The Septuagint and Legal Traditions

Mels Jakob Verburg

St John's College

University of Oxford

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ABSTRACT

There are many minor differences between the Masoretic Text of the biblical laws and the Septuagint's translation. What led the Septuagint's translators to deviate from the *Vorlage*? Was it a matter of textual exegesis, development of halakhah, custom among the local Jewish community, or influence of contemporary Egyptian law? This thesis evaluates past scholarship, establishes the meaning of the Septuagint through contemporary texts, and compares the Septuagint to early rabbinic halakhah. This thesis argues that "intermediaries" —i.e., traditions of interpretation that arose between the time of composition and the time of translation—often shaped the translator's understanding of the biblical laws. This thesis introduces new evidence to support the proposal of influence of Egyptian law on the Septuagint.

1 INTRODUCTION

> Words, English words, are full of echoes, of memories, of associations—naturally. They have been out and about, on people's lips, in their houses, in the streets, in the fields, for so many centuries. And that is one of the chief difficulties in writing them today—that they are so stored with meanings, with memories, that they have contracted so many famous marriages.
>
> —Virginia Woolf, *BBC Broadcast*

1.1 Alexandrian Houses

The priestly law says that if someone dies in a "tent" (אהל), anyone or anything in it shall be unclean for seven days (Num. 19:14).[1] The LXX does not mention a "tent" but a "house" (οἰκία). John William Wevers argued that the LXX's translator "updated" the law because "Alexandrians lived in houses, not in tents."[2] The problem turns out to be more complicated. The LXX's translator was not the only ancient exegete who came up with this idea, nor were Alexandrians the only ones who lived in houses.[3] The *Damascus Document*, the *Temple Scroll*, Philo, and Josephus all substituted "house" for "tent" (*CD* XII.15–8; *11QT*^{a} XLIX.5–

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[1] A note on abbreviations: for biblical, extra-biblical, and rabbinic texts, see P. H. Alexander et al. (eds), *The SBL Handbook of Style: For Ancient Near Eastern, Biblical, and Early Christian Studies* (Peabody, MA, 1999), ch. 8; for classical literature, see S. Hornblower and A. Spawforth (eds), *The Oxford Classical Dictionary* (Oxford, 2012^{4}), xxvi–liii; for papyri and ostraca, see J. F. Oates et al. (eds), *Checklist of Editions of Greek, Latin, Demotic, and Coptic Papyri, Ostraca, and Tablets*, http://scriptorium.lib.duke.edu/papyrus/texts/clist.html; for inscriptions, see the bibliography of the *Packard Humanities Institute*, https://inscriptions.packhum.org/biblio.html.

[2] J. W. Wevers, *Notes on the Greek Text of Numbers* (Septuagint and Cognate Studies 46; Atlanta, GA, 1998), 318.

[3] Note also that the priestly law of leprosy "anticipates" that the Israelites, upon arrival in Canaan, will no longer live in tents, but in houses (Lev. 14:34–57). Impurity caused by leprosy sticks to the timber, stones, and mortar of the house and makes impure anyone who enters the house (v. 45–6).

L.19; Philo, *Spec.* 3.206; Jos., *Ant.* 18.36; *Ag. Ap.* 2.205; cf. *m. Ohol.* 3.4).[1] This is not the only case where the LXX rendered "tent" as "house" (note the triple translation of אהל as οἶκος in Gen. 31:33). The definition of οἰκία is broad.[2] Aristotle argued it might include any kind of "shelter of things and people" (σκεπαστικὸν χρημάτων καὶ σωμάτων) (*Metaph.* 1043a). Arrian even mentioned a tribe that built "huts" (οἰκία) from the bones of dead fish (*Ind.* 30.8–9).

Did the LXX's translator impose the current understanding of Jewish law on scripture? Or did he produce a perfectly reasonable translation of the original text? How does one decide? There are many minor differences between the MT and the LXX like this—i.e., differences that need not derive from a different *Vorlage* nor from the translator's ingenuity.

The solution to the problem of these minor differences lies in recognising that the extant evidence, including the LXX, is only the tip of the iceberg. The pieces of evidence—which, in the case of the "house" in the law of corpse impurity, betray a remarkable congruity despite their different origins—conceal much older traditions of reading the Hebrew Bible. Already by the early Hellenistic period, the words of the biblical laws had grown rich in meaning. They had been read, recited, and studied since time immemorial. Although the LXX is the oldest extant piece of written evidence in this chain of interpretation, there is good reason to suspect that the idea of extending the law on corpse impurity to structures other than tents was not *invented* by the LXX's translator. The translator deviated from a pattern of translating "tent" (אהל) as "tent" (σκηνή) to accommodate a legal tradition (see, e.g., the use

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[1] See also V. Noam, 'Creative Interpretation and Integrative Interpretation in Qumran', in A. D. Roitman, L. H. Shiffman, and S. Tzoref (eds), *The Dead Sea Scrolls and Contemporary Culture: Proceedings of the International Conference held at the Israel Museum, Jerusalem (July 6-8, 2008)* (Studies on the Texts of the Desert of Judah 93; Leiden, 2011), 363–76.

[2] *LSJ*, 1203 sub οἰκία I.2 argues that there is a distinction between οἶκος, the "property" or "estate", and οἰκία, the "dwelling-house only". That such a distinction was recognised and maintained by every Greek speaker is doubtful.

of σκηνή for אהל in Num. 16:26–7). Presumably he did so not on a personal whim, but because many before him had argued that corpses defiled more than just tents.

The genius of the LXX's law on corpse impurity is that it cloaks an interpretation—i.e., the law should be extended to include structures other than tents—as an accurate translation of the source text. One can only get the measure of the translation's success when one compares it not just to its *Vorlage* but also to contemporary texts (to establish the semantic meaning of the Greek), to early rabbinic literature (to understand the legal implications of a translation), and to other passages of the LXX (to discern the translator's strategy). The aims of this thesis are to make sense of the LXX's translation of the biblical laws and, in doing so, to trace the earliest development of traditions of Jewish law.

1.2 Minor Differences

The example of the "house" in the law of corpse impurity is just one of many minor differences between the MT and the LXX. This type of difference poses a challenge to textual criticism *and* reception history. One can sufficiently explain such a difference *without* postulating a different *Vorlage*—the aim of textual criticism—, but one cannot attribute the difference with any confidence to the LXX's translator. There is, in other words, no reason to reconstruct a variant text but sufficient evidence to suggest that the idea—though expressed in the LXX—did not originate with the translator. Many *legal* differences between the Hebrew Bible as we know it and the LXX fall in a middle category between textual criticism and reception history. Such differences are not purely textual in nature. There is no extant manuscript reading בית in Num. 19:14. Nor are the differences the initiative of the LXX's translator. The very same interpretation turns up in many other sources.

The traditional explanations of textual criticism—linguistics, literary context, or theology—do not apply to examples such as the "house" in the law of corpse impurity.[1] Modern scholarship has come up with new solutions for these legal differences: the translator may have updated the law to his contemporary situation (as Wevers suggested), introduced the contemporary practice of the Jewish community into his translation, or sought to harmonise the biblical laws (see 1.6). As of yet we do not fully understand the reason behind such differences. In order to understand why the translation differs from its *Vorlage*, we have to look for an explanation beyond textual criticism.

1.3 Between Textual Criticism and Reception History

There are many variants between the MT and the ancient versions of the Hebrew Bible. The variants, readings that differ from the MT, are the subject of both textual criticism and reception history.[2] One can analyse the semantic, syntactic, and literary differences between the versions in order to reconstruct the development of the text *and* to gain an understanding of how ancient readers "received"—i.e., understood and explained—the text. Reception history traces the text's meaning; textual criticism reconstructs the history of the text itself. The options are not mutually exclusive. The explanation and expansion of older passages contributed to the composition of new texts within the Hebrew Bible.[3] The scribe's understanding of the text sometimes contributed to its composition. The way a scribe

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[1] E. Tov, *Textual Criticism of the Hebrew Bible* (Minneapolis, 2001[2]), 124–8.
[2] This is a working definition of "variant". In each case, one needs to weigh all the available witnesses, versions, and translations. Tov, *Textual Criticism of the Hebrew Bible*, 18.
[3] M. Fishbane, *Biblical Interpretation in Ancient Israel* (Oxford, 1989); for a critique of Fishbane's approach, see J. L. Kugel, 'The Bible's Earliest Interpreters', *Prooftexts* 3 (1987), 269–83; R. G. Kratz, 'Biblical Scholarship and Qumran Studies,' in G. J. Brooke and C. Hempel (eds), *T&T Companion to the Dead Sea Scrolls* (London, 2019), 204–15, 205: "The complex development of a biblical text from its earliest beginnings to the final form is best understood as a dynamic process of reception and (so to speak inner-biblical) interpretation … The understanding of the dynamics behind the biblical tradition just outlined invites the question how such a process can be related to the reception and (extra-biblical) interpretation of the biblical texts in the Dead Sea Scrolls."

understood his source text influenced the details of his own copy or translation. There are many ways in which the "natural order" of text and explanation might be reversed. The scribe's understanding sometimes preceded and shaped the text.

Joseph, for example, either "subjected" the Egyptians "as slaves" (העביד … לעבדים) or "transferred" them "to cities" (העביר … לערים) (Gen. 47:21).[1] The first reading—the SP's—makes more sense in the literary context. The Egyptians had offered themselves as "slaves to the pharaoh" (עבדים לפרעה) a little earlier (v. 19).[2] The idea behind the second reading—the MT's—is unclear. What would have been the goal of such a program of forced urbanisation? The difference between the two readings is of a mechanical nature from the perspective of textual criticism.[3] It hinges primarily on the minute difference between the letters ד and ר. From the perspective of reception history, which charts the evolution of the text's meaning, the consequences of this variant reading are profound. The second reading—probably a secondary emendation—clears Joseph of the accusation of reducing the Egyptians to slavery and presents him as a merciful leader rather than a ruthless tyrant. The minute difference presented the scribe with an opportunity to emend the meaning of the text.[4]

In other cases, however, the combination of textual criticism and reception history is more complex. It is often difficult to discern whether a variant results from the scribe's *Vorlage* or from his own or his community's ideas—especially in the case of the ancient *translations*. The *Vorlage* of the ancient translations has to be reverse-engineered. This causes a conflict of interest between textual criticism and reception history. Textual criticism attributes variants to the translator's manuscript, reception history to the translator's own

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[1] Tov, *Textual Criticism of the Hebrew Bible*, 92.
[2] Supported by the LXX: κατεδουλώσατο … εἰς παῖδας.
[3] E. A. Speiser, *Genesis* (Anchor Bible 1; New York, 1964), 352.
[4] For a different example, see H. G. M. Williamson, *Isaiah 1–5: A Critical and Exegetical Commentary* (London, 2006), 189–230 (on Isa. 2:17–22).

ideas. For example, whereas the MT's law of the goring ox says that the owner of a violent ox should "guard" the animal (שמר), the LXX says that he should "destroy" it (ἀφανίζω) (Exod. 21:29, 36). A textual critic might argue that the LXX's *Vorlage* read "destroy" (שמד *hiphil*).[1] A reception historian, by contrast, might argue that the LXX's translator read "to guard" but bent the text to his will.[2] The translator knew the text meant "to guard" but made it to mean "to destroy". That also happens to be the opinion of an early rabbi: R. Eliezer argued that a violent ox should be put down (see *m. B. Q.* 4.9). The translator, being familiar with a proto-rabbinic version of this interpretation, mentally changed the text to accommodate this interpretation.

Most textual variants at the centre of this thesis are of a similarly subtle nature: they might be a straightforward translation of the translator's *Vorlage* or a novel interpretation. To untangle whether the translation of a particular word or phrase is an accurate representation of the source text or an innovation from the hand of the scribe is a difficult task.[3] But there is a third possibility: a translation might go back to a *tradition of interpretation*.

1.4 To the Court House

Many differences between the MT and LXX fall in this middle category—between the cracks of textual criticism and reception history. For example, the Covenant Code instructs the owner of a slave who wants to sell himself into permanent slavery to present his slave to האלהים (Exod. 21:6a).[4]

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[1] Or that he *misread* his *Vorlage*. See *BHS* ad loc.
[2] Frankel, *Einfluss*, 93.
[3] D. A. Teeter, *Scribal Laws: Exegetical Variation in the Textual Transmission of Biblical Law in the Late Second Temple Period* (Forschungen zum Alten Testament 92; Tübingen, 2014), 7–14.
[4] For an exceptional, exilic dating of the Covenant Code, see J. Van Seters, *A Law Book for the Diaspora: Revision in the Study of the Covenant Code* (Oxford, 2002). For a brief discussion of the various names for this collection of laws, see 2.1.

וְהִגִּישׁוֹ אֲדֹנָיו אֶל־הָאֱלֹהִים

His master shall lead him to *hā'elōhîm*.

The ritual signifying the slave's transfer of status, piercing his ear against a doorpost (v. 6b), was intended to take place at the entrance of a sanctuary.[1] But the LXX translates:

προσάξει αὐτὸν ὁ κύριος αὐτοῦ πρὸς τὸ κριτήριον τοῦ θεοῦ

His owner shall bring him to *the court* of God.

It is impossible to reconstruct a Hebrew *Vorlage* from the LXX. Biblical Hebrew does not have a word for "court of law". In the Hebrew Bible legal disputes are adjudicated at the opening of the tabernacle, in the city gates, or in the king's palace. It is hard to explain what is going on in the LXX if one assumes the translator was merely transferring the words on the page from one language into another. The LXX must be more than an ad hoc response to "an incongruous text".[2] One has to suppose that something else has happened.

In this particular case, the LXX is similar to a longstanding tradition. The tradition interprets האלהים as a reference to the judiciary; it is attested in the Targums (e.g., Tg. Ps.-J.: דייניא; Frg. Tg.: בית דִּינָא), the *Mekhilta deR. Ishmael* (הדיינין),[3] and the Peshitta (ܕܝܢܐ). Some modern translations, such as the *KJV* ("the judges"), follow in the footsteps of ancient

[1] B. M. Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation* (Oxford, 1997), 112: "The liminal ceremony, involving the transition from contractually limited to permanent slavery, requires a liminal context: the gateway of a temple or sanctuary, which marks the transition point between the divine and the human realms."
[2] J. W. Wevers, *Notes on the Greek Text of Exodus* (Society of Biblical Literature Septuagint and Cognate Series 30; Atlanta, GA, 1990), 324.
[3] J. Z. Lauterbach (ed.), *Mekhilta de-Rabbi Ishmael: A Critical Edition, Based on the Manuscripts and Early Editions, with an English Translation, Introduction, and Notes* (Philadelphia, PA, 2004), 364–5.

tradition.[1] At the same time, the LXX's translation has a particularly Egyptian flavour. The Greek κριτήριον could, technically, convene anywhere: in the theatre, in the agora, or in the open field.[2] In the heyday of the Late Kingdom, the Egyptians first started to erect buildings specifically designed for adjudication (*ʿwi n wpy.t*, "judgment houses", in Egyptian).[3] The translator of the LXX may have inherited a traditional explanation or adapted an archaic law to the contemporary situation.[4]

In Emanuel Tov's *Textual Criticism of the Hebrew Bible*, the discipline of textual includes explanations drawn from linguistics, literary context, and theology.[5] The legal differences between the MT and the versions, however, are somewhat different. Although one can explain many of them just like one might explain other variants, scholarship adds three further possible explanations for differences of a legal nature. Legal differences may have been motivated by the theory and practice of early Jewish law—halakhah—,[6] by the contemporary practice of the law of the land,[7] and/or by a concern for the internal consistency of the biblical law codes.[8] These explanations have a long history of scholarship (for more, see 1.6).

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[1] The intended meaning of the LXX's "court *of God*", an expression that occurs primarily in commentaries on this passage by church fathers, remains unclear (see also Philo, *Cher.* 3.72).
[2] The examples *LSJ*, 997 cites under "2. court of judgment, tribunal" do not refer to a court of law, but to a body of jurors (Pl., *Leg.* 767b; *IG* XIV 951.20; Polyb. 9.33.12; 1 Cor. 6:2), a particular rank of Egyptian judge (*P.Oxy.* XVII 2134.6), or a site where once a famous trial took place (Paus. 2.20.7).
[3] S. Allam, 'Egyptian Law Courts in Pharaonic and Hellenistic Times', *Journal of Egyptian Archaeology* 77 (1991), 109–27.
[4] M. Dhont, 'Towards a Comprehensive Explanation for the Stylistic Diversity of the Septuagint Corpus', *Vetus Testamentum* 69 (2019), 388–407, at 397: "Since many factors influence this process [of translation], scholars of the Septuagint should aim for *multicausal explanations for phenomena in the translation*" (my italics).
[5] Tov, *Textual Criticism of the Hebrew Bible*, 124–8.
[6] Z. Frankel, *Vorstudien zu der Septuaginta* (Leipzig, 1841); id., *Ueber den Einfluss der palästinischen Exegese auf die alexandrinische Hermeneutik* (Leipzig, 1851); A. Geiger, *Urschrift und Übersetzungen der Bibel in ihrer Abhängigkeit von der inneren Entwicklung des Judenthums* (Breslau, 1857).
[7] E. J. Bickerman, 'The Septuagint as a Translation', in A. Tropper (ed.), *Studies in Jewish and Christian History: A New Edition in English Including* The God of the Maccabees (2 vols.; Ancient Judaism and Early Christianity 68; Leiden, 2007), I, 163–94 (citation at 189); id., 'Two Legal Interpretations of the Septuagint', in Tropper (ed.), *Studies in Jewish and Christian History*, I, 195–217. For an early critique of 'Two Legal Interpretations', see J. J. Rabinowitz, 'Exodus XXII 4 and the Septuagint thereof', *Vetus Testamentum* 9 (1959), 40–6.
[8] Teeter, *Scribal Laws*.

These explanations raise a series of questions about the LXX:

1. What is the value of the LXX's variants for the history of halakha? Abraham Geiger argued that the ancient versions and translations testified to the existence of an earlier halakhah that the rabbis later abandoned. Do the LXX's legal variants indeed testify to the existence of traditions independent of the rabbinic? Or do the LXX's variants confirm the antiquity and continuity of rabbinic halakhah—as Zacharias Frankel argued?
2. How do the LXX's laws compare to Ptolemaic law? Does the LXX preserve traces of the contemporary practice of law? Did the LXX's translators try to bring the biblical law up to date with the current law of the land?

The problem is that the LXX provides no straightforward evidence. Each word must be carefully examined in order to reconstruct how and why the translator arrived at his conclusion, at his final translation.

1.5 Intermediaries and Associations

Two insights—Goldhill's "intermediaries" and Woolf's "associations"—offer a middle road between textual criticism and reception history.

Simon Goldhill, summarising the achievements of reception criticism, argues that "the recognition of a multiplicity of intermediaries between past and present has diffused the direct and unilinear genealogy of source text and response."[1] The "intermediaries"—i.e., interpretations of a text introduced between the time of its original composition and the time

[1] S. Goldhill, 'The Limits of the Case Study: Exemplarity and the Reception of Classical Literature', *New Literary History* 48 (2017), 415–35, at 420–1.

of its reception—exert an influence on the "final interpretation". In our case, texts composed between the original law codes and the translation of the LXX influenced the translator's understanding of the original law. The deuteronomic instruction for the *pesah* sacrifice, for example, says: "you shall boil (it)" (ובשלת) (Deut. 16:7). Another law prohibits the consumption of the meat "boiled in water" (בשל במים) (Exod. 12:9). The Chronicler—the "intermediary" in this case—reports that the Israelites "cooked the *pesah* on fire" (ויבשלו הפסח באש) (2 Chron. 35:13). The LXX's translator of the deuteronomic law adopted the same solution, rendering "you shall cook (it)" (ובשלת) as "you shall cook *and roast* it" (ἑψήσεις καὶ ὀπτήσεις) (Deut. 16:7).[1] The "double translation" relies on an "intermediary", the Chronicler, who harmonised the command to boil with the prohibition against boiling. Other cases are less clear-cut: the "intermediaries" have to be searched for in other biblical laws or reconstructed from the Scrolls, Philo, Josephus, and early rabbinic literature. When two or more of these sources—independently of each other—agree on a particular point of legal interpretation, it is fair to assume that a tradition of interpretation was already in the air.

There is another way to think about the development of a text's meaning. In the course of their "lives" words accumulate meaning through repeated use. Virginia Woolf once said: "Words, English words, are full of echoes, of memories, of associations—naturally. They have been out and about, on people's lips, in their houses, in the streets, in the fields, for so many centuries."[2] She cited the example of "incarnadine", which invokes the memory of Shakespeare's *Macbeth*: "No, this my hand will rather / The multitudinous seas incarnadine"

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[1] The reasons for the difference between the MT and the LXX may be more complicated: perhaps the meaning of בשל was unclear or perhaps the doublet was an addition in an early manuscript of the LXX. Teeter, *Scribal Laws*, 195–6.

[2] Woolf, in a BBC broadcast on 29 April 1937. Full transcript available on http://www.bbc.com/culture/story/20160324-the-only-surviving-recording-of-virginia-woolf. See also C. Martindale, *Redeeming the Text: Latin Poetry and the Hermeneutics of Reception* (Cambridge, 1993); A. Lianeri and V. Zajki (eds), *Translation and the Classic: Identity as Change in the History of Culture* (Oxford, 2008).

(II.2.59–60).[1] The same holds true for the words of the Hebrew Bible: already in the early Hellenistic period they were rich in "echoes", "memories", and "associations". Such associations are easier to trace when words are rare.

The use of "desire" (תשוקה) in the Song of Songs (7:11) recalls the primeval history. Shortly after the "fall", God tells Eve: "your desire will be towards your man" (ואל אישך תשוקתך) (Gen. 3:16; cf. 4:7). The Song reverses God's words by putting "desire" in the mouth of the female lover: "towards me is *his* desire" (ועלי תשוקתו).[2] The translator of Genesis probably did not know the rare word, translating: "towards your husband will be your *return* (ἀποστροφή)".[3] The translator of the Song, remembering the use of the word in the primeval history, similarly translated "desire" (תשוקה) as ἐπιστροφή, "return".

Some of the most subtle associations are expressed in ancient translations. In the book of Jonah, God complains about the inhabitants of Nineveh: "their evil rose before me" (עלתה רעתם לפני) (Jon. 1:2). The story invites a comparison between the fate of Nineveh and that of Sodom and Gomorrah—most notably in its use of the verb "to destroy" (הפך) in Jonah's five-word prophecy (Jon. 3:4; cf. Gen. 19:21, 25, 29). The number of associations between these evil cities is greater in the LXX than in the MT. The LXX renders "their evil rose before me" as "the *cry* of her evil rose up to me" (ἀνέβη ἡ κραυγὴ τῆς κακίας αὐτῆς πρός με). The translation invokes the memory of Sodom and Gomorrah. In Gen. 18:21, God says: "her cry that came to me" (צעקתה הבאה אלי) (cf. Gen. 19:13).[4] An avid textual critic might reconstruct a

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[1] S. Wells and G. Taylor (eds), *William Shakespeare: The Complete Works* (Oxford, 1998), 983.
[2] Y. Zakovitch, *The Song of Songs: Riddle of Riddles* (ed. V. C. Zakovitch; Library of Hebrew Bible/Old Testament Studies 673; London, 2019), 8.
[3] One might also argue that the LXX's *Vorlage* read "return" (תשובה) or that the translator misunderstood "desire" (תשוקה) as "return" (תשובה). The Scrolls sometimes use תשוקה as if it meant "return" (see especially *1QS* XI.22). For a history of interpretation, see J. N. Lohr, 'Sexual Desire? Eve, Genesis 3:16, and תשוקה', *Journal of Biblical Literature* 130 (2011), 227–46; for the use of תשוקה in the Scrolls, see J. Joosten, 'Pseudo-Classicisms in Late Biblical Hebrew', *Zeitschrift für die alttestamentliche Wissenschaft* 128 (2016), 16–29, at 22–3.
[4] On the level of the Hebrew texts, the connection is noted by, e.g., U. Simon, *The JPS Bible Commentary: Jonah* (trans. L. J. Schramm; Philadelphia, 1999), 5.

variant *Vorlage* of LXX Jonah. It is more likely that the description of Nineveh triggered the memory of the other famously evil cities. The association between the cities may have occurred to the translator during the translation, but it seems more likely that previous readers already spotted the similarity between the descriptions of the cities. The translator did not just rely on one version of the text, a *Vorlage*, but also on this legacy of associations.[1] The LXX is a treasury "full of echoes, of memories, of associations" that clung to the words of the Bible. The same goes for the LXX's translation of the biblical laws.

Though there is nothing radically new about these ideas, they have the potential to explain minor differences between the original text and its translation without having to posit a different text (a *Vorlage*) and without attributing every difference to the translator's mind. We do not have to trace the precise genealogy or identify the origin of a tradition of interpretation in order to explain the evolution of the meaning of the text. Words and texts, through repeated recitation and use, accumulate new meanings that resound through the history of its reception. These new meanings "stick" to the original text—perhaps written down in the margin, perhaps passed on orally—and emerge in later translations and interpretations.

1.6 History of Scholarship

What is the value of the LXX for the early history of halakhah? Despite the gap in time between the LXX and the earliest compilations of midrash halakhah (the LXX is dated to the mid-third century BC,[2] the final redaction of the Mishnah traditionally attributed to R. Judah ha-Nasi, ca. AD 200), it is possible that the LXX preserves some early traditions of halakhah.

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[1] J. M. Sasson, *Jonah* (Anchor Bible 24B; New York, 1990), 76–7.
[2] J. K. Aitken, 'Introduction', in id. (ed), *The T&T Clark Companion to the Septuagint* (London, 2015), 1–12, at 3.

Michael Fishbane argued that the Hebrew Bible itself already contains the earliest examples of midrash halakhah (see, e.g., Ezra 9:1–3 on intermarriage; Neh. 8:13–8 on the *sukkah*; 2 Chron. 35:13 on the preparation of the Pesach sacrifice).[1] It is possible that sources from the Second Temple period preserve further examples of "early halakhah". Philo alludes to "unwritten laws" (ἄγραφοι νόμοι) and "ancestral customs" (ἔθη πάτρια) (*Spec.* 4.149–50).[2] Josephus writes that the Pharisees had "some customs … not written down in the laws of Moses" (νόμιμά τινα … οὐκ ἀναγέγραπται ἐν τοῖς Μωυσέος νόμοις) (*Ant.* 13.297; cf. Mark 7:3).[3] Some of the Scrolls share with the rabbis an interest in controversial questions of halakhah (e.g., whether an unbroken stream of liquid transfer impurity, *4QMMT B* 55–8; *m. Yad.* 4.7 *m. Toh.* 8.9). The Targums contain traces of interpretive traditions dating back to the Second Temple period.[4] Where does the LXX fit in the history of halakhah?

In the early days of the *Wissenschaft des Judentums*, Zacharias Frankel turned to the ancient versions of the Hebrew Bible ("the versions" from now on) to prove the antiquity of rabbinic midrash. Abraham Geiger, by contrast, used the same evidence to show that there once must have been an old version of the halakhah. This old halakhah was later superseded by the new halakhah of the rabbis. More recent scholarship has come up with more nuanced

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[1] M. Fishbane, *Biblical Interpretation in Ancient Israel* (Oxford, 1989); for a critique of Fishbane's approach, see J. L. Kugel, 'The Bible's Earliest Interpreters', *Prooftexts* 3 (1987), 269–83.
[2] The only systematic study on Jewish law in the works of Philo is still S. Belkin, *Philo and the Oral Law* (Harvard Semitic Series 11; Cambridge, MA, 1940), but the study is hindered by Belkin's assumption that whenever Philo's interpretation "differs" from the biblical law, it must be reflecting the current *practice* at Alexandria.
[3] J. Klawans, *Josephus and the Theologies of Ancient Judaism* (Oxford, 2012), 142–7 warns against equating this passing reference with a later conception of oral Torah: "All we can say of Josephus's Pharisees is that they are willing to ascribe authority to non-scriptural legal traditions" (144).
[4] T. Legrand and J. Joosten (eds), *The Targums in Light of Traditions of the Second Temple Period* (Supplements to the Journal for the Study of Judaism 167; Leiden, 2014); J. Joosten, 'How Old is the Targumic Tradition?', in A. Piquer Otero and P. Torijano Morales (eds), *The Text of the Hebrew Bible and Its Editions: Studies in Celebration of the Fifth Centennial of the Complutensian Polyglot* (Supplements to the Textual History of the Hebrew Bible 1; Leiden, 2016), 143–59.

and more "critical" ways—in the technical sense of the word[1]—to describe the development of early midrash halakhah in the versions, the Scrolls, and other Jewish literature from this period. The following brief history of scholarship analyses the use of the LXX for the history of halakhah from the beginning of the *Wissenschaft des Judentums* until today.

1.6.1 Zacharias Frankel

Zacharias Frankel, who wrote two books on the relation between halakhah and the LXX (published in 1841 and 1851), summarised his view of the history of halakhah as follows:

> Diese auf die Schrift übertragenen und in ihrem Geiste erfasten Vorschriften bildeten ursprünglich die Halacha (practische Lehre); und es floss durch sie häufig die Interpretation, mit dem Wortsinne zusammen, so dass dieser fast in jener aufging: die Kunde wie das Gesetz zu erläutern, in welchem Sinne es aufzufassen sei, machte die Interpretation aus: das Gesetz wurde nach seiner Anwendung in der Gegenwart erklärt, während das Verständniss der Schrift dem einfachen Wortsinne nach, obgleich man auch diesem nicht sein Recht ganz verweigerte, von untergeordnetem Interesse war. So nun gestaltete sich die Halacha und halachische Exegese: sie sind in einander wechselweise bedingt: und wenn auch manche exegetische Auffassung sich zu einer andern Zeit anders ausprägte, so blieb doch das aus jener hervorgegangene halachische Product, da es ins Leben übergangenen und von dem Gesammtwillen

[1] For "biblical criticism" as an attempt to uncover and understand the historical—as opposed to the traditional or canonical—meanings of a text, see J. Barton, *The Nature of Biblical Criticism* (Louisville, KY, 2007). This method may have its origins in protestant theology: an attempt to "free" the meaning of the Bible from the constraints of tradition and the authority of the church, see J. Barr, 'Bibelkritik als theologische Aufklärung', in T. Rendtorff (ed.), *Glaube und Toleranz: Das theologische Erbe der Aufklärung* (Gütersloh, 1982), 30–42.

> getragen war, unverändert: nur in den Fällen, wo die Halacha nicht allgemeine Gültigkeit erlangt hatte, unterlag auch sie dem Wechsel.[1]

In Frankel's history of halakhah there was once a unanimity—a confluence—between halakhic exegesis and halakhic practice: "Originally, these rules, which were both transferred to Scripture *and* understood in the spirit of Scripture, made up the halakhah". The traces of interpretations in the versions can, at the same time, represent what people thought the text *meant* and what people were *doing*. At some point in time, however, the conclusions from the process of exegesis began to lead a life of their own. The connection between exegesis and practice was obscured: "although many exegetical opinions took on a different shape at a different time, the halakhic product that had emerged nevertheless remained … unchanged". The only reason for change in halakhah was a lack of universal consensus: "only in those cases, where the halakhah had not attained general validity, was it too subjected to change".

In Frankel's books there are many examples of similarity between rabbinic halakhah and the versions but few examples of difference. To name just one, there is a difference of opinion on the punishment of beating (Deut. 25:1–3). The MT says:

> וְהִפִּילוֹ הַשֹּׁפֵט וְהִכָּהוּ לְפָנָיו
>
> the judge shall make him [*sc.* the convict] fall and beat him in front of him (Deut. 25:2)

The rabbis argued that this meant the convict should be beaten while bending over:

[1] Z. Frankel, *Vorstudien zu der Septuaginta* (Leipzig, 1841), 180–1.

וְאֵינוֹ מַכֶּה אוֹתוֹ לֹא עוֹמֵד וְלֹא יוֹשֵׁב אֶלָּא מֻטֶּה, שֶׁנֶּאֱמַר וְהִפִּילוֹ הַשֹּׁפֵט.

> and he may not strike him when he is standing or when he is sitting, but only when he is bending low, for it is written, *The judge shall cause him to lie down*. (*m. Makk.* 3.13; cf. *b. Makk.* 22b)[1]

The LXX translated the same passage as:

> καὶ *καθιεῖς* αὐτὸν ἔναντι τῶν κριτῶν καὶ μαστιγώσουσιν αὐτὸν ἐναντίον αὐτῶν
> and you shall make him *sit down* in front of the judges and they shall flog him in front of them

The Greek translation says that more than one judge should be present at the beating, in contrast to the MT's singular שפט. Most importantly, the LXX says that the convict should sit down for the beating, in contrast to the Mishnah's prostrate convict. This and similar examples are relevant to the history of halakhah, but Frankel ignored them. Why?

Comparing the works of Zacharias Frankel and Abraham Geiger, Jacob Sussman argued that Frankel "turned backward from rabbinic literature".[2] Geiger, by contrast, started with the versions and then turned to rabbinic literature. Aharon Shemesh described Frankel's method as the "reflective model" and characterised Geiger's method as the "developmental model".[3] In other words, Frankel was intimately familiar with the classic works of midrash

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[1] H. Danby, *The Mishnah: Translated from the Hebrew with Introduction and Brief Explanatory Notes* (Oxford, 1933), 407–8.
[2] Sussman, 'The History of the Halakha and the Dead Sea Scrolls', in Qimron and Strugnell (eds), *DJD X*, 179–200, at 179.
[3] Shemesh, *Halakhah in the Making*, 3, 5.

halakhah and *then* turned to literature from the time of the Second Temple. In the preface to his *Vorstudien* Frankel himself wrote as much:

> In den nachbiblischen schriftlichen Monumenten, welche die Sage jener frühern Zeit vindiciren will, in der alten griechischen Uebersetzung der Schrift, hoffte ich einige Aushilfe zu finden und so ging ich an das Studium der Septuaginta. Und welche Auskunft bot sich mir nicht beim ersten Durchlesen dar! Fast für jede Halacha und jede Sage entdeckte ich einen Beleg, ich nahm allenthalben Hinweisungen auf religiöse Verordnungen wahr und fand die meisten Abweichungen erklärbar.[1]

Frankel discovered a precedent "for almost every halakhah" in the LXX. Whenever he came across a minor difference between rabbinic halakhah and the LXX, he explained the LXX as a misunderstanding of the Hebrew text, a corruption in the process of transmission, or some local practice peculiar to Egyptian Judaism.

The MT, for example, prohibits consumption of any meat "with the blood" (על הדם) (Lev. 19:26). The LXX, however, forbids the Israelites to eat "on the mountains" (ἐπὶ τῶν ὀρέων). According to Frankel, the LXX's translators mistook הדם for ההרים (but compare Ezek. 18:11, 15).[2] The LXX's reading is the result of a misunderstanding of the Hebrew text. The LXX demands that the priest put frankincense "and salt" (καὶ ἅλα) on the twelve breads of testimony (Lev. 24:7). The phrase "and salt" has no equivalent in the MT. Frankel speculates that putting salt on the bread was the local practice at the temple of Onias at Leontopolis. The demand for salt on the loaves of bread is "a late gloss".[3] The LXX contains

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[1] Frankel, *Vorstudien zu der Septuaginta*, xiii–xiv.
[2] Z. Frankel, *Ueber den Einfluss der palästinischen Exegese auf die alexandrinische Hermeneutik* (Leipzig, 1851), 157.
[3] Frankel, *Einfluss*, 158: "ein späteres Glossem".

a warning against vigilante justice: "*your hand* shall not avenge" (οὐκ ἐκδικᾶταί σου ἡ χείρ) (Lev. 19:18). The MT is more concise: לֹא־תִקֹּם. Depending on the vocalisation, these words mean either "do not avenge" (from נקם) or "do not stand up" (from קום). Frankel argued that the LXX was an intentional adaptation. The reason for the adaptation was the character of the citizens of Alexandria, whom he described as "the easily excitable Alexandrians".[1]

This method, which marginalises the differences that do not align with rabbinic halakhah, creates a powerful argument for the antiquity of rabbinic law. If the legal differences between the LXX and the halakhah are due to error, corruption, and local custom, then the similarities testify to the continuity of the halakhah. The LXX thus proves the existence of a legal orthodoxy long before the rise of rabbinic Judaism. That conclusion is warranted only if some pieces of evidence are taken more seriously than others.

A second problem for Frankel's approach is the ongoing publication of Greek papyri and inscriptions since the end of the nineteenth century. The relevance of these documents to

[1] Frankel, *Einfluss*, 155: "die leicht erregbaren Alexandriner".

the semantics and the syntax of the LXX is well known among students of the LXX.[1] Because of these documentary texts, we now know that the LXX does not always mean what Frankel thought it meant. In Exod. 22:8, for example, the LXX's translators rendered אמר as ἐγκαλέω.

> עַל כָּל אֲבֵדָה אֲשֶׁר יֹאמַר כִּי הוּא זֶה
>
> every lost object, about which he says: 'This is it!'

> [*sc.* περί] πάσης ἀπωλείας τῆς ἐγκαλουμένης, ὅ τι οὖν ἂν ᾖ
>
> about every lost *egkaloumenos* object, whatever it may be

Frankel explained the translation of this verb:

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[1] See, e.g., G. A. Deissmann, *Bible Studies: Contributions, Chiefly from Papyri and Inscriptions, to the History of the Language, the Literature, and the Religion of Hellenistic Judaism and Primitive Christianity* (tr. A. Grieve; Edinburgh, 1901); id., *The Philology of the Greek Bible: Its Present and Future* (tr. R. M. Strachan; London, 1908); id., *Light from the Ancient East: The New Testament Illustrated by Recently Discovered Texts of the Graeco-Roman World* (tr. L. R. M. Strachan; London, 1910); J. A. L. Lee, *A Lexical Study of the Septuagint Version of the Pentateuch* (Society of Biblical Literature Septuagint and Cognate Studies Series 14; Chica, CA, 1983); J. K. Aitken, 'The Language of the Septuagint and Jewish-Greek Identity', in J. K. Aitken and J. Carleton Paget (eds), *The Jewish-Greek Tradition in Antiquity and the Byzantine Empire* (Cambridge, 2014), 120–34; id., *No Stone Unturned: Greek Inscriptions and Septuagint Vocabulary* (Critical Studies in the Hebrew Bible 5; Winowa Lake, IN, 2014); id., 'Moses's θίβις', in S. Kreuzer, M. Maiser, and M. Sigismund (eds), *Die Septuaginta—Orte und Intentionen: 5. Internationale Fachtagung veranstaltet von Septuaginta Deutsch (LXX.D), Wuppertal 24.-27. Juli 2014* (Wissenschaftliche Untersuchungen zum Neuen Testament 361; Tübingen, 2016), 169–85; M. N. van der Meer, 'Bridge over Troubled Waters? The γέφυρα in the Old Greek of Isaiah 37:25 and Contemporary Sources', M. K. H. Peters (ed.), *XIII Congress of the International Organization for Septuagint and Cognate Studies, Ljubljana, 2007*, (Society of Biblical Literature Septuagint and Cognate Studies 55; Atlanta, GA, 2008), 305–24; id., 'Trendy Translations in the Septuagint of Isaiah: A Study of the Vocabulary of the Greek Isaiah 3:18–23 in the Light of Contemporary Sources', in M. Karrer, W. Kraus, and M. Meiser (eds), *Die Septuaginta—Texte, Kontexte, Lebenswelten* (Wissenschaftliche Untersuchungen zum Neuen Testament 219; Tübingen, 2008), 581–96; id., 'Papyrological Perspectives on the Septuagint of Isaiah', in A. van der Kooij and M. N. van der Meer (eds), *The Old Greek of Isaiah: Issues and Perspectives* (Contributions to Biblical Exegesis and Theology 55; Leuven, 2010), 107–33; id., 'Problems and Perspectives in Septuagint Lexicography: The Case of Non-Compliance (ΑΠΕΙΘΕΩ)', in J. Joosten and E. Bons (eds), *Septuagint Vocabulary: Pre-History, Usage, Reception* (Atlanta, GA, 2011), 65–86; J. Joosten, 'Varieties of Greek in the Septuagint and New Testament', in J. Carleton Paget and J. Schaper (eds), *The New Cambridge History of the Bible, 1: From the Beginnings to 600* (Cambridge, 2013), 22–45; id., 'The Interplay between Hebrew and Greek in Biblical Lexicology: Language, Text, and Interpretation', in E. Bons, J. Joosten, and R. Hunziker-Rodewald (eds), *Biblical Lexicology: Hebrew and Greek* (Beihefte zur Zeitschrift für die alttestamentliche Wissenschaft 443; Berlin, 2015), 209–25.

> In Alexandrien mochte ebenfalls dieser Gebrauch, aber in veränderter Weise, herrschend gewesen sein: wer einen Gegenstand verloren hatte, liess ihn ausrufen, dass man ihn einliefere[.][1]

This is just one of many examples of the influence of local custom on the LXX:

> Diese Uebersetzer tragen nicht selten mit Umgehung der eigentlichen Bedeutung, das zu ihrer Zeit Gebräuchliche oder in den Zeitverhältnissen Gelegene, in den Text hinein.[2]

But ἐγκαλέω does not mean "ausrufen" or "to call *out*" but literally "to call *in*, to summon". In Egyptian papyri the word is used in the sense of "to accuse".[3]

> τῇ μητρί μου Ἑρμιόνῃ φαρμα|κείας ἐνκαλῶν …
> … accusing my mother Hermione of poisoning (*P.Oxy.* III 486.21–2, 130s AD)

The LXX's πάσης ἀπωλείας τῆς ἐγκαλουμένης does not mean that people had to call out their lost object in the streets. Instead the LXX denotes that, in order to retrieve their property, people had to lodge a formal complaint with a local official or file charges at a court of law.

When comparing the LXX to rabbinic halakhah, it makes better sense first to establish —by means of literature, papyri, and inscriptions—the meaning of the Greek. Comparing the

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[1] Frankel, *Einfluss*, 95.
[2] Frankel, *Einfluss*, 97.
[3] F. Preisigke, *Wörterbuch der griechischen Papyrusurkunden* (2 vols; Berlin, 1925), I, 411–2; A. Le Boulluec and P. Sandevoir, *L'Exode: Traduction du texte grec de la Septante, introduction et notes* (La Bible d'Alexandrie 2; Paris, 1989), 226; J. Schaper, 'Exodos', in M. Karrer and W. Kraus (eds), *Septuaginta Deutsch: Erläuterungen und Kommentare zum griechischen Alten Testament* (2 vols; Stuttgart, 2011), I, 258–324, at 305.

use of words and sentence structures in other compositions will throw into relief how reasonable speakers of the language might construe the sense of the text. (Such comparisons should give preference to texts close to the LXX both in time and in content.) One should compare the LXX to rabbinic halakhah only after establishing the meaning of the LXX. The sequence of this method—first Greek, *then* halakhah—opens up the possibility for *difference* between the LXX and the halakhah. This method takes seriously the possibility that the translation preserves ideas otherwise unattested in Jewish tradition.

1.6.2 Abraham Geiger

Abraham Geiger, a contemporary of Frankel, was his most important critic. Geiger had a very different view of the history of Judaism, which he laid out in *Urschrift und Übersetzungen der Bibel* (1857). The first and second part of the book are an investigation into the effects of the development of halakhah on the versions of the Bible. Geiger cited nine examples where the versions—including the LXX and its revisions—reflect an interpretation that differs from rabbinic tradition.[1] From these differences he concluded that there must have been an "old halakhah".

> es existirte eine ältere vormischnaitische Halachah, die systematisch umgewandelt wurde und die ihre Trümmer zurückliess in einer Anzahl von Werken, welche dieselben neben neueren Elementen aufbewahren, welche gerade deshalb dann weniger beachtet wurden; die recipirte jüngere Entwickelung gestaltete die

[1] The nine examples are Gen. 5:24; Exod. 13:3; 21:7; 22:6–14; Num. 9:10; 12:1; 19:23–24; Deut. 19:16f; 26:12.

> Erinnerungen aus der alten Zeit unwillkürlich nach ihrem Massstabe um und überlieferte sie uns in dieser Form.[1]

Geiger attributed the old halakhah to the Sadducees and the new halakhah to the Pharisees. The breaking point for the transition from old to new was, in his opinion, the Bar Kokhba revolt.

> als aber der Staat zusammenbrach, das politische Leben aufhörte, die religiöse Genossenschaft der einzige Ueberrest war, … da sanken die Sadducäer zur vollen Bedeutungslosigkeit herab, und man liess es sich angelegen sein, ihr Werk von Grund aus umzugestalten. Die pharisäische Halachah trat an die Stelle der sadducäischen und ward in absichtlichem Gegensätze zu dieser consequent ausgebildet.[2]

Of course there are other possible explanations for the variations between the versions and rabbinic halakhah. Geiger dedicated the third part of *Urschrift und Übersetzungen* to the variations due to a lack of attention to detail (e.g., אחד instead of אחר in Gen. 22:13) and the variations due to to tendentious changes for political or theological reasons (e.g., reading כסא or כְּסֵיָה instead of כֵּס יָהּ in Exod. 17:16).

Geiger was one of the first scholars to admit the possibility of a historical development to halakhah. He illustrated the development with detailed evidence. Long after the discovery of new evidence the skeleton of his developmental model remains valid—until today.

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[1] A. Geiger, *Urschrift und Übersetzungen der Bibel in ihrer Abhängigkeit von der inneren Entwicklung des Judenthums* (Breslau, 1857), 427.
[2] Geiger, *Urschrift und Übersetzungen der Bibel*, 431.

In one respect, however, Geiger's model is too restrictive. The mere distinction between "old" and "new" cannot explain the full variety of the legal traditions of the versions. Frankel suggested that some bits of the LXX reflected *local* practice. Different legal traditions may have developed *at the same time*.[1] To label all traditions found in the versions "old" and all traditions found in the Bavli "new" obscures the chronological *and geographic* complexity of the history of Judaism.[2] To be fair, Geiger did allow for some geographic variety within Judaism but those varieties of Judaism were, in his opinion, limited to three centres of authority: Jerusalem, Mt. Gerizim, and the Onias temple. Each of these centres had its own authorised version of the Bible: MT, SP, and LXX. The evidence does not testify to a division as neat as that.[3]

1.6.3 Leo Prijs

Leo Prijs's *Jüdische Tradition in der Septuaginta* (1948) analyses the influence of Jewish tradition—broadly defined—on the LXX. The first chapter, on halakhah, cites thirteen LXX passages that may have been influenced by halakhah.[4]

One problem with Prijs's approach is the assumption that the LXX's *Vorlage* was identical to the MT. Prijs consequently attributed all variation between LXX and MT to the

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[1] On the variety of ancient Judaism, see esp. M. Goodman, 'Josephus and Variety in First-Century Judaism', in id., *Judaism in the Roman World: Collected Essays* (Ancient Judaism and Early Christianity 66; Leiden, 2006), 33–46.
[2] On the chronological complexity of the Talmud, see M. Vidas, *Tradition and the Formation of the Talmud* (Princeton, 2014).
[3] Teeter, *Scribal Laws*, 161–74; Schorch, 'Die prä-Samaritanischen Fortschreibungen', in W. Bührer (ed.), *Schriftgelehrte Fortschreibungs- und Auslegungsprozesse: Textarbeit im Pentateuch, in Qumran, Ägypten und Mesopotamien* (Forschungen zum Alten Testament II 108; Tübingen, 2019), 113–32.
[4] The passages are Exod. 21:6, 17, 19, 22–3; 22:6–14, 19, 28, 30; 23:2, 7–8a; Lev. 18:21; 21:9; Deut. 22:18.

LXX's translators.[1] Even before the discovery of the Scrolls, that assumption was not warranted by the evidence (note, e.g., the correlation between the Nash Papyrus, published in 1903, and the LXX of Deut. 6:4). The LXX of Exod. 12:17a, for example, reads "this commandment" instead of "the *matzot*".

וּשְׁמַרְתֶּם אֶת־הַמַּצּוֹת

You shall keep the *matzot*

καὶ φυλάξεσθε τὴν ἐντολὴν ταύτην·

You shall keep this commandment

Prijs referred to the *Mekhilta deR. Ishmael*, which cites R. Josiah arguing for the reading הַמִּצְוֹת, "the commandments", instead of הַמַּצּוֹת, "the matzot": "Just as one should not be slow when making the mazzah, lest it leaven, so should one not be slow to perform a religious duty."[2] Prijs argues that the same play on words underlies the LXX.[3] But it is more economical to assume that the LXX relies on a *Vorlage* similar to the SP, which has a singular "commandment"—just like the LXX.

ושמרתם את המצוה

You shall keep the commandment

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[1] In the preface he writes: "Auf allgemeine Frager der Textkritik am MT sind wird [*sic*] nicht eingegangen, da sie nich zu unserem Thema gehören. Auch Feststellung von Lesarten der LXX-Vorlage war nicht der eigenlichte Zweck unserer Arbeit, sondern der Nachweis jüdischer Weltanschauung, jüdischer Gesetze, jüdischer Aggada und überhaupt jüdischer Exegese in der LXX. Diese Exegese beruht nun aber in der LXX, ebenso wie in deren jüdischen Quellen, auf der gleichen Textgrundlage: auf derjenigen, die uns im MT vorliegt. An keiner der von uns behandelten Stellen ergab sich die Notwendigkeit der Annahme einer anderen LXX-Vorlage als der masoretischen." L. Prijs, *Jüdische Tradition in der Septuaginta* (Leiden, 1948), xxi.
[2] *Mekhilta Pisha* 9; Lauterbach (ed.), *Mekhilta de-Rabbi Ishmael*, 52.
[3] Prijs, *Jüdische Tradition in der Septuaginta*, 38.

Once again it is not always a good idea to equate the LXX with rabbinic tradition. Alternative explanations for the final shape of the LXX should be taken seriously, such as the possibility of a different source text.

1.6.4 Elias Bickerman

In two articles (from 1956 and 1959) Elias Bickerman argued that the LXX translators "harmonized the sacred law with the practice of Ptolemaic Egypt."[1] Because Ptolemy II initiated and funded the translation project, the translators sought to align their laws with the laws of Egypt. This narrative of royal sponsorship is well known from the *Letters of Aristeas*. It finds support in the works of Philo, Josephus, and the rabbis.[2] Bickerman found examples of this hypothesis buried in the details of the LXX itself. All the examples Bickerman cited fall roughly within the modern category of property law. I will discuss three.

First, the Covenant Code prescribes the following punishment for an assailant who wounded but did not kill his victim.

וְנִקָּה הַמַּכֶּה רַק שִׁבְתּוֹ יִתֵּן וְרַפֹּא יְרַפֵּא

> … the one who hit (him) goes free, except that he shall give his rest and cause him to heal. (Exod. 21:19b)

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[1] E. J. Bickerman, 'The Septuagint as a Translation', in A. Tropper (ed.), *Studies in Jewish and Christian History: A New Edition in English Including* The God of the Maccabees (2 vols.; Ancient Judaism and Early Christianity 68; Leiden, 2007), I, 163–94 (citation at 189); id., 'Two Legal Interpretations of the Septuagint', in Tropper (ed.), *Studies in Jewish and Christian History*, I, 195–217. For an early critique of 'Two Legal Interpretations', see J. J. Rabinowitz, 'Exodus XXII 4 and the Septuagint thereof', *Vetus Testamentum* 9 (1959), 40–6.

[2] For references to all the evidence for the reception of the *Letter*, see A. Wasserstein and D. J. Wasserstein, *The Legend of the Septuagint: From Antiquity to Today* (Cambridge, 2006).

It is not immediately clear what it means to "give" (נתן) rest to someone or how the assailant can "cause to heal" his victim (note the *pi'el* of רפא). In the LXX the assailant is liable to *pay* the victim's time off work and his medical bills:

> ἀθῷος ἔσται ὁ πατάξας· πλὴν τῆς ἀργίας αὐτοῦ ἀποτείσει καὶ τὰ ἰατρεῖα.
>
> … the one who hit (him) shall go unpunished, except that he shall repay his unemployment and his medical treatment.

Bickerman suggested that the reason behind this interpretation was "the practice of Ptolemaic Egypt".[1]

Second, the MT of Exodus commands that the man who let his animal graze on someone else's field or vineyard shall refund the loss only with "the best" of his produce.

> מֵיטַב שָׂדֵהוּ וּמֵיטַב כַּרְמוֹ יְשַׁלֵּם
>
> He shall repay from the best of his field and from the best of his vineyard. (Exod 22:4b)

The LXX contains a longer version of the same law, which maintains that the animal's owner should only repay with the best produce of his field when the animal ate *all* of his neighbour's field.

[1] Cf. Le Boulluec and Sandevoir, *L'Exode*, 219: "la LXX met la loi en harmonie avec la pratique de l'Égypte ptolémaïque en exigeant le règlement des dépenses médicales".

ἀποτείσει ἐκ τοῦ ἀγροῦ αὐτοῦ κατὰ τὸ γένημα αὐτοῦ· ἐὰν δὲ πάντα τὸν ἀγρὸν καταβοσκήσῃ, τὰ βέλτιστα τοῦ ἀγροῦ αὐτοῦ καὶ τὰ βέλτιστα τοῦ ἀμπελῶνος αὐτοῦ ἀποτείσει.

He shall repay from his field according to its produce, but if it grazes upon the entire field, he shall repay the best of his field and the best of his vineyard.

Bickerman argued: "This addition agreed with Ptolemaic conditions."[1] There are indeed a number of papyri confirming that the owner of an animal that grazed on another's field was liable for restitution (e.g., *P.Petr*. III 26).

Third, the deuteronomic law commands that every creditor should forgive all his debtors every seventh year:

שָׁמוֹט כָּל־בַּעַל מַשֵּׁה יָדוֹ אֲשֶׁר יַשֶּׁה בְּרֵעֵהוּ

Every master of a loan should release the debt of his hand which he lends to his neighbour (Deut. 15:2)

The LXX translated "every master of a loan" into "every private loan".

ἀφήσεις πᾶν χρέος ἴδιον, ὃ ὀφείλει σοι ὁ πλησίον

You shall forgive every private loan that your neighbour owes you

Commenting on this passage, Bickerman argued:

[1] Bickerman, 'Two Legal Interpretations of the Septuagint', 215.

> the Septuagint is in agreement with Greek law, as well as with the ordinance of Ptolemy II, which in a similar manner reserves for the government alone the right to sell fiscal debtors into slavery.[1]

How can we be sure that the LXX really was in line with Ptolemaic law? It appears that Bickerman assumed the differences between MT and LXX could always be explained as resulting from the translators' familiarity with Ptolemaic jurisprudence. In 'The Septuagint as a Translation', he asserted:

> for the greater part, the divergences between the Greek and the Hebrew Law of Moses are intentional. The rabbinic tradition already spoke of the changes made "for the King Ptolemy".[2]

However, in each of these cases there are more economical explanations for the difference between MT and LXX. In the case of Exod. 21:19 Bickerman did not, unfortunately, refer to any primary sources from Ptolemaic Egypt. An extensive search for evidence to confirm or deny this was the "practice" at the time did not reveal any. Furthermore, the Mishnah, Mekhilta, Targum Pseudo-Jonathan, and Peshitta all arrived at an interpretation quite similar to the LXX's, proving that the idea of the assailant refunding the victim's medical expenses did not necessarily originate in Ptolemaic Egypt.[3] In the case of Exod. 22:4 it seems equally plausible that the translators' *Vorlage* already contained the longer version, especially since it also appears in the SP:

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[1] E. J. Bickerman, *The Jews in the Greek Age* (Cambridge, MA, 1990), 194.
[2] Bickerman, 'The Septuagint as a Translation', 186.
[3] Prijs, *Jüdische Tradition in der Septuaginta*, 10.

שלם ישלם משדהו כתבואתה ואם כל השדה יבעי מיטב שדהו ומיטב כרמו ישלם:

> He shall repay from his field according to its produce and if it grazes on all of his field, he shall repay from the best of his field and from the best of his vineyard. (Exod. 22:4)

The antiquity of this reading is proven by two fragments of *4QRewritten Pentateuch* (*4QRP*^{a} X–XII, 6–8; *4QRP*^{d} I, 9–11).[1] Bickerman, who was well aware of the SP, nevertheless maintained that "the translators *accepted* this confused text because it agreed better with the conditions of Ptolemaic Egypt."[2] In the case of Deut. 15:2, the precise distinction between private and public is an invention of Roman law unknown in Ptolemaic Egypt.[3] The restrictions on debt slavery imposed by Ptolemy II did not amount to a categorical prohibition on debt slavery. The purpose of the restrictions on enslavement in the Ptolemaic provinces of Syria and Phoenicia was to ensure peasants continued to work on the royal estates and paid their taxes to the royal treasury.[4]

Bickerman's suggestion that the jurisprudence of Ptolemaic Egypt influenced the LXX is not impossible, but it remains to be proven. With the increasing availability of Egyptian documents, it is an opportune moment to reevaluate this hypothesis.

1.6.5 Geza Vermes

In a chapter on 'Early Old Testament Exegesis' in the *Cambridge History of the Bible* (1970) Geza Vermes made a distinction between "pure" and "applied" exegesis.[5] Pure exegesis

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[1] Teeter, *Scribal Laws*, 35–58.
[2] Bickerman, 'Two Legal Interpretations of the Septuagint', 216 my italics.
[3] Ulpian, *Dig.* 1.1.1.2.
[4] *C.Ord.Ptol.* 21–2.
[5] G. Vermes, 'Bible and Midrash: Early Old Testament Exegesis', in P. R. Ackroyd and C. F. Evans (eds), *The Cambridge History of the Bible, 1: From the Beginnings to Rome* (Cambridge, 1970), 199–231.

responds to problems arising from the text; a biblical text may be unclear, imprecise, contradictory, or otherwise unacceptable. Applied exegesis is legal reasoning cast in the form of exegesis. Like Frankel and Geiger, Vermes argued that "early exegesis" tried to solve problems created by canonisation.[1] When two different laws carry the same authority and end up in the same composition, they create a tension that needs to be resolved.

The slave laws of Exodus, Leviticus, and Deuteronomy all became part of the same Pentateuch, creating tension. Exod. 21:2–6, for example, gives the male slave the choice to go free after seven years or voluntarily to accept lifelong slavery. The law makes an exception for the female slave:

וְכִי־יִמְכֹּר אִישׁ אֶת־בִּתּוֹ לְאָמָה לֹא תֵצֵא כְּצֵאת הָעֲבָדִים׃

> If a man sells his daughter as a slave, she will not go out when the male slaves go out. (Exod. 21:7)

Deut. 15:12 annuls the exception of Exod. 21:7. Instead the deuteronomic law groups male and female slaves together: "If one of your brothers, a Hebrew man *or a Hebrew woman*, is sold to you and serves you for six years, in the seventh year you shall let him go free" (cf. Lev. 25:44–6). The combination of the two laws in the same Pentateuch left the exception of Exod. 21:7 in an awkward position. Vermes pointed out the LXX's translator did not render אמה as δούλη, "slave-woman"—the normal equivalent in the LXX—, but as οἰκέτις, "household slave".

[1] Frankel, *Einfluss*, 91; Geiger, *Urschrift und Übersetzungen der Bibel*, 187–8.

ἐὰν δέ τις ἀποδῶται τὴν ἑαυτοῦ θυγατέρα οἰκέτιν, οὐκ ἀπελεύσεται ὥσπερ ἀποτρέχουσιν αἱ δοῦλαι.

If someone gives his own daughters as an *oiketis*, she will not go free like the female slaves run off.

This unexpected translation communicates "not that a Hebrew maidservant is never to be freed, but that the rules concerning her liberation differ from those affecting the Gentile slave".[1] In this interpretation Exod. 21:6–7 does not contrast the *female* Hebrew slave to the *male* Hebrew slaves but the female *Hebrew* slave to all *gentile* slaves. The rabbis, for reasons unknown, took all of Exod. 21:7 to refer to Hebrew slaves. They understood the exception to concern only the specific case of an underage Israelite girl. She has to be released as soon she has her first period or as soon as she turns twelve.[2] She is an exception in the sense that she "goes free" (יצא) for other reasons than male Hebrew slaves go free. The male slave is free to leave his master's household after six years of service—different rules apply to the female slave. In Vermes' reconstruction both the LXX and rabbinic halakhah rely on the same premise that all laws within the Pentateuch are equally valid.[3] The LXX is an organic part of that development in early halakhah.

1.6.6 Jan Joosten

Jan Joosten's article, 'Legal Hermeneutics and the Tradition Underlying the Septuagint' (2016), treats the same problem in Exod. 21:7.[4] Joosten agrees with Geiger and

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[1] Vermes, 'Bible and Midrash', 211.
[2] See *Mekhilta deR. Ishmael* ad loc.; *m. Kiddushin* 1.2; Rashi; Tg. Ps.-J.
[3] So also I. L. Seeligmann, 'Voraussetzungen der Midraschexegese', in G. W. Anderson et al. (eds), *Congress Volume Copenhagen 1953* (Supplements to Vetus Testamentum 1; Leiden, 1953), 150–81.
[4] Joosten, 'Legal Hermeneutics and the Tradition Underlying the Septuagint', in W. Kraus, M. N. van der Meer, and M. Meiser, *XV Congress of the International Organization for Septuagint and Cognate Studies: Munich, 2013* (Atlanta, GA, 2016), 551–9.

Vermes that the combination of different law codes in the composition of the Pentateuch created a problem. But the LXX's solution, Joosten argues, was not to take the exception of Exod. 21:7 as referring to any Hebrew slave girl (the reading of Frankel, Geiger, and Vermes) but as referring to a "concubine" in particular:

> The exegetical solution to this problem was to treat this case as a special kind of slavery that did not allow for liberation in the seventh year. When a father sold his daughter to become the *concubine* of another Israelite, the liberation in the seventh did not apply.[1]

That is why the οἰκέτις does not go free when the other female slaves do (note the LXX's αἱ δοῦλαι instead of the MT's העבדים, a detail Frankel, Geiger, and Vermes slighted). This reading of the LXX is corroborated by the use of the word οἰκέτις elsewhere: Prov. 30:23 refers to an οἰκέτις who "throws out her own mistress" (ἐκβάλῃ τὴν ἑαυτῆς κυρίαν). Philo uses οἰκέτις to refer to Hagar (*Congr.* 152). Joosten's critique uncovers that Vermes and his predecessors equated the LXX with rabbinic halakhah when the LXX is actually expressing something different.

1.6.7 Andrew Teeter

In *Scribal Laws* (2014) Andrew Teeter presents the first systematic study of the development of the laws in the late second temple period since Geiger's *Urschrift und Übersetzungen der Bibel*. Since Geiger, the Scrolls have changed our understanding of the transmission of the

[1] Joosten, 'Legal Hermeneutics and the Tradition Underlying the Septuagint', 556.

Hebrew Bible and our understanding of the early history of Jewish law.[1] *Scribal Laws* fills that gap in scholarship.

In the first chapter Teeter points out a profound problem of method: How can we distinguish between an accidental and a deliberate variant? If it was deliberate, how can we discern the motivations for a variant? This problem, when it turns out to be impossible to solve, dissolves the distinction between transmission and reception. When is a variant a "scribal error" and when is it a "deliberate alteration"? It may, in other words, be impossible to make out whether a scribal variant aims at bringing out the meaning "from" the text or at imposing an interpretation "on" the text.[2] The same is true for almost all the examples discussed in this thesis.

Throughout the book Teeter repeatedly argues that variants were motivated primarily by a desire for consistency among the laws of the Pentateuch. This was the primary motivation behind the expanded—or "facilitating"—texts of the law on grazing in Exod. 22:4 (in LXX, SP, and *4QRP*), of the law of boiling a kid in its mother's milk in Exod. 23:19 (in some manuscripts of LXX, and SP), and of the prohibition on private slaughter in Lev. 17:4 (in LXX, SP, and *4QLev*^{d}).[3] Variants in Lev. 15:3; Deut. 6:4 and 17:5 are adaptions from similar-sounding passages elsewhere. Teeters labels these adaptations "pastiches". Sometimes the wording of a similar passage is simply "transferred" from one place to another (as in Exod. 21:16, cf. Deut. 24:7).[4] The harmonisation of the laws on the disposal of blood in in

[1] For the impact of the Scrolls on the study of halakhah, see L. H. Schiffman, 'Halakhah and History: The Contribution of the Dead Sea Scrolls to Recent Scholarship', in id., *Qumran and Jerusalem: Studies in the Dead Sea Scrolls and the History of Judaism* (Grand Rapids, MI, 2010), 63–78; A. P. Jassen, 'American Scholarship on Jewish Law in the Dead Sea Scrolls', in D. Dimant (ed.), *The Dead Sea Scrolls in Scholarly Perspective: A History of Research* (Studies on the Texts of the Desert of Judah 99; Leiden, 2012), 101–54.
[2] Teeter, *Scribal Laws*, 7–14.
[3] For the categories of "exact" and "facilitating" text-types, see Teeter, *Scribal Laws*, 205–67, esp. 260.
[4] The same goes for Exod. 21:36; 23:18, 22; Deut. 24:20; 30:15–6.

the LXX (see, e.g., Lev. 1:15; 7:2; Deut. 12:27) was driven by a concern for "inner-textual" consistency.

Teeter critiques the assumption—of Frankel and Geiger—that legal practice informed textual variants. The attitude of the scribes towards the text can explain most of the variants among the versions. He writes:

> there is a widespread, often unexamined assumption that changes in the text of law are, *qua* law, direct reflexes of extra-textual realities. Such is a serious misreading of many of these changes, which are better explained, at least in the first instance, as representing inner-textual interpretive processes such as assimilation or harmonization. We must take seriously the possibility that exegesis might have functioned to some extent as an independent religious practice in the period, or that the directionality between text and praxis might have run in the opposite direction.[1]

Teeter's methodological concern is pressing. It is often difficult to discern whether a variant resulted from transmission or reception, whether a scribe or translator was "bringing out" meaning or "imposing" an interpretation—or, to use Vermes's terms, whether a variant resulted from "pure" or "applied" exegesis.

[1] Teeter, *Scribal Laws*, 31.

In the case of the LXX, however, the concern for "inner-textual" consistency cannot explain all the variants. Sometimes contemporary *reality* influenced the *text* of the law.[1] Not all of Bickerman's examples of the influence of the practice of law on the LXX's text were convincing—but there may be other, more subtle examples. Even if there is no direct correlation between LXX and contemporary legal practice, the LXX may still preserve more subtle "traces" of the past. Marc Bloch spoke of the "tracks which the past unwittingly leaves along its trail".[2] How, for example, are we to explain that sudden appearance in the LXX of a κριτήριον, "a court of law"—for which no word existed in Biblical Hebrew?

1.7 Method

The primary purpose of this thesis is to understand the LXX's laws in their own terms. Instead of estimating the extent to which the LXX's laws align or do not align with rabbinic halakhah, this thesis seeks to understand the meaning of the LXX's laws—i.e., the extent to which they reflect their *Vorlage*, derive from traditions of exegesis, involve efforts to update archaic laws with current jurisprudence or practice etc. The LXX is, of course, a translation. This brings its own set of challenges. Whatever "non-biblical" traditions the LXX preserves —if any—are presented as if they are "biblical". Precisely because the translation generally

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[1] Here I agree with James Kugel, who writes: "The methods and scope of biblical interpretation did not remain static; later ages of scholars and readers worried about questions that never troubled the inhabitants of Persian Judea and sought answers to them in ways that might have been thought strange indeed. Yet one aspect of biblical exegesis did remain a constant, and it should already be apparent in these brief remarks about Judea in the Persian period. It is precisely *the belief that sacred texts have a bearing on the present*" (Kugel and Greer, *Early Biblical Interpretation*, 38). Kugel argues that the continued interest in the texts not only drove the exegesis but also the transmission of these texts: "If such texts have come down to us, it is not because they were written down once and then painstakingly preserved in vacuum cases for hundreds of years, only to be reopened in the second century in the time of the earliest of our surviving commentaries to be written about them. If they have come down to us, it is because they were, *almost from the time of their composition*, copied and recopied in every century—and, in all likelihood, not by mindless scribes bent only on preserving them, but by people who had some use for these texts, sages and priests, court officials and teachers. Such figures doubtless did more than preserve the texts: they read and referred to them, explained them to others, sought to apply them to new situations or to extend their meaning—in short, they *interpreted* them." (Kugel, *In Potiphar's House*, 4).

[2] M. Bloch, *The Historian's Craft* (tr. P. Putnam; New York, 1953), 62.

mimics the original quite closely, one might easily miss the subtle deviations—which at times have far-reaching legal implications. Translation has the power to cloak novel ideas as ancient scripture. Which of the LXX's laws are truly "scriptural", "harmonising" interpretations, or local practices "imposed" on scripture? This can only be teased out after weighing the comparative evidence.

In order to understand the LXX's laws, it is often more helpful to compare the text to contemporary Greek texts—literature, papyri, and inscriptions—than to later rabbinic literature. Therefore, we should first establish the meaning of the Greek, *then* situate the LXX in the history of Jewish law. This method leaves room for the possibility that the LXX preserves legal traditions that were ignored by or simply unknown to the rabbis. At the same time, however, rabbinic literature might preserve ancient traditions—which, in embryonic form, might date back to the time of the LXX's translation.

In order to understand the LXX one should reconstruct how reasonable users of Hebrew and Greek would have construed the meaning of the texts *at the time of the translation*. Like most ancient exegetes, the LXX's translators did not make a distinction between the original, historical meaning and the present meaning of the text. They were no "originalists". They took Hebrew words to mean whatever they meant in their own days. Consequently, the analysis should not focus on what the *Vorlage* meant at the time of its composition, but also what it meant at the time of the translation. The translators' "presentism" extends beyond mere semantics. By the time of the LXX the biblical traditions had developed for many centuries. The laws of the Torah were not preserved in a pristine vacuum. They led a life of their own—they grew rich in "echoes, memories, and associations". The traditions of interpretation shaped the translator's understanding of the text and sometimes even their translation. This process by which the texts "gained" meaning is, of

course, difficult to detect—especially since the LXX is often the first extant written interpretation of the texts. Fortunately, other early interpretations sometimes survive. The Deuteronomic Code, for example, picks up some of the laws of the Covenant Code—thus providing valuable evidence for how the deuteronomic school understood the Covenant Code. In other cases, an early tradition can be reconstructed from similarities between Philo, Josephus, the Scrolls, the Targums, and early rabbinic literature.

2 THE SEAMS OF THE LAWS OF DEPOSIT (EXOD. 22:6–14)

> Memory is the seamstress, and a capricious one at that. Memory runs her needle in and out, up and down, hither and thither. We know not what comes next, or what follows after. Thus, the most ordinary movement in the world, such as sitting down at a table and pulling the inkstand towards one, may agitate a thousand odd, disconnected fragments, now bright, now dim, hanging and bobbing and dipping and flaunting, like the underlinen of a family of fourteen on a line in a gale of wind.
>
> —Virginia Woolf, *Orlando*, 48

2.1 Introduction

The law of deposit in Exod. 22:6–14 has been cited as a prime example of the influence of halakhah on the LXX. There are some significant differences between the Hebrew and Greek texts of the law. The LXX has, for example, an extra clause: "and he shall swear" (καὶ ὀμεῖται) in v. 7; and the LXX translates the idiom "to stretch out one's hand" (שלח יד) as "to act presumptuously" (πονηρεύομαι).[1] This chapter will compare the biblical law of deposit with traditions of interpretation in the Hebrew Bible and rabbinic literature, and also with contemporary Egyptian papyri. What influenced the LXX's translator in his decision to add an extra clause and to deviate from the usual translations of "to stretch out one's hand"?

It has been argued that both differences resulted from the introduction of an emerging halakhah. The LXX's addition of the oath-clause may well be based on the exculpatory oath in the second half of the very same law (v. 10). Furthermore, the lesser-known law of deposit in the Holiness Code (Lev. 5:20–6) testifies to the importance of oaths in the context of

[1] The gloss is *LSJ*'s.

property delicts. The LXX's use of the word πονηρεύομαι has a clear parallel in Ptolemaic law, which judges the defendant not only for the results of his actions but also for his *intentions*.

Frankel argued that the LXX's version of the law of deposit introduced the idea of liability for negligence. Biblical Hebrew does not have a word that corresponds exactly to the modern legal concept of "negligence". Nevertheless the idea is already implicit in the structure of the law of deposit. Contrasting the responsibility of one depositary to another depositary's, the law implies different standards of "reasonable care".[1]

The traditions of interpretation shaped the translator's understanding of the law of deposit.

2.2 The "Covenant Code"

The "Covenant Code" in Exod. 21:1–23:33, also called the "Book of the Covenant" or the "Covenant Collection", is an anthology of casuistic laws on criminal and civil issues (21:1–22:17) and apodictic laws on moral and ritual issues (22:18–23:33). Casuistic laws follow the structure: "if *x*, then *y*"; apodictic laws state categorically: "you shall not do *x*". Albrecht Alt argued that the literary forms (*Gattungen*) were clues to the relative dating of the laws. In his view casuistic laws preceded apodictic laws.[2] This conclusion has been criticised on methodological grounds. It has proven a lot more complicated to move from a *Gattung* to a particular historical context than early form critics, such as Herman Gunkel and Sigmund

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[1] The phrase "reasonable care" is from a classic definition of negligence in Donoghue v Stevenson, 1932 SC (HL) 31. The question of the standards of liability—whether "fraud" (*dolus*), "accident" (*casus*), or "negligence" (*culpa*)—will be discussed in more detail below.

[2] A. Alt, 'The Origins of Israelite Law', in id., *Essays on Old Testament History and Religion* (tr. R. A. Wilson; Oxford, 1966), 79–132. The historical conclusions he drew from that distinction in form are contested, see R. Westbrook, 'What is the Covenant Code?', in B. M. Levinson (ed.), *Theory and Method in Biblical and Cuneiform Law: Revision, Interpolation and Development* (Sheffield, 1994), 15–36.

Mowinckel, thought. The Middle Assyrian Laws, which predate even the earliest dating of the Covenant Code, already combine casuistic and apodictic laws.[1]

There is an ongoing debate about what to call the anthology of laws: should we call them a "code", a "collection", or a "book" (note ספר הברית in Exod. 24:7). The debate over nomenclature is relevant to consideration of the anthology's early reception history because it was sparked by scholarly understanding of the legal *status* of anthologies of ancient laws. Scholars have argued that Code of Hammurabi was not really a "code" in the modern sense of the word—i.e., "a systematic collection of laws" (*OED*). It might have been a collection of complex cases for advanced study.[2] Because of the verbal and structural similarities between biblical and Ancient Near Eastern laws, biblical scholars argue that the same applies to biblical laws.[3]

The idea that these texts should be read as laws—i.e., as rules regulating behaviour—was a later innovation. Some date this innovation to the early Persian Period.[4] The text of the laws probably did not play any role in the process of adjudication in the courts of ancient Israel. Judges based their verdicts on a vague concept of justice or on precedent but not on the semantics of a legal text. The constitution of Deuteronomy merely instructs judges to "judge the people with a just judgment" (ושפטו את העם משפט צדק), to ignore the status of the plaintiff and the accused, and not to accept bribes (16:16–9). It says nothing about using any

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[1] Westbrook, 'What is the Covenant Code"', 31–2.
[2] J. Bottéro, 'The "Code" of Hammurabi', in id., *Mesopotamia: Writing, Reasoning, and the Gods* (tr. Z. Bahrani and M. Van De Mierop; Chicago, 1992), 156–84; R. Westbrook, 'Cuneiform Law Codes and the Origins of Legislation', *Zeitschrift für Assyriologie* 79 (1989), 201–22.
[3] B. S. Jackson, *Wisdom-Laws: A Study of the Mishpatim of Exodus 21:1–22:16* (Oxford, 2006).
[4] A. Fitzpatrick-McKinley, *The Transformation of Torah from Scribal Advice to Law* (Library of Hebrew Bible/Old Testament Studies 287; Sheffield, 1999); P. Frei, 'Persian Imperial Authorisation: A Summary', in J. W. Watts (ed.), *Persia and Torah: The Theory of Imperial Authorization of the Pentateuch* (Society of Biblical Literature Symposium Series 17; Atlanta, GA, 2001), 5–40; M. LeFebvre, Collections, Codes, and Torah: The Re-Characterization of Israel's Written Law (The Library of Hebrew Bible/Old Testament Studies 451; Sheffield, 2006); K. Schmid, 'The Persian Imperial Authorization as Historical Problem and as Biblical Construct: A Plea for Differentiations in the Current Debate', in G. N. Knoppers and B. M. Levinson (eds), *The Pentateuch as Torah: New Models for Understanding Its Promulgation and Acceptance* (Winowa Lake, IN, 2007), 22–38.

text to guide the decisions of judges. Nevertheless, these texts enjoyed such a long *Nachleben* that people must have considered them meaningful even if they did not consult them directly for judicial verdicts.[1]

2.3 The Law of Deposit

The Covenant Code's law of deposit describes various courses of action in case a deposit—property the owner entrusted to someone else's care—is stolen or damaged (Exod. 22:6–14). The law first considers the case where the owner gives "silver or vessels" (כסף או כלים) to his neighbour to "guard" (שמר). A thief, however, steals the property in the depositary's custody.

כִּי־יִתֵּן֩ אִ֨ישׁ אֶל־רֵעֵ֜הוּ כֶּ֣סֶף אֽוֹ־כֵלִ֗ים לִשְׁמֹר֙ וְגֻנַּ֣ב מִבֵּ֣ית הָאִ֔ישׁ אִם־יִמָּצֵ֥א הַגַּנָּ֖ב יְשַׁלֵּ֥ם שְׁנָֽיִם׃ 7 אִם־לֹ֣א יִמָּצֵ֗א
הַגַּנָּב֙ וְנִקְרַ֣ב בַּעַל־הַבַּ֔יִת אֶל־הָאֱלֹהִ֔ים אִם־לֹ֕א שָׁלַ֖ח יָד֑וֹ בִּמְלֶ֖אכֶת רֵעֵֽהוּ׃

If a man gives to his neighbour silver or vessels to guard, and it is stolen[2] from the man's house: if the thief is found, he shall repay double, 7 [but] if the thief is not found, [then] the owner of the house shall be brought to God, if (?) he did not stretch out his hand to his neighbour's property. (Exod. 22:6–7)

Modern scholarship has focused on a number of unclear elements within the procedure (v. 7).

[1] Eckart Otto in a private conversation, 2 July 2019.
[2] Note that the SP and *4Q22* XXIV, 16 have a *niph'al* (נגנב), instead of a *pu'al*, the internal passive of the *qal* (גֻּנַּב).

1. It is unclear what it means for the homeowner to "be brought to האלהים". The law's אלהים could refer to officials (compare the פללים in 21:22), or to a temple, sanctuary, or cultic site.[1]
2. It is also uncertain *for what reasons* the homeowner is subject to this procedure. The law describes the homeowner's wrongdoing as "stretching out one's hand" (שלח יד 22:7). But this could be an expression of intentional fraud, accident, or negligence.[2]
3. The syntax of 22:7 is problematic. If it were an indirect quotation of an oath of innocence, we would expect אם שלח ידו, "if he *did* stretch out his hand" (instead of אם לא שלח ידו, "if he did *not* stretch out his hand").[3] If these words really are an indirect quotation of an oath of innocence, the syntax is unconventional. The syntax of oaths in Biblical Hebrew is elliptic—the apodosis of the curse is often left unpronounced. Instead

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[1] On נקרב, see S. Paul, *Studies in the Book of the Covenant in the Light of Cuneiform and Biblical Law* (Supplements to Vetus Testamentum 18; Leiden, 1970), 92 n. 6 ("a technical legal expression for the taking of an oath (ordeal?) before *ha'elohim*"); R. Westbrook, 'The Deposit Law of Exodus 22,6–12', *Zeitschrift für die alttestamentliche Wissenschaft* 106 (1994), 390–403, at 391–3, 397; C. Houtman, *Exodus* (4 vols; Historical Commentary on the Old Testament 1–4; Peeters, 1993–2002), III, 197–9; Jackson, *Wisdom-Laws*, 338. For אלהים as "household gods", see C. H. Gordon, 'אלהים in Its Reputed Meaning of Rulers, Judges', *Journal of Biblical Literature* 54 (1935), 139–44; A. Draffkorn, 'Ilāni/Elohim,' *Journal of Biblical Literature* 76 (1957), 216–24. For אלהים as "God", see M. Noth, *Exodus: A Commentary* (tr. J. N. Bowden; Old Testament Library; London, 1962), 184–5; D. P. Wright, *Inventing God's Law: How the Covenant Code of the Bible Used and Revised the Laws of Hammurabi* (Oxford, 2009), 255; Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation*, 112 n. 37. This probably means that the defendant had to appear near a sanctuary. In the Laws of Eshnunna, the owner of a house has to appear "at the gate of Tishpak" (*i-na bāb Tišpak*), or, according to version B of the Laws, "at the house of Tishpak" (*i-na bit Tišpak*). There he should "swear by the gods" (*ni-iš ilim i-za-kar-šum*) that he has not "committed evil or fraud" (*i-wi-tam ù sà-ar-tam la e-pu-šu*). Citation from R. Yaron, *The Laws of Eshnunna* (Jerusalem, 1969), 64–5. On the connection between this and the biblical law, see F. C. Fensham, 'New Light on Exodus 21:6 and 22:7 from the Laws of Eshnunna', *Journal of Biblical Literature* 78 (1959), 160–1.

[2] D. Daube, 'Negligence in the Early Talmudic Law of Contract (*Peši'ah*)', in H. Niedermeyer and W. Flume (eds) *Festschrift Fritz Schulz* (2 vols; Weimar, 1951), I, 124–47, at 127–8; P. Humbert, '"Etendre la main" (Note de lexicographie hébraïque)', *Vetus Testamentum* 12 (1962), 383–95, esp. 388, 391; E. Otto, 'Die rechtshistorische Entwicklung des Depositenrechts in altorientalischen und altisraelitischen Rechtskorpora', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 105 (1988), 1–31, at 17; J. M. Sprinkle, *'The Book of the Covenant': A Literary Approach* (Library of Hebrew Bible/Old Testament Studies 174; Sheffield, 2009), 150; Westbrook, 'The Deposit Law of Exodus 22,6–12', 391; Paul, *Studies in the Book of the Covenant*, 93; Wright, *Inventing God's Law*, 272–3; Y. Landman, *The Biblical Law of Bailment in Its Ancient Near Eastern Contexts* (Ph.D. Dissertation, Yeshiva University, 2017), esp. 80–6.

[3] B. K. Waltke and M. O'Connor, *An Introduction to Biblical Hebrew Syntax* (Winowa Lake, IN, 1990), 678–80; W. H. C. Propp, *Exodus 19–40: A New Translation with Introduction and Commentary* (Anchor Bible 2B; New York, 2006), 246–9; B. Conklin, *Oath Formulas in Biblical Hebrew* (Linguistic Studies in Ancient West Semitic 5; Winowa Lake, IN, 2011), 31–2, 41–5.

of 'if I have done *x*, let *y* happen to me' one only hears 'if I have done *x*'. Saul, for example, asks David to take this oath:

וְעַתָּה הִשָּׁבְעָה לִי֙ בַּיהוָ֔ה אִם־תַּכְרִ֥ית אֶת־זַרְעִ֖י אַחֲרָ֑י וְאִם־תַּשְׁמִ֤יד אֶת־שְׁמִי֙ מִבֵּ֣ית אָבִ֔י׃

Swear to me by YHWH, if you cut off my offspring after me and if you destroy my name from my father's house. (1 Sam. 24:22)

In the oath the consequences are left implicit. The author of the law of deposit seems to have forgotten about this, citing the oath as follows: "if he did *not* stretch out his hand to his neighbour's property". Imagining a punitive apodosis here would make little sense. Either this is an otherwise unattested form of the oath, or someone in the long chain of the text's composition and transmission forgot about the oblique syntax of curses.[1]

The law describes a different procedure for deposits of animals (22:9–14).

כִּֽי־יִתֵּ֨ן אִ֜ישׁ אֶל־רֵעֵ֗הוּ חֲמֹור֙ אֹו־שֹׁ֣ור אֹו־שֶׂ֔ה וְכָל־בְּהֵמָ֖ה לִשְׁמֹ֑ר וּמֵ֤ת אֹו־נִשְׁבַּר֙ אֹו־נִשְׁבֶּ֔ה אֵ֥ין רֹאֶֽה׃ 10 שְׁבֻעַ֤ת יְהוָה֙ תִּהְיֶ֣ה בֵּ֔ין שְׁנֵיהֶ֖ם אִם־לֹ֣א שָׁלַ֑ח יָדֹ֗ו בִּמְלֶ֙אכֶת֙ רֵעֵ֔הוּ וְלָקַ֖ח בְּעָלָ֑יו וְלֹ֖א יְשַׁלֵּֽם׃ 11 וְאִם־גָּנֹ֥ב יִגָּנֵ֖ב מֵעִמֹּ֑ו יְשַׁלֵּ֖ם לִבְעָלָֽיו׃ 12 אִם־טָרֹ֥ף יְטֹרָ֖ף יְבִאֵ֑הוּ עֵ֚ד הַטְּרֵפָ֣ה לֹ֔א יְשַׁלֵּ֖ם׃ פ 13 וְכִֽי־יִשְׁאַ֥ל אִ֛ישׁ מֵעִ֥ם רֵעֵ֖הוּ וְנִשְׁבַּ֣ר אֹו־מֵ֑ת בְּעָלָ֣יו אֵין־עִמֹּ֔ו שַׁלֵּ֖ם יְשַׁלֵּֽם׃ 14 אִם־בְּעָלָ֥יו עִמֹּ֖ו לֹ֣א יְשַׁלֵּ֑ם אִם־שָׂכִ֣יר הֹ֔וא בָּ֖א בִּשְׂכָרֹֽו׃ ס

[1] Oath, see A. Jepsen, *Untersuchungen zum Bundesbuch* (Stuttgart, 1927), 38; Sprinkle, *'The Book of the Covenant'*, 146 (both argue that this is an oath because of the similarity between 22:7 and 10); U. Cassuto, *A Commentary on the Book of Exodus* (tr. I. Abrahams; Jerusalem, 1967), 286 (notes some Ancient Near Eastern parallels, e.g., Code of Hammurabi 125). For more examples of exculpatory oaths sworn by depositaries, see Laws of Eshnunna 22, 37; Laws of Hammurabi 9, 20, 23, 103, 106, 120, 126, 131, 206–7, 227, 240, 249, 266, 281; Middle Assyrian Laws A25, 47. An alternative explanation would be to attribute the oath not to the depositary but to the owner of the property. In that case it would not be so much an oath of innocence as an oath of accusation: "if *he* did not stretch out his hand to his neighbour's property, [then let *y* happen to *me*]". But that explanation rests entirely on what is left implicit.

> If a man gives to his neighbour a mule, an ox, a sheep, or any animal to guard, but it dies, is injured, or captured without anyone seeing [it], 10 there shall be an oath of YHWH between the two of them, that he did not stretch out his hand to his neighbour's property. Its owner shall accept it[1] and he shall not repay. 11 But if it is stolen from him, [then] he shall repay to its owner. 12 If it is torn, [then] he shall bring a witness, the torn [animal] he shall not repay. 13 If a man borrows [*lit*. asks] [an animal] from his neighbour, and it is injured or it dies [while] its owner is not with him, [then] he shall repay. 14 If its owner [is] with him, he shall not repay. If he [is] hired, it comes[2] for his hire. (Exod. 22:9–14)

In contrast to the preceding law about "silver and goods" (vv. 6–7), these laws about animals hold the guardian responsible for theft. The law offers the depositary of inanimate property a chance to escape punishment by means of the oath of innocence. But the depositary of animals is held liable for restitution (note שלם) if the animal is stolen (22:11).[3] The law makes an exception for when animals are "raided" (שבה) (22:9, 13). Presumably one could expect the shepherd to ward off an ordinary thief but not "an organized cattle raid".[4]

The end of this law, in 22:12–4, is perhaps the most enigmatic. These three verses raise a series of fine-grained questions. How is the depositary of a "torn" animal to prove his innocence? By producing a "witness" (עֵד) of the incident, bringing "evidence" (another proposed translation of עֵד). Accepting alternative vocalisations and accentuations (note the

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[1] The law orders the depositor to "accept" (לקח). But what is he supposed to accept: the oath itself or the physical remains of the animal? Propp, *Exodus 19–40*, 250.
[2] בָּא could be either participle ("it comes") or a perfect ("it came").
[3] B. S. Childs, *The Book of Exodus: A Critical, Theological Commentary* (Louisville, KY, 1974), 475; Cassuto, *Commentary on the Book of Exodus*, 285; N. M. Sarna, *The JPS Commentary: Exodus* (Philadelphia, PA, 2003), 131; Westbrook, 'The Deposit Law of Exodus 22,6–12', 402–3; Jackson, *Wisdom-Laws*, 335; T. B. Dozemann, *Exodus* (Grand Rapids, MI, 2009), 540.
[4] Propp, *Exodus 19–40*, 250.

atnah separating עד and הטרפה), one might argue that the depositary should bring the owner "to" (עַד) the site of the incident or "to" the remains of the animal (22:13).[1] Who or what is a שׂכיר? Does it refer to the depositary or to the animal?[2] And, consequently, does שׂכרו refer to the money the depositary paid to the depositor ("*its* rent") or to the money the animal's owner paid to the herdsman ("*his* salary")?[3]

Between these two laws is a law dealing with "lost property" (אבדה).[4]

עַל־כָּל־דְּבַר־פֶּשַׁע עַל־שׁוֹר עַל־חֲמוֹר עַל־שֶׂה עַל־שַׂלְמָה עַל־כָּל־אֲבֵדָה אֲשֶׁר יֹאמַר כִּי־הִוא זֶה עַד הָאֱלֹהִים
יָבֹא דְּבַר־שְׁנֵיהֶם אֲשֶׁר יַרְשִׁיעֻן אֱלֹהִים יְשַׁלֵּם שְׁנַיִם לְרֵעֵהוּ: ס

Every matter of transgression—an ox, a mule, a sheep, a cloak, any lost object—about which he says: 'This is it!',[5] the word of both of them shall come to God. Whomever God will decide[6] shall pay double to his neighbour. (Exod. 22:8)

It is unclear how this law on lost property relates to the preceding law on inanimate deposits and the following law on animate deposits. V. 8 might constitute an independent law of lost property (compare the law on אבדה in Deut. 22:1–4). How did the law of lost property end up

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[1] For more examples for the alternations between עֵד and עַד, see Prov. 12:19 (MT: עַד, LXX: μάρτυς), 19:24 (MT: עַד, LXX: μαρτύριον), Isa. 19:20 (MT: עֵד, LXX: αἰῶνα), 30:8 (MT: עַד, Vulg.: *testimonium*); Zeph. 3:8 (MT: עַד, LXX: μαρτύριον), Mic. 7:18 (MT: עַד, LXX: μαρτύριον); Am. 1:11 (MT: עַד, LXX: μαρτύριον). Perhaps we should understand עַד הַטְּרֵפָה as "the spoil of the tearing", see Cassuto, *Commentary on the Book of Exodus*, 287. Compare the requirement of "evidence" (עֵד) for exculpation in this law to Gen. 37:31–3, where Joseph's brothers show Joseph's blood-stained cloak to their father. D. Daube, *Studies in Biblical Law* (Cambridge, 1947), 3–15.

[2] A. Dillmann, *Die Bücher Exodus und Leviticus* (ed. V. Ryssel; Kurzgefasstes exegetisches Handbuch zum Alten Testament 12; Leipzig, 1897), 238 argues that שׂכיר refers to the rented animal (compare Isa. 7:20). If it refers to the "hired" *person* (the majority opinion), it raises the question how, if at all, the שׂכיר is different from the borrower (שׂאל) in 22:13. Daube, *Studies in Biblical Law*, 16; Propp, *Exodus 19–40*, 252–3.

[3] Childs, *The Book of Exodus*, 476.

[4] For a list of proposed translations of Exod. 22:8, see R. Knierim, *Die Hauptbegriffe für Sünde im Alten Testament* (Gütersloh, 1965), 162.

[5] "That's him!", see Westbrook, 'The Deposit Law of Exodus 22,6–12', 397. "That's it!", see Cassuto, *Commentary on the Book of Exodus*, 286; Propp, *Exodus 19–40*, 249 (citing a parallel in the Code of Hammurabi 9–11).

[6] It is unclear how God "convicts" (רשׁע). See *Mekhilta deR. Ishmael*, *Nezikin* 15 for some possible interpretations.

in between two laws on deliberate transfers of property? Cornelis Houtman characterised v. 8 as a "bridge" connecting the two laws.[1] Eckart Otto argued that it functioned as an "epexegetical summary" of both laws.[2] Others argued that v. 8 was a later redactional addition to this passage.[3] Bernard Jackson argued that the law in its original shape only dealt with animals, and was later expanded to include other types of property. His main argument is the historical development of מלאכה. In Classical Biblical Hebrew מלאכה refers exclusively to animals (e.g., Gen. 33:14; 1 Sam 15:9). In Late Biblical Hebrew it includes all kinds of property.[4] The Chronicler, for example, reports that Jehoshaphat "had much מלאכה in the cities of Judah" (2 Chron. 17:12–3). The use of מלאכה in the 'late' sense of the word in the Covenant Code would be an argument for the interpolation of v. 8 into the laws of deposit.

The history of interpretation testifies to the complexity created by the combination of these laws. Philo and Josephus took the law to refer to just *one* type of deposit that applies to all, disregarding the nature of the deposit or the possibility of financial benefit (Philo, *Spec.* 4.33–6; Joseph., *Ant.* 4.285; *C. Ap.* 2.208, 216). Various interpretations of the law of deposit appear in tannaitic literature. The early tannaitic rabbis only recognised two types of bail: a loan for private use and a loan for deposit (*m. B. Mes.* 3.1).[5] The early tannaitic rabbis thought Exod. 22:6–8 was about the *disappearance* of the deposit and 9–14 was about something *known* happening to the deposit. Later rabbis developed a more elaborate system of three or four types of guardians, categorised on the basis of the financial benefit of the

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[1] Houtman, *Exodus*, III, 202.
[2] Otto, 'Die rechtshistorische Entwicklung des Depositenrechts in altorientalischen und altisraelitischen Rechtskorpora', 18.
[3] See, e.g., Sarna, *JPS Torah Commentary*, 132; Dozemann, *Commentary on Exodus*, 540.
[4] E. L. Greenstein, 'Trans-Semitic Idiomatic Equivalency and the Derivation of Hebrew *ml'kh*', *Ugarit-Forschungen* 11 (1979), 329–36. Horst Seebass has proposed to translate the word in the law of deposit as "working tool" (German: *Arbeitsmittel*). מלאכה is a derivation of the Semitic *l'k*, "to work". But it is hard to imagine how the "silver" of Exod. 22:6 could be used as a tool. H. Seebass, 'Noch einmal zum Depositenrecht Ex 22,6–14', in P. Mommer, W. H. Schmidt, and H. Strauß (eds), *Gottes Recht als Lebensraum* (Neukirchen-Vluyn, 1993), 21–31, at 25. The definition "working tool" makes better sense for *11QT* XLVII, 9: "in their cities they will make with these [*sc.* hides] their tools [מלאכתמה] for all their needs".
[5] D. Henshke, *The Original Mishna in the Discourse of the Later Tanna'im* (Ramat-Gan, 1997), 5–8.

guardian (*m. B. Mes.* 7.8; *m. Shev.* 8.1; *b. B. Mes.* 93a). The discussion of the rights and duties of the guardians in *m. Shev.* 8.2–6 is absent from one of the manuscripts from the Cairo Genizah. It appears therefore that they were added to the current textual tradition of the Mishnah at a later time.[1]

The distinction between the laws of deposit creates real differences in interpretation. Modern scholarship draws the line between Exod. 22:6–7, on inanimate property, and 22:9–14, on animate property—leaving v. 8 in the middle. The early tannaitic rabbis apparently drew a distinction between Exod. 22:6–8, on theft or loss, and 22:9–14 on overt death, injury, or raid of property.

2.4 The LXX's Law of Deposit

> Ἐὰν δέ τις δῷ τῷ πλησίον ἀργύριον ἢ σκεύη φυλάξαι, καὶ κλαπῇ ἐκ τῆς οἰκίας τοῦ ἀνθρώπου, ἐὰν εὑρεθῇ ὁ κλέψας,[2] ἀποτείσει διπλοῦν· 7 ἐὰν δὲ μὴ εὑρεθῇ ὁ κλέψας, προσελεύσεται ὁ κύριος τῆς οἰκίας ἐνώπιον τοῦ θεοῦ, καὶ ὀμεῖται ἦ μὴν μὴ αὐτὸς πεπονηρεῦσθαι ἐφ᾽ ὅλης τῆς παρακαταθήκης τοῦ πλησίον. 8 κατὰ πᾶν ῥητὸν ἀδίκημα περί τε μόσχου καὶ ὑποζυγίου καὶ προβάτου καὶ ἱματίου καὶ πάσης ἀπωλείας τῆς ἐγκαλουμένης, ὅ τι οὖν ἂν ᾖ, ἐνώπιον τοῦ θεοῦ ἐλεύσεται ἡ κρίσις ἀμφοτέρων, καὶ ὁ ἁλοὺς διὰ τοῦ θεοῦ ἀποτείσει διπλοῦν τῷ πλησίον. 9 Ἐὰν δέ τις δῷ τῷ πλησίον ὑποζύγιον ἢ πρόβατον ἢ μόσχον[3] ἢ πᾶν κτῆνος φυλάξαι, καὶ συντριβῇ ἢ τελευτήσῃ ἢ αἰχμάλωτον γένηται, καὶ μηδεὶς γνῷ, 10 ὅρκος ἔσται τοῦ θεοῦ ἀνὰ

[1] Y. Rosental, 'The History of the Final Chapter of Tractate *Shevu'ot*', *Tarbiz* (2014), 5–50.
[2] It is rare to find the aorist participle of κλέπτω as a translation of גנב. The expected form is the noun κλέπτης, as in Exod. 22:1.
[3] A. Rahlfs (ed.), *Septuaginta: Id est Vetus Testamentum graece iuxta LXX interpretes* (Stuttgart, 2006), 123: μόσχον ἢ πρόβατον.

μέσον ἀμφοτέρων ἧ μὴν μὴ αὐτὸν πεπονηρεῦσθαι καθ᾽ ὅλης τῆς παρακαταθήκης τοῦ πλησίον· καὶ οὕτως προσδέξεται ὁ κύριος αὐτοῦ, καὶ οὐ μὴ ἀποτείσῃ.[1] 11 ἐὰν δὲ κλαπῇ παρ᾽ αὐτοῦ, ἀποτείσει τῷ κυρίῳ. 12 ἐὰν δὲ θηριάλωτον γένηται, ἄξει αὐτὸν ἐπὶ τὴν θήραν, καὶ οὐκ ἀποτείσει. 13 Ἐὰν δὲ αἰτήσῃ τις παρὰ τοῦ πλησίον, καὶ συντριβῇ ἢ ἀποθάνῃ,[2] ὁ δὲ κύριος μὴ ᾖ μετ᾽ αὐτοῦ, ἀποτείσει· 14 ἐὰν δὲ ὁ κύριος ᾖ μετ᾽ αὐτοῦ, οὐκ ἀποτείσει· ἐὰν δὲ μισθωτὸς ᾖ, ἔσται αὐτῷ ἀντὶ τοῦ μισθοῦ αὐτοῦ.

If someone gives to his neighbour silver or vessels to guard, and it is stolen from the house of the man: if the thief is found, he shall repay double, 7 but if the thief is not found the owner of the house shall be brought before God and he shall swear that he did not act wickedly (?) towards the entire deposit of his neighbour. 8 Concerning every expressed wrong—about an ox, a mule, a sheep, a cloak, any lost object [he] filed charges [for], whatever it may be—the verdict of both shall come before God, and the one convicted by God shall repay double to his neighbour. 9 If someone gives to his neighbour a mule, a sheep, or an ox, or any animal to guard, and it is wounded, dies, or is caught by a wild animal, and no one knows, 10 there shall be an oath of God between both: that he did not act wickedly concerning the entire deposit of his neighbour, and thus its owner shall accept [it], and not repay. 11 But if it is stolen from him, he shall repay the owner. 12 If it is caught by a wild animal, he shall bring him to the prey, and he shall not repay. 13 If someone asks [an animal] from his neighbour, and it is wounded or dies: [if] the owner was not with him, he shall repay,

[1] Rahlfs (ed.), *Septuaginta*, 123: οὐκ ἀποτείσει. Wevers was hesitant about this reading: "the future is in line with the usual judgment, but it is weakly supported" (*Notes on the Greek Text of Exodus*, 347). More detailed discussion in J. W. Wevers, *Text History of the Greek Exodus* (Mitteilungen des Septuaginta-Unternehmens 21; Göttingen, 1993), 229.
[2] Rahlfs (ed.), *Septuaginta*, 123: + ἢ αἰχμάλωτον γένηται.

> 14 but if the owner *was* with him, he shall not repay. If he was a hired [servant], it shall be his instead of his salary. (Exod. 22:6–14)

Some details of the LXX differ from the known Hebrew versions. The LXX opens with "and if" (ἐὰν δέ) which may reflect וכי (SP, Pesh.) rather than the MT's כי. In the first declaration of innocence LXX has a small plus—"and he shall swear" (καὶ ὀμεῖται)—unattested in any Hebrew version of the law (22:7). The LXX's translator rendered "to stretch out one's hand" (שלח יד) as "to act wickedly" (πονηρεύομαι) (22:7, 10).[1] Elsewhere in the LXX πονηρεύομαι is usually a translation of "to do evil" (רעע).[2] The LXX normally renders the phrase שלח יד as ἐκτείνω τὴν χεῖρα (e.g., Gen. 3:22) or ἐπιφέρω χεῖρά (e.g., 1 Sam. 26:23). Instead of "to the property" (במלאכה) the LXX has "towards the *entire* deposit" (ἐφ᾽ ὅλης τῆς παρακαταθήκης).[3] The last two details have implications for the law's standards of liability.

The LXX treats the two instances of דבר in 22:8 differently. "The word of both of them" (דבר שניהם) becomes "the *verdict* of both" (ἡ κρίσις ἀμφοτέρων). The "matter of transgression" (דבר פשע) becomes the "*stated* wrong" (ῥητὸν ἀδίκημα). Le Boulluec and Sandevoir write about this "stated wrong":

> Le tour grec peut être pris pour un décalque de l'hébreu, et *rhētón* pour un équivalent de *rhēma* (au sens de « chose », « affaire »), comme en Ex 9, 4. Pour un lecteur hellénophone, cependant, *rhētón* est perçu comme qualifiant *adikēma* et comme signifiant « dit », « exprime » (d'où « délit déclaré »).[4]

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[1] The Byzantine manuscript tradition has a finite verb, πεπονηρευται instead of an infinitive. Wevers, *Notes on the Greek Text of Exodus*, 344. The gloss "to act wickedly" is from *LSJ*, 1447.
[2] Schaper, 'Exodos', in Karrer and Kraus (eds), *Septuaginta Deutsch: Erläuterungen und Kommentare zum griechischen Alten Testament*, I, 304.
[3] Le Boulluec and Sandevoir, *L'Exode*, 226: "La LXX introduit la notion juridique, avec *parakatathēkē*, en accord avec le contexte".
[4] Le Boulluec and Sandevoir, *L'Exode*, 226.

The LXX translates the direct or indirect identification formula כי הוא זה as "whatever it may be" (ὅ τι οὖν ἂν ᾖ). John Lee argues we should read ὁτιοῦν instead of ὅ τι οὖν (cf. Deut. 24:10, where ὁτιοῦν translates מאומה).[1]

The LXX translates the "oath of YHWH" (שבעת יהוה) as an "oath of *God*" (ὅρκος … τοῦ θεοῦ) (22:10). This equation has many parallels in the LXX. In the present context the translation brings the ritual of exculpation in 22:10 even closer to that of v. 7 where the defendant is "in front of *God*" (ἐνώπιον τοῦ θεοῦ).[2] This translation also avoids confusion between κύριος as the "owner" of the animal and the "Lord".[3] The wording of this second oath in 22:10 is similar to the first in v. 7, but not exactly identical: note the nominative αὐτός and the preposition ἐπί in v. 7 and the accusative αὐτόν and the preposition κατά in v. 10. The nominative αὐτός in v. 7 indicates that the subject of the infinitive (πεπονηρεῦσθαι) is the same as that of the main verb whereas the accusative αὐτόν in v. 10 points out that the subject of the infinitive is different from that of the main verb in the sentence ("there *will be* [ἔσται] an oath of God").[4]

The translators of the Pentateuch consistently equate "torn [animal]" (טרפה) with "caught by a wild animal" (θηριάλωτος) (as here in 22:12).[5] They also invariably translate נבלה as "carcass" (θνησιμαῖος) for animals that died of natural causes.[6] The LXX of 22:12, where the herdsman "brings him [*sc.* the owner] to the prey" (ἄξει αὐτὸν ἐπὶ τὴν θήραν), is perfectly comprehensible as a translation of the Hebrew consonants. But it is at variance with

[1] Lee, *Greek of the Pentateuch*, 106–7.
[2] Propp, *Exodus 19–40*, 125.
[3] Wevers, *Notes on the Greek Text of Exodus*, 346.
[4] Wevers, *Notes on the Greek Text of Exodus*, 344, 346.
[5] See also Philo, *Spec.* 4.35–6.
[6] Lee, *Greek of the Pentateuch*, 188–90.

the Masoretic vocalisation and accentuation. The versions preserve almost all possible readings of the Hebrew consonants:[1]

1. to produce a "witness" (Pesh., one MS of Tg. Onq.,[2] Frag. Tgs. P, V; Sam. Tg.) or "witnesses" (סהדין, Tg. Onq., Tg. Ps.-J., Tg. Neof.; cf. *Mekhilta deR. Ishmael*, *Nezik.* 16; *b. B. Q.* 11a) of the incident.
2. to bring the "body" (גושמה, margins of Tg. Neof.), the "limbs" (אברוי, Tg. Neof., Genizah Tg. A), or other remains (*quod occisum est*, Vulg.) of the animal to its owner.
3. Tg. Ps.-J. is the only version that like the LXX allows the depositary to escort the owner to the site of the incident: "or he shall take him to the body of the torn [animal]" (או ימטיניה עד גופת דתביר).[3]

The substantivised adjective μισθωτός in 22:14 is in Greek literature almost exclusively used for persons, "hireling, hired servant" (*LSJ*), not for hired things or animals.[4]

Some of these differences are of greater legal interest than others. In the following paragraphs the focus will be on the explication of the method of exculpation—"and he shall swear" (καὶ ὀμεῖται)—in v. 7 (see 2.4) and on the characterisation of the depositary's wrongdoing as "acting wickedly" (πονηρεύομαι) in vv. 7, 10 (see 2.6).

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[1] R. Le Déaut, 'Critique textuelle et exégèse: Exode XXII 12 dans la Septante et le Targum', *Vetus Testamentum* 22 (1972), 164–75.
[2] B. Grossfeld, *The Targum Onqelos to the Torah: Exodus* (Aramaic Bible 7; Collegeville, MN, 1990), 64 n. *c*.
[3] M. J. McNamara, M. Maher, and R. Hayward, *Targum Neofiti 1: Exodus and Targum Pseudo-Jonathan: Exodus* (Aramaic Bible 2; Collegeville, MN, 1994), 226.
[4] *LSJ*, 1137. Contra D. M. Gurtner, *Exodus: A Commentary on the Greek Text of Codex Vaticanus* (Leiden, 2013), 397.

2.5 The Addition of the Oath

At the end of the law on inanimate deposits, the LXX has a clause unattested in any extant Hebrew version: "and he shall swear" (καὶ ὀμεῖται) (22:7). Frankel argued: "Der Zusatz "καὶ ὀμεῖται" ist im Sinne der Halacha, welche erklärt: קריבה זו אינה אלא לשבועה (*Baba Kama 63* und sonst häufig)."[1] Frankel left the precise relation between the LXX and the Bavli open for interpretation. Prijs wrote that the LXX made the addition "ohne Zweifel im Hinblick auf die Mechilta".[2]

There are other explanations for the minor addition of the oath. The verb קרב, "to approach", might be an idiom for approaching the temple in order to take an oath (*b. B. Qam.* 63b; *b. B. Mes.* 41b; so also Rashi and Ibn Ezra).[3] But the present passage would be the best evidence for that interpretation of the verb; in no other passage is there a clear connection between קרב and swearing an oath.

It seems more likely that the translator noticed the similarity between the wording of Exod. 22:7 and v. 10. The words of the depositary in 22:7 are identical to those in v. 10: "if he did not stretch out his hand to his neighbour's property" (אם לא שלח ידו במלאכת רעהו). In v. 10 the depositary's words are introduced explicitly as "an *oath* of YHWH" (שבעת יהוה). The translator inferred that the first declaration must have been an oath as well.[4] The translators'

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[1] Frankel, *Einfluss*, 94.

[2] Prijs, *Jüdische Tradition in der Septuaginta*, 2: "Dieser LXX-*Zusatz* entspricht Baba q. 63b. … Diese Art Ergänzung aus Parallelstellen heisst in der Traditions-literatur גזרה שוה … Einen erweiterten hebräischen Text setzt LXX … nicht voraus. Diese beiden Übersetzungen [Targum Yerushalmi and Sahidic, ed.] haben den Zusatz ohne Zweifel im Hinblick auf die Mechilta … Das Gleiche gilt auch für LXX." Cf. Schaper, 'Exodos', in Karrer and Kraus (eds), *Septuaginta Deutsch: Erläuterungen und Kommentare zum griechischen Alten Testament*, I, 304: "»Und soll schwören« ist von den Übersetzern eingefügt, ebenso so wie im Tg. Auch hier handelt es sich um eine »halachische Präzisierung«."

[3] Jackson, *Wisdom-Laws*, 338 with n. 29.

[4] Jepsen, *Untersuchungen zum Bundesbuch*, 38: "Dass hier nur an Eid gedacht sein kann, zeigt ein Vergleich mit V. 10, wo ausdrücklich der Eid bei Jahve vorgeschrieben wird." Ibid., 38 n. 4: "G. fügt darum ein: καὶ ὀμεῖται." Sprinkle, *Book of the Covenant*, 146: "The purpose of drawing near to God is to make an oath, not only in 22.10 where the language is clear, but on the basis of 22.10 also in 22.7, 8. So the LXX interpreted these verses by adding to v. 7 'he may draw near to God', the words 'and is to affirm by oath'. Note the strong parallelism between v. 10 and v. 7 where 'swearing that he made no trespass' (literally 'did not stretch out his hand') against his fellow's property' follows 'drawing near to God' in the latter, but a 'YHWH oath' in the former, suggesting that drawing near to God involves taking an oath."

purpose was "to make clear the intent of the rather cryptic Hebrew".[1] Nevertheless, even if the Hebrew text alluded to an oath—however implicit—, it is rare for the translator of Exodus to make such additions.

2.6 A Second Law of Deposit

The law of Exod. 22:6–14 is not the only law of deposit in the Pentateuch; there is another law dealing with property embezzlement in Lev. 5:20–6.[2] The LXX's translation of the Covenant Code's law shares a number of features with the Priestly law on property embezzlement.

וַיְדַבֵּר יְהוָה אֶל־מֹשֶׁה לֵּאמֹר: 21 נֶפֶשׁ כִּי תֶחֱטָא וּמָעֲלָה מַעַל בַּיהוָה וְכִחֵשׁ בַּעֲמִיתוֹ בְּפִקָּדוֹן אוֹ־בִתְשׂוּמֶת יָדׇ֣
אוֹ בְגָזֵל אוֹ עָשַׁק אֶת־עֲמִיתוֹ: 22 אוֹ־מָצָא אֲבֵדָה וְכִחֵשׁ בָּהּ וְנִשְׁבַּע עַל־שֶׁקֶר עַל־אַחַת מִכֹּל אֲשֶׁר־יַעֲשֶׂה
הָאָדָם לַחֲטֹא בָהֶנָּה: 23 וְהָיָה֮ כִּי־יֶחֱטָא וְאָשֵׁם וְהֵשִׁיב אֶת־הַגְּזֵלָה אֲשֶׁר גָּזָל אוֹ אֶת־הָעֹשֶׁק אֲשֶׁר עָשָׁק אוֹ
אֶת־הַפִּקָּדוֹן אֲשֶׁר הָפְקַד אִתּוֹ אוֹ אֶת־הָאֲבֵדָה אֲשֶׁר מָצָא: 24 אוֹ מִכֹּל אֲשֶׁר־יִשָּׁבַע עָלָיו֒ לַשָּׁקֶר וְשִׁלַּם אֹתׇ֣
בְּרֹאשׁוֹ וַחֲמִשְׁתָּיו יֹסֵף עָלָיו לַאֲשֶׁר הוּא לֹו יִתְּנֶנּוּ בְּיוֹם אַשְׁמָתוֹ: 25 וְאֶת־אֲשָׁמוֹ יָבִיא לַיהוָה אַיִל תָּמִים
מִן־הַצֹּאן בְּעֶרְכְּךָ֣ לְאָשָׁם אֶל־הַכֹּהֵן: 26 וְכִפֶּר עָלָיו הַכֹּהֵן לִפְנֵי יְהוָה וְנִסְלַח לֹו עַל־אַחַת מִכֹּל אֲשֶׁר־יַעֲשֶׂה
לְאַשְׁמָה בָהּ: פ

YHWH said to Moses: 21 If a soul sins and acts unfaithfully against YHWH, lies to his neighbour about a deposit, an investment,[3] a robbery, or distrains [something from] his neighbour, 22 or finds a lost object and lies about it, and swears falsely about anything a person may do to sin thereby. 23 If someone sins and feels guilt,[4] he

[1] Wevers, *Notes on the Greek Text of Exodus*, 344: "Exod has expanded somewhat to make clear the intent of the rather cryptic Hebrew, taking the similar judgment of v. 11 into account."
[2] 6:1–6 in some editions.
[3] *Lit.* "placement of a hand".
[4] Or "brings a guilt offering".

> shall return the thing he robbed, or the thing he distrained, or the thing he deposited with him, or the lost thing he found, 24 or anything he swore falsely about. He shall pay him the principal, adding a fifth to it. He shall give it to whom it belongs on the day of his guilt. 25 He shall bring a guilt offering to YHWH, a perfect ram from the flock in your valuation as a guilt offering to the priest. 26 The priest shall atone for him before YHWH, and he shall be forgiven[1] for anything that he did to trespass thereby. (Lev. 5:20–6)

In P's property law all property exchanges—including the "deposit" (פקדון)—are governed by the same conditions. The punishment for all types of property embezzlement consists of three elements: return of the property, payment of a fine of one fifth of the property's value, sacrifice of a ram as "guilt offering" (אשם).

The punishment for the embezzlement of human property is exactly the same as the punishment for the embezzlement of sacred property. The law of property embezzlement is preceded by a law on the desecration קדשי יהוה, "the holy things of YHWH" (Lev. 5:15–9). Someone who takes any of these "holy things"—e.g., one of the twelve loaves of shewbread—has to return the property, pay an additional fifth, and bring a guilt offering of a ram (Lev. 5:15b–16).[2] Jacob Milgrom argues that the punishment for the two crimes is the same because P understands both as a "defrauding" of God. He writes:

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[1] *Lit.* "it shall be forgiven for him".
[2] For the shewbread as a "holy thing", see esp. 1 Sam. 21:7: "The priest gave him [*sc.* David] holy [bread] because there was no bread except the shewbread taken from before the face of YHWH to place hot bread on the day of its removal" (ויתן לו הכהן קדש כי לא היה שם לחם כי אם לחם הפנים המוסרים מלפני יהוה לשום לחם חם ביום הלקחו).

> I submit that the clauses that speak of a false oath (vv 22aβ, b; 24aα) apply to all of the cases that precede them: not only does the offender deny he has wronged his fellow, *he denies it under oath*. If so, then the "sacrilege against the Lord" that heads the pericope (v 21) is fully clarified: the Lord has been made an accomplice to the defrauding of man. The reparation offering, which in vv 15–19 was enjoined for real or suspected desecration of God's property, is now imposed for the desecration of God's name.[1]

Swearing an oath by YHWH elevates an ordinary case of fraud to a case of sacrilege.[2] In Lev. 5:21 the clause "lying to his neighbour" (כחש בעמיתו) is parallel to "acting unfaithfully against YHWH" (מעל ביהוה). The parallelism indicates that the crime of lying under oath amounts to an act of sacrilege.

Implicit in P's property law is the assumption that anyone suspected of fraud—i.e., embezzling a deposit or an investment, robbing someone, withholding a pledge, or hiding a lost object—can take an oath of innocence (Lev. 5:21–2). If someone takes an oath and later realises that he lied,[3] *then* he has to return the property, pay the fine, and bring the guilt-offering. If he continues to live with a guilty conscience, refusing to subject himself to the three-stage punishment, the sin of perjury makes him liable for divine punishment.

There are few verbal links between the Priestly law and the older law of the Covenant Code. The oath, however, is a strong conceptual link between the two laws. These are the only laws that coerce a defendant to take an oath. During the Sotah ritual a *priest* swears an oath to curse the woman suspected of adultery (Num. 5:19, 21). When someone makes a vow

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[1] J. Milgrom, *Leviticus 1–16* (Anchor Bible 3A; New Haven, CT, 1998), 365 my italics.
[2] For swearing a false oath as "profaning" (חלל) God's name, see Lev. 19:12.
[3] *Lit.* "on the day of his guilt" (ביום אשמתו).

(נדר), he "swears an oath to bind his soul" (השבע שבעה לאסר אסר על נפשו) (see Num. 30:1–16). But, as far as we can tell, people undertook these vows of their own volition. They were not externally compelled to take an oath. The levitical legislator probably did not invent the idea of the oath of innocence but borrowed it from an existing legal tradition or practice and applied it to *all* property delicts.[1]

As soon as Lev. 5:20–6 entered the orbit of Exod. 22:6–14 the two laws started to exert a force on each other. When the two laws assumed a status of similar authority, a way had to be found to prevent a clash between the laws—while preserving their distinct identities. This reciprocal force of attraction left three minute traces in the LXX.

1. In Lev. 5:22 the oath of innocence is explicit: "and he swears" (ונשבע). The LXX's addition of "and he shall swear" (καὶ ὀμεῖται) in Exod. 22:7 confirms that there is only one way for a defendant to clear oneself of the accusation of property fraud. If a guilty defendant takes the oath, he is liable not only for property fraud but also for perjury.
2. The LXX's "any *spoken* wrong" (πᾶν ῥητὸν ἀδίκημα) in Exod. 22:8 might be understood to mean that the crime not only consists of withholding lost property (אבדה) but also of *lying* about withholding lost property. This is also the assumption of Leviticus: "or he finds a lost object *and lies about it*" (או מצא אבדה וכחש בה) (5:22).[2]
3. The influence moved in the other direction as well. In the law of Leviticus the offender subjects himself to punishment ביום אשמתו, which could mean either "on the day of his guilt offering" or "on the day he *feels* guilt" (5:24).[3] The LXX renders the phrase as "on

[1] Fishbane, *Biblical Interpretation in Ancient Israel*, 255; Milgrom, *Leviticus 1–16*, 367.
[2] Note further the use of ἀδίκημα in Gen. 31:36; Exod. 22:8; Lev. 5:23, and compare דבר in Exod. 22:8 with the plus of דבר in the SP, LXX, Pesh., Tg. Ps.-J. of Lev. 5:24.
[3] Milgrom, *Leviticus 1–16*, 339–45.

the day he is convicted" (ᾗ ἡμέρᾳ ἐλεγχθῇ).[1] The passive voice of ἐλέγχω, "to convict", is neither a personal decision nor a personal feeling. Passive ἐλέγχω presupposes at least two parties: a convict and someone doing the convicting. In the Covenant Code's law the two parties appear before אלהים who will "convict" (רשע) the guilty party (22:8). (The LXX translates רשע as ἁλίσκομαι, "to be condemned".) Under the Priestly law the property owner would have to wait for a thief to confess to his crime voluntarily. The Covenant Code did not have this problem. Long before the rise of the Priestly school, it introduced a process of arbitration to decide who was guilty and who innocent. The LXX's translation of the Priestly law—anticipating the problem inherent in the process—adopts the Covenant Code's solution to that problem.

The number of intertextual connections between the two laws—i.e., Exod. 22:6–14 and Lev. 5:20–6—was low. Both use words such as "every matter" (כל דבר), "lost property" (אבדה), and "to swear" (שבע). The LXX's translators consciously or unconsciously increased the intertextual links between the two laws. The connections remain subtle.[2]

Virginia Woolf's description of memory, quoted at the beginning of the chapter, provides a way of describing the increasing "affinity" between the two laws.[3] Woolf imagined memory as a "seamstress" who connects initially "disconnected fragments". Words

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[1] Compare *Sifra*, *Ḥovah* 13.13: "*On the day of his guilt offering*—the house of Shammai says: He will accept it whether it decreased or increased, the house of Hillel says: At the time it "went out", R. Aqiva says: At the time of the claim [כשעת התביעה]." The same sequence of opinions is cited in *m. B. Mes.* 3.12 and elsewhere, but not always as an interpretation of ביום אשמתו. The LXX is closest to R. Aqiva's opinion.

[2] One might argue that the Priestly law "influenced" the LXX's translation of the Covenant Code. But it remains unclear what that means, see I. H. Hassan, 'The Problem of Influence in Literary History: Notes toward a Definition', *Journal of Aesthetics and Art Criticism* 14 (1955), 66–76, at 68, cited in J. Z. Smith, *Imagining Religion: From Babylon to Jonestown* (Chicago, 1982), 22: "When we say that A has influenced B, we mean that after literary or aesthetic analysis we can discern a number of significant similarities between the works of A and B. We may also mean that historical, social, and perhaps psychological analyses of the data available about A and B reveal similarities, points of contact, between the "lives" or "minds" of the two writers. So far we have established no influence; we have only documented what I shall call an *affinity*. For influence presupposes some manner of causality and causality has repeatedly shown itself to be the scholar's Gordian knot."

[3] V. Woolf, *Orlando: A Biography* (ed. M. H. Whitworth; Oxford, 2015), 48.

are not only "stored with … memories" as in the previous chapter, but they also invoke the memories of other texts and other occasions one heard, read, or used that particular word. The same, supposedly, happened to the LXX's translator. He read the Covenant Code but the words "agitated" the memory of myriads of other passages of Scripture. The LXX is not just a translation of a sequence of the words on the page of a particular *Vorlage* but a translation of the words *and their memories*. These memories emerge in the translation. Reading words such as "every case" (כל דבר), "lost property" (אבדה), and "oath" (שבעה) in the law of deposit (Exod. 22:8, 10) "agitated" the memory of another law. The other law uses similar words: כל דבר (Lev. 5:24), אבדה (5:22–3), שבע (5:22, 24). The echoes, memories, and associations between the two property laws resound in the LXX's translation of Exod. 22:6–14. When the intertextual details are considered together, a pattern emerges that creates a more intricate fabric out of the initially "disconnected fragments".[1]

The histories of these texts repeatedly intersect, but they were not fully "harmonised" or "merged". It may have been P's intention to "subsume" the law of deposit in the Covenant Code under its more inclusive and unifying law of property delicts.[2] That ambition was never entirely realised. The older law was preserved alongside P's law. In the LXX the law of deposit in Exod. 22:6–14 has become a little bit more compatible with the law of Lev. 5:20–6. But the two property laws have not been integrated in the same way that, for example, the slave laws have (see 2.10).[3] Unlike the slave laws, the property laws are not entirely compatible. Some friction remains: the LXX does not attempt to square the two different

[1] This is different from a full-fledged "harmonisation". In turn, the LXX became part of and added to the "memory" of these words. Note, for example, Josephus, *Ant*. 4.288, whose discussion of deposits is followed by a discussion of wages—a transition smoothened by the use of μισθός in both Exod. 22:14 and Deut. 24:14.
[2] Milgrom, *Leviticus 1–16*, 367: "The bailee laws of Exod 22:6–12 are subsumed under *piqqadon* and represent no new category."
[3] A. Aejmelaeus, 'What Can We Know about the Hebrew *Vorlage* of the Septuagint?', *Zeitschrift für die alttestamentliche Wissenschaft* 99 (1987), 58–89, at 83–5.

punishments (double restitution in Exodus, full restitution and an additional fifth of the property's value in Leviticus).

2.7 A Sacred Trust

The weight of Leviticus continued to bear down on the idea of the deposit. Consequently some authors of the Hellenistic era considered the deposit a "sacred trust".[1]

Philo thought the deposit "the most sacred [ἱερώτατον] of all the dealings between man and man" (*Spec.* 4.30). The deposit is ratified neither by contracts nor witnesses but by *oaths* alone (note ὅρκος in *Spec.* 1.235, 238; 4.32). Philo writes: "this unseen transaction has assuredly the unseen God as its intermediary [ἀόρατος μεσιτεύει θεός]" (4.31). Philo, commenting on the Priestly law, argues that the punishment for sacrilege and embezzlement of a deposit were the same because the deposit is something sacred: "if this is not something sacred as well [καὶ τοῦτ᾽ ἐστί τι ἅγιον], because of the additional oath" (1.238). Philo continues to speak of animate and inanimate property, but there is no longer a clear distinction between the liabilities of the depositaries of animate and inanimate property (4.35). The biblical law gave the depositary of stolen goods the possibility to take an exculpatory oath, but did not extend the same courtesy to the depositary of stolen animals. If someone stole a sheep, the shepherd still had to repay double (compare Exod. 22:6–7 to

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[1] Jackson, *Wisdom-Laws*, 343. It is important to note a difference between the sanctity of Jewish and Greek deposits. Greek authors make some mention of sacred deposits, but these are only sacred because they are dedicated to a *temple* (see, e.g., Xen., *An.* 5.3.4–10 on donations to the Artemision at Ephesus and the founding of a new Artemision at Olympia; Strabo, *Geography* 14.1.22 on the Artemision at Ephesus; cf. Varr., *Ling.* 5.180 explains *sacramentum* as derived from *sacrum* because parties involved in some lawsuits would "deposit", Lat. *depono*, 500 copper coins with the pontifex). M. H. Crawford, 'Thesauri, Hoards, and Votive Deposits', in O. De Cazanove and J. Scheid (eds), *Sanctuaires et sources dans l'antiquité: Les sources documentaires et leurs limites dans la description des lieux de la culte: Actes de la table ronde organisée par le Collège de France, l'UMR 8585 Centre Gustave-Glotz, l'Ecole francaise de Rome et le Centre Jean Bérard, Naples, 30 Novembre, 2001* (Collections du Centre Jean Bérard 22; Naples, 2003), 69–84, argues that such deposits to Greek temples "were evidently intended to be accessible for the use of the sanctuary". The Jewish deposits discussed here, by contrast, are not sacred because they happen to be stored in a temple treasury but because every deposit—even between private individuals—involves God in some way or other.

22:11). Philo ignored this distinction, extending the possibility of the exculpatory oath also to cases of stolen *animate* property (*Spec.* 4.35).[1] Furthermore, Philo introduces the oath as an acceptable method of exculpation even in cases where there is physical evidence. If an animal dies, the depositary should either "send for" (μεταπέμπω) the owner, or—if he is not at home—"swear" (ὀμνύναι) that he did not embezzle the animal (4.36). The biblical law knows of the first method, but not of the second (see Exod. 22:12). One might suppose that Philo read the biblical law only cursorily and liberally combined the possible faults of the depositories with the possible punishments and exculpations. But Philo's ideas make perfect sense if all deposits are governed by the same conditions and all depositaries can be asked to swear an oath of innocence, as in Lev. 5:20–6. Furthermore, Philo is not the only ancient exegete to combine these elements, and this strongly pleads for the existence of a broader tradition of exegesis of which Philo is only one example.

The wording of Philo's argument is remarkably similar to Josephus'. Josephus argues that the depositary should treat the deposit "as if it were some sacred and divine matter" (ὥσπερ ἱερόν τι καὶ θεῖον χρῆμα *Ant.* 4.285). This sounds rather similar to Philo: "if someone accepts a deposit as a sacred thing [ὡς ἱερὸν χρῆμα], he should preserve it untouched" (*Spec.* 4.33). If the depositary loses the deposit through no fault of his own, he has to appear in front of a court of seven judges and "swear by God" (ὀμνύτω τὸν θεόν *Ant.* 4.287). The security of the deposit is the depositary's knowledge that God, "whose eye no criminal escapes" (ὃν οὐδεὶς πονηρὸς ὢν λανθάνει), is watching him (*Ant.* 4.286).[2]

There are three possible explanations for the argumentative and verbal similarities between Philo and Josephus: both arrived at the same conclusion independently, Josephus

[1] F. H. Colson (ed.), *Philo VIII* (Loeb Classical Library 341; Harvard, MA, 1939), 29 n. e.
[2] H. St. J. Thackeray and R. Marcus (eds), *Josephus: Jewish Antiquities, II: Books 4–6* (Loeb Classical Library 490; Harvard, MA, 1930), 139.

relied on Philo,[1] or both relied on the same tradition of interpretation. Of these three explanations, the latter is the most economical. Philo and Josephus both relied on the same source, a tradition of interpretation that equated deposits of personal property with a sacred trust. The origins of this tradition lie in the Priestly law, which compared theft of a deposit to sacrilege. Positing the existence of such a tradition of interpretation would also explain why rabbinic literature preserves a remarkably similar account of the deposit.

The *Sifra* and Rashi's commentary on Leviticus attribute the following interpretation of Lev. 5:21 to R. Aqiva.

ר' עקיבא אומר מה תלמוד לומר "וּמָעֲלָה מַעַל בהשם"? לפי שהמלוה, והלוה, והנושא ונותן – אינו מלוה, ואינו לוה, ואינו נושא ואינו נותן אלא בשטר ובעדים. לפיכך בזמן שהוא מכחיש – מכחיש בעדים ובשטר. אבל המפקיד אצל חבירו אינו רוצה שתדע בו נשמה אלא שלישי שביניהם! בזמן שהוא[2] מכחיש – מכחיש בשלישי שביניהם!

R. Aqiva says, Why does Scripture say *He commits sacrilege against the Name* (Lev. 5:21)? Because of the lender, the borrower, the receiver, and the giver. There is no lender, no borrower, no receiver, and no giver without a contract or without witnesses. Therefore, at the time someone lies, he lies against the witnesses and against the contract. But someone who deposits [something] with his friend, he does not want anyone to know but the Third between them! At the time *he* lies, he lies against the Third between them! (*Sifra Hovah* 22.4)

[1] Thackeray and Marcus (eds), *Josephus: Jewish Antiquities, II*, 139 n. c; L. H. Feldman, *Josephus's Interpretation of the Bible* (Berkeley, CA, 1999), 53 (see pp. 52–4 for more similarities).
[2] Rashi on Lev. 5:21: לְפִיכָךְ כְּשֶׁהוּא.

Both Philo and R. Aqiva enumerate the methods of ratification of normal loans—note συμβόλαιον, γράμμα, and μάρτυς in *Spec.* 4.30 and שטר and עד in the *Sifra*. The enumeration serves to build up a contrast with deposits. For deposits there is no other witness than God, "who is rightly invoked as witness by both [ὑπ᾽ ἀμφοῖν]" (*Spec.* 4.31) or "the Third between the two of them [שביניהם]" (*Sifra*). The privacy of the transaction is not accidental but actively pursued by both parties: "the object which both of them evidently pursue is that it should be impossible to show what has happened [τὸ ἀναπόδεικτον]", and: "he [*sc.* the depositor] does not want anyone to know [אינו רוצה שתדע בו נשמה]" (*Sifra*). The three exegetes—Philo, Josephus, R. Aqiva—struggle to answer the same question: Why is the punishment for embezzlement of private property in Lev. 5:20–6 identical to the punishment for sacrilege in Lev. 5:15–9? All three suggested that there was something sacred about private deposits because the depositary can only deny responsibility by swearing an oath in God's name.[1] An embryonic version of this tradition of interpretation also underlies the LXX of Exod. 22:6–14.[2]

2.8 Subjective Criteria for Liability

The purpose of the depositary's utterance is to establish whether he stretched out his hand (שלח יד) to the deposit or not (Exod. 22:7, 10). The LXX translates שלח יד as "to act

[1] It is worth remembering that Lev. 5:21–2 enumerates a series of property exchanges and property delicts: "deposit" (פקדון), "investment" (תשומת יד), "robbery" (גזל), "distraint" (עשק), "lost property" (אבדה). Since the deposit is just one of these, the singular application to the deposit (shared by Philo, Josephus, and R. Aqiva) was by no means a necessary interpretation.

[2] There is a certain resistance against the equation of sacred and private property in the Mishnah. In *m. Me'ilah* 5.6, the use or loss of a deposit from the temple funds counts as "sacrilege" (מעל). (The root מעל became the technical term for sacrilege in Mishnaic Hebrew.) But in *m. B. Mes.* 4.11, almost identical to *m. Me'ilah* 5.6, the use or loss of *private* money incurs no special liability. It simply says: "he is answerable for it" (חיב באחריותן) without mentioning any liability for sacrilege at all (Danby, *Mishnah*, 352). In this way, the tannaitic rabbis attempted to unravel the ties between sacred and private property. In their opinion proper "sacrilege" (מעילה) only pertained to the temple funds not to private money.

maliciously" (πονηρεύομαι), which is unusual (see 2.3.2). Frankel argued that the LXX approximates rabbinic halakhah.

> Auch das πεπονηρεῦσθαι … scheint eine der Halacha nähernde Bedeutung zu haben. Nach der Halacha nämlich wird ihm der Eid auferlegt, dass er nicht nur den Gegenstand nicht veruntreuet, sondern auch in dessen Aufbewahrung nicht nachlässig war (שלא פשע בה vergl. *Baba Kama 107. Baba Mezia 6. Maimonides Schaala c. 6. §. 1*).[1]

In this reading, which has remained popular,[2] the LXX's depositary swears that he has not been negligent in his duties. Furthermore, the word πονηρεύομαι includes cases of negligence (German: *Nachlässigkeit*).

The verb πονηρεύομαι occurs 34 times in the LXX, usually as a translation of "to do evil" (רעע). But in the LXX πονηρεύομαι is sometimes used in a more subjective sense:

> ἐπονηρεύοντο τοῦ ἀποκτεῖναι αὐτόν
>
> They [*sc.* Joseph's brothers] *eponēreuonto* to kill him (Gen. 37:18)

> ποιήσετε αὐτῷ ὃν τρόπον ἐπονηρεύσατο ποιῆσαι κατὰ τοῦ ἀδελφοῦ αὐτοῦ

[1] Frankel, *Einfluss*, 94.
[2] Prijs, *Jüdische Tradition in der Septuaginta*, 2: "Hier verallgemeinert es das 'Handausstrecken': der שומר muss schwören, das er überhaupt nichts Unrechtes beging. So auch Baba q. vom שומר חנם"; Boulluec and Sandevoir, *l'Exode*, 226: "Cette traduction interprétative trouve aussi un écho dans la Mishna"; Schaper, 'Exodos', in Karrer and Kraus (eds), *Septuaginta Deutsch: Erlauterungen und Kommentare zum griechischen Alten Testament*, I, 304: "Auf den ersten Blick liegt kaum ein Unterschied zum MT vor, doch verallgemeinert die LXX dessen Aussage und ist damit wiederum der Vorreiter einer halachischen Entwicklung, dis sich dann voll im rabb. Judentum findet".

You shall do to him [*sc.* the false witness] as he *eponēreusato* to do to his brother (Deut. 19:19)

ὡς ὁ νόμος διαγορεύει, ἐποίησαν αὐτοῖς, καθὼς ἐπονηρεύσαντο κατὰ τῆς ἀδελφῆς
As the law declares, they did to them, as they *eponēreusanto* against their sister (Sus. 61)

These three occurrences have in common that they refer to *unsuccessful* plans. Joseph's brothers *wanted* to kill him and the witnesses *wanted* to secure a conviction by giving false testimony. In these cases the verb does not touch upon the *result* of whatever it describes. The word denotes not the action itself but the subject's attitude towards the action.

The same word also occurs in the Greek translation of an Egyptian text, the Legal Code of Hermopolis. This text may provide a close analogy to the LXX's use of the word. Nine columns of this "legal code" or "legal manual" survive in the original Egyptian (*P.Cairo* JE 89). Some fragments survive of a copy of a Greek translation (*P.Oxy.* XLVI 3285).[1] Whereas the translation itself probably dates back to the 3rd cent. BC, the actual copy dates from the 2nd cent. AD. The "manual" discusses the course of action in a case where a house collapses because someone dug a hole next to it.

[1] G. Mattha and G. R. Hughes, *The Demotic Legal Code of Hermopolis West* (Cairo, 1975); K. Donker van Heel, *The Legal Manual of Hermopolis (P.Mattha): Text and Translation* (Leiden, 1990); S. L. Lippert, *Ein demotisches juristisches Lehrbuch: Untersuchungen zu Papyrus Berlin P 23757 rto* (Ägyptologische Abhandlungen 66; Wiesbaden, 2004). For a comparison between *P.Oxy.* 3285 and the LXX, see J. Mélèze Modrzejewski, 'The Septuagint as Nomos: How the Torah Became a "Civic Law" for the Jews in Egypt', in J. W. Cairns and O. F. Robinson (eds), *Critical Studies in Ancient Law, Comparative Law and Legal History* (Oxford, 2001), 183–99, at 188–90. On the function of the "manual", see J. Mélèze Modrzejewski, 'La règle de droit dans l'Égypte romaine: État des questions et perspectives de recherches', in D. H. Samuel (ed.), *Proceedings of the XIIth International Congress of Papyrology* (Toronto, 1970), 317–77, at 331–4.

> Wenn ein Mensch klagt gegen einen Menschen: »Er hat gegraben neben (x+VIII, 21) meinem Haus. Er hat mein Haus einstürzen lassen«, dann wird man den Beklagten befragen. Wenn er sagt: »Ich habe es nicht getan, um sein Haus einstürzen zu lassen, sondern allein, (x+VIII, 22) um [das] Fundament meines Hauses, [das] ich bauen werde, zu graben«, und wenn er ihm schwört, wird man ihn fern sein lassen von ihm. Wenn er nicht schwört, wird man schwören lassen (x+VIII, 23) den [Kläger:] »Mein Haus ist eingestürzt. Der und der Besitz ist mir verloren gegangen wegen meines Hauses, das eingestürzt ist.« Wenn er schwört, dann wird man ihn geben lassen (x+VIII, 24) den Besitz, [den] der Mensch, dessen Haus eingestürzt ist, [verloren hat.][1]

The manual gives the man who dug the hole the opportunity to swear an oath of innocence but only if he has a good alibi: he happened to be digging the hole to lay the foundation for his own house. The Greek translation renders the defendant's explanation as "he did not act wickedly towards the collapse" (οὐ πονηρεύεσθαι πρὸς τὸ πεσεῖν).

> ἐ]ὰν δέ τις καταβοήσῃ κατά τινος, φάμενος αὐτὸν [ὑπορύ]ξ̣αι ὑπὸ τὴν αὐτοῦ οἰκίαν καὶ ποιῆσαι αὐτὴν [πεσεῖν,] προστάσσεται τῷ καταβοηθέντ[ι ὀ]μόσαι τῷ κατ̣[αβοήσαν]τι εἶ μὴν ὅτι οὐ πονηρεύεσθα[ι π]ρ̣ὸς τὸ πεσε[ῖν]
>
> If a man raises an outcry against another, alleging that he dug beneath his house and caused it to fall, it is enjoined upon the man complained against to swear an oath to the plaintiff that he is truly not acting maliciously to cause the collapse … (*P.Oxy.* XLVI 3285.43–6)[2]

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[1] M. A. Stadler, 'Rechtskodex von Hermupolis (P. Kairo JE.89.127–30+89.137–43)', in B. Janowski and G. Wilhelm (eds), *Texte zum Rechts- und Wirtschaftsleben* (Gütersloh, 2004), 185–207, at 203.
[2] J. R. Rea (ed.), *The Oxyrhynchus Papyri XLVI* (London, 1978), 34.

The oath of innocence is not a carte blanche. The defendant cannot take an oath to clear himself of *any* accusation. From other papyri it is known that digging a hole "under" or "next to" (ὑπό) someone else's house could be interpreted as an attempt at breaking and entering (see *P.Tebt.* III.1 804; *SB* XX 14679; *P.Abinn.* 45). The defendant can *only* take the oath of innocence if he dug the hole for the purpose of laying the foundation of his own house and not with the malicious intention of causing his neighbour's house to "collapse" (πεσεῖν). The oath of innocence both widens and restricts the opportunities of the defendant.[1] He has the opportunity to clear himself of the accusation of intentional malice but only if he has a good alibi (e.g., laying the foundation of his own house).

In this papyrus the infinitive πονηρεύεσθαι does not express the result of the defendant's actions, but his attitude towards his actions. This is significant. A central problem in the rabbinic discussion is the meaning of שליחות יד. The Shammaites argued that it was sufficient merely to *think* (חשב) about "putting one's hand" on the deposit.

הַחוֹשֵׁב לִשְׁלֹחַ יָד בְּפִקָּדוֹן, בֵּית שַׁמַּאי אוֹמְרִים, חַיָּב. וּבֵית הִלֵּל אוֹמְרִים, אֵינוֹ חַיָּב עַד שֶׁיִּשְׁלַח בּוֹ יָד, שֶׁנֶּאֱמַר אִם לֹא שָׁלַח יָדוֹ בִּמְלֶאכֶת רֵעֵהוּ.

> If someone thinks about putting his hand on the deposit, the house of Shammai says: He is liable. The house of Hillel says: He is not liable until he put his hand on the deposit, for it is said: *If he did not stretch out his hand to his neighbour's property* (*m. B. Mes.* 3.12)

[1] The same goes for the oath in the LXX, which does not at all "generalise" the law of its *Vorlage* but rather *limits* its applicability. Prijs, *Jüdische Tradition in der Septuaginta*, 2; Schaper, 'Exodos', in Karrer and Kraus (eds), *Septuaginta Deutsch: Erläuterungen und Kommentare zum griechischen Alten Testament*, I, 304.

According to the Shammaites, the mere *thought* of using, for example, your neighbour's spade—entrusted for safekeeping—was enough to transgress the law. The Shammaites' reading of the law of deposit, in which thinking about embezzlement is embezzlement, has an antecedent in the LXX. If one assumes the word πονηρεύομαι was used in a similar sense in the LXX as in the papyri, then the LXX implies the depositary is asked to disavow merely having had a plan to embezzle the deposit. The LXX asks the depositary to swear not only that he played no active role in the disappearance or theft of the deposit, but also that he had not even intended to use the deposit: "He shall swear that he did not intend maliciously against the entire deposit of his neighbour" (ὀμεῖται ἢ μὴν μὴ αὐτὸς πεπονηρεῦσθαι ἐφ ὅλης τῆς παρακαταθήκης τοῦ πλησίον). The same facts of the case are valued differently because of the defendant's motive. The house has collapsed, the sheep has disappeared—those are the facts. The gravity of the punishment depends, both in the LXX and in the Mishnah, on the defendant's motive.

2.9 Liability in Rabbinic Halakhah

Scholars of rabbinics have argued that the idea of liability for negligence—i.e., failure to take proper care—emerges for the first time in amoraic halakhah. David Daube argued that the tannaitic rabbis were unfamiliar with the idea of negligence (Hebr. פשיעה or Aram. פשיעותה). The rabbis, he argued, only introduced the idea around the time that standards of liability in Roman law shifted from objective to subjective—from liability for fault to liability for negligence.[1] The tannaitic rabbis understood פשע in the Biblical Hebrew sense of "to revolt, to be unfaithful" and not in the sense it acquired in later Rabbinic Hebrew of "to be

[1] Daube, 'Negligence in the Early Talmudic Law of Contract (*Peši'ah*)', in Niedermeyer and Flume (eds) *Festschrift Fritz Schulz*, I, 124–47.

negligent".[1] If tannaitic rabbis had wanted to introduce the notion of negligence they would have had plenty of opportunity to do so in their interpretations of כל דבר פשע (Exod. 22:8) but they did not (see *m. B. Mes.* 3.12).

Although he does not comment on law of deposit in particular, Leib Moscovitz observes a higher degree of abstraction and conceptualisation in post-tannaitic halakhah than in tannaitic halakhah.[2] In a footnote he argues that in a case of tort in *b. B. Q.* 55b–56a only the anonymous strata of the Bavli base their decisions on the principle of liability for negligence.[3]

Shana Strauch Schick writes that the early amoraim from Babylonia favoured strict liability whereas the early amoraim from Palestine took the defendant's degree of fault into account.[4] *M. B. Q.* 2.6 famously supports a system of strict liability by arguing that "a human is always forewarned, [whether he acted] unintentionally or intentionally [בין שוגג בין מזיד], whether awake or asleep." But whereas R. Hezekiah and Rabbah in the Bavli take this as an argument for strict liability, R. Isaac in the Yerushalmi limits the applicability of *m. B. Q.* 2.6 to cases where there is at least some degree of fault.[5]

The LXX potentially extends this discussion back into the Hellenistic era. The LXX does not, however, provide an easy solution. The LXX does take into account the subjective motives of the depositary: the verb πονηρεύομαι describes a mental attitude, not the results of an act. The LXX asks the depositary to swear he did not have any malicious intent towards the deposit. But not every depositary has the opportunity to take an oath of innocence. The LXX has left much of the structure of the Hebrew law intact. Hence the guardian of animals

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[1] See, e.g., *m. Yom.* 3.8.
[2] L. Moscovitz, *Talmudic Reasoning: From Casuistics to Conceptualization* (Texts and Studies in Ancient Judaism 89; Tübingen, 2002).
[3] Moscovitz, *Talmudic Reasoning*, 64 n. 67.
[4] S. Schick, 'Negligence and Strict Liability in the Babylonian and Palestinian Talmuds: Two Competing Systems of Tort Law in the Rulings of Early Amoraim', *Dine Israel* 29 (2013), 139*–76*.
[5] *B. B. Q.* 26b; *y. B. Q.* 2b; see also *Mekhilta Neziqin* 14.

has to live up to a higher standard of care than the guardian of "silvers or vessels". The guardian of animals is subject to strict liability: even if the animal is stolen, he still has to repay double: "if it is stolen from him, he shall repay the owner" (ἐὰν δὲ κλαπῇ παρ᾽ αὐτοῦ, ἀποτείσει τῷ κυρίῳ, Exod. 22:11). Only in exceptional circumstances—such as a cattle-raid without witnesses (v. 9)—does the depositary have the opportunity to take an oath of innocence. The result is the LXX's nuanced combination of consideration for subjective motives and maintenance of the overall structure of the biblical law, which already contained some definition of liability for negligence (see 2.11).

2.10 Negligence in Egyptian Papyri

From the perspective of a depositary biblical law compares favourably to Egyptian contracts. The two kinds of sources do not make for an even comparison: the biblical law only explicitly describes exceptional cases; Egyptian contracts only give us a glimpse of initial agreements.[1] Such contracts do not usually describe mitigating circumstances but prescribe double payment in case of failure to return the "deposit" (παραθήκη) in time.[2]

> ἐὰν δὲ μὴ [ἀποδῶσι καθὰ γέγραπται] ἀποτεισάτωσαν αὐτῷ [οἱ ὁμολογοῦντες τὴν παρα]θήκην διπλῆν ἀκολ[ο]ύθ[ως τῷ τῶν παραθηκῶν νόμῳ

[1] There is a similar uncertainty for the loan contracts in the Murašû archive, a collection of 740 cuneiform tablets from fifth-century Nippur. The contracts often do not spell out what would have happened if debtors defaulted on their loans. M. W. Stolper, *Entrepreneurs and Empire: The Murašû Archive, the Murašû Firm, and Persian Rule in Babylonia* (Publications de l'Institut historique et archéologique néerlandais de Stamboul 54; Leiden, 1985), 106: "Normal Babylonian business practice required that when a debt was paid, the record of indebtedness, along with any copy of it, be returned to the debtor or destroyed; failing that, another document was issued to nullify previous records. Consequently, unless the Murašû firm departed radically from this long-established behavior, most or all of the mortgages retained in the Archive must be understood to have resulted in the firm's acquisition of antichretic title to pledged bow lands. Since redeemed pledges ordinarily resulted in loss of the original record of debt, redemptions are invisible in the documentary record, and unpaid mortgages cannot be assessed as a percentage of all loans issued. But to judge by sheer numbers, converted mortgages constituted a large part of the Murašû firm's business."

[2] R. Taubenschlag, *The Law of Greco-Roman Egypt in the Light of the Papyri: 332 B.C.–640 A.D.* (New York, 1944), 238–9.

> If I were not to repay according to what is written, those assenting to the deposit will repay him double, in accordance with the law of deposits (*BGU* III 856.17–9, AD 106)

There are two possible exceptions; two contracts relieve the depositary from the punishment of restitution because of mitigating circumstances. The first is a copy of a naval contract, in which Archippos lends money to five sailors in order to trade perfume in present-day Somalia (2nd cent. BC). Ulrich Wilcken, the editor of the papyrus, compared the contract to a naval contract mentioned by Demosthenes (*Androcles against Lacritus* 11–5).[1] The sailor was acquitted of repayment in the case of shipwreck under the conditions of that contract. Since the lender would get a share in the profit, he did not charge interest or accept a security. Perhaps similar conditions applied to the contract of the perfume-sailors. The papyrus, however, is fragmentary and similar contracts are rare.[2]

The second exception to the rule of strict contractual liability for depositaries is a commission of a camel-delivery for a Roman prefect (*P.Bas.* 2, AD 190).[3] The agreement between the owner and the delivery-men does not hold the two men liable if the animals happen to die during the journey.

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[1] For more on these naval contracts, see P. Millett, *Lending and Borrowing in Ancient Athens* (Cambridge, 1991), 188–93; E. E. Cohen, *Athenian Economy and Society: A Banking Perspective* (Princeton, NJ, 1992), 36–83; S. Schuster, *Seehdarlehen in den Gerichtsreden des Demosthenes: Mit einem Ausblick auf die weitere historische Entwicklung des Rechtsinstitutes: dáneion nautikón, fenus nauticum und Bodmerei* (Freiburger Rechstgeschichtliche Abhandlungen 49; Berlin, 2005), 23–174.

[2] U. Wilcken, 'Punt-Fahrten in der Ptolemäerzeit', *Zeitschrift für Ägyptische Sprache und Altertumskunde* 60 (1925), 86–102, 93: "Nur erhebt sich das Bedenken, ob man auch bei einem Seedarlehen, bei dem der Glaubiger das Risiko der Fahrt mitträgt, an ein zinsloses Darlehen denken kann. Solche ἄτοκα δάνεια kommen zwar unter den gewöhnlichen Darlehen in dieser Zeit sehr häufig vor, aber als Seedarlehensgläubiger, der keinen Zinsen nimmt, würde Archippos wohl ein weißer Rabe sein. Dennoch könnte er vielleicht auf anderem Wege, etwa durch Beteiligung am Geschäftsgewinn der Reise, sich schadlos gehalten haben."

[3] E. Rabel, *Papyrusurkunden der Öffentlichen Bibliothek der Universität zu Basel, I: Urkunden in griechischer Sprache* (Berlin, 1917), 14–9.

ἐὰν δὲ πτ̣α[ίσ]ῃ τι ἐξ [α]ὐτῶ[ν κατὰ τὴ]ν ὁδὸν, οἴσομεν ὑμ[ε]ῖν τὴν σφραγεῖδα καὶ οὐδὲν ζη[τηθήσ]εται πρὸ[ς] ἡμᾶς.

If one of them falls during the journey, we will bring the seal and nothing will be required from us. (*P.Bas.* 2.10–2)

The "seal" here probably refers to the mark left by a branding iron (usually the name of the owner or one or two letters). Raphael Taubenschlag argued that this was an exception and normal contracts held a debtor or depositary liable regardless of the circumstances.[1] Ordinary Ptolemaic contracts did not consider the depositary's subjective motives; they held the depositary liable regardless of why the property was lost or damaged.

2.11 Negligence in the Hebrew Bible

There is a possibility that the wording of the Hebrew law already contemplates the possibility of liability for negligence. The substance of the depositary's denial is that he did not "stretch out his hand" (שלח יד) to his neighbour's property. But the precise meaning of that idiomatic expression is unclear. Paul Humbert, after reviewing all instantiations of שלח יד in the Hebrew Bible, concluded it invariably referred to an active gesture.

> Il appert donc que l'expression *šālaḥ yād* désigne un geste banal et rapide (cp. le choix du verbe *šālaḥ*!) de la main, soit au sens purement naturel et physique pour saisir un objet, soit avec une connotation morale pour une entreprise ou une main-mise, de nature surtout hostile, mais, très exceptionnellement, pacifique.[2]

[1] Taubenschlag, *Law of Greco-Roman Egypt in the Light of the Papyri*, 238–9.
[2] Humbert, '"Etendre la main" (Note de lexicographie hébraïque)', 388; cf. ibid., 391: "*šālaḥ yād*, un geste banal et avant tout humain, un geste préhensif, de prise de possession, d'entreprise, ou d'attentat."

Yael Landman in her dissertation proposes another definition, interpreting שלח יד in the law of deposit as "a verbal idiom for behaving negligently".[1] She compares שלח יד in Biblical Hebrew to *aḫa nadû* in Akkadian, a phrase that literally means "to drop one's arm" and functions as an idiom for negligence.[2] The Akkadian expression happens to occur in a series of texts recording deposits of property.

> Place into safekeeping 10 sheqels silver worth of dry bran … Do not be negligent (*nī aḫi*) about safeguarding the dry bran. (*CT* LII 183.15–6, 19–20).[3]

This is a tempting suggestion but it is difficult to accept that the same idiom could carry such widely different connotations, ranging from passive failure to murderous attempt, as in Esth. 7:8.

תָּלוּ עַל־הָעֵץ עַל אֲשֶׁר־שָׁלַח יָדוֹ בַּיְּהוּדִיים

> they hanged him [*sc.* Haman] on a tree, because he stretched out his hand to the Jews. (Esth. 8:7b; cf. 2:21; 6:2; 9:2)

Landman may be right, but the LXX's translator did not derive their definition from these inscriptions. Instead, they deduced the "subjective" interpretation of שלח יד from the *structure* of the law. Even if the expression שלח יד is not an idiom for negligence, the idea of

[1] Landman, *The Biblical Law of Bailment in Its Ancient Near Eastern Contexts*, 20.
[2] Landman, *The Biblical Law of Bailment in Its Ancient Near Eastern Contexts*, 80–6.
[3] Landman, *The Biblical Law of Bailment in Its Ancient Near Eastern Contexts*, 82.

liability for negligence may still be implicit in the structure of the law.[1] The depositary of "silver or vessels" is not responsible for theft (Exod. 22:6–7). The depositary of animals *is* responsible for theft.

וְאִם־גָּנֹב יִגָּנֵב מֵעִמּוֹ יְשַׁלֵּם לִבְעָלָיו׃

If it [*sc.* the animal] is stolen from him, he shall repay its owner. (Exod. 22:11)

Implicit is the expectation that the depositary of an animal, a shepherd, can be expected to prevent theft. The law holds the depositary of animals liable for failure to take "reasonable care" of the deposit. The law holds the shepherd liable for "negligence".

Other biblical laws set similar standards of liability. The law of the goring ox (Exod. 21:28–32, 35–6) expects the owner of an aggressive ox to "guard" (שמר) his ox. If the owner fails to do so and the ox kills, the owner will be punished more severely. The law does not elaborate on the meaning of שמר nor does it explicate the punishment for the owner whose ox still managed to kill (despite its owner's precautions). David Daube argued that this law "proclaims strict liability … but this strict liability is largely directed against the careless."[2] Ancient exegetes devoted much attention to the definition of שמר (see Philo, *Spec.* 3.145; Joseph., *Ant.* 4.281–2; *m. B. Q.* 4.9). Exod. 21:33–4 expects a digger to "cover" (כסה) the pit. If he does not, he will be held liable for animals who fall into his pit. The deuteronomic law decrees that anyone who builds a new house should also erect a "parapet" (מעקה) on the roof

[1] Paul, *Studies in the Book of the Covenant*, 93: "The bailee must make restitution only when the animal is stolen, for it is then assumed that he was *negligent* in guarding the animal" (my italics). Houtman, *Exodus*, III, 196, 202: "22:6–14 contains a series of stipulations intended to protect an Israelite's property against loss caused by a neighbour's deceitful conduct or neglect … the shepherd can be accused of dereliction of duty."
[2] D. Daube, *The Deed and the Doer in the Bible: David Daube's Gifford Lectures* (ed. C. Carmichael; 2 vols; Philadelphia, PA, 2007), I, 122; cf. Van Seters, *Law Book for the Diaspora*, 119; Jackson, *Wisdom-Laws*, 273–4.

(Deut. 22:8). If he fails to do so and someone falls off the roof, he will be liable for manslaughter (see 2.1).[1]

The kind of argument made by David Daube, that criteria for liability developed from objective to subjective, only works if we presuppose there is no place for subjective criteria in the Hebrew Bible. Even in the absence of a vocabulary for negligence (such as פשע in late-amoraic halakhah) the earlier sources may express expectations of reasonable care. The LXX, which gives the depositary of Exod. 22:6–14 the opportunity to clear himself of the accusation of intentional malice (πονηρεύομαι) but not of lesser crimes, is perhaps not based on a narrow consideration of the idiom of שלח יד alone but on a deeper reflection on the standards of liability in biblical law.

2.12 Conclusion

The Deuteronomic and Priestly Codes functioned as "intermediaries" between the Covenant Code and the LXX. By the time of its translation, the Covenant Code already had a long history of interpretation. The tradition of interpretation—between the original composition and the translation—influenced the translator's understanding of the text. The meaning of Exod. 21:16, for example, was completely "overshadowed" by Deut. 24:7.[2] So much so that the LXX of Exod. 21:16 or its *Vorlage* has adopted the extra clause from Deuteronomy.

וְגֹנֵב אִישׁ וּמְכָרוֹ וְנִמְצָא בְיָדוֹ מוֹת יוּמָת׃ ס

[1] Note that Philo (*Spec.* 3.144–9), Josephus (*Ant.* 4.281–4), and Maimonides (*Mishneh Torah Neziqin Hilkot Rotseah* 11) all group the laws of the goring ox, the pit, and the parapet together. L. H. Feldman, *Flavius Josephus: Translation and Commentary, III: Judean Antiquities 1–4* (ed. S. N. Mason; Leiden, 2000), … n. 8.
[2] B. M. Levinson, 'The Manumission of Hermeneutics: The Slave Laws of the Pentateuch as a Challenge to Contemporary Pentateuchal Theory', in A. Lemaire (ed.), *Congress Volume Leiden 2004* (Supplements to Vetus Testamentum 109; Leiden, 2006), 281–324.

If someone steals a man, sells him, and he is found in his hand, he shall die. (Exod. 21:16)

כִּי־יִמָּצֵא אִישׁ גֹּנֵב נֶפֶשׁ מֵאֶחָיו מִבְּנֵי יִשְׂרָאֵל וְהִתְעַמֶּר־בּוֹ וּמְכָרוֹ וּמֵת הַגַּנָּב הַהוּא וּבִעַרְתָּ הָרָע מִקִּרְבֶּךָ׃

If a man is found who sells a soul from his brothers, from the sons of Israel—he oppressed him and sold him—, then that thief shall die. You shall remove evil from your midst. (Deut. 24:7)

ὃς ἐὰν κλέψῃ τίς τινα τῶν υἱῶν Ισραηλ καὶ καταδυναστεύσας αὐτὸν ἀποδῶται, καὶ εὑρεθῇ ἐν αὐτῷ, θανάτῳ τελευτάτω.

If someone steals someone from the sons of Israel—and after oppressing him, sells him—and he is found with him, he shall die. (Exod. 21:16)

The examples from the law of deposit are more subtle; the connections more tenuous. The meaning of Exod. 22:6–14 was not obscured by Lev. 5:20–16. The LXX's translator preserves the distinct identities of the two laws (in contrast to Philo and Josephus). But there are some connections between the two laws. There are echoes of the Priestly law that resonate in the LXX's translation of the Covenant Code. The LXX is not just a translation of the words of its *Vorlage.* The LXX also depends on the law's history of interpretation.

The LXX also hosts a surprising innovation: the use of πονηρεύομαι—used in the same sense as in the Greek manual of Hermopolis—gives consideration to the subjective motives of the depositary. The structure of the law, however, is left largely intact. The contrast between the depositaries of animate and inanimate property implies different definitions of "reasonable care" (contrast Exod. 22:6–7 with v. 11). The LXX maintains the

Hebrew definition of "reasonable care", implicit in the structure of the law. But it introduces a new element: the depositary must not even *think* of embezzling the deposit. In this respect the LXX anticipated the opinion of the Shammaities, who argued that the mere thought (חשב) of using a deposit for one's own profit constituted the full crime of embezzlement.

3 THE CONDITIONS OF LEVIRATE MARRIAGE (DEUT. 25:5–6)

3.1 Introduction

If a man dies, his brother should marry the widow to produce an heir. That is the basic idea of levirate marriage, *yibbum*. The wording of the deuteronomic law is concise as always and leaves many questions unanswered. The LXX appears to imply that levirate marriage ought not to take place if the man has a daughter. The interpretation hinges on two words. The translator turned "son" (בן) into "offspring" (σπέρμα) and "firstborn" (בכור) into "child" (παιδίον) in his translation of the biblical law (Deut. 25:5–6). The implication is that a child of either sex exempts the widow from undergoing a second marriage. The early rabbis arrived at the same conclusion, focussing on the very same phrase in the biblical law: ובן אין לו, "and he has no son". The chapter will explore two possible ways through which the translator and the rabbis may have arrived at the same conclusion. The first, proposed by Andrew Teeter, is that the very word בן, usually: "son", is ambiguous and may refer to a son *or a daughter*. The second, formulated by Zacharias Frankel, is that the translator engaged in a midrashic reading of the verse, just like the rabbis. This may well be true. The crucial argument in the rabbinic discussion about the meaning of בן is the analogy with the case of the daughters of Zelophehad, who happen to use the very same phrase: ובן אין לו, "and he has no son" (Num. 27:8). It is here that we get some clarity about the right sequence of succession: a daughter can get some claim to her father's land, but only if there is no son. This may well be the way by which the translator arrived at his conclusion too: the later, Priestly text shaped the translator's understanding of the deuteronomic law.

3.2 The Law of Levirate Marriage

The idea of Deuteronomy's law of levirate marriage in itself is simple. If a man dies without a son, his brother should marry the widow in order to produce an heir.

> כִּי־יֵשְׁבוּ אַחִים יַחְדָּו וּמֵת אַחַד מֵהֶם וּבֵן אֵין־לוֹ לֹא־תִהְיֶה אֵשֶׁת־הַמֵּת הַחוּצָה לְאִישׁ זָר יְבָמָהּ יָבֹא עָלֶיהָ
> וּלְקָחָהּ לוֹ לְאִשָּׁה וְיִבְּמָהּ: 6 וְהָיָה הַבְּכוֹר אֲשֶׁר תֵּלֵד יָקוּם עַל־שֵׁם אָחִיו הַמֵּת וְלֹא־יִמָּחֶה שְׁמוֹ מִיִּשְׂרָאֵל:
>
> When brothers live together and one of them dies without a son, the wife of the deceased shall not belong to a strange man, outside (the family). Her husband's brother shall come to her. He shall take her as his wife and perform the levir's duty. 6 The firstborn she bears shall stand for the name of the dead brother and his name shall not be wiped away from Israel. (Deut. 25:5–6)

Scholarship has mainly focussed on a comparison with two other passages within the Hebrew Bible. Genesis 38 and Ruth 4 appear to invoke some form of the institution of levirate marriage. The comparison causes a series of problems.

1. Who is a *yābām*? The law only mentions the brother-in-law. Tamar produces a child with Judah, her father-in-law; Ruth with Boaz, an unspecified relative.[1]
2. Did the *yābām* have to *marry* the widow? The law seems to imply it. Boaz assumes it. But Judah did not marry Tamar.[2] What was the consequence of refusal? The law orders

[1] G. R. Driver and J. C. Miles, *The Assyrian Laws: A Translation and Commentary* (Oxford, 1935), 240–50. If indeed the יבם was not strictly speaking a *levir*, a brother-in-law, and if did not necessarily *marry* the widow, the term "levirate marriage" is entirely inaccurate.
[2] Gen. 38:26: "he did not know her again"; see G. W. Coats, 'Widow's Rights: A Crux in the Structure of Genesis 38', *Catholic Biblbical Quarterly* 34 (1972), 461–6; J. Emerton, 'Some Problems in Genesis XXXVIII', *Vetus Testamentum* 25 (1975), 357–60.

the man who refuses to marry his sister-in-law to undergo *halitzah* (Deut. 25:9–10). But in the case of Onan, God *killed* him for refusing to impregnate Tamar.[1]

3. Whose legal child was the new heir? The child is the heir to the deceased in Genesis and Deuteronomy. But in the genealogy at the end of the book of Ruth, Obed counts as Boaz' son—not Mahlon's (Ruth 4:21).[2]

Modern scholars solve the problems in roughly two ways. Some argue that the inconsistencies resulted from the historical development of levirate marriage. Eryl Davies, for example, reconstructs distinct stages of the development of the institution of levirate marriage.[3] Levirate marriage started off as an unavoidable obligation (Genesis 38) that later changed into an avoidable duty (Ruth). Other scholars turn to the genre of the texts to explain the discrepancies between them. The casuistic law considers only one scenario. The stories reflect a more complicated reality or rest on a more complicated fictional plot.[4]

The LXX raises yet another question: what would happen when a man died without a son but *with a daughter*?

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[1] R. De Vaux, *Ancient Israel: Its Life and Institutions* (tr. J. McHugh; London, 1961), 37; C. M. Carmichael, 'Ceremonial Crux: Removing a Man's Sandal as a Female Gesture of Contempt', *Journal of Biblical Literature* 96 (1977), 321–36.
[2] H. H. Rowley, 'The Marriage of Ruth', *Harvard Theological Review* 40 (1947), 77–99.
[3] E. W. Davies, 'Inheritance Rights and the Hebrew Levirate Marriage, Part 2', *Vetus Testamentum* 31 (1981), 257–68, at 267; E. Neufeld, *Ancient Hebrew Marriage Laws* (London, 1944), 23–55. See also R. Westbrook, *Property and the Family in Biblical Law* (Sheffield, 1991), 71, who argues that the deuteronomic law, like other ancient Near Eastern laws, is not "a comprehensive statement of general principles" but consists of "collections of decisions in individual cases".
[4] T. Thompson and D. Thompson, 'Some Legal Problems in the Book of Ruth', *Vetus Testamentum* 18 (1968), 79–99; D. R. G. Beattie, 'The Book of Ruth as Evidence for Israelite Legal Practice', *Vetus Testamentum* 24 (1974), 251–67; M. Leuchter, 'Genesis 38 in Social and Historical Perspective', *Journal of Biblical Literature* 132 (2013), 209–27, at 222; for a more nuanced consideration of laws and narratives, see C. M. Carmichael, 'Inheritance in Biblical Sources', *Law and Literature* 20 (2008), 229–42. Ruth in particular complicates the problem. The author apparently conflated the laws on marriage, inheritance, and land-ownership, see B. Embry, 'Legalities in the Book of Ruth: A Renewed Look', *Journal for the Study of the Old Testament* 14 (2016), 31–44.

3.3 The LXX

> Ἐὰν δὲ κατοικῶσιν ἀδελφοὶ ἐπὶ τὸ αὐτὸ καὶ ἀποθάνῃ εἷς ἐξ αὐτῶν, σπέρμα δὲ μὴ ᾖ αὐτῷ, οὐκ ἔσται ἡ γυνὴ τοῦ τεθνηκότος ἔξω ἀνδρὶ μὴ ἐγγίζοντι· ὁ ἀδελφὸς τοῦ ἀνδρὸς αὐτῆς εἰσελεύσεται πρὸς αὐτὴν καὶ λήμψεται αὐτὴν ἑαυτῷ γυναῖκα καὶ συνοικήσει αὐτῇ. 6 καὶ ἔσται τὸ παιδίον, ὃ ἐὰν τέκῃ, κατασταθήσεται ἐκ τοῦ ὀνόματος τοῦ τετελευτηκότος, καὶ οὐκ ἐξαλειφθήσεται τὸ ὄνομα αὐτοῦ ἐξ Ισραηλ.
>
> If brothers live together in the same place, and one of them dies without offspring, the wife of the deceased shall not (belong) outside, to an unrelated man. The brother of her husband shall go to her and take her as his very own wife and marry her. 6 The child, which she bears, shall be established from the name of the deceased, and his name shall not be obliterated from Israel. (Deut. 25:5–6)

The LXX's translator closely followed the Hebrew *Vorlage*. The translator came up with some beautiful solutions to the challenge of turning Hebrew into Greek. He translated the *qal* participle הַמֵּת, "the dead (one)", as a perfect participle in the genitive: τοῦ τεθνηκότος. The use of the perfect, describing past action with present result, is very apt in this context. The second time the Hebrew uses the same word, הַמֵּת, the translator chose the perfect participle of a different verb, for the sake of variation: τοῦ τετελευτηκότος. The translator's use of κατοικέω, "to live *in* a place", for ישב and συνοικέω, "to live together", for יבם creates an echo that was not yet there in the Hebrew. The translator's choice of ἐξαλείφω, "to wipe out", for מחה was inspired: the Greek verb has almost the exact same breadth of meaning as the Hebrew. The words were used of literally washing away the words from written scrolls (Num. 5:23) and crossing out names from scrolls (Xen., *Hell.* 2.3.51). Hence they were used

for “blotting out” the memory of a person (Exod. 17:14; Thuc. 3.57). Other phrases sound less natural in Greek than in Hebrew. The Hebrew בוא עליה is an idiomatic expression for sex.[1] The translator turned the phrase into εἰσέρχομαι πρὸς αὐτὴν, literally: “to enter towards her”. The Greek captures every element of the Hebrew, but falls short of conveying the connotation of the Hebrew idiom.

The word-for-word translation gives the impression of aiming merely to conserve the meaning of the Hebrew. The brilliance of the translator is that he cloaks a legal innovation in the “conservative” translation. He translates בן, usually: “son”, as σπέρμα, “offspring”, and turned בכור, “firstborn”, into παιδίον, “child”. The two small words appear inconsequential but the legal implications are significant: in the LXX, the widow is exempt from levirate marriage when the man is survived by a *daughter*. The question of the present chapter is what inspired the translator to translate the two words in this way.

3.4 The Meaning of בן

Andrew Teeter argues that the Hebrew text of the law already contained an ambiguity.[2] One normally translates בן as “son”, but the word בן occasionally refers to a child of either sex.[3]

בְּעֶצֶב תֵּלְדִי בָנִים

… in pain you will bear children. (Gen. 3:16)

[1] The MT has עליה, the SP אליה.
[2] Teeter, *Scribal Laws*, 137.
[3] *HALOT*, I, 137.

The words are usually understood as a categorical statement about giving birth to children, not just sons. Jeremiah uses the phrase בן זכר, "male son" (20:15). If בן exclusively meant "son", the adjective זכר, "male" would be superfluous.[1]

אָרוּר הָאִישׁ אֲשֶׁר בִּשַּׂר אֶת־אָבִי לֵאמֹר יֻלַּד־לְךָ בֵּן זָכָר שַׂמֵּחַ שִׂמְּחֵהוּ׃

> Cursed is the man who brought news to my father, saying: 'A *bēn zākār* is born to you,' making him very happy. (Jer. 20:15)

Elsewhere in the Hebrew Bible בן refers to the fruit of plants and to the young of animals of either sex.[2] These are strong arguments for accepting the definition of "child" for בן.

However, when בן includes female offspring, it is always in the *plural*: "children" (בנים), as in Gen. 3:16 cited above.[3] After the birth of Isaac, Sarah also uses the plural "children" to express the unlikeliness of her giving birth to children.

וַתֹּאמֶר מִי מִלֵּל לְאַבְרָהָם הֵינִיקָה בָנִים שָׂרָה כִּי־יָלַדְתִּי בֵן לְזִקְנָיו׃

> She said: 'Who would have said to Abraham: 'Sarah will breastfeed *bānîm*!' For I have born a son in his old age.' (Gen. 21:7)[4]

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[1] A. Lemaire, 'Veuve sans enfants dans le royaume de Juda', *Zeitschrift für Altorientalische und Biblische Rechtsgeschichte* (1999), 1–14, at 9. A marginal gloss of the 15th-cent. MS of Targum Neofiti adds "male" (דכר) in Deut. 25:6—thus dispelling any doubt about the sex of the בן resulting from the levirate marriage. At first sight is impossible to say whether the Neofiti's translators thought that the Hebrew בן really meant "son" exclusively or that it *should* mean "son". But the marginal gloss accords with Neofiti's preference for the patriarchal line of descent, because elsewhere the Neofiti translates "offspring" (זרע) as "son" (בין) or as "offspring of a son" (זרעי בין). M. J. McNamara (ed.), *Targum Neofiti 1: Deuteronomy* (Aramaic Bible 5A: Collegeville, MN, 1997), 5, 116.

[2] Gen. 32:16; 49:11; Num. 15:24; Deut. 22:6–7; Zech. 9:9; Ps. 29:6; Job 4:11; 39:4; Ezra 6:9. For plants, see Gen. 49:22; cf. Job 38:7.

[3] J. Bergman, H. Ringgren, and H. Haag, 'בן', in Botterweck, Ringgren, and Fabry (eds), *Theological Dictionary of the Old Testament*, II, 145–59, at 150.

[4] See also Gen. 30:1; Exod. 21:5; Deut. 4:10; Ps. 128:3.

When the deuteronomic legislator means to include daughters, he is always explicit.[1]

לֹא־יִמָּצֵא בְךָ מַעֲבִיר בְּנוֹ־וּבִתּוֹ בָּאֵשׁ

> No one shall be found to make his son *or his daughter* pass through fire. (Deut. 18:10a)

If the deuteronomic legislator wanted to include daughters in the law of levirate marriage, he would have been more explicit.[2]

Regardless of the original meaning of the word in the law of levirate marriage, the LXX's translation is remarkable. The equation of בן with σπέρμα is unparalleled in the LXX corpus. They understood σπέρμα to include both sons and daughters, most explicitly in the LXX's translation of Jakob's arrival in Egypt:

> εἰσῆλθον εἰς Αἴγυπτον, Ιακωβ καὶ πᾶν τὸ σπέρμα αὐτοῦ μετ᾽ αὐτοῦ, 7 υἱοὶ καὶ οἱ υἱοὶ τῶν υἱῶν αὐτοῦ μετ᾽ αὐτοῦ, θυγατέρες καὶ θυγατέρες τῶν υἱῶν αὐτοῦ· καὶ πᾶν τὸ σπέρμα αὐτοῦ ἤγαγεν εἰς Αἴγυπτον.
>
> They entered Egypt, Jacob and all his *sperma* with him: 7 his sons and his sons' sons with him, his daughters and his sons' daughters. He led all his *sperma* to Egypt. (Gen. 46:6b–7)

That the LXX's translation of בן as σπέρμα was not an accident is corroborated by a second unexpected translation in the law of levirate marriage. The LXX turns the "firstborn"

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[1] Lev. 18:21 uses "seed" (זרע) to express the same prohibition: "You shall not give any of your seed to pass for Moloch" (21a).
[2] S. R. Driver, *A Critical and Exegetical Commentary on Deuteronomy* (Edinburgh, 1896), 282; Tigay, *The JPS Torah Commentary: Deuteronomy*, 231

(בכור) into a "child" (παιδίον) (Deut. 25:6). The semantics of בכור are not as ambiguous as the semantics of בן. Even the feminine form of בכור (i.e., בכורה) always refers to a son's "birthright" and never to a "firstborn daughter".[1] In a rare and post-biblical exception to the rule, the text has to spell out that בכורה for once refers to "the *female* firstborn (pl.)" (הבכורות הנקבות) (*Exod. Rab.* 18).[2]

3.5 Early Rabbinic Halakhah

Frankel argued that the LXX was identical to rabbinic halakhah. He wrote:

> Auch das midraschische Element tritt in dieser Version hervor. Prägnant ist 25,5 ובן אין לו σπέρμα δὲ μὴ ᾖ αὐτῷ. Da sonst allenthalben בן παῖς übertragen wird und nur an dieser Stelle allein σπέρμα, so ist zu erkennen, dass der Vert. ausdrücken wollte, die Leviratsehe finde nur dann statt, wenn keine Nachkommenschaft, auch nicht eine weibliche, da sei: hätte aber der Verstorbene eine Tochter zurückgelassen, so wird die Leviratsehe nicht eingegangen, Und so bestimmt es auch die Halacha; vergl. *Jebamot* 22 und sonst.[3]

Frankel referred to *m. Yebam.* 2.5, cited in *b. Yebam.* 22a, which says:

> מי שיש לו בן מכל מקום, פוטראשת אביו מן היבום, וחיב על מכתו ועל קללתו, ובנו הוא לכל דבר, חוץ ממי שיש לו מן השפחה ומן הנכרית:

[1] C. Pressler, *The View of Women Found in the Deuteronomic Family Laws* (Beihefte zur Zeitschrift für die alttestamentliche Wissenschaft 216; Berlin, 1993), 64–5.
[2] Jastrow, *Dictionary*, 169.
[3] Frankel, *Einfluss*, 219.

> If a man has any kind of son, such a son renders the wife of his father exempt from levirate marriage, he is culpable if he strikes or curses his father, and he counts as his son in every respect unless he was the son of a bondwoman or a gentile woman. (*m. Yebam.* 2.5)[1]

What is the meaning of "any kind of son" (בן מכל מקום)? Could it include a daughter as well? The questions is difficult to answer since the idiom מכל מקום, literally: "from any place", occurs almost exclusively in citations of and references to the particular mishnah (e.g., *t. Yebam.* 16b; *b. Yebam.* 22a–b; *y. Yebam.* 13a; *y. B. Bat.* 22a:1). The mishnah itself shows that almost all sons were included in the category "any kind of son": only sons of slaves and gentiles are excluded. Following the rule of *expressio unius est exclusio alterius*, all other sons are understood to be included in the category of "any kind of son".

The *Yerushalmi* contains an elaborate discussion on the meaning of בן and בת in the case of the daughters of Zelophehad in Num. 27:8. The discussion culminates in an argument that depends on the idiom of מכל מקום. The discussion in *b. B. Bat.* 115a is very similar but does not use the expression "any kind of son".

> בן אין לי אלא בן בן בת מניין תלמוד לומר בן מכל מקום. בת אין לי אלא בת בן בת בת בן בת בת בן בן מניין תלמוד לומר בת מכל מקום.
>
> "Son." Not only a son, from where a daughter's son? The verse says "a son", from anywhere. "Daughter." Not only a daughter, from where a daughter's son, a son's daughter, a son's son? The verse says "a daughter," from anywhere. (*y. B. Bat.* 16a)[2]

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[1] Danby, *Mishnah*, 220.
[2] H. W. Guggenheimer, *The Jerusalem Talmud: Fourth Order: Neziqin: Tractates* Bava Qamma*,* Bava Meṣi'a*, and* Bava Batra (Studia Judaica 45; Berlin, 2008), 659.

The singular words "son" and "daughter" actually mean "any kind of son" and "any kind of daughter" and therefore include all the descendants of the "son" and the "daughter". In the end, however, the rabbis found a clue for the inclusion of daughters in the conditions of levirate marriage not in the word בן but in the two following words of the biblical law of levirate marriage: אין לו (Deut. 25:5).

Rav Yehudah, a famous student of Rav, asked what מכל מקום added to the meaning of בן. Returning to the text of Deut. 25:5, he argued that אין לו actually meant: עיין עליו, "an enquiry about him".

מכל מקום לאתויי מאי אמר רב יהודה לאיתויי ממזר מאי טעמא דאמר קרא ובן אין לו עיין עליו:

> What does ANY KIND include?—Rab Judah said: It includes a bastard. What is the reason?—Because Scripture stated, And have no [*en lo*] child which implies 'hold an inquiry concerning him.' (*b. Yebam.* 22b)[1]

This piece of creative exegesis is cited in the exegesis of Num. 27:8 as well, where the daughters of Zelophehad refer to the law of levirate marriage: "and he has no son" (ובן אין לו). It is in the application of the creative exegesis of אין לו that the full extent of the rabbinic understanding of the בן in the law of inheritance becomes apparent—and, by extension, the meaning of the בן in the law of levirate marriage.

תנו רבנן בן אין לי אלא בן בן הבן או בת הבן או בן בת הבן מנין תלמוד לומר אין לו עיין עליו. בת אין לי אלא בת בת הבת ובן הבת ובת בן הבת מנין תלמוד לומר אין לו עיין עליו.

[1] Epstein (ed.), *Babylonian Talmud*, ad loc.

> Our Rabbis taught: [It is written,] son, [from which] one only learns that a son [has a prior claim to heirship]; whence [may it he deduced that] a son of the son, or a daughter of the son, or a son of the daughter of the son [has the same rights]?—It is expressly stated, *En lo* [which is taken to imply], 'hold an enquiry concerning him'. [It is written] daughter, [from which] one only learns that a daughter [is next in succession to a son]; whence [may it he deduced that] a daughter of the daughter, and the son of a daughter, and a daughter of the son of the daughter [have also the same rights]?—It is expressly stated, *En lo* [which is taken to imply], 'hold an enquiry concerning him'. (*b. B. Bat.* 115a)[1]

The two subjects, inheritance and the conditions of levirate marriage, are closely related. The case of the daughters of Zelophehad is a prime example: the five sisters use the same words as the law of levirate marriage in order to get some control over their father's land. The rabbis recognised the similarity and applied the meaning of one passage to the other (גזרה שווה).

Clear evidence for the equation of sons and daughters in the conditions of the levirate marriage comes from *b. B. Bat.* 109a. The discussion here revolves around the question who is "closest" (קרוב, see Num. 27:11) to a deceased man and therefore has the right of inheritance: his father or his daughter? The solution is found in the similarity between levirate marriage and inheritance.

כיון דלענין יבום בן ובת כי הדדי נינהו לענין נחלה נמי בן ובת כי הדדי נינהו

[1] Epstein (ed.), *Babylonian Talmud*, ad loc.

> Since in respect of levirate marriages a son and a daughter have the same standing, a son and a daughter must have the same standing in the case also of inheritance. (*b. B. Bat.* 109a)[1]

It is assumed so evident that "a son and a daughter have the same standing" (בן ובת כי הדדי נינהו) in the case of levirate marriage that it serves as a premise in an argument about inheritance.

R. Samuel b. R. Isaac supposed that the daughters of Zelophehad themselves came up with the argument from analogy.[2] He imagined that the daughters of Zelophehad were present at a public reading of the law of levirate marriage and drew their own conclusions.

> שמואל בר רב יצחק מלמד שהיה משה רבינו יושב ודורש בפרשת יבמין שנאמר כי ישבו אחים יחדו אמרו לו אם כבן אנו חשובין תנה לנו נחלה כבן אם לאו תתיבם אמנו מיד ויקרב משה את משפטן לפני ה׳
>
> R. Samuel son of R. Isaac said: [Scripture] teaches that Moses our master was sitting and holding forth an exposition on the section of levirate marriages, as it is said, *If brethren dwell together*. They said unto him: 'If we are [to be as good] as son[s], give us an inheritance as [to] a son; if not, let our mother be subject to the law of levirate marriage!' And Moses immediately brought their cause before the Lord. (*b. B. Bat.* 119b)[3]

The daughters of Zelophehad observe that their mother is apparently exempt from levirate marriage and that the law only makes provision for the exemption from levirate marriage if

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[1] Epstein (ed.), *Babylonian Talmud*, ad loc.
[2] I. Sassoon, *The Status of Women in Jewish Tradition* (Cambridge, 2011), 113.
[3] Epstein (ed.), *Babylonian Talmud*, ad loc.

the deceased has no "son". They infer they are being treated as "sons" in respect of the law of levirate marriage. They want to extend that treatment into the area of inheritance. Their argument focuses on the word "son" (בן). If it includes daughters in the law of levirate marriage, then it should also in the law of inheritance—that is the גזרה שווה of the five daughters. The rabbis recognised a strong verbal and conceptual link between the law of levirate marriage and the case of the daughters of Zelophehad. They never extend the full right of inheritance of the son to daughters. In fact, the wording of the case of the daughters of Zelophehad in Num. 27:1–11 was reticent in the first place, as we will see below (3.6).

The most convincing evidence that already the tannaitic rabbis thought that a daughter prevented *yibbum* or *halitzah* from taking place comes from *m. Yebam.* 4.1. The mishnah discusses a complex scenario: a man refuses to marry his brother's widow, performs the ritual of *halitzah*, but the widow later turns out to be pregnant. The real question the mishnah addresses is about the rights of the man and woman: can they still marry each other's family, or do they now—because of the *halitzah*—count as divorcees? If they count as divorcees, the woman is no longer allowed to marry a priest and neither is allowed to marry the family members of the other (on which, see *b. Ketub.* 101a; *b. Yebam.* 108a).

החולץ ליבמתו, ונמצאת מעברת וילדה, בזמן שהולד של קימא, הוא מתר בקרובותיה, והיא מתרת בקרוביו, ולא פסלה מן הכהנה. אין הולד של קימא, הוא אסור בקרובותיה, והיא אסורה בקרוביו, ופסלה מן הכהנה:

If a man submitted to *halitzah* from his deceased brother's wife and she was then found with child and gave birth, if the child was like to live, [the *halitzah* is deemed void]: each is permitted to marry the other's kindred; and he has not rendered her ineligible for marriage with a priest. But if the child was not like to live, neither is

permitted to marry the other's kindred, and he has rendered her ineligible for marriage with a priest. (*m. Yebam.* 4.1)[1]

The mishnah uses the word "child" (ולד). The word has an interesting history in Hebrew. It occurs only once or twice in the Hebrew Bible.[2]

וַתְּהִי שָׂרַי עֲקָרָה אֵין לָהּ וָלָד׃

It happened that Sarai was infertile, she did not have a *wālād*. (Gen. 11:30)

The Samaritan Pentateuch reads ילד, also meaning "child" but a far more common word and therefore the *lectio facilior*. The second instance of the ולד is in the *Ketiv* of 2 Sam. 6:23, at least according to the Masoretes who lived in Babylonia.[3] The *Leningrad Codex*, which follows the western, Tiberian tradition, has ילד instead of ולד.

וּלְמִיכַל֙ בַּת־שָׁא֣וּל לֹא־הָ֣יָה לָ֔הּ יֶ֖לֶד עַ֣ד יוֹם מוֹתָ֑הּ פ

Michal, daughter of Saul, did not have a *yāled* till the day of her death. (2 Sam. 6:23)

The Masoretes who lived in Nehardea and Pumbedita read: לא היה לה ולד, "she did not have a *waled*". There is much more at stake in this particular verse: according to 2 Sam. 21:8, Michal had five sons from Adriel. The scribes had confused Michal with Merab, another daughter of Saul who was married to Adriel (according to 1 Sam. 18:19). Both instances of the word ולד refer to *hypothetical* children, children who were not yet or never conceived.

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[1] Danby, *Mishnah*, 223.
[2] *HALOT*, I, 260.
[3] R. Wonneberger, *Understanding BHS: A Manual for the Users of the Biblia Hebraica Stuttgartensia* (Subsidia Biblica 8; Rome, 2001), 32.

The rabbis used the word ולד in the same sense; the word often refers to unborn children.[1]

ההיא איתתא דעיילא לההוא ביתא למיפא. נבח בה כלבא, איתעקר ולדה. אמר לה מרי דביתא לא תידחלי, דשקילי ניביה ושקילין טופריה. אמרה ליה: שקילא טיבותיך ושדיא אחיזרי, כבר נד ולד.

A certain woman entered a house to bake. The dog barked at her, [whereupon] her child moved [from its place]. Said the householder to her, 'Fear not: his fangs and claws have been extracted.' 'Take your favours and throw them on the thorns,' she retorted, 'the child has already moved.' (*b. Sabb.* 63b)[2]

אמר רב יהודה אמר רב ארבעים יום קודם יצירת הולד בת קול יוצאת ואומרת בת פלוני לפלוני בית פלוני לפלוני שדה פלוני לפלוני

Rav Yehudah said that Rav said: Forty days before the shaping of the *walad*, the *bat qol* appears and says: the daughter of so-and-so will belong to so-and-so, the house of so-and-so to so-and-so, the field of so-and-so to so-and-so. (*b. Sot.* 2a my translation)

The mishnah, then, argues that a *yibbum* or a *halitzah* is invalid if the woman later turns out to be pregnant—the sex of the "child" or perhaps: "fetus" (ולד) is irrelevant.

The amoraic rabbis disagreed about what ought to happen if the woman had a miscarriage. Will she have to undergo *halitzah* again, or was the previous *halitzah* still valid despite the miscarriage? R. Yohanan maintained that she does not require another *halitzah*, but Resh Lakish argued that the *halitzah* is invalid. Resh Lakish implies that even the fetus, at

[1] Jastrow, *Dictionary*, 374. The Targum Pseudo-Jonathan translates Hebrew רחם, "womb", as בית וולדא, literally: "house of the *wālad*" (Gen. 20:18).
[2] Epstein (ed.), *Babylonian Talmud*, ad loc.

the time of the death of the first husband, counts as his בן. The Gemara offers different explanations of the origin of the dispute between the amoraic rabbis. In one of the explanations, the origin of the dispute is the exegesis of the words ובן אין לו in the biblical law.

ואיבעית אימא קרא רבי יוחנן סבר ובן אין לו אמר רחמנא והא לית ליה ור"ל סבר ובן אין לו עיין עליו

> R. Johanan is of the opinion that the All Merciful said, *And have no child*, and this man surely has none; while Resh Lakish is of the opinion that *And have no [en lo] child* implies. 'Hold an inquiry concerning him'. (*b. Yebam.* 35b)[1]

R. Yohanan maintains that a fetus does not count as a בן. Resh Lakish, citing the creative exegesis that probably originated with Rav Yehudah (see above on *b. Yebam.* 22b) implies the opposite: a fetus—regardless of its viability and regardless of its sex—counts as a בן.

There is a striking similarity both in reasoning and in wording between rabbinic halakhah and the LXX. The crux is the word בן in the biblical law: the rabbis argued that it actually means "any kind of son" (בן מכול מקום) or that it implicitly includes any "child" or even a "fetus" (ולד). The LXX expresses an almost identical opinion through the use of two words: "offspring" (σπέρμα) and "child" (παιδίον). Though the closest Hebrew equivalent of σπέρμα, זרע, "seed", does occur in the rabbinic literature on *yibbum* (e.g., *t. Yebam.* 35b.11). The latter word, παιδίον, is perhaps the more interesting of the two. The similarity to the ולד of the early rabbis is remarkable: the παιδίον is the diminutive of παῖς: a "small child". To my knowledge, παιδίον never refers to an unborn child in Greek. The word could, however, refer to babies from the very moment of birth (see, e.g., Men. *Epit.* 268–9 etc.; LXX Exod. 21:22; John 16:21).

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[1] Epstein (ed.), *Babylonian Talmud*, ad loc.

3.6 The Daughters of Zelophehad

The rabbis often compared the law of levirate marriage to the case of the daughters of Zelophehad (Num. 27:1–11). The analogy between the two passages was invited by the similarity in circumstances and the similarity in wording. Zelophehad died without a son, but did leave behind five daughters. The five sisters argued their case before Moses. He turned to God himself. God cast the final verdict, granting the daughters some right to the land. There is also a strong similarity in wording: the daughters used the very words that sparked the controversy about the conditions of levirate marriage, "and he does not have a *bēn*" (ובן אין לו, Num. 27:8). The rabbis noticed the similarity and treated the case of the daughters of Zelophehad as a paradigm. The biblical law itself, however, was hesitant to grant women the full right to succeed fathers. The law frames it as a rare exception.

Numbers 36 imposes restrictions on the earlier verdict of ch. 27. The Gileadites feared that giving women inalienable ownership of the land would allow for the transfer of land to a different tribe. This would amount to the crime of altering the ancestral boundaries of the land.[1] The solution: Zelophehad's daughters are allowed to marry "only to the family of their father's tribe" (36:6). In the end the five daughters preserved the integrity of the estate by marrying their paternal cousins (36:11). The creative invention of "tribal inheritance" ensured that the land remained within the father's family.[2] Because of the back-pedalling on behalf of the Gileadites, the legal status of the divine verdict of ch. 27, the חקת משפט, is not entirely

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[1] Chavel, *Oracular Law and Priestly Historiography*, 243–50; J. Joosten, 'Diachronic Linguistics and the Date of the Pentateuch', in J. C. Gertz, B. M. Levinson, D. Rom-Shiloni, and K. Schmid (eds), *The Formation of the Pentateuch: Bridging the Academic Cultures of Europe, Israel, and North America* (Forschungen zum Alten Testament 111; Tübingen, 2016), 327–44, at 338–40. On biblical anxiety about women inheriting, see D. E. Weisberg, 'The Widow of Our Discontent', *Journal for the Study of the Old Testament* 28 (2004), 403–29.
[2] I. Kislev, 'Numbers 36,1–12: Innovation and Interpretation', *Zeitschrift für die Alttestamentliche Wissenschaft* 122 (2010), 249–59.

clear (27:11).[1] The later amendment abrogated the original verdict. Itamar Kislev writes: "while the law … is not completely annulled in theory, it becomes almost valueless in practice".[2] There were, however, some restrictions to the daughters' rights already in the original verdict: it did not grant them the full right of "inheritance" (נחלה) but a "possession of the inheritance" (אחזת נחלה) (27:7). The enigmatic combination of two near-synonyms expresses reservation about the extent of the rights of women.

3.6.1 אחזה and נחלה

The verdict promises to Zelophehad's daughters only a part of their father's inheritance: "you shall give them a possession of the inheritance among their father's brothers [אחזת נחלה בתוך אחי אביהן]" (27:7). The law does not specify the size of the daughters' share.[3] The phrase אחזת נחלה, a combination that may well have resulted from redaction,[4] does not make things easier. אחזה and נחלה are virtually synonymous in other texts.

וְהָיְתָה לָהֶם֙ לְנַחֲלָ֔ה אֲנִ֥י נַחֲלָתָ֖ם וַאֲחֻזָּ֣ה לֹא־תִתְּנ֤וּ לָהֶם֙ בְּיִשְׂרָאֵ֔ל אֲנִ֥י אֲחֻזָּתָֽם׃

> It will be an inheritance to them. I am their inheritance, you shall not give them a possession in Israel, because I am their possession. (Ezek. 44:28b)

Since Leviticus always uses אחזה and Deuteronomy always uses נחלה, the two words were probably not entirely synonymous.[5] What is the precise difference between the two?

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[1] J. Weingreen, 'The Case of the Daughters of Zelophehad', *Vetus Testamentum* 16 (1966), 518–22, at 519 translates חקת משפט as "a rule of law".
[2] Kislev, 'Numbers 36,1–12', 251.
[3] The genealogical lists make no mention of Zelophehad's siblings (Num. 26:33; 1 Chron. 7:15), but a rabbinic tradition refers to two brothers (*b. B. Bat.* 118b).
[4] Chavel, *Oracular Law and Priestly Historiography*, 206, with n. 38, 211.
[5] The exception is Deut. 32:49. J. Milgrom, *Leviticus 23–27* (Anchor Bible 3B; New York, 2001), 2172; id., *The JPS Torah Commentary: Numbers* (New York, 2003), 232;.

Gerhard von Rad, following Albrecht Alt's *Der Gott der Väter*, argued the Hexateuch's land theology, in which Israel merely borrows property belonging to God himself, was a remnant of "the pre-mosaic cult of the ancestral gods".[1] The Yahwist adopted this ancient idea of tribal inheritance into his account of the promise of the land (*Landverheißung*). The Deuteronomist developed the idea of tribal inheritance into a theology of national inheritance: "the inheritance of Israel" (נחלת ישראל). Friedrich Horst argued that whereas נחלה indicated the tribal land in pre-exilic times, אחזה was a more precise and more abstract juridical notion developed after 600 BC.[2] Gillis Gerleman objected, arguing that the origin of the אחזה was not juridical but agricultural. אחזה meant "cultivated land", a definition based primarily on a reading of 2 Chron. 11:14. The Chronicler differentiates between the Levites' אחזה and their מגרשים, "pasturage".[3] He concluded that אחזה never meant the right of ownership but the right of use (*Nutzrecht*). נחלה originally meant a "settlement" or "place of residence" but evolved into a more abstract notion of "right of residence" (*Wohnrecht*).[4] Harold Forshey challenged the idea that נחלה had anything to do with inheritance at all. He preferred to define נחלה as landed property typically granted by a king to his loyal servants. This definition makes good sense for the Akkadian *naḫalum* in the Mari letters.[5] Forshey

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[1] G. von Rad, 'Verheißenes Land und Jahwes Land im Hexateuch', *Zeitschrift des Deutschen Palästina-Vereins* 66 (1943), 191–204.
[2] F. Horst, 'Zwei Begriffe für Eigentum (Besitz): *naḥala* und *'aḥuzza*', in A. Kuschke (ed.), *Verbannung und Heimkehr: Beiträge zur Geschichte und Theologie Israels im 6. und 5. Jahrhundert v. Chr. Wilhelm Rudolph zum 70. Geburtstage* (Tübingen, 1961), 135–56.
[3] G. Gerleman, 'Nutzrecht und Wohnrecht', *Zeitschrift für die alttestamentliche Wissenschaft* 89 (1977), 313–25.
[4] Perhaps Gerleman's argument rests on an anachronistic distinction between ownership and right of use. M. Burrows, 'The Ancient Oriental Background of Hebrew Levirate Marriage', *Bulletin of the American Schools of Oriental Research* 77 (1940), 2–15, at 8, defined the ancient conception of ownership as "certain rights in an object", which "were defined according to the particular purpose for which they existed." This definition of ownership makes good sense for biblical law: the owner of a field did not have unlimited rights over it, but had to let it lie fallow every jubilee year and could not sell it at will.
[5] H. O. Forshey, *The Hebrew Root NḤL and Its Semitic Cognates* (D.Th. Dissertation, Harvard University, 1973); id., '*Segulah* and *nachalah* as Designations of the Covenant Community', *Hebrew Abstracts* 15 (1974), 85–6; id., 'The Construct Chain *naḥalat YHWH* / *'elōhîm*', *Bulletin of the American Schools of Oriental Research* 220 (1975), 51–3.

further argued that the meaning of נחלה evolved from "land owned by God or Israel" to "the community of Israel" —an evolution that took place during the exile.

In the *Theological Dictionary of the Old Testament*, E. Lipiński observed that a נחלה can only be inherited. By contrast, an אחזה—derived from אחז, "to seize, to grasp"—can be acquired by other means such as purchase, gift, or continuous occupation.[1] Jacob Milgrom introduced a similar distinction: an אחזה can be taken, conquered, or seized but a נחלה can only be granted by God or directly inherited from family.[2]

The אחזה is not necessarily an inalienable possession.[3] Abraham, for example, did not inherit the אחזה of the cave of Machpelah but bought it from the Hittites "for the full price" (בכסף מלא) (Gen. 23:9).[4] Priests did not strictly speaking have a נחלה, but they did have the opportunity to acquire an אחזה. During the jubilee year they could claim a plot of land that was left unclaimed (Lev. 27:21). Ezekiel upholds the subtle distinction (Ezek. 46:16–8). The gift from an idealised ruler to his sons becomes "their property by inheritance" (אחזתם היא בנחלה). The same ruler's gift to his servants remains the נחלה of the ruler and his sons, because it has to be returned in "the year of liberty".

In some cases אחזה obviously is synonymous with נחלה. But when אחזה functions as a synonym of נחלה, it is often modified as "an eternal possession" (אחזת עולם) or as "the possession of his fathers" (אחזת אבתיו).[5] Every נחלה was also an אחזה, but not every אחזה was also a נחלה.

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[1] E. Lipinksi, 'נחל', in G. J. Botterweck, H. Ringgren, and H.-J. Fabry (eds), *Theological Dictionary of the Old Testament* (16 vols; Grand Rapids, MI, 1974–2018), IX, 319–35, at 321: "Strictly speaking, *nḥl* refers only to an allotted portion to which one has a claim by right of inheritance, while *'ḥz* refers to all the property that one has actually acquired, whether by purchase or by some other bilateral transaction, gift, inheritance, prescription, usucapion [*sic*], or the like." On נחלת אלהים, see T. J. Lewis, 'The Ancestral Estate (נחלת אלהים) in 2 Samuel 14:16', *Journal of Biblical Literature* 110 (1991), 597–612, who translates it as "ancestral estate".
[2] Milgrom, *Leviticus 23–27*, 2171–3.
[3] So S. Rattray, 'Marriage Rules, Kinship Terms and Family Structure in the Bible', in K. H. Richards (ed.), *Society of Biblical Literature Abstracts and Seminar Papers 26* (Atlanta, GA, 1987), 537–44.
[4] See also Gen. 23:4, 20; 49:30; 50:13. On the nature of this transaction, see Westbrook, *Property and the Family in Biblical Law*, 24–35.
[5] Gen. 17:8; 48:4; Lev. 25:34, 41, 46; *1QS* XI, 7.

Perhaps that is the nuance Numbers 27 expresses. There is a nuance between the ways sons and daughters succeed their fathers. When a male heir inherits, the law consistently calls the property an "inheritance" (נחלה) (Num. 27:9–10). When a daughter inherits, the law calls the property "an acquisition of an inheritance" (אחזת נחלה) (27:9). Zelophehad's daughters themselves never asked for a proper "inheritance" (נחלה), but requested a mere "acquisition" (אחזה) (27:4). Perhaps the daughters tried to mitigate the tone of their request. In contrast to women in Sumer, Nuzi, or Ugarit, the daughters of Zelophehad could not claim their father's property by *right* but only as a *favour*.[1]

3.6.2 נתן and עבר

When the divine verdict refers to the daughters' property as an "inheritance" (נחלה), it is not "given" (נתן) to the daughters but "passed on" or "transferred" (עבר) to them (Num. 27:7–8).[2]

כֵּ֣ן בְּנ֣וֹת צְלָפְחָ֔ד דֹּבְרֹ֖ת נָת֣וֹן תִּתֵּ֣ן לָהֶ֗ם אֲחֻזַּ֤ת נַחֲלָה֙ בְּתֹ֣וךְ אֲחֵ֣י אֲבִיהֶ֔ם וְהַעֲבַרְתָּ֖ אֶת־נַחֲלַ֣ת אֲבִיהֶ֑ן לָהֶֽן׃ 8

וְאֶל־בְּנֵ֥י יִשְׂרָאֵ֖ל תְּדַבֵּ֣ר לֵאמֹ֑ר אִ֣ישׁ כִּֽי־יָמ֗וּת וּבֵן֙ אֵ֣ין ל֔וֹ וְהַעֲבַרְתֶּ֥ם אֶת־נַחֲלָת֖וֹ לִבְתֽוֹ׃

> The plea of Zelophehad's daughters is just: you should give them a hereditary holding among their father's kinsmen; transfer their father's share to them. 8 Say to the Israelites: 'If a man dies without leaving a son, you shall transfer his property to his daughter.' (Num. 27:7–8)

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[1] Z. Ben-Barak, 'Inheritance by Daughters in the Ancient Near East', *Journal of Semitic Studies* 25 (1980), 22–33.

[2] The only other place where עבר *hiph'il* occurs, Ezek. 48:14 *Qere*, equates passing on first-fruits to selling and exchanging them: "you shall not pass on the first-fruit of the land" (ולא יעבור [יעביר] ראשית הארץ).

The use of עבר probably indicates that "the women hold the land on something less than a full and permanent basis", according to Simeon Chavel.[1] The Chronicler describes a case where an inheritance is passed on to—or passed over—a daughter (1 Chron. 2:34–5).[2] Sheshan, who had no sons, married his daughter to Jarha, an Egyptian slave. The son of that marriage, Attai, was considered Sheshan's heir and directly inherited his grandfather's property. Sheshan's scheme would not have worked if his daughter's husband had been an Israelite slave. An Israelite slave would have had the option to go free in the jubilee year, and would—as a freeman—inherit the property himself.

The subtle distinction between possession and inheritance was lost on some. In the SP, Zelophehad's daughters no longer ask for "an acquisition" (אחזה) but for "an acquisition of the inheritance" (אחזת נחלה) (Num. 27:4). God, in the SP, no longer commands to "pass on" (עבר) the inheritance to the daughters but to "give" (נתן) it to them (27:8).

The LXX retains the distinction between "giving" and "passing on" an inheritance, translating עבר as "to put round" (περιτίθημι).[3]

> δόμα δώσεις αὐταῖς κατάσχεσιν κληρονομίας ἐν μέσῳ ἀδελφῶν πατρὸς αὐτῶν καὶ περιθήσεις τὸν κλῆρον τοῦ πατρὸς αὐτῶν αὐταῖς. 8 … περιθήσετε τὴν κληρονομίαν αὐτοῦ τῇ θυγατρὶ αὐτοῦ

[1] Chavel, *Oracular Law and Priestly Historiography*, 242, cf. 202–5, 208.
[2] Milgrom, *Numbers*, 232.
[3] John W. Wevers implied there was no legal difference at all between giving, passing on, and putting round an inheritance: "I would render the Greek by "a hereditary holding (or title)"; what the daughters are thereby entitled to is full standing as heirs. The property of Salpaad will be retained by his actual offspring, i.e. his name will not disappear. In other words, "and you shall transfer (περιθήσεις) their father's share (i.e. heritage) to them." J. W. Wevers, *Notes on the Greek Text of Numbers* (Society of Biblical Literature Septuagint and Cognate Series 46; Atlanta, 1998), 460.

> You shall give them a possession of an inheritance in the midst of their father's brothers and put their father's land around them. 8 … If a man dies without a son, you will *put* his inheritance *around* his daughter. (Num. 27:7b, 8b)

Nowhere else did the translators render עבר as περιτίθημι.[1] Greek literature typically uses περιτίθημι for putting on clothes or headgear, and of bestowing such qualities as honour, glory, or shame on someone.[2] Philo concluded from the LXX's use of the word περιτίθημι alone that women never had full ownership of an inheritance.

> δευτέρας θυγατέρας, αἷς φησι δεῖν περιτιθέναι τὸν κλῆρον ὡσανεὶ κόσμον ἔξωθεν, ἀλλ᾽ οὐχ ὡς ἴδιον καὶ συγγενὲς κτῆμα· τὸ γὰρ περιτιθέμενον οὐδεμίαν οἰκείωσιν ἔχει πρὸς τὸ διακοσμούμενον, ἁρμονίας καὶ ἑνώσεως ἀλλοτριούμενον.
>
> In the case of the daughters His phrase is that the inheritance should be "put round" them, as though it were an external ornament, not a possession by right of kinship inalienable. For what is put round does not have an intimate connexion with what it adorns, and the ideas of close fitting and union are quite foreign to it. (Philo, *Mos.* 2.243)[3]

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[1] One might also explain the unusual translation as an "Aramaism". Jastrow's *Dictionary* lists "to cover" as one of the definitions of Aramaic עבר *pa'el*. Jastrow cites one example: מעבר ליה בפיליוס (*y. Ber.* 2.4, 15a; *cit* in. Jastrow, Dictionary, 1039, 1181). The meaning of the example is ambiguous. There are at least four possible interpretations of the dense phrase: "one should *cover* it [*sc.* the human waste] with a sheet" before reciting the Shema, "one should *cover* [one's face] with a scarf", "one should *remove* it with a cloth", or "one should *walk past* it, [while dressed] in a scarf", "one should *remove* it with a cloth", or "one should *walk past* it, [while dressed] in a scarf". For these translations, see H. W. Guggenheimer (ed.), *The Jerusalem Talmud: Edition, Translation, and Commentary, First Order: Zeraim, Tractate Berakhot* (Studia Judaica 18; Berlin, 2000), 187–8 n. 126; T. Zahavy, The Talmud of the Land of Israel, Vol. 1: Berakhot (Chicago, 1989), 76. Note further that there is uncertainty about the reading of the Yerushalmi's phrase: MS Leiden has פיליוס, MS Rome פיליונס, and cf *m. Nid.* 8.1, which has פוליוס.

[2] *LSJ*, 1390.

[3] F. H. Colson (ed.), *Philo, Volume VI* (Loeb Classical Library 289; Cambridge, MA, 1935), 571.

In Philo's order of succession the deceased's father takes precedence over his daughters. In Zelophehad's case, the estate was "put round" his daughters; his father, Hepher, enjoyed the full rights of ownership. According to Philo, the biblical law did not mention the possibility of parents inheriting from their children, so as to avoid the indecent suggestion that someone could make a profit from the death of a child (*Mos.* 244–5).

Philo's interpretation may seem far-fetched. But an Egyptian marriage contract uses the very same verb, περιτίθημι, to express the same idea. The groom transfers his property but he does not grant her the inalienable rights of ownership.

> ἀλλ' ἐὰν ἄλλα χρυσίου κόσμου μετὰ τὰ προκείμεν̣[α …]..ρησας μοι περιθῇς, οὐκ ἀπελε[ύ]σομαι αὐτ[ὰ] ἔχουσα, [ἀ]λ̣λ̣[ὰ] ἀποδώσω σοι οὐκ ἐξιδιασαμένη·
> If you give me other items of gold jewellery in addition to the aforementioned … I shall not take these away with me, but I shall give them back to you, taking nothing for myself. (*PSI* I 64.16–8, 2nd cent. BC)[1]

Contemporary Greek used περιτίθημι to indicate conditional property transfers. The verb marks a distinction between full and temporary property transfers. The LXX's translator was attentive to the subtle meaning of עבר in the divine verdict in the case of Zelophehad's daughters. He upheld the distinction between "to give" (נתן) and "to pass on" (עבר)—taking the latter to refer to a temporary transfer of property.

The daughters did not have the same rights as a son. The grant of land is an exception to the rule, and explicitly framed as such: a divine verdict is needed, later mitigated by the restriction to marry within the father's family. The wording of the original verdict itself is

[1] J. Rowlandson, *Women and Society in Greek and Roman Egypt* (Cambridge, 1998), 323 [no. 255].

hesitant: the land of the daughters is not a full inheritance but a temporary grant. Nevertheless, the case of the daughters extends the rights of the daughters from the law of levirate marriage: if a man has no son, his wife need not marry his brother to produce an heir. It is sufficient for daughters—albeit temporarily and only if there is no son—to "hold on" to the land, until there is a male heir to succeed the father.

3.7 The Daughter's Place in the Sequence of Succession

The limitations to a daughter's rights in the case of the daughters of Zelophehad throw into relief the strategy of exegesis that underlies both rabbinic halakhah and the LXX. An important argument for the rabbis was the similarity in wording between the case of the daughters and the law of levirate marriage: "and he does not have a *bēn*". However, the context of the verdict in the case of the daughters leaves no doubt about the inclusion or exclusion of daughters:

לָמָּה יִגָּרַע שֵׁם־אָבִינוּ מִתּוֹךְ מִשְׁפַּחְתּוֹ כִּי אֵין לוֹ בֵּן תְּנָה־לָּנוּ אֲחֻזָּה בְּתוֹךְ אֲחֵי אָבִינוּ׃

> Why should the name of our father be taken away from his family because he has no son? Give us a possession among the brothers of our father. (Num. 27:4)

וְאֶל־בְּנֵי יִשְׂרָאֵל תְּדַבֵּר לֵאמֹר אִישׁ כִּי־יָמוּת וּבֵן אֵין לוֹ וְהַעֲבַרְתֶּם אֶת־נַחֲלָתוֹ לְבִתּוֹ׃

> You shall say to the sons of Israel: If a man dies without a son, you shall transfer his inheritance to his daughter. (Num. 27:8)

For the question of the lexical meaning of the word בן (see 3.3) this is most revealing: clearly, the word בן excludes daughters—otherwise there would have been no need to name the בת

explicitly in the phrase that follows in the second passage cited above: "if he does not have a *bēn*, then you shall pass on his inheritance to his *bat*" (27:8).

The wider *legal* significance, however, does extend the rights of daughters. Both the law of levirate marriage and the case of the daughters touch upon a daughter's *right of succession*. The case of the daughters sets a precedent for the sequence of succession. What the law of levirate marriage left unclear (see 3.2), is now apparent: a daughter is more important for succession than a brother.

אִישׁ כִּי־יָמוּת וּבֵן֙ אֵ֣ין לֹ֔ו וְהַעֲבַרְתֶּ֥ם אֶת־נַחֲלָתֹ֖ו לְבִתֹּ֑ו 9 וְאִם־אֵ֥ין לֹ֖ו בַּ֣ת וּנְתַתֶּ֤ם אֶת־נַחֲלָתֹו֙ לְאֶחָ֔יו 10
וְאִם־אֵ֥ין לֹ֖ו אַחִ֑ים וּנְתַתֶּ֤ם אֶת־נַחֲלָתֹו֙ לַאֲחֵ֣י אָבִ֔יו 11 וְאִם־אֵ֥ין אַחִ֖ים לְאָבִ֑יו וּנְתַתֶּ֤ם אֶת־נַחֲלָתֹו֙ לִשְׁאֵ֣ר הַקָּרֹ֔ב
אֵלָ֖יו מִמִּשְׁפַּחְתֹּ֑ו וְיָרַ֣שׁ אֹתָ֔הּ וְהָיְתָ֥ה לִבְנֵ֖י יִשְׂרָאֵ֣ל ׀ לְחֻקַּ֣ת מִשְׁפָּ֑ט כַּאֲשֶׁ֛ר צִוָּ֥ה יְהוָ֖ה אֶת־מֹשֶׁ֥ה׃ ס

> If a man dies without a son, you shall pass on his inheritance to his daughter; 9 if he does not have a daughter, you shall give his inheritance to his brothers. 10 If he does not have brothers, you shall give his inheritance to the brothers of his father. 11 If he has no paternal uncles, you shall give his inheritance to the relative closest to him, from his family; he shall inherit it. It shall be a rule of judgment which YHWH ordered Moses. (Num. 27:8b–11)

The rabbis and the LXX's translator brought this understanding of the sequence of succession back to the law of levirate marriage. The deceased man's brother should only marry the widow if the man had neither son nor *daughter*. The sequence of succession is now consistent between levirate marriage and inheritance: sons always precede daughters, but daughters precede brothers.

3.8 Conclusion

To understand how and why translators arrived at a particular translation of a text, we should take into account the interpretations between the time of original composition and the time of translation. It is not always enough to compare a translation to the source, even if we can be confident about the precise shape of the *Vorlage*. Other documents and traditions contributed to the translator's decision. Simon Goldhill writes: "the recognition of *a multiplicity of intermediaries* between past and present has diffused the direct and unilinear genealogy of source text and response."[1] To understand the translator's response to his source text, we must consider the intermediaries. The LXX, in many ways the "first" translation of Torah, makes for a unique challenge. The "intermediaries" are no longer available. But sometimes they can be reverse-engineered.

In the law of levirate marriage, the LXX's translator turned "son" (בן) into "offspring" (σπέρμα) and "firstborn" (בכור) into "child" (παιδίον). The LXX implies that levirate marriage, *yibbum*, only takes effect when a man dies without leaving son or daughter. The translator was not merely trying to make sense of the Hebrew. The Hebrew text is quite straightforward. The translator had on many previous occasions and without any problem rendered בן as υἱός, "son", and בכור as πρωτότοκος, "firstborn". The translation of the law of levirate marriage is not an ad-hoc response to the words on the page. The translator arrived at the passage with a pre-existing idea about the conditions of *yibbum* and *halitzah*. He thought levirate marriage should only take place if a man died without a son *or daughter*. The tannaitic rabbis would concur. The early rabbinic opinion on daughters in the conditions of

[1] Goldhill, 'The Limits of the Case Study', 420, my italics. Martindale, *Redeeming the Text*; id., 'Reception—A New Humanism? Receptivity, Pedagogy and the Transhistorical', *Classical Receptions Journal* 5 (2013), 169–83.

levirate marriage is most clear in *m. Yebam.* 4.1, which implies that a fetus (ולד) of either sex exempts the mother from undergoing *yibbum* or *halitzah* for a second time. An important argument in the rabbinic discussion on *yibbum* is the analogy between the law and the case of the daughters of Zelophehad. Both passages use the crucial phrase ובן אין לו, "and he has no son". The divine verdict in the case of the five sisters establishes the right order of succession: if a man dies, his son succeeds him first, then his daughter, then his brothers, then his paternal cousins, and then the "closest" family member (Num. 27:7–11). It is important to note that the daughters of Zelophehad are an exception to the rule of male succession. Furthermore, the wording of the divine verdict is cautious about granting property rights to women: it precludes women from claiming inalienable rights to the ancestral land (by using עבר instead of נתן and אחזת נחלה instead of the full נחלה). The rabbis, however, starting from the verbal analogy, accepted that daughters—in the absence of a son—can exempt the widow from *yibbum* or *halitzah*. The LXX implies exactly the same, testifying to the antiquity of reading the law of levirate marriage in the light of the legal victory of the daughters of Zelophehad.

4 THE REMAINDER OF THE WELL-BEING SACRIFICE (LEV. 7:17–8; 19:5–8)

4.1 Introduction

The leftover meat of a "well-being sacrifice" (זבח שלמים) should be eaten or burnt, according to levitical law. If any of the meat remains until the third day after the sacrifice, the law calls it an "abomination" (פגול) (Lev. 7:18; 19:7).[1] The law further argues that if someone eats of the meat on or after the third day, the sacrifice "shall not be accepted" (לא ירצה) (Lev. 19:7). But how can a sacrifice become invalid three days after the fact?

The early rabbis asked themselves the same question. They solved this problem by introducing "intention" as a criterion for the validity of sacrifice.[2] According to a tradition cited in the Bavli and the *Sifra* there was a difference of opinion on precisely this subject between R. Eliezer and R. Aqiva. R. Aqiva explains the problem that an overly literal reading of the verse would cause.[3] How is it possible, he asks himself, that a sacrifice be rendered invalid retroactively? The solution that the *Sifra*—and the Bavli's quotation of the same tradition—present is that the sacrifice has already become invalid "at the hour of the sacrifice" (בשעת הקרבה). The sacrifice turns invalid as soon as the offerer *thinks* about eating the meat after its expiry date.

ת"ר ואם האכל יאכל מבשר זבח שלמיו אמר רבי אליעזר כוף אזנך לשמוע במחשב לאכול מזבחו ביום השלישי הכתוב מדבר או אינו אלא באוכל מזבחו ליום שלישי אמרת אחר שהוא כשר יחזור ויפסל

[1] *HALOT*, 2051.
[2] Milgrom, *Leviticus 1–16*, 421: "Thus by desecrating the sacrifice, in allowing it to remain beyond its prescribed time limit, the offerer has invalidated the entire sacrificial procedure retroactively. The rabbis, however, are reluctant to allow for the principle of retroactivity in the sacrificial system. They claim that if the offerer permitted the sacrifice to become desecrated by eating it beyond its time limit he must surely have intended to do so from the beginning. Thus they introduce a new principle: intentionality"; C. Hayes, *What's Divine about Divine Law? Early Perspectives* (Princeton, NJ, 2015), 210.
[3] *b. Zevah.* 29a; *Sifra, Tzav* 8.1. M. Balberg, *Blood for Thought: The Reinvention of Sacrifice in Early Rabbinic Literature* (Berkeley, CA, 2017), 45.

אמר לו רבי עקיבא הן מצינו בזב וזבה ושומרת יום כנגד יום שהן בחזקת טהרה וכיון שראו סתרו אף אתה אל תתמה על זה שאע"פ שהוכשר שיחזור ויפסל אמר ליה הרי הוא אומר המקריב בשעת הקרבה הוא נפסל ואינו נפסל בשלישי

> Our Rabbis taught: 'And if any of the flesh of the sacrifice of his peace-offerings be at all eaten [on the third day]': R. Eliezer said: Incline your ear to hear: Scripture speaks of one who intends eating of his sacrifice on the third day. Yet perhaps that is not so, but rather [Scripture speaks] of one who eats of his sacrifice on the third day? You can answer: After it has become fit, shall it then become unfit? Said R. Akiba to him: Behold, we find that a zab and a zabah and a woman 'who watches from day to day' are presumed to be clean,[1] yet since they have a discharge they undo [their cleanness]; hence you too need not wonder at this, that after [the sacrifice] has become fit it then becomes unfit. Said he to him: Lo, it says, '[unto him] that offereth', [intimating that] it becomes unfit at the offering, but it does not become unfit on the third [day]. (*b. Zevahim* 29a)[2]

This passage presents invalidation through intention as a solution to the problem that the text of the law causes: retroactive invalidation. Since intention was introduced to resist the mechanism of retroactive invalidation, the early interpretations of these passages are of profound interest to the emergence of subjective criteria in the history of Jewish law.

The LXX offers two translations of פגול: "defilement" (μίασμα) and "un-sacrificed" (ἄθυτον) (Lev. 7:18; 19:7; see 4.4). The first difference between the MT and the LXX can, once again, be explained by referring to an "intermediary". Lev. 7:18 is a Priestly law. The

[1] A *zav* or *zavah* is someone who had a bodily discharge, making him or her, and the things he or she touches unclean.
[2] Epstein (ed.), *Babylonian Talmud*, ad loc.

later laws attributed to the "Holiness School" explicate that eating something that was previously consecrated is considered *defiling* (Lev. 19:8 *et al.*). The translator introduced a cultic mechanism found more explicitly elsewhere in the book of Leviticus. The LXX's translation of the *Vorlage* was not the first moment of reception; the text had been interpreted before. The previous interpretation between original composition and final translation—hence the term "intermediary"—influenced the translator's understanding of the text. The second case, that of Lev. 19:7, is more complicated, primarily because the meaning of ἄθυτον is unclear. Frankel argued that the purpose of the LXX's translator was "to express the halakhah."[1] On closer inspection, however, there is the possibility that the LXX aligns with the unorthodox opinion R. Aqiva expressed. The sacrifice can turn invalid three days after the fact. The LXX accepts the very obstacle the rabbis sought to overcome: retroactive invalidation.

4.2 The Well-Being Sacrifice

There is no uniform translation for שלמים or זבח שלמים. The meaning of the word שלמים is disputed. Is the sacrifice offered for the sake of "peace" (שלום), "greeting",[2] "well-being",[3] or "communion".[4] An inconsistency within Leviticus about the reasons for bringing a "well-being sacrifice" creates a further complication. In Leviticus the "well-being sacrifice" functions as an umbrella term that includes a variety of sacrifices categorised by the motives for bringing the sacrifice.[5]

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[1] Frankel, *Vorstudien*, 190.
[2] B. A. Levine, *The JPS Torah Commentary: Leviticus* (New York, 2003), 15.
[3] Milgrom, *Leviticus 1–16*, 204, 217–25
[4] R. Alter, *The Five Books of Moses: A Translation with Commentary* (New York, 2004), 553. A longer list of proposed translation can be found in C. Lemardelé, 'Étymologie et signification des sacrifices šlm(y)m', *Revue Bibilique* 117 (2010), 481–90.
[5] There are, of course, exceptions to this rule. Num 29:39 lists "your vows, your freewill offerings, your burnt offerings, your meat offerings, your libations, and your well-being offerings [ולשלמיכם]".

עַל־חַלֹּת֙ לֶ֣חֶם חָמֵ֔ץ יַקְרִ֖יב קָרְבָּנ֑וֹ עַל־זֶ֥בַח תּוֹדַ֖ת שְׁלָמָֽיו׃

Besides the cakes, he shall offer leavened bread, for the thanksgiving offering of his well-being offering. (Lev. 7:13)

וְאִ֣ישׁ כִּֽי־יַקְרִ֞יב זֶ֣בַח ׀ שְׁלָמִ֗ים לַיהוָה֙ לְפַלֵּ֣א נֶ֔דֶר א֥וֹ לִנְדָבָ֖ה בַּבָּקָ֣ר א֑וֹ בַצֹּ֣אן תָּמִ֤ים יִֽהְיֶה֙ לְרָצ֔וֹן כָּל־מ֥וּם לֹ֖א יִֽהְיֶה־בּֽוֹ׃

Someone who brings a well-being offering to YHWH to fulfil a vow or (as a) a freewill offering in cattle or sheep, it will be perfect for (God's) pleasure, there shall be no defect in it. (Lev. 22:21)[1]

The category of the "well-being offering" apparently includes the "freewill offering" (נדבה), the "vow" (נדר), and the "thanksgiving offering" (תודה). Leviticus is inconsistent on the inclusion of the thanksgiving offering. Priestly texts use "thanksgiving offering" and "well-being sacrifice" in one breath: "the thanksgiving offering of well-being" (זבח תודת שלמיו) (7:13, 15). Texts associated with the Holiness Code (H) only speak of the "thanksgiving offering" (זבח תודת) (22:29). The Holiness School apparently refused to include the thanksgiving offering in the category of the well-being sacrifices.[2] The reason for this might be a difference in the regulations for the thanksgiving offering and the other offerings, in particular about the permitted period of meat consumption (see below).

In contrast to the "whole-burnt sacrifice" (עלה), not all the parts of the victim offered as a well-being sacrifice are incinerated on the altar. Some parts are eaten. The priest burns

[1] In addition to these examples, see Ezek. 46:12 (freewill offering); Prov. 7:14 (vow); 2 Chron. 31:2 ("in order to *thank*").
[2] Milgrom, *Leviticus 1–16*, 15.

the victim's fat and the organs richest in fat on the altar: the kidneys, the liver, and a sheep's tail (Lev. 3:1–17).[1] The priests receive the victim's breast (7:30–1). The sacrificer is expected to present the right thigh as a gift to the priest (7:32; cf. 9:21; 10:15).[2] The sacrificer himself, however, has the right to consume most of the meat. Or he could invite others to join (Num. 6:13–21).[3] Leviticus prohibits the consumption of beef, lamb, or goat slaughtered by laymen (17:3–9). These animals should first be slaughtered professionally (i.e., by a priest) and offered as a well-being sacrifice before the "sacrificer" gets to eat the meat of these animals. This must have been the main purpose of the well-being sacrifice, at least in theory: "they brought *shelamim* and the people sat down to eat [לאכל]" (Exod. 32:6), and: "you shall sacrifice *shelamim* and eat [ואכלת] there" (Deut. 27:7).

The Priestly School and the Holiness School each had its own idea about well-being sacrifices. There are good reasons to suspect that the Holiness School based its ideas on the Priestly account of the well-being sacrifice.

וְהַנּוֹתָר מִבְּשַׂר הַזֶּבַח בַּיּוֹם הַשְּׁלִישִׁי בָּאֵשׁ יִשָּׂרֵף׃ 18 וְאִם הֵאָכֹל֙ יֵאָכֵל מִבְּשַׂר־זֶ֣בַח שְׁלָמָ֔יו בַּיּ֖וֹם הַשְּׁלִישִׁ֑י
לֹ֤א יֵרָצֶה֙ הַמַּקְרִ֣יב אֹת֔וֹ לֹ֥א יֵחָשֵׁ֖ב לֹ֑ו פִּגּ֤וּל יִהְיֶה֙ וְהַנֶּ֣פֶשׁ הָאֹכֶ֔לֶת מִמֶּ֖נּוּ עֲוֹנָ֥הּ תִּשָּֽׂא׃

The remainder of the meat of the sacrifice shall be burnt with fire on the third day. 18 If any of the meat of his well-being sacrifice be eaten on the third day, it shall not be accepted. The offerer—it shall not be counted toward him. It will be *piggul*. The soul that eats from it shall bear its guilt. (Lev. 7:17–8, "P")

[1] C. Eberhart, 'Beobachtungen zum Verbrennungsritus bei Schlachtopfer und Gemeinschafts-Schlachtopfer', *Biblica* 83 (2002), 88–96; A. Amihay, 'Ritual Law: Sacrifice and Holy Days', in P. Barmash (ed.), *The Oxford Handbook of Biblical Law* (Oxford, 2019), 79–99 at 92–3.
[2] I. Knohl, *The Sanctuary of Silence: The Priestly Torah and the Holiness School* (Minneapolis, 1995), 51.
[3] Milgrom, *Leviticus 1–16*, 217–25.

וְכִי תִזְבְּחוּ זֶבַח שְׁלָמִים לַיהוָה לִרְצֹנְכֶם תִּזְבָּחֻהוּ׃ 6 בְּיוֹם זִבְחֲכֶם יֵאָכֵל וּמִמָּחֳרָת וְהַנּוֹתָר עַד־יוֹם הַשְּׁלִישִׁי
בָּאֵשׁ יִשָּׂרֵף׃ 7 וְאִם הֵאָכֹל יֵאָכֵל בַּיּוֹם הַשְּׁלִישִׁי פִּגּוּל הוּא לֹא יֵרָצֶה׃ 8 וְאֹכְלָיו עֲוֹנוֹ יִשָּׂא כִּי־אֶת־קֹדֶשׁ יְהוָה
חִלֵּל וְנִכְרְתָה הַנֶּפֶשׁ הַהִוא מֵעַמֶּיהָ׃

> If you offer a well-being sacrifice to YHWH, you shall offer it at your will. 6 It shall be eaten on the day of your sacrifice or the day after, what remains till the third day shall be burnt with fire until the third day. 7 If it is eaten on the third day, it is *piggul*—it shall not be accepted. 8 Whoever ate it shall bear his guilt, because he desecrated a holy thing (or: sanctuary) of YHWH, this person shall be cut off from his people. (Lev. 19:5–8, "H")

Israel Knohl and Jacob Milgrom argued that P preceded H. The relation between these two accounts of the well-being sacrifice is one of their strongest arguments. The H passage is an interpretation or even a "halakhic midrash" of P.[1] In this small passage H employs all the characteristic redaction tactics (19:6–7).[2] H abbreviates by leaving out a phrase deemed superficial: "the offerer, it shall not be counted to him". H explicates the punishment for violation: "this person shall be cut off from his people". H adds a motivation for the punishment: "he desecrated a holy thing of YHWH". The redactional history of the text also explains the sudden shift from the second to the third person in Lev. 19:5, 6–7. H adopted the segments in the third person from P's account.

Despite the similarity in wording, the purpose of H was not just to revitalise and improve P's law. There is an essential difference. When does the meat turn "abominable" (פגול)? P commands the meat be burnt "on" (ב) the third day (7:17). The sacrificial meat can

[1] Milgrom, *Leviticus 1–16*, 14–5.
[2] Knohl, *Sanctuary of Silence*, 226.

be eaten on the day of the sacrifice, on the day after, and on the third day it should either be eaten completely or burnt. H, by contrast, orders the meat that remains "*till*" (עד) the third day to be burnt (19:6).[1] The preposition changes the period of grace between the sacrifice and the expiry date. H only grants the sacrificer the day of the sacrifice and the day after to eat the sacrificial meat. If it isn't eaten by the evening of that day, it turns "abominable". It can be eaten "till" the third day but not "on" the third day. This is the earliest extant trace of the controversy over the expiry of the well-being sacrifice's leftovers.

P's law itself may contain the traces of an even older practice. There is a discrepancy within P between the well-being sacrifice and the "thanksgiving offering" (תודה). Well-being sacrifices, as we have just seen, can be eaten the day of the sacrifice and the day after (Lev. 7:16–7). But the thanksgiving offering can only be eaten "on the day of its offering" (ביום קרבנו Lev. 7:15). Jacob Milgrom suggested that the prescriptions for the thanksgiving offering preserve an older practice. At one time, the meat of the thanksgiving sacrifice was eaten on the day of the sacrifice alone (1 Sam. 2:13–4).[2] The Priestly School, wanting a more coherent system, amalgamated the thanksgiving sacrifice, the vow, the freewill offering. The Priestly School called all of these "well-being sacrifices".[3] The conflation caused the thanksgiving sacrifice with an expiry date of one day to fall under the heading of the well-being sacrifice, which has a longer expiry date.

P's system led to some confusion about the period for eating the meat of a thanksgiving sacrifice. In Jubilees, Abraham reminds Isaac of the right way of bringing "the thanksgiving sacrifice" (זבח התודה Jub. 21:9).

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[1] Note that Leviticus maintains a distinction between קטר *hiph'il* for the burning of the sacrifice proper and שרף for the burning of the leftovers (so esp. in 4:12, 21). See C. Eberhart, 'A Neglected Feature of Sacrifice in the Hebrew Bible', *Harvard Theological Review* 97 (2004), 485–93, at 489 n. 15.
[2] Milgrom, *Leviticus 1–16*, 417–9.
[3] Knohl, *Sanctuary of Silence*, 118–9; Milgrom, *Leviticus 1–16*, 15; Lemardelé, 'Étymologie et signification', 489 disagrees.

אך את הבשר תאכל ביום קרבנו וממחרת ולא תבוא עליו השמש ביום השני בטרם יאכל:

> You shall eat the meat on the day of its sacrifice and on the day after, and the sun shall not go down upon it on the second day till it is eaten. (Jub. 21:12)

Jubilees allows the meat of the thanksgiving offering to be consumed even on the day after the sacrifice. The *Halakhic Letter* of *4QMMT*, however, argued that the meat of the thanksgiving sacrifice should be eaten on the day of the sacrifice alone (*4QMMT*^{a} frgs. 3–7).[1] The *Letter* critiques those who "leave it [i.e., the meat] from one day to the other" (שמניחים אותה מיום ליום) (*4QMMT*^{a} frgs. 3–7.10). In fact, the *Letter* explicates that the meat of thanksgiving sacrifices "should be eaten … on the day of their sacrifice" (נאכלת [ביום … זוב]חם) (*4QMMT*^{a} frgs. 3–7.14).

The controversy, which began over a concern for the shelf-life of meat, was expressed in such a way that it soon raised questions over the very "mechanisms" of the sacrificial cult. What does it mean for sacrificial meat to turn "abominable"? Can a sacrifice turn "abominable" after it has already been sacrificed?

4.3 The Meaning of פגול

The meaning of פגול in either passage is unclear.[2] In the only two biblical passages outside Leviticus where it occurs, פגול describes a quality of the meat. Isaiah criticises the Israelites for doing everything God prohibited, and uses the word פגול.

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[1] In the 1994 edition, Qimron had reconstructed זבח השלמים [ואף על מנחת], but his most recent edition now reads: זבח השלמים [ואף על תודת]. See E. Qimron (ed.), *The Qumran Texts: Composite Edition* (Tel Aviv, 2004), 208. The edition is available online at https://zenodo.org/record/3737950#.YJQ-Qy0RpQJ.

[2] The LXX translates the word as μίασμα (Lev. 7:18) and ἄθυτόν (19:7). But the early revisers disagreed: Symmachus has ἀργός, "unfit [*sc.* for eating?]", Aquila renders ἀπόβλητος, "to be thrown away", and Theodotion transcribes it as φεγγουλ. Wevers (ed.), *Leviticus*, 211.

הַיֹּשְׁבִים בַּקְּבָרִים וּבַנְּצוּרִים יָלִינוּ הָאֹכְלִים בְּשַׂר הַחֲזִיר וּמְרַק פִּגֻּלִים כְּלֵיהֶם׃

They dwell in graves, in caverns they spend the night. They eat pig's meat and broth of *piggulim* is [in] their vessels. (Isa. 65:4 *Qere*).

Ezekiel uses פגול in a list of all the impurities he has not committed.

וָאֹמַר אֲהָהּ אֲדֹנָי יְהוִה הִנֵּה נַפְשִׁי לֹא מְטֻמָּאָה וּנְבֵלָה וּטְרֵפָה לֹא־אָכַלְתִּי מִנְּעוּרַי וְעַד־עַתָּה וְלֹא־בָא בְּפִי בָּשַׂר פִּגּוּל׃ ס

I said: Oh, my Lord YHWH, my soul is not defiled. I have not eaten dead or torn animals since my youth till now, and *piggul* meat has not entered my mouth. (Ezek. 4:14).

Unlike Leviticus, neither of these passages mentions a sacrificial context. It appears that the prophets used פגול in a more general sense than Leviticus.

Walther Zimmerli, in his Ezekiel commentary, suggested that the purpose of Leviticus' authors may well have been to introduce a more precise definition of פגול: sacrificial meat turned inedible.[1] The specific use of פגול is consistent with P's broader tendency to adopt existing practices and words, and giving them new meaning by using them systematically.[2]

The word also makes three appearances in the Post-Biblical Hebrew of the *Temple Scroll*. The scroll prohibits anyone from bringing "tainted skins" (עורות פגוליהמה) into the

[1] W. Zimmerli, *Ezechiel* (2 vols; Biblischer Kommentar Altes Testament 13; Neukirchen-Vluyn, 1979[2]), I, 171. In P, the day starts at sunrise, see De Vaux, *Israel*, 181–3; Milgrom, *Leviticus*, I, 420.
[2] Zimmerli, *Ezechiel*, I, 411–2, 452.

temple city (*11QT* XLVII, 13–8).[1] Anyone who brings an unclean hide—e.g., as the packaging for wine, oil, or food—into the sanctuary precinct "defiles" (טמא) both the temple and the city. The same scroll forbids the slaughter of pure animals with a "blemish" (מום) within a radius of thirty stadia from the temple, because "its flesh is tainted" (כי בשר פגול) (*11QT* LII, 16–8).[2] In these cases the word פגול is not used in the narrow Priestly definition of "meat turned bad three days after sacrifice" but in the broader definition of "impure meat".

4.4 Sacrificial Meat in the LXX

The LXX renders the two instances of פגול differently (see 4.1). In the first instance the translators rendered פגול as "defilement" (μίασμα).

> καὶ τὸ καταλειφθὲν ἀπὸ τῶν κρεῶν τῆς θυσίας ἕως ἡμέρας τρίτης ἐν πυρὶ κατακαυθήσεται. 18 ἐὰν δὲ φαγὼν φάγῃ ἀπὸ τῶν κρεῶν τῇ ἡμέρᾳ τῇ τρίτῃ, οὐ δεχθήσεται αὐτῷ τῷ προσφέροντι αὐτό, οὐ λογισθήσεται αὐτῷ, *μίασμά ἐστιν·* ἡ δὲ ψυχή, ἥτις ἐὰν φάγῃ ἀπ᾽ αὐτοῦ, τὴν ἁμαρτίαν λήμψεται.
>
> What remains of the meat of the sacrifice till the third day shall be burned in fire. 18 If someone eats of the meat on the third day, it shall not be accepted [from] him who offered it. It shall not be counted to him: *it is a defilement.* The soul that eats from it will bear the sin. (Lev. 7:17–8)

The translation of פגול as "defilement" (μίασμα) has been influenced by the "intermediary" of H. P merely argues that the "soul" (נפש) who ate from the sacrificial meat on the third day

[1] G. Vermes, *The Complete Dead Sea Scrolls in English: Revised Edition* (London, 2004), 207.
[2] Vermes, *Complete Dead Sea Scrolls in English*, 210–1.

would "bear its guilt" (עונה נשא) (7:18). What precisely is wrong with eating sacrificial meat? The pieces of meat were destined neither for priests nor for God. Why, then, would it be wrong to store the meat for another day or two? H answers the question. H prescribes the punishment of excommunication and offers a justification:

וְאֹכְלָיו עֲוֹנוֹ יִשָּׂא כִּי־אֶת־קֹדֶשׁ יְהוָה חִלֵּל וְנִכְרְתָה הַנֶּפֶשׁ הַהִוא מֵעַמֶּיהָ׃

> He who eats it shall bear guilt, because he desecrated the sacred thing of YHWH. This soul shall be cut off from its people. (19:8).

The clue is that the meat is considered a "sacred thing" (קדש). Jacob Milgrom commented: "Implied is that the meat-and indeed all parts-of the sacrifice retains its holiness until the time of its elimination."[1] The same logic underlies the instructions for Aaron and his sons.

וְאִם־יִוָּתֵר מִבְּשַׂר הַמִּלֻּאִים וּמִן־הַלֶּחֶם עַד־הַבֹּקֶר וְשָׂרַפְתָּ אֶת־הַנּוֹתָר בָּאֵשׁ לֹא יֵאָכֵל כִּי־קֹדֶשׁ הוּא׃

> If any of the meat of the consecrations (or any of the bread) is left over until the morning you shall burn the remainder in fire. It shall not be eaten *because it is sacred*. (Exod. 29:34)

The leftover meat is considered "sacred" (קדש). The LXX's translator took this piece of logic —eating something sacred at the wrong time turns it into the very opposite of "sacred"—and introduced it in his translation of Leviticus: "it is a defilement" (μίασμά ἐστιν).

Eating consecrated food is fine when done within the right place, the right time, and by the right people. If these conditions are not met, eating sacred food induces impurity.

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[1] Milgrom, *Leviticus 1–16*, 420.

Leviticus relies on separations between pure and impure, and between sacred and profane (e.g., Lev. 10:10). As soon as something crosses the boundary between these realms, it "defiles" (טמא). Leviticus cites many examples of pure people coming into contact with impure things (e.g., Lev. 22:4–6). The reverse is also possible: impure people can come into contact with *pure* things. This transgression of boundaries is no less defiling than the other. Ironically, eating something sacred defiles. This mechanism, defilement through touching the sacred, is perhaps best known from the *m. Yadayim*: "All the Holy Scriptures render the hands unclean" (כל כתבי הקדש מטמאין את הידים) (3.5).[1] The LXX's translators must have recognised the logic underlying the levitical passage and explicated it in their translation. Hence the use of "defilement" (μίασμα) to describe the condition of the leftover meat of the well-being sacrifice (Lev. 7:18).[2]

In the second passage, the LXX's translators solved the same problem differently. They rendered the same word, פגול, as ἄθυτον.

> καὶ ἐὰν θύσητε θυσίαν σωτηρίου τῷ κυρίῳ, δεκτὴν ὑμῶν θύσετε. ᾗ ἂν ἡμέρᾳ θύσητε, βρωθήσεται καὶ τῇ αὔριον· καὶ ἐὰν καταλειφθῇ ἕως ἡμέρας τρίτης, ἐν πυρὶ κατακαυθήσεται. ἐὰν δὲ βρώσει βρωθῇ τῇ ἡμέρᾳ τῇ τρίτῃ, ἄθυτόν ἐστιν, οὐ δεχθήσεται·

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[1] Danby, *Mishnah*, 781.

[2] J. Joosten, *People and Land in the Holiness Code: An Exegetical Study of the Ideational Framework of the Law in Leviticus 17–26* (Supplements to Vetus Testamentum 67; Leiden, 1997), 124: "The holy and the impure are dynamic qualities which may under certain circumstances extend their influence over the profane and the pure respectively; both holiness and impurity are "contagious". On the other hand, the profane and the pure merely signal the absence of holiness and impurity respectively; they are static qualities, though by certain rites an object or a person may be transferred from the holy to the profane or from the impure to the pure. These two oppositions are related in a peculiar way: the profane may be either pure or impure, and the pure may be either holy or profane, but the holy and the impure are absolutely incompatible. What is impure may never be brought into contact with what is holy." M. Douglas, *Leviticus as Literature* (Oxford, 2001), 84: "It would be like taking back a gift, or rejecting bonds of affection, or kinship, or fealty, a grave insult to the one to whom the offering was first made." Ezekiel and the Priestly school possibly had slightly different conceptions of the causes of "defilement". T. Ganzel, 'Defilement and Desecration of the Temple in Ezekiel', *Biblica* 89 (2008), 369–79, who argues that, for Ezekiel, "the absence of sanctity" already counted as desecration (at 379).

> If you sacrifice a sacrifice of salvation to the Lord, you shall sacrifice [something] acceptable of yours. On the day that you sacrifice, it shall be eaten, also on the next day. And if something should be left until the third day, it will be consumed by fire. But if it is eaten on the third day, it is not sacrificed. It will not be received. (Lev. 19:5–7)

Greek ἄθυτος can refer both to unsacrificed and unsacrificable meat. Robert Parker argued that the word, at least in three inscriptions from Asia Minor, does not indicate the meat of non-sacrificial animals but the meat of unsacrificed animals.[1] In the first inscription someone confesses that his servants ate of the pieces of meat—with severe consequences.

> Μείδων Μενάνδρου κρατῆρα | ἐπόει ἐπὶ τοῦ Διὸς τοῦ Τρωσου | καὶ οἱ διάκονοι ἄθυτα ἐφάγοσαν | καὶ ἀπεμάκκωσεν αὐτὸν | ἐπὶ μῆνας τρεῖς καὶ παρεσ|τάθη αὐτῷ εἰς τοὺς ὕπνους, | ἵνα στήλην στήσας ἐπιγράψῃ | ἃ πέποσχεν καὶ ἤρξατο τότε | λαλεῖν. Meidon, son of Menander, had a drinking party in (the temple of) Zeus of Trosu, and his servants ate *athuta*. He made him dumb for three months and appeared to him in his dreams, so that—after erecting a stele—he would inscribe what had happened to him. Then he began to speak. (*IMT Kaikos* 932)

In a dedicatory inscription, erected near a temple of Apollo, someone thanked the god for healing him.

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[1] R. Parker, 'Eating Unsacrificed Meat', in P. Carlier and C. LeRouge-Cohen (eds), *Paysage et religion en Grèce antique: Mélanges offerts à Madeleine Jost* (Travaux de la Maison René-Ginouvès 10; Paris, 2010), 139–47, at 145.

καθαρμοῖς κὲ θυσίαις ε̣|[ἱλασάμην τὸν Κ]ύριον ἵνα μυ τὸ ἐμὸν σῶ|[μα σώ]σι κὲ
ΜΟΠCΜΕ {<ὅτι ἐ>μὲ?} ἀποκαθέστ[η]σε | [τῷ ἐμ]ῷ̣ σώματι διὸ παρανγέλλω μηθ|
ένα ἱερὸν ἄθυτον αἰγοτόμιον ἔσθε|ιν ἐπεὶ παθῖτε τὰς ἐμὰς κολ|άσεις.
I […] the Lord with purifications and sacrifices so that he might save my body and he … my body. Therefore I command that no one eat the sacred, *athuton* goat-meat—he will suffer my afflictions.[1]

Another inscription is concerned with the preservation of the sanctity of the temple to Dionysos. The inscription, written in hexameters, prohibits anyone from touching anything *athutos*.

[πάν]τ̣ες ὅσοι τέμενος Βρομίου ναούς τε περᾶτε,
…
μηδὲ μελανφάρους προσίναι βωμοῖσι ἄνακ̣τ̣[ος,]
μηδ’ ἀθύτοις θυσίαις ἱερῶν ἐπὶ χῖρας ἰάλ[λειν,]
All who enter the precinct and the temple of Bromios, (*sc.* you shall take care) that those wearing black do not approach the altars of the lord, and that no-one lays hands on the *athutoi* sacrifices of the victims. (*Smyrna* 223.2, 10–1)

What precisely do the inscriptions advise against? It is impossible to eat a goat’s meat before it has been roasted. It is more likely these inscriptions condemn the consumption of bits of

[1] W. M. Ramsay and D. G. Hogarth, ‘Apollo Lermenus’, *Journal of Hellenic Studies* 8 (1887), 376–400, at 387–9. They translated ἄθυτον differently: “wherefore I recommend that none eat a sacred goat-steak *which may not be sacrificed*”. Cf. W. M. Ramsay, *The Cities and Bishoprics of Phrygia: Being an Essay of the Local History of Phrygia from the Earliest Times to the Turkish Conquest, Vol. 1: The Lycos Valley and South-Western Phrygia* (Oxford, 1895), 150 [no. 43].

meat that have not been thoroughly consumed by the fire. Robert Parker comments on the inscriptions:

> What form this eating of unsacrificed meat took is unfortunately far from clear. The language used … implies that what was eaten was not the meat of non-sacrificial animals (a practice which the osteological evidence suggests could occur even within sanctuaries), but that of potential ἱρὰ which have not been sacrificed. But it is not obvious how servants and women could have done this. One can steal scraps of ordinary food, but one cannot steal scraps of a sacrificial animal prior to sacrifice. A master could choose to slaughter an animal without sacrificing it, but how could a woman and servants? Perhaps like βωμολόχοι they ate scraps that the sacrificial fire had not consumed.[1]

It makes good sense to understand ἄθυτον in these inscriptions as a reference to the unsuccessfully sacrificed meat (as opposed to meat that ought not to be sacrificed at all).

The LXX confirms Parker's suggestion that ἄθυτος refers to the eating of unburnt meat after the liturgy. The legislation in Lev. 19:5–8 is exclusively concerned with the consumption of sacrificial meat *after* the moment of sacrifice: "if it is eaten on the third day [*sc.* after the sacrifice], it is *athuton*" (Lev. 19:7). Understanding ἄθυτον as denoting meat *unfit* for sacrifice creates a paradox: "if it it is eaten on the third day, it is unfit for sacrifice".[2]

The similarity between the LXX and the Greek inscription goes beyond mere semantics. Why would the subject of the second inscription—the man who brought a

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[1] Parker, 'Eating Unsacrificed Meat', 144–5.
[2] Harlé and Pralon, *Lévitique*, 164: "si elle est quand même consommée au troisième jour, elle est *impropre à l'offrande*".

sacrifice to Apollo—worry about what happened to the sacrificial meat after the sacrifice? One possible reason is that it is improper for people to eat the meat offered to the *gods*. That is not, however, the way the inscription frames the problem. Instead the inscription warns against consumption because the meat has been offered to commemorate healing. If someone ate the unburnt meat, it would impact the efficacy of the sacrifice. Presumably one of the purposes of the public display of the inscription was to deter anyone from eating the goat's meat. Improper consumption would, in some way or other, affect the initial sacrifice. Below the surface of this inscription is a concern for the possibility of retroactive invalidation of the sacrifice—not unlike the ritual laws of Leviticus.

The comparison between the inscription and Leviticus also reveals a contrast. ἄθυτον clearly refers to the meat in the inscription. But the antecedent for ἄθυτον in the LXX is not immediately apparent. In the Hebrew versions (and in the Vulgate) the closest and most likely antecedent for "it is *piggul*" (פגול הוא) is "the remainder" (הנותר) (19:6). But the LXX translated that noun as a verbal clause: "if it is left over" (ἐὰν καταλειφθῇ). This left the subject of "is *athuton*" (ἄθυτόν ἐστιν) up in the air; the subject might be a neuter undefined, "it is *athuton*". The nearest and most likely candidate is the "sacrifice of salvation" (θυσίαν σωτηρίου) in 19:5. It makes good sense to understand the "sacrifice" as the implied subject of the many passive clauses that follow in 19:6–8: "*it* shall be eaten …, and if *it* is left over …, *it* shall be burnt. But if *it* is eaten …, *it* is *athutos—it* shall not be accepted." When read alongside the Hebrew text it looks like the LXX switches between the meat and the sacrifice as the subject. But when it is read on its own it makes more sense to suppose that the *sacrifice* is the subject throughout. If all these clauses are indeed dependent on the subject in 19:5, the LXX does apparently not—in the syntax of this small passage—make a distinction between the sacrificial meat and the sacrifice itself. This subtle variation between Hebrew

and Greek results in the following reading; first, the LXX describes what ought to happen with leftover meat: it should be burnt (Lev. 19:6); second, it condemns eating leftover meat on the third day: it turns the entire sacrifice "un-sacrificed" (19:7). The LXX has apparently accepted the very obstacle the rabbis sought to overcome: the time-warp of retroactive invalidation of the sacrifice.

4.5 The LXX and Rabbinic Halakhah

Zacharias Frankel argued that the purpose of the LXX's translation of Lev. 19:7 was "to express the halakhah".

> And yet the translator intentionally chose ἄθυτον in its actual meaning, in order to express the halakhah, which says that ואם האכל יאכל here means "when it will be eaten", i.e. when during the execution of the sacrifice (the slaughtering, the sprinkling of the blood etc.) one entertains the thought of eating the sacrifice on the third day, then it is פגול and it can not be sacrificed any further … How could our author have expressed himself any clearer than by rendering פגול as ἄθυτον, *non litandum* [a gerundive: "it should not be sacrificed"], thus resolving the meaning of βρώσει βρωθῇ at the very same time?[1]

In Frankel's reading, then, the meat turns ἄθυτον during the process of sacrificing: as soon as the officiating priest thinks of eating the meat after the third day, the meat should not—or

[1] Frankel, *Vorstudien zu der Septuaginta*, 190: "Und doch hat der Uebersetzer mit Bedacht ἄθυτον in seiner eigentlichen Bedeutung gewählt, um die Halacha auszudrücken! Diese sagt nämlich ואם האכל יאכל sei hier „wenn gegessen werden soll" d. i. wenn bei der Verrichtung des Opferns (Schlachten, Sprengen des Blutes ff.) man den Gedanken hege des Opfer am dritten Tage zu essen, dan ist es פגול darf es nicht weiter geopfert werden … Wie konnte nun unser Autor sich deutlicher aussprechen als indem פגול ἄθυτον *non litandum*, setzte und hierdurch zugleich über den Sinn des βρώσει βρωθῇ Aufschluss gab?"

rather, should no longer—be sacrificed. That reading accords entirely with rabbinic halakhah. The problem is that Lev. 19:7 does not refer to the process of sacrificing, but to the third day *after* the sacrifice: "if he eats it *on the third day*, [then] it will be *athuton* [ἐὰν δὲ βρώσει βρωθῇ τῇ ἡμέρᾳ τῇ τρίτῃ, ἄθυτόν ἐστιν]".

In the *daf* Frankel alluded to, an unknown rabbi argues a sacrifice can only become invalid if the priest offered it while thinking of eating the meat on the third day.

א"ל ההוא מרבנן לרבא ושפיכת שירים והקטרת אימורין לא פסלה בהו מחשבה והתנן יכול לא תהא מחשבה מועלת אלא באכילת בשר מנין לרבות שפיכת שירים והקטרת אימורים ת"ל ואם האכל יאכל בשתי אכילות הכתוב מדבר אחת אכילת אדם ואחת אכילת מזבח לא קשיא הא דאמר הריני זורק על מנת לשפוך שירים למחר הא דאמר הריני שופך שירים על מנת להקטיר אימורין למחר

> One of the Rabbis said to Raba: Now does not intention disqualify at the pouring out of the residue and the burning of the emurim? Yet surely it was taught: You might think that intention is effective only in connection with the eating of the flesh. Whence do we know to include the pouring out of the residue and the burning of the emurim? From the text, And if [any of the flesh …] be at all eaten [on the third day … it shall be an abhorred thing]: Scripture refers to two eatings, viz., eating by man and eating by the altar. There is no difficulty: In the one case he declares, 'Lo, I sprinkle [the blood] with the intention of pouring out the residue to-morrow'; in the other he declares, 'Lo, I pour out the residue with the intention of burning the emurim to-morrow.' (*b. Zevahim* 13b)[1]

[1] Epstein (ed.), *Babylonian Talmud*, ad loc.

This interpretation of Lev. 19:7 does not underlie the LXX. The LXX does not at all refer to the intention of eating the meat or any of the sacrificer's thoughts. Instead the LXX reaffirms the process of retroactive invalidation: eating of the sacrificial meat on the third day *retroactively* renders the sacrifice invalid, or "not sacrificed". This is precisely the interpretation rejected by R. Eliezer in the *Sifra* and, at least in the *Sifra*'s reconstruction of the historical development of the argument, the reason why intention was introduced in the first place.

In the Mishnah a priest's state of mind has the capacity to validate or invalidate a sacrifice.

לשם שישה דברים הזבח נזבח--לשם הזבח, לשם זובח, לשם ה', לשם אישים, לשם ריח, לשם ניחוח; חטאת ואשם, לשם חטא.

> An offering must be slaughtered while mindful of six things: of the offerings, of the offerer, of God, of the altar-fires, of the odour, and of the sweet savour; and, if it is a Sin-offering or a Guilt-offering, also of the sin (*m. Zevahim* 4.6).[1]

This logic, according to which an act is only valid when performed with the right intention, does not only apply to sacrifice but also to reciting the Shema: "if he directed his heart he has fulfilled his obligation; otherwise he has not fulfilled his obligation" (*m. Ber.* 2.1).[2] It applies to reading a scroll: "if … he directed his heart [to the reading of the Scroll], he has fulfilled his obligation; otherwise he has not fulfilled his obligation" (*m. Meg.* 2.2). Similarly a

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[1] Danby, *Mishnah*, 473.

[2] On prayer on the road, see *m. Berakhot* 4.5; *t. Berakhot* 3.18. If a traveller is unable to turn towards Jerusalem physically, he must instead direct his heart—a new idea. In this case the Tosefta may be older than the Mishnah, see J. Hauptman, *Rereading the Mishnah: A New Approach to Ancient Jewish Texts* (Texts and Studies in Ancient Judaism 109; Tübingen, 2005), 3–5; J. Neusner, Review of J. Hauptman, *Rereading the Mishnah*, *Review of Rabbinic Judaism* 10 (2007), 129–36 at 130–2.

person's intention has the capacity to render objects susceptible to impurity: "All articles can be rendered susceptible to uncleanness through intention" (*m. Kel.* 25.9).[1] Intention can also make the difference between conviction for murder and acquittal: "If he had intended to kill a beast and killed a man, … he is not culpable" (*m. Sanh.* 9.2). These and similar *mishnayot* have been the subject of modern scholarship, because—with the notable exception of the homicide laws—intention had no obvious place in biblical law.

The study of intention in the Mishnah gives an opportunity to estimate how early rabbinic halakhah differs from biblical law. Jacob Neusner argued that there was no difference at all between biblical and early rabbinic laws on sacrifice. He wrote:

> If, therefore, any of our tractates has, or conforms to, a "theory of sacrifice," I cannot specify what that theory is, except for Scripture's. I see no important point at which a profound and fundamental conviction of Scripture is reversed or even examined. Time and again all we find in our division is an amplification of secondary implications of Scripture, never a confrontation with the primary assertions or fundamental ideas thereof.[2]

In reaction to Neusner's reductionist approach to the Mishnah, more recent scholarship has pointed out the ways in which the early rabbis interpreted, innovated, and revolutionised biblical law. Scholars have focused on intention in particular. Howard Eilberg-Schwartz argued that "the Mishnah fundamentally reworks biblical law" by making "the whole

[1] Compare *m. Kelim* 17.15; 26.7–8.
[2] J. Neusner, 'Map without Territory: Mishnah's System of Sacrifice and Sanctuary', *History of Religions* 19 (1979), 103–27, at 113.

question of culpability dependent on the actor's intention".[1] Joshua Levinson wrote that categories like intention were "rabbinic innovations that grant a new legal status to the internal world of the legal subject."[2] Ishay Rosen-Zvi called these categories—i.e., intention, thought, will, and contemplation—"pure Tannaitic innovations".[3] Mira Balberg wrote that this "dimension of intention and mental disposition" was "completely absent from biblical and Second Temple accounts of sacrifice".[4]

These conclusions, however, need to be nuanced in two ways. First, there is one Jewish thinker from before the Mishnah who thought intention could invalidate sacrifices. Consequently the "mental revolution" was not necessarily rabbinic in origin. In order to assess to what extent the Mishnah is a fundamental reworking, an innovation, or a revolution, we need to compare the Mishnah to pre-mishnaic sources (see 4.6). Second, tannaitic halakhah is not always as unified as thought. Christine Hayes points out that tannaitic rabbis had different opinions on which thoughts could invalidate a sacrifice; which thought could

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[1] H. Eilberg-Schwartz, *The Human Will in Judaism: The Mishnah's Philosophy of Intention* (Brown Judaic Studies 103; Atlanta, GA, 1986), 88: "The Mishnah … makes the whole question of culpability dependent on the actor's intention. Precisely the same action may constitute a transgression if done with one purpose in mind, while it may be a permissible act if performed for a different purpose. By stressing a new aspect of intention, therefore, the Mishnah fundamentally reworks biblical law."

[2] J. Levinson, 'From Narrative Practice to Cultural Poetics: Literary Anthropology and the Rabbinic Sense of Self', in M. Niehoff (ed.), *Homer and the Bible in the Eyes of Ancient Interpreters: Between Literary and Religious Concerns* (Jerusalem Studies in Religion and Culture 16; Leiden, 2012), 345–68, at 348: "Suddenly, in rabbinic literature, we begin to hear echoes of a different type of legal subject. This is seen most clearly in certain legal terms and categories that emerge here for the first time, like; "commandments must be performed with intention," or, unintentional work on the Sabbath. Without, at present, going into the history of these concepts, they are all rabbinic innovations that grant a new legal status to the internal world of the legal subject."

[3] I. Rosen-Zvi, 'The Mishnaic Mental Revolution: A Reassessment', *Journal of Jewish Studies* 66 (2015), 36–58, at 36: "Tannaitic literature uses mental categories to determine the status of persons, objects and actions. While some of these categories, such as intentional or unintentional actions, are extensive developments of biblical categories, others are pure Tannaitic innovations. The latter include 'intention' … in the performance of commandments …, the effects of 'thought' … on the validity of a sacrifice, 'will' … as a category in the laws of purity, and the ability to recite the *shema* through mere 'contemplation'".

[4] Balberg, *Blood for Thought*, 20: "the rabbis integrate in their discussions of sacrificial actions a dimension that is completely absent from biblical and Second Temple accounts of sacrifice: a dimension of intention and mental disposition." Cf. E. Ottenheijm, 'Impurity Between Intention and Deed: Purity Disputes in First Century Judaism and in the New Testament', in M. J. H. M. Poorthuis and J. Schwartz (eds), *Purity and Holiness: The Heritage of Leviticus* (Jewish and Christian Perspectives Series 2; Leiden, 2000), 129–47, at 143.

turn it פגול.[1] *M. Zev.* 3.6 argues that not all thoughts—however improper—have the power to invalidate a sacrifice:

שְׁחָטוֹ עַל מְנָת לִתְּנוֹ עַל גַּבֵּי הַכֶּבֶשׁ שֶׁלֹּא כְנֶגֶד הַיְסוֹד, לִתֵּן אֶת הַנִּתָּנִין לְמַטָּה, לְמַעְלָה, וְאֶת הַנִּתָּנִין לְמַעְלָה, לְמַטָּה, אֶת הַנִּתָּנִין בִּפְנִים, בַּחוּץ, וְאֶת הַנִּתָּנִין בַּחוּץ, בִּפְנִים, שֶׁיֹּאכְלוּהוּ טְמֵאִים, שֶׁיַּקְרִיבוּהוּ טְמֵאִים, שֶׁיֹּאכְלוּהוּ עֲרֵלִים, שֶׁיַּקְרִיבוּהוּ עֲרֵלִים, לְשַׁבֵּר עַצְמוֹת הַפֶּסַח וְלֶאֱכֹל הֵימֶנּוּ נָא, לְעָרֵב דָּמוֹ בְדַם פְּסוּלִין, כָּשֵׁר, שֶׁאֵין הַמַּחֲשָׁבָה פּוֹסֶלֶת אֶלָּא חוּץ לִזְמַנּוֹ וְחוּץ לִמְקוֹמוֹ, וְהַפֶּסַח וְהַחַטָּאת שֶׁלֹּא לִשְׁמָן:

> If he slaughtered it and intended to sprinkle it on the Ramp and not by the [Altar-]base, or to sprinkle above what should be sprinkled below, or to sprinkle below what should be sprinkled above, or to sprinkle outside what should be sprinkled within, or to sprinkle within what should be sprinkled outside, or [if he intended] that such as were unclean should eat it, or that such as were unclean should offer it, or that such as were uncircumcised should eat it, or that such as were uncircumcised should offer it, or [if he intended] to break the bones of the Passover-offering or to eat of it raw, or to mingle its blood with the blood of invalid [offerings], it still remains valid, since no other intention can render the offering invalid save that which concerns [an act] outside the proper time or place, or, if it is a Passover-offering or Sin-offering, slaughtering it under another name. (*m. Zev.* 3.6)[2]

The *mishnayot* on intentions "work together to both assert and delimit the power of thought to establish the validity of a sacrifice".[3] In the Tosefta some rabbis sought to define more

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[1] Hayes, *What's Divine about Divine Law?*, 207–12.
[2] Danby, *Mishnah*, 472.
[3] Hayes, *What's Divine about Divine Law?*, 210.

precisely which thoughts could invalidate sacrifice and which could not. Whereas the Mishnah focusses on the sacrificer's at the time of the sacrifice (e.g., *m. Zev.* 2.2; 3.6), the Tosefta argues that only thoughts before the completion of the sacrifice could invalidate it. The Tosefta lists the same examples of impure thoughts concerning sacrifice as the Mishnah but adds: "but if he actually did it, it [*sc.* the sacrifice] is not *piggul*" (ואם עשה כן אינו פגול) (twice in *t. Men.* 5.4).

The LXX responds to the same problem of retroactive invalidation but—like early rabbinic halakhah—does not offer a *single* solution. There is a subtle difference between the two translations of the LXX. Whereas μίασμα describes the effect that eating the sacrificial meat has on the eater, ἄθυτον describes the effect it has on the sacrifice itself (Lev. 7:18; 19:7).[1] The difference can, of course, be explained by arguing that the translator was inconsistent, that there was more than one translator, or that the translation was partially revised.[2] Possibly, however, the discussions about the retroactive invalidation of the well-being sacrifice were already going on at the time of this translation. Perhaps the LXX's inconsistency arose from an effort—whether by translators or early copyists—to cope with the affront of retroactive invalidation.

4.6 Philo

The introduction of intention as a solution to the problem of retroactive invalidation was not rabbinic in origin. In his commentaries, Philo frequently underlines the spiritual dimension of sacrifice. Philo was to some extent indebted to the ancient prophets. Long before him, the

[1] Similarly, what was selected as "acceptable" by the offerer(s) in Lev. 19:5 "shall not be accepted" in 19:7 because it was not consumed at the right time: δεκτὴν ὑμῶν θύσετε … οὐ δεχθήσεται.
[2] E. Tov, 'The Greek Biblical Texts from the Judean Desert', in id., *Hebrew Bible, Greek Bible, and Qumran* (Texts and Studies in Ancient Judaism 121; Tübingen, 2008), 339–64.

prophets had argued that sacrifices offered without the right attitude were pointless.[1] Unlike the prophets and similar to the early rabbis, however, Philo maintained that sacrifices offered without the right intention were not real sacrifices—they were *invalid*. On two separate occasions Philo introduced an inventive etymology of the word "altar" (θυσιαστήριον). He argued that what is being "preserved" (τηρέω) in sacrifice is not the meat of the victim but the state of mind of the sacrificer.

> διὸ καὶ κέκληκε θυσιαστήριον, ἴδιον καὶ ἐξαίρετον ὄνομα θέμενος αὐτῷ παρὰ τὸ διατηρεῖν, ὡς ἔοικε, τὰς θυσίας, καίτοι τῶν κρεῶν ἀναλισκομένων ὑπὸ πυρός. ὡς εἶναι σαφεστάτην πίστιν, ὅτι οὐ τὰ ἱερεῖα θυσίαν ἀλλὰ τὴν διάνοιαν καὶ προθυμίαν ὑπολαμβάνει λαμβάνει τοῦ καταθύοντος εἶναι, ἐν ᾗ τὸ μόνιμον καὶ βέβαιον ἐξ ἀρετῆς.
> From the same point of view he called the altar a sacrifice-keeper, evidently giving it that special and distinctive name from its preserving the sacrifices, though the flesh is consumed by fire. And thus we have the clearest proof that he holds the sacrifice to consist not in the victims but in the offerer's intention and his zeal which derives its constancy and permanence from virtue. (Philo, *Spec.* 290)[2]

In several passages scattered throughout his works, Philo uses the word ἄθυτος to explain why some sacrifices are not as good as others. The sacrifices offered to the golden calf were in essence "unsacrificed sacrifices" (θυσίας ἀθύτους *Mos.* 1.162) and sacrifices brought by people ignorant of sacrifice are, again, "unsacrificed sacrifices" (ἄθυτοι θυσίαι *Plant.* 108).

[1] See, e.g., Psalm 50:12–3; 51:19; 141:2; Hos. 14:3; Mic. 6:7; Isa. 1:11–6; 66:1; 1 Sam. 15:22; 1 Kings 8:27–8.
[2] F. H. Colson (ed.), *Philo, Volume VII* (Loeb Classical Library 320; Cambridge, MA, 1937), 266–9.

Philo gives a lucid explanation of what makes some sacrifices "unsacrificed" in his biography of Moses:

> τὸν δ᾽ ἐν ὑπαίθρῳ βωμὸν εἴωθε καλεῖν θυσιαστήριον, ὡσανεὶ τηρητικὸν καὶ φυλακτικὸν ὄντα θυσιῶν τὸν ἀναλωτικὸν τούτων, αἰνιττόμενος οὐ τὰ μέλη καὶ τὰ μέρη τῶν ἱερουργουμένων, ἅπερ δαπανᾶσθαι πυρὶ πέφυκεν, ἀλλὰ τὴν προαίρεσιν τοῦ προσφέροντος· εἰ μὲν γὰρ ἀγνώμων καὶ ἄδικος, ἄθυτοι θυσίαι καὶ ἀνίεροι ἱερουργίαι καὶ εὐχαὶ παλίμφημοι παντελῆ φθορὰν ἐνδεχόμεναι·
>
> The great altar in the open court he usually calls by a name which means sacrifice-keeper, and when he thus speaks of the altar which destroys sacrifices as their keeper and guardian he alludes not to the parts and limbs of the victims, whose nature is to be consumed by fire, but to the intention of the offerer. For, if the worshipper is without kindly feeling or justice, the sacrifices are no sacrifices, the consecrated oblation is desecrated, the prayers are words of ill omen with utter destruction waiting upon them. (Philo, *Mos.* 2.106–7)[1]

Scholarship on Philo's ideas about sacrifice has a long history. H. A. Wolfson cited these and similar passages to argue that Philo "reflects" nothing more than the views of the biblical prophets—with the exception that Philo thought prayer superior to sacrifice.[2] Jean Laporte wrote that Philo gives a "symbolic interpretation" of sacrificial rituals: "Philo's ritualism is impregnated with a moral and religious signification which opens the way to communication with God", and: "According to Philo, repentance, return to righteousness, and

[1] Colson (ed.), *Philo, Volume VI*, 500–1.
[2] H. A. Wolfson, *Philo: Foundations of Religious Philosophy in Judaism, Christianity, and Islam* (2 vols; Structure and Growth of Philosophic Systems from Plato to Spinoza 2; Cambridge, MA, 1947), II, 243–8.

supplications obtain from God the forgiveness of sins, with or without sacrificial expiation."[1] This reading of Philo is problematic because it assumes that all sacrificial rituals are meaningless until they are "impregnated" with pious meaning. Jonathan Klawans argued that Philo "forges a synthesis between the prophetic and priestly traditions—but it's a synthesis that, like much else in Philo, contains some idiosyncratic elements."[2]

There is a noticeable difference between the prophetic critique of sacrifice and Philo's. The biblical prophets insisted on the sacrificer's ritual and moral purity. Both of these qualities would have to be established prior to the act of sacrificing. Philo, however, zooms in on the offerer's "thought" (διάνοια), his "readiness" (προθυμία), and his "purpose" (προαίρεσις) at the time of the sacrifice itself—much like the early rabbis. In the *Questions and Answers on Exodus* Philo approximated the rabbinic position.[3] Fortunately fragments of the *Questions and Answers* survive in Greek, Armenian, and Latin in manuscripts, citations by church fathers, florilegia, and catenae.

> Ὁ μὴ ἐκ προαιρέσεως ἀπάρχων [θεῷ], κἂν τὰ μέταλλα πάντα κομίζῃ μετὰ τῶν βασιλικῶν θεσαυρῶν, ἀπαρχας οὐ φέρει· [οὐ γὰρ ἐν ὕλαις ἀλλ᾽ εν εὐσεβεῖ διαθέσει τοῦ κομίζοντες ἡ ἀληθὴς ἀπαρχή.]
>
> He who unwillingly offers first-fruits, even if he offered all the metal from the royal treasury, does not bring first-fruits. Because the true first-fruit is not in the cuts of meat but in the pious disposition of the offerer.[4]

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[1] J. Laporte, 'Sacrifice and Forgiveness in Philo of Alexandria', *Studia Philonica Annual* 1 (1989), 34–42, citations on pp. 35, 42.
[2] J. Klawans, *Purity, Sacrifice, and the Temple: Symbolism and Supersessionism in the Study of Ancient Judaism* (Oxford, 2006), 121.
[3] Cf. Philo, *Quest. Ex*. 2.71, 98–9.
[4] F. Petit (ed.), *Quaestiones in Genesim et in Exodum: Fragmenta graeca* (Les œuvres de Philon d'Alexandrie 33; Paris, 1978), 271–2.

The Greek and Armenian versions of this answer are very different. Françoise Petit, the editor of the Greek, argued that the Greek was "un texte très remanié par rapport à l'arménien et est plutôt un écho qu'un fragment".[1] This is Ralph Marcus's translation of the Armenian:

> But he who unwillingly brings an offering is forgotten and deceives himself, for even if he offers silver or something else, he does not bring first-offerings, in the same way as he who unwillingly makes a sacrifice is thought to offer unsacrificed meat to the fire rather than a (real) sacrifice. (Philo, *Quest. Ex.* 2.50)[2]

Scholarship on the *Questions and Answers on Exodus* focuses on the origins of the genre. Did Philo adopt the Q&A-structure from the Jewish synagogues in Alexandria or from the Hellenistic inquiries into the Homeric corpus (such as Aristotle's now-lost *Homeric Questions*)?[3]

From the two quotations it appears that Philo voiced an opinion quite similar to that of the rabbis: a sacrifice offered without the right intention is not an actual sacrifice. Interestingly there was a similar debate on the novelty of Philo's ideas on sacrifice. Hans Wenschkewitz argued that Philo's thoughts on the temple cult constitute a "planmäßige Umdeutung der äußeren Kultus in einen inneren".[4] The wording of that conclusion is strongly

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[1] Petit (ed.), *Quaestiones in Genesim et in Exodum*, 271 n. *a*.
[2] R. Marcus (ed.), *Philo, Questions and Answers on Exodus* (Loeb Classical Library 401; Cambridge, MA, 1953), 97.
[3] P. Borgen and R. Skarsten, '*Questiones et Solutiones: Some Observations on the Form of Philo's Exegesis*', *Studia Philonica* 4 (1976–77), 1–15; F. Siegert, 'Early Jewish Interpretation in a Hellenistic Style', in M. Saebø (ed.), *Hebrew Bible / Old Testament: The History of Its Interpretation, Volume 1: From the Beginnings to the Middle Ages (until 1300), Part 1: Antiquity* (Göttingen, 1996), 130–98; J. Leonhardt, *Jewish Worship in Philo of Alexandria* (Texts and Studies in Ancient Judaism 84; Tübingen, 2001), 93–5; K. Schenck, *A Brief Guide to Philo* (Louisville, KY, 2005), 15–6, 25.
[4] H. Wenschkewitz, *Die Spiritualisierung der Kultusbegriffe: Tempel, Priester und Opfer im Neuen Testament* (Leipzig, 1932), 9.

reminiscent of the debate on whether there is method to the madness of Philo's thought.[1] Jutta Leonhardt disagreed with Wenschkewitz's conclusion, insisting that Philo did not just systematically rework but actually "add[ed] a new dimension to the outer cult".[2]

The origins of Philo's concern for a sacrificer's attitude towards the sacrifice can be traced back to a particular Stoic conception of the mind. The discussion over epistemology among the Stoics reveals how they thought the mind (ψυχή) works. The faculty of choice (προαίρεσις) has the power to assent (συγκατατίθεσθαι) to impressions (φαντασίαι)—or to withhold assent.[3] In this view the mind is a "communication mechanism".[4] The mind receives, registers, and interprets data. It then produces output in the form of thoughts, and ultimately beliefs or knowledge. The Stoics argued that what separated humans from animals is the mind's power of choice. Animals only have impulses; they do not have a choice to assent to or to withhold impressions—humans do. Epictetus, a second-century Stoic, argued that a man's προαίρεσις is entirely free:

> ἄνθρωπε, προαίρεσιν ἔχεις ἀκώλυτον φύσει καὶ ἀνανάγκαστον. τοῦτο ἐνταῦθα ἐν τοῖς σπλάγχνοις γέγραπται. δείξω σοι αὐτὸ πρῶτον ἐπὶ τοῦ συγκαταθετικοῦ τόπου. μή τίς σε κωλῦσαι δύναται ἐπινεῦσαι ἀληθεῖ; οὐδὲ εἷς. μή τίς σε ἀναγκάσαι δύναται παραδέξασθαι τὸ ψεῦδος; οὐδὲ εἷς. ὁρᾷς ὅτι ἐν τούτῳ τῷ τόπῳ τὸ προαιρετικὸν ἔχεις ἀκώλυτον ἀνανάγκαστον ἀπαραπόδιστον;

[1] There is according to O. Schmitz, *Die Opferanschauung des späteren Judentums und die Opferaussagen des Neuen Testamentes: Eine Untersuchung ihres geschichtlichen Verhältnisses* (Tübingen, 1910), 156, but not according to I. Heinemann, *Philons griechische und jüdische Bildung: kulturvergleichende Untersuchungen zu Philons Darstellung der jüdischen Gesetze* (Breslau, 1932), 66.
[2] Leonhardt, *Jewish Worship in Philo of Alexandria*, 253.
[3] A. A. Long, 'Stoic Psychology', in K. Algra, J. Barnes, J. Mansfeld, and M. Schofield (eds), *The Cambridge History of Hellenistic Philosophy* (Cambridge, 1999), 560–84, at 572–80.
[4] J. E. Annas, *Hellenistic Philosophy of Mind* (Berkeley, CA, 2004), 63.

> Man, you have a moral purpose free by nature from hindrances and constraint. This stands written here in these entrails. I will prove you that first in the sphere of assent. Can anyone prevent you from assenting to truth? No one at all. Can anyone force you to accept the false? No one at all. Do you see that in this sphere you have a moral purpose free from hindrance, constraint, obstruction? (*Diss.* 1.17.21–3)[1]

It is because of this and similar passages that Michael Frede considered Epictetus's idea of προαίρεσις the closest analogy to the modern idea of "free will".[2] The Stoics further distinguished between *kataleptic* and *akataleptic* impressions. *Kataleptic* impressions are irrefutable—the mind cannot but assent to them. In characteristically ambiguous fashion Sextus Empiricus, another second-century Stoic, argued that a *kataleptic* impression "is so evident and striking that it grabs us, as they say, by the hair, dragging us to assent" (*Math.* I 7.257).[3] This, Charles Brittain argues, does not imply necessary assent but merely the mind's strong inclination to assent.[4]

Although most of our sources for the Early Stoics are much later than the Early Stoics themselves, there is good reason to suspect that Philo subscribed to some version of this theory of the mind.[5] He wrote:

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[1] W. A. Oldfather, *Epictetus, Discourses, Books 1–2* (Loeb Classical Library 131; Cambridge, MA, 1925), 116–7.
[2] M. Frede, *A Free Will: Origins of the Notion in Ancient Thought* (ed. A. A. Long; Berkeley, CA, 2012).
[3] αὕτη γὰρ ἐναργὴς οὖσα καὶ πληκτικὴ μόνον οὐχὶ τῶν τριχῶν, φασί, λαμβάνεται, κατασπῶσα ἡμᾶς εἰς συγκατάθεσιν, καὶ ἄλλου μηδενὸς δεομένη εἰς τὸ τοιαύτη προσπίπτειν ἢ εἰς τὸ τὴν πρὸς τὰς ἄλλας διαφορὰν ὑποβάλλειν.
[4] C. Brittain, 'The Compulsions of Stoic Assent', in M.-K. Lee (ed.), *Strategies of Argument: Essays in Ancient Ethics, Epistemology, and Logic* (New York, 2014), 332–55.
[5] The use of προαίρεσις in the sense of a capacity or "process of forming new desires" is certainly older than Epictetus, see C. Chamberlain, 'The Meaning of *Prohairesis* in Aristotle's Ethics', *Transactions of the American Philological Association* 114 (1984), 147–57.

> τὸ γὰρ ζῷον τοῦ μὴ ζῴου δυσὶ προῦχει, φαντασίᾳ καὶ ὁρμῇ· ἡ μὲν οὖν φαντασία συνίσταται κατὰ τὴν τοῦ ἐκτὸς πρόσοδον τυποῦντος νοῦν δι᾽ αἰσθήσεως, ἡ δὲ ὁρμή, τὸ ἀδελφὸν τῆς φαντασίας, κατὰ τὴν τοῦ νοῦ τονικὴν δύναμιν, ἣν τείνας δι᾽ αἰσθήσεως ἅπτεται τοῦ ὑποκειμένου καὶ πρὸς αὐτὸ χωρεῖ γλιχόμενος ἐφικέσθαι καὶ συλλαβεῖν αὐτό.
>
> For the living creature excels the non-living in two respects, in the power of receiving impressions and in the active impulse towards the object producing them. The impression is produced by the drawing nigh of the external object, as it stamps the mind through sense-perception; while the active impulse, close of kin to the power aforesaid, comes about by way of the mind's power of self-extension, which it exercises through sense-perception, and so comes into touch with the object presented to it, and goes towards it, striving to reach and seize it. (*Allegorical Interpretation of Genesis 2 and 3* 1.30)[1]

Philo used the same Stoic vocabulary of epistemology to describe sacrifice (note esp. προαίρεσιν in *Mos.* 1.106; *Quest. Ex.* 2.50). He must have assumed that the mind worked the same when producing knowledge as when offering sacrifice. When the sacrificer witnesses the sacrifice, he is supposed to give his assent—if he does not, the sacrifice is now *athutos*. Adopting the LXX's vocabulary, Philo calls such sacrifices "unsacrificed sacrifices" (ἄθυτοι θυσίαι) (*Mos.* 2.107). God does not care about the animal—which is burnt anyway—but only about the sacrificer's mental attitude towards the sacrifice. Philo's theory of sacrifice is a remarkable combination of the LXX's vocabulary and the Stoic philosophy of mind. The

[1] F. H. Colson and G. H. Whitaker (eds), *Philo, Volume I* (Loeb Classical Library 226; Cambridge, MA, 1929), 166–7. Cf. Origen, *De princ.* 3.1.2–3.

combination is greater than the sum of its parts. Philo's ideas about sacrifice anticipate the rabbinic system that makes sacrifice contingent on intention.

4.7 Conclusion

The translators of the LXX had to answer two questions. When does the sacrificial meat turn bad? What happens when someone eats the meat that has gone bad? The laws of Leviticus are at variance on the question of the expiry date of sacrificial meat. One text commands the meat to be eaten "*on* the third day" (ביום השלישי) but another allows it to be eaten "*till* the third day" (עד יום השלישי) (Lev. 7:17; 19:7). Like the Scrolls, the LXX accepted the stricter law. The LXX's translator rendered "on the third day" (ביום השלישי) as "*till* the third day" (ἕως ἡμέρας τρίτης) (7:17). This example again illustrates how the "intermediary" of the Holiness Code shaped the LXX's understanding of the earlier Priestly law.

The LXX came up with two different solutions to the second problem—that of the consequences of meat consumption after the expiry date. In the first, the LXX argues that the meat has become μίασμα (7:18). This translation depends on a logic already found in Leviticus: maltreatment of holy things "defiles". The second solution is more intricate: it calls the meat ἄθυτον (19:7)—a word that inscriptions use for unburnt meat. In the LXX, however, the same word refers not to the meat but to the sacrifice. Apparently the LXX's translator adopted the idea that sacrifices can be turned invalid after the fact. If the two solutions have anything in common, it is a certain "indifference to motive". The sacrificial meat defiles the eater and invalidates the sacrifice *regardless* of the eater's motives.

The problem with the Levitical law—at least to the rabbis—was the affront of a perfectly fine sacrifice being invalidated three days after the fact. To overcome this problem, the rabbis introduced a subjective dimension, reasoning that the priest's mind must've

wandered to eating of the meat already at the moment of the sacrifice itself. The LXX, by contrast, betrays what E. R. Dodds would call a certain "indifference to motive"—it doesn't matter what the priest was thinking of.[1] So far, there is no precedents for the early rabbinic solution—except that the very reason why they introduced the factor of intention is defined more sharply in the LXX than in other versions of the Levitical law. The Hebrew versions advise against eating meat simply because "it is *piggul*"—in the LXX the connection between eating the meat at the wrong time and the sacrifice losing its validity is much more explicit: "if someone eats it, … it [*sc.* the sacrifice] is un-sacrificed".

[1] E. R. Dodds, *The Greeks and the Irrational* (Berkeley, CA, 1962), 36; cit. in R. Parker, *Miasma: Pollution and Purification in Early Greek Religion* (Oxford, 1990), 9 n. 38.

5 INTENTION AND HOMICIDE (EXOD. 21:12–4)

> In the purely empirical conduct of legal practice and legal training one always moves from the particular to the particular but never tries to move from the particular to general propositions in order to be able subsequently to deduce from them the norms for new particular cases.
>
> —Max Weber, *Economy and Society*, 787

5.1 Introduction

Intention did not play an obvious role in the biblical laws for sacrifice. In the previous chapter, the rabbis *introduced* intention as a solution to a problem created by the laws of Leviticus—the problem of the sacrifice's retroactive invalidation. Joshua Levinson compared biblical and rabbinic law and concluded: "in rabbinic literature, we begin to hear echoes of a different type of legal subject."[1] Biblical law evaluates actions on the grounds of their consequences; rabbinic law values them on the grounds of the agent's *intentions*. There are a few exceptions to this rule. The biblical laws already distinguish between intentional and unintentional homicide—between murder and manslaughter. Translating the Covenant Code's homicide law, the LXX's translator emphasised the importance of intention, making it the most important criterion for distinguishing between manslaughter and murder (Exod. 21:12–4). The LXX's translation is not a radical innovation but has precedents in Priestly law, Egyptian law, and Greek philosophy.

[1] Levinson, 'From Narrative Practice to Cultural Poetics', in Niehoff (ed.), *Homer and the Bible in the Eyes of Ancient Interpreters*, 348.

The LXX and the Mishnah share an essential principle about homicide. Both hold that for the final verdict the agent's intentions are more important than the actual results of his intentions. Nevertheless, they applied this principle in different ways. The tannaitic rabbis argued—in contrast to biblical law—that some killers go free (*m. Makk.* 2.1; *Sanh.* 9.2). The LXX suggests that even the assailant who intends to kill is liable for capital punishment, even if his assault was ultimately unsuccessful (in Exod. 21:14, see 5.6).

5.2 Two Punishments

The biblical homicide laws are primarily concerned with the question of asylum: who is allowed to flee to a safe "place" (מקום) or to a "city of refuge" (עיר מקלט) and who is not (Exod. 21:12–4; Num. 35:9–34; Deut. 19:2–13)? The purpose of these places of asylum is a matter of dispute. They protect the accidental killer from the revenge of the victim's avenger but they also isolate him from his family, his home, and his land (and thus from his livelihood).[1] The duality of the city of refuge is nicely captured in the Hebrew עיר המקלט, usually translated as "city of refuge". In Rabbinic Hebrew the root קלט means "to close, to retain" as well.[2]

Kevin Mattison argued recently that the homicide laws conceive differently of the function of the cities of refuge. In the Deuteronomic Code the purpose of asylum is to protect

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[1] M. Greenberg, 'The Biblical Conception of Asylum', *Journal of Biblical Literature* 78 (1959), 125–32; H. McKeating, 'The Development of the Law of Homicide in Ancient Israel', *Vetus Testamentum* 25 (1975), 46–68; A. Graeme Auld, 'Cities of Refuge in Israelite Tradition', *Journal for the Study of the Old Testament* 10 (1978), 26–40; J. Milgrom, 'Sancta Contagion and Altar/City Asylum', in J. A. Emerton (ed.), *Congress Volume Vienna 1980* (Leiden, 1981), 278–310; A. Rofé, 'The History of the Cities of Refuge in Biblical Law', *Scripta Hierosolymitana* (1986), 205–39; C. Houtman, 'Der Altar as Asylstätte im Alten Testament: Rechtsbestimmung (Ex. 21, 12–14) und Praxis (I Reg. 1–2)', *Revue Biblique* 103 (1996), 343–66; P. Barmash, *Homicide in the Biblical World* (Cambridge, 2005), 71–93, 101–2; J. Stackert, *Rewriting the Torah: Literary Revision in Deuteronomy and the Holiness Legislation* (Forschungen zum Alten Testament 52; Tübingen, 2007), 31–112; J. Burnside, *God, Justice, and Society* (Oxford, 2011), 253–83; E. Hadad, '"Unintentionally (Numbers 35:11) and "Unwittingly" (Deuteronomy 19:4): Two Aspects of the Cities of Refuge', *Association for Jewish Studies Review* 41 (2017), 155–73.
[2] Jastrow, *Dictionary*, 1374–5.

the accidental killer from the avenger of blood (the גאל הדם) for a short period of time (Deut. 19:6). In the Priestly Code the purpose of asylum is to contain the bloodguilt of the accidental killer until the contaminating bloodguilt can be expunged—i.e., until the high priest dies (Num. 35:24–5).[1] If there is indeed a punitive element to the killer's stay in the asylum city, there is no type of homicide that went "unpunished" under biblical law. Although the Deuteronomic Code suggests that the blood of the accidental killer is "innocent blood" (דם נקי) the law still forces him to flee from family, home, and land (Deut. 19:10).

5.3 The Homicide Law of the Covenant Code

The three biblical homicide laws introduce slightly different criteria for distinguishing between murder and manslaughter. The Covenant Code's homicide law introduces the criteria of "lying in wait" and "planning" to distinguish between the types of homicide:

> מַכֵּה אִישׁ וָמֵת מ֖וֹת יוּמָֽת׃ 13 וַאֲשֶׁר֙ לֹ֣א צָדָ֔ה וְהָאֱלֹהִ֖ים אִנָּ֣ה לְיָדֹ֑ו וְשַׂמְתִּי֙ לְךָ֣ מָקֹ֔ום אֲשֶׁ֥ר יָנ֖וּס שָׁמָּֽה׃ ס 14
> וְכִֽי־יָזֵ֥ד אִ֛ישׁ עַל־רֵעֵ֖הוּ לְהָרְגֹ֣ו בְעָרְמָ֑ה מֵעִ֥ם מִזְבְּחִ֖י תִּקָּחֶ֥נּוּ לָמֽוּת׃ ס
>
> If someone strikes a man and he dies, he shall die. 13 But he who did not lie in wait, and God gave him in his hand, I will appoint a place for you where he shall flee to. 14 But if a man planned against his neighbour to kill him with treachery, you will take him from my altar, to die. (Exod. 21:12–4)

[1] K. Mattison, 'Bloodguilt and Asylum in Deuteronomy and the Holiness Legislation (Deut 19:1–13 and Num 35:9–34)', *Conversations with the Biblical World* 36 (2016), 29–45; id., 'Contrasting Conceptions of Asylum in Deuteronomy 19 and Numbers 35', *Vetus Testamentum* 68 (2018), 232–51; id., *Rewriting and Revision as Amendment in the Laws of Deuteronomy* (Forschungen zum Alten Testament II 100; Tübingen, forthcoming), 158–74.

Martin Noth, Brevard Childs, and Bernard Jackson applied Albrecht Alt's distinction between apodictic and casuistic law to this law, arguing that the distinction between accidental and premeditated homicide in vv. 13–4 was introduced secondarily to modify the apodictic, absolute law of v. 12.[1] (Note that in Alt's own history of biblical law, casuistic laws *preceded* apodictic laws.) This reconstruction of the history of biblical law implies the law developed from strict liability to fault-based liability. In the earliest phase of its literary history, the law condemned to death anyone who killed anyone, regardless of the circumstances. In a later phase, the consideration for mitigating circumstances was attached to the absolute law. Raymond Westbrook argued it is impossible to draw such historical conclusions from the shape of the laws (their *Gattung*), especially since some Middle Assyrian laws already combine apodictic and casuistic laws. Therefore he argued that the distinction between accidental and premeditated homicide was not a later addition. Instead he argues the apodictic law was "the necessary preamble" to the clauses of accident and premeditation.[2] What those clauses precisely mean, is another question.

5.4 Criteria

The interpretation of the criteria for murder and manslaughter hinges on the definitions of the words צדה, אנה, זיד, and ערמה. The verb צדה has been translated as "to do intentionally" (NIV), "to premeditate" (NRSV), and "to do by design" (JPS). זיד has been translated as "to come presumptuously upon" (KJV), "to scheme" (NIV, JPS), and "to attack wilfully" (NRSV). The phrase בערמה has likewise been translated as "treacherously" (RSV), "deliberately" (NIV), or

[1] Alt, 'The Origins of Israelite Law', 81–132; Noth, *Exodus*, 180; Childs, *Book of Exodus*, 470; B. S. Jackson, *Essays in Jewish and Comparative Legal History* (Studies in Judaism in Late Antiquity 10; Leiden, 1975), 43, 92–3.
[2] Westbrook, 'What is the Covenant Code?', in Levinson (ed.), *Theory and Method in Biblical and Cuneiform Law*, 31–2.

"with premeditation" (NKJV). What is the difference between these translations, and what is the meaning of the Hebrew words?

The variety of translations is confusing. Intention and premeditation are, strictly speaking, different concepts. Intention is the contemplation of a particular result; premeditation is a "[c]onscious consideration and planning that precedes some act".[1] The difference is the planning before the act. It is possible in theory, to commit a crime intentionally without having planned on it beforehand. The "crime of passion" is an example of such a crime. In the archetypal crime of passion the man kills his wife and her lover. The man acted with intention (i.e., foreseeing and desiring the death of the two) but not with premeditation. He did not in advance form a plan to kill his wife. He may have been unaware of the existence of his wife's lover. Modern law codes make a distinction between premeditated homicide ("murder") and unintentional homicide ("manslaughter") and give special consideration to cases of *intentional but unpremeditated homicide*. Under French law, for example, a crime of passion went unpunished from 1810 till 1975.[2]

What scenario does the biblical law of homicide consider? The law defines the first case, that of v. 13, negatively: "if he did not *ṣādāh*" (ואשר לא צדה) and then positively: "and God made it happen to his hand" (והאלהים אנה לידו). The latter phrase suggests a scenario of pure accident, for which the person cannot be held accountable. That is at least how the phrase has traditionally been interpreted. The *Mekhilta deR. Ishma'el* suggests that David refused to kill Saul because he trusted God would eventually "take care" of Saul (*Nezik.* 4).

[1] B. A. Gardner et al. (eds), *Black's Law Dictionary* (9th ed.; St. Paul, 2009), 1300.
[2] Art. 324.

יִשְׁפֹּט יְהוָה בֵּינִי וּבֵינֶךָ וּנְקָמַנִי יְהוָה מִמֶּךָּ וְיָדִי לֹא תִהְיֶה־בָּךְ׃ 14 כַּאֲשֶׁר יֹאמַר מְשַׁל הַקַּדְמֹנִי מֵרְשָׁעִים יֵצֵא רֶשַׁע וְיָדִי לֹא תִהְיֶה־בָּךְ׃

YHWH will judge between you and me, he will avenge me on you, but my hand will not be on you. 14 As the ancient proverb says: From the evil persons comes evil, but my hand will not be on you. (1 Sam. 24:13–4)

This "ancient proverb", the *Mekhilta* argues, is an oblique reference to the homicide law of the Covenant Code: "God made it happen to his hand". The *Mekhilta* argues David implied Saul would eventually die by the hand of an inadvertent slayer (compare the two accounts of Saul's death in 1 Sam. 31:4 and 2 Sam. 1:9–10).

The verb אנה *pi'el*, "to cause to happen", in the phrase "God made it happen to his hand" does not occur elsewhere in the Hebrew Bible.[1] It does occur once in Ben Sira. Although the Wisdom of Ben Sira is a composition much later than the Covenant Code, it does shed light on the ways Hebrew speakers understood the verb.

רעה ותעבה שנה ייי ולא יאננה ליראיו׃ 14 אלהים מבראשית ברא אדם וישתיהו ביד חותפו ויתנהו ביד יצרו׃

YHWH hates evil and abomination; he shall not make it happen to those who fear him. 14 In the beginning God created man, placed him in the hand of his abductor, and gave him in the hand of his inclination. (Sir. 15:13–4)[2]

[1] Note the *pu'al* in Ps. 91:10; Prov. 12:21; and the *hitpa'el* in 2 Kgs. 5:7
[2] MS A VIr.23–5; MS B IIr.14 reads אלהים instead of ייי.

Ben Sira expresses the idea that evil does not originate with God, but solely results from one's own choice.[1] The Covenant Code takes a different approach: if a fatal accident occurs, the law assumes that the accident was an act of God.[2]

The meaning of the former phrase, "if he did not *ṣādāh*" (ואשר לא צדה), is open to interpretation. The verb צדה may be a local variant of צוד, "to hunt" (so already Rashi, ad loc.).[3] The verb occurs only twice in the Hebrew Bible. In 1 Sam. 24:12, David accuses Saul of "coming after" (יצא אחרי), "pursuing" (רדף), and "hunting" (צדה) him for no good reason.

וְאָבִי רְאֵה גַּם רְאֵה אֶת־כְּנַף מְעִילְךָ בְּיָדִי כִּי בְּכָרְתִי אֶת־כְּנַף מְעִילְךָ וְלֹא הֲרַגְתִּיךָ דַּע וּרְאֵה כִּי אֵין בְּיָדִי רָעָה וָפָשַׁע וְלֹא־חָטָאתִי לָךְ וְאַתָּה צֹדֶה אֶת־נַפְשִׁי לְקַחְתָּהּ: … 15 אַחֲרֵי מִי יָצָא מֶלֶךְ יִשְׂרָאֵל אַחֲרֵי מִי אַתָּה רֹדֵף אַחֲרֵי כֶּלֶב מֵת אַחֲרֵי פַּרְעֹשׁ אֶחָד:

> My father, look at the edge of your robe in my hand! I cut the edge of your robe but I did not kill you. Know and see that in my hand there is no evil or transgression and that I did not sin against you, and yet you hunt for my life to take it. … 15 After whom do you go out, King of Israel? Whom do you pursue? A dead dog, a single flea. (1 Sam. 24:12, 15)

The translations "to do intentionally", "to premeditate", and "to do by design" are less fitting in this context. The verb צדה appears to denote less of a mental process and more of a physical activity.

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[1] Barton, *Ethics in Ancient Israel*, 71.
[2] The theory of ethics implied by the Covenant Code is perhaps closer to that of the *Serekh ha-Yaḥad*: "All things come to pass by His knowledge; He establishes all things by His design and without Him nothing is done" (ובדעתו נהיה כול וכ{ע}ול הויה במחשבתו יכינו ומבלעדיו לוא יעשה) (*1QS* XI.11). Vermes, *The Complete Dead Sea Scrolls in English*, 116.
[3] D. J. A. Clines (ed.), *The Dictionary of Classical Hebrew* (9 vols; Sheffield, 1993–2011), VII, 74.

The Covenant Code's homicide law uses equally rare words in the description of the case of murder in v. 14: "if a man *yāzīd* against his neighbour to kill him *be-'ormāh*" (וכי־יזיד איש על־רעהו להרגו בערמה). The verb זיד is used quite frequently in Rabbinic Hebrew. In Rabbinic Hebrew the מזיד (the *hif'il* participle of זיד) became synonymous with the transgressor who has "full consciousness of doing wrong".[1] The Gemara argues that a מזיד on the Sabbath, for example, must be fully aware (1) that it is the Sabbath and (2) that the specific work he is doing is prohibited on the Sabbath.

הזיד בזה ובזה—זהו מזיד האמור בתורה.

> If one wilfully transgresses in respect of both [i.e., of the Sabbath and that this labour is forbidden on the Sabbath], he is the presumptuous offender mentioned in the Torah. (*b. Sabb.* 69a)

The use of the word in Rabbinic Hebrew is different from its original use in Biblical Hebrew. The basic meaning of the root is culinary: "Jacob cooked a stew" (ויזד יעקב נזיד) (Gen. 25:29). Metonymy facilitated the extension of the word into the forensic and the religious domains: "hot" turned into "hot-headed".

וָאֲדַבֵּר אֲלֵיכֶם וְלֹא שְׁמַעְתֶּם וַתַּמְרוּ֙ אֶת־פִּ֣י יְהוָ֔ה וַתָּזִ֖דוּ וַתַּעֲל֥וּ הָהָֽרָה׃

> I spoke to you but you did not listen. You rebelled against the mouth of YHWH *wa-tāzīdū* and went up the mountain. (Deut. 1:43).

[1] Jastrow, *Dictionary*, 391.

In the verse זיד is closely associated with "to rebel" (תמר) and it is the opposite of "to listen" (שמע), as it is in Deut. 17:13; Neh. 9:16, 29. In that sense the word is used in the biblical law.

ערמה, which only occurs five times in the Hebrew Bible, appears to be a positive concept in Proverbs, where it is parallel to such abstract expressions as "knowledge and purpose" (דעת ומזמה) and "knowledge of plans" (דעת מזמות) (Prov. 1:4; 8:12; cf. 8:5). The fifth instance of the word gives a more detailed example of what acting "with *'ormah*" might mean.

וְיֹשְׁבֵי גִבְעוֹן שָׁמְעוּ אֵת אֲשֶׁר עָשָׂה יְהוֹשֻׁעַ לִירִיחוֹ וְלָעָי: 4 וַיַּעֲשׂוּ גַם־הֵמָּה בְּעָרְמָה וַיֵּלְכוּ וַיִּצְטַיָּרוּ וַיִּקְחוּ שַׂקִּים בָּלִים לַחֲמֹרֵיהֶם וְנאדוֹת יַיִן בָּלִים וּמְבֻקָּעִים וּמְצֹרָרִים: 5 וּנְעָלוֹת בָּלוֹת וּמְטֻלָּאוֹת בְּרַגְלֵיהֶם וּשְׂלָמוֹת בָּלוֹת עֲלֵיהֶם וְכֹל לֶחֶם צֵידָם יָבֵשׁ הָיָה נִקֻּדִים: 6 וַיֵּלְכוּ אֶל־יְהוֹשֻׁעַ אֶל־הַמַּחֲנֶה הַגִּלְגָּל וַיֹּאמְרוּ אֵלָיו וְאֶל־אִישׁ יִשְׂרָאֵל מֵאֶרֶץ רְחוֹקָה בָּאנוּ וְעַתָּה כִּרְתוּ־לָנוּ בְּרִית:

When the inhabitants of Gibeon heard what Joshua had done to Jericho and Ai, 4 they themselves acted with *'ormah*. They went, acted as envoys, took worn sacks on their mules, bottles of wine: worn, split, and bound. 5 Old and patched shoes on their feet, old clothes on them, and every bread of their supply was dry and mouldy. 6 They came to Joshua, to the camp of Gilgal and said to him and to the man of Israel: We've come from a land far away, and now, make with us a covenant. (Josh. 9:3–6)

The precise nature of the deception of the Gibeonites is layered: they betray the sacred idea of a covenant (note the ברית in v. 6) *and* they must have known that the law of war forces the Israelites to kill all inhabitants of cities nearby but binds them to accept any offer of peace

from cities far away (Deut. 20:10–8).[1] The deception of the Gibeonites is not executed in the spur of the moment. It is a deception that takes considerable preparation.

5.5 The Language of Intention in the LXX and Ptolemaic Law

> Ἐὰν δὲ πατάξῃ τίς τινα, καὶ ἀποθάνῃ, θανάτῳ θανατούσθω· 13 ὁ δὲ οὐχ ἑκών, ἀλλὰ ὁ θεὸς παρέδωκεν εἰς τὰς χεῖρας αὐτοῦ, δώσω σοι τόπον, οὗ φεύξεται ἐκεῖ ὁ φονεύσας. 14 ἐὰν δέ τις ἐπιθῆται τῷ πλησίον ἀποκτεῖναι αὐτὸν δόλῳ καὶ καταφύγῃ, ἀπὸ τοῦ θυσιαστηρίου μου λήμψῃ αὐτὸν θανατῶσαι.
>
> If someone strikes someone and he dies, he will be condemned to death. 13 He who did not act intentionally (but God gave him in his hands), I will give you a place, where the killer shall flee to. 14 If he attacked his neighbour to kill him through a trick and flees, you will take him from my altar to kill him. (Exod. 21:12–4)

Two details of the LXX's translation of the homicide law are particularly interesting, because they potentially change the criteria for distinguishing between murder and homicide. First, the phrase ואשר לא צדה has changed into an adverbial phrase: "not intentionally" (οὐχ ἑκών). Second, the phrase וכי־יזיד איש על־רעהו has turned into "if someone attacks his neighbour to kill him" (ἐὰν δέ τις ἐπιθῆται τῷ πλησίον ἀποκτεῖναι αὐτὸν). The rest of the chapter will explore how intelligent readers may have understood these two criteria of the homicide law.

The word ἑκών and its cognates also occur in Ptolemaic papyri on homicide. The LXX's use of the word can best be understood against the background of those laws.[2]

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[1] Dozeman, *Joshua 1–12*, 412, 416–7.
[2] Le Boulluec and Sandevoir, *L'Exode*, 217. The cognates are ἀέκων or ἄκων, ἑκούσιος, ἀεκούσιος or ἀκούσιος.

Ptolemaic law distinguished between intentional and unintentional homicide.[1] Ptolemy VIII issued an amnesty decree pardoning all crimes committed up to that point with the notable exceptions of sacrilege and intentional murder (118 BC).

> [Βασιλεὺς] Πτολεμαῖος καὶ βασίλισσα Κλεοπάτρα ἡ ἀδελφὴι [καὶ βασίλισσ]α Κλεοπάτρα ἡ γυνὴ [ἀ]φιᾶσει τοὺς ὑ[πὸ] τὴ[ν βασιλήαν π]άντας ἀγνοημάτων, ἁμαρτημ[άτ]ων, [ἐ]ν[κλημάτων, <καταγνωσμάτων>], αἰτ[ι]ῶν πασῶν τῶν ἕως θ τοῦ Φα[ρμοῦ(θι) τοῦ] νβ (ἔτους) [π]λὴν τ[ῶν φόν]ους ἑκουσίοις καὶ ἱεροσυλίαις ἐνεχομ[ένων].[2]
>
> King Ptolemy and Queen Cleopatra the Sister and Queen Cleopatra the Wife proclaim an amnesty to all their subjects for errors, crimes, accusations, condemnations and charges of all kinds up to the 9th of Pharmouthi of the 52nd year, except to persons guilty of wilful murder or sacrilege. (*P.Tebt.* I 5.1–5)[3]

Apparently Ptolemaic law recognised "wilful" homicide as a graver crime than other forms of homicide. Whether it also recognised a difference between intention and premeditation is a different question, which depends entirely on the definition of "wilful" (ἑκούσιος). The laws of Athens shed light on the use of the word.[4] The Athenian law of homicide did not make a distinction between "without premeditation" (μὴ ἐκ προνοίας) or "unintentionally" (ἄκων).

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[1] R. Taubenschlag, *Das Strafrecht im Rechte der Papyri* (Leipzig, 1916), 8; id., *Law of Greco-Roman Egypt in the Light of the Papyri*, 326. See also Diodorus Siculus, *Library*, 1.77.6.
[2] A. S. Hunt and C. C. Edgar (eds), *Select Papyri, Volume II: Public Documents* (Loeb Classical Library 282; Cambridge, MA, 1934), 58.
[3] Bagnall and Derow (eds), *Hellenistic Period*, 95 [no. 54]. Compare the other two versions of the same decree: *SB* VIII 9899a–b and *P.Köln* VII 313.
[4] More on the Athenian law of homicide, see A. R. W. Harrison, *The Law of Athens* (2 vols.; Oxford, 1968–1971), I, 169–70, 173, 196–99; II, 36–43; D. M. MacDowell, *Athenian Homicide Law in the Age of the Orators* (Publications of the Faculty of Arts of the University of Manchester 15; Manchester, 1963); R. S. Stroud, *Drakon's Law on Homicide* (University of California Publications, Classical Studies 3; Berkeley, CA, 1968); M. Gagarin, *Drakon and Early Athenian Homicide Law* (Yale Classical Monographs 3; New Haven, CT, 1981); P. J. Rhodes, *A Commentary on the Aristotelian* Athenaion politeia (Oxford, 1981), 641–46.

καὶ ἐὰμ μὲ ’κ [π]ρονοί[α]ς [κ]τ[ένει τίς τινα, φεύγ]ε[ν· …] … ἐὰν δὲ τούτον μεδὲ *h*ε͂ς ε͂ῖ, κτ]ένει δὲ ἄκο[ν], γνõσι δὲ *h*οι̣ [πε]ντ[έκοντα καὶ *h*ε͂ς *h*οι ἐφέται ἄκοντ]α̣ κτε͂ναι, ἐσέσθ[ο]ν δὲ *ḥ*[οι φ]ρ[άτορες ἐὰν ἐθέλοσι δέκα·

Even if someone kills someone without premeditation, he shall be exiled. … And if there is not even one of these [*sc.* male family members] alive, and the killer did it unintentionally, and the Fifty-One, the Ephetai, decide that he did it unintentionally, then let ten members of the phratry admit him to the country, if they are willing. (*IG* I^3 104.11, 16–8)[1]

The inscription does not make a legal distinction between unpremeditated and unintentional murder.[2] The nonchalant use of the words of intention and premeditation is also found in Aristotelian literature. According to a student of Aristotle, the Areopagus once rendered a verdict of “involuntary” homicide (οὐχ ἑκούσιον) because a woman had given a love potion to a man “without forethought” (οὐκ ἐκ προνοίας) (Ps.-Arist., *Mag. mor.* 1188b36–8).[3] To be precise: the woman acted without constraint and without intent to kill. She thought she gave the man a love potion, not poison. Athenian jurisprudence did not distinguish between intention and premeditation.[4] There are, of course, fine-grained *semantic* distinctions between “intention” and “premeditation”. In the practice of law, however, these words did not describe in detail the killer’s state of mind but functioned as broad legal categories. If well-informed judges and authors did not recognise any meaningful distinction between intention and

[1] Stroud, *Drakon’s Law on Homicide*, 5–6.
[2] Stroud, *Drakon’s Law on Homicide*, 41; Gagarin, *Drakon and Early Athenian Homicide Law*, 31.
[3] H. Tredennick and G. C. Armstrong (eds.), *Aristotle, Volume XVII* (Loeb Classical Library 287; Cambridge, MA, 1935), 499.
[4] W. T. Loomis, ‘The Nature of Premeditation in Athenian Homicide Law’, *Journal of Hellenic Studies* 92 (1972), 86–95.

premeditation, it stands to reason that people in the streets would be even less attuned to such subtleties.

How the crimes of intentional and premeditated homicide were *punished* under Ptolemaic law is unknown.[1] There are, however, two papyri that may shed light on the question. Menches, a village scribe of Kerkeosiris, informed his superior he made an inventory of the property belonging to someone accused of murder.[2]

> ἔγραψας ἡμῖν Ἥραν Πετάλου τῶν ἐκ τῆς κώμης εὐθυνομένωι δὲ φόνωι καὶ ἄλλαις αἰτίας παραγγεῖλαι ἀπαντᾶν ἐν ἡμεραι τρισὶν πρὸς τὴν περὶ τούτων ἐσομένην διεξαγωγήν, μέχρι δὲ τοῦ τὸ προκείμενον ἐπὶ τέλος ἀχθῆναι ἀναγραψάμεν̣ο̣ς̣ αὐτοῦ τὰ ὑπάρχοντα συντάξαι θεῖναι ἐν πίστει παραθεὶς τά τε μ[έτ]ρ[α] καὶ γειτνίας καὶ ἀξίας ἀνενεγκεῖν εὐσήμως.
>
> You wrote to me that I was to give notice to Heras son of Petalus, an inhabitant of the village, is arraigned for murder and other offences to appear in three days' time for the decision to be made concerning these charges, and that until the matter was concluded I was to make a list of his property and arrange for it to be placed in bond, and was to send a report stating the measurements, adjoining areas and values in detail. (*P.Tebt.* I 14.2–11, 114 BC)[3]

From the letter Raphael Taubenschlag concluded that Ptolemaic law punished murder with confiscation of property.[4] In a petition a certain Apollonios mentions someone "living in

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[1] Taubenschlag, *Law of Greco-Roman Egypt in the Light of the Papyri*, 327: "The papyri do not give positive information about the kind of punishment meted out in homicide cases."
[2] On Menches, see Lewis, *Greeks in Ptolemaic Egypt*, 104–23.
[3] B. P. Grenfell, A. S. Hunt, and J. G. Smyly (eds), *The Tebtunis Papyri, Part I* (London, 1902), 82.
[4] Taubenschlag, *Strafrecht im Rechte der Papyri*, 9–10; id., *Law of Greco-Roman Egypt in the Light of the Papyri*, 327.

banishment because of murder" (φυ]γαδεύων χάριν φόνου) (*P.Rain.Cent.* 50.20–1, 99 BC). The punishments of banishment and property confiscation were perhaps complementary. When sentenced to banishment the convict's possessions fell to the government or to the victim's family.

5.6 The Priestly Homicide Law

There is ample precedent for considering the killer's state of mind already within the Hebrew Bible. The Priestly School's homicide law introduces a different criterion for distinguishing between manslaughter and murder (Num. 35:9–34). The law's primary concern is who may flee to the cities of refuge (35:9–15). It allows those who kill "accidentally" (בשגגה) to take refuge (35:11, 15). But what does it mean to kill "accidentally"? The law cites "killing" (נכה) by means of "an iron instrument" (כלי ברזל), "a stone" (אבן יד), and "a wooden weapon" (כלי עץ יד) as examples of the graver crime of murder (35:16–18). It makes a distinction between those who kill "in hatred" (בשנאה), "in enmity" (באיבה), or "by lying in wait" (בצדיה) and those who do so "suddenly, without enmity" (בפתע בלא איבה) or "without lying in wait" (בלא צדיה) (35:20-3) The first group is condemned to death; the second is permitted to flee. The law takes the weapons, the circumstances, and—most significantly—the killer's *emotions* as indications for murder. The precise definition of a שגגה remains elusive. Surely the law did not intend to imply that *any* killing without hard-hitting weapons, without ambush, or without flaring emotions should be considered an "accident"?

The word שגג occurs frequently in the Levitical laws of sacrifice.[1] The definition of the word is tied up with a confusion about sacrifices. The Priestly law commands someone

[1] The noun שגגה in particular. The only attestation of that word outside of the Priestly corpus are in Josh. 20:3, 9 (which arguably depend on Numbers 35); Eccl. 5:5; 10:5.

who commits a sin "accidentally" (בשגגה) to bring a "sin offering" (חטאת) in Leviticus 4 but a "guilt offering" (אשם) in ch. 5 (see Lev. 4:2–3, 22–24, 27–29; 5:14–9). It is not immediately clear what distinguishes one sinner from the other, or why the law commands the same sinners to bring two different sacrifices. Roland de Vaux argued that the confusion in the law was due to the redactors' ignorance: "the last redactors who drew up these confused rulings had no clear idea of what exactly was meant by a חטאת and an אשם".[1] The exegetical problem has a long and complicated history. The LXX appears to avoid speaking of the guilt offering, thus leaving open the possibility to bring a sin offering instead (Lev. 5:5–7).[2] Philo argued that the difference between the crimes was that a "sin" (חטאת) could only be unintentional but "guilt" (אשם) could be both intentional and unintentional (*Vict.* 11). Josephus argued that a "sin" (חטאת) was always witnessed and "guilt" (אשם) was not (*Ant.* 3.230–2).

Jacob Milgrom, however, argued that there was no need to amend the ritual law to understand its logic. The law requires a "sin offering" (חטאת) only from the wrongdoer who was fully aware of his act and its outcome, but it demands a "guilt offering" (אשם) from the offender who was aware of his act but oblivious to its results.[3] Milgrom argued that שגגה implied "consciousness of the act itself … but not of its consequences".[4] This would explain why שגגה describes acts committed accidentally and acts committed deliberately.[5] Adopting Elizabeth Anscombe's *Intention*, we might say that someone who commits a שגגה acts with "intention in action" but without "further intention".[6] The corpus gives two examples of such oxymoronic "intentional accidents". If someone eats food consecrated for priests, he

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[1] De Vaux, *Ancient Israel*, 421.
[2] N. H. Snaith, 'The Sin-Offering and the Guilt-Offering', *Vetus Testamentum* 15 (1965), 73–80.
[3] J. Milgrom, 'The Cultic שגגה and Its Influence in Psalms and Job', *Jewish Quarterly Review* 58 (1967), 115–25. See also Maimonides, *Guide for the Perplexed*, 3.41.14.
[4] Milgrom, 'The Cultic שגגה and Its Influence in Psalms and Job', 118.
[5] Sometimes P has to qualify the precise meaning of שגגה. In Lev. 5:17, for example, the law spells out: "and he did not know" (ולא ידע).
[6] G. E. M. Anscombe, *Intention* (Oxford, 1963[2]), 1.

presumably does not know that is prohibited (Lev. 22:14). Or if someone throws a stone, he knows what he is doing but he does not know where the stone will end up (Num. 35:22–3). Because the vocabulary of accident describes pure accidents and deliberate acts, the ritual laws demand a "guilt offering" (אשם) to expiate pure accidents and a "sin offering" (חטאת) to expiate such "deliberate accidents".[1]

The Priestly Code differs from the Covenant Code. The Covenant Code's homicide law only discussed the extreme cases of pure accident and premeditation (Exod. 21:13–4). The indicators of the graver crime are "lying in wait" and "planning". But these are examples of premeditation, not of intention. It is possible to kill someone intentionally but without premeditation. The Priestly homicide law, Bernard Jackson argues, considers this "middle case" of intentional but unpremeditated homicide.[2]

וְאִם־בְּפֶתַע בְּלֹא־אֵיבָה הֲדָפוֹ אוֹ־הִשְׁלִיךְ עָלָיו כָּל־כְּלִי בְּלֹא צְדִיָּה: אֹו בְכָל־אֶבֶן אֲשֶׁר־יָמוּת בָּהּ בְּלֹא רְאוֹת
וַיִּפֹּל עָלָיו וַיָּמָת וְהוּא לֹא־אוֹיֵב לֹו וְלֹא מְבַקֵּשׁ רָעָתוֹ: וְשָׁפְטוּ הָעֵדָה בֵּין הַמַּכֶּה וּבֵין גֹּאֵל הַדָּם עַל הַמִּשְׁפָּטִים
הָאֵלֶּה: וְהִצִּילוּ הָעֵדָה אֶת־הָרֹצֵחַ מִיַּד ׀ גֹּאֵל הַדָּם וְהֵשִׁיבוּ אֹתֹו ׀ הָעֵדָה אֶל־עִיר מִקְלָטֹו אֲשֶׁר־נָס שָׁמָּה וְיָשַׁב בָּהּ
עַד־מוֹת הַכֹּהֵן הַגָּדֹל אֲשֶׁר־מָשַׁח אֹתֹו בְּשֶׁמֶן הַקֹּדֶשׁ:

If he thrust him without enmity, or threw something at him without lying in wait, or with any stone through which he might die: without seeing it fell on him and he died —but he was not his enemy nor actively sought his harm—, then the congregation shall judge between the killer and the deliverer of the blood in these cases. The

[1] According to Snaith, 'The Sin-Offering and the Guilt-Offering', 73–80, however, a חטאת is for "unwitting offences" and an אשם for "offences where damage has been done and loss incurred" regardless of the deliberation of the wrongdoer. For this interpretation to work, Snaith has to argue that the use of שגגה in Leviticus 5:14–16 is "incidental" (p. 78), because "[t]he אשם (guilt-offering) is not for unwitting offences; it is for offences that cause damage and loss, whether deliberate or unwitting."
[2] Jackson, *Wisdom-Laws*, 127–30. For a different interpretation, see Propp, *Exodus 19–40*, 206: "Nowhere does the Torah clearly address the spontaneous crime of passion, in which the assailant does not "lie in wait" but nonetheless kills deliberately".

> congregation shall save the killer from the hand of the avenger of blood, the congregations shall return him to the city of refuge where he fled to, and he shall live there until the death of the high priest who has been anointed with holy oil. (Num. 35:22–5)

The word שגגה suitably describes the middle case: the killer acted with "intention in action" but without the "further intention" of killing. The killer knew what he was doing when he threw the stone, but he did not know it would eventually hit someone on the head. The LXX's translation of choice for "accidentally" (בשגגה) is "unintentionally" (ἀκουσίως).[1] Aristotle argued that the Greek vocabulary of intention describes the agent's attitude towards his action at the time of the action.

> αἱρεταὶ γάρ εἰσι τότε ὅτε πράττονται· τὸ δὲ τέλος τῆς πράξεως κατὰ τὸν καιρόν ἐστιν, καὶ τὸ ἑκούσιον δὴ καὶ τὸ ἀκούσιον ὅτε πράττει λεκτέον· πράττει δὲ ἑκών·
> For at the actual time when they are done they are chosen or willed; and the end or motive of an act varies with the occasion, so that the terms 'voluntary' and 'involuntary' should be used with reference to the time of action. (*Eth. Nic.* 1110a11–14)

If that is how the most demanding Greek-speakers interpreted the vocabulary of intention, the Greek ἀκουσίως is a fitting translation of the Hebrew בשגגה. Both refer to the agent's "intention *in action*" not to his "further intention". Aristotle's definition, however, throws into relief the difference between the Hebrew and Greek versions of the Covenant Code's

[1] Lev. 4:2, 22, 27; 5:15; Num. 15:27–9; 35:11, 15.

homicide law. Whereas the Hebrew צדה describes the act itself, the Greek ἑκών refers to the agent's *attitude* at the time of the act. Zooming in on the semantics, the LXX's translation turns the example of unpremeditated homicide into a case of unintentional homicide.

5.7 Liability for Murderous Intention

In Exod. 21:14, the LXX reads ἐὰν δέ τις ἐπιθῆται τῷ πλησίον ἀποκτεῖναι αὐτὸν, which the NETS renders as "if someone *attacks* his neighbor to kill him", *La Bible d'Alexandrie* and the *Septuaginta Deutsch* produce similar translations of the Greek.[1] Although this is a perfectly acceptable translation, there is a possibility that ἐπιτίθημι here means "to try" rather than "to attack". These definitions are not mutually exclusive. In English "to attempt" can mean both "to make an effort to achieve or complete something difficult" and "to try to take a life".[2] If the Greek ἐπιτίθημι has a similar breadth of meaning, the LXX hints at a very unusual interpretation of the homicide law. The law implies that even the unsuccessful assailant should be convicted for murder.

In Greek literature ἐπιτίθημι sometimes refers to an unsuccessful attempt. Socrates, for example, says in the *Sophist*: "I am going to undertake the refutation [ἐλέγχειν τὸν λόγον ἐπιθησόμεθα], if I succeed in it" (Pl., *Soph.* 242b).[3] The servant of Socrates's student, Aristippus, says in the *Learned Banqueters*: "when my master was a young man, he … made an effort to be a philosopher [φιλοσοφεῖν ἐπέθετο]" (Ath. 12.544e–f).[4] In a Roman papyrus a priest argues: "although I did not profit from the honorary wreaths, I tried to prepare them

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[1] Compare Le Boulluec and Sandevoir, *L'Exode*, 217–8: "Si quelqu'un attaque son prochain pour le tuer par ruse *et qu'il aille se réfugier*, tu l'emmèneras de mon autel pour le faire mourir". And Karrer and Kraus (eds), *Septuaginta Deutsch*, 77: "Wenn aber einer *den* Nächsten angreift, um ihn in böser Absicht zu töten, *und er sucht Zuflucht*, den sollst du von meiner Opferstätte nehmen, um ihn zu töten."
[2] *Oxford English Dictionary*, https://www.lexico.com/definition/attempt.
[3] H. North Fowler (ed.), *Plato, Volume VII* (Loeb Classical Library 123; Cambridge, MA, 1921), 357.
[4] S. D. Olson (ed.), *Athenaeus, The Learned Banqueters, Volume VI: Books 12–13.594b* (Loeb Classical Library 327; Cambridge, MA 2010), 167–9.

[κατασκευασθῆναι ἐπεθέμην] together with my colleagues with all our strength" (*P.Wisc.* I 3.2–4). Elsewhere in the LXX ἐπιτίθημι is also used in the sense of "to try": "they will not fail in all that they might try to do [ὅσα ἂν ἐπιθῶνται ποιεῖν]" (Gen. 11:6). By translating "if a man *yāzīd* upon his neighbour to kill him" into "if someone *tries* to kill his neighbour", the LXX fundamentally changes the meaning of the homicide law. The LXX effectively suggests that an assailant does not have the right to flee for refuge but is liable for capital punishment, even if his murderous attempt was unsuccessful.

This translation may also have been a solution to an internal problem of biblical law. The homicide law (Exod. 21:12–4) is followed immediately by a series of laws on other violent crimes (21:15–27). One of these laws describes the case of a man "hitting" (נכה) another man in a fights. The victim, however, does not die.

וְכִי־יְרִיבֻן אֲנָשִׁים וְהִכָּה־אִישׁ אֶת־רֵעֵהוּ בְּאֶבֶן אוֹ בְאֶגְרֹף וְלֹא יָמוּת וְנָפַל לְמִשְׁכָּב: 9 אִם־יָקוּם וְהִתְהַלֵּךְ בַּחוּץ עַל־מִשְׁעַנְתּוֹ וְנִקָּה הַמַּכֶּה רַק שִׁבְתּוֹ יִתֵּן וְרַפֹּא יְרַפֵּא: ס

> If men fight and one of them hits his neighbour with a stone or a fist, but he does not die and lies on his bed: 9 if he rises and walks about the street on a stick, then the hitter is innocent. He shall only give his rest and cause him to heal. (Exod. 21:18–9)

One might suppose that Exod. 21:12 describes the general rule for intentional murder, v. 13 the exception of unintentional manslaughter, and vv. 18–9 the case of wounding without the intention to kill. In this series, an important case remains undiscussed. What to do with the man who tried to kill someone, but just happened to be unsuccessful? The LXX fills this gap in the series of laws.

There is a remarkable congruity between the LXX's interpretation of biblical law and Ptolemaic law. Under Ptolemaic law an assailant could be held liable for murderous intention —even if his attempt was unsuccessful. In a Ptolemaic petition, a man writes to some local official in order to have an assailant arrested on charges of murder:[1]

> μέτωπον ἔ[π]οὐλ[ο]ὐ ἔνμο̣τον ὥστ' ἂν κλινοπετῆ αὐτὸν εἶναι <καὶ> κινδυνεύειν τῶι βίωι. προσαγγέλλομέν σοι ἀσφαλισάμενον αὐτὸν ἐξαποστεῖλαι ἐφ' οὗς καθήκει ἵν', ἐάν τι πάθῃ, ἔνοχος εἴη τῶι φόνωι. εὐτύχει.
>
> … frilled forehead swathed in bandages so that he is bedridden and risked his life. We send [*sc.* to ask] you that you arrest him to try him for the fitting [*sc.* accusation], in order that, when he be punished, he may be liable for murder. Goodbye. (*P.Tebt.* III.2 960, 145–116 BC)

The victim of the attack, though heavily wounded and confined to bed, was apparently still alive. The author of the petition must have thought that the perpetrator could be held liable not just for the actual physical harm he caused but for his intent to kill. That is also the assumption made by the LXX's translators. We do not know how this case unfolded or what verdict the court rendered.[2] In another papyrus someone petitions in similar wording for a verdict of murder: "I ask you therefore to find the aforementioned man, to hand him over to the rulers so that he might become liable for the murder [ὅπως ἔνοχος γένηται περὶ τοῦ φόν̣[ο]υ]" (*P.Köln* VI 272.11–7, second half of third century BC). In this case, however, the

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[1] A. S. Hunt, J. G. Smyly, and C. C. Edgar (eds), *The Tebtunis Papyri, Volume III, Part II* (London, 1938), 202: "Reign of Euergetes II? End of a petition demanding the arrest of a man on a charge of wounding or possible homicide."

[2] Perhaps the two demotic lines written at the bottom of the papyrus might provide a clue, but these have unfortunately not been published.

victim actually died as a result of the attack.[1] The similarity in wording between these papyri confirms that the author of the first tried to secure a murder conviction—although the victim was still alive.

5.8 Philo

The proposed reading of the LXX may sound unusual and harsh because it holds people liable for their thoughts. It is, however, precisely the way Philo paraphrased the biblical law.

> Ἐάν τις ἐπανατείνηται ξίφος, ὥστε ἀποκτεῖναι, κἂν μὴ ἀνέλῃ, ἔνοχος ἔστω προαιρέσει γεγονὼς ἀνδροφόνος, εἰ καὶ μὴ τὸ τέλος τῇ γνώμῃ συνέδραμε. τὰ δ᾽ αὐτὰ πασχέτω, κἂν σὺν τέχνῃ τις ἐξ ἐνέδρας, οὐ θαρρῶν ἄντικρυς ἐπιχειρεῖν, βουλεύῃ καὶ μηχανᾶται δολερῶς τὸν φόνον· ἐναγὴς γὰρ καὶ οὗτος εἰ καὶ μήπω ταῖς χερσὶν ἀλλά τοι τῇ ψυχῇ καθέστηκεν.
>
> If anyone threatens the life of another with a sword, even though he does not actually kill him, he must be held guilty of murder in intention, although the fulfilment has not kept pace with the purpose. The same should be the lot of anyone who craftily lies in wait, and, though not daring to attack outright, plots and schemes to shed blood treacherously, for he too is under the curse in his soul at least even though his hands are innocent as yet. (Philo, *Spec.* 3.86)[2]

If there was any doubt that this is Philo's interpretation of Exod. 21:14, he gave the same interpretation in *On the Confusion of Tongues*. In this case he cited the passage verbatim.

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[1] W. Clarysse, 'Notes on Papyri', *Zeitschrift für Papyrologie und Epigraphik* 168 (2009), 243–6, at 243.
[2] Colson (ed.), *Philo, Volume VII*, 529, 531.

καὶ ἂν ἐξ ἐνέδρας μέντοι τις ἐπιχειρήσας ἀνελεῖν τινα μὴ δυνηθῇ κτεῖναι, τῇ τῶν ἀνδροφόνων οὐδὲν ἧττον ὕποχος δίκῃ καθέστηκεν, ὡς ὁ γραφεὶς περὶ τούτων δηλοῖ νόμος· "ἐὰν" γάρ φησι "τὶς ἐπιθῆται τῷ πλησίον ἀποκτεῖναι αὐτὸν δόλῳ καὶ καταφύγῃ, ἀπὸ τοῦ θυσιαστηρίου λήψῃ αὐτὸν θανατῶσαι"· καίτοι ἐπιτίθεται μόνον, οὐκ ἀνῄρηκεν, ἀλλ᾽ ἴσον ἡγήσατο ἀδίκημα τῷ κτεῖναι τὸ βουλεῦσαι τὸν φόνον· οὗ χάριν οὐδ᾽ ἱκέτῃ γενομένῳ δέδωκεν ἀμνηστίαν, ἀλλὰ καὶ ἐξ ἱεροῦ ἐκέλευσεν ἀπάγειν τὸν ἀνιέρῳ γνώμῃ χρησάμενον.

And indeed if a man makes a treacherous attempt against another's life, but is unable to kill him, he is none the less liable to the penalty of the homicide, as is shewn by the law enacted for such cases. "If," it runs, "a man attacks his neighbour to kill him by guile and flees to refuge, thou shalt take him from the altar to put him to death" (Ex. xxi. 14). And yet he merely "attacks" him and has not killed him, but the law regards the purpose of murder as a crime equal to murder itself, and so, even though he takes sanctuary, it does not grant him the privileges of sanctuary, but bids him be taken even from the holy place, because the purpose he has harboured is unholy. (Philo, *Confus.* 106)[1]

Usually it is not controversial at all to argue that Philo derived an idea from the LXX. In this particular case Boulluec and Sandevoir, the commentators of *La Bible d'Alexandrie*, argued that Philo "expresses the viewpoint of Attic law".[2] Although they did not give any argument for their conclusion, they supposedly picked up this idea either from a footnote to Cohn's

[1] F. H. Colson and G. H. Whitaker (eds), *Philo, Volume IV* (Loeb Classical Library 261; Cambridge, MA, 1932), 97.
[2] Le Boulluec and Sandevoir, *L'Exode*, 218.

translation or from an appendix to Colson's edition. Both refer to Andocides's *On the Mysteries*.[1] This Athenian orator said: "we find it laid down that there shall be no distinction between the principal who plans a crime [τὸν βουλεύσαντα] and the agent who commits it" (Andoc., *Myst.* 94). In the past the law cited by Andocides has been taken to mean that merely "willing an act is equivalent to doing it with one's own hand."[2]

The βουλεύσας, however, in the law cited by Andocides is not someone who merely wants to commit murder but someone who *plans* a murder by hiring someone else to execute the plan. In that sense the same vocabulary is used by Antiphon: "I did not cause his death, whether by my own act [χειρὶ ἐργασάμενος] or by instigation [βουλεύσας]" (Antiph., 6.16).[3] Plato uses the word in the same sense: "If a man does not slay another with his own hand [αὐτόχειρ], but plots [βουλεύσῃ] death for him" (*Leg.* 872a).[4] The point of Andocides' argument is complicated.[5] Andocides was accused of committing impiety by attending the cult of the mysteries in 415 BC. In his defence Andocides argued that the charges brought against him had been invalidated by the amnesty of 400 BC (granted by an interim government after the defeat of the pro-Spartan oligarchy of the Thirty Tyrants). Andocides cited the example of Leon's sons who on the grounds of the amnesty could not prosecute Meletus, who was indirectly responsible for Leon's death. Andocides argues that planning to commit murder is tantamount to actually committing murder and that charges of murder were

[1] Colson (ed.), *Philo, Volume VII*, 635; L. Cohn, I. Heinemann, M. Adler, and W. Theiller (eds), *Philo von Alexandria: Die Werke in deutscher Übersetzung* (7 vols; Berlin, 1962²), II, 209–10 n. 3.
[2] J. W. Jones, *The Law and Legal Theory of the Greeks: An Introduction* (Oxford, 1956), 266.
[3] K. J. Maidment (ed.), *Minor Attic Orators, Volume I* (Loeb Classical Library 308; Cambridge, MA, 1941), 259.
[4] R. G. Bury (ed.), *Plato, Volume XI* (Loeb Classical Library 192; Cambridge, MA, 1968), 261.
[5] For a summary of Andocides' defence, see D. M. MacDowell, *Andokides, On the Mysteries: Text Edited with Introduction, Commentary, and Appendixes* (Oxford, 1989), 15–8.

and ought to be dropped after the amnesty of 400. Consequently, the comparatively minor charge of impiety should also be dropped.[1]

The idea that the unsuccessful assailant should face the full penalty for murder is not only found in the LXX but also in Platonic dialogues. Plato wrote in the *Laws*:

> Ἡ δὴ γραφὴ περὶ τραύματος ὧδε ἡμῖν κείσθω. ἐάν τις διανοηθεὶς τῇ βουλήσει κτεῖναί τινα φίλιον, πλὴν ὧν ὁ νόμος ἐφίησι, τρώσῃ μέν, ἀποκτεῖναι δὲ ἀδυνατήσῃ, τὸν διανοηθέντα τε καὶ τρώσαντα οὕτως οὐκ ἄξιον ἐλεεῖν, οὐδὲ αἰδούμενον ἄλλως ἢ καθάπερ ἀποκτείναντα ὑπέχειν τὴν δίκην φόνου ἀναγκάζειν
>
> So let our written law concerning wounding run thus:—If any man purposing of intent to kill a friendly person—save such as the law sends him against,—wounds him, but is unable to kill him, he that has thus purposed and dealt the wound does not deserve to be pitied; rather he is to be regarded exactly as a slayer, and must be compelled to submit to trial for murder (Pl., *Leg.* 876e–877a)

The Athenian politician in the *Laws* insists that the assailant who intended to kill should stand trial for murder. He does not condemn him to death but to exile because he reasons that the assailant's luck must be attributed to his "demon" (877a). The Athenian does not extend the same courtesy to those who try to kill close family members or their superiors—they should be sentenced to death (877a–b). He further proposes that those who kill involuntarily should

[1] According to Arist., *Ath. Pol.* 39.5, the amnesty did not apply to murderers with their own hands. If so, Andocides' argument further proves the absurdity of his accusation: there is no difference between committing murder with one's own hands and planning to commit murder, and yet the government does not allow Leon's sons to prosecute Meletus, but does allow outdated charges of impiety to be brought against him! MacDowell, *Andokides, On the Mysteries*, 133.

go free (831a, 865b). Someone's actions should be judged entirely according to his intention. (The Athenian wants to extend the same logic to all crimes in 908a–910e, 938b–c.)

This idea complements a particular view of the function of punishment in the *Laws*. The aim of punishment is to "cure" or "educate" the criminal. Punishment is a "remedial education".[1] The Athenian expresses this idea most explicitly towards the end of the *Laws*. The "good judge", he argues, will "prepare the greatest possible change" (παρασκευάζοντα … εἰς τὸ δυνατὸν μεταβολήν) for all those "whose ideas are curable" (ὅσοις ἰάσιμοι δόξαι) (957e). This corrective view of punishments is well-suited to the Platonic view that most crimes are committed because of a lack of knowledge—no one commits evil voluntarily (860c–862c).

Philo exploited an ambiguity in the LXX's law of homicide. The idea of full liability for murderous intention is only latently present in the LXX: ἐπιθῆται ἀποκτεῖναι could mean either "he attacked to kill" or "he *tried* to kill". The latter interpretation seamlessly suited Philo's purpose of aligning Mosaic law with Platonic philosophy.

5.9 Mishnah

The comparison of the LXX and Philo with early rabbinic halakhah reveals a profound difference. In the Mishnah too, intention is the defining criterion for murder. But in contrast to biblical law and any piece of Jewish literature predating the Mishnah, the early rabbis argued that some killers should neither be put to death nor flee to a city of refuge.[2] A ruling attributed to R. Yehudah ha-Nasi, for example, argued that the killer whose blade had slipped

[1] T. Pangle, *The Laws of Plato: Translated, with Notes and an Interpretive Essay* (Chicago, 1988), 498; so also R. F. Stalley, *An Introduction to Plato's Laws* (Oxford, 1983), 144–5.
[2] Jackson, *Wisdom-Laws*, 140.

off his axe while chopping wood did not have to go into exile at all, directly contradicting the biblical paradigm of unpremeditated homicide.[1]

נִשְׁמַט הַבַּרְזֶל מִקַּתּוֹ וְהָרַג, רַבִּי אוֹמֵר, אֵינוֹ גוֹלֶה. וַחֲכָמִים אוֹמְרִים, גּוֹלֶה.

> If the iron [of an axe] slipped from its haft and killed a man. Rabbi says that he need not escape into exile, but the Sages say that he must do so. (*m. Makk.* 2.1)[2]

וְזֶה דְּבַר הָרֹצֵחַ אֲשֶׁר־יָנוּס שָׁמָּה וָחָי אֲשֶׁר יַכֶּה אֶת־רֵעֵהוּ בִּבְלִי־דַעַת וְהוּא לֹא־שֹׂנֵא לוֹ מִתְּמֹל שִׁלְשֹׁם: וַאֲשֶׁר יָבֹא אֶת־רֵעֵהוּ בַיַּעַר לַחְטֹב עֵצִים וְנִדְּחָה יָדוֹ בַגַּרְזֶן לִכְרֹת הָעֵץ וְנָשַׁל הַבַּרְזֶל מִן־הָעֵץ וּמָצָא אֶת־רֵעֵהוּ וָמֵת הוּא יָנוּס אֶל־אַחַת הֶעָרִים־הָאֵלֶּה וָחָי:

> This is the case of the killer who shall flee there and live: he who hits his neighbour without knowledge, who did not hate him yesterday or the day before. He who comes with his neighbour to the wood to cut trees, his hand swings on the axe in order to cut the tree, the blade slips from the tree and his [*lit.* finds] his neighbour, and he dies. He shall flee to one of these cities and live. (Deut. 19:4–5)

The early rabbis adopted a far narrower definition of intention than Philo or the LXX's translators, demanding a precise correspondence between the intention to murder and the execution of that intention. If there was any incongruity whatsoever between the killer's

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[1] Deut. 19:4–5:

> וְזֶה דְּבַר הָרֹצֵחַ אֲשֶׁר־יָנוּס שָׁמָּה וָחָי אֲשֶׁר יַכֶּה אֶת־רֵעֵהוּ בִּבְלִי־דַעַת וְהוּא לֹא־שֹׂנֵא לוֹ מִתְּמֹל שִׁלְשֹׁם: וַאֲשֶׁר יָבֹא אֶת־רֵעֵהוּ בַיַּעַר לַחְטֹב עֵצִים וְנִדְּחָה יָדוֹ בַגַּרְזֶן לִכְרֹת הָעֵץ וְנָשַׁל הַבַּרְזֶל מִן־הָעֵץ וּמָצָא אֶת־רֵעֵהוּ וָמֵת הוּא יָנוּס אֶל־אַחַת הֶעָרִים־הָאֵלֶּה וָחָי:
> This is the case of the killer who shall flee there and live: if he hits his neighbour without knowledge and he did not hate him in the past. If he came with his neighbour into the woods to cut trees and his hand swung on the axe to cut the tree, the blade escaped from the three, struck his neighbour—and he died, then he shall flee to one of these cities and live.

[2] Danby, *Mishnah*, 403.

intention and the execution of that intention, the early rabbis argued that the wrongdoer should not be held liable for his malicious intention.

נִתְכַּוֵּן לַהֲרֹג אֶת הַבְּהֵמָה וְהָרַג אֶת הָאָדָם, לַנָּכְרִי וְהָרַג אֶת יִשְׂרָאֵל, לְנָפָלִים, וְהָרַג בֶּן קַיָמָא, פָּטוּר.

> If he had intended to kill a beast and killed a man, or a gentile and killed an Israelite, or an untimely birth and killed offspring that was like to live, he is not culpable. (*m. Sanh.* 9.2)[1]

By demanding such an unbroken chain of causation between intention and action, the early rabbis created a system in which almost every killer could get off on a technicality. Perhaps this was not all about the emergence of the philosophical concept of intention in Jewish jurisprudence. Quite possibly the early rabbis were adapting to the historical circumstances in Roman Palestine, where only Roman courts had jurisprudence over murder cases, and Jews no longer had access to the cities of refuge.

Joshua Levinson argued that the Mishnah's line of reasoning, which prioritises intentions over results, was a rabbinic innovation:

> At the risk of over-generalising, the subject in biblical law, with very few exceptions, is defined and evaluated mostly by what he does, and these actions determine if the agent is guilty or innocent, pure or impure. Suddenly, in rabbinic literature, we begin to hear echoes of a different type of legal subject. This is seen most clearly in certain legal terms and categories that emerge here for the first time, like; "commandments must be performed with intention," or, unintentional work on the Sabbath. Without,

[1] Danby, *Mishnah*, 396.

> at present, going into the history of these concepts, they are all rabbinic innovations that grant a new legal status to the internal world of the legal subject.[1]

From the evidence of Philo and the LXX, however, it appears that the importance attributed to intention was not a "*rabbinic* innovation". To the extent that the early rabbis paid more attention to the internal intentions of the legal subject than the Hebrew Bible, they were the successors of a longstanding tradition of interpretation that can be traced to Philo, the LXX, and perhaps even to the Hebrew Bible itself.

5.10 Conclusions

At first sight the LXX introduced a radically new idea into the Covenant Code: the gravity of a killer's actions should be weighed entirely on the grounds of his *intentions*. On closer inspection there was ample precedent for the LXX's idea. Whereas the Covenant Code only distinguished between premeditated and accidental homicide, the Priestly Code introduced the middle category of "accidental" homicide (Exod. 21:12–4; Num. 35:22–5). The word שגגה describes "consciousness of the act itself … but not of its consequences".[2] Greek law did not recognise a *legal* difference by meting out different punishments for intentional and premeditated homicide. There may, nevertheless, be a subtle semantic distinction: Aristotle insists that the vocabulary of intention only describes the agent's attitude at the time of the action.

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[1] Levinson, 'From Narrative Practice to Cultural Poetics', 348.
[2] Milgrom, 'The Cultic שגגה and Its Influence in Psalms and Job', 118.

The LXX was not as radical an innovation as one might conclude from exclusively comparing translation to *Vorlage*. The LXX can be understood as a response to biblical law and Ptolemaic practice.

1. The LXX responded to a problem inherent in the complex of laws: what distinguishes the מזיד in 21:14 from the ordinary מכה in 21:12 and the אנשים רבים in 21:18–9? The LXX suggests the assailant's intention—rather than the outcome of his action—is the distinguishing criterion and the primary measure of guilt.
2. In the second century BC, an Egyptian tried to achieve the very same—i.e., to secure a murder conviction for a heavy wounding (see *P.Tebt.* III.2 960).

The wealth of evidence on homicide allows for the charting of a more precise trajectory of the development of intention in the history of Jewish law. The evidence lays bare a difference between rabbinic and "Greek halakhah". Whereas the LXX and Philo entertain the possibility of holding the assailant liable for his intentions; the rabbinic tradition only does so if such intentions were explicitly expressed and successfully realised.

6 THE EGYPTIAN QUESTION

6.1 Introduction

The precise relation between the *reality* of Egyptian practice and the *text* of the LXX has been elusive so far. With new evidence from the papyri and with new linguistic theories, we might shed light on the extent to which the translators introduced Egyptian law into their translation. Elias Bickerman argued that the LXX's translators in some cases "harmonized the sacred law with the practice of Ptolemaic Egypt."[1] In other cases they "limited" the applicability of biblical law in agreement with "Ptolemaic conditions".[2] Andrew Teeter, by contrast, argued that most differences among the versions were caused by "inner-textual interpretive processes" rather than "direct reflexes of extra-textual realities".[3] That argument relies on a sharp distinction between *text* and *reality*.

Words require a knowledge of the contexts in which they are normally used, as proponents of "frame-semantics" have argued. This chapter argues that some *words* used in the LXX presuppose an awareness of the *practice* of Egyptian law. Egyptian law left an impression on the text of the LXX, but only in that limited sense. The relation between practice and text is, therefore, more subtle than previously thought. There is no evidence for a substitution of biblical for Egyptian law, but the LXX *does* contain traces of contemporary legal practice.

The meaning of words cannot be captured in dictionary lemmas. Words invoke "frames", a background knowledge about the situations in which these words are normally

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[1] Bickerman, 'The Septuagint as a Translation', 189.
[2] Bickerman, 'Two Legal Interpretations of the Septuagint', 215: "The translators could not abrogate the biblical law. They left it as it was, but limited its application to the rather exceptional case when "the whole field" should be eaten down by trespassing cattle. In the more common case of partial damage, the damager "will make good from his field according to its produce". This addition agreed with Ptolemaic conditions." On a discussion of this example from Exod. 22:4, see 1.3.4.
[3] Teeter, *Scribal Laws*, 31.

used.[1] The word "Tuesday" is incomprehensible without a basic knowledge of time-measurement, the division of the solar year into cycles seven days, and the English names for those days.[2] Jurisprudence is rich in words that require a familiarity with legal processes. To understand the expression "to pay alimony", one needs to be familiar with matrimonial property regimes, binding divorce agreements, and the regular payments that these agreements involve.[3] Outside of their natural habitat, these words are left incomprehensible.

This holds true for words and expressions in the LXX as well. Most of the time, however, the LXX's Greek is perfectly comprehensible in the broad frame of *koine* Greek. There are exceptions: some expressions can only be understood in the "frame" of Hebrew. For example, the Hebrew phrase "to fill one's hand" (מלא יד) is an expression for the consecration of priests (see, e.g., Exod. 28:41).[4] The LXX consistently translates the expression literally as "to finish, to perfect the hands" (ἐμπίπλημι, τελειόω τὰς χεῖρας). The reader familiar with the idiom for the ritual consecration of priests would understand the Greek differently from the reader unfamiliar with that idiom. Other words and phrases invoke "frames" of Egyptian jurisprudence—words that are incomprehensible without a knowledge of Egyptian law. In its translation of biblical laws, the LXX frequently uses words that are common in Greek legal texts: "deposit" (παρακαταθήκη), "inherit" (κληρονομέω), "willingly" (ἑκών). But this is only to be expected of a translation: when the subject of the source text is legal, we expect the translation to use the legal words available in the target language. The passages about deposits, inheritance, and homicide are comprehensible even

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[1] C. J. Fillmore and C. Baker, 'A Frames Approach to Semantic Analysis', in B. Heine and H. Narrog (eds), *The Oxford Handbook of Linguistic Analysis* (Oxford, 2009), 313–39.
[2] Fillmore and Baker, 'A Frames Approach to Semantic Analysis', 318.
[3] Fillmore and Baker, 'A Frames Approach to Semantic Analysis', 318–9.
[4] J. Joosten, 'Translating the Untranslatable: Septuagint Renderings of Hebrew Idioms', in R. Hiebert (ed.), *"Translation is Required": The Septuagint in Retrospect and Prospect* (Leiden, 2010), 59–70, at 65–6; id., 'Pseudo-Classicisms in Late-biblical Hebrew', *Zeitschrift für die alttestamentliche Wissenschaft* 128 (2016), 16–29, at 25–6; R. Hendel and J. Joosten, *How Old Is the Hebrew Bible? A Linguistic, Textual, and Historical Study* (New Haven, CT, 2018), 88.

with a superficial knowledge of jurisprudence in the Greek-speaking world. The following examples do require an in-depth knowledge of the legal "frames" in which they are commonly used.

6.2 ἐκδέχομαι

6.2.1 Pledging Property

In Biblical and post-Biblical Hebrew, the verb "to pledge" (ערב I) usually refers to pledging oneself for someone else's debt. Proverbs condemns this practice as a categorically bad idea.

בְּנִי אִם־עָרַבְתָּ לְרֵעֶךָ תָּקַעְתָּ לַזָּר כַּפֶּיךָ׃

> My son, if you pledge yourself for your neighbour you have struck a deal with a stranger. (Prov. 6:1)

Ben Sira, by contrast, acknowledges pledging oneself can be a noble thing to do that is only imprudent if the debt is too large for one's financial means.[1]

אל תערב יתר ממך ואם ערבת כמשלם׃

> Do not stand surety above your capacity. If you stand surety, do it in the full knowledge that you may have to repay. (8:13)

4QInstruction^{b} warns against the danger of losing one's inheritance and freedom. The warning is strongly worded. It is not, however, a categorical prohibition.

[1] MS A IIIr.20–1; D Iv.13–4.

[אל תמ]כור נפשכה בהון טוב היותכה עבד ברוח וחנם תעבוד נוגשיכה ובמחיר אל תמכור כבודכה ואל תערבהו בנחלתכה פן יורש גויתכה

> Do not sell yourself for wealth. It is better for you to be a slave in spirit and to serve your master for nothing. Do not sell your honour for a price. Do not mortgage it for your inheritance, lest he take possession of your body. (*4Q416* fr. 2, col. II.17–8)[1]

There probably was a difference between pledging *oneself* (e.g., ערב + ל) and pledging one's *property* (ערב + direct object). Nehemiah reports that some inhabitants of Jerusalem have pledged their fields, vineyards, and houses.

וְיֵשׁ אֲשֶׁר אֹמְרִים שְׂדֹתֵינוּ וּכְרָמֵינוּ וּבָתֵּינוּ אֲנַחְנוּ עֹרְבִים וְנִקְחָה דָגָן בָּרָעָב׃

> There are those who say: Our fields, our vineyards, and our houses we pledge in order to take grain in the famine. (Neh. 5:3)

These inhabitants of Jerusalem apparently mortgaged their property in exchange for cash. If they failed to repay their creditors in time, their land and houses would fall to the creditors.[2] An Aramaic papyrus from Upper Egypt records a similar pledge (*BMAP* 11, 401 BC). The contract allows the creditor, in the event of the debtor's death, to lay claim to the debtor's children, his house, his slaves, his iron and copper vessels, his clothes, and his produce—until the debt is paid off (*BMAP* 11.8–12).[3]

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[1] 4Q416 fr. 2 ii.4–7, 17–8.
[2] H. G. Kippenberg, *Religion und Klassenbildung im antiken Judäa: Eine religionssoziologische Studie zum Verhältnis von Tradition und gesellschaftlicher Entwicklung* (Studien zur Umwelt des Neuen Testaments 14; Göttingen, 1978), 56–7; H. G. M. Williamson, *Ezra, Nehemiah* (World Biblical Commentary 16; Grand Rapids, MI, 1985), 237–9.
[3] E. G. Kraeling (ed.), *The Brooklyn Museum Aramaic Papyri: New Documents of the Fifth Century B.C. from the Jewish Colony at Elephantine* (New Haven, CT, 1953), 259–65.

The basic idea of ערב is a financial transaction, but the word describes two different transactions:

1. *A* borrows from *B* on the security of *X*. If *A* fails to repay, the ownership of *X* falls to *B*. (4QInstruction, Nehemiah, *BMAP* 11)
2. *A* borrows from *B*. If *A* fails to repay, a third party, *C*, is responsible for repaying *B*. (Proverbs, Ben Sira)

Elsewhere in the Hebrew Bible and the Dead Sea Scrolls, "to pledge" (ערב) is also used in a more poetical and metaphorical sense, for example when God puts the question to Jeremiah:

כִּי֩ מִי הוּא־זֶ֨ה עָרַ֤ב אֶת־לִבּוֹ֙ לָגֶ֣שֶׁת אֵלָ֔י

Who is it that pledged his heart to me to come near to me? (Jer. 30:21bα)

6.2.2 Judah's Pledge

In the Joseph story, Judah uses the same word to pledge himself. But it is difficult to map any of the previous patterns of exchange on the transaction Judah proposes. Judah tries to persuade his father Jacob to permit him to bring his youngest brother Benjamin to Egypt (Genesis 43). That is what Joseph demanded of his brothers. Judah pleads in front of his father Jacob:

אָנֹכִי֮ אֶעֶרְבֶּנּוּ מִיָּדִי תְּבַקְשֶׁנּוּ אִם־לֹא הֲבִיאֹתִיו אֵלֶיךָ֒ וְהִצַּגְתִּיו לְפָנֶיךָ֒ וְחָטָאתִי לְךָ֣ כָּל־הַיָּמִים׃

I will *'arav* him—from my hand you will seek him. If I do not bring him to you and stand him before you, I have sinned to you forever. (Gen. 43:9)

Later on the brothers appear before Joseph. Joseph has taken Benjamin in custody, suspecting him of the theft of his silver cup. Judah explains he has pledged himself to his father for Benjamin's safety.

כִּֽי עַבְדְּךָ֞ עָרַ֣ב אֶת־הַנַּ֗עַר מֵעִם֙ אָבִ֔י לֵאמֹ֕ר אִם־לֹ֥א אֲבִיאֶ֖נּוּ אֵלֶ֑יךָ וְחָטָאתִי֙ לְאָבִ֔י כָּל־הַיָּמִֽים׃

Because your servant *'arav* the child from my father, saying: If I do not return him to you, I have sinned to my father forever. (Gen. 44:32)

The wording of Judah's explanation to Joseph recalls the wording of the earlier plea to his father. It is precisely these words that move Joseph to tears and compel him to reveal his true identity (ch. 45). The conditions of Judah's promise to his father are unclear.

It is particularly unclear what would have happened to Judah if he had failed to return Benjamin to his father. Judah says: "If I do not return him to you and stand him before you, I will have sinned to you forever (וחטאתי לך כל הימים)". The ancient interpretations of the conditions of Judah's surety differ substantially. Philo assumed Jacob entrusted Benjamin to Judah as a deposit.

πολλὰ γὰρ ὑπεσχόμην τῷ πατρὶ προέσθαι παρακαταθήκην λαμβάνειν ὁμολογῶν, ἣν ἀποδώσειν, ὅταν ἀπαιτηθῶ·

> I have taken it upon myself to deliver many things to my father, promising to take (*sc.* the boy) as a deposit, which I would return when asked. (Philo, *Joseph* 227)

Philo's Greek here is elusive and could also be translated as: "Many times I have promised my father to return (the boy)". πολλά can be the object of the infinitive προέσθαι or an accusative of time. The Vulgate is close to Philo's interpretation. The Vulgate translates Judah's promise as: "I take the child (*ego suscipio puerum*)", and as: "I am your real servant who received the child in trust (*in meam hunc recepi fidem*)".

Josephus, by contrast, takes Judah's pledge to mean that he would rather die together with Benjamin than fail to return the boy:

> μὴ φειδοῖ τῆς Βενιαμεῖ ἀποδημίας ἐκεῖνος ἀπόληται· πιστεῦσαι δὲ περὶ αὐτοῦ τῷ θεῷ παραινοῦντος καὶ αὐτῷ, ὡς ἢ σῶον ἐπανάξοντος αὐτῷ τὸν υἱὸν ἢ συγκαταστρέψοντος ἅμα ἐκείνῳ τὸν βίον
>
> As for Benjamin, he exhorted him to trust to God and to himself, for either he would bring his son back safe and sound or he would lay down his life along with him. (Joseph., *Ant.* 2.117)[1]

The Targum Neofiti takes yet a different spin on the agreement between Judah and his father.

> ניהוי מרחק מן שאלת בשלמך כל יומיא
>
> we will forever be too far away to ask for your wellbeing. (*Tg. Neof.*)

[1] H. St. J. Thackeray (ed.), *Josephus, Volume V: Jewish Antiquities, Volume I: Books 1–3* (Loeb Classical Library 242; Cambridge, MA, 1930), 217, who notes in the apparatus that previous editions read συγκαταστρέψαντος, an aorist participle.

This translation assumes that—if they failed to collect Benjamin—Judah and his brothers would never again partake in "saluting" their father. Some of these interpretations (especially those of Josephus and Tg. Neof.) are hard to accept. Why would Judah's promise to die, or his vow never to return home be of any assurance to Jacob?

6.2.3 The LXX

The LXX translates ערב as "to be surety for" (ἐκδέχομαι).[1]

> ἐγὼ δὲ ἐκδέχομαι αὐτόν, ἐκ χειρός μου ζήτησον αὐτόν· ἐὰν μὴ ἀγάγω αὐτὸν πρὸς σὲ καὶ στήσω αὐτὸν ἐναντίον σου, ἡμαρτηκὼς ἔσομαι πρὸς σὲ πάσας τὰς ἡμέρας.
> I *ekdechomai* for him, you will seek him from my hand. If I do not lead him to you and set him in front of you, I will have sinned to you all my days. (Gen. 43:9)

> ὁ γὰρ παῖς σου ἐκδέδεκται τὸ παιδίον παρὰ τοῦ πατρὸς λέγων Ἐὰν μὴ ἀγάγω αὐτὸν πρὸς σὲ καὶ στήσω αὐτὸν ἐναντίον σου, ἡμαρτηκὼς ἔσομαι πρὸς τὸν πατέρα πάσας τὰς ἡμέρας.
> For your servant *ekdedektai* for the child from our father, saying: If I do not lead him to you and set him in front of you, I will have sinned to my father all my days. (Gen. 44:32)

The word ἐκδέχομαι invokes a particular proceeding of Ptolemaic law. When someone received a subpoena, someone else guaranteed for his appearance in court. In some third-

[1] *LSJ*, 503.

century papyri the Greek "to be surety for" (ἐκδέχομαι) does not refer to down-payments to ensure the delivery of goods, but to formal assurances for the appearance of a person in court.[1] In 248 BC, for instance, a court subpoenaed Theophilos on charges of fraud, a crime for which he could receive a fine of 300 drachmas. Since Theophilos himself was absent, Alketas—convinced of Theophilos's innocence—guaranteed his presence. In a letter Alketas's brother, Lysianas, explains the situation to Theophilos himself. He urges him to return as soon as possible:

> γίνωσκε οὖν ἐντυχόντος Δημέου Φανίαι κατὰ Ἀλκέτου ὅτι ἐγδεξάμενος Θεόφιλον \κατὰ σύμβολον/ παρέξεσθαι κρινόμενον οὐ παρέχεται καὶ Φανίου γεγραφότος Ἐπηράτωι κατασχεῖν τὰ γενήματα Ἀλκέτου ἕως ἂν παραγενόμενος ἐπὶ τοῦ ἀριθμοῦ διακούσηι.
>
> Know therefore that Demeos has appealed to Phanias against Alketas, because after having assured by written contract that Theophilos would be present to be tried, he was absent, and Phanias has written to Eperatos to withhold the produce of Alketas until you are present on (the date of) the hearing of the matter. (*P.Mich.* I 57.9–11)

John Lee argued that the LXX's translator used the same verb in precisely this sense, "to be surety *for someone's appearance*".[2] The translator did the same thing in Judah's speech to Joseph (Gen. 44:32). Here too they rendered ערב as ἐκδέχομαι:[3]

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[1] F. Preisigke, *Wörterbuch der griechischen Papyrusurkunden* (Berlin, 1925[1]), I, 440–1; id., *Wörterbuch der griechischen Papyrusurkunden* (Berlin, 1944[2]), I, 726–7; H. A. Rupprecht, *Wörterbuch der griechischen Papyrusurkunden, Supplement II (1967–1976)* (Wiesbaden, 1991), 102. Compare the more general analysis of M. Harl, *La Genèse* (La Bible d'Alexandrie 1; Paris, 1986), 283: "Le sens du verbe grec *ekdékhomai*, qui signifie de façon classique « recevoir en succession », semble se spécialiser dans la koinè: « assumer, prendre en charge »."

[2] Lee, *A Lexical Study of the Septuagint Version of the Pentateuch*, 59–60.

[3] In this context, especially because of the preposition "from" (παρά), the more usual sense of ἐκδέχομαι, "to receive", suggests itself as well: "For your servant has received the child from our father".

ὁ γὰρ παῖς σου ἐκδέδεκται τὸ παιδίον παρὰ τοῦ πατρὸς

For your servant stands surety for the child from our father (Gen. 44:32)

The LXX's translation also explains the curious exegesis of Philo and Jerome. Philo assumed that Judah promised Jacob to "take" Benjamin as a deposit (παρακαταθήκην λαμβάνειν ὁμολογῶν) (*Joseph* 227). Jerome translated ערב as "to take" (*suscipio*) and "to receive" (*recipio*). These interpretations of the story are easier to explain when we assume that they relied on the Greek ἐκδέχομαι in the usual sense of "to receive" than on the Hebrew ערב. They were unaware of the particular sense of "to stand surety for someone's appearance" that ἐκδέχομαι carrie in Ptolemaic legal writing.

There are good reasons for Philo and Jerome's misunderstanding of the LXX's Greek. There are only six instances of ἐκδέχομαι used in that particular sense. (There are, of course, many more instances of ἐκδέχομαι in the more general sense of "to receive".) All six instances of the particular use of ἐκδέχομαι occur in papyri from the mid-third century BC.[1] This chronological distribution could be a coincidence. Because there are mid-third-century Greek papyri extant (more than, say, from the late-fourth century), we are more likely to

[1] The 1925 and 1944 editions of Preisigke's *Wörterbuch* list five examples of ἐκδέχομαι in the sense of "to stand surety for". The five papyri are *SB* VI 9220a (254 BCE), *P.Mich.* I 57 (248 BC), *P.Cair. Zen.* 3 59323 (pre-249 BC), *P.Cair. Zen.* I 59036 (257 BC), *P.Cair. Zen.* IV 59636 (mid-3rd cent. BC). Rupprecht's 1991 appendix to Preisigke's *Wörterbuch* adds one more example to the list, *SB* XII 10855 (250–238 BC). Rupprecht's second and third examples date from the second, and from the fifth to sixth centuries CE respectively. In my opinion, however, Rupprecht listed these instances of ἐκδέχομαι here by mistake. In Rupprecht's second example, *SB* XIV 11899, a tax collector explains why he had not yet collected the tribute from a certain Diogenes: "and I waited (ἐξεδεχόμην) until they were better in order that we might take (*sc*. the tribute)". In this case, the tax collector waited until Diogenes had recovered from his discharge of the eyes, probably due to glaucoma. To translate ἐκδέχομαι into "to stand surety for" would not make sense in this context. Rupprecht's third example, *SB* XIV 11358, relies on an uncertain reconstruction of the phrase ἐξεδ[.]... τὴν ἀποχὴν at the end of receipt. It makes more sense to reconstruct a form of ἐκδίδωμι than ἐκδέχομαι here, especially since the precise phrase ἐξεδόμην τὴν ἀποχὴν—which would fit perfectly here—occurs 42 times in extant contracts from the Roman period.

encounter a particular Greek word in papyri from that period. There are, however, two arguments for why this is not a trick of the eye:

1. The word itself did not disappear after the mid-third century. It just never occurs in later documents *in this particular, legal sense*. The verb "to pledge" (ἐγγυάω) made "to stand surety for" (ἐκδέχομαι) superfluous. Lysias uses "to pledge" in that sense: "pledging to produce [*sc.* him] the next morning" (ἐγγυησάμενοι παρέξειν εἰς αὔριον) (Lys., *Or.* 23.9; cf. *Or.* 13.23). The process of semantic substitution explains why ἐκδέχομαι in the sense of "to stand surety for" became obsolete.
2. If we assume that the use ἐκδέχομαι in a legal sense was limited to the third-century, it is easy to explain Philo's misunderstanding of the LXX. Philo's vocabulary was extensive but he could not have know that the word ἐκδέχομαι was used in a specific sense rather than the general sense of "to receive". He simply did not know the legal jargon of the third century BC.

The word ἐκδέχομαι itself was not unique to Ptolemaic legal writing. Nor was the idea of standing surety for someone's appearance in court peculiar to Ptolemaic Egypt. In Old Babylonian law, a surety could both secure the payment of a debt and "the appearance of a person at a given date or venue".[1] Similarly, in Neo-Babylonian law someone who stood surety either "had an obligation to produce the debtor" or "guarantees that the debtor will be present at the place of payment".[2] Under Athenian law, someone could "pledge" (ἐγγυάω) for the appearance of someone before the council (βουλή) on a given day (which is known from

[1] R. Westbrook, 'The Old Babylonian Period', in R. Westbrook and R. Jasnow (eds), *Security for Debt in Ancient Near Eastern Law* (Culture and History of the Ancient Near East 9; Leiden, 2001), 63–92, at 79.
[2] J. Oelsner, 'The Neo-Babylonian Period', in Westbrook and Jasnow (eds), *Security for Debt in Ancient Near Eastern Law*, 289–303, at 300.

Lys., *Orr.*). It is probably in this sense, which can be captured in the German word *Gestellungsbürgschaft*, that Judah uses ערב in Gen. 43:9 and 44:32.[1]

What is unique to the third-century Egyptian texts is the use of this particular word to describe this particular legal institution. Outside of this particular "frame", the LXX's use of "to stand surety" (ἐκδέχομαι) is left incomprehensible.

6.3 κατόχιμος

6.3.1 The Problems of Lev. 25:46

The Holiness Code draws a sharp distinction between Israelite and foreign slaves: whereas the first may leave the service of their masters after some time, the latter must serve their masters forever (Lev. 25:39–55).[2] During the jubilee year every land owner and his family should return to their ancestral property (אחזה).

וְכִי־יָמוּךְ אָחִיךָ עִמָּךְ וְנִמְכַּר־לָךְ לֹא־תַעֲבֹד בּוֹ עֲבֹדַת עָבֶד: 40 כְּשָׂכִיר כְּתוֹשָׁב יִהְיֶה עִמָּךְ עַד־שְׁנַת הַיֹּבֵל
יַעֲבֹד עִמָּךְ: 41 וְיָצָא מֵעִמָּךְ הוּא וּבָנָיו עִמּוֹ וְשָׁב אֶל־מִשְׁפַּחְתּוֹ וְאֶל־אֲחֻזַּת אֲבֹתָיו יָשׁוּב:

> If your brother with you becomes poor and sells himself to you, you shall not force him to do the work of a slave. 40 He shall be with you like a hired servant, like a resident, until the year of the jubilee he shall serve with you. 41 Then he, and his children with him, shall go free from you and he shall return to his family and to the inheritance of his family he shall return. (Lev. 24:39–41)

[1] E. A. Speiser, *Genesis* (Anchor Yale Bible Commentary 1; New York, 1964), 327–8.
[2] Milgrom, *Leviticus 23–27*, 2145–271.

Whether the laws about the jubilee year were ever put into practice is a matter of debate.[1] Nonetheless, the ideology of the Holiness Code is clear: Israelite slaves go free in the jubilee in order to preserve the ancestral land boundaries. Jacob Milgrom summarised the connection between redemption and landownership in the Holiness Code:

> The purpose of the jubilee an its attendant redemption is to restore the land to its original owner. Since the alien has no land to lose to a creditor, these remedies are of no meaning. Thus the discrimination against the alien rests not on the absence of jubilee, but on his inaccessibility to land. Even Ezekiel, who rectifies the discrimination against the alien in regard to possessing and bequeathing land (Ezek 47:21–23), remains silent about the remedies of redemption and jubilee for the alien.[2]

In the Holiness Code the Israelite slave goes free in the jubilee and returns to his ancestral land. The foreign slave serves "forever" (לעולם). The story of Sheshan in 1 Chron. 2:34–41 presupposes a similar distinction between Israelite and foreign slaves. Sheshan, who had no sons, gave his daughter in marriage to his Egyptian slave, so that they might produce an heir for him. Sheshan's plan would not have worked if his slave was an Israelite, because an Israelite slave would only serve until the jubilee year and the slave's children would be his

[1] On the practicability of the laws of the jubilee, see Westbrook, *Property and the Family in Biblical Law*, 36–57.
[2] Milgrom, *Leviticus 23–27*, 2231.

own, not his master's.[1] The Holiness Code consistently calls the foreign slave a "slave" (עבד) but it prefers to call the Israelite slave a "hired servants" (שכיר).[2]

In one instance the Holiness Code apparently conflates land and slaves, applying the vocabulary for land to slaves (Lev. 25:46). The text calls the foreign slaves "an eternal possession" (אחזה לעולם).

וְהִתְנַחַלְתֶּם אֹתָם לִבְנֵיכֶם אַחֲרֵיכֶם לָרֶשֶׁת אֲחֻזָּה לְעֹלָם בָּהֶם תַּעֲבֹדוּ וּבְאַחֵיכֶם בְּנֵי־יִשְׂרָאֵל אִישׁ בְּאָחִיו לֹא־תִרְדֶּה בוֹ בְּפָרֶךְ׃ ס

> you may keep them as a possession for your children after you, for them to inherit as property for all time. Such you may treat as slaves. But as for your Israelite kinsmen, no one shall rule ruthlessly over the other. (Lev. 25:46 *NJPS*)

The problem of this verse is that it unclear when it speaks of foreign slaves and when it it speaks of Israelite slaves. Jacob Milgrom takes "these you may enslave" (בהם תעבדו) as referring to foreign slaves: "*these* you may enslave"—suggesting, through negative implication,[3] a prohibition on enslaving Israelites.[4] The Holiness Code takes issue with the earlier laws of the Covenant and Deuteronomic Codes, which do allow for the enslavement of Israelites (Exod. 21:2–11; Deut. 15:12–8). Bernard Levinson argues for a different division of the sentences in v. 46. He argues that the word "forever" (לעלם) is a direct quotation from the

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[1] S. Japhet, 'Israelite Legal and Social Reality as Reflected in Chronicles: A Case Study', in M. Fishbane and E. Tov (eds), *Sha'arei Talmon: Studies in the Bible, Qumran, and the Ancient Near East Presented to Shemaryahu Talmon* (Winowa Lake, IN, 1992), 79–91.
[2] Levinson, 'The Manumission of Hermeneutics', in Lemaire (ed.), *Congress Volume Leiden 2004*, 305–6: "H never describes the indentured Israelite as an עבד. Instead, H rejects the very language of slavery. It avoids the transitive verb עבד+object suffix, "to serve (someone)" and replaces it with the distinctive causative formulation עבד+ב-, "to enslave" (Lev. 25:39, 46). … The author of the Holiness Code rejects even the syntax of slavery, breaking the accusative construction and substituting a prepositional formulation whereby the laborer maintains his autonomy: עד שנת היבל יעבד עמך, "until the year of the jubilee shall he serve with you" (Lev. 25:40)."
[3] *Expressio unius est exclusio alterius*.
[4] Milgrom, *Leviticus 23–27*, 2231.

older law (Exod. 21:6). Whereas the Covenant Code's law concerned Israelite slaves, the Holiness Code's citation limits its application exclusively to foreign slaves. Levinson translates the verse:[1]

> … to inherit as a possession. Forever—only they—may you make serve as slaves. But as for your brothers, the sons of Israel—each man in relation to his brother—you must not oppress him through hard labor. (Lev. 25:46)

Regardless of the precise division of the clauses, the verse upholds a distinction between foreign and Israelite slaves that is at tension with the ethnic equality proclaimed elsewhere in the Holiness Code.

מִשְׁפַּט אֶחָד֙ יִהְיֶ֣ה לָכֶ֔ם כַּגֵּ֥ר כָּאֶזְרָ֖ח יִהְיֶ֑ה כִּ֥י אֲנִ֖י יְהוָ֥ה אֱלֹהֵיכֶֽם׃

> You shall have *one* law. It shall be the same for the foreigner and for the native, for I am YHWH, your God. (Lev. 24:22; cf. 19:33–4)

These laws assume that foreigners were living among the Israelites. Despite the fictional setting of the revelation of the Holiness Code in the Sinai desert, the Code presupposes a much later political reality (see Judg. 3:5–6; 1 Kgs. 9:20). The Holiness Code, then, prescribes two different treatments of foreigners: the slave laws draws a sharp distinction (25:46) where there shouldn't be any distinction according to the equality principle (24:22). It

[1] Levinson, 'The Manumission of Hermeneutics', in Lemaire (ed.), *Congress Volume Leiden 2004*, 310.

is because of this flagrant contradiction within the Holiness Code that the difference in treatment is expressed so covertly.[1]

It is only from the structural symmetry of the pericope that the difference in treatment emerges (Lev. 25:39–46).[2]

	Israelite slaves		*Foreign slaves*
39–40	Israelite slave sells himself (מכר *nif'al*)	44	Israelite buys foreign slave (קנה)
41	Israelite slave returns to property (אחזה)	45	Foreign slave becomes property himself (אחזה)
42	Israelites are "my slaves" (עבדי)	46a	Israelites inherit (נחל *hitpa'el*) and "possess" (ירש) foreign slaves (עבד)
43	Israelite slaves may not be oppressed ruthlessly (רדה בפרך)	46b	Israelite slaves may not be oppressed ruthlessly (רדה בפרך)

The verbal similarity is strongest between vv. 43 and 46b, but in v. 46b the focus shifts from foreign slaves back to Israelite slaves. Where the reader would expect a prohibition on the abuse of foreign slaves, there is none. Instead the prohibition on the abuse of Israelite slaves is repeated. Milgrom argued that the symmetric structure implies

> that the non-Israelite slave may receive harsh treatment. This conclusion can only be drawn by comparing the two panels. Apparently, there was some uneasiness in stating this explicitly, and it has to be inferred from the pericope's structure.[3]

[1] Note also that the Israelites are addressed directly, in the second person, whereas the laws applying to foreigners are expressed in the third person. Joosten, *People and Land in the Holiness Code*, 62.
[2] Milgrom, *Leviticus 23–27*, 2217–8.
[3] Milgrom, *Leviticus 23–27*, 2218.

There is, then, a certain inconsistency within the Holiness Code's laws of slavery. The laws demand equality for Israelites and non-Israelites, but they also allow for different treatments for both.

6.3.2 The LXX

The LXX's translator rendered "inheritance" (אחזה) as "held in possession" (κατόχιμοι).

> καὶ καταμεριεῖτε αὐτοὺς τοῖς τέκνοις ὑμῶν μεθ᾽ ὑμᾶς, καὶ ἔσονται ὑμῖν κατόχιμοι εἰς τὸν αἰῶνα· τῶν ἀδελφῶν ὑμῶν τῶν υἱῶν Ισραηλ ἕκαστος τὸν ἀδελφὸν αὐτοῦ οὐ κατατενεῖ αὐτὸν ἐν τοῖς μόχθοις.
>
> You will divide them to your children that are with you, and they will be your *katochimoi* forever. Of you brothers, the sons of Israel, each shall not strain his brother with labours. (Lev. 25:46)

The gloss "held in possession" is *LSJ*'s.[1] John William Wevers, the *NETS*, and the two Greek-English dictionaries of the LXX followed *LSJ*'s verdict.[2] The editors of *La Bible d'Alexandrie* state that the use of κατόχιμος was "pour le sens, une innovation, unique dans le LXX".[3]

In Ptolemaic papyri, however, κατόχιμος is used only in a very specific context. The adjective refers to plots of land confiscated from the original owner. The reason for confiscation was criminal—as far as we can tell from the extant documents. In a petition a

[1] *LSJ*, 930.
[2] J. W. Wevers, *Notes on the Greek Text of Leviticus* (Society of Biblical Literature Septuagint and Cognate Series 44; Atlanta, GA, 1997), 429; J. Lust, E. Eynikel, and K. Hauspie, *A Greek-English Lexicon of the Septuagint* (Stuttgart, 2003), 334; T. Muraoka, *A Greek-English Lexicon of the Septuagint* (Leuven, 2009), 392.
[3] Harlé and Pralon, *Lévitique*, 203.

shepherd accuses at least five men of stealing 40 sheep. The victim wants the sheep returned, the thieves punished, and their land "confiscated" (note the future passive of κατέχω).

> ἀξιῶ ὑποτάξαι τοῦ | ὑπομνήματος ἀντίγραφον οἷς καθήκει | ὅπως οἱ εὐθυνόμενοι ἀναζητηθ̣[έ]ντες | τὰ μὲν κτήνη ἀποδοθῇ αὐτοὶ δὲ | τύχωσι ὧν προσήκει, πρὸ δὲ πάν[τ]ων | οἱ κλῆροι αὐτῶν κατασχεθῶσι ἐν τῶι | βασιλικῶι.
>
> I therefore beg you to forward a copy of this petition to the proper officials in order that the culprits having been searched for the animals may be restored to me and the offenders receive the penalties which they deserve, and before all else that their holdings may be held in bond by the Crown. (*P.Tebt.* I 53.20–6, after 110 BC)[1]

What does it mean for land to be "held in bond"? The same petition contains a subscript, apparently scribbled by an official.

> ἀναφέρωι ἵνα ἐὰν μὴ ἄλως φαίνηται συν|τάξῃς κατεγγυ(ᾶν) αὐτῶν τοὺς κλ(ήρους) αὐτοὺς δὲ ἀνα|σζητήσα̣ς \τῳν/ ⟦ . . . .κ̣α̣ .⟧ ἀσφαλίσασθαι τὰ γενή(ματα)
>
> I send this report in order that, if you please, you may order their holdings to be impounded, and, having searched for the offenders, seize the produce … (*P.Tebt.* I 53.27–9)[2]

In these documents, the reason for confiscation of land is criminal. *P.Tebt.* I 72 contains "[a] list of five persons, … whose holdings had become κατόχιμοι". The land of one of them had

[1] Grenfell, Hunt, and Smyly (eds), *Tebtunis Papyri, Part I*, 163.
[2] Grenfell, Hunt, and Smyly (eds), *Tebtunis Papyri, Part I*, 163.

been confiscated "because of the sheep tribute" (πρὸς φόρον πρ̣ο̣β̣ά(των) (*P.Tebt.* I 72 col. 11.232).[1] This expression does not refer to a failure to pay tax—the culprit had *stolen* sheep: "because of the plundering of the sheep of the public revenue" (πρὸς διαφόρησιν τῶν τῆς προσόδου [π]ρ̣[ο]β̣άτ[ων) (*P.Tebt.* I 72 col. 12.261–2). These offenders remained "free" to a certain extent; they were neither imprisoned nor enslaved. In one case a man whose land had been confiscated managed to regain ownership of his land. A certain Orses stole a number of sheep and therefore owed 32.5 artabae (*P.Tebt.* I 64b.24–9). Three years later he only owed 16.25 artabae (*P.Tebt.* I 72.231). His entry for the fourth year "is subtracted from the list … because he had paid the demands of the State in full" (see *P.Tebt.* I 72.236–45).[2] The tenants of these "disowned plots of land" (κλῆροι κατόχιμοι) were not slaves or prisoners, they were free tenants bound merely by a financial liability.

Without a knowledge of the Ptolemaic economy of agriculture, the meaning of κατόχιμος would remain obscure.

6.3.3 Competing Visions of Reality

Using that specific vocabulary, the LXX implicitly compares the fate of foreign slaves in Israel to that of Ptolemaic tenants who lost ownership of their land. The LXX is a compromise between competing descriptions of the practice of land ownership. According to the Holiness Code's ideology the Israelites have the inalienable property rights to their land. To be precise, YHWH owns all the land—the Israelites are merely "strangers and sojourners" with him (Lev. 25:33). Paradoxically, it is because the land belongs to YHWH that the Israelites have inalienable property rights. Every Jubilee year all land is returned to the family

[1] Grenfell, Hunt, and Smyly (eds), *Tebtunis Papyri, Part I*, 319: "This means not that he had failed to pay the sheep-tax, but, as appears from ll. 259 sqq. and 64. (*b*) 14–22, that he had injured this revenue by destroying sheep belonging to the κεχωρισμένη πρόσοδος."
[2] Grenfell, Hunt, and Smyly (eds), *Tebtunis Papyri, Part I*, 320.

of its original owners (Lev. 25:23–55). Even if an Israelite is forced to sell his land and to sell himself into debt slavery, he is released in the Jubilee year—in order to return to his ancestral land (Lev. 25:10). The land surrounding the cities of the Levites cannot be sold at all (Lev. 25:34). The Code frequently assumes that the foreigners living among the Israelites are "poor" (Lev. 19:9–10; 23:22; 25:6).[1]

The historical reality was different. Some foreigners evidently grew rich and could afford to buy Israelites slaves (Lev. 25:47). Some Israelites married foreigners (Judg. 3:5–6). Solomon imposed a "duty of work" (מס עבד) on all foreigners remaining in Israel—but he did not subdue them to outright slavery or strip them of all property rights (1 Kgs. 9:20–1; 2 Chron. 2:17–8). The reality of the diaspora was even further removed from the ideology of the Holiness Code. In the Babylonian Exile, some non-Israelites apparently joined the Israelite community.[2] What was to happen to them if they decided to "return" to Israel together with the Israelites? Ezekiel argues that these foreigners should be given the same property rights as Israelites.

וְהָיָה תַּפִּלּוּ אוֹתָהּ֙ בְּנַחֲלָ֔ה לָכֶ֖ם וּלְהַגֵּרִ֣ים הַגָּרִ֑ים בְּתוֹכְכֶ֔ם אֲשֶׁר־הוֹלִ֥דוּ בָנִ֖ים בְּתוֹכְכֶ֑ם וְהָיוּ֙ לָכֶ֣ם כְּאֶזְרָ֔ח בִּבְנֵ֖י יִשְׂרָאֵ֑ל אִתְּכֶ֗ם יִפְּל֥וּ בְנַחֲלָ֛ה בְּתוֹךְ֖ שִׁבְטֵ֥י יִשְׂרָאֵֽל׃

> It will happen that you will divide it for yourselves and for the foreigners living among you, who gave birth to children among you, and who were as a native among Israel's children. They shall share in the inheritance among Israel's tribes. (Ezek. 47:22)

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[1] Joosten, *People and Land in the Holiness Code*, 60–2.
[2] Zimmerli, *Ezechiel*, II, 1219: "Im Exil nun vollzieht sich offenbar das Neue, daß sich Nicht-Israeliten der Gemeinde der Jahwegläubigen anschließen. … Wenn nun der neue Einzug ins Land geplant wird, was soll geschehen, wenn die גרים, die sich in Babylonien der Jahwegemeinde angeschlossen hatten, auch mit ins Land Jahwes zogen. … Die Bestimmung gehört viel mehr in den Zusammenhang des Neubedenkens der guten Ordnung im Lande, in das zurückzukehren man sich vorbereitet, von der Basis neuer Realitäten her."

This was a new solution to a new problem.

In the Egyptian diaspora, Jews were an ethnic minority too. Some Jews rose to prominence; other were sold into slavery (e.g., *CPJ* I 1, 7, 126). The LXX's translator was reluctant to call foreigner slaves "eternal property" because of his contemporary context—where there were far more "foreign" than Jewish landowners. The LXX does not do away with the distinction between Israelite and foreign slaves altogether, but downplays it. First, the LXX has no equivalent for "them you shall enslave" (בהם תעבדו).[1] Second, the LXX refrains from calling foreign slaves "eternal property". Instead, these foreigners are imagined to be free tenants on land that was "bound" by financial liability, whose produce could be seized at will.[2]

6.4 φερνή

6.4.1 The LXX's Dowry and the Rabbinic Ketubah

The LXX's translators rendered מהר, an "indemnity" the groom pays to the bride's family,[3] as φερνή, property given by the bride's family and "brought" into the marriage "by the wife" (Gen. 34:12; Exod. 22:15–6).[4] This is potentially a crucial moment in the history of Jewish marriage. Bickerman understood the LXX's φερνή to be identical to the rabbinic *ketubah*, a

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[1] Wevers, *Notes on the Greek Text of Leviticus*, 429: "This is followed in MT by בהם תעבדו but this is omitted by LXX, possibly as not quite fitting in the context. After all, the verse speaks of passing such on as an inheritance to one's children, and the clause seems intrusive. It is also possible that the translator overlooked the clause, since בהם תעבדו is followed by a coordinate ב phrase ובאחיכם, i.e. it may have been a simple case of parablepsis"
[2] Levinson, 'The Manumission of Hermeneutics', in Lemaire (ed.), *Congress Volume Leiden 2004*, 310–1: "The Septuagint translator did not recognize the syntax of the verse. … The Septuagint translator construed verse 46 as making a legal analogy between the land as inalienable (v. 34) and the right granted in this verse to transfer non-Israelite slaves as property that may be "held in possession" (κατόχιμοι) forever. The form employed is a *hapax legomenon*. That suggest the extent to which the translator was straining to make sense of this verse, whose syntax and legal formula escaped him."
[3] *HALOT*, 1446.
[4] *LSJ*, 1922.

pledge of property by the husband to his wife in case of divorce or death.[1] He cited the *Mekhilta deR. Ishmael*, which identifies the rabbinic pledge with the biblical מהר: "there is no other *mōhar* than the *ketubah*" (ואין מוהר אלא כתובה) (*Nezik.* 17).[2] Bickerman thought this was precisely the interpretation underlying the LXX:

> The Septuagint shows that this interpretation … was already current by 250 B.C. … The term [φερνή] here means the stipulation in the marriage contract … by which the husband promises a certain sum for the maintenance of the divorced wife or widow.[3]

The φερνή functions as a kind of Hebraism but not the kind familiar to students of the LXX. The LXX uses φερνή in the sense not of the *Vorlage*'s מהר but of the rabbinic *ketubah*.

Michael Satlow gives a different interpretation of the evidence. He critiques Bickerman for anachronistically imposing the rabbinic *ketubah* on the LXX's φερνή. He argues: "It may well have been that the Egyptian Jews of this period … used only dowries for marriage payments."[4] He gives an alternative account of the emergence of the *ketubah*. A rabbinic narrative presents the *ketubah* as the natural outcome of an organic development of marriage gifts. One compact version of that tradition is found in the Tosefta.

> בראשונה כשהיתה כתובתה אצל אביה היתה קלה בעיניו להוציאה התקין שמעון בן שטח שתהא כתובתה אצל בעלה וכותב לה כל נכסים דאית לי אחראין וערבאין לכתובתיך דא

[1] Bickerman, 'Two Legal Interpretations of the Septuagint', in Tropper (ed.), *Studies in Jewish and Christian History*, I, 195–217, at 203–4, 206–7.
[2] Lauterbach (ed.), *Mekhilta de-Rabbi Ishmael*, 445–6
[3] Bickerman, 'Two Legal Interpretations of the Septuagint', 204.
[4] M. L. Satlow, 'Reconsidering the Rabbinic *Ketubah* Payment', in S. D. Cohen (ed.), *The Jewish Family in Antiquity* (Atlanta, GA, 1993), 133–51, at 136 n. 9.

> At first, when the *ketubah* was with her father, it was easy for him [*sc*. the husband] to send her away. Shim‘on ben Shetaḥ ruled that the *ketubah* should be with her husband and he should write for her: All my possessions are sureties and warranties for your *ketubah*. (*t. Ketub.* 12.1)[1]

Mordechai Friedman thought that “these texts must be seen as containing partial reminiscences of ancient practices.”[2] Satlow disagrees and argues that this is fiction fabricated “to yield a coherent historical explanation for a rabbinic legal institution.”[3] Instead, he argues that the *ketubah* was in fact “a rabbinic legal *innovation* of the first century C.E.”[4]

Aristotelian logic dictates that Satlow and Bickerman cannot both be right. The *ketubah* cannot be both an innovation of the first century AD *and* attested in a translation traditionally dated to the third century BC. Bickerman and Satlow give radically different evaluations of the LXX but they share a determination to trace the source of the *ketubah*. In that sense their interpretations of the evidence are a continuation of a debate already found within rabbinic literature. The rabbis too were concerned with where “their” *ketubah* came from. The Bavli quotes R. Shim‘on b. Gamliel as pleading for the abrogation of the *ketubah* precisely because it had no scriptural precedent.

> רבן שמעון בן גמליאל אומר כתובת אשה אינה מדברי תורה אלא מדברי סופרים
>
> Rabban Shim‘on ben Gamli’el says: The *ketubah* is not derived from the words of Torah but from the words of the scribes. (*b. Ketub.* 10a).

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[1] Satlow, ‘Reconsidering the Rabbinic *Ketubah* Payment’, 136. Variants of the same tradition can be found in *y. Ketub.* 8.32b–c; *b. Ketub* 82b.
[2] M. A. Friedman, ‘Mohar Payments in the Geniza Documents’, *Proceedings of the American Academy of Jewish Research* 43 (1976), 15–47, at 25.
[3] Satlow, ‘Reconsidering the Rabbinic *Ketubah* Payment’, 150.
[4] Satlow, ‘Reconsidering the Rabbinic *Ketubah* Payment’, 149.

Satlow was right to critique the anachronism inherent in Bickerman's proposal. There is no evidence for the word φερνή being used in the sense of the rabbinic *ketubah*—a pledge of property in the case of divorce or death.

Satlow, however, makes an equally problematic assumption: the mere use of the word φερνή must be a reflection of the practice at Alexandria. The LXX does not use φερνή in the normal sense of the word.

φερνῇ φερνιεῖ αὐτὴν αὐτῷ γυναῖκα (Exod. 22:15b)

The recipient of this "dowry" is not immediately apparent. Depending on the definition of φερνίζω, this could be translated as: "with a dowry he will endow *her* as wife", or: "with a bride price he shall pay the bridal price for her as a wife for him" (*NETS*).

6.4.2 The מהר *in the Hebrew Bible and the Elephantine Papyri*

In the Hebrew Bible מהר consistently indicates a gift from the groom to the bride's father. Shechem offers to pay a מהר to Jacob for Dinah (Gen. 34:12). David pays one hundred Philistine foreskins to Saul for Michal (1 Sam. 18:25).[1] There is another text, which does not use the key word *mōhar*, but may reveal something about the purpose of the gift. Jacob suggests to Leah and Rachel that they should all run away from Laban (Genesis 31). Leah and Rachel agree. One of the reasons they cite is that Laban "has consumed our money" (ויאכל גם אכול את כספנו).

[1] For a detailed study of the *mōhar* and its function in society, see T. M. Lemos, *Marriage Gifts and Social Change in Ancient Palestine: 1200 BCE to 200 CE* (Cambridge, 2010).

וַתַּעַן רָחֵל֙ וְלֵאָ֔ה וַתֹּאמַ֥רְנָה לֹ֖ו הַעֹ֣וד לָ֑נוּ חֵ֚לֶק וְנַחֲלָ֔ה בְּבֵ֖ית אָבִֽינוּ׃ 15 הֲלֹ֥וא נָכְרִיֹּ֖ות נֶחְשַׁ֣בְנוּ לֹ֑ו כִּ֥י מְכָרָ֖נוּ
וַיֹּ֣אכַל גַּם־אָכֹ֔ול אֶת־כַּסְפֵּֽנוּ׃ 16 כִּ֣י כָל־הָעֹ֗שֶׁר אֲשֶׁ֤ר הִצִּיל֙ אֱלֹהִ֔ים מֵאָבִ֖ינוּ לָ֣נוּ הִ֑וא וּלְבָנֵ֣ינוּ וְעַתָּ֗ה כֹּל֙ אֲשֶׁ֣ר
אָמַ֔ר אֱלֹהִ֖ים אֵלֶ֥יךָ עֲשֵֽׂה׃

> Rachel and Leah answered and said to him: Do we still have a portion or inheritance in our father's house? 15 Are we not considered strangers by him? Because he has sold us and he has consumed our money. 16 All the wealth that God has taken from our father belongs to us and to our children. Now, do everything that God has said to you. (Gen. 31:14–6)

There are competing understandings of Leah and Rachel's answer. In one possible explanation, Leah and Rachel expected an actual "inheritance" from their father (note חלק ונחלה in Gen. 31:14). But Laban has sons who would be first in line to inherit (Gen. 31:1). The five daughters of Zelophehad *did* inherit their father's property but their case is framed as an exception. A special divine "oracle" is needed to break the rule of male inheritance (Num. 27:7–11).[1] After a complaint by the Gileadites the first oracle is rendered practically meaningless (Numbers 36). The daughters have to marry within their tribe to prevent Zelophehad's land from being transferred to another tribe.[2]

Millar Burrows gives an alternative explanation of Leah and Rachel's answer. He compares the Hebrew *mōhar* to the Akkadian *terḫatum.* He concludes: "The simplest interpretation of the complaint of Laban's daughters … would be that Laban had used up

[1] Chavel, *Oracular Law and Priestly Historiography in the Torah*, 264: "If the oracular novellas are historicized versions of the form of adjudication-records at the episodic level, which maintain the human initiative, the Priestly history has the form of their origin story, inverting the relationship so that Yahweh largely initiates the mass of legislation, but ongoing inquiry is envisioned—and prized."
[2] Kislev, 'Numbers 36,1–12', 249–51.

their "bride-price," whereas (by implication) he should have either given it to them or held it for them in trust."[1] The major commentaries have adopted this reading. Jacob gave Laban fourteen years of his time, during which his property significantly increased. Leah and Rachel expected to see a share in Laban's profit from Jacob's free labour. The ultimate goal of the מהר was not the compensation of the woman's father but the financial security of the woman and her children. Bernard Jackson even argues that the *mōhar* was, by this time, "an indirect dowry".[2]

Among the Elephantine papyri there are two marriage contracts explicitly mentioning the מהר.[3] A contract says Eshor paid a מהר of five shekels to the father of Mivtahiah (*TAD* B2.6, 449 BC). The attached list of property, however, counts the מהר among Mivtahiah's property. The same goes for the second contract. Ananiah says he has given an amount of silver to the brother of Jehoishma (*TAD* B3.8, 420 BC). The inventory, however, lists the מהר as *her* property. How did the מהר end up in the woman's possession? There are two possible answers: either the man gave the מהר directly to his own wife or no one paid anyone anything —it was a "legal fiction".[4] In these cases, the groom and the bride's father settled on a price or picked a piece of property already in the woman's possession that would nominally count as a מהר.

If the property of the מהר was nominally in the woman's possession or ultimately destined for the woman's benefit, φερνή would have been a suitable Greek equivalent. This explanation only works on the level of semantics. The LXX's syntax complicates matters.

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[1] M. Burrows, 'The Complaint of Laban's Daughters', *Journal of the American Oriental Society* 57 (1937), 259–76, at 268.
[2] B. S. Jackson, 'The 'Institutions' of Marriage and Divorce in the Hebrew Bible', *Journal of Semitic Studies* 56 (2011), 221–51, at 224.
[3] R. Yaron, 'Aramaic Marriage Contracts from Elephantine', *Journal of Semitic Studies* 3 (1958), 1–39.
[4] B. Porten, *The Elephantine Papyri in English: Three Millennia of Cross-Cultural Continuity and Change* (Atlanta, 2011[2]), 181 n. 17.

6.4.3 The Greek φερνή

The LXX's translation of the law of seduction does not use φερνή in the normal sense of "that which is brought by the wife" (*LSJ*).[1]

> Ἐὰν δὲ ἀπατήσῃ τις παρθένον ἀμνήστευτον καὶ κοιμηθῇ μετ᾽ αὐτῆς, φερνῇ φερνιεῖ αὐτὴν αὐτῷ γυναῖκα. 16 ἐὰν δὲ ἀνανεύων ἀνανεύσῃ καὶ μὴ βούληται ὁ πατὴρ αὐτῆς δοῦναι αὐτὴν αὐτῷ γυναῖκα, ἀργύριον ἀποτείσει τῷ πατρὶ καθ᾽ ὅσον ἐστὶν ἡ φερνὴ τῶν παρθένων.
>
> If someone seduces an unbetrothed virgin and sleeps with her, he shall endow her with a dowry as his wife. If he refuses and her father does not want to give her to him as a wife, he shall pay her father as much silver as the dowry of virgins is. (Exod. 22:15–6)

The Greek φερνῇ φερνιεῖ αὐτὴν may be just a straight-forward translation of the Hebrew מהר ימהרנה. The girl may be the direct object of the verb in the Hebrew text, she is not the first recipient of the money: "he will marry her by paying the bride-price (i.e., to her father)" (מהר ימהרנה). In the Greek translation, it is not immediately clear who will receive the "dowry" from the seducer: "with a dowry he will endow *her*" (φερνῇ φερνιεῖ αὐτὴν). Some have argued that the φερνίζω has the exact same meaning as the Hebrew מהר, "to pay a bride-price *for someone*". The φερνή does not go to the bride but to her father.[2] This leaves the accusative αὐτήν dangling as some kind of "adverbial accusative of respect" instead of the object of the verb.[3] This can only be true if we assume that the Greek verb here means

[1] *LSJ*, 1922.
[2] R. J. V. Hiebert, 'Deuteronomy 22:28–29 and Its Premishnaic Interpretations', *Catholic Biblical Quarterly* 56 (1994), 203–20, at 209–10; *NETS*.
[3] Hiebert, 'Deuteronomy 22:28–29 and Its Premishnaic Interpretations', 209.

something else than it does in other Greek texts. In Greek texts the girl herself receives the dowry. A Roman epitaph form Asia Minor tells the tale of a girl who died shortly after her marriage (*KILyk* I 242.3–4).[1]

> παρθένος οὖσα [κ]όρη φέρνην ἔλα[χον παρὰ πατρὸς] πολλὴν καὶ με[γάλην, οὐκ ἐδό]θην δ[ὲ πόσει].
>
> Because I was a virgin girl, I received a great and expensive dowry from my father, but I did not give it to my husband.

Although the verb φερνίζω itself is extremely rare, we would expect the direct object to indicate the recipient of the dowry. In the Greek papyri the verb is consistently used for giving a "dowry" to the girl herself.[2]

The Greek φερνή normally indicates a gift from a father to his daughter, who in turn lends her husband the right of use for the duration of the marriage (Hdt. 1.93.4; Eur., *Hipp.* 629). In Greek marriage contracts from Egypt, the φερνή remains the inalienable property of the woman. The husband has the right of use but—in contrast to Roman law—cannot do whatever he wants with the dowry. Some women in Egypt wrote petitions accusing their own husbands of taking unwarranted risks with *their* dowries (e.g., *P.Tebt.* III 776). Many marriage contracts stipulate that the dowry will return to the woman in the case of divorce. Sometimes they specify that the man is liable for an additional fine of 50 to 100 percent, especially if he committed adultery (e.g., *P.Eleph.* I 1).[3]

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[1] An alternative reconstruction reads: "… I received a great and expensive dowry from my father, but not good (enough) for my husband (οὐκ ἀγαθ]ὴν δ[ὲ πόσει])."
[2] The occurrences are: "having been endowed by my father" (πεφερνισμένη ὑπὸ τοῦ πατρός μου) in *P.Enteux.* 9.8, third century BC; "endowed by our father" (φερνισθεῖ[σα] ὑπὸ τοῦ πατρὸς ἡμῶν) in *P.Lond.* II 177.15–6, first century AD; "and when she gives her away to a man, to endow [*sc*. her]" (καὶ ἐὰν ἐγ[δ]ῶται αὐτὴν ἀνδρὶ φερ[ν]ιεῖν) in *UPZ* I 2.15, 163 BC.
[3] See Taubenschlag, *Law of Greco-Roman Egypt in the Light of the Papyri*, 90–7.

Scholars have argued that "dowry" is the *only* meaning of φερνή.[1] But there are a handful of examples proving the word was more flexible. It could describe more than a one-time gift from the woman's father to the man.[2]

1. In bilingual Egyptian-Greek marriage contracts, φερνή is attested as a translation of two different kinds of marriage gifts. Pieter Pestman grouped all Egyptian marriage contracts into three categories. Type A: the man gives a gift to the woman (*šp n s.ḥm.t*). Type B: the woman gives a sum of money to her husband (*s'nḫ*). Type C: the woman gives money to her husband in exchange for her maintenance (*ḥd n ìr ḥm.t*).[3] Greek subscripts to Egyptian marriage contracts translate gifts of both type B—a gift to the man—and of type C—a gift to the man for the sustenance of the woman—as φερνή (*P.Tebt.* II 386; *P.Dime* III 39–40).

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[1] G. Häge, *Ehegüterrechtliche Verhältnisse in den griechischen Papyri Ägyptens bis Diokletian* (Cologne, 1968), 24: "Eine andere Bedeutung als Mitgift kommt dem Wort φερνή nicht zu". S. Schorch, 'Hellenizing Women in the Biblical Tradition: The Case of LXX Genesis', *Bulletin of the International Organization for Septuagint and Cognate Studies* 41 (2008), 3–16, at 8 n. 14: "all external evidence … unanimously exhibit the meaning "dowry".

[2] There is, to my knowledge, one "classical" precedent for this use of φερνή. In Euripides' *Medea*, Medea finds out that her husband, Jason, is planning on marrying another princess, Glauce. She sends her two children with gifts—a poisoned diadem and cloak—to the bride. She describes these gifts as φερνάς (956).

> λάζυσθε φερνὰς τάσδε, παῖδες, ἐς χέρας
> καὶ τῇ τυράννῳ μακαρίᾳ νύμφῃ δότε
> φέροντες· οὗτοι δῶρα μεμπτὰ δέξεται.
> Children, take these *fernai* in your hands.
> Bring and give them to the ruler's fortunate bride.
> She will accept unsuspicious gifts. (Eur., *Med.* 956–8)

Classicists have given two explanations for this use of the word. Euripides presents a parody of marriage among the Athenian upper classes: earlier on in the play, Medea had argued that women "buy" their husbands (*Med.* 223–24). Euripides' use of φερνή is meant to "provoke the audience to reflect" on the function of marriage gifts in society, see M. Mueller, 'The Language of Reciprocity in Euripides' *Medea*', *American Journal of Philology* (2001), 471–504, at 490–1. Alternatively, the word is "anachronistic". Euripides wants to describe the archaic custom—the suitor giving gifts to the girl's family—but forgot the proper archaic word, ἔεδνα. Instead, he used the word for the marriage gift in use at his own time. D. J. Mastronarde (ed.), *Euripides: Medea* (Cambridge, 2002), 210. Such anachronisms may have served a "pedagogic" function, reminding the audience that they're watching a story from the distant past but should still take seriously its moral implications. See P. E. Easterling, 'Anachronism in Greek Tragedy', *Journal of Hellenic Studies* 105 (1985), 1–10, at 9.

[3] P. W. Pestman, *Marriage and Matrimonial Property in Ancient Egypt: A Contribution to Establishing the Legal Position of the Woman* (Leiden, 1961).

2. In a transcript of a marriage contract the φερνή does not come from the side of the bride's family alone (*P.Tebt.* III 815 fr. 4r, 223/2 BC). Ptolemaios, son of Stephanos, formally acknowledges the receipt of a dowry of 700 drachmae from his wife, Theuxena. Then the papyri says: "Stephanos provides 200 dr. out of the dowry" (παρέχει Στέφανος ἀπὸ τῆς φερ(νῆς) (δραχμὰς) σ). Of this dowry 500 drachmae were given by the bride's father and 200 by the groom's father.

> διομολογεῖ Πτολεμαῖος Στεφάνου Σαλαμείνιος τῆς ἐπιγονῆς | ἔχειν παρὰ Θευτείμης τῆς Ἡρακλείδου Κυρηνίας με|τὰ κυρίου vac. ? φερνὴν τῆς αὐτῆς θυ(γατρὸς) | Θευξένας χαλκοῦ ἰσονόμου (δραχμὰς) ψ ἐφ' ᾧι ποήσειν συγ|γραφὰς συνοικεσίου, ἐὰν δὲ . . . . πατρὸς αὐτῆς Ἡρα}κλεί[δου] . . . .ηι Θευτείμη ἢ Θευξένα τὴν | [φερνὴν ἀποδότω] παραδεχόμενος αὐτῶι τὰ ἀναλώματα | πάντα [. . . .] . κατ . . . . παρέχει Στέφανος ἀπὸ τῆς φερ(νῆς) (δραχμὰς) σ.
>
> Ptolemaios son of Stephanos, a Salaminian of the epigone, acknowledges to have received from Theutime, daughter of Herakleides from Cyrene with her guardian … the dowry of her daughter Theuxena, 700 copper drachmae, for which he shall make a marriage contract, and if … her father Herakleides … Theutime or Theuxena … receiving for himself all the expenses … Stephanos provides 200 drachmae out of the dowry. (*P.Tebt.* III 815 fr. 4r 1.2–10)[1]

These are rare exceptions to the rule, but they make an important point: for Theuxena's dowry to be valid, the word φερνή must have been comprehensible, even when used in this sense.

[1] B. P. Grenfell, A. S. Hunt, and J. G. Smyly (eds), *The Tebtunis Papyri, Volume III, Part I* (London, 1933), 297.

6.4.4 The Justice of the Law of Seduction

The Covenant Code lays out two possible consequences for the seducer. If the father refuses, the seducer still has to pay the value of a מהר. If the father agrees to give his daughter, the seducer only has to pay the מהר.

וְכִי־יְפַתֶּה אִישׁ בְּתוּלָה אֲשֶׁר לֹא־אֹרָשָׂה וְשָׁכַב עִמָּהּ מָהֹר יִמְהָרֶנָּה לּוֹ לְאִשָּׁה: 16 אִם־מָאֵן יְמָאֵן אָבִיהָ לְתִתָּהּ
לוֹ כֶּסֶף יִשְׁקֹל כְּמֹהַר הַבְּתוּלֹת: ס

> If a man seduces a virgin girl who has not been betrothed and sleeps with her, he shall make her his wife by paying the bride-price. 16 If her father refuses to give her to him, he shall weigh out silver according to the bride-price of virgins. (Exod. 22:15–6)

In the second scenario the seducer receives hardly any punishment at all. If he had pursued the girl in the normal way, he would also have to pay the מהר. How is this a *just* consequence for the crime of seduction?

The justice of the law of seduction was a matter of concern in antiquity. The Deuteronomic Code models its own law of *rape* on the Covenant Code's law of seduction, but it attaches an extra punitive measure: "because he has humiliated her, he may not divorce her all his days" (תחת אשר ענה לא יוכל שלחה כל ימיו) (Deut. 22:29).[1] The *Temple Scroll* merges these two laws, attaching the clause of no divorce from the deuteronomic law of rape to the

[1] On the literary relation between the Covenant and Deuteronomic "Codes", see Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation*.

case of seduction (11QT[a] LXVI, 8–11).[1] Philo interpreted the dowry paid by the seducer as a fine and adds two further conditions: "he [*sc.* the seducer] must not be at liberty to draw back, or to make difficulties" (μήτε ἀναδύεσθαι τὴν ἐξουσίαν ἐχέτω μήτε παραιτεῖσθαι) (*Spec.* 3.70).[2] The tannaitic rabbis did allow the seducer (המפתה in rabbinic jargon) to divorce. If he did, he would have to make three payments: "[for] indignity, [for] blemish and the [prescribed] fine" (בשת ופגם וקנס) (*m. Ketub.* 3.4).[3]

The LXX expresses a similar concern over the justice of the law of seduction. The LXX suggests that the seducer should provide the girl with a dowry, instead of her family: "*he* (i.e., the seducer) will endow her with a dowry" (φερνῇ φερνιεῖ αὐτὴν). This appears to be the interpretation of the Vulgate also: "he shall endow her" (*dotabit eam*). The translator's interpretation makes good sense if he assumed the biblical law to be governed by the same conditions as contemporary dowries: the dowry remained in principle the inalienable property of the woman. When compared to other ancient Jewish literature on the consequences of seduction, the uncommon use of the word φερνή reveals the translator's exegetical purpose. The LXX's translator sought to balance the scales of justice by arguing that the seducer, rather than the girl's family, should pay for the girl's dowry.[4]

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[1] The reasons for he Scroll's omission of "to grab" (תפש) and its use of "to seduce" (פתה) are a matter of debate. It could a case of scribal amnesia, see J. M. Tucker, 'A Closer Look at the Law(s) of Seduction and Rape in the Temple Scroll', in H. Drawnel and G. J. Brooke (eds), *Qumran Manuscripts and Their Interpretation: Disparate Traditions and Dissenting Opinions* (Leiden, forthcoming). Others have argued that the Scroll's conflation of the laws is due to a merely semantic development, see Schiffman, *Courtyards of the House of the Lord*, 534. Hauptman, by contrast, argues that the Scroll amounts to a denial of the possibility of rape, see J. Hauptman, *Rereading the Rabbis: A Woman's Voice* (Boulder, CO, 1997), 80.
[2] Colson (ed.), *Philo, Volume VII*, 518–9.
[3] Danby, *Mishnah*, 248.
[4] Joshua Levinson writes: "Every text creates its meaning by reacting to other texts … We should try to understand the text as an active participant in a multivoiced cultural discourse." J. Levinson, *The Twice Told Tale* (Jerusalem: Magnes, 2005), 26; cit. in Y. Blankovsky, 'A Silent Revolution: The Talmudic Discussion about Tort Law', *Jewish Quarterly Review* 109 (2019), 1–23, at 1. Levinson is writing about *midrash haggadah* but the same applies to early *midrash halakhah*.

6.5 ἐκδίδωμι

6.5.1 Marriage in Athens and Ptolemaic Egypt

In Athens a legal marriage consisted of two ceremonies. 1) The ἐγγύη or ἐγγύησις prior to the wedding, during which the father of the bride "promised" or "pledged" his daughter to the groom in the presence of witnesses. 2) The ἔκδοσις on the wedding day, during which the father "gave away" his daughter to the groom.[1] The precise relation between the ἐγγύη and the ἔκδοσις has been the subject of ancient and modern enquiry. Isaeus, for example, wrote an oration on behalf of the heir of Pyrrhus, whose estate was valued at three talents. The argument revolves around the question whether Phile was a legitimate or illegitimate daughter of Pyrrhus. Isaeus wrote his oration to prove the illegitimacy of Phile, alleging that she had been born of a mistress. In his oration, he refers in passing to the betrothal and giving away of Phile's mother.

> ὅτε δ᾽ ἠγγύα καὶ ἐξεδίδου ὁ Ἔνδιος τὴν γυναῖκα, ἐπετρέπετε ὑμεῖς οἱ θεῖοι τὴν τοῦ ἀδελφιδοῦ τοῦ ὑμετέρου αὐτῶν ὡς ἐξ ἑταίρας οὖσαν ἐκείνῳ ἐγγυᾶσθαι, ἄλλως τε καὶ παραγενέσθαι φάσκοντες, ὅτε ὁ ἀδελφιδοῦς ὑμῶν ἠγγυᾶτο τὴν μητέρα τὴν ταύτης κατὰ <τοὺς> νόμους ἔξειν γυναῖκα[;]
>
> Yet when Endius betrothed the woman and gave her in marriage, did you, his uncles allow your own nephew's daughter to be betrothed as his daughter by a mistress, though you declare that you were present when your nephew took her mother to be his wife in due legal form[?] (Isae., *Or.* 3.70)[2]

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[1] Harrison, *Law of Athens*, I, 1–12.
[2] E. S. Forster, *Isaeus* (Loeb Classical Library 202; Cambridge, MA, 1922), 117.

From such allusions to marriage customs, it is clear that—at least among the Athenian upper class—pledging and giving away a woman were the two constituent parts of any legal marriage.[1]

In Ptolemaic papyri the oral promise disappeared entirely. The reason for this difference between Athenian and Ptolemaic law could be chronological or geographic in nature. The oral promise could have disappeared over time by slowly growing obsolete during the Hellenistic period. Little is known, however, about marriage customs outside Athens. Other Greek cities may never have known the oral promise in the first place. The extant evidence could be interpreted both ways. Joseph Mélèze Modrzejewski argued once that "some formalities disappear, like *engyēsis*".[2] On another occasion he argued that "l'*engyê* pourrait avoir eu une portée territoriale limitée."[3] The evidence allows for both explanations: the oral promise could have disappeared over time and it could have been confined to Athens.

The ceremony of the ἔκδοσις does occur in early Ptolemaic papyri. During the second century BC, however, the formal handover from father to groom disappears from the records.[4] A marriage contract from 92 BC, for example, documents the exchange of the dowry. The couple, however, was already living together and there was no need for the father

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[1] See the texts cited in Harrison, *Law of Athens*, I, 6 n. 2.
[2] J. Mélèze Modrzejewski, 'Greek Law in the Hellenistic Period: Family and Marriage', in M. Gagarin and D. Cohen (eds), *The Cambridge Companion to Ancient Greek Law* (Cambridge, 2005), 343–54, at 349.
[3] J. Mélèze Modrzejewski, 'Papyrologie et histoire des droits de l'Antiquité', *Annuaires de l'École pratique des hautes études* (1982), 297–320, at 303.
[4] H. J. Wolff, *Written and Unwritten Marriages in Hellenistic and Postclassical Roman Law* (Philological Monographs 9; Haverford, PA, 1939), 27: "During the second century B.C. at the latest the evolution reached the point where it was no longer generally believed that *ekdosis* was a necessary condition of lawful marriage. That final stage is certainly represented by *P. Teb.* I 104 of 92 B.C.; the fact that contractants were content with the homologia means from the viewpoint of marriage law, that the feeling had grown up that a marriage valid in law could be contracted by mere *de facto* joining of the couple."

to give the bride away. Instead, the contract presupposes that the bride shall "continue" to live with the groom.

> [ἔ]στω δὲ Ἀπολλωνίαι π[α]ρὰ Φιλίσκωι πειθαρχοῦσα α[ὐ]τοῦ ὡς προσῆ[κό]ν ἐστιν γυναῖκα ἀνδρός
>
> Apollonia shall remain with Philiscus, obeying him as a wife should her husband. (*P.Tebt.* I 104.13–5)[1]

Hans Julius Wolff speculated that the ἔκδοσις "degenerated to a mere phrase".[2] The custom became virtually obsolete and only lingered in the records as a legal fiction. There were good reasons for this development.

1. The greater part of marriages in Egypt were informal. Because formal agreements deal almost exclusively with the division of property,[3] such agreements were of no use to people without property. For most people the implicit understanding that they were "husband" and "wife" was equivalent to legal marriage. William Edgerton writes:

> a legal marriage was constituted either by the mere fact that the couple regarded themselves as husband and wife or by their explicit or implicit public recognition of the fact that they so regarded themselves.[4]

[1] Grenfell, Hunt, and Smyly (eds), *Tebtunis Papyri, Part I*, 452.
[2] Wolff, *Written and Unwritten Marriages in Hellenistic and Postclassical Roman Law*, 18.
[3] W. F. Edgerton, *Notes on Egyptian Marriage Chiefly in the Ptolemaic Period* (Studies in Ancient Oriental Civilization 1; Chicago, 1931), 1–2.
[4] Edgerton, *Notes on Egyptian Marriage Chiefly in the Ptolemaic Period*, 5.

2. The rise of *written* contracts documenting the value of the dowry made any oral agreement superfluous.[1] The Athenian ἔκδοσις was an agreement between the bride's father and the groom in the presence of witnesses. The lawsuit between Endius and Xenocles illustrates that the reliability of witnesses was sometimes contested.

   The case, for which Isaeus wrote the defence, can be summarised as follows (Isae., *Pyrrhus*).[2] Pyrrhus dies and leaves his property to his sister's son, Endius. Endius dies. Xenocles claims that his wife, Phile, was Pyrrhus's daughter and therefore his heir. Xenocles's claim turns out to be false and he is convicted for perjury. Nicodemus, Pyrrhus's brother-in-law, testifies that he gave his sister in marriage to Pyrrhus and that Phile is their daughter. Nicodemus is now, like Xenocles, accused of perjury. It turns out that witnesses present at the ceremony of the ἔκδοσις were close family members who had a conflict of interest: telling the truth might mean that—in this specific case—their granddaughter's husband would not inherit.

These are major factors that contributed to the decline of the ἔκδοσις. The ἔκδοσις *does*, however, occur in documents from Ptolemaic Egypt. Some Greek families stuck to the custom of formally "handing over" the bride to the groom. A will from the late third century BC specifies that after a man's death his wife should "give away" their two daughters.

> ἐγδόσθω δ[ὲ Ἀρτε]||μιδώ[ρα τὰς θυ]γατέρας Τετ̣[. . .] καὶ Νικοῦν, διδοῦσα φερνὴν
> ἑκάστηι ἣν ἂν̣ [αὐτῆι] | φαίνη[ται ἀπὸ τῶ]ν ὑπαρχόν[των.] ἐὰν δέ [τ]ι πάθηι

[1] U. Yiftach-Firanko, *Marriage and Marital Arrangements: A History of the Greek Marriage Documents in Egypt: 4th century BCE–4th century CE* (Munich, 2003); Mélèze Modrzejewski, 'Greek Law in the Hellenistic Period', 343–54.
[2] For a summary of the argument, see W. Wyse (ed.), *The Speeches of Isaeus with Critical and Explanatory Notes* (Cambridge, 2013), 273–82.

[Ἀρ]τεμιδώρα πρὸ τοῦ ἐ[γδεδόσθαι] | τὰς θυ̣[γατέρας, ἔσ]τω τὸ ἥμ̣[ισυ τοῦ] π̣ρ̣ο̣[γε]γραμμένου μου ἀμπελῶνος [καὶ τῶν] | συγκυ̣[ρόντων αὐ]τῶι πάντων Ἀριστοκράτους τοῦ πρεσβυτέρου μ[οῦ] υἱο[ῦ]

Artemidora should give her daughters, Tet… and Niko, giving each of them a dowry from these possessions as she seems fit. But if Artemidora dies before giving away our daughters, halve of my aforementioned vineyard and everything that happens to it shall belong to Aristokratos, my eldest son. (*P.Petr.* (2) 1 25.25–30, 226/5 BC)[1]

The custom of giving away daughters continued to exist in the more traditional Greek-speaking community. There were some differences from the Athenian custom. In the Ptolemaic papyri, it was not only the bride's father or the male guardian who could give his daughter away—but also the bride's mother. The oldest extant written marriage contract also attests to this practice.

λαμβάνει Ἡρακλείδης | Δημητρίαν Κώιαν γυναῖκα γνησίαν παρὰ τοῦ πατρὸς Λεπτίνου Κώιου καὶ τῆς μητρὸς Φιλωτίδος ἐλεύθερος | ἐλευθέραν

Herakleides (the Temnitan) takes as his lawful wife Demetria the Koan, a free man a free woman, from her father Leptines, Koan, and her mother Philotis (*P.Eleph.* I 1.2–4, 311 BC).[2]

In exceptional cases the bride could give herself away in marriage to her own groom:

[1] Cf. *P.Petr.* (2) 1 2.31, where the same word is used.
[2] Rowlandson, *Women and Society in Greek and Roman Egypt*, 165–6 [no. 123].

το[ῦ Ἀ]ρσινοίτου νομοῦ. ἀγαθῆι τύχηι. ἐξέδοτο ἑαυτὴν Ὀλυ[μ]πιὰς Διονυσίου | Μᾳ[κ]έτα μετὰ κυρίου τοῦ ἑαυτῆς πατρὸς Διονυσίου Μακεδόνος τῆς δευτέ|ρας ἱππαρχίας ἑκατονταρούρου Ἀνταίωι Ἀθηναίωι τῶν Κινέου τῆς δευ|τέρ[α]ς ἱππαρχίας ἑκαντοντ[α]ρούρωι [εἶναι] γυναῖκα γαμετὴν φερνὴν

Olympias daughter of Dionysios son of Maketas, with her own father Dionysios … as her guardian, has given herself to Antaios, an Athenian …, so as to be his wedded wife." (*P.Giss.* I 2.8–11, 173 BC).[1]

There was no necessity for this custom. Other marriage contracts specify the value of the dowry and the conditions of the marriage without mentioning the "giving away". The courts of Egypt recognised the validity of marriage entered in an informal way and the validity of documents without an ἔκδοσις-clause. The value of the "giving away" was merely cultural: it distinguished the marriage as a traditionally Greek, formal, upperclass marriage.

6.5.2 A Semantic and Legal Ambiguity in Lev. 21:3

The Holiness Code in Leviticus details for which family members a priest may go into mourning, and for which family members he may not. Since a priest would defile himself as soon as he touched a corpse or as soon as he even stepped into a room containing a corpse, the Holiness Code gives a precise list of family members for whom a priest "shall become impure" (טמא *nif'al*) (21:2–3). In other words, a list of family members for whom a priest is obliged to participate in the funerary rites. The list consist of close family members, including a sister who has not "belonged to a man" (היה לאיש).

[1] Rowlandson, *Women and Society in Greek and Roman Egypt*, 168–9 [no. 126].

וַיֹּאמֶר יְהוָה אֶל־מֹשֶׁה אֱמֹר אֶל־הַכֹּהֲנִים בְּנֵי אַהֲרֹן וְאָמַרְתָּ אֲלֵהֶם לְנֶפֶשׁ לֹא־יִטַּמָּא בְּעַמָּיו: 2 כִּי אִם־לִשְׁאֵרוֹ
הַקָּרֹב אֵלָיו לְאִמּוֹ וּלְאָבִיו וְלִבְנוֹ וּלְבִתּוֹ וּלְאָחִיו: 3 וְלַאֲחֹתוֹ הַבְּתוּלָה הַקְּרוֹבָה אֵלָיו אֲשֶׁר לֹא־הָיְתָה לְאִישׁ לָהּ
יִטַּמָּא:

YHWH said to Moses: Speak to the priests, the sons of Aaron. You shall say to them: no one of his people shall be defiled, 2 except for a family member close to him, his mother, his father, his son, his daughter, his brother, 3 his virgin sister, who is close to him, who has not belonged to a man—because of her he may be defiled. (Lev. 21:1–3)

It is not immediately clear what the idiom היה לאיש in itself means, and the combination of the idiom and the condition of virginity (note בתולה) complicates matters further. In Biblical Hebrew היה לאיש can refer to the act of getting married or the state of being married:

וַיִּקַּח בֹּעַז אֶת־רוּת וַתְּהִי־לוֹ לְאִשָּׁה וַיָּבֹא אֵלֶיהָ וַיִּתֵּן יְהוָה לָהּ הֵרָיוֹן וַתֵּלֶד בֵּן:

Boaz took Ruth and she belonged to him as wife. He came in to her, YHWH made her pregnant, and she gave birth to a son. (Ruth 4:13)

בֶּן־אֲבִינָדָב כָּל־נָפַת דֹּאר טָפַת בַּת־שְׁלֹמֹה הָיְתָה לוֹ לְאִשָּׁה: ס

Abinadab's son (in) all the height of Doar. Taphat, Solomon's daughter, belonged to him as wife. (1 Kgs. 4:11)

There is a possibility that the same expression refers to sex. That seems to be the meaning of היה לאיש in Hosea.

וָאֹמַר אֵלֶיהָ יָמִים רַבִּים תֵּשְׁבִי לִי לֹא תִזְנִי וְלֹא תִהְיִי לְאִישׁ וְגַם־אֲנִי אֵלָיְךִ׃

I said to her: Many days you shall wait for me. You shall not fornicate, and not belong to a man—not even I to you. (Hos. 3:3)

Hosea has already "bought" (כרה) the woman for fifteen shekels and an amount of barley (Hos. 3:2). This woman could reasonably be said already to "belong to" (–היה ל) Hosea. Hosea's words in v. 3 make more sense if היה לאיש does not just refer to marriage. If the expression also indicates sex Hosea's prohibition is a "total ban on all sexual activity".[1] Ruth uses the expression in the same sense.

שֹׁבְנָה בְנֹתַי֙ לֵּ֣כְנָ כִּי זָקַ֔נְתִּי מִהְיוֹת֙ לְאִ֔ישׁ כִּ֥י אָמַ֖רְתִּי יֶשׁ־לִ֣י תִקְוָ֑ה גַּ֚ם הָיִ֣יתִי הַלַּ֔יְלָה לְאִ֖ישׁ וְגַ֥ם יָלַ֖דְתִּי בָּנִֽים׃

My daughters, return, go! I am too old to belong to a man. If I were to say: there is still hope for me, then I would belong to a man tonight and I would give birth to children. (Ruth 1:12; cf. Ezek. 16:15)

The context is suggestive of the meaning. The timing of the action—"tonight"—and its consequence—"giving birth to children"—suggest that היה לאיש does not just refer to the ceremony or status of marriage but to sexual intercourse.

The LXX's translator rendered היה לאיש as "to give away" (ἐκδίδωμι) in Leviticus.

καὶ ἐπ᾽ ἀδελφῇ παρθένῳ τῇ ἐγγιζούσῃ αὐτῷ τῇ μὴ ἐκδεδομένῃ ἀνδρί, ἐπὶ τούτοις μιανθήσεται.

[1] F. I. Andersen and D. N. Freedman (eds), *Hosea* (Anchor Yale Bible Commentary 24; New York, 1980), 303: "a total ban on all sexual activity, inside marriage as well as outside it."

> … and because of a virgin sister who is close to him, who has not been given away to a man, because of these shall he be defiled. (Lev. 21:3)

"To give away" (ἐκδίδωμι) is not in itself a *special* word. It occurs frequently in Greek literature and refers to all kinds of transactions (money, land, documents etc.).[1] This particular use—the passive voice with a woman as subject—refers to "giving away" in marriage, as attested in the documents cited above. To contemporary readers this was the only ceremony marking the beginning of a formal marriage. Egyptian marriages could start informally—i.e., just by living together—or marked by festive ceremony—which celebrated the occasion but did not make a difference for the marriage's legal status. Traditional Greek marriages were different: they were marked by a ceremony where a parent "gave away" his or her daughter to the groom. The papyri show that Egyptian Greeks attached cultural value to this ceremony and stuck to tradition—even if there was no parent or guardian available to give the bride away. The LXX, then, is only comprehensible with a knowledge of marriage customs in Ptolemaic Egypt.[2]

The LXX does not stand alone in its effort to pinpoint for which sisters a priest may go into mourning. The polyvalence of היה לאיש created a problem for the interpretation of Lev. 21:3. If היה לאיש is constructed strictly as indicating marriage, a priest may only bury his unmarried sister. What would happen if the girl was married but the marriage never consummated? If, however, היה לאיש is construed leniently it might include sisters who are merely betrothed. What would happen if the girl died during the period between betrothal and

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[1] *LSJ*, 504; Preisigke, *Wörterbuch der griechischen Papyrusurkunden*, I, 441 [1925].

[2] ἐκδίδωμι occurs in the same sense in Exod. 2:21: "he gave Zipporah his daughter away to Moses as wife" (καὶ ἐξέδοτο Σεπφωραν τὴν θυγατέρα αὐτοῦ Μωυσῇ γυναῖκα). But here, it translates נתן. 1 Macc. 10:58; Sir. 7:25The LXX interprets this as a sister "who *has not been given away* to a man" (τῇ μὴ ἐκδεδομένῃ ἀνδρί). Similarly, the translator of the book of Ben Sira rendered "bring out a daughter!" (הוצא בת) as "give a daughter away!" (ἔκδου θυγατέρα) in 7:25, perhaps reflecting subtly different assumptions about betrothal rites between the sage in Jerusalem and the translator resident in Ptolemaic Egypt.

marriage? What if the sister was betrothed but the betrothal broken off? Would a priest be allowed to bury his sister in these cases?

The rabbis present various solutions.

תנו רבנן אחותו ארוסה רבי מאיר ור' יהודה אומרים מטמא לה רבי יוסי ורבי שמעון אומרים אין מטמא לה

Our Rabbis taught: For a betrothed sister, R. Meir and R. Judah said, [a common priest] may defile himself. R. Jose and R. Simeon said: He may not defile himself for her. (*b. Yebam.* 60a)[1]

The opinion of R. Jose and R. Simeon has a parallel in the Targum Pseudo-Jonathan:

ולאחתיה בתולתא דקריבא ליה ולא מארסא ודעד כדון לא הות מיבעלא לגבר לה יסתאב

also for his virgin sister who is close to him, who is not betrothed nor as yet married to a man, for her he may defile himself.[2]

The alternative interpretation of R. Meir and R. Judah—which allows a priest to bury his betrothed sister—has parallels in the *Vulgate* and Maimonides' *Mishneh Torah*.

et sorore virgine quae non est nupta viro

and for a virgin sister who has not been married to a man (*V*)

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[1] Epstein (ed.), *Babylonian Talmud*, ad loc.
[2] M. J. McNamara, M. Maher, R. Hayward (eds), *Targum Neofiti 1: Leviticus and Targum Pseudo-Jonathan: Leviticus* (Aramaic Bible 3; Collegeville, MN, 1994), ad loc.

אֲשֶׁר לֹא הָיְתָה לְאִישׁ פְּרָט לַאֲרוּסָה שֶׁאֵינוֹ מְטַמֵּא לָהּ אַף עַל פִּי שֶׁהִיא אֲרוּסָה לְכֹהֵן

> *that hath had no husband*—this excludes a betrothed sister, for *whom* he may not defile himself, even if the man to whom she is betrothed is a priest. (*Mishneh Torah, Shoftim* 4.2.10)[1]

Rashi's commentary is more specific. He glosses "who did not belong to a man" with "to the bed" (למשכב). Only if the priest's sister's marriage was not consummated, is he allowed to bury her.

The LXX is more than an update or an actualisation—an attempt to express old ideas in new words. The LXX's unusual translation of היה לאיש shows that the debate over the priest's participation in funerals was already going on long before the rise of the rabbinic movement. The LXX's solution to the semantic and legal ambiguity was a particularly Egyptian one—outside of the frame of Egyptian marriage customs it does not make sense. It presupposes that "giving away" (ἐκδίδωμι) a girl was the only legal requirement for marriage.

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[1] A. M. Hershman (ed.), *The Code of Maimonides, Book Fourteen: The Book of Judges* (New Haven, CT, 1949), 168. Maimonides' opinion is more complex. He attempts to differentiate precisely between the two criteria of Lev. 21:3—i.e., "virginity" and not having "belonged" to a man.

> אֲחוֹתוֹ הַנְּשׂוּאָה אֵינוֹ מְטַמֵּא לָהּ אַף עַל פִּי שֶׁהִיא נְשׂוּאָה לְכֹהֵן. שֶׁנֶּאֱמַר "הַבְּתוּלָה הַקְּרוֹבָה אֵלָיו אֲשֶׁר לֹא הָיְתָה לְאִישׁ". הַבְּתוּלָה פְּרָט לַאֲנוּסָה וּמְפֻתָּה. יָכוֹל שֶׁאֲנִי מוֹצִיא אֶת הַבּוֹגֶרֶת וּמֵכַת עֵץ תַּלְמוּד לוֹמַר אֲשֶׁר לֹא הָיְתָה לְאִישׁ מִי שֶׁהָיְתָה בִּידֵי אִישׁ. אֲשֶׁר לֹא הָיְתָה לְאִישׁ פְּרָט לַאֲרוּסָה שֶׁאֵינוֹ מְטַמֵּא לָהּ אַף עַל פִּי שֶׁהִיא אֲרוּסָה לְכֹהֵן
>
> He is forbidden to defile himself for his married sister even if her husband is a priest, as it is aid *and for his sister a virgin, that is near unto him, that hath had no husband* (Lev. 21:3). *A virgin*—this excludes one that was violated or seduced. Lest one conclude that a sister who is of age, or who has lost her virginity through an accident, be also excluded, Scripture adds *that hath had no husband*, that is, whose changed condition was caused by a man; *that hath had no husband*—this excludes a betrothed sister, for *whom* he may not defile himself, even if the man to whom she is betrothed is a priest.

In Maimonides' opinion, the criterium of virginity takes precedence—and therefore a priest is not allowed to bury a sister who was raped or seduced. But the criteria are also complementary: the law's exception only applies to a girl who lost her signs of virginity (בתולות) *because* of sex with a man (היה לאיש). Maimonides wants to have his cake and eat it. He takes the two criteria as independent *and* complementary.

6.5.3 P.Yadin 18

A contract from the Judean Desert uses the very same word to describe the marriage between Chtousion and Shelamzion, a Jewess.[1]

> ἐξ[έ]δοτ[ο Ἰούδα]ς Ἐλεαζάρου τοῦ καὶ [Χθουσί]ων[ος Σ]ελαμψ[ι]ώνην τὴν ἰδίαν θυγατέραν αὐτοῦ παρθένον Ἰούδατι ἐπικαλουμένῳ Κίμβερι υἱῷ Ἀνανίου Σωμαλα, ἀμφότεροι ἀπὸ κώμης Αἰνγαδῶν τῆς Ἰουδαία[ς] ἐνθάδε καταμένοντ[ες], εἶναι τὴν Σελαμψιώ[νην] Ἰούδατι Κίμβερι γυναῖκαν γαμετὴν πρὸς γάμου κ[οι]νωνίαν κατὰ τοὺς νόμους
>
> Judah son of Eleazar, also known as Khthousion, has given over Shelamzion, his very own daughter, a virgin, to Judah, surnamed Cimber, son of Ananias son of Somalas, both of the village of Gedi in Judaea residing here, for Shelamzion to be a wedded wife to Judah Cimber for the partnership of marriage according to the laws. (*P.Yadin* 18.32–9, second century AD)

Scholars offer different readings of this marriage contract. Ranon Katzoff, on the one hand, argues that this is effectively a *ketubah* in accordance with rabbinic halakhah (cf. *m. Yebam.* 13.2).[2] Uri Yiftach-Firanko, on the other hand, maintains that "what has been performed here is the good old Greek *ekdosis*."[3]

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[1] U. Yiftach-Firanko, 'Judaean Desert Marriage Documents and *ekdosis* in the Greek Law of the Roman Period', in R. Katzoff and D. Schaps (eds), *Law in the Documents of the Judaean Desert* (Supplements to the Journal for the Study of Judaism 96; Leiden, 2005), 67–84, at 79.
[2] N. Lewis, R. Katzoff, and J. C. Greenfield, 'P.Yadin 18', *Israel Exploration Journal* 37 (1987), 229–50; cf. N. Lewis, *The Documents from the Bar-Kokhba Period in the Cave of Letters: Greek Papyri* (Jerusalem, 1989), 130; T. Ilan, 'Premarital Cohabitation in Ancient Judea: The Evidence of the Babatha Archive and the Mishnah (Ketubbot 1.4)', *Harvard Theological Review* 86 (1993), 247–64, at 252.
[3] Yiftach-Firanko, 'Judaean Desert Marriage Documents and *ekdosis* in the Greek Law of the Roman Period', 80.

That sharp distinction between Jewish and Greek marriage recedes from view because of the LXX. The LXX already attest to the practice of giving away one's daughter in marriage—more than four centuries before Judah and Shelamzion got married.

6.6 Betrothal

6.6.1 In the Torah

The final example is not just one word that invokes a particular legal frame—it is a series of misunderstandings informed by contemporary culture. Since the "pledge" (ἐγγύη or ἐγγύησις) of the bride grew obsolete, there no longer was a period of betrothal—a period prior to marriage that incurred any legal obligations.[1] In this respect Ptolemaic law differed from both Athenian and biblical law. In the Hebrew Bible betrothing a woman incurs legal obligations. Roland de Vaux argues: "Legal texts … show that engagement was a recognized custom with juridical consequences."[2] The Covenant Code holds that a man who betroths a slave girl to his son should treat her as if she were his own daughter:

וְאִם־לִבְנוֹ יִיעָדֶנָּה כְּמִשְׁפַּט הַבָּנוֹת יַעֲשֶׂה־לָּהּ׃

> If he has betrothed her to his son, he will treat her according to the judgment of the daughters (Exod. 21:9)

[1] E. Lüddeckens, *Ägyptische Eheverträge* (Ägyptologische Abhandlungen 1; Wiesbaden, 1960), 5: "Wir wissen auch nichts genaues darüber, ob es damals, wie jetzt in der islamischen Gegenwart, üblich war, der Ehe eine Verlobungszeit vorangehen zu lassen, die eine zwar losere, aber juristisch doch auch schon verpflichtende Verbindung bedeutete."
[2] De Vaux, *Ancient Israel*, 32.

It is unclear what the "judgment of the daughters" means. If the owner betroths the girl to himself and breaks off the engagement, he has to "redeem" (פדה) the girl and cannot sell her to a "foreign nation" (עם נכרי) (21:8). A slave owner does not normally have these responsibilities towards a slave girl. Under normal circumstances he does not have to let his slave go free if she "displeases her master" (רעה בעיני אדניה) and he can sell the girl to whomever he wants. The rights of a betrothed slave girl are different from the rights of a unbetrothed slave girl. The betrothal had legal consequences.

The Deuteronomic Code distinguishes between the rape of a married woman, an unbetrothed virgin, and a betrothed virgin (22:22–9). If a man has sex with a virgin betrothed to another man, either both of them should be executed or—if it happened in the field—the rapist alone should be executed (22:23–7). The Deuteronomic Code recognises the legal status of a betrothed girl, effectively equating the "virgin girl *betrothed* to a man" (נער בתולה מארשה לאיש) with "his neighbour's *wife*" (אשת רעהו) (22:23–4).[1]

כִּי יִהְיֶה֩ נַ֨עֲרָ בְתוּלָ֜ה מְאֹרָשָׂ֗ה לְאִ֤ישׁ וּמְצָאָהּ֙ אִ֣ישׁ בָּעִ֔יר וְשָׁכַ֖ב עִמָּ֑הּ׃ 24 וְהוֹצֵאתֶ֣ם אֶת־שְׁנֵיהֶ֗ם אֶל־שַׁ֙עַר֙ ו
הָעִ֣יר הַה֔וּא וּסְקַלְתֶּ֥ם אֹתָ֛ם בָּאֲבָנִ֖ים וָמֵ֑תוּ֙ אֶת־הַנַּ֣עֲרָ֔ עַל־דְּבַר֙ אֲשֶׁ֣ר לֹא־צָעֲקָ֔ה בָּעִ֖יר וְאֶת־הָאִ֣ישׁ עַל־דְּבַ֔ר
אֲשֶׁר־עִנָּ֖ה אֶת־אֵ֣שֶׁת רֵעֵ֑הוּ וּבָעַרְתָּ֥ הָרָ֖ע מִקִּרְבֶּֽךָ׃ ס

If it happens that a virgin is betrothed to a man, he finds her in the city, sleeps with her, and they are found, 24 then you shall bring both of them to the gate of that city and stone them with stones—so that they die. The girl because she did not cry out in the city. The man because he humiliated his neighbour's wife. You shall remove evil from your midst. (Deut. 22:23–4)

[1] Neufeld, *Ancient Hebrew Marriage Laws*, 145–7; D. I. Block, 'Marriage and Family in Ancient Israel', in K. M. Campbell (ed.), *Marriage and Family in the Biblical World* (Downers Grove, IL, 2003), 33–102, at 58.

6.6.2 In the LXX

The LXX's translator misunderstood the nature of the biblical betrothal. They translated "you shall betroth a woman" (אשה תארש) into "you shall take a wife" (γυναῖκα λήμψῃ).

אִשָּׁה תְאָרֵשׂ וְאִישׁ אַחֵר יִשְׁגָּלֶנָּה בַּיִת תִּבְנֶה וְלֹא־תֵשֵׁב בּוֹ כֶּרֶם תִּטַּע וְלֹא תְחַלְּלֶנּוּ׃

> You shall betroth a woman but another man shall violate her. You shall build a house but not live in it. You shall plant a vineyard but not use it.

> γυναῖκα λήμψῃ, καὶ ἀνὴρ ἕτερος ἕξει αὐτήν· οἰκίαν οἰκοδομήσεις καὶ οὐκ οἰκήσεις ἐν αὐτῇ· ἀμπελῶνα φυτεύσεις καὶ οὐ τρυγήσεις αὐτόν·
> You will take a woman but another man will have her. You will build a house but not live in it. You sill plant a vineyard but not harvest it. (Deut. 28:30)

In the original the woman is raped *before* marriage, but in the translation the woman is snatched away *after* marriage. "To take a woman" (γυναῖκα λαμβάνειν) is a common formula in Greek literature on marriage and marriage documents.[1] There is a certain irony to this translation. Deuteronomy 28 was in itself an interpretation of Esarhaddon's *Succession Treaty* but the *Treaty* spoke of married women: "May Venus … before your eye make your wives lie in the lap of your enemy" (428).[2] The author of Deuteronomy 28 "heightened" this curse by

[1] See *LSJ*, 1026–7, under λαμβάνω II.1.c.
[2] On the relation between Deuteronomy 28 and the Succession Treaty, see J. Lauinger, 'Esarhaddon's Succession Treaty at Tell Tayinat: Text and Commentary', *Journal of Cuneiform Studies* 62 (2012), 87–123; B. M. Levinson and J. Stackert, 'Between the Covenant Code and Esarhaddon's Succession Treaty: Deuteronomy 13 and the Composition of Deuteronomy', *Journal of Ancient Judaism* 3 (2012), 123–40; H. U. Steymans, 'Deuteronomy 28 and Tell Tayinat', *Verbum et Ecclesia* 34 (2013), art. 870.

having the violation occur *before* marriage.[1] The LXX undoes the effort by "ton[ing] down the language".[2]

The translator's failure to recognise the difference between "betrothing" and "taking" a woman is especially surprising since deuteronomic law is explicit about the distinction:

וּמִי־הָאִישׁ אֲשֶׁר־אֵרַשׂ אִשָּׁה וְלֹא לְקָחָהּ יֵלֵךְ וְיָשֹׁב לְבֵיתוֹ פֶּן־יָמוּת בַּמִּלְחָמָה וְאִישׁ אַחֵר יְקָחֶנָּה׃

The man who has betrothed a woman but has not taken her shall go and return to his home, lest he die in battle and another man takes her. (Deut. 20:7)

Elsewhere, the LXX's translators render "to betroth" (ארש and יעד) either as "to promise" (καθομολογέω) or as "to court" (μνηστεύω).

καθομολογέω

The Hebrew יעד occurs twice in the Hebrew Bible with a man as subject and a woman as object—both in the passage on the slave girl.[3] The LXX translates it as καθομολογέω both times.

וְכִי־יִמְכֹּר אִישׁ אֶת־בִּתּוֹ לְאָמָה לֹא תֵצֵא כְּצֵאת הָעֲבָדִים׃ 8 אִם־רָעָה בְּעֵינֵי אֲדֹנֶיהָ אֲשֶׁר־לֹא יְעָדָהּ וְהֶפְדָּהּ
לְעַם נָכְרִי לֹא־יִמְשֹׁל לְמָכְרָהּ בְּבִגְדוֹ־בָהּ׃ 9 וְאִם־לִבְנוֹ יְיַעֲדֶנָּה כְּמִשְׁפַּט הַבָּנוֹת יַעֲשֶׂה־לָּהּ׃

If a man sells his daughter as a slave girl, she shall not go free when the slaves go free. 8 If she is evil in her master's eyes, who betrothed her to himself, then he shall

[1] Hendel and Joosten, *How Old is the Hebrew Bible?*, 111: "The curse of wife and home … is heightened in Hebrew by making the violation of the wife occur before marriage. The man has not yet consummated the marriage when the "betrothed" is violated."
[2] J. W. Wevers, *Notes on the Greek Text of Deuteronomy* (Society of Biblical Literature Septuagint and Cognate Series 39; Atlanta, GA, 1995), 440: "LXX tones down the language somewhat".
[3] *HALOT*, 419.

redeem her. He shall not have the authority to sell her, because he betrayed her. 9 If he betroths her to his son, then he shall do unto her according to the verdict of the daughters. (Exod. 21:7–9)

ἐὰν δέ τις ἀποδῶται τὴν ἑαυτοῦ θυγατέρα οἰκέτιν, οὐκ ἀπελεύσεται ὥσπερ ἀποτρέχουσιν αἱ δοῦλαι.
8 ἐὰν μὴ εὐαρεστήσῃ τῷ κυρίῳ αὐτῆς ἣν αὐτῷ καθωμολογήσατο, ἀπολυτρώσει αὐτήν· ἔθνει δὲ ἀλλοτρίῳ οὐ κύριός ἐστιν πωλεῖν αὐτήν, ὅτι ἠθέτησεν ἐν αὐτῇ. 9 ἐὰν δὲ τῷ υἱῷ καθομολογήσηται αὐτήν, κατὰ τὸ δικαίωμα τῶν θυγατέρων ποιήσει αὐτῇ.
If someone sells his own daughter as *oiketis*, she shall go free when the slave-girls depart. 8 If she, whom he *kathomologesato* to him, does not please her owner, then he will release her. He does not have the authority to sell her to another nation, because he rejected her. 9 If he *kathomologesetai* her to his son, then he will do to her according to the decree of the daughters. (Exod. 21:7–9)

The Hebrew "to betroth" (ארש) occurs ten times in the Hebrew Bible.[1] The LXX translates the verb as μνηστεύω eight times, and as λαμβάνω two times. *LSJ* offers "to betroth" as a definition for καθομολογέω and μνηστεύω, but it appears that the two verbs were used in different contexts and with different nuances.[2]

Greek καθομολογέω can refer to an oral agreement between the bride's father and the groom and overlaps with ἐγγυάω, "to betroth". This is clear from a short story about the betrothal between Tiberias and Claudia told by Plutarch:

[1] *HALOT*, 91.
[2] *LSJ*, 856, 1140.

> ἑστιωμένων γὰρ ἐν ταὐτῷ τῶν ἱερέων, προσαγορεύσας τὸν Τιβέριον καὶ φιλοφρονηθείς, αὐτὸς ἐμνᾶτο τῇ θυγατρὶ νυμφίον. δεξαμένου δὲ ἀσμένως ἐκείνου καὶ τῆς καταινέσεως οὕτω γενομένης, εἰσιὼν ὁ Ἄππιος οἴκαδε πρὸς αὐτὸν ἀπὸ τῆς θύρας εὐθὺς ἐκάλει τὴν γυναῖκα μεγάλῃ τῇ φωνῇ βοῶν, "Ὦ Ἀντιστία, τὴν Κλαυδίαν ἡμῶν ἀνδρὶ καθωμολόγηκα."
>
> For Appius, … at a banquet of the augurs addressed Tiberius with words of friendship, and asked him to become the husband of his daughter. Tiberius gladly accepted the invitation, and the betrothal was thus arranged, and when Appius returned home, from the doorway where he stood he called his wife and cried in a loud voice: "Antistia, I have betrothed our Claudia. (Plut., *Tiberius and Gaius Gracchus* 4).[1]

In the papyri καθομολογέω occurs only once. The papyrus has nothing to do with betrothal, however. It is about the decoration of bathhouse floors (*P.Cair.Zen.* IV 59665.18–9).[2]

μνηστεύω

The LXX's use of μνηστεύω in the context of betrothal is surprising. Michael Satlow writes:

[1] B. Perrin (ed.), *Plutarch, Lives, Volume VI* (Loeb Classical Library 98; Cambridge, MA, 1918), 151.
[2] "He promises that the remaining floors are plastered." ([τὰ] δὲ λοι[πὰ ἐδ]άφ\η/ καταπλ̣[αστὰ | ὄν]τα κα[θομο]λογήσει).

> Not fully understanding the biblical notion of inchoate marriage, the Septuagint's translators replace it with a word denoting a semiformal agreement that marriage will take place.[1]

Even Satlow's "*semiformal* agreement" is a generous definition of μνηστεύω. Greek literature uses the verb for men wooing, courting, and pursuing women. These actions do not necessarily involve the bride's father.[2] In this respect Greek μνηστεύω is substantially different from Hebrew ארש.

Hebrew ארש stands or falls by an agreement between the bride's father and the groom. In 1 Sam. 18:25, for example, Saul's courtiers report to David that the king requires a bride-price (מהר) of one hundred foreskins of the Philistines for his daughter Michal. David obliges, delivers the foreskins, and marries Michal. Later on, David sends a message to Ishbosheth, the son of the now-deceased Saul:

> תְּנָה אֶת־אִשְׁתִּי אֶת־מִיכַל אֲשֶׁר אֵרַשְׂתִּי לִי בְּמֵאָה עָרְלוֹת פְּלִשְׁתִּים
>
> Give me my wife, Michal, whom I betrothed with a hundred Philistine foreskins. (2 Sam. 3:14b)

The example illustrates the patriarchal nature of the betrothal in the Hebrew Bible. It is a deal between the bride's father (or a close male family member) and the groom—it does not necessarily involve the girl at all.[3]

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[1] Satlow, *Jewish Marriage in Antiquity*, 70.
[2] Preisigke, *Wörterbuch*, II, 113 [1927].
[3] E. Fuchs, 'Structure and Patriarchal Functions in the Biblical Betrothal Type-Scene: Some Preliminary Notes', *Journal of Feminist Studies in Religion* 3 (1987), 7–13.

Greek μνηστεύω reflects a different configuration of the parties involved. To μνηστεύειν a woman always involves the woman herself. In the *Odyssey*, for example, Odysseus scolds the suitors:

> οἵ τ᾽ ἀγαθήν τε γυναῖκα καὶ ἀφνειοῖο θύγατρα
> μνηστεύειν ἐθέλωσι καὶ ἀλλήλοις ἐρίσωσιν,
> αὐτοὶ τοί γ᾽ ἀπάγουσι βόας καὶ ἴφια μῆλα,
> κούρης δαῖτα φίλοισι, καὶ ἀγλαὰ δῶρα διδοῦσιν·
> ἀλλ᾽ οὐκ ἀλλότριον βίοτον νήποινον ἔδουσιν.
> Those who wish to woo a lady of worth and the daughter of a rich man and vie with one another, these themselves bring cattle and fat sheep, a banquet for the friends of the bride, and give to her glorious gifts; they do not devour the livelihood of another without atonement. (Homer, *Od.* 18.276–80)[1]

It is this verb, μνηστεύω, that the LXX's translators use to render ארש eight times. This has far-reaching legal consequences. The Deuteronomic Code includes a series of four scenarios of sexual misconduct, each with a different punishment. The gravity of the punishment depends primarily on the marital status of the girl; the man's status is assumed irrelevant.

1. Adultery proper, i.e., a man has sex with a *married* woman (אשה בעֻלת בעל). Punishment: both condemned to death (Deut 22:22).

[1] A. T. Murray and G. E. Dimock (eds), *Homer, The Odyssey, Volume II* (Loeb Classical Library 105; Cambridge, MA, 1919), 221.

2. Rape of a betrothed girl (נער בתולה מארשה) in the city. Punishment: both condemned to death by stoning (vv. 23–4).
3. Rape of a betrothed girl (נער בתולה מארשה) in the field. Punishment: man condemned to death by stoning, girl goes free (vv. 25–7).
4. Sex with an unbetrothed girl (נער בתולה אשר לא ארשה). Punishment: man pays fifty shekels to the girl's father, marries her, and has no right to divorce her (vv. 28–9).

The nature of the last three scenarios has changed in the LXX, because the "betrothal" is absent. Instead the LXX speaks of "the courted virgin girl" (παῖς παρθένος μεμνηστευμένη), "the girl who has been courted" (τὴν παῖδα τὴν μεμνηστευμένην), and "the virgin girl, who has not been courted" (τὴν παῖδα τὴν παρθένον, ἥτις οὐ μεμνήστευται) (22:23, 25, 28). Intelligent readers would not necessarily infer that marriage was preceded by an agreement—whether formal or informal—between the groom and the bride's father.

6.6.3 μνηστεύω in the Papyri

In Ptolemaic papyri "to betroth" (μνηστεύω) occurs only once. A certain Philotas argues that Lysimachus should give his daughter, Nikaias, to him because she had been "betrothed" to him:

> ἐν τῶι ἐνεστῶτι ἔ[τ]ει ἐμνησ|τευσάμην Ν̣ε̣ί̣κ̣α̣[ι]α̣ν̣ Λ̣υ̣σ̣ι̣μ̣ά̣|χου καὶ τοῦ σημ̣α̣[ι]ν̣ο̣μένου | αὐτῆς πατρὸς ὀμ̣[ό]σαντος | δώσ̣ε̣ι̣ν̣ ἐμοὶ αὐτ[ὴ]ν καὶ τὴν | σταθε̣ῖ̣σαν ἐπ᾽ α̣[ὐ]τῆι φ̣ε̣ρ̣νήν

> In the current year, I betrothed Nikaia daughter of Lysimachos. The said father has promised by oath to give her to me (*sc.* as my wife) along with the dowry laid down for her, and with which I agreed. (*P.Polit.Iud.* 4r.5–10, 134 BC)[1]

Since the wording of his argument relies heavily on the LXX, Philotas must have been a Jew. Philotas notably infers that he should have received a "bill of divorce" (τοῦ ἀποστασίου βυβλίον).[2]

> ὁ Λυσίμ̣α̣χ̣ο̣ς συνήρμοκεν | ἄν̣ε̣υ̣ λόγου ἑ̣τ̣έρωι ἀ̣ν̣δ̣ρὶ | τὴν Νε̣ίκαιαν̣ πρὶν ἢ λα|βεῖν παρ᾽ ἐμοῦ τ̣ὸ̣ εἰθ̣ισμέ|νον τοῦ ἀποσ̣τ̣ασίου | ⟦τὸ⟧ βυβλ̣ί̣ο̣ν.
>
> Lysimachos without good reason joined Nikaia to another man before receiving from me the customary bill of divorce (*P.Polit.Iud.* 4r.19–24)[3]

Philotas refers to the biblical law of divorce (Deut. 24:1–4).[4]

> Ἐὰν δέ τις λάβῃ γυναῖκα καὶ συνοικήσῃ αὐτῇ, καὶ ἔσται ἐὰν μὴ εὕρῃ χάριν ἐναντίον αὐτοῦ, ὅτι εὗρεν ἐν αὐτῇ ἄσχημον πρᾶγμα, καὶ γράψει αὐτῇ βιβλίον ἀποστασίου καὶ δώσει εἰς τὰς χεῖρας αὐτῆς καὶ ἐξαποστελεῖ αὐτὴν ἐκ τῆς οἰκίας αὐτοῦ

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[1] J. Mélèze Modrzejewski, 'The *Politeuma*', in Keenan, Manning, and Yiftach-Firanko (eds), *Law and Legal Practice in Egypt from Alexander to the Arab Conquest*, 477–82, at 480–1 [no. 10.2.3].
[2] For other possible correlations between the vocabulary of the LXX and the papyrus, see R. A. Kugler, 'Uncovering Echoes of LXX Legal Norms in Hellenistic Egyptian Documentary Papyri: The Case of the Second-Century Herakleopolite Nome', in M. K. H. Peters (ed), *XIV Congress of the IOSCS, Helsinki, 2010* (Society of Biblical Literature Septuagint and Cognate Series 59; Atlanta, GA, 2013), 143–53.
[3] Mélèze Modrzejewski, 'The *Politeuma*', 481.
[4] On this document, see J. M. S. Cowey and K. Maresch (eds), *Urkunden der Politeuma der Juden von Herakleopolis (144/3–133/2 v. Chr.) (P. Polit. Iud.): Papyri aus den Sammlungen von Heidelberg, Köln, München und Wien* (Papyrologica Coloniensia 29; Wiesbaden, 2001); S. Honigman, 'The Jewish *Politeuma* at Heracleopolis', *Scripta Classica Israelica* 21 (2002), 251–66.

> If someone takes a wife and lives with her, and it happens that she does not find grace in his presence because he finds in her an unseemly thing, then he shall write for her a bill of divorce and give it in her hands and send her away from his house. (Deut. 24:1)

This is the only case from Ptolemaic Egypt where a "betrothal" is alleged to have incurred any legal obligations. This may well have been the reason why Philotas decided to address his petition not to the Ptolemaic magistrates but to the Jewish rulers (τοῖς ἄρχ̣ο̣υ̣[σι]) (*P.Polit.Iud.* 4r.2). From the collection of papyri it appears that these rulers had jurisdiction in the Jewish *politeuma*. Philotas anticipated that Jews would lend a more willing ear to his grievance, since there was no precise equivalent for a betrothal in Ptolemaic law.

6.6.4 Other Evidence for Betrothal among Egyptian Jews

There are some passages in Jewish literature that illustrate the dubious nature of the betrothal in Egypt.[1] In a dispute over the categorisation of *mamzerim* ("bastard children") Hillel (*b.* 30 BC)[2] refers to the precise wording of Alexandrian marriage contracts (*ketubot*).[3]

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[1] Brought to my attention by B. Cohen, 'On the Theme of Betrothal in Jewish and Roman Law', *Proceedings of the American Academy of Jewish Research* 18 (1948–9), 67–135, at 69. On the dating of the Yerushalmi to the late fourth century, see Y. Sussman, '*Weshuv 'al yerushalmi neziqin*', in Y. Sussman and D. Rosenthal (eds), *Mehqerei Talmud, Volume 1: Talmudic Studies Dedicated to the Memory of Professor Eliezer Shimshon Rosenthal* (Jerusalem, 1993), 55–134, at 132–3; *Z.* Safrai, *The Missing Century: Palestine in the Fifth Century: Growth and Decline* (Palestina antiqua 9; Leuven, 1998), 64; L. Moscovitz, 'The Formation and Character of the Jerusalem Talmud', in S. T. Katz (ed.), *The Cambridge History of Judaism, Volume IV: The Late Roman-Rabbinic Period* (Cambridge, 2006), 663–77, at 665–7.
[2] See *b. Shab.* 15a.
[3] Belkin, 'Levirate and Agnate Marriage in Rabbinic and Cognate Literature', 326: "a betrothal in Alexandria did non constitute marriage".

דרש הלל הזקן לשון הדיוט כשהיו בני אלכסנדריא מקדשין נשים אחד בא וחוטפה מן השוק ובא מעשה לפני חכמים בקשו לעשות בניהן ממזרין אמר להם הלל הזקן הוציאו לי כתובת אמותיכן הוציאו לו וכתוב בה משתכנסי לביתי תיהוי לי לאנתו כדת משה וישראל

> Hillel the Elder scrutinised the common language [of the *ketubah*]. It happened that when the people of Alexandria betrothed women, one person came and grabbed her from the market. The matter came before the Sages. They sought to make their children *mamzerin*. But Hillel the Elder said to them: Bring out for me the *ketubah* of your mothers. They brought it out for him, and it said: When you enter into my house, you will be my wife according to the law of Moses and Israel. (*t. Ketub.* 4.9)[1]

The problem under discussion is precisely which children should be categorised as *mamzerim*. The Sages argue that if a woman is already betrothed to a man she cannot marry another man—the children born from the second union should be considered *mamzerim*. Hillel disagrees. He uses the formulation of Alexandrian marriage contracts to prove his point. These contracts allegedly contained an extra clause: "*When you enter into my house*, you will be my wife etc." Hillel applies the methods of scriptural exegesis (note דרש) to this formula, arguing that Alexandrian marriages only take effect at the moment the woman enters the man's house. The necessary conclusion is implicit: children born from the second union (with the man who "snatched" the woman from the *shuk*) are legitimate children—not *mamzerim*.

There is a flagrant contradiction between Hillel's account of the Alexandrian betrothal and Philo's. Philo argued that to be betrothed is no different from actually being married:

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[1] M. S. Zuckermandel (ed.), *Tosefta nach den Erfurter und Wiener Handschriften mit Parallelstellen und Varianten* (Trier, 1880), 264. My translation.

> Μεθόριόν τινες ὑπολαμβάνουσιν ἀδίκημα εἶναι φθορᾶς καὶ μοιχείας ὑπογάμιον, ὅταν ὁμολογίαι μὲν ὑπερεγγυήσωσι, μήπω δὲ τῶν γάμων ἐπιτελεσθέντων ἕτερος ἀπατήσας τις ἢ καὶ βιασάμενος εἰς ὁμιλίαν ἔλθῃ. παρ᾽ ἐμοὶ δὲ κριτῇ μοιχείας καὶ τοῦτ᾽ ἐστὶν εἶδος· αἱ γὰρ ὁμολογίαι γάμοις ἰσοδυναμοῦσιν, αἷς ἀνδρὸς ὄνομα καὶ γυναικὸς καὶ τὰ ἄλλα τὰ ἐπὶ συνόδοις ἐγγράφεται.
>
> Some consider that midway between the corruption of a maiden and adultery stands the crime committed on the eve of marriage, when mutual agreements have affianced the parties beyond all doubt, but before the marriage was celebrated, another man, either by seduction or violence, has intercourse with the bride. But this too, to my thinking, is a form of adultery. For the agreements, being documents containing the names of the man and woman, and the other particulars needed for wedlock, are equivalent to marriage. (Philo, *Spec.*, 3.72)[1]

Philo refers explicitly to contracts drawn up at the time of betrothal (note the middle-passive voice of ἐγγράφω).[2] There is no reference to such documents in the Hebrew Bible. The rise of this custom of drawing up *marriage* documents is, of course, well attested.

1. There are *ca.* seven marriage contracts among the Elephantine papyri (three "fairly complete" and four more fragmentary).[3] In accordance with Egyptian custom these documents were no *sine qua non* for the validity of marriage. The contract for the

[1] Colson (ed.), *Philo, Volume VII*, 519, 521.
[2] M. Kister, 'From Philotas to Hillel: 'Betrothal' Contracts and Their Violation', *Scripta Classica Israelica* 21 (2002), 57–60.
[3] Yaron, 'Aramaic Marriage Contracts from Elephantine', 1.

marriage between Ananiah and Tamut was drawn up when the couple already had a son. The contract *ratified* the marriage—it did not initiate it.

2. When Tobias and Sara get married Raguel draws up and seals an "agreement" (συγγραφή).

> καὶ ἐκάλεσεν Σαρραν τὴν θυγατέρα αὐτοῦ καὶ λαβὼν τῆς χειρὸς αὐτῆς παρέδωκεν αὐτὴν τῷ Τωβια γυναῖκα καὶ εἶπεν Ἰδοὺ κατὰ τὸν νόμον Μωυσέως κομίζου αὐτὴν καὶ ἄπαγε πρὸς τὸν πατέρα σου· καὶ εὐλόγησεν αὐτούς. καὶ ἐκάλεσεν Εδναν τὴν γυναῖκα αὐτοῦ· καὶ λαβὼν βιβλίον ἔγραψεν συγγραφήν, καὶ ἐσφραγίσαντο. καὶ ἤρξαντο ἐσθίειν.
>
> He [*sc.* Raguel] called Sara, his daughter, took her hand and gave her to Tobias as wife. He said: Receive her, in accordance with the law of Moses, and lead (her) to your father. He blessed them. He called Edna, his wife, took a scroll, wrote a contract, and sealed (it). Then he began to eat. (Tob. 7:13–4)

But this document is drawn up around the time of marriage; it is not—strictly speaking—a betrothal contract.

Philotas, like Philo, thought that the betrothal was a formal agreement. Unlike Philo, he did not refer to a betrothal contract. He thrice claims that the girl's father swore an *oath* to give his daughter to him (*P.Polit.Iud*. 4r.8, 12, 19). If Philotas's case ever got a hearing, he would have nothing to show in support of his argument except an undocumented and unverifiable claim to the father's oath.

6.6.5 Later Use of μνηστεύω

Greek literature normally uses μνηστεύω in the sense of "to court (a woman)". References to formal betrothal agreements from the Ptolemaic period are very scarce. It seems unlikely, therefore, that the LXX's use of the word invoked the particular frame of betrothal. Greek-speaking readers would not have understood μνηστεύω as a reference to a betrothal—a period before marriage that incurred legal obligations. This changed.

In AD 312 a groom's father writes to the prefect to accuse the bride's parents of giving the bride to someone else. The irate father argues that the bride's parents had long ago promised their daughter, Taeus, to his son, Zoilos.

> μ̣ν̣ηστευσαμένου μου τοίνυν ἡμετέρῳ υἱῷ̣ Ζωΐλῳ τὴν τῆς θείας μου | […… τος θ]υγατέρα Ταε̣ῦν τὸ τουν[ο]μα ἐκ νηπίας ἡλικίας πρὸς γάμου κοινωνίαν καὶ ἐν τῷ̣ μετοξὺ τῆς | [μητρὸς ……]τος τετελε[υτ]ηκυ̣ίης καὶ τοῦ ἀνδρὸς αὐτῆς Σακαῶνος ἑτέρᾳ γυναικὶ κοινωνήσαν[το]ς | [τοῦ βίου Κα]μουτίῳ τὸ τουνο[μα], [λ]αβομένου τὴν̣ αὐτὴν παῖδα ἀπὸ τῆς τῆς μητρὸς τελευτῆς | [ἐκηδόμην ἐν το]σ̣ούτῳ χρόνῳ [καθ]άπερ ἰδίας θυγάτρος·καὶ ἵνα μὴ πολλὰ λέγω τοῦ γάμου, καλέσαν|[τός μου φίλο]υ̣ς τοὺς παῖδας [συ]νέ[ζ]ευξα καὶ τὰ εἰωθότα ἅπαντα ἀπεπλήρωσα. ὁ τοίνυν Σακαῶν, | [ἐκ πιθανολογί]ας τῆς ἑαυτοῦ̣ γ̣υναικ̣[ὸ]ς Καμουτίου, βεβούληται τὸν γάμον ἐν συνχίσι ποιῆσαι, τὸν |[—*ca.*10—γ]εγενημένον, π[ρ]ο̣φάσι ἓ̣[δν]ων, ὡς αὐτοῦ μὴ εἰληφότος· καὶ ἐκ τούτου ἁρπάξας τὴν κόρην̣ | [φυλάσσει παρ'] αὐτῷ̣.
>
> I *mnēsteusamenou* my aunt's … daughter, called Taeus, to my own son, Zoilos, from the time of their youth for the communion of marriage. But in the meantime her mother … died and her husband, Sakaon, married another woman, Kamoutis by name, taking his child with him after her mother's death. In this period I was concerned (for

her) as if for my own daughter. Sakaon, however, … of his own wife, Kamoutis, wanted to break up the marriage, … of the marriage gifts, as if he had not received them. Therefore he took away the girl and keeps her with him. (*P.Sakaon* 38.4–12, AD 312)

In this instance μνηστεύειν preceded the actual γάμος, "wedding" (note the gen. abs. in the aor., μνηστευσαμένου). It took place a long time before the marriage: the couple were betrothed "since the time of their youth" (ἐκ νηπίας ἡλικίας). The author of the letter thought it improper to change anything about the agreement in the period "in between" (ἐν τῷ μετοξὺ) the agreement and the ceremony.

A long fragment of a marriage contract from the Dioskoros archive also mentions a "betrothal" (μνηστεία). This betrothal is a formal agreement between the fathers of the bride and groom. The contract frequently reminds the recipient of the agreement's formality.

πάτηρ Βικ[το]ρος ἰατρὸς προγ[εγραμμ(ένος) τ]ῷ προιριμένῳ [εὐλ]αβεστ[ά]τῳ Ἰωάν[νῃ] …. | περὶ τῆς κοσμιοτάτης αὐτοῦ θυγατρ[ὸς Βικτωρίνης] παρθένου, ἐξετὸν αὐτῶν ταύτην …. | [διδόνα]ι πρὸς νόμιμον γάμον, καὶ ταύτην ἐμνηστευσατω ὑπὲ[ρ] το(ῦ) αὐτοῦ υἱοῦ [Ἀ]φ[οῦτος], … | τῆς μνηστίας κατὰ νόμους συστάσης καὶ χιρολαβί[ο] τ[ε] συντ[αχθέ]ντος μετα[ξὺ αὐτῶν | ἀ]μφοτέρον

Father Victor, the doctor, wrote to the aforementioned … John … about his most beautiful virgin daughter Victorina, … in lawful marriage. He betrothed her to his own son Aphous … after the betrothal was established according to the laws … and contracted between the two of them. (*P.Cair.Masp.* I 67006v.6–10, *c.* AD 567)

The fathers, Victor and John, arranged the betrothal between their children, Aphous and Victorina. The marriage contract spells out "the betrothal was established according to the laws" (τῆς μνηστίας κατὰ νόμους συστάσης). The betrothal is an agreement between the fathers *about* the bride and groom (see also *SB* XVI 12574; *SB* XXIV 15913). The bride and groom themselves do not have any say in the process. The use of μνηστεύω in this sense is different from the classical use of the verb, where it invariably involves the lovers themselves. Before or during the Roman period μνηστεύω started to refer to a binding agreement between the parents. Precisely when this shift happened, we do not know.

There are some indications that this shift began long before the fourth century AD. The gospels use μνηστεύω to describe the relation between Mary and Joseph at the time of Jesus's birth.

> Τοῦ δὲ Ἰησοῦ Χριστοῦ ἡ γένεσις οὕτως ἦν. μνηστευθείσης τῆς μητρὸς αὐτοῦ Μαρίας τῷ Ἰωσήφ, πρὶν ἢ συνελθεῖν αὐτοὺς εὑρέθη ἐν γαστρὶ ἔχουσα ἐκ πνεύματος ἁγίου.
>
> The birth of Jesus Christ was as follows. His mother Mary was betrothed to Joseph. Before they came together, she was found to be pregnant from the holy spirit. (Matt. 1:18b; cf. Luke 1:27; 2:5)

The presupposition is that there is a period prior to marriage during which it is improper to "come together" (συνέρχομαι).[1]

Why did the LXX's translator use the word? Perhaps he used it as a translation for "to betroth" (ארש) for want of a better alternative. Because the Greek words describing a formal agreement prior to marriage (e.g., ἐγγυάω) had become obsolete, the translator forced

[1] Cf. 1 Macc. 3:56.

μνηστεύω into use. This use extended the meaning of μνηστεύω. Words not only "invoke" frames; repeated use also redefines the frames themselves. The "frames" of frame-semantics are no Platonic ideas that exist outside of the actual use of words—the use of words in certain contexts bends and extends their meaning. That is what happened with μνηστεύω: through its repeated use in the translation of biblical law—where the relationship before marriage *does* make a legal difference—some started to think it was a legally-binding agreement.

The evidence does not allow for the conclusion that the translators were the prime movers of this semantic development. The word might have been used in this way before the translation project—but no *written* evidence survives. It is, however, suspicious that the earliest attestation of μνηστεύω in a more formal sense stems from a document whose author was familiar with the LXX.

6.7 The LXX as a Civil Law Code

6.7.1 The Evidence of the Papyri

There are good reasons to suspect that the LXX was *used* as a civil law code.[1] *P.Polit.Iud* is a collection of 20 papyri from the Jewish *politeuma*—an ethnic community allowed to live by its own rules—at Herakleopolis (dated to 144–132 BC). One of the papyri refers to "the required bill of divorce" (τὸ εἰθισμέ|νον τοῦ ἀποστασίου | ⟦τὸ⟧ βυβλίον) (*P.Polit.Iud.* 4.22–4). The letter almost certainly refers to the LXX because the LXX uses a very similar phrase—i.e., βιβλίον ἀποστασίου (Deut. 24:1, 3)—and because no such document of divorce was required under Ptolemaic law.[2] The verdict that the "rulers" (ἄρχοντες) rendered in this case

[1] J. Mélèze Modrzejewski, 'Law and Justice in Ptolemaic Egypt', in M. J. Geller and H. Maehler (eds), *Legal Documents of the Hellenistic World* (London, 1995), 1–19; id., 'The Septuagint as *Nomos*',183–99.
[2] Cowey and Maresch (eds), *Urkunden der Politeuma der Juden von Herakleopolis*; Honigman, 'The Jewish Politeuma at Heracleopolis', 251–66.

is, of course, unknown. There is a possibility that the reason why Philotas, the plaintiff, alluded to the LXX and insisted that the bride's father swore an oath was that his claim was ultimately undocumented and unverifiable. Philotas's chances for winning the case and winning back his fiancée were not looking bright.

In addition to this second-century document, there is a third-century petition referring to "the civil law of the Jews":

> ἀδικοῦμαι ὑπὸ Ἰωνάθου Ἰουδαίου …..].ου. ϛυ̣γραψα[μένου] | γὰρ αὐτοῦ μοι ἐχ[— ca.?—]ο̣λ̣ιτικὸν τῶν [Ἰου]|δαίων ἔχειν με γυν[αῖκα
>
> I am being wronged by Jonathas, the Jew … He has agreed in accordance with the law of the Jews to hold me as wife. (*CPJ* I 128.1–3, 218 BC)[1]

Although the wording of this particular papyrus is not reminiscent of the contents of the LXX, the reference—or rather: the possible reference—to "the civil law of the Jews" has invited speculation about the use of the LXX as a civil law of the Jewish community.

It must have been possible to invoke the LXX in Ptolemaic courts—in theory at least. The defendants in a dispute over the ownership of a house in Thebes famously invoked a Greek translation of the Egyptian "law of the land" (τοῦ τῆς χώρας νόμου) (*UPZ* II 162 fr. 4.17; cf. fr. 7.12). The judges recognised the legal validity of these documents and the Egyptian family won their case (*UPZ* II 162). They regained possession of the house. Egyptians before Greek judges—i.e., the χρηματισταί who dealt with administrative matters—could cite Greek translations of Egyptian documents (in the Demotic script) and win their case. It stands to reason that other ethnic groups living in Egypt might well do the same.

[1] V. A. Tcherikover and A. Fuks (eds), *Corpus Papyrorum Judaicarum, Volume I* (Cambridge, MA, 1957), 237.

At the moment, however, the LXX's use in Egyptian courts remains speculative. There are ample papyri attesting to Jews appearing in Greek-speaking courts (e.g., *CPJ* I 19). But there is as of yet no document proving Jews cited the LXX in a Greek court. The petition of Philotas, which alludes to the LXX, was brought before Jewish "rulers"—not before Greek judges.

6.7.2 The Evidence of the LXX

Philotas presumed a council would lend a willing ear to the LXX. This does not, however, have any bearing on the question of the LXX's original purpose. Whether the translators ever intended their document to be used in a court of law remains an unanswered question.[1] There are, of course, no external documents testifying to the intended purpose of that translation—unless we are willing to accept the account of the *Letter of Aristeas*. The *Letter* incidentally uses the word νόμος to refer to the contents of the translation and its original (e.g., 312–3). Aristeas, however, takes pride in the "law" not because it has the potential of deciding complicated cases but because it is of divine origin, it contains words of "wisdom", "piety", "righteousness", "purity", "truth", "reason", and following its precepts leads to a "good life" (3, 31, 131, 127, 139, 161). Whether the law could be applied to render incisive verdicts is a question that the *Letter* does not answer.

The only evidence that can be used to answer the question of the LXX's original purpose are the contents of the LXX itself. Despite the overlap in the vocabulary and the

[1] Honigman, *The Septuagint and Homeric Scholarship*, 108: "Recently published documents may well lend renewed credibility to the view that the LXX was used as a document of reference in a legal context – if not as its primary goal, then at least as a derivative sphere of use." Ibid., 111–2: "The evidence is too uncertain to be conclusive. It is undeniable, however, that the hypothetical reading in *CPJ* I 128 received additional weight after the publication of the Heracleopolis archive. If this reading is, indeed, to be maintained, the assumption that the Septuagint was used as a legal document from the beginning would need to be considered seriously. However, there would still be a step to go through before concluding that legal use was the initial purpose of the translation of the Pentateuch. Derivative uses of the translation could, after all, evolve within a short time after its completion."

legal papyri, which is well researched, there is no reason to suspect that the translation aimed at practical applicability in the courts. There are some passages within the LXX that lack the clarity required for applicability. Some passages relish in an ambiguity that would have made it very difficult to use the LXX as a civil law code. The deuteronomic law of divorce, for example, lays out the acceptable grounds for a man to "send away" his wife:

כִּֽי־יִקַּח אִישׁ אִשָּׁה וּבְעָלָהּ וְהָיָה אִם־לֹא תִמְצָא־חֵן בְּעֵינָיו כִּי־מָצָא בָהּ עֶרְוַת דָּבָר וְכָתַב לָהּ סֵפֶר כְּרִיתֻת וְנָתַן בְּיָדָהּ וְשִׁלְּחָהּ מִבֵּיתוֹ׃

> If a man takes a woman and marries her, and it happens that she does not find grace in his eyes, and he finds in her *'erwat dāvār*, then he shall write a document of divorce, give it in her hand, and send her away from his house (Deut. 24:1)

The crucial phrase specifying the reasons why a man may dismiss his wife is tantalisingly vague: "the nakedness of a thing" (ערות דבר). If the LXX's translation was intended to function as a civil law code—as it was made to be by Philotas—, one would expect the LXX to produce a more precise rendering. It does not: "because he found in her an unseemly thing [ἄσχημον πρᾶγμα]".[1] The LXX resists any attempt at specification, making it no less easier to decide what is and what is not a valid reason for divorce in the eyes of the law. A judge trying to decide whether a man was right to dismiss his wife would find in the LXX no great source of help. These ambiguities, of which there are many, make it unlikely that the LXX was intended to be used as a civil law code.

[1] Vermes, 'Bible and Midrash', 206.

The Goring Ox

The law of the goring ox has been at the centre of the study of biblical law because it condemns the homicidal animal to death by stoning. Since this case is without precedent in the Ancient Near East, scholars have deduced that there was something special about the value of human life in ancient Israel.[1] The structural and verbal similarities between the biblical law and the Ancient Near Eastern laws on goring oxen led some to believe there must have been a common tradition of jurisprudence,[2] or even that the Covenant Code was a direct literary descendant of the Code of Hammurabi.[3]

The biblical law of the goring ox makes a distinction between the first-time offender and the ox that already has a reputation of violence.

וְאִם שׁוֹר֣ נַגָּ֗ח הוּא֙ מִתְּמֹ֣ל שִׁלְשֹׁ֔ם וְהוּעַ֖ד בִּבְעָלָ֑יו וְלֹ֣א יִשְׁמְרֶ֔נּוּ וְהֵמִ֥ית אִ֛ישׁ אֹ֥ו אִשָּׁ֖ה הַשֹּׁ֣ור יִסָּקֵ֑ל וְגַם־בְּעָלָ֖יו

יומָֽת׃ [...] 36 אֹ֣ו נֹודַ֗ע כִּ֤י שֹׁור֙ נַגָּ֣ח הוּא֔ מִתְּמֹ֖ול שִׁלְשֹׁ֑ום וְלֹ֣א יִשְׁמְרֶ֗נּוּ בְּעָלָ֛יו שַׁלֵּ֥ם יְשַׁלֵּ֖ם שֹׁ֣ור תַּ֣חַת הַשֹּׁ֑ור

וְהַמֵּ֖ת יִֽהְיֶה־לֹּֽו׃ ס

> If the ox was goring yesterday or before, and it was known to the owner, but he did not guard it and it killed a man or a woman, [then] it shall be stoned and its owner too shall die. … 36 Or [if] it was known that the ox was goring yesterday or before, and its owner did not guard it, [then] he shall repay an ox for an ox and the dead (ox) shall belong to him. (Exod. 21:29, 36).

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[1] Greenberg, 'Some Postulates of Biblical Criminal Law', 5–28; J. J. Finkelstein, 'The Ox that Gored', *Transactions of the American Philological Society* 71 (1981), 1–89.
[2] R. Westbrook, *Studies in Biblical and Cuneiform Law* (Cahiers de la Revue Biblique 26; Paris 1988); Levinson (ed.), *Theory and Method in Biblical and Cuneiform Law*.
[3] Wright, *Inventing God's Law*.

The severity of the punishment for the ox's owner depends firstly on the victim—the owner gets away with a fine if the ox killed another ox (21:35–6)—and secondly on the owner's behaviour: if he was aware of the ox's resumé of violence he should have "guarded" the ox. "If he hasn't guarded it" (ולא ישמרנו) then the consequences are more severe. The owner himself can even be sentenced to death if he has not taken the right precautions. What these precautions are—or what it means to "guard" (שמר)—is not immediately clear from the text of the law.

The tannaitic rabbis wondered precisely what the standard of "reasonable care" was.[1] In the Mishnah R. Meir is quoted as suggesting that the owner is still liable if he "tied [the ox] with a halter, or shut it in properly" (קשרו … במוסרה, ונעל בפניו כראוי) (*m. B. Q.* 4.9).[2] R. Judah disagrees, implying that tying up and shutting in *are* good ways of "guarding" an aggressive animal: "… if it was an attested danger, he goes free, it is said, *And he did not guard it*, but this one was guarded". R. Eleazar comes up with the most radical definition of guarding an ox: "There is no other guarding than the knife!" (אין לו שמירה אלא סכין).[3]

At first sight the LXX suggests something similar to R. Eliezer's knife-solution. The LXX condemns the owner to death if the ox was a safety risk and the owner did not ἀφανίσῃ it.

> ἐὰν δὲ ὁ ταῦρος κερατιστὴς ᾖ πρὸ τῆς ἐχθὲς καὶ πρὸ τῆς τρίτης, καὶ διαμαρτύρωνται τῷ κυρίῳ αὐτοῦ, καὶ μὴ ἀφανίσῃ αὐτόν, ἀνέλῃ δὲ ἄνδρα ἢ γυναῖκα, ὁ ταῦρος

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[1] The phrase "reasonable care" is from classic definition of negligence, see Donoghue v Stevenson, 1932 SC (HL) 31.
[2] Danby, *Mishnah*, 337–8.
[3] Philo gives a similar interpretation: "If the owner of the animal knowing that it is savage and wild has not tied it up nor kept it shut up under guard [μήτε καταδήσῃ μήτε κατακλείσας φυλάττῃ], … he must be held guilty as responsible for the death" (*Spec*. 3.145). Note that Philo uses the verb φυλάττω, which seems closer to the Hebrew than any known version of the Greek Bible. The range of options Philo gives to the ox' owner—tying up and shutting in—are similar to the options dismissed by R. Meir and accepted by R. Judah: קשר and נעל. But Philo does not go quite as far as R. Eliezer.

λιθοβοληθήσεται, καὶ ὁ κύριος αὐτοῦ προσαποθανεῖται. […] 36 ἐὰν δὲ γνωρίζηται ὁ ταῦρος ὅτι κερατιστής ἐστιν πρὸ τῆς ἐχθὲς καὶ πρὸ τῆς τρίτης ἡμέρας, καὶ διαμεμαρτυρημένοι ὦσιν τῷ κυρίῳ αὐτοῦ, καὶ μὴ ἀφανίσῃ αὐτόν, ἀποτείσει ταῦρον ἀντὶ ταύρου, ὁ δὲ τετελευτηκὼς αὐτῷ ἔσται.

If the bull was goring before yesterday or before the third [*sc.* day], and they [?] testified to its owner, but he did not do away with it, and it killed a man or a woman, the bull shall be stoned and its owner shall die too. … 36 If it was known that the bull was goring before yesterday or before the third day and they had testified to its owner, but he did not do away with it, he shall repay bull for bull but the dead one shall be his. (Exod. 21:29, 36)

Although שמר occurs some 450 times in the Hebrew Bible, the LXX's translators rendered it as ἀφανίζω only in these two cases.[1] Modern scholarship has used the evidence of the LXX to support two very different theories. First, the LXX has been used as a textual witness of the Hebrew Bible: the apparatus of the *BHS* suggests that καὶ μὴ ἀφανίσῃ αὐτόν is a translation of "and he has not *destroyed* it" (ולא ישמידנו) instead of "and he has not guarded it" (ולא ישמרנו). Bernard Jackson argues that this is in fact the primary reading and the MT a secondary development.[2] He has three main arguments to support that hypothesis: the LXX, R. Eliezer's opinion (*m. B. Q.* 4.9), and Josephus's *Antiquities*.

The evidence of Josephus's *Antiquities* could support both readings. Josephus does say that "[a]n ox that goreth with its horns shall be slaughtered by its owner [ὁ δεσπότης

[1] E. Hatch and H. A. Redpath, *A Concordance to the Septuagint and the Other Greek Versions of the Old Testament (Including the Apocryphal Books* (3 vols.; Oxford, 1897), I, 181 mark the occurrences of ἀφανίζω in Exod. 21:29, 36 as if it they had no equivalent in the MT.
[2] Jackson, *Essays in Jewish and Comparative Legal History*, 122–4; id., *Wisdom-Laws*, 271–2; cf. Sarna, *The JPS Torah Commentary: Exodus*, 128.

ἀποσφαττέτω]" (*Ant.* 4.281). Only a little later on Josephus also says: "if the owner himself be convicted of not having guarded it [μὴ φυλαξάμενος], he shall die". The *Antiquities* provides stronger support for the masoretic reading of שמר than for שמד. Josephus has restructured the law, making the first line—"[a]n ox that goreth with its horns shall be slaughtered by its owner"—an inclusive summary of the cases that are to follow. Josephus appends the only case where the ox remains alive—where a tame ox kills another ox—at the very end of the law, as if it were an exception to the rule (*Ant.* 4.282). The *rule*, according to Josephus, was that every goring ox should be slain. The *Antiquities* provides stronger support for שמר than for שמד.

The second theory built on the LXX is that of Frankel's *Einfluss*. Frankel argued that the translator "may have had a halakhic opinion in mind", citing R. Eliezer's knife-solution:

> From this ἀφανίσῃ it cannot be concluded (as some want) with certainty that the translator read ישמידנו. Instead, the translator had in mind a halakhic opinion, which determines: אין לו שמירה אלא סכין, "for a goring ox there is no guarding but the knife", i.e., he must be removed.[1]

Greek ἀφανίζω can mean more than either "to get something out of the way" or "to destroy", as already noted by by Le Boulluec, Sandevoir, and Wevers.[2]

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[1] Frankel, *Einfluss*, 93: "Aus diesem ἀφανίσῃ is nicht (wie Einige wollen) mit Sicherheit zu schliessen, der Vertent habe ישמידנו gelesen, sondern mochte er hier eine halachische Meinung im Auge haben, welche bestimmt: אין לו שמירה אלא סכין „für einen stössigen Ochsen gibt es kein Bewahren als das Messer", d. i. er muss aus dem Wege geschafft werden."

[2] Le Boulluec and Sandevoir, *L'Exode*, 222: "L'hypothèse d'une lecture différente de l'hébreu n'est donc pas décisive ici". Wevers, *Notes on the Greek Text of Exodus*, 336: "In spite of the warning, however, the owner did not put him away, ἀφανίσῃ, probably in the sense of put away under guard; the word can also mean "destroy, kill," but that is hardly intended here, since MT has ישמרנו."

The transitive verb derived from the root φαν–, prefixed with the *alpha privative*, can be used for various ways of "making something or someone *unseen*". There are, of course, many texts where ἀφανίζω is used in a sense of "to destroy". A report from the third century AD contains this phrase:

> οὐδὲν ἠφάνισεν | ὁ ἱπποποταμις
>
> the hippopotamus did not *ēfanisen* anyone. (*P.Oxy.* IX 1220.20–1)

But there are exceptions, texts where ἀφανίζω does not mean "to destroy". Aristophanes makes a character in his *Ploutios* say: "and the god immediately disappeared into the temple" [ὁ θεὸς … ἠφάνισεν αὐτὸν]" (740–1).[1] Xenophon describes the behaviour of young pigs: "when the hounds find them …, they quickly vanish into the wood [εἰς τὴν ὕλην ἀφανίζεται]" (*On Hunting* 10.23).[2] Aristotle writes that people are more likely to steal "the things that can be easily hidden [ἃ πολλαχοῦ ἀφανίσαι εὔπορον·] … and those things that can be hidden in small places [καὶ ἐν μικροῖς τόποις ἀφανιζόμενα]" (*Rhetoric* 1373b32–35). These passages use ἀφανίζω in the a sense of "concealing, hiding, keeping away from the public eye".

If they wanted to, both R. Judah—who suggested that "to guard" an ox means to "shut it in properly"—and R. Eliezer—who favoured killing the ox—could have based their legal opinions on the LXX's wording. The LXX's ἀφανίζω beautifully captures a range of legal opinions: it can be understood to mean "to kill" but also "to hide" (as Aristophanes, Xenophon, and Aristotle used the word). It could have been a translation of both שמר and שמד.

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[1] J. Henderson (ed.), *Aristophanes IV* (Cambridge, MA, 2002), 530–1
[2] E. C. Marchant and G. W. Bowersock (eds), *Xenophon VII* (Cambridge, MA, 1925), 440–1.

The Morrow of the Sabbath

The second example of ambiguity comes from Leviticus 23, which describes the rituals of the *pesah* festival. The law demands that an *ʿōmer*, a "barley offering", be brought ממחרת השבת, which is typically translated as "on the morrow after the sabbath" (*KJV*).

וְהֵנִיף אֶת־הָעֹמֶר לִפְנֵי יְהוָה לְרְצֹנְכֶם מִמָּחֳרַת הַשַּׁבָּת יְנִיפֶנּוּ הַכֹּהֵן׃

> He shall wave the barley before YHWH, at your will, on the morrow of the שבת the priest shall wave it. (Lev. 23:11)

Because the festival of *pesah* lasts seven days and the first and last day of the festival are days of rest (23:6), it is not entirely clear which day שבת refers to. It could be the first day of *pesah*, the last day, or the Saturday during the festival. If one chooses the Saturday option or the last-day-option, there is a possibility that the barley offering would take place on the day *after* the *pesah* festival. Each of these option is found in Jewish literature and in the versions.[1] Jacob Milgrom called the difference of opinion "arguably the most long-lasting schism in the history of the Jewish people".[2] Biblical scholarship has contributed two more possible

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[1] See, e.g., Philo, *Spec.* 2.162: Ἑορτὴ δέ ἐστιν ἐν ἑορτῇ ἡ μετὰ τὴν πρώτην εὐθὺς ἡμέραν, ἥτις ἀπὸ τοῦ συμβεβηκότος ὀνομάζεται δράγμα. Jos., *Ant.* 3.250: τῇ δὲ δευτέρᾳ τῶν ἀζύμων ἡμέρᾳ, ἕκτη δ᾽ ἐστὶν αὕτη καὶ δεκάτη, τῶν καρπῶν οὓς ἐθέρισαν, οὐ γὰρ ἤψαντο πρότερον αὐτῶν. Tg. Ps.-J.: וירים ית עומרא קדם ייי לרעוא לכון מבתר יומא טבא קמאה דפיסחא ירימיניה כהנא. Tg. Onq.: מבתר יומא טבא. Cf. Jub. 15:1; 44:4–5. The rabbinic interpretation of the phrase ממחרת השבת has played a significant role in the recent discussion over whether the modern categories of "nominalism" and "realism" can be applied to early Jewish law. Jeffrey Rubinstein argued that the root of the difference between the interpretations of the rabbis and the Sadducees is not the abstract principles of law but the text of Lev. 23:11: "The question is not whether the Omer sacrifice has a set time, nor whether humans arrogate authority by determining it, but what the Omer sacrifice's set time is, what exactly "God said" about it, and how one interprets the Torah to determine that fact. This is a question of exegesis, not legal philosophy." J. L. Rubinstein, 'Nominalism and Realism in Qumran and Rabbinic Law: A Reassessment', *Dead Sea Discoveries* 6 (1999), 157–83, at 176. Daniel Schwartz, by contrast, argued that the rabbinic interpretation of "sabbath" as "the festival day" was "a clear case of rabbinic arrogation of authority to depart from the clear sense of what God said." D. R. Schwartz, 'Law and Truth: On Qumran-Sadducean and Rabbinic Views of Law', in D. Dimant and U. Rapaport (eds), *The Dead Sea Scrolls: Forty Years of Research* (Studies on the Texts of the Desert of Judah 10; Leiden, 1992), 229–40, at 235.

[2] Milgrom, *Leviticus 23–27*, 2057.

interpretations of שבת. The word could be a *pars pro toto* for a "week". The word could also refer to the "full moon", as Kaufmann Kohler proposed in 1917.[1] The date of the barley offering is particularly problematic because the date of another festival, Shavuot, depends on it. Shavuot has no fixed date; it begins seven weeks after the day of the barley offering.

At first sight the LXX's translation solves most of the problems. The translator rendered the elusive ממחרת השבת as "on the morrow of the first [*sc.* day of *pesah*]" (τῇ ἐπαύριον τῆς πρώτης). This is an unusual translation that deviates from a pattern of equation between שבת and σάββατα in the LXX. This sudden deviation is significant because the LXX's interpretation is apparently also the rabbinic interpretation of the passage, as many scholars have noted. Frankel writes:

> The halakhah emerges no less from Lev. 23:11. There ממחרת השבת יניפנו is ἐπαύριον τῆς πρώτης ἀνοίσει αὐτό (namely the עומר discussed there). This dark πρώτης seems to have been remarkable since ancient times, because many variants (without weight) are found for this word (cf. Holmes). But here too the halakhah offers a solution. The halakhah says that the ממחרת השבת is not the day after שבת, a Sunday, but the other day of the festival, the second day of the *pesah* festival (cf. b. Menach. 65; Torat Kohanim etc.). Our translator demonstrated this through ἐπαύριον τῆς πρώτης *sc*. τής ἑορτής (of which the previous verse speaks) and in v. 16 he return to this, because he

[1] K. Kohler, 'The Sabbath and Festivals in Pre-Exilic and Exilic Times', *Journal of the American Oriental Society* 37 (1917), 209–23. For detailed discussions of the history of interpretation of ממחרת השבת, see D. Hoffmann, *Das Buch Leviticus* (2 vols.; Berlin, 1906), 159–215. For a speculative definition of ממחרת השבת as "the day after the full moon" on the basis of an analogy with other Semitic languages, see M. Jastrow, 'On מִמָּחֳרַת הַשַּׁבָּת ("On the Day after the Sabbath")', *American Journal of Semitic Languages* 30 (1913), 94–110.

translates עד ממחרת השבת השביעית as τῆς ἐπαύριον τῆς ἑβδόμαδος τῆς ἐσχάτης (and not as usual שבת σάββατα).[1]

In the Bavli some tannaim and amoraim argue that the counting of the seven weeks to Shavuot should start from the first day of *pesah*—regardless of whether it was a Saturday or any other day of the week—meaning that "the morrow of the שבת" would be the second day of the *pesah* festival.

רבי יוסי אומר ממחרת השבת ממחרת יום טוב אתה אומר ממחרת יו"ט או אינו אלא ממחרת שבת בראשית אמרת וכי נאמר ממחרת השבת שבתוך הפסח והלא לא נאמר אלא ממחרת השבת דכל השנה כולה מלאה שבתות צא ובדוק איזו שבת ועוד נאמרה שבת למטה ונאמרה שבת למעלה מה להלן רגל ותחילת רגל אף כאן רגל ותחילת רגל

R. Jose says, *On the morrow after the Sabbath* means on the morrow after the Festival. You say that it means on the morrow after the Festival, but perhaps it is not so, but rather on the morrow after the Sabbath of Creation! I will prove it to you. Does Scripture say, 'On the morrow after the Sabbath that is in the Passover week'? It merely says, '*On the morrow after the Sabbath*'; and as the year is full of Sabbaths, then go and find out which Sabbath is meant. Moreover, '*Sabbath*' is written below, and '*Sabbath*' is written above; just as in the former case it refers to the Festival, and

[1] Frankel, *Vorstudien*, 190–1: "Nicht minder tritt die Halacha Levit. 23, 11 hervor. Dort ist ממחרת השבת יניפנו ἐπαύριον τῆς πρώτης ἀνοίσει αὐτό (nämlich das dort besprochene עומר). Dieses dunkle πρώτης scheint schon alter Zeit auffallend gewesen sein, sich hierzu mehre (werthlose) Varianten finden (vgl. bei Holmes). Aber auch hier hilft die Halacha aus. Diese sagt, dass dieses ממחרת השבת nicht der andere Tag nach שבת d. i. Sonntag, sondern der andere Tag der Feier, der zweite Tag des Pessachfestes sei. vgl. Menachot f. 65. Torat Cohanim u. a. m. Unser Uebersetzer zeigte dieses durch ἐπαύριον τῆς πρώτης scil. τής ἑορτής (von dem den vorherg. V. daselbst die Rede ist) an und er kehrt V. 16 darauf zurück, da er עד ממחרת השבת השביעית durch τῆς ἐπαύριον τῆς ἑβδόμαδος τῆς ἐσχάτης (und nicht wie sonst שבת σάββατα) gibt."

> indeed to the beginning of the Festival, so in the latter case, too, it refers to the Festival, and indeed to the beginning of the Festival. (*b. Menah.* 66a)[1]

The chapter in the Bavli on the counting of the days between *pesah* and Shavuot (49 or 50 days) presents a variety of arguments, of increasing intricacy. This particular interpretation receives the seal of approval from Raba himself. He concedes that R. Jose's argument "cannot be refuted". Other interpretations of ממחרת השבת are attributed to the Boethusians, who are often found to defend ideas and practices the rabbis thought unorthodox (*m. Menah.* 10.3).

The same phrase, "from the morrow of the sabbath", occurs in other places too (Lev. 23:15–16). In these instances, however, the translator renders "from the morrow of the sabbath" as "from the morrow of the *sabbata*" (ἀπὸ τῆς ἐπαύριον τῶν σαββάτων).

> Καὶ ἀριθμήσετε ὑμεῖς ἀπὸ τῆς ἐπαύριον τῶν σαββάτων, ἀπὸ τῆς ἡμέρας, ἧς ἂν προσενέγκητε τὸ δράγμα τοῦ ἐπιθέματος, ἑπτὰ ἑβδομάδας ὁλοκλήρους· ἕως τῆς ἐπαύριον τῆς ἐσχάτης ἑβδομάδος ἀριθμήσετε πεντήκοντα ἡμέρας καὶ προσοίσετε θυσίαν νέαν τῷ κυρίῳ.
>
> You yourselves shall count from the morrow of the *sabbata*, from the day on which you brought the sheaf of cover (?), seven complete weeks. Until the morrow of the last week you shall count fifty days and bring a new sacrifice to the Lord. (Lev. 23:15)

[1] Epstein (ed.), *Babylonian Talmud*, IV, 388.

The LXX's translator identifies "the day on which you offered the barley" with the *sabbata*. The form σαββάτων is apparently a genitive plural built off σάββατα. The form σάββατα appears to be a plural, but it derives from the Aramaic definite singular שבתא.[1] It looks like a plural; yet it is has the meaning of a singular. For example, the LXX's description of *yom kippur* only makes sense if we allow σάββατα to refer to a singular.

> σάββατα σαββάτων ἀνάπαυσις αὕτη ἔσται ὑμῖν
> this break shall be a *sabbata sabbatōn* to you (Lev. 16:31a)

"The sabbath of sabbaths" (σάββατα σαββάτων) goes with a verb in the singular (ἔσται) and specifies a singular "day" (ἡμέρα). The form σάβαττον, which only occurs in the later books of the LXX collection,[2] is a secondary reconstruction derived from σάββατα.

The LXX preserves two different interpretations of the date of the barley offering. In the first, the barley offering is brought on the second day of *pesah*; in the other, it is offered on a Sunday. In the first, Shavuot always falls on the same calendrical date (the 6th of Sivan); in the other, Shavuot always falls on the same day of the week, a Sunday—thus giving everyone a long weekend off. This inconsistency is a real challenge if one assumes the LXX was meant to be a civil law code. The ambiguities and inconsistencies impede any practical application of the LXX's text. The legal reality of Ptolemaic Egypt may have left its traces in the LXX's text but it seems unlikely the LXX itself was ever intended to be applied as a text of law. The LXX was not envisaged as having the final say in these matters; but as the starting point of further debate. It was apparently more important to the translators to retain

[1] A. Pelletier, 'Σαβαττα: Transcription grecque de l'araméen', *Vetus Testamentum* 22 (1972), 436–47.
[2] 2 Kings, Chronicles, Nehemiah, Maccabees, Psalms, Isaiah, and Lamentations.

the differences of the text than to pin down a definitive reading of the text. This must have made the LXX less practicable in reality and all the more suitable as a starting point for further discussion and education.[1]

6.8 Conclusion

The basic idea of frame-semantics is that linguistic forms are associated with cognitive frames.[2] This chapter has produced a series of examples of frames particular to Ptolemaic jurisprudence. There is no evidence to confirm Bickerman's hypothesis, which argues that the translators "harmonized the sacred law with the practice of Ptolemaic Egypt", with royal assent.[3] The connection between the laws of Ptolemaic Egypt and the LXX are more subtle. There are at least six words that require an understanding of the processes and institutions of Ptolemaic law. To repeat:

1. ἐκδέχομαι in the sense of "to stand surety for someone's appearance" occurs only in the LXX and in mid-third century BC papyri about persons summoned to appear in court.
2. κατόχιμος occurs only in the LXX and in Ptolemaic papyri describing land "sequestered" because its owner committed a crime.

The latter example is unique because this word only survives in Egyptian texts. For the other examples, it is the *combination* between word and frame that is exceptional—not the attestation of the word in itself.

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[1] Cf. Philo, *Prob.* 80–2: τὸ ἠθικὸν εὖ μάλα διαπονοῦσιν ἀλείπταις χρώμενοι τοῖς πατρίοις νόμοις … ἕτερος δὲ τῶν ἐμπειροτάτων ὅσα μὴ γνώριμα παρελθὼν ἀναδιδάσκει;
[2] Fillmore and Baker, 'A Frames Approach to Semantic Analysis', 313.
[3] Bickerman, 'The Septuagint as a Translation', 189.

3. φερνή usually refers to a payment from the bride's family to the new couple. But in the LXX it denotes a payment from the groom to the bride. This liberal use of φερνή is paralleled in a Ptolemaic papyrus, where the groom pays a part of the φερνή.
4. ἐκδίδωμι in Classical Greek is one of two stages required for contracting a legal marriage (at least among the Athenian elite). This was different in Ptolemaic Egypt because the bar for legal marriage was low. If a couple understood themselves to be married, they were. Only conservative members of the Greek-speaking community "gave away" their daughters in a ceremony. This ceremony marking the precise moment of marriage was the only one of its kind in Ptolemaic Egypt.

The last example is not a single word, but nevertheless shows how the ignorance of a particular cognitive frame—betrothal as a formal agreement—led the translators astray. This frame is quite prominent in both biblical and Greek law. The misunderstanding "makes sense" in Ptolemaic Egypt since there was no period before marriage that incurred any legal obligation.

5. The LXX uses λαμβάνω ("to take") and καθομολογέω (an informal agreement) to translate Hebrew words for betrothal. In Classical Greek μνηστεύω does not refer to an agreement between the bride's family and the groom. In documents from the Roman period the word does mean precisely that. This development was perhaps initiated and certainly propelled by the LXX. Words do not only *invoke* frames; their repeated use also *defines* them.

When someone uses specific words correctly, we may assume a certain degree of familiarity with the frame in which they are ordinarily used. The six examples of this chapter show that the LXX's translators were familiar with the jargon of Egyptian law.

Whether the use of these legal words adds up to a "harmonisation" of biblical and Egyptian law is a different question. The translators used words that invoked the processes of Egyptian law, but they did so in order to express their own ideas. They used the words without necessarily introducing articles of Egyptian law into biblical law. The "new" understandings of these words reveals an *exegetical* element of the translation. The use of ἐκδίδωμι, that precise indication of marriage, to clarify an ambiguity discussed by the later rabbis—for which sisters a priest is allowed to defile himself (Lev. 21:3). The flexible use of φερνή suggest that, in this exceptional case, it is not the bride's father but the groom himself who must endow his own bride—as a punishment for seducing her (Exod. 22:15–6).

7 CONCLUSIONS

7.1 The Influence of Proto-Rabbinic Halakha

The aim of this thesis has been to understand the LXX's translation of some of the biblical laws. It has proven impossible to draw a single trajectory from proto-rabbinic halakhah to the LXX. The relation between rabbinic literature and the LXX is more complex. It is not always necessary to posit the influence of a proto-rabbinic tradition on the LXX's translation. In these cases, it appears more likely that the translator himself engaged in a midrash halakhah of his own.

The law of deposit is a prime example. The LXX's translator added a minor clause, "he shall swear" (καὶ ὀμεῖται), not because of the rabbinic tradition but because he noticed the similarity between the oath of innocence in cases of inanimate and animate property (in Exod. 22:7, 10). The exact same words of the oath are used, but introduced explicitly as "an oath" (ὅρκος). The levitical law against property embezzlement heightened the importance of oaths of innocence, forcing everyone suspected of embezzlement to swear by God he did not commit any wrongdoing (Lev. 5:20–6). In this case, it is more economical to suppose the translator knew the biblical law well than to posit the existence of a tradition that saw in the *niph'al* of קרב, literally "to be brought", a reference to taking oaths. The LXX's translator and the early rabbis arrived at the same conclusion, but via a different route.

Yet there are surprising similarities between the LXX and rabbinic halakhah that suggest at least a congruent evolution of ideas. The conditions of levirate marriage are perhaps the most striking point of similarity. The LXX implies that levirate marriage only takes place if a man has neither son nor daughter (Deut. 25:5–6). The rabbis argued the same. There was already some precedent: in the case of the daughters of Zelophehad, God himself

ruled that daughters can lay claim to the land of their father (Num. 27:1–11). The wording of that verdict is cautious about the rights of succession of daughters. It appears more likely that the translator had a preconceived idea about the conditions of levirate marriage. Frankel was right about the example of the conditions of levirate marriage.

Intention has proven a particularly interesting point of similarity *and difference* between the LXX and rabbinic halakhah.

1. Biblical law offers no precise definition of the crime of embezzlement of a deposit beyond "putting one's hand" (שלח יד) on property (Exod. 22:7, 10). The Shammaites argued that thinking (חשב) about embezzlement of a deposit was the same as actual misappropriation (*m. B. Mes.* 3.12). The LXX's translation of שלח יד points in the same direction: πονηρεύομαι is something that happens in one's head—that is how other LXX passages and one contemporary text use the word.
2. The early rabbis argued that someone who kills accidentally should be acquitted (*m. Makk.* 2.1) and refused to condemn anyone if there was any incongruity between intention and execution (*m. Sanh.* 9.2). The LXX also stresses the importance of intention, but in a different way. The LXX implies that even someone who "tried" (ἐπιτίθημι) to kill but ultimately failed should still be held liable for his murderous intention (Exod. 21:12–4).
3. If someone eats the leftovers of a well-being sacrifice three days after the fact, the sacrifice turns פגול and unacceptable. The early rabbis sought to overcome this process of retroactive invalidation, positing that the sacrificer's intentions of eating the meat had already invalidated the sacrifice at the time of the sacrifice itself (*Sifra Tzav* 8; *b. Zevah.* 29a). The LXX translates פגול as ἄθυτον, a word that Greek inscriptions from Asia Minor use for pieces of unburnt meat. In the LXX the subject of ἄθυτόν ἐστιν is not just the meat

but the "sacrifice" (θυσία) itself (19:5–7). Unlike the rabbis, the LXX has accepted the retroactive invalidation of the sacrifice.

7.2 The Influence of Legal Practice in Egypt

Teeter argued that most variants among the ancient versions of the biblical laws could be explained as "representing inner-textual interpretive processes" rather than "direct reflexes of extra-textual realities".[1] The assumption that contemporary realities informed the texts of biblical law should indeed not go "unexamined".[2] In the LXX's case, however, such a sharp distinction between text and reality is difficult to maintain. Proponents of frame semantics argue that in order to understand words, one must be familiar with their natural frames—the contexts in which they are normally used. Words such as ἐκδέχομαι, κατόχιμος, φερνή are used in their natural sense in Greek literature ("to give away", "held in possession", "dowry") but in the Ptolemaic papyri the same words are used in a specific legal sense: "to stand surety for someone's appearance", "disowned because of a crime", and the "dowry" could be composite—paid for by the families of the bride *and* the groom. The obsolescence of the period of betrothal under Ptolemaic law explains why the LXX's translator had to force "to court" (μνηστεύω) into use. The use of these words in the LXX would be incomprehensible if the translators were unfamiliar with contemporary legal reality. Some words that the translators used presuppose an intricate knowledge of contemporary legal reality.

[1] Teeter, *Scribal Laws*, 31.
[2] Teeter, *Scribal Laws*, 31.

BIBLIOGRAPHY

Aejmelaeus, A., 'What Can We Know about the Hebrew *Vorlage* of the Septuagint?', *Zeitschrift für die alttestamentliche Wissenschaft* 99 (1987), 58–89.

Aitken, J. K., 'The Language of the Septuagint and Jewish-Greek Identity', in J. K. Aitken and J. Carleton Paget (eds), *The Jewish-Greek Tradition in Antiquity and the Byzantine Empire* (Cambridge, 2014), 120–34.

———, *No Stone Unturned: Greek Inscriptions and Septuagint Vocabulary* (Critical Studies in the Hebrew Bible 5; Winowa Lake, IN, 2014).

———, 'Why is the Giraffe Kosher? Exoticism in Dietary Laws of the Second Temple Period', *Biblische Notizen* 164 (2015), 21–34.

———, 'Introduction', in idem (ed), *The T&T Clark Companion to the Septuagint* (London, 2015), 1–12.

———, 'Moses's θίβις', in S. Kreuzer, M. Maiser, and M. Sigismund (eds), *Die Septuaginta —Orte und Intentionen: 5. Internationale Fachtagung veranstaltet von Septuaginta Deutsch (LXX.D), Wuppertal 24.-27. Juli 2014* (Wissenschaftliche Untersuchungen zum Neuen Testament 361; Tübingen, 2016), 169–85.

Albert, M. K., 'Criminal Law: Homicide: Murder Committed by Lying in Wait', *California Law Review* 42 (1954), 337–45.

Alexander, P. H., et al. (eds), *The SBL Handbook of Style: For Ancient Near Eastern, Biblical, and Early Christian Studies* (Peabody, MA, 1999).

Allam, S., 'Egyptian Law Courts in Pharaonic and Hellenistic Times', *Journal of Egyptian Archaeology* 77 (1991), 109–27.

———, 'Women as Holders of Rights in Ancient Egypt (During the Late Period)', *Journal of the Economic and Social History of the Orient* 33 (1990), 1–34.

Alt, A., 'The Origins of Israelite Law', in idem, *Essays on Old Testament History and Religion* (tr. R. A. Wilson; Oxford, 1966), 79–132.

Alter, R., *The Five Books of Moses: A Translation with Commentary* (New York, 2004).

Amihay, A., 'Ritual Law: Sacrifice and Holy Days', in P. Barmash (ed.), *The Oxford Handbook of Biblical Law* (Oxford, 2019), 79–99.

Andersen, F. I., and D. N. Freedman (eds), *Hosea* (Anchor Yale Bible Commentary 24; New York, 1980).

Annas, J. E., *Hellenistic Philosophy of Mind* (Berkeley, CA, 2004).

Anscombe, G. E. M., *Intention* (Oxford, 1963²).

Archer, L. J., *Her Price Is beyond Rubies: The Jewish Woman in Graeco-Roman Palestine* (Supplements to the Journal for the Study of the Old Testament 60; Sheffield, 1990), 229–39.

Bagnall, R. S., and P. Derow (eds), *The Hellenistic Period: Historical Sources in Translation* (Malden, MA, 2004).

Balberg, M. *Blood for Thought: The Reinvention of Sacrifice in Early Rabbinic Literature* (Berkeley, CA, 2017).

Barmash, P., 'Blood Feud and State Control: Differing Legal Institutions for the Remedy of Homicide During the Second and First Millennia B.C.E.', *Journal of Near Eastern Studies* 63 (2004), 183–99.

———, *Homicide in the Biblical World* (Cambridge, 2005).

Barr, J., 'Bibelkritik als theologische Aufklärung', in T. Rendtorff (ed.), *Glaube und Toleranz: Das theologische Erbe der Aufklärung* (Gütersloh, 1982), 30–42.

Barton, J., *The Nature of Biblical Criticism* (Louisville, KY, 2007).

Baumgarten, J. M., *Studies in Qumran Law* (Studies in Judaism in Late Antiquity 24; Leiden, 1977).

Beattie, D. R. G., 'The Book of Ruth as Evidence for Israelite Legal Practice', *Vetus Testamentum* 24 (1974), 251–67.

Belkin, S., *Philo and the Oral Law* (Harvard Semitic Series 11; Cambridge, MA, 1940).

———, 'Levirate and Agnate Marriage in Rabbinic and Cognate Literature', *Jewish Quarterly Review* 60 (1970), 275–329.

Ben-Barak, Z., 'Inheritance by Daughters in the Ancient Near East', *Journal of Semitic Studies* 25 (1980), 22–33.

Benjamin, W., *Gesammelte Schriften* (eds R. Tiedemann and H. Schweppenhäuser; 7 vols; Frankfurt am Main, 1991).

———, 'The Task of the Translator', in M. Bullock and M. W. Jennings (eds), *Selected Writings, 1: 1913–1926* (Cambridge, MA, 1996), 253–63.

Bergman, J., H. Ringgren, and H. Haag, 'בן', in Botterweck, Ringgren, and Fabry (eds), *Theological Dictionary of the Old Testament*, II, 145–59.

Bickerman, E. J., *The Jews in the Greek Age* (Cambridge, MA, 1990).

———, 'The Septuagint as a Translation', in A. Tropper (ed.), *Studies in Jewish and Christian History: A New Edition in English Including* The God of the Maccabees (2 vols.; Ancient Judaism and Early Christianity 68; Leiden, 2007), I, 163–94.

———, 'Two Legal Interpretations of the Septuagint', in Tropper (ed.), *Studies in Jewish and Christian History*, I, 195–217.

Black, M., *An Aramaic Approach to the Gospel and Acts* (Oxford, 1967[3]).

Blankovsky, Y., 'A Silent Revolution: The Talmudic Discussion about Tort Law', *Jewish Quarterly Review* 109 (2019), 1–23.

Bloch, M. *The Historian's Craft* (tr. P. Putnam; New York, 1953).

Block, D. I., 'Marriage and Family in Ancient Israel', in K. M. Campbell (ed.), *Marriage and Family in the Biblical World* (Downers Grove, IL, 2003), 33–102.

Bockmuehl, M., 'The Dead Sea Scrolls and the Origins of Biblical Commentary', in R. A. Clements and D. R. Schwartz (eds), *Text, Thought, and Practice in Qumran and Early Christianity: Proceedings of the Ninth International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature, Jointly Sponsored by the Hebrew University Center for the Study of Christianity, 11–13 January, 2004* (Studies on the Texts of the Desert of Judah 84; Leiden, 2009), 3–29.

Borgen, P., and R. Skarsten, '*Questiones et Solutiones: Some Observations on the Form of Philo's Exegesis*', *Studia Philonica* 4 (1976–77), 1–15.

Bottéro, J., 'The "Code" of Hammurabi', in idem, *Mesopotamia: Writing, Reasoning, and the Gods* (tr. Z. Bahrani and M. Van De Mierop; Chicago, 1992), 156–84.

Brittain, C., 'The Compulsions of Stoic Assent', in M.-K. Lee (ed.), *Strategies of Argument: Essays in Ancient Ethics, Epistemology, and Logic* (New York, 2014), 332–55.

Bultmann, R., 'Ist voraussetzungslose Exegese möglich?', in idem, *Glauben und Verstehen: Gesammelte Aufsätze* (4 vols; Tübingen, 1933–65), III, 142–50.

Burnside, J., *God, Justice, and Society* (Oxford, 2011).

Burrows, M. 'The Complaint of Laban's Daughters', *Journal of the American Oriental Society* 57 (1937), 259–76.

———, 'The Ancient Oriental Background of Hebrew Levirate Marriage', *Bulletin of the American Schools of Oriental Research* 77 (1940), 2–15.

Bury, R. G., (ed.), *Plato, Volume XI* (Loeb Classical Library 192; Cambridge, MA, 1968).

Carmichael, C. M., 'Ceremonial Crux: Removing a Man's Sandal as a Female Gesture of Contempt', *Journal of Biblical Literature* 96 (1977), 321–36.

———, 'Inheritance in Biblical Sources', *Law and Literature* 20 (2008), 229–42.

Cassuto, U., *A Commentary on the Book of Exodus* (tr. I. Abrahams; Jerusalem, 1967).

Chamberlain, C., 'The Meaning of *Prohairesis* in Aristotle's Ethics', *Transactions of the American Philological Association* 114 (1984), 147–57.

Chavel, S., *Oracular Law and Priestly Historiography in the Torah* (Forschungen zum Alten Testament II 71; Tübingen, 2014).

Childs, B. S., *The Book of Exodus: A Critical, Theological Commentary* (Louisville, KY, 1974).

Christensen, D. L., *Deuteronomy 21:10–34:12* (World Biblical Commentary 6B; Nashville, TN, 2002).

Clarysse, W., 'Notes on Papyri', *Zeitschrift für Papyrologie und Epigraphik* 168 (2009), 243–6.

Clines, D. J. A. (ed.), *The Dictionary of Classical Hebrew* (9 vols; Sheffield, 1993–2011).

Coats, G. W., 'Widow's Rights: A Crux in the Structure of Genesis 38', *Catholic Biblbical Quarterly* 34 (1972), 461–6.

Cohen, B., 'On the Theme of Betrothal in Jewish and Roman Law', *Proceedings of the American Academy of Jewish Research* 18 (1948–9), 67–135.

Cohen, E. E., *Athenian Economy and Society: A Banking Perspective* (Princeton, NJ, 1992).

Cohn, L., I. Heinemann, M. Adler, and W. Theiller (eds), *Philo von Alexandria: Die Werke in deutscher Übersetzung* (7 vols; Berlin, 1962²).

Colson, F. H. (ed.), *Philo, Volume VI* (Loeb Classical Library 289; Cambridge, MA, 1935).

———, *Philo, Volume VII* (Loeb Classical Library 320; Cambridge, MA, 1937).

———, *Philo, Volume VIII* (Loeb Classical Library 341; Harvard, MA, 1939).

Colson, F. H., and G. H. Whitaker (eds), *Philo, Volume I* (Loeb Classical Library 226; Cambridge, MA, 1929).

———, *Philo, Volume IV* (Loeb Classical Library 261; Cambridge, MA, 1932).

Conklin, B., *Oath Formulas in Biblical Hebrew* (Linguistic Studies in Ancient West Semitic 5; Winowa Lake, IN, 2011).

Cowey, J. M. S., and K. Maresch (eds), *Urkunden der Politeuma der Juden von Herakleopolis (144/3–133/2 v. Chr.) (P. Polit. Iud.): Papyri aus den Sammlungen von Heidelberg, Köln, München und Wien* (Papyrologica Coloniensia 29; Wiesbaden, 2001).

Crawford, M. H., 'Thesauri, Hoards, and Votive Deposits', in O. De Cazanove and J. Scheid (eds), *Sanctuaires et sources dans l'antiquité: Les sources documentaires et leurs limites dans la description des lieux de la culte: Actes de la table ronde organisée par le Collège de France, l'UMR 8585 Centre Gustave-Glotz, l'Ecole francaise de Rome et le Centre Jean Bérard, Naples, 30 Novembre, 2001* (Collections du Centre Jean Bérard 22; Naples, 2003), 69–84.

Danby, H. *The Mishnah: Translated from the Hebrew with Introduction and Brief Explanatory Notes* (Oxford, 1933).

Daube, D., *Studies in Biblical Law* (Cambridge, 1947).

———, 'Consortium in Roman and Hebrew Law', *Juridical Review* 72 (1950), 71–91.

———, 'Negligence in the Early Talmudic Law of Contract (*Peši'ah*)', in H. Niedermeyer and W. Flume (eds) *Festschrift Fritz Schulz* (2 vols; Weimar, 1951), I, 124–47.

———, *The Deed and the Doer in the Bible: David Daube's Gifford Lectures* (ed. C. Carmichael; 2 vols; Philadelphia, PA, 2007).

Davies, E. W., 'Inheritance Rights and the Hebrew Levirate Marriage, Part 2', *Vetus Testamentum* 31 (1981), 257–68.

De Vaux, R., *Ancient Israel: Its Life and Institutions* (tr. J. McHugh; London, 1961).

Deissmann, G. A., *Bible Studies: Contributions, Chiefly from Papyri and Inscriptions, to the History of the Language, the Literature, and the Religion of Hellenistic Judaism and Primitive Christianity* (tr. A. Grieve; Edinburgh, 1901).

———, *The Philology of the Greek Bible: Its Present and Future* (tr. R. M. Strachan; London, 1908).

———, *Light from the Ancient East: The New Testament Illustrated by Recently Discovered Texts of the Graeco-Roman World* (tr. L. R. M. Strachan; London, 1910).

Dhont, M., 'Towards a Comprehensive Explanation for the Stylistic Diversity of the Septuagint Corpus', *Vetus Testamentum* 69 (2019), 388–407.

Dillmann, A., *Die Bücher Exodus und Leviticus* (ed. V. Ryssel; Kurzgefasstes exegetisches Handbuch zum Alten Testament 12; Leipzig, 1897).

Dodds, E. R., *The Greeks and the Irrational* (Berkeley, CA, 1962).

Donker van Heel, K., *The Legal Manual of Hermopolis (P.Mattha): Text and Translation* (Leiden, 1990).

Douglas, M., *Leviticus as Literature* (Oxford, 2001).

Dozemann, T. B., *Exodus* (Grand Rapids, MI, 2009).

Draffkorn, A., 'Ilāni/Elohim,' *Journal of Biblical Literature* 76 (1957), 216–24.

Driver, S. R., *A Critical and Exegetical Commentary on Deuteronomy* (Edinburgh, 1896).

Driver, G. R., and J. C. Miles, *The Assyrian Laws: A Translation and Commentary* (Oxford, 1935).

Easterling, P. E., 'Anachronism in Greek Tragedy', *Journal of Hellenic Studies* 105 (1985), 1–10.

Eberhart, C., 'Beobachtungen zum Verbrennungsritus bei Schlachtopfer und Gemeinschafts-Schlachtopfer', *Biblica* 83 (2002), 88–96.

———, 'A Neglected Feature of Sacrifice in the Hebrew Bible', *Harvard Theological Review* 97 (2004), 485–93.

Edgerton, W. F., *Notes on Egyptian Marriage Chiefly in the Ptolemaic Period* (Studies in Ancient Oriental Civilization 1; Chicago, 1931).

Eilberg-Schwartz, H., *The Human Will in Judaism: The Mishnah's Philosophy of Intention* (Brown Judaic Studies 103; Atlanta, GA, 1986).

Embry, B., 'Legalities in the Book of Ruth: A Renewed Look', *Journal for the Study of the Old Testament* 14 (2016), 31–44.

Emerton, J., 'Some Problems in Genesis XXXVIII', *Vetus Testamentum* 25 (1975), 357–60.

Epstein, I. (ed.), *The Babylonian Talmud* (35 vols; London, 1935–59).

Feldman, L. H., *Josephus's Interpretation of the Bible* (Berkeley, CA, 1999).

———, *Flavius Josephus: Translation and Commentary, III: Judean Antiquities 1–4* (ed. S. N. Mason; Leiden, 2000).

Fensham, F. C., 'New Light on Exodus 21:6 and 22:7 from the Laws of Eshnunna', *Journal of Biblical Literature* 78 (1959), 160–1.

Fillmore, C. J., and C. Baker, 'A Frames Approach to Semantic Analysis', in B. Heine and H. Narrog (eds), *The Oxford Handbook of Linguistic Analysis* (Oxford, 2009), 313–39.

Finkelstein, J. J., 'The Ox that Gored', *Transactions of the American Philological Society* 71 (1981), 1–89.

Fischer-Bovet, C., *Army and Society in Ptolemaic Egypt* (Cambridge, 2014).

Fishbane, M., *Biblical Interpretation in Ancient Israel* (Oxford, 1989).

Fitzpatrick-McKinley, A., *The Transformation of Torah from Scribal Advice to Law* (Library of Hebrew Bible/Old Testament Studies 287; Sheffield, 1999).

Forshey, H. O., *The Hebrew Root NḤL and Its Semitic Cognates* (D.Th. Dissertation, Harvard University, 1973).

———, '*Segulah* and *nachalah* as Designations of the Covenant Community', *Hebrew Abstracts* 15 (1974), 85–6.

———, 'The Construct Chain *naḥalat YHWH* / *'elōhîm*', *Bulletin of the American Schools of Oriental Research* 220 (1975), 51–3.

Forster, E. S., *Isaeus* (Loeb Classical Library 202; Cambridge, MA, 1922).

Fraade, S., *Legal Fictions: Studies of Law and Narrative in the Discursive Worlds of Ancient Jewish Sectarians and Sages* (Supplements to the Journal for the Study of Judaism 147; Leiden, 2011).

Frankel, Z., *Vorstudien zu der Septuaginta* (Leipzig, 1841).

———, *Ueber den Einfluss der palästinischen Exegese auf die alexandrinische Hermeneutik* (Leipzig, 1851).

Frede,M., *A Free Will: Origins of the Notion in Ancient Thought* (ed. A. A. Long; Berkeley, CA, 2012).

Freedman, H. (ed.), *Midrash Rabbah* (10 vols; London, 1939).

Frei, P., 'Persian Imperial Authorisation: A Summary', in J. W. Watts (ed.), *Persia and Torah: The Theory of Imperial Authorization of the Pentateuch* (Society of Biblical Literature Symposium Series 17; Atlanta, GA, 2001), 5–40.

Friedman, M. A., 'Mohar Payments in the Geniza Documents', *Proceedings of the American Academy of Jewish Research* 43 (1976), 15–47.

Fuchs, E., 'Structure and Patriarchal Functions in the Biblical Betrothal Type-Scene: Some Preliminary Notes', *Journal of Feminist Studies in Religion* 3 (1987), 7–13.

Gaballa, G. A., *The Memphite Tomb-Chapel of Mose* (Warminster, 1977).

Gagarin, M., *Drakon and Early Athenian Homicide Law* (Yale Classical Monographs 3; New Haven, CT, 1981).

Ganzel, T., 'Defilement and Desecration of the Temple in Ezekiel', *Biblica* 89 (2008), 369–79.

Gardiner, A. H., *The Inscription of Mes: A Contribution to the Study of Egyptian Judicial Procedure* (Leipzig, 1905).

Geiger, A., *Urschrift und Übersetzungen der Bibel in ihrer Abhängigkeit von der inneren Entwicklung des Judenthums* (Breslau, 1857).

Gerleman, G., 'Nutzrecht und Wohnrecht', *Zeitschrift für die alttestamentliche Wissenschaft* 89 (1977), 313–25.

Goitein, S. D., *A Mediterranean Society: The Jewish Communities of the Arab World as Portrayed in the Documents of the Cairo Geniza, Vol. III: The Family* (Berkeley, CA, 2000).

Goldhill, S., 'The Limits of the Case Study: Exemplarity and the Reception of Classical Literature', *New Literary History* 48 (2017), 415–35.

Goodman, M. 'Josephus and Variety in First-Century Judaism', in id., *Judaism in the Roman World: Collected Essays* (Ancient Judaism and Early Christianity 66; Leiden, 2006), 33–46.

Gordon, C. H., 'אלהים in Its Reputed Meaning of Rulers, Judges', *Journal of Biblical Literature* 54 (1935), 139–44.

Graeme Auld, A., 'Cities of Refuge in Israelite Tradition', *Journal for the Study of the Old Testament* 10 (1978), 26–40.

Greenberg, M., 'The Biblical Conception of Asylum', *Journal of Biblical Literature* 78 (1959), 125–32.

———, 'Some Postulates of Biblical Criminal Law', in M. Haran (ed.), *Y. Kaufmann Jubilee Volume* (Jerusalem, 1960), 5–28.

Greenstein, E. L., 'Trans-Semitic Idiomatic Equivalency and the Derivation of Hebrew *ml'kh*', *Ugarit-Forschungen* 11 (1979), 329–36.

Grenfell, B. P., A. S. Hunt, and J. G. Smyly (eds), *The Tebtunis Papyri, Part I* (London, 1902).

Grenfell, B. P., A. S. Hunt, and J. G. Smyly (eds), *The Tebtunis Papyri, Volume III, Part I* (London, 1933).

Grossfeld, B., *The Targum Onqelos to the Torah: Exodus* (Aramaic Bible 7; Collegeville, MN, 1990).

Guggenheimer, H. W. (ed.), *The Jerusalem Talmud: Edition, Translation, and Commentary, First Order: Zeraim, Tractate Berakhot* (Studia Judaica 18; Berlin, 2000).

Gurtner, D. M., *Exodus: A Commentary on the Greek Text of Codex Vaticanus* (Leiden, 2013).

Hadad, E., '"Unintentionally (Numbers 35:11) and "Unwittingly" (Deuteronomy 19:4): Two Aspects of the Cities of Refuge', *Association for Jewish Studies Review* 41 (2017), 155–73.

Häge, G., *Ehegüterrechtliche Verhältnisse in den griechischen Papyri Ägyptens bis Diokletian* (Cologne, 1968).

Hallet, J. P., *Fathers and Daughters in Roman Society: Women and the Elite Family* (Princeton, NJ, 1984), 77–81.

Harl, M., *La Genèse* (La Bible d'Alexandrie 1; Paris, 1986).

Harlé, P., and D. Pralon, *Le Lévitique* (La Bible d'Alexandrie 3; Paris, 1989).

Harrison, A. R. W., *The Law of Athens* (2 vols.; Oxford, 1968–1971).

Hartog, P. B., *Pesher and Hypomnema: A Comparison of Two Commentary Traditions from the Hellenistic-Roman Period* (Studies on the Texts of the Desert of Judah 121; Leiden, 2017).

Hassan, I. H., 'The Problem of Influence in Literary History: Notes toward a Definition', *Journal of Aesthetics and Art Criticism* 14 (1955), 66–76.

Hatch, E., and H. A. Redpath, *A Concordance to the Septuagint and the Other Greek Versions of the Old Testament (Including the Apocryphal Books* (3 vols.; Oxford, 1897).

Hauben, H., ‘Le transport fluvial en Égypte ptolémaïque: Les bateaux du roi et de la reine’, in *Actes du XVe Congrès international de papyrologie* (Brussels, 1979), 68–77.

Hauptman, J., ‘Women’s Liberation in the *Talmudic* Period’, *Conservative Judaism* 26 (1971–2), 22–8.

———, *Rereading the Rabbis: A Woman’s Voice* (Boulder, CO, 1997).

———, *Rereading the Mishnah: A New Approach to Ancient Jewish Texts* (Texts and Studies in Ancient Judaism 109; Tübingen, 2005).

Hayes, C., *What is Divine about Divine Law? Early Perspectives* (Princeton, NJ, 2015).

Heidegger, M. *Sein und Zeit* (Tübingen, 1926).

Heinemann, I., *Philons griechische und jüdische Bildung: kulturvergleichende Untersuchungen zu Philons Darstellung der jüdischen Gesetze* (Breslau, 1932).

Hempel, C., *The Laws of the Damascus Document: Sources, Traditions and Redaction* (Studies on the Texts of the Desert of Judah 29; Leiden, 1998).

Hendel, R. ‘The Life of Metaphor in Song of Songs: Poetics, Canon, and the Cultural Bible’, *Biblica* 100 (2019), 60–83.

Hendel, R., and J. Joosten, *How Old Is the Hebrew Bible? A Linguistic, Textual, and Historical Study* (New Haven, CT, 2018).

Henderson, J. (ed.), *Aristophanes IV* (Cambridge, MA, 2002).

Henshke, D., *The Original Mishna in the Discourse of the Later Tanna’im* (Ramat-Gan, 1997).

Hershman, A. M. (ed.), *The Code of Maimonides, Book Fourteen: The Book of Judges* (New Haven, CT, 1949).

Hiebert, R. J. V., ‘Deuteronomy 22:28–29 and Its Premishnaic Interpretations’, *Catholic Biblical Quarterly* 56 (1994), 203–20.

Hoffmann, D., *Das Buch Leviticus* (2 vols.; Berlin, 1906).

Holmes, O. W., Jr., *The Common Law* (Cambridge, MA, 2009).

Honigman, S., 'The Jewish *Politeuma* at Heracleopolis', *Scripta Classica Israelica* 21 (2002), 251–66.

Hornblower, S., and A. Spawforth (eds), *The Oxford Classical Dictionary* (Oxford, 2012[4]).

Horst, F., 'Zwei Begriffe für Eigentum (Besitz): *naḥala* und *'aḥuzza*', in A. Kuschke (ed.), *Verbannung und Heimkehr: Beiträge zur Geschichte und Theologie Israels im 6. und 5. Jahrhundert v. Chr. Wilhelm Rudolph zum 70. Geburtstage* (Tübingen, 1961), 135–56.

Houtman, C., 'Der Altar as Asylstätte im Alten Testament: Rechtsbestimmung (Ex. 21, 12–14) und Praxis (I Reg. 1–2)', *Revue Biblique* 103 (1996), 343–66.

———, *Exodus* (4 vols; Historical Commentary on the Old Testament 1–4; Peeters, 1993–2002).

Humbert, P., '"Etendre la main" (Note de lexicographie hébraïque)', *Vetus Testamentum* 12 (1962), 383–95.

Hunt, A. S., and C. C. Edgar (eds), *Select Papyri, Volume II: Public Documents* (Loeb Classical Library 282; Cambridge, MA, 1934).

Hunt, A. S., J. G. Smyly, and C. C. Edgar (eds), *The Tebtunis Papyri, Volume III, Part II* (London, 1938).

IJsewijn, J., *De sacerdotibus sacerdotiisque Alexandri Magni et Lagidarum eponymis* (Brussels, 1961).

Ilan, T., 'Premarital Cohabitation in Ancient Judea: The Evidence of the Babatha Archive and the Mishnah (Ketubbot 1.4)', *Harvard Theological Review* 86 (1993), 247–64.

———, *Jewish Women in Greco-Roman Palestine: An Inquiry into Image and Status* (Texts and Studies in Ancient Judaism 44; Tübingen, 1995).

———, 'The Attraction of Aristocratic Jewish Women to Pharisaism', *Harvard Theological Review* 88 (1995), 1–33.

———, ‘Patriarchy, the Land of Israel and the Legal Position of Jewish Women’, *Nashim* 1 (1998), 42–50.

Jackson, B. S., *Essays in Jewish and Comparative Legal History* (Studies in Judaism in Late Antiquity 10; Leiden, 1975).

———, *Wisdom-Laws: A Study of the Mishpatim of Exodus 21:1–22:16* (Oxford, 2006).

———, ‘The ‘Institutions’ of Marriage and Divorce in the Hebrew Bible’, *Journal of Semitic Studies* 56 (2011), 221–51.

James, T. G. H., *Pharaoh’s People: Scenes from Life in Imperial Egypt* (London, 2003).

Japhet, S., ‘Israelite Legal and Social Reality as Reflected in Chronicles: A Case Study’, in M. Fishbane and E. Tov (eds), *Sha’arei Talmon: Studies in the Bible, Qumran, and the Ancient Near East Presented to Shemaryahu Talmon* (Winowa Lake, IN, 1992), 79–91.

Jassen, A. P., ‘American Scholarship on Jewish Law in the Dead Sea Scrolls’, in D. Dimant (ed.), *The Dead Sea Scrolls in Scholarly Perspective: A History of Research* (Studies on the Texts of the Desert of Judah 99; Leiden, 2012), 101–54.

Jastrow, M., ‘On מִמָּחֳרַת הַשַּׁבָּת (“On the Day after the Sabbath”)’, *American Journal of Semitic Languages* 30 (1913), 94–110.

Jepsen, A., *Untersuchungen zum Bundesbuch* (Stuttgart, 1927).

Jones, J. W., *The Law and Legal Theory of the Greeks: An Introduction* (Oxford, 1956).

Joosten, J., *People and Land in the Holiness Code: An Exegetical Study of the Ideational Framework of the Law in Leviticus 17–26* (Supplements to Vetus Testamentum 67; Leiden, 1997).

———, ‘Translating the Untranslatable: Septuagint Renderings of Hebrew Idioms’, in R. Hiebert (ed.), *“Translation is Required”: The Septuagint in Retrospect and Prospect* (Leiden, 2010), 59–70

———, *Collected Studies on the Septuagint: From Language to Interpretation and Beyond* (Forschungen zum Alten Testament 83; Tübingen, 2012).

———, 'Varieties of Greek in the Septuagint and New Testament', in J. Carleton Paget and J. Schaper (eds), *The New Cambridge History of the Bible, 1: From the Beginnings to 600* (Cambridge, 2013), 22–45.

———, 'The Interplay between Hebrew and Greek in Biblical Lexicology: Language, Text, and Interpretation', in E. Bons, J. Joosten, and R. Hunziker-Rodewald (eds), *Biblical Lexicology: Hebrew and Greek* (Beihefte zur Zeitschrift für die alttestamentliche Wissenschaft 443; Berlin, 2015), 209–25.

———, 'How Old is the Targumic Tradition?', in A. Piquer Otero and P. Torijano Morales (eds), *The Text of the Hebrew Bible and Its Editions: Studies in Celebration of the Fifth Centennial of the Complutensian Polyglot* (Supplements to the Textual History of the Hebrew Bible 1; Leiden, 2016), 143–59.

———, 'Legal Hermeneutics and the Tradition Underlying the Septuagint', in W. Kraus, M. N. van der Meer, and M. Meiser, *XV Congress of the International Organization for Septuagint and Cognate Studies: Munich, 2013* (Atlanta, GA, 2016), 551–9.

———, 'Diachronic Linguistics and the Date of the Pentateuch', in J. C. Gertz, B. M. Levinson, D. Rom-Shiloni, and K. Schmid (eds), *The Formation of the Pentateuch: Bridging the Academic Cultures of Europe, Israel, and North America* (Forschungen zum Alten Testament 111; Tübingen, 2016), 327–44.

———, 'Pseudo-Classicisms in Late-biblical Hebrew', *Zeitschrift für die alttestamentliche Wissenschaft* 128 (2016), 16–29.

Keenan, J. G., J. G. Manning, and U. Yiftach-Firanko (eds), *Law and Legal Practice in Egypt from Alexander to the Arab Conquest: A Selection of Papyrological Sources in Translation, with Introductions and Commentary* (Cambridge, 2014).

Kippenberg, H. G., *Religion und Klassenbildung im antiken Judäa: Eine religionssoziologische Studie zum Verhältnis von Tradition und gesellschaftlicher Entwicklung* (Studien zur Umwelt des Neuen Testaments 14; Göttingen, 1978).

Kislev, I., 'Numbers 36,1–12: Innovation and Interpretation', *Zeitschrift für die Alttestamentliche Wissenschaft* 122 (2010), 249–59.

Kister, M., 'Some Aspects of Qumranic Halakhah', in J. Trebolle Barrera and L. Vegas Montaner (eds), *The Madrid Qumran Congress: Proceedings of the International Congress on the Dead Sea Scrolls Madrid 18–21 March, 1991* (Studies on the Texts of the Desert of Judah 11/2; Leiden, 1992), 571–88.

———, 'From Philotas to Hillel: 'Betrothal' Contracts and Their Violation', *Scripta Classica Israelica* 21 (2002), 57–60.

Klawans, J., *Purity, Sacrifice, and the Temple: Symbolism and Supersessionism in the Study of Ancient Judaism* (Oxford, 2006).

———, *Josephus and the Theologies of Ancient Judaism* (Oxford, 2012).

Knierim, R., *Die Hauptbegriffe für Sünde im Alten Testament* (Gütersloh, 1965).

Knohl, I., *The Sanctuary of Silence: The Priestly Torah and the Holiness School* (Minneapolis, 1995).

Kohler, K., 'The Sabbath and Festivals in Pre-Exilic and Exilic Times', *Journal of the American Oriental Society* 37 (1917), 209–23.

Kraeling, E. G., (ed.), *The Brooklyn Museum Aramaic Papyri: New Documents of the Fifth Century B.C. from the Jewish Colony at Elephantine* (New Haven, CT, 1953).

Kratz, R. G., 'Biblical Scholarship and Qumran Studies,' in G. J. Brooke and C. Hempel (eds), *T&T Companion to the Dead Sea Scrolls* (London, 2019), 204–15.

Kugel, J. L., 'The Bible's Earliest Interpreters', *Prooftexts* 3 (1987), 269–83.

———, *In Potiphar's House: The Interpretative Life of Biblical Texts* (Cambridge, MA, 1994).

———, *Traditions of the Bible: A Guide to the Bible as It Was at the Start of the Common Era* (Cambridge, MA, 1998.

———, *The Ladder of Jacob: Ancient Interpretations of the Biblical Story of Jacob and His Children* (Princeton, 2006).

Kugel, J. L., and R. A. Greer, *Early Biblical Interpretation* (Library of Early Christianity 3; Philadelphia, 1986).

Kugler, R. A., 'Uncovering Echoes of LXX Legal Norms in Hellenistic Egyptian Documentary Papyri: The Case of the Second-Century Herakleopolite Nome', in M. K. H. Peters (ed), *XIV Congress of the IOSCS, Helsinki, 2010* (Society of Biblical Literature Septuagint and Cognate Series 59; Atlanta, GA, 2013), 143–53.

Landman, Y., *The Biblical Law of Bailment in Its Ancient Near Eastern Contexts* (Ph.D. Dissertation, Yeshiva University, 2017).

Laporte, J., 'Sacrifice and Forgiveness in Philo of Alexandria', *Studia Philonica Annual* 1 (1989), 34–42.

Lauinger, J., 'Esarhaddon's Succession Treaty at Tell Tayinat: Text and Commentary', *Journal of Cuneiform Studies* 62 (2012), 87–123.

Lauterbach, J. Z. (ed.), *Mekhilta de-Rabbi Ishmael: A Critical Edition, Based on the Manuscripts and Early Editions, with an English Translation, Introduction, and Notes* (Philadelphia, PA, 2004).

Le Boulluec, A., and P. Sandevoir, *L'Exode: Traduction du texte grec de la Septante, introduction et notes* (La Bible d'Alexandrie 2; Paris, 1989).

Le Déaut, R., 'Critique textuelle et exégèse: Exode XXII 12 dans la Septante et le Targum', *Vetus Testamentum* 22 (1972), 164–75.

Lee, J. A. L., *A Lexical Study of the Septuagint Version of the Pentateuch* (Society of Biblical Literature Septuagint and Cognate Studies Series 14; Chica, CA, 1983).

———, *The Greek of the Pentateuch: Grinfield Lectures On The Septuagint 2011–2012* (Oxford, 2018).

Legrand, T., and J. Joosten (eds), *The Targums in Light of Traditions of the Second Temple Period* (Supplements to the Journal for the Study of Judaism 167; Leiden, 2014).

LeFebvre, M., *Collections, Codes, and Torah: The Re-Characterization of Israel's Written Law* (The Library of Hebrew Bible/Old Testament Studies 451; Sheffield, 2006).

Lemaire, A., 'Veuve sans enfants dans le royaume de Juda', *Zeitschrift für Altorientalische und Biblische Rechtsgeschichte* (1999), 1–14.

Lemardelé, C., 'Étymologie et signification des sacrifices šlm(y)m', *Revue Bibilique* 117 (2010), 481–90.

Lemos, T. M., *Marriage Gifts and Social Change in Ancient Palestine: 1200 BCE to 200 CE* (Cambridge, 2010).

Leonhardt, J., *Jewish Worship in Philo of Alexandria* (Texts and Studies in Ancient Judaism 84; Tübingen, 2001).

Leuchter, M., 'Genesis 38 in Social and Historical Perspective', *Journal of Biblical Literature* 132 (2013), 209–27.

Levine, B. A., *The JPS Torah Commentary: Leviticus* (New York, 2003).

Levinson, B. M., *Deuteronomy and the Hermeneutics of Legal Innovation* (Oxford, 1997).

———, 'The Manumission of Hermeneutics: The Slave Laws of the Pentateuch as a Challenge to Contemporary Pentateuchal Theory', in A. Lemaire (ed.), *Congress Volume Leiden 2004* (Supplements to Vetus Testamentum 109; Leiden, 2006), 281–324.

Levinson, B. M., and J. Stackert, 'Between the Covenant Code and Esarhaddon's Succession Treaty: Deuteronomy 13 and the Composition of Deuteronomy', *Journal of Ancient Judaism* 3 (2012), 123–40.

Levinson, J., *The Twice Told Tale* (Jerusalem: Magnes, 2005).

———, 'From Narrative Practice to Cultural Poetics: Literary Anthropology and the Rabbinic Sense of Self', in M. Niehoff (ed.), *Homer and the Bible in the Eyes of Ancient Interpreters: Between Literary and Religious Concerns* (Jerusalem Studies in Religion and Culture 16; Leiden, 2012), 345–68.

Lewis, N., *Greeks in Ptolemaic Egypt: Case Studies in the Social History of the Hellenistic World* (Oxford, 1986).

———, *The Documents from the Bar-Kokhba Period in the Cave of Letters: Greek Papyri* (Jerusalem, 1989).

Lewis, N., R. Katzoff, and J. C. Greenfield, 'P.Yadin 18', *Israel Exploration Journal* 37 (1987), 229–50.

Lewis, T. J., 'The Ancestral Estate (נחלת אלהים) in 2 Samuel 14:16', *Journal of Biblical Literature* 110 (1991), 597–612,

Lianeri, L., and V. Zajki, V. (eds), *Translation and the Classic: Identity as Change in the History of Culture* (Oxford, 2008).

Lipinksi, E., 'נחל', in G. J. Botterweck, H. Ringgren, and H.-J. Fabry (eds), *Theological Dictionary of the Old Testament* (16 vols; Grand Rapids, MI, 1974–2018), IX, 319–35.

Lippert, S. L., *Ein demotisches juristisches Lehrbuch: Untersuchungen zu Papyrus Berlin P 23757 rto* (Ägyptologische Abhandlungen 66; Wiesbaden, 2004).

———, *Einführung in die altägyptische Rechtsgeschichte* (Münster, 2008).

Long, A. A., 'Stoic Psychology', in K. Algra, J. Barnes, J. Mansfeld, and M. Schofield (eds), *The Cambridge History of Hellenistic Philosophy* (Cambridge, 1999), 560–84.

Loomis, W. T., 'The Nature of Premeditation in Athenian Homicide Law', *Journal of Hellenic Studies* 92 (1972), 86–95.

Lüddeckens, E., *Ägyptische Eheverträge* (Ägyptologische Abhandlungen 1; Wiesbaden, 1960).

Lust, J., E. Eynikel, and K. Hauspie, *A Greek-English Lexicon of the Septuagint* (Stuttgart, 2003).

MacDowell, D. M., *Athenian Homicide Law in the Age of the Orators* (Publications of the Faculty of Arts of the University of Manchester 15; Manchester, 1963).

———, *Andokides, On the Mysteries: Text Edited with Introduction, Commentary, and Appendixes* (Oxford, 1989).

Maidment, K. J. (ed.), *Minor Attic Orators, Volume I* (Loeb Classical Library 308; Cambridge, MA, 1941).

Marchant, E. C., and G. W. Bowersock (eds), *Xenophon VII* (Cambridge, MA, 1925).

Marcus, R. (ed.), *Philo, Questions and Answers on Exodus* (Loeb Classical Library 401; Cambridge, MA, 1953).

Martindale, C., *Redeeming the Text: Latin Poetry and the Hermeneutics of Reception* (Cambridge, 1993).

———, 'Reception—A New Humanism? Receptivity, Pedagogy and the Transhistorical', *Classical Receptions Journal* 5 (2013), 169–83.

Mastronarde, D. J. (ed.), *Euripides: Medea* (Cambridge, 2002).

Mattha, G., 'Rights and Duties of the Eldest Son According to the Native Egyptian Laws of Succession of the Third Century B.C.', *Bulletin of the Faculty of Arts, University of Cairo* 12 (1950), 113–8.

Mattha, G., and G. R. Hughes, *The Demotic Legal Code of Hermopolis West* (Cairo, 1975).

Mattison, K., 'Bloodguilt and Asylum in Deuteronomy and the Holiness Legislation (Deut 19:1–13 and Num 35:9–34)', *Conversations with the Biblical World* 36 (2016), 29–45.

———, 'Contrasting Conceptions of Asylum in Deuteronomy 19 and Numbers 35', *Vetus Testamentum* 68 (2018), 232–51.

———, *Rewriting and Revision as Amendment in the Laws of Deuteronomy* (Forschungen zum Alten Testament II 100; Tübingen, forthcoming).

McKeating, H., 'The Development of the Law of Homicide in Ancient Israel', *Vetus Testamentum* 25 (1975), 46–68.

McNamara, M. J. (ed.), *Targum Neofiti 1: Deuteronomy* (Aramaic Bible 5A: Collegeville, MN, 1997).

McNamara, M. J., M. Maher, and R. Hayward, *Targum Neofiti 1: Exodus and Targum Pseudo-Jonathan: Exodus* (Aramaic Bible 2; Collegeville, MN, 1994).

McNamara, M. J., M. Maher, R. Hayward (eds), *Targum Neofiti 1: Leviticus and Targum Pseudo-Jonathan: Leviticus* (Aramaic Bible 3; Collegeville, MN, 1994).

Mélèze Modrzejewski, J., 'La règle de droit dans l'Égypte romaine: État des questions et perspectives de recherches', in D. H. Samuel (ed.), *Proceedings of the XIIth International Congress of Papyrology* (Toronto, 1970), 317–77.

———, 'Papyrologie et histoire des droits de l'Antiquité', *Annuaires de l'École pratique des hautes études* (1982), 297–320.

———, 'Law and Justice in Ptolemaic Egypt', in M. J. Geller and H. Maehler (eds), *Legal Documents of the Hellenistic World* (London, 1995), 1–19.

———, 'The Septuagint as Nomos: How the Torah Became a "Civic Law" for the Jews in Egypt', in J. W. Cairns and O. F. Robinson (eds), *Critical Studies in Ancient Law, Comparative Law and Legal History* (Oxford, 2001), 183–99.

———, ‘Greek Law in the Hellenistic Period: Family and Marriage’, in M. Gagarin and D. Cohen (eds), *The Cambridge Companion to Ancient Greek Law* (Cambridge, 2005), 343–54.

———, ‘The *Politeuma*’, in Keenan, Manning, and Yiftach-Firanko (eds), *Law and Legal Practice in Egypt from Alexander to the Arab Conquest*, 477–82.

Milgram, J. S., *From Mesopotamia to the Mishnah: Tannaitic Inheritance Law in its Legal and Social Contexts* (Texts and Studies in Ancient Judaism 164; Tübingen, 2016).

Milgrom, J., ‘The Cultic שגגה and Its Influence in Psalms and Job’, *Jewish Quarterly Review* 58 (1967), 115–25.

———, ‘Sancta Contagion and Altar/City Asylum’, in J. A. Emerton (ed.), *Congress Volume Vienna 1980* (Leiden, 1981), 278–310.

———, *Leviticus 1–16* (Anchor Bible 3A; New Haven, CT, 1998).

———, *Leviticus 23–27* (Anchor Bible 3B; New York, 2001).

———, *The JPS Torah Commentary: Numbers* (New York, 2003).

Millett, P., *Lending and Borrowing in Ancient Athens* (Cambridge, 1991).

Moscovitz, L., *Talmudic Reasoning: From Casuistics to Conceptualization* (Texts and Studies in Ancient Judaism 89; Tübingen, 2002).

———, ‘The Formation and Character of the Jerusalem Talmud’, in S. T. Katz (ed.), *The Cambridge History of Judaism, Volume IV: The Late Roman-Rabbinic Period* (Cambridge, 2006), 663–77.

Mroczek, E., *The Literary Imagination in Jewish Antiquity* (Oxford, 2016).

Mueller, M., ‘The Language of Reciprocity in Euripides’ *Medea*’, *American Journal of Philology* (2001), 471–504.

Muraoka, T., *A Greek-English Lexicon of the Septuagint* (Leuven, 2009).

Murray, A. T., and G. E. Dimock (eds), *Homer, The Odyssey, Volume II* (Loeb Classical Library 105; Cambridge, MA, 1919).

Najman, H., *Seconding Sinai: The Development of Mosaic Discourse in Second Temple Judaism* (Supplements to the Journal for the Study of Judaism 77; Leiden, 2003).

———, *Past Renewals: Interpretative Authority, Renewed Revelation and the Quest for Perfection in Jewish Antiquity* (Supplements to the Journal for the Study of Judaism 53; Leiden, 2010).

———, *Losing the Temple and Recovering the Future: An Analysis of 4 Ezra* (Cambridge, 2014).

Neufeld, E., *Ancient Hebrew Marriage Laws* (London, 1944).

Neusner, J., 'Map without Territory: Mishnah's System of Sacrifice and Sanctuary', *History of Religions* 19 (1979), 103–27.

Noam, V., 'Creative Interpretation and Integrative Interpretation in Qumran', in A. D. Roitman, L. H. Shiffman, and S. Tzoref (eds), *The Dead Sea Scrolls and Contemporary Culture: Proceedings of the International Conference held at the Israel Museum, Jerusalem (July 6-8, 2008)* (Studies on the Texts of the Desert of Judah 93; Leiden, 2011), 363–76.

North Fowler, H. (ed.), *Plato, Volume VII* (Loeb Classical Library 123; Cambridge, MA, 1921).

Noth, M., *Exodus: A Commentary* (tr. J. N. Bowden; Old Testament Library; London, 1962).

Oelsner, J., 'The Neo-Babylonian Period', in Westbrook and Jasnow (eds), *Security for Debt in Ancient Near Eastern Law*, 289–303.

Oldfather, W. A., *Epictetus, Discourses, Books 1–2* (Loeb Classical Library 131; Cambridge, MA, 1925).

Olson, S. D. (ed.), *Athenaeus, The Learned Banqueters, Volume VI: Books 12–13.594b* (Loeb Classical Library 327; Cambridge, MA 2010).

Ottenheijm, E., 'Impurity Between Intention and Deed: Purity Disputes in First Century Judaism and in the New Testament', in M. J. H. M. Poorthuis and J. Schwartz (eds), *Purity and Holiness: The Heritage of Leviticus* (Jewish and Christian Perspectives Series 2; Leiden, 2000), 129–47.

Otto, E., 'Die rechtshistorische Entwicklung des Depositenrechts in altorientalischen und altisraelitischen Rechtskorpora', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 105 (1988), 1–31.

Pangle, T., *The Laws of Plato: Translated, with Notes and an Interpretive Essay* (Chicago, 1988).

Parker, R., *Miasma: Pollution and Purification in Early Greek Religion* (Oxford, 1990).

———, 'Eating Unsacrificed Meat', in P. Carlier and C. LeRouge-Cohen (eds), *Paysage et religion en Grèce antique: Mélanges offerts à Madeleine Jost* (Travaux de la Maison René-Ginouvès 10; Paris, 2010), 139–47.

Paul, S., *Studies in the Book of the Covenant in the Light of Cuneiform and Biblical Law* (Supplements to Vetus Testamentum 18; Leiden, 1970).

Pelletier, A., 'Σαββαττα: Transcription grecque de l'araméen', *Vetus Testamentum* 22 (1972), 436–47.

Perrin, B. (ed.), *Plutarch, Lives, Volume VI* (Loeb Classical Library 98; Cambridge, MA, 1918).

Pestman, P. W., *Marriage and Matrimonial Property in Ancient Egypt: A Contribution to Establishing the Legal Position of the Woman* (Leiden, 1961).

———, 'Les archives privées de Pathyris à l'époque ptolémaïque: La famille de Pétéharsemtheus, fils de Panebkhounis', in E. Boswinkel, P. W. Pestman, and P. J. Sijpesteijn, *Studia Papyrologica Varia* (Pap. Lugd. Bat. 14; Leiden, 1965), 47–105.

———, 'The Law of Succession in Ancient Egypt', in J. Brugman (ed.), *Essays on Oriental Laws of Succession* (Leiden, 1969), 58–77.

Petit, F. (ed.), *Quaestiones in Genesim et in Exodum: Fragmenta graeca* (Les œuvres de Philon d'Alexandrie 33; Paris, 1978).

Preisigke, F. *Wörterbuch der griechischen Papyrusurkunden* (2 vols; Berlin, 1925[1]; Berlin, 1944[2]).

Pressler, C., *The View of Women Found in the Deuteronomic Family Laws* (Beihefte zur Zeitschrift für die alttestamentliche Wissenschaft 216; Berlin, 1993).

Prijs, L., *Jüdische Tradition in der Septuaginta* (Leiden, 1948).

Pomeroy, S. B., *Women in Hellenistic Egypt: From Alexander to Cleopatra* (Detroit, 1990).

Porten, B., *The Elephantine Papyri in English: Three Millennia of Cross-Cultural Continuity and Change* (Atlanta, 2011[2]).

Propp, W. H. C., *Exodus 19–40: A New Translation with Introduction and Commentary* (Anchor Bible 2B; New York, 2006).

Rabel, E., *Papyrusurkunden der Öffentlichen Bibliothek der Universität zu Basel, I: Urkunden in griechischer Sprache* (Berlin, 1917).

Rabinowitz, J. J., 'Exodus XXII 4 and the Septuagint thereof', *Vetus Testamentum* 9 (1959), 40–6.

Rahlfs, A. (ed.), *Septuaginta: Id est Vetus Testamentum graece iuxta LXX interpretes* (Stuttgart, 2006).

Ramsay, W. M., *The Cities and Bishoprics of Phrygia: Being an Essay of the Local History of Phrygia from the Earliest Times to the Turkish Conquest, Vol. 1: The Lycos Valley and South-Western Phrygia* (Oxford, 1895).

Ramsay, W. M., and D. G. Hogarth, 'Apollo Lermenus', *Journal of Hellenic Studies* 8 (1887), 376–400.

Rattray, S., 'Marriage Rules, Kinship Terms and Family Structure in the Bible', in K. H. Richards (ed.), *Society of Biblical Literature Abstracts and Seminar Papers 26* (Atlanta, GA, 1987), 537–44.

Rea, J. R. (ed.), *The Oxyrhynchus Papyri XLVI* (London, 1978).

Rhodes, P. J., *A Commentary on the Aristotelian* Athenaion politeia (Oxford, 1981), 641–46.

Rickert, G., *ΕΚΩΝ and ΑΚΩΝ in Early Greek Thought* (American Classical Studies 20; Atlanta, GA, 1989).

Ritner, R. K., 'A Property Transfer from the Erbstreit Archives', in H.-J. Thissen and K.-T. Zauzich (eds), *Grammata Demotika: Festschrift für Erich Lüddeckens zum 15. Juni 1983* (Würzburg, 1984), 171–87.

Rofé, A., 'The History of the Cities of Refuge in Biblical Law', *Scripta Hierosolymitana* (1986), 205–39.

Rosen-Zvi, I., 'The Mishnaic Mental Revolution: A Reassessment', *Journal of Jewish Studies* 66 (2015), 36–58.

Rosental, Y., 'The History of the Final Chapter of Tractate Shevu'ot', *Tarbiz* (2014), 5–50.

Rowlandson, J., *Women and Society in Greek and Roman Egypt* (Cambridge, 1998).

Rowley, H. H., 'The Marriage of Ruth', *Harvard Theological Review* 40 (1947), 77–99.

Rubinstein, J. L., 'Nominalism and Realism in Qumran and Rabbinic Law: A Reassessment', *Dead Sea Discoveries* 6 (1999), 157–83.

Rupprecht, H. A., *Wörterbuch der griechischen Papyrusurkunden, Supplement II (1967–1976)* (Wiesbaden, 1991).

Safrai, H., 'Women and the Ancient Synagogue', in S. Grossman and R. Haut (eds), *Daughters of the King: Women and the Synagogue* (Philadelphia, PA, 1992), 39–49.

Safrai, Z., *The Missing Century: Palestine in the Fifth Century: Growth and Decline* (Palestina antiqua 9; Leuven, 1998).

Sanders, E. P., *Jewish Law from Jesus to the Mishnah: Five Studies* (London, 1990).

Sarna, N. M., *The JPS Commentary: Exodus* (Philadelphia, PA, 2003).

Sasson, J. M., *Jonah* (Anchor Bible 24B; New York, 1990).

Sassoon, I., *The Status of Women in Jewish Tradition* (Cambridge, 2011).

Satlow, M. L., 'Reconsidering the Rabbinic *Ketubah* Payment', in S. D. Cohen (ed.), *The Jewish Family in Antiquity* (Atlanta, GA, 1993), 133–51.

———, *Jewish Marriage in Antiquity* (Princeton, NJ, 2001).

Schaper, J., 'Exodos', in M. Karrer and W. Kraus (eds), *Septuaginta Deutsch: Erläuterungen und Kommentare zum griechischen Alten Testament* (2 vols; Stuttgart, 2011), I, 258–324.

Schenck, K., *A Brief Guide to Philo* (Louisville, KY, 2005).

Schick, S., 'Negligence and Strict Liability in the Babylonian and Palestinian Talmuds: Two Competing Systems of Tort Law in the Rulings of Early Amoraim', *Dine Israel* 29 (2013), 139*–76*.

Schiffman, L. H., *The Halakhah at Qumran* (Studies in Judaism in Late Antiquity 16; Leiden, 1975).

———, 'Halakhah and History', in A. Oppenheimer and E. Müller-Luckner (eds), *Jüdische Geschichte in hellenistisch-römischer Zeit* (Munich, 1999), 205–19.

———, *The Courtyards of the House of the Lord: Studies on the Temple Scroll* (Studies on the Texts of the Desert of Judah 75; Leiden, 2008).

———, ‘Halakhah and History: The Contribution of the Dead Sea Scrolls to Recent Scholarship’, in id., *Qumran and Jerusalem: Studies in the Dead Sea Scrolls and the History of Judaism* (Grand Rapids, MI, 2010), 63–78.

Schmid, K., ‘The Persian Imperial Authorization as Historical Problem and as Biblical Construct: A Plea for Differentiations in the Current Debate’, in G. N. Knoppers and B. M. Levinson (eds), *The Pentateuch as Torah: New Models for Understanding Its Promulgation and Acceptance* (Winowa Lake, IN, 2007), 22–38.

Schmidt, L., ‘Leviten- und Asylstädte in Num. XXXV und Jos. XX; XXI 1–42’, *Vetus Testamentum* 52 (2002), 103–21.

Schmitz, O., *Die Opferanschauung des späteren Judentums und die Opferaussagen des Neuen Testamentes: Eine Untersuchung ihres geschichtlichen Verhältnisses* (Tübingen, 1910).

Schorch, S., ‘Hellenizing Women in the Biblical Tradition: The Case of LXX Genesis’, *Bulletin of the International Organization for Septuagint and Cognate Studies* 41 (2008), 3–16.

———, ‘Die prä-Samaritanischen Fortschreibungen’, in W. Bührer (ed.), *Schriftgelehrte Fortschreibungs- und Auslegungsprozesse: Textarbeit im Pentateuch, in Qumran, Ägypten und Mesopotamien* (Forschungen zum Alten Testament II 108; Tübingen, 2019), 113–32.

Schuster, S., *Seehdarlehen in den Gerichtsreden des Demosthenes: Mit einem Ausblick auf die weitere historische Entwicklung des Rechtsinstitutes: dáneion nautikón, fenus nauticum und Bodmerei* (Freiburger Rechstgeschichtliche Abhandlungen 49; Berlin, 2005).

Schwartz, D. R., ‘Law and Truth: On Qumran-Sadducean and Rabbinic Views of Law’, in D. Dimant and U. Rapaport (eds), *The Dead Sea Scrolls: Forty Years of Research* (Studies on the Texts of the Desert of Judah 10; Leiden, 1992), 229–40.

Seebass, H., 'Noch einmal zum Depositenrecht Ex 22,6–14', in P. Mommer, W. H. Schmidt, and H. Strauß (eds), *Gottes Recht als Lebensraum* (Neukirchen-Vluyn, 1993), 21–31.

Seeligmann, I. L., 'Voraussetzungen der Midraschexegese', in G. W. Anderson et al. (eds), *Congress Volume Copenhagen 1953* (Supplements to Vetus Testamentum 1; Leiden, 1953), 150–81.

Seidl, E., *Ptolemäische Rechtsgeschichte* (Glückstadt, 1962²).

Shemesh, A., *Halakhah in the Making: The Development of Jewish Law from Qumran to the Rabbis* (Berkeley, 2009).

Siegert, F., 'Early Jewish Interpretation in a Hellenistic Style', in M. Saebø (ed.), *Hebrew Bible / Old Testament: The History of Its Interpretation, Volume 1: From the Beginnings to the Middle Ages (until 1300), Part 1: Antiquity* (Göttingen, 1996), 130–98.

Simon, U., *The JPS Bible Commentary: Jonah* (trans. L. J. Schramm; Philadelphia, 1999).

Smith, J. Z., *Imagining Religion: From Babylon to Jonestown* (Chicago, 1982).

Snaith, N. H., 'The Sin-Offering and the Guilt-Offering', *Vetus Testamentum* 15 (1965), 73–80.

Speiser, E. A., 'The Stem *PLL* in Hebrew', *Journal of Biblical Literature* 82 (1963), 301–6.

———, *Genesis* (Anchor Yale Bible Commentary 1; New York, 1964).

Spiegelberg, W. (ed.), *Die demotischen Papyri Hauswaldt* (Leipzig, 1913).

Sprinkle, J. M., *'The Book of the Covenant': A Literary Approach* (Library of Hebrew Bible/ Old Testament Studies 174; Sheffield, 2009).

Stackert, J., *Rewriting the Torah: Literary Revision in Deuteronomy and the Holiness Legislation* (Forschungen zum Alten Testament 52; Tübingen, 2007).

Stadler, M. A., 'Rechtskodex von Hermupolis (P. Kairo JE.89.127–30+89.137–43)', in B. Janowski and G. Wilhelm (eds), *Texte zum Rechts- und Wirtschaftsleben* (Gütersloh, 2004), 185–207.

Stalley, R. F., *An Introduction to Plato's Laws* (Oxford, 1983).

Steymans, H. U., 'Deuteronomy 28 and Tell Tayinat', *Verbum et Ecclesia* 34 (2013), art. 870.

Stolper, M. W., *Entrepreneurs and Empire: The Murašû Archive, the Murašû Firm, and Persian Rule in Babylonia* (Publications de l'Institut historique et archéologique néerlandais de Stamboul 54; Leiden, 1985).

Stroud, R. S., *Drakon's Law on Homicide* (University of California Publications, Classical Studies 3; Berkeley, CA, 1968).

Sussman, Y., '*Weshuv 'al yerushalmi neziqin*', in Y. Sussman and D. Rosenthal (eds), *Mehqerei Talmud, Volume 1: Talmudic Studies Dedicated to the Memory of Professor Eliezer Shimshon Rosenthal* (Jerusalem, 1993), 55–134.

———, 'The History of the Halakha and the Dead Sea Scrolls', in E. Qimron and J. Strugnell (eds), *DJD X* (Oxford, 1994), 179–200.

Taubenschlag, R., *Das Strafrecht im Rechte der Papyri* (Leipzig, 1916).

———, *The Law of Greco-Roman Egypt in the Light of the Papyri: 332 B.C.–640 A.D.* (New York, 1944).

Tcherikover, V. A., and A. Fuks (eds), *Corpus Papyrorum Judaicarum, Volume I* (Cambridge, MA, 1957).

Teeter, D. A., *Scribal Laws: Exegetical Variation in the Textual Transmission of Biblical Law in the Late Second Temple Period* (Forschungen zum Alten Testament 92; Tübingen, 2014).

Thackeray, H. St. J. (ed.), *Josephus, Volume V: Jewish Antiquities, Volume I: Books 1–3* (Loeb Classical Library 242; Cambridge, MA, 1930).

Thackeray, H. St. J., and R. Marcus (eds), *Josephus: Jewish Antiquities, II: Books 4–6* (Loeb Classical Library 490; Harvard, MA, 1930).

Thompson, T., and D. Thompson, 'Some Legal Problems in the Book of Ruth', *Vetus Testamentum* 18 (1968), 79–99.

Tigay, J. H., *The JPS Torah Commentary: Deuteronomy* (Philadelphia, PA, 2003).

Tov, E., Textual Criticism of the Hebrew Bible (Minneapolis, 2001²).

———, 'The Greek Biblical Texts from the Judean Desert', in idem, *Hebrew Bible, Greek Bible, and Qumran* (Texts and Studies in Ancient Judaism 121; Tübingen, 2008), 339–64.

Tredennick, H., and G. C. Armstrong (eds.), *Aristotle, Volume XVII* (Loeb Classical Library 287; Cambridge, MA, 1935).

Tucker, J. M., 'A Closer Look at the Law(s) of Seduction and Rape in the Temple Scroll', in H. Drawnel and G. J. Brooke (eds), *Qumran Manuscripts and Their Interpretation: Disparate Traditions and Dissenting Opinions* (Leiden, forthcoming in 2019).

van der Meer, M. N., 'Bridge over Troubled Waters? The γέφυρα in the Old Greek of Isaiah 37:25 and Contemporary Sources', M. K. H. Peters (ed.), *XIII Congress of the International Organization for Septuagint and Cognate Studies, Ljubljana, 2007* (Society of Biblical Literature Septuagint and Cognate Studies 55; Atlanta, GA, 2008), 305–24.

———, 'Trendy Translations in the Septuagint of Isaiah: A Study of the Vocabulary of the Greek Isaiah 3:18–23 in the Light of Contemporary Sources', in M. Karrer, W. Kraus, and M. Meiser (eds), *Die Septuaginta—Texte, Kontexte, Lebenswelten* (Wissenschaftliche Untersuchungen zum Neuen Testament 219; Tübingen, 2008), 581–96.

———, 'Papyrological Perspectives on the Septuagint of Isaiah', in A. van der Kooij and M. N. van der Meer (eds), *The Old Greek of Isaiah: Issues and Perspectives* (Contributions to Biblical Exegesis and Theology 55; Leuven, 2010), 107–33.

———, 'Problems and Perspectives in Septuagint Lexicography: The Case of Non-Compliance (ΑΠΕΙΘΕΩ)', in J. Joosten and E. Bons (eds), *Septuagint Vocabulary: Pre-History, Usage, Reception* (Atlanta, GA, 2011), 65–86.

Van Seters, J., *A Law Book for the Diaspora: Revision in the Study of the Covenant Code* (Oxford, 2002).

Vermes, G., 'Bible and Midrash: Early Old Testament Exegesis', in P. R. Ackroyd and C. F. Evans (eds), *The Cambridge History of the Bible, 1: From the Beginnings to Rome* (Cambridge, 1970), 199–231.

———, *The Complete Dead Sea Scrolls in English: Revised Edition* (London, 2004).

Vidas, M. *Tradition and the Formation of the Talmud* (Princeton, 2014).

Vince, J. H. (ed.), *Demosthenes: Orations, Volume III* (Loeb Classical Library 299; Cambridge, MA, 1935).

von Rad, G., 'Verheißenes Land und Jahwes Land im Hexateuch', *Zeitschrift des Deutschen Palästina-Vereins* 66 (1943), 191–204.

Waltke, B. K., and M. O'Connor, *An Introduction to Biblical Hebrew Syntax* (Winowa Lake, IN, 1990).

Wasserstein, A., and D. J. Wasserstein, *The Legend of the Septuagint: From Antiquity to Today* (Cambridge, 2006).

Weber, M., *Economy and Society: An Outline of Interpretive Sociology* (eds G. Roth and C. Wittich; Berkeley, CA, 1978).

Wegner, J. R., *Chattel or Person? The Status of Women in the Mishnah* (Oxford, 1993).

Weisberg, D. E., 'The Widow of Our Discontent', *Journal for the Study of the Old Testament* 28 (2004), 403–29.

Weingreen, J., 'The Case of the Daughters of Zelophehad', *Vetus Testamentum* 16 (1966), 518–22.

Wells, S., and G. Taylor (eds), *William Shakespeare: The Complete Works* (Oxford, 1998).

Wenschkewitz, H., *Die Spiritualisierung der Kultusbegriffe: Tempel, Priester und Opfer im Neuen Testament* (Leipzig, 1932).

Westbrook, R., 'The Law of the Biblical Levirate', *Revue internationale des droits de l'antiquité* 24 (1977), 65–87.

———, *Studies in Biblical and Cuneiform Law* (Cahiers de la Revue Biblique 26; Paris 1988).

———, 'Cuneiform Law Codes and the Origins of Legislation', *Zeitschrift für Assyriologie* 79 (1989), 201–22.

———, *Property and the Family in Biblical Law* (Sheffield, 1991).

———, 'What is the Covenant Code?', in B. M. Levinson (ed.), *Theory and Method in Biblical and Cuneiform Law: Revision, Interpolation and Development* (Sheffield, 1994), 15–36.

———, 'The Deposit Law of Exodus 22,6–12', *Zeitschrift für die alttestamentliche Wissenschaft* 106 (1994), 390–403.

———, 'The Old Babylonian Period', in R. Westbrook and R. Jasnow (eds), *Security for Debt in Ancient Near Eastern Law* (Culture and History of the Ancient Near East 9; Leiden, 2001), 63–92.

Wevers, J. W., *Notes on the Greek Text of Exodus* (Society of Biblical Literature Septuagint and Cognate Series 30; Atlanta, GA, 1990).

———, *Text History of the Greek Exodus* (Mitteilungen des Septuaginta-Unternehmens 21; Göttingen, 1993).

———, *Notes on the Greek Text of Deuteronomy* (Society of Biblical Literature Septuagint and Cognate Series 39; Atlanta, GA, 1995).

———, *Notes on the Greek Text of Leviticus* (Society of Biblical Literature Septuagint and Cognate Series 44; Atlanta, GA, 1997).

———, *Notes on the Greek Text of Numbers* (Septuagint and Cognate Studies 46; Atlanta, GA, 1998).

Wilcken, U., 'Punt-Fahrten in der Ptolemäerzeit', *Zeitschrift für Ägyptische Sprache und Altertumskunde* 60 (1925), 86–102.

Williamson, H. G. M., *Ezra, Nehemiah* (World Biblical Commentary 16; Grand Rapids, MI, 1985).

———, *Isaiah 1–5: A Critical and Exegetical Commentary* (London, 2006).

Wittgenstein, L. *The Blue and Brown Books: Preliminary Studies for the 'Philosophical Investigations'* (Malden, MA, 1958).

Wolff, H. J., *Written and Unwritten Marriages in Hellenistic and Postclassical Roman Law* (Philological Monographs 9; Haverford, PA, 1939)

———, *Das Justizwesen der Ptolemäer* (Münchener Beiträge zur Papyrusforschung und antiken Rechtsgeschichte 44; Tübingen, 1970²).

Wolfson, H. A., *Philo: Foundations of Religious Philosophy in Judaism, Christianity, and Islam* (2 vols; Structure and Growth of Philosophic Systems from Plato to Spinoza 2; Cambridge, MA, 1947).

Woolf, V., *Orlando: A Biography* (ed. M. H. Whitworth; Oxford, 2015).

Wright, D. P., *Inventing God's Law: How the Covenant Code of the Bible Used and Revised the Laws of Hammurabi* (Oxford, 2009).

Wyse, W. (ed.), *The Speeches of Isaeus with Critical and Explanatory Notes* (Cambridge, 2013).

Yaron, R., 'Aramaic Marriage Contracts from Elephantine', *Journal of Semitic Studies* 3 (1958), 1–39.

———, *The Laws of Eshnunna* (Jerusalem, 1969).

Yiftach-Firanko, U., *Marriage and Marital Arrangements: A History of the Greek Marriage Documents in Egypt: 4th century BCE–4th century CE* (Munich, 2003).

———, 'Judaean Desert Marriage Documents and *ekdosis* in the Greek Law of the Roman Period', in R. Katzoff and D. Schaps (eds), *Law in the Documents of the Judaean Desert* (Supplements to the Journal for the Study of Judaism 96; Leiden, 2005), 67–84.

Zahavy, T., *The Talmud of the Land of Israel, Vol. 1: Berakhot* (Chicago, 1989).

Zakovitch, Y., *The Song of Songs: Riddle of Riddles* (ed. V. C. Zakovitch; Library of Hebrew Bible/Old Testament Studies 673; London, 2019).

Zimmerli, W., *Ezechiel* (2 vols; Biblischer Kommentar Altes Testament 13; Neukirchen-Vluyn, 1979²).

Zuckermandel, M. S. (ed.), *Tosefta nach den Erfurter und Wiener Handschriften mit Parallelstellen und Varianten* (Trier, 1880).