sup> Cry with a throat, do not hold back, Raise your voice like a shofar

And make known to my people their rebellion And to the house of Jacob their sins.

<sup>2</sup> Yet they seek me daily And *desire* the knowledge of my ways

<sup>35</sup> While MT reads the singular נִחְלִיץ, both 1QIsa<sup>a</sup> (יחליצו) and 1QIsa<sup>b</sup> (יחלצו) have the plural form here. See Paul, *Isaiah 40–66*, 491.

<sup>36</sup> 1QIsa<sup>a</sup> here has וקראו, again rendering the plural instead of the MT singular. 1QIsa<sup>a</sup> seems to want to avoid the collective sense implied in MT and rather bring out the plural explicitly. Kutscher comments here: “Most of the changes in number—sing. and pl.—are due to exegetical considerations, i.e. the desire to achieve internal agreement in number within a single verse, etc. The Scroll’s reading thus frequently seems to be more appropriate than that of the Masoretic Text; but in view of the obvious tendency to coordinate, we need not assume that the reading contained in the Scroll is necessarily that of the underlying text” (Eduard Yechezkel Kutscher, *The Language and Linguistic Background of the Isaiah Scroll (IQIsaA)* (Leiden: Brill, 1974), 43). And again: “Several instances may be explained as due to a tendency towards harmonization where the context would seem to require it—i.e. in instances where the subject and object of the verse differ in number in the MT, or where there is both a singular and plural subject in a single sentence, and the like” (Kutscher, *The Language and Linguistic Background of the Isaiah Scroll (IQIsaA)*, 395). Paul writes: “The form קָרָא is an archaic *qal* passive (see also 48:8; 61:3; 62:2)” (Paul, *Isaiah 40–66*, 492).

Table 19 — *Continued.*

Lev 16:21, 29–31; 23:24, 27–28, 31–32; 25:9–10; Num 29:7	Isa 58:1–14
<p>into the wilderness. . . .</p> <p><sup>16:29</sup> And it shall be to you an ordinance forever, in the seventh month, on the tenth [day] of the month, you shall <u>afflict</u> your <u>persons</u>, and <u>you shall not do any work</u>, the native or the stranger dwelling in your midst.</p> <p><sup>16:30</sup> For on this day he does purgation for you to cleanse you from all your <u>sins</u>. You shall be clean before YHWH.</p> <p><sup>16:31</sup> It is a Sabbath of Sabbaths for you, and you shall <u>afflict</u> your <u>persons</u>, an ordinance forever. . . .</p> <p><sup>23:24</sup> Speak to the sons of Israel saying: “In the seventh month, on the first [day] of the month it shall be a memorial Sabbath [with] trumpet blast, a holy <u>convocation</u>. . . .</p> <p><sup>Lev 23:27</sup> Now on the tenth [day] of this seventh month is the Day of Atonement, it shall be for you a holy convocation, and you shall <u>afflict</u> your <u>persons</u>, and draw near an offering by fire to YHWH.</p> <p><sup>23:28</sup> And <u>you shall not do any work</u> on that very day, for it is the Day of Atonement to atone on your behalf before YHWH your God. . . .</p> <p><sup>23:31</sup> <u>You shall not do any work</u>. It is an ordinance for ever to your generations in all your <u>dwellings</u>.</p> <p><sup>23:32</sup> It shall be a <u>Sabbath of Sabbaths</u> for you, and you shall <u>afflict</u> your <u>persons</u>. On the ninth [day] of the month, in the evening, from evening to evening you shall <u>keep</u> your <u>Sabbath</u>. . . .</p> <p><sup>Lev 25:9</sup> And you shall pass a blast of the <u>shophar</u> in the seventh month, on the tenth [day] of the month, on the Day of Atonement you shall pass the <u>shophar</u> throughout all your land.</p> <p><sup>25:10</sup> And you shall sanctify the fiftieth year, and <u>proclaim</u> liberty in the land to all who dwell in it. It shall be a jubilee for you, while each one shall return to his property and</p>	<p>As a people that <u>does</u> righteousness And do not despise the justice its god(s). They ask me for the justice of righteousness, <i>They desire</i> the nearness of God.</p> <p><sup>3</sup> “Why have we fasted but you did not see, We <u>afflicted</u> our <u>persons</u> but you did not notice?” “Behold, on the day of your fast <i>you seek business</i> And oppress all your labourers<sup>37</sup>!</p> <p><sup>4</sup> Behold, you fast for the purpose of strife and contention And in order to strike with a wicked fist! You do not fast at this moment To make your voice heard on high.</p> <p><sup>5</sup> Will this be the fast I choose: A day to <u>afflict</u> a man his <u>person</u>? Is it to bow down his head as a rush, Spreading out sackcloth and dust? Is this what you call a fast And a desirable day of YHWH?</p> <p><sup>6</sup> Is not this the fast that I choose: To loose bonds of wickedness, To untie ropes of the yoke, And to let oppressed go free And you snap all yokes?</p> <p><sup>7</sup> Is not this to break your bread for the hungry, And bringing afflicted poor and homeless to a house; If/when you see a naked even to clothe him And not ignore your kin?</p> <p><sup>8</sup> Then your light will burst forth like the dawn And your healing will spring up quickly, And Your Vindicator will walk before your face; The glory of YHWH shall be your rear guard.<sup>38</sup></p> <p><sup>9</sup> Then you shall call and YHWH will answer. You will cry for help and he will say: “Here I am!” If you remove the yoke from your midst, To point finger and speak evil;</p> <p><sup>10</sup> And you offer your <u>person</u>/sustenance to the hungry And satisfy the <u>starved throat</u>, Then your light shall shine in the darkness And your gloom as the noon.</p> <p><sup>11</sup> And YHWH will lead you continually And He will satisfy your person in drought And strengthen your bones. And you will be like a watered garden,</p>

<sup>37</sup> For specific translations I have consulted Paul, *Isaiah 40–66*, 485–94. Unless specifically relevant for the present discussion I do not include discussions here.

<sup>38</sup> Cf. Klaus Koenen, “Zur Aktualisierung eines Deuterocesajawortes in Jes 58,8,” *BZ* 33, no. 1 (1989).

Table 19 — *Continued.*

Lev 16:21, 29–31; 23:24, 27–28, 31–32; 25:9–10; Num 29:7	Isa 58:1–14
<p>each one return to his family.  <small>Num 29:7</small> And on the tenth day of this seventh month there shall be <u>a holy convocation</u> for you, you shall <u>afflict</u> your <u>persons</u>; <i>you shall not <u>do</u> any work.</i></p>	<p>Like a spring of water, Whose water never fail.  <sup>12</sup> And [men] from you will build ancient ruins, Raise up foundations of generations and generations, And call you ‘repairer of a breach, <i>Restorer</i> of paths, in order to <i> dwell</i>’.  <sup>13</sup> If you <i>turn back</i> your foot on the <u>Sabbath</u> <i>From doing your business</i> on my holy day, And you name<sup>39</sup> the <u>Sabbath</u>: “Delight!”, To YHWH’s holy: “Honored!”, And you honor it more than to do your ways, More than <i>finding your business</i> and not speak a word,  <sup>14</sup> Then you will take your pleasure in YHWH And I will cause you to ride over the high places of the land And you will eat the inheritance of your father Jacob For the mouth of YHWH has spoken.</p>

16:29, 31; Lev 23:27, 32; Num 29:7; 30:14; Ps 35:13; Isa 58:3, 5, 10. All of these passages refer to the Day of Atonement, except in the cases of Num 30:14 and Ps 35:13. Outside the Torah only Ps 35:13 and Isa 58 use this expression. Num 29:7 contains three key locutions or concepts also found in Isa 58: (1) מְקַרְא־קִדְּשׁ, (2) עֲנָה + נִפְנֵשׁ, and (3) מְלֶאכָה + לֵא + עֲשֵׂה.<sup>40</sup> It therefore seems reasonable to take these locutions as linked to the Day of Atonement in Lev 16; 23; and Num 29:7.

<sup>39</sup> Note how it is really an issue of naming the Sabbath here: “If you call the Sabbath “Delight”—The prophet now switches from prohibitions to positive commandments: If you shall treat the Sabbath as a day of joy and delight (cf. Saadyah Gaon: “If you shall celebrate the Sabbath with pleasures”). The substantive עֲנָה appears again only in Isa 13:22: “In the palaces of pleasure (עֲנָה).” The expression -לֵא קְרָא denotes naming or designating; cf. Esth 9:26: “For that reason these days were named (-לֵא קְרָאוּ) Purim” (Paul, *Isaiah 40–66*, 494).

<sup>40</sup> For commentators that emphasize the closeness of Num 29:7 to Lev 16 and 23 see Baruch A. Levine, *Numbers 21-36: A New Translation with Introduction and Commentary*, AYB 4A (New York: Doubleday, 2000), 388; Gane, *Leviticus, Numbers*, 751; Philip J. Budd, *Numbers*, WBC 5 (Waco, TX: Word Books, 1984), 317; George Buchanan Gray, *A Critical and Exegetical Commentary on Numbers*, ICC (Edinburgh: T&T Clark, 1903), 411–12; Carl Friedrich Keil, *Pentateuch*, Commentary on the Old Testament (Peabody, Mass.: Hendrickson, 2001), 804–5.

In Num 30:14 the legislation concerns self-imposed vows and sworn obligations of self-denial (ענה + נָפַשׁ) of a woman dependent upon her husband. Here the phrase does not seem to be limited only to fasting, and might refer to other forms of self-denial such as sexual abstinence.<sup>41</sup> Ps 35:13 appears to be more limited to mere fasting, as it also includes the word צום (עָנִיתִי בְצוּם נַפְשִׁי). The psalmist prays, as for a friend or a brother (פָּרַע־כָּאָה in v. 14), for those maligning him and repaying his goodness with evil (vv. 11, 12) by afflicting himself through fasting.

Roy Gane takes the phrase ענה + נָפַשׁ in the more general sense of self-denial as “an outward expression accompanying supplication to God at a time of inner distress.”<sup>42</sup>

The LXX by rendering ענה with ταπεινώω also seems to support this more general understanding of ענה as self-denial or self-humiliation in Lev 16:29, 31; Lev 23:27, 32.

We also find ענה in the *hithpa'el* (Gen 16:9; 1 Kings 2:26 (2x), Ps 107:17; Dan 10:12;

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<sup>41</sup> See Gane, *Leviticus, Numbers*, 761; Levine, *Numbers 21-36: A New Translation with Introduction and Commentary*, 433; Budd, *Numbers*, 323; Milgrom, *Leviticus 1–16*, 1054.

<sup>42</sup> Gane, *Leviticus, Numbers*, 405. Milgrom provides five arguments for why the phrase ענה + נָפַשׁ in itself does not mean mere fast: “There are, however, several reasons why the limitation to fasting does not do justice to the range of the idiom. (1) The words themselves imply more than hunger. To be sure, *nepes̄*, like its Akk. cognate *napištu*, can have the restricted notion of appetite (Ps 107:9) or throat (Isa 5:14). In P, however, it only denotes the individual (2:1) or the body (21:1). Moreover, that *nepes̄* here refers to the self, the entire person, is evident from the use of the root *nh* in the *hithpa'el*, where *nepes̄* does not appear (Ezra 8:21; Dan 10:12; cf. Ps 107:17) and need not appear, because the *hithpa'el* is reflexive. Surely, there are more ways to ‘afflict’ the body than just by starving it. (2) *wēkol-šēbu ‘at ’issār lē ‘annōt nāpes̄* ‘every sworn obligation of self-denial’ of the wife can be annulled by her husband (Num 30:14). Of a certainty, her absentions are not limited to fasting. (3) *‘innētū baššōm napšī* ‘I afflicted myself with a fast’ (Ps 35:13) clearly implies that there are other means of self-affliction than fasting. (4) Daniel’s attempt *lēhit ‘annōt* (Dan 10:12) consisted of three weeks of mourning during which he ‘refrained from all choice food, no meat or wine passed my lips and I did not anoint myself’ (ibid., v 3). Thus his self-denial consisted of a partial fast and, in addition, he abstained from anointing his body. The latter deprivation is included among the items enumerated in the rabbinic definition: ‘Afflict yourselves, from food, drink, and from enjoying bathing, and from anointing, and from sexual intercourse’ (Tg. Ps.-J.; cf. m. Yoma 8:1). (5) King David not only fasts, but sleeps on the ground, does not change his clothes, and refrains from sex, anointing, and bathing (2 Sam 12:16–20), a striking confirmation of the rabbinic definition” (Milgrom, *Leviticus 1–16*, 1054). See also Milgrom, *Leviticus 23–27*, 2023; John E. Hartley, *Leviticus*, WBC 4 (Dallas, TX: Word Books, 1992), 242).

Ezra 8:21).<sup>43</sup> The meaning in these cases seems to be to subject oneself to affliction.<sup>44</sup> Ibn Ezra therefore seems to overstate the evidence when based on Ps 35:13 he stated the following rule: “The rule is that every time ‘abstinence’ (עִינוּי) is mentioned in Scripture together with ‘self’ (נַפְשׁ), it denotes fasting.”<sup>45</sup> It is only when צוֹם is used together with עִנוּי + נַפְשׁ, that we can be certain that it has the more narrow meaning of fasting.

Ps 35:13 seems too far removed from Isa 58 to give a basis for arguing that there is reuse between the two.<sup>46</sup> Still, Ps 35:13 raises the following question: As Isa 58 uses both עִנוּי + נַפְשׁ and צוֹם (Isa 58:3, 5, 6), while צוֹם is absent from the Torah, including Lev 16; 23 specifically,<sup>47</sup> is Isa 58’s more narrow understanding of self-denial (עִנוּי + נַפְשׁ) as fasting (צוֹם) simply using a common understanding of self-denial from the time of its composition, or can it be argued that Isa 58 is reusing the concept of עִנוּי + נַפְשׁ from the

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<sup>43</sup> Based on the criteria of biblical distribution in Hurvitz’ methodology and given this attestation of the *hitpaal* of עִנוּי it would be difficult to argue for a diachronic replacement of the phrase עִנוּי in piel + נַפְשׁ in CBL with עִנוּי in hitpaal in LBH (Avi Hurvitz, “Continuity and Innovation in Biblical Hebrew: The Case of “Semantic Change” in Post-Exilic Writings,” in *Studies in Ancient Hebrew Semantics*, ed. T. Muraoka, *Abr-Nahrain Supplement 4* (Louvain: Peeters, 1995), 1–10). Ezra 8:21 shows that the phrase עִנוּי in piel + נַפְשׁ was still in use in LBH.

<sup>44</sup> As seen above Milgrom takes the cases of עִנוּי in *hitpaal* as an affirmation that עִנוּי in piel + נַפְשׁ has a broader meaning of self-denial than mere fasting (Milgrom, *Leviticus 1–16*, 1054). 1 Kgs 2:26b (אֲשֶׁר־הִתְעַנָּה אֲבִי) and Ps 107:17 (וּמִצְוֹתֵיהֶם יִתְעַנֶּה) could be discussed here, as the affliction might be understood as coming from the outside.

<sup>45</sup> Quoted in Paul, *Isaiah 40–66*, 484.

<sup>46</sup> Just as Ps 35:13, Joel 2:15 holds open the alternative reading that Isa 58 is concerned with a fast, rather than pointing to the Day of Atonement or Year of Jubilee.

<sup>47</sup> I therefore disagree with Hartley when he claims that “עִנוּי is used in place of צוֹם, ‘fast,’ in order to communicate that more than not eating is required” (Hartley, *Leviticus*, 242). As צוֹם is not used at all in the Torah, it is not evident that the author of Leviticus saw this as an available term. Keil and Delitzsch points out that צוֹם came into use first in the time of the Judges, referring to Judg 20:26 and 1 Sam 7:6 (Keil, *Pentateuch*, 591). Their argument evidently rests on an understanding of the chronological composition of the Torah, but the absence of צוֹם in the Torah needs to be accounted for if Hartley’s claim is going to be more convincing.



Day of Atonement in Lev 16; 23, even if it adds the word צוֹם? The phrase נִפְשׁ + עֲנֵה could be said to be distinctly characteristic of to the Day of Atonement, but it is not unique to it. Based on the above evidence I would argue that the phrase נִפְשׁ + עֲנֵה, in itself, is not conclusive enough to warrant saying there is literary reuse between Lev 16; 23 and Isa 58. We need corroborating evidence to make this claim secure.

We find three additional parallels that strengthen the claim that there is reuse between Isa 58 and Lev 16 and 23.<sup>48</sup> Second, the opening phrase in Isa 58:1 is: קְרֵא בְּגֵרוֹן (“Cry with a throat, do not hold back, raise your voice like a shofar”).<sup>49</sup> The lexeme קְרֵא in 58:1a opens the entire chapter. The imperative directed toward the prophet might very well come as the divine response to the apostasy of the people described in Isa 57.<sup>50</sup> In comparison we read in Lev 25:9: בְּיֹם הַכִּפּוּרִים תַּעֲבִירוּ שׁוֹפָר בְּכָל-אַרְצְכֶם (“On the Day of Atonement you shall cause the shofar to pass

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<sup>48</sup> I have here found Paul’s suggestion about parallels between Isa 58 and Lev 16; 23 helpful (Paul, *Isaiah 40–66*, 480-81). He does, however, not analyze these parallels in detail. The following is therefore an attempt to analyze the nature and strength of these parallels in detail to evaluate whether they really provide a clear picture of reuse or not. Cf. Hanks, *God So Loved the Third World*, 99–100; Bergsma, *The Jubilee from Leviticus to Qumran*, 195.

<sup>49</sup> Paul writes: “The opening verses of this prophecy may have been influenced by Hos 8:1–2: ‘Put a ram’s horn to your mouth!’ (Hos 8:1)—‘Cry with a full throat, without restraint, raise your voice like a ram’s horn!’ (v. 1); ‘Because they have transgressed My covenant and rebelled against My teaching’ (Hos 8:1)—‘Declare to My people their transgression, to the house of Jacob their sins!’ (v. 1); ‘Israel cries out to Me, ‘O my God, we are devoted to You’ (Hos 8:2)—‘To be sure, they seek Me daily, eager to learn My ways’ (v. 2)’ (Paul, *Isaiah 40–66*, 482). See also Mic 3:8; Ezek 33:1–6. As my focus in this chapter is upon the reuse between the Torah and Isa 58, I do not study the parallels with Hos 8:1–2 further here.

<sup>50</sup> For other parallels between Isa 57 and 58 see Paul, *Isaiah 40–66*, 482. See also 58:5f where קְרֵא is also used, but this time for the people calling a fast. In 58:9a it is used a third time, but now for the people’s call being heard. This time they do not proclaim a fast, but call upon God under conditions where He will hear them. In clause 64 it is used about the faithful who are given the name ‘restorer of a breach, restorer of paths, in order to dwell’. In 58:13c the inner joy of true spirituality makes the faithful call the Sabbath a delight. קְרֵא is of course a common word, and care should be used not to exaggerate the point. Due to its central role in the opening clause, it nevertheless seems justified to notice how the word is used in the rest of the chapter. From being used with negative connotations the first two times, it is turned into a positive term.

throughout the land”).<sup>51</sup> Even if קרא is a very common word in BH, it is worth noting that it is used in Lev 23:2, 4, 21, 37 for proclaiming the festivals.<sup>52</sup> Apparently, it was normal practice to publicly proclaim the command to assemble for the sacred festivals, which were called מִקְרָאֵי קִדְּשׁ.<sup>53</sup> The shofar (שׁוֹפָר) was thus sounded for the beginning of the Year of Jubilee, on the Day of Atonement at the end of the seventh cycle of sabbatical years, at the beginning of the fiftieth year.<sup>54</sup> But the שׁוֹפָר was also used at other occasions. Generally speaking, it was used to call attention at some kind of solemn occasion.<sup>55</sup> It was even blown for religious festivals like the new moon (Ps 81:4) and a general fast (Joel 2:15).<sup>56</sup> The use of שׁוֹפָר in Isa 58:1 therefore seems to point us more

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<sup>51</sup> Cf. וַיִּעֲבֹר־קוֹל in Ezra 1:1, that Moshe Weinfeld takes as using technical terminology for the proclamation of liberation associated with the Year of Jubilee (Weinfeld, *Social Justice in Ancient Israel*, 13).

<sup>52</sup> Having discussed various suggestions of how to render קרא, Milgrom concludes that the basic meaning in relation to the festivals is ‘proclaim’ (Milgrom, *Leviticus 23–27*, 1957).

<sup>53</sup> For how מִקְרָאֵי קִדְּשׁ and קרא are related to the festivals see Milgrom, *Leviticus 23–27*, 1957–58. The phrase מִקְרָאֵי קִדְּשׁ is used eleven times only in Lev 23, in vv. 23:2, 3, 4, 7, 8, 21, 24, 27, 35, 36, 37.

<sup>54</sup> Cf. Park, *Die Gerechtigkeit Israels*, 235–38; Gane, *Leviticus, Numbers*, 432–34; Hrobon, *Ethical Dimension*, 202; Paul, *Isaiah 40–66*, 482. See Joel 2:15. In Lev 23:24, in relation to the Day of Atonement, it is not the word שׁוֹפָר that is used, but תְּרוּעָה. I would therefore not use this verse as a link between Isa 58 and Lev 23 as Michael Fishbane does (Fishbane, *Biblical Interpretation in Ancient Israel*, 305).

<sup>55</sup> Cf. Oswalt, *Isaiah 40–66*, 495.

<sup>56</sup> Milgrom writes that שׁוֹפָר was used “to muster an army (Judg 3:27; 6:34), to frighten the enemy (Judg 7:8, 16, 22), to proclaim victory (1 Sam 13:3), to terminate a battle (2 Sam 18:16; 20:22), to warn of an approaching enemy (Jer 4:21; Hos 5:8), to install the Ark in David’s tent (2 Sam 6:15), and to crown kings (2 Sam 15:10; 2 Kgs 9:13)” (Milgrom, *Leviticus 23–27*, 2163–64). HALOT expands the list by writing that “the reasons, or alternatively the occasions, for using the 1— שׁוֹפָר: a) at a theophany of Yahweh Ex 19:16,19; 20:18; Zech 9:14, cf. Is 27:13; 58:1; b) on יוֹם יְהוָה the day of Yahweh Jl 2:1; Zeph 11:6. —2. ceremonial occasions: a) Year of jubilee Lv 25:9 (שׁוֹפָר תְּרוּעָה sounding the alarm); b) at the festival of the new moon Ps 81:4; c) at a general fast Jl 2:15; d) for the proclamation of a new king 2S 15:10; 1K 13:4,39,41; 2K 9:13; e) at the exaltation of Yahweh, hauling up the Ark 2S 6:15; Ps 47:6; 98:6, cf. Ps 150:3; 1C 15:28; 2C 15:14. —3. in the course of battle: a) to announce the approach of an enemy Jr 4:5 (textual emendation), 19, 21; 6:1; b) שׁוֹפָר the means by which a watchman warns the populace Is 18:3; Jr 6:17; Ezk 33:3, 4, 5, 6; Hos 8:1; Am 3:6; Neh 4:12, 14; c) for a signal before and during a battle Jos 6:4–

specifically to the announcement of the Year of Jubilee on the Day of Atonement.<sup>57</sup>

However, the use of the lexeme שׁוֹפָר is not by itself a conclusive argument for reuse between Isa 58 and Lev 25:9.<sup>58</sup>

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6, 8, 9, 13, 13, 16, 20; Ju 3:27; 6:34; 7:8, 16, 18, 18, 19, 20, 22; 1S 13:3, 2S 2:28, 18:16; 20:1, 22; Jr 42:14; 51:27; Hos 5:8; Am 2:2; Jb 39:24f’ (Koehler et al., *HALOT*, 1447–48). As the evidence reviewed here and below point in the direction of reuse between Isa 58 and Lev 16; 23, I do not agree with HALOT in simply understanding the שׁוֹפָר in Isa 58:1 as “a theophany of Yahweh”. Divine theophany is not central as such in Isa 58, even if it is implied in v. 9 with the הִנְנִי (“Here I am”), but rather the state of the people in their religious assemblies.

<sup>57</sup> Weinfeld points out that “it was customary in Israel to blow the shofar at the beginning of the year of ‘liberation’ (Lev. 25:10), so that over the course of time the blowing of the shofar became a symbol of freedom and liberation” (Weinfeld, *Social Justice in Ancient Israel*, 14). In other ANE countries a torch, pole or banner had a similar function as the shofar in Israel.

<sup>58</sup> Sommer points out a possible reuse between Mic 3:5–12 and Isa 58:1–12:

Mic 3:5–12  
<sup>5</sup> Thus says YHWH to the prophets who mislead my people. . . and proclaim (וְקָרְאוּ) peace . . . <sup>6</sup> Therefore, it shall be night to you rather than vision, and darkness (וְחֹשֶׁךְ) to you rather than prophecy. And the sun shall set on the prophets so the day shall be darkened for them. . . . <sup>7</sup> . . . for there will be no answer (מַעֲנֶה) from God. <sup>8</sup> But I am full of the power of the spirit of YHWH and justice and might to tell Jacob his sins and Israel his sins (לְהַגִּיד לְיַעֲקֹב פְּשָׁעוֹ וּלְיִשְׂרָאֵל חַטָּאתוֹ). Hear now . . . <sup>10</sup> you who build (בְּנֶה) Zion with blood . . . Her leaders judge (יִשְׁפֹּטוּ) for bribes . . . and her prophets divine for silver. Yet they rely upon YHWH, saying, “Is not YHWH in our midst (בְּקִרְבָּנוּ)? No evil will come upon us!” <sup>12</sup> Therefore, because of you, Zion will be plowed as a field.

Isa 58:1–12  
<sup>1</sup> Cry (קְרֵא) with a throat, do not hold back (תִּתְקַשֵּׁר), . . . And make known to my people their rebellion And to the house of Jacob their sins (וְהַגַּד לְעַמִּי וְלִבְיַת יַעֲקֹב חַטָּאתָם). <sup>2</sup> Yet they seek me daily . . . As a people that . . . do not despise the justice (וּמִשְׁפָּט) of its god(s). They ask me for the justice of righteousness, They desire the nearness of God. . . . <sup>4</sup> Behold, you fast for the purpose of strife and contention . . . <sup>6</sup> Is not this the fast that I choose: To loose bonds of wickedness, . . . And to let oppressed go free . . . <sup>7</sup> Is not this to break your bread for the hungry, . . . <sup>8</sup> Then your light will burst forth like the dawn . . . <sup>9</sup> Then you shall call (תִּקְרָא) and YHWH will answer (יַעֲנֶה). . . . <sup>10</sup> . . . Then your light shall shine in the darkness . . . <sup>12</sup> And [men] from you will build (וּבְנֶה) ancient ruins . . .

It is possible there is a reuse between Isa 58 and Mic 3. If so, the tendency to conflate various passages in a new literary composition is even stronger in Isa 58. Sommer also points out a thematic reversal: “The motive behind the allusion becomes palpable here: as a prophet who reassures—that is, the sort of prophet whom Micah reviles—Deutero-Isaiah wants to stress his connection with his predecessors; he needs not only to reverse the older message but to repeat it within newly appropriate confines. Lest the audience mistake him for the sort of prophet whom Micah condemns, Deutero-Isaiah first follows Micah’s biddings by proclaiming the people’s sins. Having thus abrogated not Micah’s message but the situation that called it forth, Deutero-Isaiah can proceed to announce the cessation of the punishment Micah foresaw: light will replace the darkness, prophets will again receive answers, and what was destroyed will be rebuilt” (Sommer, *A Prophet Reads Scripture*, 77–78). Cf. 157.

Third, there is a parallel in regard to the acknowledgment of sin.<sup>59</sup> In Lev 16:21 we read: וְהִתְוַדָּה עָלָיו אֶת־כָּל־עֲוֹנוֹת בְּנֵי יִשְׂרָאֵל וְאֶת־כָּל־פְּשָׁעֵיהֶם לְכָל־חַטָּאתָם (“and he [Aaron] shall confess over it [the live goat] all the culpability of the sons of Israel, and all their rebellion and all their sins”). In comparison Isa 58:1 reads: וְהִגַּד לְעַמִּי פְשָׁעָם וּלְבַיִת יַעֲקֹב וְהִגַּד לְחַטָּאתָם (“and make known to my people their rebellion and to the house of Jacob their sin”). The settings in Lev 16 and Isa 58 are different. In Lev 16 the people have confessed their sins throughout the year, but in Isa 58 they are called to a solemn assembly to be told their sin. In vv. 2–3 the people appear ignorant as to their true spiritual state.<sup>60</sup> This ignorance has, apparently, also led to a consequent failure to confess

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<sup>59</sup> For others seeing a link to the Day of Atonement on the basis of the words used for sin in Isa 58, see Fishbane, *Biblical Interpretation in Ancient Israel*, 305–6; Hrobon, *Ethical Dimension*, 203; Kline, *Allusive Soundplay*, 83–84. It is nothing in the words used for sin in the Hebrew that gives us an indication that there is a reuse between Isa 58 and Lev 16; 23. Isa 58 uses three words for sin: (1) פְּשָׁע (“inexpiable defiant sin”; Isa 58:1. 1QIsa<sup>a</sup>, LXX, Targum Jonathan and Vulgate all have plural here instead of the MT singular), (2) חַטָּאת (“expiable nondefiant sin”; Isa 58:1), and (3) רָשָׁע (“wickedness”; Isa 58:4, 6). Lev 16 and 23 uses four words for sin: (1) טְמֵאתָ (“physical ritual impurity”; Lev 16:16, 19), (2) עֲוֹן (“culpability”; Lev 16:21, 22), (3) פְּשָׁע (“inexpiable defiant sin”; Lev 16:16, 21), (4) חַטָּאת (“expiable nondefiant sin”; Lev 16:3, 5, 6, 9, 11, 15, 16, 21, 25, 27, 30, 34; 23:19) (See Roy E. Gane, *Cult and Character: Purification Offerings, Day of Atonement, and Theodicy* (Winona Lake, IN: Eisenbrauns, 2005), 298–300). We see that Isa 58 uses רָשָׁע, only once attested in the Torah, not in the legal material, but in a prayer (Deut 9:27). On the other hand Lev 16:21, 22 uses עֲוֹן, not used in Isa 58, and טְמֵאתָ, not used by Isaiah at all. It is not a substantial argument to say that since Isa 58 LXX repeats the three words for sin in Lev 16 LXX (ἀνομία, ἀδικία, and ἁμαρτία), while Isa 58 MT has only two of them (פְּשָׁע and חַטָּאת, leaving out עֲוֹן), that LXX draws Isa 58 and Lev 16 closer together. LXX does not seem to operate consistent with several of the words for sin, as the following analysis shows: LXX in Lev 16 and 23 renders (1) טְמֵאתָ with ἀκαθαρσία in Lev 16:16, 19, a word not attested at all in the LXX of Isaiah, (2) עֲוֹן with ἀνομία in Lev 16:21, also found in Isa 58:1 to render חַטָּאת, and with ἀδικία in Lev 16:22, not used at all by Isaiah, (3) פְּשָׁע with ἀδικημα in Lev 16:16, not used in Isa 58, and with ἀδικία in Lev 16:21, rendering רָשָׁע in Isa 58:6, and (4) חַטָּאת with ἁμαρτία in Lev 16:3, 5, 6, 9, 11, 15, 16, 21, 25, 27, 30, 34; 23:19, a word not used in Isa 58. ἀδικία is therefore used in Isa 58:6 LXX to render רָשָׁע, something that is done only one other time according to Muraoka (Takamitsu Muraoka, *A Greek ≈ Hebrew/Aramaic Two-Way Index to the Septuagint* (Leuven: Peeters, 2010), 4). The lexeme רָשָׁע is also rendered as the adjective ταπεινός in Isa 58:4 LXX. Further, Isa 58:1 is the only time חַטָּאת is rendered with ἀνομία (Muraoka, *A Greek ≈ Hebrew/Aramaic Two-Way Index to the Septuagint*, 11). Could it be that Isa 58 chooses the words for inexpiable (פְּשָׁע) and expiable (חַטָּאת) sins as it is concerned more with moral sins than ritual?

<sup>60</sup> A NT parallel could here be the Laodicean church who in Rev 3:15–17 also seems ignorant about their true situation. Comparing 58:1d and 58:3c we detect an epistemological tension in Isa 58. From

previous sins, so their sin needs to be made known and spelled out to them in order that they might confess. If Isa 58 reuses Lev 16; 23 with respect to the Day of Atonement, this would only heighten the intensity of the opening words of Isa 58. Coming unrepentant to the Day of Atonement with unconfessed sins would be fatal. This critical situation would most likely catch the attention of Isaiah’s audience. Despite the difference between Isa 58 and Lev 16; 23 in regard to sin, the character of this difference only makes the connection stronger.<sup>61</sup>

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God’s perspective, the people are ignorant of their sins, and need to be made aware of them (58:1). This is marked by the only three imperatives in the chapter. In response, the people counter that God seems ignorant about their religious practice (58:3). The irony is that if the people really believed they were right about their conviction that the neglect was on God’s side, why then do they seem to have been content for such a long time, first questioning God’s silence as a response when they themselves are accused?

<sup>61</sup> As mentioned in the previous chapter, the lexical set שלח + חַטָּאת is used in Exod 21:26-27; Deut 15:12-13, 18; Isa 58:6; Jer 34:9-11, 14, 16; Job 39:3, 5. We can add that like Exod 21 and Deut 15 Isa 58 speaks of the release of slaves. However, as with Jer 34, Isa 58 draws upon the conceptual framework of Lev 25. While it is possible that Isa 58 is reusing שלח + חַטָּאת from Exod 21 and/or Deut 15, the lack of additional clear reuse makes it difficult to make a substantial argument for this. Cf. Thomas Podella, *Šôm-Fasten: Kollektive Trauer um den verborgenen Gott im Alten Testament* (Neikirchen-Vluyn: Neukirchener, 1989), 218. Westermann claims there is a parallel between וְהִרְבַּתְיָה עַל-בְּמוֹתַי אֲרָץ in Isa 58:14 and וַיִּאֲכַל הַגּוֹיֹת שָׂדֵי in Deut 32:13 (Westermann, *Isaiah 40–66*, 342). Sommer sees a similar parallel, adding that כִּי פִי יְהוָה דִּבֶּר (“for the mouth of YHWH has spoken”) in 58:14 “sometimes is a formula indicating reliance on an older oracle or text” (Sommer, *A Prophet Reads Scripture*, 134–35). Cf. Fishbane, *Biblical Interpretation in Ancient Israel*, 478–79. Delitzsch sees a parallel between Jer 34:8–22 which he sees as pre-exilic and Isa 58 as he sees as exilic, in a continuing oppressive spirit among the people towards the poor and afflicted (Carl Friedrich Keil and Franz Delitzsch, *Isaiah*, Commentary on the Old Testament (Peabody, MA: Hendrickson, 2001), 555). Oswalt thinks it is a more general focus here, where the last part of the book of Isaiah emphasize the freedom God wants to give his people through the Servant. The question thus raised in Isa 58 is how they live as free persons in relations to others (Oswalt, *Isaiah 40–66*, 503). Paul also points out a similar parallelism between the verbs שלח and פתח in Job 39:5 and Isa 58:6 (Paul, *Isaiah 40–66*, 487), but again the evidence appears to be too meagre to make a case of reuse. Thomas Hanks has pointed out that Jesus in his inaugural sermon in Nazareth seems to conflate LXX Isa 58:6 ἀποστείλετε τεθραυσμένους ἐν ἀφέσει with Isa 61:1–2 by speaking ἀποστεῖλαι τεθραυσμένους ἐν ἀφέσει (“to release the oppressed into liberty”) “to underscore the liberating dimension of his own ministry and his understanding of the kingdom of God as involving the kind of socio-economic revolution envisioned in the Jubilee provision” (Hanks, *God So Loved the Third World*, 98, 103–4). He proposes “that the insertion of Isaiah 58:6 in Isaiah 61:1–2 is best explained by recognizing that both of them reflect the teaching of Leviticus 25 concerning the Year of Jubilee, and that the originality and boldness exemplified in relating the two texts is best accounted for as reflecting Jesus’ own exegetical insight and passion for liberation (not just ‘forgiveness,’ as Marshall suggests)” (Hanks, *God So Loved the Third World*, 99).

Finally, an additional inner-Isaianic parallel supports the contention that Isa 58 is referring to the Day of Atonement. Whereas Isa 58:5 refers to the Day of Atonement as יום רצון ליהנה (“the day pleasing to YHWH”), the Jubilee year announced on this day is called שנת־רצון ליהנה (“the year pleasing to YHWH”) in 61:2. As Hanks puts it: “the ‘acceptable year’ (Jubilee, Isa. 61:[2]) is to be inaugurated by the ‘acceptable day’ (Isa. 58:5), the fast day of Atonement.”<sup>62</sup> If it is accepted that שנת־רצון ליהנה in 61:2 is the Year of Jubilee, it would then strengthen the contention that יום רצון ליהנה in 58:3 is a reference to the Day of Atonement.

*Thematic correspondence:* First, I have already noted how the use of שופר in Isa 58:1 might point to the Year of Jubilee. In Lev 25:10 we read: וקראתם דרור בארץ לכל- יְשִׁבֵיהָ (“and you shall proclaim a release in the land for all her inhabitants”).<sup>63</sup> The phrase לקרא לשבויים דרור ולְאֲסוּרִים פְּקֹחַ- קרא + דרור from Lev 25:10 might be reused in Is 61:1: לקרא לשבויים דרור ולְאֲסוּרִים פְּקֹחַ- קום (“to proclaim a release to the captives, liberation to the imprisoned”).<sup>64</sup> Besides Isa

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<sup>62</sup> Hanks, *God So Loved the Third World*, 100.

<sup>63</sup> Milgrom writes: “Three interpretations are extant for the meaning of *dērôr*: (1) “release” (LXX; *Jos. Ant.* 12.3; Ibn Ezra); (2) “flow,” as in *môr/môr dērôr* “free flowing myrrh” (Exod 30:23; Song 5:5, 13), supported by Arabic “flowing streams” (Snaith 1967; see also Lewy 1958: 21–22); and (3) “freedom” (*Tgs*; *Sipra* Behar 2:2; Ibn Ezra, “free as the swallow,” *dērôr*, Ps 84:4; Prov 26:2; *b. Beša* 24a). One can easily see that the three meanings are related: whatever is released, flows and gains freedom. The first meaning, “release,” would be primary, with “flow” and “freedom” as its natural but secondary extension” (Milgrom, *Leviticus* 23–27, 2166–67).

<sup>64</sup> Moshe Weinfeld calls דרור “the epitome of the establishment of ‘righteousness and justice’ in Israel” “whose aim is to establish social justice and equality and to assist the weaker members of society” (Weinfeld, *Social Justice in Ancient Israel*, 9). He continues: “The proclamation of freedom—in Scriptural language, the *calling* (קרא) of freedom (דרור)—was done by means of a proclamation of a royal figure” (Weinfeld, *Social Justice in Ancient Israel*, 12). Weinfeld sees as the background in Isa 61:1–2 (Weinfeld, *Social Justice in Ancient Israel*, 18). Paul also points out the relation between יום רצון (“a favourable day”) in Is 58:5 with עת רצון (“a favourable time”) in Isa 49:8 and שנת־רצון ליהנה (“a year of favour for YHWH”) in Isa 61:2. This would also link Isa 58 and the Year of Jubilee in Isa 61:2 together (Paul, *Isaiah 40–66*, 486). Whereas Isa 58:5 refer to the Day of Atonement as יום רצון ליהנה, the Jubilee year announced on this day is called שנת־רצון ליהנה in 61:2 (cf. Hanks, *God So Loved the Third World*, 100).

58:1, the combination of רום + שׁוֹפֵר is only found in close proximity in Job 39:24–25, 27, but this case is too far removed to speak of a parallel. We find the combination of קרא + שׁוֹפֵר in several cases of the HB, but as they are only thematically and not grammatically connected this affords little help.<sup>65</sup> As we shall see below, there might also be diachronic reasons why Isa 58:1 uses the word שׁוֹפֵר instead of יוֹבֵל.

Here it is significant to note that the context of Isa 58 also might evoke formulas related to the Year of Jubilee. In Isa 58:6 we find the theme of liberation, הֲלוֹא זֶה צוֹם (‘‘Is not this the fast that I choose: to loose bonds of wickedness, to untie ropes of the yoke, and to let oppressed go free and you breaking all yokes?’’). There is not a significant reuse of lexemes or phrases between Isa 58:6 and Lev 25:10, but we could say that there is a thematic correspondence. Hrobon has pointed out, however, that the lexeme מוֹטֵה (‘‘yoke’’) only occurs in Lev 26:13, outside the prophets, in the analogical context of Israel having its yoke of bondage broken.<sup>66</sup>

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<sup>65</sup> The combination of the lexemes קרא + שׁוֹפֵר in the same context is linked with the Sinai theophany (Exod 19:16-17, 19-20), as a war-signal (Josh 6:4-6; Judg 6:32, 34-35; 7:19-20, 22; 2 Sam 15:10-11; 20:1; Jer 4:5, 19-21), for coronation (1 Kgs 1:39, 41), and for a public assembly, be that a fast (Joel 2:15), a festival (Ps 81:4, 8), or more specifically the Year of Jubilee (Lev 25:9-10). Isa 58:1 clearly belongs to the latter thematically, but the combination of קרא + שׁוֹפֵר is only linked thematically, not grammatically, since שׁוֹפֵר is nowhere the object of קרא. This combination is therefore not helpful.

<sup>66</sup> The lexeme מוֹטֵה is testified in Lev 26:13; Isa 58:6, 9; Jer 27:2; 28:10, 12–13; Ezek 30:18; 34:27; 1 Chr 15:15. Might there be a link between the word used for poor in Lev 25:35 (מֵטֵה) and the word for yoke (מוֹטֵה) in Isa 58:6? May there be a double entendre with מוֹטֵה in הֲתֵר אֲגִדוֹת מוֹטֵה (‘‘to release the ropes of the yoke/poor’’) based on the reuse of Lev 25? The clause וְכָל־מוֹטֵה תִּנְתַּקוּ (‘‘you shall break off/lure away every yoke/poor’’) would be more difficult to explain as such a double entendre. Hrobon writes: ‘‘It is noteworthy that the Hebrew word for yoke (מוֹטֵה) that comes up three times in Isa 58 (v. 6 twice and v. 9) is used outside the Prophets only once, namely Lev 26:13. This verse and its nearby parallel 25:55 list the underlying principle for observing God’s statutes and commandments in general and the Sabbath year and the Year of Jubilee in particular: ‘I am the LORD your God who brought you out of the land of Egypt, to be their slaves no more; I have broken the bars of your מוֹטֵה and made you walk erect’ (26:13), and ‘For to me the people of Israel are servants; they are my servants whom I brought out from the

Second, it is even possible that Isaiah built his integration of themes from the Year of Jubilee, Day of Atonement, and weekly Sabbath upon Lev 25:1–12, as all three are mentioned here, if we take the Sabbath-theme from the sabbatical year in vv. 2-4.<sup>67</sup> Hrobon writes that “if Isa 58:1–12 is read through the lens of the Sabbath, the Sabbatical year, the Year of Jubilee, and the Day of Atonement regulations in Leviticus, the sabbath concept turns out to be all-encompassing in Isa 58, and vv. 13–14 then come naturally as the chapter’s grand finale.”<sup>68</sup>

Third, in Isa 58:3–6 there is a focus upon proper fasting. The only fast *commanded* in the Torah is on the Day of Atonement (Lev 16:29–31; 23:26–32). In post-exilic times other fasts were added (Zech. 7:3–10; 8:18; 8:18).<sup>69</sup>

Fourth, the thematic parallels between Lev 25 and Isa 58 can be summed up as outlined in Table 20.

*Multiplicity:* As we will see below, it is the specific manner in which lexemes and themes from passages in Lev 16; 23; 25 are woven together in Isa 58 that indicate a dependence of the latter upon the former. It is the same indicators that also provide the stronger arguments for the case of reuse between these passages as well. As Fishbane,

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land of Egypt: I am the LORD your God’ (25:55)” (Hrobon, *Ethical Dimension*, 202). Cf. Park, *Die Gerechtigkeit Israels*, 239.

The lexical set שָׁלוֹם + שָׁפָט is used in Exod 21:26-27; Deut 15:12-13, 18; Isa 58:6; Jer 34:9-11, 14, 16; Job 39:3, 5. In order to establish a case of reuse between the manumission instructions of Exod 21 and/or Deut 15 on the one hand and Isa 58 on the other it would be desirable with stronger evidence for reuse.

<sup>67</sup> Cf. Exod 23:10-12, where the weekly Sabbath is juxtaposed to the sabbatical years.

<sup>68</sup> Hrobon, *Ethical Dimension*, 205.

<sup>69</sup> Cf. Hanks, *God So Loved the Third World*, 99; Oswalt, *Isaiah 40–66*, 497; Bergsma, *The Jubilee from Leviticus to Qumran*, 195–97.



**Table 20. Thematic Parallels between Lev 25 and Isa 58**

Lev 25		Isa 58	
25:14–17	Fair trade	58:3, 13	Seeking and not seeking one's own business/desire
25:36, 39, 43, 46, 53	Prohibition against enslavement and harsh treatment of Hebrews	58:3	Oppression of workers <sup>70</sup>
25:29, 31	Return to one's home (בֵּית) <sup>71</sup>	58:7	Home (בֵּית) for the homeless
25:35–38	Showing hospitality to the poor brother and not exploiting him	58:7, 10 <sup>72</sup>	Showing hospitality to the poor and taking care of their basic needs
25:25, 35, 47–49	Taking care of and redeeming one's brother	58:7	Not to ignore one's own kin <sup>73</sup>
25:39–55	Manumission of economically	58:6, 9	Setting the afflicted free

<sup>70</sup> Bergsma writes: “The constellation of ethical injunctions in Isa 58 corresponds well with those of Lev 25. The freeing of debt-slaves (Isa 58:6, 9c; cf. Lev 25:39–55), the protest against the abuse of workers (Isa 58:3d; cf. Lev 25:36, 39, 43, 46, 53), and the sharing of food and shelter with the needy, especially the needy kinsman (Isa 58:7, 10a–b; cf. Lev 25:35–38) can all be found reflected in the jubilee legislation. In addition, some scholars have suggested translating Isa 58:4a[58:3a] as ‘Behold, on the day of your fast you pursue your own business and dun your debtors.’ This would reflect the prohibition on charging interest of Lev 25:35–38. In sum, nearly all the injunctions of Isa 58 find a parallel in Lev 25. No other biblical legislation (i.e. Deut 15, Exod 21:2–11) corresponds so completely. This may explain why the promised blessings for fidelity to the LORD in Isa 58 (vv. 8, 11, 14) are thematically similar to those of Lev 25:18–19 and Lev 26:3–13, including bountiful rain (Isa 58:11, Lev 26:4a), the divine presence (Isa 58:8d, Lev 26:11–12), divine military defense (Isa 58:8c; Lev 26:6–8), and the consumption (אָכַל), cf. Isa 58:14c, Lev 25:19, 26:5) of the produce of the ancestral land” (Bergsma, *The Jubilee from Leviticus to Qumran*, 196). To me Bergsma’s rendering of Isa 58:3a so as to deal with the relation between debtors and lenders seems a little pressed, and therefore the link to Lev 25:35–38 is not as clear as he suggests. Otherwise, though, there seems to be weight to his suggested parallels between Lev 25 and Isa 58.

<sup>71</sup> The parallel between Lev 25:29, 31 and Isa 58:7 may explain the ambiguity of the latter. For more discussion see below.

<sup>72</sup> A question here is how to understand וְהָיָה לְרֵעֵב לֶחֶם in Isa 58:10. Should לֶחֶם here be understood as ‘food’, ‘abundance’, or ‘person’? See discussion below.

<sup>73</sup> Paul writes: “And not to ignore your own kin—If your kith and kin are in need, you are obliged to lend them a helping hand as well. For בְּשָׂרָא (“kindred blood relations”), see Gen 29:14: “You are truly my bone and flesh (בְּשָׂרִי)”; Lev 18:6. For the verbal expression לְהִתְעַלֵּם מִי, denoting disregard or evasion, see Deut 22:1: “If you see your fellow’s ox or sheep gone astray, do not ignore it (וְהִתְעַלַּמְתָּ מֵהֶם). You must take it back to your fellow” (Paul, *Isaiah 40–66*, 488). Hanks also reads בְּשָׂרָא in terms of blood-relations (Hanks, *God So Loved the Third World*, 101). May it be that Isa 58:7 used בְּשָׂרָא in the sense of “your own kin”/“according to your kind” as a word referring both to the native, stranger and sojourner, as both your kindred and those of the same flesh as yourself (cf. וּבְשָׂרָא מִבְּשָׂרִי in Gen 2:23), i.e. other humans? Oswalt acknowledges the kindred meaning of בְּשָׂרָא, but sees the possibility of a more universal scope as well, relating to all humans (Oswalt, *Isaiah 40–66*, 504).

Table 20 — *Continued.*

Lev 25		Isa 58	
	dependent Hebrews		
25:18–19; 26:3–13	Promised blessings, including divine military defense (26:7–8), YHWH’s dwelling among the people (26:11–12), rain in its season (26:4), peaceful habitation in the land (26:6), the land giving fruit to eat (אכל) one’s fill (שָׂבַע) (25:19; 26:5, 10).	58:8– 9, 11– 12	Promised blessings, including divine military defense (58:8), YHWH being available to the people (58:9), with abundant water (58:11), restored habitation in the land (58:12), God satisfying (שָׂבַע) one’s soul (58:11) and giving one to eat (אכל) of the inheritance of the Jacob (58:14).
26:2	Keeping the Sabbath (שָׁבַת)	58:13– 14	Keeping the Sabbath (שָׁבַת) <sup>74</sup>

Park, and Hrobon have argued, each individual parallel does not make a strong case. It is the combination of several parallels that combine into a convincing case for reuse in Isa 58 of the Torah-passages related to the Day of Atonement.<sup>75</sup> So far we have found the following parallels to warrant such a conclusion: (1) the use of the phrase נָפֶשׁ + עֲנָה which is distinct, even if it is not unique, to the Day of Atonement (Lev 16:29, 31; 23:27, 32; Num 29:7; Isa 58:3, 5, 10), (2) the use of the verb קָרָא (Lev 23:2, 4, 21, 37; Isa 58:1) and the noun שׁוֹפָר (Lev 25:9; Isa 58:1) to call a solemn assembly, (3) the issue of the people having confessed their sins on the Day of Atonement (Lev 16:21) but live in

<sup>74</sup> Hanks also claims there is a similarity between “the conclusion of the Jubilee teaching even includes an exhortation to Sabbath keeping (Lev. 26:2) that is remarkably similar to Isaiah 58:13–14” (Hanks, *God So Loved the Third World*, 99).

<sup>75</sup> Fishbane, *Biblical Interpretation in Ancient Israel*, 305–6; Park, *Die Gerechtigkeit Israels*, 237–39; Hrobon, *Ethical Dimension*, 202–5. Fishbane and Hrobon mention the use of הִטָּאת and פָּשַׁע, in Isa 58 as supportive evidence of reuse. Above I have shown that this lexical combination does not add much to the strength of the argument for reuse.

unrepentant ignorance of it in Isa 58:1, 6, and (4) the thematic correspondence between Isa 58:6 and the Year of Jubilee in Lev 25:10.

### Direction of Dependence

*Reference to a source:* Isaiah 58:2 refers twice to מְשֻׁפָּט,<sup>76</sup> the most frequent word used in the instructive material of Torah to describe its own genre, as mentioned in chapter one.<sup>77</sup> The verse speaks of the people’s hypocrisy in appearing as if they have not forsaken YHWH’s מְשֻׁפָּט (וּמְשֻׁפָּט אֱלֹהֵיוּ לֹא עָזַב) and inquiring after YHWH’s מְשֻׁפָּט (יִשְׁאַלְוּנִי מְשֻׁפָּטֵי־צְדָקָה). Some form of מְשֻׁפָּט is clearly presupposed in Isa 58. The lexeme מְשֻׁפָּט is the only genre-lexeme used besides הַקְּדָשׁ in Lev 25, both used in the land-promise of Lev 25:18 (וַעֲשִׂיתֶם אֹתָם וְעֲשִׂיתֶם אֹתָם). Given the parallels between Isa 58 and Lev 25 the reference to מְשֻׁפָּט in 58:2 supports seeing Isa 58 as a secondary text, even if it does not entitle us to claim that it is secondary to Lev 25. Isaiah 58:2 does not speak of מְשֻׁפָּט as a written composition nor as a source borrowed from. מְשֻׁפָּט is rather placed in parallel to general concepts like דַּעַת דְּרָכַי (“the knowledge of my way”) and צְדָקָה (“righteousness”).<sup>78</sup> Still, all of these concepts refer to some kind of a

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<sup>76</sup> Cf. Hanks, *God So Loved the Third World*, 100.

<sup>77</sup> מְשֻׁפָּט is used in total 85 times in Torah, 65 of these in its instructive material: Gen 14:7; 18:19, 25; 40:13; Exod 15:25; 21:1, 9, 31; 23:6; 24:3; 26:30; 28:15, 29-30; Lev 5:10; 9:16; 18:4-5, 26; 19:15, 35, 37; 20:22; 24:22; 25:18; 26:15, 43, 46; Num 9:3, 14; 15:16, 24; 27:5, 11, 21; 29:6, 18, 21, 24, 27, 30, 33, 37; 35:12, 24, 29; 36:13; Deut 1:17; 4:1, 5, 8, 14, 45; 5:1, 31; 6:1, 20; 7:11-12; 8:11; 10:18; 11:1, 32-12:1; 16:18-19; 17:8-9, 11; 18:3; 19:6; 21:17, 22; 24:17; 25:1; 26:16-17; 27:19; 30:16; 32:4, 41; 33:10, 21.

As mentioned, Sommer comments on כִּי פִי יְהוָה דִּבֶּר (“for the mouth of YHWH has spoken”) in 58:14 “sometimes is a formula indicating reliance on an older oracle or text” (Sommer, *A Prophet Reads Scripture*, 134–35). I do, however, not see that it is possible to corroborate a claim 58:14 is actually a reference to a source.

<sup>78</sup> The phrase מְשֻׁפָּטֵי־צְדָקָה in Isa 58:2f seems to combine צְדָקָה in v. 2c and מְשֻׁפָּט אֱלֹהֵיוּ in v. 2d. Sommer states that כִּי פִי יְהוָה דִּבֶּר (“for the mouth of YHWH has spoken”) in 58:14 “sometimes is a

divine instruction. The portrait of Torah as we have it would fit this characterization, as we have seen earlier, with *הַדָּקָה* as the standard for judges, *מְשֻׁפָּט* as the preferred self-designation in Torah, and with YHWH as the ultimate reference for conduct. At least we can claim that Torah and Isa 58 participate in a similar conceptual world, with Isa 58 signalling dependence on such a conceptual world.

*Modification and wordplay:* First, in Isa 58:10a we read *וְתָפַק לְרַעֲב נַפְשֶׁךָ* (“and you offer your person to the hungry”). One reason why this formulation is puzzling is that it is the only time *פּוֹק + נַפְשֶׁךָ* is attested in the HB. 1QIsa<sup>a</sup> supports the MT by reading *וּתְפַק לְרַעֲב נַפְשֶׁכָּה*.<sup>79</sup> This clause has posed a problem to ancient as well as modern readers.<sup>80</sup> Hurowitz shows how three interpretations have been suggested: (1) *וְתָפַק נַפְשֶׁךָ* as “the desired attitude towards the hungry,” (2) *נַפְשֶׁךָ* as “your bread,” and (3) *וְתָפַק נַפְשֶׁךָ* as “providing food generously or with a good attitude.”<sup>81</sup> The primary difference between

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formula indicating reliance on an older oracle or text,” thinking of the parallels between Isa 58:11–14 and Deut 32:9–13 (Sommer, *A Prophet Reads Scripture*, 134–35).

<sup>79</sup> The ה final of *נַפְשֶׁכָּה* is simply a final vowel letter to represent א (Elisha Qimron, *The Hebrew of the Dead Sea Scrolls*, Harvard Semitic Studies (Atlanta: Scholar Press, 1986), 23; Eduard Yechezkel Kutscher and Elisha Qimron, *The Language and Linguistic Background of the Isaiah Scroll (1QIsaA): Indices and Corrections* (Leiden: Brill, 1979), 163–64).

<sup>80</sup> The various ways translations render this clause is illustrated by the following examples: “And you offer your compassion to the hungry” (NJPS); “if you offer your food to the hungry” (NRSV); “And if you give yourself to the hungry” (NASB); “if you pour yourself out for the hungry” (RSV); “and if thou draw out thy soul to the hungry” (OJPS/ASV); “if you pour yourself out for the hungry” (ESV); “and if you spend yourselves in behalf of the hungry” (NIV); “And if thou draw out thy soul to the hungry” (KJV); “And dost bring out to the hungry thy soul” (YLT).

<sup>81</sup> Victor Avigdor Hurowitz, “A Forgotten Meaning of *Nepeš* in Isaiah 58,10,” *Vetus Testamentum* 47 (1997): 43–46. While sympathetic to Hurowitz’ proposal, Hrobon finds his rejection of proposals to emend 58:10a the strongest. He writes: “Until a new evidence is brought up, sheer prudence requires Hurowitz’s proposal to remain an isolated voice. Nevertheless, his argument against the emendation of *נַפְשֶׁךָ* in v. 10aA is solid, and, for now, it seems best to retain the ambiguity of this verse by rendering it as ‘if you extend yourself to the hungry’” (Hrobon, *Ethical Dimension*, 183).

the first and third is between seeing the clause as primarily referring to attitude or action. The second alternative differs most from the others. LXX has been taken as support for it with its καὶ δὲ πεινῶντι τὸν ἄρτον ἐκ ψυχῆς σου (“and if you give to the hungry the bread from your person”).<sup>82</sup> The Targum Jonathan can be taken as support of the first with its דַּשְׁנָא נַפְשָׁא קָדְמָה קָדְמָה (‘‘your soul will ignite before the hungry’’). Hurowitz, however, rightly points out that the LXX ‘‘is actually the first witness to the tradition of compound interpretation’’ of דַּשְׁנָא in Isa 58:10, rendering it as both ‘bread’ and ‘your person’. He continues: ‘‘Had the LXX read only ‘if you give bread,’ it could indeed support a reading *lahmekā*. However, such a reading is excluded by the addition ‘from your soul.’ This can be based on *napšekā*, but certainly not on *lahmekā*. . . . Contrary to the scholarly consensus, the LXX is in fact supportive of the MT rather than indicative of a variant *Vorlage*.’’<sup>83</sup> Likewise, it could also be argued that the Targum Jonathan supports the MT דַּשְׁנָא. The difference here is not in the noun, but the verb. It replaces the MT hifil דַּשְׁנָא with a hitpaal דַּשְׁנָא, giving the more reflexive meaning. It thus resembles the replacement of עָנָה in piel + דַּשְׁנָא with the עָנָה in hitpael mentioned above. Both the LXX and Targum Jonathan are therefore supportive evidence of MT.<sup>84</sup>

Hurowitz continues by arguing that דַּשְׁנָא should be read as a poetic ellipsis of ‘‘(sustenance) of life’’, analogical to certain usages of *napištum* in Akkadian. He believes this meaning might also be found in a few other biblical passages. He sees ‘‘He granted

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<sup>82</sup> Oswalt writes: ‘‘‘Bread’ is a much easier reading in the context, and it is hard to explain how ‘soul’ could have replaced it even by accident. Thus MT is preferable’’ (Oswalt, *Isaiah 40–66*, 500).

<sup>83</sup> Hurowitz, ‘‘A Forgotten Meaning of *Nepeš* in Isaiah 58,10,’’ 46.

<sup>84</sup> The Peshitta has a similar doublet as the LXX, with דַּשְׁנָא together with דַּשְׁנָא (Paul, *Isaiah 40–66*, 490).

their request, but diminished their sustenance (וַיִּשְׁלַח רִזּוֹן בְּנִפְשָׁם)”) as a “highly likely” reading of Ps 106:15, and “They tested God in their heart by asking bread for their sustenance (לִשְׂאֵל-לֶאֱכֹל לְנִפְשָׁם)”) in Ps 78:18 and “because bread for their sustenance (כִּי-לֶחֶם לְנִפְשָׁם will not enter the temple of YHWH” in Hos 9:4 as “not definite but certainly possible” cases.<sup>85</sup> Finally, Hurowitz explains the choice of this meaning for נִפְשָׁ in Isa 58:10 as a pun: “The reason a word with a rare meaning is used is to provide a pun on *napšō*, ‘his throat’, used immediately afterwards in the same verse. Quite frequently, the same word will be used twice in close proximity, each time bearing a different meaning.”<sup>86</sup>

Still, it seems appropriate to ask: if the author meant ‘bread’ why did he not simply use the word לֶחֶם as in 58:7a, לָרַעַב לְחֶמֶד (‘Is not this to break your bread for the hungry?’)<sup>87</sup> Can poetic variation alone explain this? Even if I believe Hurowitz is correct in seeing the LXX as supportive evidence for the MT, and his suggestion that נִפְשָׁ in Isa 58:10 might be an ellipsis of ‘(sustenance) of life’ is intriguing,<sup>88</sup> this reading of נִפְשָׁ does not seem to exhaust the possible reasons why the

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<sup>85</sup> Hurowitz, “A Forgotten Meaning of *Nepes* in Isaiah 58,10,” 49–50. Hurowitz is followed by Paul in Paul, *Isaiah 40–66*, 490.

<sup>86</sup> Hurowitz, “A Forgotten Meaning of *Nepes* in Isaiah 58,10,” 52. Hurowitz renders the entire verse as follows: “(If) you extend your sustenance to the hungry, and satisfy the starved throat, then your light will shine forth in the darkness, and your gloom shall be like the afternoon.”

<sup>87</sup> The argument that it is simply a variation of the same idea, namely sharing one’s bread, could be supported by that the verbs used simply seem to be synonymous for “share” (פָּרַס לָרַעַב לְחֶמֶד) in 58:7/וַתִּפְקַד לָרַעַב נִפְשָׁדָ in 58:10).

<sup>88</sup> Tov shows how there is an interchange of ה and ח in Jer 16:7 LXX where it has ἄτροφος while MT להם. The phrase יִפְרְסוּ לָהֶם (lit. “they shall not break for them”) in Jer 16:7 is probably an interchange based on the phrase פָּרַס לְחֶמֶד (“to break your bread”) in Is 58:7 MT (Tov, *Text-Critical Use of the Septuagint*, 138).

author of Isa 58 would have chosen this awkward formulation. Even if Hurowitz is correct, the author would likely have been aware that he chose to formulate himself in an enigmatic manner. Hurowitz' own examples of other passages possibly also using נִפְּשׁ in the meaning of 'sustenance,' demonstrate its rarity in BH. I am not even convinced his suggested reading 'sustenance' is the best here, as 'for their person' seems just as appropriate. Saying that this is a pun in Isa 58 appears too weak an explanation. The same could be said of G. R. Driver's earlier suggestion that נִפְּשׁ here should be understood as 'abundance' based on the Akkadian *napāšu*. For him also rendering וְתִפְּקֵךְ לְרַעֲבֵי נִפְּשֶׁךָ as "thou pourest (*i.e.* expendest thyself) on the hungry' is admittedly unsatisfactory."<sup>89</sup> As I will suggest below, rather than seeing an etymological solution to the conundrum and even if both Hurowitz and Driver help us become aware of the problem in 58:10a, I will rather suggest that it is part of Isaiah's strategic reworking of the reused phrase עֲנָה נִפְּשׁ.

To me it seems that the author intended to say something more than in 58:7a (הֲלוֹא פָּרַס לְרַעֲבֵי לֶחְמֶךָ). If Hurowitz is correct in saying that נִפְּשׁ in Isa 58:10 is merely a pun, then 58:10a (וְתִפְּקֵךְ לְרַעֲבֵי נִפְּשֶׁךָ) would be tautological in light of 58:7a.<sup>90</sup> This is, of course, possible as an author might choose to repeat himself with variation in formula. But to me 58:10a is better understood as a strategic replacement of words to say something more than 58:7a. It may be that if Hurowitz is right in proposing that לְחֵם and נִפְּשׁ may have been understood as synonymous, this could have invited the interchange in

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<sup>89</sup> G. R. Driver, "Hebrew Notes," *ZAW* 52 (1934): 53.

<sup>90</sup> This reading seems supported by Oswalt, even if he does not develop the point in terms of a reuse of Lev 16: "Some evidence argues for 'bread' instead of 'soul' as the correct reading. When one understands the point of the allusion to fasting, however, the MT is clearly correct. Fasting was called 'affliction of soul' (e.g., Lev 16:31, AV). Thus the worshiper was pouring out his or her soul to God in an act of self-denial" (Oswalt, *Isaiah 40–66*, 506).

58:10a as part of the author’s general reworking of the phrase ענה + נפש in the chapter. The key phrase ענה + נפש in the reuse of Lev 16; 23 seems to influence this puzzling formulation. By replacing לָהֶם in 58:7a with נפש in 58:10a, the author is able to integrate the message of the Day of Atonement with the people’s relation “to the hungry” (לָרֵעַב). The affliction (ענה) of one’s self (נפש) requires him to place his self at the disposal of the hungry.<sup>91</sup> Isa 58:10a says nothing about giving yourself (נפֿשֶׁךָ) to the hungry (לָרֵעַב) for him or her to eat, as if it would imply cannibalism. It simply says that one should give, in the meaning of placing at disposal, oneself for the needs of the hungry. This reading is supported by NASB rendering the clause “And if you give yourself to the hungry.” The puzzling formulation of 58:10a (וְהִתְּתָה לָרֵעַב נַפְשְׁךָ) therefore seems to indicate Isa 58’s dependence upon the language of Lev 16; 23.

Second, and closely related to the previous point, וְהִתְּתָה לָרֵעַב נַפְשְׁךָ (“and you offer your person to the hungry”) in Isa 58:10a appears to be part of a pervasive strategic reworking of and word play on the phrase ענה + נפש, as already mentioned.<sup>92</sup> The root ענה is used in Isa 58:3, 5, 9, 10, נפש in Isa 58: 3, 5, 10, 11, and ענה + נפש appear in Isa 58:3, 5, 10. In 58:3c ענה + נפש is largely used as we find it in Lev 16; 23, namely for affliction in the form of fasting. The phrase ענה + נפש in 58:5d is somewhat ambiguous,

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<sup>91</sup> The idea of loving your neighbor and alien as yourself (וְאָהַבְתָּ לּוֹ כָמוֹךָ) from Lev 19:18, 34 might not be far away in the author’s mind.

<sup>92</sup> Fishbane writes: “The thick rhetorical structure of this homiletical piece [Isa 58] cannot be missed: the key terms (particularly נפש; ענה; and their variants) echo throughout the piece in punning allusion. . . . One may even wonder whether the attentive ear of the people would have also heard this rebuke as a deliberate allusion to the afflictions of Yom Kippur. Ancient rabbinic tradition surely did hear it this way and assigned chapter 58 as the prophetic lection for the Day of Atonement, when Leviticus 16 is recited as the Pentateuchal portion” (Michael Fishbane, “The Hebrew Bible and Exegetical Tradition,” in *Intertextuality in Ugarit and Israel*, ed. Johannes C. de Moor, OTS 40 (Leiden: Brill, 1998), 26).



something I will return to later.<sup>93</sup> This is supported by the use of the noun צום or verb צום in Isa 58:3-6 and only here in the chapter. When speaking of the people's צום/צום in 58:3-4 it refers to fasting. But as the lexeme is used to describe YHWH's צום in 58:5-6 an ambiguity is also introduced. Here YHWH's צום is described in terms of self-denying for the sake of the needy. As we come to vv. 9-11 the meanings of ענה + נִפְּשׁ are altered. In 58:9b ענה is no longer II ענה in piel ('to afflict'), but Isaiah has changed it to I ענה ('to answer').<sup>94</sup> It is a promise about God's response as part of the first apodosis (58:8a-9e, see above). In 58:3a-d the people complained over the silence of God, that he did not respond to their religious practice. In 58:9b God promises that he will again answer (I ענה) his people if they correct their social practice.<sup>95</sup>

Above I looked closer at נִפְּשׁ in 58:10a. Here I will only add that as this clause comes among those verses altering the meaning of ענה and נִפְּשׁ again supports the reading that it is not simply a literary pun, but part of the author's strategic reversal of the meaning of ענה + נִפְּשׁ in 58:10b. The phrase ענה + נִפְּשׁ no longer means self-affliction. It is now used for the person being afflicted by others, indicated by the use of the niphal. A noun (נִפְּשׁ) + participle (נִפְּשָׁה) construction "is the representation of an action as ongoing at a reference time."<sup>96</sup> This is not simply a temporary situation, on one day as in the case of the Day of Atonement—and it could be argued that the Day of Atonement itself was

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<sup>93</sup> Cf. Westermann, *Isaiah 40-66*, 336 who also points out a surprising shift from v. 5 and onwards.

<sup>94</sup> Paul, *Isaiah 40-66*, 481.

<sup>95</sup> Jonathan Kline has also seen this as a wordplay (Kline, *Allusive Soundplay*, 85).

<sup>96</sup> Joosten, *The Verbal System of Biblical Hebrew*, 239.

only the climax of ongoing repentance and loyalty to YHWH throughout the year of.<sup>97</sup> Isa 58:10 is a call to satisfy the needs of a person caught in a more permanent and desperate state of degradation.

The phrase *נִפְשֵׁי* is used again in 58:11b, *וְהִשְׂבִּיעַ בְּצַחְצְחוֹת נִפְשֵׁי* (“and He will satisfy your person in desert land”), now again as part of a promise in an apodosis, this time apodosis 2 (58:10c–12f, see above). The *נִפְשֵׁי* is no longer the one that is afflicted, but the one having helped the afflicted one. It is as if the single *עֲנָה* in apodosis 1 in 58:9b and the single *נִפְשֵׁי* in apodosis 2 in 58:11b separately elaborate *עֲנָה + נִפְשֵׁי* into a promise. In 58:11b *נִפְשֵׁי* is used in the promise that God will now satisfy the person who has taken care of the afflicted and hungry. The alteration of *עֲנָה + נִפְשֵׁי* in Isa 58 therefore seems to be a strategic reversal of the meaning of *עֲנָה + נִפְשֵׁי* in Lev 16; 23; and Num 29:7, and supports the claim that Isa 58 is dependent upon Lev 16; 23; 25; Num 29:7.

Third, while Lev 16 speaks of afflicting one’s own person, Isa 58 appears to be somewhat ambiguous in 58:5a–d:

Will this be the fast I choose:  
 A day to afflict a man (*אָדָם*) his person (*נִפְשֵׁוֹ*)?  
 Is it to bow down his head (*רָאֵשׁוֹ*) as a rush,  
 spreading (*צִיֵּי*) out sackcloth and dust?

The question is who the *נִפְשֵׁוֹ* and *רָאֵשׁוֹ* with their 3ms suffixes refer to.<sup>98</sup> I have already mentioned above how the meaning of *עֲנָה* and *נִפְשֵׁי* are altered after v. 5. The question is if this change also occurs already in 58:5b? 1QIsa<sup>b</sup> might have seen the

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<sup>97</sup> Roy E. Gane, *Altar Call* (Berrien Springs, MI: Diadem, 1999), 319–20; Gane, *Cult and Character*, 301, 305–33.

<sup>98</sup> 1QIsa<sup>a</sup> confirms MT here together with LXX reading *ταπεινοῦν ἄνθρωπον τὴν ψυχὴν αὐτοῦ*. 4QIsa<sup>d</sup> would have to be studied closer to see whether the lacuna at this point would support MT and 1QIsa<sup>a</sup>.

ambiguity in רָאֵשׁוּ, and tried to clarify it by rendering it רָאֵשׁוּ instead. It did, however, change the second instance 3ms suffix, but retained נִפְשׁוּ. It is the only time we find אָדָם as the object of the verb עָנָה. Might it be that Isaiah consciously formulated himself ambiguously here, as a double entendre? On the one hand, 58:5 could be read as the regular practice on the Day of Atonement, with fasting and putting on sackcloth and ashes. On the other hand, it could also be understood as an affliction of another person. Isaiah 58:5c would then refer to forcefully bending another person down like a rush.<sup>99</sup> As יִצְיֵעַ does not have the reflexive sense of the *hithpael*, but is rather a *hifil*, it is not clear that this is something one did to oneself. Isaiah’s inclusion of אָדָם in 58:5b could then signal that the prophet refers to the social oppression of another. This again could indicate word play that inclines us to believe that Isa 58 is the borrowing text.

Fourth, is the cessation of labor. In Lev 16:29 we read וְלֹא תַעֲשׂוּ לְמִלְאָכָה (‘‘and you shall not do any work’’). The same is restated in 23:28, 30, 31. Milgrom writes:

The prohibition of labor on the Sabbath and the Day of Purgation is described by the phrase *kol-mēlā’kâ* (23:3, 28; Num 29:7), whereas on the festivals it is described as *mēle’ket ‘ābōdâ* ‘laborious work’ (23:7, 8, 21, 25, 35, 36; Num 28:18, 25, 26; 29:1, 12, 35). The implication is that on the festivals, light work, unrelated to one’s livelihood, would be permitted, whereas on the Sabbath and Day of Purgation even the slightest exertion would be forbidden.<sup>100</sup>

Isaiah never uses the word מִלְאָכָה. Instead of מִלְאָכָה + עָשָׂה in Lev 16 and 23, we do

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<sup>99</sup> Can we read the hiphil יִצְיֵעַ in וְרָאֵשׁוּ אֶת הָאֲפֹרֹת (‘‘to spread out sackcloth and dust’’) in 58:5d as YHWH indicating that sackcloth and dust was forced upon others? Paul: ‘‘Cf. Esth 4:3: ‘Sackcloth and ashes were spread out (יִצְיֵעַ) for the masses.’ For the root יִצְעַ denoting ‘laying, spreading out,’ see also Isa 14:11; Ps 139:8. For sackcloth as the garb of fast days, see 1 Kgs 21:27; Joel 1:8; Jonah 3:5–7’’ (Paul, *Isaiah 40–66*, 486). Cf. Park, *Die Gerechtigkeit Israels*, 258–65.

<sup>100</sup> Milgrom, *Leviticus 1–16*, 1054–55.

however find  $\text{הַפֶּזַח} + \text{עֲשֵׂה}$  in Isa 58:13.<sup>101</sup> Isaiah 58:3 seems to give a basis for saying that  $\text{הַפֶּזַח}$  in Isa 58 is not simply used as ‘desire, delight,’ but also for ‘business, occupation.’<sup>102</sup> Here  $\text{הֵן בְּיוֹם צִמְצוּמְכֶם תִּמְצְאוּ אֶת-הַפֶּזַח}$  (“Behold, on the day of your fast you seek business”) is followed by  $\text{וְכָל-עֲצָבֵיכֶם תִּגְשׁוּ}$  (“and oppress all your laborers!”). The lexeme  $\text{הַפֶּזַח}$  in v. 3 thus seem to slightly favor the meaning of ‘business, occupation’ over ‘desire, delight,’ even if both might be intended.<sup>103</sup> While the meaning of ‘business, occupation’ appears to

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<sup>101</sup> The noun  $\text{הַפֶּזַח}$  is found in the book of Isaiah in Isa 44:28; 46:10; 48:14; 53:10; 54:12; 58:3, 13. Besides 53:10 (where it has the meaning ‘precious’) and 58:13 the word is used in the meaning of ‘purpose,’ ‘will’, and ‘intention’. The construction is found in  $\text{הַפֶּזַח} + \text{עֲשֵׂה}$  in 1 Kgs 5:22–23; Isa 46:10; 48:14; 58:13; Prov 31:13, indicating that it is part of Isaianic parlance. Given this attestation we can therefore not claim that Isa 58:13 is somehow dependent on  $\text{מְלָאכָה} + \text{עֲשֵׂה}$  in Lev 16 and 23, even if it is possible that Isa 58:13 used an Isaianic expression to play on the locution in Lev 16 and 23. In Jub 10:19, where it and the surrounding verses seem to blend Deut 5:12–15 and Isa 58:13 together, the lexemes used to describe prohibited work are  $\text{עֲבוּדָה}$  and  $\text{מְלָאכָה}$  based on Deut 5:13, not  $\text{הַפֶּזַח}$  as in Isa 58. In Jub 10:20–21  $\text{הַפֶּזַח}$  is used as an adjective to qualify  $\text{עֲבוּדָה}$ , in the infinitival clause  $\text{הַשְׁבֵּתוּ (בְּיוֹם) הַפֶּזַח}$  (“his desired work”), likely to clarify the ambiguous  $\text{הַפֶּזַח}$  of Isa 58:13 MT as referring to work-related pursuits. Jassen writes: “The introduction of  $\text{עֲבוּדָה}$  in CD 10:20 is motivated by both exegetical and semantic factors. Exegetically, the introduction of this word is based on textual analogy with the Sabbath law in the Decalogue . . . . Semantically, it is likely that the use of  $\text{עֲבוּדָה}$  is intended to refer to *physical* labor” (cf. Jassen, *Scripture and Law*, 140. Cf. also pp. 82–84, 139–44, 155–56, 158). This is also corroborated by Isa 58:13 LXX which gives  $\tau\alpha \theta\epsilon\lambda\eta\mu\alpha\tau\acute{\alpha} \sigma\upsilon$  (“the things you wish” (NETS)) for the MT  $\text{הַפֶּזַח}$  (“your business”) but  $\epsilon\pi' \xi\epsilon\rho\gamma\omega$  (“for work” (NETS)) for MT  $\text{מִמְצוֹא הַפֶּזַח}$  (“than finding your business”). The double occurrence of  $\text{הִקְצִינָה}$  (“they desire”) in Isa 58:2 MT is rendered as  $\epsilon\pi\theta\upsilon\mu\omicron\sigma\iota\upsilon$  (“they desire”) in Isa 58:2 LXX, and in 58:3 MT  $\text{הַפֶּזַח}$  (“business”) with LXX  $\tau\alpha \theta\epsilon\lambda\eta\mu\alpha\tau\alpha \upsilon\mu\omicron\omega\upsilon$  (“your own wishes” (NETS)). As mentioned in my discussion on Jer 17,  $\text{מְשָׂא}$  in Jer 17 and  $\text{הַפֶּזַח}$  in Isa 58 find a similar reception in Second Temple Judaism. They were both seen as too ambiguous for precise application, and were extensively debated so as to clarify their precise meaning. For a discussion of  $\text{הַפֶּזַח}$  in Isa 58:13 see Hudyard Y. Muskita, “Justice, Cultus, and Salvation in Isaiah 56–59: A Literary-Theological Study” (Ph.D. diss., Andrews University, 2016), 215–19.

<sup>102</sup> For the scholarly debate on the meaning of  $\text{הַפֶּזַח}$  see Jassen, *Scripture and Law*, 70, 139. Moshe Weinfeld wrote commenting on Isa 58:13: “In fact all the three stipulations in this verse— $\text{מִצָּא הַפֶּזַח}$  [‘do business’],  $\text{עֲשׂוּ דָרֶךְ}$  [‘carry out an enterprise’],  $\text{דַּבֵּר דָּבָר}$  [‘make an agreement’]—are associated with business transactions. Like  $\text{דַּבֵּר דָּבָר}$  . . . ,  $\text{מִצָּא הַפֶּזַח}$  and  $\text{עֲשׂוּ דָרֶךְ}$  have their semantic equivalents in Akkadian expressions that are clearly connected with business transactions and business journey, and it even seems that we meet here with Babylonian influence on the rhetoric of the prophet. . . . Furthermore, in the Neo-Babylonian sources we find side-by-side the expressions for undertaking a journey and doing business in the same vein as Isa 58:13” (Moshe Weinfeld, “The Counsel of the ‘Elders’ to Rehoboam and Its Implications,” in *Reconsidering Israel and Judah: Recent Studies on the Deuteronomic History*, eds. Gary N. Knoppers and J. Gordon McConville (Winona Lake, IN: Eisenbrauns, 2000), 531–32).

<sup>103</sup> Cf. Oswalt, *Isaiah 40–66*, 498. Paul comments on v. 3: “The unique expression  $\text{מִצָּא הַפֶּזַח}$  (see v.

be in the foreground in 58:3e, the double use of the verb  $\text{יָפַח}$  in v. 2 seems to have the meaning ‘desire, delight’ in the foreground.<sup>104</sup> Isa 58:13b and 58:13g might use  $\text{יָפַח}$  in both meanings. To me it is not clear that it is possible to exclusively reduce  $\text{יָפַח}$  in v. 13 to either one of the meanings.<sup>105</sup> It is therefore possible that Isa 58 plays on both the meaning of  $\text{יָפַח}$  as ‘desire, delight’ and as ‘business, occupation’ as a *double entendre*. If this was intended it is reasonable to think that the author chose this one word, and it would explain the choice of  $\text{יָפַח}$  rather than  $\text{מְלָאכָה}$ .<sup>106</sup>

It strengthens the sense that word play is present when we observe that God in 58:3e uses the noun  $\text{יָפַח}$  (“desire, delight”) when he again speaks after the interruption of

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13) denotes commercial activity, as does its Akkadian semantic cognate, *šibūtam kašādu* (CAD S:169–70)” (Paul, *Isaiah 40–66*, 484). See also Fishbane, *Biblical Interpretation in Ancient Israel*, 304. In his 2013-presentation Jan Joosten pointed out that the lexeme underwent a semantic development between CBH and LHB: “ $\text{יָפַח}$  ‘desire’ in Samuel-Kings turns up with the meaning ‘thing, affair’ in Ecclesiastes. The latter meaning derives from the first by a process of generalization that is well understood” (Jan Joosten, “The Use of Linguistic Arguments in Dating the Pentateuch” (paper presented at Convergence and Divergence in Pentateuchal Theory: Bridging the Academic Cultures of Israel, North America, and Europe. Jerusalem, 2013), 16). This comment is not included in the published version of the paper, Joosten, “Diachronic Linguistics,” 327–44. The term is neither discussed in Hurvitz, *A Concise Lexicon of Late Biblical Hebrew*. W. E. Staples confirms in his study that  $\text{יָפַח}$  in Ecclesiastes has the meaning “business or facts” (W. E. Staples, “The Meaning of Hēpeš in Ecclesiastes,” *JNES* 24, no. 1–2 (1965): 110–12). Isa 58 could therefore be said to incorporate both meanings of  $\text{יָפַח}$  in CBH and LHB.

<sup>104</sup> The meaning ‘to work, to do one’s business or occupation’ for the verb I  $\text{יָפַח}$  seems to be unattested (Koehler et al., *HALOT*, 340; Brown et al., *BDB*, 342–43). II  $\text{יָפַח}$  (‘to bend down, make lower’) could be said to have been fitting for the context of Isa 58, but then this root does not seem to have been in common use. It is only attested in Job 40:17.

<sup>105</sup> Contra Paul, *Isaiah 40–66*, 494. See also Isa 65:12; 66:4. Oswalt writes: “the frequent suggestion (e.g., Whybray) that *hāpēs* should be translated as ‘business’ here misses the point. But ‘pleasure,’ as though people were not to smile on the Sabbath day, misses it as well. The point is that one should never engage in religious ceremony to further one’s own purposes (*ways*; cf. 55:8) as opposed to God’s” (Oswalt, *Isaiah 40–66*, 508). Of course, the two points about the meaning of  $\text{יָפַח}$  as ‘business’/‘desire’ does not exclude the more overall point of the contrast between one’s own  $\text{יָפַח}$  in contrast to God’s. The two thoughts can be kept in mind together.

<sup>106</sup> For a similar observation see Kosmala, “Form and Structure of Isaiah 58,” 80; Hrobon, *Ethical Dimension*, 204–5.

the people's accusation of God's neglect in 58:3a–d.<sup>107</sup> It reminds the reader of the last word in God's previous speech, the verb *הִפֵּךְ* ('desire, delight') in 58:2f.<sup>108</sup> It is as if God says: "So you pretend to desire my nearness (58:2f), while your real desire is your own business (58:3e)!"<sup>109</sup>

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<sup>107</sup> This presupposes that it is God speaking in 58:3e–4. Another possibility might be that it is Isaiah speaking. In this case we could understand 58:3e–4 as Isaiah's fulfilment of the imperatives directed toward him in 58:1, to make known to the people their sins. Supportive arguments could be that the shift of speaker is not announced between 58:2f and 58:3a, and is therefore not required between 58:3d and 58:3e. Further, the reference to God in the 3ms pronoun in 58:9d, 58:11b, and possibly 58:13c, together with the use of His personal name *יְהוָה* as though referring to Him, could again be taken as evidence for God speaking. Nevertheless, since a speaker, including God, can refer to him or herself in the third person, but the 1cs is a prerogative of the speaker in a clause, the use of 1cs in 58:5b, 58:6b, 58:13b and 58:14b seem to provide the stronger argument for saying that God is the speaker in 58:3e–14. There are no discourse-shifts implying a new speaker after 58:3e. 58:14d, *כִּי פִי יְהוָה דִּבֶּר*, could be taken as an indication that it might even be a synthesis of the two, that God and the prophet have spoken in symphony by uttering the same words, even if also this clause could be read as spoken by God.

<sup>108</sup> Is this a *Wiederaufnahme* indicating the discursive/oral character of the chapter? But then this *Wiederaufnahme* would also indicate a semantic shift, where God takes up his discourse only to redirect its meaning. Both LXX (*λέγοντες*) and Targum Jonathan (*אָמְרִין*) introduces v. 3 with the masculine plural participle 'saying.' The effect of this is incorporating the people's statement into God's own speech. While the MT quotation creates a fictive dialogue in the text, even if this might represent the actual attitude of the people, LXX and Targum Jonathan loses this type of dialogue by incorporating the people's words into God's own speech.

<sup>109</sup> See Fishbane, *Biblical Interpretation in Ancient Israel*, 304. Another possible wordplay may be found in *נגַשׁ*. The verb *נגַשׁ* ("to approach") is typically used of approaching God, even in Isaiah (Exod 19:22; 20:21; 21:6; 24:2; 28:43; 30:20; 32:6; Lev 2:8; 8:14; 21:21, 23; Num 4:19; 8:19; Josh 3:9; Judg 6:19; 1 Sam 14:34; Isa 29:13; 41:1; 45:20–21; 65:5; Jer 30:21; Ezek 44:13; Amos 5:25; Mal 1:7–8, 11; 2:12; 3:3; 2 Chr 29:31). We could for example have expected Isa 58:2–3 to have formulated itself in terms of Isa 29:13: *וַיֹּאמֶר אֲדֹנָי יְעֹזֵב כִּי נִגַּשׁ הָעָם הַזֶּה בְּפִי* ("The Lord said: Because this people draw near (*נגַשׁ*) with its mouth"). But when speaking of *קִרְבַּת אֱלֹהִים* ("nearness of God") in 58:2f *נגַשׁ* is not used. Instead we find the verb *גָּשַׁח* ('to oppress') used in 58:3f. May this be a play on the verb *נגַשׁ* ('to approach')? If so, the text is saying that in the people's pretense to *נגַשׁ* ("approach") God, they actually *גָּשַׁחוּ* ("oppress") their laborers. Further, as pointed out by Hrobon, it may be a reason why Isa 58 prefers to formulate itself in terms of *קִרְבַּת אֱלֹהִים* instead of *נגַשׁ*. Lev 16:1–2 opens the chapter on the Day of Atonement as follows: "The LORD spoke to Moses after the death of the two sons of Aaron who died when they drew too close to the presence of the LORD (*בְּקִרְבָּתָם לִפְנֵי יְהוָה*). The LORD said to Moses: Tell your brother Aaron that he is not to come at will into the Shrine behind the curtain, in front of the cover that is upon the ark, lest he die; for I appear in the cloud over the cover" (NJPS). Hrobon explains the possible dependence in Isa 58:2 on Lev 16:1: "The parallel with Isa 58 is tangible: here the people 'delight to draw near to God (*קִרְבַּת אֱלֹהִים*)' (v. 2), and the role of the prophet is to change this approaching from being ineffective (v. 3a and 4b), even offensive to God (v. 5), into being efficacious (vv. 8–9a, 10b–12, 14) and pleasing to him (v. 6a). The prophet carries out this task in the two interwoven stages: announcing to people their *הַטָּאָת* and *פְּשָׁע*, and giving them the instructions for purification. As shown above, he elaborates on the Sabbath year, the Year

*Conceptual dependence:* The double mention of the שַׁבָּת (“Sabbath”) in Isa 58:13 also underlines the idea of cessation from labor. In Leviticus it was only the weekly Sabbath, the Day of Atonement and the sabbatical year that were called שַׁבָּת שַׁבָּתוֹן (“Sabbath of Sabbaths” or “Cessation of cessations”; Lev 16:31; 23:32; see Ex 31:15; 35:2; Lev 23:3; 25:4).<sup>110</sup> It is not clear whether Isa 58 has the absolute cessation of labor in mind. It is also a question whether the author of Isa 58 refers to the weekly Sabbath, or only the Day of Atonement named ‘sabbath,’ or even more narrowly the Day of Atonement upon which the Year of Jubilee was announced. As there is nothing singling out the reference to the שַׁבָּת as primarily the weekly Sabbath in vv. 13–14,<sup>111</sup> and the

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of Jubilee, and the Day of Atonement, in order to bring out the ethical dimension of what is essentially a cultic issue” (Hrobon, *Ethical Dimension*, 204).

<sup>110</sup> Gane, *Cult and Character*, 315; Martin Pröbstle, “Truth and Terror: A Text-Oriented Analysis of Daniel 8:9-14” (Ph.D. diss., Andrews University, 2006), 490–91.

<sup>111</sup> Most Bible commentaries simply assume that שַׁבָּת here refers to the weekly Sabbath, but without providing any evidence for this (Blenkinsopp, *Isaiah 56-66*, 181–82; Keil and Delitzsch, *Isaiah*, 558–59; McKenzie, *Second Isaiah*, 165; Francis D. Nichol, ed., *Isaiah to Malachi* (The Seventh-Day Adventist Bible Commentary [SDABC]; ed. Francis D. Nichol; Hagerstown, MD: Review and Herald Publishing Association, 1976), 307). Watts claims that the phrase תְּשִׁיב רַגְלְךָ in v. 13 “refers to restrictions on travel on the Sabbath” in Exod 16:29 (John D. W. Watts, *Isaiah 34-66*, WBC 25 (Waco, TX: Word Books, 1987), 844). I am not, however, convinced by this interpretation, as this would only be a loose thematic link between these two passages. Paul’s suggestion is more convincing, seeing it rather as a more general expression: “The unique expression הִשִּׁיב רַגְלְךָ מִ- (“turn back your foot from”) is similar to מִנַּע רַגְלְךָ מִ- (Prov 1:15); כִּלְאֵי רַגְלְךָ מִ- (Ps 119:101); and הִסִּיר רַגְלְךָ מִ- (Prov 4:27). Its meaning is spelled out in the following clauses.” He might also be closer by suggesting the affinity between לְקַדְּשׁ יְהוָה in Isa 58:13 and קִדְּשׁ לַיהוָה in Exod 31:15, but again due to the variation in syntactic construction I do not find this conclusive (Paul, *Isaiah 40–66*, 494). The expression קִדְּשׁ + יוֹם + אֶרֶץ is only found in Isa 58:13 and Neh 10:32. In the latter it seems to be used for other holy days in contrast to the Sabbath. This undermines using קִדְּשׁ + יוֹם + אֶרֶץ as an argument that the phrase necessarily refers to the weekly Sabbath *day* (Myers, *Ezra. Nehemiah*, 178; Williamson, *Ezra, Nehemiah*, 334; Batten, *Ezra and Nehemiah*, 376; Francis D. Nichol, ed., *1 Chronicles to Song of Solomon* (SDABC; ed. Francis D. Nichol; Hagerstown, MD: Review and Herald Publishing Association, 1977), 435). The strongest evidence that the שַׁבָּת here refers to the weekly Sabbath, is probably in the word שַׁבָּת itself.

Blenkinsopp points out that 1QIsa<sup>a</sup> acknowledges the “distinctive character” of vv. 13–14 by having “an almost entirely blank line preceding it” (Blenkinsopp, *Isaiah 56-66*, 181). McKenzie goes further and claims that vv. 13–14 was “an afterthought” and “a secondary addition to the original poem” (McKenzie, *Second Isaiah*, 165). While the spacing in 1QIsa<sup>a</sup> is clearly the case, the close lexical and thematic interweaving of vv. 13–14 with the rest of the chapter, as pointed out in my discussion, makes it

Year of Jubilee is only hinted at with the use of שׁוֹפָר and the theme of liberation, it seems safest to say that the Day of Atonement appears to be in the foreground, with the other two holy days in a likely background. But even if Isa 58 does not use the characteristic phrase שְׁבַת שְׁבַתוֹן (see Lev 16:31; 23:32), the mention of שְׁבַת would evoke ideas of festive cessation from labor. The ambiguity of the term שְׁבַת, possibly both referring to the Day of Atonement and the weekly Sabbath, might again be intentional. It would fit the pattern of other cases in the chapter that may be intentionally ambiguous or appear as conundrums, as the lexemes חֲפֹץ/חֶפֶץ (58:2–3, 13), אָדָם נִפְשׁוֹ and רָאִשׁוֹ in 58:5, בֵּית in 58:7 (see below), and the clause וְתָפַק לְרַעַב נַפְשֶׁךָ (58:10). It seems that their shared theme of cessation from labor, more precisely the putting aside of one’s own business and delight, is the shared concept behind the two, providing the rationale for why the weekly Sabbath might be brought into Isa 58 at this point.<sup>112</sup> The contrast established earlier in the chapter between seeking one’s business and delight in contrast to filling the needs of the poor and

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difficult to imagine these verses as a later interpolation. The phrase לְשָׁבַת seems to be used in Isa 58:12 proleptically to the theme of the Sabbath in vv. 13–14. The use of the roots שׁוּב, יָשַׁב, שׁוּב for the second time, and שְׁבַת in 58:12e–13a might also be intentional to create a phonetic play. Paul has also noticed this play on words (Paul, *Isaiah 40–66*, 493). Cf. Kline, *Allusive Soundplay*. This would be an argument contrary to those claiming that vv. 13–14 did not originally belong to Isa 58. Paul also notes that 1QIsa<sup>a</sup> leaves an empty space after v. 12, and begins a new line with v. 13, thus marking a gap: “The final segment (vv 13–14) is generally taken to be an addendum (we might call it a minisermon on Sabbath observance), and its distinctive character is acknowledged in 1QIsa<sup>a</sup> by an almost entirely blank line preceding it” (Blenkinsopp, *Isaiah 56–66*, 181). The question is however whether this should be given any weight, as this might simply be a scribal decision not reflecting the unity between v. 12 and 13 noted above. For references to scholars who see Isa 58:13–14 as a later addition, and those arguing that Isa 58 as a whole constitutes a literary unit see Kline, *Allusive Soundplay*, 86n. Hrobon writes that “if Isa 58:1–12 is read through the lens of the Sabbath, the Sabbatical year, the Year of Jubilee, and the Day of Atonement regulations in Leviticus, the sabbath concept turns out to be all-encompassing in Isa 58, and vv. 13–14 then come naturally as the chapter’s grand finale” (Hrobon, *Ethical Dimension*, 205).

<sup>112</sup> Hrobon writes: “One should think of the sabbath concept as represented not only by the Sabbath day, but also by the Sabbath year, the Year of Jubilee, and the Day of Atonement. Once these festivals are taken into consideration, the connections between Isa 58:13–14 and the rest of the chapter are manifold” (Hrobon, *Ethical Dimension*, 202). Cf. Westermann, *Isaiah 40–66*, 340 seeing the weekly Sabbath as framing the literary unit Isa 56–58.



afflicted on the Day of Atonement, now seems to inform and flow into the meaning of the Sabbath in the latter part of the chapter. The difference, however, is that the contrast is now between seeking one's business and personal delight in contrast to honoring God. I will return to this point below. Here it should be noted that the idea of cessation from labor in Isa 58 seems conceptually dependent on Leviticus. In Isa 58 it is not clear why the *שַׁבָּת* is suddenly mentioned. Leviticus seems to provide the explanation for this, indicating that Isa 58 is dependent on Leviticus. Both the Day of Atonement and the weekly Sabbath are called *שַׁבָּת שַׁבְּתוֹן*, and both are given an absolute prohibition against any work in Leviticus. This seems to be the rationale for linking the two together in Isa 58. In concluding this chapter, I therefore agree with Paul in claiming that Isa 58 was dependent on Lev 16; 23; 25. Paul writes: "This prophecy [Isa 58] was deeply influenced by the injunctions regarding the observation of the Day of Atonement found in Lv 16; 23:24–32; 25:9–10."<sup>113</sup>

To me it does not seem possible to determine whether Isa 58 reused *שַׁבָּת* + *עֲנָה* from one of the passages Lev 16; 23; or Num 29:7 or rather borrowed this locution conceptually linked to the Day of Atonement from all three passages. However, Milgrom has pointed out a chiasm in Lev 16:29–31, highlighting the command to afflict one's soul and prohibition against labor:<sup>114</sup>

- A. And this shall be for you a law for all time (*וְהָיְתָה לָכֶם לְחֻקַּת עוֹלָם*, 16:29a):
- B. . . . you shall practice self-denial (*וְהָעֲנִיתֶם אֶת-נַפְשֵׁיכֶם*, 16:29b)
- C. and you shall do no manner of work . . . . (*וְכָל-מְלָאכָה לֹא תַעֲשׂוּ*), 16:29c)
- X. For on this day shall purgation be effected on your behalf to

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<sup>113</sup> Paul, *Isaiah 40–66*, 480.

<sup>114</sup> Milgrom, *Leviticus 1–16*, 40, 1057. Cf. Kline, *Allusive Soundplay*, 80–82.

purify you of all your sins; you shall become pure before the Lord (16:30).

C'. It shall be a sabbath of complete rest for you (שַׁבַּת שְׁבֻתוֹן הִיא לָכֶם, 16:31a),

B'. and you shall practice self-denial (וְעִנִּיתֶם אֶת-נַפְשֵׁיכֶם, 16:31b);

A'. It is a law for all time (הַקָּדָשׁ עוֹלָם, 16:31c).

The command to afflict one's self and prohibition against work, highlighted in Lev 16:29–31 through this chiasm, are exactly the two locutions upon which I argue that Isa 58 plays upon.<sup>115</sup> Paul points out another paronomasia in Isa 58:12c–13a: “And call you ‘restorer (מְשַׁבֵּר) of a breach, Restorer of paths, in order to dwell (לְשֻׁבָת)’. If you turn back (תָּשִׁיב) your foot on the Sabbath (מְשַׁבֵּת) . . . .”<sup>116</sup> Further, Kline here sees an allusive word play, this time linking the passage to the similar allusive wordplay in Lev 23:31–32: “You shall not do any work. It is a regulation forever throughout your generations in all your dwellings (מְשַׁבְּתֵיכֶם). It is a Sabbath of complete rest (שַׁבַּת שְׁבֻתוֹן) for you . . . from evening to evening you shall keep your Sabbath (תִּשְׁבְּתוּ שַׁבְּתֵיכֶם).”<sup>117</sup>

*Linguistic dating:* Had the noun יוֹבֵל been used in Isa 58, the link with Lev 25 would have been stronger. But there might be reasons why this word is not used. If we check the distribution we only find the lexeme used in Torah and the book of Joshua, with 21 of a total of 27 occurrences in the HB in Leviticus itself, with 14 of these only in Lev 25.<sup>118</sup> The lexeme שׁוֹפָר is attested 63 times in the HB.<sup>119</sup> Isa 58:1 uses שׁוֹפָר instead

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<sup>115</sup> For another who has made a similar point see Kline, *Allusive Soundplay*, 85.

<sup>116</sup> Paul, *Isaiah 40–66*, 493.

<sup>117</sup> Kline, *Allusive Soundplay*, 80–82, 86.

<sup>118</sup> Exod 19:13; Lev 25:10-13, 15, 28, 30-31, 33, 40, 50, 52, 54; 27:17-18, 21, 23-24; Num 36:4; Josh 6:4-6, 8, 13.

<sup>119</sup> The lexeme שׁוֹפָר attested in the HB in Exod 19:16, 19; 20:18; Lev 25:9; Josh 6:4–6, 8–9, 13, 16, 20; Judg 3:27; 6:34; 7:8, 16, 18-20, 22; 1 Sam 13:3; 2 Sam 2:28; 6:15; 15:10; 18:16; 20:1, 22; 1 Kgs

of יוֹבֵל, in harmony with the changes in Hebrew as to how to refer to the Day of

Atonement. Bergsma writes concerning יוֹבֵל:

It does not occur in undisputed exilic or post- exilic literature in the Hebrew Bible; in Ezekiel’s reference to the jubilee year (Ezek 47:17) it is simply called “the year of release” (שנת דרור) perhaps indicating that by the time Ezekiel was composed, the term יוֹבֵל had fallen out of general use. Significantly, however, the statement of Lev 25:10, “It [the fiftieth year] will be a Jubilee for you,” assumes that the reader/listener knows what a jubilee is, i.e. the text presupposes some prior knowledge of the meaning of יוֹבֵל. . . . In the opinion of the majority of scholars, יוֹבֵל is an antique term for “ram’s horn,” which was gradually replaced with שֹׁפָר. Joshua 6:4, 6, 8, 13 are cited as evidence for this, since in these verses the term יוֹבֵלִים appears glossed with שׁוֹפְרוֹת.<sup>120</sup>

*Multiplicity:* I have argued that it is Isa 58 that reuses and depends upon Lev 16; 23; 25. My four main arguments have been (1) the concentration of lexical and thematic parallels in Isa 58:1 almost as an introduction to the textual basis for the chapter, to the announcement of the Year of Jubilee on the Day of Atonement in Lev 25:9–10, (2) the puzzling phrase וְתָפַק לְרַעֲב נַפְשֶׁךָ (“and you offer your person to the hungry”) as part of a general and strategic alteration in Isa 58 of the phrase עָנָה in piel + נָפַשׁ used in the command in Lev 16 and 23 for the people to fast on the Day of Atonement, (3) the likely intentional reworking of the second command directed to the people in Lev 16 and 23 on the Day of Atonement, namely abstention from work, through the lexemes תָּפַץ/הִפָּץ, and (4) the possible transition between v. 12 and 13, from the Day of Atonement to where the weekly Sabbath possibly and abruptly comes into view;<sup>121</sup> abrupt in Isa 58 itself but fully

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1:34, 39, 41; 2 Kgs 9:13; Isa 18:3; 27:13; 58:1; Jer 4:5, 19, 21; 6:1, 17; 42:14; 51:27; Ezek 33:3–6; Hos 5:8; 8:1; Joel 2:1, 15; Amos 2:2; 3:6; Zeph 1:16; Zech 9:14; Ps 47:6; 81:4; 98:6; 150:3; Job 39:24–25; Neh 4:12, 14; 1 Chr 15:28; 2 Chr 15:14.

<sup>120</sup> Bergsma, *The Jubilee from Leviticus to Qumran*, 61.

<sup>121</sup> The strongest evidence that the שָׁבֶת here refers to the weekly Sabbath, is probably in the word שָׁבֶת itself, as argued above.

understandable through the shared concept of cessation of labor between the Day of Atonement and weekly Sabbath in Leviticus. I suggest that recognizing the reuse of Lev 16; 23; 25 in Isa 58 seems to offer a more adequate explanation than the etymological explanation of the puzzling phrase וְהִנֵּחַ לְרֵעִב נַפְשְׁךָ (“and you offer your person to the hungry”) in Isa 58:10 and that the abrupt transition between Isa 58:12 and 58:13, as well, is better understood in this way in contrast to the proposed source critical explanations. It is preferable to adopt the single proposal that Isa 58 reuses Lev 16; 23; 25 in order to explain both phenomena, as opposed to having to manage a separate explanation for each phenomenon.

### **Appropriation**

In the above discussion, I have argued that Isa 58 reuses Lev 16; 23; and 25 to form its unique message.<sup>122</sup> Strictly speaking, it is possible both to argue that there is a literary dependence in Isa 58 upon Lev 16; 23; 25 and that Isa 58 is drawing upon a cultic setting framed by instructions like those we find in Lev 16; 23; 25. The objection can be made that there is no decisive evidence for claiming it as necessary to see direct literary dependence, but, on the other hand, the accumulation of parallels makes it most reasonable to acknowledge a reuse in Isa 58 of a cultic setting as outlined in Lev 16; 23; 25. For practical purposes we can therefore speak of literary reuse and dependence.

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<sup>122</sup> Terms like ‘intertextuality’, ‘allusion’, ‘echo’ and ‘exegesis’ all seem inadequate to explain what is really going on in Isa 58. ‘Intertextuality’ seems too weak, as there seems to be intentional reuse and a chronological relation between the two. Both ‘allusion’ and ‘echo’ also seem inappropriate to catch the strategic play and alteration of meaning found in this chapter. Finally, God in the words of Isaiah is not simply exegeting Lev 16 and 23, even if the Year of Jubilee in Lev 25 seems to provide a hermeneutical key to unlock the true meaning of the Day of Atonement in Lev 16; 23.

We find the material most clearly reusing elements from Lev 16; 23 and 25 in the prologue in section 1 (see above), the people's response in section 3, God's accusation and exposition of the false Day of Atonement in sections 4a and 4b, and then afterwards in the protasis-sections. The reuse of Lev 16; 23; and 25 in the protases signifies conditionality. Bringing their moral conduct up to the true meaning of the cultic practice is part of God's grand scheme of restoring His people to the blessings of the covenant relationship with Him. If the people will remain faithful to the true meaning of the fast and cessation of labor on the Day of Atonement and cessation of labor on the weekly Sabbath, God will turn the peoples' fast to a feast.

Fishbane correctly points out that even if there is a tension in Isa 58 between cultic fasting and morality, the chapter is not antinomian:

Given the compact congruence between the imagery and linguistic forms found in Isa. 58:1–12 and Lev. 16 and 23:24–32, and the shift in focus and concern, it may be concluded that the former is a deliberate piece of homiletical-aggadic exegesis. The Pentateuchal legal materials dealing with the rules and regulations of the Day of Atonement thus serve as the linguistic and ideological matrix for the inversion and reapplication in Isaiah's discourse. The powerful spiritual redefinition of fasting undertaken by the prophet so balances the old cult practices on the edge of rhetorical hyperbole that the hermeneutical tension between the two is taut and unyielding. However, it must be stressed that Isa. 58:1–12 is not antinomian: it neither attempts to weaken nor to reject the Pentateuchal law. In fact, the text specifically condemns work on the fast day (v. 3). Accordingly, what the prophet ultimately seeks to effect is a social-spiritual extension of an authoritative religious practice.<sup>123</sup>

As we saw in Jer 34, Isa 58 can also be said to contain an expansionistic reading of Torah. Isaiah 58 presents God as the one interpreting the true meaning of the Day of Atonement. At the same time the people are rebuked for their narrow concepts of the fast.

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<sup>123</sup> Fishbane, *Biblical Interpretation in Ancient Israel*, 305. Hrobon adds that this "social-spiritual extension" of Torah should be "extended to the Sabbath as well" (Hrobon, *Ethical Dimension*, 205).

They should have known better. While the people were commended in Jer 34 for their expansionistic reading of the manumission instructions, and later held accountable for their covenant based on this reading, in Isa 58 the people are criticized for not having seen the expansionistic reading implied by Lev 25:9–10. God, speaking through the prophet, exposes the textual indicators that could have led the people to see the radical truths implied in Torah. The chapter opens in Isa 58:1 by reusing locutions that remind the people of the call to a religious assembly (קרא בגרון אל־תִּתְשֹׁדוּ פִּשׁוּפֵר הָרֶם קוֹלְךָ), now for the purpose of disclosing the sins of the people (וְהִגֵּד לְעַמִּי פִּשְׁעֵם וּלְבַיִת יַעֲקֹב חַטָּאתָם), and I have argued that it is reasonable to see a parallel to Lev 25:9–10 and the announcement of the Year of Jubilee on the Day of Atonement. The people’s response in 58:3 (לָמָּה צָמְנוּ וְלֹא רָאִיתָ עֲנִינוּ נִפְלְשָׁנוּ וְלֹא תִדְעַע) ties the assembly even closer to key locutions in the Day of Atonement. Their literal reading of the cultic passages of Lev 16 and 23 had led them to believe that abstaining from food was sufficient. Furthermore, the fast, presumably on the Day of Atonement, together with a display of generally pious behavior throughout the year (58:2) appears to have been considered by the people as good enough. The statement הֵן בְּיֹום צִמְמֶם תִּמְצְאוּ חִפְזִים וְכָל־עַצְבֵיכֶם תִּתְנַגְּשׁוּ (“Behold, on the day (בְּיֹום) of your fast you seek business and oppress all your labors”) in 58:3 seems to underline the incommensurability of the fast on the Day of Atonement itself with cotemporaneous social oppression. It here reminds of לֹא־אוּכַל אֲנִי וְעֵצְרָה (“I cannot take iniquity and assemblies”) in Isa 1:13.<sup>124</sup> We can also think of Isa 29:13: כִּי וַיֹּאמֶר אֲדֹנָי יְעֹזֵב כִּי (“The Lord has rejected this people and despised their assembly, for they have despised my voice and despised my word, they have despised my voice and despised my word, they have despised my voice and despised my word”)

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<sup>124</sup> LXX makes the link with Isa 58 even stronger by rendering it *νηστείαν και ἀργίαν* (“fast and assembly”). Cf. Oswalt, *Isaiah 40–66*, 493–94.

Lord said: Because this people draw near with its mouth and its lips honor me, while its heart is far from me, and their fear of me is a human commandment learned by rote”).

After YHWH’s rhetorical questions in 58:4 he then starts reworking the meaning of עֲנֵה נְפִישׁ. As we have seen, Lev 25 and its message of social justice each Year of Jubilee is injected into the message of the annual Day of Atonement—a message not found in Lev 16 and 23—so as to characterize every day every year as a time of social justice, not least the Day of Atonement itself. Thus, the opening in Isa 58:1 points us to the textual basis in Lev 25:9–10 for this radicalized reading of Torah. Implicit in the message of Isaiah 58 is the idea that true readers of Torah should have been able to grasp the message of Isa 58 on the basis of Leviticus itself.<sup>125</sup>

Further, with the prohibition against any form of labor on the Day of Atonement, Isa 58 seems to recognize the similar prohibition on the weekly Sabbath. On this basis, the author seems to have established the following analogy: Just as the Day of Atonement is about setting oneself and one’s business-desires aside for the afflicted, the weekly Sabbath is about setting oneself and one’s business-desires aside for God. It is even possible that the author of Isa 58 built his integration of themes from the Year of Jubilee, Day of Atonement, and weekly Sabbath upon Lev 25:1–12, as all three are mentioned there—that is, if we derive the Sabbath-theme from the Sabbatical year in vv. 2-4.

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<sup>125</sup> Bergsma writes “that there is nothing arbitrary about the proclamation of the jubilee on *yom kippur*, on the contrary, there may be the most intimate conceptual relationship between the purgation of the temple and the restoration of social justice in Israel” (Bergsma, *The Jubilee from Leviticus to Qumran*, 31). Drawing upon the *akîtu* festival he writes on the same page: “The nature of the *akîtu* festival is yet another indication that in ancient Near Eastern societies there was not a divorce between cult and (social) ethics.”

Shalom Paul claims that the main problem is “their lack of abstinence from commerce on communal fast days.”<sup>126</sup> I am not able to see this as the primary issue in the chapter. Rather, it is the rampant social abuse that serves as the focal point of which their trade on fast days is only a part. Gane argues that the purpose of the fast on the Day of Atonement in Lev 16 and 23 was to express continuing loyalty to God. He writes:

The purpose of self-denial on the Day of Purgation appears to be basically the same as that of this practice at other times: to humbly acknowledge total dependence on God at a time of special need. . . . On this occasion the Israelites’ need is to receive moral cleansing through purgation of the sanctuary on their behalf from sins for which they have already been forgiven (Lev. 16:30). We can conclude that the Israelites who practice self-denial as an outward token of sincere inner repentance and who keep Sabbath on the Day of Purgation express their ongoing loyalty and humble submission to their holy Lord.<sup>127</sup>

In Isa 58 the problem is not that the people do not fast or abstain from labor as such. They did both. The problem is that their religious conduct is not for the good of those around them; their religious praxis exhibits an utter lack of morality and may even preclude it. While they are fasting no one else is fed, and while they afflict themselves their affliction of others is not relieved. Their lack of true repentance bars them from receiving the benefit of the Day of Atonement. So on the Day of Atonement, when sin truly could have been purged from the people, their sins are prosecuted with even a greater degree of enthusiasm. Commenting on Isa 58 and the link to Lev 16; 23; and 25 Gane writes: “On the Day of Purgation, when the sins of the Israelites were purged out of the sanctuary so that they could be morally pure (ch. 16), it was more inappropriate and

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<sup>126</sup> Paul, *Isaiah 40–66*, 480.

<sup>127</sup> Gane, *Leviticus, Numbers*, 405. See also Gane, *Altar Call*, 306–7, 319–20; Gane, *Cult and Character*, 300–2.



hypocritical than ever to commit more rebellious faults and sins of social unkindness (Isa 58:1–5).”<sup>128</sup> This once more highlights the fluidity between the moral and cultic instructions in Torah. Isa 58 clearly reads the cultic instructions as being deeply rooted in the moral instructions. Cult without morals is a defiance of YHWH’s instructions.

Isaiah 58:6b–7e lists eight injunctions concerning the true fast: (1) to loose bonds of wickedness, (2) to untie ropes of the yoke, (3) to let oppressed go free, (4) to break all yokes, (5) to break your bread for the hungry, (6) to bring afflicted poor and homeless to a house,<sup>129</sup> (7) to clothe the naked, and (8) not to turn away from your own kin. In this list only #8 is in the negative form.<sup>130</sup> Paul writes: “The prophet, however, reinterprets these

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<sup>128</sup> Gane, *Leviticus, Numbers*, 447. For a thematic link to Rev 14:12 see Gane, *Leviticus, Numbers*, 413. Paul comments on v. 2: “Ridicule is inherent in the structure of this verse: If they ‘eagerly desire’ the ‘nearness of God’ (v. 2), how can they eagerly (רָצוּ) continue to do business on a fast day?!” (Paul, *Isaiah 40–66*, 484–85).

<sup>129</sup> A question is what the indeterminate ‘house’ (בֵּית) in v. 7 refers to? LXX adds the 2. pers. pronoun “your” in εἰς τὸν οἶκόν σου (“into your house”). Oswalt points out that the following word begins with a *kaph* and might suggest that a 2ms suffix was lost through haplography (Oswalt, *Isaiah 40–66*, 500). But both 1QIsa<sup>a</sup> and 1QIsa<sup>b</sup> support MT. Does בֵּית refer to one’s own house or to the afflicted one’s house? Oswalt comments that “if the MT is correct, it is not so much that the homeless need to be taken into one’s own home as that shelter should be procured for them” (Oswalt, *Isaiah 40–66*, 504). As the people would go up to the Temple on the Day of Atonement (cf. Lev 16:11–12, 15, 17), it could also be that a contrast is intended here between the Temple and one’s own house. Rather than bringing the afflicted up to the Temple, the message of the Day of Atonement is rather to bring them to one’s own house. With the return to one’s property and family in the Year of Jubilee (Lev 25:10), it might even be that the ‘house’ here refers to bringing the afflicted back to their own family house (see Weinfeld, *Social Justice in Ancient Israel*, 14–15). Lev 25:29–33 deals specifically with the question of the loss of one’s בֵּית. As the personal pronoun is missing, the radical message might even be that the individual Israelite has a responsibility to provide a house even for the one who has never owned a house. I am therefore inclined to see the reuse and parallel to Lev 25:10 as a likely explanation for the the ambiguity of בֵּית in Isa 58:7. Cf. Polan, *In the Ways of Justice*, 34 pointing out the analogy between God bringing stranger to his Temple in Isa 56:7 and the people providing shelter for the homeless.

<sup>130</sup> Paul only lists four points: “(1) providing food for the hungry; (2) housing of indigents; (3) clothing them; and (4) paying heed to destitute kin” (Paul, *Isaiah 40–66*, 487). Weinfeld also summarize it in four points “both negatively and positively: the release of prisoners, the setting free of the oppressed, on the one hand, and the supplying of the needs of the poor and indigent on the other hand” (Weinfeld, *Social Justice in Ancient Israel*, 220–21). But following the clause divisions, it seems more appropriate to me to see eight actions called for. Weinfeld continues: “However, unlike in Ezekiel [18:7–8, 16–17], where matters of ritual are also included, in Isaiah, all the actions which are mentioned are taken from the social

edicts and concentrates on their social ramifications. He is thus very much akin to his prophetic predecessors who denounced animal offerings, observation of holidays, and even prayer, if they were not accompanied by moral uprightness (see Isa 1:1–17; Jer 7:21–23; Hos 6:6; Amos 5:21–24). All ritual is secondary and dependent on morality.”<sup>131</sup> The promise is that God will respond, when the people respond to the needy.<sup>132</sup> Isaiah 58 demonstrates an inner unity between ritual and morality, or rite and right. The former does not make sense without the latter. As Fishbane puts it: “In this fiercely ironical rebuke, the Israelites are told that they cannot force divine favour by fasting, but that they can elicit it by feeding the hungry.”<sup>133</sup>

Let me finally say some words about the Sabbath in vv. 13–14. As mentioned, Hrobon finds the Sabbath concept to be “all-encompassing in Isa 58.”<sup>134</sup> The weekly Sabbath, the Sabbatical year, the Year of Jubilee, and the Day of Atonement come together in this chapter as an organic whole. Like Deut 5:12–15 and Isa 56:2–8, Isa 58 could have brought out the social element of the Sabbath.<sup>135</sup> It would have been an

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sphere” (Weinfeld, *Social Justice in Ancient Israel*, 221). For a discussion on Isa 58:5 and how it uses ‘negative dialectics,’ see Heinz Kruse, “Die ‘Dialektische Negation’ Als Semitisches Idiom,” *VT* 4, no. 1 (1954): 396.

<sup>131</sup> Paul, *Isaiah 40–66*, 481. And again: “The prophet warns the people that in order to be near to God and to know His ways it is not sufficient to fast and offer sacrifices, since ritual has no value in and of itself if not accompanied by morally and socially responsible conduct. It is not enough to humble one’s heart and deprive one’s body, because ‘He has told you, O man, what is good, and what the Lord requires of you: Only to do justice, and to love loyalty, and to walk wisely with your God’ (Mic 6:8). If they conduct themselves in this manner, they shall be saved” (Paul, *Isaiah 40–66*, 484).

<sup>132</sup> See Fishbane, *Biblical Interpretation in Ancient Israel*, 304; Paul, *Isaiah 40–66*, 480.

<sup>133</sup> Fishbane, *Biblical Interpretation in Ancient Israel*, 304.

<sup>134</sup> Hrobon, *Ethical Dimension*, 205.

<sup>135</sup> See Blenkinsopp, *Isaiah 56-66*, 181.

appropriate link to make explicit in this chapter. But the author chose not to focus on this, but rather, changed the focus to loyalty toward God. The shift in focus in vv. 13–14 is significant: “There is, at any rate, no longer a concern for the humanitarian or philanthropic aspect of the Sabbath rest, comparable to the accusation of exploiting the fast days in 3b–4, and in agreement with the Deuteronomic formulation of the Sabbath command (Deut 5:12–15). Sabbath observance is considered exclusively an act of obedience and devotion to God.”<sup>136</sup> Watts writes concerning the Sabbath: “here it is seen as a test by which one restrains common desires in order to conform to God’s expressed will.”<sup>137</sup> While fasting and cessation of labor constituted a test of loyalty to YHWH on the Day of Atonement according to Lev 16; 23, fasting and cessation of labor in Isa 58:1–12 is taken as signifying social justice rather than loyalty to God. As we come to vv. 13–14, however, the Sabbath cessation of labor becomes again a test of loyalty to YHWH, as on the Day of Atonement.<sup>138</sup> If Isa 58:13–14 should be read in terms of the weekly Sabbath, it is then colored by the concepts of the Day of Atonement through the theme of loyalty to YHWH.<sup>139</sup> If read in this way, the chapter brings us along a trajectory that

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<sup>136</sup> Blenkinsopp, *Isaiah 56-66*, 181.

<sup>137</sup> Watts, *Isaiah 34-66*, 844. Paul writes: “In the preceding verses, divine favor was made conditional upon social reform (conduct relative to one’s fellow), while here it is conditional upon Sabbath observance (conduct relative to God)” (Paul, *Isaiah 40–66*, 493–94).

<sup>138</sup> “The duty of keeping the Sabbath is also enforced by Jeremiah (Jer. 17:19ff.) and Ezekiel (Ezek. 20:12ff., 22:8, 26), and the neglect of this duty severely condemned. Ch. 56 has already shown the importance attached to it by our prophet” (Keil and Delitzsch, *Isaiah*, 558).

<sup>139</sup> McKenzie claims that the Sabbath observance of Isa 58 is unique in the HB: “The ideal of Sabbath observance proposed here is found in no other passage of the OT” (McKenzie, *Second Isaiah*, 165). Keil and Delitzsch on their side do not see any new precepts being included, contrary to McKenzie: “The prophet does not hedge round this commandment to keep the Sabbath with any new precepts, but merely demands for its observance full truth answering to the spirit of the letter” (Keil and Delitzsch, *Isaiah*, 559).

begins with the Day of Atonement, is elaborated in terms of the Jubilee year, and, finally, shows us that the content of both were already implicit in the weekly Sabbath itself. In regard to Lev 16 and 23, we could say that vv. 13–14 again takes up the theme of cessation from labor as a sign of loyalty to God.<sup>140</sup> This connects with a remarkable irony in Isaiah 58; namely, that the chapter that began by speaking about the people fasting, ends with a promise of the people feasting.<sup>141</sup>

Isaiah 58 is therefore a prime example of an expansionistic reading of the Torah instructions. A close reading of the Levitical instructions detects a bridge between the cultic regulations of the Day of Atonement and the moral obligation to release one's

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<sup>140</sup> Blenkinsopp also claims there is a reuse of other biblical passages in apodosis 3, in v. 14: “The promises, the fulfillment of which is to be contingent on Sabbath observance, are formulated on the basis of familiar and unspecific expressions of reassurance. ‘You will take delight in YHVH’ is reminiscent of Job 22:26, and ‘I shall set you astride on the heights of the earth’ is taken almost verbatim from the Song of Moses (Deut 32:13a), which also suggests the promise about Jacob’s heritage (Deut 32:9, 13a). The finale, ‘this is what YHVH has spoken,’ is borrowed from Isa 40:5 in order to confer the character of a prophetic pronouncement on what is, in effect, a very brief homiletic admonition” (Blenkinsopp, *Isaiah 56-66*, 182). Paul writes even more detailed about this reuse: “The Song of Moses left its linguistic and thematic imprint on this verse: ‘For the Lord’s portion is His people, Jacob His own allotment. . . . He set him atop heights of the earth to enjoy the yield of the fields’ (Deut 32:9, 13). Thematically, the Mosaic promise in the song will be fulfilled, provided that the Israelites observe the Sabbath, as delineated in v. 13. Linguistically, the very distinctive idiom *הָרָכִיב עַל בְּמַתֵּי אֶרֶץ* (‘to set astride the heights of the earth’) appears only here and in Deuteronomy, and both are accompanied by a similar image: ‘He [Israel] shall enjoy (וַיֹּאכַל) the yield of the fields’ (Deut 32:13); and here: ‘I shall let you enjoy (וְהֵאכִלְתֶּיךָ) the heritage of your father Jacob.’ . . . (Perhaps one should add another linguistic item to this comparison: Both Deut 32:12 and v. 11 here feature the verb *נָחַי* [‘the Lord alone did guide him (וַיִּנְחֵנוּ)’, and ‘The Lord will guide you (וַיְנַחֵךְ) always’].) In spite of these common images, there is an important difference between Deuteronomy and Deutero-Isaiah: In the former Israel is the Lord’s allotment or heritage, while in the latter the land of Israel is the nation’s heritage or reward, which accords with the usual emphasis on return and inheritance in Deutero-Isaiah’s prophecy” (Paul, *Isaiah 40–66*, 495). As this reuse is outside of textual parameters set for this study, I let it suffice with these remarks here. Still, they do support the overall claim that Isa 58 is a borrowing text.

<sup>141</sup> Paul: “There may be a hidden wordplay here, since the chapter begins with the theme of fasting and ends with ‘eating’ (וְהֵאכִלְתֶּיךָ), at least in the metaphorical sense. Moreover, the reward of the nation that provides for the hungry (vv. 7, 10) is that they themselves shall have the enjoyment of ‘eating’ (וְהֵאכִלְתֶּיךָ)” (Paul, *Isaiah 40–66*, 496). It is therefore a *lex talionis* operative here, just as we saw it in Jer 34 as well. And again: “Moreover, the observance of the Sabbath was especially emphasized during the period of the exile and the return (see Isa 56:2, 4, 6; 66:23), since the desecration of the Sabbath was considered one of the reasons for the national disaster (see Jer 17:24, 27; Ezek 20:12, 13, 15, 20, 21, 24; 22:8, 26; Neh 13:15–18). The prophet therefore promises that if they observe the Sabbath properly, they shall be rewarded with the repossession of the land” (Paul, *Isaiah 40–66*, 493). Cf. also Neh 10:32.

neighbor from oppression and affliction. This bridge is the announcement of the Year of Jubilee on the actual Day of Atonement. This also demonstrates a semi-permeable membrane between so-called cultic and ethical instructions in the mind of the author of Isa 58, and confirms that the two are seen as fundamentally belonging together in a life lived with YHWH. The chapter, therefore, simultaneously challenges a literalistic reading that limits religion to the plain sense of the text on the one hand, and an irresponsible creative reading that is not controlled by the text on the other. Instead, Isa 58 holds its reader accountable for not having seen the expansionistic potential it unfolds in the Torah instructions. As readers, we are not entitled either to only “stick with the text” or “move beyond the text.” It is through a thorough familiarity both with the text and with YHWH that we are enabled or led to detect textual potentialities that truly set us on the walk in the ways of YHWH.

## CHAPTER 8

### PASTICHES OF TORAH IN JER 7:1–15 AND EZEK 18 AS AN ENTRY INTO A REFLECTION ON IMPLICATIONS FOR POSSIBLE PROTO-HALAKHIC ELUSIVE REUSE IN THE PROPHETS

#### **Introduction**

In this chapter, I will change the mode of analysis and reflection as I approach more elusive cases of reuse between Torah and the Prophets. As my point of departure, I will briefly reflect on the reuse of Torah in Jer 7:1–15 and Ezek 18. In each case, we find what seems to be a list of reuses of Torah-passages. Jer 7 and Ezek 18 display a series of more atomistic types of reuse in that they reuse smaller segments from a single passage combined with less creative reuse. By reiterating lexemes, phrases, and themes from Torah they create a pastiche, as it were. But since parallels are more limited to one lexical set or phrase between Jer 7 or Ezek 18 on the one hand and Torah on the other, it is more difficult to speak confidently of reuse and direction of dependence. It is rather the accumulation of parallels between Jer 7 or Ezek 18 on the one hand and *various* passages in Torah on the other that constitute the strongest argument for reuse and direction of dependence in these cases. The character of reuse in Jer 7 and Ezek 18 is therefore different from the type of reuse seen in the previous cases. According to Fishbane, the

lists in Ezek 18 and 22 seems to have “served a pedagogical and hortatory function.”<sup>1</sup>

The same seems to apply to Jer 7.

Jeremiah 7 and Ezekiel 18 can be characterized as more elusive cases of reuse compared to the previous cases studied, so much so that the strength of a case for reuse and direction of dependence is significantly reduced. While the passages deserve close attention in their own right as proto-halakhic discourse, the relatively weaker cases for reuse and direction of dependence place them more in the periphery of the present study. Instead of proceeding to a discussion of the character of appropriation in these passages, I will therefore use them as an entry to the larger question of how to relate to possible proto-halakhic elusive reuse in the Prophets in general. And as an entry point, I will only briefly touch upon this question by way of offering some reflections.

In the former discussion, given the phenomenon of repetition with variation in the concrete cases, it was the evidence demonstrating exact or near to exact linguistic parallels between passages that provided a basis for speaking of reuse and direction of dependence with a certain degree of confidence. This evidence, further, gave the basis for exploring the more creative and elusive ways in which a passage reused its source(s). But what about cases where we do not have the same degree of evidence for exact or close to exact linguistic parallels, where we might only have an author’s more atomistic or creative reuse? Can we imagine that some authors or authors sometimes operated more freely in regard to their sources, using them as part of their language game while still

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<sup>1</sup> Michael Fishbane, “Sin and Judgment in the Prophecies of Ezekiel,” *Interpretation* 38 (1984): 146. Matties writes regarding Ezek 18: “This is one of the few texts in Ezekiel that is hortatory, that calls on the people to take action in the present” (Matties, *Ezekiel 18*, 222). Cf. also p. 152.

intending to remain faithful to them? I will argue that such an imagination is warranted given the pattern of repetition with variation already seen. The authors do not seem to have viewed themselves as restricted and bound to the precise formulations found in their sources. But can we move from here to demonstrate that such elusive parallels are actual cases of reuse? Here I am more pessimistic. However, elusive cases of reuse might be possible to identify in cases where we have some kind of additional supporting evidence, as I will argue may be the case in the lists of Jer 7 and Ezek 18. These cases, therefore, show that we should be open to the possibility of more elusive literary reuse of Torah in the Prophets, even when we cannot demonstrate such reuse with confidence. This is an alternative approach to those either arguing confidently for reuse and direction of dependence when the evidence is thin, or those who, with equal confidence, explain them as merely coincidental or as simply reflecting a common tradition.

In the following I will briefly discuss Jer 7 and Ezek 18, focusing only upon the relatively stronger parallels between them and Torah, before reverting to a final reflection on the more general question of elusive parallels between Torah and the Prophets.

### **Jeremiah 7:1–15**

Jeremiah 7:3 can be read as a summary statement of the following, with a presentation of YHWH as speaker (כֹּה־אָמַר יְהוָה צְבָאוֹת אֱלֹהֵי יִשְׂרָאֵל), admonishing the people to correct their ways and deeds (הֲיִטִּיבוּ דַרְכֵיכֶם וּמַעַלְלֵיכֶם), with a conditional promise that YHWH may then dwell with them in the Temple (וְאִשְׁכַּנְתִּיהֶם אֶתְכֶם בְּמִקְוֹם)



הַיְהוָה).<sup>2</sup> Jeremiah 7:4 disputes the religious confidence placed in the Temple of YHWH (הַיְהוָה) itself.

Jeremiah 7:5–6 constitutes a protasis, including a series of conditions, with 7:7 as the apodosis containing a promise to the people of dwelling forever in the land. While Jer 7:3 gave the promise of YHWH’s dwelling with the people in the Temple, 7:7 promises that the people will continue forever in the land.

Jeremiah 7:3–9 seems to contain a panel structure<sup>3</sup>:

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<sup>2</sup> In the following I will limit the contextual information and survey of discussions on the passages. Some points might however be in place. Based on the date given in Jer 26:1 it is common to date the delivery of the Temple Sermon to 609–608 B.C. (e.g. G. Ernest Wright, *The Rule of God: Essays in Biblical Theology* (New York: Doubleday, 1960), 81; Weippert, *Die Prosareden des Jeremiabuches*, 28; Jay A. Wilcoxon, “The Political Background of Jeremiah's Temple Sermon,” in *Scripture in History and Theology: Essays in Honor of J. Coert Rylaarsdam*, eds. Arthur L. Merrill and Thomas W. Overholt (Pittsburgh, PA: Pickwick), 152; Holladay, *Jeremiah 1–25*, 240; Craigie et al., *Jeremiah 1-25*, 119). Mark Leuchter writes: “Though scholars are divided on whether the Temple Sermon may be regarded as the prophet’s *ipsissima verba* or if it derives from the hand of a later scribe, it is widely regarded as preserving the essence of the prophet’s early post-Josianic declarations” (Mark Leuchter, “The Temple Sermon and the Term מְקוֹם in the Jeremianic Corpus,” *JSOT* 30, no. 1 (2005): 97). Cf. Weippert, *Die Prosareden des Jeremiabuches*, 29–30, 41; McKane, *Jeremiah*, 158–69; Maier, *Jeremia als Lehrer der Tora*, 62–63. For an enlightening study on the political background of the Temple Sermon see Wilcoxon, “The Political Background of Jeremiah's Temple Sermon,” 151–65. For a discussion on Jer 7 in its literary context, and how it among other things challenges the confidence of Judah addressed in Jer 2–6 and shows how this confidence in part derived from its temple ideology see Stulman, *Order Amid Chaos*, 40–42, 54. Holladay claims “that the temple sermon served to close off the first scroll which Jrm dictated to Baruch” (Holladay, *Jeremiah 1–25*, 236). Stulman sees Jer 7:1–10:16 as one literary macro-unit, giving it the title “Dismantling Temple Ideology” (Stulman, *Order Amid Chaos*, 31). Cf. Smelik’s discussion on the interrelationship between Jer 7; 25; and 34 (Smelik, “The Inner Cohesion of Jeremiah 34:8–22,” 246–50). For Georg Fohrer’s argument that Jer 7:1–15 is really Hebrew poetry, *Kurzversen*, and McKane’s critique of this proposal, see Georg Fohrer, “Jeremias Tempelwort (Jeremia 7:1–15),” in *Studien zur Alttestamentlichen Prophetie (1949–1965)*, BZAW 99 (Berlin: Verlag Alfred Töpelmann, 1967), 190–203; McKane, *Jeremiah*, 168–69. John Day argues that Jer 7 support an 11<sup>th</sup> century destruction of Shiloh, since it would not make sense that Jeremiah referred to an 8<sup>th</sup> century destruction of the sanctuary at Shiloh if the Jerusalem Temple had in every way replaced its function a couple of centuries prior (John Day, “The Destruction of the Shiloh Sanctuary and Jeremiah 7:12, 14,” in *Studies in the Historical Books of the Old Testament*, ed. J. A. Emerton (Leiden: Brill, 1979), 87–94). Maier does not find his arguments convincing, since Deuteronomy already presupposed the existence of multiple sanctuaries (Maier, *Jeremia als Lehrer der Tora*, 84).

<sup>3</sup> In contrast Holladay proposes to see four sections: 7:3–4, 7:5–8, 7:9–11, and 7:12 (Holladay, *Jeremiah 1–25*, 238–39).

- A Promise that YHWH will dwell with the people in the Temple ( וַאֲשַׁכְנֶנּוּ אֶתְכֶם ) (בְּמִקּוֹם הַזֶּה, 7:3)
- B Admonition not to trust in false words about the Temple ( אַל־תִּבְטְחוּ לָכֶם ) ... אֶל־דְּבָרֵי הַשִּׁקָּר לֵאמֹר הִיכַל יְהוָה ... (7:4)
- C Conditions that Possibly Reuse Instructions in Torah (7:5–6)<sup>4</sup>
- A' Promise that the people will dwell in the land ( וְשָׁכַנְתִּי אִתְּכֶם בְּמִקּוֹם הַזֶּה בְּאֶרֶץ ) ..., 7:7)<sup>5</sup>
- B' Criticism for trusting in false words ( הִנֵּה אַתֶּם בֹּטְחִים לָכֶם עַל־דְּבָרֵי הַשִּׁקָּר ) (7:8)<sup>6</sup>
- C' Criticism that Possibly Reuse Instructions in Torah (7:9)<sup>7</sup>

The majority of scholars see Jer 7:1–15 as reusing instructions from the Torah, or note the parallels without concluding that they constitute reuse.<sup>8</sup> Nevertheless, some have

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<sup>4</sup> If we take a closer look at Jer 7:5a (כִּי אִם־הִיטִיב תִּיטִיבוּ אֶת־דְּרָכֵיכֶם וְאֶת־מַעַלְלֵיכֶם) it repeats the admonition from 7:3 (הִיטִיבוּ דְרָכֵיכֶם וּמַעַלְלֵיכֶם) to correct one's ways, but now as part of a condition in the protasis. As mentioned above, 7:3 seems to be a summary statement for the rest of the admonitions and conditions given in the Temple Sermon.

<sup>5</sup> The promises in Jer 7:7 are also similar to those at the end of Jer 17, promising the endurance of the city Jerusalem.

<sup>6</sup> It is possible to see these false words as either referring to the claim that the Temple was inviolable (7:4) or that the people were safe (7:10). Holladay and Maier claim it is the first (Holladay, *Jeremiah 1–25*, 242; Maier, *Jeremia als Lehrer der Tora*, 79), while Lundbom argues the reference might be to both (Lundbom, *Jeremiah 1–20*, 465, 472).

<sup>7</sup> The passage returns in Jer 7:10–11 to the worshippers on the Temple precincts, and their illusions about being able to continue with their present conduct. In 7:11c YHWH reminds them that he sees what is going on (גַּם אֲנֹכִי הִנֵּה רֹאֵתִי נְאֻם־יְהוָה). Jeremiah 7:12 draws the analogy to the sanctuary at Shiloh and its destruction. In 7:13 YHWH reminds them how he constantly warned them, before stating that he will do the same to the present Temple as with Shiloh (7:14) and cast the people away as he did with the seed of Ephraim (7:15). This is how the Temple Sermon as recounted ends. In brief, while the people have sought their security in the holiness of the Temple (7:4, 8), Jeremiah responds by saying that it is only if the people live up to the instructions of Torah (7:3, 5–6, 9–10) that God will literally place them on secure ground (7:3, 7). But since the people reject to listen he will destroy the Temple in which they falsely found security (7:11–15). Holladay writes: “But what is this search for security and protection? Jrm asks; why center one’s attention on the holiness of the temple? Only if our lives are lived in radical obedience to the demands of Yahweh’s covenant, the ethical expectations of the Decalogue, will Yahweh continue to sponsor us and protect us” (Holladay, *Jeremiah 1–25*, 249).

<sup>8</sup> Helga Weippert writes: “Der Prophet greift deshalb zurück auf die aus der Tradition bekannte Forderung die sozial Schwachen zu schützen (Ver 6), und auf die Gebote des Dekalogs (Vers 9)” (Weippert, *Die Prosareden des Jeremiabuches*, 48). Maier writes: “Der Bezug auf die Kurzreihe des Dekalogs ist denkbar, der Dekalog als ganzer jedoch in Jer 7:9 nicht vorausgesetzt” (Maier, *Jeremia als Lehrer der Tora*, 80). Holladay writes that while it is common to name Jer 7:1–15 a parenthesis, a moral exhortation, since it is based on covenantal formulations, “covenant speech” is the most accurate term (Holladay,

argued for the reverse relationship.<sup>9</sup> In the following, I will briefly give some of the main arguments for seeing Jer 7 as an instance of what I have termed a pastiche containing elusive reuses of Torah. This is not meant as a comprehensive discussion of the question of reuse and direction of dependence in Jer 7 as such, but only as a brief overview of the main points, in order to open the discussion up to the general

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*Jeremiah 1–25*, 239). Cf. my discussion of Torah as “covenantal instructions” in chapter 2. John Day takes Jer 7:9a and Hos 4:2 as the “two passages in the prophets which appear to contain a direct echo of [the Decalogue]” (Day, “Inner-biblical Interpretation in the Prophets,” 231).

It is common to see the Temple Sermon as the product of a Deuteronomistic redactor (e.g. Thiel, *Jeremia 1–25*, 107–114). Holladay argues, however, that the phrases found in it “are not specifically ‘Deuteronomistic.’” He explains the closer parallels to Deuteronomy rather as an intentional reuse: “Thus ‘make good’ (כֹּלֵךְ hip‘il, vv 3\*, 5\*) is not Deuteronomistic but is part of Jrm’s vocabulary; ‘ways’ paired with ‘doings’ is likewise not Deuteronomistic but is part of Jrm’s vocabulary. It is true, the triad ‘stranger, orphan and widow’ (v 6\*) is found in Deuteronomy, but if Jrm wished to cite a legal norm of this sort, it would be hard to avoid using the phrase. The phrase ‘walk after other gods’ (vv 6\*, 9\*) is Deuteronomistic, but then the component phrases ‘walk after’ (in religious contexts) and ‘alien gods’ are found in Jrm’s poetry (2:5\*, 23\*, 36\*; 5:19\*) as well. The phrase ‘house which bears my name’ (vv 10\*, 11\*, 14\*) is not found in Deuteronomy. In short, there is some overlap in phraseology between this passage and Deuteronomistic material but not to a significant degree. . . . One cannot therefore call the passage ‘monotonous’ or ‘repetitive,’ as ‘Deuteronomistic’ prose is often thought to be; rather it is carefully crafted and precise. There is nothing here that suggests exilic authorship or late reflection on an earlier event and much that suggests immediacy and emotion. . . . It is difficult to avoid the conclusion that the phraseology of the present passage reflects what Jrm said on that occasion, or at least what he himself recalls having said on that occasion” (Holladay, *Jeremiah 1–25*, 240). Cf. Weippert, *Die Prosareden des Jeremiabuches*, 46–48; McKane, *Jeremiah*, 162, 164–67; Craigie et al., *Jeremiah 1–25*, 117–19, 121; Craigie et al., *Jeremiah 1–25*; Theodor Seidl, “Jeremias Tempelrede: Polemik gegen die joschijanische Reform? Die Paralleltraditionen Jer 7 und 26 auf ihre Effizienz für das Deuteronomismusproblem in Jeremia befragt,” in *Jeremia und die 'deuteronomistische Bewegung'*, ed. Walter Groß, BBB 98 (Weinheim: Beltz Athenäum, 1995), 141–79. For additional sources on the relation between Deuteronomy and Jeremiah see Fischer, “Der Einfluss des Deuteronomiums auf das Jeremiabuch,” 247.

Fischer sees all the books of Torah as available to the author of Jeremiah, with strong ties to Exodus and particularly Deuteronomy (Fischer, *Jeremia 1–25*, 68, 71). Regarding Jeremiah’s reuse of Deuteronomy, he comments: “In der Regel ist die Verwendungsweise bei Jer länger und *komplexer*, oftens auch kritisch” (Fischer, “Der Einfluss des Deuteronomiums auf das Jeremiabuch,” 254). And again: “Die Berührungen finden sich mehrheitlich in jer Prosa, doch auch in Poesie (Jer 8,8; 10,10), und sie sind *breit* über das ganze Jeremia-Buch *gestreut* (hier c7 bis c35)” (Fischer, “Der Einfluss des Deuteronomiums auf das Jeremiabuch,” 254). Cf. Eustace J. Smith, “The Decalogue in the Preaching of Jeremias,” *CBQ* 4 (1942): 197–209; Maier, *Jeremia als Lehrer der Tora*, 74–81; Carr, *Writing on the Tablet of the Heart*, 143–56, 167; Lundbom, *Jeremiah 1–20*, 463–65; Fischer, “The Relationship of the Book of Jeremiah to the Torah,” 901.

<sup>9</sup> Edwin Firmage is an example of scholars that argue that Jer 7 may be the source for the Decalogue, and that the direction of dependence therefore goes the other way (Firmage, “Jeremiah, Deuteronomy, and the Metamorphosis of Israel,” 49; Firmage, “Jeremiah, Deuteronomy, and the Priestly Corpus,” 1–120. Cf. esp. pp. 75 and 116ff).

problem of how to deal with more elusive reuse in the Prophets and HB.

In my view, there are several reasons as to why Jer 7 should be characterized as an elusive reuse of Torah. First, while Jer 7, as already seen, occurs in the book of Jeremiah together with other more clear cases of reuse—and most commentators will at least admit that there is a link between the prose sections of Jer 7, 17, and 34—it is more likely that the parallels between Jer 7 and passages in Torah are instances of literary reuse which is more elusive in character.<sup>10</sup>

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<sup>10</sup> Before entering a more detailed study of Jer 7:1–15 itself, it is helpful to briefly survey some of the issues raised in the context of this passage. How do we understand the כִּי לֹא־דִבַּרְתִּי אֶת־אֲבוֹתֵיכֶם וְלֹא־צִוִּיתִים בְּיָוֶם הַזֶּה הוֹצִיא אֹתָם מֵאֶרֶץ מִצְרַיִם עַל־דִּבְרֵי עֹלָה וְזֶבַח (“For I did not speak to your fathers nor did I command them regarding burnt offerings and sacrifices in the day when I brought them from the land of Egypt”) in Jer 7:22? There are two main interpretations of this passage, one which “distinguishes sharply between Deuteronomic (D) and Priestly (P) strands in the Pentateuch and assumes that Jeremiah is here reflecting the view of Deuteronomy, according to which only the Ten Commandments were given to Israel at Sinai (Deut 5:22); the remainder of the Law came later” while the second “sees Jeremiah employing a type of *distributio* in Hebrew rhetoric, where a first statement is negated *only* to emphasize a second statement that matters more” (Lundbom, *Jeremiah 1–20*, 481–82). For example, Moshe Weinfeld argued that Jer 7:22 is a “slap in the face of the Priestly with all its details” (Moshe Weinfeld, “Jeremiah and the Spiritual Metamorphosis of Israel,” *ZAW* 88 (1976): 53). Others have argued that the passage was formulated in contrast to a Deuteronomistic theology (Francis K. Kumaki, “The Temple Sermon: Jeremiah's Polemic against the Deuteronomists (Dtr1)” (Ph.D. diss., Union Theological Seminary, 1980)). In contrast, Heinz Kruse argues it should be understood as a “dialectical negation” (Kruse, “Dialektische Negation,” 385–400, esp. 386, 388, 391, 393–95). Cf. Smith, “The Decalogue in the Preaching of Jeremias,” 208; Maier, *Jeremia als Lehrer der Tora*, 63–68. Jacob Milgrom, “Concerning Jeremiah’s Repudiation of Sacrifice,” *ZAW* 89 (1977): 273–75 argued that Jer 7:22 only denounced voluntary sacrifices, and thus might simply mean that piety is only worthwhile if accompanied by just action.

This is not the place to discuss the passage in detail, but commentators in general seem to agree that the key point in this verse is that obedience is more important than sacrifice. Hyam Maccoby writes: “Scholars have ceased to say that the prophets were opposed to ritual as such; it is now well understood that the prophets wanted the holiness code to be observed, but not at the expense of morality” (Maccoby, *Ritual and Morality*, 194). Cf. M. Sekine, “Das Problem der Kultpolemik bei den propheten,” *Evangelische Theologie* 28 (1968); Greenberg, “Three Conceptions of the Torah,” 14; Milgrom, “Concerning Jeremiah’s Repudiation of Sacrifice,” 17–56; Craigie et al., *Jeremiah 1–25*, 124. For other passages frequently referred to as cult-polemic see Amos 5:25; Ezek 20:25; Hos 2:18–25. Georg Fischer also mentions more immediate reuse of Torah in the context of Jer 7:1–15, pointing out the parallels between 7:22–23 and Exod 19:5 (Fischer, “The Relationship of the Book of Jeremiah to the Torah,” 901). If Fischer is correct, it may be that we should read Jer 7:22–23 as a reference to the initial address to the people upon arrival at Sinai in Exod 19, and not the subsequent cultic instructions (cf. בְּיָוֶם הַזֶּה in Jer 7:22 and the enigmatic הִנֵּה בְּיָוֶם הַזֶּה in Exod 19:1). Kruse, however, argued that this is a misreading of Jer 7:22, and that instead of such a temporal harmonization it should be understood as employing a ‘dialectical negation’ (Kruse, “Dialektische Negation,” 395). For a discussion of other possible reuses in Jer 7 from the HB other than Torah, see Weippert, *Die Prosareden des Jeremiabuches*, 43–44.

Second, since Jer 7 seems to take the form of a pastiche of instructions drawn from Torah: each case of a possible reuse becomes more likely because it is placed in a list of other possible cases of reuse. Given the strength or weakness—depending on the perspective—of each individual parallel between Jer 7 and passages in Torah, Jer 7 also raises the question of how we ought to deal with the accumulation of weaker parallels? Does the accumulation of many weak parallels add up to a strong case? Does the accumulation in Jer 7 of individual parallels demonstrate a type of reuse that would otherwise be difficult to establish if such individual parallels occurred alone? While we can wish that the evidence had indicated a stronger link to possible sources, it would be difficult to avoid recognizing that the lists strongly hint at some kind of reuse.

Third, there seem to be close parallels between Jer 7:6 and 22:3. While the possible reuse of Torah in Jer 22:3 could be studied in its own right, for the present, it is enough to compare it with Jer 7. Jer 22:3 also seems to be a list of injunctions based on reuse of instructions in Torah much like those we find in Jer 7:5–6, 9. The parallels with Jer 22:3 thus strengthen the case for reading 7:5–6, 9

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Jeremiah 7:23 refers to a previous instruction, possibly found in Deut 5:33 (cf. Deut 10:12–13; Mic 6:8). The parallels between Deut 5:33 ( בְּכָל־הַדְּבָרִים אֲשֶׁר צִוָּה יְהוָה אֱלֹהֵיכֶם אֲתֹכֶם תִּלְכוּ לַמַּעַן תַּחֲיוּ וְטוֹב לָכֶם ) and Jer 7:23 ( כִּי אִם־אֶת־הַדְּבָר הַזֶּה צִוִּיתִי אוֹתָם לֵאמֹר שְׁמַעוּ בְּקוֹלִי וְהָיִיתִי לָכֶם ) and Jer 7:23 ( לְאֱלֹהִים וְאֹתָם תִּהְיוּ־לִי לְעַם וְהִלַּכְתֶּם בְּכָל־הַדְּבָרִים אֲשֶׁר אֲצַוְהָ אֲתֹכֶם לַמַּעַן יִשָּׁב לָכֶם ) are particularly strong. Cf. Carl Friedrich Keil and Franz Delitzsch, *Jeremiah, Lamentations*, Commentary on the Old Testament 8 (Peabody, MA: Hendrickson, 2001), 102; Smith, “The Decalogue in the Preaching of Jeremias,” 200, 203, 209; Fischer, “Der Einfluss des Deuteronomiums auf das Jeremiabuch,” 252.

Even if Jer 7:31 has weak lexical links to Lev 18:21; 20:2; Deut 18:10, the thematic correspondence seems to be very strong and unique to biblical law. Cf. Firmage, “Jeremiah, Deuteronomy, and the Metamorphosis of Israel,” 46. There is an analogy between Jeremiah denouncing reliance upon the materiality of the Temple itself (7:4, 10–14) and his denunciation of the reliance upon the expiatory strength of the sacrifices (7:22) (Smith, “The Decalogue in the Preaching of Jeremias,” 203). The statement בִּי עָלְתָה עַל־לִבִּי אֲשֶׁר לֹא צִוִּיתִי וְלֹא עָלְתָה עַל־לִבִּי (“which I did not command and did not come into my heart”) in Jer 7:31 is a denial of the content of a previous instruction. By this negation, it simultaneously raises the possibility of a previous instruction, i.e. an instruction commanding other things but *not* this.

as a pastiche reusing instructions from Torah, as illustrated in Table 21:

**Table 21. Jer 7:6 and 22:3**

Jer 7:6	Jer 22:3
<p><sup>6</sup> גַּר יְתוֹם וְאַלְמָנָה לֹא תַעֲשֶׂקוּ וְדָם נְקִי אֶל־  <u>תִּשְׁפְּכוּ בַּמָּקוֹם הַזֶּה</u> וְאַחֲרֵי אֱלֹהִים אַחֲרֵים לֹא          תִּלְכוּ לְרַע לְכֶם:</p>	<p><sup>3</sup> כֹּה אָמַר יְהוָה עֲשׂוּ מִשְׁפָּט וְצְדָקָה וְהִצִּילוּ          גְּזוּל מִיַּד עֹשֶׂק וְגַר יְתוֹם וְאַלְמָנָה אֲלִיתְנוּ          אֶל־תַּחֲמִסוּ וְדָם נְקִי אֶל־תִּשְׁפְּכוּ בַּמָּקוֹם הַזֶּה:</p>
<p><sup>6</sup> [if] you do not oppress a <u>stranger, orphan, or widow</u>, or do not <u>shed innocent blood in this place</u>, or do not follow after other gods, to harm yourself, . . .</p>	<p><sup>3</sup> Thus says YHWH: Do justice and righteousness, rescue the robbed from the hand of the oppressor, and do not wrong a <u>stranger, orphan or widow</u>, do not be violent, and do not <u>shed innocent blood in this place</u>.</p>

Fourth, an interesting comparison can be made between Jer 7:1–15 and 26:1–6; what are commonly accepted as two different versions of Jeremiah’s Temple Sermon. While Jer 7 presents the speech in “the sermonic style,” Jer 26 places the sermon in a biographical setting recounting what happened to Jeremiah afterwards as well.<sup>11</sup> So we have the same sermon reported in two different settings for two different purposes. The two accounts supplement one another.<sup>12</sup> Between the two we find overlapping material.

<sup>11</sup> According to Stuhlman, Jer 26 is the introduction to the second scroll in the book of Jeremiah, i.e. Jer 26–52. He writes: “Jeremiah 26, the prose introduction to the second scroll, for example, abbreviates and backgrounds the so-called ‘Temple Sermon’, and instead foregrounds a variety of narrative responses to the message. That is, the text narrates the various *responses to the message* more than *the message itself*” (Stulman, *Order Amid Chaos*, 103). See also p. 66. Holladay writes: “The logic of 26:4\* and 6\* is by itself not clear: why should the temple be destroyed because of the sins of the people? It is the present passage which supplied the missing link: the people have put false trust in the temple, so the temple must be destroyed. That is, the abbreviated narrative in chapter 26 assumes the availability of the text of 7:3–12\* and refers to it in summarizing fashion” (Holladay, *Jeremiah 1–25*, 240). Cf. Weippert, *Die Prosareden des Jeremiabuches*, 28–37, 47–48; Wilcoxon, “The Political Background of Jeremiah’s Temple Sermon,” 151; Seidl, “Jeremias Tempelrede,” 164–68; Mark Leuchter, *The Polemics of Exile in Jeremiah 26–45* (Cambridge: Cambridge University Press, 2008), 25–38; Otto, “Jeremia und die Tora,” 531–39.

<sup>12</sup> For discussions on “histories twice told” in ANE and biblical literature see Savran, *Telling and Retelling*; Altman, *The Historical Prologue*; Weeks, *Admission and Curse*; Berman, “Histories Twice

What is of particular interest for the present is that we do not find a verbatim correspondence in Jer 26 to the particular verses to be studied below, containing the parallels with Torah; namely, 7:5–6, 9. In their place we find the interesting statement **נָתַתִּי לְפָנֵיכֶם לְלַכֵּת בְּתוֹרָתִי אֲשֶׁר נָתַתִּי לְפָנֵיכֶם** (“to walk in my Torah which I placed before you”) in 26:4.<sup>13</sup> Both the idea of walking in (**לְלַכֵּת בְּ**) as well as placing before (**נָתַתִּי לְפָנֵיכֶם**) indicate some kind of external תּוֹרָה. As an independent oral or written instruction previously given, it becomes likely that Jer 7 as well might have reused a תּוֹרָה. And since this תּוֹרָה has close literary parallels to the written תּוֹרָה as we find it in the MT, it strengthens the claim that both Jer 7 and 26 are referring to a text similar to the one we call Torah.<sup>14</sup>

All these four points, however, are external to the elusive parallels between Jer 7 and Torah themselves. An elusive parallel in itself is not sufficient to establish a case of literary reuse. We have, however, in the previous cases studied seen that repetition with

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Told,” 229–50; Berman, *Inconsistency in the Torah*, 81–103.

<sup>13</sup> I am not able to see that Jer 26:4 is a “specific reference to the Decalogue,” as Smith claimed (Smith, “The Decalogue in the Preaching of Jeremias,” 201). He argues this on the basis of an analogy with Jer 7:9, and the likely reuse of the Decalogue there. But as I will show below, the reuse in Jer 7:5–6, 9 is not limited to the Decalogue, but rather selected passages from a wide array in Torah. On p. 202 Smith gives a table of which specific commands in the Decalogue are used in Jeremiah, using the traditional Catholic division of the Decalogue. Many of these cases, however, seem not to be limited to the Decalogue as such, but have stronger parallels with other passages in the Torah. In this table, as well as on p. 203, it becomes clear that he overlooks the reuse in Jer 7:5–6. This might be arguably on the basis that these verses do not show a particular affinity to the Decalogue itself, but other passages in Torah. However, if the **אֲתָרִי אֱלֹהִים אֲתָרִים + הַלֵּךְ** in Jer 7:9 is seen as a reuse of the Decalogue, it is strange to ignore the same locution in 7:6. In Jer 7:6 Smith only sees a reuse of the sixth commandment, prohibiting murder (his fifth according to the Catholic division). But as I will argue below, this parallel seems forced. On p. 205 he also sees a parallel between Jer 26:15–19 and the same commandment. I also believe this should be read otherwise, as will be shown in the following.

<sup>14</sup> Given the rediscovery of the book of Torah during the reign of Jehoiakim’s father, Josiah (2 Kgs 22), Jer 26:4 could likely also be referring to a written composition of Torah (Nielsen, *Oral Tradition*, 77–78).

variation is typical in the HB. In this spectrum of types of reuse, individual elusive parallels are frequent. It has shown that elusive reuse is common in the HB. Therefore, when we come to a case like Jer 7, containing an accumulation of various elusive parallels supported by the above four external arguments for reuse, it therefore seems reasonable to take Jer 7 as a pastiche of Torah. Jer 7 therefore helps us establish the phenomena of elusive reuse of Torah among the Prophets, even if we often may only be entitled to speak of the *possibility* of elusive reuse in cases containing one or very few parallels.

Added to this, we can also mention the oral dimension of Jer 7 as a written composition. As discussed in the first chapter, a text-supported memorized reuse can also help us appreciate the more elusive type of reuse. The oral dimension of Jer 7 is witnessed in the orality of YHWH's words having come to Jeremiah.<sup>15</sup> Jeremiah 7 can therefore also be read as representing a symbiosis between orality and writing.<sup>16</sup>

Following is a survey of the stronger parallels between Jer 7 and Torah.

*The Place as the Dwelling of YHWH's Name in Jer 7:3, 7, 12 and Deut 12:11;*

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<sup>15</sup> Cf. אֱלֹהֵי יִשְׂרָאֵל יִרְמִיָּהוּ מֵאֵת יְהוָה לֵאמֹר in 7:1; כֹּה־אָמַר יְהוָה in 7:3 (in a way YHWH speaks through the written words); נֹאמַרְיְהוָה in 7:11, 13; and referring to past addresses וְלֹא יִדְבַר וְלֹא אֲלִיכֶם הַשְׁכֵּם וְדַבַּר וְלֹא אֲלִיכֶם הַשְׁכֵּם וְדַבַּר in 7:13). Further, the words now written in the passage are to be orally proclaimed in the gates (וְשָׁמַעְתֶּם וְאָקְרָא אֶתְכֶם וְלֹא עֲנִיתֶם in 7:2). The people are adjured to listen (שָׁמְעוּ דְבָרִי in 7:2).

<sup>16</sup> To me it is not clear, however, that Jer 7 is much different from for example Jer 3; 17; and 34 what orality is concerned, and this therefore does not explain why Jer 7 may be more elusive in character than these other cases. They should all possibly be seen as part of a text-supported memorized reuse, only varying in degree as to the exact reuse and elusiveness present in each individual case. It is no obvious reason why Jer 7 is more elusive than the other cases. It may simply be that it was perceived to be more appropriate for the occasion of the Temple Sermon, or that an elusive pastiche served sufficiently its rhetorical and hortatory purposes.

For the pathos indicated in Jer 7 see Muffs, *Love and Joy*, 27–28.



14:23; 16:2, 6, 11; 26:2: Only Deut 26:2 and Jer 7:7 use the lexical set אָרַץ + אֲשֶׁר + נתן + מקום + שכן in close proximity in the HB.<sup>17</sup> This lexical set is thus unique to these verses.

In Deuteronomy we find the lexical set אָרַץ + אֲשֶׁר + נתן + מקום + שכן used in a somewhat standardized formula, with some minor variation.<sup>18</sup> Still, the formulation seems relatively standardized. Jer 7:1–15 seems to contain interspersed abbreviations, fragments, or modifications of this formula.<sup>19</sup> The greater variation over this locution in Jer 7:1–15 may

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<sup>17</sup> It can also be argued that there is a certain inversion of the order of the parallel locutions between these two passages. Given these parallels we also notice a possible reuse between לְכֹנֵן אֶל־מְקוֹמִי in Jer 7:12 and וְהִלַּכְתָּ אֶל־הַמְּקוֹם אֲשֶׁר in Deut 26:2.

<sup>18</sup> We find the following formulations in Deuteronomy: הַמְּקוֹם אֲשֶׁר־יְבַחֵר יְהוָה אֱלֹהֵיכֶם בּוֹ לְשֹׁכֵן שְׁמוֹ (12:11), שָׁם (16:2), הַמְּקוֹם אֲשֶׁר־יְבַחֵר יְהוָה לְשֹׁכֵן שְׁמוֹ שָׁם, (14:23), הַמְּקוֹם אֲשֶׁר־יְבַחֵר לְשֹׁכֵן שְׁמוֹ שָׁם, (16:11). The combination of שכן + מקום is found in 17 cases (Num 9:17; Deut 12:11; 14:23; 16:2, 6, 11; 26:2; 2 Sam 7:10; Jer 7:3, 7, 12; Ezek 43:7; Nah 3:17-18; Job 38:19; Neh 1:9; 1 Chr 17:9). The lexeme שכן + the preposition בְּ occur in 53 cases in the HB (Gen 9:27; 14:13; 26:2; 35:22; Exod 25:8; 29:45-46; Lev 16:16; Num 5:3; 10:12; 14:30; 23:9; 35:34; Judg 8:11; 1 Kgs 6:13; 8:12; Isa 8:18; 32:16; 34:11, 17; Jer 7:3, 7, 12; 17:6; 25:24; 48:28; 49:16; Ezek 43:7, 9; Joel 4:17, 21; Obad 1:3; Mic 4:10; 7:14; Zech 2:14-15; 8:3, 8; Ps 15:1; 65:5; 69:37; 74:2; 78:55, 60; 85:10; 139:9; Job 4:19; 11:14; 18:15; 29:25; Prov 2:21; 1 Chr 23:25; 2 Chr 6:1). It is therefore not possible to establish a case of reuse on the basis of these constructions themselves. There is a certain thematic similarity between Exod 25:8 and Jer 7:3, in YHWH dwelling with the people in his sanctuary, but due to the use of different words and contexts it seems difficult to claim there is reuse here. The only place שכן + the preposition בְּ + מקום is found, in this given order, is in Jer 7:3, 7. The reverse order, the preposition בְּ + מקום + שכן, we find in 4 cases (Num 9:17; Deut 14:23; 16:2, 11). Num 9:17 is set in the context of the desert wanderings, describing the lifting and settling of the cloud. In Deut 14:23; 16:2, 11 the preposition בְּ + מקום + שכן is used to describe the place YHWH has chosen to let his name dwell. Deut 12:11 and 26:2 uses שכן + מקום, without the preposition בְּ, to describe the same. The lexical set שכן + שָׁם + שָׁם is found within one clause in Deut 12:5, 11; 14:23; 16:2, 6, 11; 26:2; Jer 7:12. Cf. Ezek 43:7 and Neh 1:9 using the lexical set שכן + שָׁם + שָׁם + מקום, but not in one clause. The words are used in a clause with some variation in the formulations: לְשׁוֹם אֶת־שְׁמוֹ שָׁם לְשֹׁכְנוֹ in Deut 12:5, שָׁם שְׁמוֹ שָׁם in Deut 12:11; 14:23; 16:2, 6, 11; 26:2, and שָׁם שְׁפַנְתִּי שְׁמִי שָׁם in Jer 7:12. All these verses also use the lexeme מקום.

<sup>19</sup> We find the following formulations in Jer 7: וְאֲשַׁכְּנָה אֶתְכֶם בַּמְּקוֹם הַזֶּה in 7:3c, בַּמְּקוֹם הַזֶּה in 7:6b, לְפָנַי בְּבַיִת הַזֶּה אֲשֶׁר נִקְרָא־שְׁמִי עָלָיו in 7:7, וְשַׁכַּנְתִּי אֶתְכֶם בַּמְּקוֹם הַזֶּה בְּאָרְץ אֲשֶׁר נָתַתִּי לְאֲבוֹתֵיכֶם in 7:10, לְפָנַי בְּבַיִת אֲשֶׁר בְּשִׁילוֹ אֲשֶׁר שַׁכַּנְתִּי שְׁמִי שָׁם בְּרֵאשׁוֹנָה in 7:11, בְּבַיִת הַזֶּה אֲשֶׁר נִקְרָא־שְׁמִי עָלָיו in 7:12, מְקוֹמִי אֲשֶׁר נִקְרָא־, in 7:12, לְפָנַי בְּבַיִת אֲשֶׁר נִקְרָא־שְׁמִי עָלָיו in 7:14. The phrase בַּמְּקוֹם הַזֶּה in 7:6b seems to be the only addition to the list of reuse in 7:6, besides לְפָנַי בְּבַיִת הַזֶּה. Leuchter points out a slight modification in Jer 7:3 of the supposed Deuteronomistic locution בַּמְּקוֹם הַזֶּה: “While this invokes a multitude of passages in the Deuteronomistic Torah that employ this language, there is a notable circumstantial shift. It is no longer YHWH’s name that he will cause to dwell in the temple; the שָׁם terminology so typical of Deuteronomistic texts is absent from this verse, which points to an abandonment of the original initiatives behind Josiah’s

be taken as an argument for seeing the more standardized Deuteronomic locution as a source, referring to it by abbreviations, fragments, and/or modifications.<sup>20</sup>

Despite the unique use of the lexical set שֶׁכֶן + מְקוֹם + נָתַן + אֲשֶׁר + אֶרֶץ in Deut 26:2 and Jer 7:7, I am inclined to see Jer 7:3, 7, 12 as picking up a locution that is distinct to Deuteronomy, found in Deut 12:11; 14:23; 16:2, 6, 11; 26:2, without being exclusive to any one passage within Deuteronomy.

It is somewhat perplexing to discover Jer 7's silence regarding the name of Jerusalem as the dwelling place of God in the days of Jeremiah. This is rather projected as a future possibility. The clause וְאֲשַׁכְנָה אִתְּכֶם בְּמִקְוֹם הַזֶּה (“and I will dwell with you in this place”) in Jer 7:3 is given as a promise on the condition that the people correct their ways.<sup>21</sup> By comparison, Deut 12:11; 14:23; 16:2, 6, 11; 26:2 are predictive and

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actions that were heralded by the Deuteronomic ideology. Rather, the focus is on the people themselves rather than the architectural structure surrounding them. The verse employs the indicative pronoun אַתְּכֶם (‘you’), that is, those to whom the Sermon is addressed. It is they as a nation who will have their existence sustained by YHWH” (Leuchter, “The Temple Sermon,” 98). Cf. Wouter C. van Wyk, “The Translation of MQWM (land) in the Temple Speech of Jeremiah,” in *Papers Read at the 24th meeting of Die Ou-Testamentiese Werkgemeenskap in Siuder-Afrika*, eds. Ferdinand Deist and James Alfred Loader, OTS (Stellenbosch: Ou-Testamentiese Werkgemeenskap in Siuder-Afrika, 1982), 103–9; Maier, *Jeremia als Lehrer der Tora*, 82–85; Lundbom, *Jeremiah 1–20*, 461, 464.

<sup>20</sup> Weippert writes: “Die Wendung אשר שכנתי שמי שם nimmt Bezug auf die vom Deuteronomium geprägte Theologie, daß Jahwe sich einen Ort erwählt habe, um dort seinen Namen wohnen zu lassen” (Weippert, *Die Prosareden des Jeremiabuches*, 40. Cf. p. 43). In Deut 12:1–17 the three pilgrimage festivals, the Pesach, Shavout, and Sukkot, are prescribed. It raises the question whether the people coming through the gates of the house of YHWH in Jer 7:2 may have gathered for the occasion of any one of the annual festivals. Its use of כָּל־יְהוּדָה הַבָּאִים (“all of Judah coming”) may indicate that the occasion was a general assembly of the entire people during a festival. Cf. Wright, *The Rule of God*, 80; Fohrer, “Jeremias Tempelwort (Jeremia 7:1–15,” 191; Craigie et al., *Jeremiah 1-25*, 120; Lundbom, *Jeremiah 1–20*, 460, 471. For a suggestion to read הַמִּזְבֵּחַ הַזֶּה in Jer 7:4 as “. . . the temple of Jahweh.’ What?” instead of the more common “. . . the temple of Yahweh are these (buildings)” see Charles F. Whitley, “A Note on Jeremiah 7:4,” *Journal of Theological Studies* 5, no. 1 (1954): 57–59.

The absence of בָּחַר in Jer 7, so central to the Deuteronomic locution, could either be seen as an addition in Deuteornomy or subtraction in Jer 7. The modification is open to a direction of dependence either way.

<sup>21</sup> For the name-theology cf. Deut 28:10; 1 Kgs 8:43; Jer 7:11, 14, 30; 14:9; 15:16; 25:29; 32:34; 34:15. See also Holladay, *Jeremiah 1–25*, 245–46; Eep Talstra, *Solomon's Prayer: Synchrony and*

prescriptive regarding the dwelling of YHWH's name as the place he will choose. In other words, both Deuteronomy and Jer 7 present God's dwelling with his people as a future possibility. Admittedly, Jer 7:10–11, 14, 30 describes the Temple presently as the place *נִקְרָא-שְׁמִי עָלָיו* (“which is called by my name”). This *niphal*-construction leaves the impression that while the people regard the Temple as belonging to YHWH, he has not made his name to dwell there as a fulfillment of the Deuteronomic promise.<sup>22</sup>

However, resembling the Deuteronomic usage we find *אֲשֶׁר שָׁכַנְתִּי שְׁמִי שָׁם* (“where I let my name dwell”) in Jer 7:12. This formulation is not used about the Temple in Jerusalem, but the Tabernacle at Shiloh. In other words, both Deuteronomy and Jer 7 present the dwelling of YHWH in the chosen place or Jerusalem as a future possibility, except Jer 7:12. Here Jeremiah affirms that YHWH did dwell in the Tabernacle at Shiloh. Since Deuteronomy contains descriptions of the fulfilled promise of a dwelling at Shiloh or any other chosen place, it therefore seems reasonable to take Jeremiah's affirmation that it was fulfilled in Shiloh as post-dating the Deuteronomic promise. In other words, first the Deuteronomic promise was given about a place to be chosen for the dwelling of YHWH's name, and then it was fulfilled with Shiloh according to Jer 7:12. While Deut

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*Diachrony in the Composition of I Kings 8,14-61*, trans. Gonn Runia-Deenick (Kampen: Kok Pharos, 1993).

<sup>22</sup> Holladay as well points out the irony between the promise of YHWH dwelling with the people and what the Temple is called (Holladay, *Jeremiah 1–25*, 246). Leuchter proposes “that the Jerusalem Temple may indeed be regarded as YHWH's מקום as well, though like Shiloh, this is not contingent upon the presence of YHWH's name residing therein” (Leuchter, “The Temple Sermon,” 105). Weippert writes: “Die Tempelrede wendet sich demnach nicht gegen eine Hochschätzung des Tempels, wie sie etwa aus dem Deuteronomium ableitbar ist, sondern gegen die Volksfrömmigkeit, die sich auf ein falsch verstandenes Deuteronomium beruft. Der Tempel ist für das Volk nicht mehr ein Weg zu Jahwe, sondern Ziel der Frömmigkeit. Auf diese Weise wird der Tempel zum Hindernis zwischen Jahwe und seinem Volk. Der Tempel gewinnt so den Charakter eines Fetischs und Amuletts” (Weippert, *Die Prosareden des Jeremiabuches*, 47–48).

26:2 says that the people “shall go to the place which” YHWH will choose, bringing the produce of the land he has given as a covenant blessing, Jer 7:12 admonishes the people to “go up to my place which” YHWH destroyed due to covenant breaches. This may indicate a direction of dependence going from Deuteronomy to Jer 7.

*Judging between Person in Jer 7:5b and Exod 18:16:* The only two cases where the formula *בין איש ובין רעהו* (“between a man and his neighbor”) occurs in the HB are in Exod 18:16 and Jer 7:5. It is, thus, a locution unique to these two passages. In addition, Exod 18:16 precedes the formulation with *וְשֹׁפְטֵתִי* (“and I decide”), while Jer 7:5 has *תַּעֲשׂוּ מִשְׁפָּט* (“do justice”).<sup>23</sup> The use of this same root in both passages strengthens the case of a reuse between the two. At the same time, this case may also be explained as the two passages drawing upon a common source; namely, from established legal language and tradition. If this was a common legal formula we would, however, expect to encounter it more times in the HB.

In Exod 18:16 it is Moses that says *וְשֹׁפְטֵתִי בין איש ובין רעהו* (“and I judge between a man and his neighbor”). In other words, the just judgment is Moses’ responsibility. By comparison Jer 7:5 uses the locution *בין איש ובין רעהו* to speak of a responsibility of all the people. It is possible to argue that Exod 18 transfers Moses’ responsibility to the judges and Jer 7 to all the people, but it is difficult to see evidence for Exod 18 modifying Jer 7; it follows that this does not offer a sound rationale for the direction of dependence. Again, it is the occurrence in the list of possible reuses in Jer 7:5–6, 9 that may constitute the strongest argument for Jer 7:5b being dependent upon Exod 18:16, and not *vice versa*.

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<sup>23</sup> In Ezek 18:8 we find *לֹאִישׁ לְאִישׁ בֵּין אִישׁ לְאִישׁ יַעֲשֶׂה אָמֶת מִשְׁפָּט אֲמִת*. Cf. Weinfeld, *Social Justice in Ancient Israel*, 7; Maier, *Jeremia als Lehrer der Tora*, 74.

*The Stranger, Fatherless, and Widow in Jer 7:6a and Deut 24:17, 19:* We find the lexical set גַּר (“stranger”) + יְתוֹם (“orphan”) + אֵלְמָנָה (“widow”) several places in the HB.<sup>24</sup> Beside the lexical set גַּר + יְתוֹם + אֵלְמָנָה, Jer 7:6a seems thematically close to Exod 22:20–21; Deut 24:17; and 27:19. In all cases mistreating the three groups is prohibited or cursed. Exod 22:20–21 prohibits oppressing the stranger (וְלֹא תִלְחָצְנֶנּוּ) and mistreating the widow and fatherless (כָּל־אֵלְמָנָה וְיְתוֹם לֹא תַעֲנוּן); using a different word for oppression (יָנָה) than Jer 7:6 (עָשָׂק). Deut 24:17 speaks against perverting the justice of the stranger and fatherless (לֹא תִטֶּה מִשְׁפַּט גַּר יְתוֹם) and not taking the garment of the widow in pledge (וְלֹא תִחַבֵּל בְּגָד אֵלְמָנָה). Deut 27:19 curses the one who perverts the justice of the stranger, fatherless, and the widow (אָרוּר מִטָּה מִשְׁפַּט גַּר־יְתוֹם וְאֵלְמָנָה).

In the Torah, with the exception of Exod 22:20–21, this triad is found exclusively in Deuteronomy. Further, the order אֵלְמָנָה/יְתוֹם/גַּר is found in Deut 14:29; 16:11, 14; 24:17, 19–21; 26:12–13; 27:19, the same order as in Jer 7:6, while Exodus has the order גַּר/יְתוֹם/אֵלְמָנָה, in two separate clauses with a relative clause in between.<sup>25</sup>

I am inclined to see Jer 7:6a in a similar way as 7:3, 7, 12 discussed above, as picking up a general locution from Deuteronomy without necessarily reusing a specific passage. The evidence for direction of dependence is, however, too weak to identify with

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<sup>24</sup> Cf. Exod 22:20-21; Deut 10:18-19; 14:29; 16:11, 14; 24:17, 19-21; 26:12-13; 27:19; Jer 7:6; 22:3; Ezek 22:7; Zech 7:10; Mal 3:5; Ps 94:6; 146:9. Cf. Isa 1:17. The lexical set גַּר + יְתוֹם + אֵלְמָנָה + עָשָׂק is only found in Jer 7:6; Zech 7:10; Mal 3:5. The formulation in Zech 7:10 is quite similar to Jer 7:6, except it adds וְעָנִי and uses אֵל instead of לֹא. Cf. how Mal 3:5, like Jer 7:9, also speak of swearing falsely (וּבִנְשָׁבְעִים לִשְׁקֹר). Since Deut 24:17 reads אֵלְמָנָה בְּגָד תִּחַבֵּל בְּגָד אֵלְמָנָה, it may possibly also be a relation here to Jer 7:5b, with the context of executing מִשְׁפַּט. The same is the case for Deut 27:19, אָרוּר מִטָּה מִשְׁפַּט גַּר־יְתוֹם וְאֵלְמָנָה וְאָמַר כְּלֵהֶעָם אֲמִן. Cf. Weippert, *Die Prosareden des Jeremiabuches*, 42; Holladay, *Jeremiah 1–25*, 243.

<sup>25</sup> We should also note that it is found in Jer 22:3 and Ezek 22:7 in the same order.

much confidence. Christl Maier and Karel van der Toorn have pointed out that part of the ANE tradition and ethos was a concern for the three *personae miserae*.<sup>26</sup> Therefore, we cannot discount the possibility that Jer 7 and Deuteronomy share a common tradition that explains the parallels as opposed to claiming that they show literary dependence.

*Pouring out the Blood of the Innocent in Jer 7:6b and Deut 19:10*: The lexical set שפך + דם + נקי is found in 13 cases in the HB.<sup>27</sup> Deut 19:10 is set in the context of unintentional murder and cities of refuge. The innocent (נקי) is the one who has murdered another unintentionally, and the person liable to shed his blood is the blood-avenger.<sup>28</sup> In Deut 21:7–8 the innocent is a person found killed in the field with no witnesses around. It prescribes the *heifer* rite to purify for the shed blood. 2 Kgs 21:16; 24:4 denounce the innocent blood shed in Jerusalem. Joel 4:19, 21 speaks of the shedding of the blood of innocent Jews by foreign nations, and how the Jews are vindicated by YHWH. Isa 59:7; Ps 106:38; Prov 6:17 speak of the shedding of innocent blood in general terms, and, thus, raise the question whether Jer 7:6b may not also express a moral idiom and, therefore, not qualify as an instance of literary reuse.<sup>29</sup>

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<sup>26</sup> van der Toorn, *Sin and Sanction*, 16; Maier, *Jeremia als Lehrer der Tora*, 74–75.

<sup>27</sup> Deut 19:10; 21:7–8; 2 Kings 21:16; 24:4; Isa 59:7; Jer 7:6; 22:3, 17; Joel 4:19, 21; Ps 106:38; Prov 6:17. Lundbom sees the Deuteronomic passages as background to Jer 7:6 (Lundbom, *Jeremiah 1–20*, 464). Cf. Weinfeld, *Deuteronomy and the Deuteronomic School*, 356.

<sup>28</sup> Cf. Maier, *Jeremia als Lehrer der Tora*, 75.

<sup>29</sup> Smith claims that the formulation in Jer 7:6, “‘Shed not innocent blood in this place and walk not after strange gods to your own heart’ throw into perspective the fifth and first commandments respectively” (Smith, “The Decalogue in the Preaching of Jeremias,” 203). Below I will argue that שפך + דם + נקי is more likely a general Deuteronomic locution picked up by Jer 7, rather than a specific reuse of the first commandment in the Decalogue. Here I will question the lexical basis for Smith’s parallel to the sixth commandment against murder (his fifth according to the Catholic division). It is clearly a difference between שפך דם בנקי in Jer 7:6 and לא תרצח in Exod 20:12 and Deut 5:17. Thematically the two are related, but it is difficult—if not impossible—to demonstrate a literary

In the context of Jer 7, the indictment against shedding innocent blood seems best understood in light of the execution of Uriah son of Shemaiah from Kiriath-jearim, who delivered a similar message as Jeremiah (26:20–23) just prior to Jeremiah’s own Temple Sermon. This might be the concrete historical event referred to in Jer 7 and 26. This appears to be supported by Jeremiah’s own statement to the officials and all the people that they could do with him as they pleased, but should they kill him for delivering the Temple Sermon, as Uriah had been killed, then they would bring the guilt of innocent blood upon themselves (דָּם נָקִי אַתֶּם נוֹתְנִים עָלֵיכֶם, 26:15). This would be an argument based on the thematic correspondence between Jer 7:6b; 26:15, 20–23.<sup>30</sup>

Since it does not seem possible to conclude with confidence on the question of reuse based on שָׁפַךְ + דָּם + נָקִי alone, neither is it possible to reach a conclusion on the question of the direction of dependence.<sup>31</sup>

*Following Other Gods in Jer 7:6c, 9d and Deut 11:28; 13:3:* The lexical set הֵלֵךְ + אֲחֵרֵי אֱלֹהִים אֲחֵרִים is found in Deuteronomic passages or those often called Deuteronomistic.<sup>32</sup> The majority of them are found in either Deuteronomy or Jeremiah.

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dependence. Further, the repetition within Jer 7 itself of הֵלֵךְ + אֲחֵרֵי אֱלֹהִים אֲחֵרִים in 7:6, 9—even if 7:9 also adds לֹא־יִדְעֶתֶם לִשְׂרָאֵל—shows that the author of Jer 7 also could use exact reproduction of locutions. While we have by now become used to the phenomena of exact or near to exact repetition combined with variation in the same passages, it is not clear why Jer 7:6 preferred the locution הֵלֵךְ אַחֲרֵי אֱלֹהִים אֲחֵרִים if it meant to reuse the sixth commandment.

<sup>30</sup> Jeremiah’s critique in 22:17 of Jehoiakim shedding innocent blood would also support a certain *Sitz im Leben* of this locution: “For your eyes and heart are on nothing except unjust gain, on shedding innocent blood (וְעַל דָּם־הַנָּקִי לִשְׂפֹךְ), and on doing oppression (הַעֲשֹׂק) and violence.” The lexical parallels with 7:6 are here clear: “[if] you do not oppress (תִּעֲשֹׂקוּ) a stranger, an orphan, or a widow, or do not shed innocent blood (וְדָם נָקִי אַל־תִּשְׁפְּכוּ) in this place, or do not walk after other gods, to harm yourself.” Cf. Lundbom, *Jeremiah 1–20*, 464.

<sup>31</sup> A similar point is made by Firmage, “Jeremiah, Deuteronomy, and the Priestly Corpus,” 31.

<sup>32</sup> Deut 6:14; 8:19; 11:28; 13:3; 28:14; Judg 2:12, 19; 1 Kings 11:10; Jer 7:6, 9; 11:10; 13:10;

While אֱלֹהִים אֲחֵרִים is a set formula in both books, the verbal form of הַלֵךְ varies, dependent on the syntax of the passage.<sup>33</sup> In Deut 11:28; 13:3; and Jer 7:9 we find a variation on the verb הַלֵךְ + אֱלֹהִים אֲחֵרִים + אֲשֶׁר לֹא־יִדְעֶתֶם. Syntactically the closest parallels are between Deut 11:28 and Jer 7:9.<sup>34</sup> Jer 7:6c therefore seems to be an abbreviated form of this longer locution, using only הַלֵךְ + אֱלֹהִים אֲחֵרִים, and not אֲשֶׁר לֹא־יִדְעֶתֶם. It seems reasonable to see a reuse of this locution between Jer 7:6, 9 and Deut 11:28; 13:3.<sup>35</sup>

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16:11; 25:6; 35:15. Cf. 1 Kings 9:6; 11:4-5. Fischer points to Deut 6:14 as the verse mentioning the prohibition against following other gods first (Fischer, “Der Einfluss des Deuteronomiums auf das Jeremiabuch,” 255). Maier points out that it is only in Deut 6:14 and Jer 7:6 that we find הַלֵךְ + אֱלֹהִים אֲחֵרִים as prohibitive statements (Maier, *Jeremia als Lehrer der Tora*, 76. See also p. 81). She writes: “Allein im Verbot der Fremdgottverehrung (Jer 7,6b) findet sich ein literarisch nachweisbarer Bezug auf eine Stelle im Deuteronomium (Dtn 6,14). Die übrigen Gebote sind in Anlehnung an die dtn. Sozialgesetzgebung formuliert, ohne jedoch deren Wortlaut zu übernehmen” (Maier, *Jeremia als Lehrer der Tora*, 90). Weinfeld as well lists הַלֵךְ + אֱלֹהִים אֲחֵרִים (+ אֲשֶׁר לֹא־יִדְעֶתֶם) as a “Deuteronomic phraseology” (Weinfeld, *Deuteronomy and the Deuteronomic School*, 320, 324, 357). The prohibitive form is, however, not sufficient reason to single this out as the source. We need to look at the distribution in the entire HB and see which of the alternatives is the more likely. He points out the parallels between the prohibition against following other gods in Deut 6:14 and Jer 7:6, and the parallels in Deut 6:18 ( וְעָשִׂיתָ ) and Jer 26:14 ( עָשׂוּ־לִי כָטוֹב וְכִי־אֲשֶׁר בְּעֵינֵיכֶם ). This strengthens the case that there might be a specific reuse of Deut 6 in the Temple Sermon. Further, we might also see a reversal of the phrase לְטוֹב in Deut 6:24; 10:13; Jer 32:39 (also in Eccl 2:26; 2 Chr 10:7, and therefore not as exclusive as Fischer claims between Deuteronomy and Jeremiah. Cf. Fischer, “Der Einfluss des Deuteronomiums auf das Jeremiabuch,” 255) in the phrase לָרַע לְכֶם in Jer 7:6. The other cases of reuse between Deut 6 and Jer 7:6, as pointed out above, strengthens this possibility. This could explain this somewhat strange appendix in 7:6.

<sup>33</sup> Again Lundbom sees the Deuteronomic locution as background to Jer 7:6, 9 (Lundbom, *Jeremiah 1–20*, 464). Weippert writes concerning the locution הַלֵךְ + אֱלֹהִים אֲחֵרִים: “Die Wendung gehört auch zum deuteronomisch-deuteronomistischen Formelschatz; dennoch kann sie nicht einfach als Indiz für die redigierende Hand eines deuteronomistischen Verfassers gelten” (Weippert, *Die Prosareden des Jeremiabuches*, 41–42).

<sup>34</sup> The clause אֲשֶׁר לֹא־יִדְעֶתֶם or equivalents are found in several places in the HB: Gen 19:8; Exod 1:8; Num 31:18, 35; Deut 1:39; 8:3, 16; 11:2, 28; 13:3, 7, 14; 28:33, 36, 64; 29:25; 31:13; Judg 2:10; 3:1; 21:12; 1 Sam 25:11; 1 Kgs 18:12; Isa 29:12; Jer 7:9; 9:15; 10:25; 16:13; 17:4; 19:4; 22:28; 44:3; Ezek 32:9; Jonah 4:11; Zech 7:14; Ps 35:11; 79:6; Ruth 2:11; Eccl 4:13; 10:15; Dan 11:38). The exact formulation אֲשֶׁר לֹא־יִדְעֶתֶם is only found in Deut 11:28; 13:3, 14; Jer 7:9; 16:13; Ezek 32:9.

<sup>35</sup> There might be a relation to the first word in the Decalogue, לֹא יִהְיֶה־לְךָ אֱלֹהִים אֲחֵרִים עֲלֵי־פָנַי (“There shall not be to you other gods before my face”) in Exod 20:3 and Deut 5:7, but this link should



Deuteronomy 11:28 is set in the context of blessings for obedience to the commandments of YHWH (אֶת־הַבְּרָכָה אֲשֶׁר תִּשְׁמְעוּ אֶל־מִצְוֹת יְהוָה אֱלֹהֵיכֶם, 11:27), and curses for disobedience (וְהִקְלָלָה אִם־לֹא תִשְׁמְעוּ אֶל־מִצְוֹת יְהוָה אֱלֹהֵיכֶם, 11:28). Deut 13:3 is found in the context of the warning against and punishment upon the prophet or dream-diviner attempting to lead the people into idolatry (13:2–6). With the curse-passage in Deut 27:19 as a possible source for Jer 7:6a (see above), it may be that Jer 7:6, 9 also evokes the Deuteronomic curses. Alternatively, we may see a parallel between the denouncement of false prophets in Deuteronomy and Jeremiah as an instance of possible thematic correspondence (e.g. Jer 8:8).<sup>36</sup> The phrase לְרַע לָכֶם (“to harm yourself”) in Jer 7:6 may be read as alluding to the curse that would be upon them if they followed other gods.<sup>37</sup>

With the exception of the arguments for Jer 7:6, 9 reusing Deut 11:28 and/or 13:3, mentioned above, I do not see any strong indicators in how Deuteronomy and Jeremiah use the locution אֲשֶׁר לֹא־יַדְעֻתָם + אֶחָדִי אֱלֹהִים אֲחֵרִים + הַלֵךְ to settle the question of direction of dependence.<sup>38</sup>

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most likely be seen as indirect, as the formulation is developed in the other Deuteronomic passages.

<sup>36</sup> Like Jer 7:6c, the lexical set אֲשֶׁר לֹא־יַדְעֻתָם + אֶחָדִי אֱלֹהִים אֲחֵרִים + הַלֵךְ is also found in Jer 13:10; 35:15. In these two cases, however, the people are predicated as being evil and therefore follow other gods, while in Jer 7:6 the evil is seen as a consequence of them following after other gods.

<sup>37</sup> Weinfeld points out that לְרַע לָכֶם in Jer 7:6 and 26:7 is the inverse formulation of the “Deuteronomic phraseology וטוב/לטוב לך/לכם/לנו (Weinfeld, *Deuteronomy and the Deuteronomic School*, 346). He refers to Deut 5:30; 6:24; 10:13; 19:13. I assume he was thinking of Deut 5:29 instead of 5:30, and Deut 30:9 should be added to the list. We should also include the ל + טוב + 2ms/pl suffix in Deut 4:40; 5:16, 29; 6:3, 18; 12:25, 28; 22:7. The phrase לֵטוֹב לְ is, however, also found in Eccl 2:26; 2 Chr 10:7, and is therefore not as exclusive as Fischer claims for Deuteronomy and Jeremiah. Cf. Fischer, “Der Einfluss des Deuteronomiums auf das Jeremiabuch,” 255.

<sup>38</sup> In both Jer 7:5–6 and 7:9 the human realm is mentioned prior to the divine-human. The order is the reverse of the one we find in the Decalogue. Is Jeremiah communicating something about priorities

*Murder, Adultery, and Robbery in Jer 7:9a and Exod 20:13–15; Deut 5:17–19:*

The lexical set רצה + נאף + גנב is used in Exod 20:13–15; Deut 5:17–19; Jer 7:9; Hos 4:2;

Job 24:14–15.<sup>39</sup> While Exod 20:13–14 and Deut 5:17–19 have the order רצה (“to

murder”)/נאף (“to commit adultery”)/גנב (“to steal”), Jer 7:9 gives the order as

גנב/נאף/רצה, Hos 4:2 and Job 24:14–15 as רצה/גנב/נאף.<sup>40</sup>

here? Why is the divine-human realm described in rather similar formulations, with little variations between 7:6c (וְאֶתְּחַרֵּם אֱלֹהִים אֲחֵרִים לֹא תִלְכֹּד לְרַע לְכֶם) and 7:9c–d (וְקִטְרַת לְבַעַל וְהִלֵּךְ אֲחֵרִים אֱלֹהִים אֲחֵרִים אֲשֶׁר)? Of differences can be mentioned the additions of לְרַע לְכֶם in 7:6c, וְקִטְרַת לְבַעַל in 7:9c, and אֲשֶׁר לֹא תִלְכֹּד in 7:9d. Further, the word order and form of the verb also differ between אֲחֵרִים אֱלֹהִים אֲחֵרִים לֹא in 7:6c and אֲחֵרִים אֱלֹהִים אֲחֵרִים in 7:9d.

<sup>39</sup> The combination of רצה + גנב is found in Isa 1:21, 23, and נאף + גנב in Hos 4:2; 7:1, 4; Ps 50:18; Job 24:14–15; Prov 6:30, 32. The combination רצה + נאף is never found except in the above quoted cases.

Given that Jeremiah often seems close to Hosea, even reusing this text at points, we need to ask whether Jer 7:9a might be reusing Hos 4:2, rather than directly the Decalogue in Exod 20 and Deut 5. Based on the infinitive forms in Jer 7:9, with הִגְנֵב רְצַח וְנָאֵף, it is a question whether it may not be a case of reuse between Jer 7:9 and Hos 4:2. I concur with Holladay as he writes: “Both prophets thus cite various commandments, but there is no discernible pattern either between the lists of the two prophets or in the order of choice that either prophet makes from the longer list of the Decalogue” (Holladay, *Jeremiah 1–25*, 244). Cf. Maier, *Jeremia als Lehrer der Tora*, 77–78, 90. Weippert is more confident of a reuse of the Decalogue: “Die Verbalreihe von Vers 9 ist sicher auf dem Hintergrund des Dekalogs zu verstehen; der Propheten wirft also dem Volk die Nichtbeachtung des Gesetzes vor” (Weippert, *Die Prosareden des Jeremiabuches*, 34). Hos 4:2 comes at the beginning of a diatribe against the inhabitants of the land (כִּי רִיב 4:1). The absence of honesty, goodness and knowledge of God (כִּי אֵין־אֱמֶת וְאֵין־חֶסֶד 4:1) has led to profanity and immorality, with Hos 4 focusing especially upon idolatry and adultery. The על־כֵּן (“therefore”) of Hos 4:13 even establish an explicit link between idolatry and adultery, with adultery following as a result of idolatry. It is common to see 4:1 as introducing a new major section in the book of Hosea.

<sup>40</sup> Smith claims that compared to the Decalogue we find the “order actually inverted” in Jer 7:9 (Smith, “The Decalogue in the Preaching of Jeremias,” 203). If this was correct, it might have led us to think that it was a case of Seidel’s law of inversion. But that Smith is wrong in claiming that the order is inverted is shown in the following table. Here is an overview of the different orders in some of the most important manuscripts:

	גנב/נאף/רצה	נאף/גנב/רצה	נאף/רצה/גנב	נאף/רצה/גנב	נאף/גנב/רצה
Exod 20:13–15	MT				LXX
Deut 5:17–19	MT, 4QDeut <sup>a</sup> , Sam. Pent., LXX, Targum, Peshitta, Vulgate, 4QPhyl <sup>a</sup> , XQPhyl, 1QPhyl			PapNash, LXX	
Jer 7:9	LXX		MT		
Hos 4:2		LXX			MT

While there seems to be a likely reuse between some of the passages Exod 20:13–15; Deut 5:17–19; Jer 7:9; Hos 4:2; Job 24:14–15, it can also be argued that all or some share a common legal tradition.<sup>41</sup> Based on the occurrence of the lexical set נאף + רצה + גנב itself it does not seem possible to conclude on the question of the direction of dependence.

*False Swearing in Jer 7:9b and Exod 20:16; Lev 19:11–12:* The lexical set שבוע + שקר is found in Gen 21:23; Lev 5:24; 19:11–12; Jer 5:2; 7:9; Zech 5:4; Mal 3:5.

Job 24:14– 15		LXX			MT
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In the manuscripts it therefore seem to be a clear tendency to prefer the order נאף/רצה in Deut 5:17–19. PapNash and LXX are here the exceptions. This may cast some doubt as to the originality of the order also for Exod 20:13–15 LXX, and support Exod 20:13–15 MT. Strangely enough, the order in Jer 7:9 LXX aligns with the order given in the versions of the Decalogue in MT. It is possible the translator of Jer 7:9 LXX recognize a reuse and render his translation closer to that of the versions of the Decalogue in his Hebrew *Vorlage*, even if the LXX itself chose to render the order in the Decalogue different than as found in MT. This overview also raises the question whether there might be a case of reuse between Hos 4:2 and Job 24:14–15, as we find the same order both in MT and LXX in the two passages. This, however, takes us beyond the parameters of the present study. The parallels between Deut 5:29 (מִי־יִתֵּן וְהָיָה לְבָבָם זֶה לָהֶם) (לִירְאָה אֹתִי וְלִשְׁמֹר אֶת־כְּלִמְצוֹתַי כְּלִי־הַיָּמִים לְמַעַן יִיטֵב לָהֶם וְלִבְנֵיהֶם לְעֹלָם וְנִתְּמִי לָהֶם לֵב אֶחָד וְדָרֵךְ) and Jer 32:39 (אֶחָד לִירְאָה אוֹתִי כְּלִי־הַיָּמִים לְטוֹב לָהֶם וְלִבְנֵיהֶם אֶחָדֵיהֶם) can be taken as support of reuse of Deut 5 in Jeremiah. Fischer writes: “Die beiden Passagen stellen die langste Übereinstimmung zur Kombination der Elemente, geben, Herz, mich furchten, alle Tage, gut, ihnen und ihren Kindern’ dar” (Fischer, “Der Einfluss des Deuteronomiums auf das Jeremiabuch,” 251).

<sup>41</sup> For a discussion on the prohibitions against murder, adultery, theft, and false witness in the ANE, see van der Toorn, *Sin and Sanction*, 15–20. Cf. Fitzpatrick-McKinley, *The Transformation of Torah*, 118–45. Commenting on the parallels between Hos 4:2 and Jer 7:9 and the versions of the Decalogue, de Vos writes: “Für diese beiden Texte gilt das Gleiche wie für Hos 13,4: Es ist unsicher, ob hier bewusst auf den Dekalog angespielt wird, und wir wissen nicht, ob der Dekalog beiden Autoren schon vorlag. Eher darf man davon ausgehen, dass sowohl der Dekalog als auch die eben erwähnten Texte auf traditionelle Normen zurückgehen, die schriftlich auf verschiedene Weise zum Tragen kommen konnten” (J. Cornelis de Vos, *Rezeption und Wirkung des Dekalogs in jüdischen und christlichen Schriften bis 200 n. Chr.*, Ancient Judaism and Early Christianity 95 (Leiden: Brill, 2016), 17). Maier writes: “Die häufig verhandelte Frage, ob Hos 4,1–3 und Jer 7, den Dekalog voraussetzen oder auf die Gebotsformulierungen erst hinführen, lässt sich kaum zweifelsfrei beantworten” (Maier, *Jeremia als Lehrer der Tora*, 78).

Since Jer 7:9b can be read as a possible reuse of the ninth word of the Decalogue (see below), as relating to false swearing or testimony (וְהִשָּׁבַע לְשָׁקֵר), see below), this also strengthens the case for reuse of the 6.–8. words of the Decalogue. In this case, Jer 7:9 could be understood as reusing the 6.–9. words of the Decalogue.

Could this be a case of reuse of the ninth commandment in the Decalogue, prohibiting false testimony (לֹא־תַעֲנֶה בְּרַעְיֶךָ עֵד שָׁקֶר)? This possibility is limited to Exod 20:16, as the Deuteronomic version of the Decalogue uses שָׁוֹא instead of שָׁקֶר. The use of the lexeme שָׁקֶר in itself is of course too meagre a basis for reaching a conclusion, but since Jer 7:9a may be understood as reusing the sixth to eighth commandments in the Decalogue (see above) and 7:9b the ninth commandment of the Decalogue, they mutually strengthen one another's case of reuse of the Decalogue.<sup>42</sup>

Lev 19:11–12 may be of special interest here, as it ties together stealing (לֹא תִגְנוֹבוּ), lying (וְלֹא־תִשְׁקְרוּ אִישׁ בְּעַמִּיתוֹ), and false swearing by the name of YHWH (וְלֹא־תִשְׁבַּע בְּשֵׁם יְהוָה אֱלֹהֶיךָ לְשָׁקֶר).<sup>43</sup> It resembles Jer 7:9 also speaking of stealing and swearing falsely. The lexical set שָׁבַע + לְ + שָׁקֶר seems to be used specifically for swearing by YHWH's name (Lev 19:12; Jer 5:2; Zech 5:4, cf. Gen 21:23), while Jer 7:9 does not specify whether this is swearing falsely by YHWH's name. Nevertheless, וְהִשְׁבַּע לְשָׁקֶר in Jer 7:9b may be related to the דִּבְרֵי הַשָּׁקֶר in 7:4, 8. If they are to be understood as referring to the same, they would both denounce swearing falsely by the Temple. Reading וְהִשְׁבַּע לְשָׁקֶר in Jer 7:9b as swearing by YHWH's name thus seems reasonable as well. On the other hand, while דִּבְרֵי הַשָּׁקֶר in 7:4, 8 may be understood as false confidence in the Temple

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<sup>42</sup> Holladay writes: “there is reason to connect the prohibition here and in Hos 4:2\* with the commandment in the Decalogue, “You shall not take the name of Yahweh your God in vain” (Holladay, *Jeremiah 1–25*, 245). Maier characterizes the expression וְהִשְׁבַּע לְשָׁקֶר as post-exilic (Maier, *Jeremia als Lehrer der Tora*, 79). Cf. Weippert who questions seeing תוֹעֲבָה in Jer 7:10 as a reuse of the syncretistic definition the term has in Deuteronomy. She concludes that it “entsprechen damit aber nicht einem speziell deuteronomischen, sondern allgemein üblichen Sprachgebrauch . . . In sprachlicher Hinsicht hebt sich das Jeremiabuch im Gebrauch von תוֹעֲבָה sowohl vom Deuteronomium als auch vom Deuteronomisten ab. Die für das Deuteronomium typische Wendung יהוה תוֹעֲבָה hat im Jeremiabuch keine Entsprechung” (Weippert, *Die Prosareden des Jeremiabuches*, 43).

<sup>43</sup> Cf. Stewart, “Leviticus 19 as Mini-Torah,” 299–323.

itself, 7:9b may be understood more as swearing falsely in general. Exod 20:16 concerns a false testimony given in a court setting. Given thematic correspondence, Jer 7:9b seems closer to Lev 19:11–12 than Exod 20:16.

Again, the individual locutions seem insufficient to make strong conclusions regarding reuse and direction of dependence. It is rather the overall structure of Jer 7:1–15, more specifically what seem to be cases of pastiche in 7:5–6, 9, that make the strongest argument for reuse and direction of dependence, where Jer 7:5–6, 9 accumulates abbreviated cases of reuse of Torah instructions in list-form.

We now move to the case of Ezek 18, which, very similarly to Jer 7, contains what looks like a pastiche of Torah-passages.

### Ezekiel 18

Ezekiel 18:2 opens with the proverb spoken among the people that children suffer for the acts of their fathers, אָבוֹת יֹאכְלוּ בֶּטֶר וְשִׁנֵי הַבָּנִים תִּקְהֶינָה, (“fathers eat sour grapes and the sons’ teeth are blunt”).<sup>44</sup> The people clearly thought that their exilic destiny resulted

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<sup>44</sup> The people’s statements break up the chapter at certain places. As mentioned, the people’s proverb referred to in 18:2 constitute the departure of the diatribe. In 18:19, 25, 29 the people object to YHWH’s countering their proverb, and is met by a further elaboration of his principle. The same proverb is found in Jer 31:30. Note how two different words for sin is used in Jer 31:30 and Deut 24:16. Jer 31:30 uses בְּעֵוֹנוֹ while Deut 24:16 uses בְּהִטָּאוֹ. Still it is a similar syntactic structure: ב + עֵוֹן/הִטָּא + 3ms suffix. Greenberg writes: “Contrary to Ezekiel, Jeremiah tacitly admitted the validity of the proverb. In the present dispensation, made harsh by Israel’s obduracy, God uses his prerogative against the children of apostates (who, though not so bad as their fathers, still do not have clean hands); only in time to come (‘in those days’) as part of the ‘new covenant’ God will abandon this harsh measure. Then, but not now, ‘he who eats unripe grapes, his teeth shall be set on edge,’ and the proverb will no longer be used. Ezekiel, on the other hand, demands that the proverb be given up at once; it gives a false picture of God’s conduct now. To him the proverb means that its users regard themselves as innocent” (Greenberg, *Ezekiel 1-20*, 340).

Moshe Greenberg divided the book of Ezekiel in two, following more ancient traditions, between Ezek 1–24 and 25–48 (Greenberg, *Ezekiel 1-20*, 3–4). The ancient traditions Greenberg refers to are the Babylonian Talmud (Baba Batra 14b) and Josephus (*Antiq.* 10.5.1 [79]). He entitles Ezek 18 “Retort to an epigram impugning God’s justice, a call to repentance.” Zimmerli entitled the chapter “The Freedom to Repent” (Walther Zimmerli, *Ezekiel 1: A Commentary on the Book of the Prophet Ezekiel, Chapters 1–24*,

from their fathers' sins, not their own.<sup>45</sup> The rest of the chapter is a refutation of this proverb by YHWH.<sup>46</sup> Ezek 18:3 declares that the proverb shall be spoken no more in Israel. The basic premise of the refutation is given in 18:4, namely that all persons belong to YHWH, both fathers and sons (הֵן כָּל־הַנְּפֹשֹׁת לִי הֵנָּה כְּנֶפֶשׁ הָאָב וְכְנֶפֶשׁ הַבֵּן לִי־הֵנָּה).<sup>47</sup> He is thus entitled to judge, and the principle by which he operates is that “the person who sins, that one shall die” (הַנְּפֹשׁ הַחֹטֵאת הִיא תָמוּת). Each one will be rewarded for their own actions. Implicitly, members of the present generation are not suffering for their fathers' sins, but their own. Ezek 18 is thematically paralleled by Ezek 33:10–20. This passage begins with the question וְאֵיךְ נִהְיֶה in 33:10.<sup>48</sup> The question could be read ethically as “how then should we live?”; the same question with which I introduced this study. But given the larger context of 33:10, the ethical question must accommodate an immediate existential question; namely, “how can we survive?” The opening ethical question in this study therefore receives an existential sense as well.

Then we are given a description of three generations, largely in similar terms, and basically alternating between walking in YHWH's commands and keeping/doing his rulings or contrary doing what is an abomination for him. The first generation (18:5–9) is

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Hermeneia (Philadelphia: Fortress, 1979), 386). For parallel passages in Ezekiel see Ezek 22:6–12 and 33:10–20.

<sup>45</sup> Cf. Graffy, *A Prophet Confronts His People*, 58–60.

<sup>46</sup> Cooke saw precedents in the book of Ezekiel to the themes in Ezek 18, in that “the righteous are to be marked out by a sign (9:4); they would at any rate deliver themselves (14:14, 16, 18, 20); repentance was still possible (14:6, 11)” (G. A. Cooke, *A Critical and Exegetical Commentary on the Book of Ezekiel*, ICC 21 (Edinburgh: T&T Clark, 1936), 195).

<sup>47</sup> I choose to render אָב and בֵּן in this chapter as “father” and “son,” since the use of the 3ms suffixes (e.g. אָבִי in 18:13 and בְּנִי in 18:14) in the chapter indicate a focus upon the male lineage.

<sup>48</sup> Cf. Greenberg, *Ezekiel 1-20*, 334.

summed up as *בְּחֻקוֹתַי יֵהַלֵךְ וּמִשְׁפָּטַי שָׁמֵר לַעֲשׂוֹת אֱמֶת* (“he walks in my commandments and keeps my rulings to act truthfully”, 18:9). The third (18:14–17) is in reverse order but likewise says, *מִשְׁפָּטַי עָשָׂה בְּחֻקוֹתַי הָלַךְ* (“he did my rulings and walked in my commandments,” 18:17), whereas the middle generation (18:10–13) is described as *אֵת כְּלֵי-הַתּוֹעֵבוֹת הָאֵלֶּה עָשָׂה* (“the one who has done all these abominations,” 18:13). We can compare the similar terminology used to describe the three generations in Table 22.

While the proverb of 18:2 accused the generation of fathers to be responsible for the children’s malady, it is of interest to note that the first generation is described as righteous (*צַדִּיק וְעָשָׂה מִשְׁפָּט וּצְדָקָה*, 18:5). Similarly, the third generation is characterized in positive terms. The contemporaries of Ezekiel apparently correspond to the second generation. They cannot blame their fathers before them, who are implicitly right. It is the middle generation that does what is wrong, and will suffer capital punishment (18:13, *מוֹת יוֹמָת דָּמְיוֹ בּוֹ יִהְיֶה*). Simultaneously, there is hope in the analogy if their own children, corresponding to the third generation, will turn from the evil ways of the present generation. The analogy can therefore be read as placing the responsibility of the present malady upon the present generation, while optimistically seeing hope for the next generation.

The principle of individual responsibility is explicitly stated in 18:4, 17, 20, 30 As mentioned, in 18:4 it is formulated as *הַנֶּפֶשׁ הַחַטָּאת הִיא תָמוּת* (“the person who sins, that one shall die”). Speaking about a son who has turned away from the evil ways of his father, 18:17 states that *הוּא לֹא יָמוּת בְּעוֹן אָבִיו כִּי הִיא יִחְיֶה* (“he shall not die for the iniquity of his father. He shall surely live”). Ezek 18:20 continues saying *הַנֶּפֶשׁ הַחַטָּאת הִיא תָמוּת בֶּן* (“The *לֹא-יָשָׂא בְעוֹן הָאָב וְאָב לֹא יִשָּׂא בְעוֹן הַבֵּן צְדָקַת הַצַּדִּיק עָלָיו תִּהְיֶה וְרָשָׁעַת רָשָׁע עָלָיו תִּהְיֶה*”).

**Table 22. The Three Generations in Ezek 18**

Ezek 18:5–9	Ezek 18:10–13	Ezek 18:14–17
<p><sup>5</sup> ואיש כִּי־יהיה צדיק ועשה משפט וצדקה: <sup>6</sup> אֲלֵה־הָרִים לֹא אֵכֹל וְעֵינָיו לֹא נִשְׂא אֶל־גְּלוּלֵי בֵּית יִשְׂרָאֵל וְאֶת־אִשְׁת־רֵעֵהוּ לֹא טָמָא וְאֶל־אִשָּׁה נָדָה לֹא יִקְרַב: <sup>7</sup> וְאִישׁ לֹא יֹנֵה חִבְלָתוֹ חֹב יִשִּׁיב גְּזֹלָה לֹא יִגְזֹל לַחֲמוֹ לָרֶעִב יִתֵּן וְעִירִים יִכְסֶה־בַּגָּד: <sup>8</sup> בְּנִשְׁךְ לֹא־יִתֵּן וְתִרְבִּית לֹא יִקַּח מֵעוֹל יִשִּׁיב יָדוֹ מִשְׁפֵּט אִמָּת יַעֲשֶׂה בֵּין אִישׁ לְאִישׁ: <sup>9</sup> בַּחֲקוֹתַי יִהְלַךְ וּמִשְׁפָּטֵי שֹׁמֵר לַעֲשׂוֹת אִמָּת צָדִיק הוּא חַיָּה יַחֲיֶה נָאִם אֲדַנִּי יְהוָה:</p>	<p><sup>10</sup> וְהוֹלִיד בֶּן־פְּרִיץ שֹׁפֵךְ דָּם וַעֲשֶׂה אֶחָ מֵאֶחָד מֵאלֹהֵי: <sup>11</sup> וְהוּא אֶת־כָּל־אֵלֹהֵי לֹא עֲשֶׂה כִּי גַם אֲלֵה־הָרִים אֵכֹל וְאֶת־אִשְׁת־רֵעֵהוּ טָמָא: <sup>12</sup> עֵנִי וְאֲבִיוֹן הוֹנֵה גְזֹלוֹת גְּזֹל חִבְלָה לֹא יִשִּׁיב וְאֶל־הַגְּלוּלִים נִשְׂא עֵינָיו תוֹעֵבָה עֲשֶׂה: <sup>13</sup> בְּנִשְׁךְ נִתֵּן וְתִרְבִּית לִקַּח וְחַי לֹא יַחֲיֶה אֶת־כָּל־הַתּוֹעֵבוֹת הָאֵלֹהֵי עֲשֶׂה מוֹת יוֹמָת דְּמִיו בּוֹ יִהְיֶה:</p>	<p><sup>14</sup> וְהִנֵּה הוֹלִיד בֶּן וִירָא אֶת־כָּל־חַטָּאת אֲבִיו אֲשֶׁר עֲשֶׂה וִירָאָה וְלֹא יַעֲשֶׂה כִּהְיָ: <sup>15</sup> עַל־הָהָרִים לֹא אֵכֹל וְעֵינָיו לֹא נִשְׂא אֶל־גְּלוּלֵי בֵּית יִשְׂרָאֵל אֶת־אִשְׁת־רֵעֵהוּ לֹא טָמָא: <sup>16</sup> וְאִישׁ לֹא הוֹנֵה חִבְלָה לֹא חִבְלָה וְגְזֹלָה לֹא גְזֹל לַחֲמוֹ לָרֶעִב נִתֵּן וְעִירוֹם כִּסֶּה־בַּגָּד: <sup>17</sup> מֵעֵנִי הִשִּׁיב יָדוֹ נִשְׁךְ וְתִרְבִּית לֹא לִקַּח מִשְׁפָּטֵי עֲשֶׂה בַּחֲקוֹתַי הִלֵּךְ הוּא לֹא יוֹמָת בְּעוֹן אֲבִיו חַיָּה יַחֲיֶה:</p>

<sup>5</sup> And if a man is righteous, and does justice and righteousness, <sup>6</sup> he does has not eaten on the mountains, and he has not lifted his eyes to the idols of the house of Israel, and has not defiled his neighbor's wife, and not approached a menstruant woman, <sup>7</sup> and has not oppressed anyone, returned the debtor's pledge, not robbed a robbery, given his bread to the hungry, and covered the naked [with] clothe, <sup>8</sup> not lent with interest, not taken profit, kept his hand from injustice, done true justice between a man and a man, <sup>9</sup> walks in my ordinances and keeps my judgments to act truthfully, he is righteous. He shall surely live, says the lord YHWH.

<sup>10</sup> But if he begets a violent son, shedding blood, and does to a brother any of these things <sup>11</sup>— though he has not done any of these things—if he even eats upon the mountains, and has defiled his neighbor's wife, <sup>12</sup> has oppressed the poor and needy, robbed robbery, not returned a pledge, and lifted his eyes to the idols, committed abominations, <sup>13</sup> lent with interest, taken a profit—and shall he live? He shall not live who does all these abominations. He shall die for certain. His blood shall be upon him.

<sup>14</sup> but if he begets a son, and he sees all the sins of his father, who he [i.e. his father] did, and he sees and does not do likewise, <sup>15</sup> he does not eat upon the mountains, and does not lift his eyes to the idols of the house of Israel, has not defiled his neighbor's wife, <sup>16</sup> and has not oppressed anyone, not taken a pledge, nor robbed a robbery, given his bread to the hungry and covered the naked [with] clothe, <sup>17</sup> kept his hand from the poor,<sup>49</sup> not taken interest or profit, done my justice, walked in my commands—he shall not die in his fathers sins. He shall surely live.

<sup>49</sup> In v. 8 his grandfather has kept his hand from injustice, here in v. 16 from the poor.



person who sins, he shall die. A son shall not bear the iniquity of the father, and a father shall not bear the iniquity of the son. The righteousness of a righteous man shall be upon him, and the wickedness of the wicked shall be upon him”). Ezek 18:30 summarizes by stating the basic principle anew, לָכֵן אִישׁ כְּדַרְכּוֹ אֲשַׁפֵּט אֶתְכֶם בַּיּוֹם הַהוּא (‘‘Therefore, I will judge you, O house of Israel, each man according to his ways’’).

We note that Ezekiel operates with an absolute dichotomy between the one who is righteous because of one’s righteous acts, and the one who is wicked because of one’s wicked acts. There are no grey zones. Neither is there any determinism at work. An individual can choose at any time to effect a transition between the two categories. The chapter focuses upon the individually chosen disposition expressed in concrete actions. There is an almost equal distribution between cultic and moral/social acts in the description of the three generations. While the main focus arguably is upon what we would call ethical and social interaction, the cultic descriptions indicate that cultic participation and ethics go hand in hand.<sup>50</sup>

Ezekiel 18:21–24, 26–28 proceeds to radicalize the principle.<sup>51</sup> Not only will each be rewarded according to his or her own actions, but what really counts are the present acts and not the previous ones. Therefore, there is a present possibility for each individual

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<sup>50</sup> Cf. Kaufmann, *The Religion of Israel*, 433; Greenberg, *Ezekiel 1-20*, 342; Weinfeld, *Social Justice in Ancient Israel*, 17n.

<sup>51</sup> Commenting on the two sections of Ezek 18, vv. 2–20 and 21–32, Greenberg writes that ‘‘a feature of this oracle is the interweaving of its parts with an absence of clear formal boundaries’’ (Greenberg, *Ezekiel 1-20*, 335). On p. 336 he finds this to be an example of the ‘‘halving’’ structure of Ezekiel’s oracles.’’ Cf. Adrian A. Schenker, ‘‘Saure Trauben ohne stumpfe Zahne: Bedeutung und Tragweise von Ez 18 und 33:10–20 oder ein Kapitel alttestamentlicher Moraltheologie,’’ in *Melanges Doiminique Barthelemy: Etudes Bibliques Offertes  L’occasion de Son 60e Anniversaire*, eds. P. Casetti, O. Keel and A. Schenker (Gottingen: Vandenhoeck & Ruprecht, 1981), 460–64; Matties, *Ezekiel 18*, 50–51.

to make a change. One's destiny is not determined by previous sins, but one can choose to change course. Furthermore, one's previous sins are entirely forgotten if one chooses to walk according to YHWH's commands and rulings (18:22). On the other side, there is no meritorious repository of righteous acts than can balance out present sins (18:24). Present sins will also cancel out entirely any previous righteous acts.

Finally, the chapter sums up with a call to all of Israel that they turn from their sins, repent, and acquire a new heart and spirit (18:30–32). While it is not clear how they can acquire a new heart and spirit in these passages, they clearly have a personal responsibility to begin reform through repentance. Ezekiel 11:19–20 and 36:26–27 imply divine enabling in this process.<sup>52</sup> While I have so far emphasized reading as a disclosure of the thought of the heart, Ezek 11:19–20; 18:30–32; 36:26–27—together with Jer

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<sup>52</sup> Greenberg, *Ezekiel 1-20*, 341; Matties, *Ezekiel 18*, 6–7. Matties formulates it as follows: “In Ezekiel laws are cited not so much to describe reality as to create and evoke a new reality. . . . The call to ‘get yourselves a new heart and a new spirit’ is an invitation to participate in the process of becoming” (Matties, *Ezekiel 18*, 194–95). And again: “Ezekiel 18 is an attempt to shape a moral community through the creative use of language” (Matties, *Ezekiel 18*, 219). See also 205–208, 218, 224 where he reflects on the parallels between repentance and acquiring a new heart/spirit in the book of Ezekiel, and how Ezek 18 offers “a way of being in the liminal moment between judgment and transformation.” And again: “We need to say that Ezekiel saves both God’s honour and the honour of the human community by offering both the freedom to act according to the character of the covenantal narrative tradition. That allows Ezekiel to do justice to the tension between human and divine interdependence and responsibility” (Matties, *Ezekiel 18*, 213). And finally: “Yahweh is an interactive personal agent who has a stake in the fate of the people. This God cannot be known apart from embodiment in the life and character of the peoplehood. And this God is affected by the actions of that people. Thus, the actions of the community have consequences not only in the historical experience of Israel, but also the community’s actions have driven Yahweh from his land. Ezekiel 18 therefore addresses the theodicy question by suggesting that the moral architecture of the world is known in the real world of human community” (Matties, *Ezekiel 18*, 223). According to Zimmerli, the tension between Ezek 11:19–20 and 36:26–27 on one side and Ezek 18:30–32 on the other side show “that in the divine salvation man never appears simply as a vague object, but always as the purposeful subject of grace for a new beginning” (Zimmerli, *Ezekiel 1*, 386). Cf. Paul M. Joyce, *Divine Initiative and Human Response in Ezekiel*, JSOTSup 51 (Sheffield: Sheffield Academic Press, 1989), 107–24; Paul M. Joyce, “Ezekiel and Moral Transformation,” in *Transforming Visions: Transformations of Text, Tradition, and Theology in Ezekiel*, eds. William A. Tooman and Michael A. Lyons (Cambridge: James Clarke & Co, 2010), 139–58.

31:31–34—open the possibility, as well, of reading in order to change one’s heart.

Pursuing this topic, together with the deceptiveness of the heart addressed in Jer 17:9 mentioned earlier, would take us beyond the parameters of the present study.<sup>53</sup>

The following is a summary of the strongest parallels between Ezek 18 and passages in Torah. The relation between Ezekiel and Torah has been extensively discussed. Lyons summarizes the five different explanation for the parallels between Ezekiel and the HI: “Ezekiel the prophet wrote both the book bearing his name and the Holiness Code; H draws upon the book of Ezekiel; both H and Ezekiel used a common source; both H and Ezekiel underwent a long history of composition and mutually influenced each other; the book of Ezekiel used H.”<sup>54</sup> More specifically it is rather a

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<sup>53</sup> Joyce writes: “The book [of Ezekiel] is marked by strong tensions, of which none is more dramatic than that between the challenge to Israel to get a ‘new heart’ and a ‘new spirit’ in 18.31 and the promise that a ‘new heart’ and a ‘new spirit’ will be given to Israel in 36.26–27. These texts represent the twin poles of the book: on the one hand, a strong insistence upon Israel’s responsibility before her God and, on the other, a remarkable assurance that Yahweh will enable his recalcitrant people to obey him” (Joyce, *Divine Initiative*, 125. Cf. his proposal on pp. 126–29 that the two poles are related in the book of Ezekiel through its radical theocentricity).

<sup>54</sup> Lyons, *From Law to Prophecy*, 35. For a survey and discussion of the various positions see Lyons, *From Law to Prophecy*, 36–46. To Karl Heinrich Graf it seemed that it was Ezekiel that wrote both the book by his name and the HI (Karl Heinrich Graf, *Die geschichtlichen Bücher des Alten Testaments. Zwei historisch-kritische Untersuchungen* (Leipzig: Weigel, 1857), 81–82). Julius Wellhausen claimed that it was the author of HI that reused Ezekiel (Wellhausen, *Prolegomena*, 378–79, 384). Georg Fohrer argued that Ezekiel and HI used a common source (Georg Fohrer, *Introduction to the Old Testament*, trans. David E. Green (Nashville: Abingdon, 1968), 142). For scholars who have argued that P and Ezekiel belonged to the same tradition, see Joon S. Park, “Theological Traditions of Israel in the Prophetic Judgment Speeches of Ezekiel” (Ph.D. diss., Princeton Theological Seminary, 1979), 201–22; Zimmerli, *Ezekiel 1*, 46–52; Ronald E. Clements, “The Ezekiel Tradition: Prophecy in a Time of Crisis,” in *Israel’s Prophetic Tradition: Essays in Honour of Peter R. Ackroyd*, eds. R. Coggins, A. Phillips and M. Knibb (Cambridge: Cambridge University Press, 1982), 130–32. Zimmerli nevertheless calls for a more qualified approach to the question of the relation between Torah and Ezekiel, specifically the so-called P source and Ezekiel, calling for careful studies of the individual parallels—noticing both similarities and differences: “Even if we exclude the view that Ezekiel was the author of H as improbable from the start, we will have to abandon the sharp alternatives: Ezekiel was dependent on H or vice-versa; or there was a common source for Ezekiel and H. Instead we must make a carefully detailed comparison. The contacts must be carefully studied in detail as well as the frequent direct interruptions of contact and the undeniable distinctiveness of the two corpora, each of which has its own tradition—and redaction—history” (Zimmerli, *Ezekiel 1*, 47). Zimmerli concludes that the picture is complex: “It cannot be denied that Ezekiel has been influenced by detailed

commonplace in scholarship to note the parallels between Ezek 18 and Torah.<sup>55</sup>

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material built into H, or which already underlies it. This dependence appears in regard to the speech forms of Leviticus 17, the series of laws of Leviticus 18 (and 20), but less strong in regard to those of Leviticus 19, but then again in strong measure in regard to the underlying text used by Leviticus 26. Against this there are other parts, as Leviticus 21–25, in which the contacts are much less. On the other hand, it can be seen most clearly in parts of Leviticus 26 that the prophecy of Ezekiel has exercised a reciprocal influence on the development of H, even though the theological basis of H is clearly different, from that of Ezekiel. The circles which must have given to H its (pre-P Document) form must not be sought too far from the circles which transmitted the book of Ezekiel” (Zimmerli, *Ezekiel 1*, 52). He is however clear that it is not possible to see an influence going from Ezekiel to the so-called P source: “In what has been said it is already quite clear that we cannot speak of a dependence of the original words of Ezekiel on the Priestly Document (P), into which H in its present form has been worked. . . . P drew from the great stream of priestly tradition, from which also the priest-prophet Ezekiel (at an earlier point of time) had also been nourished” (Zimmerli, *Ezekiel 1*, 52). Regarding Ezek 18 specifically, he writes that the chapter makes “extensive use of older formulations” (Zimmerli, *Ezekiel 1*, 386). For scholars who have argued for the priority of the so-called Priestly source relative to Ezekiel see e.g. Kaufmann, *The Religion of Israel*, 432–35; Menahem Haran, “The Law Code of Ezekiel 40–47 and its Relation to the Priestly School,” *HUCA* 50 (1979); Hurvitz, *A Linguistic Study*; Lyons, *From Law to Prophecy*; Jacob Milgrom and Daniel I. Block, *Ezekiel's Hope: A Commentary on Ezekiel 38-48* (Eugene, OR: Cascade Bookes, 2012). Greenberg writes: “The priest-prophet’s orientation toward *torah* meant that for him the ancient ideal would be embodied in *torah*-like individual stipulations” (Greenberg, *Ezekiel 1-20*, 344).

<sup>55</sup> Greenberg compares the Decalogue, Ezek 18, and other moral lists in the HB: “Compared with the Decalogue, Ezekiel’s list is more specific in its moral items but less comprehensive and suggestive; it is formally composed of indicative verb sentences, not commands. Other comparable lists describe the ideal man “who may sojourn on God’s holy mountain” (Ps 15 at length; briefly Ps 24:3f.; cf. Isa 33:14b–16)—but they are remarkably divergent from Ezekiel’s list and lack ritual qualifications” (Greenberg, *Ezekiel 1-20*, 342). For the pedagogical function of moral lists in the HB, see Greenberg, *Ezekiel 1-20*, 344–45. Cf. Zimmerli, *Ezekiel 1*, 379–80 who finds in Ezek 18 “an order which recalls the classical Decalogue,” at the same time as he notes that “the verbal contacts with the classical Decalogue are surprisingly small.” Levinson writes: “Ezekiel . . . uses the proverb as a strategic foil for the far more theologically problematic act of effectively annulling a divine law. The prophet in effect ‘devoices’ the doctrine’s original attribution to God and then ‘revoices’ it as folk wisdom. By this means, the oracle obscures its subversion of the divine instruction found in the Decalogue” (Levinson, *Legal Revision*, 63). While it is easy to see how the Decalogue and Ezek 18 can be read as divergent, as will be seen, it is not as clear to demonstrate an intentional literary reworking—not to speak of ‘subversion’—of the Decalogue in Ezek 18. While Levinson’s reconstructed relation between the passages is possible, the evidence seems wanting for the confidence in which he goes about discussing their relation. The overlap between Exod 20:5; Deut 5:9; and Ezek 18:2 in the idea of transgenerational punishment combined with the lexical overlap of אֲבוֹת (“fathers”) and בְּנֵי (“sons”) is clearly not a strong basis for speaking of reuse. This Levinson himself admits: “the overlap is only partial: sufficient for the proverb to resonate with the Decalogue doctrine, but insufficiently specific or extensive to point to an explicit citation or reuse of that text” (Levinson, *Legal Revision*, 62). Agreeing with him on the weak basis for speaking of reuse between the two passages, might we not be better served by caution than conjecture? It could possibly be argued that the lexical set אֲבוֹת (“fathers”) and בְּנֵי (“sons”) is used in a distinct manner in Exod 20:5; Deut 5:9; and Ezek 18:2 in the context of transgenerational punishment, but Levinson does not try to make such a point. The meager evidence of reuse, however, still stands as the major challenge. The combination of אֲבוֹת + בְּנֵי, both in the plural, is relatively common in the HB (108 cases within one verse).

My discussion is not intended to uncover a comprehensive nor exhaustive list of possible parallels, but only to focus on the stronger parallels. We find these parallels in the lists used to describe the three generations.<sup>56</sup>

*Individual Responsibility in Deut 24:16 and Ezek 18:4, 20:* There seems to be a close thematic link between Deut 24:16 and all of Ezek 18, in the principle of individual punishment in contrast to transgenerational punishment.<sup>57</sup> The lexical set מות + בן + אב +

<sup>56</sup> For a survey of the scholarly discussion on the function of these lists see Matties, *Ezekiel 18*, 92–105, 182–85. Cf. pp. 86–92.

<sup>57</sup> Fishbane writes: “The typical crimes in chap. 18 are derived from Deut 24, precisely the chapter which contains the rule of individual responsibility which he cites” (Fishbane, “Sin and Judgment,” 146–47). On p. 339 he writes that “the sources of Ezekiel’s exegetical imagination are, of course, difficult to determine” but nevertheless finds Deut 24:16 to be “a valuable clue” for understanding Ezek 18. He continues: “An examination of Ezekiel’s language in 18:7–8, 13, 16, and 8 shows that many of the cases which he cites as examples of civil delicts are in fact drawn from a series of cases found in close association in Deut. 23:20–1, 24:6, 10–15, 17. . . . it suggests that Ezekiel was drawn to cite these deuteronomic cases precisely because they were *already* associated in his *traditum* and were found in close proximity to a legal principle which rejected vicarious punishments” (Fishbane, *Biblical Interpretation in Ancient Israel*, 339). He mentions Ezek 18 as an example of “links between Ezekiel and the Covenant Code, via the deuteronomic laws” where the author “lists a sequence of delicts which follows those in Exod. 22:10, 24–6 and their reworking in Deut. 24:10–18” (Fishbane, *Biblical Interpretation in Ancient Israel*, 293). Joyce points out that there is a reversed order of the locutions between Deut 24:16 and Ezek 18:20 (Joyce, *Divine Initiative*, 48). On p. 49 he also claims that in Ezek 18:2 the principle of non-transgenerational punishment is pronounced in the context of divine punishment, while in 18:20 as a legal principle. According to Kohn the order in Ezek 18:20 is reversed when compared to Deut 24:16, while Ezek 18:20 at the same time is formulated in the language of the so-called P source (Kohn, *New Heart and A New Soul*, 96–97). Cf. Graffy, *A Prophet Confronts His People*, 63; Leslie C. Allen, *Ezekiel 1–19*, WBC 29 (Nashville, TN: Thomas Nelson, 1990), 272–73, 277, 281. Greenberg writes: “The literary connection of Ezekiel’s theological principle to Deuteronomy’s legal one is suggested by the strict inversion of parts:

Deut 24:16		Ezek 18:20	
not fathers for sons	1	who sins dies	3
not sons for fathers	2	not son for father	2
each dies for his own sin	3	not father for son	1

—a parade example of Seidel’s rule that literary reference is indicated by inversion. The “normal” sequence “fathers—sons” appears in initial position in Deuteronomy; this suggests that Ezekiel was the borrower” (Greenberg, *Ezekiel 1–20*). While there might be a thematic inversion, given the variation in the language in the MT, however, the inversion is not as clear:

Deut 24:16		Ezek 18:20	
לא־יומתו אבות על־בנים	1	הנפש החטאת היא תמות	3
ובנים לא־יומתו על־אבות	2	בן לא־ישא בעון האב	2
איש בחטאו יומתו	3	ואב לא ישא בעון הבן	1

הטא is found in the HB in the six cases of Num 27:3; Deut 24:16; 2 Kgs 14:6; Ezek 18:4, 20; 2 Chr 25:4. 2 Kgs 14:6 and 2 Chr 25:4 both describe Amaziah's execution of his father Joash's murderers. Both verses can be considered a citation from Deut 24:16, as they give the exact wording of Deut 24:16 and refer to תורת־מֹשֶׁה אֲשֶׁר־צִוָּה יְהוָה לְאמֹר ("as it is written in the Book of the Torah of Moses, which YHWH commanded, saying").<sup>58</sup> Num 27:3 may be seen as sharing the same idea as Deut 24:16, contrasting Korah who died for his own sins and Zelophehad who was not part of the rebellion. Even if Deut 24:16 is a likely source for Ezek 18, it is not possible to establish a direct literary influence based on the lexical set מוֹת + בֶּן + אָב. Given the weak literary parallels between Deut 24:16 and Ezek 18:4, 20 it does not seem possible to either demonstrate literary reuse or direction of dependence even if influence between the two is clearly possible.<sup>59</sup>

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Syntactically and lexically we see several differences, so much so that the lexical and thematic parallels are not strong enough to speak of reuse and direction of dependence with confidence. Thematically Deut 24:16 stress the invalidity of transgenerational punishment, while Ezek 18:20 speak of the invalidity of transgenerational culpability. Cf. Levinson, *Legal Revision*, 64. In his dissertation on Deuteronomistic influence in the book of Ezekiel, Gile mentions Ezek 18 only in passing without any extensive discussions (Jason Gile, "Deuteronomistic Influence in the Book of Ezekiel" [Ph.D. diss., Wheaton College, 2013]).

<sup>58</sup> Both 2 Kgs 14:6 and 2 Chr 25:4 seem to be a citation from Deut 24:16 as they give the exact wording of Deut 24:16 (לֹא־יָמוּתוּ אָבוֹת עַל־בָּנִים וּבָנִים לֹא־יָמוּתוּ עַל־אָבוֹת, "fathers shall not die because of sons, nor sons because of fathers"), introduce the citation with יְהוָה לְאמֹר יְהוָה אֲשֶׁר־צִוָּה יְהוָה לְאמֹר ("as it is written in the Book of the Torah of Moses, which YHWH commanded, saying"), with a slight variation in the explanatory clause (כִּי אִם־אִישׁ בְּחַטָּאוֹ יָמוּת) ("for a person shall die only for his own sins") in 2 Kgs 14:6 and כִּי אִישׁ בְּחַטָּאוֹ יָמוּתוּ ("for each one shall die for his own sins") in 2 Chr 25:4 in contrast to אִישׁ בְּחַטָּאוֹ יָמוּתוּ ("each one shall die for his own sins") in Deut 24:16. Both authors of 2 Kgs 14:6 and 2 Chr 25:4 clearly claim that Deut 24:16 was already known in the days of Amaziah (796–767 B.C.), or at least they interpreted his actions as in accord with Deut 24:16. While both 2 Kgs 14:6 and 2 Chr 25:4 identify their source as סֵפֶר תּוֹרַת־מֹשֶׁה ("the Book of the Torah of Moses"), it is an open possibility that either may have influenced the ideas in Ezek 18, or that they participate in the same conceptual tradition.

<sup>59</sup> For a debate on the meaning of דָּמִי בּוֹ יִהְיֶה ("his blood shall be upon himself") in Ezek 18:13, see Henning Graf Reventlow, "'Sein Blut komme über sein Haupt,'" *VT* 10, no. 3 (1960): 311–27; Klaus Koch, "Der Spruch 'Sein Blut bleibe auf seinem Haupt' und die Israelitische Auffassung vom vergossenen

Related to the question of individual responsibility is the question of whether the formulations *הַנֶּפֶשׁ הַחַטָּאת הִיא תָמוּת* (“The person who sins, only he shall die”) in Ezek 18:4 and *מוֹת יוֹמָת* (“he shall surely die”) in 18:13 is related to the *מוֹת יוֹמָת* (“he shall be put to death”)-laws in Torah? First, we notice that while the typical formulation in the legal instructions in Torah is the qal inf. *מוֹת* + *hof yitqtol* *יוֹמָת*,<sup>60</sup> in the Writings and Prophets the formulation is more commonly qal inf. *מוֹת* + *qal yitqtol* *מוֹת*.<sup>61</sup> Among the Prophets, it is only in Ezek 18:13 that we find the locution *מוֹת יוֹמָת*. Second, while Torah prescribes the death penalty *מוֹת יוֹמָת* for prohibited contact with sacred space (Exod 19:12), murder (Exod 21:12; Lev 24:17; Num 35:16–18, 21, 31), cursing or striking parents (Exod 21:15, 17; Lev 20:9), kidnapping (Exod 21:16), bestiality (Exod 22:18; Lev 20:15–16), profaning the Sabbath (Exod 31:14–15; Num 15:35), offering children to Molech (Lev 20:2), adultery (Lev 20:10), forms of illicit inner-family sexual relations (Lev 20:11–12), homosexuality (Lev 20:13), being a medium and necromancer (Lev 20:27), blaspheming (Lev 24:16), any being *הָרֵם* (Lev 27:29), Ezek 18:10–13 seems to broaden the application of *מוֹת יוֹמָת* to violence and shedding blood—which could be read as referring to murder—, eating upon the mountains, defiling his neighbor’s wife, oppressing the poor and needy, committing robbery, not restoring the pledge, lifting

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Blut,” *VT* 12, no. 4 (1962): 396–416. Cf. Zimmerli, *Ezekiel 1*, 383–84; Graffy, *A Prophet Confronts His People*, 63; Kohn, *New Heart and A New Soul*, 47.

<sup>60</sup> The construction qal inf. *מוֹת* + *hof yitqtol* *מוֹת* (*מוֹת יוֹמָת*) occurs in Gen 26:11; Exod 19:12; 21:12, 15-17; 22:18; 31:14-15; Lev 20:2, 9-13, 15-16, 27; 24:16-17; 27:29; Num 15:35; 35:16-18, 21, 31; Judg 21:5; Ezek 18:13. Cf. Matties, *Ezekiel 18*, 74; Zimmerli, *Ezekiel 1*, 49.

<sup>61</sup> The construction qal inf. *מוֹת* + *qal yitqtol* *מוֹת* (e.g. *מוֹת יָמוּת*) occurs in Gen 2:17; 3:4; 20:7; Num 26:65; Judg 13:22; 1 Sam 14:39, 44; 22:16; 2 Sam 12:14; 14:14; 1 Kgs 2:37, 42; 2 Kgs 1:4, 6, 16; 8:10; Jer 26:8; Ezek 3:18; 33:8, 14.

one's eyes to the idols, committing abominations, and taking interest and profit.<sup>62</sup> This also fits with Fishbane's claim that Ezek 18 expands Deut 24:16 to include individual punishment for civil offences, something not attested in the parallel instructions in Torah.<sup>63</sup> Third, while there is an affinity between the death penalty being applied individually for individual culpability in Deut 24:16 and Ezek 18:4, 20, the locution מוֹת

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<sup>62</sup> Commenting on how Jer 31:29 and Ezek 18:4 counter the proverb, Greenberg wrote: "Jeremiah and Ezekiel transfer this judicial provision to the theological realm, the first promising that in the future, the second insisting that, in the present, each man *die* for his own sin — but both change יוֹמֵת to יָמוּת (Jer. 31:29; Ezek. 18:4 and passim)" (Greenberg, "Some Postulates of Biblical Criminal Law," 22). Fishbane writes that when Ezek 18:1–32 "revises the older doctrines of collective responsibility, and contends that responsibility for offences is solely limited to the offending party, he lists a sequence of delicts which follows those in Exod. 22:10, 24–6 and their reworking in Deut. 24:10–18, where the emphasis on *individual* responsibility is particularly marked (v. 16)" (Fishbane, *Biblical Interpretation in Ancient Israel*, 293).

<sup>63</sup> Fishbane writes: "Like Jeremiah, Ezekiel's citation of Deut. 24:16 in connection with the proverb on 'sour grapes' serves to undermine and counter the older doctrine of transgenerational responsibility. But Ezekiel's teaching goes further. First, it is clear from the continuity of his discourse that he understands Deut. 24:16 in an expansive sense. For if Deut. 24:16 prohibits vicarious punishment of fathers/sons but makes no explicit comment on civil cases, the legal instances which Ezekiel cites to support his argument derive from the Pentateuchal civil jurisprudence. For example, the cases referred to in 18:7–8 (cf. vv. 12–13, 16–17) are derived from such case-types as Exod. 22:20, 24b–26, Lev. 25:36–7, Deut. 23:20–1, 24:6, 10–15, 17. These judicial allusions are all the more striking since none of the Pentateuchal formulations articulates a penalty; they are rather addressed to the moral will of the person. In Ezekiel, by contrast, such cases as the misuse of loans or interest are cited *with punishments*, capital punishments to boot (cf. vv. 14, 18, vs. acquittal as 'life' in vv. 9, 19). Since such penalties are unthinkable in actual biblical law, one may conclude that Ezekiel's hyperbolic rhetoric was designed to rebut thoroughly the prevailing notions of vicarious guilt, and to emphasize the unilateral application of the standard of individual responsibility" (Fishbane, *Biblical Interpretation in Ancient Israel*, 337–38. Italics original). He suggests that the insertion of Deut 24:16's rejection of transgenerational punishment into civil jurisprudence without any punishment is done "in order to counter tendencies to exact vicarious retributions in cases of economic collapse" (Fishbane, *Biblical Interpretation in Ancient Israel*, 339). For parallels between Exod 22:20–23:12 and Deut 24:10–25:1 see Fishbane, *Biblical Interpretation in Ancient Israel*, 340. While acknowledging the astuteness of Fishbane's observation, Lyons nevertheless finds that "Fishbane may be overstating his case in depicting Ezekiel as an innovator. This same 'theologizing' of laws can be found within the Holiness Code itself, and Ezekiel is simply basing his arguments in ch. 18 on what he reads in Lev 18–20. The highly diverse older laws regarding social justice within Lev 19, to which no individual penalties are attached, have been collected together and enveloped within two parallel chapters (Lev 18, 20) dealing with sexual misconduct and the worship of chthonic deities. Whatever the original settings of and original punishments attached to the ancient laws contained in Lev 18–20, all have been collected together and are subsumed under the same heading: 'observe my statutes . . . which if a man does them, *he will live by them*' (Lev 18:5)" (Lyons, *From Law to Prophecy*, 130, Italics original. Cf. p. 170). Greenberg point out the parallels between Ezek 18:13 and Lev 20:9–27 in the idea of blood being upon the perpetrator (Greenberg, *Ezekiel 1-20*, 331).



תִּמְתָּ in Ezek 18:13 is not found in Deuteronomy, and rather seems to draw from the Exod–Num tradition.<sup>64</sup>

*Approaching a Menstruant Woman in Lev 18:19–20 and Ezek 18:6, 11, 15:* Lev 18:19 and Ezek 18:6 are the only two cases where the lexical set אִשָּׁה + נָדָה + לֹא + קָרַב is used together in the HB. The combination is therefore unique to these two verses. The clause וְאַל־אִשָּׁה בְּנִדְתָּ טְמֵאָתָהּ לֹא תִקְרַב (“and you shall not approach a woman in her menstrual impurity”) in Lev 18:16a and וְאַל־אִשָּׁה נָדָה לֹא יִקְרַב (“and not approached a menstruant woman”) in Ezek 18:6d are quite similar, but with some differences. Ezek 18:6 is the shorter form. Lev 18:16 has the more elaborate בְּנִדְתָּ טְמֵאָתָהּ compared to the simple נָדָה in Ezek 18:16. While Ezek 18:6 uses the 3ms יִקְרַב, Lev 18:19 speaks in 2ms

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<sup>64</sup> There is an extensive discussion on Ezek 18 in relation to collective and individual responsibility in other passages in the HB. Cf. Exod 20:5; Deut 5:9; Lam 5:7; Jer 31:29–30; Ezek 18:1–4; Deut 7:9–10; Lev 26:39; 2 Kings 23:26; 24:3. It is not possible to enter this debate here, but some references to it can be mentioned. For a list of references to scholars discussing the question of individual responsibility in the HB see Matties, *Ezekiel 18*, 113–14n. A question is to what extent Ezek 18 may be in dialogue and possibly countering statements like אֵל קָנָא פִּקְדוֹ עֲוֹן אָבֹת עַל־בָּנִים עַל־שְׁלֵשִׁים וְעַל־רִבְעִים לְשִׁנָּא (“a jealous God who visits the iniquity of the fathers upon sons, upon the third and fourth (generation) of those who reject me”) in Exod 20:5 (cf. Deut 5:9)? If the references to the third and fourth generation in Exod 20:5 and Deut 5:9 is taken as pointing to those who would live contemporaneously within a household and be affected by the sins of the central male or female addressed in the instruction, then it would also be natural to take the ‘thousands’ (אַלְפִּים) of Exod 20:6 and Deut 5:10 in the sense of contemporaneity, i.e. affecting people living simultaneous with the one loving God and keeping his commandments.

For studies on the concept of collective or transgenerational versus individual punishment, see Greenberg, “Some Postulates of Biblical Criminal Law,” 20–27; Weinfeld, “Jeremiah and the Spiritual Metamorphosis of Israel,” 35–39; Joyce, *Divine Initiative*, 112–13; Matties, *Ezekiel 18*, 113–58; Levinson, *Legal Revision*, 57–88; Jurrian Mol, *Collective and Individual Responsibility: A Description of Corporate Personality in ezeiel 18 and 20*, ed. K. A. D. Smelik. SSN (Leiden: Brill, 2009). Matties summarizes: “Without again reverting to the argument of primitive mentality or corporate personality, it is possible to say that for Ezekiel the self and the community ‘exist’ in an interactive process in which neither is the determinant factor” (Matties, *Ezekiel 18*, 148). According to Cooke the aim of Jeremiah and Ezekiel “was to build up a nation out of converted individuals” (Cooke, *Ezekiel*, 196). Cf. Levinson, *Legal Revision*, 66–67. For a possible dialectics or inconsistency as to individual and collective punishment between Ezek 18 and 20 see Fishbane, “Sin and Judgment,” 141–48; Joyce, *Divine Initiative*, 125; Allen, *Ezekiel 1–19*, 271, 279; Matties, *Ezekiel 18*, 139–40; Mol, *Collective and Individual Responsibility*.

בְּקִרְבּוֹ. Both formulations are well adapted to their respective contexts.<sup>65</sup> Further, even if the combination of אִשָּׁה + לֹא + טָמֵא is found in several verses,<sup>66</sup> there also seems to be a close relationship between וְלֹא-לְאִשֶּׁת עַמִּיתְךָ לֹא-תִתֵּן שְׂכַבְתָּךְ לְזָרַע לְטַמְאָהָּ-בָּהּ (“And you shall not have sexual relations with your neighbor’s wife to defile yourself with her”) in Lev 18:20 and אֶת-אִשֶּׁת רֵעֵהוּ לֹא טָמֵא (“has not defiled his neighbor’s wife”) in Ezek 18:15.<sup>67</sup> Again, Ezekiel has the shorter form. It may, therefore, be a reuse between Lev 18:19–20 and Ezek 18:6, 15 regarding the prohibitions against approaching a menstruant woman or neighbor’s wife.<sup>68</sup>

As observed above, Lev 18:16 has the more elaborate טַמְאָתָהּ compared to the simple נָדָה in Ezek 18:16.<sup>69</sup> The principle of *lectio brevior* is not a strong basis for

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<sup>65</sup> Besides Lev 18:19–20, of those verses using אִשָּׁה + נָדָה (Lev 12:2; 15:19, 24–25; 18:19–20; 20:21; Ezek 18:6; 22:10–11), Lev 15:24–25 would be the closest to Ezek 18, speaking of sexual relations with a menstruant woman. In this case, it seems to be an unintentional act, i.e. the partners are unaware of her menstrual impurity. In Lev 18:16 and Ezek 18:6 the sexual relation seems to be despite awareness of her menstrual impurity. Cf. Kohn, *New Heart and A New Soul*, 45–46.

<sup>66</sup> Lev 15:24–25; 18:19–24; 21:11–12; Num 5:13–15, 27–29; Deut 24:4; Ezek 18:6–7, 11–12, 15–16; Job 14:2, 4.

<sup>67</sup> For a parallel between Ezek 18:6, 11, 15 and Lev 18:20 in the idea of incurring impurity for sexual relations with a neighbor’s wife see Matties, *Ezekiel 18*, 165–66. Hurvitz argued that the locution אִשֶּׁת רֵעֵהוּ in Ezek 18:6 reused from אִשֶּׁת עַמִּיתְךָ in Lev 18:20, but replaced רֵעֵהוּ with עַמִּיתְךָ because the former had went out of use (Hurvitz, *A Linguistic Study*, 74–78). Lyons, however, points out that it may be that “Ezekiel has taken the word רֵעַ (‘neighbor’) from the parallel law forbidding adultery in Lev 20:10, thereby conflating Lev 18:20 with Lev 20:10” (Lyons, *From Law to Prophecy*, 81n). Cf. Kohn, *New Heart and A New Soul*, 40.

<sup>68</sup> Lyons points out that there is a reverse order between Lev 18:19–20 and Ezek 18:6 regarding the prohibition against approaching a menstruant woman and defilement of or by the neighbor’s wife (Lyons, *From Law to Prophecy*, 90). This might be an indicator of reuse, according to Seidel’s law. However, it would be desirable with stronger arguments for reuse to conclude with confidence.

<sup>69</sup> Lyons finds an accumulation of reuse of Lev 18 in Ezek 18 (Lyons, *From Law to Prophecy*, 129, 163). He gives the following list: (1) Ezek 18:6//Lev 18:19–20; 20:10, (2) Ezek 18:8//Lev 25:36, (3) Ezek 18:9//Lev 18:4–5, (4) Ezek 18:11//Lev 18:20; 20:10, (5) Ezek 18:13//Lev 25:36, (6) Ezek 18:15//Lev 18:10; 20:10, (7) Ezek 18:17//Lev 18:4–5; 25:36, (8) Ezek 18:18//Lev 19:13?, (9) Ezek 18:19, 21//Lev 18:4–5, (10) Ezek 18:24//Lev 19:15?, 35?, and (11) Ezek 18:26//Lev 19:15?, 35?. If Lyons is correct, this accumulated list of parallels might strengthen the claim of reuse in the specific parallels. For a discussion

determining the direction of dependence, since a borrowing author could easily choose either to elaborate or to abbreviate his source.<sup>70</sup> Even if a case of literary reuse can be made between Lev 18:19–20 and Ezek 18:6, 11, 15, determining the direction of dependence is more uncertain.<sup>71</sup>

*The Interest and Pledge in Exod 22:24–26; Lev 25:36 and Ezek 18:7–8, 12–13, 16–17:* First, it is only in Exod 22:24–25 and Ezek 18:8, 12–13, 16–17 that we find the use of the two lexemes נִשָּׂה (“interest”) and the verb חָבַל (“to take a pledge”) or the noun חֶבֶל (“a pledge”) used together in close proximity. Second, the similarity is especially close between Lev 25:36 and Ezek 18:17 using the construction לָקַח (“to take”) + נִשָּׂה (“interest”) + תְּרִבִּית (“profit”). This combination within one clause is found only in Lev 25:36; Ezek 18:17; 22:12.<sup>72</sup> It is therefore possible to see Ezek 18:7–8, 12–13, 16–17 as

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of the stronger parallels see my discussion in the main text. Zimmerli sees “close contacts” between Lev 18 and Ezek 18:6; 22:10 in the idea of not approaching a menstruant woman (Zimmerli, *Ezekiel 1*, 48).

<sup>70</sup> Cf. Kilchör, *Mosetora und Jahwetora*, 38–39. Carr nevertheless operates with a narrow use of the *lectio brevior* principle to determine direction of dependence: “a text tends to be later than its parallel if it verbally parallels that text and yet includes *substantial* pluses vis-a-vis the text. In turn, this would be a confirmation of the usefulness of shortness as a criterion for earliness of a given parallel: a text tends to be earlier when it is substantially shorter than texts which it otherwise closely parallels” (Carr, “Method in Determination of Direction of Dependence,” 124. *Italics original*). The limited parallels between Lev 18:19–20 and Ezek 18:6, 11, 15, however, do not seem to entitle us to apply the principle of *lectio brevior* in this case to determine the direction of dependence.

<sup>71</sup> Maccoby writes: “The prohibition against intercourse with a menstruant has put this form of impurity into a special category: menstruation (with its analogues) is the only form of impurity that has survived the destruction of the Temple and has remained as a subject of practical observance to the present day” (Maccoby, *Ritual and Morality*, 38). And again: “This prohibition has nothing to do with the Temple, but only with sexual relations. That is why the prohibition against intercourse with a menstruant is included in the list of sexual offences (Lev. 18:19), not in the passage about the ritual impurity of a menstruant (Lev. 15:19–24)” (Maccoby, *Ritual and Morality*, 39). Cf. p. 59–60.

<sup>72</sup> Cf. Greenberg, *Ezekiel 1-20*, 330; Matties, *Ezekiel 18*, 171. Lyons reads לֹא־יִתֵּן וְתִרְבִּית לֹא בְנִשָּׂה אֶל־תִּקַּח מֵאֹתוֹ (“he does not give at interest or take profit”) in Ezek 18:8, 13 as splitting the single clause בְּנִשָּׂה וְתִרְבִּית לֹא (“Do not take from him interest or profit”) in Lev 25:36 (Lyons, *From Law to Prophecy*). Zimmerli on the contrary is more negative to postulate an influence at this point. He writes: “The prohibition of interest, which is expressed in Lev 25:35–38\* in connection with a reference to lending to the poor, is regarded as close to Ezek 18:8\*, 13\*, 17\*; 22:12\*, yet here also the idea of brotherhood defined

drawing both from Exod 22:24–26 and Lev 25:36. If it is accepted that Ezek 18:7–8, 12–13, 16–17 draws from both Exod 22:24–26 and Lev 25:36, this would define Ezek 18 as the borrowing text. But with the scant evidence at our disposal, it seems preferable to defer judgment.<sup>73</sup>

### Reflections on Reuse in Jer 7:1–15 and Ezek 18

While Jer 7 contain two lists in 7:5–6, 9, Ezek 18 contain three lists in 18:5–9,

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by Deuteronomy, is totally lacking in Ezekiel. The vocabulary of the Leviticus passage which is unusual for Ezekiel (מִדָּרַךְ, מִדָּרַךְ, מִדָּרַךְ, מִדָּרַךְ fear of God) and the motivation in a saving history forbid us to think of an influence on the text” (Zimmerli, *Ezekiel 1*, 50).

<sup>73</sup> Matties writes: “The laws in Ezekiel 18 are not in fact ‘quoted,’ but terminology, phraseology, and traditional concepts are incorporated. There may be connections between the laws and other textual units in the Hebrew Bible, but literary (i.e. genetic) relationship cannot always be proven” (Matties, *Ezekiel 18*, 162). Cf. also the parallels between Lev 25:14, 17 and Ezek 18:7, 16 in regard to the issue of oppression. The lexical set אִישׁ + יָנָה is only found in Lev 25:14, 17; Jer 46:16; 50:16; Ezek 18:7, 16; 46:18. The economic context in which the locution is used is distinct to Lev 25:14, 17 and Ezek 18:7, 16. Cf. Zimmerli, *Ezekiel 1*, 380. For parallels between Deut 12:1–14 and Ezek 18:6 see Kohn, *New Heart and A New Soul*, 95, and for parallels on the idea of bearing guilt (עָוֹן + נִשָּׂא) in Exod–Num and Ezek 18:19–20 see Kohn, *New Heart and A New Soul*, 46. On p. 67 she also notes the parallel between Num 16:8; 20:10 and Ezek 18:25 in the locution שְׁמַעְרֵנָּה (“Hear now!”). Further, the combination עָשָׂה + מִשְׁפָּט + עָוֹן is a unique lexical set to Lev 19 and Ezek 18; 33 (Lev 19:15, 35; Ezek 18:8–9, 26–27; 33:13–15, 18–19). Cf. Matties, *Ezekiel 18*, 172–73. There are many parallel common words shared between Lev 18:4–5 and Ezek 18. Ezek 18:9, 17, 19, 21, however, seem to have a particular density of parallels. The lexical set of + עָשָׂה הַלֵּךְ + הִקָּה + שָׁמַר + מִשְׁפָּט is found in Lev 18:3–5; 1 Kgs 2:3; 6:12; Ezek 11:20; 18:8–10; 20:17–19, 21; 37:24. We can also mention the parallel between רָעָהוּ וּבֵין אִישׁ וּבֵין רָעָהוּ (“and I judge between a man and his neighbor”) in Exod 18:16 and מִשְׁפָּט אֱמֶת יַעֲשֶׂה בֵּין אִישׁ לְאִישׁ (“executes true justice between man and man”) in Ezek 18:8 (cf. Jer 7:5 discussed above). Cf. Greenberg, *Ezekiel 1–20*, 344; Kohn, *New Heart and A New Soul*, 36–37. Relevant for the present study, Weinfeld points out the parallel between מִשְׁפָּט אֱמֶת in Ezek 18:8 and תַּעֲשׂוּ מִשְׁפָּט בֵּין אִישׁ וּבֵין רָעָהוּ (“if you truly act justly one with another” (NJPS)) in Jer 7:5, both as referring “to perform deeds of righteousness and truth,” not to pass a righteous verdict in a court, finding the same meaning in Isa 58:2, 6–7 (Weinfeld, *Social Justice in Ancient Israel*, 220). On pp. 142 and 222 he observes that both in Ezek 18:7, 16 and Isa 58:7 acts of righteousness are defined as giving bread to the hungry and clothing the naked. He writes: “The ideal of *performing justice and righteousness* is not confined to abstention from evil; it consists primarily in doing good: in giving bread to the hungry and clothing to the naked (Ezek. 18:7, 16)” (Weinfeld, *Social Justice in Ancient Israel*, 18). Cf. Greenberg, *Ezekiel 1–20*, 332. Kohn points out the parallel between Exod 28:42 and Ezek 18:7, 16 in the image of covering nakedness, but is therefore wrong in claiming that “it is not found elsewhere in the HB (Kohn, *New Heart and A New Soul*, 73). We can also mention the covering of Noah’s nakedness in Gen 9:23. For a discussion of possible reuse of Torah in Ezek 18, including other parallels as well than those discussed here, see Matties, *Ezekiel 18*, 163–81.

10–13, 14–17 (cf. Hos 4:1 and Ezek 22:12, 29). We have seen that there are several possible cases of reuse of Torah both in Jer 7:1–15 and Ezek 18:5–17, but since the parallels are limited in each case it is difficult to conclude on reuse and the direction of dependence with a certain degree of confidence. There is considerable integrity in these two chapters to the degree that neither of them merely echo or literalistically apply a source text. To the extent that they do reuse a source text, they appropriate it into their new composition which has a considerable degree of literary integrity. We can possibly see Jer 7:1–15 and Ezek 18:5–17 as examples of Wittgenstein’s “language-game” where the author is so immersed in the covenantal tradition of Torah that he does not need to visually consult his sources, but lets the language of Torah dynamically flow into his own discourse.<sup>74</sup> In other words, Jer 7:1–15 and Ezek 18:5–17 might be examples of

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<sup>74</sup> Fishbane might be correct in claiming that Ezek 18, and we can include Jer 7, is *aggadah* rather than *halakha*: “As distinct from the process of halakhic exegesis, which is concerned with developing and expounding the law, aggadic exegesis was at once theological and reflective, moral and practical” (Fishbane, *Biblical Interpretation in Ancient Israel*, 281). And further: “Inner-biblical legal exegesis is singularly concerned with the reinterpretation (or extension or reapplication) of pre-existing legal texts. By contrast, aggadic exegesis utilizes pre-existing legal materials, but it also makes broad and detailed use of moral dicta, official or popular *theologoumena*, themes, motifs, and historical facts. In a word, aggadic exegesis ranges over the entire spectrum of ideas, genres, and texts of ancient Israel. It is these which form the basis of its textual transformations, reapplications, and reinterpretations.” And again: “legal exegesis is concerned—both theoretically and practically—with actions based on the received *traditum* or its revised *tradition*. By contrast, aggadic exegesis is primarily concerned with utilizing the full range of the inherited *traditum* for the sake of new theological insights, attitudes, and speculations. Action may, to be sure, be a result (or even intent) of a creative theological reworking of the *traditum* when rhetorically addressed to the covenantal community; but action, or its prescription, is not a necessary characteristic of aggadic exegesis.” He also makes a distinction between “the existence or perception of some lack in the *traditum*” as a “significant condition for the rise of legal exegesis,” while in aggadic exegesis “*fullness* is a significant condition for its emergence,” i.e. “certain features of the *traditum* are actively present in the mind of those tradents entrusted with its preservation and reformulation.” And finally, “aggadic exegesis is thus not content to supplement gaps in the *traditum*, but characteristically draws forth latent and unsuspected meanings from it” (Fishbane, *Biblical Interpretation in Ancient Israel*, 282–83. Italics original). While Fishbane discusses Jer 17 under legal exegesis and Isa 58 and Ezek 18 under aggadic exegesis, I am not sure how helpful such an anachronistic distinction is in classifying the six cases in the present study. They all seem to be intended to have a bearing on how life is lived concretely, they all draw from sources outside Torah, like popular sentiments (Isa 58:3; Jer 3:4–5; 7:4, 8, 10; 34:14), contemporary practice (Jer 3:1–2, 7–8, 10; 17:23; Isa 58:2, 4–5), official actions (Jer 34:8–11, 15–16), common proverbs (Ezek 18:2), and they all somehow seem to be rooted in the instructions in Torah at the same time as they go beyond them and

memorized reuse, even if it is probably impossible to demonstrate this point. It is actually quite difficult to demonstrate that these two chapters are cases of elusive literary reuse, even if there are clear indicators that such reuse is possible, and even likely. A reader immersed in Torah might, however, have easily detected resonances with Torah.<sup>75</sup>

We, therefore, come back to the question raised at the beginning of this chapter, whether the sum of many weak cases can add up to a strong case of reuse and direction of dependence? Given the weakness of each individual case of possible reuse, it would seem that the supporting evidence external to these individual cases constitutes the strongest case for reuse; namely, that they occur within the form of lists of multiple possible cases of reuse.

Witnessing such elusive reuse in Jer 7:1–15 and Ezek 18:5–17 also raises the question as to how we ought to relate to other cases of elusive reuse in the prophetic literature. Some scholars argue confidently that these are not cases of reuse, while others argue with a similar degree of confidence that they are, indeed, cases of reuse. Jeremiah 7:1–15 and Ezekiel 18:5–17 may help us see that there may be cases of elusive reuse in the HB, where this possibility cannot be ruled out. At the same time, we cannot conclude with confidence that we have a case of actual reuse in front of us. Such would be the

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introduce new dimensions—often rooted in trajectories or dialectics in the sources themselves. Seeing some as sensing a lack in Torah in contrast to others a presence of Torah does not seem to be a precise way of putting it.

<sup>75</sup> Matties writes: “Ezekiel is drawing on a rather fluid and dynamic tradition complex that commands no loyalties. Ezekiel forges a new path within Israel.” And again: “What is clear is that Ezekiel 18 is heir to a long tradition. But it is not the slave of that tradition. A matrix of factors has made Ezekiel 18 a new entity that builds on the past, but that moves creatively into the future” (Matties, *Ezekiel 18*, 10). While I can somewhat resonate with Matties’ reading, comparing Jer 3; 17; 34; and Isa 58 on the one side with the lists in Jer 7 and Ezek 18 invites some nuancing. I do not see the same type of literary creativity in Jer 7 and Ezek 18 as attested in the four other cases. While Jer 3; 17; 34; and Isa 58 seem to be a close reworking of their sources, Jer 7 and Ezek 18 seem to represent a freer paraphrase of the likely sources.

case, for example, where we would have only one or more of the individual cases testified in Jer 7:5–6, 9 or Ezek 18:5–17, but not the external arguments that make these passages into likely cases of reuse of Torah.

## PART THREE



## CHAPTER 9

### UNSCIENTIFIC POSTSCRIPT ON READING AS A DISCLOSURE OF THE THOUGHTS OF THE HEART

“Tell me *how* you seek and I will  
tell you *what* you are seeking.”<sup>1</sup>

“The truth can be spoken only by one who *rests* in it;  
not by one who still rests in falsehood, and who  
reaches out from falsehood to truth just once.”<sup>2</sup>

#### Introduction

Ludwig Wittgenstein pointed out that even if the everyday meaning of ‘reading’ is clear to us, it is not clear what really constitutes the act of reading when we analyze it. Is reading merely passing one’s eyes along the text? How often have our eyes followed the text while our thoughts have wandered? Is reading saying out loud the words in the text? But what if a person simply pretends to be reading and recounts the words from memory? Or what if a person recounts a text from memory without having it in front of him or her, as many ancient scribes likely did; is this reading or not? Is reading taking place when one has not seen a text previously and is able to say words corresponding to the characters in the text? But how does this differ from a child, not yet having learned the

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<sup>1</sup> Ludwig Wittgenstein, *Philosophical Grammar*, trans. Anthony Kenny (Berkeley: University of California Press, 1974), 370. Italics original.

The title of this chapter is a reuse of Søren Kierkegaard’s *Concluding Unscientific Postscript*.

<sup>2</sup> Wittgenstein as quoted in Rush Rhees, “Introduction,” in *Recollections of Wittgenstein*, ed. Rush Rhees (Oxford: Oxford University Press, 1984), xix. Italics original.

alphabet, who can pronounce one or more correct words—maybe even sentences—when sitting with an open book in the belief that they are actually reading when imagining what is written? Or what do we mean if we say that a text causes, influences, or guides certain words to occur in our mind?<sup>3</sup> In the end, it seems that it is only our lived life—the response, as it were, to what we have read—that can truly attest to what really took place in the act we call reading.

In this chapter I will refrain from writing a conclusion. As I wrote in the introduction, the aim in this study has not been a theory, but an articulation of a way of life. The study can therefore not be concluded here, as it can only be brought to an end in life itself.<sup>4</sup> This chapter is therefore rather a ‘postscript’ approaching the same question differently. The question can now be formulated as follows: How does our reading of the biblical texts relate to how we should live? This time I am coming more from contemporary perspectives making particular use of the philosophers Søren Kierkegaard and Ludwig Wittgenstein, in order to find resonances with the reflections found in my previous chapters. We have seen that there is a tendency towards an expansionistic reading in the prophetic passages of Torah. While a reading is rooted in the source text through an apparent close reading, the prophetic authors nevertheless do not appear to have been bound by a standard of literalistic repetition. While we moderns may wonder

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<sup>3</sup> Wittgenstein, *Philosophical Investigations*, 61e–70e (156–71), 116e–17e (375–76).

<sup>4</sup> Steven Shakespear writes, commenting upon Kierkegaard’s *Concluding Unscientific Postscript*: “Closure is at once the indispensable condition and the unattainable dream of the system. . . . It is this which leads Climacus to his well-known contention that ‘(a) a logical system can be given; (b) but a system of existence cannot be given’ (CUP 109). Logic corresponds to the ‘eternal’ nature of thought, to its timeless formal rules. It has an analytic and classificatory task; it cannot be called upon to yield new information about the world, to add to our store of facts” (Steven Shakespear, *Kierkegaard, Language and the Reality of God* (Columbus, OH: The Educational Publisher, 2013), 159–60). Italics original.

why the biblical authors did not reuse a passage verbatim, something quite different, such as repetition with variation, might have been the norm expected by ancient readers. We have also seen that Torah was constructed as a mediator of the covenantal relation between YHWH and his people, calling for a holy and righteous life together with the holy and righteous YHWH. In the following hermeneutical reflections we shall see that such repetition with variation may make prove of vital importance when the goal is a lived life loving YHWH, and one's neighbor. It is through a hard-earned familiarity with YHWH through a close reading of the text that we can detect pointers and trajectories in the text that truly set us on the path to living in the ways of YHWH.

### The Way

וּשְׁמַרְתֶּם לַעֲשׂוֹת כְּאֲשֶׁר צִוָּה יְהוָה אֱלֹהֵיכֶם אֲתֶכֶם לֹא  
 תִסְרוּ יָמִין וּשְׂמֹאל: בְּכָל־הַדְרָךְ אֲשֶׁר צִוָּה  
 יְהוָה אֱלֹהֵיכֶם אֲתֶכֶם תֵּלְכוּ

“Be careful to do as YHWH your God commanded you, not deviating to the right or the left. You must walk in all the ways which YHWH your God commands you” (Deut 5:32–33).

ὁ δὲ εἶπεν πρὸς αὐτόν· ἐν τῷ νόμῳ τί γέγραπται; πῶς ἀναγινώσκεις;  
 “And he said to him: What is written in the law? How do you read?” (Luke 10:26).

“In reading as in other things I have always striven to practice obedience. There is nothing more favorable to intellectual progress, for as far as possible I only read what I am hungry for at the moment when I have an appetite for it, and then I do not read, I *eat*.”<sup>5</sup>

An initial question concerns how to re-present instructive texts like those I have focused upon from the Torah and Prophets? Can this be done faithfully through detached

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<sup>5</sup> Simone Weil, *Waiting for God*, trans. Emma Craufurd (New York: HarperCollins, 2001), 27. Cf. Markus P. Zehnder, *Wegmetaphorik im Alten Testament: Eine Semantische Untersuchung der alttestamentlichen und altorientalischen Weg-Lexeme mit besonderer Berücksichtigung ihrer metaphorischen Verwendung*, ed. Otto Kaiser. BZAW 268 (Berlin: De Gruyter, 1999).

objectivist scholarly methodologies—what is typically referred to as the use of a scientific approach? Can a reading that brackets the self and the heart be faithful, even realistic? Have the previous chapters read the text faithfully, or have they only been, at best, a preparation for faithful reading? Though we are not the original readers, the authors of the texts clearly did not intend to leave any reader untouched. At the same time, we often read texts without allowing them to radically change or even re-define our thinking. So how should we read? It seems that whether we prefer a detached or a more receptive posture before the biblical texts; whether we remain a spectator or participant in the forms of life indicated by them, we necessarily disclose an inner posture towards the texts and their authors in our reading of them. Is it possible that Isa 9:13, namely that *הָעָם הַזֶּה בִּפְּיוֹ וּבִשְׂפָתָיו כְּבָדוּנִי וְלִבּוֹ רָחַק מִמְּנִי* (“this people honor me with its mouth and its lips, but its heart is far from me”) might also apply to us as modern readers? And Georg Fischer has reminded us of Jer 2:8, *וְתַפְשִׁי הַתּוֹרָה לֹא יָדְעוּנִי* (“and those handling the Torah do not know me”).<sup>6</sup> Is our heart so disposed in our handling of the Torah that we come to know YHWH, or do we read with a heart determinedly alien to such a possibility?

Søren Kierkegaard says that we need to read Scripture with a hermeneutics of love, and in this he resonates clearly with Deut 6:4–9; 10:12. To help us towards this end, he asks us to imagine a lover that has just received a letter from the beloved and to make the metaphor address more specifically the one who “insists upon reading Scripture in the original language,” he writes:

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<sup>6</sup> Fischer, “The Relationship of the Book of Jeremiah to the Torah,” 911.

I assume, then, that this letter from the beloved is written in a language that the lover does not understand, and there is no one around who can translate it for him, and perhaps he would not even want any such help lest a stranger be initiated into his secrets. What does he do? He takes a dictionary, begins to spell his way through the letter, looks up every word in order to obtain a translation. Let us assume that, as he sits there busy with his task, an acquaintance comes in. He knows that this letter has come, because he sees it on the table, sees it lying there, and says, “Well, so you are reading a letter from your beloved”—what do you think the other will say? He answers, “Have you gone mad? Do you think this is reading a letter from my beloved! No, my friend, I am sitting here toiling and moiling with a dictionary to get it translated. At times I am ready to explode with impatience; the blood rushes to my head and I would just as soon hurl the dictionary on the floor—and you call that reading—you must be joking! No, thank God, I am soon finished with the translation and then, yes, then, I shall read my beloved’s letter; that is something altogether different.”<sup>7</sup>

How often does theology confuse translation with reading? We are sitting with HALOT or BDAG trying to understand the meaning of the words, or we are using extra-biblical sources or commentaries to understand what is going on in the textual material. But is all this really reading the words of the beloved? Kierkegaard continues:

Let us assume that this letter from the beloved contained not only an expression of affection, as such letters ordinarily do, but that it contained a wish, something the beloved wished her lover to do. It was, let us assume, much that was required of him, very much; any third party would consider that there was good reason to think better of it, but the lover—he is off at once to fulfil his beloved’s wish. Let us assume that after some time the lovers meet and the beloved said, “But, my dear, that was not at all what I asked you to do; you must have misunderstood the word or translated it incorrectly.” Do you think that the lover would now regret rushing off straightway that very second to obey the wish instead of first entertaining some doubts, and then

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<sup>7</sup> Søren Kierkegaard, *For Self-Examination; Judge for Yourself!*, trans. Howard V. Hong and Edna H. Hong, Kierkegaard’s Writings 21 (Princeton, N.J.: Princeton University Press, 1990), 26–27. Cf. Søren Kierkegaard, *En oppbyggelig tale*, Samlede Værker (Kjøbenhavn: Gyldendalske Boghandel, 1962), 70. Reflecting on Jas 1:22–25 Kierkegaard writes: “If God’s Word is for you merely doctrine, something impersonal and objective, then it is no mirror—an objective doctrine cannot be called a mirror; it is just as impossible to look at yourself in an objective doctrine as to look at yourself in a wall. And if you want to relate impersonally (objectively) to God’s Word, there can be no question of looking at yourself in the mirror, because it takes a personality, an *I*, to look at oneself in a mirror; a wall can be seen in a mirror, but a wall cannot see itself or look at itself in a mirror. No, while reading God’s Word you must incessantly say to yourself: It is I to whom it is speaking; it is I about whom it is speaking” (Kierkegaard, *For Self-Examination*, 43–44). Cf. Timothy Houston Polk, *The Biblical Kierkegaard: Reading by the Rule of Faith* (Macon, GA: Mercer University Press, 1997), 55–56.

perhaps getting the help of a few additional dictionaries, and then having some more misgivings, and then perhaps getting the word translated correctly and consequently being exempt—do you believe that he regrets the mistake, do you believe that he pleases his beloved less?<sup>8</sup>

Would a true lover read such a letter in a detached (objectivistic) manner or, alternatively, in a self-absorbed (subjectivistic) way? Ellen White phrased it in the following sober tone: “One reason why many theologians have no clearer understanding of God’s word is, they close their eyes to truths which they do not wish to practice. An understanding of Bible truth depends not so much on the power of intellect brought to the search as on the singleness of purpose, the earnest longing after righteousness.”<sup>9</sup> Or as Heschel put it, we fail to understand God “not because we do not know how to extend our concepts far enough, but because we do not know how to begin close enough.”<sup>10</sup> Might it not be that much theological reasoning, philological studies, and cultural investigations hide a desire to avoid responding in obedience? A reading in love will not look for the minimum compliance but, rather, spontaneously follow every hint of a request. Often it does not matter so much which particular theory one adheres to just as long as they distract from

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<sup>8</sup> Kierkegaard, *For Self-Examination*, 27–28. Cf. Kierkegaard, *En oppbyggelig tale*, 71. Rhees speaking of a man speaking to his beloved: “The language is not the words on paper nor even the reciting of them, the language is the way it is used and the role it plays, the language is all it means to him in using it and to her in listening” (Rush Rhees, *Rush Rhees on Religion and Philosophy* [Cambridge: Cambridge University Press, 1997], 307).

<sup>9</sup> Ellen G. White, *The Great Controversy between Christ and Satan: The Conflict of the Ages in the Christian Dispensation* (Mountain View, Calif.: Pacific Press, 1888), 599.

<sup>10</sup> Abraham Heschel, *Between God and Man: An Interpretation of Judaism* (New York: Harper, 1959), 181. And again: “A student of philosophy who turns from the discourses of the great metaphysicians to the orations of the prophets may feel as if he were going from the realm of the sublime to an area of trivialities. Instead of dealing with the timeless issues of being and becoming, of matter and form, of definitions and demonstrations, he is thrown into orations about widows and orphans, about the corruption of judges and affairs of the market place. Instead of showing us a way through the elegant mansions of the mind, the prophets take us to the slums” (Abraham Joshua Heschel, *The Prophets* (New York: Harper & Row, 1962), 3).

hearing what God says through the text to us as readers.

A main problem with much academic discourse on the biblical text is that it all the time *speaks about the text*, without *letting the text speak about onself*. Wolterstorff wrote: “It’s the details of texts that resist imposed interpretations. Only by attending to the details does it become likely that one is oneself interpreted by the text—or by that One who is the author of the text.”<sup>11</sup> As already seen, in reuse within the HB it is often how the details are read that constitute the *shibboleth* (cf. Judg 12:6).

This corresponds somewhat to the dialectic between God’s address and human response, which Claus Westermann argues constitutes the central structure within the Old Testament in effect claiming that the Old Testament primarily tells a story, “based on event rather than concepts”: “the structure of the Old Testament in its three parts [the Torah, the Prophets, and the Writings] indicates that the narrative in the Old Testament is determined by the word of God occurring in it and by the response of those for whom and with whom this story unfolds.”<sup>12</sup> Having claimed that human response is “one of the three integral parts of the Old Testament,” beside narrative and the word of God, and that “all of God’s acts and speaking is directed towards eliciting a response,” he continues:

This has trans-historical consequences. In the tradition of Western theology there has from the very beginning been a tendency to separate the human response in speaking

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<sup>11</sup> Wolterstorff, *Divine Discourse*, 202.

<sup>12</sup> Claus Westermann, *Elements of Old Testament Theology*, trans. Douglas W. Stott (Atlanta, Ga.: John Knox, 1982), 10. Cf. p. 9. On p. 11 he also describes the HB as “a story entrusted to us which includes the occurrence of God speaking and the response of those who experience these events.” He writes that “wisdom has no place within this basic framework of an Old Testament theology, since it originally and in reality does not have as its object an occurrence between God and man” (Westermann, *Elements of Old Testament Theology*, 11), but to me it is not clear why we cannot see the Wisdom literature as a human response to this same dialectical relation (cf. Gerhard F. Hasel, *Old Testament Theology: Basic Issues in the Current Debate* (Grand Rapids, MI: Eerdmans, 1991), 92).

and action from theology in the real sense, from dogmatics. Thus the basic response is often unconsciously regarded as subordinate in significance. It is treated as different from theology. Human response as action, to the extent it affects behaviour in daily life, is treated in 'ethics.' To the extent it affects behaviour in worship, it is considered under the heading of 'liturgy.' Human response as speaking (prayer) is generally treated in either ethics or liturgy. This separation into distinctive, individual divisions of study necessarily results in a kind of arbitrariness. It misleads us from seeing that human response belongs to the nucleus of theology, that only the Bible in its entirety can say what prayer is, what worship is, and what obedience in daily life is. A change can occur here from the perspective of the Old Testament if the human response is seen as one of the three main parts of the Old Testament.<sup>13</sup>

Martin Buber and Franz Rosenzweig writes:

People today resist Scripture because they cannot abide revelation. To abide revelation means to sustain the full decisiveness of the moment, to respond to the moment, to be responsible for it. People today resist Scripture because they are no longer responsive or responsible. They claim to venture much; but the one true venture, the venture of responsibility, they industriously avoid.<sup>14</sup>

And George Steiner writes:

Unlike the reviewer, the literary critic, the academic vivisectioner and judge, the exegete invests his own being in the process of interpretation. His readings, his enactments of chosen meanings and values, are not those of external survey. They are a commitment at risk, a response which is, in the root sense, responsible. To what,

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<sup>13</sup> Westermann, *Elements of Old Testament Theology*, 27–28. Cf. p. 16. Jacques Doukhan writes: "Hebrew thought as expressed in the Bible is not a thought. The Bible does not provide any treatise on the concept of the world, or of time, etc. Hebrew thought does not construct the truth as a philosophical system; rather it is essentially the response to an event. Thus, in Hebrew, it is the thought that follows the event and not the reverse. . . . Indeed the mechanism of Hebrew thinking stands at the opposite to the Cartesian *cogito*, the latter being the basic presupposition in Western methodology. Instead of stating 'I think, therefore I am,' Hebrew thought proclaims 'I am, therefore I think.' Here the thought is not initiated and controlled by the thought, but is generated and governed by the adventures of history" (Jacques B. Doukhan, *Hebrew for Theologians: A Textbook for the Study of Biblical Hebrew in Relation to Hebrew Thinking* (New York: University Press of America, 1993), 192–93. We could possibly take it one step further, following the Norwegian philosopher Egil Wyller formulating the Christian view as *amor ergo sum*, "I am loved, therefore I am," in contrast to Descartes' *cogito ergo sum* ("I think, therefore I am"). On the basis of God creating, sustaining, and redeeming life in his love, as a historical event, we can therefore say "I am loved, therefore I am, therefore I think."

<sup>14</sup> Martin Buber and Franz Rosenzweig, *Scripture and Translation*, trans. Lawrence Rosenwald and Everett Fox (Bloomington, IN: Indiana University Press, 1994), 9. Hans-Georg Gadamer wrote regarding the reader: "he must not try to disregard himself and his particular hermeneutical situation. He must relate the text to this situation if he wants to understand at all" (Hans-Georg Gadamer, *Truth and Method*, trans. Joel Weinsheimer and Donald G. Marshall (London: Continuum, 1998), 324).



save pride of intellect or professional peerage, is the reviewer, the critic, the academic expert accountable?<sup>15</sup>

Further, Kierkegaard wrote in his well-known section “Subjective Truth, Inwardness; Truth is Subjectivity” of his *Concluding Unscientific Postscript*: “So, then, subjectivity, inwardness, is truth. . . . Speculative thought also says that subjectivity is untruth but says it in the very opposite direction, namely, that objectivity is truth. Speculative thought defines subjectivity negatively in the direction of objectivity.”<sup>16</sup> Steven Shakespear explains that “the ‘objectivity’ that Kierkegaard resists is that of the neutral and impartial spectator, who is able to judge what the truth is from an elevated vantage point. Objective truth is the correspondence of thought and reality which is valid independently of whether or not we happen to accept it. This model of truth presupposes that it is timeless, universally valid and accessible to intellectual contemplation.” In contrast, “Kierkegaard advocates the maxim that ‘subjectivity is truth’. ‘Subjectivity’ here means something like inward, passionate faith which has no objective, external guarantee of its validity. The subjective character of truth means that faith is a risk, that faith demands commitment and action rather than the speculative gaze of philosophy.”<sup>17</sup> According to Hans Skjervheim there is “an inner connection between factualization,

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<sup>15</sup> George Steiner, *Real Presences* (Chicago: The University of Chicago Press, 1989), 8.

<sup>16</sup> Søren Kierkegaard, *Concluding Unscientific Postscript to Philosophical Fragments*, trans. Howard V. Hong and Edna H. Hong, *Kierkegaard's Writings 2* (Princeton, NJ: Princeton University Press, 1992), 207. Kierkegaard’s “Inderlighed” is here rendered as “inwardness” by Hong. While ‘inwardness’ primarily says something about direction or location, the Danish “Inderlighet” has much more passion implied in it, intentionally chosen by Kierkegaard. Passion may even be said to be the primary sense of “Inderlighed,” so it could also be rendered with words like ‘heartfelt’ or ‘passionately’.

<sup>17</sup> Shakespear, *Kierkegaard, Language and the Reality of God*, 23.

objectification, ‘Entfremdung,’ depersonalization, and elimination of the ethical.”<sup>18</sup> This raises the question whether the objectivist ideal in much contemporary theology dissolves the ethical and halakhic?<sup>19</sup> But when probing the distinction between the subjective and objective, do we not find that a subjectivist approach—accepting no moral normativity beyond the subject— also leads to the same dissolution of the ethical and halakhic?<sup>20</sup> The question is, therefore, whether both an objectivist and subjectivist approach fail to help us in the quest of how to authentically read the biblical texts to aid us in how to live life?<sup>21</sup> Heidegger famously found the classical subject-object dichotomy inadequate, and,

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<sup>18</sup> Skjervheim, *Deltakar og tilskodar*, 86. My translation. See also p. 143.

<sup>19</sup> Cf. Holmer, *On Kierkegaard and the Truth*, 121.

<sup>20</sup> Shakespear elaborates on Kierkegaard’s statement that truth is subjectivity: “. . . proclaiming the ‘subjectivity’ of truth does not amount to endorsing subjectivism . . . . One cannot ignore the fact that the famous statement that ‘subjectivity is truth’ in the Postscript is counterbalanced by a recognition that ‘subjectivity is untruth’ – that is, that human subjectivity is always already answerable to, guilty before, an otherness which precedes it. Kierkegaard, through Climacus his pseudonym, does not license unbridled human subjectivism, for the human will is not deemed to be pure and innocent” (Shakespear, *Kierkegaard, Language and the Reality of God*, 23). And again: “Does this amount to religious subjectivism? Those commentators who think not point out that, in principle, it is possible to relate oneself to the (objectively) true God, but that one must go about this subjectively, that is, one must appropriate one’s belief in an inward way, on the basis of a passionate decision of faith rather than on objective evidences. The underlying argument is that the subjectivity of the method or the way does not preclude the objectivity of the goal, that is, the extra-human reality of God. This argument has much to commend it. After all, if truth is relational, as we have suggested, subjectivism or anti-realism would seem to represent another form of closure” (Shakespear, *Kierkegaard, Language and the Reality of God*, 164). For how Kierkegaard may bridge the gap between a subjectivist and objectivist reading by recommending to simultaneously stand at a distance to the text and appropriate it inwardly see Shakespear, *Kierkegaard, Language and the Reality of God*, 119. Note that Kierkegaard writes “subjektiviteten,” i.e. ‘truth is the subjectivity’ not simply ‘truth is subjectivity’ or ‘truth is subjective’. Cf. Skjervheim, *Deltakar og tilskodar*, 87; Paul L. Holmer, *On Kierkegaard and the Truth*, eds. David J. Gouwens and Lee C. Barrett III. The Paul L. Holmer Papers (Eugene, OR: Cascade, 2012), 151. While I have questioned Wellhausen’s dictum that the prophets are orphans, on the question of subjectivity and objectivity in the prophets he seems to parallel Kierkegaard’s position: “the subjective in the highest sense, which is exalted above all ordinances, is the truly objective, the divine” (Wellhausen, *Prolegomena*, 397-99).

<sup>21</sup> Cf. Melis Erdur, “A Moral Critique of Moral Philosophy” (Ph.D. thesis, New York University, 2013). For how a hermeneutics of suspicion easily dissolves any dogmatism, but also leaves us without any foundation, see Skjervheim, *Deltakar og tilskodar*, 36.

instead, elaborated on an already given participation with others and belonging in the world as a prime characteristic of what it means to be human.<sup>22</sup> As Skjervheim wrote: “If

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<sup>22</sup> Heidegger wrote: “There is no such thing as the ‘side-by-side-ness’ of an entity called ‘Dasein’ with another entity called ‘world’” (Martin Heidegger, *Being and Time*, trans. John Macquarrie and Edward Robinson (Oxford: Blackwell, 1962), 81; Martin Heidegger, *Sein und Zeit* (Tübingen: Max Niemeyer, 2001), 55). For him the human is primarily something that belongs: “By ‘Others’ we do not mean everyone else but me—those over against whom the ‘I’ stands out. They are rather those from whom, for the most part, one does *not* distinguish oneself—those among whom one is too. This Being-there-too [Auch-dasein] with them does not have the ontological character of a Being-present-at-hand-along-‘with’ them within a world” (Heidegger, *Being and Time*, 154; Heidegger, *Sein und Zeit*, 118).

Both kantianism and utilitarianism attempted to ground a universal ethics upon something universal in man. They defined man on the basis of pleasure or pain, or duty and responsibility, not individual attributes or personal relations (Ross Poole, *Morality and Modernity* (London: Routledge, 1991), 21). While Kant saw man as the telos of nature, Charles Darwin made it problematic to claim a unique status of man compared to other creatures. Contra the rationalism of Kantianism and utilitarianism, Freud exposed the irrational and unconscious forces often directing our conduct. And Nietzsche claimed that “God is dead” and that man has no access to an absolute and universal standard for life and thought.

The following century saw a rethinking of what ethics was and its foundations. According to B. F. Skinner man could be viewed to a large extent like Pavlov’s dogs, conditioned by external stimuli. Ethical conduct could therefore be manipulated by external factors (Leslie Stevenson, *Syv teorier om menneskets natur*, trans. Trond Berg Eriksen (Oslo: Cappelen, 1994), 141, 147). According to Richard Rorty “God is dead” results in “man is dead,” man as a constant and universal essence. The individual is therefore free to define and create him- or herself. But as the language the individual needs in this self-constitution is borrowed from the social domain, ethics and morals is for him contingent as a social construct (Jan-Olav Henriksen, *Grobunn for moral – om å være moralsk subjekt i en postmoderne kultur* (Kristiansand S.: Høyskoleforlaget, 1997), 116, 119).

With John Rawls and Jürgen Habermas we see a revised rationalism as an attempt to again ground ethics in something universal. Rawls draws upon the idea of a social contract from thinkers like Locke, Hobbes, and Rousseau. He uses this idea in a thought experiment (Poole, *Morality and Modernity*, 76). By imagining an original standpoint where our concrete setting is abstracted away, and we only know how a society functions, and that we do not know our actual role in this society, Rawls claims we could agree to two fundamental principles: (1) The principle of equal liberty for all, and (2) the principle that differences in a society shall be based upon all having equal access to the good, and that the differences shall serve the common good. Habermas took the concept of ‘Lebenswelt’ (‘Life-world’) from Husserl, and developed the idea that through intersubjective communication it is possible to arrive at a universal ethics, norms and values all participants in the discourse can agree upon.

According to Nietzsche the only ethics possible after the death of God, the death of universalism, was the Aristotelian ethics of virtue. Two thinkers that have developed a more Aristotelian ethics are Alaister MacIntyre and Charles Taylor. Taylor’s thinking is hermeneutical. Man is what man interprets himself to be. But in this self-interpretation the individual receives norms and values from tradition. Through a discourse with this ‘received meaning,’ the ‘sources of the self’ as he calls them, the individual sets forth ‘strong evaluations’ in a hierarchy of norms and values. For him identity and morals are therefore closely connected (Taylor, *Sources of the Self: The Making of the Modern Identity*, 3). While MacIntyre is critical of what he saw as a historical irresponsibility in Nietzsche, he seems to accept the claim that the only possible ethics now is an Aristotelian (Alaister MacIntyre, *A Short History of Ethics: A History of Moral Philosophy from the Homeric Age to the Twentieth Century* (London: Routledge, 1998), 225). MacIntyre saw virtues like wisdom and judgement as aids the individual could use to supersede received cultural norms. While Taylor, MacIntyre, and Poole all see the tradition and culture an individual participates in as sources for ethics and morals, the latter two seem to give the individual’s context a more determinative role (cf. Henriksen, *Grobunn for moral*, 256).

one objectify the other, it is not that simple at the same time *to take him* and *what he says* serious.”<sup>23</sup> As Skjervheim, we can therefore distinguish between the spectator and participator. Objectivism strives towards a spectator role in relation to the other. We can try to take the spectator’s stance in regards to the biblical text and its author(s). Or we can acknowledge that our person, our subject, is already involved. Such a concession is that of the participant.

The quest for objectivity is typically coupled with a quest for system, but what possibilities are there for a system if it needs to be seen in the text itself, and not constructed by way of abstractions? Still, the history of scholarship on the HB seems to demonstrate that the biblical text cannot simply and easily be reduced to one main theme or idea or reconstructed as an Euclidian system. It defies idealizations, disembodiment, and a timeless realm. Over the years, it has proven wonderfully resistant to reductionisms and systematization.<sup>24</sup> David Aaron argues that theology requires a certain degree of

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Martin Heidegger also sought for other sources of morals than the universal. He tried to revitalize a pre-platonic understanding of man, where ethics was not understood as a human product but something received from what man (*Dasein*) belongs to (Martin Heidegger, *Brev om humanismen*, trans. Eivind Tjønneland (Oslo: Cappelen, 2003), 46). Emmanuel Lévinas was influenced by Heidegger, but argued that ethics does not find its grounds in what man belongs to, but rather what man is separate from, what is different from us. The Other is something that always escapes my *oikos*, my eye and ear. The Other is encountered as an absence. As the Other constitutes the original difference, and thus precedes all reflection, Lévinas called ethics a ‘first philosophy.’ Cf. my Kenneth Bergland, “Den andre i det samme” (Cand. phil. thesis, University of Oslo, 2003).

<sup>23</sup> Skjervheim, *Deltakar og tilskodar*, 74. My translation.

<sup>24</sup> Many have suggested different concepts or unifying principles for the HB. The covenant (Walther Eichrodt), holiness of God (E. Sellin), God as Lord (Ludwig Köhler), election of Israel (Hans Wildberger), rulership of God (Horst Seebass), kingdom of God (Günther Klein), YHWH as the God of Israel and Israel as the people of YHWH (Rudolf Smend), the dual concept of the rule of God and communion between God and man (Georg Fohrer), righteousness and justice (Rolf Knierim), righteousness (Walter Dietrich), the first commandment (W. H. Schmidt and Walther Zimmerli), Deuteronomy (S. Herrmann), and simply God (Th. C. Vriezen, the late Gerhard von Rad, and Gerhard Hasel) (cf. Hasel, *Old Testament Theology*, 139–71). And these are not all. Richard Davidson has identified at least 50 different suggestions as to a possible center of the Bible (Richard M. Davidson, “Back to the Beginning: Genesis 1–

systematization not present in the natural language of the Bible. Thus he can formulate himself in the provocative statement: “there is no theology that is biblical.”<sup>25</sup> Theology, taken as a primary commitment to a tradition, confession, or system of thought, and not a commitment to the biblical text itself, and the one claiming to address us through it, can be criticized as not being truly biblical.

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3 and The Theological Center of Scripture,” in *Christ, Salvation, and the Eschaton: Essays in Honor of Hans K. LaRondelle*, eds. Daniel Heinz, Jiri Moskala and Peter M. van Bemmelen (Berrien Springs, MI: Old Testament Department, Seventh-day Adventist Theological Seminary, Andrews University, 2009), 5–9). Here he also suggests a seven-faceted center of Scripture. Having summarized the various claims to what a center in the HB might be, Gerhard Hasel writes: “Those to whom we have referred so far primarily agree on the matter that a single Scriptural concept, theme, motif, or idea can be made into a center which can serve as an organizing principle for a sort of systematic structure of an OT theology. This is done on the basis of an unspoken presupposition which has its roots in philosophical premises going back to scholastic theology of medieval times. It appears that the doing of OT theology is at this point in the grip of a philosophical-speculative presupposition which claims that the multiform and multiplex OT materials in all their rich manifoldness will fit into and can be systematically ordered and arranged by means of a center. . . . It is evident that even the most carefully worked out single center or formula will prove itself finally to be one-sided, inadequate, and insufficient, if not outrightly erroneous, and therefore will lead to misconceptions” (Hasel, *Old Testament Theology*, 154–55. Cf. also pp. 139–71). For other problematizations of reducing the OT to a central concept see Kornelis H. Miskotte, *When the Gods are Silent*, trans. John W. Doberstein (New York: Harper & Row, 1967), 119; Gerhard von Rad, *Old Testament Theology* (London: SCM Press Ltd, 1965), 362–63; James Barr, *The Concept of Biblical Theology: An Old Testament Perspective* (London: SCM Press, 1999), 605–7. Hasel rightly claimed that the event-centered and word-centered HB—and I would add with its focus on choice, action, and life—cannot be reduced to a single concept (Hasel, *Old Testament Theology*, 158). There is an overflow in the text which is not grasped by concepts or a system. Hasel might touch upon a central nerve when he says that the only one that unites the HB is YHWH himself (Hasel, *Old Testament Theology*, 168–71. Of course, a question is if we could say that YHWH is even the center in a book like Esther where he is nowhere mentioned, even if he may be implied?). And let us here spare ourselves from using the dull words ‘theological’ or ‘theocentric,’ even for the sake of “convenience,” as they leave the impression that we are again dealing with a systematism. In the text we are invited to encounter YHWH speaking to us, without hiding behind any fig leaves or trees. And we are called to, we must, respond with our life. Biblical and systematic theology, apologetics and orthodoxy, are not flawed in themselves, but if any become the dominant reading of the text, it becomes faithless to the primary intent of the text. For further discussions on the role of systematization in biblical theology see Westermann, *Elements of Old Testament Theology*, 24; Jon Levenson, “Why Jews are not Interested in Biblical Theology,” in *Judaic Perspectives on Ancient Israel*, eds. Jacob Neusner, Baruch A. Levine and Ernest S. Frerichs (Philadelphia: Fortress, 1987), 281–307; Hasel, *Old Testament Theology*; Barr, *The Semantics of Biblical Language*, 259; Barr, *The Concept of Biblical Theology: An Old Testament Perspective*; Ben C. Ollenburger, *Old Testament Theology: Flowering and Future*, SBTS 1 (Winona Lake, IN: Eisenbrauns, 2004); Dalit Rom-Shiloni, “Hebrew Bible Theology: a Jewish Descriptive Approach,” *The Journal of Religion* 96, no. 2 (2016): 165–84.

<sup>25</sup> Aaron, *Biblical Ambiguities*, 17. Cf. p. 18 and the reference to Dalferth’s chapter. See also p. 21.

The text is grounded in life, and it might be at the cost of life itself that we try to build our neat systems.<sup>26</sup> We must therefore always begin at the beginning, with the text as it is given to us, and the forms of life it initiates us into. Wittgenstein wrote: “It is so difficult to find the *beginning*. Or, better: it is difficult to begin at the beginning. And not try to go further back.”<sup>27</sup>

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<sup>26</sup> I find myself resonating with an existentialist approach to the HB as Maurice Friedman explains existentialism: “It is true that ‘religion has always been existentialist,’ as Walter Kaufmann puts it, but this is only a half truth and is confusing if taken as a whole one. Religion has never been simply a detached observation of reality for its own sake. Rather it has always been a way of life, a way of man. It has always stood in need, therefore, of existential verification in the lived life of men. On the other hand, through the dual need of expressing religious reality and of handing it down, religion has inevitably produced many manifestations which have led in very opposite directions from man’s concrete existence. Religion is neither an objective philosophy nor a subjective experience. It is lived reality which is ontologically prior to its expression in creed, ritual, and group. At the same time, it is inseparable from these expressions and cannot be distilled out and objectified in itself. . . . It is understandable, therefore, that the life of every religion depends not only upon its continuation but upon those men within it who will bring it back to the concrete reality from which it began—often through relating to the traditional forms in such a way that they point back to the lived religious life rather than lead away from it, sometimes through breaking through these forms to new central experiences and the new forms that arise from them. In this dialectic those who insist on the incessant return to the lived religious life and on the superior reality of the religious meeting with reality over any formulations concerning the nature of religious reality may properly be called existentialist” (Maurice Friedman, ed., *The Worlds of Existentialism: A Critical Reader* (Chicago: University of Chicago Press, 1964), 6–7). He elaborates: “‘Existentialism’ is not a philosophy but a mood embracing a number of disparate philosophies; the differences among them are more basic than the temper which unites them. This temper can best be described as a reaction against the static, the abstract, the purely rational, the merely irrational, in favour of the dynamic and the concrete, personal involvement and ‘engagement,’ action, choice, and commitment, the distinction between ‘authentic’ and ‘inauthentic’ existence, and the actual situation of the existential subject as the starting point of thought. Beyond this the so-called existentialists divide according to their views on such matters as phenomenological analysis, the existential subject, the intersubjective relation between selves, religion, and the implications of existentialism for psychotherapy” (Friedman, *Worlds of Existentialism*, 3–4. Cf. also p. 5). He continues: “It is in this emphasis upon the existential subject that the crucial distinction is found between existentialism and the various brands of empiricism, positivism, and instrumentalism that also emphasize the particular, the concrete, and the here and now. For these latter the particular is still seen from without, from the standpoint of the detached observer, rather than from within, from the standpoint of lived life. . . . Nietzsche recognizes that life must be lived from within—from the standpoint of the person or the self. This does not mean introversion or subjectivism, but it does mean that there is a crucial and inescapable distinction between authentic and inauthentic existence” (Friedman, *Worlds of Existentialism*, 9).

<sup>27</sup> Ludwig Wittgenstein, *On Certainty* (New York: Harper & Row, 1972), 471 (62e).

## The Truth

הַיּוֹם הַזֶּה רָאִינוּ כִּי־דִבֶּר אֱלֹהִים אֶת־הָאָדָם וְחַי  
“We have seen this day that God may speak  
with man, and man still live” (Deut 5:24).

ἐγώ εἰμι ἡ ὁδὸς καὶ ἡ ἀλήθεια καὶ ἡ ζωὴ  
“I am the way, and the truth,  
and the life” (Joh 14:6).

All the major books in this study have one feature in common; they claim to be a record of YHWH’s speech(es) mediated by a prophet.<sup>28</sup> Even when the books open as the prophet’s words to the people (e.g. Deut 1:1; Isa 1:1), the following content is nevertheless presented as YHWH’s mediated words.<sup>29</sup> It is possible that YHWH is

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<sup>28</sup> According to Jan Joosten the prophetic expression *יְהוָה אָמַר*, “thus says the LORD,” should be understood as performative when “followed by the adverbial phrase ‘unto you’ (2 Chr 20:15), or when the oracle explicitly addresses the hearer in the second person (see, e.g., 2 Kgs 9:3),” but non-performative when specified by “a phrase like ‘unto me’ (Isa 18:4; 31:4; Jer 17:19), showing that the prophet is relating a personal experience that occurred earlier.” But the pronouncement comes “with full force only in the presence of the intended addressee (see, e.g., 2 Sam 24:12)” (Joosten, *The Verbal System of Biblical Hebrew*, 204). Bruce Waltke and M. O’Connor write that the other prophetic phrase used for divine speech, *אָמַר יְהוָה* (“declaration(?) of YHWH”), is “almost always used as a closing formula in the prophets,” “almost always with *yhwh*” even though “the closure may be slight” (Waltke and O’Connor, *Biblical Hebrew Syntax*, 681 (40.2.3a)). But according to Oliver Glanz, studying the language of Jeremiah, *אָמַר יְהוָה* rather “seem to function as macro-syntactical markers emphasizing that YHWH is still speaking and holds the 1pPos” (Glanz, *Participant-Reference Shifts in the Book of Jeremiah*, 244). The messenger formula in the Bible resemble the introduction of prophetic speech in Mari, Eshnunna, and Assyria (Claus Westermann, *Basic Forms of Prophetic Speech*, trans. Hugh Clayton White (Cambridge: Lutterworth, 1991), 103–104). Cf. Marjo C. A. Korpel and Johannes C. de Moor, *The Silent God* (Leiden: Brill, 2011), 178, 181 for further references on the similarity in the messenger formula between HB and ANE. Cf. Stackert, *Rewriting the Torah*, 2.

In the books in this study the noun *אֱמֶת* tends to be used in the sense of someone or something that can be trusted, in a strongly relational sense, rather than the more abstract ‘truth’. There are also several passages that use the word more in the sense of ‘honesty’ and ‘sincerity’ (Gen 24:27, 48–49; 32:11; 42:16; 47:29; Exod 18:21; 34:6; Deut 13:15; 17:4; 22:20; 2 Kgs 20:19; Isa 10:20; 16:5; 38:3, 18–19; 39:8; 42:3; 43:9; 48:1; 59:14–15; 61:8; Jer 2:21; 4:2; 9:4; 10:10; 14:13; 23:28; 26:15; 28:9; 32:41; 33:6; 42:5; Ezek 18:8–9). The word *אֱמֶת* does not appear to be prominent in Torah, and among the studied books only Isaiah and Jeremiah have some frequency of the word.

<sup>29</sup> The statement *דִּבֶּר מֹשֶׁה אֶל־בְּנֵי יִשְׂרָאֵל כְּכֹל אֲשֶׁר צִוָּה יְהוָה אֹתוֹ אֲלֵהֶם* (“Moses spoke to the sons of Israel in accordance with all the commandments YHWH [gave him] for them”) in Deut 1:3 makes clear that even if the following is couched in the words of Moses, it was originally commanded by YHWH. Further, the same point is made by *רְאֵה לִמְדַתִּי אֶתְכֶם חֻקִּים וּמִשְׁפָּטִים כְּאֲשֶׁר צִוָּנִי יְהוָה אֱלֹהֵי* (“See, I have taught them rules and judgments, as YHWH my God commanded me”) in 4:5. They are presented as YHWH’s instructions in the voice of Moses. Deut 6:1, *וְהַמִּצְוֹת הַחֻקִּים וְהַמִּשְׁפָּטִים אֲשֶׁר צִוָּה יְהוָה אֱלֹהֵיכֶם לְלַמֵּד אֶתְכֶם,*

presented in the HB as speaking more often than the representation of other deities in the ANE world.<sup>30</sup> It is also possible that divine speech was proclaimed more openly by prophets in ancient Israelite society than in comparable cultures.<sup>31</sup>

Despite similarities with ANE literature, the Hebrew prophets show a polemical rhetoric against gods other than YHWH and those crafting their images (e.g. Isa 44:12–20; Jer 10:14–16; 51:17–19; Hab 2:18–19). For them YHWH could choose to be silent,<sup>32</sup>

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(“This is the instruction—the rules and judgements—that YHWH your God instructed [me] to teach you”), tells us that Moses was not simply instructed to teach the people instructions, but that he was also given the concrete instructions he was to communicate. Cf. Deut 6:25; 10:13.

Claus Westermann writes: “The second part of the canon, the Prophets, has as its actual subject matter the occurrence of the word of God . . . . But it is not only this part of the canon that deals with the word of God; on the contrary, the word of God in various forms belongs to everything the Old Testament says about God” (Westermann, *Elements of Old Testament Theology*, 15).

<sup>30</sup> Cf. Korpel and Moor, *The Silent God*, 224. On p. 227 they also claim that in no other ANE culture “a singular ‘prophet’ like Moses arose – or was framed” or “nowhere so many prophecies of doom were recorded as in Israel.” However, they find that prophetic criticism of the king and oracles of doom was not unique to the HB. In the HB YHWH famously speaks everything into existence (Gen 1). Similarly, in the New Kingdom Egyptian scribes saw silence as dominating the primordial earth, until the Sun-god Amun-Re “opened speech from within the stillness” (as quoted in Korpel and Moor, *The Silent God*, 231):

He opened speech from within the stillness;  
And he opened each eye, letting it see;  
He began sounds while the world was silent –  
And his unchallenged victory-shout encircled the earth.

Cf. Susan Tower Hollis, ed., *Hymns, Prayers, and Songs: An Anthology of Ancient Egyptian Lyric Poetry* (vol. 8 of *SBL-Writings from the Ancient World*; Atlanta: Scholar Press, 1995), 76. In the HB and Egypt we therefore find the idea that the world was created by divine words, while in other ANE cultures the idea seems to be more that the gods formed the world out of matter. On the lack of divine speech in Babylonia, and how they there resorted to divinely inscribed/written phenomena in nature instead, through omens and astrology, see Van De Mierop, *Philosophy before the Greeks*, 90–91.

For general discussions of prophecy in the ANE see Simo Parpola, *Assyrian Prophecies*, State Archives of Assyria 9 (Helsinki: Helsinki University Press, 1997); Robert P. Gordon and Hans Barstad, *“Thus Speaks Ishtar of Arbela”: Prophecy in Israel, Assyria, and Egypt in the Neo-Assyrian Period* (Winona Lake, IN: Eisenbrauns, 2013); Kitchen, *On the Reliability of the Old Testament*, 383–95; John Kaltner and Louis Stulman, eds., *Inspired Speech: Prophecy in the Ancient Near East Essays in Honour of Herbert B. Huffmon* (New York: T&T Clark, 2008); Korpel and Moor, *The Silent God*, 168n.

<sup>31</sup> Cf. Alan Lenzi, *Secrecy and the Gods: Secret Knowledge in Ancient Mesopotamia and Biblical Israel* SAAS (Helsinki: University of Helsinki, 2008), 221; Korpel and Moor, *The Silent God*, 204.

<sup>32</sup> André Neher in *The Exile of the Word* argues that it is not God’s silence *per se* that is the problem in the HB, but his silence in interpreting events. He leaves that open to us. He writes: “Like Job, Aaron would be less disturbed in his human reactions by the mystery of death than by the interpretations which people strive to give to it. And here we put our finger on a biblical attitude which the example of Job



in contrast to the gods who were silent because they did not exist.<sup>33</sup> In defiance of the gods, they claimed the exclusivity of YHWH (e.g. Isa 45:5; 46:5, 9–10). They upheld the difference by themselves being the person through which the silent YHWH becomes audible.<sup>34</sup>

The biblical authors seem to describe divine and human speech in analogous terms. Moshe Greenberg wrote “that the biblical narrators all portrayed speech between man and God on the analogy of speech between humans. Such a procedure accords perfectly with the personal conception of God in the Scriptures; the only analogy available for intercourse with him was the human-personal.”<sup>35</sup> A text like Exod 33:11a

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precisely illustrates in a remarkable manner, namely, that the silence of God in the event is less painful than His silence in the interpretation, and that men can accept that God keeps silent but not that other men should speak in His place” (André Neher, *The Exile of the Word: From the Silence of the Bible to the Silence of Auschwitz*, trans. David Maisel (Philadelphia: Jewish Publication Society of America, 1981), 35). In the preceding chapters we have studied passages where YHWH interprets text, his own words. While it is true that YHWH interprets both events and texts in the HB, Neher seems to be correct in pointing out that the most painful silence is when he is silent and does not give an interpretation of tragic events. According to Korpel and de Moor in the ANE the divinity could be silent because of offenses, awe/fear, forbearance/prudence, incapacity, sleep or of incomprehensible reasons (Korpel and Moor, *The Silent God*, 277 ).

<sup>33</sup> Kornelis Miskotte: “When the gods are dumb, when the ‘godhead’ is silent, this is ultimately not so much because they have been put to silence, but rather because their eternal silence has been exposed as their most essential, their ‘mystical’ characteristic” (Miskotte, *When the Gods are Silent*, 11). Cf. also p. 51. He continues to ask whether we as moderners have “heard the prophets if one has not heard that they are witnesses of the Word, which *a priori* and *a limine* breaks through the spell of nihilism” (Miskotte, *When the Gods are Silent*, 19).

<sup>34</sup> Cf. Heschel, *The Prophets*, 22, 25; Korpel and Moor, *The Silent God*, 191–2.

<sup>35</sup> Moshe Greenberg, *Biblical Prose Prayer: As a Window to the Popular Religion of Ancient Israel* (Berkeley, CA: University of California Press, 1983), 36. Korpel and de Moor describe the analogy as a metaphor: “If people state that God ‘keeps silent’ they presuppose that normal audible or written communication between God and human beings is possible. . . . It is important, however, to realize that the concept of a speaking God belongs to the domain of metaphorical religious language. To be more specific, phrases like these originate from the common idea that God can be described analogous to a human being. Anthropomorphic concepts of God dominate all God-talk from ancient times until today, even though the inadequacy of this ‘humanizing’ of God is generally admitted” (Korpel and Moor, *The Silent God*, 59–60). Cf. p. 65). Korpel and de Moor seem to be inclined to their metaphorical reading of divine speech because they see the divine realm as “a totally different reality” (Korpel and Moor, *The Silent God*, 59–60). For them people in the ANE, including biblical authors, “professed the incomparability of God and man even

seems to support seeing it as analogous events: וַדַּבֵּר יְהוָה אֶל-מֹשֶׁה פָּנִים אֶל-פָּנִים כַּאֲשֶׁר יְדַבֵּר אִישׁ אֶל-רֵעֵהוּ (“For YHWH spoke face to face with Moses, as a man speaks to his fellow”). The כַּאֲשֶׁר (lit. “like as”) here seems to indicate an analogical event rather than an analogical metaphor. The analogy comes subsequent to the symmetry of the events, it does not establish the similarity through a metaphor based on inter-human communication. Human speech is not used to conceptualize divine speech, but the passages stresses the similarity between events of divine and human speech.<sup>36</sup>

For the biblical authors the event of divine speech seems to be a given, analogous to the phenomena of human speech. It seems possible to speak of divine speech for the biblical authors in terms of Wittgenstein’s ‘certainty’; what they do not doubt. According to Wittgenstein everything can be doubted, but not at the same time. We need to be certain of something in order to question something else. He wrote:

“Doubt comes *after* belief.”<sup>37</sup>

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though they spoke about the divine in human metaphorical language” (Korpel and Moor, *The Silent God*, 276). Cf. Marjo C. A. Korpel, *A Rift in the Clouds: Ugaritic and Hebrew Descriptions of the Divine* (Münster: UGARIT-Verlag, 1990). But it is a question whether it is not more precise to understand the authors in the HB as seeing divine speech as an analogical event, rather than an analogical metaphor, with human speech.

<sup>36</sup> The episode of the boy Samuel interchanging the voice of YHWH with that of Eli in 1 Sam 3 also seem to support the contention that the events of divine and human speech were experienced as analogous. Cf. Korpel and Moor, *The Silent God*, 150. It seems to be a progression in the theophany as 1 Sam 3:10 adds וַיִּבֹּא יְהוָה וַיִּתְנַצֵּב וַיִּקְרָא כַּפְעֵם-כַּפְעֵם שְׁמוֹאֵל שְׁמוֹאֵל (“And YHWH came and stood and called as before: ‘Samuel! Samuel!’”). A question is how we should understand the וַיִּבֹּא יְהוָה וַיִּתְנַצֵּב וַיִּקְרָא כַּפְעֵם-כַּפְעֵם שְׁמוֹאֵל שְׁמוֹאֵל (“And Samuel had not yet experienced YHWH, and the word of YHWH had not yet been revealed before”) in 1 Sam 3:7? The remark appears to be added in order to explain the reason for Samuel’s confusion of the voice of YHWH and Eli (cf. Henry Preserved Smith, *A Critical and Exegetical Commentary on the Books of Samuel*, ICC (New York: C. Scribner’s Sons, 1899), 26). The point here is that for the young Samuel YHWH’s speech sounded identical to Eli’s. Ralph Klien writes: “In 2:12 the same words are used about Eli’s sons. For them not to know Yahweh meant they did not acknowledge Yahweh as Lord, or they did not obey him, or they had no relationship to him. None of these seems relevant for the situation of Samuel” (Ralph W. Klein, *1 Samuel*, WBC 10 (Nashville, TN: Thomas Nelson, 2008), 32).

<sup>37</sup> Wittgenstein, *On Certainty*, 23e. Shakespear writes: “Consciousness stands before the questions

“For whenever we test anything, we are already presupposing something that is not tested.”<sup>38</sup>

“We could doubt every single one of these facts, but we could not doubt them *all*.”<sup>39</sup>

“The questions that we raise and our *doubts* depend on the fact that some propositions are exempt from doubt, are as it were like hinges on which those turn.”<sup>40</sup>

“I really want to say that a language-game is only possible if one trusts something (I did not say ‘can trust something’).”<sup>41</sup>

The point here is not to argue that the words recounted in the HB are *de facto* YHWH’s words, but to reflect on how biblical authors and ourselves speak about YHWH speaking. According to Wittgenstein certainty is learned by practicing language-games that presuppose them. For the biblical authors divine speech is a given, an event, analogical to the experience of human discourse. It is therefore not a conceptualization that makes divine speech accessible to man, but the event of divine speech itself results in a certainty about having actually been addressed by YHWH. This is why they can speak of God speaking without any embarrassment or *ad hoc* explanations. Similarly, they can speak of God’s body without any further excuse.<sup>42</sup>

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of truth, meaning and goodness, not as a disinterested spectator, but as a *participant* in the struggle between doubt and faith” (Shakespeare, *Kierkegaard, Language and the Reality of God*, 61).

<sup>38</sup> Wittgenstein, *On Certainty*, 24e.

<sup>39</sup> Wittgenstein, *On Certainty*, 30e.

<sup>40</sup> Wittgenstein, *On Certainty*, 44e. Italics belongs to the author himself.

<sup>41</sup> Wittgenstein, *On Certainty*, 66e.

<sup>42</sup> Quoting Calvin, Nicholas Wolterstorff writes: “Calvin, in a passage contrasting Scripture with God’s revelation in creation, says that this ‘is a special gift, where God, to instruct the church, not merely uses mute teachers but also opens his own most hallowed lips’ (*Institutes* I, vi, I). Though *the language is of course metaphorical*, clearly Calvin is expressing the view we have been exploring, viz., that Scripture is a medium of divine discourse” (Wolterstorff, *Divine Discourse*, 282). Italics are mine. A little earlier Wolterstorff has taken it as intuitively obvious that God does not have a body, so that he finds it sufficient simply to state: “I take it as beyond doubt that the human writers were speaking metaphorically when they spoke of the eyes and ears and limbs of God” (Wolterstorff, *Divine Discourse*, 211). While Kornelis Miskotte was critical of the negative interpretations among certain theologians of the anthropomorphic descriptions of God in the Bible, he rejects the idea of God having a body (Miskotte, *When the Gods are*

Ludwig Wittgenstein further pointed out the futility of arguing about “what sits deep in a man,” objecting to suggestions like “I can see that this is the word of God *because*. . .” or “I feel that this cannot be the word of God, *because* (surely God would never . . . etc).”<sup>43</sup> He wrote: ““You can’t hear God speak to someone else, you can hear him only if you are being addressed’.—That is a grammatical remark.”<sup>44</sup> Wittgenstein’s statement, “This is a grammatical remark,” should probably be understood in relation to

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*Silent*, 173). In contrast to Wolterstorff who seems to object on intuitive grounds, Miskotte tries to found the argument exegetically: “We cannot say that God ‘has’ a face, eyes, hands; this is prevented by the Name – not because seeing, hearing, and touching would be beneath his dignity, but rather because this ‘having’ (as well as ‘being’) is an assertion that conflicts with the Second Commandment, ‘You shall not make yourself a graven image, or any likeness. . .’” (Miskotte, *When the Gods are Silent*, 132). But while the Second Commandment forbids humans to create any image of God, does it forbid God to have a body? Miskotte’s textual reference can hardly be said to support his argument.

This line of thinking has deep roots in the history of ideas. Philo rejected the idea that God had emotions or a body (Philo, “On the Unchangeableness of God,” in *The Works of Philo: Complete and Unabridged* [Peabody, MA: Hendrickson, 1993], 162 [XI.52]). Augustine also found it repugnant to understand the bodily descriptions of God literally, as if God was limited to a body. He writes addressing God: “I thought it shameful to believe you to have the shape of the human figure, and to be limited by the bodily lines of our limbs” (Augustine, *Confessions*, trans. Henry Chadwick [Oxford: Oxford University Press, 1992], 85. Cf. p. 94). Maimonides felt a similar need to free God of any bodily attachment. He argues from the philosophic assumption that since God does not need to prolong or improve his existence, neither has he a need of a body (Moses Maimonides, *The Guide for the Perplexed*, trans. Shlomo Pines [Chicago: The Chicago University Press, 1963], I,46 [101]). While one could ask what function such philosophic speculations as these should have, and if it is not better counsel to keep one’s silence (cf. Prov 17:28) (Wittgenstein, *Tractatus Logico-Philosophicus*, 27, 189 (7)), the main question here is of course what the biblical passages themselves communicate on this point? With them we do not find the same embarrassment to speak of God’s body. Cf. Benjamin D. Sommer, *The Bodies of God and the World of Ancient Israel* (Cambridge: Cambridge University Press, 2011).

<sup>43</sup> As referred by Wittgenstein’s close friend and editor Rush Rhees in Rhees, *Rush Rhees on Religion and Philosophy*, 307–8. Rhees is here writing a response to M. O’C. Drury, who had told him that Wittgenstein replied very sternly “You musn’t pick and choose just what you want in that way” to Drury’s remark that he found offensive the episode of the bears devouring the boys who taunted Elisha. The specific exchange between Drury and Wittgenstein is published in M. O’C. Drury, “Conversations with Wittgenstein,” in *Recollections of Wittgenstein*, ed. Rush Rhees (Oxford: Oxford University Press, 1984), 169–70. A question is if Wittgenstein here himself confronted “what sits deep” in Drury, or just a superficial remark he saw it as appropriate to rebuke.

<sup>44</sup> Ludwig Wittgenstein, *Zettel*, trans. G. E. M. Anscombe (Berkeley: University of California Press, 1967), 124e (§717). Barr wrote that the biblical theology movement had been primarily occupied with questions like “‘How can human speech be used as the vehicle of divine communication?’ or ‘How can the Bible, which is a body of literature or tradition composed entirely in human language, be expounded or interpreted as the Word of God?’” (Barr, *The Semantics of Biblical Language*, 276). As he points out these are philosophical-theological questions, not linguistic facts.

his thoughts about language-games. Divine speech is a language-game and has its own grammar as all languages do. Ingrained in the divine speech grammar is this exclusive first person stance for the addressee. Statements like “I can see that this is the word of God” or “I feel that this cannot be the word of God” are not objective statements like “this is (not) a chair.” They can only be taken as objective statements in confusion. It does therefore not make sense to ground them objectively with a “*because*,” as Wittgenstein pointed out. Hearing God speak is a personal encounter. What is perceived as divine speech, whatever form the phenomena may take, can only be perceived as such in the first person. In this sense, not even the prophet can hear God’s words for us. He or she can only recount what God spoke to him or her. And hearing this record as divine speech—past or present—thus depends on personal appropriation.

Rush Rhees elaborates on these thoughts:

‘Because that was the voice of God, I *cannot* doubt that the Scriptures are the word of God.’ Again one might want to ask, ‘Why not?’ . . . Is not the point rather that in knowing the voice as the voice of God, I knew the Scriptures as the word of God? ‘It is from God’ would mean the same in both cases. I might say, ‘If I had not had that experience, I should never have recognized the divinity of the Scriptures.’ But what I recognize is not something quite apart from what I had in that experience. It is not like, ‘If I had not met him, I should never have known who wrote the book.’ The divinity of the Scriptures is not an ‘objective fact’ like that. Once again: what do I recognize, when I recognize the divinity of Scriptures? And what sort of recognition is it? It is not *finding out something about them* – like discovering the date when they were written down. It is to live by them. If I say, ‘This is the word of God’, that is a confession of faith.<sup>45</sup>

As I understand Rhees’ point, he is saying that when someone will confess “This is the word of God” it is not based on objective facts. It is a recognition of “the voice as the

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<sup>45</sup> Rhees, *Rush Rhees on Religion and Philosophy*, 12. Cf. p. 37. We can also ask how this relates to a person who recognizes something as God’s words and still decides to turn his or her back against them? This discrepancy is consistently addressed by the prophets.

voice of God.” It is not that such a faith-statement needs to go counter to objective facts, even if it is not the same as a statement about objective facts. Rather, it is a different type of statement. A faith statement cannot be reduced to an objective statement, and an objective statement cannot be said to be a faith statement.<sup>46</sup>

This differentiation is significant as it relates to how we understand divine speech in the HB. Claus Westermann points out the difference in how the modern historian under the ideal of secular objectivity approaches the word of God in the HB compared to how the prophets themselves perceived this word of God:

The word of God does not exist for modern historical understanding because it cannot be historically documented. The modern historian must place the prophet’s subjective consciousness, the consciousness which believes it has heard the word of God, in the place of the word coming to the prophet from God. But with that the historian changes the meaning of ‘word’ in the Old Testament. He is able to adapt the phenomenon of the word of God encountered in the Old Testament to his own historical understanding only by understanding it differently than the text intends.<sup>47</sup>

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<sup>46</sup> “Given the existence of religious statements within an already existing religion (i.e. religious practices and concerns), you may *in many cases* be able to find a correlation of such statements with statements about physical things and worldly affairs; and you may think such correlations are very interesting. But this does not show that religious language and religious practices are or ever could be a regular substitute for secular practices. As though you had found a way of translating from one (dishonest) language into another (honest) one. If that were so, then it should be possible to make the translation the other way. It should be possible to translate any worldly concerns into a form of religious devotion. That never is done, and it cannot be done” (Rhees, *Rush Rhees on Religion and Philosophy*, 119–20. Italics original).

<sup>47</sup> Westermann, *Elements of Old Testament Theology*, 16. And further: “The Old Testament knows nothing of an abstracted, objectified word of God, and that is why the word of God in the Old Testament cannot become a doctrine. It is also the reason none of these functions can be absolutized apart from the others. This absolutizing takes place not only when in the Jewish understanding the Law becomes the dominant word of God. It is also the case in Christian theology when the Old Testament as a whole is understood from the perspective of the concept of Law and in contrast to the New Testament” (Westermann, *Elements of Old Testament Theology*, 24). See also pp. 22–24. Seizo Sekine asks “whether scholarship has drifted toward non-essential, intellectual games of batting around indeterminable hypotheses concerning historical theses and antitheses. The essential task of hermeneutical scholarship is to deepen our reading of the text, and scholarship that contributes nothing to this has lost its way. Perhaps the current state of Western research exposes the dead-end of historical research methods that tend to run in circles while bouncing around such theses” (Seizo Sekine, *Philosophical Interpretations of the Old Testament*, eds. John Barton, Reinhard G. Kratz and Markus Witte. trans. J. Randall Short and Judy Wakabayashi, BZAW 458 (Berlin: De Gruyter, 2014), 227). For Baruch Spinoza’s undoing of biblical

In other words, there is no neutral ground of reading the biblical text. An ‘objective’ reading does not leave the phenomena untouched. It is already a commitment.

Westermann further highlights this difference between how the prophet understood God’s words and the way modern theology relates to it by continuing:

However, modern theology also understand the ‘word of God’ to a large extent differently than the Old Testament intends, namely, on the basis of its content. According to that understanding, the word of God is what God has said. As such it can be found as given and becomes accessible to objective reflection. This separates the word of God from the process of its occurrence and puts it at one’s disposal.<sup>48</sup>

As such there is a tendency to relate to the HB as ideas and concepts rather than as communication.<sup>49</sup>

For Wittgenstein “the question is not one of explaining a language-game by means of our experiences, but of noting a language-game,”<sup>50</sup> and to “look on the language-game as the *primary* thing.”<sup>51</sup> We need to “*accept* the everyday language-

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authority as ethical foundation, and how he can be read as utilizing the principle of *sola Scriptura* at the same time as he laid the foundation of the historical-critical method see Baruch Spinoza, "Theological-Political Treatise," in *Spinoza: Complete Works* (Indianapolis: Hackett, 2002). Cf. J. Samuel Preus, *Spinoza and the Irrelevance of Biblical Authority* (Cambridge: Cambridge University Press, 2001), 1–33, 154–202. For further discussions on YHWH speaking in human language, more favorable to a critical approach, see Jacob Weingreen, “דְּבַרְהָ תוֹרָה כְּלִשׁוֹן בְּגוֹיִם אֲדָמָה,” in *Interpreting the Hebrew Bible: Essays in Honour of E. I. J. Rosenthal*, eds. John Emerton and Stefan C. Reif (Cambridge: Cambridge University Press, 1982), 267–75; Bernard M. Levinson, “The Human Voice in Divine Revelation: The Problem of Authority in Biblical Law,” in *Innovations in Religious Traditions*, eds. M. A. Williams, C. Cox and M. S. Jaffee, RelSoc (Berlin: de Gruyter, 1992), 35–71; Frank Polak, “The Messenger of God and the Dialectic of Revelation,” in *A Light of Jacob: Studies in the Bible and the Dead Sea Scrolls in Memory of Jacob Licht*, eds. Yair Hoffman and Frank Polak (Jerusalem: The Bialik Institute, 1997), 14–30; Sonnet, *The Book within the Book*, 110; Watts, *Reading Law*, 93; Carasik, *Theologies of the Mind*, 11; Jassen, *Scripture and Law*, 22. 6.

<sup>48</sup> Westermann, *Elements of Old Testament Theology*, 16.

<sup>49</sup> Cf. the previous footnote referring to the different ways in which the center of the HB has been defined.

<sup>50</sup> Wittgenstein, *Philosophical Investigations*, 167 (655).

<sup>51</sup> Wittgenstein, *Philosophical Investigations*, 167 (656).

game.”<sup>52</sup> Malcolm elaborates:

In secular life, when something distressing occurs and there is a demand for explanations of why it happened – at some stage someone may say: ‘It is pointless to continue seeking for an explanation. We are faced with a fact which we must *accept*. That’s how it is!’ The words, ‘It is God’s will’, have many religious connotations: but they also have a logical force similar to ‘That’s how it is!’ Both expressions tell us to stop asking ‘Why?’ and instead to *accept a fact!*<sup>53</sup>

The question occurs as to how this would apply to the language-game between God and the prophet, and the language-game we participate in when reading the prophetic texts?

We tend to want to ground the God-prophet language-game metaphysically and ontologically.<sup>54</sup> But is the phenomena of YHWH’s speech a given that objective research (to the extent such a thing exists) can verify or falsify? Wittgenstein argues that the given is not divine speech as such, but ‘forms of life’: “And to imagine a language means to imagine a form of life.”<sup>55</sup> And again: “What has to be accepted, the given, is—so one

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<sup>52</sup> Wittgenstein, *Philosophical Investigations*, 200. Malcolm comments: “You make a study of a particular language-game. Then you can say to someone: ‘Look at it! That’s how it is! Don’t ask why, but take it as a fact, without explanation!’ We need ‘to *accept* the everyday language game’ (*PI*, p. 200)” (Norman Malcolm, *Wittgenstein: A Religious Point of View?* (Ithaca, NY: Cornell University Press, 1995), 86).

<sup>53</sup> Malcolm, *Wittgenstein: A Religious Point of View?*, 86. Cf. Tim Labron, *Wittgenstein's Religious Point of View* (London: Continuum, 2006), 3.

<sup>54</sup> For a critique of Wittgenstein’s analogy between language and games, see Rush Rhees, *Wittgenstein and the Possibility of Discourse*, ed. D. Z. Phillips. (Oxford: Blackwell, 2006), 116—29.

<sup>55</sup> Wittgenstein, *Philosophical Investigations*, 8e (§19). And again: “Philosophy is not laid down in sentences but in language” (Ludwig Wittgenstein, “Sections 86–93 (pp. 405–35) of the so-called “Big Typescript”, ed. Heikki Nyman, trans. C. G. Luckhardt and M. A. E. Aue,” *Synthese* 87, no. 1 (1991): 16). Labron writes: “We do not start with a single independent proposition and then build our system; rather, we start with a system of propositions.” Patterson: “Language emerges through the multiple paths of life, not from logical syntax” (Labron, *Wittgenstein's Religious Point of View*, 29). Cf. Labron, *Wittgenstein's Religious Point of View*, 35). And again: “To think of a conceptual framework is to think of a language, but for Wittgenstein, to think of a language is to think of some activity” (Sue Patterson, *Word, Words and World: How Wittgensteinian Perspective on Metaphor-Making Reveals the Theo-logic of Reality* (Oxford: Peter Lang, 2013), 172).



could say—*forms of life*.”<sup>56</sup> It means that only to the extent we participate in the forms of life outlined by the prophets will the language-game of the biblical passages make sense to us. Only then can we read the words as intended, and not alter the meaning of the words in order to accommodate an objectivist detached approach. Kierkegaard wrote that truth in order to be truth needs to become a life:

Thus Christ is the truth in the sense that to be the truth is the only true explanation of what truth is. Therefore one can ask an apostle, one can ask a Christian, ‘What is truth?’ and in answer to the question the apostle and this Christian will point to Christ and say: Look at him, learn from him, he was the truth. This means that truth in the sense in which Christ is the truth is not a sum of statements, not a definition, etc., but a life. . . . only then do I in truth know the truth, when it becomes a life in me.<sup>57</sup>

Jean Zurcher claims that it is only as the text becomes life that we really comprehend it: “Bible truth only makes sense to the extent in which it is lived. . . . Truth is really known only when it becomes inner life.”<sup>58</sup> Or, to phrase it in Wittgensteinian terms, if we desire

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<sup>56</sup> Wittgenstein, *Philosophical Investigations*, 226e. Labron writes: “We can only understand logical grammar through our use of language, and we can only understand religion through worship. . . . What becomes important in Wittgenstein’s later understanding of language is the form of life for language in contrast to a rule-governed logical form” (Labron, *Wittgenstein's Religious Point of View*, 31). A further study could be an analysis of Wittgenstein’s discussion of “a form of life” and “rule-governed logical form” and the rules or instructions of Torah as it relates to a Torah “form of life”. Cf. Dennis M. Patterson, ed., *Wittgenstein and Legal Theory (New Perspectives on Law, Culture, and Society)*; eds. Robert W. Gordon and Margaret Jane Radin; Boulder: Westview Press, 1992); Dennis M. Patterson, ed., *Wittgenstein and Law (Philosophers and Law)*; ed. Tom Campbell; Burlington, VT: Ashgate, 2004).

<sup>57</sup> Søren Kierkegaard, *Practice in Christianity*, trans. Howard V. Hong and Edna H. Hong, Kierkegaard's Writings (Princeton: Princeton University Press, 1991), 205–6. On the emphasis upon doing the instructions in Torah see Carasik, *Theologies of the Mind*, 183, 194–95.

<sup>58</sup> Jean Zurcher, “Existentialism: A Survey and Assessment,” n.p. [Cited 14 July 2014]. Online: [https://adventistbiblicalresearch.org/sites/default/files/pdf/existentialism\\_0.pdf](https://adventistbiblicalresearch.org/sites/default/files/pdf/existentialism_0.pdf). Cf. Labron, *Wittgenstein's Religious Point of View*, 111–12; Paul Morris, “The Embodied Text: Covenant and Torah,” *Religion* 20 (1990): 84. Oswald Chambers put it even more succinctly. He writes that spiritual sight is not so much about thinking right, as obeying right: “Simplicity is the secret of seeing things clearly. A saint does not think clearly for a long while, but a saint ought to see clearly without any difficulty. You cannot think a spiritual muddle clear, you have to obey it clear. In intellectual matters you can think things out, but in spiritual matters you will think yourself into cotton wool. If there is something upon which God has put His pressure, obey in that matter, bring your imagination into captivity to the obedience of Christ with regard to it and everything will become as clear as daylight. The reasoning capacity comes afterwards, but we never see along that line, we see like children; when we try to be wise we see nothing (Matthew 11:25)” (Oswald

to say “I can see that this is the word of God”, we have to participate in a form of life where the language-game knows the voice of God as a certainty.

### The Life

הַחַיִּים וְהַמָּוֹת נִתְּמִי לְפָנֶיךָ הַבְּרִכָּה וְהַקְּלָלָה  
וּבְחַרְתָּ בַחַיִּים לְמַעַן תִּתְּנֶה אֶתָּה וְנִרְעֶדָה:  
לְאַהֲבָה אֶת־יְהוָה אֱלֹהֶיךָ לְשִׁמְעַת בְּקוֹלוֹ  
וּלְדַבְּקָה־בּוֹ כִּי הוּא חַיִּיךָ

“I have set before you life and death, blessing and curse.  
Choose life, so that you and your offspring may live,  
by loving YHWH your God, by hearing his voice,  
and by clinging to him—for he is your life”  
(Deut 30:20; cf. 32:47).

Since the Enlightenment a split has been assumed between word and world resulting in a quest for a language that could bridge the two.<sup>59</sup> According to Patterson, Wittgenstein’s language-game is exactly what reunites language and world: “Since our primary contact with reality is in our activities, where there is an interweaving and association of linguistic and nonlinguistic contact in language-world, it is there that new discoveries about the nature of reality are made and find their way to articulation.”<sup>60</sup> And again: “Language and world are inextricably intervoven in the practices of living.”<sup>61</sup>

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Chambers, “My Utmost for His Highest,” in *The Complete Works of Oswald Chambers* (Grand Rapids, MI: Discovery House Publishers, 2000), 823 (September 14)).

<sup>59</sup> Shakespear, *Kierkegaard, Language and the Reality of God*, 28. Cf. Patterson, *Word, Words and World*, 3.

<sup>60</sup> Patterson, *Word, Words and World*, 111.

<sup>61</sup> Patterson, *Word, Words and World*, 32. Cf. 11, 14–15, 19, 227. Instead of his former view seeing this link as consisting in “the human ability to receive and articulate sense-date,” it became in his later thinking “instead human ability to access the physical world through our use of (activities involving) it” (Patterson, *Word, Words and World*, 18). Critiquing his own former atomistic view of language Wittgenstein wrote: “It makes no sense at all to speak absolutely of the ‘simple parts of a chair’” (Wittgenstein, *Philosophical Investigations*, 21e (§47). Cf. Labron, *Wittgenstein’s Religious Point of View*, 30.

For Wittgenstein it is our acting, or involvement with the world through verbal and non-verbal language-games that constitutes forms of life.<sup>62</sup> According to him forms of life are basic, allowing for a foundationalism where self-evidence is not found in logic and sense-evidence, but in a form of life.<sup>63</sup> Patterson summarizes the significance of this for theology: “It is through participation in the relating activity of God (in God’s language-games) that humans are able to transcend their local forms of life and begin to glimpse the pattern of the whole.”<sup>64</sup>

Both Kierkegaard and Wittgenstein could be said to place themselves between the realist and anti-realist views, or rather both seem to challenge the realist/anti-realist dichotomy by challenging the subject-object and the world-language dichotomies.<sup>65</sup>

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<sup>62</sup> Patterson, *Word, Words and World*, 13.

<sup>63</sup> Patterson, *Word, Words and World*, 173.

<sup>64</sup> Patterson, *Word, Words and World*, 220. Wittgenstein wrote: “If a lion could talk, we could not understand him” (Wittgenstein, *Philosophical Investigations*, 223). Patterson nuances Wittgenstein’s statement: “It may indeed be possible to evaluate one form of life from the perspective of another because, as is obvious, there is overlap of concepts and activities between forms of life” (Patterson, *Word, Words and World*, 166). The obvious example here, which also would question the absoluteness of Wittgenstein’s statement is Balaam’s donkey in Num 22:28–30.

<sup>65</sup> Shakespear defines the realist and anti-realist positions as follows: “If you interpret language about God in a realist way, it means that you believe that the reality of God is independent of that language. In other words, God’s reality is ‘objective’. It does not depend upon human experience or concepts. However metaphorical or analogical it may be, language about God refers to and is constrained by the objective truth of God. It does not create or project that truth out of ‘subjective’ human ideals, values or feelings.

Conversely, an anti-realist sees language about God as an expression of human ideals and needs. We do not know or need to know if that language has any objective referent. This is not necessarily intended to be a devaluation of language about God. A religious anti-realist claims that religion does not provide us with information about realities that exist prior to us. The function of religion is expressive. It is a means of articulating a way of life and a set of values. Within this picture, language about God provides a focus for our notions of the ultimate good in human life” (Shakespear, *Kierkegaard, Language and the Reality of God*, 2).

Patterson on Wittgenstein challenging the subject-object dichotomy: “Another theological implication of an abandonment of the realist-idealist distinction is the loss of the traditional subjective-objective dichotomy. If, in a language-game theology, the realist anti-realist dichotomy is not observed, the reality of God cannot be simply either objective or subjective because this reality, in encompassing all other realities, is mediated and understood in terms of language-games” (Patterson, *Word, Words and World*,

Patterson summarizes it succinctly: “Realists just as much as idealists fail to acknowledge that *das leben* is ‘the given.’”<sup>66</sup>

A word and a statement can therefore not be said to have an autonomous and atomistic meaning. Meaning instead becomes interlinked to context and practice. After the publication of James Barr’s *The Semantics of Biblical Language* in 1961 biblical scholars have downplayed the etymology of individual words and rather emphasized the

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191). Kierkegaard, on his side, “is making claims about the nature of God and the ultimate value of created life which do not function as subjective fictions. However, in changing the emphasis in dogmatics from a static metaphysics to communication, Kierkegaard is fundamentally challenging metaphysical realist assumptions about the role and justification of religious language. The practical emphasis of such a dogmatics makes propositional doctrinal correctness of little value, because such beliefs must serve religious practice, and not the other way round” (Shakespeare, *Kierkegaard, Language and the Reality of God*, 197). While Kierkegaard can be interpreted as an anti-realist, the problem with this interpretation “is that it fails to recognize that the passion of infinity . . . opens the self out of its inclosed ‘subjectivity’” (Shakespeare, *Kierkegaard, Language and the Reality of God*, 167). And further: “If, for Kierkegaard, form and content in general are inseparably locked together, then the same may be said of his view of religious language. The how of religious language and communication cannot be subtracted from the what. Religious communication is neither contentless rhetoric nor a direct statement of objective truth.

If this is the case, then the ambiguity of Kierkegaard’s position in relation to realism and anti-realism becomes more understandable. Kierkegaard does not fit easily into either category. In fact, we will see how Kierkegaard occupies a third position, somewhere between the two, which we will call ethical realism. From anti-realism, he might draw the point that religious faith is not a matter of knowing, of conceptual cognition. There is no direct or immediate access to God, and faith takes the form of a subjective passion. God is not knowable outside of the forms of life to which faith commits itself in passionate interest and striving.

However, from realism he would adopt the argument that religious faith cannot be reduced without remainder to an expression of human ideals. Language about God still opens us to an otherness which we cannot eliminate or dispose of at will. There is a real constraint operating on our formulation of appropriate practical responses to the religious calling.

To hold such positions together might suggest a dubious philosophical sleight of hand. In fact, although we have said that Kierkegaard occupies a middle position between realism and anti-realism, this does not do justice to the radical nature of his authorship. It is not that Kierkegaard just mixes together a bit of objectivity and a bit of subjectivity to produce the right notion of faith. Rather, he places the boundaries between subjective and objective in dispute, without effacing the difference between them” (Shakespeare, *Kierkegaard, Language and the Reality of God*, 22–23).

For further discussions on Kierkegaard’s challenge to the realist anti-realist dichotomy cf. Shakespeare, *Kierkegaard, Language and the Reality of God*, 6, 11, 24, 54–55, 82, 165, 178, 180, 219, 221. Shakespeare also points out similarities between the realist and anti-realist positions (Shakespeare, *Kierkegaard, Language and the Reality of God*, 8–9).

<sup>66</sup> Patterson, *Word, Words and World*, 187–88. Cf. Fergus Kerr, *Theology after Wittgenstein* (London: SPCK, 1997), 133.

relation between words and their use in the immediate context to recover the meaning of a passage. He wrote that “the test of explanations of words is by their contexts.”<sup>67</sup> This stress on actual usage resonates with Wittgenstein’s philosophy of language:

“Philosophers very often talk about investigating, analysing, the meaning of words. But let’s not forget that a word hasn’t got a meaning given to it, as it were, by a power independent of us, so that there could be a kind of scientific investigation into what the word *really* means. A word has the meaning someone has given to it.”<sup>68</sup> Meaning comes down to a question of usage and practice. The question is not simply *what* a word means, but *how* it means—or *what* the one using it means by *how* he or she uses it. Wittgenstein wrote:

What I actually want to say is that here too it is not a matter of the words one uses or of what one is thinking when using them, but rather of the difference they make at various points in life. How do I know that two people mean the same when both say they believe in God? And one can say just the same thing about the Trinity. Theology which insists on the use of *certain* words and phrases and bans others, makes nothing clearer (Karl Barth). It, so to speak, fumbles around with words, because it wants to say something and doesn’t know how to express it. *Practices* give words their meaning.<sup>69</sup>

And in reflecting on 1 Cor 13:1–3 Kierkegaard wrote:

There is no word in the human language, not a single one, not the most sacred, about which we are able to say: “If a man uses this word it unconditionally proves that he has love.” On the contrary, it is always true that a word used by one man can assure us that he has love, and an absolutely contrary word used by another can assure us that he loves just as much; it is true that a word can assure us that love dwells in the

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<sup>67</sup> Barr, *The Semantics of Biblical Language*, 113. Cf. A. P. Martinich and David Sosa, *The Philosophy of Language* (New York: Oxford University Press, 2013), 359–61.

<sup>68</sup> Ludwig Wittgenstein, *The Blue and Brown Books: Preliminary Studies for the 'Philosophical Investigations'* (Oxford: Blackwell, 1969), 27–28.

<sup>69</sup> Ludwig Wittgenstein, *Remarks on Colour*, trans. Linda L. McAlister and Margarete Schättle (Berkeley: University of California Press, 1978), 59e (§317). Wittgenstein: “. . . it is our *acting*, which lies at the bottom of the language-game” (Wittgenstein, *On Certainty*, 28e (§204)).

heart of the one who uttered it, and not in another who nevertheless used the same word.

There is no act, not a single one, not the best, about which we unconditionally dare to say: “He who does this proves unconditionally that he loves.” It depends on *how* he shows his love. There are, we know, deeds which in a special sense are called acts of charity. But truly, because one gives alms, because one visits the widow and clothes the naked, one’s love is not thereby proved or even recognizable. . . . And yet it is certain that love must be known by its fruits.<sup>70</sup>

No word, no act proves, in itself, that there is love in it. So while seeing our reading as disclosed in our life, it nevertheless needs to be stressed that no word or act, not even a form of life, carries a guarantee or certainty in and of itself. No form of word, act, or life disclose unequivocally what really is in the heart, and still God cannot dwell in the heart without it manifesting itself in word, act, and one’s form of life. In the reverse, one cannot reject God in one’s heart without disclosing it somehow in word, act, and form of life.

Reflecting on biblical prose prayer, Moshe Greenberg sums up this prophetic thrust as follows: “No wording of an appeal can persuade, when the one to be persuaded mistrusts the appellant.”<sup>71</sup> And:

This vehement, unconditional repudiation of the whole of Israel’s established worship has several premises: first, that in all its forms, worship is, like prayer, a social transaction between persons, with no magical virtue or intrinsic efficacy. It is rather a gesture of submission and like all gestures a formality whose meaning depends ultimately on the total moral evaluation the recipient makes of the one who gestures; for the recipient to esteem the gesturer there must be some moral identification between them. . . . For worship to find favour in God’s eyes, the worshiper must identify himself with (‘know’ in the biblical idiom; e.g., Jer. 22:15f.) God in the one way possible for man—by imitating his

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<sup>70</sup> Søren Kierkegaard, *Works of Love*, trans. David F. Swenson and Lillian Marvin Swenson (Princeton, NJ: Princeton University Press, 1946), 11–12. Cf. Søren Kierkegaard, *Kjerlighedens Gjerninger*, Samlede Værker (København: Gyldendals Bogklubber, 1962), 18–20. Cf. Ellen G. White, *Steps to Christ* (Boise, Idaho: Pacific Press, 1892), 58–59.

<sup>71</sup> Greenberg, *Biblical Prose Prayer*, 50.

moral conduct (compare also Hos. 4:1f. and Jer. 9:23).<sup>72</sup>

In the previous chapters, we have seen the prophets repeat Torah with variation. We have seen indications of close reading that go beyond a literalistic approach, finding indicators and trajectories that invite an expansionistic reading. This ‘beyond’ seems to reflect a hermeneutic of love, a reading in excess, a desire to go all the way with YHWH as he indicates in his instructions. Maybe we should read Deut 6:5 as follows: “And you shall love YHWH your God with all your heart and with all your person and will all your excess” (וְאָהַבְתָּ אֶת יְהוָה אֱלֹהֶיךָ בְּכָל-לִבְבְּךָ וּבְכָל-נַפְשְׁךָ וּבְכָל-מְאֵדְךָ). A hermeneutic of love is a commitment to go as far as possible while rooted in a close reading of Torah and simultaneously following indications and trajectories that take us beyond literalistic boundaries. The words of Torah, received as intended, cannot be separated from a form of life. Torah is not seen as an end but a beginning, an invitation into a covenantal form of life with YHWH. It is not to be read as an exhaustive description of this life, but as instructions for how to go about living this life. By taking the posture of a spectator, instead of a participant in this form of life, we can remain detached but not without necessarily altering the usage the words were intended for. Since the passages do not intend to leave any neutral space for the reader,

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<sup>72</sup> Greenberg, *Biblical Prose Prayer*, 55–56. B. Gemser uncovers the same tendency by investigating the *rib*-pattern in the HB, the idea of the prophet calling the people to God’s legal procedure against them. But there is also amazing grace in this *rib*-pattern as it “reveals the undogmatic, unsystematic way of thinking, in religious matters, of the Old Testament. All is ultimately left to, lies in the hands of, the Supreme Judge and Ruler, whose judgment is righteous, but unpredictable, and inscrutable for human understanding, whose ways are not ours. He is a person, not a system or an order. But this implies that there is an appeal to Him, even an irrational, undeserved, unjustifiable appeal to his heart, his compassion, his grace” (Gemser, “The *Rib*-Pattern in Hebrew Mentality,” 137).

however we read the text, it is a “commitment at risk.”<sup>73</sup>

Michael Fishbane wrote: “The cultural archive must become a living voice, and the written formulations must become direct address; one’s life and the life-world presented in the text must coincide in a dynamic way.”<sup>74</sup> When the biblical words come across as foreign and dead without meaning; when we experience ourselves as exiled from the biblical world, it may not be another theory we need, but, rather, a form of life where the Bible’s words speak to us as a living voice.<sup>75</sup>

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<sup>73</sup> Steiner, *Real Presences*, 8.

<sup>74</sup> Fishbane, *Sacred Attunement*, 63.

<sup>75</sup> Wittgenstein wrote: “What we do is to bring words back from their metaphysical to their everyday use” (Wittgenstein, *Philosophical Investigations*, 48 (§116)). And Labron: “Wittgenstein’s later conception of philosophy was shown to be ‘therapeutic’ for the problem of philosophical idols by demonstrating that ordinary language reveals meaning in the language-games. Meaning is not explained through metaphysical connections or by positing foundational realms, but is shown in the form of life. In a similar manner, God is not found or explained by deduction from metaphysical inquiry, presented as a particular object, or a theoretical abstraction in Hebraic thought. Instead, God is shown through the Israelites’ history and practices, that is, their form of life” (Labron, *Wittgenstein’s Religious Point of View*, 153). And Holmer: “For there is a way that one comes to believe so that a religious form of life ensues” (Paul L. Holmer, *The Grammar of Faith* (New York: Harper & Row, 1978), 144). Cf. pp. 50, 128, 130–32, 156, 170.



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### **Education**

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- 1999: History of Ideas (Mellomfag), University of Oslo.
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