'Seriousness of Offence' in Biblical Law

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by

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This thesis is dedicated to my parents, who gave me everything.

Abstract

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The aim of the thesis is to investigate the problem of 'seriousness of offence' in s.1(2)(a) of the Criminal Justice Act 1991 from a comparative perspective; that of biblical law. It explores, by means of a semiotic approach, how the biblical conception of 'seriousness' is synthesised and communicated. This picture is composed and developed through a series of six case-studies. These draw primarily on the following texts: Lev. 4:1-35; Lev. 21:9; Deut. 21:18-21; Deut. 22:20-21 and Deut. 25:5-10. The thesis achieved the following results. First, it shows that biblical law discriminates between the seriousness of different offences. Second, it finds that biblical law discriminates between the relative seriousness of the same offence when the crime is committed by different people and when it is performed in different ways. Third, it demonstrates that underlying values of seriousness are expressed through a variety of performative and descriptive registers. These disseminate an understanding of seriousness of offence to different semiotic groups. Fourth, the thesis reveals several recurring elements of seriousness including: 'status'; 'location' and 'type of relationship.' Fifth, it poses relevant questions to the current debate by underlining the need to develop a wider and more appropriate range of penal and non-penal registers with which to communicate a sense of seriousness. This might assist in shaping societal consensus concerning the relative harmfulness and wrongfulness of different crimes. Together, these results confirm the value of a semiotic approach to biblical law. How far these findings hold true for texts drawn from other periods of Israel's history is a matter for further investigation.

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Acknowledgements

And finally, my thanks to friends everywhere who advised and encouraged - you know who you are.

"Wherefore the law is holy, and the commandment holy, and just, and good" (*Romans* 7:12; KJV).

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Abbreviations

In an effort to reduce the length of the footnotes, references to books, commentaries and journals are abbreviated.

Journals

AA	American Anthropologist
AJS	American Journal of Sociology
BA	Biblical Archaeologist
BASOR	Bulletin of the American School of Oriental Research
BB	Biblebhashyam
BJC	British Journal of Criminology
BJRL	Bulletin of the John Rylands University Library of Manchester
BR	Bible Review
BT	The Bible Translator
BTB	Biblical Theology Bulletin
CBQ	Catholic Biblical Quarterly
CLR	Criminal Law Review
HBT	Horizons in Biblical Theology
HLR	Harvard Law Review
HTR	Harvard Theological Review
HUCA	Hebrew Union College Annual
Int	Interpretation
ILR	Israel Law Review
IJSL	International Journal for the Semiotics of Law
JAAR	Journal of the American Academy of Religion
JANES	Journal of the Ancient Near Eastern Society of Columbia University
JAOS	Journal of the American Oriental Society
JBL	Journal of Biblical Literature
JBS	Journal of the Behavioural Sciences
JCJ	Journal of Criminal Justice
JJS	Journal of Jewish Studies
JLA	Jewish Law Annual
JNES	Journal of Near Eastern Studies
JQR	Jewish Quarterly Review
JSOT	Journal for the Study of the Old Testament
JSNT	Journal for the Study of the New Testament
JSQ	Jewish Studies Quarterly
JSS	Journal of Semitic Studies
JTS	Journal of Theological Studies
LCP	Legal and Criminological Psychology
LQR	Law Quarterly Review
NTS	New Testament Studies
OJLS	Oxford Journal of Legal Studies
RB	Revue Biblique

RQ	Restoration Quarterly
SLR	Stanford Law Review
TA	Transactional Analysis
TynB	Tyndale Bulletin
TZ	Theologische Zeitschrift
VE	Vox Evangelica
VT	Vetus Testamentum
ZAW	Zeitschrift für die alttestamentliche Wissenschaft

Encyclopaedias, Dictionaries & Other Works

ABD	Anchor Bible Dictionary [6 vols.] (ed.) David Noel Freedman 1992. New York: Doubleday.
ANET	Ancient Near Eastern Texts Relating to the Old Testament. (ed.) James B. Pritchard. 1950. Princeton: Princeton University Press.
BDB	Hebrew and English Lexicon. Francis Brown, S. R. Driver and Charles A. Briggs. 1979. Peabody, Mass.: Hendrickson.
EncJud	Encyclopaedia Judaica [16 vols.] (ed.) Cecil Roth. 1971. Jerusalem: Keter.
IBD	Illustrated Bible Dictionary [3 vols.] (ed.) J. D. Douglas *et al.* 1994. Leicester: IVP.
IDB	Interpreter's Dictionary of the Bible [4 vols.] (ed.) G. A. Buttrick. 1962. Nashville: Abingdon.
NBD	New Bible Dictionary (eds.) J. D. Douglas *et al.* 1996 (3rd edn.). London: IVP.
NIDOTTE	New International Dictionary of Old Testament Theology and Exegesis [6 vols.] (ed.) Willem A. Van Gemeren. 1997. Grand Rapids, Mich.: Zondervan.
TDOT	Theological Dictionary of the Old Testament [8 vols.] (eds.) G. J. Botterweck and H. Ringgren. 1975-97. Grand Rapids, Mich.: Eerdmans.
TDNT	Theological Dictionary of the New Testament [10 vols.] (ed.) G. Kittel. 1963-76. Grand Rapids, Mich.: Eerdmans.
TWAT	Theologisches Wörterbuch zum Alten Testament [10 vols.] (eds.) G. Johannes Botterweck, Helmer Ringgren, Heinz-Josef Fabry. 1973-99. Stuttgart: Kohlhammer.

Series

ABC	Anchor Bible Commentary
ICC	International Critical Commentary
JSOTSup	Journal for the Study of the Old Testament, Supplement Series
NCBC	New Century Bible Commentary
NIBC	New International Biblical Commentary
NICOT	New International Commentary on the Old Testament
SBLDS	Society of Biblical Literature Dissertation Series
SBLMS	Society of Biblical Literature Monograph Series
TOTC	Tyndale Old Testament Commentaries
WBC	Word Biblical Commentary

Collected Works

EJCLH   *Essays in Jewish and Comparative Legal History.* Bernard S. Jackson. 1975.
          Leiden: E. J. Brill.
FECD   *A Feminist Companion to* Exodus *to* Deuteronomy (ed.) Athalya Brenner.
          1994. Sheffield: Sheffield Academic Press.
PGB   *Pomegranates and Golden Bells: Studies in Biblical, Jewish and Near Eastern Ritual,
          Law and Literature in Honour of Jacob Milgrom* (ed.) David P. Wright *et al.*
          1995. Eisenbrauns: Winona Lake, Indiana.
SPPS   *A Song of Power and the Power of Song* (ed.) Duane L. Christensen. 1993.
          Eisenbrauns: Winona Lake, Indiana.
TWL   *The Word of the Lord Shall Go Forth.* (eds.) C. L. Meyers and M. O'Connor.
          1983. Eisenbrauns: Winona Lake, Indiana.

Ancient Near Eastern Law

LE   Laws of Eshnunna
LH   Laws of Hammurabi

Roman Law

Cod.   Justinian's *Code*
Coll.   *Collatio Legum Mosaicarum et Romanarum*
Dig.   Justinian's *Digest*

Bible Translations

BBE   The English Bible in Basic English. 1949/64. Cambridge: CUP.
JPS   Tanakh. The Holy Scriptures. 1985. Jerusalem: JPS.
KJV   The Holy Bible: King James Version. 1611/1988. Cambridge: CUP.
NEB   The Holy Bible: New English Bible. 1961/1972. Oxford: OUP.
NIV   The Holy Bible: New International Version. 1984. London: Hodder and
          Stoughton.
NKJ   The Holy Bible: New King James Version. 1982. Nashville, Tennessee:
          Thomas Nelson.
NRS   The Holy Bible, Containing the Old and New Testaments with the
          Apocryphal/Deuterocanonical Books: New Revised Standard Version.
          1989. New York and Oxford: OUP.
RSV   The Holy Bible, Containing the Old and New Testaments: Revised
          Standard Version. 1952. New York and Oxford: OUP.

Other

LXX   Septuagint version of the Hebrew Bible
MT   Masoretic Text of the Hebrew Bible.

Organisations

SBL   Society of Biblical Literature
OCHJS   Oxford Centre for Hebrew and Jewish Studies

Publishers

CUP   Cambridge University Press
HMSO   Her Majesty's Stationery Office
IVP   Inter-Varsity Press
JPS   Jewish Publication Society
OUP   Oxford University Press
SAP   Sheffield Academic Press
SPCK   Society for the Promotion of Christian Knowledge

Biblical and Rabbinic citations are abbreviated according to the systems of the RSV and Danby, respectively.

INTRODUCTION

1. Aim and scope of thesis

The thesis examines the problem of 'seriousness of offence' from a comparative perspective, that of Biblical law. The aim is to identify some of the key 'elements' and 'registers' of 'seriousness of offence' in Biblical law by reference to a series of case studies (*Chapters One* to *Five*). The sheer diversity of material on seriousness precludes any systematic presentation. Rather, the thesis seeks to draw together previously unrelated material in an original way and to inform reflection on the current search for seriousness.[1]

We do not assume that values of 'seriousness' remain constant throughout the period of Biblical law, nor that different writers of the same period necessarily share the same values. To the extent that the final version of the Biblical text reflects the values of its final editors, we shall be examining 'seriousness of offence' in terms of how it is understood at the end of the redaction process. The claim is not being made that the elements of 'seriousness of offence' to which we draw attention are representative of every period of Biblical law.

2. The problem of 'seriousness of offence'

(a) Seriousness of offence in English law

The modern definition of the problem of 'seriousness of offence' in English law[2] is provided by s.1(2) (a) of the Criminal Justice Act (CJA) 1991. This makes 'seriousness of

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[1] See *Discussion* at end.

[2] Scottish judges have a far wider discretion in this regard than their English counterparts. Whilst seriousness is undoubtedly a factor in sentencing in Scotland, there is no statutory requirement. Sections 204 and 207 of the Criminal Procedure (Scotland) Act 1995 as amended allow the court to impose a sentence of imprisonment if "no other method of dealing with him [the offender] is appropriate...." In the case of probation orders, s. 228(1) allows the court to make a probation order "if ... it is expedient to do so...." The grounds are expediency, not seriousness. Likewise, the use of community service as a direct alternative to prison in s. 238 makes no reference to seriousness.

offence' one of only three grounds on which the court is justified in giving an offender a custodial sentence.[3] In practice, it is the most important.

However, despite its centrality, the CJA 1991 nowhere defines what is meant by 'so serious an offence that only a custodial sentence is justified.' The guideline judgements of the Court of Appeal in *Baverstock*[4] and *Cox*[5] offer only partial assistance. The Court fell back on a formula of Lord Justice Lawton in *Bradbourn*[6], holding that 'seriousness' in s. 1(2)(a) of the CJA 1991 referred to:

> "the kind of offence which when committed... would make all right thinking members of the public, knowing all the facts, feel that justice had not been done by the passing of any sentence other than a custodial one."[7]

The only part of the Act to give clear content to the meaning of 'seriousness' was s. 29(1) which held that:

> "An offence shall not be regarded as more serious... by reason of any previous convictions of the offender or any failure of his to respond to previous sentences."

This was widely perceived to be unjust and was amended by s.66(6) of the Criminal Justice Act 1993:

> "For section 29 of the Act of 1991 (effect of previous convictions) there shall be substituted -
> 29 - (1) In considering the seriousness of any offence, the court may take into account any previous convictions of the offender or any failure of his to respond to previous sentences."

This legislative 'U-turn', together with the public debate that greeted the implementation of the CJA 1991 in autumn 1992, reflected uncertainty as to what should be the key elements of 'seriousness of offence' in contemporary English law.

This uncertainty was underscored by the Magistrates' Association's failure to provide more concrete guidance for its members. They awarded a number of positive and

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[3] The other grounds are 'dangerousness' (where the offence is sexual or violent in nature; s. 1(2)(b)) and where the offender has refused to agree to a community service order (s. 1(3)).

[4] (1993) 14 Cr. App. R. (S.), 477.

[5] (1993) 14 Cr. App. R. (S.), 481.

[6] (1985) Cr. App R. (S.) 180, 182-3. Lawton LJ's response originated in response to s. 1(4) of the CJA 1982 and to the phrase "so serious that a non-custodial sentence cannot be justified."

[7] (1993) 14 Cr. App. R. (S.), 477, 481.

negative 'seriousness indicators' (typically three or four) for each of the most common criminal offences that come before magistrates' courts,[8] but this attempt to explicate the meaning of 'seriousness' only highlighted the problems."[9]

Part of the difficulty in articulating the meaning of 'seriousness of offence' lies in the fact that seriousness assumes, by definition, that some acts have greater significance than others. It requires that we make choices and judge some matters more important than others. To this extent, the problem of determining seriousness of offence may in part reflect the difficulty of securing moral agreement in a pluralist culture.

This, arguably, makes the choice of 'seriousness' as the primary legal justification for a custodial sentence appear surprising. It is certainly not the only option. Other theoretical constructs exist, among them deterrence, incapacitation and reformation. But rightly or wrongly 'seriousness of offence' is the current legal justification. As such it demands an articulation.

'Seriousness of offence' holds up a mirror to the criminal justice process by challenging it to identify its underlying values. This is because 'seriousness' tells us what society sees as most threatening to its survival, and what penalties are appropriate for offending. To this extent, the concept of 'seriousness of offence' is a touchstone for the values of the criminal justice process itself.[10]

'Crime-seriousness' has gained importance in recent years. This is due to the rise of desert-orientated conceptions of sentencing. These demand that the punishment should

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[8] Magistrates' Association 1992. The Guideline for 'theft from shop,' for example, lists as 'positive seriousness indicators': 'Adult involving children; High value; Organised teams; Planned' and as 'negative seriousness indicators': 'Impulsive action; Low value.' Interestingly, the Guidelines do not assign relative weight to the seriousness indicators. The order in which the factors appear in the list is alphabetical and has no other significance.

[9] For example, 'Impulsive action' is a negative seriousness indicator in nearly half of the non-motoring offences. However, this assumes that impulsive behaviour is always less serious than premeditated law-breaking. Moreover, how, exactly, does one 'impulsively' handle stolen goods? In addition, the Guidelines identify the role of the victim as a possible seriousness factor. In the Guideline for 'theft from a vehicle', a negative seriousness indicator is: "Car unlocked" whilst the Guideline for 'taking [a vehicle] without consent' indicates that: 'Keys left in car' makes the offence less serious. This violates the conviction that the victim's carelessness is merely additional to the offender's fault; Wasik and Turner 1993, 353. Finally, the Guidelines make no mention of intoxication as affecting the seriousness of an offence, possibly because some magistrates feel that drink aggravates an offence whilst others infer a lesser degree of culpability than would be present in a sober decision to commit the offence; Wasik and Turner, *ibid.*

[10] The depth of the challenge is indicated by a former Principal Establishments Officer in the Home Office who warned: "... there is now a serious void at the centre of the criminal justice system. There is no clearly understood set of purposes which it is meant to achieve or principles which it is meant to observe;" David Faulkner, 'All flaws and disorder,' *The Guardian*, 11 November 1993.

be 'proportionate' to the gravity of the offence. Surprisingly, "the jurisprudence of crime seriousness is a topic that has scarcely been touched."[11]

(b) 'Elements' and 'registers' of 'seriousness'

Throughout the thesis we shall draw a conceptual distinction between 'elements' and 'registers' of 'seriousness.'

'Elements', or 'components', of seriousness refer to those factors that contribute to our assessment of the seriousness of an offence. They may include, for example, the identity of the offender, the identity of the victim, the location of the offence and so on.

'Registers' of seriousness refer to the different semiotic forms in which values can be expressed. These can be either linguistic or non-linguistic.[12] We can distinguish between registers that are primarily 'descriptive' and those that are primarily 'performative.' 'Descriptive' registers are those registers that relate to the language of the text. The language of the text often characterises the offence in a certain way (e.g. describing the offence as 'evil' or as an 'abomination'). It also describes what ought to happen in a given case (e.g. what ought to be done to the offender). 'Performative' registers, on the other hand, are concerned with the acts of those people who perform what is in the description (e.g. the performance of a sacrificial ritual).

3. Review of public perceptions of 'seriousness'

In contrast to the lack of research on the jurisprudence of crime seriousness, empirical research on the perceived 'seriousness of offence' has been popular among criminologists since the development of the Sellin-Wolfgang 'seriousness' scale in the 1960s.[13]

(a) The Sellin-Wolfgang seriousness scale

This scale assumes that each individual offence can be defined in terms of personal injury; threat; intimidation; and the amount of property stolen, damaged or destroyed. Each harm-producing element is designated by a measured amount of 'seriousness.' The total

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[11] Von Hirsch and Jareborg 1991, 2. Von Hirsch, the leading desert theorist, and Jareborg write: "The gravity of the crime has such obvious relevance to the sanction ... [one] would think that judges and legal scholars surely must have been theorizing about it for years. Yet that has not been the case"; *ibid.*

[12] I am therefore using the word 'register' in a modified sense to that of modern linguists for whom 'registers' describe linguistically-distinct activities related to particular occupations; see e.g. Crystal 1991, 52.

[13] Sellin and Wolfgang 1964.

component scores for the harm to each victim of the crime is the resulting 'seriousness' tally.

Respondents are invited to rank a mixture of crimes according to their perceived order of 'seriousness.' Offences usually include: crimes against the person; crimes involving property; selling illegal drugs; white-collar crimes; so-called 'victimless' crimes; crimes against the State; crimes involving action against policemen; and various public order offences.[14] In the US such research enables policymakers to scale punishment according to public judgements about the seriousness of an offence. This is in spite of scepticism in some quarters that 'public opinion' regarding seriousness exists.[15]

The main drawback with the Sellin-Wolfgang scale is that it largely equates 'seriousness' with 'harmfulness.' Recent research has criticised the failure of the Sellin-Wolfgang scale to consider other variables, notably culpability (see **(c)** below).[16] Other relevant factors include: the vulnerability of the victim; the power of the offender; and whether it is a first-time or a repeat offence.[17]

(b) Public 'consensus' on seriousness?

'Crime-seriousness' investigations since the 1960s have focused on three main areas: within- and cross-cultural replications of the original Sellin-Wolfgang seriousness scale; the relative seriousness of white-collar, property and violent crime; and the extent of subgroup variation in the rankings of seriousness (e.g. according to age, sex and race).

The results of these studies have been remarkably consistent. The Sellin-Wolfgang scale has been replicated successfully on such diverse populations as French and English

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[14] For example, Cullen *et al*'s respondents were asked to rank a list of 140 offences. A brief summary will give a flavour of the findings. Contract killing was rated by respondents as the most serious of all 140 offences. It was higher than the planned killing of a spouse (2nd) which in turn was rated more serious than the impulsive killing of a spouse (7th). Notably, the impulsive killing of a stranger (placed sixth) was thought to be more serious than the impulsive killing of a spouse (places seventh). The forcible rape of a neighbour (14th) was thought to be more serious than the forcible rape of a stranger in a park (placed 22nd). In addition, the latter was thought to be less serious than the armed robbery of a bank (placed 21st). Variations with regard to sexual offences included rating father-daughter incest 38th, considerably higher than mother-son incest (equal 61st with 'performing illegal abortions') and higher than brother-sister incest (placed 72nd). Engaging in male homosexual acts with consenting adults (126th) was rated more serious than the female equivalent (ranked 135th). At the lower end of the scale, 'pouring paint over someone's car' (ranked 117) was thought to be 'more serious' than killing a suspected burglar in one's home (122nd). Loitering in a public place was regarded as the least serious offence in the list (ranked 140th); Cullen *et al* 1982.

[15] Durham III, 1993.

[16] E.g. Hoffman and Hardyman 1986, 416.

[17] Travis *et al* 1986, 437.

Canadians, Puerto Rican juveniles and Taiwanese college students.[18] Researchers have found that crimes involving physical harm are judged as 'most serious', whilst violations of administrative rules are regarded as 'least serious.' The range runs from planned murder at one extreme to parking violations at the other. There is widespread agreement in rankings across age, sex, social class and racial groups.

This suggests a high degree of consensus as to the relative seriousness of crimes.[19] However, 'seriousness' investigators are divided over whether this consensus has an underlying 'normative' structure, or whether it is the product of methodological artefact.[20] Much depends on the extent of the consensus and what it is based on.

Firstly, there is the extent of the 'consensus.' It is helpful to distinguish between 'global' and 'local' consensus. 'Global consensus' refers to the agreement that exists on the total range of seriousness, that is, on the overall ordering of crimes from murder to traffic rules. By contrast, 'local consensus' refers to agreement on the ordering of crimes that are close together in seriousness.[21] There is high agreement regarding 'global' consensus, but low agreement regarding 'local' consensus. Everyone agrees that murder is heinous and that 'double-parking' by comparison is trivial, but it is far less clear whether stealing from a large corporation is more or less reprehensible than stealing from a private dwelling.[22]

Secondly, there is the basis of the consensus. This depends on what phenomenon, precisely, is being measured in seriousness studies. It is not clear whether respondents report their own evaluations of criminal acts ('seriousness as evaluation') or whether they report what they perceive the norms of society to be ('seriousness as cognition').[23]

Several writers suggest that seriousness studies measure perceived norms rather than personal opinions. Miethe suggests that seriousness studies simply measure the affirmation of existing legal norms.[24] This is because seriousness surveys may be affected

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[18] Miethe 1982, 516.

[19] Epperlein and Mienstedt 1989, 345-6.

[20] Miethe *op. cit.*, 517-8 suggests that it may be the result of overrepresentation of the most serious acts that tend to have relatively small variances, such as violent crimes against persons.

[21] Rossi and Henry 1980, 494.

[22] *Ibid.*, 502.

[23] *Ibid.*, 492.

[24] Miethe *op. cit.*, 519.

by a 'social desirability effect.' In other words, respondents rate offences according to their perceptions of what is socially desirable and not on the basis of their personal feelings. If this is correct, it follows that real individual variations are suppressed. This may create a false image of consensus.[25]

In similar vein, Sheley argues that 'seriousness studies' are merely tests of information known by respondents. Whereas other 'attitudinal' tests measure a respondent's likes or dislikes, attitudes about crime seriousness reflect a set of learned rights and wrongs.[26] Perceptions of 'seriousness' are simply a product of the socialisation process, media reporting and general knowledge of the penalties for various crimes. A high consensus may reflect the efficiency of socialising media.[27]

If this is correct, the existence of a 'global' consensus on seriousness is neither a purely 'normative' matter nor a 'methodological artefact.' It is not an 'artefact' because it is based on a consensus view of certain behaviours in a given society. But neither is it 'normative' because the consensus changes over time.[28]

This is consistent with the finding that whilst there is strong cross-cultural and international consensus about certain offences, there is local variation on crimes of lesser seriousness. This may explain why, in certain studies, offences such as homosexuality, pornography and loitering are marked by greater standard deviation.[29] They are behaviours about which there is little consensus in society and consequently, little direction from socialisation, media and law.[30]

(c) Measuring seriousness

Measuring public perceptions of 'seriousness' is complex because there is no clear evidence as to what respondents have in mind when they rate the seriousness of crimes. Nor are investigators themselves always agreed on the meaning of 'seriousness.' Some argue that it refers to 'harm'; others that it refers to the 'wrongfulness' of the crime or to

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[25] *Ibid.* Indeed, there is some evidence that people respond to surveys differently according to whether they are asked to express how the 'ideal person', 'most people,' or 'themselves' would react; Travis III *et al.* 1986, 438.

[26] Sheley 1980, 133.

[27] Cf. Rossi and Henry *op. cit.*, 496.

[28] For example, Cullen *et al op. cit.* found that white-collar crime was perceived more seriously in post-Watergate US.

[29] Sheley 1980, 133.

[30] *Ibid.*

'moral indignation.' Still others equate it with 'the severity of legal punishment' or to a 'typification' based on stereotypical perceptions of offenders and events.[31]

(i) 'Harmfulness' and 'wrongfulness'

Broadly speaking, there are two types of judgement that may be made when evaluating the 'seriousness' of a crime; namely, the 'factual' and the 'normative.' A 'factual' response evaluates the degree of damage ('how much harm was done by the offence?'). Here, 'seriousness' equals 'harmfulness.' A 'normative' response evaluates the degree of moral culpability or blameworthiness involved ('how culpable is the offender?'). This involves a number of factors including intent and premeditation. Here, 'seriousness' equals 'wrongfulness.'

The question is whether respondents determine seriousness entirely by 'harmfulness,' entirely by 'wrongfulness,' or by some combination of the two. It is also possible that respondents alternate between wrongfulness and harmfulness, depending on which of the two attributes is greater for any particular crime.

(ii) The 'primacy model'

Recent research in seriousness studies has tried to address separately the concepts of 'harm' and 'culpability.' Warr, for example, found that 'harmfulness' and 'wrongfulness' were distinct dimensions, but that these dimensions were given different weight by different people in different circumstances.[32] Whether 'harmfulness' or 'wrongfulness' prevails depends on what is commonly viewed as the most striking feature of the crime. Warr's 'primacy model' suggests that respondents do not use both harmfulness and wrongfulness in judging seriousness.[33] Rather, they choose one criterion or the other, depending on which of the two is greater for any particular crime.[34]

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[31] Sykes and West, 1978 (Available as an abstract only).

[32] Warr's finding applies to those whom he terms 'discriminators,' that is, those who see differences in the moral gravity of offences. This is as opposed to 'nondiscriminators' who refuse to discriminate between the relative wrongfulness of offences. By contrast, such respondents appear to rely solely on harmfulness in judging seriousness; Warr 1989. If Warr is correct, much of the individual variability in seriousness ratings is attributable to variation across individuals in the perceived 'harmfulness' and 'wrongfulness' of crimes. These two dimensions help to explain differences in seriousness ratings, not only from one crime to the next, but also among individuals; *ibid*, 816-7.

[33] *Ibid*, 809.

[34] Warr *op. cit.*, 805 distinguishes several categories of offence; one in which offences are perceived to be more 'wrong' than 'harmful' (e.g. dole fraud) and another where offences are perceived to be more 'harmful' than 'wrong' (e.g. killing a pedestrian whilst speeding). His findings suggest that conventional classes of crime (personal, property, public order) systematically differ on these two dimensions.

Warr's study needs to be replicated, but in the meantime the following preliminary conclusions may be drawn. Firstly, seriousness is a complex variable that reflects the relative weight given to the wrongfulness and harmfulness of an offence. Secondly, 'factual' and 'normative' mechanisms of evaluating seriousness appear to be held differentially by different respondents. Thirdly, the principal, or most striking, feature of a crime appears to determine public perceptions of its 'seriousness.'

(iii) 'Individual impact'

O'Connell and Whelan's recent study found a strong match between 'seriousness of offence' and 'deserved punishment'; *viz.* there was a high correlation between perceptions of 'crime seriousness' and 'penalty severity.'[35] O'Connell and Whelan argue that this, in turn, is a function of the relative weight given to normative 'badness' and to the 'individual impact' of the offence on the victim.[36]

At first sight, O'Connell and Whelan's use of the phrases 'normative badness' and 'individual impact' simply mirrors the standard 'intentional' and 'consequential' dimensions of seriousness. That is, they are simply other words for the standard dimensions of 'wrongfulness' and 'harmfulness.' However, their study is important because, in identifying 'individual impact' as a key criterion, they suggest the particular type of harm that respondents find most salient.

O'Connell and Whelan identify five 'clusters' of offences that they argue correlate with 'individual impact,' in ascending order of seriousness.[37] Thus the least serious offences are classically 'victimless' crimes that have little 'individual impact' (such as consensual underage sex and dealing in soft drugs). The next cluster consists of crimes in which there is a victim, but where the impact on any particular individual is diluted, either because the victim is 'diffused' or is an impersonal institution (such as business and dole fraud). The third cluster is seemingly more concentrated and individualised, consisting of police corruption and fraud on the public. The final two clusters (burglary, assault on a

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[35] O'Connell and Whelan 1996, 310.

[36] *Ibid.*

[37] *Ibid*, 308-9.

policeman, and murder respectively) show an increasingly individualised violation either of a person or of their property.[38]

O'Connell and Whelan's discovery of the salience of 'individual impact' reinforces the conclusion that seriousness judgements are more structured and complex than formerly supposed.

(d) Perception of semiotic groups

Meaning is not universal in any society but is contingent upon the sense-creating conventions of a variety of 'semiotic groups.'[39] The criminal justice process is essentially a composite of semiotic groups. It is an aggregated growth of micro-systems, each with its own characteristic language norms and subculture. This means that we cannot assume that the meaning of a particular offence or punishment is necessarily the same for everyone who has contact with the legal process. Empirical research confirms that different semiotic groups perceive the seriousness of an offence and the seriousness of its penalty differently.

(i) Perceptions of 'seriousness of offence'

Although some researchers report no significant effects upon crime seriousness ratings when results are divided according to particular categories,[40] other researchers have found variations among sub-groups.[41]

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[38] It is possible that diachronic changes in perceptions of seriousness may be related to changes in the 'individual impact' dimension. O'Connell and Whelan *op. cit.*, 312 found that marijuana sale, dole fraud and underage sex were subject to the most marked change between the 1985 and 1994 studies, possibly because they cause virtually no harm to an individual victim and hence load very weakly on the 'individual impact' dimension.

[39] Jackson 1996b, 43. 'Semiotic groups' are social and/or professional groups that are distinguished one from another by the often overlapping, but still distinct, systems of signification operating within them; *ibid*, 32-33.

[40] Rossi *et al op. cit.* and Cullen *et al op. cit.* report no effect for age, sex, race and educational attainment among their samples, whilst O'Connell and Whelan *op. cit.*, 312 found no significant effect for class.

[41] Sparks *et al* 1977 found a positive relationship between age and seriousness perceptions, whilst Rose and Prell 1955 found that social class had a significant effect, although the relationship varied from offence to offence. Gender is important. Rose and Prell *op. cit.* found that women tended to be significantly more punitive than men towards child-beaters, bigamists, forgers and drunk-drivers but not towards offenders who have committed assault, bribery, arson or theft. O'Connell and Whelan *op. cit.*, 314 found that men attributed to mugging, burglary and dole fraud a relatively higher rank of seriousness than women. Respondents from rural areas are more inclined to deal harshly with those convicted of arson or of cutting electric or telephone lines than do those from urban areas; Rose and Prell *op. cit.* 259. Variations exist between criminal justice professionals and lay people. Compared to the police, the public tends to perceive offences as more serious; Levi and Jones 1985 whilst McCleary *et al* 1981 found that lawyers tend to be more reliant than the public on legalistic conceptions of seriousness (e.g. for lawyers, victim harm was a less important dimension).

A number of studies have examined variations in the perceived seriousness of different kinds of offences. They show that some offences are perceived differently by different semiotic groups. These include: certain crimes of violence;[42] prison violence;[43] sex offences;[44] drug offences;[45] property crimes;[46] and traffic offences.[47]

(ii) Perceptions of seriousness of punishment

Variation in the perceived seriousness of punishment also exists between different semiotic groups. In general terms, offenders (for whom punishment is a real and unpleasant experience) perceive punishment as more severe than do police officers (for whom sanctions are usually intended for others).[48]

Specifically, the relative seriousness of different kinds of penalties varies between different groups. Sebba and Nathan found that prisoners gave relatively high scores in terms of 'imprisonment equivalents' to long probation orders.[49] This probably reflects their first-hand experience of probation orders as burdensome. At the lower end of the scale, only

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[42] Walker and Marsh 1984 found significant differences in disapproval for violent crime among certain groups. For example, younger working-class men and women were least censorious when presented with a story of an ex-boxer who accepted a challenge to fight outside a pub with another man. Older working-class women were the most tolerant of the husband who assaulted his wife because she spent all day 'gossiping' and did not clean the house or prepare dinner.

Other studies suggest similar variations of class and gender. Walker 1978 found that people of higher social class tend to perceive violent offences as significantly more serious than those of lower social class. The 1992 British Crime Survey found that female victims of home-based and domestic violence regarded it as more serious than male victims. By contrast, the figures for work-based and pub and club violence were the same for both male and female victims; Mayhew *et al* 1992, 94.

[43] Braswell and Miller 1989, 51 found that, among prison staff, crimes committed by an inmate against a member of the prison staff were regarded as significantly more serious than crimes committed against another inmate. Violence against inmates (except murder but including rape and felonious assault) was not considered serious. This may reflect general societal attitudes in which 'prison violence' is not regarded as seriously as 'street violence' because it is seen as a part of prison life and punishment for offenders.

[44] O'Connell and Whelan *op. cit.*, 312 found a positive relationship between increasing age and increased seriousness for underage sex, while women rank underage sex as relatively more serious than men; *ibid.* 314.

[45] Main *et al* 1996 found that women rate different drug offences (e.g. ecstasy, drink, glue-sniffing, heroin) as being more serious than do men (cf. O'Connell and Whelan *op. cit.*, 314). O'Connell and Whelan *op. cit.*, 312 found that as people become more educated, they tend to regard marijuana sale as less serious.

[46] Sparks *et al op. cit.* reported that lower social class respondents tended to view property crime as more serious. Consistent with this, Walker and Marsh *op. cit.* found that younger middle-class men and women were more tolerant than others about the offence of vandalising a telephone box.

[47] Walker and Marsh *op. cit.* found that working-class respondents (with the exception of older women) were more tolerant of the decision not to use a seat-belt than other groups. Corbett and Simon 1991, 163 found that the public rate the seriousness of traffic offences higher in absolute terms than do the police.

[48] Sebba and Nathan 1984.

[49] Among prisoners, a probation order of ten years' duration was the equivalent of between 18 months and twelve months imprisonment, whereas for the other two groups (probation officers and students), it was between six and twelve months imprisonment; Sebba and Nathan *op. cit.*, 234.

prisoners regarded a fine of $250 as more severe than a one-month prison sentence. They also regarded a $100 fine as more severe than one year's probation. This perception probably reflects prisoners' poorer economic circumstances. Punishment is perceived and experienced differently by different groups.

The salience of the death penalty also varies. Sebba and Nathan also found that, of all groups, prisoners were the most opposed to the use of capital punishment whereas the police were the group most in favour.[50] Prisoners were more likely to respond emotionally to the death penalty, whereas the police were more likely to regard the death penalty unemotionally as an instrument of penal policy.[51]

4. Liberal jurisprudence and the problem of 'seriousness'

(a) Seriousness and morality

'Seriousness' embodies the philosophic maxim that it is "absurd and impolitic to apply the same punishment to crimes of different malignity."[52] As Montaigne wrote: "Les vices sont tous pareils en ce qu'ils sont tous vices... Mais, encore qu'ils soient également vices, ils ne sont pas égaux vices."[53] 'Seriousness' assumes, by definition, that offences vary in their degree of moral turpitude.[54] Judgements must be made that deem some behaviour more morally repugnant than others. These decisions are reached on the basis of a set of values; a value being "an idea which serves as a ground for choosing between possibilities."[55] Put in these terms, 'seriousness of offence' is a problematic concept for liberal jurisprudence. This is because a formative influence upon modern liberalism was the Enlightenment contention that truth could be attained by rational method, which

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[50] *Ibid*, 225.

[51] *Ibid*, 239.

[52] Mendelsohn 1991 [1891], 37-38.

[53] Montaigne 1931 [1613], Chapitre II, 2.

[54] Of course, attempts have been made to define 'seriousness' without recourse to morality. Political statements to the effect that 'prison works' effectively redefined the meaning of 'seriousness' following the introduction of the CJA 1991. 'Seriousness' became a matter of how many people the Prison Service can, or ought, to hold. Another 'pragmatic' definition of seriousness is found in the Home Office's decision, in the early 1980s, to develop a blueprint on 'seriousness' based on a statistical analysis of current court practice. 'Seriousness' was defined descriptively, not prescriptively, in terms of the *status quo*. It was simply a matter of 'what the courts do.' Needless to say, neither of these definitions satisfy because they do not provide the criminal justice process with a 'general justifying aim' in regard to punishment.

[55] Allott 1990, 48.

could in turn appeal to principles undeniable by any fully reflective, rational person.[56] Today, however, there is less confidence, particularly among post-Enlightenment relativists and perspectivists, that such optimism can be sustained (see **(b)** below).

(b) The challenge to modern liberalism

MacIntyre is an example of one modern philosopher who traces the shortcomings of liberal thought back to its abandonment of a conception of rational enquiry as embodied in a tradition: what he terms a 'tradition of enquiry.'[57] Enlightenment and post-Enlightenment theories of justice that seek to apply to all societies everywhere are rejected in favour of those theories that are derived from historical traditions of enquiry. Since rational enquiry is inseparable from the intellectual and social tradition in which it is embodied, MacIntyre's method is essentially historical. Justice is a concept with a history, and since there are diverse traditions of enquiry, with histories, there are justices rather than justice. For this reason justice is not abstract; it finds its meaning within the context of a particular living, historic and geographic community. Consequently, it is not possible to ask and answer questions about justice from a standpoint external to all traditions.[58]

A 'tradition' is defined as an argument extended through time, from which standards of rational justification emerge as part of a history. Different traditions embody different visions of what is just and since there are a diversity of traditions of enquiry with histories, there are 'rationalit*ies*' rather than 'rationality' and 'justice*s*' rather than 'justice.' MacIntyre concludes that:

> "there is no other way to engage in formulation, elaboration, rational justification, and criticism of accounts of ... justice except from within some one particular tradition ... There is no standing ground, no place for enquiry, no way to engage in the practices of advancing, evaluating and rejecting reasoned argument apart from that which is provided by some particular tradition or other."[59]

The post-modern task, as identified by MacIntyre, is to engage in debate within the context of a tradition of enquiry.

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[56] See generally Laski 1962.

[57] MacIntyre 1988, 7.

[58] *Ibid.*, 369.

[59] *Ibid.*, 350.

This approach runs contrary to the liberal assumption that it is possible to assess and justify a particular moral tradition from some neutral vantage-point. Rather, it is only from within traditions that anyone is able to acquire the standing-ground or the vocabulary from which to reject or defend particular ethical practices. The one who stands outside all traditions is a mute.[60] For these reasons we propose to examine 'seriousness of offence' within the context of one particular 'tradition of enquiry.'

5. The relevance of Biblical law to the modern search for seriousness

We shall examine 'seriousness of offence' within the context of the tradition of justice represented by Biblical law.[61] We use the term 'Biblical law' to denote the legal rules and practices that are laid down or reflected in the books of the Hebrew Bible.

There are several reasons for choosing Biblical law. Firstly, it provides excellent resources for evaluating the problem. Insofar as 'seriousness' is properly regarded as a moral issue, it is advantageous to examine seriousness of offence in a legal system that draws no distinction between law and morality. This is the case in Biblical law.

A possible objection might be that Biblical law supports the position of the 'nondiscriminators' more than that of the 'discriminators' (see note **32**, above). After all, in the Bible all transgressions are sins irrespective of the magnitude of the particular deed. This approach does not encourage us to weigh the relative seriousness of one offence against another. As R. Abba b. Kahana puts it: "The Scripture has made the lightest command in the *Torah* equal to the heaviest command."[62]

However, whilst it is true that 'sin is sin is sin,' the punishment for sin varies. This is enough to tell us that Biblical law discriminates between the gravity of different offences.

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[60] The completely 'impartial' person has no possible basis on which to make a valuative judgement. Cf. Moore 1993, 171; "It is an illusion to suppose that there is some neutral vantage-point from which to assess and justify a particular moral tradition... The person who stands outside all practices is, as Aristotle said, rendered speechless with no grounds for rejecting or defending any particular ethical conception."

[61] Our use of the phrase 'seriousness of offence' in relation to Biblical law presupposes an etic perspective to the text (cf. Rogerson 1978 and Clements 1989). We are conscious that throughout this thesis we shall step between the 'emic' and the 'etic.' We are, however, justified in using the term 'seriousness of offence' in relation to Biblical law. Every modern reading of a text brings certain categories to a text in order to understand it. 'Seriousness of offence' is one such category. It reflects the concerns of a modern reader without doing violence to the ancient text. Indeed, it can be argued that the link between the ancient and the modern world is primarily one of values; see, e.g. Matthews and Benjamin 1993.

[62] *T. Jer.*, *Kid.* I. 27d.

In addition, as the quote by R. Abba b. Kahana itself indicates, the Biblical legal tradition knows of a distinction between 'light' and 'heavy' commands. The Rabbis constantly mention and discuss this distinction, which gives rise to a whole exegetical tradition that attempts to distinguish between lighter and weightier, smaller and greater commandments.[63] Such reductions demonstrate precisely what the prophets[64] and Jesus taught;[65] namely there are priorities to be observed in responding to God's law.[66] There are 'greater' and 'lesser commandments.' The tradition of Biblical law, like the concept of 'seriousness of offence,' bids recognition of relative rank, significance and primacy.

Secondly, this tradition provides continuity with the past. Biblical law has been of great and abiding importance through Christianity to Western civilisation.[67] The English criminal justice system has been significantly influenced by Biblical law.[68] Law is an organic structure and so, in seeking answers to contemporary problems, it is important to have some continuity with the past.[69] Law takes society from the past to the future. It is a means of transforming society in accordance with its values and it tends to make the future of that society into what society has determined in the past that its future should be.[70] To the extent that Judaeo-Christian thought has had a major influence upon individual and social consciousness, it is fair to claim that this tradition is an integral part of the dynamism of law. For these reasons it is appropriate to examine the problem of 'seriousness of offence' from the perspective of Biblical law.

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[63] Kaiser 1975, 180-3.

[64] Mic. 6:6-8; Amos 5:21-24; 7:21-23; Hos. 6:6; Isa. 1:11-18; 43:22-24; Ps. 51:16-19; 1 Sam. 15:22.

[65] E.g. Mark 12:28-34. Jesus instructs the Pharisees to go home and reflect on Hos. 6:6 if they wanted to understand the requirements of the law of Moses (cf. Matt. 9:13 and 12:7).

[66] Kaiser *op. cit.*, 182.

[67] Walker, 1980, 57, 213, 664, 724.

[68] See, variously; Bailey 1931, Davies 1954, Jackson 1975b, 1977, 1978a and 1978b.

[69] Cf. Frazer 1923, 351: "Only a law which in some measure answers to a people's past has any power to mould that people's future."

[70] Allott 1991, 4.

The object is to devise a method that allows us to identify the values that underlie 'seriousness of offence' in Biblical law. This is not a straightforward issue. We must start by recognising that our understanding of law depends, to a large degree, on the use to which it is put. For this reason, our approach to the question of legal values begins with an analysis of legal praxis.

1. Modern and Biblical legal praxis

There appears to be a sharp contrast between the assumptions that underlie modern and Biblical legal praxis.

(a) Modern legal praxis

Modern legal praxis is based on the 'Rule of Law,' that is, the belief that adjudication should be governed by laws and not by people.[71] This 'legislative' model of law, based upon the 'application' of statutes in court, holds that general normative propositions laid down in advance are normally sufficient to deal with every human situation that may arise. The role of the judge is to apply general rules laid down by a higher authority, whether the legislature itself or superior courts in a system of precedents.

(b) Biblical legal praxis

Jackson argues that this Western conception of law is culturally-contingent and does not reflect Biblical legal praxis.[72] In other words, the idea that judges should see their role as the application of general rules laid down by authority was not the dominant conception of the relationship between legislator and judge in Biblical law. It is true that written *Torah* existed in the pre-exilic period. However, a number of sources seem to indicate that its function was not the provision of statutory rules to be applied as such by the judges. In

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[71] An assumption that is, arguably, far removed from the reality of the judicial process; Jackson 1990, 258.

[72] Jackson 1989, 185-6

other words, the rules were not regarded as authoritative in their linguistic form as well as their content.[73] There are a number of reasons for this.

(i) Deut. 17:18-20

In Deut. 17:18-20, the written legal text (the *sēfer tôrah*, 'Book of the Law') is intended for the king. It is for his instruction, and its primary purpose is to make him 'wise.' In contrast to the 'legislative' model of law, the law in Deut. 17:18-20 has, primarily, a sapiential function.[74]

(ii) Deut. 16:18-20

According to Deut. 16:18-20, the newly-appointed 'judges' (*šōp̄ṭîm*) are charged in entirely general terms. They are not asked to follow any particular rules; rather, they are told simply to 'act justly' and to avoid corruption. Of course, this does not mean that the *šōp̄ṭîm* have *carte blanche*. But the connotations of wisdom that are implied in Deut. 16:18-20 suggest that the judge's sense of justice is to be informed by the conventional norms of practical wisdom.[75] Only when local wisdom proves insufficient, do the local judges need to consult the central authorities (Deut. 17:8-13). Again there is no reference to any authoritative set of rules that the priests have to apply.[76]

(iii) 2 Chr. 19:4-11

This pattern is reinforced by Jehoshaphat's charge to his newly-appointed judges:

(6)… "Consider what you do, for you judge not for man but for the LORD; he is with you in giving judgment. (7) Now then, let the fear of the LORD be upon you; take heed what you do, for there is no perversion of justice with the LORD our God, or partiality, or taking bribes."

Verse 6 implies that the judges' intuition will be divinely directed. Executing justice is primarily a matter of exercising Solomonic wisdom, not the application of legal rules.[77] This is confirmed by the injunction "let the fear of the LORD be upon you." The fear of

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[73] Jackson 1990, 245.

[74] *Ibid.*, 246-7.

[75] *Ibid.*, 245.

[76] The verb *dāraš* suggests that an oracular consultation is used to resolve the matter; *ibid.*, 246.

[77] 1 Kgs. 3:9 records Solomon's prayer thus: "…Give thy servant therefore an understanding mind to govern thy people, that I may discern between good and evil…." This is followed by an example of Solomon's wise ruling which causes "… all Israel … [to stand] in awe of the king, because they perceived that the wisdom of God was in him, to render justice" (1 Kgs. 3:28).

the LORD is, of course, the beginning of wisdom (e.g. Prov. 1:7).[78] The judges are to be careful in what they do and are warned against injustice, partiality and bribery (cf. Deut. 16:18-20). Nothing is said about any set of laws written in a *sēfer* ('book'), nor is there even any mention of *Torah*. This does not mean that the judges lacked access to the divine law (which was, after all, supposed to make them wise in the first place). What it means is that the mere possession of divine rules was not sufficient to secure justice. Biblical law required, in addition, inspiration. Judges decided in accordance with divinely-inspired intuition to produce a just result in terms of a specific case.

Nor are the local judges subjected, as *per* the 'legislative' approach, to general rules passed on from on high. Rather, they are given a *general* authority to judge according to divinely-inspired intuitions of justice.[79]

Jehoshaphat's appointment of judges for Jerusalem follows a similar pattern. Again no substantive rules of divine law are commended to them, and the charge to these judges is entirely general in character (2 Chr. 19:9-11).[80] The stress is again on charisma ("you must serve faithfully and wholeheartedly") and wisdom ("in the fear of the LORD") (2 Chr. 19:9). The fact that the Jerusalem judges have to report to the chief priest "for every matter concerning the LORD" suggests that the priests were the real source of the law to be applied by the judges. But even here, as in Deut. 17:8-13, there is no reference to a binding set of rules that even these ultimate authorities must apply.[81]

(iv) 2 Chr. 17:7-9
As part of the same judicial reform, the king orders his officers to take copies of "the book of the law of the LORD" (*sēfer tôraṭ YHWH*) around the country and to teach it to the people by oral proclamation (2 Chr. 17:7-9).[82] The audience is 'the people,' not legal

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[78] 2 Chr. 19:7 uses *paḥaḏ-YHWH* instead of the phrase *bᵉyiraṭ YHWH* common to *Proverbs*. But this does not matter. The phrase *bᵉyiraṭ YHWH* appears in 2 Chr. 19:9 where Jehsohaphat charges the Jersualemite judges in similar terms to those of 2 Chr. 19:6-7: *paḥaḏ-YHWH* is simply a stylistic variant.

[79] Jackson 1990, 247.

[80] *Ibid.* Cf. the NIV which imports the 'legislative' model into the text: "... Jehoshaphat appointed ... [them] *to administer the law of the LORD...*" (my italics); 2 Chr. 19:8. But the text simply says *lᵉmišpaṭ YHWH* ("to give judgment for the LORD"). For the meaning of *mišpaṭ* see e.g. Herntrich 1965.

[81] *Ibid.*

[82] Cf. the practice of the Assyrian kings in sending royal officers to each town to exercise a teaching function with regard to the law; Weinfeld 1972, 163ff.

experts. This further undermines the 'legislative' model. Nor is there any suggestion that the officers leave the written law with their audience for private study.[83]

(v) 'Self-executing' rules

A further indication that at least some of the rules of Biblical law are directed to the general public and not to experts may be found in the somewhat 'arbitrary' character of several laws of the Covenant Code.[84] Such 'self-executing' rules presuppose a system of 'self-help.' They reflect the practical value of having norms that are capable of execution by the people themselves, without the need for specialist intervention. The use of arbitrary tests (as in Deut. 22:13-21; *Chapter Three*) is consistent with a pre-institutionalised legal process where the norms are directed to the people as a form of teaching, and to be implemented by them directly.

(vi) ANE legal praxis

This picture is consistent with what is known of legal praxis elsewhere in the ANE. Eichler has drawn attention to the literary structure of the Laws of Eshnunna (*c.* 1800 B.C.), arguing that this text was the product of scholastic activity rather than litigation proceedings.[85] In particular, its use of 'polar cases' with maximal variation appears to confirm its sapiential function, of provoking thought and discussion, especially on the range of 'real life' cases that are found between the polarity.[86] Within this large 'grey area,'

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[83] Jackson 1987, 14.

[84] For example, the law in Ex. 21:36 is not concerned with whether the substitute ox is of equal value to the one that has been killed; Jackson 1997, 138-40. The relative values of the oxen is 'arbitrary' in the sense that, rather than delay matters by technical or legal arguments that require adjudication, the parties are encouraged to put the matter behind them as quickly as possible. Similar concerns may underlie Ex. 22:3 which offers no guarantee that the value of the thief, or of his labour for the period involved, will coincide with the value of stolen animal; Jackson forthcoming. Likewise Ex. 22:5 [H 22:4] where the remedy does not state that the quantum or the quality of the produce from the tortfeasor's field must be identical to the produce which his animal has wrongfully consumed: *ibid.* Jackson 1992, 70 characterises such cases as 'self-executing laws'; *viz.* rules so formulated as to reduce the need to have recourse to third-party adjudication. This is made possible through the use of evidentiary tests and dispute-resolving mechanisms that are easy to administer. For example, Ex. 22:1-2 states that it is justifiable to kill by night and not by day. This means that the kin of a deceased thief would know, without an adjudication, whether the killing had been justified or not. In the next verse (Ex. 22:3) theft is proved by the simple evidentiary test of 'hot possession.' 'Arbitrary' rules make proof of an offence easier and provide remedies that can be readily implemented by the parties, without the need for institutional adjudication. The possibility of resolving the dispute without the need for a formal adjudication may have been a necessity but it is itself a benefit. It avoids the transaction costs of adjudication and the potential for shame; cf. Prov. 25:7-9; Jackson 1989, 197-8.

[85] Eichler 1987, 84.

[86] LE §23 and §24, §25 and §26, §29 and §30, §33 and §34/35; Eichler 1987, 77, 76, 75, 79 respectively.

judges must use their discretion. Eichler finds a similar use of 'polar cases' in the Laws of Hammurabi (c. 1700 B.C.).[87]

Further evidence of a 'gap' between 'law' and 'legal 'procedure' in Mesopotamia may be found in the fact that neither the prologue nor the epilogue of LH commends them to the use of the judges.[88] Indeed, of the large corpus of judicial decisions from Old Babylonia to which we have access, there is only one quotation from LH and not even this is of a substantive legal provision.[89] Sometimes the rulings of the courts conform to the code, but frequently they do not.

For these reasons, neither LE nor LH bear out any expectation that the codes were applied in the courts like modern statutes.[90] Jackson notes that Biblical law is arguably even further removed than the ANE codes from the model of modern legislation because of the complex literary and narrative framework in which it has been transmitted.[91]

(c) Summary

The modern idea of law, based upon the 'application' of statutes in court, is not applicable to ancient Israel. In both *Deuteronomy* and *2 Chronicles* written law has a didactic rather than a 'legislative' function. It is given in order to teach, not to turn its recipients into legal experts. Nor is it the sole basis of adjudication; a right attitude towards YHWH is prerequisite.

2. 'Semantic' versus 'narrative' readings of Biblical law
(a) 'Semantic' readings

The legislative model necessarily gives rise to a 'semantic' view of law. A legal statute is seen as a text whose very words, as opposed to its meaning, are thought to be authoritative. Because every word in modern legislation is regarded as of 'binding' character, the technical rules of statutory interpretation are primarily semantic. The judge must take into account all of the canonical words of legislation and he cannot substitute

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[87] LH §129 and §130; Eichler *op. cit.*, 82.

[88] Pritchard 1950, 164-5, 177-80.

[89] Jackson 1990, 248.

[90] Eichler *op. cit.*, 81, cf. Jackson *op. cit.*, 248-9.

[91] Jackson 1989, 186.

as his primary source of authority words from any other source. Nor can he extrapolate from the words some 'main point' or principle.[92] A semantic reading sees the law in question as comprising a set of words whose meaning needs to be elucidated. The question, 'what does this law mean?' becomes 'what is the meaning of words x in the statute?' The answer requires a paraphrase and results in one verbal proposition being replaced by another. The law then applies to all cases falling within the semantic meaning of the words.

Biblical law is frequently read in 'semantic' terms.[93] However to the extent that the legislative model itself is inapplicable to ancient Israel (see 1 above), we may query the utility of this approach.

(b) 'Narrative' readings

Jackson argues that a 'narrative' as opposed to a 'semantic' approach to the meaning of language is more consistent with the Biblical legal praxis outlined in 1(b) above. Jackson contends that the task of making sense of Biblical law needs to be based on some conception of sense-making in general.[94] A semiotically-inspired approach to legal philosophy, in which law is read 'narratively' in terms of 'narrative rules' or 'paradigm cases,' sees the law as evoking 'narrative typifications of action.'[95] That is, words are not purely linguistic signifiers but the signifiers of 'life-bound images.' They differ from modern statutory language in the sense that they are more 'concrete' than legislative rules. By contrast, legislative rules are more 'abstract' and 'conceptual.'[96] Interpreting legislative texts requires levels of generality and abstraction that concrete, 'picture-oriented' formulation of narrative rules usually lack.

Critically, the assumptions that underpin 'legislative' and 'narrative' readings of a text are quite different. A 'legislative' approach sees the text as covering all cases that may be

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[92] *Ibid.*, 187.

[93] For example, Deut. 21:18-21 deals with the case of the 'stubborn and rebellious' son who is denounced by his parents for being a 'glutton and a drunkard.' Brichto 1973, 32 takes a semantic approach by asking, what would be the case if the son was 'stubborn, rebellious and gluttonous' but not a 'drunkard.' This misses the point. Deut. 21:18-21 should be read in narrative terms (see *Chapter One*).

[94] Jackson 1997, 133.

[95] For the relationship between 'narrative typification' and the general semiotic theory of Greimas see Jackson 1995c, 141-163.

[96] Paradigm cases are only the first step in the process of abstraction. They abstract from a total situation those features that are regarded as particularly significant.

subsumed under it. A 'narrative' approach, on the other hand, suggests that the paradigm may sometimes extend beyond what is 'covered' by the semantic reading. This is the difference between regarding the text as containing 'paradigms' (or 'narrative-rules') and viewing it as imposing a legislative stipulation.[97]

Decisions that are based on 'paradigm cases' or 'narrative rules' proceed differently from decisions based on 'legislative' texts. A 'narrative' approach proceeds from judgements of relative similarity between the case in hand and the 'narrative typification of action' or 'narrative stereotype.'[98] It is not based on the semantic analysis and application of the words in which the narrative rule is expressed.

Thus, if a case arises that is different from the 'typical'[99] case or 'narrative rule,' the question is not the semantic one that is associated with 'legislative' texts, *viz*.: 'Do the words of the rule 'cover' the case?' Rather, the question is: 'how similar is this case to the one in the narrative rule?'[100]

It is an important difference, because questions of relative similarity evoke intuitive judgements of justice to a greater degree than semantic questions. This is because 'how similar...?' is not merely a descriptive question; it is also an evaluative question ('how justified is it to treat these cases as similar?'). By contrast, semantic questions are more concerned with the meaning of the words.[101]

(c) 'Narrative rules' and Biblical law

Biblical law, in common with other legal collections of antiquity, is far from comprehensive in terms of the range of cases that it deals with.[102] Even if we assume, for the sake of argument, that Biblical society possessed a more complete body of divine law than has survived in our sources, it is still likely that a great many cases lacked specific guidance.

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[97] Jackson 1988, 101-110.

[98] Cf. Sudnow 1965.

[99] 'Typical' here does not mean simply 'frequency of occurrence.' A case can be 'paradigmatic' in two different senses, (1) because it 'happens all the time' or (2) in the sense that although it does not happen all the time there is a stock of social knowledge of what ought to happen (or usually does happen) in such circumstances.

[100] Jackson 1996a, 240-1.

[101] *Ibid.*

[102] Yaron 1980, 37.

In such circumstances, where the case in hand is not one of the paradigm cases for which specific solutions are provided, *Deuteronomy* and *2 Chronicles* suggest that it is for the judges, applying their intuitive and divinely guided sense of justice, to decide which of the known paradigms the case in question most resembles (see **1(b)***(i)-(iv)*). The laws give rise to discussion at a popular level. This debate would be concerned, not with linguistic questions comparable to our methods of statutory interpretation, but rather to substantive analogies. This in turn would generate, at a deeper level, some consideration of values.[103]

The case for reading Biblical law in narrative, rather than semantic, terms is strengthened when we consider that the law has a didactic rather than a statutory purpose (see **1(b)** above). If the purpose of the law is to teach, it is likely that such teaching is directed, particularly in its non-scholastic form, to central issues and situations rather than to 'penumbral' ones.[104] This creates a working presumption that the law is mainly concerned with 'typical' cases. This, however, is only a presumption. We propose to test it on a case-by-case basis *(Chapters One to Five)*.[105]

In determining whether the law is mainly concerned with 'typical cases,' social context is a key factor. If the social context is one in which a certain law is the 'typical' case, then the presumption is strong that this is the meaning of the teaching. We should not therefore assume that the same rule applies in non-typical cases, even though these might fall within the semantic meaning of the words. A narrative approach may thus yield very different results than a semantic approach. For example, we should not assume that the talionic formula is intended to apply to a one-eyed man who put out one of the eyes of a two-eyed man.

(d) 'Narrative stereotypes' and Biblical law

A narrative approach to Biblical law presupposes stereotypical social knowledge on the part of its audience. Stereotypes are the form in which social knowledge is acquired and stored. Stereotypical knowledge varies from one society to the next, depending on what

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[103] Jackson 1992, 92.

[104] Jackson forthcoming in 1999.

[105] Jackson's thesis has been developed in the context of the *Mishpatim*. Here, it may well be claimed that the norms of that particular legal collection make best sense as a collection of 'paradigm cases' or 'wisdom-laws.' Indeed, the nearest one gets to a slightly unusual case is Ex. 21:22 but even here one might claim that since women were pregnant much of the time even this case is not particularly unusual. However, the question whether this approach can be usefully extended to cases found outside the Covenant Code must be asked separately of each particular document and legal text.

the prevailing stereotypes are. Each society has its own stock of substantive narratives or 'typifications of action.' These represent typical human behaviour patterns that are known and understood within that society or social group.[106] They provide the framework for understanding the meaning of particular laws. Some typifications are relative to particular semiotic groups.

The presence of 'narrative stereotypes' in a text is important for our understanding of 'seriousness of offence.' This is because 'narrative stereotypes' or 'typifications of action' are not neutral descriptions of typical action. They include a tacit social evaluation.[107] They express an aesthetic judgement that may often include evaluations of 'seriousness.'

For example, the collective image of acting like a 'stubborn and rebellious son' who is 'a glutton and a drunkard' does not merely describe a general lifestyle of which such behaviour is a part. It also includes the social evaluation that such a person is intolerable (see *Chapter One*). The same applies to the narrative typification of 'playing the harlot' (see *Chapter Four*). Other stereotypes that we shall encounter are: the stereotype of the greedy grasping 'rotter' who cares more about his inheritance than he does about his dead brother's 'name' (see *Chapter Two*); and the idolater (see *Chapter Five*).

Again, we should not treat collective images as if they were statutory definitions. The collective image represents the 'core' of the message. The further one departs from that collective image, the less sure one can be that the same message is intended to apply, or that it would be regarded as applicable by the audience.[108] Or, to put in another way, the further one departs from the paradigm, the less 'gravitational force'[109] the paradigm will exert; whether on the parties seeking to negotiate their own solution, or on a court searching for the just solution.

(e) Summary
To sum up, the legal praxis of Biblical law is far removed from that of a modern statute which stipulates rules through verbal definitions. Unlike the modern law-book, Biblical law is not a permanent record of the authoritative wording of the rules, to be consulted

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[106] Jackson 1996b, 20.

[107] *Ibid.*, 33.

[108] Jackson forthcoming in 1999.

[109] Dworkin 1987, 111.

when needed by the law's subjects and its administrators.[110] Rather, the sources indicate that Biblical law is sapiential in nature. Its primary purpose is to educate its hearers via a series of 'paradigm cases' that in turn draw on stereotypical social knowledge.

3. Identifying the values of Biblical law

Every society legislates in accordance with its values. Accordingly, all societies embody values within their legal systems. The difficulty is that these values often reside at an implicit rather than an explicit level. This is the case in Biblical law.

(a) The problem

Biblical law does not postulate axioms. However, although the values of Biblical law are not explicitly stated, they are implicit. The task is to extract these values from the text. This makes 'seriousness of offence' a good illustration of the methodological choices that are available to us in studying the values represented by Biblical law.

(b) Extracting legal values

Jurists have conducted their search for the underlying values of law in a number of different ways. These reflect, respectively, different conceptions of the nature of legal values and of the way in which they operate. Following Jackson we may distinguish between two models of determining legal values; the rationalist (see **4** below) and the semiotic (see **5** below).[111] We shall examine the shortcomings of a rationalist approach to 'seriousness' (see **4** below) and the advantages of adopting a 'semiotic' approach to seriousness of offence (see **5** below).

4. A rationalist approach to 'seriousness of offence'

A rationalist approach seeks underlying principles of law in explicit legal statements. As such it is primarily attached to the surface level of the text. It treats individual rules as bases for the inference of more general principles. The 'rationalist' approach to Biblical legal values is exemplified by Greenberg[112] and Finkelstein.[113]

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[110] Jackson 1989, 195.

[111] Jackson 1987, 16.

[112] Greenberg 1960.

[113] Finkelstein 1981.

(a) Greenberg's 'inner postulates'

Greenberg argues that Biblical law is an expression of "underlying postulates or values of culture."[114] This means that particular laws can only be interpreted in the light of certain 'key concepts' and 'value judgements.'[115]

Greenberg's rationalist approach to explicating these 'jural postulates' relies, first, on explicit value statements in the texts.[116] But since, as we have seen, Biblical law rarely provides express statements of values or principles, Greenberg is forced to draw on rationalist reconstructions of the supposed reasons for individual laws. He does this by assuming that particular cases are instances of more general values and that it is possible to infer by abstraction what these general values are. Concrete rules regarding murder, concretely expressed, are taken in combination with rules regarding theft, equally concretely expressed, in order to derive propositions about the 'value of life' as against the 'value of property' in general. Thus Ex. 21:30, for example, yields the postulate 'human life and property are incommensurable.'[117] The process is 'rationalist' in the sense that it seeks to infer by abstraction general rules.

A rationalist approach to 'seriousness' would have to assume that the concept of 'seriousness of offence' reflected the 'inner postulates' of Biblical law. It would try to make explicit certain principles of 'seriousness' that are thought to be implicit. This might be attempted by generalising from a small number of concretely expressed laws.

However, this approach is fraught with methodological difficulties. Firstly, Greenberg's approach is criticised by Jackson[118] who argues that, whilst Biblical law may contain certain values or principles (for example, such maxims as 'a life for a life': Ex. 21:23; Lev. 24:18) we must be cautious about making 'explicit' certain postulates that are only

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[114] Greenberg *op. cit.*, 8.

[115] *Ibid.*

[116] E.g. Gen. 9:6; Greenberg *op. cit.*, 15.

[117] Greenberg *op. cit.*, 8.

[118] Jackson 1973.

implicit.[119] Otherwise the search for 'values' falls prey to the scholar's own subjective preconceptions.[120]

Secondly, Greenberg's assumption that the law must be interpreted in the light of a total system of values underestimates the fragmentary nature of Biblical law. Like other ancient legal systems, Biblical law is far from comprehensive.[121]

Thirdly, a rationalist approach to 'seriousness' would assume that basic differences in the evaluation of offences can be ascertained solely in terms of the penalties imposed.[122] But in many cases the same punishment is imposed for a variety of offences. This does not take us very far because the imposition of the same penalty for different offences does not necessarily imply the same value judgements of those offences.[123] For example, some offences may be punishable with the death penalty. But this does not mean that they are all equal in the degree to which they offend against the values of society.

Finally, it is doubtful that people in the Biblical period would have used the law to abstract general concepts such as 'value of life' and 'value of property' and 'incommensurability.' Indeed, the abstract concept is not found in Biblical law at all. In cognitive terms, it is more likely that the kind of sense that biblical people would have made of these concrete rules would have been to attach tacit social evaluations to them and to compare them with one another in their literary structure The rationalist approach assumes the justifiability of proceeding from concrete cases to abstract concepts without considering whether this kind of sense-making was appropriate to people in ancient Israel. To the extent that this approach is not appropriate, the rationalist approach is an anachronism.

To conclude, the rationalist approach adopted by Greenberg to the question of values in Biblical law does not constitute a reliable methodology for determining 'seriousness of offence.'

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[119] "... [it is only when principles] assume an explicit form that we can be confident (a) that they exist; (b) that they were consciously articulated; (c) that a certain minimum value, sufficient for their inclusion, was placed upon them; (d) that their range can be determined within reasonable limits"; Jackson *op. cit.*, 13.

[120] Jackson *op. cit.*, 12-13.

[121] Jackson *op. cit.*, 12.

[122] Greenberg *op. cit.*, 19; cf. Jackson *op. cit.*, 16.

[123] Jackson *op. cit.*, 16.

(b) Finkelstein's 'cosmological order'

Finkelstein's 'cosmological' approach seeks to interpret the norms of Biblical law against the views held in that society of the relationship between man and the natural world.[124] Finkelstein's approach is similar to that of Greenberg insofar as he, too, argues that one should seek the general characteristics that underlie concrete laws.[125]

Seriousness, from this perspective, could be cast in terms of violating 'cosmological norms.' Indeed Finkelstein sees the category of offences for which stoning is a penalty as: "crimes of the most serious kind for they are revolts against God, or the world order which is ordained by the divine word."[126] Finkelstein's approach may even be taken to suggest some relationship between 'seriousness of offence' and certain conceptions of 'natural law.'

However, as Jackson notes, there is some difficulty, on Finkelstein's criterion, in finding any offences proscribed by the Bible which are *not* 'insurrections against the cosmic order.'[127] At a deeper level, Finkelstein, like Greenberg, underestimates the possibility that a modern, Western rationalist methodology may be anachronistic when applied to Biblical law.[128] Both impose a 'system' on Biblical texts which do not seem to be sufficiently integrated as a system. They also exclude the possibility of pluralist views of seriousness

An alternative, and more historically-sensitive, approach to determining legal values is therefore required.

5. A semiotic approach to 'seriousness of offence'

An alternative approach is the 'semiotic model' of legal values. Like the rationalist approach, a semiotic approach also claims that it is possible to access popular values. However, a semiotic approach infers these values differently. It contends that legal values reside primarily at the level of the popular unconscious.[129] These legal values are made

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[124] Finkelstein 1981, 7f and 46.

[125] *Ibid.*, 5: "In scrutinising the institutions of any civilisation we must first be sure that we know the conceptual postulates of the society under consideration, its system of values...."

[126] Finkelstein *op. cit.*, 28.

[127] Jackson forthcoming in 1999.

[128] Jackson 1988, 239.

[129] Jackson 1987, 17.

manifest at the level of both language and at the level of social reality by the total experience (especially in ancient societies) of 'legal symbolic acts.'

This means that the issue of the communication of Biblical values can be examined at two levels. The first level (language) concerns the use of the text as an educational device. At this level, we shall examine the operation of descriptive registers. This of course includes the description of legal symbolic acts. The second level (social reality) concerns how the act is performed. At this level we shall be concerned with the operation of performative registers. These deal with the more visual and immediate experience of the act. The supposition that values are communicated at the level of the social reality of the text is based on the assumption (contrary to Carmichael)[130] that the Biblical text is not a purely literary construction but that it also describes real social practice .

To sum up: unlike the rationalist approach which finds popular values by raising the level of abstraction, a semiotic approach locates these values at the level of language and legal symbolic acts. Whereas the rationalist approach strips away the detail of the case to arrive at an abstract proposition, the semiotic approach pays close attention to the detail that is expressed in the act and its description.

A semiotic approach also distinguishes between 'linguistic' meaning and 'aesthetic' meaning. The performance of an act, such as a punishment or a ritual, evokes feelings. These feelings are aesthetic and they involve aesthetic judgements. Aesthetic meaning is a crucial component of 'seriousness of offence' in Biblical law because 'seriousness' evokes feelings. We must therefore consider how these acts are experienced if we want to determine what meaning is attached to certain acts in the minds of the people.

(a) Semiotics and symbolism

Semiotics is concerned with how meaning is constructed and conveyed and specifically with the study of sign structures and sign processes. It is relevant to the study of legal values because the peoples of the ANE often express legal values in symbolic acts.[131]

Semiotics is also relevant because law is an aspect of sense-construction that involves acts of communication between 'sender' and 'receiver.' If we want to understand 'seriousness

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[130] E.g. Carmichael 1974; 1979; 1982, 1994 and 1995. For criticism of Carmichael's approach see Levinson 1990.

[131] E.g. Kruger 1990, 156.

of offence' in Biblical law, therefore, we must examine how beliefs about 'seriousness' are conveyed and signified. This means locating the meaning of punishment in the socio-cultural context where the performance is said to take place. Relevant questions include: 'What aspects of the content of the laws makes them appear intelligible to the Biblical audience, even without conscious rationalisation?' and 'What makes these penalties meaningful'; that is to say, why do they strike the community as 'natural' or appropriate?[132]

(b) Advantages of a semiotic approach

A semiotic approach has a number of advantages over a rationalist approach. Firstly, it provides a way of understanding what certain social acts and patterns of behaviour mean. It shows increased sensitivity to how ideas were constructed in their historical context and it reduces the possibility of anachronism.

Secondly, it allows us to differentiate between offences that are punished in similar ways. A rationalist approach has difficulty in identifying the relative seriousness of offences that are all capital, for example. This is a major limitation given that diverse offences in Biblical law are punishable by the death penalty. A semiotic approach, on the other hand, allows us to differentiate between different forms of capital punishment (e.g. burning instead of stoning; *Chapter Three*). It even allows us to distinguish between different locations for the same type of execution (e.g. stoning at the door of the 'father's house' instead of stoning at the city gate; *Chapter Three*). The same advantage applies to more informal social sanctions that are also capable of a range of modalities. Shame, for example, has a distinct semiotic matrix of its own.[133] A semiotic approach allows us to explore exactly what is being communicated by a particular shaming ritual (*Chapter Two*). The exploration of the meaning of an act includes the meaning of 'speech acts.' We see this also in *Chapter Two* where the widow's declaration in respect of the levir (Deut. 25:10) can be seen as a speech-act of humiliation and disgrace.

Thirdly, it allows us to draw on a greater range of 'registers' of seriousness. Whereas a rationalist approach is largely restricted to the type of penalty imposed, a semiotic approach can draw on other registers. These include: the way in which a punishment is

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[132] Jackson 1987, 24.

[133] See Olyan 1996.

carried out; the language used to describe the offence (*Chapter Five*) and its literary context (*Chapter One*).

Fourthly, a semiotic approach places more emphasis on relationships between people than a rationalist approach which tends to emphasise relationships between concepts. The former approach looks at what is being communicated between the 'sender' and the 'receiver' in the context of a specific relationship. By contrast, the rationalist approach considers the relationship between, say, the 'value of life' and the 'value of property.' In this respect, too, a semiotic approach is preferred against a rationalist approach. This is because the question of justice in Biblical law, to which the problem of seriousness is intimately related, is cast in relational rather than abstract terms. Like justice, the problem of 'seriousness' must be set in the context of particular relationships if it is to be seen in proper relief. We cannot approach 'seriousness of offence' in Biblical law as though we were trying to construct a global scale of values that can be applied 'across the board' to all offences, irrespective of the nature of the crime or its context. Instead, we must approach each case in terms of the relationships involved.

The greater plausibility of the semiotic, as against the rationalist, approach in this context derives from widespread evidence that the Biblical writers used a range of semiotic markers in order to convey meaning. This contrasts with the manifest absence of the kind of high-level abstract concepts on which the rationalist approach relies. We shall, therefore, adopt a semiotic approach to 'seriousness of offence' in Biblical law.

(c) Adopting a semiotic approach

In the case-studies that follow (*Chapters One - Five*) we shall consider the semiotic significance of different 'registers' of seriousness. These include: different forms of execution (*Chapter One* and *Chapter Three*), the location of the execution site (*Chapter Three*), a shaming ceremony (*Chapter Two*); a sacrificial ritual (*Chapter Four*); and the departure of the deity from his temple (*Chapter Five*).

Following Viberg, we shall assume that common symbols in Biblical law have a 'conventional character' within the culture; that is, their meanings are commonly agreed upon. This is likely to be the case for the following registers of 'seriousness': the penalty of stoning (*Chapter One* and *Chapter Three*); the penalty of burning (*Chapter Three*); the

sacrificial ritual described in Lev. 4 (*Chapter Four*); and the departure of the *Shekhinah* (*Chapter Five*).

But we may not assume that all symbols are 'conventional' in character. Some may be non-conventional, in which case it is left to the performance of the particular act to communicate its symbolic meaning. In such cases the 'conventional agreement' and its socio-cultural context is less important. This may be the case with the *ḥāfṣāh* ceremony (*Chapter Two*).

Finally, we are not restricted to the symbolic importance of sanctions alone. Even matters of process are value-laden.[134] Thus we shall pay careful attention to how legal procedure develops our understanding of 'seriousness.' It is relevant to defining the seriousness of the protagonists' behaviour in *Chapters One, Two, Three* and *Five*.

6. Literary presentation and seriousness

Literary presentation is important to our understanding of seriousness of offence for several reasons. Firstly, we have already argued in **5** above, that a semiotic approach to 'seriousness of offence' locates the significance of the punishment in its socio-cultural context. However, since this socio-cultural context is primarily available for study in literary form, it follows that the world of 'seriousness' is accessible only through the world of the text. Contextual literary interpretation is thus an important element of determining seriousness of offence in Biblical law.[135]

Secondly, a semiotic approach to the problem of 'seriousness of offence' considers how the modes in which seriousness of offence are displayed help us to understand the nature of the Biblical conception of their difference. This emphasis upon the semiotics, rather than the pragmatics, of Biblical law (that is, the content of the law rather than in its actual use) requires close attention to literary presentation.

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[134] Jackson 1995b, 204.

[135] Our emphasis upon the final literary form of the text means that source critical questions have less to contribute to an understanding of seriousness of offence in Biblical law. Our approach identifies the key issue as the semiotic significance of a particular punishment and how it functions in the textual world presented by the texts. This means that the attempt to create a hypothetical text through the use of source-critical methodologies leads to the creation of a hypothetical context for the punishment; that is, another textual world and possibly a new hypothetical meaning for the punishment. We shall rely on the understanding of the final editors of the texts since their appreciation of how these punishments functioned in their socio-cultural context is likely to be more reliable than a hypothetical context reconstructed by a modern scholar.

Thirdly, a semiotic approach to 'seriousness of offence' distinguishes between the performance of a sanction and its use in a literary context. In semiotic terms, it is the difference between 'doing' and 'telling.' It distinguishes between the 'act' of performing the punishment (that is, its social reality) and the 'telling' of the story of the punishment (that is, its literary construction).[136] This semiotic approach sees 'story-telling' as a form of behaviour. Certain decisions and choices are made, depending on what the narrator seeks to achieve by the 'act of telling' the story. Narrative techniques are therefore important.

For these reasons, literary phenomena convey part of the message of the text in its final form. Semiotic choices made in the final editing of the text are thus an important aspect of sense-construction. Areas of semiotic choice that affect our understanding of seriousness include the following: terminology; literary arrangement; binary oppositional categories; and links to the wider narrative. These are set out briefly in **(a) - (d)** below.

(a) Terminology

The use of particular words such as 'stubborn and rebellious' (*sōrēr ûmōreh*) and 'a glutton and a drunkard' (*zōlēl w'sōbē*; see *Chapter One*), 'wanton' (*n'bālāh*; see *Chapter Three*) and 'abomination' (*tô'ēbāh*; see *Chapter Five*) is an important aspect of semiotic choice. We shall consider how the connotations and narrative evocations of such vocabulary contribute to our understanding of seriousness.

(b) Literary arrangement

Biblical law is more than the mere sum of the specifically legal contents of individual paragraphs. The meaning of an individual rule often goes beyond the meanings of

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[136] We assume that the text is evidence of the ancient world, but no claim is made to equate the two. Some scholars might argue from this lacuna that there is no necessary connection between 'social reality' and 'literary presentation.' Certainly, it is plausible to suggest that there is some disjuncture between social reality and Biblical ideology. This is especially likely if the text is composed in a society that is pluralistic in its attitudes and beliefs. For this reason, Jackson 1984, 29 thinks it necessary to distinguish between 'biblical law' and the 'law of biblical society.' However, we do not know to what extent the Biblical laws were intended to be descriptive and, if so, whether they described 'common practice' or 'best practice.' Our position in this thesis is that although the laws of the Hebrew Bible give only a partial view of the norms of ancient Israel, they are nevertheless a primary source for reconstructing the ideals and practices of that society. The texts are literary constructions that represent, to a greater or lesser extent, the law as actually practised; Jackson 1973, 29. But it goes too far to claim that the laws were purely literary creations. For example, some would argue that the law in Deut. 21:18-21 and Deut. 22:13-21 was never applied in practice, nor even intended to have been applied. We shall argue against this view by demonstrating that the law in both cases is eminently practicable (see Chapters *One* and *Three*). Indeed, it can be argued that the more unusual the ritual (e.g. the *ḥālīṣāh* ceremony of Deut. 25:5-10; see *Chapter Two*) the less likely it is to be concocted and the more likely it is to have some form of historical reality. However, demonstrating the historicity of particular legal procedures and sanctions lies beyond the scope of this thesis.

individual sentences to depend on discursive relationships between sentences and whole groups of provisions.[137]

Thus we shall look at how our understanding of seriousness is affected by the underlying inter-relationships between different legal rules, particularly those which appear to be related from their literary positioning (see *Chapter One*).

(c) Binary oppositional categories

An important structural feature is the correlation of normally associated 'binary oppositions.'[138] Binary oppositional categories are important to a semiotic account of seriousness because they help us to explain why classifications appear 'natural' or 'intelligible.'[139] In Ezek. 8 the structure of seriousness is based on a series of binary oppositions, that is, 'east' versus 'north'; 'inside' versus 'outside' (see *Chapter Five*).

(d) Wider narrative

Unlike other ANE laws, Biblical law is preserved in the form of a historical narrative. This means that, to a large extent, its character is best understood in terms of the literary and narrative relationships it bears with the surrounding material. Close attention has therefore to be paid to its position within the overall narrative structure. For example, the charge of being 'stubborn and rebellious' and 'a glutton and a drunkard' has particular resonance in the light of the wilderness narrative (see *Chapter One*).

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[137] Jackson 1989, 197.

[138] That is, a pair of terms that are conventionally regarded as opposites. For a discussion see Jackson 1995c, 22ff.

[139] Other examples in Biblical law include the depasturation law of Ex. 22:4. This deals with a domesticated (as opposed to a wild) animal; acting in a non-hostile (as opposed to a hostile) fashion; in a certain cultural context, namely, having been put there to graze (as opposed to seeking new grass); Jackson forthcoming.

1. Identifying the texts

Our procedure is determined by our methodology. This, we saw, is informed by a basic theoretical claim from semiotics: namely, the distinction between linguistic meaning and aesthetic meaning. Semiotics claims that the latter is as much a part of sense-construction as the former. That being so, we looked for texts that involved the use of symbolic acts whose non-linguistic meaning could then be explored.

This yielded a range of texts from which we have selected five. These five are carefully chosen to maximise diversity and to refract, to the fullest possible extent, the spectrum of seriousness of offence in Biblical law.

Firstly, we want to discover whether there is an 'inner coherence' to seriousness of offence. This means juxtaposing cases that deal with similar themes (for example, the 'rebellious son' of Deut. 21:18-21 (see *Chapter One*) and the 'rebellious daughter' of Deut. 22:13-21 (*see Chapter Three*); the concern for the Land in Deut. 21:18-21 (see *Chapter One*) and Deut. 25:5-10 (see *Chapter Two*); offences against YHWH alone in Lev. 4 (see *Chapter Four*) and Ezek. 8 (see *Chapter Five*); as well as the theme of social status in Lev. 21:9, Deut. 22:13-21, Lev. 4 and Ezek. 8 (see *Chapters Three, Four* and *Five*).

Secondly, we want to cover a range of punitive acts. These include: different forms of capital punishment (stoning and burning; see *Chapters One* and *Three*); different ways of carrying out the same mode of capital punishment (stoning an offender in one place rather than another; see *Chapter Three*); informal methods of punishment, such as shaming (again, with different modalities involved; see *Chapter Two*) not to mention the role of the sacrificial system as a possible register (see *Chapter Four*). We also want to include an example of an extraordinary act of divine punishment upon corporate Israel ('divine-temple abandonment'; see *Chapter Five*).

Thirdly, we want to include cases that involve some judgement as to relative seriousness. This occurs where there are different evaluations of seriousness attached to the

performance of the same offence by different people, or by the same people in different ways. This allow us to draw firm conclusions about relative seriousness because the offence is held constant throughout. Any variation in the evaluation of seriousness must therefore be due to some other factor. For this reason too we shall look at Lev. 21:9, Deut. 22:13-21 and Lev. 4 (where the social status of the parties is relevant; see *Chapters Three* and *Four*) and Ezek. 8 (where both the social status of the parties and the location of the offence is important; see *Chapter Five*).

Fourthly, we want to draw our case-studies from different literary genres. We therefore include narrative (such as Ezek. 8; see *Chapter Five*) as well as law and legal texts from different legal corpora (Lev. 4, 21:9; Deut. 21:18-21; 22:13-21 and 25:5-10; see *Chapters One* to *Four*). This allows us to explore the different audiences to whom the text is addressed and to see whether seriousness of offence varies according to different semiotic groups.

2. Presenting the case-studies

The thesis accordingly takes the form of a series of case-studies. To re-iterate, our procedure reflects our methodology. A semiotic, as opposed to a rationalist approach to Biblical law, has no prior reason for supposing that 'seriousness of offence' fits into a 'system.' The thesis, therefore, makes no attempt to unlock a hitherto concealed system (even assuming that such a system exists). It is of course possible that the acts that we shall examine do fit together, rather imperfectly, into some sort of system. But this is not essential. The structure of the thesis as a series of case-studies is thus perfectly authentic to the pre-systematic way in which people in the Biblical period appeared to construct the meaning of seriousness.[140]

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[140] A narrative approach to 'seriousness of offence' in Biblical law is pluralist and not reductionist. This narrows, rather than widens, the gap between Biblical law and the contemporary quest for 'seriousness.' This is because, even in modern law and penal philosophy, there is no single answer to the problem of punishment. There is a constant tension between the ideals of 'rehabilitation,' 'retributivism,' 'utilitarianism' and 'eclecticism.' We should not be surprised at the plurality of 'seriousness' in ancient Israel, when we ourselves are far from systematic, or precise, in expressing our rationale for various punishments; cf. Garland. Moreover, as in biblical society (see p. 186ff below), the rationale behind the concept of any form of punishment can be conceived very differently by different elements in a single society. Liberals might speak of the rehabilitative function of punishment, whilst a conservative will tend to favour the punitive aspect. Others might speak of the necessity to detain prisoners as a protective device. Yet it is possible to argue that all these factors are involved in varying degrees in any given punishment; Garland 1990. A comparative approach suggests that it is probably unrealistic to expect a modern conception of 'seriousness' to take the form of an ethical 'system.' Rather, the most that can be aspired to is a conception of seriousness that displays an inner coherence.

The result is a study that is illustrative of 'seriousness of offence' in Biblical law, rather than exhaustive. Again, this is appropriate. Biblical law makes no claim to be exhaustive in terms of the range of cases that it covers. This means that we are not entitled to regard its presentation of 'seriousness' as comprehensive, either. The cases that deal with seriousness of offence in Biblical law are themselves illustrative and not exhaustive. To this extent, the structure of the thesis reflects the presentation of seriousness of offence in Biblical law itself.

The five case-studies are as follows. *Chapter One* examines the case of the rebellious son (Deut. 21:18-21), whilst *Chapter Two* considers the case of the levir who refuses to sire an heir for his dead brother (Deut. 25:5-10). *Chapter Three* contrasts the offence committed by the priest's daughter in Lev. 21:9 with that of the commoner's daughter in Deut. 22:13-21, whilst *Chapter Four* examines inadvertent offending in Lev. 4. Finally, *Chapter Five* explores the seriousness of Temple-idolatry in Ezek. 8.

3. Identifying the paradigm case

We saw that the praxis of Biblical law, so far as we are able to establish, militates against the 'legislative' model and in favour of a narrative approach that understands the law in terms of a 'paradigm case.' Our procedure will therefore be to reconstruct the paradigm expectation in each case and to comment on those features that have significance for our understanding of 'seriousness.'

The importance of placing descriptive questions first is demonstrated in each case-study. Unless the descriptive features of the case are clearly identified, we are in no position to state the nature of the offence, let alone to evaluate its seriousness. Having identified the actual nature of the offence, we then consider the form of the punishment and why this

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A narrative approach militates against a systematic account of 'seriousness of offence' in Biblical law. This is because of tension between the idea of a 'paradigm case' (which is concrete, narrative and contextual) and the notion of a 'system' (which involves abstraction). If the praxis of Biblical law is the popular use of paradigm cases, we may query to what extent ideas of seriousness were systematised in ancient Israel.

Strangely enough, this narrows, rather than widens the gap, between Biblical ideas of seriousness and the modern search for seriousness. This is because contemporary models of legal systems are based on the idea of precedent, and precedents, too, offer 'paradigm cases.' The key difference, of course, between the use of precedents under a 'legislative' model of law and the use of paradigm cases under a 'charismatic' model, is that, under the former, each case is only authoritative within the scope of each *ratio decidendi*. Nonetheless, whilst one may try to abstract from these cases something that we may call 'family law' or 'law of torts,' the fact remains that we are dealing with a variety of stories and 'paradigms' that do not always fit together coherently in a logical fashion. Thus, as with ancient Israel, we may query whether, under contemporary English law, we have any 'systematic' approach to seriousness of offence. Indeed, we may even question whether such a 'system' is desirable (see end *Discussion*).

was appropriate. Here we consider the historical and cultural links that connect the execution of the punishment to its semiotic meaning.

We shall compose and develop the picture of seriousness in Biblical law as we move through each of the case-studies. We shall see that Biblical law contains a sophisticated understanding of 'seriousness.' We shall identify some of the different elements that make up the Biblical conception of 'seriousness' and the various means by which this understanding is synthesised and communicated. Finally, we shall conclude with a *Discussion* in which we assess the relevance of the Biblical conception of 'seriousness of offence' to the modern search for seriousness.

THE WRATH OF GOD ON THE SONS OF DISOBEDIENCE

Seriousness of Offence and Deut. 21:18-21

Text

Deut. 21:18 כִּי־יִהְיֶה לְאִישׁ בֵּן סוֹרֵר וּמוֹרֶה אֵינֶנּוּ שֹׁמֵעַ בְּקוֹל אָבִיו וּבְקוֹל
אִמּוֹ וְיִסְּרוּ אֹתוֹ וְלֹא יִשְׁמַע אֲלֵיהֶם: 19 וְתָפְשׂוּ בוֹ אָבִיו וְאִמּוֹ וְהוֹצִיאוּ אֹתוֹ
אֶל־זִקְנֵי עִירוֹ וְאֶל־שַׁעַר מְקֹמוֹ: 20 וְאָמְרוּ אֶל־זִקְנֵי עִירוֹ בְּנֵנוּ זֶה סוֹרֵר
וּמֹרֶה אֵינֶנּוּ שֹׁמֵעַ בְּקֹלֵנוּ זוֹלֵל וְסֹבֵא: 21 וּרְגָמֻהוּ כָּל־אַנְשֵׁי עִירוֹ בָאֲבָנִים
וָמֵת וּבִעַרְתָּ הָרָע מִקִּרְבֶּךָ וְכָל־יִשְׂרָאֵל יִשְׁמְעוּ וְיִרָאוּ:

The RSV translates Deut. 21:18-21 as follows:

Deut. 21

18   If a man has a stubborn and rebellious son, who will not obey the voice of his father or the voice of his mother, and, though they chastise him, will not give heed to them,

19   then his father and his mother shall take hold of him and bring him out to the elders of his city at the gate of the place where he lives,

20   and they shall say to the elders of his city, 'This our son is stubborn and rebellious, he will not obey our voice; he is a glutton and a drunkard'.

21   Then all the men of his city shall stone him to death with stones; so you will purge the evil from your midst; and all Israel will hear, and fear.

1. Introduction

"Good wombs have borne bad sons."[141] The seriousness of being a 'bad son' is set out in Deut. 21:18-21. The elements of seriousness in Deut. 21:18-21 are described as follows: the son is "stubborn and rebellious"; he does not heed his parents' voice; he is incorrigible (Deut. 21:18); and he is a "glutton and a drunkard" (Deut. 21:20). We explore the seriousness of this offence in **2-6**, below.

Deut 21:18-21 also contains a number of 'registers' of seriousness; *viz.* different semiotic forms in which the values of seriousness can be expressed. 'Performative' registers (that is, acts performed by people in the text) are as follows. Firstly, the act of bringing the son before the elders ("... his father and his mother shall take hold of him and bring him out to the elders of his city at the gate of the place where he lives"; Deut 21:19). The case is too serious to be dealt with by the parents alone. It must come before the jurisdiction of the elders who, unlike the parents, are legally competent to impose the death penalty. Secondly, the speech-act of accusation: "and they shall say to the elders of his city..." (Deut. 21:20). Thirdly, the act of punishment, which is death by stoning ("Then all the men of his city shall stone him to death with stones..." (Deut. 21:21)). In addition to describing these performative registers, the text also contains the following 'descriptive' registers of seriousness. These include the expiatory purpose of the sanction ("... so you shall purge (*ūbi 'arta*) the evil from your midst" (21:21)). The basic idea is the rejection of the evildoer in order to purify the tribal or the national community.[142] This statement of purpose reflects the law's own understanding of the seriousness of the offence (cf. Deut. 17:12; 19:13; 22:21; 22:22, 24 and 24:7). A further 'descriptive' register is found in the use of the 'public-example' formula: "... and all Israel will hear and fear" (21:21).[143]

2. Offence description

We begin our analysis of 'seriousness' by examining the description of the offence as it is given in Deut 21:18 and 20. Comparison between verses 18 and 20 reveals an 'imperfect repetition': *viz.* the precise terminology of the law in v.18 differs from the parents' plea in

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[141] *The Tempest*, Act I sc. II, l.119.

[142] Ringgren 1975, 203-4.

[143] This formula is also used in Deut. 13:12; 17:13 and 19:20. As with Deut. 21:21, each offence is described in terms of a single culprit whose fate is then spelt out. This emphasis on the individual offender and his offence rather than the category of offenders and what their offences have in common increases the 'deterrent' effect; Carmichael 1974, 45.

v. 20. Verse 18 reads: "If a man has a stubborn and rebellious son, who will not obey the voice of his father or the voice of his mother, and, though they chastise him, will not give heed to them." Verse 20, however, is slightly different. The parents allege: "This our son is stubborn and rebellious, he will not obey our voice; he is a glutton and a drunkard." Verse 20 repeats the charge of being 'stubborn and rebellious' and of 'failing to heed his parents' voice.' However, there is no repetition, in verse 20, of the claim in verse 18 that he is incorrigible ("though they chastise him he will not give heed to them"; Deut. 21:18). Instead, they allege that he is "a glutton and a drunkard" (Deut. 21:20).

This 'imperfect repetition' might suggest that the phrase "a glutton and a drunkard" is an interpolation. However, our approach to 'seriousness of offence' in Deut. 21:18-21 militates against this view. We shall argue, instead, that Deut. 21:18-21 presents us with a 'narrative typification of action.' Verses 18 and 20 refer to the *typical* behaviour associated with the social stereotype of the 'rebellious son.'[144] This behaviour includes: being 'stubborn and rebellious'; 'not obeying his parents' voice'; being 'incorrigible'; and being a 'glutton and a drunkard.' Such an approach means that there is no question of regarding these behaviour patterns as discrete offences.[145] Rather, they are all part of the same substantive narrative or 'typification of action.'[146]

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[144] This is preferable to the narrowly semantic approach favoured by other writers. Brichto 1973, 32 for example wonders what would happen to the 'abstemious' rebellious son who was 'stubborn' and a 'glutton' but not a 'drunkard' (see 4 below). It is doubtful whether the law was ever meant to be understood in that way.

[145] *Contra*, for example, Bellefontaine 1979, 20ff who sees the phrase "a glutton and a drunkard" as the remains of an originally independent tribal customary law whose purpose was to destroy thoroughly corrupt members of the tribe or clan.

[146] *Contra* Benjamin 1983, 212 who argues that the offence of being a "a glutton and a drunkard" in v. 20 is a separate offence, comparable to that of being 'incorrigible' in v. 18. Benjamin argues that v. 18 contains two offences, not just one (*viz.* "if a man has [1] *a stubborn and rebellious son, who will not obey the voice of his father or the voice of his mother,* and, [2] *though they chastise him, will not give heed to them...*"; my italics). The son is not 'stubborn and rebellious' because his parents have chastised him and he has refused to listen. Rather, he is 'stubborn and rebellious' (one offence) and he continues to disobey after he has been chastised (a second offence). Benjamin proposes that verses 18 and 20 both consist of two separate offences. He contends that two distinct offences have to be committed before the son can be brought before the elders (*viz.* [1] 'being stubborn + rebellious + refusing to listen to his parents' voice' and [2] 'being incorrigible'). Likewise, he must be accused of two serious offences before he can be executed (*viz.* [1] 'being stubborn + rebellious + refusing to listen to his parents' voice' and [2] 'being a glutton and a drunkard').

However, Benjamin's approach cannot be supported grammatically. There is no conjunction (in Hebrew, the letter *wāw*) before the phrase "he is a glutton and a drunkard." Grammatically, the phrase "he is a glutton and a drunkard" simply explicates his 'refusal to heed.' This is reflected in many translations of the Bible by the use of a semi-colon ("...; he is a glutton and a drunkard."). The sense is: "This our son is stubborn and rebellious, he will not obey our voice [*namely*, or *in other words*] he is a glutton and a drunkard." The charge "he is a glutton and a drunkard" is not a separate offence. It is simply part of the 'narrative stereotype.'

Consistent with this view, the phrase "he is a glutton and a drunkard" is perfectly well embedded in the text as it stands. Verse 18 presents us with three typical behaviour patterns of the narrative stereotype; *viz.* "If a man has [1] a stubborn and rebellious son, [2] who will not obey the voice of his father or the voice of his mother, and, [3] though they chastise him, will not give heed to them." Verse 20 does the same: "This our son is [1] stubborn and rebellious, [2] he will not obey our voice; [3] he is a glutton and a drunkard." Both verses explicate the same stereotype (cf. **3 - 5**, below).

If we assume that the phrase 'a glutton and a drunkard' is integral to the original text because it is part of an overall, threefold, 'narrative typification' of the 'rebellious son', we are, nevertheless, still obliged to explain why there is an 'imperfect repetition' in verse 20. We shall address this in **6** below. We shall argue that there are strong *evidentiary* reasons for stressing the fact that the son is "a glutton and a drunkard" when he is brought before the elders.

The distinctiveness of the charge "he is a glutton and a drunkard" raises another methodological question. Some scholars, such as Weinfeld, suggest that the charge of being "a glutton and a drunkard" is evidence that Deut. 21:18-21 originated in Wisdom circles and should therefore be dated *circa.* eighth century BCE, at the earliest.[147] This is because the expression 'a glutton and a drunkard' is characteristic of Wisdom literature and of *Proverbs* especially.[148]

However, this view is not convincing, for several reasons. Firstly, the Wisdom tradition presents 'gluttony' and 'drunkenness' as *self*-punishing (e.g. Pr. 23:20-21). If Deut. 21:18-21 is truly 'Wisdom,' why do we need the community to intervene and to mete out punishment?[149] Secondly, had Deut. 21:18-21 arisen in a Wisdom context, one might have expected the charge "he is a glutton and a drunkard" to figure prominently in the text. But it does not. More prominent is the charge of being "stubborn and rebellious," vocabulary that is not discernibly 'Wisdom' at all. On the contrary, these very words ("stubborn and rebellious") are a recurring feature of the valedictory speech that is attributed to Moses on the plains of Moab; e.g. Deut. 31:27.[150] Ironically, Weinfeld's

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[147] Weinfeld 1972, 303-6.

[148] See Prov. 23:30-21; 28:7; 30:8-9.

[149] Benjamin *op. cit.*, 218.

[150] See also Deut. 1:26, 43; 9:7, 23-24.

appeal to language supports an early, rather than a late, date for the text. It supports the traditional view that Deut. 21:18-21 was part of the speech given by Moses at the entrance to the promised Land (1:1-2).

Indeed, the entrance to the promised Land is Deut. 21:18-21's most natural *Sitz im Leben*. Moses' speech is a borderline speech, both geographically and temporally. It marks the end of the desert wanderings and the beginnings of a new, settled, way of life. For the Israelites gathered on the plains of Moab (1:5) there is a contrast between 'scratching by' in the wilderness and life in Canaan, "a land oozing with milk and honey" (6:3). A transition had to be made from the enforced asceticism of the desert to Canaan's bounty. Understandably, not everyone would negotiate that change successfully. Some could easily fall into 'food abuse.'

Against this backdrop, Deut. 21:18-21 is a warning against behaving in a particular way at the very moment when the temptation to do just that is greatest. Of course, it is proper that Israel should enjoy all the fruits of whatever the land produces (e.g. Deut. 14:26). This enjoyment is one of YHWH's blessings (Deut. 28:4-5, 8) and its absence is one of YHWH's curses (Deut. 28:17-18, 39). But they are not to go 'overboard' (e.g. 6:10-12). They are to limit their indulgence. The warning against 'food abuse' in Deut. 21:18-21 is consistent with the concern throughout *Deuteronomy* as a whole to treat the Land properly. It is, after all, YHWH's 'gift' (e.g. Deut. 9:6). For what else is 'food abuse' but, ultimately, an abuse of the Land?

3. Identifying the paradigm case

Understanding 'seriousness of offence' in Deut. 21:18-21 means understanding the significance of the 'social stereotype' that it presents. Of the two typifications presented (in verses 18 and 20) we shall examine the typification expressed in v. 20 (the parents' charge). This is because it is this charge that, if upheld, justifies the offender's execution.

Three behaviour patterns are described in verse 20: being 'stubborn and rebellious'; 'not obeying his parents' voice'; and being a 'glutton and a drunkard.' Naturally the precise significance of each of these behaviours depends on what social knowledge is presupposed on the part of the audience.

It is, therefore, appropriate to begin by examining some of the contexts in which these behaviours are described. In doing so, we bear in mind the usual caveats about the semantics of Biblical language.[151] We shall also pay special attention to associated imagery, since reception of the 'paradigm' case (whether heard or read) may be designed to 'trigger' visual images.

(a) "This our son is stubborn and rebellious ..." (Deut. 21:20a)

The key words here are *sôrēr* ('stubborn') and *môreh* ('rebellious'). Occasionally, as in Deut. 21:20a, the words appear together in the phrase *sôrēr ûmôreh* ('stubborn and rebellious'). We shall consider each, as follows.

(i) Sôrēr

A concrete description of *sôrēr* is found in Hos. 4:16: "Like a stubborn (*sôrērāh*) heifer, Israel is stubborn (*sārar*)." The picture is of the 'baulky' or intractable cow who either refuses to move[152] or who cannot keep to a directed path.[153] The image carries overtones of wilfulness, obstinacy and perversity. The word is frequently used in a more abstract sense to describe Israel's refusal to 'walk' in the way of the LORD. Zech. 7:11 is typical in relating how the people "... refused to hearken [to the word of the LORD] and turned a stubborn shoulder (*kātēp sôreret*)[154] and stopped their ears that they might not hear." Exactly the same motifs occur in Deut. 21:18-21 (refusing to 'pay heed,' 'stubborn' behaviour and 'not listening' to the parents' voice).

Israel's stubborn behaviour is often said to be directed against YHWH Himself: "I [YHWH] constantly spread out My hands to a disloyal people (*'am sôrēr*)" (Isa. 65:2); whilst Jeremiah charges the people with being "stubbornly defiant" (*sārê sôrᵉrîm*) towards YHWH (Jer. 6:28). This behaviour is a personal affront to YHWH: "... they rebel (*yāsûrû*) against *Me*" (Hos. 7:14). This is brought out in the JPS translation of Hos. 7:15: "Although *I* braced, *I* strengthened their arms, And they plot evil against *Me!*" Woe is promised to the "disloyal sons" (*bānîm sûrᵉrîm*) of Israel who, in Isa. 30:1, make a treaty

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[151] Classically expressed by Barr 1978 (1961).

[152] Ruppert 1986, 958.

[153] Hirsch 1989b [1837], 417.

[154] Turning a 'stubborn shoulder' again evokes the image of the obstinate cow who lifts up its shoulders because it does not want the yoke around its neck.

with Egypt, swapping the protection of one overlord for another. Again, the charge of being a 'stubborn' or 'disloyal' son echoes that of Deut. 21:18-21.

(ii) Môreh

A parallel word to *sôrēr*, *môreh* belongs to the same semantic field as being 'stiff-necked' and 'obstinate.'[155] It refers to a hardened attitude that (perhaps like the cow) will not budge. Its binary opposite is *šāma'* ('to listen' or 'to obey').

Rebellion against YHWH is thematically typified by the 'wilderness generation.' The Psalmist recalls: "Our forefathers in Egypt did not perceive your wonders; they did not remember your abundant love, but rebelled (*wayyamrû*) at the sea, at the Sea of Reeds" (Ps. 106:7). Elsewhere in the Psalms, 'wilderness behaviour' is seen as a paradigm of 'rebellion.' "How often they rebelled (*yamrûhû*) against him in the wilderness and grieved him in the desert" (Ps. 78:40). It is also echoed by the prophets, such as Ezekiel: "And I said to their children in the wilderness, 'Do not walk in the statutes of your fathers, nor observe their ordinances ....' But the children rebelled (*yamrûhû*) against me; they did not walk in my statutes and were not careful to observe my ordinances" (Ezek. 20:18, 21). Isa. 30:9 juxtaposes "rebellious people ('*am merî*)" with "faithless children (*bānîm kehāšîm*) who refused to heed the instructions of the LORD." As with *sôrēr*, Israel's 'rebellion' is personally wounding to YHWH: "... they rebelled (*mārû*) and grieved his holy Spirit, therefore he turned to be their enemy" (Is. 63:10).

Attention is occasionally drawn to Jerusalem's 'rebellion.' Notable is Zephaniah's lament: "Woe to her that is rebellious (*mōr'â*) and defiled, the oppressing city! (2) She listens to no voice, she accepts no correction (*mûsār*)[156]..." (Zeph. 3:1-2). As in Deut. 21:18-21, *mōr'â* is identified with a refusal to listen and to benefit from 'chastisement.'

(iii) Sôrēr ûmôreh

The words *sôrēr* and *môreh* also appear together in the form *sôrēr ûmôreh*. This phrase is used several times to describe corporate Israel.[157] Indeed the epitome of the 'stubborn and rebellious son' is the nation of Israel, especially the wilderness generation. The

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[155] Ruppert *op. cit.*, 958.

[156] Cf. *we yisserû*, Deut. 21:18. Both Zeph. 3:2 and Deut. 21:18 use the same root; *yāsar* (to chastise).

[157] In drawing a comparison between the use of *sôrēr ûmôreh* in Deut. 21:18-21 and its application in regard to corporate Israel, we acknowledge that there may, in theory, be a difference between the meaning of *sôrēr ûmôreh* when applied to a specific individual and its meaning when applied to a corporate body.

psalmist laments the "stubborn and rebellious generation (*sôrēr ûmōreh*) ... whose heart was not steadfast, whose spirit was not faithful to YHWH" (Ps. 78:8). Jeremiah charges "the house of Jacob" with "a stubborn and rebellious (*sôrēr ûmōreh*) heart" (Jer. 5:20, 23). Nehemiah's damning résumé of Israel's forefathers includes the charge that "they were disobedient and rebelled (*wayyamrû wayyimrᵉᶜdû*) against thee [YHWH], and cast thy law behind their back..." (Neh. 9:26). A couple of verses later it is said that "they [Israel's forefathers] acted presumptuously... and turned a stubborn shoulder (*kātēp sôreret*), and stiffened their neck and would not obey" (Neh. 9:28). In Neh. 9:26-28, the roots *sārar* and *mārāh* do not appear together, but they are sufficiently close to suggest a parallel with Deut. 21:18-21.[158]

Wright sees *sôrēr ûmōreh* as a term for the "serious and persistent rejection of authority...."[159] Benjamin goes further, claiming that *sôrēr ûmōreh* refers to "measurable and public"[160] apostasy. Israel's 'stubbornness' (the opposite of obedience) is the reason why YHWH denied the desert generation access to the Promised Land.[161]

This view is supported by Coats' analysis of Israel's rebellion in the wilderness.[162] He argues that Israel's lack of food merely provided the setting for the 'murmurings.' To this extent, Israel's 'food problem' was merely the 'presenting issue.' The real issue - that is, the substance of the rebellion - was a desire to go back to Egypt. They wanted to go back to the life that they had before the Exodus. Their rebellion was, essentially, apostasy.[163] Ex. 16:3 provides a good example. The Israelites complain: "Would that we had died by the hand of YHWH in the land of Egypt when we were sitting by the pots of flesh, when we were eating bread to the full." The memory of food (supposedly) left behind in Egypt forms the immediate motivation for the murmuring. But the rosy picture of life in Egypt (slave labourers eating boiled flesh?) puts the emphasis, by dint of the exaggeration, on the fact that they left Egypt at all. Hence, the substance of the rebellion is not lack of food, but the fact that they had been taken out of Egypt. The complaint expresses not only a desire to return to the state of life that they had before the Exodus, but also the

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158 Although it might be queried whether these texts are an allusion to Deut. 21:-18-21, or *vice versa*.

159 Wright 1996, 237.

160 Benjamin *op. cit*, 220.

161 Benjamin *ibid*. Cf. Ps. 95:7b-11, although the words *sôrēr ûmōreh* do not themselves appear in these verses.

162 Coats 1968.

163 Cf. the argument of Heb. 3:7-19, citing Ps. 95:7-11.

wish that the Exodus itself had never happened.[164] This is the rebellion for which the wilderness generation were disqualified from entering the Promised Land, underlining the idea that *sôrēr ûmôreh* signifies apostasy.

Just as corporate Israel refuses to heed instruction from YHWH, so the son in Deut. 21:18-21 who is *sôrēr ûmôreh*, refuses to take instruction from his parents. His behaviour is tantamount to a renunciation of the parental bond. It is also tantamount to apostasy, insofar as the parental instruction that he rejects relates to the commands of YHWH (see **6(b)** below).

(b) "… he will not obey our voice…" (Deut. 21:20b)

We have seen that the charge of being "stubborn and rebellious" signifies an obstinate refusal to listen to, or to obey, the voice of authority. This applies whether the voice of authority belongs to the parents or whether, as in the case of corporate Israel, it belongs to YHWH himself.

The phrase "… he will not obey our voice…" (*'êynennû šomēʿa bᵉqôlēnû*) simply explicates this stereotype of the 'rebellious son.' This is because, throughout the Hebrew Bible, 'hearing' is associated with 'obedience.' The one who 'hears' is the one who obeys. Similarly, the one who refuses to 'hear' is a synonym for one who disobeys. There is a binary opposition between active listening and obedience on the one hand and the refusal to hear, and rebellion, on the other.

This opposition is apparent in the epilogue to the Covenant Code, where the people are commanded regarding the angel of YHWH (Ex. 23:20): "Pay attention to him and listen to what he says (*ûšᵉmaʿ bᵉqôlô*, JPS "obey him"). Do not rebel (*tammēr*) against him…" (Ex. 23:21).[165] In this verse, the word translated 'rebel' is derived from the root *mārar* (to be bitter) and not from the root *mārāh* (to be rebellious), as used in Deut. 21:18 and 20. However the verbs are quite similar phonetically. In any case, it is apparent that 'rebellion' is the opposite of 'listening.'

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[164] Coats *op. cit*, 89. This is of course a theological interpretation that is not necessarily to be attributed to all the participants in the narrative.

[165] There are many other examples; notably the command to heed the words of the 'prophet like Moses' (Deut. 18:15-19).

For this reason, the parents' charge "… he will not obey our voice…" recapitulates the charge of being "stubborn and rebellious." It clarifies the stereotype of the 'rebellious son.'

The charge presupposes the parents' teaching function in relation to the character and commands of YHWH. This presupposition is established early in *Deuteronomy* itself:

"Only take heed, and keep your soul diligently, lest you forget the things which your eyes have seen, and lest they depart from your heart all the days of your life; make them known to your children and your children's children – [10] how on the day that you stood before the LORD your God at Horeb, the LORD said to me [Moses], 'Gather the people to me, that I may let them hear my words, so that they may learn to fear me all the days that they live upon the earth, and that they may teach their children so' (Deut. 4:9-10).

It is also clear from the early chapters of *Deuteronomy* that one of the typical settings for parental instruction is the home:

"… you shall teach them [YHWH's words] diligently to your children, and shall talk of them when you sit in your house, and when you walk by the way, and when you lie down, and when you rise" (Deut. 6:7; cf. 11:19).

To conclude: 'refusing to obey the parents' voice' explicates the charge of being "stubborn and rebellious." Both have in mind the stereotypical person who does not heed the voice of authority. Moreover, to the extent that his 'refusal to heed' refers to parental instruction in the commands of YHWH, it lends further support to the idea that *sōrēr ûmōreh* has overtones of apostasy.

(c) "… he is a glutton and a drunkard" (Deut. 21:20c)

The third charge further explicates the stereotype of the 'rebellious son.' It is at one with the behavioural pattern described in the first charge ("This our son is stubborn and rebellious") and in the second charge ("he will not obey our voice"). We may demonstrate this by examining the usage of the words: *zōlēl* (a glutton); *sōbē'* (a drunkard); and the phrase *zōlēl w^esōbē'* ('a glutton and a drunkard').

(i) Zôlēl

"He who keeps the law (*nōsēr tōrāh*) [or who "heeds instruction"; JPS] is a wise son, but a companion of gluttons (*zôf'līm*) shames his father" (Prov. 28:7). 'Gluttony' is associated with departing from *tôrāh* and with failing to heed "instruction." Like the 'drunkard' (see

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(ii) below), the 'glutton' is characterised as someone who has no interest in YHWH's commands.[166] Prov. 23:20 states: "Be not among winebibbers, or among gluttonous (*b^ezôlâlê*) eaters of meat." There appears to be a binary opposition between the verb *zālal* (meaning 'to be worthless' and used in Prov. 23:20 of gluttons) and *yāqar* ('to be valued, honoured').[167] If so, the 'glutton' may be associated with the 'lowest' in society.

For ancient moralists, such as Philo, gluttony was regarded as 'unnatural'; not because gluttons have a desire to eat 'unnatural' things but because the glutton was insatiable.[168] Instead of being satisfied with a decent meal, the glutton gorges himself until he is sick, even causing himself to vomit so that he can continue eating. The glutton goes 'beyond nature' (and is therefore unnatural) because he overindulges a natural appetite. In this way, gluttons lose control of their appetites - and not only for food. Food abuse, it was thought, led to sexual perversion.[169] Gluttony was analogous to bestiality; for if gluttony was 'too much food,' bestiality was 'too much sex.' In both cases, it was thought, a natural desire was taken to unnatural extremes.[170]

(ii) Sōbē'

As with the glutton, the drunkard is also characterised as someone who has little concern for YHWH's commands. The prophet Hosea castigates the northern kingdom of Israel in the following terms: "Ephraim is joined to idols, let him alone. [18] A band of drunkards (*sob^e'ām*), they give themselves to harlotry; they love shame more than their glory" (Hos. 4:17-18).[171] This link between 'drunkenness' and 'whoredom' echoes the juxtaposition of harlotry (*z^enût*) and wine (*w^eyayîn*) in Hos. 4:11. The context ('loss of understanding') typifies the 'drunkard' as someone who cares little for anything beyond his sensual desires.

A similar typification occurs in Isaiah 56:12: " 'Come,' they [Israel's watchmen] say, 'let us get wine, let us fill ourselves (*w^enis^eb^e'āh*) with strong drink (*šēkār*); and tomorrow will be like this day, great beyond measure.'" In this verse, the drunkenness of Israel's leaders

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[166] Hirsch 1989b [1837], 419 typifies the glutton (*zôlēl*) as the man who knows "no higher bliss than a large juicy steak" and who has sunk into a "brutish pandering to the senses" characterised by "animal-like gorging."

[167] E.g. Jer. 15:19: "If you utter what is precious (*yāqār*) and not what is worthless (*mizzôlēl*), you shall be as [the] mouth [of God]."

[168] For Philo, gluttony is a common result of *epithumia* ('lust'); Philo, *Special Laws* 4.91.

[169] Philo, *Special Laws* 3:43.

[170] Martin 1995, 343.

[171] NKJ translates "Their drink is rebellion..." whilst the NRS proposes "When their drinking is ended...."

typifies their complacency. It is part and parcel of their 'blindness' (Isa. 56:10), their 'lack of knowledge' (Isa. 56:10) and their sensual self-absorption (Isa. 56:11). It leaves them bemused to the world around them and unable to comprehend the true state of affairs described in Isa. 56:9 (the beasts on the way to the feast).[172]

Philo explicitly compared the rebellious son to the degenerate Israelites who worshipped the golden calf (Ex. 32:17-19).[173] In his view, Deut. 21:20 referred to drunkenness of 'the most intense sort.'[174] It was: "the poison which causes folly, indiscipline, smoulders within the man, then bursts into fire and flame impossible to quench, and consumes the soul through its whole being with the conflagration."[175] For Philo "strong liquor" symbolised several things: "... foolish talking and raving, ... complete insensibility, ... insatiable and ever-discontented greediness... [and] the nakedness which embraces the rest and manifests itself in all the qualities just mentioned."[176] From this it follows that the rebellious son "adds sins to sins, great to small, new to old [as well as] voluntary and involuntary."[177]

(iii) Zôlēl wᶜsōḇē'

The words *zôlēl wᶜsōḇē'* do not appear together outside Deut. 21:20 with the same frequency as *sôrēr ûmôreh*. However, there is an interesting juxtaposition in Prov. 23:19-22: "Hear, my son, and be wise, and direct your mind in the [proper] way. [20] Be not among winebibbers (*bᶜsōḇ'ê yāyin*) or among gluttonous eaters of meat (*bᶜzōlălēy bāśār*); [21] for the drunkard (*sōḇē'*) and the glutton (*wᶜzōlēl*) will come to poverty, and drowsiness will clothe a man with rags. [22] Hearken to your father who begot you, and do not despise your mother when she is old."

The warning about the fate of drunkards and gluttons in Prov. 23:21 is sandwiched between an imperative with an emphatic appeal (literally, "listen, you!"; *šᵉma' 'atāh*) on

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[172] Motyer 1993, 468-9.

[173] The Midrash hints at a similar link when it claims that: "... the making of the golden calf was on account of wine"; *Numbers Rabbah* 9.24.

[174] Philo, *On Drunkenness*, 8.27.

[175] *Ibid.*

[176] Philo, *On Drunkenness*, 1.4.

[177] *Ibid.* Cf. M. *Sanh* 8.5: "A stubborn and rebellious son is condemned because of [what he may become in] the end...." Cohn 1971, 1604 writes: "the rebellious son is executed, not because of what he has actually done, but because of what he was foreseen to be prone to do were he allowed to live."

one side (v.19) and an injunction to obey one's father and to honour one's mother on the other (v.22). A clearer 'tip of the hat' to Deut. 21:18-21 is hard to imagine.[178] Like Deut. 21:18-21, Prov. 23:19-22: warns against gluttony and drunkenness; echoes the motif of 'listening to the voice of the father'; and appeals to the fifth Commandment (see also **5** below).

Prov. 23:19-22 also incorporates the motif of 'keeping bad company' (*viz.* "do not be of those..."/"do not be among..."; cf. Prov. 28:7, above). It places emphasis upon habitual behaviour. 'Glutting meat' implies more than an occasional feast, whilst 'guzzling wine' implies more than the occasional 'hangover.'[179]

From a semiotic point of view, the phrase "a glutton and a drunkard" may be regarded as a visual manifestation of a particular lifestyle. Designating someone as a 'drug addict' or a 'traveller,' for example, immediately evokes a way of life that goes far beyond taking drugs or being 'on the road.' We are supplied with part of the picture and our social knowledge of the stereotype enables us to 'fill in' the rest.

In the same way, the designation "a glutton and a drunkard" may typify a lifestyle that includes excessive eating and drinking, but which may also go beyond it to include more destructive forms of behaviour.[180] The charge of being "a glutton and a drunkard" signifies other forms of behaviour that also contribute to evaluations of the seriousness of this offence.

The association between 'a glutton and a drunkard' and 'keeping the wrong sort of company' in Prov. 23:19-22 reinforces this idea of 'deviant lifestyle.' It suggests a person who eats and drinks more with his like-minded companions than with his own family. In terms of lifestyle, this creates greater potential (and support) for his own rejection of parental authority.

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[178] For possible connections between Deuteronomic theology and Proverbial wisdom see, e.g. Blenkinsopp 1983.

[179] Reference is made elsewhere in the same chapter to the morning drinking bout: "... As often as I wake, I go after it again." (Prov. 23:35b).

[180] Cf. Rotenberg and Diamond 1971, 37 who argue that Deut. 21:18-21 is an example of an ancient 'personality profile.' They contend that the terms 'stubborn and rebellious' and 'a glutton and a drunkard' function as a kind of diagnostic category, roughly corresponding to the modern 'psychopathic personality.' The psychopathic or antisocial personality type describes individuals who, whilst lacking the classic outward manifestations of insanity, demonstrate pronounced behavioural abnormalities such as cruelty, delinquency, sexual perversion, alcoholism, drug addiction, irresponsibility and immorality. Rotenberg and Diamond are probably right to argue that the 'stubborn and rebellious' son presents us with a recognisable 'stereotype'; however, it is anachronistic to present this typology as a 'psychological profile.'

4. The 'rebellious son' as a 'son of Belial'

A possible example of a "stubborn and rebellious son," after the manner of the stereotype described in Deut. 21:18-21, are the sons of Eli, Hophni and Phinehas. Their behaviour is described in 1 Sam. 2:12-17. It must be recognised at the outset that 1 Sam. 2:12-17 does not use the language of Deut. 21:18-21. However, we are still obliged to consider the case. This is because we have argued that Deut. 21:18-21 presents us with a 'narrative typification.' This means that the question of whether the law 'applies' in a given case does not depend on the answer to semantic questions such as: 'what if he was 'stubborn' but a teetotaller?' (as *per* Brichto)[181] or 'suppose he drank (cheap) Italian wine instead of expensive wine' (as *per M. Sanh.*).[182] The relevant question is: "does his behaviour fit the stereotype?" This makes a brief discussion of 1 Sam. 2:12-17 relevant, in the context of the wider narrative of 1 Sam. 1-4.

According to 1 Sam. 2:12-17, the sons of Eli fit the stereotype of the "rebellious son" in a number of respects. Firstly, we know that they are 'gluttons.' The normal practice at Shiloh was supposed to be that the attendant thrust his fork into the pot and whatever stuck to it was brought up for the priest (1 Sam. 2:13-14). The sons of Eli violated this system of 'pot luck' by choosing the best portions for themselves (1 Sam. 2:15). They also included the fatty portions in their selection (which were supposed to be burnt for YHWH);[183] they demanded roasted (rather than boiled) meat (1 Sam. 2:15); and they insisted on getting their share before YHWH's portion was offered up (1 Sam. 2:15-16). For these reasons their offence is characterised as "despising YHWH's offering" (1 Sam. 2:17). But they are also gluttons. The word *zôf'lîm* is not used (and there is no particular reason why it should).[184] Nonetheless, it is clear that 'filling their stomachs' was more important to them than discharging their proper priestly duties.

A second echo comes in the form of Eli's discipline (albeit weak discipline; 1 Sam. 1:22-25). His verbal reproof is not as forceful as the 'chastisement' of Deut. 21:18. However, some allowance should be made for the fact that Eli is "very old" (1 Sam. 1:22).

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[181] See n. 144, above.

[182] *M. Sanh.* 8.2.

[183] See Lev. 7:23-25, 31; 17:6.

[184] To demand the presence of the word *zôf'lîm* presupposes a 'semantic' approach. In fact, *zôf'lîm* only occurs in Prov. 28:7.

Thirdly, we are told that the sons are aggressive and violent. They use the threat of force to get their own way (1 Sam. 2:16). In this respect too, they are like the 'rebellious son.' Deut. 21:19 alludes to his violence, describing how the father and mother "seize" him (*tāpaś*; a forceful verb) and bring him before the elders. The son is overcome by the use of force.

Fourthly, we are told that the sons "would not listen to the voice of their father" (1 Sam. 2:25). As with Deut. 21:18-21, this refusal to heed is a continuing process (implied by the phrasing: "... when [Eli] *would* hear what his sons were doing to the Israelites he *would* say to them..." (1 Sam. 2:22, my italics)).

Finally, the sons meet an untimely end (1 Sam. 4:17; cf. 1 Sam. 2:25). There is no reference to the sons' drunkenness. This would complete the picture (formally, at any rate). Even here, however, there are arguments to support the drunkenness of the sons of Eli. It is implicit in the description that they are described as 'sons of Belial' (*bᵉnê bᵉlîˆyāʿāl*, 1 Sam. 2:12). Earlier in the narrative, Hannah begs Eli not to think of her as a "daughter of Belial" (*bat bᵉlîˆyāʿāl*, 1 Sam. 1:16) when he mistakenly accuses her of behaving like a drunkard. The chances are high that Eli's sons were not only gluttons but also drunkards. We know from Judges 21:19-21 that there were vineyards around Shiloh. And if the sons were 'ripping off' the Israelites in respect of one sort of sacrifice, it is likely that they did the same with the others, including the libation offerings.

We noted at **3(c)***(i)* and *(ii)*, above, that the "glutton" and the "drunkard" typified the person who had no regard for YHWH's commands. 1 Sam. 2:12 explicitly characterises the sons of Eli as men who had "no regard for the LORD." We also considered at **3(c)(iii)**, above, that the phrase "a glutton and a drunkard" typified a lifestyle that included food and alcohol abuse, but that also went beyond it to include other dissolute forms of behaviour. This is also the case with the sons of Eli. According to the MT,[185] "[the sons] lay with women who served at the entrance of the Tent of Meeting" (1 Sam. 2:22).[186]

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[185] Though not according to LXX; Klein 1983, 22 n. 22b.

[186] This is, after all, what we might expect. Gluttony, drunkenness and promiscuity are all part of the same behaviour pattern insofar as they are characterised by 'excessive indulgence.' Gluttony is 'too much food,' drunkenness is 'too much drink' and promiscuity is 'too much sex.'

To sum up, the sons of Eli, as described in 1 Sam. 2:12-17, fit the stereotype of the "stubborn and rebellious son" very well. They are incorrigible sons who do not heed the rebuke of their father and who are more interested in indulging their sensual appetites than in following YHWH's commands.

Interestingly, this stereotype is expressly 'labelled' in the text. They are designated "sons of Belial" (1 Sam. 2:12). This suggests a possible relationship between the popular stereotype of the "rebellious son," and being called a "son of Belial."

Other Biblical texts confirm the existence of a possible relationship between the social stereotype summoned up by Deut. 21:18-21 and the designation, "son of Belial." In 1 Sam. 10:27, "sons of Belial" scoff at King Saul and show disrespect by not bringing him gifts. This echoes the refusal of the "rebellious son" to respect 'authority.' In Jdg. 19:22, the phrase "sons of Belial" describes the men of Gibeah who demand relations with the visiting Levite and who fatally abuse his concubine (Jdg. 19:25-28). This is consistent with the 'deviant lifestyle' that is thought to be pursued by the "glutton and a drunkard." A wicked thought that makes a man hostile to his poor brother is described as a "thing" of Belial in Deut. 15:9. Ps. 18:5 refers to "rivers of Belial" which are thought to be the forces of chaos and the hellish waters of adversity. The implicit link between 'Belial' and the netherworld in Ps. 18:5 is made explicit in post-biblical literature, where 'Belial' is identified as the spirit of darkness.[187]

Finally, 2 Samuel 20:1 introduces us to a "son of Belial" (*îš bᵉlîyā'al*) "named Sheba, the son of Bichri (*bēn-bikrî*), a Benjaminite" who revolted against David after Absalom's death. The narrative account of this unsuccessful revolt (2 Sam. 20:1-22) refers eight times to Sheba as "the son of Bichri." Clines suggests some wordplay with the popular etymology of the clan name Bichri.[188] *Bikrî* sounds like *bikrāh* ('young camel').[189] Camels are, of course, famously recalcitrant and aggressive creatures.[190] The implication seems to be that Sheba, the son of *Bikrî* is a true son of a *bikrāh*. He is "stubborn, rebellious and

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[187] E.g. Test. Patr. Levi 19:1. Cf. Maag 1965, 294-5.

[188] Clines 1972, 277.

[189] The feminine version *bikᵉrāh* appears in Jer. 2:23; Isa. 60:6.

[190] Bailey and Holladay 1968, exploring the referent of *bikᵉrāh* in Jer. 2:23, claim that "a young camel never takes more than about three steps in any direction. To this day the young camel provides a dramatic illustration for anything unreliable."

self-willed."[191] Clines concludes from this that "sons of Belial" are those who break loose from accepted standards of morality or order.[192] Again, this is very close to the social stereotype envisaged in Deut. 21:18-21.

The question is: did every "son of Belial" conform to the stereotype of the "rebellious son"? This depends on how central the various characteristics of the "son of Belial" are to the stereotype described in Deut. 21:20. Not every person who was called a "son of Belial" may have been charged under Deut. 21:20. Following Wittgenstein's idea of 'family resemblances,'[193] it is possible that the Biblical characteristics of the "son of Belial" may only have been part of the set of characteristics (or 'family resemblances') of the "rebellious son." On their own, these characteristics might not be sufficient. However, there is not enough evidence to answer this question with certainty.

To conclude: there is a possible relationship between the popular stereotype of the "rebellious son," and being 'labelled' a "son of Belial." This relationship exists at the level of social knowledge. Certain characteristics of the 'son of Belial' (gluttony, refusal to heed, obstinacy, violence and sexual deviance) echo the 'narrative typification' of the "stubborn and rebellious son." However, the apparent overlap between the stereotype of the "stubborn and rebellious son" and the designation "son of Belial" does not exclude the possibility that there are other antisocial characteristics associated with the "stubborn and rebellious son" that are not associated with the "son of Belial." Nor does it necessarily imply that every "son of Belial" was also a "stubborn and rebellious son."

5. Seriousness of offence

We have argued that the behavioural pattern described in Deut. 21:20 constitutes a narrative typification that has much in common with the "son of Belial." Its seriousness consists in two main factors: first, it is a violation of the fifth Commandment (see **(a)** below) and second, it is a violation of the covenant community (see **(b)** below).

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[191] Clines *op. cit*, 277. Another layer of meaning may be intended by the fact that Sheba is referred to as a region of camels in Isa. 60:6. A link between the rebellious 'Sheba' and a place of camels may have been intended by the writer of 2 Sam. 20 to reinforce his opinion of Sheba's character; *ibid.*

[192] Clines *ibid.*, n. 2.

[193] For the notion of 'family resemblance' see Wittgenstein 1958, i. paras. 66-76.

(a) Violation of the fifth Commandment

The seriousness of the offence described in Deut. 21:18-21 is closely tied to the fifth Commandment ("Honour your father and your mother..."; Deut. 5:16; cf. Ex. 20:12).[194] It is not unusual, in Biblical legal reasoning, to tie certain offences to this commandment.[195] There are several literary reasons for regarding Deut. 21:18-21 as a violation of the fifth Commandment.

Firstly, there is the immediate literary context. Wenham and McConville note a chiastic structure in Deut. 21:1-23, in which the mirror of Deut. 21:18-21 is Deut. 21:10-13 (the law of the captive maid).[196] Both Deut. 21:10-13 and Deut. 21:18-21 concern the separation and death of children from their parents. A parallel is drawn between the captive woman who mourns her parents, and the rebellious son who is executed by his parents. This suggests that filial relationships based on proper behaviour and respect for parents are central to the meaning of Deut. 21:10-13 and Deut. 21:18-21.[197]

Secondly, there is the wider literary context. A number of scholars (including Kaufman,[198] Miller,[199] Olson[200] and Wright[201]) point to the Decalogue-structure of Deuteronomic law. Deut. 21:18-21 is broadly related to the fifth Commandment insofar as Deut. 12-26 itself largely follows the sequence of the Ten Commandments. On this view, Deut. 21:18-21 is an extension, or a reinterpretation, of Deut. 5:12.[202]

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194 Miller 1989, 236 sees Deut. 21:18-21 as one of a number of laws (along with Ex. 21:15, 17; Lev. 20:9 and Deut. 27:16) that spell out the implications of the commandment to 'honour' parents. Carmichael 1974, 140 claims that Deut. 21:18-21 is a reworking of Ex. 21:15 and Ex. 21:17.

195 Jesus links together Ex. 21:17 "Honour your father and your mother" and Lev. 20:9 "If anyone insults his father or his mother, he shall be put to death; he has insulted his father and his mother - his bloodguilt is upon him" (cf. Matt. 15:4; Mark 7:10).

196 Wenham and McConville 1980, 251.

197 *Ibid.*

198 Kaufmann 1979, 109.

199 Miller *op. cit*, 239.

200 Olson 1994, 64.

201 Wright 1996, 4-5.

202 Inevitably, this macro-structural approach has its weaknesses. Scholars disagree on the precise relationship between the Commandments and the various 'statutes and ordinances' of Deut. 12-26 (for example, Kaufman *op. cit* and Olson *op. cit*, 64 outline chapters 6-28 differently). However, this criticism is not fatal because the 'Decalogue pattern' in Deut. 12-28 is not an exact science. In spite of their differences, Kaufman *op. cit*, 113; Olson *ibid.* and Miller *ibid.* all relate Deut. 16:18-18:22 to the Commandment to 'honour your parents.' We share Wright's conclusion that although the analysis is not clear-cut, it is likely that the Decalogue has influenced the ordering of the legal material in *Deuteronomy*. Wright *op. cit*, 4.

The form and the content of the fifth Commandment clarifies the nature of the offence in Deut. 21:18-21 and amplifies its seriousness.

(i) Form

The legal form of the fifth Commandment is unusual in several ways. Firstly, there is a dearth of prescriptive texts demanding honour in covenant contexts.[203] This is despite the fact that honour and shame were central to Israel's covenant relations.[204] For this reason the fifth Commandment (Ex. 20:12 & Deut. 5:16) is a quite exceptional imperative.

Secondly, the Commandment is a 'gentler' or 'weaker' imperative than 'you shall' or 'you shall not.' It counsels, recommends, rather than imposes, compels.[205] Daube sees it as the only ordinance in the Pentateuch couched in this mood (with one possible exception).[206] The statutory imperative is thus "unique -or, if you prefer,- near unique."[207]

Thirdly, the Commandment follows an unusual pattern of 'demand and reward' (cf. Ephesians 6:2).[208] The reward for keeping the Commandment is "that you may long endure on the land that the LORD your God is assigning to you" (Ex. 20:12) or "that you may long endure, and that you may fare well, in the land that the LORD your God is assigning you" (Deut. 5:16). Only Deut. 22:6-7 promises a similar combination of 'long days' and 'well-being.' The explanation appears to be simple. As with the fifth Commandment, "we owe piety to parents even in nature."[209] Similar respect is found in Deut. 21:10ff, where a certain woman taken captive in war is first allowed to spend a month mourning her parents.

To sum up, the legal form of the fifth Commandment highlights its singularity and importance and, accordingly, the seriousness of its breach.

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[203] Olyan *op. cit*, 218.

[204] *Ibid.*

[205] Daube 1981, 92.

[206] This is the Sabbath commandment (Ex. 20:8-11). However, Daube 1981, 94 argues that although the imperative in the Fourth Commandment (*zakôr*) is closer to the imperative form in the fifth Commandment (*kabēd*) than to the command 'you shall' or 'you shall not,' it is not the same.

[207] *Ibid.*

[208] Daube *op. cit.*, 98.

[209] Daube *op. cit.*, 99.

Part of the 'honour' that is due to parents under the Fifth Commandment is tied to respect for the 'teaching' they impart.[210] Parents were the custodians of Israel's "national assets"[211] *viz.* her faith, history and traditions. They preserved the stories that lay at the heart of Israel's self-identity, including the Exodus, the receiving of *Torah* and the gift of the Land.[212] An attack on the authority of parents is most serious because "it threatens the most precious heritage of Israel, its knowledge of God...."[213] This is consistent with the overtones of apostasy noted in the parents' charge in **3(a)-(c)**, above.

Phillips claims that the aim of the Commandment was to ensure that sons would automatically maintain the faith of their parents.[214] In a similar vein, Craigie argues that the issue in Deut. 5:16 is "the continuity of the covenant."[215] Noting a parallel between Deut. 5:16 and Deut. 4:40 ("...that you may live long and it may go well for you on the land...") he argues that if the children were receptive and learned the faith of their fathers from their parents, both children and parents would prosper in the Land (4:9-10, 40).[216]

Certainly, the fifth Commandment is "not merely a recipe for happy families."[217] This is because the fifth Commandment (as with the *Torah* as a whole) was part of the structure of Israel's covenantal relation with YHWH. The fifth Commandment may be seen as an attempt to protect the family internally from the disruption of its domestic authority structure.[218] Wright argues that this was important because the national relationship between Israel and YHWH depended on the survival and stability of family units living on their portions of land. This in turn depended on maintaining a healthy authority structure within the family itself.

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[210] For the parental duty to teach see Deut. 4:9; 5:31; 31:19.

[211] Wright 1992, 764.

[212] Parents were to explain to their children the significance of key events, institutions and memorials. Ex. 12:26f; 13:14f; Deut. 6:20-24 and Josh. 4:6f, 21-23. Fathers played a leading role (Prov. 3:1; 4:2; 7:2) though a mother was expected to take an equal share (Prov. 1:8).

[213] Poythress 1991, 88.

[214] Phillips 1970, 81.

[215] Craigie 1976, 158.

[216] *Ibid.*

[217] Wright 1996, 77.

[218] Wright 1979, 105.

In addition, we should note that the relationship between YHWH and Israel was analogous to that between a father and his son.[219] 'Parenting' had a divine dimension in ancient Israel.[220] This may have made the violation of the fifth Commandment particularly serious.[221] Special respect is conferred on parents who have been co-creators of life with God.[222] The fifth Commandment, accordingly, enjoins an attitude toward parents that parallels the proper attitude toward YHWH of honour, fear and reverence.[223]

Finally, it should also be noted that rebellion against one's progenitors was regarded as 'unnatural' (cf. Isa. 1:2-3). Bockmuehl places this 'rebellion' in the same category as Amos 6:12; *viz.* "the corruption of what is perceived and acknowledged to be a healthy state of nature."[224] This may also have been an aspect of seriousness.

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[219] *Deuteronomy* consistently uses the relationship between a father and his son to describe YHWH's relationship with his people; McCarthy 1965. They have been carried in the wilderness "as a man carries his son" (Deut.1:31) whilst elsewhere the Israelites are reminded: "You are sons of the LORD your God…" (Deut.14:1). Such texts are consistent with the practice of naming peoples as masculine and countries as feminine; Schmitt 1983, 116. Since the word 'Israel' primarily denotes the name of a people, this consistency results in a masculine image. 'Israel' is therefore characterised as a 'son.' (There are however two exceptions to this rule in the M.T. namely 1 Sam. 17:21 and 2 Sam. 24:9. Schmitt *ibid.* regards the latter as an irregularity corrected by the Chronicler's rendering of the verse in 1 Chr. 21:5). Melnyk 1993 suggests that the 'father-son' imagery *vis à vis* YHWH and Israel refers to relations between a father and his adopted son. The following aspects of YHWH's relationship with Israel are similar to the stipulations found in ANE adoption clauses, namely, claiming the child as one's own; raising the child; providing an inheritance; and punishing the rebellious child; Melnyk *op. cit.* Three of these stipulations are crystallised in one declaration: "I thought I would set you among my sons (*'āšîtēk bĕbānîm*) and give you a desirable land, the fairest heritage of all the nations; and I thought you would call me, 'My Father,' and would not turn from following me" (Jer. 3:19). The verse makes three points: Israel is (1) appointed as son, (2) promised an inheritance and (3) the adopted children are expected not to rebel; Melnyk *op. cit.*, 251. The Hebrew phrase *'āšîtēk bĕbānîm* may be seen as the inter-dialectal semantic equivalent of an Akkadian phrase meaning 'to establish for the status of an heir'; Melynk *op. cit.*, 251. This background of adoption, filial obedience and disinheritance is relevant to our understanding of Deut. 21:18-21. Melnyk *op. cit.*, 255 notes that the condition that the children should not rebel was a common clause in ANE adoption contracts, especially if the father had bequeathed a large or a valuable inheritance. If the conditions laid down in the adoption agreement were broken, the inheritance was the first to go. Breaking an adoption agreement often meant more than disinheritance. Adoptive but rebellious children were commonly disowned, exiled and subjected to slavery; Melnyk *op. cit.*, 256. Significantly, Israel's rebellion is punished in the same way. If Melnyk is correct and Canaan is seen as the valuable inheritance that YHWH bequeaths to His adopted son, Israel, it follows that filial respect is necessary for 'survival' in the Land (Deut. 32:45-47).

[220] Harrelson 1980, 99.

[221] Harrelson *ibid.* for example, thinks that the command to honour parents is probably affected by the use of parent-child language for the relation between YHWH and Israel.

[222] "Remember that through your parents you were born: and what can you give back to them that equals their gift to you?" (Ecclus. 7:28). For duties to parents see Ex. 20:12; 21:15, 17; Lev. 19:3a; 20:9; Deut. 5:16; 27:16.

[223] Miller 1989, 238. Jackson 1995b, 191 sees the fifth Commandment (as expressed in the Covenant Code; Ex. 20:12) as a parallel to the first Commandment (Ex. 20:2). It too is designed to evoke *feelings* of loyalty and respect. Both Commandments are a demand for an affective state. Reverence for parents is paralleled with reverence for YHWH.

[224] Bockmuehl 1995, 23.

(b) Violation of the covenant community

We have argued that the charge of being "a glutton and a drunkard" explicates what it means to be 'stubborn and rebellious and to not heed the parents' voice.' It is 'part and parcel' of the same 'lifestyle' and not a separate offence.

Nonetheless, the charge of being "a glutton and a drunkard" does take the modern reader by surprise. It is not, at first sight, the behavioural example we expect. We must explain why this particular behavioural pattern was regarded as a serious offence.

'Gluttony and drunkenness' is a more serious charge than it appears at first sight. This is because 'eating and drinking' in ancient Judaism was a powerfully concentrated language of great semiotic significance. The 'wrong' sort of eating and drinking could easily constitute a challenge to Israelite religious and social structures. It is a publicly-observable rebellion that calls into question his continuing membership of the covenant community.

(i) The semiotics of food

Food, whether involved in eating, not eating, starving and fasting is a powerfully concentrated language that symbolises behaviour among members of a social group.[225] How one eats; how much; and with whom (all relevant factors when considering the typification of a 'glutton') can be seen as a direct expression of social, political and religious relationships.[226] Eating together is a social event that involves all who share the meal in a complex web of reciprocity and mutuality. It symbolises a complex set of relationships and feelings, and it expresses the boundaries of group identity. For these reasons, food was a controversial issue in ancient Israel and it was (one of) the means by which condemnation and exaltation were conveyed.[227]

Food, therefore, was a medium through which attitudes both towards YHWH and the covenant community could be communicated. The act of eating fosters feelings of 'brotherhood,' commonality, trust and intimacy. By the same token, 'gluttony' could express breach of covenant with YHWH and the breakdown of relationships within the

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[225] Neufeld 1996, 159.

[226] *Ibid.*

[227] *Ibid.*

covenant community. A number of verses warn that material wealth and satiety can lead to pride and arrogance and to forgetting one's dependence upon YHWH.[228]

(ii) Food, glorious food?

We saw at **3(c)***(i)-(ii)* above that, for Philo, the seriousness of 'gluttony' and 'drunkenness' subsists in the fact that it frequently led onto other vices. How far these attitudes, typical of some of the more ascetic Greco-Roman traditions, underpinned Deut. 21:18-21 is hard to determine. However, it is consistent with the argument that the phrase "a glutton and a drunkard" is not simply concerned with 'gluttony' and 'drunkenness.' Rather, it typifies a lifestyle that includes excessive eating and drinking but which may also go beyond it to include more destructive forms of behaviour (see **3(c)***(iii)* and **4**, above).

6. Different jurisdictions, different forms of proof

We have argued that the charge of being "a glutton and a drunkard" is integral to the text of Deut. 21:18-21, where it explicates the stereotype of being "stubborn and rebellious," and of 'not heeding his parents' voice.' However, we have still to explain why the behavioural pattern of being "a glutton and a drunkard" appears in v. 20 and not in v.18 (see **2**, above).

The reason is that Deut. 21:18-21 envisages two different jurisdictions (the family and the elders). These jurisdictions have different powers of punishment. The parents have the power to inflict corporal punishment on their son (Deut. 21:18) and to bring him before the elders (Deut. 21:19),[229] but unlike the Roman practice of *ius vitae necisque*, [230] the

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[228] E.g. Deut. 8:12-14; 11:14-16; 31:20; 32:15. This is also the force of Deut. 8:3. The same connection is made in Nehemiah's retrospective (Neh. 9:24-26): "(9:25)... [Israel's descendants] ate, and were filled and became fat, and delighted themselves in thy great goodness. (26) Nevertheless they were disobedient and rebelled (*wayyamʿrū wayyamʿrᵉdū bāk*) against thee and cast thy law behind their back and killed thy prophets...."

[229] For the scope of the parents' actions, cf. Frishtik 1992, 93-4.

[230] The *ius vitae necisque* refers to the right of the Roman *paterfamilias* to put to death those in his *potestas*. How far this was part of Roman social life is a matter of debate. Most writers take it for granted that the *ius vitae necisque* was a fact of Roman life, at least in the early period. Buckland 1966, 123 states the traditional view: "the father's power of life and death was very real in early law" whilst Schulz 1936, 167 avers that the disciplinary powers of the *paterfamilias* were unfettered: "any chastisement was permitted, even capital punishment." The *ius vitae necisque* is allowed by Papinian (*Coll.* 4. 8), Ulpian (*Dig.* 48. 8. 2) and Paul (*Dig.* 28. 2. 11). Most scholars argue that the practice waxed during the early period of the Republic and waned during Imperial times, although exactly when is disputed. Nicholas 1962, 67 argues that there were no attempts at restriction until the beginning of the second century AD and then only by extraordinary imperial intervention in particular cases. The *ius vitae necisque* was abolished by Constantine (*Cod.* 9. 17. 1) but according to another view it was extinguished in 365 AD by a constitution of Valentinian I (*Cod.* 9. 15. 1).

However, this picture of the social reality of the *ius vitae necisque* has been challenged by a number of scholars. Saller 1994, 115 argues that the most famous cases of *ius vitae necisque* come from what he calls the "legendary era" of early Rome.

parents in Deut. 21:18-21 do not have the power to put their son to death. Only the elders are competent to pronounce execution. Because these two jurisdictions have different powers to punish, they also require different standards of proof. Verse 20 requires a different standard of proof than verse 18, because the sanction is capital, rather than corporal, punishment. The 'imperfect repetition' in verses 18 and 20 reflects these differences between the two jurisdictions.

According to Deut. 21:18, the parents have complete discretion to "chastise" their son if they think that he is violating the fifth Commandment. They may also have complete discretion to bring him before the elders if he persists.[231] This implies that the parents are in the best position to judge whether their son is *sôrēr ûmôreh* and is refusing to 'obey their voice.' If he has violated the fifth Commandment, they should know. After all, it is their voice he does not heed.

Here, the allegation of being "a stubborn and rebellious son" is akin to a married couple's claim that their marriage has "irretrievably broken down." It is an unassailable claim because nobody knows the state of their marriage better than they do. The very nature of the parents' charge in Deut. 21:20a-b makes it difficult for anyone else to challenge. If *they* think he is 'stubborn and rebellious' then he must be. Against a parent's accusation, who can stand?

The charge of 'gluttony and drunkenness' in Deut. 21:20c, however, is different. Whereas the typical case of being "stubborn and rebellious" and of 'refusing to heed the parents' voice' takes place in a *private*, domestic, setting, the charge of being "a glutton and a drunkard" - with all that that involves regarding a visibly deviant lifestyle - refers to *publicly* observable behaviour. Verses 18 and 20 both allege that his behaviour conforms to a particular stereotype. In that respect, there is no difference between the behavioural

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He contends that the cases contain unreliable details that change from one version to another. Saller notes that some of the sources on which the traditional view relies are ambiguous. For example, Lee 1956, 61 and Nicholas 1962, 67 refer to the Catilinarian conspiracy of 63-62 BC as an example of the *ius vitae necisque*. In this episode, the conspirators are joined by Fulvius, a senator's son. His father had him brought back and put to death and other fathers followed suit. However, Saller *op. cit*, 115 sees this story (and others like it) as showing the value of putting loyalty to the *patria* ahead of loyalty to the *familia*. Saller *op. cit*, 117 concludes that there is no clear evidence for the successful invocation of the *ius vitae necisque* in the classical era against a grown son except in defence of the *patria*. Likewise, Harris 1986, 86 draws attention to the "real rarity" of historical instances in which *vitae necisque potestas* was relied on with regard to adult sons.

231 This discretion may be implied by the word 'shall' in verse 19. This is because the use of the imperfect in Hebrew does not distinguish between the mandatory and the permissive. It could equally be read "his father and mother *may* take hold of him and bring him out to the elders…."

patterns mentioned. Both claim that he is a certain 'sort of person.' The difference lies in the nature of the evidence that is put forward to support this claim. In Deut. 21:18, it is sufficient if the parents alone think that he is a "stubborn and rebellious son." But for the elders to concur in the parents' judgement, there must be a different form of evidence in the form of publicly-observable behaviour ("he is a glutton and a drunkard"). This different standard is required because the sanction is capital, and not corporal, punishment.

Thus, although the parents are in the best position to establish whether their son is "stubborn and rebellious," the elders cannot simply rely on the parent's word.[232] There must be safeguards for the alleged "rebellious son" in case his parents bring him before the elders out of frustration, anger or malice. This means that a substantive, publicly-observable, demonstration of the parents' allegation is required.[233] This is the charge that he is "a glutton and a drunkard" (zōlēl w⁴sōbē').[234] This relates to matters that can be publicly attested. Everyone knows the 'town drunk.' It is the most obvious external indicator of a deviant lifestyle made manifest to the community.

To sum up, the parents' charge that their son conforms to the stereotypical "rebellious son" must be backed up by publicly-observable proof. The allegation combines two different forms of proof; namely personal or private knowledge (on the part of the parents) and public knowledge (on the part of the community). The latter takes the form of independent eyewitness evidence of a deviant lifestyle.

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[232] *Contra* Matthews 1987, 27 who claims that the public execution acted as a warning against "parents who might make irresponsible accusations against their children." This ignores the two forms of proof that are present in Deut. 21:18-21. Irresponsible parents could not simply 'hand over' their children for public execution. The rebellious son was only executed if he was found to be "a glutton and a drunkard." Proving this charge was a matter for the community as a whole, not just the parents.

[233] This is consistent with the protective features of Deut. 21:18-21 noted by several writers. Patrick 1985, 129 sees Deut. 21:18-21 as a shift in legal tradition that "safeguards against [the] unlimited authority of parents." Olson *op. cit*, 79 notes that parental authority in Deut. 21:18-21 is shared by the father and the mother and not centred in one individual. He argues that this reflects *Deuteronomy's* concern for the careful distribution and balance of human power (cf. the 'decentralising' and limiting of authority among judges, kings, priests and prophets in Deut. 16-18). Wright 1996, 236 takes a steer from the preceding law (Deut. 21:15-17) in arguing that the mother's presence in Deut. 21:18-21 acts as a safeguard for her son. As in the law of inheritance (Deut. 21:15-17), a son is not to suffer at the hands of an unjust father. Cf. also Deut. 22:13-19 for an example of another law protecting innocent family members from false accusation and execution (see *Chapter Three*, below).

[234] This may partly account for the lawgivers' interest in 'gluttony and drunkenness' as opposed to, say, 'hitting his parents' (cf. Ex.21:15). 'Food abuse' typically takes place in public whereas 'elder abuse' typically takes place in private.

7. Conclusion

Deut. 21:18-21 describes the social stereotype of the "rebellious son." Verses 18 and 20 signify the typical behavioural patterns of this narrative stereotype and not discrete offences. It is a serious offence to be a "rebellious son" because it violates the fifth Commandment. Moreover, his deviant lifestyle is a challenge to Israelite religious and social structures. In a culture where 'eating' was a powerful instrument to convey meaning, this is typically signified by 'gluttony' and 'drunkenness.' Deut. 21:18-21 is internally structured around two spheres of jurisdiction. The charge of *zôlēl wᵉsōbē'* safeguards the 'rebellious son' from malicious prosecution by establishing a different form of proof. If the elders, like the parents, are satisfied that he conforms to this stereotype, he is to be executed. His behaviour, as evidenced by his lifestyle, call into question his continuing membership of the covenant community. His execution has a purifying effect upon the community, 'purging' the evil from their midst.

LINEAGE, TITLE AND THE BAREFOOT MAN

Seriousness of Offence and Deut. 25:5-10

Text

Deut. 25:5 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: 7 וְאִם־לֹא יַחְפֹּץ הָאִישׁ לָקַחַת אֶת־יְבִמְתּוֹ וְעָלְתָה יְבִמְתּוֹ
הַשַּׁעְרָה אֶל־הַזְּקֵנִים וְאָמְרָה מֵאֵן יְבָמִי לְהָקִים לְאָחִיו שֵׁם בְּיִשְׂרָאֵל
לֹא אָבָה יַבְּמִי: 8 וְקָרְאוּ־לוֹ זִקְנֵי־עִירוֹ וְדִבְּרוּ אֵלָיו וְעָמַד וְאָמַר
לֹא חָפַצְתִּי לְקַחְתָּהּ: 9 וְנִגְּשָׁה יְבִמְתּוֹ אֵלָיו לְעֵינֵי הַזְּקֵנִים וְחָלְצָה נַעֲלוֹ
מֵעַל רַגְלוֹ וְיָרְקָה בְּפָנָיו וְעָנְתָה וְאָמְרָה כָּכָה יֵעָשֶׂה לָאִישׁ אֲשֶׁר
לֹא־יִבְנֶה אֶת־בֵּית אָחִיו: 10 וְנִקְרָא שְׁמוֹ בְּיִשְׂרָאֵל בֵּית חֲלוּץ הַנָּעַל: ס

The RSV translates Deut. 25:5-10 as follows:

Deut. 25

5   If brothers dwell together, and one of them dies and has no son, the wife of the dead shall not be married outside the family to a stranger; her husband's brother shall go in to her, and take her as his wife, and perform the duty of a husband's brother to her.

6   And the first son whom she bears shall succeed to the name of his brother who is dead, that his name may not be blotted out of Israel.

7   And if the man does not wish to take his brother's wife, then his brother's wife shall go up to the gate to the elders, and say, "My husband's brother refuses to perpetuate his brother's name in Israel; he will not perform the duty of a husband's brother to me."

8   Then the elders of his city shall call him, and speak to him: and if he persists, saying, "I do not wish to take her,"

9   then his brother's wife shall go up to him in the presence of the elders, and pull his sandal off his foot, and spit in his face; and she shall answer and say, "So shall it be done to the man who does not build up his brother's house."

10 And the name of his house shall be called in Israel, The house of him that had his sandal pulled off.

1. Introduction

Deut. 25:5-10 is included in this thesis because it is a unique text. It is the only example of a Biblical law whose punishment consists exclusively in public degradation (Deut. 25:9-10).[235] Further, the sanction is unusual insofar as it is diachronic. It continues through time and has consequences for future generations (see Deut. 25:10, below). Exploring this text thus helps us to extend the semiotic range of 'seriousness of offence.' Moreover, Deut. 25:5-10, like Deut. 21:18-21, reflects an underlying concern for the Land and for the obligations imposed by family relationships (see *Chapter One*).

There are a number of registers of 'seriousness of offence' in Deut. 25:5-10. The performative registers are as follows. Firstly, the widow's initiative in appearing before the elders.[236] She is to "go up to the gate to the elders, and say, 'My husband's brother refuses to perpetuate his brother's name (*šēm*) in Israel; he will not perform the duty of a husband's brother to me'" (Deut. 25:8). The seriousness of the offence is such that the widow is granted immediate access to justice.[237] Secondly, the elders' act of summoning the unwilling brother: "... the elders of his city shall call him, and speak to him..." (Deut. 25:8).[238] The gravity of the situation makes persuasion worthwhile. Thirdly, the levir's continuing refusal to perform the duty: "... and if he persists, saying, 'I do not wish to take her'" (Deut. 25:8). The offence is made more serious because it is a repeat, and not a 'one-off' offence (see **3(e)***(i)*, below). Fourthly, the performance of the *ḥāl͟sāh* ceremony:

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[235] Daube 1969a, 35; Daube 1969b, 7.

[236] How widely this performative register was broadcast depends on whether the phrase "shall go up to the gate" (*haššaʿ rāh*) in Deut. 25: envisages the open area that would have existed just inside the city, against the back wall of the gates (cf. excavations at Dan; Biran 1993, 325), or the complex of rooms built into the city gate (cf. recesses found during excavations at Gezer; Dever 1993, 503-5). The latter may have provided a place for the discussion and settlement of disputes. For various reasons, it is likely that the woman's complaint was brought to the elders as they sat in private in the city gates. In a shame-conscious society such as ancient Israel (see n. 299, below), one would not want a 'shameful' allegation to be brought in public until (a) the elders had a chance to investigate the matter and (b) the accused had been given an opportunity to speak for himself (the purpose of the 'interim stage' described in Deut. 25:8).

[237] Cf. the complaint of the daughters of Zelophehad: "Why should the name (*šēm*) of our father be taken away from his family, because he had no son?..." (Num. 27:4). Its importance prompts Moses to seek a special, oracular, ruling (Num. 27:5). Cf. also the case of the woman of Tekoa (2 Sam. 13:7), whose deceased's husband's "name" (*šēm*) is in danger of being wiped out (2 Sam. 13:7). Her plea also prompts a swift response, this time from the king (2 Sam. 8:9). Both cases indicate that these situations were regarded as serious.

[238] As with Deut. 25:7, it is questionable how far this performative register was broadcast. Again, it is likely that this discussion also took place in private. There is little point in holding the interim stage out in the open, because the very process of litigation is itself shaming (Prov. 25:7-10). If the levir is already shamed he has no reason to capitulate. Psychologically, a public hearing is less conducive to the goal of the discussion; that is, to change the levir's mind.

"… his brother's wife shall go up to him in the presence of the elders, and pull his sandal off his foot, and spit in his face; and she shall answer and say, 'So shall it be done to the man who does not build up his brother's house'" (Deut. 25:9).[239] This was a serious punishment in a shame-conscious society (see **5(a) - (c)**, below). Fifthly, the implementation of the levir's change of status: "… the name of his house shall be called in Israel, 'The house of him that had his sandal pulled off'" (Deut. 25:10).[240] 'Renaming' is a significant sanction in a 'name'- oriented society (see **5(d)** below).

In addition to describing these performative registers, the text also contains the following 'descriptive' registers of seriousness. These include; firstly, the motivation that is given for the performance of the duty ("… that his [the dead brother's] name may not be blotted out…" (Deut. 25:6)). The importance of preserving the name is explored in **2(a) - (d)**, below. A further descriptive register is the addition of the words "of Israel" in Deut. 25:6 ("… that his name may not be blotted out of Israel)" and "in Israel" in Deut. 25:7 ("… 'My husband's brother refuses to perpetuate his brother's name in Israel …'"). This invocation of "Israel" may suggest that a venerable Hebrew tradition ('preserving the name') is under attack.[241]

2. Offence description

The offence is described in the woman's charge as brought before the elders: "'My husband's brother refuses to perpetuate his brother's name (*šēm*) in Israel; he will not perform the duty of a husband's brother to me'" (Deut. 25:7). By not uniting with his brother's wife, the levir fails to uphold the purpose of the law in Deut. 25:5-6. He refuses to provide his dead brother with a son and so causes his brother's *šēm* to be extinguished.

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[239] Again, there is a question as to how widely this register was broadcast. Deut. 25:10 does not specify the exact location for the *ḥālīṣāh* ceremony. However, the reference to "the presence of [lit. 'in the sight of'] the elders" in Deut. 25:9 implies that the ritual is located in the same place as the interim stage (Deut. 25:8); that is, in private. Indeed, the reference to "the presence of the elders" may indicate that there are no other witnesses. If correct, does this weaken the shaming power of the ritual, given that 'shame' stems from the *public* revelation of a person's failure or inadequacy? (Bechtel 1991, 49; Olyan *op. cit*, 204). Much depends on how widely we define 'public.' If we bear in mind that the elders would most likely have been relatives of the accused and that the power of shame is related to our having people whose opinions we care about (e.g. Braithwaite 1989 and Braithwaite 1993), there is no reason to think that the presence of a smaller group reduces the intensity of the shame (indeed, quite the reverse).

[240] This sanction qualifies as a performative register because the community 'performs' it in the act of implementing it.

[241] Benjamin *op. cit*, 247.

The description of the offence is thus tied to the meaning of *šēm*. This word has multivalent connotations[242] and so it is important to determine its precise meaning in the context of Deut. 25:6-7.

(a) Family line

In certain contexts, the word *šēm* means 'family line' or 'line of descendants.' A man with no descendants has no *šēm* (Isa. 14:22). Elsewhere in *Isaiah*, YHWH promises to give to the eunuchs: "... a hand and a name (*yād wāšēm*) better than that of sons and daughters... an everlasting name (*šēm 'ōlām*) that shall not be cut off" (Is. 56:5). The reference to "eunuchs" in Isa. 56:4 implies an association, in certain contexts, between *šēm* and "seed."

This correlation is also found in Gen. 38:7-9. In Gen. 38:8, Judah commands that Onan raise up "seed" (*zera'*) to his dead brother. This is significant because Gen. 38:7-9, like Deut. 25:5-10, deals with a form of levirate marriage (see **4(b)***(i)* and *(iii)*, below). Likewise, Ps. 109:13 parallels a man's "posterity" (*'aḥārîtô*) with the "names" (*š°mām*) of his children. These texts suggest that *šēm* has a metonymic force meaning "progeny," possibly comparable to that for *bayit* ('house').[243]

'Family line' appears to be the primary meaning of *šēm* in Deut. 25:6-7. To 'perpetuate the name' in the context of Deut. 25:7 means to continue or to perpetuate the family line. This squares with the justification given for the *ḥălîṣāh* ceremony in Deut. 25:9; *viz.* "'So shall it be done to the man who does not build up (*lō-yibneh*) his brother's house.'" Here, the expression 'to build a house' means 'to establish a family' (cf. 2 Sam. 7:27; 1 Kgs. 11:38 and 1 Chr. 17:10).

That said, the word *šēm* is multivalent. Thus, whilst the primary meaning of *šēm* in Deut. 25:5-10 is 'family line,' we must consider other, contextual, connotations.

(b) Property

Several texts suggest a link between property and *šēm*. Firstly, it is implicit in the complaint of the daughters of Zelophehad: "Why should the name (*šēm*) of our father be

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[242] Ross 1997.

[243] Brichto 1973, 22. Cf. Ps. 113:9: "He gives the barren woman a home (*bayit*), making her the joyous mother of children (*bānîm*) ...."

taken away from his family, because he had no son? Give to us a possession (*'ăhuzzāh*) among our father's brethren" (Num. 27:4). Secondly, in Ru. 4:10, the son born to Boaz and Ruth perpetuates "the name of the dead" (*šēm-hammēt*) by inheriting the land. Thirdly, Ezek. 48 commences with the phrase "these are the names (*š^emôt*) of the tribes" (48:1), before going on to state the portions of land that are assigned to each (48:1-29).

Together, these texts suggest that the *šēm* maintained the legal claim of Israelite families to their land.[244] This is not unusual. An association between 'name' and property' is apparent elsewhere in the ANE.[245]

'Succeeding to the name' may therefore be a question of legal attribution in respect of a particular property. This is apparent in Gen. 48:6, where Jacob, having adopted Joseph's two eldest sons, declares that the future sons of Joseph will "be called in the name of their older brothers [Ephraim and Manasseh] in their inheritance (*'al šēm 'ăhêhem yiqqar^eû b^enahālātām*)" (Gen. 48:6). In other words, for the purpose of inheritance they will be considered sons of their brothers, Ephraim and Manasseh.

In a similar vein, Ruth's marriage is intended "to perpetuate the name of the dead in his inheritance (*l^ehāqîm šēm-hammēt 'al-nahălatô*)" (Ruth 4:10); that is, to continue the dead man's nominal ownership of his estate. Both Ruth 4:10 and Gen. 48:6 link *šēm* with *nahălā*.

Deut. 25:6 uses similar language to both Gen. 48:6 and Ruth 4:10, although it is closer to the latter.[246] The first-born son of the levirate marriage "shall succeed to the name of his brother (*yāqûm 'al- šēm*) who is dead, that his name may not be blotted out of Israel." In other words, as in Ruth 4:10, the son in Deut. 25:6 asserts the rights to the property that his dead father had. He is, legally, the 'bearer' of the 'name.'[247] A comparison with Gen. 48:6 may suggest that, in essence, the son in Deut. 25:5-10 is posthumously adopted by the deceased brother.[248]

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[244] Benjamin *op. cit*, 255. This practice may, in part, be due to the fact that contracts for the sale of land specified the location of a field by registering the names of owners of adjacent plots; Sasson 1995, 45.

[245] Cf. Wenham 1971, 113-4.

[246] Deut. 25:6 uses the verb *qûm* ('to establish'; cf. Ru. 4:10) instead of the verb (*qārā'* 'to call'; cf. Gen. 48:6).

[247] Hirsch 1989b [1837], 508.

[248] Tigay, 1996, 232.

The property dimension of *šēm* in Deut. 25:6 means that performing the duty was usually a sacrifice on the levir's part. It meant raising up a child for the widow and looking after property that would ultimately belong to that child as the deceased's successor.[249] The temptation to leave the deceased without issue and to take over the property for himself, and his own descendants, must have been immense.[250]

To sum up: performing the levir's duty meant raising up a son who would continue the lineage of the deceased, and who would succeed to the family inheritance. The levir is supposed to prevent the deceased's title to his landed inheritance from being extinguished. He is expected to provide the deceased with a successor to his estate, and to keep the ancestral estate within the immediate family.

(c) As a patronymic

Sons bore their father's personal name as a patronymic ('so-and-so son of X'). It is possible that the son of the levirate marriage took the dead brother's personal name as his patronymic, instead of that of his father. If so, this is another sense in which the dead brother's 'name' could be maintained, at least for a generation or two.[251]

Neufeld denies that Deut. 25:5-10 uses the word *šēm* in a personal sense, citing Ruth 4:17.[252] This explicitly identifies Obed as the son of Boaz (Ruth 4:21). However Neufeld ignores the possibility that the levirate offspring took the patronymic in their own lifetimes.[253]

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[249] Normally, if a man died without issue his inheritance would pass to member(s) of the collateral family line, the closest being his brother(s). But if the brother performed the levirate, the inheritance that would otherwise have passed to the brother(s) would return to the deceased's line.

[250] *Contra* Rowley 1947, 90 n.47 and Viberg 1992, 156, who argue that it is inconceivable that the levir should benefit from a refusal. Burrows 1940b, 29 states, contrary to the implication of Gen. 38:9: "there is no indication that the brother-in-law... would be the heir if there were no levirate marriage." In any case, what is the alternative? The only other possibility is that the widow inherits the property herself. This is inherently unlikely (see n. 69, below). However, if she does inherit, and remarries outside her husband's family, then the ancestral estate will pass completely out of the hands of the original owner (Davies 1981a, 263; cf. the concern to prevent possible alienation of property in Num. 27 and 36). The willing levir may enjoy some benefit (e.g. he could exploit the land and its produce for a number of years whilst the child was growing up). However, there must have been many cases when the disadvantages outweighed the advantages (e.g. where the inheritance was small and a poor levir would have been reluctant to provide for another wife); Davies 1981a, 259-260.

[251] Brichto 1973, 24 and Levine 1976, 558 claim (without citing sources) that except for eponymous ancestors who gave their name to a tribe or a clan, a patronymic goes back normally only one, or a few, generations.

[252] Neufeld 1944, 47 n.1

[253] Tigay *op. cit*, 232. Potash's ethnographic study of levirate marriage among the African Luo found that the degree to which the genitor (the biological father) was accorded recognition varied from case to case. Much depended on the

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(d) Summary

The description of the offence is tied to the meaning of *šēm* in Deut. 25:5-7. This has several dimensions. 'Perpetuating the *šēm*' in Deut. 25:7 means continuing the 'family line' (cf. Deut. 25:9). 'Succeeding to the *šēm*' in Deut. 25:6 means succeeding to the family inheritance that formerly belonged to the dead brother. The word *šēm* may also refer to the deceased's personal 'name.' All three dimensions are interlinked.[254]

Raising up a son on behalf of the deceased, therefore, performs several functions. The son continues the 'family line' of the deceased and keeps the ancestral estate intact. He may also perpetuate the dead brother's name for several generations. The levir refuses to perform this duty, and to fulfil these purposes. This is the substance of the woman's charge in Deut. 25:7.

3. Identifying the paradigm case

(a) "When brothers dwell together..."

Deut. 25:5 seems to refer to brothers who continue to 'dwell together' on their father's death without dividing up the family estate.[255] This is the 'paradigm case'.[256] As we saw in

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quality of the relationship between the levir and the offspring of the union; Potash 1986b, 59. A compromise solution may have existed in ancient Israel. Offspring could have been known as the sons of the deceased brother during their own lifetimes, whereas the genealogies recorded the genitor's contribution.

[254] Property is not the only aspect of *šēm* in Deut. 25:5-10. This is apparent from Num. 27:1-11 and Num. 36, both of which precede Deut. 25:5-10 in narrative terms. (The events of Num. 27:1-11 and Num. 36 are located "on the steppes of Moab, at the Jordan near Jericho" (Num. 26:63; Num. 36:13), whereas the law of Deut. 25:5-10 is given "on the other side of the Jordan" (Deut. 1:1)). According to Num. 27:1-11 and Num. 36, daughters are allowed to inherit in the absence of sons, provided they do not marry outside the tribe. If inheritance is the *only* issue at stake in Deut. 25:5-10, what we do need the law in Deut. 25:5-10 for? It achieves nothing. If the dead brother had no sons, but left behind a daughter, she would inherit the estate. Nor do we need the proviso in Deut. 25:6 to raise up a 'first-born son.' A daughter would do just as well. Yet the perspective of Deut. 25:5-10 seems to be that it is not enough that the *šēm* should descend via the dead man's daughter (see **3(b)** below). This is consistent with the claim that the meaning of *šēm* in Deut. 25:5-10 is not simply a matter of property.

[255] Daube 1950; Westbrook 1991, 78. Westbrook *ibid.*, argues that this is the reason why there is no reference to the father-in-law in Deut. 25:5-10: he is already dead (though cf. Sasson 1995, 125). If Deut. 25:5-10 is rightly characterised by this sort of partnership, it follows that both brothers jointly own all the property. In English terminology the brothers are joint tenants rather than tenants in common. Thus, when "one of them dies" the surviving brother is not 'heir' to the dead one. He does not 'acquire' the property by succession. Rather, he simply carries on being owner. His legal status is unchanged (although in practical terms he now has greater freedom to act in respect of the property than hitherto). Cf. MAL B:2, 3 (*ANET* 185) and CE16 (*ANET* 262). Thus it seems as though the son born of the levirate union stands in the place of his deceased father as a joint owner of the individual estate, and not merely of his father's (divided) share.

[256] Some scholars such as Davies 1981a, 265 might object that since the general practice was almost certainly for the heirs to divide up the estate among themselves and to set up a household of their own, the case of 'brothers dwelling together' is far from being the 'typical case.' The fact that 'dwelling together' is extolled in Psalm 133:1 ("... How good and how pleasant it is that brothers dwell together..."; JPS) suggests that 'common ownership' was the exception rather than the rule. Does this mean that Deut. 25:5-10 cannot be regarded as a 'paradigm case'? No. To say that an

the *Methodology*, much depends on whether we take a 'semantic' or a 'narrative' approach to the text.

An example of a 'semantic' approach is Davies' claim that the phrase "when brothers dwell together" functions as a "severe restriction"[257] on the operation of the rule. Here, the semantic approach implies the presence of an additional logical operator "if *(and only if)* brothers dwell together...." Davies argues that the possibility of levirate marriage was often not open to the childless widow, because the brothers would probably have followed the prevailing custom of dividing up the ancestral land. A semantic approach suggests that the duty rarely, if ever, fell upon the deceased's brothers.

A 'narrative' approach, on the other hand, proceeds from judgements of relative similarity between the case in hand and the 'narrative stereotype.' This means that the further one departs from the collective image in Deut. 25:5-10, the less sure one can be that the case is intended to apply to the 'real-life' situation, or that it would be regarded as applicable by the audience. But because a narrative approach is not based on a semantic analysis of the words in which the narrative rule is expressed, it is possible for the paradigm to exert some influence. The difference between a semantic and a narrative approach to Deut. 25:5-10 is this: a narrative approach does not allow us to assume that, simply because the brothers are not "dwelling together," they are thereby absolved of all responsibility.

There is another important aspect to regarding Deut. 25:5-10 as a paradigm case. It is this: the further we move away from the 'paradigm case' in Deut. 25:5-10, two things happen.

First, the more distant the next-of-kin, the less dishonour he suffers for refusing the duty.[258] Second, and by corollary, the more distant the next-of-kin, the more honour there

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illustration is a 'paradigm case' or a 'typical case' does not necessarily entail the claim that it 'happens all the time.' Even situations that do not occur very often can give rise to a 'paradigm', *provided* there is a stock of social knowledge of what does happen or ought to happen in such circumstances. Deut. 25:5-10 is not a 'paradigm case' in the sense that it 'happened all the time.' However, it may have happened frequently enough for there to be a stock of social knowledge about it. Certainly, there is nothing unusual about the levir's behaviour. It conforms to the stereotype of the 'greedy rotter' who puts himself before family duty. We have 'heard it all before' in the Onan story (Gen. 38:8-10). For this reason, Deut. 25:5-10 is still a 'paradigm case.'

257 Davies 1981a, 265. Cf. Legett 1974, 48, Greenspahn 1994, 54 and Sasson 1995, 133-4.

258 Rowley 1947, 85 is right to suggest that levirate marriage presses less heavily on more distant relations and that the measure of stigma in Deut. 25:9-10 is in direct ratio to the nearness of the relationship. Elsewhere, however, he takes the standard view that Deut. 25:5-10 "limits" the duty to 'brothers dwelling together' (*op. cit.*, 80) and that Deuteronomy fails to "*prescribe* [my italics] any alternative to a brother-in-law who should decline the duty" (*op. cit.*, 86). Rowley could have strengthened his argument by adopting a 'narrative' approach (see (e)*(iii)*, below).

is for the willing levir. There are no plaudits for the brother who performs the levirate. He is only doing his duty *as a brother*. By contrast, we would expect the far-flung relative to receive praise precisely *because* his noble behaviour is atypical. We shall develop this theme further in (e)*(iii)* below, with respect to Ruth 4:1-12.

(b) "... and one of them dies and has no son (*bēn*)..."

The paradigm case probably concerns a husband who dies soon after the marriage. The question is whether *bēn* means "son"[259] or simply "child" (meaning either a son or a daughter).[260] In the context of Deut. 25:5, it refers to a "son." This is indicated by the word *haḇ'kôr* in Deut. 25:6, which consistently refers to a first-born male in the Hebrew Bible. In any case, it appears on the evidence that daughters were not considered to be fully capable of perpetuating the dead man's *šēm*, as understood in Deut. 25:5-7.[261]

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[259] As per most mainstream translations, e.g. RSV, NKJ, NRS and BBE.

[260] As per KJV, LXX.

[261] Num. 27:7-11 allows daughters to inherit their father's property in the absence of sons. But, as we saw in **2(a) - (d)** above, Deut. 25:5-10 is concerned not only with property but also with the two other dimensions of *šēm*, that is, continuing the dead man's family line and perhaps also his personal name. If we assume that the provisions of Num. 27:7-11 (said to be given in the wilderness) are already in place at the time of promulgating Deut. 25:5-10 (said to be given at the border of the Land), then the levirate law of Deut. 25:5-10 suggests that daughters do not ultimately preserve the *šēm* in this broader sense, even though they are restricted to marrying within the tribe (Num. 36:6-13).

Moreover, whilst Num. 27:7-11 allows the daughters to inherit land, even this arrangement may not be all that it seems. The language of Num. 36:5-9 is revealing. Moses outlines the conditions under which the law of Num. 27:7-11 is to be applied, saying: "(7)... every man, the sons of Israel, will *cleave* (*yiḏ'bq̄û*) to the inheritance of the tribe of their fathers. (8) And every daughter to acquire an inheritance of the tribe of the sons of Israel shall be wife to one of the lineage of the tribe of her father... (9) and an inheritance shall not circulate from one tribe to another tribe; on the contrary: every man of the tribes of the sons of Israel shall *cleave* (*yiḏ'bq̄û*) to his inheritance" (my italics; translation Sterring 1994, 94). In this passage the verb *dāḇaq* ('to cleave'; cf. Gen. 2:24) is twice used in connection with the inherited land. But on both occasions it is used in respect of sons. It is not used in respect of daughters. As Sterring *ibid*. notes: "the social and physical unity that the Genesis text ascribes for man and wife turns in Numbers 36 into a command for the man only, and with respect to his land." Thus, even the text that grants daughters the right to inherit in the absence of sons recognises that their relationship to the inherited land is not and cannot be the same as the relationship that a son would have.

It might be argued that daughters are capable of carrying on the dead man's personal name. They can do this by making their husbands take his name as a patronym. We know from Ezra 2:61 and Neh. 7:63 that this was possible. Both texts describe how a priest married a man's daughter and was then called by his name (presumably as a patronym). The drawback is that both texts then go on to tell us that this man's descendants - uniquely among the priests - could not find their genealogical records and so were disqualified from the priesthood (Ezra 2:62; Neh. 7:64). Clearly, this method was disadvantaged.

It might be objected that, on this reading, the daughters' hard-won rights in Num. 27:7-11 are defeasible by the law of the levirate (Deut. 25:5-10). But there is no need to assume that the rights of the daughters will be 'trumped' by the levirate offspring in every case. The daughters' right is not so defeasible that it is futile giving it to them. It is not hard to imagine cases where their rights will not be annulled (e.g. cases where the brothers do not 'live together'; where the real-life case is too far removed from the paradigm; where the levir refuses to perform the duty; or where the woman remains sterile). In fact, given the unpopularity of the levirate institution (as witnessed in Gen. 38:9, Ruth 4:6 and the provisions of Deut. 25:7-10), Num. 27:7-11 may be seen as providing an alternative way of preserving the *šēm* in the absence of sons. Of course, it is not ideal. The effect of the ruling in Num. 36:6-9 is that the family property may ultimately go outside the family, even though it remains in the tribe; whilst the effect of the levirate is that it remains, if

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(c) "Her husband's brother shall unite with her: he shall take her as his wife and perform the levir's duty"

The paradigm case opens with a reference to "brothers" (plural) dwelling together (Deut. 25:5). This implies that typically the levir was one of a number of brothers who, in the absence of the deceased's brother's sons or children, would take an equal share in the property.[262] But only one brother is identified as failing to perform his duty. A key question is: on what criteria is he summoned before the elders in 25:8? Deut. 25:5-10 gives no indication of who should perform the duty if there is more than one surviving relative in the same degree. It is commonly supposed that the duty devolved upon the eldest first,[263] although this view has its critics.[264]

However, we do not need to assume that the paradigm case always points automatically to a particular brother.[265] It may assume that the levir's identity is the widow's choice.[266]

The bottom line is that, according to the paradigm case, a choice is to be made (by whatever means) from among "brothers" who dwell together. But as we have already seen, in **(a)** above, this does not necessarily mean that simply because there are no brothers who 'dwell together,' the paradigm thereby exerts no influence.

A 'semantic' approach to Deut. 25:5-7 would restrict the meaning of the noun $y^e\bar{b}\bar{a}m$ (Deut. 25:5,7; 'her husband's brother') to 'a biological brother-in-law who dwells together

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by a fiction, in the personal line of the deceased, so long as there are male heirs. However, it is better than nothing, and it may have been regarded as a more reliable, if limited, way of preserving the *šēm* in the absence of sons.

[262] In the case of the daughters of Zelophehad, the daughters shared their father's estate with Zelophehad's brothers (plural); cf. Job 42:15.

[263] Gen. 38:2-5, 8-11 suggests that it was a matter of customary law that the levirate duty devolved according to age; cf. also Neufeld 1944, 34. One advantage of this view (which Neufeld does not mention) is that, according to Deut. 21:17, the eldest son is given a double portion. This may compensate him for what he would otherwise have gained from performing the duty (i.e. the deceased's brother's share). It may also compensate him for the expense incurred in looking after his dead brother's estate until the offspring comes of age. How well it compensates the brother depends on the number of other brothers that the levir has. In this respect there may well be an element of 'rough justice' (not unknown in biblical law; cf. Jackson forthcoming). If this is correct, it increases the seriousness of the offence. It means that the 'first-born' refuses to perform the levirate, *despite* the fact that Deut. 21:7 gives him a double portion.

[264] E.g. Greenspahn *op. cit*, 54.

[265] Recent ethnographic studies, especially those focusing on African societies, indicate a range of practices for choosing the levir. The levir may be appointed by his family (Oboler 1986, 79), by the lineage head or by a council of lineage elders (Potash 1986a, 7).

[266] Cf. certain African tribes where the widow is free to select any member of the lineage subject, on occasion, to the elders' formal approval; Potash 1986a, 7. This possibility is consistent with the remarkable autonomy that the widow displays in Deut. 25:5-10 (going up to the elders (25:9) and performing the *ḥǎlṣāh* ceremony (25:9-10)). If so, the woman in Deut. 25:7 may be complaining that it is her choice that is refused. Both Tamar and Ruth exercise 'choice' in terms of their 'levir.'

with his other brothers (and to no-one else).' Similarly, a 'semantic' approach would restrict the meaning of the verb *yābam* (Deut. 25:5, 7; '[to] perform the duty of a brother-in-law') to 'the duty performed by a *yᵉbām* (and by no-one else).'

By contrast, a narrative approach does not restrict the meaning of *yᵉbām* and *yābam*. Instead, both the noun *yᵉbām* and the verb *yābam* are seen as referring to a wider range of agnatic kin in one's own (and possibly the senior) generation. As we argued in **(a)**, above, the duty is not restricted to the 'biological brother-in-law' alone.[267]

(d) Comparing a narrative approach to Deut. 25:5-10 with Gen. 38 and Ruth

A narrative approach to Deut. 25:5-10 assumes a certain amount of flexibility on the part of the levirate. Support for the flexibility of this institution is found in Gen. 38 and Ruth 4; texts that, it is often claimed, also depict cases of levirate marriage.

It is beyond the scope of this thesis to consider the precise nature of any relationship that may exist between Deut. 25:5-10, Gen. 38 and Ruth 4. However, to demonstrate the flexibility of leviratic marriage, we shall highlight some of the similarities and the differences that exist between Deut 25:5-10 and Gen. 38:8-11 (see *(i)* below) and between Deut 25:5-10 and Ruth 4:1-12 (see *(ii)* below). We shall then suggest that a narrative reading of Deut. 25:5-10 may go some way toward resolving the alleged anomalies between Gen. 38:8-11, Deut. 25:5-10 and Ruth 4:1-12 (see *(iii)* below).

(i) Comparison between Deut. 25:5-10 and Gen. 38:8-11

It is generally assumed that levirate marriage underlies the narrative of Gen. 38:8-11.[268] Indeed, there are certain similarities between Deut. 25:5-10 and Gen. 38:8-11. Firstly, the 'duty' appears to be compulsory in both cases (Gen. 38:8; Deut. 25:5). Secondly, it is unpopular, probably because, as we have seen, it requires the levir to act contrary to his own interests (see **2(b)** above). Thirdly, both offences are 'continuing actions.' Onan's

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[267] This is consistent with the idea that kin terms in the Bible are not always descriptive and are sometimes used with 'classificatory depth.' For example, the word 'brother' is used as a classificatory kinship term that also means 'kinsman.' Many kinship terms have a specific and a general use within family relationships; Andersen 1969, 38. In the Bible, relatives with a quite different blood relationship to the *ego* nonetheless share the same kin term. This is because the 'kin term' goes beyond 'genetics' to typify those people who share the same network of rights and obligations. It is, in fact, a 'narrative' reading that centres on similar attitudes and patterns of behaviour (cf. Jesus' redrawing of the 'family of God': "Whoever does the will of God is my brother, and sister, and mother" (Mark 3:35)). The dominant idea here is not a semantic one ('what is the literal (i.e. biological) meaning of this word?') but a narrative one ('what sort of person would act like this?').

[268] E.g. Benjamin *op. cit*, 246-7, Neufeld *op. cit*, 34-6, Snaith 1966, 125, Tigay *op. cit*, 481 and Westbrook *op. cit*, 69.

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coitus interruptus is not a 'one-off' act but a regular occurrence.[269] Likewise, the levir in Deut. 25:5-10 is punished for his persistent refusal (Deut. 25:8).

However, there are also important differences. The main divergence is that whilst Deut. 25:5-10 limits the levirate to brothers 'dwelling together,' Gen. 38:13-26 extends it to the father-in-law (see especially Gen. 38:26). Another is the fact that Gen. 38:8 refers not to *šēm* but to *zera* ʿ ('seed'). Finally, there is a difference between the levir's outright refusal of the duty in Deut. 25:5-10 and Onan's pretended (and hence hypocritical) assumption of the duty (Gen. 38:8-10).

(ii) Comparison between Deut. 25:5-10 and Ruth 4:1-12

It is frequently assumed that Ruth 4 is an example of levirate marriage performed by the *go ʾēl*.[270] Similarities between Deut. 25:5-10 and Ruth 4:1-12 include the following. Firstly, the child born of Ruth and Boaz' union is legally deemed the son of the deceased Mahlon (Ruth 4:10). Secondly, the bystanders appear to regard Ruth and Boaz' marriage as similar to Judah and Tamar's union (Ruth 4:12). Thirdly, Boaz' rationale in Ruth 4:10: "to perpetuate the name of the dead in his inheritance, that the name of the dead may not be cut off from among his brethren and from the gate of his native place" evokes the woman's charge in Deut. 25:7.

However, there are important differences between Deut. 25:5-10 and the details of the *Ruth* narrative. This has caused several scholars to question whether *Ruth* is an example of the levirate.

Firstly, Sasson argues that the limiting case of "brothers [who] dwell together" does not apply in *Ruth*.[271] Neither Boaz or the nearer kinsman are brothers, nor sons of Naomi, nor do they 'dwell together.' Secondly, whereas in Deut. 25:5-10 (and Gen. 38) the levirate is compulsory, in *Ruth* it is not. Ruth was never under an obligation to enter the

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[269] Davies 1981b 257, n.1 points out that the consecutive perfect in Gen. 38:9 is used in a frequentative sense which implies that Onan continually refused to perform the obligation.

[270] E.g. Benjamin *op. cit.*, 247, Neufeld *op. cit.*, 37-8, Tigay *op. cit.*, 481. The idea that the marriage of Ruth and Boaz is conceived as a form of levirate marriage does not require us to assume that these sources reflect the same form, or opinions about levirate marriage. The question is whether the discrepancies between Deut. 25:5-10 and *Ruth* reflect two different institutions, or different versions of the same institution. We shall argue, firstly, that *Ruth* reflects a version of the institution of levirate marriage and, secondly, that the flexibility of levirate marriage is an argument in favour of taking a narrative approach to Deut. 25:5-10.

[271] Sasson 1995, 133-4.

next of kin's household.[272] Thirdly, Deut. 25:5-10 emphasises the ideal of perpetuating the 'name of the dead man in Israel' as the main purpose behind levirate practice. In Ruth 4, although the šēm of Mahlon is mentioned (Ruth 4:10), the emphasis falls on the redemption of Elimelech's land.[273] Fourthly, if the levirate duty was tied to purchase of land, and if Boaz wanted to marry Ruth and be in a position to accomplish both, he should have asked the gō'ēl to release Ruth rather than merely to desist from purchasing her.[274] Fifthly, there are also important differences between the ḥāfṣāh ceremony and the judicial proceedings that are described in Ruth 4. In Deut. 25:7, 9-10, the initiative to obtain release from levirate obligations rests on the aggrieved woman. But there is no indication that Ruth is even present during the proceedings at the gate. Nor is there any indication that the nearer kinsman submits to the ḥāfṣāh ceremony (though see *(iii)* below). The act of 'sandal-removal' is different both in its nature and its consequences from that of Deut. 25:5-10. Finally, Bledstein argues that the allusion to Gen. 38 in Ruth 4:12 is quite general and does not necessarily imply levirate marriage.[275] Sasson concludes that "Ruth tells us *nothing* about the workings of this institution."[276]

(iii) Accounting for the 'anomalies'

Scholars have found it difficult to reconcile historically the law in Deut. 25:5-10 with the cases described in Gen. 38 and Ruth 4, and have put forward various theories to explain the 'anomalies.'[277] However, we shall argue in this section that these anomalies are more apparent than real, and that they are best explained by taking a narrative approach to Deut. 25:5-10.[278]

We argued at **3(a)** above that, in contrast to a semantic approach to Deut. 25:5-10, a narrative approach does not restrict the meaning *yḇām* and *yāḇam* to 'biological brother-

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[272] Sasson *op. cit.*, 134-5.

[273] Sasson *op. cit.*, 126-7.

[274] Sasson *op. cit.*, 128.

[275] Bledstein 1993, 128-9.

[276] Sasson *op. cit.*, 229; *ditto* Beattie 1974, 265.

[277] E.g. source-critical methods (e.g. Burrows 1940a and Burrows 1940b and Rowley 1947, 84-5) that see, for example, Ruth as 'pre-Deuteronomic' and Th. and D. Thompson 1968, 79, 88 who claim that the differences between the texts arise purely from the fact that Deut. 25:5-10 is 'law' whereas Gen. 38 and Ruth are 'stories.'

[278] Cf. the approach taken by the Karaites (Beattie *op. cit*, 259) and the Samaritans (Neufeld *op. cit*, 44). For a modern example of a 'narrative' approach see T. and D. Thompson 1968, 89-90, 94.

in-law.' Rather, both the noun *yᵉbām* and the verb *yābam* are seen as referring to a wider range of agnatic kin.

We see this 'narrative,' rather than 'semantic,' approach in Gen. 38. In Gen. 38:11, Judah withholds his youngest son from performing the levirate duty with Tamar, whom he regards as lethal. This creates an unusual situation in which he, Judah, is next-in-line to perform the levirate. This duty is formally recognised by Judah himself (Gen. 38:26). What the story shows is that, in real-life cases, where the circumstances are removed from the standard case, the duty could (and, indeed ought) to be performed by other, possibly senior, agnatic kin. The 'blood brother' is still the 'paradigm levir,' but this does not prevent the duty from falling on male members of the family who are not as close an agnate of the deceased, if the case is an unusual one. Gen. 38 certainly presents problems for those wedded to a 'semantic' interpretation of levirate marriage.[279] However, it is perfectly consistent with a narrative approach.

Similarly, Ruth's situation is several stages removed from the paradigm case of Deut. 25:5-10. For a start, she is not even an Israelite and her humble approach to Boaz (Ruth 3:9) is anything but that of a claimant to a legal right. Yet although she is a Moabitess, she prefers to marry within the family of her deceased husband, Mahlon, in order to preserve his 'name' and property, than to seek a suitor from outside his family. Ruth supports a 'narrative' reading according to which the levirate duty was by no means confined to 'brothers dwelling together', but extends to all male members according to the proximity of their relationship to the deceased. The exact nature of the relationship between Elimelech, the Nearest Redeemer, and Boaz is not clear. But it shows that if the Nearest Redeemer refuses, the duty devolves on those who are the next closest in terms of familial order.

Ruth 4:1-12 also demonstrates the proposition, at **3(a)** above, that, on a narrative reading of Deut. 25:5-10, less dishonour is incurred by a more distant relation who refuses to perform the duty. The lesser seriousness of this offence is reflected in a less ignominious ritual. Thus, in Ruth 4:1-12, the Nearest-Redeemer is not subject to the 'full-scale' *ḥălîṣāh* ceremony.[280] Nonetheless, there may still be a muted form of disgrace. This surfaces in

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[279] E.g. Greenspahn *op. cit*, 52-53 finds Gen. 38 "suspect, since its description differs from [Deut. 25:5-10]."

[280] *Contra* Josephus who saw Ruth 4 as an application of the *ḥălîṣāh* ceremony in Deut 25:9: "Boaz called the senate to witness, and bid the woman to loose his shoe, and spit in his face, according to the law…" (*Antiq.* v:9-4).

the fact that we are never told the Nearest Redeemer's name, and in the odd way that Boaz calls him *pᵉlonî 'almonî* (Ruth 4:1), which may be translated "Mr. So-and-So."[281] This may suggest that, just as the Nearest Redeemer chose to ignore the duty of perpetuating an Israelite's name in the land, so his own name will not be recorded for posterity.[282]

Moreover, it follows that, just as less dishonour is incurred by the more distant relation who refuses to perform the duty, so more honour is won by the distant relation who does perform the duty. This too is demonstrated in Ruth 4:1-12. When Boaz agrees to take Ruth as his wife, he is regarded *not* as a man performing his legal duty (as would have been the case under the paradigm of Deut. 25:5-10), but as a generous benefactor. Boaz' benevolence is striking *because* it is far removed from the paradigm case.[283]

To sum up, scholarly difficulties in reconciling the law in Deut. 25:5-10 with the events of Gen. 38 and Ruth 4 stem from a semantic reading of Deut. 25:5-10. We suggest that a better explanation of the differences between these texts may lie in a narrative approach to Deut. 25:5-10.

4. Seriousness of offence

The consequences of the levir's refusal is that his brother's name will be "blotted out in Israel" (Deut. 25:6). This is recapitulated in the charge that the brother's name will not be "perpetuated" (Deut. 25:7). It is restated in the *ḥalîṣāh* ceremony, which is a punishment for "the man who does not build up his brother's house" (Deut. 25:9). These descriptions emphasise the harm that is done to the deceased brother, and to his potential 'family line.' Several texts, elsewhere in the Hebrew Bible, predispose us to the view that this is indeed a serious offence.[284]

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[281] Sasson *op. cit*, 102-3.

[282] Carmichael 1977, 335.

[283] The record of King David's genealogy (Ruth 4:18-22) is, perhaps, a measure of the divine praise and reward that attaches to fulfilment of the duty in exceptional (and non-paradigmatic) circumstances; cf. Belkin 1969, 287.

[284] The celebrated story of Tamar, who tricks her father-in-law into performing the levirate duty in Gen. 38:12-19, shows that the importance of providing 'a memorial for the childless man' places the levirate duty beyond other moralities (Frost 1972). Likewise, the woman of Tekoa is able to persuade David that the principle of leaving a son to carry on his father's name is more important than the principle that bloodguilt must be avenged (2 Sam. 14:5-11). Similarly, in Deut. 25:5-10 the levirate law takes precedence over the ban on incest (Lev. 18:16=20:21). We take the view that both Lev. 18:16 and Lev. 20:21 are capable of being interpreted as placing a ban even when the husband is dead. We note

Deut. 25:5-10 presents the dead brother as the primary victim. The woman does not complain that she has been 'done down,' but that her husband has been. She sues for justice on his behalf. In evaluating the seriousness of this offence, therefore, we shall concentrate on its impact upon the dead brother.

Ancient Israel feared "the obliteration of the name above all eventualities."[285] Blotting out the name' had a number of serious consequences for the deceased brother. It robs him of his right to descendants and it is tantamount to his personal extinction.

(a) Loss of descendants

Descendants are one of the principal forms of blessing in the worldly piety of the Hebrew Bible. An ancestor and his descendants are thought of as one, living on through solidarity with their offspring.[286] To deny a man his posterity is therefore a serious matter.

According to Psalm 128:3, the wife of the man who 'fears the LORD' "will be like a fruitful vine within your house; your children will be like olive shoots around your table" (cf. Ps. 113:9). The continuation of his family line (e.g. Ps. 128:6) is important because it is central to being able to enjoy YHWH's blessings, not least the blessing of 'life in the Land.' Psalm 25:13 promises that: "[the man who fears the LORD]... shall abide in prosperity, and his children shall possess the land" (cf. Ps. 69:36: "the children of his [God's] servants shall inherit [Zion and the cities of Judah]"). Not only is it a blessing in itself to have children, it is also the means to enjoy future blessing.

The reverse is also true. We saw in **2(b)** above that the loss of a lineage risks alienating the family estate. Barrenness was a disgrace (e.g. Gen. 30:1), whilst Ps. 21:10 exults in the hope that YHWH will punish Israel's enemies by cutting off their family line.

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the interesting opposition between the penalty of Lev. 20:21 (childlessness) and the purpose of Deut. 25:5-10 (to produce a child). The seriousness of Deut. 25:5-10 is also suggested by the literary arrangement of the book of *Deuteronomy*. According to Deut. 1:1, Deut. 25:5-10 is delivered at the entrance to the Promised Land as part of a body of legislation described as: "... all the commandments and the statutes and the ordinances which you shall teach them, that they may do them *in the land which I give them to possess*" (Deut. 5:31; my italics). *All* the commands from 6:1 onwards are qualified by the geographical boundaries of the Land. (In fact, the phrase "in the Land" frequently recurs after this point; e.g. 5:31, 33; 6:1, 3, 10, 18, 23; 7:1; 8:1). The underlying values of Deut. 25:5-10 (brothers should do their duty to one another and keep the ancestral land within the family) are consistent with the great Deuteronomic themes of 'land' and 'brotherhood' noted by McConville 1993, 46-7.

[285] Sasson *op. cit*, 133.

[286] Cf. Preuss 1986, 161: "whoever has descendants lives and his life has a future."

Daube points out that whilst there is no duty of procreation in the Hebrew Bible (procreation being a blessing and not a commandment; (Gen. 1:28)), Deut. 25:5-10 is an example of a case where a man must, nevertheless, do his best to sire offspring. Here the duty is commanded, not for oneself, but for the deceased brother's benefit. Daube writes: "It is in the very nature of a boon that, while as far as your own person is concerned, you are free to take it or leave it, you must not withhold it from others."[287] Since it is a blessing to have one's name carried on by subsequent generations, the surviving brother is to help the dead one to enjoy it.[288]

(b) Threat of personal extinction

There is an intimate connection between 'the name' and 'existence' (e.g. Eccl. 6:10: "Whatever has come to be has already been named (*niqʿrāʾ šᵉmô*)...)." In a similar vein, YHWH's promise that His people's name shall remain is a pledge of their continuing existence: "For as the new heavens and the new earth which I will make shall remain before me, says the LORD; so shall your descendants and your name (*zarʿᵃḵem wᵉšimᵏem*) remain" (Is. 66:22). Annihilation of the name spelt "absolute death."[289] For this reason, David laments: "My enemies say of me in malice: 'When will he die, and his name (*šēmô*) perish?'" (Psalm 41:5 [Heb. 41:6]).

The idea that *šēm* and 'existence' are connected suggests that 'blotting out the name' amounts to "total personal extinction."[290] For example, the command in Deut. 12:3 to wipe out the 'names' of the pagan deities upon entering the land is seen as tantamount to destroying the religion that those images represented: "you shall tear down their altars, and dash in pieces their pillars... you shall hew down the graven images of their gods, and destroy their name (*eṭ-šᵉmām*) out of that place" (Deut. 12:3). Zimmerman avers: "Complete annihilation of a human being is not only accomplished through his physical death, but through the obliteration of his name."[291] Personal and lineal extinction appears to lie behind second-millennium covenant-treaties where the deity threatens to "blot out

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[287] Daube 1977, 6.

[288] This analysis may help us to understand why Deut. 25:4 precedes Deut. 25:5-10. Deut. 25:4 states: "You shall not muzzle an ox while it is threshing." It is unfair to deprive an ox of its share of the grain. Likewise, it is unfair to deprive the dead brother of his 'share' in the world; Carmichael 1974, 239. Noonan 1979 and Carmichael 1980 a find sexual innuendo linking Deut. 25:4 and Deut. 25:5-10.

[289] Pedersen 1959, 256.

[290] Pedersen *op. cit.*, 255-6.

[291] Zimmerman 1966, 313.

the [transgressor's] name and seed from the land."[292] To this extent, the levir's duty was nothing less than to save his brother from being "utterly quenched as a person."[293]

5. Seriousness of punishment

The levir's punishment is for him to be subjected to the *ḥāfsāh* ceremony (Deut. 25:9-10). Its purpose is to demote the levir within the community's status hierarchy. The formula found at the close of the ceremony ("Thus shall be done to the man who…") signifies the levir's change of status. In Est. 6:11, the same phrase (*kākāh yēʿāśeh lā ʾīš ʾāśer*) signifies Mordecai's change of status (although in his case, the change is positive, rather than negative).

The *ḥāfsāh* ceremony can be characterised as a shaming ritual for the following reasons. Firstly, shame impacts on 'identity,' changing the perception of 'who a person is.'[294] This is achieved in Deut. 25:10 by renaming the man: "The house of him that had his sandal pulled off." Secondly, shame often arises where there is a reversal of expectations.[295] This is seen in the reversal of gender roles in Deut. 25:9. The woman assumes the 'dominant/active/powerful' role in the ceremony whilst the levir is put in the 'submissive/passive/powerless' position. Thirdly, the essence of shame is to be looked on as an object. This is achieved in Deut. 25:10 when the levir is stripped of his 'name' and is made to feel like a 'non-person.' Fourthly, the woman's complaint relates to an intimate matter (Deut. 25:9). Daube notes that "the tendency for shame to come to the fore [in sexual matters] is pretty universal."[296] Fifthly, shame depends on some form of shared moral consensus. This is achieved in Deut. 25:9 by performing the ritual in the presence of the elders who are representatives of the community. Finally, the ceremony involves a

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[292] Wiseman 1973, 16.

[293] Motyer 1944, 863.

[294] Bechtel *op. cit*, 49.

[295] Lynd 1958.

[295] Smedes 1993, 54.

[296] Daube 1982, 363.

form of divestiture (sandal-removal). This is a common ritual that is often used to humiliate those found guilty of dishonourable conduct.[297]

The *ḥāḷṣāh* ceremony was a serious penalty.[298] This is because shame was a serious punishment in ancient Israel.[299] The form of the punishment expresses the seriousness of the offence in the following ways. Firstly, by the act of sandal-removal, which leaves the levir barefoot; secondly by the act of spitting in the levir's face and thirdly, by the act of renaming. Each of these acts is both descriptive and performative (see **1** above). By exploring their symbolic meaning, we can demonstrate how the *ḥāḷṣāh* ceremony functions as a 'register' of seriousness.

(a) The sandal-removal

In addition to their use as footwear, sandals were widely used in the ANE for symbolic purposes.[300] Their broad use means that they may symbolise different things in different contexts. Conflicting theories have been put forward to explain the meaning of the 'sandal' and the act of 'sandal-removal' in Deut. 25:9. We shall consider three of these *(i)- (iii)*, below, before proposing a different explanation in *(iv)*, below.

(i) Freedom

Several scholars argue that the 'sandal' signifies 'oppression'[301] and that the act of 'sandal-removal' signifies freedom.[302] By removing the shoe, the widow gains her freedom. She is released from her legal obligation to marry the levir, and from his claim upon her.

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[297] Clerics are 'defrocked' of their vestments and soldiers are 'stripped' of their uniforms; Benjamin *op. cit*, 253. Divestiture may exploit the hypothesised link between feelings of 'loss' (here, of clothes, or a sandal) and the sense of 'shame'; cf. Smedes *op. cit*, 12.

[298] *Contra* Davies 1981b, 260 ("no penalty was imposed on the brother-in-law who refused his obligation") and Mendelsohn 1948, 31 ("the law nullifies itself by providing no penalty for its non-observance"). Others downplay its significance, including Viberg 1992, 157, who doubts whether this is a formal punishment and Westbrook 1991, 82 ("[The levir] is subject only to his own conscience and family pride"). Davies 1981, 262 goes so far as to suggest that the ritual exists for the levir's convenience, providing "[a means] by which he could formally renounce his obligation." *M. Yeb.* 13a treats the appellation of Deut. 25:10 as a symbol, not of shame, but of praise.

[299] See Bechtel *op. cit*, 47-76; Bechtel 1994, 79-92; Olyan *op. cit*, 201-218. Cf. Daube 1969b, criticised by Dempster 1984.

[300] Carmichael *op. cit*, 321-4; Speiser 1940; Viberg *op. cit*, 157-164.

[301] "The equation of shoes with power, mastery, victory, pride and dignity emerges… from texts which equate the removal or lack of shoes with weakness, subservience, defeat, humiliation and grief"; Brichto *op. cit*, 19. In Ezek. 24:17, 23 the removal of shoes is explicitly a mourning rite whilst in 2 Sam. 15:30 and Isa. 20:2-4 it is a sign of defeat, subservience and humiliation.

[302] Sasson *op. cit*, 146; Tigay *op. cit*, 231.

However, if this theory was correct we might expect the *levir* to remove the sandal. This is because, in the Bible, freedom is normally acquired as the result of the master's declaration or some act of his.[303] It would be highly unusual for a subject person to gain independence by a declaration or ceremonial act of his or her own.[304] Consequently, we reject this theory on the grounds that it does not adequately explain why the *woman* removes the sandal.

(ii) A rite of passage

A second approach sees the sandal as symbolising the husband's authority and its removal as a symbolic 'rite of passage' that marks her transition from an 'old' identity to a 'new' one.[305] This approach is based on the belief that the woman automatically becomes the levir's lawful wife upon her husband's death. A 'rite of passage' is therefore necessary to dissolve the marriage so that the wife can become a free woman again.[306]

However, this theory ignores the unusual sequence of the clauses in Deut. 25:5: "[he] shall go in to her, and take her as his wife...." This differs from the usual construction as expressed in Deut. 22:13: "if any man takes a wife and goes in to her...."[307] This suggests that there is no automatic marriage on the brother's death.[308]

(iii) Fertility

A third possibility is that the sandal is used as a symbol of 'fertility.' It is likely that an agricultural society would have associated the 'earth' with 'fertility.' Certainly, ancient Israel's traditions present the 'ground' as "the womb from which man emerges,"[309] (cf. Gen. 2:7:"... the LORD God formed man of dust from the ground..."). To this extent, the 'sandal' may be regarded as a symbol of fertility because it has contact with the ground.[310] The sandal, too, is covered with sand. This recalls YHWH's promise of

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303 E.g. Ex. 21:26-27, Deut. 21:14.

304 Westbrook *op. cit*, 84.

305 Kruger 1996.

306 Kruger *op. cit.*, 538.

307 Benjamin *op. cit*, 246.

308 Deut. 25:5 emphasises the duty of the levir to take the widow of the deceased *as his wife*. This is confirmed by Rabbinic interpretation of Deut. 25:5 which holds that intercourse is necessary if the levir is to take the place of the deceased brother; Belkin *op. cit*, 282-3. The widow only becomes the levir's wife when he performs the duty.

309 Hamilton 1991, 158.

310 I am indebted to Dr. Brian Lancaster for this observation.

"descendants" to Abraham that would be as numerous as "the sand which is on the seashore" (Genesis 22:17). Indeed, the word for "descendants" in Gen. 22:17 is *zar-'ăkā*, suggesting a conceptual link between *zera'* and grains of sand.[311] The levir has refused to raise up 'seed' for his brother (cf. Gen. 38:8-9). Therefore, the woman takes the sandal off his foot to signify that the privilege of intercourse is taken away from him.[312]

There are a number of reasons for favouring a 'procreative' interpretation of the ritual. Firstly, it is a simple explanation that includes all the relevant data, unlike *(i)* and *(ii)* above. In particular, it explains why the *woman* takes off the *levir's* sandal. It is also fitting because 'procreation' is integral to the meaning of the verb *yābam* (that is, '[to] perform the duty of a brother-in-law').[313] A second advantage is that if the sandal symbolises 'fertility,' the ceremony effectively symbolises the nature of the offence (that is, the levir's refusal to impregnate the woman). Thirdly, it is authentic to the text insofar as it views the 'sandal-removal' from the actor's, that is, the widow's perspective. Moreover, if the sandal symbolises 'fertility,' it follows that she is in the best position to remove the sandal and, thereby, the privilege of fertility. After all, she is the only person (apart from the levir) who truly knows whether he has performed the duty or not. Fourthly, this interpretation incorporates an element of 'poetic justice.' The ritual ends with the levir standing 'barefoot.' This 'exposure' may be an ironic comment on his refusal to 'uncover' himself before the widow. Finally, this interpretation is supported by the literary presentation of Deut. 25:5-12. 'Fertility' seems to be the link between Deut. 25:5-10 and the strange provision of Deut. 25:11-12. This prescribes a severe punishment for the woman who seizes a man's genitals (albeit in defence of her husband). The severity of the penalty in Deut. 25:12 suggests that Deut. 25:11 has in mind injury of the genitals (possibly resulting in a hematoma or even orchitis).[314] By her action, the woman risks making the man

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[311] Cf. Job 29:18 which associates "sand" with "multiplication" and "increase": "…'I shall die in my nest, and I shall multiply (*'ar-beh*) my days as the sand.'"

[312] This need not conflict with the explanation given for the 'sandal-removal' ceremony in Ruth 4:7 because, we have argued, the meaning of the ceremony in *Ruth* is different anyway; see n.230, above. Additional support for a 'procreative' interpretation may be found in the erotic significance of the 'foot.' 'Feet' may sometimes be used as a euphemism for genitals (Isa. 6:2). Carmichael 1977, 330 also observes that the nominal form of the verb used for 'sandal removal' in Deut. 25:9 (*hālas*) refers to a man's loins (three times in the sense of his virility; Gen. 35:11; 1 Kgs. 8:19 = 2 Chr. 6:9). He suggests that the verb *hālas* may well have had special significance in contexts such as Deut. 25:9 where the notion of generative strength is present. A similar association is found in Isa. 20:2 where the prophet removes sackcloth from his loins and, in a parallel action, is commanded to "take off" (*tahālōs*) the sandals (singular in some manuscripts) from his feet (again, singular in some manuscripts); Carmichael *op. cit.*, 330 n.33.

[313] Burrows 1940a, 6-7, citing an unpublished letter by Albright connects the Hebrew verb *yābam* with the Akkadian word *bamatu* ('loins'). This may suggest that the Hebrew root *yābam* denotes 'procreation.'

[314] Tigay *op. cit*, 483.

infertile. Taking away the levir's 'right' to inseminate the widow is an authoritative act that, like the 'spitting' and the 'renaming' (see **(b)** and **(c)**, below), subjugates the levir in relation to the widow. We have already seen that 'sandal-removal' is a sign of deference to a higher authority (see *(ii)* above). Clearly, the act of forcibly removing the sandal places the levir in an even more abject position *vis à vis* the woman.[315]

This interpretation is an attractive one. However, it suffers from the weakness that there is currently no evidence that attests to this use of the sandal elsewhere in the ANE. Accordingly, we have reservations about the explanatory power of this proposal.

(iv) Property

Finally, a number of scholars suggest that the "sandal" symbolises the ratification of a transaction.[316] In their view, the *ḥālṣāh* ceremony allows the widow to assume the right to her deceased husband's estate. Proponents appeal to the historical notice attached to Ruth 4:7, which also describes a 'sandal-removal' ceremony: "Now this was the custom in former times in Israel concerning redeeming and exchanging: to confirm a transaction, the one drew off his sandal and gave it to the other, and this was the manner of attesting in Israel." The reference to "former times" implies that the practice has since been superseded. But if it went back to the original understanding of Deut. 25:9-10, it could be argued that 'sandal-removal' in Deut. 25:9-10 is also bound up with the transfer of property.

Expressed in these terms, this view is not convincing for several reasons. Firstly, there are important differences between Deut. 25:9-10 and Ruth 4:7.[317] Secondly, in the light of the inheritance schema presented in Num. 27:8-11, it is hard to see how the levir can be thought of as 'releasing' the property to the widow. His offence lies precisely in the fact

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315 There may be a hint of 'poetic justice' here: the levir who refuses to act as the 'dominant' partner by inseminating the widow is thereby rendered 'submissive' before the woman.

316 Loader 1994, 136. It is thought that 'taking possession' of land meant 'walking' over it and that this, in time, was symbolised by the 'sandal' with which one 'treads the land.'

317 There is a world of difference between taking off one's sandal and handing it to another and having one's sandal forcibly removed by someone else. Sasson *op. cit*, 143 points out that in Ruth 4 it is not clear whose shoe is bandied about during the ceremony, nor do we know who receives it or removes it from the foot. Pressler 1993, 70 notes that in Ruth 4:7 all of the parties agree to the transaction, whereas Deut. 25:7 depicts the woman as bringing a complaint against the levir. "[The] ceremony in *Ruth* represents concession of a right, in *Deuteronomy* it represents failure to perform a duty"; Westbrook *op. cit*, 81.

that he is keeping it. If the property is 'released' to anyone it is to him. [318] Although Deut. 25:5-10 says nothing about the destination of the estate in the event of *ḥalṣāh*, the presumption must be that the estate goes to the brother(s), including the levir (as argued at **2(b)** above). This means that there is no transfer of the estate in Deut. 25:9. Rather, it goes where it would have gone anyway, in the absence of a levirate marriage, that is, to the surviving brothers. This being so, no ceremony of transfer is required.[319] We conclude, therefore, that the ceremony does not symbolise 'ceding the property' to the widow, because that is manifestly what the levir does *not* do.

But whilst the ceremony may not describe what the levir has done, it may well describe what he *ought* to have done. By wresting the sandal off his foot, the widow demonstrates what ought to have occurred; namely, that the levir ought to have raised up an heir who would succeed to the dead brother's title. This interpretation allows us to take seriously the association between the sandal and property in Ruth 4:7 whilst avoiding the pitfalls presented by other advocates of 'property-release' in Deut. 25:9-10.

(b) The barefoot man

The act of 'removing the sandal' presents the image of a man 'standing barefoot.' This image functions as a descriptive register (when the law is read) and as a performative register (when it is carried out). It is a potent image for several reasons.

Firstly, it visually places the levir in a position of vulnerability and defencelessness. These are the very emotions associated with shame.[320] Secondly, 'to go barefoot' was itself a source of shame in ancient Israel. 'To go barefoot' was a mark of abject poverty.[321] "Walking naked and barefoot" is a source of shame in Isa. 20:2-4, where it typifies the

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[318] Bechtel *op. cit*, 60-1 suggests that the 'sandal removal' symbolises the surrender of the property to the levir. But for this to make any sense, we would expect the *levir* to remove the *woman's* sandal. It does not explain why the woman releases the levir's sandal. Finally, T. and D. Thompson *op. cit*, 93 suggest that by this act the woman gains her dead husband's estate. But although women are sometimes depicted as owning money and property (e.g. Judg. 1:14; 17:2-3; 2 Kgs. 8:1-6; Job 42:15; Ruth 4:3), there are no cases in the Hebrew Bible where a childless widow is depicted as possessing her deceased husband's land. If the woman could inherit a portion of the estate, it would reverse the roles of the parties. The levir would be the party most interested in enforcing the duty.

[319] There may be a partial parallel in the slavery laws (Ex. 21:4-6). No ceremony attends the release of the Hebrew debt-slave after six years because that is a reversion to his 'normal' status (Ex. 21:4). A ceremony is only required if there is to be a change of status to permanent slavery (Ex. 21:5-6).

[320] For example, in Ps. 89:40 Jerusalem is in a 'shameful' condition because she has been left 'vulnerable' and 'defenceless.' We note in passing that this is another example of how Biblical law seeks to evoke certain feelings (see *Chapter Five*, below).

[321] On the view that 'a pair of sandals' was a proverbial expression for something of small value, cf. Am. 8:6.

'exiled.' Jer. 2:25 counsels: "Keep your feet from going unshod..." whilst David's ascension of the Mount of Olives barefoot, following Absalom's putsch, is a mark of his humiliation (2 Sam. 15:30). In a shame-conscious society, such as ancient Israel, the 'barefoot man' stood for the sort of person whom everyone else looked down upon. In the context of Deut. 25:9-10, therefore, the sight of the levir 'standing barefoot' signifies that he now belongs to 'the lowest of the low.'

(c) Spitting in the levir's face

'Spitting in the face' signifies the strongest rejection and contempt (e.g. Num. 12:14 where a daughter is expected to feel shame for seven days if her father spits in her face). Like the act of sandal-removal, it is designed to maximise the levir's humiliation.[322] Job complains that his persecutors "... abhor me, they keep aloof from me; they do not hesitate to spit at the sight of me" (Job 30:10). Likewise, "shame and spitting" (Isa. 50:6) form a natural pair in the indignities heaped upon the Suffering Servant.

(d) The renaming

The renaming of the levir: "The house of him that had his sandal pulled off"[323] is presented as the culmination and consequence of the *hālîṣāh* ceremony (Deut. 25:10). It is not clear, however, whether the renaming is performed by the woman as part of the ceremony,[324] or whether the statement in Deut. 25:10 is an editorial comment. The stigma

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[322] Carmichael 1977, 329 suggests that the act of spitting is a coded reference to Onan's (misdirected) semen in Gen. 38:9. However, his argument would be stronger if the spitting was performed by the levir, rather than the woman.

[323] A key question is whether the phrase "The house of him that had his sandal pulled off" refers to a continuing state ("The house of him who is unsandalled") or to something that has been done to him ("The house of the one who has been unsandalled"). In other words, does it refer to 'the house of a person who is in the state of having his sandal taken off' or is it a description of 'the house who has had his sandal taken off'? Syntactically, the Hebrew (*bêt hălûṣ hannā'al*) can express "the house of he who is in the state of having had his sandal removed," but on pragmatic grounds it is more acceptable to adopt a process interpretation. Thus, we take the view that the name in Deut. 25:10 describes a process. He is called "The house of him that had his sandal pulled off" on account of what has been done to him (i.e. the *hālîṣāh* ceremony). I am indebted to Prof. Dennis Kurzon for his advice on this matter.

[324] It would be quite remarkable if the renaming was performed by the woman. This is because 'renaming' in the Bible typically expresses the authority of the name-giver over the subject who is named or renamed. This is commonly seen in regard to places that have changed ownership (e.g. as a result of conquest; thus 'Kenath' becomes 'Nobah' in honour of its eponymous conqueror; Num. 32:42). There is, of course, a difference between renaming places and renaming people, but the extrapolation is reasonable (cf. Gen. 17:1; John 1:42). However, if the woman did rename the levir, it would not be altogether surprising. It is consistent with the high degree of authority that she exercises over him in the course of the ceremony (cf. the acts of sandal-removal and spitting, above). Being renamed *by a woman* could be an additional aspect of his humiliation.

may have been assimilated into the levir's 'family name' in two ways; one, in common parlance[325]and two, in genealogical records.[326]

To be the bearer of a 'bad name' was a serious matter in a society that attached high value to a "good name" (e.g. Pr. 22:1; Eccl. 7:1). There are several reasons for this. Firstly, in such a society, 'names' summarise 'narratives.' "Through names language mediates between time and place and commemorates an occurrence in a particular locale."[327] Likewise, the purpose of renaming is essentially narrative: it is the story of an event. Changes in place-names, for example, mostly reflect events that have happened there (or have yet to happen).[328] Re-naming is a recurrent feature of the 'punishment narratives' in the book of *Numbers* (e.g. Taberah (Num. 11:1-3), Kibroth-hattaavah (Num. 11:34) and the Waters of Meribah (Num. 20:13)). People as well as places are 'renamed' and this too reflects the occurrence of an event.[329] The levir's new name, on the process interpretation noted in n.323 above, perpetuates the story of the *ḥālṣāh* ceremony. Like Taberah, Kibroth-hattaavah and the Waters of Meribah, it retells the story of a punitive event. This standing reminder of his 'criminal record' effectively destroys his reputation in the community. This is because there is a close association between 'name' and 'reputation' in ancient Israel. 'Names' and 'reputations' were lost and won when the characters and deeds of people became widely known (e.g. 1 Sam. 18:30; 1 Kgs 5:11).

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[325] The name could have been assimilated into the two-unit patronymic 'X *bēn* Y,' in which case we might expect it to last for two generations. A key question is whether the new name would have been assimilated into Israelite 3-unit ('X *bēn* Y *bēn* Z, where Z is the paternal grandfather); 4-unit (e.g. 1 Kgs. 11:26); or 6-unit (1 Sam. 9:1) names, in which case the stigma could have been extended for longer. Ultimately, it is impossible to say how long the disgrace typically lasted, as we do not have any examples of this name-form outside Deut. 25:10. Probably, it was a matter for the local community to decide, since they were the ones who actually enforced it.

[326] We might expect the 'name' to survive longer in written records although, again, how long is impossible to quantify. Evidence for extensive genealogies in the ANE include the Assyrian, Babylonian and Sumerian king lists. Documentary evidence of land ownership lawsuits, whose histories go back over three or four centuries, indicate that extended genealogical data were kept among land-owning people (e.g. the property dispute recorded on the walls of the Egyptian tomb of Mes (or Mose), a minor official under Rameses II; Gaballa 1975). Mes, of course, was not an 'ordinary' person, and we have no examples of similar documents in the case of 'ordinary' Egyptians. However, the strength of oral tradition in ancient Egypt and ancient Israel suggests that even where such information was not written down, it could still have been remembered.

[327] Ben-Amos 1990, 38.

[328] Eissfeldt 1968, 72.

[329] Ancient Israel had a tradition in which a 'birth-name' was replaced later on with an 'event-name'; Andersen *op. cit*, 30. Classic examples include: Abraham (Gen. 17:5); Sarah (Gen. 17:15); Edom (Gen. 25:30); Israel (Gen. 32:28); and Jerubbaal (Judg. 6:32).

Secondly, and allied to this, 'renaming' is a serious matter in ancient Israel because the 'name' was thought to be closely related to the nature of its bearer.[330] By analysing a man's name one might find a clue to his personality and, in the light of this discovery, deal with him accordingly.[331] For this reason, a man could be given a new 'name' in the light of a revaluation of his character. Where the change is positive (e.g. 'Abram' to 'Abraham' (Gen. 17:5) and 'Jacob' to 'Israel' (Gen. 32:38; 35:10)) it is equivalent to 'regeneration.' The new name signifies that he is a new man. By the same token, where the change is negative (e.g. Jeremiah's oracle against the unjust priest Pashhur; Jer. 20:3), the change of name symbolises degeneracy. Deut. 25:10 is an example of the latter. It 'rebrands' the levir as the 'sort of man who will not stand by his brother.' As such, his new name represents 'local intelligence' in a concise form. It tells everyone the sort of person that he is.[332]

Thirdly, the scope of the 'renaming'. His whole "house"[333] is blackened.[334] In this regard, the punishment reflects the seriousness of the offence. The name attaches to the levir's 'posterity' because he denied his brother's 'posterity.' His 'house' bears the shame because the levir would not build his brother's 'house.' The punishment, like the offence, has generational consequences. There is a further element of 'poetic justice' insofar as the levir who has no concern for his brother's 'name' finds himself the object of excessive concern about his 'name.' His 'name' lives on - but only to preserve his notoriety.[335]

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[330] Rankin 1967, 157; Zimmerman 1966, 311.

[331] Names to beware included 'Jacob' (Gen. 27:36) and 'Nabal' (1 Sam. 25:25).

[332] Social knowledge was often appended to English surnames as well. Daube 1981, 71 notes that a person's dwelling was once part of his 'name;' for example, 'John Smith the Mill.'

[333] The phrase 'House of the Unsandaled one' raises the question; whose 'house' is being referred to? Rattray 1987, 541 suggests that Biblical Hebrew differentiates between the two kinds of family distinguished by anthropologists: the family of orientation (i.e. the family one is born into; the *bêt-'āb*) and the family of procreation (i.e. the family one creates by marrying and having children of one's own; the *bayit*.) If so, the referent of 'House' may be the levir's own 'house' that is, the one that he has himself created.

[334] Daube 1947 contends that the infamy of an entire 'house' is a classic example of 'communal punishment.' He argues that this is designed to stop subversive activities, not by targeting specific individuals, but by striking at the group in which they originate. "Even modern parents who believe in individual responsibility are apt to ostracise a whole family just because one member of it has committed theft"; Daube *op. cit.*, 183.

[335] Cf. talionic 'name-punishment' in Gen. 11:1-9. The purpose of the building project in Gen. 11:4 is to 'make a name' for themselves. But their construction is named 'Babel' (Gen. 11:9; 'confusion'). The name endures, but to commemorate "their failure, not their success"; Wenham 1987, 239.

6. Conclusion

The offender refuses to perform the levir's duty. His offence consists in failing to sire a male child who can continue the family line and, in so doing, succeed to the property and establish the deceased's title to his inheritance. The offence menaces the deceased brother by 'blotting out' his 'name.' This was a serious offence because it posthumously denied the brother the blessing of descendants. This results in the alienation of the ancestral land and in the deceased's personal and lineal extinction. The seriousness of this offence is reflected in the *ḥāfsāh* ceremony. This was a potentially severe penalty in a status-sensitive society. The offence (a refusal to beget) is perfectly captured in the procreative symbolism of the *ḥāfsāh* ceremony, culminating in the talionic ('name' for 'name') 'renaming' of the levir and his house.

PROSTITITUTION AND THE JEALOUSY OF GOD AND MAN

Seriousness of offence in Lev. 21:9 and Deut. 22:20-21

Texts

Lev. 21:9 וּבַת אִישׁ כֹּהֵן כִּי תֵחֵל לִזְנוֹת אֶת־אָבִיהָ הִיא מְחַלֶּלֶת בָּאֵשׁ
תִּשָּׂרֵף: ס

Deut. 21:13[336] כִּי־יִקַּח אִישׁ אִשָּׁה וּבָא אֵלֶיהָ וּשְׂנֵאָהּ: 14 וְשָׂם לָהּ עֲלִילֹת
דְּבָרִים וְהוֹצִיא עָלֶיהָ שֵׁם רָע וְאָמַר אֶת־הָאִשָּׁה הַזֹּאת לָקַחְתִּי וָאֶקְרַב
אֵלֶיהָ וְלֹא־מָצָאתִי לָהּ בְּתוּלִים: 15 וְלָקַח אֲבִי (הַנַּעַר) [הַנַּעֲרָה] וְאִמָּהּ
וְהוֹצִיאוּ אֶת־בְּתוּלֵי (הַנַּעַר) [הַנַּעֲרָה] אֶל־זִקְנֵי הָעִיר הַשָּׁעְרָה: 16 וְאָמַר
אֲבִי (הַנַּעַר) [הַנַּעֲרָה] אֶל־הַזְּקֵנִים אֶת־בִּתִּי נָתַתִּי לָאִישׁ הַזֶּה לְאִשָּׁה
וַיִּשְׂנָאֶהָ: 17 וְהִנֵּה־הוּא שָׂם עֲלִילֹת דְּבָרִים לֵאמֹר לֹא־מָצָאתִי לְבִתְּךָ
בְּתוּלִים וְאֵלֶּה בְּתוּלֵי בִתִּי וּפָרְשׂוּ הַשִּׂמְלָה לִפְנֵי זִקְנֵי הָעִיר:
18 וְלָקְחוּ זִקְנֵי הָעִיר־הַהִוא אֶת־הָאִישׁ וְיִסְּרוּ אֹתוֹ: 19 וְעָנְשׁוּ אֹתוֹ מֵאָה
כֶסֶף וְנָתְנוּ לַאֲבִי הַנַּעֲרָה כִּי הוֹצִיא שֵׁם רָע עַל בְּתוּלַת יִשְׂרָאֵל וְלוֹ־תִהְיֶה
לְאִשָּׁה לֹא־יוּכַל לְשַׁלְּחָהּ כָּל־יָמָיו: ס 20 וְאִם־אֱמֶת הָיָה הַדָּבָר הַזֶּה
לֹא־נִמְצְאוּ בְתוּלִים (לַנַּעַר) [לַנַּעֲרָה]: 21 וְהוֹצִיאוּ אֶת־(הַנַּעַר) [הַנַּעֲרָה]
אֶל־פֶּתַח בֵּית־אָבִיהָ וּסְקָלוּהָ אַנְשֵׁי עִירָהּ בָּאֲבָנִים וָמֵתָה כִּי־עָשְׂתָה נְבָלָה
בְיִשְׂרָאֵל לִזְנוֹת בֵּית אָבִיהָ וּבִעַרְתָּ הָרָע מִקִּרְבֶּךָ: ס

The JPS translates Lev. 21:9 as follows:

Lev. 21

9   When the daughter of a priest defiles herself through harlotry, it is her father whom
      she defiles; she shall be put to the fire.

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[336] We present the comparative text of Deut. 22:20-21 in the wider context of Deut. 22:13-21, see p.104 below.

The RSV translates Deut. 22:13-21 as follows:[337]

13   If any man takes a wife, and goes in to her, and then spurns her,
14   and lays charges against her, and brings an evil name upon her, saying, 'I took this woman, and when I came near her, I did not find in her the *bᵉtûlîm*,
15   then the father of the young woman and her mother shall take and bring out the *bᵉtûlîm* to the elders of the city in the gate;
16   and the father of the young woman shall say to the elders, 'I gave my daughter to this man to wife, and he spurns her;
17   and lo, he has made charges against her, saying, 'I did not find in your daughter the *bᵉtûlîm*.' And yet these are my daughter's *bᵉtûlîm*.' And they shall spread the garment before the elders of the city.
18   Then the elders of that city shall take the man and whip him;
19   and they shall fine him a hundred shekels of silver, and give them to the father of the young woman, because he has brought an evil name upon a virgin of Israel; and she shall be his wife; he may not put her away all his days.
20   But if the thing is true, that the *bᵉtûlîm* were not found in the young woman,
21   then they shall bring out the young woman to the door of her father's house, and the men of her city shall stone her to death with stones, because she has wrought folly in Israel by playing the harlot in her father's house; so you shall purge the evil from the midst of you.

1. Introduction

This chapter juxtaposes two cases: Lev. 21:9 and Deut. 22:20-21. The comparison assists our understanding of 'seriousness of offence' in Biblical law, for the following reasons. Firstly, because there are important similarities between the two cases. The same formal charge is brought in both cases. This is the accusation of *lizᵊnôt*, usually translated "playing the harlot." We shall argue that the word *lizᵊnôt* in both cases refers to similar behaviour; i.e. that both women are engaged in prostitution (see **3** and **4** below). Both offenders also bring dishonour upon themselves and their fathers (see **2** below). In addition, in both cases, 'seriousness of offence' is related to the women's status. The priest's daughter abuses her cultic status whilst the commoner's daughter abuses her status as a betrothed woman (see **3(e)***(ii)* and **4(d)***(ii)* below). So much for the similarities. The second reason for juxtaposing Lev. 21:9 and Deut. 22:20-21 is the striking difference in the form of the punishment. The priest's daughter is "burned with fire" (Lev. 21:9), whereas the commoner's daughter is stoned to death (Deut. 22:21) (see **2** below). This difference allows us to investigate whether there is a correlation between 'seriousness' and the offender's social status.

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[337] We replace the RSV translation "tokens of virginity" with the transliteration *bᵉtûlîm*.

2. Registers of 'seriousness' in Lev. 21:9 and Deut. 22:20-21

There are several registers of seriousness in both Lev. 21:9 and Deut. 22:20-21. The main performative register in Lev. 21:9 is the execution of the priest's daughter: "She shall be put to the fire." It is not clear whether the fire is simply a way of disposing of the corpse (the offender having been executed by some other means), or whether it is the means of execution itself.[338] We take the view that the girl is burned to death.[339] Even if she is not put to death by fire, the pyre still functions as a *post-mortem* register of 'seriousness.' 'Burning' was viewed extremely seriously in a culture that prized proper burial.[340] Burning the body maximised the humiliation and punishment of the deceased, adding infamy to death. Within the ideational framework of *Leviticus*, it was especially serious to destroy the body of a priest's daughter. [341] In semiotic terms, fire in ancient Israel is an ambivalent motif because it is both destructive[342] and beneficial.[343] This duality is reflected in Lev.

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[338] Most commentators take the former view (e.g. Jenson *op. cit.*, 123, n. 2), invoking Josh. 7 as a parallel. The offence in Josh. 7:15 is described in the same terms as that of Lev. 21:9 (*nᵉbālāh bᵉyiśrāʾēl*). It also states that the offender "shall be burned with fire (*yiśśārēp bā ʾēš*), he and all that he has...." Accordingly, Jenson *ibid.* suggests that Josh. 7:25-26 may be authority for the view that the priest's daughter is stoned *before* she is burnt. However, the double reference to stoning in Josh. 7:25 and the ambiguity over exactly who or what is stoned and burned means that the role of fire in Josh. 7 is not clear-cut. The LXX omits the account of the burning and so does the NEB. The reason for the multiple punishments of burning and stoning is probably because each part of Josh. 7:25 refers to a different object. It is likely that Josh. 7:25 follows a similar order to Jos. 7:24 (*viz.* "all Israel stoned him [Achan] with stones; they burned them [the *herem*] with fire, and stoned them [Achan's family and animals] with stones"). This would mean that only the *herem* was actually burnt. This might appear to contradict Josh. 7:15. However, the penalty for stealing *herem* is variable (cf. Josh. 6:18 and Josh, 8:2, 27). To sum up, Jos. 7 provides only ambiguous support for the idea that the priest's daughter is stoned to death.

[339] Cohn 1970, 59. Fire was a known form of execution in ancient Israel (e.g. Gen. 38:24 and Judg. 12:1).

[340] Every Israelite expected to be interred, in the ordinary course of events, in one of three places: their capital city (e.g. Isa. 22:16); the family tomb; or the common burial field (2 Kgs. 23:6). Not to receive a proper burial was a recognised curse (1 Kgs. 13:22; see also Deut. 28:26; 1 Kgs. 14:11 and Jer. 16:4). The execution in Lev. 21:9 means that the young woman cannot be given a proper burial, marking her as an accursed object. 'Burning the body' meant charring the bones of the young woman. This excited particular horror in ancient Israel (e.g. 2 Kgs. 23:15-16; Amos 2:1 and 6:10. Cf. the thematic contrast in 1 Kings 13:1-31 between the dishonourable 'burning of bones' (1 Kgs. 13:2) and the honourable preservation of a dead body through burial (1 Kgs. 13:31). In contrast to the former, the latter involves no violence to the body after death (cf. the detail in 1 Kgs. 13:28 that the lion does not eat the dead body of the prophet)). The seriousness of burning bones may lie in the idea that an individual's identity was never wholly lost as long as the bones (or significant portions thereof) were safely conserved; Frost 1972, 438, hence the practice of ossilegium (the secondary burial of bones). 1 Sam. 31:11-13 is the exception that proves the rule. Indeed, 1 Sam. 31:13 is careful to record that the bones were preserved and given a proper burial. Others (e.g. Brichto 1973, 4-5, 35-38. Niehaus 1992, 358) suggest that a felicitous condition in the afterlife depended on the proper preservation of remains.

[341] 'Burning the body' is particularly serious within the ideological structure of *Leviticus*, where holiness is 'wholeness' and is symbolised by physical perfection. The polarity between the 'whole' and the 'defective' places what is imperfect, marred and corrupt at the opposite end of the holiness spectrum. Only priests free from bodily defects were allowed to serve YHWH at the altar (Lev. 21:17-21) because "only the perfect witnessed to the holy ..." (Hartley 1992, lx). Neither the priests (Lev. 21:5-6) nor the ordinary Israelites (Lev. 19:27-28) are allowed to deface their bodies and Wenham 1979, 291 notes that bodily defects are an especially serious matter for priests. Reducing the body of the priest's daughter to ashes symbolically relocates her at the opposite end of the holiness spectrum. It vividly expresses the fact that she has deprived herself of 'holiness' by 'profaning herself' (Lev. 21:9).

[342] E.g. Deut. 32:22; Prov. 30:16.

21:9. Fire expresses divine wrath[344] and total destruction,[345] but it is also a means of purifying the community.[346]

In Deut. 22:20-21 the performative registers are as follows. Firstly, the young woman is brought out to the door of her father's house (Deut. 22:21) to be executed. The choice of this location for an execution is unique in the Hebrew Bible. Secondly, the young woman is stoned to death by the men of her city (Deut. 22:21). In contrast to Lev. 21:9, the death penalty in Deut. 22:21 takes the more common form of stoning.[347] Compared to the burning of the priest's daughter, this is a less serious form of execution. This comparison demonstrates that some forms of capital punishment are more serious than others.

In addition to describing these performative registers, Lev. 21:9 and Deut. 22:20-21 also contain the following 'descriptive' registers of seriousness. In Lev. 21:9, descriptive registers include the ritual consequences of the offence. Firstly, the daughter "profanes

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[343] Fire purifies. The process of refining metals in a furnace is a symbol of cleansing judgement (e.g. Isa. 1:22, 25; Jer. 6:27-30; Ezek. 22:17-22; Mal. 3:2; Zec. 13:9; Ps. 66:10; Prov. 17:3). Cf. also the uses of fire as a means of plague control in the aftermath of Baal Peor (Num. 31:21-23).

[344] E.g. Isa. 66:15-16. Cf. Rev. 18:7-9 for an association between 'playing the prostitute,' 'divine punishment' and 'burning.' Fire typifies 'YHWH in action' (e.g. Ps. 50:3; Isa. 31:9). The fire that comes from before YHWH to consume the sacrifices (Lev. 9:24) is possibly the reason why YHWH as a judge of sin is described as a 'consuming fire' (Deut. 4:24; 1 Kgs. 19:12; Isa. 9:26; Zech. 2:9). Certain offenders are devoured by YHWH's fire (e.g. Lev. 10:2; Num. 11:1; Num. 16:35; 2 Kgs. 1:10,12 & 14) whilst Amos threatens a whole series of nations with divine destruction by fire (Amos 1:4, 7, 10, 12, 14; 2:2,5).

[345] The absolute destruction by fire of Sodom and Gomorrah along with Admah and Zeboiim (Gen. 19:23-29; Deut. 29:23) is a seminal motif that casts a long shadow over subsequent incinerations (e.g. Hosea 11:8; Zeph. 2:9; Fields 1997, 158ff). Sodom or Gomorrah are never rebuilt, becoming symbols of enduring punishment (Isa. 13:19-22). They illustrate the fate of Moab and Ammon in Zeph. 2:9 precisely because historical observation proved that their punishment was perpetual. We may infer that something that is totally destroyed by fire is destroyed for ever. This underlines the seriousness of the form of the punishment in Lev. 21:9. Cf. Mark 9:49, a problematic verse that is usually translated "everyone will be salted with fire." Fields 1985 argues that it should be translated "everyone [who is sent to hell] will be completely destroyed [by fire]" where the phrase 'to be salted' means 'to be destroyed.' If correct, his interpretation can be seen as part of a long-standing Jewish tradition in which fire is used in punitive contexts to signify complete destruction.

[346] See n.343 above. The idea that fire has overtones of purification in Lev. 21:9 strengthens the link between Lev. 21:9 and Deut. 22:20-21; where the purpose of the stoning is to "purge the evil from the midst of you" (Deut. 22:21). The priest's daughter is burned to death because of the greater degree of sanctity intrinsic in the priesthood. If prostitution by a priest's daughter's is more serious than that of a commoner, it follows that a more intensive purgation is required. This is satisfied by the use of fire.

[347] Stoning is a less serious form of capital punishment than 'burning.' The body is marred, though not to the same degree as in the case of the priest's daughter in Lev. 21:9, and subsequent burial is a possibility (although Pedersen 1959, 428 and Köhler 1956, 112 claim that stoning prevents the victim from being interred in the family tomb). There is only one other case where *nᵉbālāh* is visited with capital punishment: Josh. 7:15 (see n.338 above) but there are several examples in which *nᵉbālāh* results in death. These include: Shechem's and Amnon's forcible intercourse (Gen. 34:7; Gen. 34:25, 26 and 2 Sam. 13:12, 28-29 respectively), as well as the behaviour of the men of Gibeah (Jdg. 19:23-24; 20:6), resulting in the massacre of the tribe of Benjamin (Jdg. 20:46). Cf. also the punishment meted out upon Shemaiah and his descendants (Jer. 29:23).

herself (*tēḥēl*) by playing the harlot" (Lev. 21:9).[348] Secondly, she profanes (*mᵉḥalleleṯ*) her

father (Lev. 21:9).[349] In Deut. 22:20-21, descriptive registers include the statement that the

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[348] The reflexive *niphal* of the verb *ḥālal* ('to profane') means 'to pollute or to defile oneself.' This can occur either ritually or sexually. A priest can "profane himself" (*lᵉhēḥallô*) by contact with dead bodies (Lev. 21:4) whilst the text under discussion shows that the priest's daughter "profanes herself" (*tēḥēl*) by 'acting the prostitute' (Lev. 21:9). We hypothesise that the cultic consequences to the girl who "profanes herself" through prostitution are somewhat similar to the consequences suffered by the priest who "profane[s] himself" through contact with a dead body. Both examples of 'profaning oneself' in Lev. 21 relate to the priestly family, and suggest that 'profaning oneself' has something to do with the loss of cultic status. This is strengthened when we consider that the word *ḥōl* ('profane') is one of four common Priestly words that reflect the priest's 'graded' conception of the world. The others are *qōdeš* ('holy'), *tāhôr*, ('clean') and *tāmē'* ('unclean'); Jenson *op. cit.*, 40. The relationship between these key terms is indicated by Lev. 10:10: "... you [the priests] must distinguish between the holy (*qōdeš*) and the profane (*ḥōl*), and between the unclean (*tāmē'*) and the clean (*tāhôr*)." From this and other texts, it is clear that 'holy' and 'profane'; 'clean' and 'unclean' are opposed pairs; Jenson *op. cit.* 43. A strict parallelism between these terms might suggest that the pairs are equivalent in some respect (*viz.* 'holy = clean' and 'profane = unclean'). However, Jenson *op. cit.* 44 argues that this is inconsistent with the strong contrast in the Priestly texts between 'holiness' and 'impurity.' It is preferable therefore to assume a chiastic structure to the parallelism in Lev. 10:10; *viz.* the words 'holy and clean' and 'profane and unclean' are aligned but not identified terms. Or to put it another way; holiness is akin to cleanness but strongly opposed to profanity and uncleanness. The result is a 'parallelogram' in which the vertical relationships between the pairs ('holy → profane' and 'unclean → clean') are more strictly defined than the horizontal relationships ('holy → clean' and 'profane → unclean'). The 'holy' may be defined as that which belongs to the divine sphere. "Holiness is a relational term; it means 'belonging to God, consecrated to God'"; Joosten 1996, 123-4. It applies to places, people, objects and times. A special act of YHWH is required to make an earthly thing or a person 'holy.' Lev. 21:9 is preceded by the words: "... I the LORD, who sanctify you, am holy" (Lev. 21:8). Jenson suggests that the 'holy-profane' pair represents (positively and negatively) the divine sphere. Consequently, 'holiness' and 'profanity' are respectively characterised by the subject's presence in or absence from the divine sphere; Jenson *op. cit.* 55. The word *ḥōl* is the opposite of *qōdeš*, Dommershausen 1980, 416. Activity described by the root *ḥālal* deprives someone or something of holiness; Collins 1977, 174. The priest's daughter shares the objective holiness of her father (cf. Lev. 22:13 which states that a widowed daughter who has no offspring may partake of the cultic offerings. Thus when she 'plays the harlot' she no longer shares in this holy status and so 'profanes herself.' This is appropriate because it effectively means that she loses the cultic status that she has abused.

[349] The *piel* form of *ḥālal* means 'to defile or pollute something or someone else.' Examples of things that are ceremonially profaned in the Hebrew Bible (all in the *piel*) include: the Sabbath (Ex. 31:14); a holy thing of the LORD (Lev. 19:8); the Sanctuary (Lev. 21:12); and the "holy things" (Lev. 22:15). In all of these cases the referent has some degree of holiness. The Name of YHWH is profaned when other nations cease to respect it as a result of Israel's misconduct (Lev. 18:21; 22:32; Ezek. 36:20, 21). There are also a number of examples (again in the *piel*) of individuals being 'profaned' by another's actions (e.g. the personal splendour of the Prince of Tyre that will be 'profaned' by the troops of Nebuchadnezzar; Ezek. 28:7). Sometimes an individual can be profaned as a result of another person's sexual wrongdoing. The prohibitions of Lev. 19:29 and Lev. 21:15, respectively, indicate that an Israelite father is capable of 'profaning' his daughter whilst the high priest is likewise capable of 'profaning' his offspring. Elsewhere *ḥālal* is only used in Gen. 49:4 to describe how Reuben 'profaned' his father's "bed," which is thought to refer to Reuben's sleeping with his father's concubine (Gen. 35:22; Dommershausen 1980, 416). This shows that *ḥālal* can refer to sexual defilement independently of cultic associations. Either way, the underlying idea is that when an individual is 'profaned', his reputation is dishonoured. This is confirmed by the fact that the secondary meaning of *ḥālal* in the *piel* form is to dishonour or to violate the subject's honour. Examples of subjects include: the crown of the Davidic kingdom (Ps. 89:39); the kingdom of Judah (Lam. 2:2); and Tyre (Is. 23:9). In like manner, the priest's daughter who becomes involved in cultic prostitution dishonours her father. She attacks the moral integrity and honour of the priestly family by making a laughing-stock of its leader and head (cf. *M. Sanh.* 52a: "If he [the father] was regarded as holy, he is now regarded as profane; if he was treated with respect, he is now treated with contempt; and men say 'Cursed is he who begot her, cursed be he who brought her up, cursed be he from whose loins she sprung'"). It is interesting that Lev. 21:9 immediately concludes a section (Lev. 21:1-8) that is addressed to the priests (Lev. 21:1), in which they are exhorted to be holy. Notably, the priest is not to defile himself lest he 'profanes the name of his God' (Lev. 21:6) and his daughter is not to profane herself lest she 'profanes her father' (Lev. 21:9). This implies that the priest's relationship to his daughter (at least in terms of the capacity to profane) is comparable to the relationship between YHWH and the priest. It is also significant that whilst Lev. 19:29 envisages the situation where the father 'profanes' (*tᵉḥallēl*) his daughter through harlotry (see further 3(c) below), Lev. 21:9 envisages the case where the (priest's) daughter profanes (*tēḥēl*) her father. Priests are not to profane their daughters and the daughters of priests are not to profane their fathers. But the parents' responsibilities towards their children (in Lev. 19:29) are stated before childrens' obligations

daughter has "wrought folly in Israel" (*n°bālāh b°yiśrā'ēl*) by playing the harlot (Deut. 22:21).[350] A final register in Deut. 22:20-21 is the added description of the purpose of the execution: "so shall you purge the evil from the midst of you" (Deut. 22:21).[351]

3. Offence description (Lev. 21:9)

The priest's daughter is burnt for "playing the harlot" (*liznôt*, Lev. 21:9). The word *liznôt* is the infinitive construct of the verb *zānāh*. The verb *zānāh* primarily designates sexual intercourse outside of a formal union.[352] It is the usual verb for the activity of a harlot or prostitute,[353] who is even called a *zônāh*.[354] For this reason, the verb *zānāh* is usually translated 'to fornicate, be a prostitute.'[355] The behaviour envisaged in Lev. 21:9 is prototypical of prostitution.[356] The prostitute can be distinguished from the merely

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towards their parents (Lev. 21:9). Cf. Deut. 21:15-17, where the responsibilities of the father in relation to his son precedes that of the son's responsibilities towards his parents (Deut. 21:18-21). It seems as though obligations between fathers and children are characterised by mutuality.

[350] The legal idiom "he did *n°bālāh b°yiśrā'ēl*" appears in six texts: Gen. 34:7; Deut. 22:21; Josh. 7:15; Judg. 20:6 and 10; 2 Sam. 13:12 and Jer. 29:23. The phrase "and you shall purge the evil from your midst" appears in two cases of *n°bālāh* (Deut. 22:21and Judg. 20:13). For Driver 1895, 256 *n°bālāh* signifies moral and religious insensibility, whilst Phillips 1975, 238 sees it as "an act of crass disorder or unruliness" that breaks up relationships at every level, including relationships with YHWH, between tribes, relationships within the family as well those in marriage and business. It signifies the "extreme gravity" (Phillips *op. cit.*, 241) of an offence. The stem נבל is associated with ruin and deterioration; Collins 1977; 162, 166. Thus *n°bālāh* can mean an act that is destructive or degrading. In Deut. 22:21, *n°bālāh* emphasises the degrading, destructive aspect of the woman's prostitution. It also has overtones of disgrace, dishonour and contempt and signifies moral insensitivity (cf. 2 Sam 13:12, 13; Pr. 17:21). The stem נבל also occurs with the stem זנה in several other texts (Hos. 2:5-12 and Nah. 3:4-7). Several contextual elements in these passages also emphasise the degrading nature of prostitution (Hos. 2:5, 10; Nah. 3:4, 6). This is consistent with the use of *n°bālāh* in Deut. 22:21. The reference to the woman 'degrading herself' through harlotry in Deut. 22:21 is comparable to the statement in Lev. 21:9 that the priest's daughter 'profanes herself.'

[351] Key elements of this formula occur elsewhere in *Deuteronomy*. See Deut. 17:12; 21:21; 22:22; 22:24; and 24:7. The 'evil' in Deut. 22:21 has a specific referent. It refers back to Deut. 22:14, where the husband brings an "evil name" upon his wife. If the charge is true (Deut. 22:20) it follows that evil is in their midst. It is this evil that must be "purged."

[352] Erlandsson *op. cit.*, 100.

[353] E.g. Gen. 38:24; Hos. 2:5 [Heb. 2:7].

[354] The word *zônāh* appears to be a general term for any professional prostitute. Whether the prostitution is 'cultic' (e.g. Gen. 38:15, 21, 22) or 'non-cultic' (e.g. Josh. 2:1, 6:17, 22 & 25) depends on the context. For a definition of 'cultic prostitution' see n.360 below.

[355] Erlandsson 1980, 99.

[356] This is confirmed by the verb aspect of *hālal* ('to profane') in Lev. 21:9. The imperfective (*tēhēl*) suggests that the daughter's offence is a continuing process. 'Verb aspect' is one element of sense-construction that examines the particular way in which a verb presupposes and involves the use of time (Vendler 1957). We can thus distinguish the sentence: "I walked to the University" from the sentence: "I was walking to the University." The former refers to a completed, single event whereas the latter draws attention to the process, or the continuing process, of walking; Jackson 1995, 205f. In Lev. 21:9 the question is one of duration; namely whether the verb *hālal* operates merely for an instant or over a period of time. The imperfect use of *hālal* in Lev. 21:9 implies that the 'harlotry' takes place over a certain period. This is reflected in the translation: "*When* the daughter of a priest profanes herself through prostitution..." (NRS, my italics), suggesting regular activity. Further support for the view that Lev. 21:9 concerns cultic prostitution is found in (a) - (c), below.

promiscuous woman by her mercenary motive and by her more numerous partners (e.g. Hos. 2:5). The most common usage of *zānāh* has a figurative meaning, referring to worship outside the covenant. Israel 'plays the harlot' against YHWH when she turns from YHWH and worships idols.[357] This extension of *zānāh* from 'sex outside of a formal union' to 'apostasy' is logical because Israel is presented as YHWH's 'wife.'[358] For Israel to turn away from her covenant relationship with YHWH to idols is as illegitimate in the context of that relationship as it is for the woman who forsakes her husband to have intercourse with other men. Occasionally, *zānāh* can refer to *both* 'sex outside a covenant relationship' *and* to 'worship outside the covenant.'[359] This is because acts of apostasy frequently took the form of cultic prostitution.[360] The prevalence of cultic prostitution in the ANE is a matter of dispute.[361] The practice was, however, inimical to the cult of YHWH (e.g. Lev. 19:29; Deut. 23:18). The ritual context in which cultic prostitution occurred ensured that it was, by definition, idolatrous. This means that cultic prostitution is more serious than non-cultic prostitution. This is because cultic prostitution is an act of 'double harlotry.' Cultic prostitution meant participation in an idolatrous rite (and therefore faithlessness toward YHWH; cf. Hos. 4:15). This act of 'harlotry' is compounded by an act of physical 'harlotry' (because sexual intercourse was frequently part of the idolatrous cult; cf. Hos. 4:13). Cultic prostitution is thus 'double harlotry' in contrast to non-cultic prostitution which is simply a case of 'regular harlotry.' Non-cultic prostitution involves 'sex outside a covenant relationship' but not an additional act of apostasy.

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[357] Lev. 17:7, 20:5f; Num. 14:33; 15:39; 25:1; Deut. 31:16; Jdg. 2:17; 8:27, 33; 1 Ch. 5:25; 2 Ch. 21:11, 13; Ps. 73:27; 106:39; Erlandsson *op. cit.*, 99.

[358] E.g. Ho. 2:19-20. For this reason Israel's conduct can be branded as fornication (Jer. 3:2-3; Ezek. 23:43) and as adultery (Jer. 3:8; Ezek. 23:45).

[359] E.g. Num. 25:1; Hos. 4:13-15; 9:1; Jer. 5:7.

[360] We define cultic prostitution as sexual relations with partners who are 'dedicated' to the gods, usually for hire. It may be distinguished from ritual intercourse which refers to specific relations that are carried out in prescribed circumstances between prescribed personnel (for example, between a priest and a priestess on certain occasions to represent the union of the god and his consort); Fisher 1976, 229-30.

[361] Bird 1989b, 76 argues that whilst prostitutes may have functioned at times in the cultic sphere and that whilst hierodules may have had functions that involved sexual activity, the actual scope of their activities must be carefully determined according to the circumstances of each case. Her plea for caution is consistent with recent reassessments that have tended to cast doubt on the extent of cultic prostitution in the ANE (see e.g. Fisher 1976). However, some scholars, e.g. Westenholz 1989 go too far in claiming that: "there was no such institution as sacred prostitution in Mesopotamia..." (260). We follow Yamauchi 1973 in assuming that cultic prostitution was a known practice at least in Mesopotamia (214-6), whilst recognising that the details of this institution remain a matter of conjecture.

The word *liz-nôt* occurs only five times in the Hebrew Bible (Lev. 20:5; 20:6; 21:9; Num. 25:1 and Deut. 22:21). In three of these cases (Lev. 20:5; 20:6 and Num. 25:1) it is used in a figurative sense to refer to apostasy. Israel 'plays the harlot' by breaking covenant with YHWH. However, as we have already noted, this may also refer to actual prostitution as well as to syncretism. This is certainly the case in Num. 25:1 where *liz-nôt* clearly refers to sexual rites of pagan worship.[362] It is likely that the references to *liz-nôt* in Lev. 20:5[363] and Lev. 20:6[364] also included acts of cultic prostitution. It is possible, therefore, that *liz-nôt* in Lev. 20:5, 20:6 and Num. 25:1 each refers to 'double harlotry.' The question is whether Lev. 21:9 is also concerned with cultic prostitution and therefore with 'double harlotry.' This is important because it affects the parameters of 'seriousness of offence.'

The parameters of seriousness vary according to whether Lev. 21:9 and Deut. 22:21 are characterised as examples of either 'cultic' or 'non-cultic' prostitution. These parameters are the 'minimal' and the 'maximal' interpretations of Lev. 21:9 and Deut. 22:21, respectively. A 'minimal' interpretation holds that both Lev. 21:9 and Deut. 22:21 deal with prostitution in a non-cultic context. A 'maximal' interpretation holds that both cases are concerned with cultic prostitution. Midway between these interpretations is the view that one case refers to cultic prostitution and the other case refers to non-cultic prostitution. The parameters of seriousness vary according to whether each case is characterised as 'cultic' or 'non-cultic.' The 'maximal' interpretation increases the overall seriousness of the offence because it treats both cases as examples of 'double harlotry'; *viz.* sexual wrongdoing in the context of an idolatrous act of worship. The 'minimal'

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[362] Num. 25:2-3 follows the common liturgical order of the fertility cult; *viz.* the people eat, drink and bow down to foreign gods (25:2), and then engage in sexual practices (25:3: where the verb 'to yoke together' (*sāmad*) has sexual connotations); Collins 1977, 115. Cf. the similar pattern of Ex. 32:6; where the expression 'rose up to play' almost certainly refers to sexual cultic rites. Cf. also Num. 25:6-8.

[363] Lev. 20:5 refers to the cult of Molech. There are several reasons for thinking that Molech-worship involved prostitution. Firstly, a parallel text to Lev. 20:5 (Lev. 18:21) is found in the context of a chapter that is entirely devoted to illicit sexual intercourse (Lev. 18:1-30). Secondly, Molech-worship is associated with child sacrifice in several texts (2 Kgs. 23:10; Jer. 32:35, cf. Jer. 7:31). This is relevant because of the link between child sacrifice and the fertility cult (e.g. 2 Kings 16:3-4) where the expression "under every green tree" has unmistakable connections with the worship of Asherah and the fertility cult. *Asherim* and green trees are mentioned together in Deut. 12:2-3; 1 Kgs. 14:23; 2 Kgs. 17:9-10 and Jer. 17:2; Collins 1977, 106. Child sacrifice is also associated with the fertility cult in Isa. 57:5; which refers to: "...you who burn with lust among the oaks, under every green tree; who slay your children in the valleys, under the clefts of the rocks?" Jer. 19:4-6 also refers to the sacrifice of children at "the high places of Ba'al." Snaith 1967, 125 draws explicit links between Molech worship and the fertility cult, whilst Phillips 1970, 128-9 suggests that the children sacrificed were the offspring of cultic prostitution.

[364] The reference to "wizards" in Lev. 20:6 supports the view that *liz-nôt* here involves sexual rites. This is because the stem זנה is frequently associated with sorcery in the Bible (e.g. 2 Kgs. 9:22 and Nah. 3:4). Sorcery involved sexual rites (cf. Isa. 57:3 which occurs in a larger context replete with cultic imagery, see Isa. 57:5a, 5b, 6, 7 and 8-9). The fact that the charge of participation in fertility cult practices is addressed to the "sons of the sorceress" (Isa. 57:3) implies that sorcery played a role in the fertility cult; Collins 1977, 99-100.

interpretation decreases the overall seriousness of the offence because it limits the harlotry to sexual wantonness only. In this section, we argue that Lev. 21:9 envisages the offence of a priest's daughter who is engaged in cultic prostitution. By contrast, we shall argue in 4 below that the use of *liz-nôt* in Deut. 22:20-21 could refer to either cultic or to secular prostitution. Therefore in terms of the overall seriousness represented by these two cases, our position is somewhere between the 'midway point' and the 'maximal interpretation.'

We begin by examining Lev. 21:9. There are several reasons for arguing that Lev. 21:9 deals with a case of cultic prostitution.

(a) Importance of the priest's daughter in cultic rites

The status of the priest's daughter in the ANE made her the ideal partner for acts of cultic prostitution.[365] This is because cultic prostitution was based on the belief that intercourse with a deity's representatives would, by a kind of 'sympathetic magic,' cure sterility and increase the fecundity of people, livestock and crops.[366] This logic ensured that the participation of a priest's daughter in cultic sexual rites would always be preferable to that of a commoner. This cultural background meant that priests and their daughters in ancient Israel had to guard against a presumption that they should be involved in cultic prostitution. The sources attest that this was an ever-present danger. Israel constantly seceded to Canaanite fertility religion from the time of the settlement until the Exile.[367] There are even indications that ritual prostitution occurred, contrary to the Law, within the cult of YHWH itself.[368] The special role of the priest's daughter in the ANE creates a strong presumption that the typical case of Lev. 21:9 is directed against her involvement in cultic prostitution.

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[365] In some ANE cultures the status of a priest's daughter was virtually synonymous with the position of a cult prostitute; Brooks 1941, 243.

[366] *Ibid.*

[367] E.g. 1 Kgs. 14:24; 2 Kgs. 23:7 and Hos. 4:14.

[368] The women who served at the entrance to the tent of meeting and with whom the sons of Eli had relations (1 Sam 2:22) are thought to have been religious prostitutes (although cf. the 'ministering' or 'serving' women at the door of the Tent of Meeting in Ex. 38:8, who may been maintained at the shrine for manual labour only. It is possible that the transgression of Eli's sons was to have used these women as sacred prostitutes; Brooks *op. cit.*, 241). By the time of Josiah's reformation cultic prostitution had invaded the Jerusalem Temple (2 Kgs. 23:7).

(b) Literary context of Lev. 21:9

The literary context of Lev. 21:9 confirms the idea that the paradigm case of Lev. 21:9 refers to cultic prostitution. Lev. 21:9 appears in the context of a section (Lev. 21:1-9) that is concerned with maintaining priestly holiness in the face of alien cults, specifically the cult of the dead (Lev. 21:1, 5).[369] This is significant for our understanding of *zānāh* in Lev. 21:9 because of the link between the cult of the dead and certain fertility rites.[370]

(c) The typical case envisaged by Lev. 19:29

Lev. 19:29 states:

> "Do not profane your daughter by making her a harlot (*l'haz̆nôṯāh*) lest the land fall into harlotry and the land become full of wickedness"

where the *hiphil* of *zānāh* means 'to force into prostitution.'[371] Lev. 19:29 prohibits fathers from giving their daughters up to prostitution. It was common for fathers to make harlots of their daughters in the ANE, and especially to force them into cultic prostitution.[372] Lev. 19:29 does not refer explicitly to either common or to cultic prostitution. However, the immediate context (Lev. 19:26-31) suggests that cultic prostitution is primarily in view.[373] We conclude that the paradigm case of 'fathers giving their daughters up for prostitution' most likely refers to cultic prostitution. Notably, the ban in Lev. 19:29 is addressed to all Israelite fathers and not just to the priests (Lev. 19:2). This suggests that cultic prostitution was the main form of prostitution into which Israelite daughters were typically forced by their fathers. If this is correct, it may explain why Lev. 21:9 highlights

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[369] Lev. 21:1-9 begins with the command that priests shall not defile themselves "for the dead" (Lev. 21:1). Lev. 21:5 forbids cultic practices associated with the cult of the dead, such as shaving a bald spot on the head, disfiguring the edge of the beard and lacerating the skin.

[370] This is supported by the biblical memory of Baal Peor as preserved in Ps. 106:28: "Then they [the wilderness generation] attached themselves to the Baal of Peor, and ate sacrifices offered to the dead...." We know from elsewhere that the Baal Peor incident involved wrongful sexual intercourse on the part of the Israelites (cf. Num. 25:6-8). The arrangement of Lev. 19:26-31 also suggests a connection between certain necrological rites and prostitution. Notably, the ban on fathers forcing their daughters into prostitution (Lev. 19:29; see (c), below) occurs in a cultic context (Lev. 19:26-31). The prohibitions in Lev. 19:26-31 include: "round[ing] off the side-growth on your head, or destroy[ing] the side-growth of your beard" (Lev. 19:27); making "gashes in your flesh for the dead" (Lev. 19:28); and turning to "ghosts" and "familiar spirits" (Lev. 19:31).

[371] Other translations include: "to cause her to be a whore" (KJV) or "by making her a prostitute" (NRS).

[372] It was customary in Mesopotamia for fathers of whatever social class to dedicate their daughters to cultic service; Collins 1977, 34. All forms of cultic service (bar the *shugetu* or lay priestess) are said to be dedicated to the goddess by the prostitute's father. These include the *entu* priestess, the *nadītu* or 'regular' priestess, the *qadishtu* or dedicated cult prostitute and the *kulmashitu*; Collins *op. cit.*, 34-37.

[373] Lev. 19:26-31 refers to augury and witchcraft (v. 26), the cult of the dead (vv. 27-28), the need for proper cultic worship (v. 30) and to mediums and wizards (v. 31). Several of these cultic practices (the cult of the dead, mediums and wizards) are elsewhere associated with the stem *zānāh* (see n. 370 and n.364 above, respectively).

the impact of the daughter's sexual offending upon her *father.* Lev. 21:9 states that the priest's daughter 'profanes' her father (see n.349 above). This unusual consequence may reflect the fact that the father was responsible for forcing his daughter into the act of prostitution in the first place.

(d) Summary

To sum up, the verb *zānāh* in Lev. 21:9 typifies prostitution, not merely promiscuity. Moreover, it appears that Lev. 21:9 envisages cultic rather than non-cultic prostitution. This is suggested by the cultural expectations of priest's daughters in the ANE, the literary context of Lev. 21:9 and the typical case of 'daughters given up for prostitution' envisaged in Lev. 19:29. We conclude that the word *liznôt* in Lev. 21:9 deals with a case of 'double harlotry.' This is consistent with the meaning of *liznôt* in Num. 25:1 and possibly also in Lev. 20:5 and Lev. 20:6.[374]

(e) Seriousness of offence

(i) Imitating pagan practices

Cultic prostitution was a serious offence for any Israelite. Deut. 23:17 excluded not only fertility rites from the worship of YHWH but also the involvement of Israelites as cult prostitutes at Canaanite shrines.[375] Elsewhere, Ho. 4:12, 5:4 describes the *rûaḥ zᵉnûnîm* (or 'spirit of prostitution') as antithetical to the worship of YHWH. The imitation of pagan practices, with their blend of popular religion and sexual practices, was a grave threat to Israel's cultic distinctiveness.[376] Since priestly families bore primary responsibility for maintaining Israel's cultic identity (e.g. Lev. 10:10-11), it was a particularly serious matter for a priest's daughter to be involved.

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[374] The meaning of *liznôt* in Deut. 22:20-21 is considered in 4 below.

[375] Collins *op. cit.*, 89.

[376] Prostitution was an integral part of the fertility religion of the ANE. The polytheistic cults of the ANE were ritually served by sexual license. Mesopotamian temples supported a large number of priests and priestesses from early Sumerian times, many of whom were devoted to the functions of the Ishtar cult. The central figure of Mesopotamia, Inanna-Ishtar, was given the role of prostitute and protector of prostitutes, being described in one text (*Inanna's Descent to the Nether World*, ANET 56) as the "Hierodule of Heaven." Sacred prostitution in Canaan seems to have been the almost invariable concomitant of the cult of the Phoenician and Syrian goddess; Collins *op. cit.*, 38-41. Sacred prostitution was also prevalent in Egypt as a foreign phenomenon in the New Kingdom, where it focused on Anat and Baal. The worship of Anat was especially prevalent in the eastern Delta region where Israel sojourned in Egypt whilst Baalzephon, Israel's port of exit (Ex. 14:2), was probably the location of a Baal sanctuary; Collins *op. cit.*, 41-43.

(ii) Status

Allied to *(i)* above, a key element is the daughter's abuse of her cultic status. As we noted in **2** above, the consequences of her abuse are that she "profanes" both herself and her father (Lev. 21:9). In contrast to the commoner's offence in Deut. 22:20-21 (see **4(d)***(ii)* below), which relies on the fact that the offence was committed whilst she was betrothed, no reference is made in Lev. 21:9 to the marital status of the priest's daughter. She is guilty whether she is betrothed or not. This confirms that in Lev. 21:9 her status as a member of the priestly family is the key factor in determining 'seriousness of offence.'[377]

(iii) Location

The location of the priestly families during the wilderness wanderings may also be relevant to 'seriousness of offence' in Lev. 21:9. Num. 3:38 states that during this period the priestly family protected the Tabernacle on its eastern side whilst the Levites threw a protective cordon around the other three sides (Num. 3:23, 29 and 33). The priestly family was located at the eastern side because this was holiest flank of the Tabernacle.[378] This suggests that the daughter's offence could have been committed somewhere within the priestly encampment and thus not far from the entrance to the Tabernacle itself.[379] Even if her offence is committed in some other location, her return to the priestly encampment inevitably brings the 'profane' in close proximity to the 'holy.' This is a serious matter because moral impurity, as well as ritual impurity, defiles the Sanctuary (Lev. 20:3, Ezek. 5:11).[380]

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[377] Cf. CH 110 which prescribes burning for "a priestess [or] a high-priestess... not dwelling in a cloister" who "opens an ale-house or enters an ale-house for liquor." This refers to the *entu*, the "bride-sister" of the god, who served as consort of the local god and his priest-king (CH 110; 127; 178 and 179). In view of the close association between 'prostitutes' and 'taverns' in the ANE, CH 110 is taken to indicate that common prostitution is forbidden to the *entu*. Since her distinctive role is her marriage to the god, the law should probably be understood in terms of guarding the sanctity of the office; Collins *op. cit.*, 35.

[378] See *Chapter Five*, below.

[379] This is not wholly surprising. There are several indications from a later period that cultic prostitution took place either in or in close proximity to YHWH's temple. Cf. 1 Samuel 2:22 where the reference to "the women who served at the entrance to the tent of meeting" may refer either to the class of women with whom the sons of Eli had relations or to where the offence took place (i.e. in the priestly tents at the entrance to the tent of meeting). In addition, 2 Kings 23:7 refers to the "houses of the male cult prostitutes" that were "in the house of the LORD, where the women [the wives of the ritual prostitutes?; Craigie 1993, 114] wove hangings [tents?] for the Asherah" when Josiah ascended the throne. Cf. CH 110, *ANET* 170 which describes religious prostitutes living in a communal manner in a reserved area within the temple precincts.

[380] Klawans 1997, 3.

4. Offence description (Deut. 22:20-21)

Deut. 22:13-21 consists of two linked cases: a main case (Deut. 22:13-19) and a subsidiary case (Deut. 22:20-21). The opening of Deut. 22:20 ("But if the thing is true…") refers back to the accusation brought in Deut. 22:14. Thus the death penalty in Deut. 22:21 cannot be taken independently from the context of Deut. 22:13-19. We must therefore reconstruct the paradigm case of Deut. 22:13-21 in order to understand the seriousness of the offence in Deut. 22:20-21. The traditional view of Deut. 22:13-21 is that the girl's offence in Deut. 22:20-21 is not to have been a virgin on her wedding-night.[381] It claims that: "except for the possible rape victim (Deut. 22:25-28), any unmarried girl who forms an illegal sexual union is to be stoned by her father's house."[382] But there are problems with the traditional approach.

(a) Problems with the traditional approach

(i) Literary structure of Deut. 22:13-29

The chief problem is that this approach conflicts with the wider literary structure of Deut. 22:13-29. Deut. 22:20-21 is the second in a series of six highly-structured cases spanning Deut. 22:13-29 (see Table 2 below).[383]

Case no.	Verse(s)	Status of woman	Punishment (if any)
Case 1(a) [Main case]	22:13-19	Married (presumably following betrothal)	Damages (100 shekels) No divorce
Case 1(b) [Subsidiary case]	22:20-21	Married (presumably following betrothal)	♀ executed
Case 2	22:22	Married	♂ and ♀ executed
Case 3 [Relations in town]	22:23-24	Betrothed $b^e \underline{t}ûlāh$ (consents to intercourse)	♂ and ♀ executed ♂ said to have "violated his neighbour's wife"
Case 4 [Relations in open country]	22:25-27	Betrothed $b^e \underline{t}ûlāh$ (raped)	♀ exempted
Case 5	22:28-29	Unbetrothed $b^e \underline{t}ûlāh$ (raped)	Damages (50 shekels) No divorce

Table 2: Summary of cases presented in Deut. 22:13-29

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[381] Most recently expressed by Pressler 1993, 30, contending that Deut. 22:20-21 makes "entering into a first marriage as a non-virgin" a capital offence.

[382] Niditch 1979, 146.

[383] Pressler 1994, 106; Wenham and McConville 1980, 250.

All of the laws in Deut. 22:13-29 contain the variable of marital status.[384] Deut. 22:13-21 concerns the behaviour of a *bᵉtûlāh* during betrothal.[385] The traditional approach assumes that the law is concerned with the betrothed woman's premarital virginity. But the law in Deut. 22:13-29 is in fact more concerned with how she behaved *whilst she was betrothed* rather than with whether she was still a virgin. If the law was concerned with virginity *per se* one might have expected a penalty for the unbetrothed girl who engages in consensual relations. But there is no reference to this in Deut. 22:13-29. The most proximate case is Deut. 22:28-29, which only deals with the matter of an unbetrothed girl who is raped. This is consistent with Ex. 22:15-16 ([Heb]; 22:16-17), which likewise does not prescribe a penalty for fornication. But whereas Ex. 22:15-16 and Deut. 22:28-29 concern a *bᵉtûlāh* who is not *'ōrāśāh* ('betrothed'), Deut. 22:13-21 deals with a *bᵉtûlāh* who is *'ōrāśāh*. In contrast to Ex. 22:15-16 and Deut. 22:28-29, the offence of the *bᵉtûlāh* in Deut. 22:20-21 is to have had intercourse during the period of betrothal. This makes her offence one of 'quasi-adultery.' Marital status, not virginity, is the defining feature of 'seriousness of offence' in Deut. 22:20-21. This is not surprising when compared to other laws in the ANE.[386]

What then of Deut. 22:23-24, which also deals with a *bᵉtûlāh* who has consensual relations during the period of betrothal? The key difference here is that whilst the *bᵉtûlāh* in Deut. 22:23-24 is stoned at the gate of her city, the *bᵉtûlāh* in Deut. 22:20-21 is stoned at the entrance to her father's house.[387] This is a significant difference.[388] Indeed, the location of the execution in Deut. 22:20-21 is unparalleled in Biblical law.[389] The location implies

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[384] Pressler *op. cit.*, 106-7; Wenham and McConville *op. cit.*, 249.

[385] Deut. 22:13 refers to a marriage. We are entitled to presume that this followed a period of betrothal, or inchoate marriage. Betrothal establishes the groom's exclusive claim over the bride, and it is normally enacted by the payment of bridewealth. Upon betrothal, the woman is called his wife *'iššā* (cf. Deut. 22:24 where the third party who has relations with a betrothed *bᵉtûlāh* is said to have "violated his neighbour's wife"). Although the couple are not allowed to cohabit until the marriage proper, sexual intercourse with third parties is a capital offence (Deut. 22:23-27). The standard length of the engagement in ancient Israel cannot be ascertained (1 Sam. 18:17-19, 26-27). Later Jewish tradition held that there was customarily a twelve-month gap between betrothal and marriage.

[386] Marital status is an issue in the cuneiform adultery laws; cf. MAL 1:14 (*ANET* 181) where a key question is whether the male adulterer knew of the woman's marital status.

[387] Deut. 22:21 presumably envisages the 'doorway' of the standard house (Stager 1985, 11), or the main entrance to a multiple family compound (Stager *op. cit.*, 18).

[388] Commentators (e.g. Craigie 1976; Pressler 1994 and Wright 1996) ignore the significance of the location. Phillips 1970, 116 suggests that this location "dramatised the offence as against family institutional law." But there are any number of offences against 'family institutional law' that are not punished at the door of the father's house.

[389] The city gate is the normal place of execution in *Deuteronomy* (e.g. Deut. 17:5; Deut. 22:24 and implied in Deut. 21:18-21).

some blame on the part of the father.[390] A superficial response might be to argue that the execution site in Deut. 22:21 reflects the father's responsibility to ensure his daughter's virginity prior to marriage.[391] However, this cannot be correct because there is no suggestion that the father is blamed in Deut. 22:23-24 (the case of a betrothed girl who is seduced in the city). There is no indication in Deut. 22:23-24 that her father was supposed to guarantee her chastity until she was married. We conclude therefore that Deut. 22:20-21 deals with a different case to that of Deut. 22:23-24. We reconstruct the paradigm case of Deut. 22:20-21 in **(b)** below.

(ii) The meaning of bᵉṯûlāh *and* bᵉṯûlîm *in Deut. 22:13-21*

Further problems with the traditional view concern the meaning of *bᵉṯûlāh* and *bᵉṯûlîm* in Deut. 22:13-21. The traditional approach contends that *bᵉṯûlāh* refers to 'virgin'[392] and that the *bᵉṯûlîm* or 'tokens of virginity' are evidence of a perforated hymen on the wedding-night.[393] However, as Wenham[394] has shown, there are problems with this approach. Firstly, as Wenham notes: "the garment [i.e. the *śim ᵉlāh* in Deut. 22:17; see further **(b)** below] is such that the husband is prepared to gamble very heavily that the girl's parents cannot produce it."[395] But if the *bᵉṯûlîm* are the evidences of a broken hymen on the bed linen, the husband would obviously know if his parents-in-law could produce the evidence. Why risk punishment (Deut. 22:18-19) on a matter of which he can be certain? On this ground alone it is unlikely that the *bᵉṯûlîm* are 'proof of virginity.'[396] Recent criticisms of Wenham's approach do not address this fundamental objection.[397] Secondly, Wenham draws on a number of authorities to demonstrate that none of the cognate terms used in other Semitic languages have the meaning of 'virgin.'[398] Only when the word *bᵉṯûlāh* is qualified by the phrase "whom no man has known" (e.g. Gen. 24:16;

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[390] The location lays the blame quite literally 'at the father's door.' Some stigma remains attached to his 'house' (perhaps material, in the form of a pile of stones cf. 2 Sam. 18:17, Josh. 7:26, 8:29, 10:27, although this custom may have been reserved for notorious or royal criminals. For ordinary criminals, burial was thought sufficient; 1 Kgs. 2:31-34; cf. Deut. 21:22f; De Ward 1972b, 146. At any rate, the family still has an execution site for a doormat. They are scarred and shamed every time they go in or out of that house.

[391] Cf. Collins *op. cit.*, 116; Hallo 1964, 102.

[392] Wadsworth 1980; Locher 1986.

[393] E.g. Tigay 1996, 203.

[394] Wenham 1972, 326-348.

[395] Wenham *op. cit.*, 334.

[396] Wenham *op. cit.*, 334; Schmitt 1992, 853. Contra Wadsworth 1980, 161-171.

[397] E.g. Zipor 1987 n. 10, 260-261; Pressler 1993, 26f.

[398] Wenham *op. cit.*, 326-9.

Num. 31:18; Judges 11:37-39) does it refer primarily to a virgin.[399] Wenham supports this argument by reference to Lev. 21:13-15.[400] Thirdly, there are certain practical difficulties. Not all virgins have intact hymens or bleed the first time they have sexual relations.[401] There is also the potential for fraud.[402] Fourthly, the traditional view implies that *any* intercourse by an unmarried woman is capital. However, we have already seen in **(a)** above that Ex. 22:16-17 (22:15-16 [Heb]) and Deut. 22:28-29 cast doubt on this. Biblical law is not explicitly concerned with virginity *per se*.

Wenham advances instead the alternative argument that *bᵉtûlāh* denotes a 'girl of marriageable age' who may or may not be a virgin.[403] Support for this is found in his interpretation of the allied word *bᵉtûlîm*. Wenham argues that *bᵉtûlîm* is a regular Hebrew form for abstract nouns designating age groups.[404] Hence it can refer to 'tokens of adolescence' rather than 'tokens of virginity.'[405] We may thus infer that *bᵉtûlāh* means, not

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[399] Even here "[such expressions] may have less to do with a claim to technical virginity than with the more public and observable fact that such a woman had not yet experienced the consummation of a marriage" (Hugenberger 1994, 263). Num. 31:7 is a case in point. Here, Israelite soldiers are commanded to kill "every woman who has known a man." As Hugenberger 1994, 263 rhetorically asks: "How were the Israelite soldiers to check for the requisite virginity? By impromptu medical examinations?" Rather, the phrase stands by synecdoche for marital status and not for technical virginity.

[400] Wenham 1972, 336-8. Lev. 21:13-15 reads as follows:

"(13) [The high priest] may marry only a woman who is a *bᵉtûlāh*. (14) A widow, or a divorced woman, or one who is *hālālāh* - such he may not marry. Only a *bᵉtûlāh* of his own kin may he take to wife - (15) that he may not profane his offspring among his kin, for I the LORD have sanctified him" (Lev. 21:13-15).
All the prohibited women in this text (widows, divorcees and harlots) are 'non-virgins.' Wenham *op. cit.*, 338 argues that if the word *bᵉtûlāh* means 'virgin' it is "redundant" to state that the high priest shall take a 'virgin.' Rather, *bᵉtûlāh* refers to a 'teenage girl' who may or may not be a virgin. The weakness with this argument is that 'redundancy' is a common technique in Biblical law; Wadsworth *op. cit.*, 166-7. It does not in itself prove that *bᵉtûlāh* cannot mean 'virgin' in Lev. 21:13-15. Our solution is to characterise the opposition in Lev. 21:13-15 between 'approved' and unapproved' slightly differently. A key question is the meaning of *hālālāh* in Lev. 21:14. This probably refers to a hierodule (Zipor *op. cit.*, 265) as reflected in the translation: "He must not marry ... a woman defiled by prostitution" (NIV). The word *bᵉtûlāh* is thus in opposition to the following: a widow; a divorcee; a hierodule; and a prostitute. These four are all typical cases of 'women who have given birth.' The opposition in Lev. 21:13-15 is therefore not between 'virgins' and 'non-virgins' but between 'those who have never born a child' and 'those who have.' This squares with the argument that the stereotype of the *bᵉtûlāh* is a girl who has 'come of age' but whose womb has not been opened by birth or miscarriage. The prohibitions in Lev. 21:13-15 are said to be important because the high priest must not "profane his offspring among his kin..." (Lev. 21:15). The issue is clearly one of paternity. His posterity is disqualified from the (high?) priesthood if he marries one of the prohibited women; Zipor *op. cit.*, 262. The community must be sure that the high priest's children are his. But the concern for paternity is satisfied if *bᵉtûlāh* means 'a woman who has never given birth.' For this reason, *bᵉtûlāh* in Lev. 21:13-15 need not therefore refer to a *virgo intacta*.

[401] Tigay 1993, 129f. It could be argued that the 'virgin who fails to bleed' is an exceptional case and that the law is only concerned with 'typical' cases. However, since the physical evidence of the cloth (*simᵉlāh*) is sufficient to determine the case, the existing terms must be sufficient to deal with 'exceptional' cases as well.

[402] Tigay *op. cit.*, 130f; *Tosef. Ket.* 1:4ff; 12a.

[403] Wenham 1972, 326; Schmitt 1992, 853.

[404] Wenham *op. cit.*, 331.

[405] Cf. Ezek. 23:3, 8: "[Oholah and Oholibah] played the harlot in their youth; there their breasts were pressed and their *bᵉtûlîm* bosoms handled."

virgin, but 'menstruant' (or as seems to be implied, 'pubescent'). It refers to a girl who has 'come of age.' Wenham, accordingly, argues that the *bᵉtûlîm* are the evidence of menstruation. The husband brings his objection ("I did not find *bᵉtûlîm* in her") because in the month following the marriage she showed no signs of menstruation.[406] This failure could be due to her conceiving on the wedding-night, but it may also be due to her 'playing the harlot' before the marriage. For Wenham the *bᵉtûlîm* are not so much 'tokens of virginity' as a 'pregnancy test.'[407] Deut. 22:13-21 is concerned with the paternity of an unexpected pregnancy that occurs immediately after marriage.[408] The question is not: 'was she a virgin on the wedding-night?' but rather: 'was she already pregnant?' Wenham's proposal is supported by a 'narrative' reading of the text. The stereotype of the *bᵉtûlāh* (or 'marriageable girl') is one who has 'come of age,' but whose womb has not been opened by birth or miscarriage.[409] The likelihood is that such a girl is also a virgin but this is not essential.[410] The most important aspect of the stereotype is whether or not she has conceived. Wenham's definition can thus be recast in narrative terms. Menstruation (*bᵉtûlîm*) is the 'typical' proof of whether a girl has reached adolescence. Once she has reached adolescence, the absence of *bᵉtûlîm* is the 'typical' proof of whether she has conceived.[411]

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[406] Wenham *op. cit.*, 334.

[407] Wadsworth *op. cit.*, 165-6 objects that menstrual stains 'only' prove that the girl was not pregnant before marriage. But this is precisely the point at issue. As with adultery there is a danger that her behaviour will pollute her husband's seed; Niditch *op. cit.*, 146.

[408] Cf. Collins *op. cit.*, 118 who claims that virginity is the central issue in Deut. 22:21 "to ensure the paternity of the first offspring of the marriage." But virginity is not essential to settle the question of paternity. It is sufficient if the husband can be sure that the woman is not already pregnant by the time that he marries her. This can be achieved by making the woman reside for a certain period in her father's house (see **(b)** below).

[409] As argued by Sasson *op. cit.*, 133.

[410] Hugenberger *op. cit.*, 253 n.159 suggests that the conflicting views of scholars on the question whether *bᵉtûlāh* means 'virgin' is the result of "a confusion of reference with meaning" since in the ANE a marriageable young woman would almost certainly be a virgin. This is consistent with Finkelstein's account of sex offences in Sumerian law (Finkelstein 1966). Finkelstein identifies two axes in the legal cases dealing with sexual offences; *viz.* 'married-unmarried' and 'coercion-consent' and a correlation between them. 'Consent' and 'unmarried women' rarely occur together whilst with married women the correlation is reversed. Finkelstein *op. cit.*, 368 argues that these correlations are based on real-life experience. Unmarried women, even when betrothed, were usually minors since, with the onset of puberty, they would soon have been married. The stereotype of the *bᵉtûlāh* as a 'marriageable young girl' carries a social presumption of virginity, but the main emphasis is on her age and nubility.

[411] The *bᵉtûlîm* may thus be an example of what Jackson calls an 'arbitrary causation rule' in which a particular concrete test (examining the *simlāh* or garment, see n.416 below) is conclusive of a wider issue. For example, the test of 'getting up and walking abroad on a staff' in the Covenant Code (Ex. 21:18) signifies that the injured man has made a sufficient degree of recovery that any subsequent death cannot be his assailant's fault; Jackson, forthcoming. Similarly the lack of *bᵉtûlîm* on the *simlāh* is conclusive of the wider issue of pregnancy, proving that the young woman 'played the prostitute' (*liznôt*) whilst she was betrothed. However, evidence of *bᵉtûlîm* proves only that she was not pregnant at the time of the marriage; it does not prove that she was a virgin. This use of the *simlāh* is consistent with the law's

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(b) The paradigm case of Deut. 22:20-21

Thus far we have argued that the key issue in Deut. 22:13-21 is 'pregnancy' rather than 'premarital virginity.' However this raises the further question: of what behaviour is the pregnancy in Deut. 22:20-21 prototypical? Does it typify prostitution or simply promiscuity? This is an important question because we need to characterise, as accurately as possible, the type of behaviour for which the girl is punished. In this section we shall argue that the paradigm case of Deut. 22:20-21 envisages a betrothed *bᵉtûlāh* who becomes pregnant as a result of engaging in prostitution during the period of betrothal.

The primary reason for taking this view is the role of the father in Deut. 22:13-21. Although both parents play a role in Deut. 22:13-21[412] (cf. Deut. 21:18-21) the relative importance of the father is signalled in two ways. Firstly, although the mother and father present the *simᵈ lāh* to the elders (Deut. 22:15), only the father speaks (Deut. 22:16; *contra* Deut. 21:20 where both parents speak). Secondly, if the *bᵉtûlîm* are found, her father is vindicated and the money damages are given to him (Deut. 22:17). Thirdly, the execution is said to take place at "the door of her father's house" (Deut. 22:21). The location highlights the fact that the girl was "under her father's authority" at the time of the offence.[413] This location is in contrast to Deut. 22:23-24. As we saw in **(a)** above, Deut. 22:23-24 also concerns a *bᵉtûlāh* who has consensual relations whilst betrothed. However, unlike Deut. 22:21, the *bᵉtûlāh* in Deut. 22:24 is stoned at the city gates (the normal execution site in *Deuteronomy*). There is no indication in Deut. 22:23-24 that the father is to blame for her offence. We conclude that the father has a special obligation to preserve his daughter's chastity in the case of Deut. 22:13-21 that he does not have in Deut. 22:23-24.

We suggest that the reason why the father is blamed in Deut. 22:20-21 and not in Deut. 22:23-24 is because Deut. 22:20-21 deals with a situation where a husband wants to marry a girl who has in the past been put out to work by her father as a prostitute. It appears

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apparent lack of interest in premarital virginity and with the Biblical concern for paternity (see **(c)***(i)* below). Cf. the use of clothes as criminal evidence (falsely, as it turns out) in the Joseph narrative (Gen. 19:13-20).

[412] See Deut. 22:15 and 17.

[413] 'Entrances' were 'legally significant sites' in the ANE and places for executing justice (Matthews 1987, 32). The city gate was a dividing line that signified 'inclusion' and 'exclusion' from the community (Matthews *op. cit.*, 32-3). The 'door of the father's house' signifies who is under his authority (cf. the function of the doorpost in Ex. 21:6 and Deut. 15:17 where authority is clearly an issue). The 'door' in Deut. 22:21 thus signifies the woman's status which, as we have seen, is an element in the seriousness of the offence. This is consistent with other ANE laws and legal documents where an extraordinary site of execution reflects the nature of the offence: CH 21, 25 (*ANET*, 167); CH 256 (*ANET*, 177); HL 166 (*ANET*, 195).

that the husband does not mind marrying a former prostitute,[414] but he wants to ensure that the offspring of the marriage are his (especially the first-born). Accordingly, the woman resides in her father's house for an agreed period of time during which she refrains from prostitution.[415] This is to ensure that she is not pregnant at the time of the marriage. Throughout this period, she is dressed in the *śim·lāh* which, in this context, probably refers to the robe of a betrothed woman.[416] The idea that the *śim·lāh* was a special garment, worn during the period of betrothal, is consistent with the use of clothes to visually convey status in ancient Israel (see n.479 in *Chapter Four* below). It is very likely that the post-betrothal *śim·lāh* is identifiably different to that of the pre-betrothal *śim·lāh*.[417] If the young woman does not become pregnant, the *śim·lāh* will come to bear

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[414] The prohibition of prostitutes to a priest or a high priest implies that a common Israelite might marry a prostitute without self-desecration. Hosea is explicitly commanded by YHWH to marry a prostitute (Ho. 1:2). The drawback was that the paternity of a child born to a *zōnāh* could not be guaranteed, except through some 'probationary' arrangement (see further below). This was presumably why priests were forbidden to marry a *zōnāh* (Lev. 21:14). The prohibition ensured that the priests would always be of Aaronide stock (cf. Ezek. 44:22 where a priest is allowed to marry the widow of another priest but not a layman's widow. Here, even if there is any doubt as to paternity, at least the community can be sure that the offspring is a descendant of Aaron).

[415] Cf. the narrative of Judg. 19:1-3. Judg. 19:2 refers to a concubine (*pileḡeš*) who "played the harlot" against her master and subsequently stayed at her father's house (*'el-bêt 'ābîhā*) for "four months" (Judg. 19:2). The concubine's offence is described as *wattiz^eneh* ('acting the prostitute') against him (Judg. 11:2). This reading is supported by the reference to *pileḡeš* (19:2). The status of a *pileḡeš* is not explicit in Israelite law although Neufeld *op. cit.*, 123-4 suggests that she was more a prostitute than an actual concubine. Given the narrator's brevity of style, the reference to staying at her father's house for "four months" is an important detail to be included in the introductory résumé. It is also given an important place of emphasis at the end of the sentence. Collins *op. cit.*, 122 suggests that this 'four-month period' reflects the Levite's concern for his children's legitimacy. It is, after all, a typical consequence of the prostitute's irregular sexual relationships that her offspring are liable to unknown paternity. It seems as though the Levite, who is willing to resume relations with his concubine, wants to settle the question of paternity first. The fact that he is a Levite reinforces the concern for legitimacy. Only descendants of Levi's sons (Num. 3:5-37) could be devoted to the service of the sanctuary (Num. 3:11-13). Paternity was therefore important. The Levite could not resume relations with his concubine until the question of an illegitimate pregnancy had been determined. The four months' residence in her father's house may be best explained as a legal measure to ensure her husband against illegitimate offspring; Collins *op. cit.*, 122. It was the husband's insurance against the possibility of further illicit conduct during the interval. The warm hospitality given to the Levite by the concubine's father suggests that the parties celebrated the happy conclusion of the daughter's 'probation' (Judg. 19:3-9).

[416] The traditional view sees the *śim·lāh* as the blood-stained cloths on which the marriage is consummated. Tigay 1996 203 claims that this practice was apparently well-known among various Jewish and Arab communities in the Middle East until recent times. Giovannini 1987, 61 notes that ritual displays of virginity (bloody sheets, night-gowns) following the consummation of a marriage is "very pervasive" in Mediterranean culture. However anthropology only generates hypotheses. In this case, the hypothesis that Deut. 22:13-21 is concerned with virginity, as suggested by the anthropological evidence, does not appear to be supported by the Biblical text. Following Wenham's argument that *b^etûlîm* means 'tokens of adolescence' (Wenham 1972, 334f.) it is preferable to see the *śim·lāh* as a piece of the daughter's clothing that is stained with menstrual blood. It is not clear whether this case was a soiled undergarment or an outer garment. However, *śim·lāh* usually refers to an outer garment which is sometimes also used as a cover whilst sleeping; Tigay *op. cit.*, 203.

[417] A change in status is frequently signified by a change of clothes. Thus the act of removing the "garment of captivity" (Deut. 21:13) may be understood as removing the status of captivity; Pressler 1993, 13. It is likely that the woman's change of status from that of 'unbetrothed' to 'betrothed' was also signalled by a change of clothes. We know that the married or betrothed woman was distinguished from all other classes of women by their dress (saying in effect: 'hands off'; Bird 1989a, 135, n.15). Tamar's status as an (un)betrothed *b^etûlāh* is indicated by her clothing: "She was wearing an ornamented tunic [cf. Gen. 37:3] for maiden [*b^etûlāh*] princesses were customarily dressed in such garments" (2

the stains of menstruation. It is for this reason that her parents are able to produce dateable evidence of their daughter's menstruation. The *śimláh* is identifiably the same as that which the young woman wore during the period of betrothal. When the period of betrothal is over and the young woman is about to begin cohabiting with her husband, the *śimláh* is handed over to her parents. If it contains the stains of menstruation, the parents can subsequently adduce it as dateable proof that their daughter was not pregnant prior to the marriage. This explains why the husband has no access to the evidence.

The father effectively pledges to the intended husband that, although he did put his daughter out to work as a prostitute in the past, he will not do so during the period of betrothal. He promises that she will not be pregnant with another man's seed when the time comes for her to begin cohabitation. We suggest that the father's special obligation in Deut. 22:13-21 stems from the fact that he is the person responsible for putting his daughter out to work as a prostitute, as suggested by Lev. 19:29 (see **3(c)**, above). He assures the husband that, in spite of her former occupation, the offspring of the marriage will belong to the husband. In this way, a husband who marries a harlot can be satisfied that the first-born child is his, *provided* the father keeps his word and the probationary period is completed successfully. The husband's complaint in Deut. 22:14 is that, contrary to expectations, the girl was already pregnant at the time of the marriage.[418] This is taken as proof that she continued to have relations with other men whilst she was under her father's authority. The father is blamed because he did not keep his side of the bargain. Instead of guaranteeing her chastity for a limited period, he continued to put her out to work as a prostitute. This is the reason for the different location in Deut. 22:21 and Deut. 22:24.

Sam. 13:18; JPS). In both Israel and Mesopotamia, the bride was veiled or otherwise clothed by her husband to publicly demonstrate her entry into his family; Van der Toorn 1995, 338. Van der Toorn *op. cit.*, 335 notes that the act of 'veiling' and 'clothing' (covering the head and clothing the body) occur together in an Old Babylonian deed of marriage. The fact that a woman is clothed by a man indicates that she belongs to him (cf. the description of the Babylonian *bᵉtúlôt* in Isa. 47:1-3). MAL 1. 40-41 (*ANET* 183) stipulate that a cult prostitute who is married must veil herself on the street. It is likely that the betrothed woman as well as the married woman wore special clothes, especially given that the violation of a betrothed woman was treated as seriously as that of a married wife (Deut. 22:22; Deut. 22:25-27).

418 There are several possible reasons why the husband brings the charge so soon after the marriage. Presumably if the period of betrothal was quite short other people might assume it was a 'honeymoon pregnancy' and that the child was his. Secondly, it was normal practice for an offended husband to 'go public.' If nothing else, he makes known to her lovers that he is aware of his wife's unfaithfulness (cf. YHWH's reaction to Israel's prostitution (Ho. 2:12 [Heb.; 2:10]); McComiskey 1992, 39). Thirdly, adult male mortality rates may have meant that nine months was simply too long to expect a man to wait when he had the option of divorce and of siring children by another woman; Meyers 1983, 295 (cf. Deut. 24:5 which exempts a newly-married man from military service for one year; thus allowing him sufficient

This reconstruction fits the framework of Deut. 22:13-21 in a number of respects. Firstly, it helps us to understand why Deut. 22:13-21 is concerned with the question of pregnancy and paternity and not with virginity. It may be related to the fact that the paternity of a child born to a prostitute could not be guaranteed *unless* the harlot gave up the 'trade' when she was betrothed. Secondly, it may explain why the presence or absence of menstruation is the decisive issue. It is precisely because a prostitute has numerous sexual encounters that pregnancy during the period of betrothal is prototypical of 'prostitution' rather than 'promiscuity.' The ability of the *simlāh* to settle the issue practically demands that the accusation of Deut. 22:13 relates to multiple sexual encounters. It favours the view that her offence is one of 'playing the prostitute' rather than of 'sleeping around.' Thirdly, it allows us to interpret the charge of *liznôt* in Deut. 22:21 at face value. The *bᵉtûlāh* is guilty, quite literally, of "playing the prostitute" whilst betrothed.[419] This is consistent with the meaning of *liznôt* in Lev. 21:9 and Num. 25:1 (and arguably also in Lev. 20:5 and Lev. 20:6 as well; see **3** above). Fourthly, it explains why the husband is not executed if the allegation is false. Following Deut. 19:16-21, one might have expected the husband to be stoned to death since this was the penalty that his wife would have suffered had she been found guilty (cf. Deut. 22:21). But although the husband has "brought an evil name upon a virgin of Israel" (Deut. 22:19), it appears as though this accusation is primarily directed against her father. There are two reasons for this. First, during the period of betrothal she is her father's ward and not an independent legal person.[420] Second, the husband's accusation essentially charges the father with fraud. By allowing his daughter to 'act the prostitute' during betrothal the father gains *both* the bride-price *and* the income generated by his daughter's prostitution.[421] This aspect of the slander helps us to understand why the husband pays the father a fine as part of his punishment (Deut. 22:19). A fifth reason in favour of our reconstruction of Deut. 22:13-21 is that payment is made to the father "for publicly defaming a *bᵉtûlāh* of Israel." This implies that the payment is made "for publicly defaming the father of a *bᵉtûlāh*."[422] The issue is

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time to sire an heir in case he is killed in battle). Fourthly, nine months may also have been too long to expect the woman to be under the stain of suspicion, if she is innocent.

[419] *Contra* the traditional interpretation, criticised in **(a)** above, of Collins *op. cit.*, 88 who argues that *zānāh* in Deut. 22:21 refers to: "premarital unchastity in which the woman wilfully participates, or [to]… cases involving seduction or rape, which she wilfully conceals."

[420] Benjamin *op. cit.*, 230.

[421] Prostitutes were paid. Deut. 23:18 refers to "the hire of a harlot" (*'etnan zônāh*); cf. Prov. 6:26.

[422] Boose 1989, 66; although Tigay 1996, 203 notes that there is no point in giving the fine to the bride. She is under her husband's authority, and he can take it from her.

whether the father has successfully discharged his duty as guarantor.[423] Sixthly, if residence in the 'father's house' is the husband's insurance against illicit conduct during betrothal, it may help to explain why the onus is on the father to prove his innocence, rather than on the husband to establish guilt. Seventhly, it may explain why the girl is stoned at the entrance to the father's house. She is stoned for her behaviour (working as a prostitute during betrothal), but her father is also held responsible. This is because his co-operation is needed if her probation is to be a success.[424] The location reflects the practice of fathers 'giving up' their daughters to prostitution in the ANE, especially to cultic prostitution.[425] Since he is the person who 'puts her out to work' then it follows that he is also responsible for keeping her out of it.[426]

To conclude, we suggest that Deut. 22:13-21 deals with the situation where the woman has 'played the harlot,' that is, been a professional prostitute during the period of betrothal. We submit that this is the most reasonable solution to the understanding of 'seriousness' in Deut. 22:20-21 because it fits both the framework of Deut. 22:13-21 and the wider setting of Deut. 22:13-19.

(c) Seriousness of offence

(i) Paternity

We have already noted in **(a)** and **(b)** above that paternity is a key issue in Deut. 22:13-21. Uncertainty as to paternity is a serious matter in ancient Israel (cf. Num. 5:11-31), where lineage is defined in terms of the father. The husband must be certain that his children are his own. The biological integrity of his family is at stake. This is especially important

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[423] Marriages were contracted through the payment of a bridewealth by the groom to the bride's father (cf. Gen. 34:12; Ex. 22:15; 1 Sam. 18:25). The fifty shekels paid by the violator of an unmarried virgin (Deut. 22:28-29) is likely to be the fixed sum for the bridewealth. The cuneiform laws (CE 25, ANET 162; CH 160, ANET 173; HL 29, ANET 190) allow a groom to reclaim double the amount which he had paid, if his father-in-law failed to follow through on the contract by delivering his daughter. Presumably a groom could claim breach of contract where the father had failed in his duty as a guarantor. The husband may have slandered his bride in order to get out of the marriage and to recover double the bridewealth. The slanderous husband is fined the amount that the bride's father would have to pay if the charges were upheld and the contract proved to have been broken. Notably, the price is double what the rapist owes the father in Deut. 22:28-29. This suggests that defaming the father is significantly more serious than the rape of an unbetrothed *bĕţûlāh*.

[424] The location acts as a signifier of the father's shame because he did not fulfil his duty as a guarantor of the husband's paternity.

[425] Deut. 22:13-21 does not indicate whether the prostitution occurs in a cultic context or not. However, a cultic interpretation may help us to explain why the father is culpable in Deut. 22:21. This is because, as we have seen in **3(c)** above, the typical case of daughters being forced into prostitution (Lev. 19:29) appears to refer to cultic prostitution.

[426] In contrast to the traditional view where the father is blamed because he is responsible for ensuring his daughter's virginity prior to marriage (e.g. Collins *op. cit.*, 55-56).

when, as in Deut. 22:13-21, the doubts concern the paternity of the first-born son (cf. Deut. 21:17).[427]

(ii) Status

Her status as a betrothed woman at the time of the offence is a key element in understanding 'seriousness of offence' in Deut. 22:20-21. The husband's allegation in Deut. 22:14 relates to the period of betrothal before the *b^etûlāh* was married. This is consistent with the observation that no formal sanctions attach in Biblical law to the sexual activity of an unbetrothed commoner's daughter (see **(a)** above). The seriousness of the offence in Deut. 22:20-21 consists not in the fact that she has 'lost her virginity' or even that she had once 'played the prostitute.' It consists in the fact that she 'played the prostitute' *during the period of betrothal.* Her status at the time of the offence is crucial to the seriousness of the offence.

5. Conclusion

The offence in both Lev. 21:9 and Deut. 22:20-21 is that of *liznôt* ('prostitution'). 'Seriousness of offence' depends on two factors: the context of the offence (whether cultic or non-cultic) and the status of the offenders. Lev. 21:9 appears to deal with cultic prostitution, whilst Deut. 22:20-21 may refer to either cultic or non-cultic prostitution. Cultic prostitution is more serious than non-cultic prostitution because it is a case of 'double harlotry.' The woman in Lev. 21:9 abuses her status as the daughter of a priest, whilst the *b^etûlāh* in Deut. 22:13-21 abuses her status as a betrothed woman. Status is also a key element in explaining the different forms of capital punishment in Lev. 21:9 and Deut. 22:20-21. The higher cultic status of both the priest and his daughter (Lev. 21:9) is the main reason why the latter's offence is more serious than that of a commoner (Deut. 22:20-21).

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[427] Mendelsohn 1959; Milgrom 1976a.

STATUS, SIN AND SACRIFICE

'Seriousness of offence' and Lev. 4:1-35

Text

Lev. 4:1 וַיְדַבֵּר יְהוָה אֶל־מֹשֶׁה לֵּאמֹר: 2 דַּבֵּר אֶל־בְּנֵי יִשְׂרָאֵל
לֵאמֹר נֶפֶשׁ כִּי־תֶחֱטָא בִשְׁגָגָה מִכֹּל מִצְוֺת יְהוָה אֲשֶׁר לֹא תֵעָשֶׂינָה וְעָשָׂה
מֵאַחַת מֵהֵנָּה: 3 אִם הַכֹּהֵן הַמָּשִׁיחַ יֶחֱטָא לְאַשְׁמַת הָעָם וְהִקְרִיב עַל
חַטָּאתוֹ אֲשֶׁר חָטָא פַּר בֶּן־בָּקָר תָּמִים לַיהוָה לְחַטָּאת: 4 וְהֵבִיא אֶת־הַפָּר
אֶל־פֶּתַח אֹהֶל מוֹעֵד לִפְנֵי יְהוָה וְסָמַךְ אֶת־יָדוֹ עַל־רֹאשׁ הַפָּר וְשָׁחַט
אֶת־הַפָּר לִפְנֵי יְהוָה: 5 וְלָקַח הַכֹּהֵן הַמָּשִׁיחַ מִדַּם הַפָּר וְהֵבִיא אֹתוֹ
אֶל־אֹהֶל מוֹעֵד: 6 וְטָבַל הַכֹּהֵן אֶת־אֶצְבָּעוֹ בַּדָּם וְהִזָּה מִן־הַדָּם שֶׁבַע
פְּעָמִים לִפְנֵי יְהוָה אֶת־פְּנֵי פָּרֹכֶת הַקֹּדֶשׁ: 7 וְנָתַן הַכֹּהֵן מִן־הַדָּם עַל־קַרְנוֹת
מִזְבַּח קְטֹרֶת הַסַּמִּים לִפְנֵי יְהוָה אֲשֶׁר בְּאֹהֶל מוֹעֵד וְאֵת כָּל־דַּם הַפָּר
יִשְׁפֹּךְ אֶל־יְסוֹד מִזְבַּח הָעֹלָה אֲשֶׁר־פֶּתַח אֹהֶל מוֹעֵד: 8 וְאֶת־כָּל־חֵלֶב
פַּר הַחַטָּאת יָרִים מִמֶּנּוּ אֶת־הַחֵלֶב הַמְכַסֶּה עַל־הַקֶּרֶב וְאֵת כָּל־הַחֵלֶב
אֲשֶׁר עַל־הַקֶּרֶב: 9 וְאֵת שְׁתֵּי הַכְּלָיֹת וְאֶת־הַחֵלֶב אֲשֶׁר עֲלֵיהֶן אֲשֶׁר
עַל־הַכְּסָלִים וְאֶת־הַיֹּתֶרֶת עַל־הַכָּבֵד עַל־הַכְּלָיוֹת יְסִירֶנָּה: 10 כַּאֲשֶׁר יוּרַם
מִשּׁוֹר זֶבַח הַשְּׁלָמִים וְהִקְטִירָם הַכֹּהֵן עַל מִזְבַּח הָעֹלָה: 11 וְאֶת־עוֹר הַפָּר
וְאֶת־כָּל־בְּשָׂרוֹ עַל־רֹאשׁוֹ וְעַל־כְּרָעָיו וְקִרְבּוֹ וּפִרְשׁוֹ: 12 וְהוֹצִיא אֶת־כָּל־הַפָּר
אֶל־מִחוּץ לַמַּחֲנֶה אֶל־מָקוֹם טָהוֹר אֶל־שֶׁפֶךְ הַדֶּשֶׁן וְשָׂרַף אֹתוֹ עַל־עֵצִים
בָּאֵשׁ עַל־שֶׁפֶךְ הַדֶּשֶׁן יִשָּׂרֵף: פ 13 וְאִם כָּל־עֲדַת יִשְׂרָאֵל יִשְׁגּוּ וְנֶעְלַם
דָּבָר מֵעֵינֵי הַקָּהָל וְעָשׂוּ אַחַת מִכָּל־מִצְוֺת יְהוָה אֲשֶׁר לֹא־תֵעָשֶׂינָה
וְאָשֵׁמוּ: 14 וְנוֹדְעָה הַחַטָּאת אֲשֶׁר חָטְאוּ עָלֶיהָ וְהִקְרִיבוּ הַקָּהָל פַּר
בֶּן־בָּקָר לְחַטָּאת וְהֵבִיאוּ אֹתוֹ לִפְנֵי אֹהֶל מוֹעֵד: 15 וְסָמְכוּ זִקְנֵי הָעֵדָה
אֶת־יְדֵיהֶם עַל־רֹאשׁ הַפָּר לִפְנֵי יְהוָה וְשָׁחַט אֶת־הַפָּר לִפְנֵי יְהוָה:
16 וְהֵבִיא הַכֹּהֵן הַמָּשִׁיחַ מִדַּם הַפָּר אֶל־אֹהֶל מוֹעֵד: 17 וְטָבַל הַכֹּהֵן
אֶצְבָּעוֹ מִן־הַדָּם וְהִזָּה שֶׁבַע פְּעָמִים לִפְנֵי יְהוָה אֵת פְּנֵי הַפָּרֹכֶת:
18 וּמִן־הַדָּם יִתֵּן עַל־קַרְנֹת הַמִּזְבֵּחַ אֲשֶׁר לִפְנֵי יְהוָה אֲשֶׁר בְּאֹהֶל
מוֹעֵד וְאֵת כָּל־הַדָּם יִשְׁפֹּךְ אֶל־יְסוֹד מִזְבַּח הָעֹלָה אֲשֶׁר־פֶּתַח אֹהֶל מוֹעֵד:

19 וְאֵת כָּל־חֶלְבּוֹ יָרִים מִמֶּנּוּ וְהִקְטִיר הַמִּזְבֵּחָה: 20 וְעָשָׂה לַפָּר כַּאֲשֶׁר עָשָׂה
לְפַר הַחַטָּאת כֵּן יַעֲשֶׂה־לּוֹ וְכִפֶּר עֲלֵהֶם הַכֹּהֵן וְנִסְלַח לָהֶם: 21 וְהוֹצִיא
אֶת־הַפָּר אֶל־מִחוּץ לַמַּחֲנֶה וְשָׂרַף אֹתוֹ כַּאֲשֶׁר שָׂרַף אֵת הַפָּר הָרִאשׁוֹן
חַטַּאת הַקָּהָל הוּא: פ 22 אֲשֶׁר נָשִׂיא יֶחֱטָא וְעָשָׂה אַחַת מִכָּל־מִצְוֹת יְהוָה
אֱלֹהָיו אֲשֶׁר לֹא־תֵעָשֶׂינָה בִּשְׁגָגָה וְאָשֵׁם: 23 אוֹ־הוֹדַע אֵלָיו חַטָּאתוֹ אֲשֶׁר
חָטָא בָּהּ וְהֵבִיא אֶת־קָרְבָּנוֹ שְׂעִיר עִזִּים זָכָר תָּמִים: 24 וְסָמַךְ יָדוֹ
עַל־רֹאשׁ הַשָּׂעִיר וְשָׁחַט אֹתוֹ בִּמְקוֹם אֲשֶׁר־יִשְׁחַט אֶת־הָעֹלָה לִפְנֵי יְהוָה
חַטָּאת הוּא: 25 וְלָקַח הַכֹּהֵן מִדַּם הַחַטָּאת בְּאֶצְבָּעוֹ וְנָתַן עַל־קַרְנֹת
מִזְבַּח הָעֹלָה וְאֶת־דָּמוֹ יִשְׁפֹּךְ אֶל־יְסוֹד מִזְבַּח הָעֹלָה: 26 וְאֶת־כָּל־חֶלְבּוֹ
יַקְטִיר הַמִּזְבֵּחָה כְּחֵלֶב זֶבַח הַשְּׁלָמִים וְכִפֶּר עָלָיו הַכֹּהֵן מֵחַטָּאתוֹ וְנִסְלַח
לוֹ: פ 27 וְאִם־נֶפֶשׁ אַחַת תֶּחֱטָא בִשְׁגָגָה מֵעַם הָאָרֶץ בַּעֲשֹׂתָהּ אַחַת מִמִּצְוֹת
יְהוָה אֲשֶׁר לֹא־תֵעָשֶׂינָה וְאָשֵׁם: 28 אוֹ הוֹדַע אֵלָיו חַטָּאתוֹ אֲשֶׁר חָטָא
וְהֵבִיא קָרְבָּנוֹ שְׂעִירַת עִזִּים תְּמִימָה נְקֵבָה עַל־חַטָּאתוֹ אֲשֶׁר חָטָא:
29 וְסָמַךְ אֶת־יָדוֹ עַל רֹאשׁ הַחַטָּאת וְשָׁחַט אֶת־הַחַטָּאת בִּמְקוֹם הָעֹלָה:
30 וְלָקַח הַכֹּהֵן מִדָּמָהּ בְּאֶצְבָּעוֹ וְנָתַן עַל־קַרְנֹת מִזְבַּח הָעֹלָה וְאֶת־כָּל־דָּמָהּ
יִשְׁפֹּךְ אֶל־יְסוֹד הַמִּזְבֵּחַ: 31 וְאֶת־כָּל־חֶלְבָּהּ יָסִיר כַּאֲשֶׁר הוּסַר חֵלֶב מֵעַל
זֶבַח הַשְּׁלָמִים וְהִקְטִיר הַכֹּהֵן הַמִּזְבֵּחָה לְרֵיחַ נִיחֹחַ לַיהוָה וְכִפֶּר עָלָיו
הַכֹּהֵן וְנִסְלַח לוֹ: פ 32 וְאִם־כֶּבֶשׂ יָבִיא קָרְבָּנוֹ לְחַטָּאת נְקֵבָה תְמִימָה
יְבִיאֶנָּה: 33 וְסָמַךְ אֶת־יָדוֹ עַל רֹאשׁ הַחַטָּאת וְשָׁחַט אֹתָהּ לְחַטָּאת בִּמְקוֹם
אֲשֶׁר יִשְׁחַט אֶת־הָעֹלָה: 34 וְלָקַח הַכֹּהֵן מִדַּם הַחַטָּאת בְּאֶצְבָּעוֹ וְנָתַן
עַל־קַרְנֹת מִזְבַּח הָעֹלָה וְאֶת־כָּל־דָּמָהּ יִשְׁפֹּךְ אֶל־יְסוֹד הַמִּזְבֵּחַ:
35 וְאֶת־כָּל־חֶלְבָּהּ יָסִיר כַּאֲשֶׁר יוּסַר חֵלֶב־הַכֶּשֶׂב מִזֶּבַח הַשְּׁלָמִים וְהִקְטִיר
הַכֹּהֵן אֹתָם הַמִּזְבֵּחָה עַל אִשֵּׁי יְהוָה וְכִפֶּר עָלָיו הַכֹּהֵן עַל־חַטָּאתוֹ
אֲשֶׁר־חָטָא וְנִסְלַח לוֹ: פ

The RSV translates Lev. 4:1-35 as follows:

Lev. 4

1   And the LORD said to Moses,

2   "Say to the people of Israel, If any one sins unwittingly in any of the things which the LORD has commanded not to be done, and does any one of them,

[CASE A:
The sin of the *ha̱kōhēn hammāšîaḥ*, with repercussions on the *'am*; vv. 3-12]

3   if it is the anointed priest who sins, thus bringing guilt on the people, then let him offer for the sin which he has committed a young bull without blemish to the LORD for a sin offering.

4   He shall bring the bull to the door of the Tent of Meeting before the LORD, and lay his hands on the head of the bull, and kill the bull before the LORD.

5   And the anointed priest shall take some of the blood of the bull and bring it to the Tent of Meeting;

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6   and the priest shall dip his finger in the blood and sprinkle part of the blood seven times before the LORD in front of the veil of the Sanctuary.

7   And the priest shall put some of the blood on the horns of the altar of fragrant incense before the LORD which is in the Tent of Meeting, and the rest of the blood of the bull he shall pour out at the base of the altar of burnt offering which is at the door of the Tent of Meeting.

8   And all the fat of the bull of the sin offering he shall take from it, the fat that covers the entrails and all the fat that is on the entrails,

9   and the two kidneys with the fat that is on them at the loins, and the appendage of the liver which he shall take away with the kidneys

10 (just as these are taken from the ox of the sacrifice of the peace offerings), and the priest shall burn them upon the altar of burnt offering.

11 But the skin of the bull and all its flesh, with its head, its legs, its entrails, and its dung,

12 the whole bull he shall carry forth outside the camp to a clean place, where the ashes are poured out, and shall burn it on a fire of wood; where the ashes are poured out it shall be burned.

[CASE B:
The sin of *kôl - 'ăḏaṯ yiśrā 'el* (acting on its own; vv. 13-21)]

13 If the whole congregation of Israel commits a sin unwittingly and the thing is hidden from the eyes of the assembly, and they do any of the things which the LORD has commanded not to be done and are guilty;

14 when the sin which they have committed becomes known, the assembly shall offer a young bull for a sin offering and bring it before the Tent of Meeting;

15 and the elders of the congregation shall lay their hands upon the head of the bull before the LORD, and the bull shall be killed before the LORD.

16 Then the anointed priest shall bring some of the blood of the bull to the Tent of Meeting,

17 and the priest shall dip his finger in the blood and sprinkle it seven times before the LORD in front of the veil.

18 And he shall put some of the blood on the horns of the altar which is in the Tent of Meeting before the LORD; and the rest of the blood he shall pour out at the base of the altar of burnt offering which is at the door of the Tent of Meeting.

19 And all its fat he shall take from it and burn upon the altar.

20 Thus shall he do with the bull; as he did with the bull of the sin offering, so shall he do with this; and the priest shall make atonement for them, and they shall be forgiven.

21 And he shall carry forth the bull outside the camp, and burn it as he burned the first bull; it is the sin offering for the assembly.

[CASE C:
The sin of the *nāśî'* (vv. 22-26)]

22 When a ruler sins, doing unwittingly any one of all the things which the LORD his God has commanded not to be done, and is guilty,

23 if the sin which he has committed is made known to him, he shall bring as his offering a goat, a male without blemish,

24 and shall lay his hands upon the head of the goat, and kill it in the place where they kill the burnt offering before the LORD; it is a sin offering.

25 Then the priest shall take some of the blood of the sin offering with his finger and put it on the horns of the altar of burnt offering, and pour out the rest of its blood at the base of the altar of burnt offering.

26   And all its fat he shall burn on the altar, like the fat of the sacrifice of peace offerings; so the priest shall make atonement for him for his sin, and he shall be forgiven.

[CASE D:
The sin of the member of the *'am hā 'āreṣ* **(vv. 27-35)]**

27   If any one of the common people sins unwittingly in doing any one of the things which the LORD has commanded not to be done, and is guilty,

28   when the sin which he has committed is made known to him he shall bring for his offering a goat, a female without blemish, for his sin which he has committed.

29   And he shall lay his hand on the head of the sin offering, and kill the sin offering in the place of burnt offering.

30   And the priest shall take some of its blood with his finger and put it on the horns of the altar of burnt offering, and pour out the rest of its blood at the base of the altar.

31   And all its fat he shall remove, as the fat is removed from the peace offerings, and the priest shall burn it upon the altar for a pleasing odour to the LORD; and the priest shall make atonement for him, and he shall be forgiven.

32   If he brings a lamb as his offering for a sin offering, he shall bring a female without blemish,

33   and lay his hand upon the head of the sin offering and kill it for a sin offering in the place where they kill the burnt offering.

34   Then the priest shall take some of the blood of the sin offering with his finger and put it on the horns of the altar of burnt offering, and pour out the rest of its blood at the base of the altar.

35   And all its fat he shall remove as the fat of the lamb is removed from the sacrifice of peace offerings, and the priest shall burn it on the altar, upon the offerings by fire to the LORD; and the priest shall make atonement for him for the sin which he has committed, and he shall be forgiven.

1. Introduction

Lev. 4 is a case-study in seriousness. The nature of the offence ('inadvertent sin') remains stable throughout (see Lev. 4:2, 13, 22 and 27), but important variations occur in the type of the sacrifice and the type of sacrificial ritual. These variations appear to be correlated with the identity of the offender, allowing us to explore 'status' as a possible element of seriousness of offence. To the extent that 'seriousness' manifests a concern for 'grading' and 'classifying,' it is not surprising to find an analysis of 'seriousness' in a priestly text. This is because the Priestly world-view is dominated by the belief that order emerges through the correct separation of categories.[428]

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[428] Gorman 1990, 59; Wright 1991, 153.

Lev. 4:1-35 can be treated as a discrete unit for the purpose of this chapter. Questions may be raised about the relationship between Lev. 4:1-35 and Lev. 5:1-13, but these do not affect the argument of the present chapter.[429] Questions may also be raised concerning the relationship between Lev. 4 and Num. 15:22-29. The similarities between these two sets of provisions may suggest some literary dependence between the two passages, although in what direction it is not clear.[430] On the other hand, the differences between the two texts are sufficiently striking to raise the possibility that neither text is completely dependent upon the other and that each may represent an independent tradition.[431] Suffice it to say that the precise nature of the relationship between Lev. 4 and Num. 15:22-31 is beyond the scope of this chapter. The safest provisional conclusion is probably that of Davies, who avers: "the nature of the literary relationship between the two passages is probably far more complex than has generally been supposed."[432] We divide Lev. 4:1-35 into four cases (see **Text**, above). These are: case A (Lev. 4:3-12); case B (Lev. 4:13-21); case C (Lev. 4:22-26); and case D (Lev. 4:27-35).

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[429] Lev. 4:1-35 has much in common with Lev. 5:1-13. However, the latter is much less helpful to us for the purpose of understanding 'seriousness of offence.' This is because, as we shall see in **4** below, the main registers of 'seriousness of offence' are found in the details of the sacrificial ritual. Hence Lev. 4:1-35 is relevant to our analysis of 'seriousness of offence,' because it describes at length the rituals involved. By contrast, Lev. 5:1-13 does not describe the sacrificial rituals (bar a very brief discussion in 5:9 and 12). Its primary purpose appears to be to specify those situations where the *ḥaṭṭā 't* is, or is not, required. For this reason, Lev. 5:1-13 is not included in our analysis of 'seriousness of offence.'

[430] The word *biš'gāgâ* is used repeatedly in both passages (Lev. 4:2, 22, 27; cf. Num. 15:24-29). Also, Num. 15:24a bears a striking resemblance to Lev. 4:13, whilst Num. 15:25a has a clear parallel in Lev. 4:20b, 26b, 31b, 35b. Finally the Hebrew text of Num. 15:27a agrees verbatim with Lev. 4:27a. Fishbane 1985, 191 argues that Num. 15:22-9 is an exegetical expansion of Lev. 4. and that this establishes the relative priority of the latter. Rendtorff 1954 by contrast, argues that Lev. 4 is dependent upon Num. 15:22-29. The possibility also exists that neither Lev. 4 nor Num. 15:22-31 may be a homogenous unit. It is possible that each passage contains material that dates from different periods. Thus any literary 'borrowing' may not all be in the same direction. For example, Num. 15:22-26 may show some literary dependence on Lev. 4:13-21, while Lev. 4:27-31 may be dependent upon Num. 15:27-29; Davies 1995, 157.

[431] Firstly, Lev. 4 refers to an accidental transgression committed "from among all the commandments (*mikôl miṣwôṯ*" which the LORD has commanded not to be done (cf. vv. 2, 13, 22, 27), whilst Num. 15:22-31 commences with the further-reaching statement: "and if you unintentionally transgress and do not do any of it [lit. all] these commandments (*kôl - hammiṣ'wôṯ ha 'ēlleh*) which YHWH spoke to Moses." Secondly, Lev. 4 deals with four types of offender, whereas Num. 15:22ff only considers two. Thirdly, there are differences in terms of the type of sacrifice required. Fourthly, reference is made to the "stranger" in Num. 15:26, 29 and 30, but not in Lev. 4. Finally, the statement in Num. 15:30f that no sacrifice can atone for deliberate or 'high-handed' sins has no counterpart in Lev. 4, or anywhere else for that matter; Davies *op. cit.*, 156-157. Various scholars have tried to rationalise the differences between the texts. Toeg 1973 argues that Num. 15:22-31 is a halakhic *midrash* of Lev. 4, but this is heavily criticised by Knohl 1991, 194-5. Milgrom 1991, 267 considers that the two texts represent independent traditions about the *ḥaṭṭā 't*, whilst Budd 1996, 85 suggests that Num. 15:22-31 is a reworking of earlier priestly material in *Exodus* and *Leviticus*. Traditional methods of source criticism founder on the fact that each passage appears to be more complex than the other. It is possibly for this reason that scholarship has failed to reach a consensus in spite of a detailed analysis of the two texts; Davies *op. cit.*, 156.

[432] Davies *op. cit.*, 157.

Broadly speaking, there are four main registers of 'seriousness' in Lev. 4. These are: firstly, the type of sacrifice (see **4(a)** below); secondly, the nature of the blood rite (see **4(b)** below); thirdly, the identity of the ritual object cleansed by the blood (see **4(c)** below); and fourthly, the method used to eliminate the animal carcass (see **4(d)** below). Performative registers include; firstly, the act of bringing different types of animals for sacrifice (Lev. 4:4, 14, 23, 28 and 32). The sacrifices vary according to the identity of the offender. They are: a young bull for *hakōhēn hammāšîaḥ* (Lev. 4:4) and *kôl - ʿădat yiśrāʾel* (Lev. 4:14); a male goat for a *nāśîʾ* (Lev. 4:23) and finally, a female goat (Lev. 4:28) or a female lamb (Lev. 4:32) for the member of the *ʿam hāʾāreṣ*. The declining economic value of the sacrifice reflects the seriousness of the offence (see **4(a)***(i)* below). It is also possible that the visual appearance of each animal symbolises the offenders' visual prestige. If so, this may be another respect in which the act of bringing different types of animals for sacrifice functions as a register of seriousness (see **4(a)***(ii)* below). A second performative register is the performance of the blood rites (Lev. 4:5-7, 16-18, 24-25, 30 and 34). Lev. 4 describes two different blood rites; one in which the blood is brought into the Holy Place (in the case of *hakōhēn hammāšîaḥ* (Lev. 4:6) and the *kôl - ʿădat yiśrāʾel* (Lev. 4:17)) and another in which the blood is not brought into the Holy Place (in the case of the *nāśîʾ* and the member of the *ʿam hāʾāreṣ*). This registers the seriousness of the offence because the blood rite signifies the extent to which the Sanctuary has been polluted because of the offenders' sin (see **4(b)** below). A third performative register (and one that is related to the second performative register) is the question of which of the horned altars are daubed with blood. In the case of *hakōhēn hammāšîaḥ* (Lev. 4:7) and the *kôl - ʿădat yiśrāʾel* (Lev. 4:18), it is the incense altar that is located in the Holy Place. However, in the case of the *nāśîʾ* (Lev. 4:25) and the errant member of the *ʿam hāʾāreṣ* (Lev. 4:30 and 34) it is the altar of burnt offering, located in the courtyard. This aspect of the blood rite is also a register of seriousness because it, too, signifies the extent to which the Sanctuary has been polluted because of the offenders' sin (see **4(c)**, below). A fourth performative register is the means by which the priest disposes of the animal carcass. In the case of *hakōhēn hammāšîaḥ* (Lev. 4:11-12) and the *kôl - ʿădat yiśrāʾel* (Lev. 4:21), the carcass is carried outside the camp to a clean place and burnt. This is not, however, required in the case of the *nāśîʾ* and the member of the *ʿam hāʾāreṣ*. This act functions as a register of seriousness because it indicates how much impurity was caused to the sancta by the offence (see **4(d)** below). It advertises the greater seriousness of the offence in cases A and B as opposed to

cases C and D. It is worth noting that, in contrast to the other performative registers (*viz.* bringing the animals for sacrifice and performing the blood rites) which are witnessed only by the priests and the offeror(s), this performative register (burning the carcass outside the camp) is broadcast to a wider audience. 'Burning the carcass outside the camp' attracts greater publicity than the acts of bringing different animals for sacrifice and performing the blood rites.

2. Offence description

The offence is an inadvertent error of commission.

(a) 'Inadvertent' sin

Such sin is committed *biš⁽e⁾gāgâ* ('in error').[433] The word *š⁽e⁾gāgâ* may derive either from the verbal root *šāgag* meaning 'to commit error' or 'to sin inadvertently' or *šāgâ* meaning 'to go astray.'[434] These roots suggest several factors that might reduce culpability, including lack of intention[435] and drunkenness.[436] The word *š⁽e⁾gāgâ* occurs in other legal contexts (e.g. Lev. 5:15, 22:14 and the parallel text of Num. 15:26, 27-29). The word *š⁽e⁾gāgâ* refers to sin of which it is easy to remain unaware. In Lev. 4, *š⁽e⁾gāgâ* means to err through mistake, ignorance or inadvertence. The key factor seems to be inadvertence that arises from carelessness or ignorance. But when a sin committed *š⁽e⁾gāgâ* was 'made known' a sacrifice was required. The offender's guilty conscience may prompt him to bring a sacrifice.[437] Alternatively, the knowledge that he has committed an inadvertent sin. may be brought to light by some other means.[438] Lev. 4:14, 23 and 28 do not state exactly

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[433] Examples of *š⁽e⁾gāgâ* include the 'slip of the tongue' (Eccl. 5:6 [Heb. 5]) and the error (misjudgement?) of a ruler (Eccl. 10:5).

[434] Seidl 1993, 1058; Milgrom 1967, 116 argues that the two roots coalesce (e.g. in Job 12:16).

[435] *Biš⁽e⁾gāgâ* may also reduce culpability because it signifies a lack of intention (e.g. Gen. 43:12. Cf. also Num. 35:5, 10 and Josh. 20:3).

[436] The word *šāgâ* is used of those who cannot walk in a straight line because they are under the influence of alcohol (e.g. Prov. 20:1). This may suggest that the 'inadvertence' of Lev. 4 refers to the ignorance of some relevant fact or quality as a result of intoxication.

[437] Milgrom 1991, 243; Wenham 1979, 99.

[438] Lev. 4:14 states: "when the sin which they have committed becomes known (*w⁽e⁾nôḏ⁽e⁾âh*)...." This corresponds to the fact that at the time the *kōl-⁽ăḏaṯ yiśrā'el* commit the offence they do so: "... unwittingly and the thing is hidden from the eyes of the assembly and they do any one of the things which the LORD has commanded not to be done and are guilty (*w⁽e⁾'āšēmû*)" (Lev. 4:13). In Lev. 4:13 when the *kōl-⁽ăḏaṯ yiśrā'el* commit the offence, they do not know that they are doing it. However if in Lev. 4:14 the offence is known, the *kōl-⁽ăḏaṯ yiśrā'el* is required to bring a sacrifice. Yet there is an ambiguity in the use of the word *w⁽e⁾nôḏ⁽e⁾âh* in Lev. 4:14. This arises from the fact that the *waw* in *w⁽e⁾nôḏ⁽e⁾âh* can be translated either 'and' or 'or.' Accordingly, the 'knowledge' that is spoken of in verse 14 may be consequent upon the awareness of guilt that is described in Lev. 4:13 (*w⁽e⁾'āšēmû*). On the other hand, it may refer to an alternative

how the sin becomes known. Since no institution is mentioned as giving the warning perhaps nothing more than informal notification need be assumed.

(b) Against a prohibitive command of the LORD

The heading in Lev. 4:2 refers to the situation where a person sins inadvertently: "...in any of the things which the LORD has commanded not to be done (*mikōl misᵉwōt̪ YHWH 'āšer lō' t̪ē 'āśeynāh*) [lit. "any of the LORD's commandments which are not to be done"] and does any one of them." Cases A - D concern a sin of commission, committed by someone who, at the time, did not realise that what he was doing was wrong.[439]

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means by which the knowledge of an inadvertent sin is brought to light. We can settle the matter by noting that two different types of conjunctions are used in Lev. 4. The first is the (ambiguous) *waw* conjunction that appears in Lev. 4:13-14. The second is the *'ō* conjunction that appears in Lev. 4:23-24:

"(22) When a ruler sins, doing unwittingly any one of all the things which the LORD his God has commanded not to be done, and is guilty (*wᵉ 'āšem*) (23) if the sin which he has committed is made known to him (*'ō - hôda'*) he shall bring as his offering a goat, a male without blemish")

and also in Lev. 4:27-28:

"(27) If any one of the common people sins unwittingly in doing any one of the things which the LORD has commanded not to be done, and is guilty (*wᵉ 'āšem*) (28) when the sin which he has committed is made known to him... (*'ō - hôda'*)."

The conjunction *'ō* in both Lev. 4:23-24 and in Lev. 4:27-28 means 'or.' The phrase *'ō - hôda'* is therefore an alternative to *wᵉ 'āšem.* The word *wᵉ 'āšem* in Lev. 4:22 does not therefore mean 'thereby' incurring guilt. It refers to one of the two ways in which the offender discovers that he has done wrong. Either he discovers it himself (*wᵉ 'āšem*) *or* it is made known to him (*'ō - hôda'*). Accordingly, we ought to translate Lev. 4:22-23 and Lev. 4:27-28 slightly differently to that of the RSV, above, as follows:

"(22) When a ruler sins, doing unwittingly any one of all the things which the LORD his God has commanded not to be done, and is guilty (23) *or* the sin which he has committed is made known to him, he shall bring as his offering a goat, a male without blemish"

"(27) If any one of the common people sins unwittingly in doing any one of the things which the LORD has commanded not to be done, and is guilty (28) *or* the sin which he has committed is made known to him he shall bring for his offering a goat, a female without blemish, for his sin which he has committed."

This interpretation of Lev. 4:22-23 and Lev. 4:27-28 has a bearing on how we should understand the ambiguous conjunction in Lev. 4:13-14. We should understand the ambiguous in the light of the clear, interpreting Lev. 4:13-14 in the light of the conjunctions used in Lev. 4:23-24 and 4:27-28. Accordingly, Lev. 4:13-14 should be read as follows:

"(13) If the whole congregation of Israel commits a sin unwittingly and the thing is hidden from the eyes of the assembly, and they do any one of the things which the LORD has commanded not to be done and are guilty (*wᵉ 'āšemû*), (14) *or* when the sin which they have committed becomes known (*wᵉnôd̪ᵉ 'āh*), the assembly shall offer a young bull for a sin offering..." (my italics).

[439] This creates an overlap with Num. 15:22-29. Num. 15:22 refers to "all" (*kōl*, Num. 15:22) the LORD's commandments; positive and negative, performative and prohibitive (Milgrom *op. cit.*, 265, Fishbane *op. cit.*, 190-1; *contra* Levine 1989, 395). This seemingly contradicts Lev. 4 insofar as both passages appear to require different sacrifices for the inadvertent violation of prohibitive commandments. This takes us back to the question of the relationship between these two passages; see n.230 and n.231, above.

(c) Inadvertence and pollution

Inadvertent sin was a serious offence in ancient Israel.[440] This is signified by the need to bring a *ḥaṭṭā't* ('purification offering').[441] The primary purpose of the *ḥaṭṭā't* ritual appears to be to 'purge' the Sanctuary.[442] The blood of the *ḥaṭṭā't* functions as "ritual detergent,"[443] cleansing the Sanctuary of impurities caused by the offeror.[444] Certain sins cause impurities that pollute the Sanctuary (Lev. 15:31; 20:3 and Num. 19:20).[445] This appears to include sins of inadvertence.[446] In this way, inadvertent sin was a serious offence because it polluted the Sanctuary. This was serious because YHWH would not dwell in a polluted Sanctuary (see further *Chapter Five*, below). The *ḥaṭṭā't* ritual was necessary to cleanse the Sanctuary, lest YHWH depart. The *ḥaṭṭā't* ritual was also necessary to re-establish the sacred boundaries of the Sanctuary.[447] Impurity threatened the status of the Sanctuary as a consecrated area that is 'bounded' and 'set apart.' Defiling the Sanctuary by inadvertent sin risked the collapse of the sacred order and the eruption of chaos.[448] In this respect, 'seriousness of offence' in Lev. 4 is united to the overall theme

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[440] *Contra* Douglas forthcoming, 148: "Surely the unintended or inadvertent sin is not very serious."

[441] Milgrom persuasively argues in favour of this translation in a series of publications: Milgrom 1971; 1976; 1985 and 1991. He is followed by Hartley 1992; Kiuchi 1987; Schwartz 1995 and Wenham 1979, although some commentators such as Budd 1996; Harrison 1980; Knohl 1991and Zohar 1988 prefer the traditional translation 'sin offering.'

[442] Milgrom 1976 and 1985. Milgrom 1991, 255 notes that the blood of the *ḥaṭṭā't* is never applied to a person. Apart from Lev. 4, it is only brought by an individual in cases of severe physical impurity, as with the parturient, leper or gonorrheic (Lev. 12-15). None of these individuals are daubed with the purgative blood. Rather, atonement is made "on" the holy objects in the Sanctuary (Lev. 4:7, 18, 25, 30 and 34); Milgrom 1985, 303. This is because the purpose of the *ḥaṭṭā't* sacrifice is to purge the Sanctuary and its sancta of the impurities that they have attracted as a result of the offeror's sin. Milgrom's thesis has found widespread support and is followed, though not necessarily in all of its details, by Hartley 1992, 55f; Schwartz 1995 and Wenham 1979, 96. For important modifications of Milgrom's approach see Levine 1976 (differentiating between the 'riddance rite' and the 'expiation rite'); Kiuchi 1987 (arguing that purification of the sancta is not wholly unrelated to the expiation of sin) and Zohar 1988 (stressing the personal purification of the sinner as the purpose of the *ḥaṭṭā't* ritual).

[443] Milgrom 1991, 254.

[444] Milgrom 1976; 1985 and 1991, 254-8; followed by Hartley 1992, 57f. *Contra* Levine 1974, 67-77, who argues that impurity is 'demonic' and that the blood is apotropaic, and Douglas 1993a, 116, 118, 123 and 127-129, who argues that the basic meaning of atonement is to repair a torn protective covering. It is not necessary to choose between these theories. The complex nature of rites of atonement allows for secondary meanings. Milgrom's thesis does not exclude the possibility, raised by Levine and Douglas, that atonement has a protective as well as a purificatory character. Indeed 'protection' is a logical consequence of 'purification.' The Sanctuary is purified and because of this the sinner and the community are protected from YHWH's wrath. Blood protects as well as purifies.

[445] For the spectrum of priestly impurity see Wright 1991.

[446] The Sanctuary is not only polluted by direct contact. Purgation rites are described for areas to which the Israelites have no access (e.g. Lev. 16:16); Milgrom 1976, 394. Milgrom *op. cit.*, 393 argues that impurity has a "dynamic, aerial quality" that marks the Sanctuary from afar. Milgrom *op. cit.*, 398 draws an analogy with the *Picture of Dorian Gray*. "... sin may not leave its mark on the face of the sinner, but it is certain to mark the face of the sanctuary, and unless it is quickly expunged, God's presence will depart."

[447] Gorman *op. cit.*, 234.

of *Leviticus* itself: "how to protect the holiness of the house of God."[449] Within the priestly world-view, inadvertent sin was a serious offence because it threatened the holiness of a Sanctuary that had to be guarded, protected and maintained at all costs.

3. Offender status

The status and identity of the offenders is an important aspect of 'seriousness of offence' in Lev. 4.

(a) Identity of *hakōhēn hammāšîaḥ* (Case A [Lev. 4:3-12])

Lev. 4:3 refers to *hakōhēn hammāšîaḥ* ("the anointed priest"). The question is whether this refers to the ordinary priesthood or only to the High Priest. Ordinary priests could be referred to as "the anointed priests" (*hakōhănîm hammᵉšuḥîm*; e.g. Num. 3:3) because they had been sprinkled with the sacred anointing oil (Lev. 8:30). Nevertheless, there remains a sense in which the High Priest alone could be referred to as "the anointed priest," because he was the only priest who had the sacred anointing oil (Ex. 30:22-33) poured upon his head (Lev. 8:12; cf. Lev. 21:11).[450] The definite form of verse 4 ("*the* anointed priest") confirms that the subject of verses 4-12 is the High Priest alone and not the priestly class as a whole.[451]

Uniquely among cases A - D, the high priest's wrong "[brings] guilt upon the people (*lᵉʾašᵐmat hā ʿām*)" (Lev. 4:3).[452] BDB translates Lev. 4:3 as: "sin to the *becoming guilty* of the

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448 For the relationship between pollution and chaos see Frymer-Kensky 1983, 408f discussing, among other texts, Jer. 4:23-27.

449 Douglas 1995, 247.

450 Milgrom 1991, 231. *Contra* Budd *op. cit.*, 81 who contends that *hakōhēn hammāšîaḥ* refers to an ordinary priest.

451 The use of the definite article in verse 4 contrasts with verse 22, where the reference to "*a ruler*" (*nāśî*') shows that the subject is a whole class of rulers and not one particular person (see **(c)** below). The conclusion that the referent of Lev. 4:3 is the High Priest does not necessarily entail the conclusion that the ordinary priests are ranked with the *ʿam hā ʾāreṣ* of v. 27. This is because we do not have to assume that Lev. 4 is exhaustive. Indeed, the use of the phrase *ʿam hā ʾāreṣ* often *excludes* (rather than includes) the priesthood (see **(d)** below). The ordinary priests may not be included in Lev. 4. If so, Lev. 4 presents the case of the high priest (Lev. 4:3-12), but not the case of the ordinary priest.

452 This has been variously translated: "according to the sin of the people"; "to the sinning of the people" (Bonar 1972 [1846], 66); "to the detriment of the people" (Milgrom *op. cit.*, 231); or "so that blame falls upon the people" (JPS). For the meaning of *ʾāšām* see Kellerman 1977.

people" (my italics); that is, so that the people incur guilt.[453] The phrase explicitly attributes guilt to the people, although it is not clear how exactly this guilt arises.[454]

Regardless of how one interprets Lev. 4:3, the sin of the anointed priest is greater than either that of the *nāśî'* (4:22-26; see **4** and **5**, below) or one of the *'am hā 'āreṣ* (4:21-31; see **4** and **5**, below). This is consistent with the unique appointment of the high priest "for YHWH" (Ex. 28:1,3; 29:1). Compared to the *nāśî'* and the errant member of the *'am hā 'āreṣ*, the high priest's inadvertence is more serious because he has a higher obligation to know and to practice the *Torah*.[455] His 'sin of ignorance' is more serious because it is against better knowledge.

(b) Identity of *kôl - 'ǎdat yiśrā'el* (Case B [Lev. 4:13-21])

Lev. 4:13 refers to two institutions: the *kôl - 'ǎdat yiśrā'el* and the *qāhāl*. Reference is also made in Lev. 4:15 to *ziqnê hā 'ēdāh* ("elders of the congregation"). However, this group is not synonymous with either the *kôl - 'ǎdat yiśrā'el* or the *qāhāl*. It is limited to a small group of representatives who can lay their hands on the sacrifice. By contrast, *kôl - 'ǎdat yiśrā'el* and *qāhāl* appear to refer to a large multitude of people; equivalent to either the entire nation (to state the apparent upper limit; see below) or to 'all Israelite men over twenty' (the apparent lower limit; see below).

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[453] BDB 1979, 80.

[454] The key question is whether the people were actively involved in "becoming guilty" or not. There are two possible scenarios. One is that the high priest does something inadvertently and the people are guilty without doing anything. The other possible scenario is that the high priest does something and the people follow suit. In the latter case, the people are actively involved in "becoming guilty" because the high priest's erroneous decision causes the whole community to err. The first scenario may reflect the high priest's solidarity with the people; Pursiful 1993, 49. Milgrom *op. cit.*, 231 sees *t 'aš-maṭ* as a 'consequential *'aš*em̂* that signifies that the high priest's action has somehow affected the whole nation. Bonar *op. cit.*, 67 suggests that the high priest was guilty of some mistake in his cultic service; or accidentally polluted some of the holy vessels. This may have caused injury to the people as a whole because it misrepresented the sacrificial system. Keil and Delitzsch 1976 [1876], 303 wrongly claim that the high priest sins in his official capacity as representative of the nation before YHWH. In fact, the High Priest only acts in a truly 'representative' capacity once a year on the Day of Atonement (as signified by his change of clothing; Lev. 16:4, 23-4). There is no reason to suppose that he is acting in a 'representative' capacity in vv. 3-12, where his clothes class him as one 'set apart.' An example of the second scenario is the high priest commanding the people to observe a cultic feast on the wrong day.

[455] It is the duty of the high priest, as a member of the priestly class, to know the Law and to teach it to the people (Lev. 10:10-11; cf. Mal. 2:7). That the Law is particularly associated with the priesthood is implicit in several texts (Jer. 14:18, 18:18 and Ezek. 7:26). It is re-stated in the context of Jehosphahat's reforms (2 Chr. 19:11), and reaffirmed following the Exile (Neh. 8:2). Ezra himself is described as: "Ezra the priest, the scribe, learned in matters of the commandments of the LORD and his statues for Israel" (Ezr. 7:11). A number of texts hold the priests directly responsible for not knowing the Law and for not teaching it to the people. "My people are destroyed for lack of knowledge... since you [the priest] have forgotten the law of your God" (Hos. 4:6). In consequence: "For a long time Israel was without the true God, and without a teaching priest, and without law..." (2 Chr. 15:3). This responsibility places a higher obligation on the priest to know and follow *Torah*. Cf Jer. 5:4 where "the great" includes the priesthood as well as the

The evidence suggests that *kôl - 'ădaṭ yiśrā 'el* refers to the whole body of Israel and not to any specific body of representatives.[456] This is confirmed by the use of the similar phrase *kôl - 'ădaṭ b'nê-yiśrā'el* which occurs more frequently than *kôl - 'ădaṭ yiśrā'el.*[457] The parallelism between *kôl - 'ădaṭ yiśrā'el* and *qāhāl* in Lev. 4:13 ("If the *kôl - 'ădaṭ yiśrā'el* commits a sin unwittingly and the thing is hidden from the eyes of the *qāhāl*...") suggests that the two groups are synonymous. This synonymity appears to be confirmed in other texts.[458] We conclude that the sin in Lev. 4:13-21 is not committed by a small, representative, group but by a multitude that includes, at the minimum, 'all Israelite men over twenty.'[459]

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secular leaders of Judah. Jesus' parable of the Good Samaritan assumes that the priest has the greatest responsibility to obey the law, followed by the Levite and then by the Samaritan (Luke 10:30-37).

[456] The *kôl - 'ădaṭ yiśrā 'el* is a far broader group than the *'ēdâ* referred to in Num. 35:24. In Ex. 12:3 and 47 *kôl - 'ădaṭ yiśrā 'el* refers to those ("every man") who are commanded to take part in the Passover. In Josh. 22:18, Joshua warns the Transjordan tribes who have set up their own altar: "... if you rebel against the LORD today, he will be angry with *kôl - 'ădaṭ yiśrā 'el* tomorrow." He invokes the sin of Achan as a precedent: "Did not Achan the son of Zerah break faith in the matter of the devoted things, and wrath fell upon *kôl - 'ădaṭ yiśrā 'el*?...."

[457] In Num. 1:2-3, YHWH commands Moses to: "take a census of *kôl - 'ădaṭ b'ney-yiśrā 'el* by the clans of its ancestral houses [i.e. of its tribes] listing the names, every male, head by head. You and Aaron shall record them by their groups, from the age of twenty years up, all those in Israel who are able to bear arms." This indicates that the *kôl - 'ădaṭ b'ney-yiśrā 'el* consists of all Israelite men over twenty. Against this, it might be argued that *kôl - 'ădaṭ b'ney-yiśrā 'el* refers to the whole nation of Israel (Ex. 16:1,2,9,10; 17:1; 35:1,4,20; Lev. 19:2; Num. 1:2, 8:9, 13:26, 14:7, 15:25; 16:41). However, as Wenham 1979, 98 points out, if the *kôl - 'ădaṭ b'ney-yiśrā 'el* consists of 'all Israelite men over twenty,' it would contain representatives of every Israelite family. It could therefore be used, on occasion, to designate the whole nation; *ibid.* Interestingly, *kôl - 'ădaṭ b'ney-yiśrā 'el* is used in Num. 15:25, which has some parallels to Lev. 4:13: "And the priest shall make atonement for *kôl - 'ădaṭ b'ney-yiśrā 'el*, and they shall be forgiven; because it was an error...."

[458] Although the term *qāhāl* can, on occasion, mean a select group (e.g. Ps. 26:5: "I hate the company of evildoers [*q'hal m're 'im*]..."), phrases such as *kôl - q'hal* and *kôl - q'hal yiśrā 'el* are presented as being close to the meaning of *kôl - 'ădaṭ yiśrā 'el*. With regard to the former, the phrase *kôl - q'hal* is used in Ex. 16:1-3 as a parallel to *kôl - 'ădaṭ yiśrā 'el*. With regard to the latter, Josh. 8:35 states: "there was not a word of all that Moses commanded which Joshua did not read before *kôl - q'hal yiśrā 'el*, and the women, and the little ones, and the sojourners who lived among them." This implies that women, children and aliens were not part of the *kôl - q'hal yiśrā 'el*. This is consistent with the picture given of the *kôl - 'ădaṭ b'ney-yiśrā 'el* in Num. 1:2-3 (Israelite men over twenty). The phrase *kôl - q'hal yiśrā 'el* is also used in 1 Kgs. 8:14, 22, 55. This is important because at 1 Kgs. 8:65 the writer uses the phrase: "all Israel, a great assembly (*qāhāl gādôl*)." This connects the phrase *kôl - q'hal yiśrā 'el* to the shorter term *qāhāl gādôl*. *Qāhāl gādôl* is used in a number of texts to refer to the whole nation (Jer. 44:15). In fact, there is no apparent difference between *qāhāl gādôl* and *qāhāl* because *qāhāl* is used to mean "a host" (Ezek. 16:40; 23:46,47) or a "multitude" (2 Chr. 31:8). In Joel 2:15-16, the whole nation is implied in the command: "... call a solemn assembly (*'āṣārā*), gather the people (*'ām*). Sanctify the congregation (*qāhāl*); assemble the elders, gather the children, even nursing infants." There are other permutations, of which the most important are *kôl q'hal 'ădāṭ-yiśrā 'el*, Ex. 12:6) and *kôl - q'hal 'ādāṭ b'ney yiśrā 'el*, Num. 14:5). There is thus little difficulty in treating *kôl - 'ădaṭ yiśrā 'el* and *qāhāl* as parallel terms in Lev. 4:13.

[459] The wilderness narratives present the *kôl - 'ădaṭ b'ney-yiśrā 'el* as a corporate body that is capable of both obedience and deliberate sin. In Num. 27:20, YHWH commands Moses to invest Joshua with some of his (Moses') authority: "... that *kôl - 'ădaṭ b'ney-yiśrā 'el* may obey." Clearly, if the whole people can be regarded as a corporate body that is capable of obedience, they can also be regarded as a single body that is capable of offending. An example of this is found in Num. 13:26ff. The spies return from Canaan to report their findings to: "Moses and Aaron and to *kôl - 'ădaṭ b'ney-yiśrā 'el* (Num. 13:26). The latter hear their report (Num. 14:7), but their response is to stone them with stones (Num. 14:10, where the referent is simply to the (*'ēdâ*). If the 'whole congregation' can 'obey' and 'rebel,' it can also sin 'inadvertently.' This does not require every single member of the nation to sin 'inadvertently.' It merely requires that the *majority* of 'males over twenty' to sin inadvertently. (Even the deliberate sin of the whole congregation, described in

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(c) Identity of *nāśî*: (Case C [Lev. 4:22-26])

The definitive meaning of *nāśî'* is contained in the Hexateuch.[460] The *nāśî'* appears to be a leader, potentially at either tribal (cf. Num. 3:32; Jos. 22:14) or sub-tribal (Num.3:30, 35) levels.[461] The *nᵉśî'îm* represented the chief political authority of their day.[462] An executive council of the *nᵉśî'îm*, acting as representatives of their tribes, probably made important decisions.[463] There is no definite article in Lev. 4:22 (in contrast to the singular *nāśî'* of *Ezekiel*; e.g. Ezek. 34:24). We therefore conclude that Lev. 4:22-26 refers to any single member of the class of *nᵉśî'îm*.[464]

(d) Identity of *'am hā 'āreṣ*: (Cases D1 [Lev. 4:27-31] and D2 [Lev. 4:32-35])

Some scholars argue that the phrase *'am hā 'āreṣ* (lit. "people of the land") in Lev. 4:27 includes priests and Levites as well as commoners.[465] It is true that *'am hā 'āreṣ* can have this range of meaning in certain contexts.[466] However, it is by no means certain whether

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Num. 14, does not include Joshua and Caleb!). Num. 14:7 strengthens the idea that the *kôl - 'ădat bᵉney-yiśrā 'el* consists of all Israelite men over twenty (see n.457 above). Everyone over twenty who rebelled against the spies was part of the generation who died in the wilderness (cf. Num. 14:29, Wenham *op. cit.*, 98). Finally, reference is made in the wilderness narratives to *kôl - 'ădat bᵉney-yiśrā 'el* appearing before Moses (Ex. 35:1, 4, 20) and Aaron (Ex. 16:10) for instruction. The latter example describes how: "... Aaron spoke unto *kôl - 'ădat bᵉney-yiśrā 'el* " (Ex. 16:10). This suggests that the 'error' in Case A might have arisen when the high priest mistakenly taught the *kôl - 'ădat bᵉney-yiśrā 'el'* (all males over twenty) and all, or the vast majority, followed his direction.

[460] This is because the term *nāśî'* in the Hebrew Bible always refers to a pre-monarchical figure, apart from a few scattered references and Ezekiel's 'idiosyncratic' usage. Its meaning is therefore most likely to be found in narrative accounts of Israel's pre-monarchic history; Duguid 1994, 14. For the development of chiefly authority in Israel see Flanagan 1981.

[461] The *nᵉśî'îm* are frequently equated with the title *rā'šê bêt 'ăbōtām* (Num. 7:2; 36:1), suggesting that the *nāśî'* had to be a duly recognised head of a *bêt - 'ab* (Speiser 1963, 113; cf. Mari, where the title for the clan head (lit. 'father of the household') could also designate the tribal chief; Milgrom 1991, 247). Each tribal subdivision or clan was designated as *bêt 'ābōt*, and each could have its own *nāśî'*; *ibid.* (cf. Num. 3:32 where the three Levite clans had individual *nᵉśî'îm* with a chief *nāśî'* over them). Speiser *op. cit.*, 113 argues that *any* patriarchal grouping, large or small was headed by its own *nāśî'*, who was probably elected in the case of larger groups (cf. Num. 1:16 and Num. 16:2). Speiser's view that among such groups, *nāśî'* stands for a 'duly elected chieftain' has since been supported by the discovery of a semantic equivalent in Ugaritic; Duguid *op. cit.*, 12.

[462] Duguid *op. cit.*, 14. They had the right to declare war (Jos. 22:14), to make treaties (Jos. 9:15) and to decide property issues (Num. 36:1). The leaders of other tribal groups with whom Israel came into contact were also called *nāśî'îm* (Jos. 13:21).

[463] Speiser *op. cit.*, 114 contends that, just as clans and tribes each had their respective *nāśî'*, the same title was also applied to the head of a combination or confederation of a number of tribes. In this way a *nāśî'* could hold national as well as clan or tribal office.

[464] As n.461 indicates, there were plenty of *nāśî'îm* in ancient Israel. Indeed, Num. 1:5-16; 13:1-15; 34:16-28 provides three discrete lists of the chieftains of the twelve tribes, none of which duplicates the other; Milgrom *op. cit.*, 246.

[465] Milgrom *op. cit.*, 251, Bush 1976 [1852], 47.

[466] Milgrom *op. cit.*, 251, cites Ezek. 45:22; cf. 7:27; 45:16. But *Ezekiel* does not offer firm support in this respect. Ezekiel's use of *nāśî'* is idiosyncratic; Duguid *op. cit.*, 14 and the same may also be true of his use of *'am hā 'āreṣ*. Milgrom also cites Hag. 2:4.: "But be strong, O Zerubbabel - says the LORD - be strong, O high priest Joshua son of Jehozadak; be strong all you people of the land - says the LORD...." But is it really the case that *'am hā 'āreṣ* here refers to 'the entire Israelite nation minus two people (Zerubbabel and Joshua)'? It is far more likely that Zerrubabel and Joshua represent

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priests and Levites are included in Lev. 4:27.[467] It might be argued that because we have excluded the priesthood from our reading of the "anointed priest" in Lev. 4:3 (see **(a)** above), we ought therefore to include the priesthood in our reading of Lev. 4:27. Such an argument is based on the premise that Lev. 4 must be exhaustive in its scope. However, as we saw in n.451 above this a rebuttable presumption. There is no reason to assume that Lev. 4 is intended to be comprehensive. We do not therefore see any need to include the priests and the Levites in the referent of *'am hā'āreṣ* in Lev. 4:27-35. Indeed, the phrase *'am hā'āreṣ* explicitly excludes the priesthood in certain contexts (e.g. Jer. 1:18).[468] The phrase *'am hā'āreṣ* in Lev. 4:27 should therefore be taken at face value to refer to the general class of 'common people.' Consequently the typical offender in Lev. 4:27-35 is any individual member of the class of commoners.

(e) Summary

To sum up: case A (Lev. 4:3-12) deals with the high priest who leads the people into sin. Case B (Lev. 4:13-21) concerns the multitude, apparently acting independently and without being prompted by the high priest. Lev. 4 does not state what would be the consequences of the high priest acting on his own (without 'bringing guilt upon the people'). Some might contend that cases A and B simply deal with two different ways in which the people make a mistake. On the one hand (case A), it is due to the high priest, and on the other hand (case B), they make it on their own. However, this differentiation overlooks the focus of each case. In case A, the focus is on the responsibility of the high priest whilst in Case B the focus is on the responsibility of the *kôl - 'ădaṯ yiśrā'el.* Case C (Lev. 4:22-26) deals with the inadvertent sin of the *nāśî'* whilst case D (Lev. 4:27-35) deals with the inadvertent sin of the member of the *'am hā'āreṣ.*

From this brief sketch, it appears that there is a binary opposition between cases A and C. Case A presents the case of the 'sacred leader' (*hakōhen hammāśîaḥ*) whilst case C

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the *office* of leadership; secular and sacred respectively. If so, the phrase "the people of the land" simply refers to those who are neither secular leaders nor sacred leaders. If so, Hag. 2:4 posits exactly the same opposition between 'sacred leader' and 'secular leader' (cases A and C) and between 'leaders' (cases A and C) and 'followers' (cases B and D) that we argue is found in Lev. 4 (see **(e)**, below). We conclude that *'am hā'āreṣ* in Hag. 2 and Lev. 4:27 *excludes* rather than encompasses the priests.

[467] Cf. Duguid *op. cit.*, 30.

[468] On occasion, it has an even more exclusive sense (e.g. 2 Kgs. 11; 21:24; 23:30 where it refers to a political group). Strangely, Milgrom 1991, 252 cites Jer. 1:18 in support of his reading of Lev. 4:27. This is odd, because Jer. 1:18 defines *'am hā'āreṣ* as the *absence* of leaders and priests, which is contrary to Milgrom's interpretation. Jer 1:18 is, however, consistent with the idea that there is a basic opposition between 'leaders' (defined as 'princes' and 'priests') and 'followers' (defined as the *'am hā'āreṣ*). The same opposition is apparent in Lev. 4, see **(e)**, below.

presents that of a 'secular leader' (the *nāśî'*). Both B (*kôl - 'ădat yiśrā'el*) and D (*'am hā'āreṣ*) envisage the people (*en masse*) who 'follow' their leaders. To this extent there is also a structural opposition between 'leaders' (in cases A and C) and 'followers' (in cases B and D). Finally, we note that the three cases dealing with individuals are presented in descending order of status. They are the 'sacred leader' (case A), followed by the 'secular leader' (case B) and the 'commoner' (case D).[469] 'Descending order of status' appears elsewhere in Biblical law[470] and in the ANE.[471]

4. Registers of 'seriousness' in Lev. 4

Table 1, below, presents the main registers of 'seriousness of offence' in Lev. 4. They are presented separately to simplify matters, although the registers are of course inter-connected.

	Registers 1 Type of Animal	2 Blood rite	3 Object cleansed	4 Disposal of Carcass
Status of Offender *Hakōhen hammāšîaḥ*	Bull	Brought into Holy Place; 7 x toward the veil	Incense altar horns	Destroyed
Kôl - 'ădat yiśrā'el	Bull	Brought into Holy Place; 7 x toward the veil	Incense altar horns	Destroyed
Nāśî'	Male goat	Not brought into Holy Place	*'ōlāh* altar horns	Eaten
Member of *'am hā'āreṣ*	Female goat or Female lamb	Not brought into Holy Place	*'ōlāh* altar horns	Eaten

Table 1: Registers of seriousness according to status of
offender in Lev. 4 [472]

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[469] We note that case D (Lev. 4:27-35) can be subdivided into two cases; D1 (Lev. 4:27-31) and D2 (Lev. 4:32-35), depending on whether the *ḥaṭṭā't* is a female goat (Lev. 4:28) or a female lamb (Lev. 4:32).

[470] Cf. the descending status of the victim in Ex. 21. Ex. 21:12-17 is mostly concerned with fatal injuries to a free man, whilst Ex. 21:18-19 deals with non-fatal injuries, also to a free man. This pattern is repeated in Ex. 21:2-21 and Ex. 21:26-27, where the victim is now the male (*'ebed*) or female (*'āmāh*) slave. There is a similar pattern in Ex. 21:28-35. Case A (Ex. 21:28-30) is concerned with a "man or woman" (Ex. 21:28, 29); case B (Ex. 21:31) deals with a son or daughter; case C (Ex. 21:32) deals with the male or female slave; whilst case D (Ex. 21:33-35) is concerned with animals.

[471] Cf. the declining status of the victim in LH 196 and 198. We note in passing that the class distinction between 'nobleman' and 'commoner' in these laws makes the latter's injury less serious. This is not apparent in Ex. 21:18-19, 28, 29 or 31 (although, as we saw, there is a difference in regard to slaves; Ex. 21:26, 27 and 32).

[472] Adapted from Jenson 1992, 172.

Table 1 shows that registers of seriousness of offence in Lev. 4 (measured by type of animal, blood rite, object cleansed and disposal of carcass) are related to the status of the offender. We shall examine each of these registers as follows.

(a) Register 1: Type of animal

The type of animal functions as a register of seriousness in two respects.

(i) *Declining economic value*

Firstly, the sacrifices are presented in terms of declining economic value.[473] The more serious cases are dealt with by more expensive sacrifices and the less serious cases are dealt with by less expensive sacrifices. The young bull brought by the high priest (Lev. 4:4) and *kôl - 'ādat yiśrā'el* (Lev. 4:14) is more valuable than the male goat brought by the *nāśî'* (Lev. 4:23). This in turn is more valuable than the female goat (Lev. 4:28) or female lamb (Lev. 4:32) brought by the member of the *'am hā'āres*.[474] 'Declining economic value' is paralleled elsewhere in the priestly system.[475] A semantic approach to 'declining economic value' would see Lev. 4 as a set of rules specifying the exact value of the sacrifice.[476] However, a 'narrative' approach sees cases A - D as a series of 'paradigm cases.' The correlation between 'status,' 'seriousness' and 'expense' expresses the need to bring a sacrifice that is broadly in line with the offeror's status.[477] On this approach, it does not matter that the priests are not formally mentioned in Lev. 4 (see notes 21 and 36 above). The priests' sacrifice is worked out on the basis of what the other parties ought to

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473 Sacrifices could, and indeed were, regarded in financial terms (e.g. Deut. 14:24-26). Sacrifice was the central means of revenue collection in the Biblical world; Anderson 1987. Levine 1989 xxiii notes the similarity between the Biblical terms used for sacrifice and those used for tax records. The Tabernacle was a national 'storehouse' and to this extent, the role of Israel's priests was somewhat akin to that of modern financiers; Matthews and Benjamin 1993, 191; cf. 2 Kgs. 18:13-16. Matthews and Benjamin *ibid.* claim, without citing sources, that the priests assessed the net worth of a household on the basis of the goods brought by its representatives. Households were not to send diseased animals or agricultural produce in an attempt to reduce the value of their appraisal (the ancient equivalent of 'tax-evasion').

474 There are several possible reasons for the economic priority of males over females. Firstly, a single male animal is worth more than a single female (one stud for many females; Wenham 1979, 100). Secondly, within the sacrificial system, male animals are generally preferred to females (although there are exceptions; e.g. Gen. 15:9; Lev. 1:31 Sam. 16:2 and 1 Sam. 6:13). This may reflect Israelite patriarchal custom. Bird 1983, 263 considers that the differential valuation is also psychological. The superior economic value of males is confirmed in Lev. 27:1-8.

475 'Declining economic value' appears in Lev. 5:6-13 and in Lev. 14:10, 21-22, where it is based on the principle of affordability (Lev. 5:7, 11 and 14:21).

476 E.g. Anderson 1992, 875, speaking of the sacrifices in Lev. 4: "The priest (*sic*), community, ruler, and individual had their own requirements *that could not be varied*" (my italics).

477 For example, it is likely that a *nāśî'* in the Negev would be poorer than a *nāśî'* in Upper Galilee. This kind of leeway in sacrificial matters is seen elsewhere in the ANE. Cf. l. 85A of the text of the NIN.DINGIR ritual (Emar 369) which states that in a good year the NIN.DINGIR priestess will receive "thirty *parisu* of barley," but only "fifteen *parisu* of barley" in a bad year. Cf. also l. 85C; Fleming 1992, 58-9.

bring. A narrative approach also takes account of regional variations concerning the relative wealth of a particular 'type' of offender.

(ii) Declining visual prestige

Secondly, and related to (i) above, the sacrifices are presented in declining order of visual prestige. The young bull (Lev. 4:4, 14) is the animal of finest prestige.[478] It is visually more impressive than the male goat (Lev. 4:23), the female goat (Lev. 4:28) and the female lamb (Lev. 4:32). The visual appearance of the sacrificial animals is relevant because it correlates with the status of the offenders, who are themselves doubtless the carriers of visual markers of distinction.[479] Particularly impressive animals symbolised those who held power and prestige in Israelite society.[480] It is a further way in which 'type of animal' may function as a register of seriousness in Lev. 4. Unlike (i), above, however, this register is communicated in visual rather than purely financial terms.

(b) Register 2: Blood rite

A second register is the nature of the blood rite. We noted at 2(c), above, that the main purpose of the *ḥaṭṭā't* ritual is to cleanse the Sanctuary of impurity and to re-establish the boundaries of the holy. Fig. 1, overleaf, presents an aerial map of the Tabernacle. This shows the position of the various cultic objects and the relative holiness of different parts of the Sanctuary.[481] This will help us to understand how the blood rites of Lev. 4 function as an element of 'seriousness' in Lev. 4.

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[478] Douglas forthcoming, 142.

[479] The Israelites set high value upon clothes (e.g. Josh. 7:21; Jdg. 14:12; Is. 3:16-23; cf. Heaton 1974; 87-90). Clothes functioned as a social marker in ancient Israel, signifying gender (e.g. Deut. 22:5); employment (Ex. 28:31-42; 2 Sam. 20:8) and power relationships (e.g. 2 Sam. 13:18; 2 Kgs. 25:29; cf. their use in the Joseph narrative (Matthews 1995) and the David narrative; Prouser 1998). There is some indication that they may have been decorated with rank insignia (e.g. Josh. 9:5-13 where the Gibeonites' clothes successfully disguise their true identity. They claim to have been sent by their "elders" (Josh. 9:11) and they repeatedly claim to be "servants" (Josh. 9:8,9,11). It is thus possible that their clothes signified their lowly rank). For these reasons, it is likely that the clothes of the *nāśi'* signified his higher standing in relation to a member of the *'am hā'āreṣ*, whilst the high priest, in his ephod (Ex. 28:6-12; 39:2-7), breastplate (Ex. 28:15-30; 29:8-21) and robe (Ex. 28:31-35; 39:22-26), was the most splendidly attired of all individuals in ancient Israel.

[480] The correlation between the prestige of the animal and the prestige of the offender, is an aspect of "biotic rapport"; *viz.*, the idea that the sacrificial animal has to 'represent,' in some sense, the person bringing the sacrifice; Thompson, 1994, 1360.

[481] Cf. Jenson *op. cit.*, 89-114.
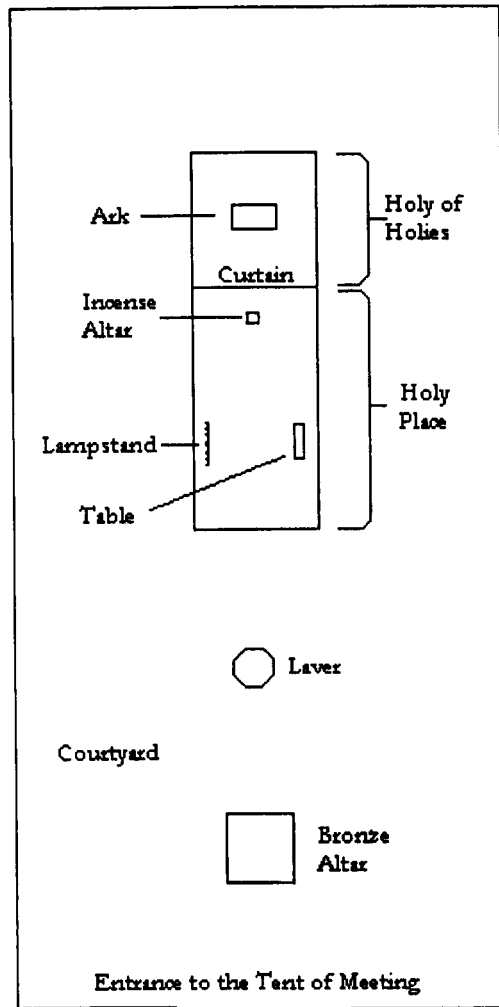
Fig. 1: Aerial view of Sanctuary showing grades of holiness

The 'boundaries of the holy' are as follows. The most sacred part of the Tabernacle is the innermost shrine, the Holy of Holies (*qōdeš haqqŏdāšîm*; Ex. 26:33, Num. 4:4, 19). This is accessible only to the High Priest on the Day of Atonement (Lev. 16:32-34). Of lesser sanctity is the Holy Place (*haqqōdeš*; Ex. 26:33, 29:30; Lev. 6:30 [Heb. 23]; Num. 3:28, 28:7). This is restricted to the priests. The Holy of Holies and the Holy Place are separated by a curtain (Ex. 26:33). The surrounding courtyard (*ḥāṣar*; Ex. 27:9-19, Num. 4:26, 32) belongs to a lower category of the sacred and is open to the laity.[482] The entrance to the Tent of Meeting, marked on Fig. 1, (*peṭaḥ 'ōhel mō'ēd*; Ex. 29:4, 32, 42; Lev. 1:3, 3:2; 12:6; 16:7) refers to the area between the bronze altar and the entrance to the court.

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482 See Milgom 1970, 207-8, n. 25.

Lev. 4 describes two distinct blood rites. The first rite is used in cases A and B. Here, the blood is brought into the Holy Place and sprinkled seven times in front of the veil that separates the Holy Place from the Holy of Holies (Lev. 4:5-6; 4:16-17).[483] The second rite is used in cases C and D. Here, the ritual is restricted to the courtyard and the blood is not brought into the Holy Place (Lev. 4:22-26; 4:27-35). The spatial extent of the blood rites is in direct proportion to the extent of the pollution caused by the offenders' inadvertency.[484] This correlation is consistent with the observation, above, that ritual preserves and protects the boundaries of the holy.[485] In this way, the blood rites function as a register of seriousness of offence.

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[483] The sevenfold sprinkling of the blood is peculiar to cases A and B. Bush 1976 [1852], 43 suggests that the number seven signifies the "full and perfect cleansing of sin" and that it indicates the aggravated heinousness of the offence in cases A and B. If so, it may act as a further register of seriousness.

[484] Milgrom 1991, 257. *Contra* Budd 1996, 81 who argues that the priest brings the blood into the holy place because the priest is implicated in the sin of cases A and B, and the holy place is the area where the priest operates. This interpretation limits the range of case B, which may be seen as a case where the people sin *without* being prompted by the high priest (see **3(b)** above).

[485] Budd *op. cit.*, 98.

Fig. 2, below, shows the extent of the blood rite in cases A and B. The impurity caused by their inadvertent sin contaminates the Holy Place and the courtyard. The blood applied on the curtain marks the outer boundary of the pollution caused by the high priest and *kôl - ʿădaṯ yiśrā 'el.*[486]

Fig. 2: Degree of pollution caused by the sin of the *hakōhen hammāšîaḥ* and the *kôl - ʿădaṯ yiśrā 'el*

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[486] *Contra.* Budd *op. cit.*, 83 who argues that the rite does not purify the holy place but the Holy of Holies. But in that case, why does the priest enter the Holy of Holies on the Day of Atonement (Lev. 16:2-16)?

Fig. 3, below, shows the extent of the blood rite in cases C and D. In contrast to Fig. 2, only the courtyard has been polluted. Consequently, the blood of the *ḥaṭṭā't* does not have to be brought into the Holy Place.

Holy of
Holies

Holy
Place

Courtyard

Bronze
Altar

KEY

Area polluted

Blood applied

Entrance to the Tent of Meeting
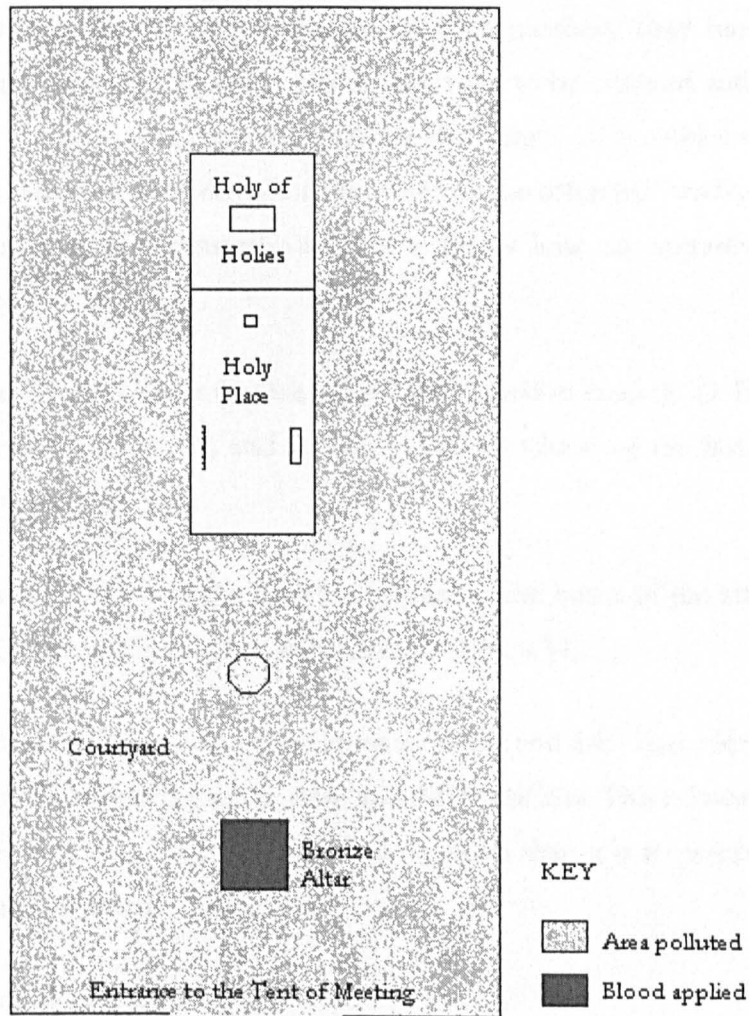
Fig. 3: Degree of pollution caused by the sin of the *nāśî'* and
the member of the *'am hā'āreṣ*

Figs. 2 and 3 show that the impurity caused by the offenders in cases A and B penetrates deeper into the Sanctuary than the impurity caused by the offenders in cases C and D. We conclude from this that the inadvertent offending of the high priest and *kôl - 'ădat yiśrā'el* is more serious than that of the *nāśî'* and the *'am hā'āreṣ*.

(c) Register 3: Object cleansed

A further register, related to **(b)**, above, is the identity of the objects that are cleansed in the course of the ceremony. The blood of the *ḥaṭṭā't* is not daubed at random. It purges

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the very points that attract impurity. Pollution is drawn, not just to the Sanctuary - the implacable foe of impurity[487] - but, in particular, to its most sacred objects.[488] The bronze altar (which is the holiest object in the courtyard) and the incense altar (which is the holiest object in the Holy Place) are the holiest points of their respective areas (Ex. 29:37; Ex. 30:10). Accordingly, they are the objects that attract contamination. They function rather like 'lightning-conductors' for impurity. Hence they have to be cleansed with the blood of the ḥaṭṭā't. In this way, as in register **(b)** above, the identity of the objects that are cleansed also indicates the extent of the pollution caused by the offenders' inadvertent sin. It functions as a register of seriousness because it shows how far impurity has penetrated the Sanctuary.

Figs. 2 and 3, above, identify the objects that are applied with blood in cases A- D. Fig. 2, above, shows that in cases A (Lev. 4:7) and B (Lev. 4:18), the blood of the ḥaṭṭā't is applied to the horns of the incense altar.

Fig. 3, above, shows that the blood of the ḥaṭṭā't is applied to the horns of the altar of burnt offering in cases C (Lev. 4:25), D1 (Lev. 4:30) and D2 (Lev. 4:34).

We may conclude that the inadvertent sin of the anointed priest and kôl - ʿădaṭ yiśrā'el is thus more serious than the inadvertency of the nāśî' and the ʿam hā'āreṣ. This is because it is a more serious matter to pollute the Holy Place and its sancta than it is to pollute the surrounding courtyard and its sancta.

(d) Register 4: Disposal of carcass

A fourth register is the manner in which the ḥaṭṭā't sacrifice is disposed of. In cases A (Lev. 4:11-12) and B (Lev. 4:21) the priest is ordered to carry the carcass: "... outside the camp to a clean place, where the ashes are poured out, and... [to] burn it on a fire of wood" (Lev. 4:12). This is in accordance with strict procedure: "no ḥaṭṭā't shall be eaten from which any blood is brought into the tent of meeting to make atonement in the holy place; it shall be burned with fire" (Lev. 6:30 [Heb. 6:23]). Cases C and D do not direct

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[487] Milgrom 1976, 395.

[488] Milgrom *op. cit.*, 393.

the priest explicitly on how to dispose of the carcass.[489] However, unlike cases A and B, the implication is that the carcass is eaten by the priests (cf. Lev. 10:17).[490]

This difference in the disposal of the carcass appears to lie in the fact that the blood of the *ḥaṭṭā't* in cases A and B purges the inner Sanctuary, whereas the blood of the *ḥaṭṭā't* in cases C and D only purges the outer altar.[491] The method of disposal functions as a register of seriousness because, as with **(b)** and **(c)** above, it signifies the degree of pollution caused by the offenders' act of inadvertency.

We have already seen that it is a more serious matter to contaminate the Holy Place than it is to contaminate the courtyard. Accordingly, the sacrifice in cases A and B absorbs more impurity than the blood of the *ḥaṭṭā't* in cases C and D.[492] This means that the blood of the *ḥaṭṭā't* has the potential to contaminate those who come across it. So too does the carcass, on the principle of *pars pro toto*. The whole animal partakes of the impurity of the blood. Consequently, the remains of this sacrifice must be removed from the camp.[493] The lesser impurity of the *ḥaṭṭā't* sacrifice in cases C and D, by contrast, means that this carcass does not have to be removed.[494] We conclude that, on this register, the inadvertent offences of cases A and B are more serious than those of C and D.

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[489] Levine 1974, 104 sees the difference between disposal of the carcass in cases A and B and that of cases C and D as evidence that there were originally two different *ḥaṭṭā't* rituals (one a 'rite of riddance' and the other a 'gift of expiation'). Milgrom 1976 disagrees, claiming that the difference between the two *ḥaṭṭā't* rituals is a difference of degree, rather than of quality. They do not vary in function, but in the degree of impurity that they purge.

[490] Notably Lev. 5:1-13, which follows on directly from Lev. 4:22-35, also appears to be concerned with *ḥaṭṭā't* that should be eaten. Milgrom 1991, 264 suggests that the *ḥaṭṭā't* may not be eaten in cases A and B because of the principle that no priest should profit from his own sin; cf. Budd *op. cit.*, 80.

[491] Milgrom *op. cit.*, 261-264 finds strong support for his thesis in Lev. 10:16-22. Here, Moses makes it clear that the *ḥaṭṭā't* should have been eaten because the blood had not been brought into the inner Sanctuary (Lev. 10:18). From this it appears that the manner of disposal depends on the use to which the blood has been put. The crucial question is whether the blood has been brought into the holy place. If it has then the flesh must not be eaten.

[492] Budd *op. cit.*, 81 argues that the unique power of sacrificial blood lies in its ability to 'do away' with impurity without thereby becoming contaminated itself. For this reason, there is no need to suppose that the *ḥaṭṭā't* becomes contaminated or carries contamination away. Budd argues that if the carcass did become contaminated, it seems unlikely that the priests would ever be allowed to eat it, or that in other circumstances it could be carried away to a clean place (Lev. 4:12, 21).

[493] 'Outside the camp' is typically where the unclean dwell, but the carcass itself is deposited in a "clean place" (Lev. 4:12, 21).

[494] Rather, it is necessary and appropriate for this sacrifice to be eaten by the priests. As in cases A and B, the flesh of the *ḥaṭṭā't* is destroyed, but by different means; Milgrom *op. cit.*, 261-4. *Contra* Dunnill 1992, 96 who suggests, without citing sources, that the consumption of the flesh by the priests rather than by fire identifies them as vehicles of divine power and as mediators between human sin and God's holiness.

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(e) Summary

Registers of seriousness in Lev. 4 include: type of animal, blood rite, object cleansed and the method of destroying the carcass. Underlying these registers, notably, are the interlocking constructs of 'status' and 'space.' 'Status' is relevant when considering the symbolic link between the type of animal and the status of the offeror (see **(a)**(ii) above); the status of the zone used to perform the ritual (see **(b)** above); and the status of the object on which the blood is applied (see **(c)** above). 'Space' is relevant when considering which area the blood is brought into (see **(b)** above); the location of the ritual object to be cleansed (see **(c)** above); and where the carcass is destroyed (see **(d)** above). 'Status' and 'space' are central to the priestly world-view and to the ritual order of the Tabernacle.[495] These are exactly the categories that we might expect the priestly writers to use to communicate their beliefs concerning the seriousness of inadvertent sins. They indicate that cases A and B are the two joint equal 'top-of -the-league' cases of seriousness. These cases are more serious than cases C and D, as measured by: type of animal; blood rite; object cleansed; and method of carcass disposal. Finally, the register of 'type of animal' introduces a distinction between cases C and D, showing that case C is more serious than case D, as measured by type of animal.

6. Conclusion

Lev. 4 holds a particular offence (sins of inadvertence) constant throughout. However, it prescribes different outcomes depending on changes in a single variable (the identity of the offender). This allows us to draw the following conclusions. First, the inadvertent sin of the high priest who leads the people into sin is a more serious offence than the inadvertent sin of a *nāśî'*. The sin of a 'sacred leader' is more serious than the sin of a 'secular leader.' Second, the sin of a *nāśî'* is more serious than the sin of a member of the *'am hā 'āreṣ*. The sin of a 'leader' is more serious than the sin of a 'follower.' Third, the sin of a high priest who leads the people into sin is equal in gravity to the collective sin of the people, acting on their own account. Finally, the inadvertent sin of the whole people, acting collectively, is more serious than the inadvertence of a single individual, whether a *nāśî'* or a member of the *'am hā 'āreṣ*. The question of whether the inadvertent sin of *kôl -'ădat yiśrā 'el* is more serious than an inadvertent sin of the high priest that does not bring guilt upon the people, is undetermined.

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495 Gorman *op. cit.*, 234.

THE ABOMINATIONS THAT BRING DESOLATION

Seriousness of offence and Ezek. 8:1-18

Text

Ezek. 8:1 וַיְהִי בַּשָּׁנָה הַשִּׁשִׁית בַּשִּׁשִּׁי בַּחֲמִשָּׁה לַחֹדֶשׁ אֲנִי יוֹשֵׁב בְּבֵיתִי וְזִקְנֵי יְהוּדָה יוֹשְׁבִים לְפָנָי וַתִּפֹּל עָלַי שָׁם יַד אֲדֹנָי יְהוִֹה: 2 וָאֶרְאֶה וְהִנֵּה דְמוּת כְּמַרְאֵה־אֵשׁ מִמַּרְאֵה מָתְנָיו וּלְמַטָּה אֵשׁ וּמִמָּתְנָיו וּלְמַעְלָה כְּמַרְאֵה־זֹהַר כְּעֵין הַחַשְׁמַלָה: 3 וַיִּשְׁלַח תַּבְנִית יָד וַיִּקָּחֵנִי בְּצִיצִת רֹאשִׁי וַתִּשָּׂא אֹתִי רוּחַ בֵּין־הָאָרֶץ וּבֵין הַשָּׁמַיִם וַתָּבֵא אֹתִי יְרוּשָׁלַ͏ְמָה בְּמַרְאוֹת אֱלֹהִים אֶל־פֶּתַח שַׁעַר הַפְּנִימִית הַפּוֹנֶה צָפוֹנָה אֲשֶׁר־שָׁם מוֹשַׁב סֵמֶל הַקִּנְאָה הַמַּקְנֶה: 4 וְהִנֵּה־שָׁם כְּבוֹד אֱלֹהֵי יִשְׂרָאֵל כַּמַּרְאֶה אֲשֶׁר רָאִיתִי בַּבִּקְעָה: 5 וַיֹּאמֶר אֵלַי בֶּן־אָדָם שָׂא־נָא עֵינֶיךָ דֶּרֶךְ צָפוֹנָה וָאֶשָּׂא עֵינַי דֶּרֶךְ צָפוֹנָה וְהִנֵּה מִצָּפוֹן לְשַׁעַר הַמִּזְבֵּחַ סֵמֶל הַקִּנְאָה הַזֶּה בַּבִּאָה: 6 וַיֹּאמֶר אֵלַי בֶּן־אָדָם הֲרֹאֶה אַתָּה (מֵהֶם) [מָה] (הֵם) עֹשִׂים תּוֹעֵבוֹת גְּדֹלוֹת אֲשֶׁר בֵּית־יִשְׂרָאֵל עֹשִׂים פֹּה לְרָחֳקָה מֵעַל מִקְדָּשִׁי וְעוֹד תָּשׁוּב תִּרְאֶה תּוֹעֵבוֹת גְּדֹלוֹת: ס 7 וַיָּבֵא אֹתִי אֶל־פֶּתַח הֶחָצֵר וָאֶרְאֶה וְהִנֵּה חֹר־אֶחָד בַּקִּיר: 8 וַיֹּאמֶר אֵלַי בֶּן־אָדָם חֲתָר־נָא בַקִּיר וָאֶחְתֹּר בַּקִּיר וְהִנֵּה פֶּתַח אֶחָד: 9 וַיֹּאמֶר אֵלַי בֹּא וּרְאֵה אֶת־הַתּוֹעֵבוֹת הָרָעוֹת אֲשֶׁר הֵם עֹשִׂים פֹּה: 10 וָאָבוֹא וָאֶרְאֶה וְהִנֵּה כָל־תַּבְנִית רֶמֶשׂ וּבְהֵמָה שֶׁקֶץ וְכָל־גִּלּוּלֵי בֵּית יִשְׂרָאֵל מְחֻקֶּה עַל־הַקִּיר סָבִיב סָבִיב: 11 וְשִׁבְעִים אִישׁ מִזִּקְנֵי בֵית־יִשְׂרָאֵל וְיַאֲזַנְיָהוּ בֶן־שָׁפָן עֹמֵד בְּתוֹכָם עֹמְדִים לִפְנֵיהֶם וְאִישׁ מִקְטַרְתּוֹ בְּיָדוֹ וַעֲתַר עֲנַן־הַקְּטֹרֶת עֹלֶה: 12 וַיֹּאמֶר אֵלַי הֲרָאִיתָ בֶן־אָדָם אֲשֶׁר זִקְנֵי בֵית־יִשְׂרָאֵל עֹשִׂים בַּחֹשֶׁךְ אִישׁ בְּחַדְרֵי מַשְׂכִּיתוֹ כִּי אֹמְרִים אֵין יְהוָה רֹאֶה אֹתָנוּ עָזַב יְהוָה אֶת־הָאָרֶץ: 13 וַיֹּאמֶר אֵלַי עוֹד תָּשׁוּב תִּרְאֶה תּוֹעֵבוֹת גְּדֹלוֹת אֲשֶׁר־הֵמָּה עֹשִׂים: 14 וַיָּבֵא אֹתִי אֶל־פֶּתַח שַׁעַר בֵּית־יְהוָה אֲשֶׁר אֶל־הַצָּפוֹנָה וְהִנֵּה־שָׁם הַנָּשִׁים יֹשְׁבוֹת מְבַכּוֹת אֶת־הַתַּמּוּז: ס 15 וַיֹּאמֶר אֵלַי הֲרָאִיתָ בֶן־אָדָם עוֹד תָּשׁוּב תִּרְאֶה תּוֹעֵבוֹת גְּדֹלוֹת מֵאֵלֶּה: 16 וַיָּבֵא אֹתִי אֶל־חֲצַר בֵּית־יְהוָה הַפְּנִימִית וְהִנֵּה־פֶתַח הֵיכַל יְהוָה בֵּין הָאוּלָם וּבֵין הַמִּזְבֵּחַ כְּעֶשְׂרִים וַחֲמִשָּׁה אִישׁ אֲחֹרֵיהֶם אֶל־הֵיכַל יְהוָה וּפְנֵיהֶם קֵדְמָה וְהֵמָּה מִשְׁתַּחֲוִיתֶם קֵדְמָה לַשָּׁמֶשׁ: 17 וַיֹּאמֶר אֵלַי הֲרָאִיתָ

בֶּן־אָדָם הֲנָקֵל לְבֵית יְהוּדָה מֵעֲשׂוֹת אֶת־הַתּוֹעֵבוֹת אֲשֶׁר עָשׂוּ־פֹה כִּי־מָלְאוּ
אֶת־הָאָרֶץ חָמָס וַיָּשֻׁבוּ לְהַכְעִיסֵנִי וְהִנָּם שֹׁלְחִים אֶת־הַזְּמוֹרָה אֶל־אַפָּם:
18 וְגַם־אֲנִי אֶעֱשֶׂה בְחֵמָה לֹא־תָחוֹס עֵינִי וְלֹא אֶחְמֹל וְקָרְאוּ בְאָזְנַי קוֹל
גָּדוֹל וְלֹא אֶשְׁמַע אוֹתָם:

The RSV translation of Ezek. 8:1-18 is as follows:

Ezek. 8

1   In the sixth year, in the sixth month, on the fifth day of the month, as I sat in my house, with the elders of Judah sitting before me, the hand of the LORD God fell there upon me.

2   Then I beheld, and lo, a form that had the appearance of a man; below what appeared to be his loins it was fire, and above his loins it was like the appearance of brightness, like gleaming bronze.

3   He put forth the form of a hand, and took me by a lock of my head; and the Spirit lifted me up between earth and heaven, and brought me in visions of God to Jerusalem, to the entrance of the gateway of the inner court that faces north, where was the seat of the image of jealousy which provokes to jealousy.

4   And behold, the glory of the God of Israel appeared there, like the vision that I saw in the plain.

5   Then He said to me, 'Son of man, lift up your eyes now in the direction of the north.' So I lifted up my eyes toward the north, and behold, north of the altar gate, in the entrance, was this image of jealousy.

6   And he said to me, 'Son of man, do you see what they are doing, the great abominations that the House of Israel are committing here, to drive me far from My Sanctuary? But you will see still greater abominations.'

7   And he brought me to the door of the court; and when I looked, behold, there was a hole in the wall.

8   Then said he to me, 'Son of man, dig in the wall'; and when I dug in the wall, lo, there was a door.

9   And He said to me, 'Go in, and see the vile abominations that they are committing here.'

10   So I went in and saw; and there, portrayed upon the wall round about, were all kinds of creeping things, and loathsome beasts, and all the idols of the House of Israel.

11   And before them stood seventy men of the elders of the House of Israel, with Jaazaniah son of Shaphan standing among them. Each had his censer in his hand, and the smoke of the cloud of incense went up.

12   Then he said to me, 'Son of man, have you seen what the elders of the House of Israel are doing in the dark, every man in his room of pictures? For they say, 'The LORD does not see us; the LORD has forsaken the land.'''

13   He said also to me, "You will see still greater abominations which they commit."

14   Then he brought me to the entrance of the north gate of the House of the LORD; and behold, there sat women weeping for Tammuz.

15   Then he said to me, "Have you seen this, O son of man? You will see still greater abominations than these."

16   And he brought me into the inner court of the House of the LORD; and behold, at the door of the Temple of the LORD, between the porch and the altar, were about twenty-five men, with their backs to the Temple of the LORD, and their faces toward the east; worshipping the sun toward the east.

17   Then he said to me, "Have you seen this, O son of man? Is it too slight a thing for the House of Judah to commit the abominations which they commit here, that they should fill the land with violence, and provoke me further to anger? Lo, they put the branch to their nose?

18   Therefore I will deal in wrath; my eye will not spare, nor will I have pity; and though they cry in my ears with a loud voice, I will not hear them."

1. Introduction

Ezek. 8 describes the state of the Temple in Jerusalem prior to its fall in 587 BC. The chapter is told through the eyes of a priest who claims to be among the first wave of deportees who were transported from Jerusalem to Babylon following the invasion of 597 BC (Ezek. 1:2-3).[496] The text takes the form of a visionary experience, in which the prophet is made witness to the idolatry that riddles the Temple. The vision is dated 18 September 592 BC[497] and although its veracity is heavily debated,[498] and the debate is not

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[496] The deportation subsequent to the initial invasion in 597 BC meant that between 597 BC and 587 BC there were two 'Houses of Israel'; the 'House of Israel-in-exile' and the 'House of Israel' left behind in Judah and Jerusalem. This explains why the 'elders' of Judah/ the House of Israel are both the subjects of the vision (8:11) as well as its audience (8:1). There are two groups of elders: those in exile and those (including Jaazaniah in 8:11) who are left behind in Jerusalem.

[497] The dates in *Ezekiel* constitute a homogenous system, the antecedents of which are grounded in the historical reality of the captivity of 597 BC; Freedy and Redford 1970. The specific date for Ezek. 8:1 is derived from the internal chronology of *Ezekiel.* This claims that the events of Ezek. 8 take place a year and two months after those of Ezek. 1:1f; e.g. Cooke 1936, 89.

[498] At issue is the prophet's claim that he was in Babylon during the entire period of his ministry (Ezek. 1:1). Yet Ezek. 8 describes the prophet's 'journey' to Jerusalem. The traditional view, which is the view of the book itself, is that Ezek. 8:3 describes a form of 'soul travel' in which the spirit of the prophet is transported to Jerusalem, whilst his body is left behind in Babylon. However, many modern scholars (with honourable exceptions; e.g. Carley 1975, 28-37) are reluctant to presuppose anything 'supranatural.' They contend, instead, that Ezekiel's 'translocation' is accomplished by physical rather than by spiritual means. They assume that Ezekiel was in Jerusalem all the time (in spite of the claim in Ezek. 1:1) or that he was taken to Babylon later than he claims (for example, with the second wave of exiles following the city's fall in 587 BC). There are many variations on the latter theme: for example, the suggestion that the prophet made a number of trips back and forth between Babylon and Jerusalem. A detailed analysis of these claims is beyond the scope of this paper. However we shall briefly address Torrey's criticism (Torrey 1970 [1930]) that the book of Ezekiel is a third-century BC pseudepigraph that was later 'dressed up' in a Babylonian setting. This is because Torrey's critique is the most famous of all the attacks on the 'traditional' view, and because Ezek. 8 is central to some of his arguments; Greenberg 1970. Torrey *op. cit.* argued that none of the abominations of Ezek. 8 fits the period that is claimed for them; namely the period of the last kings, Jehoiakim (609-598 BC) and Zedekiah (597-587 BC). By way of support, Torrey cites the writings of Ezekiel's contemporary, the prophet Jeremiah. Torrey argues that in all his visits to the Temple Jeremiah never once comes upon any of the abominations allegedly seen by Ezekiel. The apostasy for which Jeremiah reproaches the people occurs *outside* the Temple (Jer. 7:9f), in the street and on the rooftops (Jer. 7:17f; 11:13; 19:13), but not, apparently, in the Temple. However, there may be good reasons for this. The key issue for Jeremiah, writing in the age of Zedekiah, was the attitude that should be taken towards the divinely-ordained Babylonian yoke. This was an urgent political matter and it may have caused Jeremiah to put aside other concerns. There is nothing unusual about two different writers (Jeremiah and Ezekiel) having different concerns and different

foreclosed[499] there is ample justification for the traditional view that Ezekiel went into exile in 597 BC and prophesied from Babylon.[500] This is the starting-point of this paper. The purpose of the prophecy is to make clear to the deportees why they are in exile. They are not in exile because an impotent deity abandoned the Land[501] but, rather, because a powerful Judge has left his Temple in revulsion over its abominations.[502] This explanation of why the *Shekinah*[503] departs makes Ezek. 8 a prime study in 'seriousness of offence.'

2. Registers of 'seriousness'

Ezek. 8 contains a number of registers of seriousness. The main performative register is the departure of the deity from the Temple. This register is stated in Ezek. 8:6[504] although it is not actually performed until Ezek. 9:3, 10:4, 10:18 and 11:23. These verses describe the fourfold movement[505] of the glory of YHWH as it departs from the city. The departure enacts the penalty of 'divine temple abandonment.' 'Divine temple

audiences and emphasising different aspects of Jerusalem's downfall. However, there is another important difference between the writings of Jeremiah and those of Ezekiel. Whereas Jeremiah constantly provokes a strong reaction from the people of Jerusalem (cf. Jer. 7 and 26), nobody pays Ezekiel the slightest attention. Nor is there even any recognition that he is among them; Freedman 1954, 459-60. The contrast between Jeremiah and Ezekiel is all the more unusual given that both their adventures claim to have taken place in the same city at the same time. The contrast is so great as to make it practically impossible to explain Ezekiel's story on the basis of a real trip to Jerusalem that was later reworked to give it a Babylonian setting. Secondly, Torrey *op. cit.* argues that Ezekiel must have been in Jerusalem because much of his prophecy is concerned with judgement on the city. However it does not follow that Ezekiel's message was therefore addressed *in Jerusalem* to the inhabitants of that city. Torrey overlooks the psychic unity of Israel. Indeed, the message of judgement against Jerusalem affects the exiles as much as the people of the city; Freedman 1954, 462. It may even affect the refugees more because the people who needed to learn the lessons of Jerusalem were not so much the inhabitants of the city (who were doomed) but the exiles (who represented the future); Stacey 1990, 183.

[499] Halperin 1993, 56 concludes: "the question [of Ezekiel's veracity] has so far received no satisfactory answer."

[500] Freedman 1954, 455 states that: "whatever outside evidence we have tends to confirm the traditional position of the Book of Ezekiel." At 455 he cites Rowley's conclusion: "The ministry of Ezekiel I would place wholly in Babylonia in the period immediately before and after the fall of Jerusalem." Smith 1975, 11 speaks of "the return of scholarship to the opinion that Ezekiel worked in Babylonia during the twenty or thirty years after 593 BC." Stacey 1990, 183 claims that this is now the 'majority' position.

[501] Indeed, the prophecy of Ezekiel is a corrective to the widespread questioning of YHWH's power (e.g. Ezek. 8:12, 9:9). The purpose of punishment is repeatedly said to be that the people "will know that I am the LORD" (e.g. Ezek. 6:14; 7:4 and 7:9). It seems that, if nothing else, they will know His power in the form of catastrophe.

[502] The conventional translation of Ezek. 8:6 makes YHWH the subject (e.g. Cooke 1936, 93): "Son of man, do you see what they are doing, the great abominations that the House of Israel are committing here, *to drive Me far from My Sanctuary?*' (my italics); contra Greenberg 1983, 169. Ezek. 8:6 thus anticipates the main theme of the vision (Ezek. 8:1-11:25): the departure of the glory of YHWH from the Temple (Ezek. 9:3, 10:4, 10:18 & 11:23).

[503] The word *Shekhinah* is not found in the Hebrew Bible. It is a Talmudic term derived from the Biblical verb *šākan* ('to dwell') and it literally means 'the act of dwelling.' It denotes the visible and audible manifestation of God's presence on earth (cf. Ezek. 10:4-5). See Patai 1990, 96-111.

[504] See n.502 above.

[505] Cf. the fourfold movement of the prophet's tour in Ezek. 8:5-18; Block 1997, 273.

abandonment' was well-established as a form of covenantal judgement in first and second-millennium Mesopotamia.[506] The penalty was imposed by a god upon his people for breach of covenant.[507] 'Divine temple abandonment' was an extremely serious sanction. When a god deserted his people and removed his protection, the result was military defeat, foreign dominion and exile.[508] "A more total disaster is hardly possible."[509] When the *Shekhinah* departs, the exile begins.[510] The Presence of YHWH was the greatest blessing of the Mosaic covenant. Accordingly, His absence was its greatest curse.

In addition to describing this performative register, the text also contains several 'descriptive' registers of seriousness. The main descriptive register is the description of the idols as 'abominations' (*tôʿēḇōt*, Ezek. 8:6, 13, 15 and 17).[511] This is a highly emotive term expressing YHWH's attitude toward that which he hates.[512] It identifies those things that are 'disgusting', 'detestable' or 'loathsome.' A second descriptive register is the description of the first abomination as: "the statue of jealousy that provokes to jealousy" (*sēmel haqqinʾāh*, Ezek. 8:5). Again, the description has a strongly affective aspect. The word *kinʾāh* ('jealous') is freighted with strong emotion, describing the "passionate resentment"[513] that YHWH feels at seeing what belongs to Him being given to another.

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[506] Block 1997, 275-6, 298; Niehaus 1995, 136-141.

[507] A typical example is the Middle-Assyrian 'Tukulti-Ninurta Epic' in which an outraged pantheon show their wrath by abandoning their temples and holy cities, and leaving the Kassite king (Kashtiliash IV) to certain defeat. Cf. also an inscription of Esarhaddon, describing the deity's flight from the temple of Esagila because of divine wrath at the sinfulness of the people; Niehaus 1995, 137-9.

[508] Protection was one of the most important obligations of a suzerain towards his vassal (cf. Ps. 27:5). The loss of YHWH's presence meant the loss of protection for his people. "The security of Zion is grounded in its creation by Yahweh as the site of his royal residence"; Ollenburger 1957, 147. It follows that when the great King leaves, Zion must fall. We note that 'abandonment' and 'loss of protection' was also a serious punishment insofar as it exposed the whole nation to shame (cf. Ps. 78:39ff); Bechtel 1994, 83-4.

[509] Niehaus *op. cit.*, 276.

[510] There is a parallel between what happens to YHWH's 'house' and what happens to his people's 'houses.' The foreigners who loot YHWH's 'house' (7:21) will sack his people's homes as well (7:23-24). Likewise, when YHWH abandons his 'house,' his conquered and uprooted people must depart from their homes as well. Niehaus *ibid.*, 276 notes that the arrival of the *Shekhinah* in the Jerusalem Temple (1 Kgs 8:10-11) marks the completion of its journey from Mt. Sinai. The *Shekhinah*'s arrival is a sign that the people's wandering is over. Accordingly, when the *Shekhinah* departs in Ezek. 8, it is a sign that the people's 'wandering' is to begin again, this time in the form of exile.

[511] Hallo's review of ANE terms sharing the semantic field of 'divine abominations' shows that they embrace two widely divergent realms; Hallo 1985. The first involves the infraction of ethical norms or standards of good conduct (e.g. having dishonest weights, ignoring the poor and so on). The second meaning of 'abominations' is to do with 'the sacred nature of deity.' In Israel it refers to the practices of alien cults that were anathema to YHWH. The word *tôʿēḇōt* is used in Ezek. 8 in the latter sense.

[512] E.g. "Yet I persistently sent to you all my servants the prophets, to say, 'I beg you not to do this abominable thing which I *hate*" (Jer. 44:4, my italics). Ezekiel uses the word *tôʿēḇah* more than any other Hebrew author (43 times, compared to 21 times for *Proverbs* and 16 times for *Deuteronomy*); Humbert 1960, 219.

[513] Greenberg 1983, 168.

Both descriptive registers have a strongly affective aspect, that is, they seem designed to elicit strong feelings of aversion concerning the offence. Such forceful and emotive registers are typical of the prophet's 'shock tactics' (cf. chapters 6; 16 and 23 of *Ezekiel*), being designed to break down the resistance of a hardened audience (Ezek. 2:3-8; 3:7).

3. Offence description

The offence is idolatry; the most serious breach of the covenant between YHWH and Israel. Ezek. 8 presents four cases of idolatry in the Temple. Four is the number of completeness in *Ezekiel*.[514] Accordingly, the description of four abominations in Ezek. 8 demonstrates the total corruption of the Temple and the comprehensiveness of Israel's idolatry.[515]

The abominations themselves may be identified as follows. The first abomination (Ezek. 8:3-6) is "the image of jealousy, which provokes to jealousy" (*sēmel haqqin°āh hammaqʿneh*, Ezek. 8:3). The meaning of *sēmel* is unclear, although Phoenician usage denotes a statue of either a divine or human being.[516] King Manasseh places a *pesel hassemel* (2 Chr. 33:7) in the Temple, only to remove it later (2 Chr. 33:15). 2 Chr. 33:7 is seemingly a paraphrase of 2 Kgs. 21:7 which openly speaks of a *pesel hā'ăšērāh* ('graven

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[514] E.g. Ezek. 7:2. For this reason it is intrinsically unlikely that there is a fifth abomination in 8:17. The charge of 'lawlessness' in 8:17 is an overall evaluation of what Ezekiel has already seen.

[515] This fourfold structure is an early indication that Ezek. 8 is set out according to a definite plan. It is not a random jumble of alien cults. Indeed, its structure may allude to the prohibition of idolatry in Ex. 20:4-5. Ex. 20:4-5 presents us with a 'collective image' of what it means to 'act like an idolater.' 'Acting like an idolater' is particularly identified firstly, with 'making' images (Ex. 20:4: "You shall not make for yourself a graven image...") and, secondly, with the 'body language' of the worshippers (Ex. 20:5: "You shall not bow down to them or serve them..."). Ezek. 8 follows roughly the same pattern. The first two abominations (the *sēmel* and the 'creeping things') emphasise *representation* (and hence the 'making' of idols) whilst the latter two abominations (the Tammuz and the *šāmeš*) stress the *activity* (worshipping Tammuz and the sun). Notably, as in Ex. 20:5, the third and fourth abominations emphasise 'body language.' Ezek. 8:14 refers to the 'wailing' of the women, accompanied by the gesticulations associated with mourning rites whilst Ezek. 8:16 refers to the worshippers 'bowing low' to the sun and 'turning their backs' on the Temple (cf. Jer. 2:27 and 32:33). (There is of course some merging of the two. Ezek. 8:11 refers to the men 'standing' in cultic service where *'ōmʿdîm lipʿnêhem* means 'to stand as a servant' before another. Likewise, the references to 'censers' and 'incense' in Ezek. 8:11 also allude to service). Nonetheless, the primary emphasis of Ezek. 8:5-13 is on 'representations' (cf. Ex. 20:4), whilst the primary emphasis of Ezek. 8:14-16 is on 'service' (cf. Ex. 20:5). This structure is consistent with the prophetic practice of taking Israel 'back' to Mount Sinai. There is also an association between the order of the four abominations in Ezek. 8 and the warning against idolatry in Deut. 4:16-19. Deut. 4:16 warns against making a *sēmel* ('idol'; cf. the use of this word in Ezek. 8:3 and 5). Likewise Deut. 4:17 and Deut. 4:18, respectively, forbid making the likeness of *kol-bʿhēmāh* ('any beast') or *kol-rōmēš* ('creeping things'); cf. Ezek. 8:10. Moreover, Deut. 4:19 warns against astral worship (cf. Ezek. 8:16). Notably, Deut. 4:16-19 contains five references to *tabʿnît* ('likeness'); cf. Ezek. 8:10 and the ironic use of *tabʿnît* in Ezek. 8:3 to describe the 'likeness' of the *real* divine hand. Finally, Deut. 4:24 emphasises: "For the LORD your God is a devouring fire, a jealous God"; cf. the use of 'jealousy' in Ezek. 8:3, 5; the reference to 'anger' kindled in Ezek. 8:17 and the fiery destruction of Jerusalem in Ezek. 10:2, 6.

[516] Torczyner 1946, 298; Halperin 1993, 119.

representation of the '*ăšērāh*,' a Canaanite fertility goddess). Clearly there was a tradition that designated Manasseh's '*ăšērāh* as a *sēmel*. It is thus possible that the first abomination is an '*ăšērāh*.[517]

The second abomination that the prophet sees is the set of "vile abominations" (*hatô 'ēḇôt hārā'ôṯ*, Ezek. 8:9) described in Ezek. 8:7-13. These are secret engravings of: "all detestable (*šeqeṣ*) forms of creeping things (*rōmēś*) and beasts (*wûḇ'hēmāh*) and all the fetishes (*gīllûley*) of the House of Israel..." (Ezek. 8:10). The word *šeqeṣ* appears in Lev. 11:10-11. Given the close relationship between *Ezekiel* and the Priestly writings,[518] it is possible that the second abomination refers to engravings of the forbidden creatures that are described in Lev. 11:10-11. If so, it is natural that a priest such as Ezekiel would think it horrific that these illicit creatures have become the objects of worship. The scene is set in a hidden room, possibly part of a casemate wall.[519] The secrecy of the meeting and the exclusivity of the gathering (witness Ezekiel's unusual mode of entrance as described in Ezek. 8:8)[520] may suggest that Ezek. 8:10-12 is an example of clandestine idolatry.[521] An intrusion by the elders into a prohibited cultic sphere may also be implied.[522]

The third abomination (8:14) is the spectacle of "the women wailing for the Tammuz" (8:15). The Hebrew derives from the Sumerian 'Dumuzi' meaning 'the good (or 'the right') son.'[523] 'Tammuz worship' consists of a mourning rite in which women express

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[517] Contra Zimmerli 1979, 238 who assumes that the first abomination is located at the outer gate of the city and therefore cannot be the same as the '*ăšērāh* set up by Manasseh "in the Temple [area?]" (2 Kgs. 23:6 cf. 21:6). However, we argue at **5(b)** below that the Temple is the location of all four abominations. If so, there is no reason why the idol in Ezek. 8:3-6 could not have been the reinstatement of Manasseh's '*ăšērāh* in the Temple area where it was before. Zimmerli himself points out (*ibid.*) that the position (*môšăḇ*, Ezek. 8:3) of the *sēmel* seems to be well-known. This suggests that an '*ăšērāh* occupied the spot, off and on, since Manasseh's reign.

[518] E.g. Hurvitz 1982, 9.

[519] A casemate wall consisted of an outer and an inner wall joined together by cross-walls; Wright 1955, 57-58. Not all the 'rooms' need have been filled; cf. Josh. 2:15; 2 Kgs. 4:10. The prophet could have emerged into either a room in the casemate wall itself, or into a room that was part of the house attached to the casemate wall on its interior side; Ackerman 1989, 270.

[520] Clearly the prophet could not gain access by conventional means.

[521] Cf. Deut. 27:15. However, clandestine idolatry presupposes a society that is so hostile to idolatry that it is necessary to worship idols in secret. It also presupposes that the offenders' contemporaries would punish 'open' idolatry. Arguably, neither factor is relevant in Ezek. 8, where idolatry is carried on openly without fear of reprisal. More likely, the elders' secrecy in 8:10-12 is of the internal dynamic of the cult. It is a means of preserving that particular rite for an élite.

[522] Notably, the only other use of the word *miqṭeret* ('incense-burner'; 8:11) appears in connection with King Uzziah who intrudes upon the priestly prerogative by offering incense before the altar (2 Chr. 26:19); Zimmerli 1979, 241. Cf. the role of the elders in the fourth abomination; Ezek. 8:16, see further n..611 below.

[523] In Sumerian mythology, Dumuzi's true nature was that of the shepherd (Alster 1995, 1570 and see the literature review by Gurney 1962) although some scholars, notably Jacobsen 1970, have sought to add other aspects to 'Dumuzi's' identity.

sorrow for the disappearance of a young male figure who led a lonely and dangerous life as a shepherd in the desert.[524] Most of the surviving lamentation texts are written in a dialect spoken mainly by women, consistent with the picture given in Ezek. 8 of a woman's cult.[525]

The fourth abomination (8:16) describes men "worshipping *šameš* in the east." This might refer to Sham-ash, the Mesopotamian deity who upheld covenants[526]; however the word *šameš*, as used in the Hebrew Bible, is never an actual divine name.[527] More likely it refers to a form of 'sun-worship' (contrary to Deut. 17:3; cf. Deut. 4:19).[528] A third possibility is that the rite was not a 'straightforward' case of sun-worship, but a corrupt, 'solar' interpretation of 'pure' YHWH worship. The ancients believed that the face of a god (like the sun) radiated 'light' and 'life' to those who beheld it.[529] The Hebrew Bible frequently describes YHWH as His people's light[530], and the sun is a vivid symbol of His glory.[531] Although such texts are of course metaphorical,[532] it is easy to see how this symbolism could have corrupted 'pure' YHWH worship,[533] especially granted that 'sun worship' overlapped with 'YHWH-worship' in the biblical period. The fourth

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[524] Alster *op. cit.*, 1568-77. Dumuzi's 'disappearance' is often associated with the autumn (when the leaves fell) and his subsequent 'revival' with the spring (when the leaves began to sprout). The date of the vision (18 September) is consistent with the onset of autumn and with Dumuzi's 'disappearance.'

[525] Jacobsen *op. cit.*, 90. The laments are expressed through such figures as the mother, the sister and the widow. Male representatives such as a sorrowing father or brother find no place. In addition, the great events that are celebrated in the cult are the events of a woman's life.

[526] If so, the elders' behaviour before Shammash, the supposed 'god of covenant,' is highly ironic. This is because Israel's elders (the same group who ratified the covenant on Mt. Sinai according to Ex. 24:9-11) are themselves 'turning their back' on that very covenant. At the same time, these 'covenant-breakers' imagine they are worshipping 'the god of covenant,' an act which causes the *real* 'God of the covenant' to initiate the covenant curses.

[527] Lipinski 1995, 1445.

[528] According to 2 Kgs. 21:3; 23:5, worship of the "host of heavens" (comprising the sun, the moon and the planets) took place during the reigns of Mannasseh and Amon. However this text refers to a period when Judah was an Assyrian vassal and the sun-cult may have been foisted on Judah as a token of her subjection. Lipinski, *ibid.* claims that the sun-cult was not popular in Iron Age Syria-Palestine, in contrast to Egypt and Mesopotamia

[529] A prayer of Nebuchadnezzar (604-562 BC; incidentally the very commander laying siege to Jerusalem) entreats: "[O Shammash] look with your radiant countenance, your happy face joyfully upon the precious works of my hands..."; Niehaus 1995, 124. There is, therefore, tragic irony in the elders' turning their back on YHWH's *shalôm* to turn their faces towards a different sort of 'light.' It is fair to say that because the elders bow down to this sort of 'radiance', the 'radiance' of YHWH himself leaves the Temple (10:4).

[530] See also Ps. 78:14 and Ps. 47:7[6] and cf. Moses' luminosity (Ex. 34:29) and the famous Aaronic blessing (Num. 6:24-26).

[531] Lipinski *op. cit.*, 1448.

[532] As Wiggins 1996 is keen to stress in response to Taylor 1993.

[533] This may explain the denial in, e.g. Deut. 17:13 that YHWH 'ever commanded' the worship of heavenly bodies. This would not have been necessary unless there was a tendency to treat solar symbolism as a licence for 'solar-YHWH' worship. Notably Job claims that he never raised his hand in homage to the sun (literally 'the light'), Job 31:26-7.

abomination may therefore be a fusion of a YHWH festival with a 'solar' rite, perhaps even a corrupt version of the Feast of Booths.[534] But although we cannot ultimately be certain about what exactly the fourth abomination represents, there is little to choose between these possibilities. The worshippers' behaviour is denounced as idolatrous, regardless of their subjective beliefs. They have turned their backs on the Temple, rejecting YHWH in favour of the sun god. Their idolatry, indeed, may be all the worse for being disguised as 'proper worship.'

4. Elements of seriousness

(a) Breach of covenant

We noted at 2 above, that Israel's idolatry in Ezek. 8 is punished by 'divine temple abandonment'. We also noted at 2 above, that this sanction is the appropriate penalty in the ANE for breach of covenant between a god and his people. We may therefore conclude from the form of the sanction alone that idolatry was the most serious breach of covenant that was possible between YHWH and Israel.[535] This conclusion is supported by

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[534] Some scholars argue that *Sukkôt* (the 'Feast of Booths') originally took place around the time of the autumn equinox (e.g. Morgenstern 1929, 32; May 1937 and Gaster 1941). If correct, this might explain the interest in the 'sun' and the lament over the 'departure' of YHWH. The worshippers confuse 'YHWH' with the 'sun' and the onset of shorter days with YHWH's 'departure.' Ex. 23:16 and 34:22 state that *Sukkôt* was celebrated during the last seven days of the year and immediately preceding the New Year's Day (the date of the autumn equinox) upon the 10th of the seventh month. Taylor 1993, 153 thinks that the precise timing of the Feast relative to the equinox is difficult, partly because of the uncertainty surrounding the nature of the ancient Hebrew calendar. Nonetheless, the date given for the vision (calculated at 18 September) is sufficiently close to the autumn equinox (22 September) to raise the possibility that Ezek. 8 may have taken place at some time during *Sukkôt*. Interestingly, the *Mishnah* contains a tradition of a solar rite in connection with the Feast of Booths. *M. Suk.* 5.4 describes a ceremony during *Sukkôt* in which two priests, accompanied by a multitude assembled at dawn at the eastern gate of the Temple area. "Arrived there, they [the priests] turned their faces to the west and said, 'Our fathers who were in this place had their backs towards the Temple and their faces eastward, and they would prostrate themselves eastward towards the sun; but as for us, our eyes are towards Him [or 'towards Yah']." It is hard to see what significance this reference would have had in the context of the later celebration of *Sukkôt* unless the rite (which has remarkable similarities to Ezek. 8:16) played some role within the same Feast at an earlier period; Taylor 1993, 152. Thirdly, *M. Suk.* also refers to the practice, during *Sukkôt*, in which pilgrims collected different sorts of branches, some of which were to be made into a *lûlab* (festal plume). Every day during the water libation ceremony, a procession of priests walked around the altar waving the *lûlabîm* whilst the watching pilgrims joined in addressing YHWH with the chorus of Ps. 118:25: "Save us, we beseech thee O LORD!" This fits several details of Ezek. 8:16-18: the altar; extending a branch to YHWH's nose; and the remark: "…though they shout in my ears with a loud voice, I will not hear them." *M. Suk.* suggests that the shouting may have been an appeal for deliverance. Against this it could be argued that the Mishnaic tradition of 'branch-waving' is attested rather late. However, Taylor 1993, 157 contends that in Lev. 23:40 branches of different kinds are referred to in the context of rejoicing before the LORD during *Sukkôt*, rather than for constructing the booths themselves. This suggests a relatively early date for the celebrative waving of branches at the Feast. One final point. If Ezek. 8 is set at the time of *Sukkôt*, it parallels the dedication of Solomon's Temple at the time of a "Feast" (1Kgs. 8:2) which, although not explicitly named, is generally thought to have been *Sukkôt* (the most important feast of the year; Num. 29:12-34). The tragic irony is that whilst 1 Kgs. 8 describes the arrival of the *Shekhinah* into the Temple via the east gate, Ezek. 8 describes its departure via the same route.

[535] Cf. Ps. 19:13 [Heb. 19:14] where "the great crime (*peša' rāb*)" is a synonym of idolatry; Dahood 1966, 125. Wisd. 14:27 avers that: "… the worship of idols… is the beginning, cause and end of every evil" (cf. Rom. 1:23-32). Idolatry is the only command the 'prophet-like-Moses' is not allowed even to suspend; *M. Sanh.* 90a. According to *M. Sanh.* 74a, a

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a structural analysis of the Ten Commandments. 'Worshipping other gods' ('idolatry') violates the most fundamental rule of the covenant; namely, "You shall have no other gods before Me..." (Ex. 20:3). This can be set out in terms of a 'semiotic square'[536] (see Fig. 4, below).

Worship Y (True worship)   Worship Z (Idolatry)

Not Worship Z   Not Worship Y (Apostasy)
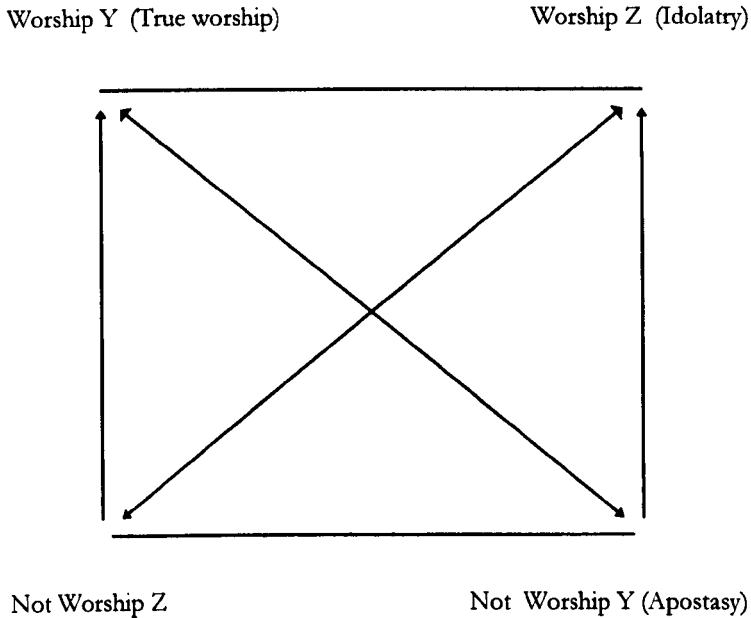
Fig. 4: A semiotic square showing the seriousness of idolatry

In a semiotic square the diagonal lines represent 'contradictions' while the top of the square represents a 'contrariety' (or conventional opposition).[537] Sense-making processes tend to operate with 'binary oppositions' (that is, with a pair of terms usually regarded as opposites). It follows that the opposite of 'worshipping Y' (YHWH) is 'worshipping Z' (that is, an idol). It even includes worshipping YHWH *plus* something else, since the 'true worship' of YHWH is exclusive (cf. Deut. 6:13; 1 Sam. 7:3 and Matt. 4:10). In this way, the semiotic square opposes 'true worship' and 'idolatry' as 'opposites.' Going up the sides of the square, we treat 'worship Y' as the privileged manifestation of 'not worship Z' and

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Jew was allowed to violate the ordinances of the *Torah* under the threat of death, with the exception of idolatry, immorality and bloodshed; idolatry being ranked first in importance.

[536] The semiotic square distinguishes between two different types of opposites that are called in logic 'contradictories' and 'contraries.' When two terms are contradictory, not only does the assertion of the one entail the negation of the other, but the negation of the one entails the assertion of the other. For example, a person who is 'wet' cannot at the same time be 'dry.' However, when two terms are a contrariety, the assertion of one term entails the negation of the other, but the negation of one term does not entail the assertion of the other. For example, something that is 'black' cannot be 'white,' but something that is not 'black' need not be 'white'; Jackson 1995, 149.

[537] Jackson 1995, 150.

'worship Z' as the privileged manifestation of 'not worship Y.' From this it is clear that the opposite to worshipping Y (or YHWH) alone is idolatry and not, for example, apostasy. This is consistent with the order of the Decalogue Commandments. Jewish tradition has always regarded Ex. 20:2 ("I am the LORD your God who brought you out of the land of Egypt, the house of bondage") as the first 'Commandment' or 'Utterance.'[538] It is an implicit command to worship YHWH alone.[539] The logical internal negation of this is the second *dābār*: "You shall have no other gods beside me..." (Ex. 20:3). Since the exclusive worship of YHWH is the first commandment, it follows that idolatry is the most serious breach of the covenant.[540]

The seriousness of idolatry within the overall structure of the Decalogue is confirmed by rhetorical criticism. The ban on idolatry (Ex. 20:3-6) is nearly twice as long as the last five commandments (Ex. 20:13-14). This is a good indicator of its importance, on the view that the tradition of public readings affected the composition and redaction of Biblical law.[541] In similar vein it is notable that the commandment: "you shall have no other god besides me" (20:3) is repeated several times to maximise its didactic force ("you shall not make for yourself a sculptured image..." (20:4) and: "you shall not bow down to them or serve them..." (20:5)).

(b) Personal context

Ezek. 8 is unique in its presentation of the charge against Israel. The prophet is transported to the crime-scene in a vision and is personally led around by a divine figure. By taking one man and showing him what is wrong, YHWH demonstrates the personal

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[538] How one classifies the Decalogue depends on whether one understands *dǝbārīm* to mean simply 'words' or 'commandments.' Jewish tradition understands Ex. 20:2 as the first 'Commandment' or 'Utterance' and Ex. 20:3-6 as the second 'Commandment' or 'Utterance.' This interpretation contrasts with that of Reformed and Orthodox Christians who understand Ex. 20:2-3 as the first 'Commandment' and Ex. 20:4-6 as the second 'Commandment.' This division implies that there is a difference between the prohibition on worshipping 'other gods' in the first 'Commandment' ("You shall have no other gods before me"; Ex. 20:3) and the ban on graven images in the Second 'Commandment' ("You shall not make for yourself a graven image, or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth"; Ex. 20:4). The phrase: "You shall not make for yourself a graven image..." could just be interpreted as a ban on making images *of YHWH*. However, the continuation: "... of anything that is in heaven above or of anything that is in the earth beneath or that is in the water under the earth" goes better with the notion that the referent of Ex. 20:4 is to graven images of 'other gods' rather than YHWH. This strengthens the Jewish position which regards the prohibition on the graven images as a continuation of Ex. 20:3; that is, the prohibition of worship of other gods.

[539] Jackson 1995b, 189-90.

[540] It is no coincidence that Israel's first act of covenant disobedience was recalled as 'making' and 'worshipping' the golden calf (Ex. 32); Miller 1989, 234.

[541] See Watts 1995.

nature of the offence. The rhetorical question: "do you see... ?" (Ezek. 8:6), and variants thereof (Ezek. 8:9, 12, 13 and 15), underscore the belief that idolatry, for Israel, is the breach of a personal relationship. It is spiritual treachery because idolatry violates YHWH's absolute claim upon Israel's devotion. This is confirmed by the description of the first abomination as: "the statue of jealousy that provokes to jealousy" (8:5). Only an exclusive and valued relationship arouses jealousy when threatened.

The personal context of idolatry is a key aspect of the seriousness of the offence. For this reason, idolatry is explained by means of anthropomorphisms that describe flawed personal relationships. Metaphors include adultery, disloyalty and betrayal.[542] "Idolatry is a sin within a system of interpersonal relationships"[543] that depends for its seriousness upon the emotional reaction of a God who can be personally wounded. For this reason too, the solution to the problem of idolatry is depicted within a framework of human relationships (Ezek. 16:62-63).[544] It is the specific history of relations between YHWH and Israel, beginning with the Exodus from Egypt that makes idolatry serious. This is seen in the Ten Commandments. The ban on idolatry in Ex. 20:3-6 follows the declaration: "I am the LORD your God who brought you out of Egypt..." (Ex. 20:2). It is because of this pre-existing relationship that the denunciation of idolatry is often described as 'walking after' "other gods which *you have not known*" (e.g. Deut. 11:28; my italics). What is lacking between Israel and another deity is 'knowledge' (*da'at*) *viz.* a personal and intimate relationship. Israel leaves a God whom she has known for a nonentity that she does not know. From YHWH's perspective, this is humiliation.[545] 'Seriousness of offence' in Ezek. 8 is thus anchored in interpersonal relationships, it is integrated into a history of relations and it is understood on a human basis.

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[542] E.g. Ex. 34:15-16 (idolatry as adultery and disloyalty) and Ho. 1:2; 2:9-11 and 2:14-15 (idolatry as betrayal). The comparison of idolatry with 'whoredom' in these texts recalls our discussion of 'harlotry' in *Chapter Three*. But although the sin of idolatry can be characterised as harlotry: "... idolatry is worse than ordinary prostitution because... the fee is always being paid with the husband's money, [i.e. God's] as he is the sustainer of the world"; Halbertal and Margalit 1992, 13.

[543] Halbertal and Margalit *op. cit.*, 1.

[544] Ezek. 16:62-63 depicts a reunion that is accompanied by such deep gratitude and feelings of shame as to guarantee that the adultery will not recur; Halbertal and Margalit *op. cit.*, 19.

[545] Halbertal and Margalit *op. cit.*, 27-8. For the perception of shame within the divine-human relationship see Bechtel, 1994.

(c) Emotional content

Concomitant with the personal context of the offence, Ezek. 8 highlights the emotions that are aroused by the offence, both on the part of the idolaters and on the part of YHWH. In all three cases where idolaters appear, their behaviour is described in terms that emphasise their emotional commitment. Signifiers of intense worship include, in the second abomination, the reference to a "thick cloud of incense" (8:11); the repetition of *kôl* in Ezek. 8:10 ("*all* detestable forms..."; "*all* the fetishes of the House of Israel") and the fact that the "abominations" are *sābîb sābîb* (Ezek. 8:10; which can be loosely translated 'everywhere you look'). Likewise, the reference to the "women wailing for Tammuz" (Ezek. 8:14) is striking for its emotional intensity. The *piel* form of *bākāh* is particularly uninhibited.[546] Indeed the most significant aspect of this cult is arguably its "altogether extraordinary potential of emotional intensity, depth and power."[547] This is reflected in surviving dirges.[548] The affective aspect of this cult is so strong that it effectively amounts to a projection of the worshippers' emotional needs.[549] Similarly, the devotion of the sun-worshippers is demonstrated by their posture ("[bowing] low ..."; Ezek. 8:16).

This emphasis upon emotions is again consistent with the Ten Commandments. The ban on idolatry is preceded by the words: "I am the LORD your God, who brought you out of the land of Egypt, out of the house of bondage" (Ex. 20:2). This evokes the 'feeling' of loyalty.[550] Ex. 20:3-6 goes on to portray idolatry in sensual and affective terms. Stress is placed on physical acts of devotion ("you shall not *bow down* to them..."; my italics) and the smell and taste of sacrifice ("or *serve* them"; my italics).[551] This signifies that a person is either for YHWH with all his being, or against him with equal fervour. 'False worship' involves active devotion to other gods.

Secondly, Ezek. 8 highlights the emotions that idolatry arouses in YHWH. We saw at 2 above that the first abomination is described as: "the statue of jealousy that provokes to

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[546] De Ward 1972, 154.

[547] Jacobsen 1970, 99.

[548] These reveal a single, all-pervasive maternal instinct to find and to 'mother'   Tammuz. The death of the god thwarts this possessive drive, fuelling anger among his worshippers; Jacobsen *op. cit.*, 93.

[549] Jacobsen 1970 94-96.

[550] Jackson 1995b, 190.

[551] *Ibid.*

jealousy" (8:5). This is consistent with Ex. 20:5 and 34:14 which present YHWH's jealousy as the reason for the prohibition of idolatry. According to Ex. 20:5, idolatry causes YHWH to requite the active hatred shown by idolatry with hatred, even as he requites love with love.[552] Interestingly, this emotional response to idolatry is made the very basis of judgement in Ezek. 9. Only those "who *moan and groan* because of all the abominations that are committed [in Jerusalem]" (Ezek. 9:4; my italics) are spared the carnage of Ezek. 9:5-7.[553] They are the only ones who share YHWH's perspective. In Ezek. 8 the effect of the four abominations is to "goad" YHWH to "fury" (8:17). The emotional aspects of idolatry increase the gravity of the offence. Like a family quarrel, it is the feelings aroused that maximises seriousness.

(d) Aesthetic revulsion

We saw in 2 above that the idols in the Temple are described as "abominations" (*tô 'ēḇōṯ*). Such things are not merely the objects of 'moral disapproval', nor are they even the most extreme expression of it. They are things that are actually 'sickening.'[554] This makes 'seriousness' in Ezek. 8 also a question of 'sensibility.' Idolatry is compared to the aesthetic rejection of anything that arouses disgust.[555] This is because idolatry occupies the nexus between intellectual conceptions on the one hand, and perceptual and emotional experiences on the other.[556] It fuses ideas and feelings, representations and impressions. Perhaps for this reason, the 'sense-construction' of idolatry is markedly semiotic. Part of the horror of the 'abominations' in Ezek. 8 is to do with how they present themselves to the senses.[557] Of these, 'sight'[558] and 'smell'[559] appear to be important. Again, this is

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[552] *Ibid.*

[553] As noted in 2 above, the affective connotations of *tô 'ēḇōṯ* are central. What seals the Jerusalemites' doom is that they simply don't care.

[554] Social commentators frequently describe horrific events of which they have no direct experience as 'sickening.' Had they been physically present at the gruesome crime scene (say), the chances are they really *would* have found it sickening. It is the sensory perception of the thing itself that creates the disturbance which we feel. Even the metaphorical use of 'sickening' depends on our immediate sense perceptions of 'things that make us sick.' If this is true in our highly-conceptual society, which hypothesises ethics in abstract terms, how much more is it likely to apply to a culture that expresses its beliefs more concretely?

[555] Provided 'aesthetics' is understood in its original meaning of 'feeling'; Halbertal and Margalit *op. cit.*, 5.

[556] Halbertal and Margalit *op. cit.*, 5.

[557] In the Hebrew Bible *tô 'ēḇōṯ* are like disgusting food, suggesting some link with the sense of taste. Unwholesome sexual practices are likened to unwholesome food in chapters 18 and 20 of *Leviticus*; Goodman 1986, 26. The visual defect described as *tô 'aḇāṯ YHWH* in Deut. 17:1 hints at an aesthetic rejection; *ditto* the confusion between male and female "things" in Deut. 22:5 which are also said to be *tô 'aḇāṯ YHWH.* The sense construction of abominations thus appears to be not primarily rationalist, but semiotic; *viz.* in determining what makes a thing 'abominable,' the appropriate question is not a rationalist one ('what general concept do these things have in common?') but a semiotic

consistent with the Ten Commandments. Ex. 20:3 instructs: "You shall have no other gods before me" (*'al-pānāy*, literally, "*before my face*"; my italics).[560] The 'face' is of course the location of the senses. The use of the word 'face' in Ex. 20:3 underlines the idea that idolatry in Ezek. 8 is conceived in terms of how it is presented to the senses.[561]

(e) Social status

'Seriousness' of offence in Ezek. 8 is also related to the social status of the worshippers. No worshippers are specified as being present at the first abomination (Ezek. 8:3, 5-6). However, the worshippers at the scene of the second and fourth abominations (the elders of the House of Judah; Ezek. 8:11, 12 and 16 (cf. 9:6)) are of a higher social status than the worshippers who are present at the third abomination (the "women" of Ezek. 8:14). *Chapters Three* and *Four* of this thesis raise the hypothesis that social status is correlated with 'seriousness of offence' in Ezek. 8. This is likely, given that *Chapter Three* (in the case of Lev. 21:9) and *Chapter Four* draw upon priestly legal texts, and that the narrator of *Ezekiel* identifies himself as a priest (Ezek. 1:3).

Indeed, there are several indications that social status is an element of seriousness in Ezek. 8. Firstly, we are told that the second abomination is worshipped by: "seventy men, elders of the House of Israel..." (Ezek. 8:11).[562] The 'seventy' were leaders (probably an élite

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one ('how do these present themselves in terms of sight, smell, taste and so on ?'). Indeed, it is likely that the strong emotive reaction that is generated by the abominations lies in the revolting presentation of the *tô 'ēbôt* to the senses.

[558] The passage repeatedly refers to 'eyes' (Ezek. 8:5; Ezek. 8:18) and to 'seeing' (Ezek. 8:6, 9, 12, 13 and 15). Of course, this emphasis on 'perception' is integral to any account of a 'vision' description. But it may also have something to do with the presentation of abominations to the senses. Cf. Calvin 1979 [1565], 282: "If an immodest woman runs after an adulterer, her husband is justly enraged; but if she brings him before her husband, and wantons with him *before his eyes*... certainly such wanton lust cannot be endured" (my italics).

[559] See Ezek. 8:11 (with reference to the "thick cloud of incense") and in 8:17 (with reference to the worshippers putting "the branch to their nose"). The latter is one of the *tiqqune sopherim*, a list of 18 passages in the M.T. that are thought to have undergone emendation for theological reasons. In Rabbinic tradition YHWH's exclamation: "Lo, they put the branch to their nose" is an emendation of the far more shocking idea that the worshippers had thrust the branches to "my (i.e. YHWH's nose)"; McCarthy 1981, 91-92. Either way, smell is part of what makes this rite offensive.

[560] The idiom may reflect the ANE belief that the divine temple was the deity's actual dwelling-place. Cf. the rituals performed by the Egyptian priests at Edfu; Fairman 1954, 180. Israel's beliefs were in some respects similar: the Tabernacle was YHWH's "house" and its accessories were his 'furniture.' Accordingly, anything performed in and around the Tabernacle (or the Temple) is done 'before' YHWH's face' (cf. the importance of location as an aspect of seriousness in 5 below). It is the immediacy of this experience that makes these abominations so repellent.

[561] Ezek. 8 may thus be related to the Biblical polemic against a belief in 'living idols'; e.g. Ps. 115:5, 6: "They have mouths, but do not speak; eyes, but do not see... noses, but do not smell" (cf. Ps. 135:16). Faur 1978, 13 argues that the purpose of these statements was to shatter the common notion that idols were capable of sensory perception. Against this background, Ezek. 8 may be claiming that YHWH, unlike the idols, is capable of sensory perception because he is the only true and living God.

[562] The willingness to name specific individuals, such as 'Jaazaniah' in Ezek. 8:11, suggests that this is an actual rather than a symbolic group. This does not, of course, rule out the possibility of symbolic overtones (such as an allusion to the

band of aristocrats) who functioned as the people's ruling council. One - "Jaazaniah son of Shaphan" - is singled out as "standing in their midst" (Ezek. 8:11). This Shaphan may be the same 'Shaphan ben Azaliah' who was "scribe" to King Josiah.[563] Idol-worship by a man of distinguished family underlines 'social status' as an element of seriousness.[564] Secondly, the 'twenty-five' men in front of the portico at 8:16 are later identified as 'elders' (9:6).[565] The presence of a smaller number than the "seventy" of Ezek. 8:11 might suggest an even more select group, but this is uncertain. Either way, judgement begins with this group (9:5). It begins with those who are (or who should be) senior in their knowledge of YHWH.[566]

The importance of social status as an element of seriousness in Ezek. 8 is confirmed by two separate sources. These are firstly, the vision of the restored Israel in Ezek.40-48 and secondly, the account of Jesus' departure from the Second Temple in Matt. 24:1-3.

Let us first deal with the vision of the restored Israel in Ezek. 40-48. One of the purposes of the book of *Ezekiel* is to identify the specific sins and sinners that caused the exile.[567] No-one emerges entirely free of guilt, but nonetheless some are more responsible than others. This is shown in Ezek. 40-48, where some groups in the restored Israel are 'downgraded' or even excluded from the promised Land in order to prevent any future

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representatives of Israel as they had once stood before YHWH at the making of the covenant; Ex. 24:9-11; Zimmerli 1979, 240).

[563] Josiah reigned from approximately 640-609 BC; hence this suggestion is consistent with the framework of Ezekiel's own chronology, which dates the vision to 592 BC. Three 'sons of Shaphan' are named in the historical sources, two of whom were allies of Jeremiah. 'Shaphan' is also said to have had two grandchildren, one of whom became Governor of Judah after the Babylonian invasions of 589-587 BC (Jer. 39:14). His brothers included: the distinguished scribe Gemariah (Jer. 36:9-12); the ambassador, Elasah (Jer. 29:3); and Jeremiah's powerful patron, Ahikam (Jer. 26:24; cf. 2Kgs. 22:12); Halperin 1993, 72.

[564] There may be an even more shocking reason for singling him out. 2 Kgs. 22:10ff relates that it was this Shaphan who conveyed the rediscovered *Torah* (commonly thought to be a scroll of *Deuteronomy*) to King Josiah (2 Kgs. 22:3-20). Shaphan's act of reading the scroll to the King spurred the King to reforming action (2 Kgs. 22:11; 23:1-25). If this is the case, it is ironic that the son of a man closely associated with turning Israel towards the Law is 'up to his neck' in the idolatry condemned by Deut. 4:17-18.

[565] One might have expected these men to have been identified as priests. But the priests' absence is consistent with the Babylonian policy of exiling the leaders of the people. Ezekiel was himself a priest and one of the first wave of captives taken into exile (Ezek. 1:1-3). Temple priests were prime candidates for exile. Their removal was a clear sign to the occupied peoples that another power (and another god) was abroad in the land. Perhaps the hypothesised priestly symbolism of the number 'twenty-five' (twenty-four priestly classes (1 Chr. 24:7-19) and the high priest) is an ironic comment on the cultic pretensions of the elders who acted as if they *were* priests (cf. n.522 above and n.611 below).

[566] Exactly the same theme is present in the New Testament. Jesus says: "… Every one to whom much is given, of him will much be required; and of him to whom men commit much, they will demand the more" (Luke 12:48). Cf. also Peter: "For the time has come for judgement to begin with the household of God; and if it begins with us, what will be the end of those who do not obey the gospel of God ?" (1 Peter 4:17).

[567] Duguid 1994, 2.

exile. There is a clear correlation between those who are seen as chiefly responsible for the exile, and their corresponding lack of status in the restored Land. The prophet maintains a remarkably consistent attitude towards each of the different leadership groups within Judaean society.[568] This makes it possible to draw comparisons between the behaviour of the lay leadership in Ezek. 8, and their corresponding treatment in Ezek. 40-48. The lay leadership is singled out for particular blame, despite the fact that the whole house of Judah shares responsibility for the exile (8:17). Within this grouping, the *zᵊqēnîm* and the *śārîm* are the two primary groups of lay leaders who are held responsible. The former group are especially associated with the sin of idolatry (see Ezek. 8; 14:1-8 and Ezek. 20)[569] whilst the latter group are particularly associated with the violent misuse of power for their own ends.[570] The *zᵊqēnîm*, whilst hardly alone in their sin, are leaders in the idolatry that causes the *Shekhinah* to depart. Accordingly, they are entirely swept away in Ezekiel's vision of the restored Temple. They are absent from chapters 40-48. Moreover, one of their chief functions in earlier times, that of acting as judges, is now given to the priests (Ezek. 44:24).[571] Likewise the people who followed their example are downgraded to the most circumscribed position in the new order. Having once defiled the Temple with idolatry they now have neither easy access to the restored Temple[572], nor a clearly defined role in worship.[573] However they are the fortunate ones. Unlike the lay leadership they at least have a place in the promised Land. In this way, social status is a factor in assessing the overall seriousness of the offence.

Secondly, central motifs in Ezek. 8, namely, 'idolatry,' 'lay leadership' and the 'departure of the *Shekhinah*' recur in a key passage of the New Testament (Matt. 23:35-24:2) which narrates Jesus' departure from the Temple in a manner that alludes to the departure of the

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[568] Duguid *op.cit.*, 1.

[569] Of course this does not mean to say that the sin of idolatry is unique to this class of people. Their sins, especially of idolatry, are also those of the whole people. After all, the same charge of idolatry is laid against groups such as 'Jerus em,' 'the people of Israel' and 'the house of Israel/Judah.' Even so when a specific group is identified out of this mass for blame in cultic matters it is invariably the *zᵊqēnîm*.

[570] There is no need to assume any 'hard and fast' distinction between the two groups since many of the *śārîm* would also have been *zᵊqēnîm*. Nonetheless, it is striking that where this specific terminology (*zᵊqēnîm* or *śārîm*) is used it is associated with specific sins; Duguid *op. cit.*, 123.

[571] 'Poetic justice,' perhaps, for their role in usurping the power of the priests (see n.522 above).

[572] They are kept at a distance from the Temple and their view of the ceremonies taking place in the inner court would have been very limited; Duguid *op. cit.*, 137.

[573] Their participation in worship was limited to the following: contributing to the offering of the *nāśî*; proceeding through the *outer* court on major festivals; and a brief act of prostration at the outer entrance of the gateway to the inner courtyard on Sabbaths and new moons. They were to have no opportunity to repeat their past abuse.

Shekhinah in Ezek. 10. Jesus is presented as the *Shekhinah* whose departure from the Second Temple is a sign of judgement. Prior to leaving the Temple, echoes of Ezek. 8 are heard in Jesus' lament over Jerusalem: "O Jerusalem, Jerusalem …. Behold your house is forsaken and desolate" (Matt. 23:27). The wording alludes to the 'divine temple-abandonment' of Ezek. 8. Notably, in the same context, Matthew draws attention to the precise location of Zechariah's murder: "…between the sanctuary and the altar" (Matt. 23:35). The reason for including this detail puzzles commentators.[574] However it may be another allusion to Ezek. 8, where the location between the sanctuary and the altar is significant (Ezek. 8:16; see **5(b)** *(iv)* below). Having left the Temple for the last time, Jesus prophesies to his disciples that the Second Temple, like the First, will be destroyed. "You see all these [Temple buildings] do you not? Truly, I say to you, there will not be left here one stone upon another, that will not be thrown down" (Matt. 24:2). This is immediately followed by the statement that "Jesus sat on the Mount of Olives" (Matt. 24:3), mirroring the tradition that the *Shekhinah* 'hovered' over the Mount of Olives following its departure from the city.[575] Finally, there is an allusion to the role of the lay leadership, whose idolatry was instrumental in driving the *Shekhinah* from the Temple in Ezek. 8. It is seen in Jesus' extraordinary denunciation of the "scribes and Pharisees" in Matt. 23:13-36 (the 'seven woes'). For who are the scribes and the Pharisees but the lay leaders of Israel?

5. Relative seriousness

The four abominations are not of equal gravity. Some are more serious than others.[576] In contrast to the majority view which ranks the four cases in ascending order of seriousness,[577] we argue that there is only one gradation in seriousness in Ezek. 8; that

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[574] E.g. Blank 1938, 345 claims that it is "totally irrelevant in its context."

[575] The Biblical account of the flight of the *Shekhinah* describes how the *Shekhinah* "stood at the door of the east gate of the house of the LORD" (10:19) before ascending from the midst of the city and standing on the Mount of Olives (11:23). R. Jonathan said: "Three and a half years the *Shekhinah* abode upon the Mount of Olives hoping that Israel would repent, but they did not…" *Midrash Rabbah* (Lamentations), 51.

[576] *Contra* the NEB translation of Ezek. 8:6, 13 and 15; and Calvin 1979 [1565], 285 who denies that *any* of the abominations are worse than another. However, Calvin overlooks the force of the comparative *mem* (מ) in 8:15 (*mē 'ēlleh*). This can only be interpreted: "greater abominations than these" (my italics). That said, the existence of another *mem* in Ezek. 8:17 does not mean that there is a *fifth* abomination, even more serious than the fourth. This is because the *mem* in 8:17 appears with an infinitive (*mē 'ásôt*), whereas in 8:15 it appears with a demonstrative adjective (*mē 'ēlleh*).

[577] *Contra* most translations of the Bible and many commentators; e.g. Block 1997, 284 n.7; Cooke 1936, 93; Duguid 1994, 122-3; Halperin 1993, 38 and Zimmerli 1979, 237, all of whom assume an ascending order of seriousness. On this assumption the transitory verses between one abomination and another (i.e. Ezek. 8:6, 13 and 14) are translated: "You will see still *greater* abominations" (my italics). In support of this, commentators argue that the emphatic word *'ôd* qualifies the noun *tô 'ēbôt* in Ezek. 8:6 and 8:13. However, one could equally claim that in Ezek. 8:6 and 13, the

between the first three cases and the last abomination.[578] Accordingly, the phrase *wᵉ 'ôd tāšûḇ tō'ḇōṭ gᵉḏōlôṭ* in Ezek. 8:6 and 8:13 should be translated: "other great abominations" and the phrase *tō'ḇōṭ gᵉḏōlôṭ mē'ēlleh* in Ezek. 8:15 should be translated: "greater abominations than these." We shall argue in this section that the location of the fourth abomination (Ezek. 8:16) is the main reason why this abomination is regarded more seriously than the preceding three. The narrative is carefully crafted so as to highlight the precise location of the 'cultic horrors.' Frequent use is made of deictic expressions such as *pōh* ('here'; Ezek. 8:6, 9 and 17) and *šām* ('there'; Ezek. 8:1, 3, 4 and 14). We are told the exact spot where they are located (Ezek. 8:5, 10, 14 and 16; see **(c)** below) and also the vantage-point from which they are seen (Ezek. 8:3, 7-10, 14 and 16; see **(c)** below). This reflects the general concern for geography in *Ezekiel*.[579]

There are four main reasons why location is an element of 'seriousness' in Ezek. 8. Firstly, the idolatry takes place at the Temple of YHWH in Jerusalem (see **(a)** below) and secondly, it is performed at entrances (see **(b)** below). Thirdly, if we locate the four abominations carefully (see **(c)** below) we find a binary opposition between the 'inside' and the 'outside' of the Temple (see **(d)** below) and fourthly, we also discover a binary opposition between the 'northern' and the 'eastern' sides of the Temple (see **(e)** below).

(a) Jerusalem

Jerusalem is the epicentre of the conflagration that consumes the whole of Judah (Ezek. 9). The presence of idols in this location is repeatedly seen as the key issue (e.g. Ezek. 5:11). There are three main reasons for this. Firstly, the presence of the Ark and the Temple in Jerusalem made the city a powerful symbol of YHWH's sovereignty (e.g. Jer.

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emphatic *'ôd* qualifies the verb (*tāšûḇ*, 'turn *again!*) rather than the noun (although even here it might still be argued that there is a rhetorical transference). Commentators also appeal to the text's 'discourse structure,' arguing that the abominations are presented in a sequential, cumulative fashion. But although the fourth abomination is climactic, this does not in itself prove that the narrator is making similar value judgements about the preceding three abominations.

578 This is signalled by the comparative *mem* in Ezek. 8:15. Some might say that the presence of a *mem* in 8:15 supports a comparative implication in 8:6 and 8:13 as well. But this is only an inference. The text does not say so explicitly. The only formal indication in the text of a comparative judgement is between the fourth abomination and the preceding three. The fourth abomination is not just worse than the third abomination, it is worse than all of them. Zimmerli 1979, 237 notes that the affirmative question of YHWH to the prophet ('have you seen …?'), which each time prepares the prophet to see something worse, is absent from Ezek. 8:17b, 18, confirming that the fourth abomination is indeed the climax.

579 Cf. Ezek. 4:1-5:4 which describes how the prophet is engaged immediately before he receives the vision in Ezek. 8. He has been enacting an omen against Jerusalem by lying before a model siege-works for a prolonged period (390 days on his left side and 40 days on his right side). Ezekiel himself is the besieger (4:3), which requires that he face in a particular direction. In this position he has a very long time in which to 'mull over' the city's geography. Fass 1988, 467-468 notes Ezekiel's particular preoccupation with the North.

8:19), not only over Israel but also over the whole world.[580] The Ark of the Covenant was where YHWH was enthroned (e.g. Ps. 80:1, 99:1).[581] The Temple, likewise, expressed YHWH's rule in visible form.[582] To set up idols in Jerusalem where the great King dwelt was tantamount to treason. Secondly, Jerusalem was the 'holy city,' the one place on earth where YHWH had set his Name.[583] Idolatry was a violation of holiness,[584] and since the scale of pollution increased with the holiness of the violated object, it was accordingly a serious matter to defile Jerusalem. The worst is the corruption of the best.[585] Thirdly, what happened in Jerusalem - the *axis mundi* and the navel of the earth - was of global significance.[586] The prophet's frequent reference to Jerusalem as "the high mountain of Israel" recalls the mythological 'cosmic mountain,'[587] which was a prevalent ANE motif.[588] It implies that the Jerusalem Temple is itself 'cosmic,' representing "the true Temple which is the source of order in the world."[589] To perform abominations at the Temple in Jerusalem is a serious matter because it threatens the whole earth. "Things fall apart; the centre cannot hold/Mere anarchy is loosed upon the world."[590] The seriousness of the offence and its global implications are signalled in Ezek. 8:17, where the words:

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580 Ollenburger 1987; McCurley 1983, 158-160.

581 McCurley *op. cit.*, 155. The Ark of the Covenant is closely associated with kingship. It is said to represent the footstool of a king in its appearance, whilst the *K⁽rûbîm* are thought to represent the guardians of YHWH's throne-room, or the throne itself. Naturally, the Ark is the focus of the covenant because it contains copies of the treaty (Ex. 25:16, 21; 40:20; Deut. 10:1-5). Israel's apostasy was thus all the worse for being committed in the very place of covenant remembrance.

582 In the ANE, temples were built for gods to rest in after their battles. The building was a sign that the god who dwelt therein had won a significant victory. According to Assyrian tradition, ancient kings routinely built or renovated temples to celebrate their victorious campaigns; Niehaus 1995, 115-7. In terms of this worldview it is not surprising that after winning his victory over the 'gods of Egypt' YHWH built his 'house' (the Tabernacle). As such, the Tabernacle (and later, the Temple) expressed YHWH's rule in visible form.

583 Jerusalem occupies the extreme end of the 'holiness spectrum' that is polarised in *Ezekiel* as 'Jerusalem *versus* the *Goyim* [Gentiles]" (Ezek. 5:5); cf. *M. Neg.* 12:4.

584 Ezekiel often associates idols and idolatry with uncleannness; e.g. Ezek. 20:7, 18 and 31.

585 Idolatry *anywhere* in Israel defiled the Sanctuary, profaned the Name and induced YHWH to withdraw his Presence. How much worse, then, was the actual installation of pagan cultic objects at the Sanctuary itself?

586 Ezek. 38:12; McCurley *op. cit.*, 139-163.

587 Clifford 1972; Hurowitz 1992, 335-337.

588 In the ANE the temple is the architectural embodiment of the cosmic mountain; Lundquist 1983, 207-8. Among the Canaanites, the earthly temple of the deity was considered a copy of the heavenly temple where the high god dwelt on the 'holy mountain.' Temples were thus thought to be 'cosmic' because they reflected the heavenly temple. This belief in a correspondence between the earthly copy and the heavenly prototype was shared by the Israelites (cf. the instructions for building the Tabernacle, esp. Ex. 25:40); Clifford 1972, 177).

589 *Ibid.*

590 Yeats, *The Second Coming*, l. 3-4.

"the earth is filled with lawlessness" repeat exactly the announcement of the Flood (cf. Gen. 6:13).[591]

(b) Entrances

Each of the four abominations takes place before an entrance (*peṭaḥ*). The first abomination takes place before a "gate entrance" (*peṭaḥ ša'ar*, Ezek. 8:3) (see ❶ in Fig. 6, p.16 below). The second abomination is situated before a "courtyard entrance" (*peṭaḥ heḥāṣēr*, Ezek. 8:7) (see ❷ on Fig. 6 below). This pattern, of "gate entrance" followed by "courtyard entrance," is repeated in Ezek. 8:14 and Ezek. 8:16. Thus, the third abomination takes place before the "gate entrance to the Temple" (*peṭaḥ ša'ar bêt-YHWH*, Ezek. 8:14) (see ❸ on Fig. 6 below). Finally, the fourth abomination is located in the "Temple courtyard [at the] ... entrance to the Temple" (*ḥāṣar bêt-YHWH ... peṭaḥ hêykal YHWH*, Ezek. 8:16) (see ❹ on Fig. 6 below). This is significant because entrances were 'legally significant sites' in the ANE.[592] Setting up idols at the entrances to the Temple (Ezek. 8:3, 5, 7, 14 and 16) and especially before the House of YHWH itself (Ezek. 8:16) aggravates the seriousness of the offence. This is because the entrance or threshold of a temple symbolises the power of the resident deity.[593] Setting up a foreign idol at the entrance to YHWH's Temple was an affront to YHWH's sovereignty.[594]

(c) Locating the abominations in the Temple

All four abominations are located in and around Solomon's Temple.[595] Fig. 5 (overleaf) reconstructs the layout of Solomon's Temple from the Biblical evidence.[596]

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[591] In both *Genesis* and *Ezekiel* the words are the prelude to divine judgement from which only a protected few escape (9:1-11; cf. Gen. 7:1-23).

[592] Matthews 1987. One particular form of entrance was the gate and 'gates' were places of judgement. Entrances (especially city-gates) were associated not only with the judicial process but also with the execution of justice. E.g. 1 Kgs. 14:12, 17; 2 Kgs. 10:8-9. The dying concubine's struggle to reach the threshold in Judges 19:26-27 may symbolise a futile, last-ditch attempt to get justice; Matthews 1987, 34. Temple gates were places of judgement throughout the ANE; Hurowitz 1992, 290 n.2; Van den Boom 1985.

[593] Cf. 1 Sam. 5:2-5. 1 Sam. 5:4 narrates how: "The head of Dagon and both his hands were lying cut off *upon the threshold*" (my italics). The broken palms on the threshold signifies the helplessness of Dagon before the might of YHWH. The fact that it occurs in Dagon's own temple adds to the irony.

[594] Notably, whilst ANE conquerors commonly installed the gods of defeated peoples in their own temples as 'captives' of their god, David burned the idols of the defeated Philistines (2 Sam. 5:19-21); Niehaus 1995, 139. It is remarkable that, in contrast to the prevailing custom, David is unwilling to bring *any* sort of idol (even a captive one) into YHWH's temple.

[595] Contra Zimmerli 1979, 237; Ackerman 1989 and Duguid 1994, 112-3 who claim that the prophet is led from the outer gate of the city to the inner part of the sanctuary. The whole vision (Ezek. 8:1-11:24) is marked by unity of place. The massacre of Ezek. 9:11 takes place 'out of vision.' So too does the burning of the city. The order to burn the city (10:2) and the description of the "fire" being given to the "man... clothed in linen" (10:6-7) is broken off by the statement
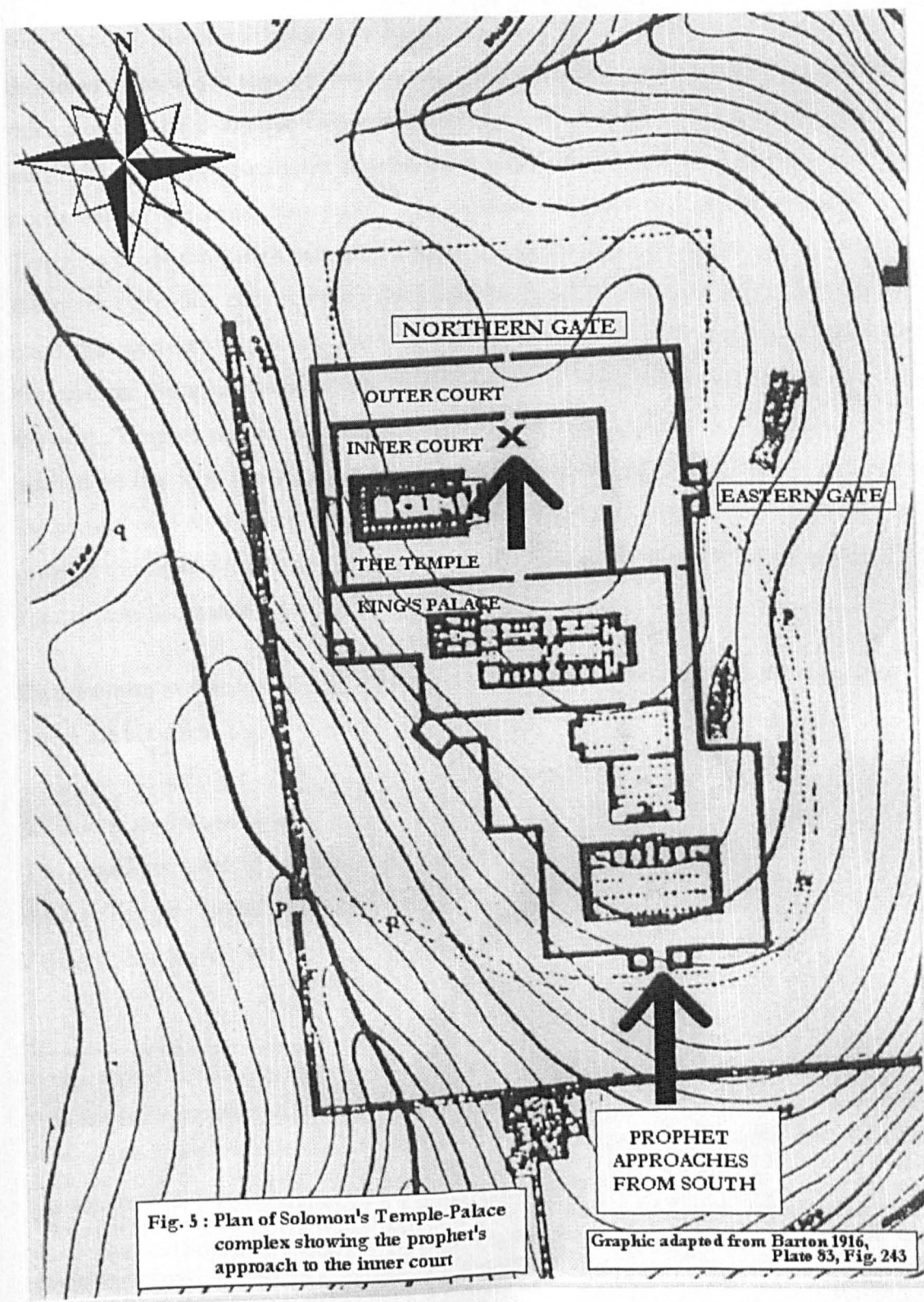
Fig. 5 : Plan of Solomon's Temple-Palace complex showing the prophet's approach to the inner court

Graphic adapted from Barton 1916, Plate 83, Fig. 243

Labels within figure: N · NORTHERN GATE · OUTER COURT · INNER COURT · THE TEMPLE · KING'S PALACE · EASTERN GATE · PROPHET APPROACHES FROM SOUTH

"and [he] went out" (v.7). This suggests that the prophet's movements are restricted to a small area. We are thus justified in assuming that the Temple and its environs are the setting of Ezek. 8:3-13, although the Temple itself is not explicitly identified until verse 14.

596 Fig. 5 reconstructs the original layout of Solomon's Temple. It is not a reconstruction of how the Temple might have appeared in Ezekiel's time since it is impossible to take account of all the subsequent alterations. Nonetheless, we can assume that the general layout holds good.

Fig. 5 (above) shows that Solomon's Temple had only one court (an inner court) and that this inner court was in turn enclosed by a larger court (the outer court). Fig. 5 shows that this created a large Temple-Palace complex[597] in which God and King lived side by side.[598] This arrangement meant that the south wall of the Temple enclosure was also the north wall of the royal enclosure.[599] Fig. 5 also shows that the typical access to the Temple was via the King's palace that lay to the south. The worshipper passed through the outer court that enclosed the palace and the Temple, and then entered the middle court that enclosed the palace. From thence he was able to reach the inner court that enclosed the Temple. The command to the prophet in Ezek. 8:5 to "lift up" his eyes "to the north" implies that the prophet has approached the Temple from the south. This is marked on Fig. 5 by two arrows pointing in a northerly direction. This is consistent with the picture of how the worshipper typically approached the Temple. The prophet is set down in the inner court,[600] south of the entrance to the northern gateway (Ezek. 8:3). His approximate position is marked with an 'X' in Fig. 5.

We now turn to consider the movement of the prophet within the Temple compound. These are set out in Fig. 6, overleaf.

(i) Locating the first abomination

The prophet is standing inside the court facing the northern gateway (Ezek. 8:3). Looking through the gate to the outer court beyond, he sees the first abomination: "north of the altar gate, in the entrance" (8:5; marked ❶ in Fig. 6 overleaf).[601]

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[597] 1Kgs. 7:1-12. Cf. excavations at Beth Shan noted by Ottosson 1980, 113.

[598] An arrangement that flowed naturally from the fact that the King was the protector of the cult; Ottosson *op. cit.*, 112.

[599] Several gates led from the inner courtyard (the 'court of the priests') to the outer court (the 'great court'). E.g. 2 Chr. 4:9. The Gate of the Courtiers apparently lay to the south, guarding direct access between the palace and the Temple (2 Kgs. 11:19; cf. YHWH's complaint that the kings of Israel "[set] their threshold by my threshold and their doorposts beside my doorposts, with only a wall between me and them" (Ezek. 43:8). The absence of any 'buffer zone' meant that the kings "[defiled YHWH's] holy name by the abominations that they committed ..." (Ezek. 43:8; probably a reference to the practice of burying kings in the palace garden (2 Kgs. 21:18,26)). Notably, this complaint is made during Ezekiel's vision of the restored Temple (Ezek. 40-46) which, unlike Solomon's Temple, had *two* courts of its own and no secular buildings in the enclosed area. This reinforces the idea that Solomon's Temple had no outer wall of its own.

[600] Interpreting *happᵉnîmît* in Ezek. 8:3 as an abbreviation for *heḥāṣēr happᵉnîmît* as used in Ezek. 10:3 (cf. *heḥāṣēr hahîṣōnāh* of Ezek. 10:5).

[601] This equation of the northern gate with the 'altar' gate is consistent with what is known of how Solomon's altar was repositioned by later kings. Originally, the 'molten sea' occupied the south-east corner of the Temple (2 Chr. 4:10). The position of the large bronze altar (2 Chr. 4:1) is not stated, but the general concern for symmetry suggests that it was sited at the north-east corner. This is supported by the observation that when the altar proved to be too small to

Fig. 6: Map of the prophet's movements according to Ezek. 8

Graphic adapted from Meyers 1992, 356
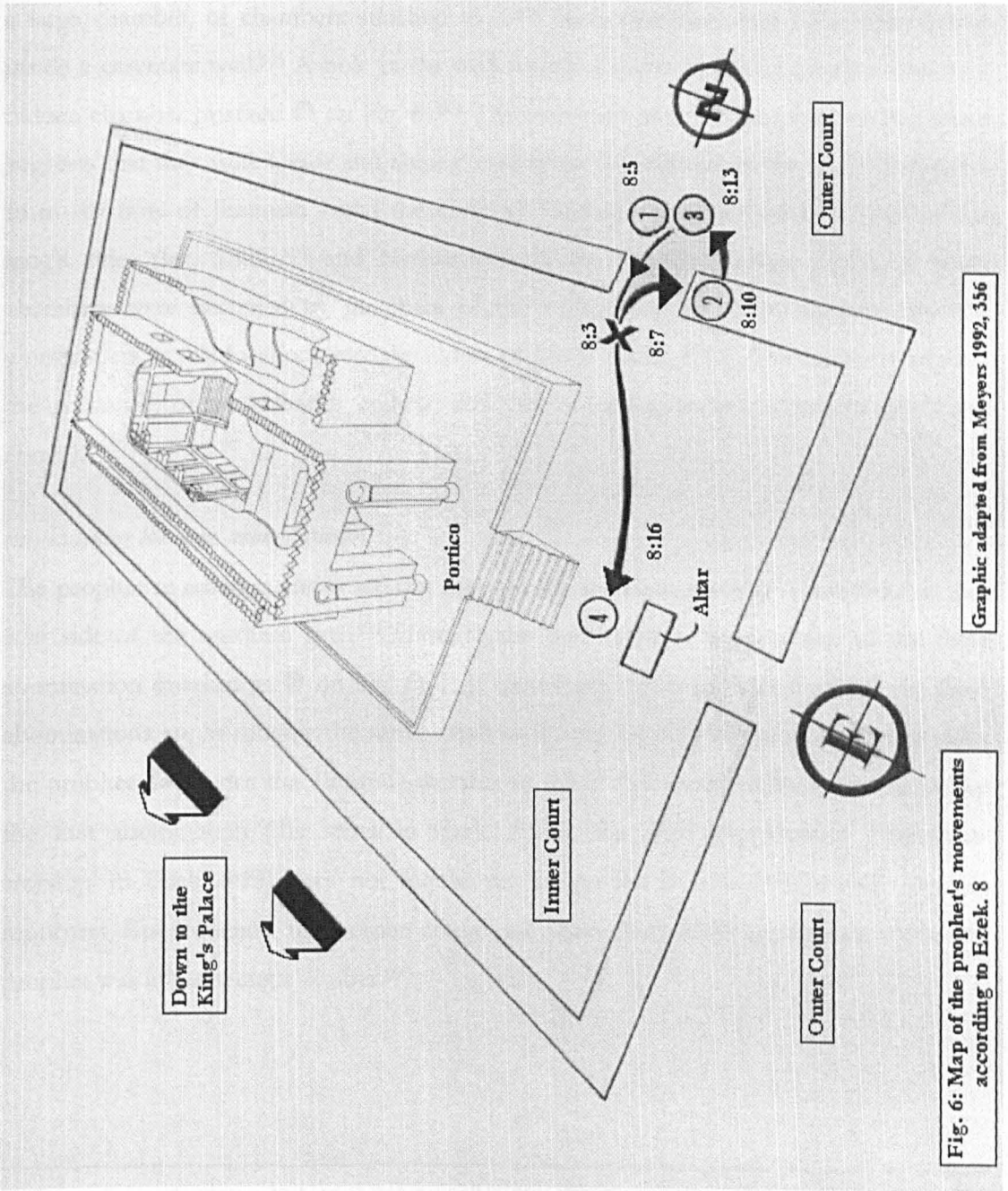
(ii) Locating the second abomination

Secondly, the prophet is brought to "the door of the court" (8:7; perhaps better translated "the entrance to the enclosure"). This refers to the south opening of the northern gate, that gives onto the inner court.[602] Thereupon, he enters the gateway's interior.[603] This had

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handle all the sacrifices at the dedication of the Temple, Solomon "consecrated the centre of the court that was in front of the House of the LORD" (1 Kgs. 8:64). This would have been the space left between the two bronze objects. According to 2 Kgs. 16:14, this altar was moved further to the north by King Ahaz, in order to make room for his new 'Damascus-style' altar. If so, it is not surprising that the northern gate would have been called the 'altar' gate.

[602] Greenberg 1983, 169.

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a large chamber, or chambers attached to it.[604] Such chambers may have been rooms inside a casemate wall.[605] A hole in the wall reveals a secret entrance, giving access to a hidden chamber (marked ❷ on Fig. 6).[606] The proximity of these chambers to the palace suggests that they were 'grace and favour' residences for servants of the king. Occupants from the time of Jeremiah - and therefore of Ezekiel - include Gemariah, one of the king's aides (Jer. 37:25),[607] and Nathan-Melech, the eunuch (2 Kgs. 23:11). If these chambers were occupied by members of the ruling class, it would explain why the worshippers at this location were the elders of Judah (Ezek. 8:11). It would also explain the exclusivity of the gathering and the difficulty of gaining access to the rite (see n.520 above).

(iii) Locating the third abomination

The prophet re-emerges and is led out through the northern gateway. He is now on the *other* side of the northern gate.[608] Here, in the *outer* court, is the location of the third abomination (marked as ❸ on Fig. 6). It is clear from Fig. 6 that the first and the third abominations are in roughly the same location. It may be objected that, if so, why does the prophet not notice the Tammuz-worship in 8:3-5? We should remember that unlike the first abomination (the *sēmel* in Ezek. 8:3-6), the third abomination ('Tammuz-worship' in Ezek. 8:15) does not require an image (see 3 above). It merely requires mourners. Consequently, the women could easily have made their appearance whilst the prophet was in the secret chamber.[609]

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[603] We can distinguish between the 'gate' (*ša 'ar*, a covered building of some size, like a college lodge) and the entrance (*petaḥ*) or 'door' within it.

[604] Certain people had rooms in the 'upper' (that is, the 'inner' court), allowing them to overlook the enclosure (e.g. Jer. 36:10).

[605] See n.519 above. Josh. 2:15 describes how: "[Rahab's] house was built into the city wall, so that she dwelt in the wall."

[606] Of course, the secret chamber could have lain either to the right or the left of the chamber, but for simplicity's sake we have marked ❷ as being on the right of the northern gate, as seen from the inner court.

[607] Conceivably, "Jaazaniah son of Shaphan", named in 8:11, may have been Gemariah's brother (Jer. 36:7).

[608] This may explain why verses 3 and 14 describe the northern gate slightly differently (Ezek. 8:3 refers to: "the entrance of the gateway of the inner [court] that faces north", whilst Ezek. 8:14 refers to: "the entrance of the north gate of the House of the LORD"). There is a difference in perspective, because in Ezek. 8:3 the prophet sees the northern gateway from within the inner court, whereas in Ezek. 8:14 he sees it from the outer court.

[609] Alternatively, we may assume that the prophet observed the women in Ezek. 8:15, but withholds the information from his hearers for dramatic purposes.

(iv) Locating the fourth abomination

Finally, the prophet is led from the outer court back "into the inner court of the House of the LORD" (8:16). He is led from the northern gate of the inner court to the eastern gate of the inner court.[610] Here he witnesses the fourth abomination that is practised: "at the door of the house of the LORD, between the porch and the altar" (8:16; marked as ❹ on Fig. 6). This was a particularly sacred part of the Sanctuary.[611]

(d) 'Outside' *versus* 'Inside'

It is clear from Fig. 6 above, that there is a binary opposition between the location of abominations ❶ - ❸ and that of ❹. The first three abominations all take place 'outside' the enclosure[612] whereas the fourth, and last, takes place 'inside' the enclosure. There is an opposition between "outside" and "inside" the enclosure. This would have been of great semiotic significance to a priest such as Ezekiel who would have been sensitive to spatial gradations in the holiness of the Temple.[613] This explains the sudden jump in relative seriousness between the first three abominations and the fourth, as registered by the comparative *mem* in Ezek. 8:15 (see n.578 above).

(e) 'North' *versus* 'East'

A further binary opposition in the presentation of Ezek. 8 is that between 'north' and 'east.' The question is whether the abomination is committed on the northern or on the eastern side of the Temple. 'North' and 'east' are binary opposites in this context, because the 'north' is the 'least favoured' area of the Temple, and the 'east' is the 'most important'

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[610] Ezekiel's journey through the enclosure from the northern to the eastern gate can be corroborated by noting the parallel journey taken by the six "executioners" in Ezek. 9:1, 2 and 6. This correspondence emphasises the justice of the punishment. The 'guided tour' in Ezek. 8 is of the idolatry that is to be punished by the divine warriors.

[611] According to Joel 2:17, this was where the priests were to weep and plead to YHWH on a fast day. It was an appropriately mediatorial position because it was situated between the altar (where sacrifice was made) and the Temple (the dwelling-place of YHWH). This text underlines the possibility that the elders in Ezek. 8:16 are usurping the role of the priests (cf. n.522 above). *M. Kel.* 1.9 gives this area 'eight out of ten' for degrees of sanctity; second only to the Sanctuary itself..

[612] ❶ and ❸ take place in the outer court, whilst ❹ occurs in the wall of the enclosure and not in the enclosure itself.

[613] Solomon's Temple like its precursor, the Tabernacle, is arranged according to the principle of graded sanctity. 'Graduated holiness' is conveyed spatially, among other means; Jenson 1992, 89-114. Since the Temple is the place where God dwells (in a limited sense), those places that are close to the divine presence are more holy than those places that are further away. Thus the adytum (the 'Holy of Holies') has a higher degree of sanctity than the main hall (the 'Holy place') which in turn is holier than the precinct outside. The courtyard itself is a transitional area and so its status is rather ambiguous. However, there appears to be some gradation between the enclosure and the area beyond it. The presence of the divine 'furniture' (the 'sea', the 'altar' and so on) implies that the inner court is more sacred than the outer court. In addition, the phrase 'the Temple of the LORD' was often used to include the courtyard as well.

area.[614] Fig. 6 shows that abominations ❶ - ❸ take place in and around the northern gate, whereas ❹ takes place at the eastern gate. This is another reason why the fourth abomination is the worst of all.

6. Conclusion

Ezek. 8 is the anatomy of a catastrophe. The cause is idolatry, the most fundamental breach of the covenant, and the penalty is 'divine-temple abandonment.' When this happens and the *Shekhinah* departs, Jerusalem falls and the exile proper begins. 'Seriousness of offence' is vital to the narrative because it establishes the justice and the power of YHWH. However, all idolatry is not the same. 'Seriousness of offence' varies according to who does it, where it takes place and with what implications. This suggests that the Biblical approach to seriousness is highly contextual, at least in the case of idolatry. The fourth abomination is worse than the preceding three abominations because it occurs in a sacred part of the enclosure and on the eastern side of the Temple, in contrast to the other three abominations that do not take place within the enclosure and which are oriented towards the north.

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[614] The only entrance to the Tabernacle was from the East. Its supremacy is signified by its superior furnishings, being curtained with similar material to that used in the curtains of the Tabernacle itself (Ex. 27:16; cf. 26:31). The superiority of the east is reflected in the arrangement of the camp around the Tabernacle in the wilderness. The leaders of the people (the Aaronides and Moses) encamped at the eastern entrance (Num. 3:38) because it was the choicest part of the camp. Rotating clockwise, still facing the east, the southern side (on the right) was next in importance, followed by the west and then by the north. This results in a structural opposition between the 'east' (as the most desirable location) and the 'north' (as the least desirable location). The tribal groupings bear out this hierarchy. Notably, the Leah tribes make up the first two divisions located in the east and the south, but not in order of birth (cf. Gen. 29:31-30:20; Ex. 1:1-4). This is to enable Judah, Leah's fourth son, to be given the choicest role as the leader of the eastern unit (cf. Gen. 49:10) whereas the first-born, Reuben, is assigned the leadership of the southern unit; Milgrom 1990, 340-1. The rotation continues with the Rachel tribes in the west (headed by Ephraim) and the Danite division in the north. We may draw upon the Tabernacle as a precedent on the assumption that the Tabernacle preceded the Temple. However our argument does not necessarily depend on this. Regardless of the direction in which the influence runs (whether 'Temple → Tabernacle' or, say, 'Ezekiel → Temple → Tabernacle'); the same evaluation is made throughout; namely that the most favoured side of YHWH's dwelling was the east. It is almost certain that the author of Ezek. 8, who identifies himself as a priest (Ezek. 1:3), drew upon this opposition in structuring the charge of idolatry. Notably, in Ezekiel's vision of the restored Temple, the *Shekhinah* enters from the East (Ezek. 43:1, 2 and 4). *Contra* Ackerman 1989, 269 who argues that the prophet's movements in Ezek. 8 are "hardly a logical path to have followed." It is perfectly logical if we posit a structural opposition between 'north' and 'east.'

SERIOUSNESS OF OFFENCE IN BIBLICAL LAW

The case-studies disclose that Biblical law discriminates between the seriousness of different offences and between the seriousness of committing the same offence in different ways. They also show that judgements of seriousness involve a moral evaluation. In the following discussion we will summarise the results of our investigation and its implications for the modern search for seriousness. Attention is drawn to comparative material from English law, insofar as this illuminates certain research findings concerning Biblical law. The inclusion of such comparative material is not, of course, central for the purpose of the claims that are made in this thesis regarding 'seriousness of offence' in Biblical law. However, whilst it is beyond the remit of this thesis to attempt a systematic comparison, we hope that this may be an area for further research.

1. The praxis of 'seriousness of offence'

The results are consistent with the reconstruction of Biblical legal praxis outlined in the *Methodology*. The case-studies demonstrate the advantages of reading Biblical law narratively, rather than semantically (see **(a)** below). They also have the cast of self-executing rules (see **(b)** below).

(a) Use of paradigm cases

Each of the case-studies demonstrate the value of a narrative, as opposed to a semantic, approach to Biblical law. In *Chapter One* we saw that the phrases "stubborn and rebellious" and "a glutton and a drunkard" refer, not to a semantic definition, but to a narrative stereotype of deviant behaviour. Similarly, in *Chapter Two*, we proposed a narrative reading of the word *yābam* (Deut. 25:5,7) and the verb *y'bām* (Deut. 25:5, 7). Instead of restricting it to the semantic meaning of 'her husband's brother' and '[to] perform the duty of a brother-in-law' respectively, we argued that the root *yābam* refers to a wider range of agnatic kin in one's own (and possibly the senior) generation. In this way,

we argued, the levirate duty is not restricted to the brother-in-law alone. Support for this narrative approach was found in Gen. 38 and *Ruth*. In *Chapter Three*, we argued that the meaning of *b'tûlāh* in Deut. 22:13-21 was best understood in narrative terms; *viz.* the *b'tûlāh* (or 'marriageable girl') is one who has 'come of age' but whose womb has not been opened by birth or miscarriage. The likelihood is that such a girl is also a virgin but this is not essential. We argued that, in the context of Deut. 22:13-21, the most important aspect of the stereotype is whether she has conceived and that the absence of *b'tûlîm* was the 'typical' proof of conception. In *Chapter Four*, we argued that the correlation between 'status', 'sin' and 'sacrifice' indicates the need to bring a sacrifice that is broadly in line with the offeror's status. For this reason, it does not matter that the priesthood are not formally mentioned as a separate category of offenders in Lev. 4:1-35. Finally, in *Chapter Five* we noted a convergence between the structure of Ezek. 8 and the 'paradigm case' of 'acting like an idolater' in Ex. 20:3-6.

(b) 'Self-executing' rules

The results bear out the methodological assumption that Biblical law was largely in the hands of the people and that its 'paradigms' formed the basis of individual negotiation and settlement. Knowledge of the law and of legal reasoning was not restricted to cadres of professionals. Rather, all members of the community were encouraged to engage in it.

We saw in *Chapter One* that the 'stubborn and rebellious' son is chastised by his parents but when his behaviour becomes too serious, he is handed over to the elders. The parents take the initiative in applying and executing the law. Similarly in *Chapter Two*, the legal process is initiated by the complainant (the widow) and not by officials. The dead brother's claim is in the hands of his widow throughout. She is the Crown Prosecution Service (CPS), Prosecutor and Executive all rolled into one. In *Chapter Three*, we suggested that the role of the *b'tûlîm* is an example of an 'arbitrary evidence rule' in which a particular concrete test (examining the *śimᶜlāh*) is conclusive of a wider issue ('playing the harlot' whilst betrothed). The advantage of such a test is that it can be applied by anyone. *Chapter Four* is also consistent with the pattern of 'self-executing' rules insofar as the means of discovery involves informal notification.

We noted in our *Methodology* that one motive for placing law in the hands of the people, rather than legal specialists, is the desire to avoid shame. In *Chapters One* and *Two*,

strenuous efforts are made to avoid public shame. In *Chapter One*, the parents try to deal with their son within the family. They go to court only as a last resort. In *Chapter Two*, the elders try to deflect the levir from the *ḥāf sāh* ceremony in the course of what seems to be a private meeting (Deut. 25:8).

We also noted that 'self-executing rules' often contain an element of 'rough justice.' In *Chapter Three*, the *b'tūlīm* only prove that the girl was not pregnant at the time of the marriage. They do not prove that she wholly abstained from relations during the period of betrothal. This unfairness is the price that has to be paid for the benefit of resolving the case between the parties concerned.

Finally, we note that the punishment in *Chapters One, Two* and *Three* is implemented and enforced by the community. The rebellious son and the rebellious daughter are stoned by the entire community (Deut. 21:21; 22:21). The levir's new 'name' also requires community enforcement (Deut. 25:10), consistent with the practice of self-executing rules.

(c) Comparative issues

In our *Methodology* we argued that 'seriousness of offence' in Biblical law is expressed through a series of 'typical' or 'paradigm' cases.[615] We noted that a case could be called a 'typical' or a 'paradigm' case in two different senses. Firstly, it may be paradigmatic because it 'happens all the time' or, secondly because although it does not happen all the time, there is a stock of social knowledge of what ought to happen (or usually does happen) in such circumstances.[616]

This 'paradigmatic' approach to seriousness of offence is relevant to the future direction of seriousness studies, for two reasons. Firstly, we saw in our *Introduction* that testing the extent of 'local' consensus is a key area for further research.[617] In other words, future seriousness studies must discriminate between the more common types of offences. As in Biblical law, seriousness studies must engage more with those cases that are characterised by 'frequency of occurrence' and less with 'exceptional' cases. Secondly, Rossi and Henry argue that, if seriousness scores are going to be useful, researchers must try to make the

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[615] See pp.21-22, above.

[616] See n.99, above.

[617] See p.6, above.

criminal acts used in ratings fit more closely to the real world.[618] This would help us to understand the ways in which respondents actually judge events.[619] We urge that vignettes conform to stereotypical social knowledge about crime in order to maximise their meaning and utility. Accounts of criminal incidents should be enriched by drawing on typical real life cases, in which specific persons commit criminal acts to specific victims with specific outcomes in terms of damage to the victim. Once again, we suggest that future seriousness studies should take a paradigmatic approach.

Thirdly, there is a need for seriousness studies to take a more qualitative approach to the problem of seriousness. The only contemporary legal discourse that matches the Biblical material on seriousness is remarks made by a judge to the defendant when passing sentence at the conclusion of the trial. Unlike most other forms of legal discourse it is addressed to a non-legal audience and it is hence not characterised by legal technicalities. There is a need to examine more discursive, qualitative material as well as quantitative material, in order to evaluate 'seriousness of offence' in a modern legal system. One method of doing this is to conduct an analysis of criminal trial transcripts, especially of the comments made by the judge to the defendant at the close of the trial. This may be an area for further research.

2. Values

The results indicate some of the values of 'seriousness of offence' in Biblical law. In *Chapter One* the underlying values are those of 'honouring parents' and respect for the Land. The latter is shown by 'self-restraint' (that is, by not behaving like a 'son of Belial'). *Chapter Two* fuses these values (just family relationships and the Land) in the obligation to raise up a 'name' for the dead brother. This reflects the value of continuing the lineage and of ensuring that the family property descends in the dead brother's line. *Chapter Three* demonstrates the need for cultic integrity on the part of the priestly family. The priest's daughter is not to imitate pagan practices by engaging in cultic prostitution. It also underlines the importance of paternity. A husband had a right to be sure that the children born within the marriage were his. *Chapter Four* demonstrates the value of maintaining the purity of the Temple, even in the face of 'inadvertent' sins. This is because a polluted

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[618] Rossi and Henry 1980, 502.

[619] *Ibid.*

Temple would prompt the deity to leave his Sanctuary, occasioning national disaster. Finally, 'divine temple abandonment' in *Chapter Five* reflects the absolute value of aniconic worship in Israel.

3. Elements of seriousness

The results indicate several elements of 'seriousness of offence.' These include: status; location; and the type of relationship involved (see **(a)** - **(c)** below). This raises questions concerning the approach taken to seriousness in modern criminal law (see **(d)** below).

(a) Status

We saw in *Chapter Three* that the seriousness of an offence varied according to the social status of the offender. The priest's daughter is executed by means of burning whereas the commoner's daughter is put to death by means of stoning. We also saw that the seriousness of the commoner's daughter's offence depends on her status as a betrothed woman. Similarly, in *Chapter Four* the seriousness of the offence varied according to whether the offender was a high priest, a *nāśî'* or a commoner. Finally, we saw in *Chapter Five* that the seriousness of the 'abominations' relies, in part, on the fact that the idolaters comprise a social élite.

(b) Location

We saw in *Chapter Five* that location is a key factor in determining 'seriousness of offence.' The worst abomination is the abomination that takes place in the inner court of the Jerusalem Temple before the eastern entrance between the portico and the altar. This concern for location is also apparent in *Chapter Three*. Either the offence of the priest's daughter takes place at the eastern entrance of the Tabernacle or else her position as a member of the priestly family means that the 'profane' is geographically proximate to the 'holy.'

(c) Type of relationship

'Seriousness of offence' also depends on the nature of the relationship involved. In *Chapter One*, the seriousness of the offence reflects the importance that is attached in Biblical law to the proper relationship of a son to his parents. In *Chapter Two*, 'seriousness' derives from the obligation that a levir owes to his childless and deceased brother. In *Chapter Three* the charge of 'double harlotry' brought against the priest's daughter echoes

the theme of 'respect for parents' in *Chapter One* and anticipates the theme of 'cultic purity' in *Chapters Four* and *Five*. The seriousness of her offence derives from the nature of her obligations, as a member of the priestly family, toward YHWH and her father. The seriousness of the offence of the commoner's daughter is expressed differently, but still in relational terms. 'Seriousness' in her case derives from her obligation toward her fiancée not to engage in promiscuous behaviour. By contrast, similar behaviour on the part of an unbetrothed girl does not appear to be punished. Finally, in *Chapter Five*, seriousness stems from the obligation of the House of Israel and the elders of Israel to worship YHWH alone.

Evaluations of seriousness reflect the obligations of particular relationships. This is consistent with the observation that Biblical justice is conceived in terms of relationships rather than abstract norms.[620] In contrast to modern seriousness studies,[621] it could be argued that the salience of 'seriousness' in Biblical law is not so much 'individual' impact as 'relational' impact. In other words, 'seriousness' appears to be related, not so much to its impact upon an individual, but to the violation of a given relationship; whether within the family, the community or towards YHWH. Certainly, *Chapter Five* suggests that the most serious offences are those that impact upon Israel's relationship with YHWH.

The case-studies suggest that, unlike modern seriousness studies, the impact of the offence in Biblical law is registered more widely than the immediate victims of the crime. All offences are regarded as crimes against YHWH, especially in *Chapters Four* and *Five*. The threat posed to the wider community is a factor in Deut. 21:21 (*Chapter One*); Deut. 22:21 (*Chapter Three*); and possibly also in Lev. 21:9 (*Chapter Three*), if the priest is disabled from performing his normal function. Offences are also regarded as serious if they violate the Land (*Chapter One*) or arrangements for its division and inheritance (*Chapter Two*). By contrast, modern 'seriousness' studies emphasise the effect of the crime upon the victim, almost to the extent that 'victimless' crimes (e.g. narcotics, drunkenness) are not considered serious.[622] Indeed, some of the offences covered in our case-studies (dishonouring parents, prostitution, promiscuity and false worship) would today be regarded as 'victimless' crimes.

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[620] See pp.16-24, above.

[621] See pp.9-10, above.

[622] E.g. O'Connell and Whelan 1996.

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4. Performative registers

The results indicate a number of registers of 'seriousness' of offence in Biblical law (see **(a)** - **(d)** below). This raises questions concerning how seriousness is registered in modern criminal law (see **(e)** below).

(a) Form of penalty

'Seriousness distance' refers to the gap between the most and the least serious offence items as measured by the form of the penalty. In our case-studies the most serious offence item is 'idolatry', whilst the least serious item is 'committing an inadvertent offence.' This is communicated by the form of the punishment. Idolatry is punished by national catastrophe, whilst inadvertent offending is dealt with by means of a sacrificial tariff in which the key register is the value of the animal. In between these two extremes, there are variations on the death penalty (the exemplary form of burning and the common form of stoning) and the use of a shaming ceremony. The form of the penalty registers the seriousness of the offence.

(b) Ritual consequence

The ritual consequence of an offence also functions as a register of seriousness. This is seen in *Chapter Three*, with regard to the behaviour of the priest's daughter. She is profaned and so is her priestly father. Ritual consequences register the seriousness of her offence. In *Chapter Four*, the seriousness of the offence is related to what part of the Sanctuary is defiled. The inadvertent sin of the high priest and the *kôl - 'ādaṭ yiśrā'el* penetrates the Holy Place, whereas that of the *nāśî'* and that of the common person is limited to the courtyard. This degree of spatial penetration is registered by the blood rite ('seven times toward the veil' or not), the cleansed object (whether the incense altar horns or the *'ōlāh* altar horns) and whether the animal carcass is destroyed or eaten.

(c) Location

The location of the punishment is significant in *Chapter Three* (execution at the entrance to the father's house). It registers the seriousness of the offence by drawing attention to her betrothed status at the time of its commission.

(d) Jurisdiction

The people before whom the case is brought also functions as a register of seriousness. *Chapter One* differentiates between two spheres of legal jurisdiction: the family and the

elders. These are distinguished by their powers of punishment, namely of corporal and capital punishment respectively. In *Chapter One*, the public nature of the enquiry functions as a register of the seriousness of the offence. The offence must come before the elders. It is too serious to be dealt with by the parents alone. *Chapter Four* falls within the jurisdiction of the priest. This reflects the special interest of the priesthood in cultic offences (cf. 2 Chr. 19:11), but it may also reflect the seriousness of the offence. This 'special interest' may explain why Ezekiel is made a witness of Israel's idolatry in *Chapter Five*. As a priest, he is in a better position than a non-priest to appreciate the seriousness of this particular offence.

(e) Comparative issues

(i) Extending the range of registers

The primary register in the modern criminal justice process is the type of punishment.[623] In modern law, 'seriousness distance' extends from the maximum sentence of life imprisonment for the most serious crimes to a conditional discharge for the least serious. However, as a register of seriousness, 'type of punishment' is a fairly blunt instrument in modern law. Fine defaulting and mass murder may both be dealt with by means of imprisonment. In such cases, 'seriousness' is registered in terms of the length of imprisonment. But this is not a salient register for most lay people, or even for many judges.[624] Modern law lacks the range of expression that gives 'seriousness of offence' in Biblical law its semiotic power. This narrow range is at constant risk of shrinking further with the increasing reliance on imprisonment as the primary form of punishment.[625]

Recent studies suggest that 'seriousness' is largely equated in the public mind with 'penal severity.'[626] However, the idea that 'seriousness' should be expressed exclusively in terms of 'punishment' is itself a major limitation. Biblical law suggests that responses to moral wrongdoing need not take the form only of penal sanctions. The need to develop other

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[623] There are of course, other registers. One example is the jury verdict of 'guilty' or 'not guilty.' A jury may think that a person is guilty of the offence as charged but do not think that the charge is sufficiently serious (e.g. marijuana possession) or, if it is, that it should not have been brought against this particular defendant (e.g. a charge of grievous bodily harm that was committed in response to provocation). In such cases, a verdict of 'not guilty' amounts to a statement by the jury, in the only way that they are able to express it, that the charge is not sufficiently serious to warrant a conviction. However, since juries are only used in a small minority of cases, this is not an important register of seriousness.

[624] Fitzmaurice and Pease 1986, 104-115.

[625] The number of people (male and female) imprisoned in the U.K. is 68,253 as of 19 February 1999; an increase of nearly 50% since October 1995. Source: National Association for the Care and Resettlement of Offenders.

registers is increasingly recognised by penal philosophers.[627] Reflection on the form of punishment in Biblical law and what it communicates about the seriousness of the offence may assist the contemporary search for alternatives to custody.[628]

(ii) Jurisdiction

Modern law is familiar with the use of different jurisdictions, with different powers of punishment, to communicate 'seriousness.' Indeed, the cut-off point between a Magistrates' Court and the Crown Court (which can, of course, impose a higher tariff) is arguably one of the main registers of seriousness in the criminal justice process. Even so, the use of different jurisdictions in Biblical law to communicate different senses of seriousness suggests that there is room for greater diversity of authority in modern law. We should not assume that the State is always the most appropriate agent for punishment.[629] The criminal justice system, it can be argued, has too wide a spectrum of behaviour to deal with. This is a limiting factor in terms of the semiotics of seriousness. If the same system deals with trivial matters that are not regarded as morally very bad, this will affect the sense produced by the treatment of the non-trivial.

5. Descriptive registers

In addition to describing these performative registers, the results also indicate a range of descriptive registers of 'seriousness of offence' in Biblical law. In *Chapters One* and *Three* the stated purpose of the punishment acts as a register of seriousness. In both Deut. 21:21 and Deut. 22:21, the purpose of the punishment is said to be expiatory. This signifies that the entire community is in danger and that communal action is needed to purify the city and the people of Israel. Further descriptive registers include the use of 'public-example' formulae (Deut. 21:21); the purpose of the sanction (Deut. 21:21; Deut. 22:21); and whether it is a repeat offence (Deut. 21:18, 21; 25:8; Lev. 21:9). Some of the descriptive registers have a strongly affective aspect, eliciting strong feelings of aversion concerning

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[626] O'Connell and Whelan 1996, 306.

[627] Kleinig 1991, 412 suggests an increased role for public criticism. Wrongdoers should be censured or reproved for their moral infractions.

[628] One 'register' that stands out when we juxtapose the concerns of the ancient and the modern world is that of 'shame.' Not only did shame play a crucial role in Biblical society, but its revival as a penal sanction is urged by some modern criminologists; e.g. Braithwaite 1989; Braithwaite1993.

[629] Cf. Kleinig *op. cit.*, 420.

the offence; for example, the use of *n̊ᵇālāh* (Deut. 22:13-21) and the description of the idols as *tô 'ēḇōṯ* (Ezek. 8:6, 13, 15 and 17).

This range of descriptive registers illustrates the Biblical practice of communicating the seriousness of the offence to as wide an audience as possible in as many different ways as possible. By contrast, modern law assumes that statutes are written for legal specialists and not for the general public. This limits the communication of legal values. Unlike Biblical law, there is not the same expectation that legal values will have an impact on the general public. The range of descriptive registers available in Biblical law raises the question of how to maximise the communication of legal values in modern society. One possible method is the 'two-document' solution. One statute is written for lawyers and another is written for the general public. One might expect the latter document to have some impact on the public. In some cases it may even be desirable to present laws for particular groups within society, such as children. This might help to extend the potential audience for legal values in modern law.

6. Communicating legal values

The results indicate some of the techniques used to communicate underlying values of 'seriousness.' These include direct sense-perception (see **(a)** below) and emotions (see **(b)** below). This in turn raises questions concerning how seriousness is expressed in modern criminal law (see **(c)** below).

(a) Direct sense perception

Immediate sense perception is the primary means of sense-construction. We shall concentrate on two main types of sense-perception and communication; the visual and the aural.

(i) Visual

Vision is pre-eminent among the senses. Visual images are powerful determinants of legal sense construction. Particular privilege is attached to the visual form of perception in Biblical law.[630] In *Chapter One*, the behaviour of the 'glutton and a drunkard' is conceived in stereotypical visual categories. In *Chapters One* and *Three*, the execution of the offenders take place in full public view. It is likely that the shaming ceremony in *Chapter Two* occurs

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[630] E.g. Ex. 20:18. See Jackson 1994, 313-4.

in public as well. *Chapter Three* shows a preference for visually salient forms of evidence with the 'bringing out' of the *śimᶜlāh* whilst in *Chapter Four* the seriousness of the pollution, and hence the offence, is visibly demonstrated by the application of blood on certain objects. *Chapter Five* also stresses the power of the visual (it is, after all, a 'vision'). The prophet is repeatedly asked whether or not he 'sees' the abominations ("do you *see?*.... Go in and *see*" etc.; Ezek. 8:6,9 my italics). Visual direct sense perception of either the offence, the punishment or both is thus an important aspect of communicating the seriousness of the offence.

(ii) Aural

The aural communication of legal values through popular debate and discussion (e.g. Deut. 6:6-7) is integral to the narrative approach set out in the *Methodology* (see pp. 20-24, above). Legal values may also be transmitted aurally through the public reading of the law (e.g. 2 Chr. 17:7-9; Neh. 8:1-8). Indeed, the texts in *Chapters One, Two* and *Three* (Deut. 21:18-21; Deut. 25:5-10 and Deut. 22:13-21) are examples of 'preached law' (Deut. 1:5). The same chapters also hint at the role played by local gossip (the publicly-known behaviour of the rebellious son (Deut. 21:20); the levir 'going about' in Israel under a new name (Deut. 25:10); and the husband 'bringing out' an 'evil name' against his wife (Deut. 22:14)).

Variety in the identity of the speaker is of particular significance to the semiotician.[631] In *Chapter One*, the behaviour of the 'stubborn and rebellious' son is described in an aurally arresting way. First, the narrator tells us that the son is 'stubborn and rebellious' (Deut. 21:18) and then the characters within the story do, in the form of an explicit speech-act (Deut. 21:20).[632] This means that the facts of the case are repeated, but in the words of someone else. The repetition in Deut. 21:20 is designed to 'stick' in the minds of the hearers, being more direct in the first person than in the third person.[633]

Other examples of narration and explicit speech act using first and second person forms are found in *Chapters Two* and *Three*. In *Chapter Two* the woman is to appear before the elders in the gate: "... and say, 'My husband's brother refuses to perpetuate his brother's

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[631] Jackson 1987, 10.

[632] In addition, the speech-act itself makes the son's behaviour more vivid; an effect that would be lost if the text was, for example, to read: "The parents should say...."'

[633] A principle well-known to modern advertisers. See Jackson 1995c, 54-55.

name in Israel; he will not perform the duty of a husband's brother to me'" (Deut. 25:7). Again, in *Chapter Three* the husband lays charges against his wife: "... saying, 'I took this woman, and when I came near her, I did not find in her the tokens of virginity'" (Deut. 21:14). As in Deut. 21:18-21, the distinctive feature is the direct quote by which the accusation is made. It is a vivid mode of formulation that goes beyond the standard casuistic sense, impressing upon its hearers the 'seriousness' of the offence.

(iii) Immediacy and extent

Immediate sense perception, whether visual or aural, makes assumptions about the directness of the communication and the extent of the audience. In *Chapters One, Two* and *Four*, the perception is conveyed directly to the following groups: the elders; the parties to the case and any onlookers. We saw in *Chapter Two* that the extent of the audience in Deut. 25:5-10 is not clear, but in *Chapters One* and *Three*, at any rate, the audience potentially includes the whole town. In *Chapter Four* the immediacy of the communication and the extent of the audience depends on the seriousness of the offence and the nature of the register that is used. In the case of the sin of the high priest and the *kôl - ʿădaṯ yiśrā'el*, only other priests would have a clear view of the application of the blood on the curtain and on the incense altar. However, if we take a different register such as the 'fate of the carcass' (see pp. 121, 137 above), the potential audience is far greater. This is because of the greater publicity that is given to carrying the cadaver outside the camp. In *Chapter Five*, the immediacy of the sense perception is restricted to the prophet Ezekiel.

(b) Affective aspect

Biblical law has a strongly affective aspect. It evokes feelings of one kind or another. As we saw in the *Introduction*, questions of attitude, motive and disposition toward the Law are at least as important as the rules themselves. This may be one reason why direct sense perception is important in Biblical law. How we perceive things by our senses partly determines how they make us feel (cf. Ex. 20:18-20). This is relevant when we consider 'seriousness of offence' in Biblical law because 'seriousness', by definition, expresses things that people feel strongly about. Thus, whilst all judgements involve an emotional component,[634] such modalities are bound to be especially prominent in evaluations of 'seriousness.' Examining how the legal values that underlie seriousness of offence in

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[634] Cf. Freudian psychoanalysis which asserts that the id always makes a contribution to the sense-making exercise; Jackson 1995c, 273-85.

Biblical law are communicated requires us to consider how the Bible generates the emotions that are associated with 'seriousness.' The case studies suggest several ways in which emotions and their expression shape the Biblical understanding of seriousness.

(i) Direct sense perception

As already suggested, direct sense perception has an important part to play in generating emotions. The "men of the city" who take part in the offenders' stoning in *Chapters One* and *Three* experience and express the seriousness of committing a capital offence. In *Chapter Two*, feelings of shame are generated in the levir by the dominant and atypical behaviour of the woman. In *Chapter Four*, the sight of the butchered animal and the administration of blood communicates the seriousness of inadvertent offending. This is reinforced by the sense of touch, specifically the offenders' act of pressing their hand upon the animal's head (Lev. 4:4, 15, 24, 29 and 33). The importance of direct sense perception in generating emotions is also seen in *Chapter Five*. 'Sight' and 'smell' are important in communicating to Ezekiel the horror and nausea associated with idolatry. Indeed, that of which Ezekiel has direct sense perception ('seeing' abominations in the Temple) is made the basis of a moral extension ('Israel has committed the worst sin possible under the covenant'). The movement from what can be seen and smelt to a more abstract characterisation is based on the experience of 'sight' and 'smell.'

(ii) Stereotypical visual images

Visual stereotypes are an important means of generating emotions. This is because they constitute a form of internalised social knowledge that is very often deployed without conscious thought. In *Chapter Two*, the *ḥālṣāh* ceremony concludes with a barefoot man, summoning up the stereotypical image of a person who is 'vulnerable' and 'defenceless.' These are exactly the emotions that are associated with shame. The *ḥālṣāh* ceremony thus creates feelings of shame, not only in the levir but also in the onlookers.

(iii) Strong language

Emotions are sometimes generated because of their association with particular words. Strong language shocks. Examples may include the charge of being 'a glutton and a drunkard' in *Chapter One*; the use of *nᵉḇālāh*, with its connotations, in *Chapter Three* and the designation *tôʿēḇah* in *Chapter Five*.

(iv) Relational context

There is more emotion in criticising someone for breaking a law in the context of a direct interpersonal relationship than exists in a formal statement of the offence. For example, a standard rule of social etiquette is the statement: 'it is rude to interrupt people.' But to ask someone to "stop interrupting" injects an emotional element that goes with the criticism. There is more feeling in the criticism that arises from the relationship than there is in the mere statement of the rule. This is inevitable. Norms are inherently less emotional because they are not a function of direct personal relationships. In this regard it is important to note that Biblical law is given in the context of a pre-existing relationship between YHWH and Israel.[635] This relational context makes 'seriousness of offence' inherently affective. It means that law-breaking is not about breaking a rule, it is about offending a person, namely YHWH. The offence is serious because it is personalised: it is a personal offence against a personal God.

Chapters One, Two and *Three* contain texts from the 'preached law' of *Deuteronomy* (Deut. 21:18-21; 22:13-21 and 25:5-10) whose hortative introduction (Deut. 1:6-4:43) makes it clear that breaking the law means breaching the covenant relationship. Likewise in *Chapter Four* the seriousness of inadvertent sin is reinforced by the awareness of YHWH's presence at the Sanctuary. This is signalled by the repeated use of "before the LORD" in Lev. 4:4, 6, 7, 15, 17 , 18 and 24. The relational context of seriousness is also important in *Chapter Five* which is not surprising because, as we have seen, idolatry is presented as the relational offence *par excellence*.[636] The prophet repeatedly brings home the directness of the relationship that is being violated. The charges themselves are brought in the context of a relationship between YHWH and the prophet. Ezekiel is led around Jerusalem by a divine figure who personally shows him what is wrong. Rhetorically-speaking, this is much stronger than a formal charge of lawbreaking. We are made to feel about the offence in the same way that YHWH feels about it. The relational setting generates strong emotions and communicates a sense of 'seriousness.'

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[635] Cf. Ex. 20:3: "I am the LORD your God, who brought you out of Egypt, out of the house of bondage."

[636] See pp. 150-1, above.

(c) Comparative issues

(i) Direct sense perception

Modern law is familiar with the Biblical emphasis upon vision as a means of communicating legal values. Jackson provides a number of illustrations of the potency of visual images in the modern legal system.[637] Concerning the aural sense, the act of sentencing in which the judge may directly address the defendant, can sometimes be significant, especially to the person being punished. Thus, whilst a judge may give the defendant an absolute discharge he may also, in addressing him, give him 'a real dressing-down.' However, its importance as a means of communicating seriousness is probably limited. Outside interest usually falls on the defendant's sentence rather than that what the judge said to the defendant in passing sentence.

(ii) Reintegrating law and social feeling

Modern law is a matter of linguistic proposition. Legal statutes are abstracted from the facts of particular cases and from the emotions of particular people in that situation. Yet psychoanalysis suggests (see n.632 above), that in 'making sense' of law we cannot completely separate the 'instinctive', or the 'emotional', from the 'cognitive.' If correct, it follows that the more conceptual and abstract our language becomes, the more we distance ourselves from our emotions. By contrast the language of Biblical law is, as we have seen, less abstract and more concrete than modern law. On the basis of form alone, we might hypothesise that Biblical law is closer to how people 'really' think about justice, crime and punishment than modern law. There may be lessons to learn from the presentation of Biblical law if we want the criminal justice process to get in better 'touch' with ordinary people.

Biblical law uses emotions to shape its understanding of seriousness. This raises the question whether we have institutionally-approved ways of channelling similar emotions within our legal system.[638] In the future, greater efficacy in communicating 'seriousness of offence' may depend on a better integration within the legal system of cognition and

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[637] Jackson 1994, 318-326.

[638] Hanson 1977 suggests that rules may be used in six different ways. They may be: 'archivative' (storing up past values for the future); used in argumentation to provide reasons for actions; designed to initiate action; to awaken emotions or to pose perspectives on relationships; and finally, they may be used to express ideals. By contrast, positivist legal philosophy conceives of legal rules primarily in terms of the act-initiating function with perhaps subsidiary attention to the use of legal rules in argumentation and in setting up ideals, but with very little regard to the archivative, emotion-awakening or perspective-posing functions; Jackson 1984, 29.

emotion. One way of achieving this may be through the use of narrative rules rather than abstract concepts, whilst another might be by a greater focus on the relationships that have been violated by the offence, rather than simply its norms.

7. 'Harmfulness' and 'wrongfulness'

We saw in the *Introduction* that two types of judgement may be made when evaluating the 'seriousness' of crime: factual 'harmfulness' and normative 'wrongfulness.' We also saw that these dimensions were given different weight by different people in different circumstances. This meant that some offences were regarded as 'more wrong than harmful' (e.g. stealing a bicycle from a drive) whilst others were regarded as 'more harmful than wrong' (e.g. a teenager hitting an old woman in the street). The results of our case-studies suggest that seriousness of offence in Biblical law is primarily defined in terms of 'wrongfulness' rather than 'harmfulness.'

(a) 'Wrongfulness' in Chapters One to Five

We saw in *Chapter One* that a key element of the seriousness of the rebellious son is his violation of the Fifth Commandment. This is primarily a matter of wrongfulness, not harmfulness. The Israelites are commanded to "purge the evil" from their midst which, again, is a normative rather than a factual judgement. Likewise, in *Chapter Two*, the levir's refusal to perform his obligation cannot be defined primarily in terms of 'harm.' As in *Chapter One*, the normative command is given to "purge the evil" from their midst. His offence consists in a 'normative' wrong against his dead brother. In *Chapter Three* the 'harmfulness' of the priest's daughter is clearly stated: she profanes herself and her father. However, this is offset by the statement of 'wrongfulness': she 'played the harlot.' As we saw, the seriousness of her offence lies in the violation of Israel's cultic distinctiveness. This is primarily a matter of 'wrongfulness' and not of 'harmfulness.' Likewise, in the case of the commoner's daughter, the statement that "she has wrought folly in Israel by playing the harlot in her father's house" characterises the offence as one of 'wrongfulness' and not of 'harmfulness.' Again, in *Chapter Four* whilst inadvertent sin does result in 'harm' (because it pollutes the Sanctuary), the offence itself is not defined primarily in terms of 'harmfulness.' Rather, it is primarily seen as a matter of 'wrongfulness.' This is underlined in two ways. Firstly, only Lev 4:3-12 (the case of the high priest) draws attention to the consequence of inadvertent sin. Lev. 4:3 refers to his 'bringing guilt' upon the people

(Lev. 4:3) which is primarily a matter of 'wrongfulness' and not of 'harmfulness.' Secondly, in the case of the other parties, attention is drawn to the fact that they are 'guilty' before YHWH (Lev. 4:13, 22 and 27) and need to be 'forgiven' (Lev. 4:20, 26, 31 and 35). Once again, the defining feature is 'wrongfulness' and not 'harmfulness.' Finally, in *Chapter Five* the 'harmfulness' of the offence is made clear by the departure of the *Shekhinah* and its consequences. However, the harmfulness of the offence is not emphasised. The account of the destruction of Jerusalem, for example, is remarkably restrained, taking place 'out of vision' (Ezek. 9:7-11). Stress is placed upon the 'wrongfulness' of idolatry and not simply its 'harmfulness.'

(b) Relationship between 'wrongfulness' and 'harmfulness'

The results show that there is a causal relationship between 'wrongfulness' and 'harmfulness.' Each of the above offences leads to harm, including that against parents and the community (*Chapter One*); the dead brother and his patrimony (*Chapter Two*); the priestly father of the cult prostitute (*Chapter Three*); the husband of the promiscuous fiancée (*Chapter Three*); the Temple (*Chapter Four*); and the House of Judah (*Chapter Five*). However, we have seen that whilst 'harmfulness' is a feature of Biblical seriousness, it does not appear to be the primary feature. Rather, seriousness of offence in Biblical law is cast primarily in terms of 'wrongfulness.' 'Harmfulness' is simply the consequence of 'wrongfulness.' 'Harm' is defined in terms of 'wrong.'

By contrast, the results of modern seriousness studies suggests that 'wrong' is defined in terms of 'harm.' Therefore, if an offence does not appear to result in measurable harm, it is not regarded as being 'wrong' or 'serious.' This may explain why Biblical law rates the 'seriousness' of rebelling against parents very highly, but the results of modern seriousness studies rate the 'repeated refusal to obey parents' 128th out of 140 possible offences.[639] The idea that 'harm' is consequent upon 'wrong' is consistent with the idea that Israel's suzerain is also the Creator of the whole earth. To break the law is to offend not only against YHWH but also to offend against Israel's highest welfare (cf. Deut. 28). The vital correspondence between 'obedience' and 'welfare' means that 'wrongfulness' entails a corresponding measure of 'harmfulness.' It also suggests that dimensions of 'wrongfulness' and 'harmfulness' are more integrated in Biblical law than they are in modern conceptions of seriousness.

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[639] Cullen *et al* 1982, 91.

8. Character

'Seriousness of offence' raises deep philosophical and anthropological questions concerning the link between a person's deeds and his reputation. Several of the case-studies (*Chapters One, Two* and *Three*) suggest that 'seriousness of offence' in Biblical law is related to some inherent quality or ontology of the individual.

In *Chapter One* the son is accused of being 'stubborn and rebellious' and 'a glutton and a drunkard.' The charge relates to a narrative stereotype and it stigmatises his character. He is not punished simply for what he has done, but for who he is. This is also apparent in *Chapter Two*. The *hāfsāh* ceremony does more than penalise an offence. It passes judgement on the levir's character by changing his name. This is because of the close relationship between 'name' and 'character' in Biblical thought.[640] The same relationship between 'seriousness' and 'character' is also found in *Chapter Three* in respect of the commoner's daughter. The husband gives his wife an "evil name" (Deut. 22:14). Her reputation is the point at issue in the subsequent judgement (Deut. 22:15-21). If the husband is proved wrong he is punished for impugning her character (Deut. 25:19). If he is correct, she is punished, not simply because of what she has done, but because of what she is revealed to be (Deut. 25:21).

The case-studies also suggest that 'repeat offending' is a mediating construct between 'character' and 'seriousness'; *viz.* whether the offence is a repeat offence or a 'one-off' offence. Single acts do not necessarily indicate dispositions.[641] Repeat offending justifies making the inference from an act to a disposition. In *Chapter One*, the offence of the 'stubborn and rebellious' son is described in terms of repeat offending. This is implicit, not only in his 'stubborn', and hence repeated, failure to obey his parents, but also in an established pattern of deviance ('he is a glutton and a drunkard'). In *Chapter Two*, we can be quite sure that the woman does not appear before the elders on the basis of a single refusal. Her complaint that the levir 'refuses' to sire an heir implies a repeated refusal. Indeed, he "insists" on refusing when brought before the elders (Deut. 25:8). In *Chapter Three*, the verb aspect of Lev. 21:9 suggests that the priest's daughter is engaged in regular,

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[640] See n.90, above. In addition, his new name ('family of the unsandalled one') can be read either pragmatically or syntactically. Pragmatically, it can be read as a description of something that has been done to him ('the house who has had his sandal removed'). But syntactically, the Hebrew can express a continuing state ("the house of the person who is in the condition of having had his sandal removed"). The syntactic reading adds further weight to the idea that the punishment in Deut. 25:10 is related to character.

[641] Bayles 1972, 8.

and hence repeated, behaviour. Finally, the girl in Deut. 22:13-21 is convicted if she is found to be pregnant, as opposed to having simply lost her virginity. The use of a 'pregnancy test' assumes that the typical case is that of promiscuity, and therefore of repeat offending.

We do not have to conclude that punishment in Biblical law is always related either to character or to deeds. It is a matter of investigation in each case. But the fact that there are some examples where character is emphasised more than the deed (as in *Chapters One, Two* and *Three*) indicate that this may have been an important element in the seriousness of an offence in Biblical law. It is sufficient to say that in Biblical law, judgement is passed on the character of the person to a greater extent than in modern penal law. In modern law, only the deed is criminalised and character is only a matter of mitigation.[642] Under s.66(6) of the CJA 1993 judges are allowed to take an offender's previous offending history into account in determining the seriousness of the offence (see p.2 above). This may or may not involve behaviour that is similar to the charge on which he is convicted. However, the language of s.66(6) is, conceptually at least, 'act-oriented' rather than 'person-oriented.' The interest is in his previous record, not his character as such.

This may perhaps be the main difference between Biblical and modern conceptions of punishment. There is a contrast between the 'person-oriented' punishment of Biblical times and the 'act-oriented' punishment of modern law. Biblical law is interested in character and it directs punishment against the character of the offender. Or, to put it another way, it holds the offender responsible for the moral choices he makes that mould his character.[643] Modern law, at least in theory, looks at the seriousness of the offence itself and is not interested in the character of the offender.[644] Some penal philosophers and criminologists have recently reasserted the nexus of punishment and moral

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[642] E.g. *Attorney-General's References Nos. 3, 4 and 5 of 1992 (Stephen Boyd and others)* (1993) 14 Cr. App. R. (S.), 191-5.

[643] Cf. Pincoffs 1973.

[644] Although Bayles 1982 argues that a Humean view of criminal responsibility is compatible with current criminal law. In the Humean view, blame and punishment are meted out, not directly for acts, but for character traits, where 'character traits' refers to any socially desirable or undesirable disposition of a person. This is compatible with *mens rea* and with the distinction between acting purposely, knowingly, recklessly and negligently; Bayles *op. cit.*, 8-11. He argues that it is also compatible with the law of attempts and abandonment, whilst also providing a rationale for the conviction and punishment of impossible attempts as well as providing the broad outlines of a basis for the excuse of mistake; Bayles *op. cit.*, 14-15. It may also help to explain the requirement of 'reasonableness' in defences of mistake of law; Bayles *op. cit.*, 16-17.

dereliction, arguing that 'character' should play an increased role in modern criminal law.[645]

9. Semiotic groups

We saw in the *Introduction* that 'meaning-making' varies with the sense-creating conventions of different 'semiotic groups' (see pp. 10-12, above). We saw that different groups inside and outside the criminal justice process perceive the meaning of a particular offence or punishment differently. This creates the hypothesis that seriousness of offence in Biblical law was also perceived differently by different semiotic groups in Biblical society.[646]

It is plausible to suggest that Biblical law took some account of different semiotic groups in Biblical society. That is to say, the same text may have been directed at different audiences. It communicated different messages at levels that were appropriate to each group.[647] Consequently, there may have been different levels of communicable seriousness. Some aspects of 'seriousness' may not have been equally intelligible to everyone and certain beliefs about seriousness may have operated in some social circumstances more than in others. A semiotic approach to seriousness requires us to ask of each case-study: what kind of audience would be expected to know about what levels of seriousness?

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[645] Bayles *op. cit.*. Kleinig *op. cit.*, 402ff argues that all punishment makes intimations concerning a person's character. This is because, in punishing, there is an implicit or explicit denunciation or condemnation of the punishee who is deemed to have acted in a morally discreditable manner. Some aspect of his character is called into question.

[646] Of course, if the case-studies are wholly a product of its writers, it is possible that none of the promulgators' ideas of seriousness are referable to their society at all, let alone to particular semiotic groups. As with the Essene community of the Dead Sea Scrolls period, it is possible that the values expressed in these texts are at odds with their social milieus. Ultimately, we have no way of discerning to what extent the ideas of seriousness that we have been considering were shared across ancient Israelite society. However, it is plausible to suggest that some ideas were closer to dominant social values than to others. It may be that those aspects of the values of the criminal law that are related to deep theological claims, either to the covenantal relationship or to the people's relationship to the land, may have been more removed than those values that were more 'populist.' As in modern times, some cases or evaluations of 'seriousness' have a more general appeal than others.

[647] Jackson 1989, 198-9 using the example of Ex. 21:2-6. Certainly, the idea that more than one level of meaning attaches to legal rules is old. It is expressed very directly by Aquinas; Jackson 1990, 260. It may help to explain why multiple understandings are given to a single commandment (e.g. the Sabbath is variously explained as: *imitatio Dei* (Gen. 2:1-3); the sign of the Sinaitic covenant (Ex. 31:12-17); a humanitarian institution (Deut. 5:14); and a memorial to the Exodus (Deut. 5:15)). In modern law, judges frequently address remarks in their judgements concerning seriousness both to the assembled court *and* to the Court of Appeal.

(a) Perceptions of seriousness of offence

The possibility that perceptions of seriousness differ according to semiotic groups compels us to look more closely at the pragmatics of seriousness in Biblical law (*viz.* how the text might have been used). Since we are dealing with moral messages and with different ways of signifying moral values, it is important to take into account the 'sender' and the 'receiver.' Key questions include: who says what to whom in what context, and what makes it effective?

(i) Semiotic groups in Chapters One, Two and Three

As already noted, the Deuteronomic texts in *Chapters One, Two* and *Three* are presented as an oral address by Moses to the people (Deut. 1:1-5). They assume an ordinary, popular audience. This is reinforced by the content of the case-studies. Deut. 21:18-21 and Deut. 22:13-21 deal with situations that are common to all (*viz.* the relationship between parents and children). Likewise, the case envisaged in Deut. 25:5-10 could potentially affect any brother. Consequently, it is not hard for the hearers to identify with the seriousness of the offence at an emotional level.

However, this does not exclude the possibility of there being other communicable levels of seriousness. We have no way of knowing what constituted 'popular' language, but it is possible that terms such as *nᵉbālāh*, in *Chapter Three*, had a specialist meaning (see n.350 above). Certainly, literary characteristics of the law that go beyond the functional import of the individual rules presuppose a level of literacy that would not have been shared by all. At the very least, the existence of a chiasmus in Deut. 21:13-29, for example, presupposes an additional, more literary audience than the hearers of the individual laws. Each punishment in *Chapters One, Two* and *Three* takes the form of a ceremony that has strong visual images. There is the stoning at the city gate; the highly-theatrical sandal-removing ceremony and the stoning of the daughter at the door of the father's house. It may be that the visual sense is the most 'popular' and effective means of conveying a message of 'seriousness.' It signifies values at a more popular level, compared perhaps to a more abstract categorisation such as *nᵉbālāh*. Biblical law constructs and appropriates judicial conventions to form a visual idiom that is meaningful to the widest possible population.

(ii) Semiotic groups in Chapter Four

The text in *Chapter Four* is also presented as an address by Moses to the Israelite people (Lev. 4:1-2), albeit to a different generation and in a different setting. The main difference, in semiotic terms, is that in *Chapter Four* Moses relays the words of YHWH to the people ("The LORD spoke to Moses, saying: Speak to the Israelite people thus…"; Lev. 4:1-2 (JPS)). However, in *Chapters One, Two* and *Three*, Moses' address to the people is made on his own behalf ("These are the words that Moses spoke to all Israel…"; Deut. 1:1). Moses is not presented in these chapters as YHWH's 'mouthpiece' in quite the same way.

The addressees are "all Israel" (Deut. 1:1) or "the Israelites" (Deut. 1:3). But it is possible that the text may also have been communicated to a narrower semiotic group, such as the priesthood. Certainly, the priesthood forms a highly distinctive semiotic group within Israel that is consistent with their status as the guardians of Israel's cultic identity. The use of priestly ritual and language in Lev. 4, together with the fact that 'seriousness' consists in harm to the Temple, suggests a level of communicable seriousness that is directed at the priesthood. We noted in the *Introduction* that some offences (e.g. domestic violence, sexual offences) are particularly salient for certain semiotic groups (female victims and women, respectively). In the same way, we might posit that the seriousness of certain offences in Biblical law are more salient to certain groups than to others. Thus we might expect the priesthood to be particularly sensitive to the seriousness of 'polluting' the Sanctuary. Indeed, a comparison between Lev. 21:9; Lev. 4; and Ezek. 8 suggests that a concern for 'social status' and 'location' may reflect an appropriately 'priestly' conception of seriousness.

(iii) Semiotic groups in Chapter Five

In *Chapter Five* the role of semiotic groups is important in understanding how 'seriousness of offence' is constructed and communicated in Ezek. 8. This text involves a number of different 'senders' and receivers.' Firstly, YHWH addresses the prophet directly about the abominations in the Temple. This is consistent with the idea in *(i)* above that the priesthood is a distinct semiotic group that was particularly sensitive to the seriousness of polluting the Sanctuary. Secondly, Ezekiel tells "the exiles all the things that the LORD had shown me" (Ezek. 11:25, JPS). This act of telling begins, necessarily, with the elders of Judah who were sitting before the prophet when 'the hand of the LORD God fell upon him' (Ezek. 8:1). The elders have a special reason for being able to identify with the

seriousness of the offence because, as we saw in *Chapter Five*, the involvement of the 'elders' played an important role in accounting for the gravity of the offence. The line of communication, from 'priest' to 'elders' to 'people' runs through those who can identify most closely with the seriousness of the offence.

To conclude, it appears from each of the case-studies that the salience of 'seriousness' is related to an identification with the offence by different semiotic groups. This is consistent with the findings of modern seriousness studies.

(b) Perceptions of seriousness of punishment

We saw in the *Introduction* that perceptions of seriousness of offence vary according to perceptions of the seriousness of the penalty. The modern 'twin-track' approach to penal policy makes a clear distinction between custodial and non-custodial sentences. This bifurcation establishes the greater severity of imprisonment as a form of punishment. But it also makes it harder for 'receivers' to agree on the relative leniency of non-custodial penalties.[648] These appear to be regarded as 'much of a muchness.'

By contrast, as we saw at **4(a) - (e)** above, Biblical society has a wider range of penalties and communicatory strategies. Because the 'seriousness distance' between different sanctions is greater, it is easier to generate a consensus as to relative severity and leniency. The results of the case-studies indicate that capital punishment is worse than the *ḥāṭsāh* ceremony, which in turn is worse than the *ḥaṭṭā't* ritual. The semiotic power of the different sanctions ensures greater differentiation than is possible today among, for example, 'non-custodial' penalties.

But although we may assume that there was greater consensus in Biblical society concerning the *overall* ranking of punishment, it is likely that different semiotic groups regarded the *relative* severity of each punishment differently. In other words, some groups may have perceived the ritual sacrifice, for example, or the act of stoning more seriously than others. We saw in the *Introduction* that perceptions of severity depend, in part, on the amount of contact that the parties had with the penal process, either as professionals or as recipients of punishment. It also depends on whether certain groups identified with the

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[648] Walker and Marsh 1984, 31 invited a sample to rank punishments in order from the 'toughest' to the 'mildest.' For the great majority of subjects, a prison sentence was 'toughest', but unanimity decreased when it involved ranking the following (fine, community service, probation and suspended sentence). Walker and Marsh concluded that no measure in the present court's repertoire stands for leniency in everyone's eyes.

person being punished or not.[649] With this is mind it is extremely likely that perceptions of the seriousness of punishment varied across and within towns in ancient Israel. Towns that rarely witnessed capital punishment would regard it more seriously than towns where it was carried out more frequently. It is also likely that, in many cases, the 'receivers' of punishment perceive it more seriously than those who are performing it. We might also reason that those who participated in the stoning of offenders (that is, the men of the town: Deut. 21:21; Deut. 22:21) may have regarded it less seriously than those who did not, because of their involvement. Likewise, the priesthood may have regarded the *ḥaṭṭā't* ritual less seriously than the laity. Like the police who, in modern seriousness studies, are somewhat hardened to penal concepts, the priesthood may attach less weight to ritual sanctions because it is the coin in which they deal daily.

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[649] Thus groups such as criminology students, who had greater empathy with prisoners, were more likely to perceive punishments as severe than those who had not; Sebba and Nathan 1984, 233.

Biblical law has a conception of seriousness of offence. It discriminates between the seriousness of different offences. It also discriminates between the relative seriousness of the same offence when it is committed by different people and when it is performed in different ways. The presentation of seriousness of offence in Biblical law in this thesis reflects the core beliefs and underlying values that are preserved in six selected texts. How far these results hold true for other texts that are drawn from different periods of Israel's history is undetermined. These underlying values of seriousness are expressed through a wide variety of descriptive and performative registers. A range of communicatory strategies disseminate an understanding of seriousness of offence to different semiotic groups. The findings present a remarkably coherent picture. Elements include: status; location and the type of relationship involved. The concern for status and location in several texts may reflect a particularly priestly understanding of seriousness. To what extent this interest in status and location as aspects of seriousness is present in other literary genres (such as Wisdom, for example) is a matter for further investigation. Evaluating the question of seriousness of offence in Biblical law as a matter of cultural semiotics helps to ensure that our methodological presuppositions approximate, so far as possible, to Biblical legal praxis. The study demonstrates the value of a semiotic approach to Biblical law by providing further examples of 'paradigm cases.' It also has a number of implications for the modern search for seriousness. In particular, it suggests that a better method for measuring 'seriousness' is by presenting respondents with paradigm cases. It also underlines the need to develop a wider and more appropriate range of penal and non-penal registers with which to communicate a sense of seriousness. This would assist in shaping societal consensus concerning the relative harmfulness and wrongfulness of different crimes.

A

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