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Volume 9 2012

### EDITED BY

Daniel R. Langton and Renate Smithuis

A publication of the Centre for Jewish Studies, University of Manchester, United Kingdom.

Co-published by



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Co-Published by Gorgias Press LLC 954 River Road Piscataway, NJ 08854 USA Internet: www.gorgiaspress.com Email: helpdesk@gorgiaspress.com

ISBN 978-1-4632-0240-8 ISSN 1759-1953

This volume is printed on acid-free paper that meets the American National Standard for Permanence of paper for Printed Library Materials.

Printed in the United States of America

*Melilah: Manchester Journal of Jewish Studies* is distributed electronically free of charge at www.melilahjournal.org

*Melilah* is an interdisciplinary Open Access journal available in both electronic and book form concerned with Jewish law, history, literature, religion, culture and thought in the ancient, medieval and modern eras. It was launched in 2004 by Bernard Jackson and Ephraim Nissan under the auspices of the Centre for Jewish Studies at the University of Manchester as the New Series of the journal of the same name founded by Edward Robertson and Meir Wallenstein and published (in Hebrew) by Manchester University Press from 1944 to 1955. Five substantial volumes, each of around two hundred pages, were produced before the series was discontinued. In his editorial foreword to the first edition, Robertson explained that *Melilah* had been established to promote Jewish scholarship in the face of the threat posed by the War and its aftermath. The title of the journal refers to the ears of corn that are plucked to rub in the hands before the grains can be eaten (Deut. 23:25).



Volume 9 (2012)

### CONTENTS

Luke Devine,
'Emergent Liberal Judaism and Lily Montagu's Proto-Feminist Project:
Exploring the Precursive and Conceptual Links with Second and Third-Wave
Jewish Feminist Theologies'1
Aron C. Sterk,
'Latino-Romaniotes: The Continuity of Jewish Communities in the Western
Diaspora, 400–700 CE'
Bernard S. Jackson,
"Why the name New TESTAMENT?"
MICHAEL RAND,
'An Aramaic Dispute Between the Months by Sahlan Ben Avraham' 101

## EMERGENT LIBERAL JUDAISM AND LILY MONTAGU'S PROTO-FEMINIST PROJECT: EXPLORING THE PRECURSIVE AND CONCEPTUAL LINKS WITH SECOND AND THIRD-WAVE JEWISH FEMINIST THEOLOGIES

#### Luke Devine\*

Abstract: Lily Montagu was the founder of Liberal Judaism in England. Because of Montagu's groundbreaking proto-feminist efforts women in Liberal Judaism can become rabbis, be called up to read the Torah, they are equal in divorce law, they can study the sacred texts, they can form a minyan, and can assume communal and religious positions of authority over men. Montagu was an author, theologian, and social worker; she was the driving force behind the development of Liberal Judaism. However, this biographical overview does not match up with the extant historiography that has instead preferred to focus on the male leaders of the Liberal movement to the extent that Montagu's intellectual and theological contribution has been marginalized and even completely ignored. In this paper we will see through analysis of rarely seen literary material another aspect of the gendered history of fin-desiècle Anglo-Jewry that would otherwise be forgotten; even more, we will see in Montagu's essays, monographs, and novels some of the English foundations of contemporary Jewish feminist theology. In the process, the biography and memory of Lily Montagu will be restored to its rightful place.

Lily Montagu was the founder of Anglo-Liberal Judaism, but the extant scholarship has not been forthcoming in acknowledging the extent of her role in the expansion of the movement. In fact, Montagu's part in the formation and development of Liberal Judaism into an established denomination, and her contribution to the intellectual, spiritual, and theological underpinnings of the movement, have been marginalized, downplayed, and even ignored, with analyses of her involvement even bordering on the derogatory. However, the historiographical picture does not marry up with the primary sources, including Montagu's innumerable speeches, lectures, prayers, and services to the Liberal congregation, and her countless monographs, novels, sermons, essays, letters, liturgies, and papers for Liberal Jewish Monthly, the Jewish Quarterly Review, and as part of the Papers for Jewish People series. Instead Anglo-Jewish historiography, with few exceptions, has preferred to focus on Claude Montefiore and the other male leaders of the movement. This is despite the fact that Montagu was overseer, driving force, and spiritual guide to the organization for over fifty years. Importantly, Montagu not only challenged contemporaneous Jewish stereotypes concerning the role and agency of women, she refigured the discriminatory layers of the tradition along proto-feminist lines to develop religious praxis, liturgical, and theological discursive that is more resonant of Second-Wave Jewish feminism than it is of earlytwentieth-century, First-Wave feminist discourse.<sup>1</sup> This is important as the Montagu corpus

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<sup>&</sup>lt;sup>1</sup> By First-Wave feminism I refer to the period of activism between 1792 and 1918 (other scholars will differ) that resulted in women gaining the franchise in 1918 in England. Alternatively, the locus of Second-Wave Jewish

reveals an Anglo-Jewish forerunner to the Second and Third-Waves of feminist activism. In this paper we will explore the links between the stages. Indeed, by examining the feminist elements of Montagu's own understanding of Liberal theology, particularly in the immanent experience of the divine presence, we will draw out some of the spiritual and conceptual links with contemporary Jewish feminist theology. In the process, we will see not only another element to the gendered history of Anglo-Jewish emancipation, acculturation, and religious reform at the fin-de-siècle that might otherwise have been overlooked or forgotten, but, through the analysis of rarely seen literary works by Lily Montagu, some of the precursory and theoretical foundations of current feminist exposition on the divine.<sup>2</sup>

Lily Montagu was born December 22, 1873 into the upper-class, Anglo-Jewish Montagu family. Despite the family's wealth, and their acculturation, Lily's father, Samuel Montagu, was intent that the household remain strictly Orthodox. But Lily was never convinced; although she enjoyed the observances and the festivals she was concerned that attention to ritual, or ritual for ritual's sake, was usurping spiritual intention (*kavanah*). Montagu could not relate any type of spiritual experience with these festivals; they seemed vacuous. Years later, she confessed in retrospect:

I was not conscious of any personal spiritual experience stimulated by the Sabbaths and festivals, but I could become very enthusiastic over the symbols, and if asked, should have unhesitatingly said that their preservation was required by God....

I can trace my first questioning of the utility of observances if pursued as ends in themselves to experiences connected with Passover . . . I remember rushing up to my eldest brother . . . and expostulating. "I feel ashamed," I said, "at the behavior of many of the people. How dare they think they are praying? If that is religion, I hate it."<sup>3</sup>

But this is not to say that Montagu did not appreciate the importance of rituals and observances; she would later recall: "I adhered to my Liberal Jewish point of view that ceremonials which are aids to holiness, which, in fact, assist ordinary people to render ordinary life holy, were worth preserving even at the cost of personal sacrifice. Legalism, which, alas, has usurped the place of life-giving religion, I felt to be acceptable."<sup>4</sup> Montagu complained that the Orthodox services were inadequate as the prayers were in Hebrew and incomprehensible and she felt peripheral as a woman being sequestered to the gallery,

feminism was in the United States and began in the 1970s. The multi-denominational emphasis of the loosely defined movement encompassed numerous feminist concerns with the central focus emanating from the Conservative movement. Jewish feminists were seeking women's equal access to all aspects of Jewish communal and religious life, including leadership, though specifically, Conservative feminists were seeking an end to gender inequality in family *halakhot* (laws), the removal of the *mechitza* curtain that separates the sexes in the synagogue, and the inclusion of women in the all male *minyan* (prayer group). Reform feminists complained that women were not being called up to read the Torah, while Orthodox feminists questioned the exclusion of women from the study of the sacred texts as well as the legal restrictions on women initiating divorce. With regard to theology, the Reconstructionist movement was integral, and continues to be, particularly in its rejection of classical theology, *halakhah* (law), hierarchy, and Jewish particularity, and in its humanism (Luke Devine, *Second-Wave Jewish Feminism, 1971–1991: Foundational Theology and Sacral Discourse* (Piscataway: Gorgias Press, 2011), 19–20). In general, the Second-Wave was a drive for gender inclusionism, in one way or another, across the Jewish denominations.

<sup>&</sup>lt;sup>2</sup> See Luke Devine, From Anglo-First-Wave Towards American Second-Wave Jewish Feminism: Negotiating with Jewish Feminist Theology and its Communities in the Writing of Amy Levy (Piscataway: Gorgias Press, 2010) and Ann Heilmann, New Woman Fiction: Women Writing First Wave Feminism (Basingstoke: Macmillan, 2000) to explore the conceptual links between First and Second-Wave feminisms.

<sup>&</sup>lt;sup>3</sup> Lily Montagu, The Faith of a Jewish Woman (London: George Allen & Unwin, 1943), 8-9.

<sup>&</sup>lt;sup>4</sup> Lily Montagu, My Club and I: The Story of the West Central Jewish Club (London: Herbert Joseph Limited, 1941), 43.

among other discriminatory gender differentiations. Believing that Orthodoxy was denying both her intellectual self-expression and the development of her inner-spirituality, Montagu went into spiritual "crisis" at the age of fifteen. She was unable to negotiate the link between the authority of her father and his uncompromising Orthodoxy and the restrictions on her personal liberty.<sup>5</sup> As a young adult, Montagu was troubled by her family's unthinking acceptance of *halakhah*: "We did not rebel. We believed that we were acting as Jews must, and there was no court of appeal against the strict laws. There was no question of degree. All the regulations were part of the fence, built up to defend the Divine laws as given to Moses, and we accepted them."<sup>6</sup> It was the Reverend Simeon Singer, the Minister of the New West End Synagogue, who Montagu credited with awakening her to the Hebrew prophets and to the importance of religion.<sup>7</sup> Singer encouraged her to ask questions that would not have been countenanced by her father. According to Montagu they discussed the prophets at length and she gradually became infused with prophetic concerns for social justice. Nellie Levy describes the sense of moral mission that became central to Montagu's life:

A young girl dreamed and behold a vision appeared and she saw her sisters, and they lacked much that had been bestowed on her, some needed guidance and friendship, some to be lighted out of squalor and shown the light; some seemed mere children forced to become breadwinners; some ran to and fro to snatch at pleasures that were transitory and left bitterness and disillusionment; some cried "Give us opportunities denied us, we too need light, space, knowledge"; others sat and waited to enter the world of literature and art, and again, others feared to tread, for the path seemed strewn with giants, who could be overcome only by strength which they lacked, and still others groped towards those frailer than themselves and longed to hold out a helping hand but knew not how. . . . "To this vision I [Montagu] consecrate myself, and its fruition I will labor unceasingly. I will break down barriers, establish friendships and give opportunities. I will share, bind up those who are broken, and I will set before them light and good through a Faith in Judaism, so that they have strength wherewith to live."<sup>8</sup>

Between the ages of fifteen and nineteen Montagu read up on philosophy, history, and religion. She became convinced that her role was to bring social "amelioration"; she was determined to help those less fortunate than herself, particularly in London's socially disadvantaged East End Jewish community.<sup>9</sup> For Montagu, it was God's will that social justice would prevail over inequality:

I was deeply shocked by the inequalities which prevailed in large cities, the terrible injustice which allowed me to have such an easy, happy, protected girlhood while there was, in some districts, a monotony of misery. But I felt convinced that God did not desire such injustice to continue. My faith in His righteousness was never affected, but I was worried by the apparent inability of God to stem the tide of injustice. I was convinced that man, with God's help, *could* set things right if he wished to, but how was he to be made to realise his obligations<sup>210</sup>

<sup>&</sup>lt;sup>5</sup> Eric Conrad, Lily H. Montagu: Prophet of A Living Judaism (New York: National Federation of Temple Sisterhoods, 1953), 35–36. See In Memory of Lily H. Montagu: Some Extracts from Her Letters and Addresses, ed. by Conrad, Eric (Amsterdam: Polak and Van Gennep, 1967).

<sup>&</sup>lt;sup>6</sup> Montagu, *The Faith*, 2–3.

<sup>&</sup>lt;sup>7</sup> Conrad, Lily H. Montagu, 36–37.

<sup>&</sup>lt;sup>8</sup> Nellie Levy, The West Central Story and Its Founders the Hon. Lily H. Montagu CBE, JP, DD and the Hon. Marian Montagu: 1893–1968, club pamphlet (London: Leeway Business Services), 1.

<sup>&</sup>lt;sup>9</sup> Montagu, The Faith, 11, 13.

<sup>&</sup>lt;sup>10</sup> Montagu, The Faith, 14.

A similarly pressing issue was the growing tide of secularization in the Jewish community. Montagu was concerned that Orthodoxy's inability to accommodate Anglo-Jewish modernity was the cause of the exodus. At the same time, Claude Montefiore was developing theories of Liberal Judaism that would re-inspire and reengage both immigrant and assimilated Jews with the tradition. Montagu was inspired by Montefiore, and by the Reform Judaism that had become prevalent in Germany and in the United States (Anglo-Reformism was far more conservative; a factor in the necessity of Liberal Judaism),<sup>11</sup> but she was mindful that Montefiore was too much of a scholar to initiate and lead a religious movement, though when she received encouraging replies from letters that she had sent out in early 1899 seeking support for a Liberal movement, Montefiore was inclined to join Montagu in her venture. The formal leadership of the newly established Jewish Religious Union, which held its first formal meeting in February 1902, was given to Montefiore. The movement's aim was to gather congregants in the formation of a new denomination based on the "eternal elements in Judaism."<sup>12</sup>

In the letter that Lily Montagu circulated she outlined a number of practical and religious issues that would need to be resolved by the fledgling Liberal Jewish movement in order that they be a radical, while at the same time acceptable, alternative to Orthodoxy with an authoritative basis in the tradition:

I. What are the vital principles of the old Judaism that must be preserved in the new?

II. If these "vital principles" do not include belief in the miraculous Divine Revelation heretofore accepted, what is the Authority on which we are to rely in judging of right and wrong? III. What forms and ceremonies should be retained on account of their historical or ethical or sanitary value? (Special reference to the seventh day Sabbath and to festivals commemorating alleged miraculous events.)

IV. What is to be the special function of the Jew under the new Judaism?<sup>13</sup>

It was in 1902 that services independent of the United Synagogue were established, along with lectures, and publications to endorse the new Liberal Judaism; as Montagu noted: "The cry was no longer for changed externalities such as were secured by the Reform Synagogue already established for seventy years, but for a re-statement of Jewish doctrine in the light of scientific truth."<sup>14</sup> Montagu was only too aware that assimilated religionists had become bored with the traditional services. Moreover, modern employment conditions and the working week did not allow for regular observance and daily visits to the synagogue; instead, Montagu saw it as her mission to create an essential and "living" Judaism that was compatible with everyday life. In *The Faith of a Jewish Woman* she notes:

<sup>&</sup>lt;sup>11</sup> The failures of late nineteenth-century Anglo-Reformism are well documented. For Daniel Langton the movement was paralyzed by its meager response to biblical criticism (*Claude Montefiore: His Life and Thought* [London: Vallentine Mitchell, 2002], 72). Moreover, as an enclave of upper-middle-class Anglo-Jewry it held no appeal to the eastern European Jewish immigrants arriving in the 1880s, its Sabbath attendances were the lowest for all synagogues in the period, and most members attended only once a year, normally on Yom Kippur (the Day of Atonement). Unsurprisingly a number of Reformers were dissatisfied with the movement's limitations, and by the late 1880s they began looking for alternatives (see Michael Hilton, *The Christian Effect on Jewish Life* (London: SCM Press Ltd, 1994); Devine, *From Anglo-First-Wave*). More so, Reform Judaism's conservative approach to the "Woman Question" and its failure to effect proto-feminist reform became a source of alienation for Anglo-Jewish women.

<sup>&</sup>lt;sup>12</sup> Montagu, *The Faith*, 28.

<sup>&</sup>lt;sup>13</sup> Lily Montagu, "Private Letter" (March 24, 1899), in *Lily Montagu: Sermons, Addresses, Letters, and Papers*, ed. Ellen Umansky (New York: Edwin Mellen Press, 1985), 289.

<sup>&</sup>lt;sup>14</sup> Montagu, The Faith, 28.

Those people, however, who had the leisure to attend services, were unwilling to do so because they were sure of being bored. Their knowledge of Hebrew was scanty, and they needed to pray in the language in which they were accustomed to think. Certainly, Hebrew had great beauty as well as historical interest, and it was a bond between different communities that they should have the same liturgy. But the religious bond could only be of real use if it expressed a living faith. There was no use in peoples meeting in various lands and going through identical services, in order to endure identical sense of boredom. Life *was essential*, and the bond of religion must be the bond of life.<sup>15</sup>

The Jewish Religious Union offered services that were predominantly in the vernacular and at times when those with employment commitments, such as on Saturday mornings, could attend in the afternoon or evening instead. Indeed, the "letter of the law" was no longer considered important,<sup>16</sup> and services maintained little resonant of their Orthodox counterparts (the inability to provide an alternative to the traditional synagogues was a failure of Anglo-Reformism). Montagu was duly aware that modern lifestyles did not allow for meticulous attention to *halakhah* and the observance of the *mitzvot* (commandments):

There is a large body of Jews who require the construction, at any rate in outline, of a definite theory of their faith. They are anxious to realise and to transmit Judaism as a living faith, but have no time or inclination to work out the principles and deductions of such a faith for themselves. This class includes busy men and women who "have enough to do already without thinking very much about their religion." There are others who think Judaism all right in its proper place, but do not believe it affects *them* more often, perhaps, than two or three times a year.<sup>17</sup>

The purpose of the new denomination was to accommodate acculturated Anglo-Jewry's busy lifestyles and the personal aspirations of religionists, but even more, the JRU was born out of necessity to prevent the perceived social absorption of the assimilated elements of Anglo-Jewry into the host culture. Indeed, in "Spiritual Possibilities of Judaism To-day" (1899) Montagu argues that "For many years self-consciousness has been growing among English Jews, and they have expressed, in whispers to one another, dissatisfaction with their spiritual state"; she concluded that the majority of Jews were "either devoted to ceremonialism at the expense of religion, or indifferent both to ceremonialism and to religion."<sup>18</sup> The article was intended to be a call to action: "Surely we English Jews can have no excuse for continued indifference and waiting. To us the call is clear and unmistakable. For our own sakes we must revive Judaism, and having reconciled its dogma with our highest conception of truth and beauty, allow it again to bind us to the God who cares for us."<sup>19</sup>

In the early years the JRU was not confined to single premises and services were held in rented halls. But in 1909 the JRU was rebranded as the Jewish Religious Union for the Advancement of Liberal Judaism and a synagogue was opened in Hill Street, Marylebone (London). The first minister was Israel Mattuck, a Reform rabbi from the United States. Indeed, Anglo-Liberal Judaism had its roots in classical Reform Judaism. Claude Montefiore was intent on maintaining monotheism and the moral and spiritual teaching of the prophets; even more, the focus on interpretive liberty, as in Reformism, allowed Liberal Judaism to

<sup>&</sup>lt;sup>15</sup> Montagu, The Faith, 29.

<sup>&</sup>lt;sup>16</sup> Montagu, The Faith, 29.

<sup>&</sup>lt;sup>17</sup> Lily Montagu, Thoughts on Judaism (London: R. Brimley Johnson, 1904), 2.

<sup>&</sup>lt;sup>18</sup> Lily Montagu, "Spiritual Possibilities of Judaism To-Day," Jewish Quarterly Review 11 (1899), 216.

<sup>&</sup>lt;sup>19</sup> Montagu, "Spiritual Possibilities," 229.

"pick and choose" those elements of the biblical and rabbinic traditions, and the halakhah, considered salvageable while the discriminatory and retrogressive aspects could be marginalized or ignored. It was not Montefiore's intention to replace or do away with the major festivals, but the critique of ritual and rabbinics central to the Christian Evangelical tradition is evident, particularly in Liberal Judaism's focus on the individual, the necessity of inner-spirituality over and above legal and ritualistic observance, and the word of the Bible over the rabbis and the Talmud. Montefiore was concerned to develop a theology devoid of nationalistic and Zionistic (advocating return to the Holy Land) tendency that was instead universal as opposed to particularistic. Even the Torah was not considered the direct word of God and was open to subjective interpretation. In the new Liberal Judaism religionists were first and foremost citizens; merely Jews by the cultural feature of religion. Ritual, and the extent of observance, was dependent on the individual and their subjective reality, while freedom of conscience and moral conduct were central. In a shift from rabbinic theology that figures the Jewish people as a collective before the divine presence and that insists on a radical separation between the individual and the Holy One, blessed be He that can at its closest only be experienced through *Shechinah* (the presence of God in the world), Liberal theology encourages direct personal and spiritual communion with the divine. Moreover, the kosher dietary laws were no longer considered justified. Indeed, the nascent leadership, Lily Montagu included, was concerned that passages in the Bible exhibited "cruelty" and "revenge", that certain "barbaric" laws brought humiliation on women, and that laws incompatible with human conduct had to be altered, particularly those in connection with sacrifice.<sup>20</sup> But perhaps the biggest break with the tradition was in Liberal Judaism's equalization of the sexes and its radical approach to the "Woman Question."<sup>21</sup> The androcentrism of the biblical and rabbinic traditions qua the "Woman Question" is well documented: women are excluded from the study and authoritative interpretation of the sacred texts; they are exempted from all positive time-bound *mitzvot* excluding *nerot*: the lighting of candles on Shabbat; *challah*: separating a portion of dough, and *niddah*: ritual immersion following menstruation; women are excluded from the *minyan*; they are inadmissible as legal witnesses, they cannot be called up to read the Torah, and they are not allowed to take communal or religious positions that place them in authority over men. As we will see, the reengagement of women with the tradition, and with the divine, was integral to Montagu's conception of Liberal Judaism.

Short, uncritical biographies of Lily Montagu have been published by those close to her in the Liberal movement. Indeed, Nellie Levy, a member of Montagu's West Central Jewish Girls' Club (established in 1893) published a brief overview of Montagu's involvement at the social club in a pamphlet, while Eric Conrad, Montagu's nephew, published *Lily H. Montagu: Prophet of a Living Judaism.* These biographers were perhaps too close to Montagu, who was a universally popular and admired figure, to be anything but praiseworthy; nonetheless these expositions are still valuable as they tell us what club members and congregants thought of Montagu and how she is remembered. Similarly, Lawrence Rigal and Rosita Rosenberg's more recent study of *Liberal Judaism: The First Hundred Years* (2004) equally praises Montagu's contribution, even though Claude Montefiore's role as philosopher and theologian is

<sup>&</sup>lt;sup>20</sup> Conrad, Lily H. Montagu, 41-2.

<sup>&</sup>lt;sup>21</sup> Luke Devine, Lily Montagu's Shekhinah (Piscataway: Gorgias Press, 2011), 60-1.

polarized with Montagu's spiritual and organizational role. Indeed, Montagu is rightly revered as central to the movement's foundation and administration, but again, Rosenberg was on the movement's professional staff and was a member of the Liberal Jewish Youth Movement, while Rigal is a youth leader and minister.<sup>22</sup> Chaim Bermant was one of the first Anglo-Jewish historians to analyse Montagu's role in the foundation of Liberal Judaism; he describes her as "less intelligent than [Claude] Montefiore . . . She played Sister Clare to his St Francis."<sup>23</sup> As we have seen, it was Montagu who initiated the movement; she recalled that it was Montefiore who agreed to help her in the pursuit of her "big adventure," and that "he was glad to help."24 More recently, Geoffrey Alderman, who has written extensively on the Anglo-Jewish community, described Montagu as "excessively plain" and emotionally attached to Montefiore.<sup>25</sup> These descriptions by respected scholars are symptomatic of androcentric stereotyping that is thankfully becoming less prevalent in Anglo-Jewish historiography. We have the Jewish feminist author and theologian Ellen Umansky to thank for reviving interest in Montagu's biography and role in the foundation of Liberal Judaism. Umansky's path-breaking Lily Montagu and the Advancement of Liberal Judaism (1983), along with the publication of Montagu's Sermons, Addresses, Letters, and Papers (1985) was necessary, long overdue, and intended to reintroduce Montagu to a new generation of Jewish women. The book's conclusions, however, are perhaps surprising given Umansky's Jewish feminist background. Indeed, while she acknowledges Montagu's contribution to Liberal Judaism in England, and her central role in the organization's administration and leadership, Umansky downplays Montagu's intellectual and theological contribution; she argues:

Lily Montagu made little if any attempt to present her thoughts systematically. In most of her writings, she focused on specific topics (e.g., the relation of conduct to belief, the significance of ceremonialism, human and divine justice, the power of personality), while in others she randomly moved from one idea to the next. Her intention was not to offer clear-cut theological statements, but simply to share her faith with others.<sup>26</sup>

<sup>&</sup>lt;sup>22</sup> See Lawrence Rigal, A Brief History of the West Central Liberal Synagogue (London: West Central Synagogue, 1978); Lawrence Rigal and Rosita Rosenberg, Liberal Judaism: The First Hundred Years (London: Union of Liberal and Progressive Synagogues, 2004).

<sup>&</sup>lt;sup>23</sup> Chaim Bermant, The Cousinhood: The Anglo-Jewish Gentry (London: Eyre & Spottiswoode, 1971), 210. See Linda Gordon Kuzmack, Woman's Cause: The Jewish Woman's Movement in England and the United States, 1881–1933 (Columbus: Ohio State University Press, 1990) for an overview of Montagu's activism in the wider context of Jewish women's movements and First-Wave feminism in Britain and America.

<sup>&</sup>lt;sup>24</sup> Montagu, The Faith, 24, 28. See Steven Bayme, "Claude Montefiore, Lily Montagu and the Origins of the Jewish Religious Union," Transactions of the Jewish Historical Society of England 27 (1982), 61–71; Edward Kessler, An English Jew: The Life and Writings of Claude Montefiore (London: Vallentine Mitchell, 1989); Langton, Claude Montefiore, 77.

<sup>&</sup>lt;sup>25</sup> Geoffrey Alderman, "Montagu, Lilian Helen," in Oxford Dictionary of National Biography, 38: Meyrick – Morande, eds. H. Matthew and Brian Harrison (Oxford: Oxford University Press, 2004), 753. For more complimentary examinations of Montagu's career see Margaret Yacobi, "Lily Montagu – A Pioneer in Religious Leadership: A Personal Appreciation," in *Hear Our Voice: Women in the British Rabbinate*, ed. Sybil Sheridan (Columbia: University of South Carolina Press, 1998), 9–15, and Jean Spence who focuses on Montagu's social work, "Lily Montagu: A Short Biography," Youth and Policy 60 (1998), 73–83. See also A Reader of Early Liberal Judaism: The Writings of Israel Abrahams, Claude Montefiore, Lily Montagu and Israel Mattuck, ed. by Kessler, Edward (London: Valentine Mitchell, 2004).

<sup>&</sup>lt;sup>26</sup> Ellen Umansky, *Lily Montagu and the Advancement of Liberal Judaism: From Vision to Vocation*, Studies in Women and Religion, vol. 12 (New York: Edwin Mellen Press, 1983), 181. See Ellen Umansky, "Lily H. Montagu: Religious Leader, Organizer and Prophet," *Conservative Judaism* 34, no. 6 (July/August 1981), 17–27; Ellen Umansky, "The Origins of Liberal Judaism in England: The Contribution of Lily H. Montagu," *Hebrew Union College Annual* 55 (1984), 309–22.

According to Umansky "The most striking feature of Lily Montagu's religious thought is that it never seemed to develop. Though she described Liberal Judaism as evolving from one age to the next, her own ideas remained static."<sup>27</sup> For Umansky, Montagu was reliant on Israel Mattuck and Montefiore to the extent that she maintained exaggerated respect for them and had to write to them on a daily basis. Even more, Umansky concludes that Montagu, who was "naive," was intellectually and emotionally dependent on them, as well as on her father.<sup>28</sup> It is therefore ironic that it was Daniel Langton, in his study of Claude Montefiore, who raised the issue that a "much needed corrective" is required to combat "the traditional downplaying of Lily Montagu's role in the Jewish Religious Union."29 What is more, Langton argues that Montagu's "revolutionary fervour" left her frustrated by Montefiore's cautious approach.<sup>30</sup> It is hardly surprising then that Judith Romney Wegner in her study of women in the Mishnah should ask rhetorically that if Montagu was the founder of Liberal Judaism in England, why did nobody write about her sooner.<sup>31</sup> Indeed, the picture of Montagu and the biography that is generated by the extant historiography does not match up with the personal reflections of her closest colleagues, relatives, and even Montefiore himself, as Eric Conrad reminds:

When it is said she came under his influence, the reverse is equally true. Claude Montefiore used jokingly to call her his gadfly. It is to be doubted whether he would have been spurred to leadership without her stimulus and energy. Today it is not uncommon to think of him not only as the leader but as the founder of the Liberal Jewish Movement in England. But he himself continually referred to Miss Montagu as the real founder of the Liberal Jewish Movement in his country. Claude Montefiore had all the intellectual and spiritual qualities needed for leadership, but he was too scholarly a nature to face the limelight of publicity. He did not, like Miss Montagu, feel the urge and vocation to take the initiative.<sup>32</sup>

What is revolutionary about Montagu's role in the foundation and development of Liberal Judaism is that, at least in England, she was the first woman to minister to a synagogue and on June 15, 1918 she became the first to preach a sermon.<sup>33</sup> More so, she was the driving force behind the movement: theologian, spiritual leader, social worker; she was all these things.

Lily Montagu was adamant that the Jewish women of both her social club and religious congregation be introduced to art, culture, and educational training in order that their natural gifts could be utilized in the service of the divine. Indeed, motherhood and wifehood were an ideal, but not the only options available to single women. Certainly, for Montagu individuality was integral to women who "hold the keys of a future destiny."<sup>34</sup> First-Wave feminists had escaped the earlier confinements of separate-spheres ideology that assumed

<sup>&</sup>lt;sup>27</sup> Umansky, Lily Montagu, 191.

<sup>&</sup>lt;sup>28</sup> Umansky, *Lily Montagu*, 189, 196. See Lily Montagu, *Samuel Montagu, First Baron Swaythling: A Character Sketch* (London: Truslove and Hansom Limited, no date of publication).

<sup>&</sup>lt;sup>29</sup> Langton, Claude Montefiore, 35.

<sup>&</sup>lt;sup>30</sup> Langton, Claude Montefiore, 77.

<sup>&</sup>lt;sup>31</sup> Judith Romney Wegner, *Chattel or Person? The Status of Women in the Mishnah* (New York: Oxford University Press, 1988), 187-8. Mishnah: code of Jewish law compiled by the early rabbis (*tannaim*).

<sup>32</sup> Conrad, Lily H. Montagu, 46.

<sup>33</sup> Conrad, Lily H. Montagu, 49-50.

<sup>&</sup>lt;sup>34</sup> Lily Montagu, "Women's Contribution to the Spiritual Life of Humanity," in *Lily Montagu: Sermons*, 159; Lily Montagu, "The Girl in the Background," in *Studies of Boy Life in Our Cities*, ed. E. Urwick (1904; rpt. New York: Garland Publishing Inc., 1980), 247.

their natural talents for the domestic setting without having to deny the doctrine of a particularistic feminine nature that was best expressed in motherly and homely roles; rather, the cult of domesticity had been transformed into the ideal of women's moral and spiritual superiority. In biblical terms, Eve the "temptress" had become Eve the "victim." The feminization of religion in all denominations ensured that the concept of female superiority became women's mission to redeem society. The focus on religious mission and philanthropy became the drive for social reform.<sup>35</sup> Thus, the role assigned by Montagu to Jewish women, while radical in the Jewish community, was virtually the norm in Christian society. According to Montagu, therefore, gender inclusionism (in response to Christian Evangelical claims that traditional Judaism was denying women education and spiritual agency) would be the benchmark of Liberal Judaism:

From the beginning it was determined that in our Synagogue men and women must be absolutely equal in their congregational privileges. Boys and girls were confirmed together, and men and women sat together as they chose in any part of the Synagogue. There was no women's gallery, such as we find in Orthodox Synagogues. Women had, as a matter of course, their seats on the Council, and took their share as voters in the shaping of Synagogue policy and in the responsibility of maintaining and developing its religious influence.<sup>36</sup>

Of course, proto-feminist transformation was not wholesale; that would have been unrealistic in such a short space of time. Montagu and the other leaders were concerned that immediate and radical change would be a "shock to the community" that might "prove injurious to our cause."<sup>37</sup> But from the outset Liberal theology was to reflect "the divine in its inclusiveness."<sup>38</sup> The theological emphasis of the movement was on personal and immediate experience of the divine. Montagu was inspired by the prophet Isaiah and particularly Is. 55, which was her favourite biblical passage:

I have regarded [Is. 55] as my favourite [passage] throughout my life. This chapter seems to me to carry within itself the essence of pure religion. It contains a call to man to seek God, and assurance that if that search is undertaken with sincerity and faith, all other of life's activities will fit in accordingly to a correct measure of values. The chapter gives glorious assurance that God will cause goodness to triumph, and that, ruling as He does by law, we can count on His law to lead to the establishment of righteousness. Moreover, we find in these verses the wonderful comfort for all seekers after truth, who, in spite of their love and faith, must ever remain to some degree perplexed and bewildered. "God's thoughts are not our thoughts, and His ways are not our ways." We have no power to explain God. If we could, we should be God ourselves.<sup>39</sup>

It was the gender inclusivist theological aspects of Isaiah that Montagu was interested in; the feminine/maternal imagery of the divine. Quoting Is. 66:13, Montagu noted that "Throughout the Old Testament God the Ruler is also God the Father [and Mother]. 'As a father pitieth his children, so does the Lord pity them who fear Him.' God's extreme tenderness is further expressed [Is. 66:13]: 'As one who his Mother comforteth so will I comfort thee.'"<sup>40</sup> In Isaiah there are several references to female God-imagery. 42:14: "I

<sup>&</sup>lt;sup>35</sup> Olive Banks, Faces of Feminism: A Study of Feminism as a Social Movement (Oxford: Basil Blackwell, 1988), 85-6, 90-1, 95.

<sup>&</sup>lt;sup>36</sup> Montagu, The Faith, 38; Devine, Lily Montagu's Shekhinah, 111-12.

<sup>&</sup>lt;sup>37</sup> Montagu, The Faith, 38.

<sup>&</sup>lt;sup>38</sup> Lily Montagu, "Kinship with God," in Lily Montagu: Sermons, 115.

<sup>&</sup>lt;sup>39</sup> Montagu, *The Faith*, 41.

<sup>&</sup>lt;sup>40</sup> Montagu, "Kinship with God," 116.

have long time holden my peace; I have been still, and refrained myself; now will I cry like a travailing woman," and in 55:1 God is also a provider of water: "Ho, every one that thirsteth, come ye to the waters."<sup>41</sup> Moreover, there are theological allusions and metaphors, such as to thrones and robes, which are associated with the *Shechinah*, the grammatically feminine attribute of divine presence in the world: "I saw the Lord sitting upon a throne high and lifted up, and his train filled the Temple" (6:1). Certainly, these references to the maternal intimacy of the divine were central to Montagu's understanding of theology.<sup>42</sup> This is not to say that Montagu envisaged God, who is supposed to transcend gender, as either male or female, or both; instead, the divine is merely imaged in masculine/feminine and maternal/ paternal terms that are accessible to a diverse range of religionists. For Montagu it is this subjective immanence that is vital: "I feel the reality of God. Believing in God as the God of Love, I believe that His presence in our midst gives us the power to love, which is of supreme importance in every individual life."<sup>43</sup>

If we consider then the central and sustaining elements of Lily Montagu's theology: first, subjectivity is vital as everyone experiences the divine in a different way, even the early rabbis were aware of this plurality, although in the rabbinic tradition God is experienced through the presence of *Shechinah*; retrospectively then, there were rabbis who assumed that even in the Bible it is not the unknowable Holy One, blessed be He who is experienced, but the immanent Shechinah. This is how the rabbis explained God's aloofness. Montagu's concept of direct communion with God, which was the very foundation of her religion; in fact, according to Eric Conrad, "She had a fervent desire for personal communion with God and an irrepressible urge to impart a similar desire to others,44 was inspired by Isaiah, and the other prophets, experiencing of the divine. The quest for immanence was present throughout the nineteenth and early twentieth-centuries. Indeed, in Reform Judaism it is incumbent on the individual to "construct" their own theology.<sup>45</sup> What is more, Montagu's novel, *Naomi's Exodus*, which was published in 1901, provides some of the best evidence of her understanding of divine immanence.<sup>46</sup> The book is semi-autobiographical and tells the story of Naomi Saul who is a young Jewish girl alienated by the traditional ritual experienced in the home of her staunchly Orthodox aunt. Indicative of the Evangelical cult of true womanhood that invests women with spiritual and redemptive qualities,<sup>47</sup> Naomi is a moral exemplar; more so, she is

<sup>&</sup>lt;sup>41</sup> Lily Montagu, "Club Letter No. 3," in Lily Montagu: Sermons, 51.

<sup>&</sup>lt;sup>42</sup> Devine, Lily Montagu's Shekhinah, 131-3.

<sup>43</sup> Montagu, The Faith, 64.

<sup>44</sup> Conrad, Lily H. Montagu, 37, 42.

<sup>&</sup>lt;sup>45</sup> Jonathan Romain, *Reform Judaism and Modernity: A Reader* (London: SCM, 2004), 145. There is not the space or the necessity to study the classical Jewish theologians in this paper, see Franz Rosenzweig, *The Star of Redemption* (New York: Holt, Reinhart and Winston, 1971); Martin Buber, *Hasidism and Modern Man* (New York: Horizon Press, 1958).

<sup>&</sup>lt;sup>46</sup> It is perhaps surprising that Montagu did not engage with earlier and contemporaneous Anglo-Jewish women novelists. Indeed, there is no evidence that she ever read, for example, Grace Aguilar, Charlotte Montefiore, or Amy Levy. According to Ellen Umansky the only Jewish novelist Montagu ever discussed was Edna Ferber (*Lily Montagu*, 62), although Montagu was affiliated with Emily Harris through her social work. See Emily Harris, *Estelle*, 2 vols. (London: George Bell, 1878); *Benedictus*, 2 vols. (London: George Bell, 1887).

<sup>&</sup>lt;sup>47</sup> The cult of true womanhood was based on the eighteenth-century Evangelical theology of Christian femininity outlined by William Wilberforce. The cult developed in tune with the concept of separate spheres: men were deemed the stronger and harder sex, less emotional, and ordained with the physical ability to survive the ruthless world of the market-place. Alternatively, women required the protective walls of the home. They possessed maternal qualities and superior moral purity making them the ethical inspiration for their husbands and the moral guardians of children. Thus, the cult of domesticity became the ideal of female superiority that invested women with the spiritual qualities to redeem wider society (Banks, *Faces of Feminism*, 86, 90).

regenerative. In the novel, Naomi embarks on a spiritual journey and in the process learns of the nature of universal religion. In response to her aunt's charge that she has become a convert to Christianity Naomi is furious, though she is equally impassioned by her spiritual connection with the ancestral faith and the bonds of inherited memory:

Naomi had behind her the racial pride of her ancestors. The persistent, dogged tenacity with which they [Jews] had clung to their religious inheritance, even deifying its casings in their passionate zeal; the fiery jealousy with which they had cherished their isolation among all the peoples of the earth; these seemed suddenly to make their influence felt on the girl. She had been born a Jewess, and no spiritual yearnings, no discontent, no remorse could rob her of this birthright. Even though she had no understanding of the ancient religion, in spite of all her recent self-questionings and misgivings, a passionate devotion to Judaism was indelibly stamped in her blood. It only required her aunt's question, expressed as it was with suspicion and apprehension, to fill her heart with intense anger that her loyalty had been challenged. Yet mingled with this anger was a feeling of acute pain, for Naomi had suddenly become conscious that in this home, which was so dear to her, she could never again be happy.<sup>48</sup>

Having gone into self-imposed exile as a result of her aunt's accusation, and as a product of her spiritual alienation, Naomi leaves home and within several months of independence, and through friendship with a Christian religionist, learns about social justice and the nature of "true" faith. She later returns to the house of her staunchly Orthodox aunt and is able once again to join in and appreciate the Shabbat celebrations. One of the moral parables of the story is that the legalistic, unthinking nature of contemporaneous religion requires invigorating with renewed spiritual impetus. Indeed, Naomi, through communion with God, is imbued with fresh understanding and appreciation of her faith and its application for daily living. It is in *Naomi's Exodus* that we catch glimpses of Montagu's own experience of the divine presence.<sup>49</sup> Naomi, in the midst of a spiritual crisis, is resolved to develop an immanent and personally immediate relationship with the divine. The communing begins with her calling out to the divine:

"Oh God, what shall I do? Oh, God, help me"!

That was the first prayer Naomi Saul had ever made.

Almost immediately her troubled spirit seemed somewhat soothed. The tension on her feelings was relieved as she gave herself up to the Power not herself of which she was becoming conscious. She lay for a whole hour, half waking, half-sleeping, in communion with her God.<sup>50</sup>

Naomi is not used to the idea of personal and private prayer; this is a direct address to the deity and a call on the divine for assistance in the form of engaged communion. Later in the novel, Naomi makes the plea again, begging the Almighty for advice:

After a time her head leaned up against the iron leg of the bedstead, and her lips murmured, "God! God! What shall I do – God"?

The prayer was spoken in utter exhaustion of spirit; the soul realized its weakness, and could no longer find rest within itself. It threw itself on the God without for help in its sore need. And the help was given. Naomi was much too tired to know how she reasoned, or whether she reasoned at

<sup>&</sup>lt;sup>48</sup> Lily Montagu, Naomi's Exodus (London: T. Fisher Unwin, 1901), 40–1. Montagu's only other novel was Broken Stalks (London: R. Brimley Johnson, 1902). See also Lily Montagu, A Little Book of Comfort: For Jewish People in Times of Sorrow (London: Wightman and Co, 1948); Lily Montagu, Letters to Anne and Peter (London: Mamelok Press, 1944); Lily Montagu, What Can A Mother Do? And Other Stories (London: George Routledge & Sons, 1926).

<sup>&</sup>lt;sup>49</sup> Devine, Lily Montagu's Shekhinah, 82.

<sup>&</sup>lt;sup>50</sup> Montagu, Naomi's Exodus, 26.

all. It seemed as if she snatched from the inmost depths of her being the love, faith and hope which she had planted there for Clement, and with that cry to God threw them at His feet. And He accepted them.<sup>51</sup>

Naomi is upset at the breakdown of her relationship with Clement Marks: "She dared to love this great clever man, and since his indifference could not stifle her feeling, it should, at least, not disgrace him."<sup>52</sup> But it is "the God of love Who gave this girl the power of loving, even while He withdrew the human object of her love, came into her heart and gave her courage."<sup>53</sup> As we can see, Montagu's theological understanding is necessarily *immediate*; it is a type of human-divine dialogue. Moreover, in *Naomi's Exodus* we can see the influence of Christian Evangelicalism, particularly in the theology of divine immanence, the spiritual vitalization of ritual, and in Montagu's reverence for the Hebrew Bible.<sup>54</sup> Naomi is redemptive and regenerative, morally and spiritually superior, though at the same time she is dutiful; she heeds the (Evangelical) call to service and becomes a nurse.<sup>55</sup>

For Lily Montagu it was necessary that religionists speak to God in the synagogue and in the home.<sup>56</sup> This relationship is not intended to be hierarchical. Indeed, Montagu was concerned that the idea of God instilling fear rather than love could be transmitted through the reading of the traditional liturgy.<sup>57</sup> According to Montagu: "God must become so real so that we can live under His guidance, working for Him and with Him, and trusting that this kinship is for ever."58 Montagu was convinced that through Judaism "a religious man must seek and discover God for himself. I believe that in Judaism will be found the methods by which God can be most surely approached, and that these methods are certainly ultimately to prevail universally."<sup>59</sup> The relationship with God is essentially about "kinship." The divine is omnipresent to the extent that personal loneliness need never be experienced.<sup>60</sup> Indeed, God is not "other" in the traditional sense of "holiness" (kedushah) which implies separation. David Blumenthal argues that in the sacred texts God has personality and talks, walks, laughs, feels anger, joy, and conveys "moral judgment": "God is what God is." But the divine is also a source of awe, the numinous, and otherness. "Wholly otherness," or holiness, is comprehendible in moments, texts, and places. Indeed, it is through the concept of holiness that God is somehow near yet at the same time distant. According to Blumenthal holiness is our experience of the sacred. Thus, God possesses two characteristic attributes: "personality and holiness"; they are "relation and relatedness". The "theology of image" is central to the Jewish tradition; knowledge of humanity, God, piety, and redemption stems from this source.

<sup>&</sup>lt;sup>51</sup> Montagu, Naomi's Exodus, 162.

<sup>&</sup>lt;sup>52</sup> Montagu, *Naomi's Exodus*, 189. It is possible that Clement Marks is based on Claude Montefiore.

<sup>53</sup> Montagu, Naomi's Exodus, 165.

<sup>&</sup>lt;sup>54</sup> Naomi Saul is probably based on Naomi of the biblical book of Ruth.

<sup>&</sup>lt;sup>55</sup> Devine, *Lily Montagu's Shekhinah*, 103–04. According to David Bebbington, Evangelicalism is based on four themes: "*conversionism*, the belief that lives need to be changed; *activism*, the expression of the gospel in effort; *biblicism*, a particular regard for the Bible; and what might be called *crucicentrism*, a stress on the sacrifice of Christ on the cross. Together they form a quadrilateral of priorities that is the basis of Evangelicalism" (*Evangelicalism in Modern Britain: A History from the 1730s to the 1980s* (London: Unwin Hyman, 1989), 2–3).

<sup>&</sup>lt;sup>56</sup> Montagu, My Club and I, 47.

<sup>&</sup>lt;sup>57</sup> Conrad, Lily H. Montagu, 42. Montagu's Prayers for Jewish Working Girls (London: Wertheimer, Lea & Co., 1895) was the first Liberal Jewish prayer book.

<sup>&</sup>lt;sup>58</sup> Montagu, My Club and I, 50.

<sup>&</sup>lt;sup>59</sup> Montagu, "Spiritual Possibilities," 231.

<sup>&</sup>lt;sup>60</sup> Montagu, "Kinship with God," 117.

In this theological process there is dialogue, empathy, demand, and claim. God's image is reflected both individually and collectively in humanity. To do traditional theology, Blumenthal argues, is to understand and muse over the image of the divine. The attributes of holiness and personality visualize the image of deity and embody the otherness of God.<sup>61</sup> Certainly, "holiness" is an integral component of God in the tradition. For Blumenthal:

HOLINESS IS A QUALITY. One senses it in objects, in moments, in texts, and in certain people. It is not a feeling like joy and anger. It is not a commitment like love or loyalty. It is not a state of mind like happiness or gloom. It is not a thought or concept. It is an awareness of the sacred, a consciousness of the spiritual. It is an experience of the *mysterium tremendum et fascinans*, a contact with the numinous. It is a perception of otherness, an intimation of the beyond.<sup>62</sup>

Blumenthal suggests that there are two aspects of holiness: *hierarchical*: the "mystical quality of certain objects, days and persons"; and non-hierarchical: personal acts of will through which one declares an object consecrated to the divine. Holiness is a product of kavanah; it is the experience of numinous otherness in the "mundane".<sup>63</sup> Montagu's theology of immanence then, and the idea of communion, is a departure from the traditional concept of holiness; but for that matter, the universal underpinnings of Liberal theology are equally a departure from the particularistic emphasis on the Jewish people inherent to the rabbinic/Orthodox tradition. Claude Montefiore's theology of Liberal Judaism that Montagu appropriated in her own work was centred on the relationship between the religionist and the divine. Both he and Montagu frequently quoted from non-Jewish sources, even the New Testament. The radical separation of the individual and the divine is, for Montefiore, unsustainable. He rejected the traditional notion that God is so mysterious and unapproachable that men and woman cannot communicate/commune with the deity. Instead, Montefiore argued that "the communion of man with God, and the action of influence of God upon man, are essential elements of true religion." Indeed, communion is possible because of the kinship between humankind and God.64

The Liberal theology that is evident throughout the Lily Montagu corpus, and in her many sermons and addresses, is characterized by its pluralistic subjectivity, immediacy, nonhierarchical nature, universality, and rejection of the traditional concept of holiness. These elements of Liberal theology have become standard to Second and Third-Wave liberal Jewish feminist spiritualities/theologies. Of course, Jewish feminist theology has gone further and has marginalized and even abandoned the central theological components that have been present since Genesis including not only the concepts of transcendence, revelation, and supernaturalism, but the eschatological aspects such as Jewish destiny, messianic redemption, afterlife, the Davidic line, and chosenness. It is only Judith Plaskow, Rachel Adler, Melissa Raphael, and Tamar Ross who have so far published full-length feminist theologies. Indeed, Judith Plaskow's classic *Standing Again At Sinai* (1990) develops a feminist theology of community that is expressed through historiography, prayer, ritual, and midrash around the central categories of Torah, Israel, and God, speculating what these concepts

<sup>&</sup>lt;sup>61</sup> David Blumenthal, *Facing the Abusing God: A Theology of Protest* ((London: John Knox Press, 1993), 6–8, 23. See T. Drorah Setel, "Feminist Reflections on Separation and Unity in Jewish Theology," *Journal of Feminist Studies in Religion* 2 (Spring 1986), 113–18.

<sup>62</sup> Blumenthal, Facing the Abusing God, 23.

<sup>&</sup>lt;sup>63</sup> Blumenthal, Facing the Abusing God, 25-6; Devine, Second-Wave Jewish Feminism, 55-6.

<sup>&</sup>lt;sup>64</sup> Claude Montefiore, Liberal Judaism: An Essay (London: Macmillan and Co., 1903), 25-7.

will look like in an inclusivist Judaism.<sup>65</sup> Adler, who was originally Orthodox but turned to Reform Judaism, is perhaps most notable for her groundbreaking article, "The Jew Who Wasn't There," that helped launch Second-Wave Jewish feminism in America, along with Trude Weiss-Rosmarin's "The Unfreedom of Jewish Women." In Engendering Judaism (1998) Adler examines gender issues relating to halakhah, prayer, textual interpretation, sexual imagery, and marriage to visualize an engendered Judaism through which the gender exclusionary and patriarchal values of the tradition and its sacred texts are not regarded as intrinsic.<sup>66</sup> Alternatively, Raphael's The Female Face of God in Auschwitz (2003) is not intended to be a prescriptive theology; rather, Raphael, who is an Anglo-Jewish theologian, asks the question "Who was God in Auschwitz"? She is concerned with restoring women's voices to our understanding of the Holocaust and reclaiming the feminine Shechinah as a maternal presence amid the horrors of Auschwitz.<sup>67</sup> Ross' Expanding the Palace of Torah is not a feminist theology per se; rather, she develops ideas of cumulative revelation that draw on the influence Abraham Isaac Kook. Orthodox Israeli feminist Ross develops a process of accumulating beyond the Sinaitic foundations of the tradition that allows feminist interpreters to build upon extant revelation while accepting that Judaism's patriarchal foundations, although incompatible with contemporary feminist values, were necessary at the time.<sup>68</sup> The Second-Wave of Jewish feminism, which arguably began in the 1970s and continued until the early 1990s, inevitably focused on the key issues at the time, including the exclusion of women from ritual, liturgy, legal processes, and in the synagogue; the focus was on praxis rather than theology. This was evidently vital to religious and communal reform, if at the expense of practical, prescriptive, and normative theology. In the Third-Wave of Jewish feminism (if it is even possible to apply such a label) that followed Plaskow's Standing Again at Sinai, on the other hand, Jewish feminists have become their own authorities often in the absence of traditional Judaism.<sup>69</sup> The daughters of the Second-Wave have grown up with a "full range of opportunities" in communal and religious life and have been offered more or less equal chances for study, employment, and meaningful spiritual existence.<sup>70</sup> But the Third-Wave has not identified any single issue or unified cause, manifesto, or underlying goal as indicative of its aims.<sup>71</sup> Donna Berman, looking back on the last forty years of feminist activism, argues that:

There has been very little, if any, experimentation with expanding the canon or introducing new texts that specifically reflect the experiences of women and lesbians. Feminism, to a large extent,

<sup>&</sup>lt;sup>65</sup> Judith Plaskow, "Calling All Theologians," in *New Jewish Feminism: Probing the Past, Forging the Future*, ed. Elyse Goldstein (Woodstock: Jewish Lights Publishing, 2009), 4; Judith Plaskow, *Standing Again at Sinai: Judaism from a Feminist Perspective* (1990; rpt. New York: HarperCollins Publishers, 1991).

<sup>&</sup>lt;sup>66</sup> See Rachel Adler, "The Jew Who Wasn't There: Halacha and the Jewish Woman," *Response: A Contemporary Jewish Review* (1971; rpt. Summer 1973), 77–82; Trude Weiss-Rosmarin, "The Unfreedom of Jewish Women," *Jewish Spectator* (October 1970), 2–6; Rachel Adler, *Engendering Judaism: An Inclusive Theology and Ethics* (Philadelphia: The Jewish Publication Society, 1998).

<sup>&</sup>lt;sup>67</sup> See Melissa Raphael, *The Female Face of God in Auschwitz: A Jewish Feminist Theology of the Holocaust* (London: Routledge, 2003).

<sup>&</sup>lt;sup>68</sup> For Kook, God is not an-other being as the Almighty transcends all anthropomorphisms. See Tamar Ross, *Expanding the Palace of Torah: Orthodoxy and Feminism* (Waltham: Brandeis University Press, 2004).

<sup>&</sup>lt;sup>69</sup> Susannah Heschel, "Foreword: It's Not About Equality – It's About Who's in Charge," in Yentl's Revenge: The Next Wave of Jewish Feminism, ed. Danya Ruttenberg (New York: Scal Press, 2001), xvi–xvii.

<sup>&</sup>lt;sup>70</sup> Susannah Heschel, preface to On Being A Jewish Feminist: A Reader, ed. Susannah Heschel (1983; rpt. New York: Schocken Books, 1995), xxiii.

<sup>&</sup>lt;sup>71</sup> Devine, Second-Wave Jewish Feminism, 47, 210.

remains something that is "tacked on" to Judaism. It is still on the margins, still too often relegated to a specific Shabbat or a special adult education session or Women's History Month. Feminist theology and feminist discourse generally have not made their way into the center.<sup>72</sup>

The "problem," if that is the right word, is with the feminist propensity, which has become a feature of Third-Wave Jewish feminism, to discourse on subjective, personal, and immediate experience over and above the tradition.<sup>73</sup> This form of self-projection might have little to do with the tradition and is regarded as *Jewish* simply because the interpreter is Jewish.

The potential abyss between "women's experience" and "authentic" Judaism has been an impediment to Jewish women doing theology,74 According to Melissa Raphael Jewish feminists, whether partially or wholly alienated by the tradition, have focused, more or less, on the historical Jewish woman who can through her personal experience and immediate context image alternative theological models and unconditioned interpretations of the sacred texts. The postmodernist refusal of normativity, Raphael argues, has rendered a prescriptive, or normative, Jewish feminist theology "impossible." Historically, Raphael notes, feminist theology is a post-Holocaust exercise that assumes, given Auschwitz, that Judaism can no longer be justified through traditional faith in the Holy One, blessed be He. What is more, the tradition cannot be sustained by the Reform assumption that Judaism underpins the ethical and moral structures of Western civilization. For Raphael, Jewish feminist theology can only justify Judaism to women on the basis of its prophetic concerns, its being a connector between the generations of the movement, and its ritual and imaginal focus for communal identity. This is endemic, however, given that generally all types of Jewish feminism have taken on the "quest of liberal modernity" and have centered on securing women's religious liberation, equality of access, and their ability to orientate the tradition toward the conditions and experiences of their own immediate context. In sum, Raphael suggests that the problem is that "Jewish feminist theology's origin in modern egalitarianism and the postmodern pluralization of truth, together with its focus upon the immediacies of women's experience . . . has left women religio-intellectually marginalized, and experience of the heteronomous, nonordinary dimension of Jewish revelation has been all but precluded."75

Contemporary liberal Jewish feminism, the Third-Wave and beyond,<sup>76</sup> is characterized by its rejection of hierarchy in all its forms. According to Judith Plaskow the concept of chosenness in traditional Judaism is a statement of hierarchical privilege in relation to those who are denied this right. Feminists have been troubled by the idea of chosenness that seems to be in contrast with the drive for civic equality. The assumption of a unique and separate destiny assigned to the Jewish people is in "tension" with the history of emancipation that

<sup>&</sup>lt;sup>72</sup> Donna Berman, "Major Trends in Jewish Feminist Theology," in New Jewish Feminism, 21.

<sup>&</sup>lt;sup>73</sup> Melissa Raphael, "Standing at a Demythologized Sinai? Reading Jewish Feminist Theology Through the Critical Lens of Radical Orthodoxy," in *Interpreting the Postmodern: Responses to "Radical Orthodoxy*," eds. Rosemary Radford Ruether and Marion Grau (New York: T & T Clark, 2006), 209–10 n.39.

<sup>&</sup>lt;sup>74</sup> The categories are taken from Adler's *Engendering Judaism*, xix.

<sup>&</sup>lt;sup>75</sup> Raphael, "Standing at a Demythologized Sinai," 198–201, 207 n27, 209–10, 214.

<sup>&</sup>lt;sup>76</sup> The Third-Wave is characterized by its efforts to challenge the essentialist assumptions of the Second-Wave, the notion of universal women's experience, and the focus on white upper-middle-class women's experience. The Third-Wave appropriates theories of anti-racism, transgender, queer theory, and eco-feminism, and is about self-definition and the broadening of biological and cultural identities through alternative lifestyles (Devine, *From Anglo-First-Wave*, 199–200).

made Jews into citizens. Thus, Plaskow notes, Jewish thinkers for nearly two-hundred years have sought to refashion the notion of chosenness in order to either discard it completely or to retain it. Indeed, chosenness has been reinterpreted through the language of universality and "mission to the nations"; Jewish superiority has even been rejected outright. For Plaskow, however, the implication of chosenness and its sense of privilege is yet to be eliminated. Jewish feminism, therefore, is in a position to rethink not only the concept of election in relation to wider non-Jewish society, but also to refigure the hierarchical differentiations present in the Jewish community. Plaskow argues that God's dominance and power means that the relationship between the deity and humankind is "asymmetrical". God's maleness denotes power that is infinite and Other over human authority. Indeed, this God who is totally Other is over and against the world in such a way that "inhibits human growth and responsibility". For Plaskow, God enforces obedience through punishments, benevolence, and domination, which discourages human activity. This dominating Other is intrinsic to the biblical texts, particularly in images of God as "holy warrior." Moreover, prophetic demands for social justice are in direct contrast with the impending threat of divine punishment and destruction. Plaskow suggests that:

Metaphors of sovereignty, lordship, kingship, and judicial and military power evoke images of arbitrary and autocratic rule that have been rejected in the human political sphere at the same time they live on in religious language. If the image of god as male provides religious support for male dominance in society, the image of God as supreme Other would seem to legitimate dominance of any kind. God as ruler and king of the universe is the pinnacle of a vast hierarchy that extends from God "himself" to angels/men/women/children/animals and finally the earth. As hierarchical ruler, God is a model for the many schemes of dominance that human beings create for themselves.<sup>77</sup>

Plaskow contends that the images of God's dominance that have become the symbols and ways that Jews have used to discuss the divine have helped perpetuate and even justify the evils that we hope God will redeem us from. The theological image of "dominating Other" acts as an "authorizing symbol" in an entire system of hierarchical dualisms that includes the relationship between Israel and other peoples and the male God-language of the androcentric tradition.78 As we have seen, Lily Montagu, along with the Liberal Jewish leadership, was concerned not only with the alienating image of a domineering and aloof deity (she instead preferred to visualize the immanent God of "love"), but also with the concepts of Jewish particularly, messianism, and national identity (Zionism) that were an impediment to wholesale emancipation, assimilation, and acceptance for religious Anglo-Jews in wider Christian society. Certainly, Liberal Judaism's aim was to counter the secularizing and estranging aspects of the tradition and to assimilate societal norms that would allow Jews to accommodate their Anglicized lifestyles to the Liberal Synagogue without having to exile themselves from the community for all time. But while the legacy of Anglo-Liberal Judaism in relation to the "Woman Question" is that women can lead the services and become rabbis, be called up, hold positions of religious and communal leadership over men, study and interpret the sacred texts, have a Bat Mitzvah, and are equal in divorce law, what are the long term consequences for Jewish feminist theology?

<sup>&</sup>lt;sup>77</sup> Plaskow, Standing Again at Sinai, 100–1, 130–2.

<sup>78</sup> Plaskow, Standing Again at Sinai, 132.

In Lily Montagu's theology of Liberal Judaism it is the personal and immediate nature of experiencing the divine which will be necessarily reduced to the individual and social context, and the subjectivity of this moment that is integral to, along with the nonhierarchical and non-domineering imagery of deity in contrast to traditional eschatological and theological notions of holiness, particularity, and hierarchical otherness. But as we have seen, it is this legacy that began with Reform Judaism and was continued with the progressive underpinnings of Liberal Judaism that has been taken on by contemporary Jewish feminism. What began as an impetus in Reform Judaism for individuals to construct theology, and was extenuated by the failure of Anglo-Reformism to develop any type of uniquely Reformist theology of its own, became in Liberal Judaism's subjective and personal communing with the divine, and then in the Second-Wave of Jewish feminism, "theology" rooted in the individual experience of the religionist and based on their personal aspirations. The focus on personal spirituality, which can have little, if anything, to do with God, was at the expense of the eschatological (the area of theology that deals with *last things*) elements of traditional Judaism including divine judgment, Messianic redemption, belief in the Messianic Age, afterlife, resurrection, anticipation of the Coming Age, the continuation of the Davidic line, the restoration and deliverance of Israel, holiness, and Jewish destiny in general, as well as the theological elements present in the biblical and rabbinic traditions, including concepts of supernaturalism, transcendence, hierarchy, and numinous otherness. Thus, the development of any prescriptive or normative Jewish feminist theology is made impossible by the diversity, non-sacral, and pluralistic nature of contemporary (Third-Wave) Jewish feminism.<sup>79</sup> Indeed, even Judith Plaskow admits that:

I had hoped that Jewish feminists would give the lie to the notion that theology is not a Jewish mode of expression by eagerly embracing it and producing a wide range of theologies that would open up new conversations within the Jewish community. But it turns out that most Jewish feminists haven't done formal theology either, and that if there is going to be a blossoming of Jewish feminist theologies, it belongs to the future.<sup>80</sup>

This is not to devalue the extant theological discourse; Jewish feminism is still only fortyyears old and is continually redefining itself and responding to contemporary challenges and trends. But at some point or another, as Orthodox feminist theorists and theologians continue to point out, there will have to be reengagement with the tradition and its theological elements.<sup>81</sup>

By the time of her passing in 1963, Lily Montagu, through her role in the Union of Liberal and Progressive Synagogues (formerly the JRU), and her presidency of the World Union for Progressive Judaism, had spread the Liberal Jewish message throughout the world.<sup>82</sup> Montagu's legacy is one of gender equalization in the Liberal Jewish community in England and beyond. But she is also a foremother of Second-Wave Jewish feminism.<sup>83</sup> Contemporary liberal Jewish feminist theology has its basis in the *Haskalah* (Jewish

<sup>&</sup>lt;sup>79</sup> See Devine, Second-Wave Jewish Feminism; Raphael, "Standing at a Demythologized Sinai."

<sup>&</sup>lt;sup>80</sup> Plaskow, "Calling All theologians," 3.

<sup>&</sup>lt;sup>81</sup> See Tova Hartman, *Feminism Encounters Traditional Judaism: Resistance and Accommodation* (New England: UPNE, 2007); Tamar Ross, "Modern Orthodoxy and the Challenge of Feminism," in *Jews and Gender: The Challenge to Hierarchy*, Studies in Contemporary Jewry, ed. Jonathan Frankel (Oxford: Oxford University, 2001), 3–38.

<sup>&</sup>lt;sup>82</sup> See Lily Montagu, *The World Union for Progressive Judaism: The Story of its First 25 Years – 1926 until 1951* (World Union for Progressive Judaism, 1951).

<sup>83</sup> See Devine, Lily Montagu's Shekhinah, 147-8.

Enlightenment), in Reform Judaism, in the age of emancipation and secularization, and in Montagu's efforts to reengage and accommodate modern Jewish women, and their employment commitments, busy lifestyles, and their boredom with the Orthodox services, with the tradition. But in the process of countering secularization and reversing the gender alienation of acculturated Anglo-Jewish women, the complex and estranging aspects of traditional theology were jettisoned. The impact of the Reformers, and the progressive Liberalizers, has been that in the post-Holocaust period, Second and Third-Wave Jewish feminisms have displayed only limited interest in classical theology, and there has been little will towards creating anything prescriptive, so far.<sup>84</sup> The contemporary importance of Montagu's work then, is that while she was able to instigate and develop far reaching reforms, particularly with regard to the "Woman Question," in contrast to contemporary post-Holocaust feminist theology, she was also able to maintain a dialogue with the theological tradition: the fundamental theology, radical monotheism, was essentially unchanged; it was just that the Anglo-Liberal reformers believed the ability to commune with the divine would encourage those alienated by the tradition to reengage. The aim was to allow religionists too busy to attend services the chance to explore the human-divine relationship. Indeed, in liberal Jewish feminism also, the tradition has given way to the individual feminist and her ability to pick and choose those elements that are relevant, empowering, and egalitarian, and that speak to her own experience; this process began in late-Victorian England when a young girl of fifteen - Lily Montagu - emerged from a spiritual crisis determined to orientate the tradition towards the practical needs and necessities of everyday life. Current Jewish feminist theologians might well revere this past, as well as its engagement with classical theology.

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<sup>&</sup>lt;sup>84</sup> Contemporary Jewish feminists have been little interested in theology; see Danya Ruttenberg, *Yentl's Revenge*. Even *New Jewish Feminism* (2010) is only able to review, and re-review, the few feminist theological expositions of the Second-Wave. Of course, theology can take a variety of forms, including through midrash (imaginative biblical exegesis) and personal spiritual reflections.

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### *LATINO-ROMANIOTES*: THE CONTINUITY OF JEWISH COMMUNITIES IN THE WESTERN DIASPORA, 400–700 CE

### Aron C. Sterk\*

ABSTRACT: The fate of Jewish communities in the western Diaspora in the period between the collapse of the Roman Empire in the fifth century and the efflorescence of Jewish learning and culture in ninth-century Spain and tenth-century France and Germany has been neglected by both Jewish and generalist historians. It has been assumed that late antique communities outside ancient centres like the city of Rome and the south of Italy were relatively recent and the period saw a contraction and withdrawal of Jewish communities to the Mediterranean littoral until they were revitalised by Jews from the Islamic south and east. More recently it has been suggested that western Jews were cut off from Hebrew language and Halakhah and therefore developed as purely 'biblical' Jews, an easy prey to Christian proselytism. However, the late antique and early medieval periods have recently been reassessed and are now seen as a period of continuity. There is evidence that Jewish communities were more extensive and longer established than previously assumed, and that Jews in the west continued to maintain a vital contact with the east and had access to Hebrew learning, Hebrew scrolls and oral tradition. The identification of a previously unknown Latin Jewish manuscript (the Letter of Annas to Seneca) and the discovery of Jewish settlements in Roman Gaul suggest that evidence from this period has been neglected or overlooked and that the period needs reassessment as a period that provided the demographic and cultural continuity that the later medieval community built upon; an indigenous Latin-speaking 'Romaniote' community that underlay the later communities of Sepharad, Tzarfat and Ashkenaz.

#### 1. SYNESIUS AND AMARANTUS

At the turn of the fifth century Synesius of Cyrene composed a letter to his brother,<sup>1</sup> a tragicomic tale of a shipwreck he had had the misfortune to experience while travelling homewards to Cyrenaica from the city of Alexandria. Synesius, a philosopher who wrote an elegant Attic Greek but composed his hymns to the 'One God, Creator of all' in good Doric, was a devoted friend of the celebrated female philosopher Hypatia of Alexandria with whom he had studied. He had travelled to Constantinople as a representative of his home province of Cyrenaica to the court of the young emperor Arcadius who in 395 had become sole ruler of the eastern half of the Roman Empire (now definitively and permanently divided between Latin West and Greek East). Returning to his estate in Cyrene, he looked forward to a quiet life of 'books and hunting', but was called like a true Roman gentleman to serve his city. However, in the late empire the only non-military institution that held any power locally was the church and Synesius' fellow-citizens accordingly elected him to the

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<sup>&</sup>lt;sup>1</sup> Epistle 5 in Opere di Sinesio di Cirene, edited by A. Garzya in 1989, 74–90. (All translations are mine unless otherwise noted.)

bishopric of Ptolemaïs. Despite his Christian wife, Synesius had many doctrinal and philosophical qualms about accepting the bishopric and only a sense of duty, along with generous concessions to his philosophical positions (and an agreement that allowed him to keep his wife and not put her away as other more properly ascetic bishops were forced to do) convinced him to accept. He spent the rest of his life as Kingsley's 'squire bishop'<sup>2</sup> defending his case against marauding, local tribesmen and incompetent, rapacious governors, and composing hymns in the same elegant Greek, but now with convenient references to the 'Son' as a concession to the faith of his flock. The date of his death is unknown but it is assumed that he died before 415 because his works show no awareness of the dreadful death of Hypatia in that year, viciously torn apart and burnt by a Christian mob.<sup>3</sup>

Synesius, standing as he does between the old world of Hellenic Neoplatonism and Roman civic order on the one hand, and the new Christian world on the other, between Augustine's two *civitates*, seems to personify the late Roman Empire itself as it transformed from pagan Antiquity to the Christian Middle Ages and as such Synesius has been the subject of fascinated study.<sup>4</sup> The captain and crew of Synesius' vessel, however, have received less note.

The boat in which Synesius had taken ship was only a small one with twelve hands and the captain and half the crew were Jews. Synesius expresses the usual Helleno-Roman prejudice of Jews as haters of Greeks; 'a graceless race and fully convinced of the piety of sending to Hades as many Greeks as possible'.<sup>5</sup> The captain, Amarantus, was heavily in debt and had sold all the spare gear, leaving only the one sail and a single anchor, and the crew were apparently all crippled in one way or another. Nevertheless he carried fifty passengers, including some Arab soldiers and about a dozen women; part of the deck was screened off with an old sail for their accommodation. Having left Alexandria, Amarantus tacked far out to seaward beyond sight of land much to Synesius' consternation who complained to the captain. The disgruntled Amarantus seems to have tried to explain basic navigation to Synesius but with little success. In the afternoon a gale blew up from the North and Amarantus tacked back towards land, much to the travellers' relief:

Now it so happened that this was the day on which the Jews make what they term the 'Preparation' *[paraskeuē*], and they reckon the night, together with the day following this, as a time during which it is not lawful to work with one's hands. They keep this day holy and apart from the others, and they pass it in rest from labour of all kinds. Our captain accordingly let go the rudder from his hands the moment he guessed that the sun's rays had left the earth, and throwing himself prostrate, 'Allowed to trample upon him what sailor so desired.'<sup>6</sup>

Synesius and the other travellers, seemingly not understanding Amarantus' action, believed he had given up in despair and implored him not to give up:

<sup>&</sup>lt;sup>2</sup> See the novel by Charles Kingsley, *Hypatia* (London: 1853).

<sup>&</sup>lt;sup>3</sup> Cf. Socrates Scholasticus, *Ecclesiastical History*, Book VI, Chapter 15.

<sup>&</sup>lt;sup>4</sup> J. Bregman, Synesius of Cyrene (Berkeley: University of California Press, 1982); C. Lacombrade, Synesios de Gyrène: Hellène et chrétien (Paris: Les Belles Lettres, 1951); H.-I Marrou, "Synesius of Cyrene and Alexandrian Neoplatonism" in A. Momigliano, ed., The Conflict of Paganism and Christianity in the Fourth Century (Oxford: Oxford University Press, 1962), 126–50; A. Cameron, J. Long, and L. Sherry, Barbarians and Politics at the Court of Areadius (Berkeley: University of California Press, 1993).

<sup>&</sup>lt;sup>5</sup> Opere de Sinesio, Epistle 5, lines 19-21, 74.

<sup>&</sup>lt;sup>6</sup> *Ibid.*, lines 74-80, 78.

... for if our skipper proved at such a moment to be an orthodox observer [nomodidaskalos] of the Mosaic law what was life worth in the future? Indeed we soon understood why he had abandoned the helm, for when we begged him to do his best to save the ship, he stolidly continued reading his roll [biblion]. Despairing of persuasion, we finally attempted force, and one staunch soldier - for many Arabs of the cavalry were of our company – one staunch soldier, I say, drew his sword and threatened to behead the fellow on the spot if he did not resume control of the vessel. But the Maccabaean in very deed was determined to persist in his observances. However, in the middle of the night he voluntarily returned to the helm. "For now," he said, "We are clearly in danger of death, and the law commands."<sup>7</sup>

In the morning they put in on a desert shore and, after waiting two days for the storm to abate, put out to sea again, only to be becalmed two days later. They then ran into another storm that broke the mast, and ran aground in a desolate spot, whence a local piloted them to a sheltered but almost equally deserted harbour. From this point we hear nothing more of Amarantus and his crew.

What sort of Jews were these? Synesius' account raises as many questions as it answers. From Amarantus' name and the Greek nicknames of his crew, and from the easy conversation with the travellers they are evidently Hellenized Jews, probably residents of Alexandria.<sup>8</sup> Clearly the ship set sail on the Friday and Amarantus would have known that he would be sailing on the Sabbath and yet he is evidently a pious Jew, dropping all work with the coming of the Sabbath. No doubt he had calculated on an easy passage that would not be beyond the capacities of the non-Jewish crew members, but interestingly Amarantus' Sabbath observation is not rigorously strict, it is tempered by an idea that can only be 'rabbinic', the principle of *piqquah nefes*,<sup>9</sup> that the Sabbath may be broken if there is even a doubt of danger to life. We can be sure that this had been voiced by Amarantus himself for it would be extremely unlikely that Synesius would be au fait with rabbinic reasoning, and (unfamiliar with the Scriptures as he might have been<sup>10</sup>) would have been more likely to reinforce his low opinion of the Jew and, ascribing the Gospel implacability of the Pharisees against breaking the Sabbath,<sup>11</sup> condemn Amarantus' piety with a self-serving breaking of the Sabbath. But what was the nature of the roll that Amarantus was reading? And in what language was it written? Was the Hellenized Amarantus reading Hebrew or Greek? It is suggestive that Synesius does not say what Amarantus was reading. Is this because he himself could not read it? What was the meaning of his prostration? Was this in prayer or simply reclining to read? Whichever it was, it evidently was not standing for the Amida prayer. Or maybe Synesius has simply not observed this. The whole scene is fraught with so many questions and yet Amarantus' is the last (relatively) clear portrait we get of a Jew in the Western Diaspora for almost half a millennium. What became of the Jews like Amarantus in this time? Is there any connection and continuity between Amarantus in the fifth century and Rashi in the eleventh century?

<sup>&</sup>lt;sup>7</sup> *Ibid.*, lines 91–103, 80.

<sup>&</sup>lt;sup>8</sup> Synesius does refer to Amarantus as 'Syrian', but this is probably no more than a reference to his ultimately non-Greek ethnic origin. Judging from Synesius' description of the ship and crew, it is unlikely that Amarantus could have sailed all the way from the port of Antioch.

<sup>&</sup>lt;sup>9</sup> Mekhilta Exodus 31:12; Babylonian Talmud Yom. 85b.

<sup>&</sup>lt;sup>10</sup> In his homilies Synesius quotes the Septuagint perfectly, whereas he frequently misquotes Plato. He doubtless had to check the former but thought himself an expert with the latter.

<sup>&</sup>lt;sup>11</sup> Cf. Mk. 3:6; Mt. 12:14: Lk. 6:11.

#### 2. JEWS IN THE 'DARK AGES'; A RADICALLY SPLIT DIASPORA?

The period between the 'fall of Rome' and the later Middle Ages was once characterised as the 'Dark Ages', a period of cultural decline and societal collapse with a lack of contemporary written history, demographic decline, limited building activity and material cultural achievements in general. Nevertheless this half millennium saw classical, pagan Rome centred on the Mediterranean replaced by medieval Catholic Europe centred on the North-West and opposed to a hostile and alien 'East' - whether it be the East of Orthodox Byzantium or the Islamic East (that rather curiously lay mainly to the South in Spain and Africa). The image of invading hordes of barbarians, pillaging their way across Europe, driving out the native population, destroying the glories of Antiquity remains a potent one. Indeed the name of one German tribe, the Vandals, has become synonymous with such wholesale destruction. However in the last couple of decades there has been a radical reevaluation of Late Antiquity and the early Middle Ages and the fifth to tenth centuries are now recognised not only as a transitional period in European history but one of continuity.<sup>12</sup> More sophisticated scientific research in archaeology and population genetics have contributed to a new understanding of the period. It has been recognised that ancient cities like Rome did not necessarily decline and others, like the frontier towns of Cologne and Regensburg, continued to be occupied and local trades and crafts flourished, albeit on a smaller and more local scale.<sup>13</sup>

The fifth to tenth centuries were also a crucial period in Jewish history for this is the period that saw the establishment of Rabbinic Judaism. But this receives scant, if any, attention in the generalist histories of the period. Roger Collins, for example, in his *Early Medieval Europe* indexes 'Jews' only three times; once in an aside to a comment on Christian ideas of truth, the other two references being to Jewish 'complicity' in the Arab invasions of Palestine and Spain respectively. Histories that have taken the later, predominantly urban and mercantile, medieval Jewish communities as paradigmatic and that have assumed that most Jewish communities outside the longer established communities in Rome and South Italy were newcomers have naturally concluded that the few Jews who were in the West in the late Roman Empire retreated to the more urban south in the face of the barbarian inroads until, reinvigorated and augmented by immigrants from the south and east, they once more began to colonise western Europe in the ninth and tenth centuries.<sup>14</sup>

With the ninth century we do in fact see an amazing efflorescence of Jewish culture in Europe. In Spain there is the 'Golden Age' of Jewish learning largely initiated by Chisdai ibn Shaprut (882–942), councillor to Caliph Abd ar-Raḥman III. In Germany Gershom ben Yehuda (c. 960–1040?) "the light of the exile" whom Rashi credited with being the teacher

<sup>&</sup>lt;sup>12</sup> For the new revisionist history of the Early Middle Ages see R. Collins, *Early Medieval Europe 300–1000* (Basingstoke: Palgrave Macmillan, 19992); C. Wickham, *Framing the Early Middle Ages* (Oxford: Oxford University Press, 2005); T. Noble, ed., *From Roman Provinces to Medieval Kingdoms* (London: Routledge, 2006); G. Halsall, *Barbarian Migrations and the Roman West 376–568* (Cambridge: Cambridge Medieval Textbooks, 2007).

<sup>&</sup>lt;sup>13</sup> For the continuity of urban life see B. Hårdh and L. Larsson, eds., *Central Places in the Migration and Merovingian Periods* (Lund: Department of Archaeology and Ancient History, 2002).

<sup>&</sup>lt;sup>14</sup> A notable exception to the neglect of Jewish history in the period is the excellent collection of papers in the two volumes of *Gli Ebrei nell'Alto Medioevo* (1980) – an exception that somewhat proves the rule. However even this collection deals in the main with the better known communities of Italy and the wider Mediterranean region and hardly touches on the provinces of Spain, Gaul and the Germanies.

of all Ashkenaz, established his *yeshiva* in Mainz. In Italy the "*Chronicle of Ahimaaz*" testifies to the work of liturgical poets and *halakhists* in the ninth century. And in the South of France the letters of Bishop Agobard of Lyons (779–840) reveal that the Jews there had knowledge of *heikhalot* mystical works such as the *Otiot de R. Aqivah* ('Alphabet of R. Akivah') and the *Ši`ur Qomah* ('Divine Dimensions'). This period also sees the beginning of a dramatic demographic shift in the world Jewish population. Within a few centuries Europe, particularly Spain and Germany will have surpassed the long-established centres in the Middle East, both intellectually and demographically. Is it really possible to explain this all by the movement into Europe of a surely limited number of merchants? Could Jews have emigrated to the (particularly inhospitable) Christian north in sufficient numbers to account for all this?

The assumption of decline also underlies the work of Jewish historians. Graetz could not be plainer; in his brief chapter on the Jews in Europe in the early Middle Ages he states that 'The Jews in Europe had no history in the proper sense of the word . . . there are only chronicles of martyrdom at the hands of the victorious Church monotonously repeated but with little variation in all countries.'<sup>15</sup> Salo Wittmayer Baron writing nearly a century later is equally dismal in his assessment of the period;

Withdrawing behind the rampart of talmudic law and religion, the Jewish people of the sixth century continued to pursue its historic career quietly, almost inarticulately. After the brilliant light – and shadows – emerging from the talmudic letters in both Palestine and Babylon, Jewish life was now suddenly enveloped in a deep mist. . . .When the downfall finally came, the Jews recoiled to await in their sheltered corner those better times which, they still confidently hoped, were soon to come.<sup>16</sup>

Cecil Roth in the introduction to the eleventh volume of the projected *World History of the Jewish People* acknowledged the problems in arguing *e silentio* on the extent and character of the Jewish population of Europe prior to the ninth century and concedes that the example of Rashi, 'or even of Rabbenu Gershom of Mainz two generations before him, seem to suggest a lengthy intellectual genealogy in this same environment [Dark Age Europe] – but we have only slender evidence for its existence.<sup>17</sup> More recently still, Robert Chazan introducing his study of medieval Jewry in the eleventh to fifteenth centuries describes 'the small Jewish settlements in western Christendom, huddled along the northern shores of the Mediterranean Sea, in Italy, southern France, and northern Spain; [a putative observer] might not even bothered to mention them, for they would hardly seem worthy of serious attention.<sup>18</sup> Presumably, as Chazan begins his study in 1000 CE, he himself would concur with his observer's estimation. Indeed, speaking of the Jewries of Northern Europe he says:

All the Jewries of northern Europe were new, much newer than the Jewish communities of the south. The Jewries of northern Europe did not have roots in the Roman world; . . . Northern-European Jewish life was a *tabula rasa*, a blank slate to be shaped by the interaction of Christian majority and Jewish immigrant minority during our period.<sup>19</sup>

<sup>&</sup>lt;sup>15</sup> H. Graetz, *History of the Jews*, vol. 3 (Philadelphia: Jewish Publication Society of America, 1895), 24.

<sup>&</sup>lt;sup>16</sup> S.W. Baron, A Social and Religious History of the Jews, vol. 3 (New York: Columbia University Press, 1957), 5-6.

<sup>&</sup>lt;sup>17</sup> C. Roth, ed., *The World History of the Jewish People*, vol. 9: The Dark Ages: Jews in Christian Europe 711–1096, rev. ed. I.H. Levine (London: W. H. Allen, 1966) 7.

<sup>&</sup>lt;sup>18</sup> R. Chazan, *The Jews of Medieval Western Christendom*, 1000–1500 (Cambridge: Cambridge University Press, 2006), 1.

<sup>&</sup>lt;sup>19</sup> *Ibid.*, 129.

Two Israeli academics have recently taken this thesis even further. In their two-part paper "A Split Jewish Diaspora: Its Dramatic Consequences",<sup>20</sup> Arye Edrei, a lawyer, and Doron Mendels, a historian of ancient Jewish 'nationalism',<sup>21</sup> maintain that there existed a fatal language divide between the western (Roman) and eastern (Persian) Jewish Diasporas. This divide led to the western Greek (*siv*) speaking Jews losing touch with both the oral *Halakhah* and the rabbis. According to Edrei and Mendels, the rabbis paid a high price for maintaining the *Jewish law* in an oral form, because, as it was not translated into Greek, the West did not develop a *Halakhah* and contributed nothing to the oral law in the East. Isolated from the rabbinic network western Jews were a receptive base for Christianity. Hence Jews in the west either converted to Christianity or remained 'biblical Jews' until the arrival of the 'Rabbinic revolution' in the ninth century.

Such an assertion, (and their papers rarely amount to more than that), could only really be made by one, to quote Peter Brown, 'green in matters Merovingian,'<sup>22</sup> – and one might add Visigothic and Late Roman. Edrei and Mendels base their argument largely on the absence of the Diaspora from the text of the Mishnah and Palestinian and Babylonian Talmuds and whilst this is a remarkable characteristic of the rabbinic texts it tells us more about the rabbis than it does about the western Diaspora.

Despite the fact that the evidence is pretty meagre there is, however, sufficient in the archeological, linguistic, and toponymic traces and in what sources survive to suggest a very different picture in the West. We are, as yet, largely ignorant of the processes that led from 'nomodidaskalos' Amarantus to Rabbi Shlomo Yitzhaki (Rashi), but I suggest that a significant native Jewish community remained dispersed throughout the West which I will name 'Romaniote.' The term 'Romaniote' has been widely used for the native Jewish communities of Greece, prior to the arrival of the Sephardic Jews from Spain in the 15th century, but I wish to extend its use here to those communities in the area of the Western Roman Empire that pre-date the later divisions into Ashkenaz, Tzarfat, Canaan (Slavic eastern Europe), etc. and that underlay the later Islamic period communities of Sepharad. Given the already existent linguistic divide between Latin west and Greek east, exacerbated further by cultural and theological divisions in the Middle Ages, the Jewish communities in West and East can be characterised as 'Greco-Romaniote' and 'Latino-Romaniote' respectively.

#### 3. JEWISH COMMUNITIES IN THE WEST

It is pretty vain to attempt to gauge the total number of Jews in the world in the fifth to eighth centuries. Estimates have ranged between two<sup>23</sup> and five million.<sup>24</sup> Naturally the main concentration of the Jewish population was in the east, particularly in northern Palestine

<sup>&</sup>lt;sup>20</sup> A. Edrei, and D. Mendels, "A Split Jewish Diaspora: Its Dramatic Consequences II", *Journal for the Study of the Pseudepigrapha* 17:3 (2008), 163–87; A. Edrei, and D. Mendels, "A Split Jewish Diaspora: Its Dramatic Consequences", *Journal for the Study of the Pseudepigrapha* 16:2 (2007), 91–137.

<sup>&</sup>lt;sup>21</sup> D. Mendels, *The Rise and Fall of Jewish Nationalism* (The Anchor Bible Reference Library; New York: Doubleday, 1996).

<sup>&</sup>lt;sup>22</sup> P. Brown, Society and the Holy in Late Antiquity (Berkeley: University of California Press, 1982).

<sup>&</sup>lt;sup>23</sup> B. McGing, "Population and Proselytism: How Many Jews Were There in the Ancient World?" in J.R. Bartlett, ed., *Jews in the Hellenistic and Roman Cities* (London: Routledge, 2002), 88–106.

<sup>&</sup>lt;sup>24</sup> Baron, Social and Religious History of the Jews, vol. I (1956), 167-71, 369-72.

and Syria, and beyond the empire in Mesopotamia, but Jewish settlements were scattered throughout the Empire. The Sibylline Oracle had declared to the Jews in the second century pasa de gaia sethen plērēs kai pasa thalassa ('the whole world is full of you, and also the seas').<sup>25</sup> Jerome, commenting on Isaiah 66:20, stated that the Jews believed that at the time of the Messiah, Jews of senatorial rank would come from Britain, Spain and Gaul, 'qui ... senatoriae fuerint dignitatis et locum principum obtinuerient, de Britannis, Hispanis Gallisque extremis hominum Morinis, et ubi bicornis finitur Rhenus, in carrucis veniant' ('... who would be of senatorial dignity and have obtained high places will come in carriages from Britain, Spain and the Gauls, from the more distant tribe of the Morini (in present day Belgium; quoting Vergil) and from where the Rhine terminates its double horns').<sup>26</sup> Even later in the seventh century Cassiodorus commented on Psalm 70: 'De Judaeis hoc dictum testatur eorum facta dispersio, ut pene per totum mundum divisi dispersique declarentur' ('Of the Jews this saying is witnessed of their dispersion, that they are said to be divided and dispersed through almost all the world.').<sup>27</sup> Evidently it was a fact for Romans as informed as Cassiodorus and Jerome that Jews were present throughout the Empire, in particular in the west. Jewish legend also told of the coming of Jews to the west. After the destruction of the Temple, according to one version of a Jewish legend, many Jews were placed on three ships by Vespasian, without captain or crew and the wind drove them ashore; at Lyons (sie), Arles, and Bordeaux. The exiles left their ships and lived peacefully on land given them by prefects of the respective towns. However, a new ruler arose who subjected them to many hardships. During this period the Jews recited the prayer vehu rahum (והוא רחום) composed by two brothers, Joseph and Benjamin, and their uncle Samuel. Delivered from their tribulations by the prayer, they sent it to their brethren throughout the world, asking that it be offered every Monday and Thursday.<sup>28</sup> A second version of the legend recounts that the Jews landed in Italy, Spain and Africa. There seems to be here some memory of deportations of Jews, probably as slaves, to the west after the destruction of the Temple. Ahimaaz ben Paltiel, author of the Chronicle of Ahimaaz, states that his family was among the captives brought to Italy by Titus after the destruction of the Temple,<sup>29</sup> and in *Midrash Leviticus Rabbah*, Rabbi Meïr who lived in the second century, refers to Spain and Gaul as the land of imprisonment.<sup>30</sup> Archaeological evidence clusters mainly around the Mediterranean littoral, though there are isolated finds on the Rhine and Danube. However, combined with references to Jewish communities in the early law codes, in Gregory of Tours and the acts of church synods, we see that there was a fairly wide distribution of Jewish communities in the period in Western Europe (see fig. 1).

By Late Antiquity Jewish communities were common throughout the western Mediterranean. Some of these were old and well established, others appear to have emerged only after the third and fourth centuries CE. These communities were not confined to the large towns, such as Naples, Rome, Carthage or Narbonne. There were also well-organised communities in smaller centres and villages and various islands; there is abundant evidence

<sup>&</sup>lt;sup>25</sup> A. Rzach, ed., Oracula Sibyllina (Vienna: F. Tempsky, 1891), III, 27.

<sup>&</sup>lt;sup>26</sup> Jerome, In Isaiam, 66:20, PL 24, 672.

<sup>&</sup>lt;sup>27</sup> Cassiodorus, Expositio in Psalterium, Ps 58 (PL LXX, 415).

<sup>&</sup>lt;sup>28</sup> S. Katz, *The Jews in the Visigothic and Frankish Kingdoms of Spain and Gaul* (Cambridge MA: The Mediaeval Academy of America, 1937), 6.

<sup>&</sup>lt;sup>29</sup> M. Salzman, The Chronicle of Ahimaaz (New York: Columbia University Oriental Studies, 1966).

<sup>&</sup>lt;sup>30</sup> J. Israelstam and J. J. Slotki, Midrash Rabbah: Leviticus, vol. 4 (London: Soncino, 1939, 3rd ed. 1961), 69.

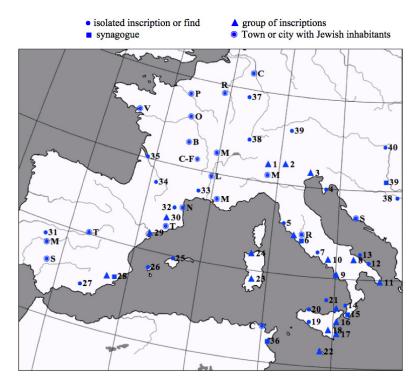


Fig. 1. Jewish Communities in the Western Diaspora 4th-8th Century

ITALY 35 Bordeaux SICILY 28 Elche (3) M Milan 29 Tortosa (2) 16 Catania (6) R Rome 17 Syracuse (3) 30 Tarragona (3) AFRICA 1 Milan (2) 18 Sofiana (3) 31 Villamesías C Carthage 2 Brescia (2) 19 Agrigento 36 Hammam Lif PROVENCE 3 Concordia, 20 Termini Imerese (Naro) M Marseille Aquileia, Grado (3) 21 Lipari N Narbonne 4 Pula 22 Malta (5) GERMANY AND 32 Narbonne RAETIA 5 Civitavecchia SARDINIA 33 Avignon 6 Ostia, Porto (6) C Cologne 23 Sant' Antioco, 7 Fondi GAUL 37 Trier Cagliari (6) 38 Kaiseraugst 8 Venosa **B** Bourges 24 Porto Torres (2) 9 Pompeii, C-F Clermont-39 Augsburg SPAIN Herculaneum (4) Ferrrand M Mérida 10 Naples, Capua, L Lyons **ILLYRICUM** Brusciano (15) S Seville M Mâcon S Split 11 Taranto (16) T Toledo O Orléans 40 Esztergom 12 Otranto, Oria T Tarragona P Paris 41 Osijek 13 Bari 25 Majorca **R** Reims 42 Sirmium 14 Reggio 26 Ibiza V Vannes 15 Bova Marina 27 Adra 34 Auch

in Sicily and Sardinia as well as Malta and Lipari and the Balearics for a strong Jewish presence.<sup>31</sup>

The archaeological and epigraphic evidence suggests that during Late Antiquity the Jewish community began to flourish in an unprecedented way. The way in which new archaeological discoveries help transform the understanding of the natures of Jewish settlement is illustrated by the recent discoveries at Boya Marina, not far from Reggio di Calabria in the extreme south of Italy.32 For most of its history Bova was an inconspicuous little town. In Late Antiquity, however, it began to prosper and Jews apparently shared in the settlement's sudden rise to prominence. In the course of the fourth century, the Jewish community of Bova erected a synagogue, of which some walls and an elegant mosaic floor remain. The building was remodeled several times, but maintained its original function until well into the sixth century. It is not known when or why the building fell into disuse, but whatever the reason, it is clear that here, as in other parts, Jews were able and willing to settle in areas where they had been absent previously. The abundance of Jewish archaeological and epigraphic evidence has been interpreted as indicating a growth in the community due to Jewish proselvtism,<sup>33</sup> but we must be careful of such easy interpretations of the evidence as new evidence on the demography of the Jewish community of Rome strongly suggests that population movement rather than growth better explains the data.<sup>34</sup>

The Jewish community of Rome was among the oldest Jewish communities in Italy and throughout Antiquity and the Middle Ages remained the most numerous one. Practically all we know about it in Late Antiquity derives from a number of Jewish catacombs and hypogaea located outside the city. These provide a wealth of material evidence of the Jewish community in the period from the late second to the early fifth centuries CE. Greek and Latin dominate the epigraphic record, and it is the type of *koiné* Greek and vulgar Latin that is encountered in non-Jewish inscriptions dating to the same general period. The onomastic evidence similarly points to a high degree of integration of the Jewish community into the surrounding society. Although names of near-eastern derivation do occur, Greek and Latin names predominate. Nevertheless the inscriptions frequently contain evidence of a strong allegiance to Judaism. Many carry renderings of Jewish symbols, in particular the menorah, but such allegiance could also be expressed in words; there is a significant portion of the inscriptions which carry words (including neologisms) referring to the person's position or role within the Jewish community. The evidence from Rome seemingly shows a distinct but integrated community, but if we turn to the evidence from the slightly later catacombs in Venosa in Basilicata we see a very different picture.

It is not certain when the community in Venosa was founded, but it is certain that, once it was created, Jews continued to live in Venosa for several centuries. The evidence indicates that even after the Jewish catacombs had gone out of use, Jews continued to bury their dead

<sup>&</sup>lt;sup>31</sup> See the epigraphic evidence in D. Noy, *Jewish Inscriptions in Western Europe*: vol. 1, *Italy (excluding Rome), Spain and Gaul*; vol. 2, *The City of Rome* (Cambridge: Cambridge University Press, 1993, 1995).

<sup>&</sup>lt;sup>32</sup> L. Costamagna, "La sinagoga di Bova Marina nel quadro degli inediamenti tardoantichi della costa Ionica meridionale della Calabria", *MEFR* 103 (1991), 611–30.

<sup>&</sup>lt;sup>33</sup> L.H. Feldman, *Jew and Gentile in the Ancient World* (Princeton: Princeton University Press, 1993).

<sup>&</sup>lt;sup>34</sup> See the work of L.V. Rutgers, *The Jews in Late Ancient Rome* (Leiden: E.J. Brill, 1995); and *The Hidden Heritage of Diaspora Judaism* (Leuven: Uitgeverij Peeters, 1998).

on top of the hill inside which their ancestors had previously entombed their dead.<sup>35</sup> At Venosa, however, there is a move from Greek to Latin inscriptions; indeed the number of Latin inscriptions increases deeper inside the catacombs in areas dateable from the fifth to sixth centuries CE. It is also notable that one inscription refers to *maiores civitatis*, that is to Jews as public officials who served not only their own community but the entire town in which they lived.<sup>36</sup>

Further north and west and away from Italy we must rely on the Christian chronicles and law codes. This material has long been admirably and comprehensively treated by both Solomon Katz and Bernhard Blumenkranz.<sup>37</sup> What is most surprising in this material is the degree of interaction between Jews and Gentiles that it reveals. The law codes and church canons are all very keen to keep separate the two communities to an extent that can only be explained if the behaviour being regulated was actually fairly common, whether it be intermarriage, dining together, gentiles attending Jewish sermons (in the vernacular), or involvement in civil and military affairs. What is less surprising, but more relevant to our argument, is the evidence for Jewish involvement in the long distance trade in luxury items and slaves, as this provides evidence that Jews in the west would have had the means to maintain cultural contacts with the Land of Israel. From the fifth century more and more Jews were attracted into commercial pursuits, largely from necessity as other activities (the professions and public office) were being closed to them.

That Jewish merchants often went to the east for trade is shown by an amusing anecdote related by Notker Balbulus. Charlemagne ordered a certain Jewish merchant, who often went to Palestine and brought back with him rare and costly articles, to deceive the vainglorious bishop of Mainz. The merchant sold the bishop a common mouse under the pretence that it was a very unusual and precious animal from Judaea.<sup>38</sup> These Jewish commercial contacts with the Middle East maintained throughout the period provided the means by which Hebrew literature and learning could reach the distant communities of the west.

The law codes also reveal that Jews were much more involved in agriculture than was to be the case in the later Middle Ages. For example, a decree of the Council of Elvira (306) shows that the Jews of Spain were accustomed to offer prayers for their crops and for those of their Christian neighbours, a practice the council forbade.<sup>39</sup> Recent work by Norman Golb,<sup>40</sup> however, has indicated more clearly how extensive this involvement in agriculture might have been in the west. Whilst researching the early history of the medieval Jewish community of Rouen, Golb turned his attention to local toponymics that clearly referred to Jews in the Norman countryside. Golb found numerous '*Rues des Juifs*' that indicated relatively heavy Jewish settlement in the region in early centuries. No documentation exists to show precisely when these settlements may have occurred and studies of Norman history

<sup>&</sup>lt;sup>35</sup> There are many medieval Jewish gravestones datable to the years 808-48 incorporated into the walls of the nearby abbey church of the Holy Trinity.

<sup>&</sup>lt;sup>36</sup> JIWE I, 86 vide infra, 10.

<sup>&</sup>lt;sup>37</sup> Katz, *The Jews in the Visigothic and Frankish Kingdoms of Spain and Gaul* (Cambridge MA: The Mcdiaeval Academy of America, 1937); B. Blumenkranz, *Juifs et chrétiens dans le monde occidental*, 430–1096 (Paris: Mouton et Co, 1960).

<sup>&</sup>lt;sup>38</sup> G. Meyer von Knonau, Monachus Sangallensis (Notkerus Balbulus) de Carolo Magno (St Gall: Fehr'sche Buchhandlung, 1920), I, 16.

<sup>&</sup>lt;sup>39</sup> A. Linder, The Jews in the Legal Sources of the Early Middle Ages (Detroit: Wayne State University Press, 1997), 483.

<sup>&</sup>lt;sup>40</sup> N. Golb, The *fews in Medieval Normandy* (Cambridge: Cambridge University Press, 1998).

had assumed that it betokens only the presence of small numbers of Jewish merchants or moneylenders in those streets during the Middle Ages. Golb's evidence, however, argues against this assumption. If the Jews formed only a late accretion to the original population, the 'Streets of the Jews' would not be so centrally located within the towns as they often are, notably in Rouen and Rheims. Similarly the presence of so significant a number of such streets in the countryside indicates land-cultivating settlements granted agricultural estates in the provinces in the heyday of Roman colonisation. The use of the designation "Rue des Juifs" not only for a street but also for a hamlet, such as is found in Quincampoix, Préaux and Norrey-en-Auge is rendered understandable on the basis of the older Latin meaning of vicus (> Fr. voie) as a place of settlement. Similarly, such designations of hamlets as "Les Juifs," "La Juiverie," and "Hamel (or Hameau) aux Juifs," also appear to be vestiges of the Latin expression Vicus Judaeorum. A further indication that these many 'Streets of the Jews' had their origin not in the Middle Ages but in a far earlier period is the fact that the Jews of Normandy are never mentioned in the sources as newcomers. The evidence from Golb's chosen region of Normandy with Rothomagus (Rouen) as its capital is doubtless a paradigm of the situation elsewhere lying as yet unexamined in the topographic evidence.

#### 4. HEBREW CULTURE IN THE WEST

#### a. Hebrew Language

On 4 July 585 Guntram, King of the Franks in Neustria (north-west France), visited Orléans on his way to a meeting with his newly baptised nephew Lothar. On his arrival he was greeted by the populace with the ritual *acclamationes* usual for a visiting Roman *imperator*. Gregory of Tours recounts;

A vast crowd of citizens came out to meet him, carrying flags and banners, and singing songs in his praise. The speech of the Syrians contrasted sharply with that of those using Latin and again with that of the Jews, as they each sang his praises in their own tongue... The Jews played a full part in those acclamations. "Let all peoples reverence you and bow the knee before you and submit to your rule!" they kept shouting.<sup>41</sup>

The Jewish community of Orléans was evidently of some importance in the city and wellestablished for they hoped that Guntram would offer them restitution for a synagogue in the city that had been destroyed some time previously by Christians. In this they were to be disappointed.<sup>42</sup> However, the incident does indicate three distinctive ethnic groups, with three distinct languages; the undoubtedly Greek-speaking Byzantine Syrian merchants, the

<sup>&</sup>lt;sup>41</sup> Processitque in obviam eius inmensa populi turba cum signis adque vexillis canentes laudes. Et hine lingua Syrorum, hine Latinorum, hine etiam ipsorum Iudaeorum in diversis laudibus variae concrepabat, dicens: 'Vivat rex, regnumque eius in populis annis innumeris dilatetur'. Iudaei vero, qui in his laudibus videbantur esse participes, dicebant: 'Omnes gentes te adorent tibique genu flectant adque tibi sint subditi.' Gregory of Tours, *Historia Francorum*, VIII, 1. MGH I, 326.

<sup>&</sup>lt;sup>42</sup> That the Jews did not place too much faith in Guntram must be deduced from the reference in their acclamation to *Esther* 3:2; 'and all the servants of the King who were in the King's gate bowed the knee and reverenced Haman' (Vulgate: *Cunctique servi regis, qui in foribus palatii versabantur, flectebant genua, et adorabant Aman*), a reference Gregory seems to have missed.

(Vulgar?) Latin-speaking Gallo-Romans, and the Jews using 'lingua Judaeorum', i.e. Hebrew. This is a rare reference to the use of Hebrew by Jews in Western Europe in the period, but we can also find evidence that the use of Hebrew was current and widespread from the linguistic and epigraphic record.

Table 1 charts the use of Latin, Greek and Hebrew in Jewish epigraphy of the fourth to seventh centuries. If we compare this with the Jewish epigraphic record from the Roman catacombs, which is overwhelmingly Greek (*vide supra*), we can see two distinct trends. Firstly, there is an increase in the use of Latin. 38% of the total epigraphic record uses Latin as opposed to 46% with Greek; and this even with the large number of Greek inscriptions from the Venosa catacombs. Secondly, there is a dramatic increase in the use of Hebrew; over 50% of the inscriptions have some Hebrew. By the eighth century all-Hebrew inscriptions have become the norm.<sup>43</sup>

	Greek	Greek and	Hebrew	Hebrew	Latin	Trilingual
	only	Hebrew	only	and Latin	only	
Gaul	0	0	0	2	2	0
N. Italy	3	1	2	10	7	2
S. Italy and Sicily	13	3	4	12	2	0
Venosa	31	12	10	9	10	0
Sardinia and Malta	6	0	4	4	0	0
Spain	3	1	0	1	1	2
Western Europe	56	17	20	38	22	4
% main language	46%		13%	38%		3%
% with Hebrew	35%	48%			14%	3%

Table 1. Languages Used in Jewish Epigraphy, 4th–7th Centuries (compiled from JIWE 1 and 2).

In many cases the Hebrew is nothing more than the simple formula ŠLWM 'L ÝŚR'L (שלים) ישלים 'peace be on Israel'). Nevertheless it is noteworthy that in the majority of cases it is grammatically and orthographically correct. In contrast the Latin shows an increasing tendency to Vulgar Latin. The early sixth century epitaph<sup>44</sup> from the catacombs at Venosa referred to earlier illustrates this:

hic ciscued Faustina | filia Faustini pat(ris), annorum | quattuordeci m\nsurum | quinque, que fuet unica paren | turum, quei dixerunt tr\nus | duo apostuli et duo rebbites et | satis grandem dolurem fecet pa | rentebus et lagremas cibita | ti. |

> משכה של פווסטינה נוח נפש שלום

que fuet pronepus Faustini | pat(ris) et nepus Biti et Acelli, | qui fuerunt maiores cibi | tatis.45

She was the great-granddaughter of Faustinus the father, granddaughter of Vitus and Asellus who were leaders of the community.'

<sup>&</sup>lt;sup>43</sup> JIWE I, 196, 198–200.

<sup>&</sup>lt;sup>44</sup> JIWE I, 86, 114.

<sup>&</sup>lt;sup>45</sup> <sup>4</sup>Here rests Faustina, daughter of Faustinus the father, aged fourteen years five months. She was her parents' only child. Two apostles and two rabbis spoke the dirges for her, and she made great enough grief for her parents and tears for the community.

Resting place of Faustina. May her soul rest. Peace.

The Latin shows the Vulgar Latin confusion of  $\check{o}$  and  $\check{u}$  (dolurem, nepus for dolorem, nepos), and  $\check{e}$  and  $\check{i}$  fuet, lagremas, fecet for fuit, lagrimas, fecit); Greek letters ( $\eta$  and probably a lunate sigma in Acelli for Asellus); the substitution of the second declension plural in parentorum for third declension parentum; 'c' for 'qu' in ciscued for quiesquit and the confusion of 'b' and 'v' in cibitati (civitas). The Latin is not learned and this is indicative of the way the Jewish community was being excluded from Latin learning despite the fact that this is the epitaph of a member of a notable local family. Clearly the Jews of Venosa were integrated enough to be speaking the vernacular but the community was also, as we see from its greater use of Hebrew in the inscriptions, increasingly falling back on its Jewish identity, learning and culture represented by Hebrew.

David Blondheim in his Les parlers judéo-romans et la Vetus Latina published in 1925 claimed that 'Jewish Romance vernaculars' were descendants of a 'Judeo-Latin' specific to the Jewish communities that evolved parallel to Vulgar Latin. This theory has now been largely rejected in favour of the idea that Jews shared the vernaculars of the surrounding communities. Umberto Cassuto, however, whilst rejecting Blondheim's theory, did postulate a common Jewish *koiné* (at least for Judeo-Italian).<sup>46</sup> What is clear is that the Judeo-Romance vernaculars had a lexical register for specifically Jewish items or practices. This can be observed in the very early Romance borrowings into Yiddish: Yid. orn < orāre 'pray', bentshn < benedicere, 'to say the blessing', leven < legere 'to read the Torah', shul < schola 'synagogue', letshen < tocāre 'to blow the shofar', tsholnt < calentem (?) 'Sabbath stew' (cf. Old French chalt 'warm'). Similarly we have the Latin names Shneyer < Senior(em) 'Elder', Fayvl < Vitalis, Fayvish < Vivus (both clearly calques for Hebrew Hayyim). We also have Romance versions of the names of the more important Rhenish cities preserved in medieval Jewish documents; ŠPYR', שפירא (Speyer, Late Latin Spira), GRMYYS', גרמייסא (Worms < Gallo-Roman \*Gormaico < Late Latin Vormatia),<sup>47</sup> TRBRS, טרברס (Trier, < \*Treveres, L. Augusta Treverorum), MGNZ', מגנצא (Mainz, < \*Magençə (cf. French Mayence) < Moguntiacum), QWLWNI', קולוניא (Cologne < L. Colonia). These borrowings into Yiddish reflect early developments in Gallo-Romance and must have been taken into proto-Yiddish early in the formation of Ashkenaz in the area of Lotharingia in the eighth to ninth centuries.<sup>48</sup>

One lexical item in particular, common to all the Jewish languages of Europe, points to a distinct common 'Romaniote' substrate. This is the verb that appears as *miauder*, *meltare*, *meltare*, *meltare*, *tet alia*). These local forms all evolve ultimately from the Greek verb *meletan*, 'to meditate' used in the Septuagint as the translation of the Hebrew root HGH (העה). From its use in the Bible the word came to mean 'study' and this meaning was attached to the cognate Late Latin borrowing from Greek, *meletare*. This verb came to be used by Jews to mean specifically

<sup>&</sup>lt;sup>46</sup> U. Cassuto, "Un'antichissima elegia in dialetto giudeo-italiano", Archivio glottologico italiano 22–3 (1929), 349–408.

<sup>&</sup>lt;sup>47</sup> Cf. French guerre < Old High German werra.

<sup>&</sup>lt;sup>48</sup> M. Weinreich, *History of the Yiddish Language* (New York: YIVO Institute for Jewish Research, 1980), 328–47. Weinreich attempts to differentiate influences from 'Western Lo`ez' (Gallo-Romance) and 'Southern Lo`ez' (Italo-Romance) as due to ninth- to tenth-century immigrants from France (Tzarfat) and Italy respectively. He does not seem to consider that the Romance forms with /č/ instead of /ç/ may be derived from an earlier Rhaeto-Romance substrate in the area that is now Switzerland. Rhaeto-Romance languages exist today in Romansch, Ladin and Friulian but historically extended much further north.

'study of the Torah' and was consequently used by Jews in preference to the verb *meditari*, the Latin word used by Jerome in the Vulgate to translate הגה.<sup>49</sup>

The various traditional pronunciations of 'whole Hebrew' (i.e. the written Hebrew text as opposed to Hebrew words taken over as loan-words into the vernacular) may also tell us something about the influences on Romaniote Jews. The pronunciation of Hebrew was assimilated to the pronunciation of the surrounding language.<sup>50</sup> Thus only in Yemen all the phonemic distinctions of Hebrew are maintained: 1 = /w/; the emphatics remain /s./,  $t_{1}, q_{1}$ ; as do the gutturals  $t_{1}, t_{1}, h_{1}$  as all of these sounds appear in Classical Arabic. However, the double realisation of the 'BeGaDKePaT' (בגדכפת) letters is maintained with  $\frac{b}{\sqrt{y}}$ ,  $\frac{d}{\sqrt{\lambda}}$ ,  $\frac{k}{\sqrt{\chi}}$ ,  $\frac{p}{\sqrt{f}}$ , and  $\frac{t}{\sqrt{\theta}}$ , but the voiced velar stop  $\frac{g}{\sqrt{g}}$ does not appear in Classical Arabic where it is replaced by /dz/ and the realisation of z is thus  $/d\tilde{z}/\sim/\gamma/$ . Likewise in Europe the emphatics and the gutturals are assimilated to the sounds available in the dominant language; the emphatics  $/s_{/}, /t_{/}, /q_{/}$ , and pharyngeal /h/ become /s/, /t/, /k/, and / $\chi$ / respectively; the pharyngeal /'/ is assimilated to the glottal stop /'/ (or becomes  $/\eta$ / in Italo-Hebrew). In the Romance-speaking areas where there is no /\$/, /\$/ and /s/ fall together as /s/. In all areas 1 becomes /v/. Whilst most of these changes are shared by all the Jewish communities, there is a notable difference in the realisation of *tav raphe*  $\bar{\mathbf{n}}$ . In Yemeni Hebrew this is preserved as  $/\theta$  as, presumably, it was in Greco-Romaniote, however in Italo-Hebrew it was voiced to /ð/ (cf. Italian carità < \*caritað < \*caritad < Latin carita (em)) and in both Ashkenaz and Provençal Hebrew the tav is assimilated to *samekh*; in Ashkenaz both > /s/, in Provence both > /f/. In all these areas the realisation of tav raphe is different but all maintain tav raphe as a fricative. On the other hand, in the areas where Babylonian influence was strongest (Spain, North Africa and Persia) and the original unvoiced fricative was not available (i.e. outside natively Semitic areas of the Arabian Peninsula and the Fertile Crescent), we see a different realisation, for here the assimilation is to the stop /t/ rather than the fricative. This parallels the local pronunciation of Arabic in these areas (including Andalusia) - see table 2.

samekh	tav raphe	tav		
/s/ /θ/		/t/	Hebrew	
/s/	/s/ /θ/		Yemeni	
/s/	/0/	/t/	Greco-Romaniote	
/s/	/ð/>/d/	/t/	Italy	
/s/		/t/	Ashkenaz	
/f/		/t/	Provence	
/s/		/t/	Sepharad	
/s/		/t/	North Africa	
/s/		/t/	Persia	

Table 2. Realisation of Tay, Tay Raphe and Samekh in Hebrew According to Region.<sup>51</sup>

<sup>&</sup>lt;sup>49</sup> A memory of this Latinophone Romaniote Jewry may remain in the use of the Hebrew term 'la'az' (تلا) for the (specifically Romance) vernacular languages, a usage that parallels that of the Germanic terms 'Wälsch/Welsh/Vlach' for the indigenous Latin-using or Romance-speaking populations of former territories of the Roman Empire. We may also note the use of the cognate term veilish for the more cursive Hebrew script of Italian and Spanish Torah scrolls.

<sup>&</sup>lt;sup>50</sup> For Ashkenaz see Weinreich, *History*. For Sepharad, compare P. Wexler, *Non-Jewish Origins of the Sephardic Jews* (New York: SUNY Press, 1996).

<sup>&</sup>lt;sup>51</sup> See 'Hebrew pronunciation', *Encyclopaedia Judaica* (New York: Macmillan, 1971–72).

That is to say there is a distinct divide between those communities that maintain the distinction between the allophones of *taw* and those which assimilate them, a distinction that corresponds to the areas of 'Palestinian' and 'Babylonian' influence; that is, those areas in which the pronunciation of Hebrew predates the Arabic conquests of North Africa and Iberia, and those areas united by the Arabic conquests where the influence of the Babylonian Gaonate and Arabic languages predominated.

Ashkenazic Hebrew has departed most markedly from the generally accepted 'Tiberian' pronunciation. Mostly this is due to changes in the pronunciation within the Yiddish form of German, thus /o/ > /oj/ in the Ashkenazi pronunciation of *Moshe* as '*Moyshe*' and in the change from Middle High German  $gr\delta z >$  Yiddish groys,<sup>52</sup> but there are two distinct characteristics of Ashkenazi Hebrew that set it apart from the others. The first of these is the penultimate stress pattern of Ashkenazi Hebrew. This is paralleled by the penultimate stress of Germanic languages, but it also parallels the stress pattern seen in Biblical Hebrew pausal forms. Penultimate stress is also found in Samaritan Hebrew and may be indicated by some of the orthographies of Qumran.<sup>53</sup> It may be that the German stress pattern helped preserve the original Hebrew accent rather than supplanted a final stress. Here Ashkenazi Hebrew may have preserved a trait of Palestinian Hebrew. The second characteristic of Ashkenazic Hebrew is the realisation of *qames* as /o/. Yemeni Hebrew, strongly influenced by Babylonia, shares the same realisation of *games*. Weinreich makes a strong case for these changes in Ashkenazi Hebrew being the result of a 'Babylonian Renaissance' in Ashkenaz in the thirteenth century as the difference is only noted in Sephardic texts from that date. Before the establishment of the 'Tiberian' seven-vowel system after the tenth century there were two vowel systems in use: a southern Palestinian system with symbols representing five vowels in which games fell together with 'i' and segol fell together with sere as /a/ and /e/ respectively; and a Babylonian system with six yowel symbols in which games is open /o/, sere is /e/, and patah and segol fall together as /a/. In 930 Jacob Alchami noted that the Babylonian reading 'had filled the world' from the eastern border of the Byzantine Empire to the borders of China. About the same time the Karaite Kirkisani reports that the Greco-Romaniote Jews do not know of a games /o/. Transcriptions of Hebrew in French manuscripts of the tenth to thirteenth century similarly show games /a/: ahavta, laolam, Adam etc. This western Romaniote sphere, 'from southern Palestine to the Atlantic, from the edges of the Sahara to the northernmost settlements in central Europe<sup>54</sup> utilised the five-vowel 'Sephardi' vocalisation.55

If the Romaniote communities of Europe had received their Hebrew from the South after the Arab invasions of the seventh-eighth centuries we would expect a much more standardised pronunciation of the Hebrew consonant system and in particular an 'Arabised' realisation of *tav raphe*. Conversely, that a Palestinian vowel system should have established itself so widely that it was able to resist 'Babylonisation' up until and beyond the Ashkenazi 'renaissance' of the thirteenth century implies that the pronunciation must have firmly

<sup>&</sup>lt;sup>52</sup> S.A. Birnbaum, *Tiddish: A Survey and a Grammar* (Manchester: Manchester University Press, 1979).

<sup>&</sup>lt;sup>53</sup> A. Sáenz-Badillos, *History of the Hebrew Language* (Cambridge: Cambridge University Press, 1993), 139.

<sup>54</sup> Weinreich, History, 364 ff.

<sup>&</sup>lt;sup>55</sup> The picture is confused because, (particularly after 1492), the 'Sephardic' and Tiberian pronunciations supplanted any vestiges of the Babylonian system that may have remained in the oriental communities other than Yemen.

established itself before the decline of the Southern Palestinian centres in the fifth-sixth centuries.  $^{\rm 56}$ 

#### b. Volumina Hebraica

Edrei and Mendels argue that the literature of the western Diaspora is reflected in the extensive Greek apocrypha and pseudepigrapha. But there is little evidence of a continuing interest in this literature in the Jewish community in Late Antiquity or the early Middle Ages. In fact its survival is a result of *Christian* interest. The evidence we have given above shows rather a distinct decline in the quality of Greek and Latin learning among Jewish communities and a consequent need to fall back on Hebrew learning and letters.<sup>57</sup> In fact we know from documents in the Cairo Genizah that by the ninth century Jews were writing Greek in a Hebrew *abjad*,<sup>58</sup> doubtless the ability to handle Latin literature in the West was even less. If the access to Latin and Greek literature was in sharp decline in the Diaspora, we do have suggestive evidence that the Jewish communities still maintained a written Hebrew-centred culture, which could only deepen with time.

There exists an account by a local bishop, Severus, of how in 417/8 a well-established Jewish community of one of the two towns on Minorca was converted under the threat of mass violence, and its synagogue destroyed and turned into a church.<sup>59</sup> The account reveals the large size of the Jewish community (at least 540 persons) in the small town of Mago and describes the community's leader Theodorus as having held all the offices within the town council (*curia*) and as *defensor (judge)* and *patronus (patron)* of his fellow citizens. He seemingly held some sort of "rabbinic" role within the community's conversion was the arrival in the island of the relics of St Stephen. The Christians of Iammo marched on the other town of Mago, invited the Jews to debate, and when this was met with stones hurled by the Jewish women, advanced on the synagogue and burnt it down. First, however, they removed the

<sup>&</sup>lt;sup>56</sup> An interesting footnote to this question of the knowledge of Hebrew in the west is provided by Irish Latin poets who wrote verse in an elaborate style influential until around 700. These were collected as the *Hisperica Famina* in the sixth and seventh centuries. One poem contains the lines:

patham lizanam sennas atque michinas, (corr. nachiras?)

cladum carsum madianum talias

bathma exugiam atque binas idumas. (Lorica of Laidcenn)

<sup>&#</sup>x27;(Deliver) my mouth?, my tongue, my teeth and nostrils? | my neck, breast, side and limbs, | joints, fat, and two hands.'

Certain words here are clearly not 'Hebrew' as the commentary suggests, but Aramaic (M.W. Herren, *Hisperica Famina* II (1987), 80): lizana אידא, senna גוחירא, nachira נוחירא, iduma אידא (dual?), transposing the Aramaic emphatic forms to the first declension. The actual source may be Christian Syriac rather than Jewish, but it seems perverse to argue, as Edrei and Mendels do, that Jews would not have access to Hebrew or Aramaic when monks in distant Ireland obviously did.

<sup>&</sup>lt;sup>57</sup> N. De Lange, "Jews in the Age of Justinian", in M. Maas, ed., *The Cambridge Companion to the Age of Justinian* (Cambridge: Cambridge University Press, 2005), 401–27.

<sup>&</sup>lt;sup>58</sup> N. De Lange, Greek Jewish Texts from the Cairo Genizah (Tübingen: Mohr-Siebeck, 1996).

<sup>&</sup>lt;sup>59</sup> PL XX, 731-46 and XLI, 821-32; E.D. Hunt, "St Stephen in Minorca. An Episode in Jewish-Christian Relations in the Early Fifth Century a.d.", *Journal of Theological Studies* 33 (1982), 106; S. Bradbury, *Severus of Minorca* (Oxford: Clarendon Press, 1996).

<sup>&</sup>lt;sup>60</sup> Cf. Amarantus the 'nomodidaskalos' *supra*. Jerome uses the same expression to describe the learned Jew from Tiberias who in the late 380s helped him with proper names in Chronicles, PL XXIX, 401ff.

*libri sancti* (sacred books) with their silver ornaments. The silver ornaments were returned but the *libri sancti* were removed, allegedly to protect them from the Jews themselves (*ne apud Iudaeos iniuriam paterentur*)! As a demonstration of their new faith, after baptism, the converted Jews were obliged to dig up the foundations of the synagogue and build a new basilica with their own hands and financed from their own funds. This would not be the only such episode in the period but we might question how permanent such conversions were once the bishop had returned to Iammo, but doubtless the *libri sancti* were confiscated in truth because they purported to be more authentic than the versions used by the Christians, either because they were in the original Hebrew or a translation that was based on the Hebrew rather the Greek of the Septuagint.

Whether the synagogue scrolls of Mago were Hebrew, Greek or Latin we cannot tell from the narrative, but this hostility to the Hebrew version must be born in mind when we examine the evidence of Justinian's famous *novella* 146, dated February 8, 553, which although it was promulgated in the Greek east was also law for the areas of Italy, Africa and Spain re-conquered by Justinian and which, as we will see, had an influence on the later, influential Visigothic laws.

The *novella* attempts to regulate the language in which the Torah was read in synagogue following an alleged dispute;

We have learnt from their petitions, which they have addressed to us, that while some maintain the Hebrew language only and want to use it in reading the Holy Books others consider it right to admit Greek *as well*, and they have already been quarrelling among themselves about this for a long time. Having therefore studied this matter we decided that the better case is that of those who want to use *also* Greek in reading the Holy Books, and generally in any language that is more suited and the better known to the hearers in each locality.<sup>61</sup>

The translation of the seventy, the Septuagint, had been accepted by many Jews including Philo and Josephus as divinely inspired and it may be that some synagogues therefore used only a Greek text for the public reading, but the simpler reading is that some Jews wanted a Greek reading *in addition* to the Hebrew, presumably in the same manner as the Aramaic Targum, and were holding out against Hebraic purists. Justinian decrees that;

it shall be permitted to those Hebrews who want it to read the Holy Books . . . in the Greek language, . . . or possibly in our ancestral language (we speak of the Italian language), or simply in all the other languages.

It may seem that Justinian's intention here is benign but it is clear from the next section that his desire is in fact to establish the Septuagint as the authorised translation because its adoption as the Christian Bible had resulted in the development of a specifically Christian hermeneutic of the text which would make the Jews vulnerable in dispute.<sup>62</sup> As Justinian continues:

Furthermore those who read in Greek shall use the Septuagint tradition, which is more accurate than all the others, and is preferable to the others... and that they shall not turn to the naked letters but perceive the reality and grasp the more divine sense and ... they shall become readier to learn the better matters (i.e. the New Testament).

<sup>&</sup>lt;sup>61</sup> Translation from A. Linder, *The Jews in Roman Imperial Legislation* (Detroit: Wayne State University Press, 1987) [my emphases].

<sup>&</sup>lt;sup>62</sup> This may well be why there existed a Hebraic purist group in the first place.

Nevertheless Justinian must have been aware that it would be impossible to force the Jews to use the Septuagint and, having voiced these pious hopes, is forced to make a concession, that the Jews may use the translation of Aquila.

Little now remains of Aquila's translation, but its main characteristic is its thoroughgoing literalness. This has been related, no doubt rightly, to the hermeneutical teaching of Aquila's master, R. Akiva, who emphasised the importance of every word of the text even the particles, but this results in making the Greek almost unreadable. Thus Genesis 1:1 is rendered:

#### En kephalaiōi ektisen ho theos syn ton ouranon kai syn tēn gēn.

Aquila here uses *syn* adverbially to represent the Hebrew objective particle *et. Kephalaion* more usually meaning 'chapter' or 'capital' is used instead of the Septuagint's *archē* because of its relationship to *kephalē* 'head', thus maintaining the relationship in Hebrew between *reshit* 'beginning' and *rosh* 'head'. The effect is to render Aquila's version not so much a calqued translation as effectively an interlinear one that not only assumes the primacy of the Hebrew text, but also its actual presence alongside the translation.

An interesting correspondence between Augustine and Jerome testifies to the presence of Hebrew scrolls also in the west. Augustine reports that a fellow bishop at Oea in Tripolitania had been forced by violent reactions among his congregation, especially the Greeks, when faced with a controversial reading in Jonah, to ask the local Jews what reading there was in their *Hebraei codices.*<sup>63</sup> It would be strange that the Jews had the Bible in the form of a *codex* (book), but, Jerome, replying to Augustine on this point, quietly corrects him and speaks of the reading to be found "in the *volumina* [scrolls] of the Jews."<sup>64</sup> Jerome further reports how in Rome he was given some *volumina* by a "Hebraeus" who had borrowed them from a synagogue with the intention of reading them.<sup>65</sup> In this case *volumina* clearly does mean scrolls and was clearly in Hebrew for Jerome had to unroll one of them to read the relevant passage – *volumen Hebraeum replico.*<sup>66</sup>

### c. Oral Tradition

From written texts we must now turn to the Oral tradition. If the Jews of the Diaspora are to be shown to be more than 'Biblical Jews', then we need to find indications that they were open to the rabbinic development of the Mishnah and Talmud. These extra-biblical teachings were the second item on which Justinian attempted to legislate in *novella* 146 under the name of *deuterosis*, clearly a translation of 'Mishnah.' Justinian explicitly states the commentators are Hebrew-based:

We also order that there shall be no licence to the commentators they have, who employ the Hebrew language to falsify it at their will, covering their own malignity by the ignorance of the many.  $\dots$ 

What they call *deuterosis*... we prohibit entirely, for it is not included among the holy books, nor was it handed down from above by the prophets, but it is an invention of men in their chatter,

<sup>&</sup>lt;sup>63</sup> Augustine, Ep. 71, 5. PL 33.

<sup>64</sup> Ibid., Ep. 75, 22.

<sup>&</sup>lt;sup>65</sup> *Ibid.*, Ep. 36, 1.

<sup>66</sup> Ibid., Ep. 36, 13.

exclusively of earthly origin and having nothing of the divine. Let them read the holy words themselves . . . without accepting extraneous and unwritten nonsense they themselves have contrived to the perdition of the more simple minded.

Clearly this refers to an extra-Biblical teaching accessible only to a learned Hebrew-speaking élite within the community, the *archipherekita, presbuteroi*, and *didaskoloi*, mentioned later in the *novella* as having authority to punish or excommunicate; these are surely men like Theodorus, the *doctor legis ('teacher of the law')* of Mago, playing a 'rabbinic' role in the community. Augustine also writes of the Jewish oral tradition:

He does not know, however, that in addition to the legal and prophetic scriptures the Jews have certain of their traditions, which they keep not in written form but committed to memory, and pass on orally to others. These traditions they call *deuterosis*.<sup>67</sup>

Justinian's *novella* seems to have influenced the seventh-century *Lex Visigothorum*<sup>68</sup> which, whilst it does not mention the *deuterosis* as such, nevertheless proscribes 'those books or doctrines . . . in which things are evilly expressed against the faith of Christ'. The law specifically forbids on pain of flogging and perpetual exile the teaching of these books and doctrines to children over the age of ten. The distinction between 'books' and 'doctrine' seems to hint at the distinction between written and oral traditions. It may be pertinent that the law specifies the age of ten in particular as this is the age recommended by *Pirkei Avot* as that at which a child should turn to the specifically Jewish teaching of the Mishnah.<sup>69</sup>

Of course we should not be too surprised to find little evidence of *halakhic* practice in the records we have for the period. For the Christian authorities, in as much as they were aware of them or had access to them, the Mishnah and Gemara were merely man-made superstition. What constituted an offence to Christianity was the continued Jewish observation of the covenant of the "Old Testament", practices that had been rendered inefficacious by the new covenant in Christ. It was the practice of the old law which presented a constant temptation to Christian 'Judaizers' and that the authorities attempted to legislate against. Secular and religious codes and church polemics are therefore concerned only with the egregious 'biblical' practices of Judaism, sabbath observance, *kashrut*, and so forth. Gregory of Tours, however, recounts at least one incident in sixth century Gaul that shows an adhherence to *halakhah*. King Chilperic had engaged a certain Jew named Priscus in a theological debate, such that the only outcome could be the conversion of Priscus. Priscus had managed to put off the inevitable until his son could be safely sent away to marriage in Marseilles but,

'in the meantime a quarrel arose between Priscus and Pathir, a converted Jew, who was son to the king in that he [Chilperic] had sponsored him at his baptism. One Jewish Sabbath Priscus was on his way to the synagogue, wrapped in his prayer shawl (*praecinctus orario*)<sup>70</sup> and carrying no weapon in his hand, for he was about to pray according to the Mosaic law.

<sup>&</sup>lt;sup>67</sup> Nescit autem habere prater scripturas legitimas et propheticas Iudaeos quasdam traditiones suas, quas non scriptas habent, sed memoriter tenent et alter in alterum loquendo transfundit, quas deuterosin vocant. Augustine, Contra adversarium legis et Prophetarum 2.1.2 (CCSL 94.87f).

<sup>&</sup>lt;sup>68</sup> A. Linder, *The Jews in the Legal Sources*, 302.

<sup>69</sup> Pirkei Avot 5, 24.

<sup>&</sup>lt;sup>70</sup> Lewis Thorpe translates "his head bound in a napkin" (*Gregory of Tours. The History of the Franks*, tr. Lewis Thorpe 1974). *Orarium* did indeed denote a napkin in classical Latin, but by the council of Laodicea (363) the Greek equivalent *orarion* had come to mean the broad, usually fringed, liturgical scarf of Christian clergy. This use of the term was first recorded in the west at the council of Braga in 561. Clearly it is used here to mean the Jewish prayer shawl or *talleth*.

Priscus, doubtless aware of the danger he was in, nevertheless refused to carry a weapon, because, according to the Mishnah tractate Shabbat; 'A man should not go out on (the Sabbath) carrying a sword, a bow, a cudgel, a stick, or a spear.' Rabbi Eliezer had argued that such things could be considered adornments which would allow them to be carried on the Sabbath, but the Sages replied: 'They [weapons] are a disgrace, as it is written, "And they shall beat their swords into ploughshares, and their spears into pruning hooks; nation shall not lift up sword against nation, neither shall they learn war anymore (Is. 2:4)."'<sup>71</sup> The Sabbath should be a presentiment of the world to come in which instruments of violence would have no place. But sixth-century Paris was a very different place from the world to come and Priscus' observance proved fatal, for 'Phatir appeared suddenly, and cut the throat of Priscus and his companions with his sword.'<sup>72</sup>

The other part of the oral tradition, the liturgy, we can say little about at this early date as the earliest texts outside the Talmud date from the tenth century at the earliest. Efforts have been made to classify the varieties of the liturgy into 'rites' but these are largely an artifice of later standardisation after the production of printed liturgies from the fifteenth century. However, we may have a liturgical reference in an artefact from Spain.<sup>73</sup> This is a white marble trough found in Tarragona and dated to the fifth or sixth century. The 'basin' some 15 cm by 57cm is inscribed on one face with, on the left שלום על ישראל ועלינו ועל בנינו אמן (Peace on Israel and on us and on our children, Amen) and on the right the Latin, PAX and FIDES, either side of a menorah and tree of life (?) flanked by two very crude peacocks. The first half of the Hebrew is a standard phrase in funerary inscriptions from the period but it is also the simplest form of the final benediction for peace of the Amidah that developed into the forms Shalom rav and Sim shalom. Elbogen quotes a version of the Amidah from the Cairo Genizah in this early simple form; שים שלום על ישראל עמך ועל עירך (Grant peace to Israel your people and to your city).<sup>74</sup> The second half of the phrase has been taken from the benediction after the Shema. The phrase has thus been formed from the culminating benedictions of the two central parts of the liturgy, the Amida and the Shema. The first is a petition for peace, the second the statement of the Jewish faith; pax and fides. Whilst the order of the two sections has been effectively reversed to create the phrase, the intention is clearly to evoke the liturgy and suggests the basin's use was liturgical rather than funerary. It also confirms that in fifth- or sixth-century Spain the Hebrew liturgy was known and used.

#### 5. JEWISH LATIN LITERATURE

Whilst it has been my concern in this paper to answer Edrei and Mendels' contention that the Jews of the western Diaspora were cut off from Hebrew culture, the presence of a large Latin speaking Jewish community raises the interesting question of whether this community had its own Latin literature. We have already seen that Justinian's *novella* 146 raises the

<sup>&</sup>lt;sup>71</sup> Mishnah Shabbat 6:4.

<sup>&</sup>lt;sup>72</sup> Interea oritur intentio inter illum et Pathiren ex Iudaeo conversum, qui iam regis filius erat ex lavacro. Cumque die sabbati Priscus praecinctus orario, nullum in manu ferens ferramentum, Moysaicas legis quasi impleturus, secretiora conpetiret, subito Pathir adveniens, ipsumque gladio cum sociis qui aderant ingulavit. HF VI, 17

<sup>73</sup> JIWE 185, 254-5.

<sup>&</sup>lt;sup>74</sup> I. Elbogen, *Jewish Liturgy: A Comprehensive Survey*, Translated by R. Scheindlin (New York: Jewish Publication Society, 1993) [originally published as *Der jüdische Gottesdienst in seiner geschichtlichen Entwicklung*, 1913, 396.

possibility of a Latin 'targum' of Scripture, but there are other texts that have been identified as products of a Jewish Latin community; the *Collatio Legum Mosaicarum et Romanarum, Liber Antiquitatum Biblicarum and Epistola Anne ad Senecam.*<sup>75</sup> As the *Epistola* has been the subject of my own research, I will conclude with a short discussion of this very interesting text.

In 1984 the Latin palaeographer Bernhard Bischoff published a previously overlooked manuscript from the archiepiscopal library in Cologne. The manuscript purports to be a letter from a certain Annas (presumably meant to be Annas the high priest of 5-16 CE) to the philosopher Seneca the Younger; Epistola Anne ad Senecam de superbia et idolis. Bischoff regards the letter as a "Jewish apologetic missionary tract" of the fourth century. Others have concurred with this interpretation.<sup>76</sup> The *Letter* has been commonly dated to the fourth century based on assumptions about the letter's purpose. Pointing out that imperial law tried to ban Jewish missionary activities from the time of Constantine onwards, Bischoff has tentatively suggested that the letter is likely to have been composed before 325. Wischmeyer suggests that the Letter must predate Jerome's translation of the Bible because the citation of Genesis 2:7 differs from Jerome's rendering in the Vulgate. However, neither of these arguments is convincing. Firstly, there is no evidence to suggest Jews would have used Jerome's translation, they may well have translated directly from the Greek or Hebrew or have used a Jewish Latin translation prior to Jerome's as we have discussed above. Secondly, the text of the Letter, although it refers to nostra veritas ('our truth'), never mentions conversion as such. Momigliano, however, proposes that Annas was an otherwise unknown Jewish propagandist not identical to Bischoff's high priest. The name is not common among Jews of Antiquity, but a certain didascalus Annas is referred to twice (along with maiores Iudaeorum) in Late Imperial legislation on the Jews (Codex Theodosianus 16.9.3 (415 CE) and 16.8.23 (416 CE).<sup>77</sup> It has been suggested that this Annas acted as a sort of Chief Rabbi of the Jews of Italy<sup>78</sup>. Though this is unsupported by any other evidence, he does seem to have represented the Jewish community to the court of Honorius at Ravenna. If there is a connection with this Annas we may have in the letter addressed to an aristocratic pagan audience Jewish participation in a Late Antique philosophical dialogue with pagan monotheism that would have certainly been congenial to the contemporary Synesius.79

It is strange that the Letter has remained unidentified for so long and this is surely an indication of an academic blindness that failed to identify this Jewish text as it failed to identify the Jews Golb discovered lying in plain view in the French countryside.<sup>80</sup> The

<sup>&</sup>lt;sup>75</sup> For the Collatio, see Rutgers, Jews in Late Antique Rome, 213–18. For a consideration of the Liber Antiquitatum Biblicarum as a Jewish 'rewritten Bible' see Tal Ilan, "The Torah of the Jews of Ancient Rome", Jewish Studies Quarterly, 16/4 (2009), 363–95.

<sup>&</sup>lt;sup>76</sup> B. Bischoff, Anecdota Novissima. Texte des vierten bis sechzehnten Jahrhunderts (Stuttgart: Anton Hiersmann Verlag, 1984); A. Momigliani, "The New Letter by 'Anna' to 'Seneca'", Athenaeum 63 (1985), 217–19; L. Cracco Ruggini, "La lettera di Anna a Seneca nella Roma pagana e cristiana del IV secolo", Augustinianum 28 (1988), 301–25; W. Wischmeyer, "Die Epistula Anne ad Senecam. Eine jüdische Missionsschrift des Lateinischen Bereichs", in J. van Amersfoort and J. van Oort, eds., Juden und Christen in der Antike (1991), 72–93. See also A.C. Sterk "The Letter of Annas to Seneca: a Late Antique Jewish Exhortation in Dialogue with Roman Paganism", in S. Pearce, ed., The Image and the Prohibition of the Image in Ancient Judaism (Journal of Jewish Studies Supplement Series 2, Oxford, 2012), 170–81, and The Epistola Anne ad Senecam in its Historical and Literary Context (PhD Thesis, forthcoming).

<sup>&</sup>lt;sup>77</sup> A. Linder, Jews in Roman Imperial Legislation, 273-6.

<sup>&</sup>lt;sup>78</sup> C. Vogler, "Les Juifs dans le Code Théodosien", Le plan théologique 32 (1979), 35-74.

<sup>&</sup>lt;sup>79</sup> For late pagan monotheism, see P. Athanassiadi and M. Frede, eds., *Pagan Monotheism in Late Antiquity* (Oxford: Oxford University Press, 1999).

<sup>&</sup>lt;sup>80</sup> An example of how Jews may have been overlooked in the archaeological record is given in the Appendix.

assumption remains that Jews constituted an insignificant community in the Latin west after the establishment of Christianity in the fourth century and remained such until the largescale immigration of Jews from the South via Italy beginning in the ninth century. But much to the contrary we see that the Jewish communities of the western Diaspora remained a significant and vital part of western society whilst maintaining a strong and evolving connection with their Jewish and Hebrew traditions. The Jewish cultures of Ashkenaz and Sepharad, Rome and southern Italy (and *a fortiori* that of Byzantine Greece) were not alien imports into medieval Europe, but rather they grew organically from indigenous Romaniote communities with their roots deep in the Latino-Romance soil, kept vital by their continuing connection to the Hebrew Levant.

### 6. CONCLUSION

As I outlined at the beginning of this paper the historiography of this period has on the whole assumed that the period saw a wholesale retreat from the cities and that Jewish communities being urban followed suit, but the evidence now seems to indicate that there was both an unexpectedly widespread presence of rural Jews and a continuity of life in the cities and towns. The evidence I have presented also shows that western Jews maintained and indeed deepened their reliance on Hebrew culture and learning. The Jewish communities of western Europe, in lasting and frequent communication with Palestine, maintained a Hebrew-centred identity and culture that developed naturally through the period from a 'normal' Judaism to rabbinic 'normative' Judaism as developments in Liturgy and Halakhah filtered through to the West. Whilst the observance of many Jews in the west may have been no more strict than the 'ammei ha' ares ('people of the land', 'the common people') so despised by the Rabbis of the Talmud it was a normal Judaism. There is absolutely no evidence that an abnormal 'biblical' Judaism existed in the west or that western rabbis had to combat such a 'karaitisant' heresy. The learned leaders of the community no doubt were instrumental in overseeing the development of everyday observance into 'normative' Judaism as the community became both more self-consciously Jewish vis-à-vis the Christian community and increasingly needed to rely on its own cultural resources as it became isolated from the wider community.

As Fergus Millar says, until now 'the social, intellectual, and religious history of these Jews in the Latin-speaking environment of the western half of the later Roman Empire remains a largely unexplored field.<sup>81</sup> This present paper is more suggestive than comprehensive in its treatment of the evidence for these continuing Jewish communities, but it is to be hoped that future studies will look beyond the limited textual evidence to other sources (archaeological, linguistic, etc.) and begin to ask what might be the consequences to the "formation of Europe" of a significant Jewish Latino-Romaniote community in the Latin West surviving from late Antiquity into the Middle Age; the demographic and cultural substratum that lay beneath both Sepharad and Ashkenaz.

<sup>&</sup>lt;sup>81</sup> F. Millar, "The Jews of the Graeco-Roman Diaspora" in H.M. Cotton and G.M. Rogers, eds., *Rome, The Greek World, and the East*, 3 vols (2006), vol. 3, 435.

### 7. APPENDIX – THE 'CHURCH' AT SILCHESTER<sup>82</sup>

The town of Silchester (*Calleva Atrebatum* – the civitas capital of the Atrebates tribe) was established by the Romans in the first century CE. It is unusual in that the site was abandoned some time in the mid-fifth century during the anarchy following the withdrawal of imperial authority from Britain by Honorius in 410 and remained unbuilt on apart from a church by the site of the east gate of the town. The town was excavated at the end of the nineteenth century by the London Society of Antiquaries who in a twenty year period from 1890 to 1909 exposed the whole area. Unfortunately this has meant that much material which would have provided important clues about the presence of wooden buildings that would have been revealed by modern techniques was also removed.

In the *insula* immediately to the south of the Forum complex a small apsed basilican building with possibly a courtyard in front was discovered in the 1892 excavations which was immediately identified as a Romano-British church, evidently the first to be discovered in Britain. The building is 10 metres in length and 8.91 metres in width. The western third of both aisles is extended slightly to form two 7 metre square 'transepts' on either side of the apse. The remains of a mosaic was centrally placed in front of the apse. The building is in fact quite small, one in which a 'congregation of fifty would have been uncomfortably crowded'.<sup>83</sup> The building is described by John Ward in his *The Roman Era in Britain* of 1911 as follows:

The only undoubted remains of a Christian church as yet known in this country were uncovered at Silchester in 1892, but as unfortunately they were very scanty, little remaining above the floorlevel, the plan, [see fig. 2], is necessarily imperfect. The church was a small structure, only 42 ft. long and 27 ft. wide; nevertheless, the plan exhibits all the chief features of a typical early Christian basilica. Its orientation, as in many early Italian churches, was the reverse of the present custom, the chancel being to the west. It was entered through an internal porch or narthex, at the east end, and was divided into a nave and two aisles by arcades of which the sleeper-walls remain. Two transepts – the *prothesis* and *diaconicum* of early Christian writers – were apparently screened off from the aisles, but open to the western prolongation of the nave. The floor was of mosaic, and where the holy table stood was a decorated panel of finer work. The building stood in an oblong space, in which, in front of the narthex, was a square foundation which presumably supported the *cantharus* [holy water font], and at its side a small pit, which probably received the waste water.

This identification has generally been accepted. There are, however, a number of problems with this. Firstly, for a church to be placed so prominently near to the administrative centre of the town would mean that it was built after 313 when Christianity finally became a recognised *religio licita*. It is extremely unlikely that a proscribed religious group would be allowed to build so close to the centre of the imperial administration and cult. Secondly, the description given above (and which has been generally accepted since) projects onto the building a pattern of liturgical design and practice that does not become normal until the sixth century and even then only in the Byzantine east. Thirdly, if the building is post-313, it is a pretty poor representation of the now imperially favoured religion. One would hardly

<sup>&</sup>lt;sup>82</sup> The following appendix is something of a thought experiment exploring the possibility of looking at such remains 'Jewishly'. I intend to look at the Silchester 'synagogue' in more detail in a future article.

<sup>&</sup>lt;sup>83</sup> M.E. Jones, *The End of Roman Britain* (New York: Cornell University Press, 1998), 176.

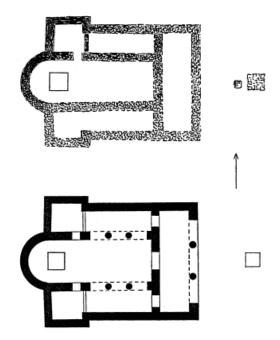


Fig 2. Plan of Church, Silchester, and Conjectural Restoration (J. Ward, *The Roman Era in Britain*, 1911)

expect the great Constantinian basilicas like those of Trier and St Peter in this small provincial town, but certainly something a little more impressive. That the building is a church has been questioned by King<sup>84</sup> who determined that 'the best possibility of its use was for an eastern cult' but he declined to say which cult he might have had in mind. Oddly, although King quotes Frere as saying; 'Since, *apart from synagogues* (my emphasis), there are no examples of non-Christian shrines of appropriate date aping so closely the architectural arrangement of a Christian place of worship,' he nevertheless does not in his paper consider this possibility. King compares the layout of the Silchester building to those of *scholae*, the meeting houses of Roman funeral and religious *collegia*, such as the Schola of the Nautae, Aventicum (Avenches, Switzerland).<sup>85</sup> The comparison is very apposite as the *collegia* would have provided the legal framework for Jewish (and Christian) communities in the empire, and it is probably not a coincidence that Latin *schola* provides the word for synagogue in the Judeo-Romance languages; Yiddish, *shul*, Judeo-slavic *škola*, Italian *escuola*.

In 2004 Stephen Cosh re-examined the only evidence in the building that is possibly dateable, the mosaic in front of the apse (see fig. 3). Comparing this to very similar mosaics elsewhere in Britain, in Leicester, Gloucester, Wroxeter and Canterbury that are more precisely dated, he concluded that the building would have to have a terminus post quem of the late second century and can probably be dated to the late second or early third century, a date far too early to make it a church.<sup>86</sup>

<sup>&</sup>lt;sup>84</sup> A. King, "The Roman Church at Silchester Reconsidered", Oxford Journal of Archaeology 2 (1983), 225–37.

<sup>&</sup>lt;sup>85</sup> E. Thomas, Monumentality and the Roman Empire (Oxford: Oxford University Press, 2007), 123.

<sup>&</sup>lt;sup>86</sup> S.R. Cosh, "A Possible Date for the Silchester 'Church'", Britannia 35 (2004), 229-33.

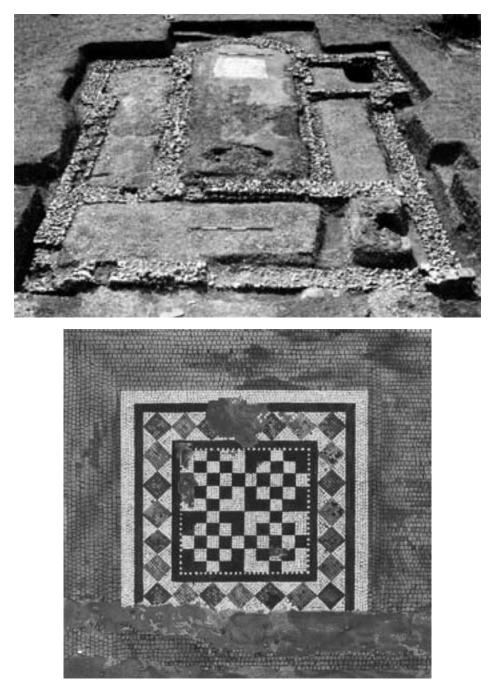


Fig 3. The Silchester "Church" and Apse Mosaic in 1961 University of Reading, Silchester Insula IX (image previously available on website: www.rdg.ac.uk/AcaDepts/la/silchester/ publish/guide/public.php)

If the building is not a church the question arises could it possibly be a synagogue? The assumption has been that Jewish communities were not present in Roman Britain, but it is not inherently impossible. We certainly have evidence of one near-eastern artisan Barates, a *vexillarius* (flag maker) from Palmyra, who settled in Wallsend in Northumbria, married a local British woman and had his grief at her death recorded on her tombstone in Aramaic. Also, judging by his name, the martyr Aaron of Caerwent who allegedly died in the Diocletianic persecutions may have come from a Jewish-Christian background. Given the evidence we have presented for extensive Jewish settlement in Northern Gaul, however, it would be surprising if there were not similar settlements in southern Britain. Silchester certainly had a number of foreign artisans as a *collegia peregrinorum* (guild of foreigners) was found to the east of the 'church' building.

Levine gives a number of criteria by which a synagogue might be identified: all or part of the following; Jewish symbols (e.g. the menorah), inscriptions mentioning the term 'synagogue', names of officials generally associated with this institution, distinctive personal names, the internal orientation of columns and/or benches towards Jerusalem, and the presence of a *bimah*, niche, or *aedicula* along the Jerusalem-oriented wall. Like many other public buildings a synagogue building might include a courtyard, entrances, a main hall with benches, columns, and often a series of ancillary rooms.<sup>87</sup>

Clearly there is no epigraphic evidence that would firmly establish the use of this building, but each of the other elements can be discerned. The platform to the east of the entrance would have formed the base of a fountain central to an *atrium* filling the space between the building and the cardo (main street). Such an atrium is common on Roman basilicas and can be seen both on the original plan of the St Peter's in Rome and the contemporary synagogue of Sardis. Indeed the whole building parallels that of Sardis, albeit it on a much humbler (and more characteristically smaller) scale. The mosaic in the centre of the apse is in the same location as the table at Sardis and may possibly have served as the location on which a portable ark could be placed. When not in use the Torah scrolls and the ark itself could have been kept either in an *aedicula* at the west (Jerusalem) end; this may have been the reason for the base found in the north of the narthex (see fig. 2). Alternatively the northern transept may have been used as a store for the scrolls and other *instrumenta*, as in the synagogue at Naro.<sup>88</sup> The northern transept may alternatively have served as a communal treasury. The orientation with the entrance towards Jerusalem is common in early synagogues (cf. Sardis again). The orientation of prayer would be to the east wall or even to the windows in the east wall in accordance with the prayer of Daniel, who prayed towards Jerusalem through an open window (Dan. 6:11).

It is impossible on the evidence we have to establish that the building *was* a synagogue, it may have served another purpose entirely, but, given the date and location<sup>89</sup> of the building, if the building had a religious function then it is actually more probable that it was a synagogue rather than the accepted identification as a church. Needless to say this does not indicate that a Jewish community survived in Britain beyond the fifth century. It does

<sup>&</sup>lt;sup>87</sup> L. Levine, *The Ancient Synagogue* (New York and London: Yale University Press, 2005), 313.

<sup>&</sup>lt;sup>88</sup> Ibid., 280.

<sup>&</sup>lt;sup>89</sup> Golb locates the medieval *vicus Judaeorum*, the centre of the Jewish communities of Rothomagus (Rouen) and Reims in a similar area close to the Forum between the *decumanus* and *cardo*. See *Jews in Medieval Normandy* (1998), 34–6.

however indicate how evidence in western Europe might be reassessed if the possibility of extensive Jewish settlements is allowed for. At Silchester we may be fortunate that the abandonment of the town has meant the building escaped Christian destruction or appropriation. Perhaps other ancient churches situated in the *enceintes* of Roman towns, like St Paul-in-the-Bail, Lincoln or St Pancras, Exeter or even Bede's "*building of antiquity*" that so readily served as a chapel for the Christian, Frankish queen Bertha, consort of the pagan King Ethelbert of Kent, might be similarly reassessed.

#### ABBREVIATIONS

- CCSL Corpus Christianorum: Series Latina. (Turnhout: Brepols, 1953–)
- JIWE D. Noy, Jewish Inscriptions in Western Europe: vol. 1, Italy (excluding Rome), Spain and Gaul; vol. 2, The City of Rome (Cambridge: Cambridge University Press. 1993, 1995).
- MGH W. Arndt and Bruno Krusch, eds., Monumenta Germaniae Historica; scriptores rerum Merovingicarum, vol. 1 (Hanover, 1885; repr. 1961).
- PL 7.-P. Migne, Patrologia Latina. Patrologiae cursus completus; series latina (1844–55).

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## "WHY THE NAME NEW TESTAMENT?"\*

## Bernard S. Jackson\*\*

ABSTRACT: Both theology and philology suggest that the title of the Christian scriptures should have been "The New Covenant" rather than "The New Testament".<sup>1</sup> Why then did the Church Fathers from at least Tertullian in the 2nd century adopt novum testamentum? Was it simply a confusion of the LXX (covenant) and *koine* (a will) meanings of *diathēkē* ( $\delta t \alpha \theta \eta \kappa \eta$ )? I first review the translation history and the methodological issues it raises (section 1) and then turn to two very different theological approaches to the question (section 2): I reject the attempt of Behm to impose (a version of) the koine meaning (in his view, as a unilateral disposition) on the LXX (and subsequent literature, and even extending back to *berit* in the Hebrew Bible) as both theologically and legally inappropriate. Far preferable is the more recent account of Schenker, who sees the use of diatithemi and diatheke in reference to *meta ten teleuten* transactions as having been chosen as appropriate to the terms of God's covenant regarding the land and its use, and rightly shows the range of succession institutions to which this terminology could be applied. Both Behm and Schenker need to take positions on the forms of succession in vogue at the relevant periods (LXX and NT) in the Hellenistic and Jewish worlds. In section 3, I summarise the current state of knowledge and debate in legal historical studies, stressing the danger of assuming the features of modern "wills", and noting the close relationship to political alliance (cf. covenant) in the "will" of the 2nd cent. BCE Ptolemy Neoteros of Cyrene. More generally, I argue that there is a connection between covenant and inheritance in the Hebrew Bible, including (but not restricted to) "spiritual inheritance" (section 4); that this was sharpened in the "Testament" genre of 2nd commonwealth (pseudepigraphical) literature, developing a model found already in the Hebrew Bible (section 5); that two New Testament texts explicitly associate covenant and (by analogy) testament (section 6); and finally that some aspects of the Roman testamentum (even more than the Jewish and Hellenistic forms of will) may well have proved theologically appealing to Tertullian, resulting in his adoption of the terminology of *testamentum vetus* and *novum* (section 7). In particular, the Roman testamentum took effect in its entirety only on death and automatically revoked any earlier will.

### 1. FROM *BERIT* (ברית), TO *DIATHEKE* ( $\delta_{1\alpha}\theta_{\eta}$ кη), TO *TESTAMENTUM*

Why the name New TESTAMENT? There is a fairly obvious, if superficial, linguistic explanation, which has long been known.<sup>2</sup> The term for "covenant" in the Hebrew Bible is

<sup>\*</sup> I am greatly indebted to Dr. Jennifer Dines (Cambridge), Dr. Gerald Downing (Manchester), Profssa. Daniela Piattelli (Rome) and Prof John (Jack) W. Welch (Brigham Young) for comments and substantial bibliographical assistance in the preparation of this paper. Comments by Philip Alexander, Adrian Curtis and Walter Houston on an oral presentation at the Ehrhardt Seminar of the University of Manchester, have also proved of great assistance.

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<sup>&</sup>lt;sup>1</sup> So Lincoln's conclusion to her article: 1999:27f.

<sup>&</sup>lt;sup>2</sup> According to the *Catholic Encyclopedia*, "Testament, New. 1. Name", as at http://www.newadvent.org/ cathen/14530a.htm: "Testament come from *testamentum*, the word by which the Latin ecclesiastical writers (from at least Tertullian in the late 2nd century) translated the Greek *diatheke*. With the profane authors this latter term means always, one passage of Aristophanes perhaps excepted, the legal disposition a man makes of his goods for after his death. However, at an early date, the Alexandrian translators of the Scripture, known as the Septuagint,

*berit*. The expression "new covenant" appears there only once, in the famous (eschatological) prophecy of Jeremiah 31:31–33 (MT 31:30–32):<sup>3</sup>

(31) Behold, the days are coming, says the LORD, when I will make a new covenant (*berit hdashah*) with the house of Israel and the house of Judah (32) not like the covenant which I made with their fathers when I took them by the hand to bring them out of the land of Egypt, my covenant which they broke, though I was their husband, says the LORD. (33) But this is the covenant which I will make with the house of Israel after those days, says the LORD: I will put my law within them, and I will write it upon their hearts; and I will be their God, and they shall be my people.<sup>4</sup>

The Septuagint translates *berit hadashah* here as  $\delta_{I\alpha}\theta_{\eta}\kappa_{\eta}\nu_{\kappa}\alpha_{I\nu\eta}\nu_{\nu}$ , in accordance with the standard LXX translation of *berit* as  $\delta_{I\alpha}\theta_{\eta}\kappa_{\eta}$  (though  $\delta_{I\alpha}\theta_{\eta}\kappa_{\eta}$  is sometimes used in the LXX also for other terms<sup>6</sup>). This is followed in New Testament citations of *Jer.* 31:31, quoted directly in *Heb.* 8:8 and paraphrased in *2 Cor.* 3:6. It is found also in the context of the eucharistic claim<sup>7</sup> in *1 Cor.* 11:23: "This cup is the new covenant in my blood" and in the synoptic versions of the last supper: *Mark* 14:24 and *Luke* 22:20.<sup>8</sup>

However, in *koine* Greek  $\delta_{I\alpha}\theta\eta\kappa\eta$  is not the normal term used for a treaty or agreement,<sup>9</sup> but most typically refers to a 'will'.<sup>10</sup> Could it be, then, that the Church fathers, when writing in Latin, arrived at *testamentum* by adopting the *koine* meaning of  $\delta_{I\alpha}\theta\eta\kappa\eta$  rather than that of the LXX?<sup>11</sup>

Neither "new covenant" nor "new testament" are actually used in the Christian scriptures to refer to themselves, although 2 Cor. 3:14 does use  $\pi\alpha\lambda\alpha_1\hat{\alpha}\zeta$   $\delta_1\alpha\theta_1'\kappa\eta\zeta$  (rendered *veteris testamenti* in the Vulgate) to refer to the literary manifestation of the old covenant.<sup>12</sup> Rather

employed the word as the equivalent of the Hebrew *berith*, which means a pact, an alliance, more especially the alliance of Yahweh with Israel." It adds: "... the expression Old Testament (*he palaia diatheke*) is found for the first time in Melito of Sardis, towards the year 170. There are reasons for thinking that at this date the corresponding word "testamentum" was already in use amongst the Latins. In any case it was common in the time of Tertullian." In fact,  $\pi\alpha\lambda\alpha_1\hat{\alpha}\zeta$   $\delta_1\alpha\theta_1$ /sign is found already in 2 Cor. 3:14. See further n.12, *infra*.

<sup>&</sup>lt;sup>3</sup> Biblical quotations are from the RSV, unless otherwise indicated.

<sup>&</sup>lt;sup>4</sup> On the significance of the context, see Jackson, "Historical Observations . . .", 7-9.

<sup>&</sup>lt;sup>5</sup> Jaubert 1963:311, noting (n.2) only three possible exceptions. Behm 1965:126 notes the use of συνθήκη for berit in LXX only once, in 2 Kings (4 Bas.) 17:15 (Alex), "though Aquila, Symmachus and Theodotion later substituted [throughout] . . .what seemed to them to be the more literal συνθήκη". Harl 1986:55 takes the substitution (also by Josephus) as motivated merely by the desire to keep to the most usual term in Attic Greek. The only other exception appears to be τας ἐνσιαζα in 1 Kings (3 Bas.) 11:11. Similarly, Hughes 1979:39 notes that the verb διατίθημι occurs 80 times in the LXX, on 74 occasions translating the Hebrew karat, as in the standard LXX rendition of his standardisation, see the last four paragraphs of section 2, *infra*.

<sup>&</sup>lt;sup>6</sup> torah, edut (see below, at n.17), davar and katuv: see Behm 1965:126.

<sup>&</sup>lt;sup>7</sup> On its origins in Jewish eschatological thought and its survival in the *afikoman* ("*tsafun*") ritual of the Passover *seder*, see Daube, "He That Cometh". See also LXX *Jer.* 38:8, which anticipates the restoration of Israel – and by implication the establishment of the new covenant – on Passover (though MT 31:7 has *piseal* = lame).

<sup>&</sup>lt;sup>8</sup> See further Jaubert 1963:447–49.

<sup>&</sup>lt;sup>9</sup> For which συνθήκη is commonly used: see Liddell & Scott, *ad loc.* (noting that the plural συνθήκαι, for articles of a treaty, is the more common usage). See, however, the example in Aristophanes (text at n.20, below), and the context in the will of Ptolemy Neoteris, discussed in s.3, *infra.* 

<sup>&</sup>lt;sup>10</sup> On the range of testamentary dispositions to which  $\delta_{1\alpha}\theta\dot{\eta}\kappa\eta$  may refer, see text at nn.124–136 and section 3, *infra*.

<sup>&</sup>lt;sup>11</sup> On the dependence of the Old Latin fragments of the Pentateuch on the LXX, see Swete 1914:93f.

<sup>&</sup>lt;sup>12</sup> "But their minds were hardened; for to this day, when they read the old covenant, that same veil remains unlifted, because only through Christ is it taken away" (kindly drawn to my attention by Walter Houston, noting that the reference is not necessarily to the Hebrew Bible as a whole, but certainly to the Torah, in the light of vv.14-15). It thus appears to be wrong to claim that the term 'Old Testament' occurs for the first time in Melito of Sardis

we find "the Testimony of Jesus" (τὴν μαρτυρίαν ἰησοῦ).<sup>13</sup> John 8:13–14<sup>14</sup> uses μαρτυρία to refer to Jesus' testimony as to his mission, which might suggest a possible Latin confusion of *testamentum* and *testimonium*,<sup>15</sup> perhaps reinforced by the fact that the Hebrew *edut*, literally testimony, is also used of the covenant<sup>16</sup> and, though normally translated in the LXX as  $\mu$ αρτύριον /  $\mu$ αρτυρία (= *testimonia*, Vulg. *Deut.* 4:45, 6:20), is also occasionally itself rendered there as διαθήκη.<sup>17</sup>

# 1A FROM *BERIT* (ברית) TO *DIATHEKE* ( $\delta$ ιαθήκη)

The very formulation of the question as a choice between a "theological" (LXX/NT) and a "legal" (*koine* Greek) meaning of  $\delta_{1\alpha}\theta\dot{\eta}\kappa\eta$  begs important linguistic questions. Is  $\delta_{1\alpha}\theta\dot{\eta}\kappa\eta$  indeed a homonym, and if so is it a "true" homonym – one word used to express two completely independent meanings unrelated in origin – such as *skate* (glide on ice) and *skate* (the fish) – or is it a polysemous homonym, with a shared origin, such as *mouth* (of a river) and *mouth* (of an animal). Though I doubt that any of the commentators on this issue would claim that the term is a "true" homonym, discussion often appears to proceed as if that were the case (perhaps reflecting underlying binary oppositional assumptions such as Jew v Greek, legal v theological).

Yet a linguistic analysis by a classicist, Frederick Norton, already challenged such assumptions as long ago as 1908. Norton confined his study to classical Greek sources no later than 300 BCE; he stressed the importance of taking account of the  $\delta_{1\alpha}$  in  $\delta_{1\alpha}\theta\eta\kappa\eta$ 

<sup>&</sup>lt;sup>13</sup> *Rev.* 12:17, 19:10, ascribed to John of Patmos, and elsewhere, with reference to the 27 books. See Martin, "What is the "New Testament"? Is it the same as the New Covenant?". Hengel 2002:61 notes that Justin Martyr, *First Apology* 67:3 (155-157 CE), still refers to the New Testament as 'the reminiscences of the apostles'.

<sup>&</sup>lt;sup>14</sup> "The Pharisees then said to him, 'You are bearing witness to yourself; your testimony is not true.' Jesus answered, 'Even if I do bear witness to myself, my testimony is true (αληθής έστιν ή μαρτυρία μου), for I know whence I have come and whither I am going, but you do not know whence I come or whither I am going.'"

<sup>&</sup>lt;sup>15</sup> The Vetus here uses *testimonium* (all witnesses in the digital edition of Burton et al, accessible from http://www. iohannes.com/vetuslatina/index.html). See also *John* 3:33: "he who receives his testimony sets his seal to this, that God is true (ὁ λαβών αὐτοῦ τὴν μαρτυρίαν ἐσφάγισεν ὅτι ὁ θεὸς ἀληθής ἐστις)."

<sup>&</sup>lt;sup>16</sup> Deut. 4:45, 6.20 and frequently elsewhere, esp. Ps. 119. It is used also of the tablets at Exod. 32.15. On edut as indicating covenant, cf. Weinfeld 1975:257.

<sup>&</sup>lt;sup>17</sup> Mould, "Eduth in the Scriptures", observes: "The words the LXX translators used to translate *eduth* are instructive. They used *marturia* or *marturia* with but four exceptions (all relating to ark of the covenant: Ex. 27:21; 31:7 (*aron la'edut*, construction of); 39:35 (similar); Joshua 4:16 (carriers of *aron ha'edut*), when they used *diatheke* instead. In six occurrences *eduth* was not translated, but its nontranslation makes no significant difference to the passages concerned. Both *marturia* on *di marturia* mean "a witness." They therefore are most suitable Greek words by which to translate *eduth*, and it is not surprising that the LXX translators rarely depart from using them.... *Diatheke* also means "compact," "covenant," "agreement."... There can be little doubt that in the four instances where the LXX translators rendered *eduth* by *diatheke* they had in mind that *eduth* (the Ten Commandments) was the basis of Jehovah's covenant with Israel."

(1908:11f.) and argued that writers on Greek law have failed to notice that  $\delta_{1\alpha}\theta_{\eta\kappa\eta}$  is used not only for a will but also "to designate what might be called a solemn agreement or

not only for a will but also "to designate what might be called a solemn agreement or compact" (1908:5). Amongst six usages which he identified for the middle voice of the verb  $(\delta_1 \alpha \tau i \theta_{\epsilon \sigma} \theta \alpha_1)$ , he included (alongside "to dispose of one's property according to his will, to make a disposition of it, to devise, to bequeath, to make a will") "to dispose for one's own interest, to make an arrangement or settlement for oneself in which another person or persons are necessarily involved . . .; . . . to settle the terms of (a dispute or quarrel), to make a covenant." He explained the latter as "a solemn<sup>18</sup> compact in which one party lays down the terms and the other agrees to them and binds himself by oath. This agreement is mutual,<sup>19</sup> but in a sense one-sided", and cited Aristophanes, Birds<sup>20</sup> (1908:27-29). Similarly, with the noun  $\delta_{1\alpha}\theta_{\eta}$  is though one sense is indeed "disposition or arrangement which a man makes with reference to his property in view of death" (1908:31), ". . . the sense of arrangement or disposition is always present in a greater or less degree, together with some idea of mutuality" (1908:30). In his account of the noun, Norton clearly distinguishes different aspects of mutuality.<sup>21</sup> One sense is: "4. A disposition of relations between two parties, where one party lays down the conditions which the other accepts. This is a "one-sided" transaction, in so far as one party does all the disposing; but, as another party is necessarily involved, and his consent is necessary to a settlement, it becomes to a certain extent a mutual agreement. διαθήκη is not used, like συνθήκη, of an ordinary bargain or contract, but of a more dignified and solemn compact or covenant. In the case of  $\sigma u \nu \theta \eta \kappa \eta$  the convention is entirely mutual, both parties having an equal part in arranging the terms" (1908:31). Within this, he includes (1908:32f.) both "4a. An agreement, or settlement, arrived at by means of a disposition or arrangement of points in dispute, a mutual settlement", citing Isaeus 6.23–32, on which he notes that in this context "This instrument served the purpose of a will as well as that of a compact<sup>22</sup> (including the fact that here, unlike a "mere will", consent was required for its revocation) and "[4b] A disposition or settlement of relations between two parties, wherein one party

<sup>&</sup>lt;sup>18</sup> Distinguishing  $\sigma \upsilon \nu \tau i \theta \epsilon \mu \alpha \iota$  as denoting "an ordinary contract or bargain" (1908:28). Cf. at 1908:30 in relation to  $\delta \iota \alpha \theta \eta \kappa \eta$ : ". . . this term is always used in a dignified sense, referring to a solemn transaction originally connected with religious rites and obligations." See further 1908:31 (Sense 4), quoted in the text below.

<sup>&</sup>lt;sup>19</sup> Cf. 1908:29: ". . . in the middle voice the meanings are all very closely allied. There is always a *disposition, laying-down, or setting-forth in order* of something in one's own interests, and then the idea of a second party being affected or involved, on whose course often the completion of the act depends; e.g. in the most common meaning, *To dispose of one's property by will,* the one party makes dispositions which affect another party, and which do not have complete fulfilment without the concurrence of the second party. Here the idea of agreement is usually remote, but in some instances it becomes quite evident (esp. 3 and 6)."

<sup>&</sup>lt;sup>20</sup> This appears from his Chronological Concordance (1908:14) to be the earliest attested use of  $\delta_{1\alpha}\theta_{\eta}\kappa_{\eta}$ . At 1908:36–38 he provides a full translation of Aristophanes, *Birds* 435–61, "as sufficient context has never been given" (36), commenting that "This is evidently not a mere bargain or contract, but a solemn compact or covenant, ratified by oath" (37). Here, "Peisthetaerus will not put down his weapons until the birds agree to make a covenant with him, the terms of which he lays down . . . I do not think it would be possible to find a more definite and explicit example of the meaning of a word than that of  $\delta_{1\alpha}\theta_{\eta}\kappa_{\eta}\nu$  in this passage. If there were no other occurrences of it in the language, this would be sufficient to establish clearly the signification of *solemn compact*, or *covenant*" (38).

<sup>&</sup>lt;sup>21</sup> At 1908:35 he comments on the "error" of eliminating "all elements of mutuality from it and make it so general as "legal transaction" or "instrument". In its widest signification it is used to mean *covenant, engagement, dealings*, and undoubtedly always refers to some relation or relations between two parties."

<sup>&</sup>lt;sup>22</sup> He notes at 1908:34: "In these passages Isaeus classes διαθήκαι amongst συμβόλαια" (contracts) [cf. Plato, *Laws* 922A at 1908:35], and observes at n.1: "The senses of "testament" and "compact" were so closely allied that the same word could be used for both, and the orator could have either or both in mind as suited his argument."

lays down the conditions, and the other accepts them and binds himself by oath or solemn promise to keep them; a settlement, arrangement, compact, covenant".<sup>23</sup>

In the same year as Norton's book appeared, the New Testament theologians James Moulton and George Milligan published "Lexical Notes from the Papyri" (a precursor article to their later book), in which they strongly advanced a homonym model for  $\delta_{1\alpha}\theta_{\eta\kappa\eta}$ , contrasting in oppositional form the *koine* and biblical uses,<sup>24</sup> and implying a conceptual distinction between them based on the presence or absence of mutuality,<sup>25</sup> reinforced by the distinction with συνθήκη: "... συνθήκη (which Aquila substitutes in Regn xxiii.21 for LXX  $\delta i\alpha \theta \eta \kappa \eta$ ) is to the last the word for compact, just as  $\delta i\alpha \theta \eta \kappa \eta$  is always and only the word for will." Moulton and Milligan characterised the usage of  $\delta_{1\alpha}\theta_{\eta\kappa\eta}$  in Hebrews 9 (discussed in section 6 below), where they accepted that both senses are found,<sup>26</sup> as one where the author used the "obsolete, Biblical word... then dropping into the modern use of it for the purposes of illustration" (one has to wonder whether "obsolete" here carries connotations beyond the purely linguistic<sup>27</sup>). In their fuller treatment of 1914 (at 148), they were equally categorical about the limited range of  $\delta_{1\alpha}\theta_{\eta}\kappa_{\eta}$  in the *koine*: "In papyri and inserr., the word means testament, will, with absolute unanimity, and such frequency that illustration is superfluous" (at the same time begging the question of what is meant by a will in these sources). However, they here acknowledged Norton's point<sup>28</sup> that the meaning in classical Greek was wider:<sup>29</sup>

Any thought of some special "Hebraic" flavour about the use of  $\delta_{1\alpha}\theta_{\eta}\kappa_{\eta}$  for *covenant* [in the LXX] is excluded by the isolated<sup>30</sup> but absolutely clear passage of Aristophanes (*Birds* 439), where *compact* is the unmistakeable meaning. This passage is enough to prove that  $\delta_{1\alpha}\theta_{\eta}\kappa_{\eta}$  is properly *dispositio*, an "arrangement" made by one party with plenary power, which the other party may accept or reject, but cannot alter . . . A will is simply the most conspicuous example of such an instrument, which ultimately monopolized the word just because it suited its differentia so completely. But it is entirely natural to assume that in the period of the LXX this monopoly was not established, and the translators were free to apply the general meaning as a rendering of *berit*. For this course there was an obvious motive. A covenant offered by God to man was no "compact" between two parties coming together on equal terms.  $\Delta_{1\alpha}\theta_{\eta}\kappa_{\eta}$  in its primary sense, as described above, was exactly the needed word.

<sup>29</sup> 1914:148 (2nd column).

<sup>&</sup>lt;sup>23</sup> 1908:35, citing here the Aristophanes passage (n.20, *supra*), but also referring to the use of  $\delta_{1}\alpha\tau'_{1}\theta\epsilon_{\mu}\alpha_{1}$ , discussed at 28f., citing also Xenophon, *Mem.* 2.6.23 and Plato, *Laws* 834A.

<sup>&</sup>lt;sup>24</sup> Although in their review of examples of *koine* vocabulary in the NT (1914:xv–xix), including legal terms (1914:xviii),  $\delta t \alpha \theta \eta \kappa \eta$  is omitted.

<sup>&</sup>lt;sup>25</sup> Compare the attempt of Ferguson to eliminate any notion of mutuality from his account of the Macedonian inscriptions which refer to conditional wills, leaving money to the municipality in exchange for a monument or some other memorial to the deceased. For example, inscription 258 of c.79 C.E. records a conditional gift κατα διαθήκην to the βουλή of 1500 denarii on condition that an annual festival be conducted at a stated time. Ferguson 1913:42f. observes: "The transaction between the  $\beta$ ουλή and the testator was not mutual. The testator took the initiative, named the recipient or beneficiary, and the conditions attaching to it, and his terms were authoritative." More generally, he claims (at 46): "the most noticeable feature of the διαθήκη as it appears in the Macedonian inscriptions is that it always contains certain injunctions or commands which are to be executed after the decease of the person who gave them, and that the requirements are imposed without consulting the persons who are to execute them." How can he know, and on what basis assume, that there were never such prior negotiations?

<sup>&</sup>lt;sup>26</sup> 1908:563f., strongly but politely rejecting the view of Westcott that it always means covenant in this chapter.

<sup>&</sup>lt;sup>27</sup> Cf. their use of "archaic" at 1914–29:148f., quoted *infra*, text at n.303.

<sup>&</sup>lt;sup>28</sup> Norton is included, amongst "recent monographs" (along with Behm, on whom see s.2, *infra*), at the end of the entry on  $\delta$ ιαθήκη.

<sup>&</sup>lt;sup>30</sup> This overlooks the sources in Isaeus, Xenophon and Plato cited by Norton: see text at n.22, and n.23, *supra*.

But this overlooks a point strongly made and documented by Norton (distinguishing  $\sigma u \nu \theta \eta \kappa \eta$  and  $\delta \iota \alpha \theta \eta \kappa \eta^{31}$ ). A "compact" does not have to be on equal terms. It can be a standard form "take it or leave it" contract, but even that requires acceptance by both parties (a prominent feature of the *berit* narrative of the Sinai pericope in Exodus<sup>32</sup>). Moulton and Milligan prefer to see  $\sigma u \nu \theta \eta \kappa \eta$  and  $\delta \iota \alpha \theta \eta \kappa \eta$  as quite distinct (in the papyri and other non-literary sources): " $\sigma u \nu \theta \eta \kappa \eta$  [which they note is not found in the NT]... is to the last the word for *compact*, just as  $\delta \iota \alpha \theta \eta \kappa \eta$  is always and only the word for *will*" (1914:148).

It is, of course, possible (and often necessary) to distinguish usages of the same word as found in different corpora – classical Greek literature on the one hand, non-literary papyri and inscriptions on the other; the LXX on the one hand, the NT on the other - and to arrive at different conclusions regarding their relationships. But the waters appear to be muddled by conceptualising the issue in terms of an opposition between "biblical" and "koine" Greek. Apart from anything else, there seems to be little consensus on the very conception of koine. Moulton and Milligan maintain that the main feature of New Testament Greek is that it was "the ordinary vernacular Greek of the period, not the language of contemporary literature" (1914:xi), and in their account of "anticipations of this view" they cite James Donaldson, who writes that "... the language used by the Septuagint and N(ew) T(estament) writers was the language used in common conversation, learned by them not through books but most likely in childhood from household talk, or, if not, through subsequent oral instruction".<sup>33</sup> But it is surely impossible to maintain that the language of either the LXX or the NT is no more than that of the contemporary Greek spoken in the street,<sup>34</sup> not least in the light of more recent studies of the relationship between oral and written language.<sup>35</sup> Moreover, such broad claims elide any consideration of genre, linguistic level,<sup>36</sup> (literary) intertextuality and the pragmatics of address to different audiences. At the very least, we surely have to restrict our claims to saying that the LXX and NT include expressions taken from the koine, and not seek to reduce everything in them to koine.

Interestingly, the more recent work of Louw-Nida, applying a quite different linguistic approach based on "semantic domains"<sup>37</sup> (and here directed towards the vocabulary of the New Testament), arrives at conclusions close to those of Norton. They see the meaning of  $\delta_{1\alpha}\theta_{\eta\kappa\eta}$  as itself presupposing a reciprocal agreement, and view the LXX usage as a

<sup>&</sup>lt;sup>31</sup> See Norton 1908:31, Sense 4(a), quoted supra.

<sup>&</sup>lt;sup>32</sup> Exod. 19:8, 24:3,7. This is less prominent in the account in Deuteronomy (with Moses as narrator). But see *Deut.* 5:23.

<sup>&</sup>lt;sup>33</sup> Moulton and Milligan 1914:xii, citing "Greek Language: Biblical" in Kitto 1876:ii.170. Moreover, they quote Masson 1859:viif. for the view that ". . . the New Testament may be considered as exhibiting the only genuine *facsimile* of the colloquial diction employed by *unsophisticated* Greeian gentlemen of the first century . . ." (emphases as in the original).

<sup>&</sup>lt;sup>34</sup> Danker and Bauer 2000:xv still understand *koine* as "colloquial common speech", but include Philo amongst our sources for it!

<sup>&</sup>lt;sup>35</sup> Especially after Ong's 1982 classic.

<sup>&</sup>lt;sup>36</sup> Thus Decker 1994, summarizing Wallace 1994:8–23: "Part of the confusion lies in the failure to recognize that in any language there are three "levels": the vernacular (the "language of the streets", popular speech, rustic, colloquial), conversational (the spoken language of educated people; grammatically correct, but lacking the subtleties, etc. of literature), and literary (the polished Koine as written by scholars/academics; artistic expression in writing). Most NT writings fit the conversational category, though there are some that lean toward either end of the spectrum. The "mainline" group is represented by (most of) Paul and Matthew. On the edge of conversational, but leaning toward vernacular are Revelation, Mark, John, and 2 Peter. On the other side, leaning toward literary, are Hebrews, Luke-Acts, James, Pastorals, 1 Peter, and Jude."

<sup>&</sup>lt;sup>37</sup> See Pitts 2006 for a description and n.1 there for further bibliography.

particular appropriation of this broad understanding. The choice of  $\delta_{1\alpha}\theta_{\eta}\kappa_{\eta}$  rather than συνθήκη is, for them, precisely "to emphasize the fact that the initiative for such a covenantal relationship existed with one person rather than being the result of negotiation and compromise".<sup>38</sup> Indeed, support for an understanding of the  $\delta_{1\alpha}\theta_{\eta}\kappa_{\eta}$  as often, in effect, a 'testamentary pact' (after family consultations) may be taken from Stanley Porter's discussion (2003:276–79) of the approach of Louw and Nida, in the context of their review of the account of Moulton and Milligan.

The 3rd edition of Danker and Bauer (2000:228f.), while not following Louw-Nida, takes elements from both Moulton & Milligan and Norton, applying them differently to the LXX on the one hand, the NT on the other. They take  $\delta_{1\alpha}\theta\eta\kappa\eta$  to be used "exclusively" in Hellenistic times as "last will and testament", and understand the LXX translation of  $\Gamma$ rr by  $\delta_{1\alpha}\theta\eta\kappa\eta$  as retaining both "the component of legal disposition of personal goods while omitting that of the anticipated death of the testator" and "another essential characteristic of a testament . . . namely that it is the declaration of one person's initiative, not the result of an agreement betw. two parties, like a compact or a contract".<sup>39</sup> They do, however, accept (citing Norton amongst others) that there is a usage (their 3) of  $\delta_{1\alpha}\theta\eta\kappa\eta$  as *compact, contract* which "seems firmly established for Gr-Rom times" but appear to doubt that this meaning significantly influenced the New Testament, though they remark that the usage of the term  $\delta_{1\alpha}\theta\eta\kappa\eta$  in such a sense would serve again as a bridge to LXX usage.

## 1B FROM *DIATHĒKĒ* (διαθήκη) TO *TESTAMENTUM*

The *Vetus Latina*<sup>40</sup> appears, on the evidence of Tertullian<sup>41</sup> (and, probably within decades, by Irenaeus,<sup>42</sup> followed in the next century by Cyprian<sup>43</sup> and Lactantius<sup>44</sup>) to have used

<sup>&</sup>lt;sup>38</sup> Louw and Nida 1988:II.452, quoted with approval by Porter 2003:278.

<sup>&</sup>lt;sup>39</sup> "This is beyond doubt one of the main reasons why the LXX rendered by  $\Box = b \delta$ . In the 'covenants' of God, it was God alone who set the conditions; hence *covenant*... can be used to trans.  $\delta$ . only when this is kept in mind. So  $\delta$ . acquires a mng in LXX which cannot be paralleled w. certainty in extra-biblical sources, namely 'decree', 'declaration of purpose', 'set of regulations'."

 $<sup>^{40}</sup>$  In addition to published sources, I have accessed the on-line (subscription) Beuron database (at http://www.brepolis.net/), which reproduces the Institute's (still incomplete) card-index system whose "goal is the complete collection and critical edition of all surviving remnants of the Old Latin translations of the Bible from manuscripts and citations in ancient writers": see further http://www.vetus-latina.de/en/institut\_vetus\_latina/institut.html. A full study would involve analysis of the data on every verse where  $\delta \iota \alpha \theta \eta \kappa \eta$  occurs in the LXX. I have contented myself, for present purposes, with an examination of all such verse in Genesis, Exodus and 7er. 31:31–33, and a sample from almost all other books of the Hebrew Bible. Within each verse, each card is numbered in the form (as in the next note) 80/84 (here normally within square brackets), meaning card number 80 of a total of 84 (of which card 1 is a heading for the verse and card 2 is always the rendering of Jerome's Vulgate, from the Hetzenauer edition of 1906).

<sup>&</sup>lt;sup>41</sup> Adv. Jud. 3, 7: Ecce enim dies veniunt, dicit dominus, et disponam domui Iudae et domui Iacob testamentum novum . . . [Beuron 80/84 on Jer. 31:31, cf. http://www.tertullian.org/latin/adversus\_iudaeos.htm, ch.III.6]; cf. Adv. Marcionem 4,1,6: Ecce veniet dies, dicit dominus, et perficiam domui Iacob et domui Iudae testamentum novum [Beuron 83/84]; Adv. Marcionem 1, 20, 4: Sic et Hieremiam: et disponam testamentum [Beuron 82/84]; Adv. Marcionem 5, 11, 4: testamentum novum non alterius erit qui illud repromisit [Beuron 84/84].

<sup>&</sup>lt;sup>42</sup> Adversus haeres 4,9,1: Ecce disponam (-) testamentum novum [Beuron 63/84]; 4, 33, 14: qui dicunt, dispositurum Deum Testamentum novum hominibus [Beuron 64/84].

<sup>&</sup>lt;sup>43</sup> Testimoniorum libri, 1, 11 (p.46, 19 Hartel ed., 1868): Ecce dies veniunt, dicit Dominus, et consummabo domui Israel et domui Iuda testamentum novum [Beuron 48/84]; *ibid.*, 3, 20: Ecce dies veniunt, dicit Dominus, et consummabo in domum Israel et in domum Juda testamentum novum [Beuron 49/84].

<sup>&</sup>lt;sup>44</sup> Divine Institutes, 4, 20, 6 (Brandt ed., p.365, 6): ecce dies veniunt, dicit dominus, et consummabo domui Israhel

*testamentum* in *Jer.* 31:31. Fischer adopts it in his Vetus Latina edition of Genesis, in almost every instance where the LXX rendered *berit* as  $\delta_{I\alpha}\theta_{\eta}\kappa\eta^{.45}$  Augustine also adopts *testamentum* in citations of *Jer.* 31:31 in a host of sources,<sup>46</sup> though in other contexts he appears to express some surprise at this translation,<sup>47</sup> but defers to what he takes as the LXX *koine* meaning.<sup>48</sup> But Jerome, when he translated directly from the Hebrew (and often, but not always<sup>49</sup> in his exceptical writing), used the more accurate *foedus*<sup>50</sup> or *pactum*<sup>51</sup> (anticipating modern scholarship's interest in the relationship between *berit* and the ancient Near Eastern treaty tradition<sup>52</sup>) both

<sup>47</sup> Both involving a *berit* between two humans, resolving a dispute. Thus, in *Gen.* 21:27 (Abraham and Abimelekh), Augustine, *Locutionum in Heptateuchum* 1, 68 (388, 264) observes: Et disposuerunt ambi testamentum, vel testati sunt ambo; amat scriptura testamenti nomine pactum appellare [Beuron 7/9]; cf. in *Gen.* 26:28 (Isaac and Abimelekh), *ibid.*, 1, 96 (390, 354): "Et disponemus tecum testamentum. Amant scripturae pro pacto ponere testamentum, id est διαθήκην. Quod latini habent: et disponemus tecum testamentum" [Beuron 6/9].

<sup>48</sup> Exod. 6:4, in *Locutionum in Heptateuchum* 1, 68 (388, 264): Statui testamentum meum ad illos, ita ut darem illis terram Chananaeorum et terram, quam incoluerunt, in qua et incoluerunt in ea. Sic enim habet graecus, quod utique et in graeca lingua absurde videtur sonare. Et tamen Septuaginta interpretum auctoritas tanta est, quos ita loqui non piguit [Beuron 4/4].

<sup>49</sup> Commentatiorum in Malachiam 2 (Migne 25, 1556B)...testamentum sacerdotii [13/20 of Num.25:13]; Origenis in Ieremiam homiliae 6: maledictus homo qui non audierit verba Testamenti hujus [5/6 of Jer. 11:3]; Commentatiorum in Hiezechielem 4 (Migne 25, 130C: ingressus sum in testamentum tecum [10/25 of Ezek. 16:8; cf. 14/25, 17/25, 18/25]; Commentatiorum in Malachiam 2 (1556A): Testamentum meum fuit cum co... [11/25 of Mal. 2:5].

<sup>50</sup> Barrows, *Companion*, 91: "A striking example of the superior accuracy of Jerome's independent version above his simple revision of the old Latin is the passage Jer. 31:31–33 as compared with the quotation of the same, Heb. 8:8–10. In the former, where the translation is made immediately from the Hebrew, we read: "Behold the days shall come, saith the Lord, that I will make for the house of Israel and the house of Judah a new covenant (*foedus*): not according to the covenant (*pactum*) which I made with their fathers," etc. In the same passage, as quoted in the epistle to the Hebrews, where we have only a revision of the old Latin, we read: "Behold the days shall come, saith the Lord, that I will accomplish for the house of Israel and for the house of Judah a new testament (*testamentum*): not according to the testament (*testamentum*) which I made for their fathers. ..." See further instances of Jerome's adoption of the VL in nn.55–56, *infra*.

<sup>51</sup> Jer. 31:31 (quoted in n.50, *supra*) is not the only place where Jerome adopts both *foedus* and *pactum* to translate two occurrences of *berit* in the same verse, the stylistic variation clearly indicating that he regarded the two terms as essentially synonymous. See also his translations of *Gen.* 17:7, 13, 19. From a review of Jerome's use of *foedus* and *pactum* in all the passages in Genesis and Exodus where the LXX renders *berit* as διαθήκη, it is difficult to discern any distinguishing criterion for his choice of the one rather than the other.

<sup>52</sup> McCarthy 1963; Kitchen 1989. For further literature, see Hahn 2005:65 n.2, who stresses in his article the cultic-liturgical dimension of the ANE treaty-covenants.

et domui Iuda testamentum novum [Beuron 69/84]; *ibid.*, 4, 20, 10 (Brandt ed., p.366, 4) consummaturum se domui Iuda testamentum novum [Beuron 69/84]. See further text at n.292, *infra*.

<sup>&</sup>lt;sup>45</sup> Gen. 6:18, 9:9, 12, 13, 15, 16, 15:18, 17:2, 4, 7, 9, 10, 11, 13, 14, 19, 21:27, 31:44, the exceptions being Gen. 9:17 (apparently following Quentin) and 26:28.

<sup>&</sup>lt;sup>46</sup> Beuron cards 21-41/84 on *fer.* 31:31, including *De civitate dei* 17, 3: Ecce dies veniunt, dicit Dominus, et consummabo domui Israel et domui Iuda testamentum novum [Beuron 21/84]; cf. *ibid.*, 18,33 [Beuron 22/84]; *Quaestiones de Deuteronomio* 11 [Beuron 23/84]; *Ep.* 82, 18 (370, 2): per Hieremiam promissum est daturum deum testamentum novum domui Iuda [Beuron 24/84]; cf. *Ep.* 82 [Beuron 25/84]; *Contra Faustum Manichaeum* 32 [Beuron 27/84]; *De gestis Pelagii* 14 [Beuron 28/84]; *Adv. Jud.* 8, 6, 8 [Beuron 29/84]; *Contra Faustum Manichaeum* 32 [Beuron 27/84]; *De gestis Pelagii* 14 [Beuron 28/84]; *Adv. Jud.* 8, 6, 8 [Beuron 29/84]; *Contra Iulianum* 3, 84 [Beuron 31/84]; *Enarationes in Psalmos* 73, 23, 10 (1020) [Beuron 32/84]; *Sermones* 155, 6 [Beuron 36/84]; *Sermones* (Dolbeau ed.) 17, 17-18 [Beuron 37-39/84]. Pepino 2011:168 cites *Ep.* 138.1 (7) *Corpus Scriptorum Ecelsiasticorum Latinorum* (CSEL) 44:132, 16–20, for the use of *testamentum* in *fer.* 31:31. However, he is clearly wrong when he claims: "This Vetus Latina variant of Jer 31:31 is specific to Augustine: Beuron n° 29 Adv. Judacos 6.8 (PL 42:56) and n° 40 Serm Étaix 2.71, 60–61. It is found nowhere else." Indeed, he himself also cites Eucherius (ca. 380–449) as using *testamentum* in another briefer citation of Jeremiah in Form 1011–12 of *Formulae spiritalis intellegentiae. Instructionum libri duo (Corpus Christianorum, Series Latina* (CCSL) 66:62): "in propheta: Et confirmabo testamentum super domum Iuda".

in his rendering of *Jer.* 31<sup>53</sup> and elsewhere,<sup>54</sup> though he too uses *testamentum* twice in *Jer.* 31:31, apparently here following the VL,<sup>55</sup> and once where he offers both *testamentum* and *pactum* as alternatives.<sup>56</sup> However, the Vulgate rendering of *berit* in *Jer.* 31:31 as *foedus* did not inhibit later writers from using *testamentum*,<sup>57</sup> many no doubt influenced by the fact that Jerome's Vulgate itself uses *testamentum* when translating New Testament citations of *Jer.* 31.<sup>58</sup>

We may doubt that Tertullian, who uses *testamentum* both in translating *Jer.* 31:31<sup>59</sup> and in referring to the biblical scriptures<sup>60</sup> (though he more commonly uses *instrumentum* for the latter<sup>61</sup>) simply made a linguistic mistake. Though credited with some knowledge of Roman law,<sup>62</sup> he

<sup>58</sup> Thus Vulg. Heb. 8:8-10, 10:16.

<sup>59</sup> See n.41, *supra*.

<sup>60</sup> Against Marcion, book 4, chapter 6: "For it is certain that the whole aim at which he [Marcion] has strenuously laboured even in the drawing up of his Antitheses, centres in this, that he may establish a diversity between the Old and the New Testaments (Veteris et Novi Testamenti diversitatem), so that his own Christ may be separate from the Creator, as belonging to this rival god, and as alien from the law and the prophets", as quoted by Martin, "What is the "New Testament"?...", citing also book 3, chapter 14. Marcion advocated the complete rejection of the "Old Testament" by Christians, but his original writings – reconstructions of New Testament texts in accordance with his theology, thus in Greek – have not survived.

<sup>61</sup> Hengel 2002:61 n.10 claims that Tertullian does so because the legal term possessed the special meaning of "evidence" or "the document to be produced before the court" (citing Zahn, 1888:106). Barrows, *Companion*, 91, notes that "another Latin term for the two great divisions of the Bible was *instrumentum*, instrument, document; a term applied to the documents or body of records relating to the Roman empire, and very appropriate, therefore, to the records of God's dealings with men", but maintains that as early as the time of Tertullian, *testamentum* was more common. The term *instrumentum* may well reflect the NT terminology of  $\mu \alpha \rho \tau u \rho' \alpha$ .

<sup>62</sup> Quintus Septimius Florens Tertullianus, 155–230, Carthage (where he ultimately became Bishop) is thought to have been the son of a Roman *centurio proconsularis*, who had legal functions: see Eusebius, *Church History*, II, ii. 4, and Jerome's *De viris illustribus*, chapter 53. His knowledge of Roman law (Eusebius, ii. 2) is discussed by Barnes, *Tertullian*, 24, 27. His identification with the classical Roman jurist Tertullianus, whose work is used in Justinian's Digest, is nowadays doubted.

<sup>&</sup>lt;sup>53</sup> Explanationum in Esaiam 2: Ecce dies veniunt, dicit Dominus, et feriam domui Israel et domui Juda foedus novum [Beuron 61/84 (*Jer.* 31:31)]; cf. Adversus Jovinianum 2, 27: apparently with Jacob instead of Juda [Beuron 59/84 (*Jer.* 31:31)].

<sup>&</sup>lt;sup>54</sup> See card 2 in the Beuron database for each of the following verses: *foedus* in *Gen.* 6:18, 9:12, 13, 15, 17, 18, 17:2, 11, 21:27, 26:28, *Exod.* 2:24, 6:4, 23:32, 24:7, 24:8, 31:7, 34:27, 28; *pactum* in *Gen.* 9:9, 11, 17:4, 9, 10, 14, *Exod.* 6:5, 19:5, 31:16, 34:10, 15; both *foedus* and *pactum* in *Gen.* 9:16, 17:7, 13, 19. See also *amicitias* in *Exod.* 34:12 (forbidding Israel from entering into a *berit* with the inhabitants of the land).

<sup>&</sup>lt;sup>55</sup> Epistulae 112, 14: ecce dies veniunt, dicit dominus, et consummabo domui Israhel et domui Iuda testamentum novum [Beuron 57+58/84 (*Jer.* 31:31)], apparently (from the identical spelling of Israhel) following Lactantius (n.44, *supra*). Cf. *Explanationum in Esaiam* 12: ecce dies veniunt, dicit Dominus, et ponam testamentum novum [Beuron 62/84 (*Jer.* 31:31)]

<sup>&</sup>lt;sup>56</sup> In Hieremian prophetam 6, 26 (Reiter ed. p.406, 1): disponam domui Israhel et domui Iuda pactum – sive testamentum [Beuron 60/84 (*Jer.* 31:31)].

<sup>&</sup>lt;sup>57</sup> E.g. 5th cent.: Evagrius Gallicus, *Altercatio* (c.430 CE) 5: et hieremias dicit: ecce dies veniunt, dicit dominus, et consummabo domui Israel et domui Iuda testamentum novum [Beuron 51/84]; Hesychius (d. after 451) *Commentarius in Leviticum* 5, Migne 1865 18 p.1009D: dabo vobis testamentum novum [Beuron 55/84], *ibid.*, 7 Migne 1865 26 p.1143C: et constituam vobis testamentum novum [Beuron 56/84]; Pope Leo I (440–461), *Sermones* 95:1 (Migne 1881, 54 p.461B) [Beuron 70/84]; *Sermones* 95:2 [Beuron 71/84]; Quodvultdeus (Bishop of Carthage), *Liber promissionum et praedictorum Dei* 3, 34 (445/51): Hieremias propheta: ecce dies veniunt, dicit dominus, et consummabo super domum Israhel et super domum luda testamentum novum [Beuron 78/84]; *idem, De cantico novo* 1, 2 (381, 6 & 7) [Beuron 76/84]; 6th cent.: Flavius Cassiodorus, *Expositio Psalmorum* 73, 20 (682, 440) [Beuron 43/84]; *idem, Espositio in Epistulas S. Pauli, Rom* 3, 31 (433A): sicut dicit Jeremias: Dabo vobis testamentum novum [Beuron 54/84]; 7th cent.: Julianus (d.690), *Antikeimenon* 2, 70 (Migne PL 96, 698A), quoting from Augustine [Beuron 68/84]; 9th cent.: Sedulius Scotus (9th cent. Irish Monk), *Collectaneum in Apostolum*, Rm 1, but attributing the quotation to Isaiah [Beuron 79/84].

59

also wrote some (now lost) works in Greek,<sup>63</sup> and would surely have been aware that *testamentum* did not fit the standard uses of  $\delta_{1\alpha}\theta\eta'\kappa\eta$  as a translation of *berit* in the LXX. For while  $\delta_{1\alpha}\theta\eta'\kappa\eta$  is the *standard* translation of the Hebrew *berit* throughout the LXX,<sup>64</sup> *testamentum*, though a common translation of  $\delta_{1\alpha}\theta\eta'\kappa\eta$  from very early times (as early as the Latin translation of the Epistle of Barnabas<sup>65</sup> and Irenaeus<sup>66</sup>), is not adopted as the *standard* (i.e. almost invariable) Latin translation in those passages: *pactum* and *foedus* are also found, in both pre-Vulgate Old Latin (Vetus Latina) versions<sup>67</sup> and later<sup>68</sup> sources, and other terms are also occasionally found.<sup>69</sup> On the other hand, there is far greater consistency in the choice of *testamentum* in those passages which appear to have carried the heaviest theological weight for the church, namely "new covenant" in Jeremiah 31<sup>70</sup> and "blood of the covenant" in *Exod.* 24:8,<sup>71</sup> the allusion in the eucharistic claim<sup>72</sup> (again here reinforced by the Vulgate's use of *testamentum* in NT passages that cite or allude to them<sup>73</sup>). Conversely, there appears to be an avoidance of *testamentum* in passages (at least in Genesis<sup>74</sup>) where the *berit*/ $\delta_{1\alpha}\theta\eta'\kappa\eta$  is to resolve a dispute between humans.

66 See n.42, *supra*.

<sup>67</sup> Fischer appears to adopt *pactum* in Gen. 9:11, following Quentin, and in Gen. 26:28, based on Rufinus.

<sup>&</sup>lt;sup>63</sup> At the very beginning of his *De virginibus velandis* (available in English at http://www.tertullian.org/anf/anf04/ anf04-09.htm#P545\_113997), he refers to an earlier non-Latin version. On his lost treatise on Heretical Baptism, see "Early Christian Writings: Tertullian", at http://www.earlychristianwritings.com/info/tertullian-wace.html. Jason E. Schaitel, "The Life of Tertullian", http://www.nolittlepeople.com/2011/12/the-life-of-tertullian.html, also lists as lost Greek works treaties on *The Defense* and *On the Spectacles* (on the surviving Latin of which, see http:// www.tertullian.org/works/de\_spectaculis.htm).

<sup>&</sup>lt;sup>64</sup> See n.5, *supra*.

<sup>&</sup>lt;sup>65</sup> Epistula Barnabae (mid 2nd cent.) 4.7 (Heer 1908, p.30, 18) on Exod. 34:28 (where, in the MT, Moses wrote the words of the *beril*): et accepit testamentum a domino [Beuron 50/80]; *ibid.*, 14,2 (Heer 1908, p.77, 10) on Exod. 24:18 and 31:18: (where the tablets of the *edut* are given to Moses): Et erat Moyses ieiunans in monte Sinai, ut acciperet testamentum a domino, quadraginta diebus et quadraginta noctibus, et accepit a deo tabulas scriptas manu dei [Beuron 57/121 of Exod. 31:18].

<sup>&</sup>lt;sup>68</sup> E.g. pactum in Bede, Libri 1 in Genesim (109C) [7/13 of Gen. 9:9] and clsewhere: foedus in Isidorus, De Natura rerum 31, 2 [10/15 of Gen. 9:11]; Breviarium Gothicus (Migne (1850) 86, 303A [42/84 of Jer. 31:31].

<sup>&</sup>lt;sup>69</sup> E.g. in *Josh.* 9:6 we variously find *iuratio* (Augustine [9/14]), *pax* (*Breviarium Gothicum* [10/14]) and *amicitia* (Cassiodorus [11/14]).

<sup>&</sup>lt;sup>70</sup> See nn.46 and 57, *supra*. In the Beuron database for *Jer.* 31:32 there are 11 occurrences of *pactum*, 1 of *foedus*, 41 of *testamentum* (a significant proportion from Augustine, who is consistent in his usage). There are 7 entries for Jerome: 4 have *testamentum*, 2 have *pactum*, 1 has *pactum sive testamentum* (cf. n.56, *supra* for *Jer.* 31:31). A similar pattern is found in the entries for *Jer.* 31:33: 8 occurrences of *pactum*, 0 of *foedus* and 21 of *testamentum*. In this context, Jerome, *In Hieremiam prophetam* 6, 26 (Reiter ed. p.405, 1) observes: quod autem pactum pro testamento ponimus, Hebraicae veritatis est, licet et testamentum recte pactum appellatur, quia voluntas in eo atque testatio corum, qui pactum ineunt, continetur [Beuron 38/58 on *Jer.* 31:33].

<sup>&</sup>lt;sup>71</sup> In the Beuron database for *Exod.* 24:8 there are 2 occurrences of *foedus* (one being the Vulgate) and 12 of *testamentum*. Quodvultdeus, *Liber promissionum et praedictorum Dei* 2, 1 has *in testimonium accipiens* [Beuron 16/18].

<sup>&</sup>lt;sup>72</sup> See text at n.8, *supra*.

<sup>&</sup>lt;sup>73</sup> Thus Vulg. Matt. 26:28, Mark 14:24, Luke 22:20, 1 Cor. 11:25.

<sup>&</sup>lt;sup>74</sup> Gen. 21:27: 2 occurrences of *testamentum*, both from Augustine; 2 (apart from the Vulgate) of *foedus*, 2 (also from Augustine) of *pactum*; Gen. 26:28: 2 occurrences of *testamentum*, both from Augustine; 2 (apart from the Vulgate) of *foedus*, 1 each of *execratio* and *coinjuratio*; Gen. 31:44 (Jacob and Laban), where *testamentum* is used again by Augustine (here joined by Cassiodorus), while *foedus* occurs 3 times. However, Fischer adopts *testamentum* in Gen. 21:27 and 31:44 but not 26:28. On Augustine in the first two of these sources, see further n.47 *supra*.

## 2. TWO LEGAL-THEOLOGICAL INTERPRETATIONS OF διαθήκη

In 1912, Johannes Behm<sup>75</sup> published a 116 page monograph<sup>76</sup> entitled *Der Begriff Diatheke im Neuen Testament* (Leipzig: Deichert), whose potential influence<sup>77</sup> has remained, insofar as Behm penned the article on  $\delta\iota\alpha\theta\eta\kappa\eta$  in the widely-consulted *Theologisches Wörterbuch zum Neuen Testament* (1935), now available also in English.<sup>78</sup> In the latter article he quotes (at 125) the statement of Moulton and Milligan<sup>79</sup> that " $\delta\iota\alpha\theta\eta\kappa\eta$  is properly *dispositio*, an "arrangement" made by one party with plenary power, which the other party may accept or reject, but cannot alter. A will is simply the most conspicuous example of such an instrument, which ultimately monopolized the word just because it suited its differentia so completely",<sup>80</sup> but adds, apparently with reference Jewish sources, that "the existing examples of the more general sense of "disposition" are all to be found in the religious sphere". Yet even in following Moulton and Milligan in support of a more general meaning of  $\delta\iota\alpha\theta\eta\kappa\eta$  in the *koine* as "ordinance" or "disposition", he has to concede that this finds literary expression "only in [one] disputed passage".<sup>81</sup> He maintains that the usage as "agreement" or "treaty" is found "only" in Aristophanes' *Birds*.<sup>82</sup>

Behm sought to reduce the distance between the LXX and *koine* meanings<sup>83</sup> in the light of a theology of unilateral grace.<sup>84</sup> Though this was immediately recognised as reflecting "one

<sup>&</sup>lt;sup>75</sup> 1883–1948, Lutheran Theologian, Göttingen.

 $<sup>^{76}</sup>$  Behm cites the work of Norton (1908) in his 1912 monograph, noting at 1912:2 that it is limited to classical sources.

<sup>&</sup>lt;sup>77</sup> See the use made of Behm's linguistic analysis in Selb, " $\delta$ tαθήκη im Neuen Testament", summarised by Llewellyn, "Revocation", 43. See also Lincoln 1999:4-5 (citing Behm's article as, and seemingly attributing it to, "Kittel").

<sup>&</sup>lt;sup>78</sup> Behm, Sections B-D of "διαθήκη", TDNT II:124-34.

 $<sup>^{79}</sup>$  1919:148. In TWNT/TDOT (see 1965:106 n.5) Behm lists Norton in the bibliography for his article on  $\delta\iota\alpha\theta\dot\eta\kappa\eta$ , but does not otherwise refer to it.

<sup>&</sup>lt;sup>80</sup> Cf. Jaubert 1963:312.

<sup>&</sup>lt;sup>81</sup> Behm, *ibid.*, quoting Dinarchus, *Fragments or Orations* 1, 9 (see now the Loeb edition of *Minor Attic Orators*, Vol.2), referring to the decrees or statutes of the Arcopagus.

<sup>&</sup>lt;sup>82</sup> Behm 1965:125. He comments: "This is a treaty between two parties, but binding only on the one according to the terms fixed by the other." Perhaps this explains why (on Behm's own account) it is so rare: the biblical covenant is binding on God, in terms of the commitment of protection, even if the specific rules laid down relate only to human conduct, and are there on a take-it-or-leave-it basis. At 1912:11, he mentions Norton's treatment of Aristophanes' *Birds*. Elsewhere, he notes the use of δtέθεντο in Ditt. Syll.3, 205, 10ff: see n.88, *infra*. See also Jaubert 1963:311 and the context in the will of Ptolemy Neoteris, discussed in s.3, *infra*.

<sup>&</sup>lt;sup>83</sup> Behm 1965:126 (under the rubric "The Transition from Σεντα το διαθήκη in the LXX and Jewish Literature"; see also 1912:17-34), argues from the fact that *diathēkē* (in the LXX, apparently) "in both poetic parallelism and lists in prose . . . is related to such concepts as *nomos*, *prostagma*, etc. . ." and then jumps to "As a synonym of *nomos* etc." At 126, he translates διαθήκη εἰρηνης in LXX Num. 25:12f. as "an ordinance which brings salvation". Again at 126: "διαθήκη is especially used for the declaration of the divine will at Sinai which is the divine disposition *par excellence* in the OT. . .".

<sup>&</sup>lt;sup>84</sup> See Behm, *ibid.*, at 126f., commenting on *diathèkė* in the LXX as a concept which "hovers between the senses of "covenant" and "disposition" . . .[to be explained not only in terms of the Greek term itself but also] "the complex content of the word *berit* which the translators were seeking to grasp", one which transcended the "originally legal" meaning and came to indicate "a free declaration of the divine will to man's salvation . . . the exclusively determinative will of the divine author emerged in clearer focus" (127). This leads ultimately to *Jer.* 31:31 where *berit* is "the free gift of God, as the declaration of His saving will, as the revelation of grace, in relation to which Israel can be only a recipient", so that the LXX *diathèle* is a religious concept, representing a "significant development of the Hebrew term even while preserving its essential content". See further *infra*, text at nn.97–114.

specific line of the part played by the covenant-idea in Reformed Theology",<sup>85</sup> Behm also claimed that the term is technical for "last will and testament" "in Gk jurisprudence in every age"<sup>86</sup> but noted that it was also found in literary and popular Greek.<sup>87</sup>

Behm argued also from the meanings of the middle voice (especially  $\delta_1 \hat{\epsilon} \theta \epsilon \tau \sigma$ ) of the verb  $\delta_1 \alpha \tau (\theta \eta \mu t (1965:104f.))$ . Despite acknowledging the meaning "less frequently, and only in older texts . . . to come to an arrangement or to order things with others", <sup>88</sup> he applies his (theological) conclusion not only to the LXX but also to the Apocrypha, <sup>89</sup> Philo<sup>90</sup> and the NT: "The term is obviously a formula for the gracious will of God disclosed in history. . ."<sup>91</sup> Indeed, he seeks to project this back even to the *berit* of the Hebrew Bible<sup>92</sup> (for which there is a – purely etymological – argument<sup>93</sup>). He concludes:

In both form and content the NT use of  $\delta_{1\alpha}\theta_{\eta}\kappa\eta$  follows that of the OT. The only difference is to be found in the step from prophecy to fulfilment . . . Neither "covenant" nor "testament" reproduces the true religious sense of the religious term  $\delta_{1\alpha}\theta_{\eta}\kappa\eta$  in the Greek Bible.  $\delta_{1\alpha}\theta_{\eta}\kappa\eta$  is from first to last the "disposition" of God, the mighty declaration of the sovereign will of God in history, by which he orders the relation between Himself and men according to His own saving

<sup>89</sup> Behm 1965:127: "The OT Apocrypha and Pseudepigrapha present much the same picture as the LXX . . ." [with parallels i.a. to νόμος in *fub*, 30:21] . . . In several passages in Sirach it is used to translate  $p\pi$ . . . . It is also used for the whole Law (βιβλίον διαθήκης, "book of the law" in *1 Macc*. 1:57, *Sir*. 24:23 [the Hebrew original of the latter is **μ**=2 Segal ed., 146] . . . All this goes to show that the primary thought is that of (God's) disposition, "order" or "institution", συνθήκη being used for "covenant" or "treaty" in 1 Macc. 10:26, 2 Macc. 12:1, Wis. 1:16 etc." (But) "an extreme development of legalism is combined with eschatological hope in the **μ**-α concept of the Damascus writing" (citing **μ**-α **μ**-π **μ**-π **μ**-μ **i** 6:19, 8:21). On διαθήκη in the Greek Sirach, see also Jaubert 1963:313.

<sup>90</sup> Behm 1965:128 argues that Philo uses συνθήκη for "treaty", "covenant" except where quoting from the LXX: "He lays the strongest possible stress on the element of the absolute one-sidedeness of the expression of the will of the gracious God, *Som.* II, 223... As an allegorist, however, he imports into the LXX concept the everyday sense of "testament"" [citing DSL II, 16, but Philo is not citing the LXX here, and the text  $\delta t\alpha \theta \eta \kappa \alpha \zeta$  has been doubted: see Loeb edition ad loc.]: "The majesty of the divine  $\delta t\alpha \theta \eta \kappa \alpha \zeta$  in the OT is seen by contrast with human testimonics [citing *Som.* II, 224 and *Mut. Nom* 52 on *Gen.* 17:2]... Philo obviously realised that his figurative interpretation of the divine  $\delta t\alpha \theta \eta \kappa \eta$  as a testament differed from the true biblical sense. His knowledge of this sense could in fact be deduced, even if there is no direct evidence, from his hermeneutical principles (the literal and allegorical sense). Even in Philo the firmly developed religious concept of the LXX shines through the enveloping imagery." See also Behm 1912:34-37. On *Mut. Nom.* 52, see further n.101, *infra.* 

<sup>91</sup> Behm 1965:128 (concluding his account of Philo), and at 129f. on the religious sense of διαθήκη in Paul: *Rom.* 11:27, *Rom.* 9:4, *Eph.* 2:12 (διαθῆκαι τῆς ἐπαγγελίας: Harl 1986:55 has noted that the latter term (promise) is not found in the LXX), *2 Cor.* 3:6. See also Behm 1912:44–49. But see further, on Galatians, s.6 *infra.* 

<sup>92</sup> Behm 1965:134, but see s.4, below. He also has some brief comments on *berit* in rabbinic Judaism and its interpretation of *Jer* 31:31: see Behm, *ibid.*, at 128f. and (late) sources there cited.

<sup>93</sup> On *berit* as disposition in the Hebrew Bible, see Weinfeld, *TDOT* II.255, arguing that the original meaning, based on an etymology from Akk. *biritu* (clasp, fetter) is the idea of a bond rather than an agreement, so that it implies first and foremost the notion of "imposition", "liability" or "obligation" [citing *Ps*. 111:19, *Judg*. 2:20] . . . *berith* is synonymous with law and commandment . . . and the covenant at Sinai in Ex. 24 is in essence an imposition of laws and obligations upon the people (vv.3–8)". Yet those very verses twice record the *acceptance* of the terms by the people (see n.32, *supra*).

<sup>&</sup>lt;sup>85</sup> Vos, Review: "All this is very fine and it may even seem beautifully to fit into one specific line of the part played by the covenant-idea in Reformed Theology. If  $\delta t\alpha \theta \eta \kappa \eta$  stands for the sovereignty and monergism of God in salvation, then it is an eminently Augustinian and Calvinistic idea."

<sup>&</sup>lt;sup>86</sup> Behm 1965:124. But see the first paragraph of section 3, infra.

<sup>&</sup>lt;sup>87</sup> Citing, e.g., Plato Leg IX.923e, Epictetus, IDISS, II, 13,7, and Papyri such as BGU 19.

<sup>&</sup>lt;sup>88</sup> Behm, 1965:105, citing Xenophon, Mem., 2.6.23 (cf. Norton, *supra* n.23). He argues that even here "The emphasis . . . does not fall on the reciprocal nature of the action. The element of reaching a decision being still strong, it falls rather on the legally binding character of the decision reached either in relation to or with respect to others", despite having earlier in the same paragraph cited not only the usage in Aristophanes, *Birds (supra*, n.9), but also Ditt. Syll.3, 205, 10ff: τὴν φιλίαν καὶ τὴν συμμαχίαν . . . ἦν διέθεντο πρòς ἀλλήλας αἱ πόλεις ("to establish friendship and covenant relationship").

purpose, and which carries with it the authoritative divine ordering, the one order of things which is in accordance with it . .  $^{94}$ 

But not only does such a construction project back a later Christian model of covenant on to the LXX (a Jewish translation) and the Hebrew Bible itself. It is also far too "systematic" to do justice to the complexity (and interest) of the legal historical development. Behm takes it for granted that  $\delta\iota\alpha\theta\eta\kappa\eta$  is a technical term in Greek jurisprudence, corresponding to our understanding of "last will and testament". But neither aspect of this assumption is solid. We find in fact that "testamentary succession" was weakly institutionalised in Greek and Hellenistic times,<sup>95</sup> and that the terminology of  $\delta\iota\alpha\theta\eta\kappa\eta$  (and the verb from which it derives) could be applied to a range of arrangements,<sup>96</sup> none of which have all the incidents of the "last will and testament" with which we are familiar: a secret, written instrument, taking effect only at death (and thus covering the "estate" as it existed at that moment) but entirely revocable by the "testator" up to that time.

Paradoxically, a more satisfactory account of the theological development of the covenant concept may now be derived from studies of the Greco-Roman background of  $\chi \alpha \rho \iota \varsigma$  (grace), whose use in Christian theology clearly informs Behm's analysis.<sup>97</sup> In the Hebrew Bible, covenant is associated in some sources with *hesed*, variously translated lovingkindness or mercy: God is said to keep the covenant and show mercy.<sup>98</sup> Such "covenant love" <sup>99</sup> "always has strong elements of reciprocity in its usage."<sup>100</sup> Philo goes further, in using the expression  $\delta \iota \alpha \theta \eta \kappa \eta \nu \chi \alpha \rho \iota \tau \sigma s$ .<sup>101</sup> But his use of  $\chi \alpha \rho \iota \varsigma$  is not to be taken in the later Christian sense. In fact, even that latter theological concept, it has recently been argued, must be understood in the context of the Greco-Roman patron-client relationship,<sup>102</sup> which involved *reciprocal* duties, *officia*, on the part of the client. But these duties were social rather

<sup>102</sup> See particularly DeSilva 1999, Harrison 2003, who observes at 352 that the Hellenistic view of grace "seems to be somewhat neglected in modern New Testament scholarship."

<sup>94</sup> Behm 1965:134.

<sup>&</sup>lt;sup>95</sup> Yaron 1960:18 comments similarly on the tannaitic institutions: "At first these practices were probably extralegal, and depended for their effect upon the readiness of those concerned to acquiesce in the changes brought about by the deccased."

<sup>&</sup>lt;sup>96</sup> See further s.3, *infra*, esp. at n.125. Yaron 1960:34 observes: ". . . as far as Greek (and Hellenistic) law is concerned, the distinction between unilateral and bilateral dispositions means much more to us, trained to distinguish and classify than it meant to Greek lawyers."

<sup>&</sup>lt;sup>97</sup> See n.84, *supra*.

 <sup>&</sup>lt;sup>98</sup> See Zobel, *TDOT* V:60 on the "stereotyped formula" that links *hesed* and *berit*: "keeping the covenant and showing kindness/mercy as attributes of God": *1 Kings* 8:23 (= 2 Chron. 6:14); *Deut.* 7:9, 12; *Neh.* 1:5, 9:32; *Dan.* 9:4.
 <sup>99</sup> Freedman and Lundblom, *TDOT* V:25, contrasting the mutuality of the relationship of muth that of <sup>19</sup>/<sub>1</sub> with that of <sup>19</sup>/<sub>1</sub>

<sup>(</sup>*hen*): "Unlike *hesed*, *hen* can be withdrawn without consequence, since it is given freely."

<sup>&</sup>lt;sup>100</sup> Harrison 2003:109.

<sup>&</sup>lt;sup>101</sup> Philo, *de mutatione nominum* 51–52, on the covenant with Abraham: "With good reason then did He say, 'Become blameless', for he holds that freedom from sin and guilt is a great furtherance towards a happy life. And to him who was elected to live in this fashion He promises to leave a covenanted portion (κλήρον κατά διαθήκας απολείπειν) such as is fitting for God to give and man to receive, for He says 'I will set my covenant between me and between thee' (Gen. xvii.2). Now covenants are drawn up for the benefit of those who are worthy of the gift, and thus a covenant is a symbol of the grace (διαθήκην χάριτος) which God has set between Himself who proffers it and man who receives." Translation of F.H. Colson, *Philo* vol.5 (London: Heinemann, 1934; Loeb Classical Library). We may note that in this passage Philo apparently uses the term διαθήκη in both the theological and the *koine* senses, linked by the association with χάριτς in the hellenistic patronage sense. See further Harrison 2003:125, in the context of an overall account of χάρις in Philo (114–33).

than legal.<sup>103</sup> The relationship was one of benefaction on the one hand, gratitude<sup>104</sup> on the other. It could be expressed in the public sphere, in inscriptions,<sup>105</sup> or in private relationships, manifest in the papyri.<sup>106</sup> The gratitude of the client/recipient entailed loyalty,<sup>107</sup> and this, I would suggest, provides a conceptual link with the notion of covenant,<sup>108</sup> whose deep structure may be described as an exchange (or bond<sup>109</sup>) of protection for loyalty.<sup>110</sup> Both the protection and the loyalty could assume different forms: in the ancient Near East vassal treaties and covenants of grant;<sup>111</sup> in the Hebrew Bible monotheistic commitment and laws;<sup>112</sup> in the New Testament works and faith. Of course we have to pose the question of the forms of both  $\delta_{1\alpha}\theta\eta'_{\kappa\eta}$  and  $\chi\alpha'_{\rho_{1\varsigma}}$  separately for each of our sources.<sup>113</sup> But it is only

<sup>105</sup> Harrison 2003:ch.2, concluding (at 63) with the observation: "Wetter was correct in seeing the bestowal of  $\chi \dot{\alpha} \rho_{1\varsigma}$  by the Caesars as the linguistic springboard for the NT. But the dominant use of the word was subsumed under the ethos of reciprocity. Thus as a semantic starting point for the NT understanding of grace,  $\chi \dot{\alpha} \rho_{1\varsigma} -$  unless carefully defined – carried as many dangers as advantages." See also Harrison 146-50 on "*Charis* in Jewish Synagogal and Funerary Inscriptions".

<sup>106</sup> See Harrison 2003:80–84 on "Charis and the Ethos of Reciprocity in the Papyri". At 2003:24, Harrison compares the "private world of benefaction relationships" (seen in the papyri) to that of Pauline house churches.

<sup>107</sup> See Zobel, *TDOT* V:62 n.52, quoting Weinfeld in Fee and Hubbard 2011:141f.: "... the most important stipulation in any suzerain/vassal treaty was loyalty (Heb. hesed)...(in this context it means covenantal faithfulness)". DeSilva 1999:45f. notes that one component of gratitude in personal patronage is loyalty to the giver, entailing an obligation not to become entangled in a web of crossed loyalties, and observes (at 63) that *pistis* in the New Testament may refer to both loyalty and trust.

<sup>108</sup> See also the interpretation by Campbell 1972:110 of a Macedonian Inscription of 93 CE described by Ferguson 1913:43, where a conditional gift is given to the city κατὰ διαθήκην.

<sup>109</sup> DeSilva 1999:46 cites Seneca, *de ben*. 6.41.1–2 on the point of a gift as not to obtain a return but to create a "bond" that "binds two people together".

<sup>110</sup> In discussing Paul's concept of  $\chi \alpha \rho \iota \varsigma$ , Harrison 2003:287 comments: "While God demands loyalty of the dependants in His household, God's reign of grace provides a security and status that totally surpasses the lucrative career prospects within the *familia Caesaris*."

<sup>111</sup> Weinfeld's distinction (1970; 1975:266-69), applied to Gen. 15 by Campbell 1972:108f. But see Hughes 1979:49-51. In fact, Weinfeld qualifies his view of the unconditional nature of the covenant of grant in several respects. Thus: "the "grant" serves mainly [emphasis supplied] to protect the rights of the servant" (1970:185); "... in contradistinction to the JE source where the loyalty of the Patriarchs is a matter of the past, in the priestly source it is anticipated" (1970:186 n.16); he concedes that the unconditional nature of the grant in the ancient Near East is not universal: see the two counter-examples (Nuzi and Hittite) at 1970:193, where he observes: "in most [emphasis supplied] of the cases rebelliousness brought about the dissolution of sonship, be it a real son or an adopted"; "It was the Deuteronomist, the redactor of the Book of Kings, who put the promise of David under condition (I Kings II, 4, VIII, 25, IX, 4f) and so did Deuteronomy with the promise to the patriarchs"; moreover, "It is true, even in the predeuteronomic documents the loyalty of David's sons and the sons of the patriarchs is somehow presupposed [n.102: "cf. Gen. XVIII, 19. This is an expectation and not a condition"] but it is never formulated as the condition for national existence as it occurs in the deuteronomic literature" (1970:195); "In regard to the Davidic covenant, it should be admitted that the conception of conditionality is implied in Ps. CXXXII (v. 12) which seems to be an ancient Psalm. It is indeed possible that alongside the conception of unconditional promise of the dynasty there was also in existence the concept of a conditional promise. The conception of conditionality might have especially developed after the division of the kingdom" (1970:196).

<sup>112</sup> The Abrahamic covenant on the one hand, the Mosaic on the other.

<sup>113</sup> Harrison 2003:11 comments that most Christian writers write as if grace is a timeless construct.

<sup>&</sup>lt;sup>103</sup> DeSilva 1999:38, 44. Compare Zobel, *TDOT* V:53 on *hesed* in the Hebrew Bible, citing A.R. Johnson: "the term connotes more than can be defined in the legal terminology of *berit*. . . *hesed* is 'the virtue that knits together society' (Robertson-Smith)".

<sup>&</sup>lt;sup>104</sup> DeSilva 1999:42 on Ciccro, *De Off.* 1.47–48 (gratitude an absolute duty); 74 n.36 on Sencca, *Ben.* 1.4.3 ("dcbt of gratitude"). On Paul's attitude to benefaction, Harrison 2003:287f. observes: "Paul endorses conventions from the honorific inscriptions that stress the obligation of the beneficiary to respond worthily to the Benefactor"; contrast Philo's critique of such acknowledgements of benefaction in the inscriptions (Harrison 2003:130–33, citing *De Cherubim* 122–23). The latter may be compared to attitudes in the early Church, discussed in Wheatley 2011. See also DeSilva 1999:39, 51 on  $\chi \alpha \rho \iota \varsigma$  as gratitude/thanks in some New Testament sources.

when faith is itself viewed as predestined<sup>114</sup> that the deep structure of covenant reciprocity comes to be threatened.<sup>115</sup>

A different theological explanation of the LXX's use of  $\delta$ ιαθήκη to render the HB's ברית, one which avoids both the theological and legal anachronisms of Behm's arguments, has been offered by Adrian Schenker.<sup>116</sup> Schenker notes correctly that the *koine* meaning of  $\delta_{1\alpha}\theta_{\eta\kappa\eta}$  includes grants in contemplation of death, where there is *shared* ownership between the "testator" (during his lifetime) and the beneficiary "after his death" - μετα την τελευτήν (meta tēn teleutēn).<sup>117</sup> This, he argues, fits the Torah's account of the covenantal grant of the land,<sup>118</sup> and the limitations on its use.<sup>119</sup> Though the Hebrew Bible itself shows no awareness of a comparable social institution involving such divided ownership<sup>120</sup> (unless we read it into Esau's "sale" of his birthright while Isaac is still alive<sup>121</sup>), Hellenistic Jews will have been familiar with the *meta ten teleuten* (an expression used, we may note, in a non-legal sense in the LXX<sup>122</sup>), which was to become the *matenat bari* of the Mishnah.<sup>123</sup> Indeed, we read in LXX Sir. 33:24(32): "In the day of the completion of the days of your life and at the moment of death, distribute an inheritance  $(\epsilon \nu \kappa \alpha \iota \rho \omega)$  τελευτής διάδος κληρονομίαν).<sup>124</sup> which though not using the technical vocabulary certainly hints at a two-stage form of inheritance. Schenker notes that  $\delta_{I\alpha}\theta_{\eta}\kappa_{\eta}$  and its verbal forms covered a range of arrangements including both the *meta ten teleuten* gift in contemplation of death and the Hellenistic "will".<sup>125</sup> However,

<sup>&</sup>lt;sup>114</sup> Not, apparently, an exclusively Christian notion. Harrison 2003:165 observes that "Electing and predestinating grace occupies a dominant position in the synagogal sermons of Pseudo-Philo."

<sup>&</sup>lt;sup>115</sup> Dum 2003:320f. comments on Paul's preference for  $\chi \alpha \rho \iota \varsigma$  (the LXX translation for *hen*) over  $\epsilon \lambda \epsilon \sigma \varsigma$  (the LXX translation for *hesed*): "... presumably because in its usage he could combine the most positive features of the two Hebrew words: *charis* denotes, as it were, the unilateralness of *chan* and the lasting commitment of *chased*", and then goes on to offer as "part of the explanation" the association of *charis* with benefaction, citing particularly Harrison's study. The latter (2003:106–10, 348f.) agrees that Paul wants to avoid the idea of reciprocity attached to *hesed* in the Hebrew Bible, but notes the "irony that in choosing the word  $\chi \alpha \rho \iota \varsigma$  Paul opts for the central *leitmotiv* of the Graeco-Roman reciprocity system."

<sup>&</sup>lt;sup>116</sup> Schenker 2000 (though not addressing Behm's analysis). Schenker is a Dominican priest, as well as a prominent academic scholar.

<sup>&</sup>lt;sup>117</sup> Cf. the *donatio mortis causa* practiced by the Egyptians, e.g. BGU III.993 of 127 BC, with the *meta ten teleuten* terminology, cited by Taubenschlag 1955:205, noting that such *donationes mortis causa* were more frequent among the Greeks, some stressing their revocability. On BGU III, 993, see also Yaron 1960:26–28 (and n.199, *infra*); Hughes 1979:74 (though wrongly dating the papyrus to 127 AD); Kloppenborg 2008:179–80 (disputing Kreller's interpretation that the usufruct in the land remained with the testator until his death), 182, 188–89, 191.

<sup>&</sup>lt;sup>118</sup> Both to Noah and Abraham: on *berit* in *Gen.* 6:18, 9:9–11, 15:18, 17:8 (where the inclusion of descendants in the covenant is taken to presuppose the grant of the land as their living space, so that the passage in this sense reiterates *Gen.* 15:1.): Schenker 2000:176f. A similar view is attributed to Philo by Jaubert 1963:314f., while denying that this was contemplated by the LXX translators.

<sup>&</sup>lt;sup>119</sup> God is the owner and the gift is to take effect in the future; *Lev.* 25:23 stresses that this is possession for enjoyment: Schenker 177.

<sup>&</sup>lt;sup>120</sup> Cf. Yaron 1960:4–10 (ch.1).

<sup>&</sup>lt;sup>121</sup> See further n.224, *infra*.

<sup>122</sup> LXX. Josh. 1:1, Judg. 1:1, 2 Chron. 24:17, 1 Mace. 9:23 (all referring to events "after the death of").

<sup>&</sup>lt;sup>123</sup> See *infra*, at nn.184–187.

<sup>&</sup>lt;sup>124</sup> New English Translation of the Septuagint, at http://ccat.sas.upenn.edu/nets/edition/). On the expression "from today and after my death" (*mehayom ule'aliar mitah*) in Mishnah *Baba Batra* 8:7 (where R. Yehuda requires these words; R. Yose does not) see Yaron 1960:114–18; Llewellyn, "Allotment", 32f. On outright gifts during lifetime, with or without clauses imposing a reciprocal duty of maintenance, see Kloppenborg 2008:183–90.

<sup>&</sup>lt;sup>125</sup> Schenker 2000:178: In Egypt the law of succession knew not only [1] testaments (citing those by soldiers from Fayoum between 238 and 225 BCE from the Flinders Petrie collection: notarised, witnessed, with set formulae; on P. Petr. III 2 (238/7 BCE) see Kloppenborg 2008:184f.), but also [2] division of property by parents in contemplation of death and [3] succession agreements between spouses. Schenker notes (2000:178f.) that Greco-Roman law did not distinguish rigorously between these three forms, although Llewellyn, "Allotment", 38, may be correct in that

the latter falls significantly short of the Roman and modern institutions in that it could include provisions taking effect already within the testator's lifetime,<sup>126</sup> and was not fully and automatically revoked by a later will.<sup>127</sup> In short, the LXX use of  $\delta_1 \alpha \theta \eta' \kappa \eta$  is both legally appropriate to a grant of land in which the owner (here, God) retains rights, and theologically appropriate to a *bilateral* covenantal relationship in which that grant remains subject to the good behaviour of its recipients (as the history of exile, and its interpretation by the prophets, well attests).

As an example of the *meta ten teleuten* arrangement in a succession agreement<sup>128</sup> between parents and children, Schenker cites P. Upps. Frid. 1 (of 48 CE):<sup>129</sup> a written contract  $(\sigma \nu \gamma \gamma \rho \alpha \phi \eta)$ , written by only one party, the father, but including a  $\delta \mu o \lambda o \gamma i \alpha$ , an acknowledgement by the children. The division is made explicitly in contemplation (Schenker: "pour cause") of death (μετα την τελευτήν). It uses a verb typical of testaments,  $\kappa \alpha \tau \alpha \lambda \epsilon (\pi \omega)^{130}$  but while it does not take effect immediately in respect of the heirs' ownership rights to either immovable or movable property, it cannot (being a pact rather than a testament, and in the absence of an explicit clause reserving a right to revocation<sup>131</sup>) be revoked by the "testator" alone;<sup>132</sup> the heirs, who may enter into possession, already have rights over the property (which Roman law later required to be registered,<sup>133</sup> for taxation purposes). Nevertheless, Schenker describes the arrangement as one which "équivaut pratiquement à un testament" in that the parents retain title until their death even though the children already enter into possession.<sup>134</sup> It is this feature which Schenker identifies as explaining the theological attraction of  $\delta_{1\alpha}\theta_{\eta}\kappa_{\eta}$  to the LXX translators: under the covenant (conceived as a bilateral agreement, not a unilateral gift<sup>135</sup>), God (whose death is not contemplated<sup>136</sup>) remains owner of the land, while his people enter into possession.<sup>137</sup> There was, however, at least one<sup>138</sup> alternative form of this arrangement, one which did not explicitly reserve the ownership rights of the testator; here the heirs gained future ownership while the "testator" retained enjoyment (as in the rabbinic matenat bari<sup>139</sup> - and, as I have

generally the Greek μετὰ τὴν τελευτήν was bilateral, involving an agreement, while the διαθήκη was unilateral (even though some of its provisions could come into effect during the testator's lifetime).

<sup>&</sup>lt;sup>126</sup> See text at nn.152–153 infra.

<sup>&</sup>lt;sup>127</sup> See text at nn.168–169 *infra*.

<sup>&</sup>lt;sup>128</sup> Schenker 2000:179f. At 182, he notes that marriage contracts could also contain comparable testamentary clauses.

 $<sup>^{129}</sup>$  Schenker 2000:179f., following the discussion by Llewellyn, "Allotment" (including the full text and translation).

<sup>&</sup>lt;sup>130</sup> Lines 10 and 14: see Schenker 2000:180.

<sup>&</sup>lt;sup>131</sup> Schenker 181f. He notes at 182 that with such a reserve clause the law combined the advantages of the two institutions, and that in some papyri this institution is called  $\sigma_{U}\gamma\gamma\rho\alpha\varphi\delta_{I}\alpha\theta_{I}\kappa\eta$ .

<sup>&</sup>lt;sup>132</sup> Compare Mishnah *Baba Batra* 8:7 (quoted in n.187, *infra*), requiring the consent of both father and children to the disposition of the property during the father's lifetime.

<sup>&</sup>lt;sup>133</sup> Lines 34–36; Schenker 2000:180f.

<sup>&</sup>lt;sup>134</sup> Schenker 2000:179.

<sup>&</sup>lt;sup>135</sup> Yaron 1960:32 maintains: "The step from bilateral gift to unilateral testament was never taken in Jewish law." See further *infra*, at nn.197–206.

<sup>&</sup>lt;sup>136</sup> An issue that troubled Behm 1965:129.

<sup>&</sup>lt;sup>137</sup> Schenker 2000:183f.

<sup>&</sup>lt;sup>138</sup> Both the content and the terminology of the papyri discussed by Kloppenborg 2008 (see n.183, *infra*) indicate a far greater flexibility in practice than might be suggested by a "rule book" like the Mishnah.

<sup>&</sup>lt;sup>139</sup> See *infra*, at nn.184–187.

argued, the relationship between the father and the older son in Luke's Parable of the Prodigal Son<sup>140</sup>).<sup>141</sup>

Of course, this particular legal analogy does not hold good for every use of  $\delta$ iαθήκη in the LXX to render the Hebrew Bible's *berit*. But LXX scholars have established that the Pentateuch was translated first and influenced the translations of later books.<sup>142</sup> The same argument may, however, be made in relation to consistency *within* the Pentateuch itself, and in particular in relation to the Mosaic covenant. Moreover, different translation styles have been observed as between the five books, leading to the inference that they come from the hands of different translators.<sup>143</sup> The probable solution is that there was a subsequent editing process which imposed terminological consistency,<sup>144</sup> and here priority was given to the Genesis translation of *berit* (itself thought to have been the first book to be translated<sup>145</sup>).

Indeed, the choice of  $\delta \iota \alpha \theta \eta \kappa \eta$  has attracted the attention of students of the general character of LXX Greek,<sup>146</sup> and its relationship to the *koine*.<sup>147</sup> There has been recognition of a "stereotyped" mode of translation, in which "simples symbols représentant l mot hébreu" could have been understood differently by the translator and by readers unfamiliar with that Hebrew (who may indeed have been taken by surprise by them).  $\delta \iota \alpha \theta \eta \kappa \eta$ , as the "équivalent fixe" for *berit*, might then appear even where the context indicates a meaning other than "alliance", but the reader could accept "l'approximation de cette traduction stéréotypée".<sup>148</sup> Muraoka comments: "Within the LXX, once such an approximation was established, it became a standard, stereotype translation equivalent whenever the Hebrew word occurred irrespective of the possibility that the translator was aware that at times the precise nuance of the Hebrew did somewhat differ from that of the Greek."<sup>149</sup>

Yet this goes beyond mere convenience, or consistency for its own sake. The absence of any "complete overlap in meaning between the Hebrew and the Greek" (Muraoka) is a function not only of the challenge to any translator (traddutore traditore), but also the fact that even within the same natural language there will be differences in the use of the same

<sup>&</sup>lt;sup>140</sup> Jackson, "The Jewish Background . . . ", 117–19, and see n.183, infra. See also Llewellyn, "Allotment", 37f.

<sup>&</sup>lt;sup>141</sup> Thus, Yaron 1960:1 defines gifts in contemplation of death as either (a) a gift of property with the donor retaining usufruct for life (= *matenat bari*, the Egyptian *meta ten teleuten* and the Roman *donatio deducto usufructu*) or (b) a gift of property which is finally irrevocable only on the donor's death (= *shekhiv mera, metsavveh mehamath mitah,* and the Roman *donatio mortis causa*).

<sup>&</sup>lt;sup>142</sup> Tov 1999:183; Fernández Marcos 2000:22.

<sup>&</sup>lt;sup>143</sup> Wevers 1991:55f., 59f.; Dines 2004:14–16, 121.

<sup>&</sup>lt;sup>144</sup> Dines 2004:59, 122 "... too much regularity may be a sign not of a translator but of an editor or reviser."

<sup>&</sup>lt;sup>145</sup> Dines 2004:14.

<sup>&</sup>lt;sup>146</sup> See Jaubert 1963:311–15; Lee 1983:11–30, commenting at 30 on διαθήκη as a term for a specifically Jewish idea and one which may have entered the spoken language of Jews (though in general he rejects the idea of a Jewish-Greek dialect); Harl 1986:55f.; Dines 127, suggesting, with Harl, that much of the technical vocabulary may have been forged before the first translations were made, even though the LXX provides the earliest written evidence; Rajak 2009:167f., comparing the LXX lexical choice of *diathiki* over *sunthiki* with the contrary choice of Aquila and Symmachus, and the use of *diathiki* by Josephus *only* in the sense of 'testament'.

<sup>&</sup>lt;sup>47</sup> See also Aitken 1999; Fernández Marcos 2000:3–31.

<sup>&</sup>lt;sup>148</sup> Harl, Dorival and Munnich 1986:249, citing Muraoka 1984:442 (quoted in n.149).

<sup>&</sup>lt;sup>149</sup> Muraoka 1984:442: "The statistically incontestable fact that in 99 per cent of its occurrences in the LXX the word διαθήκη renders μ renders

term in different semantic registers (here legal and theological). The use of one register as an analogy in another cannot be a process of reducing the sense of one to that of the other. Neither the authors of the Hebrew Bible nor those of the New Testament were writing legal treatises: when they used legal terms, they did so in order to invoke those aspects of the legal analogue which were most pertinent to the particular theological message they were conveying. It is that context which is the best indicant of what use they were seeking to make of the legal analogue, as we shall see (in section 6, *infra*) in analysing the two New Testament texts which play on the double sense of  $\delta_{I\alpha}\theta_{\eta}\kappa_{\eta}$ .

Nevertheless, our biblical authors did not invent the legal senses of the terminology they use, and we must always be sure that our view of the use they made of such vocabulary is consistent with what we know of the complex history of the relevant institutions in their respective Greek, Hellenistic, Roman and Jewish contexts. The next section seeks to outline that history.

# 3. FORMS OF SUCCESSION IN THE GREEK, HELLENISTIC AND JEWISH WORLDS

While P. Upps. Frid. dates from the Roman period, Schenker is able to point to indirect evidence of the use of  $\delta\iota\alpha\theta\eta\kappa\eta$  terminology as including this form of agreement as early as the 3rd cent BCE in Ptolemaic Egypt: a Greek contract ( $\dot{\delta}\mu\alpha\lambda\alpha\gamma\prime\alpha$ ) from Elephantine<sup>150</sup> includes the formula  $\tau\alpha\delta\epsilon$   $\delta\iota\epsilon\theta\epsilon\tau\sigma$ . Taubenschlag's review of the papyri supports the view that testamentary arrangements (even "wills"<sup>151</sup>) in the 3rd cent. BCE had important *inter vivos* effects. Thus he notes instances in III cent BCE Egyptian law of 'wills' executed by parents during their life-time. These were of immediate effect, transferring unrestricted ownership during the life-time of the parents.<sup>152</sup> Moreover the *diathēkē* of the papyri frequently contained clauses "expressing the testator's wish for keeping in good health, to enjoy his property, and to dispose of it also in the future by acts *inter vivos* and *mortis causa*".<sup>153</sup>

There is also earlier evidence. Yaron has identified one example of a "gift with effect deferred till the donor's death" in the 5th cent BCE Aramaic Papyri.<sup>154</sup> He observes, moreover: "It is not nowadays disputed that that type of Greek will which involved no adoption (*Legatentestament*<sup>155</sup>) grew out of the gift in contemplation of death. The same terms and stock phrases are used in both types of disposition, so much so that it is often difficult to

<sup>&</sup>lt;sup>150</sup> Schenker 2000:182f. on P. El. 2, citing it from Mitteis and Wilcken 1912:II.354–56. See more recently the edition in Hunt and Edgar 1932:I.236–38 (no.82).

<sup>&</sup>lt;sup>151</sup> Taubenschlag 1955:190 indicates that the *diathēkē* adopted from ancient Greek law had to be drawn up before, or handed to, a notary, in the presence of witnesses.

<sup>&</sup>lt;sup>152</sup> Taubenschlag 1955:207f.

<sup>&</sup>lt;sup>153</sup> Taubenschlag 1955:191. Cf. Yaron's examples, e.g. P. Petrie i.19 of 225 BCE, and his comparison of terminology of the *deyathiqi* at 23f., but noting at 1960:25 that in the Jewish sources this is in the context of a sick man hoping for a change for the better.

<sup>&</sup>lt;sup>154</sup> Yaron 1960:11–17 on P. Brooklyn 9, where a half house is gifted to Ychoyishma (the daughter of the donor), "at my death" and with an irrevocability clause.

<sup>&</sup>lt;sup>155</sup> In classical Greece this was often in the form of adoption by the "testator" of his intended heirs: see Norton 1908:48f., 51 (noting that it required the consent of the adoptee and was regarded as "a solemn covenant"), 52, 53f., 58f., and 69–71 on its eventual supersession.

decide to which of the two a particular disposition belongs."<sup>156</sup> Moreover, this is supported by evidence from classical Athens, where, A.R. Harrison indicates,<sup>157</sup> the normal words for a will and the making of a will were  $\delta_{1\alpha}\theta_{\eta}\kappa\eta$  and  $\delta_{1\alpha\tau}(\theta_{\epsilon\sigma}\theta_{\alpha\iota})$ ,<sup>158</sup> but the words  $\delta_{\delta\sigma\iota\varsigma}$  and  $\delta_{1\delta}\sigma_{\nu\alpha\iota}$  (indicating the inter vivos "gift" basis of the original testament in Greek law) were also used. The verbal form  $\delta_{1\alpha}\theta_{\epsilon\sigma}\theta_{\alpha\iota}$  and  $\delta_{00\nu\alpha\iota}$  were in this context synonymous,"<sup>159</sup> arguing that "the words  $\delta_{1\alpha}\theta_{\epsilon\sigma}\theta_{\alpha\iota}$  and  $\delta_{00\nu\alpha\iota}$  were in this context synonymous,"<sup>159</sup> arguing that "the word is quite appropriate to describe a transaction between two parties<sup>160</sup> . . . as against [the view that] that the word necessarily implied disposal of one's property after death."<sup>161</sup> This supports the earlier observations of Norton that the technical use of  $\delta_{1\alpha}\theta_{\eta}\kappa\eta$  in Greek law did not correspond with accuracy to our terms "will" and "testament": "In fact, we have no one word that exactly expresses the idea conveyed by  $\delta_{1\alpha}\theta_{\eta}\kappa\eta$  to the Greeks."<sup>162</sup>

We may note that these terminological issues reflect the weak institutionalisation of the substantive law itself. Norton finds evidence that it was customary on making a will to consult the prospective heir and obtain his consent (1908:57); this is not inconsistent with the fact that though the will was sometimes read to the witnesses, "on account of the usual desire for secrecy, this was seldom done" (1908:61). Harrison observes: "In consonance with the general looseness of Athenian legal institutions, there seem to have been no strict rules as to the form a will must take. Normally no doubt it was in writing, though there is one passage in Demosthenes which strongly suggest an oral will."<sup>163</sup> While it was normal practice to have witnesses, Harrison finds "no conclusive evidence that they were legally needed".<sup>164</sup> Practice regarding the deposit of copies<sup>165</sup> also appears to have varied.<sup>166</sup> Though codicils, modification, and revocation of wills was entirely possible,<sup>167</sup> it appears doubtful that a will could be revoked merely by making a subsequent will<sup>168</sup> – as also in Greco-Egyptian wills.<sup>169</sup>

Further evidence of the character of testaments in the Hellenistic world as including bilateral arrangements taking effect in part before the death of the testator may be found in a remarkable 2nd cent. BCE inscription from Cyrene:<sup>170</sup> the 'will' of Ptolemy Neoteros of Cyrene (155 BCE). In the 2nd cent BCE Cyrene was ruled by a Ptolemaic dynasty as client kings of Rome. There was a major dynastic dispute between Ptolemy VIII Physcon (otherwise Neoteros, the younger) and his brother. Neoteros claimed that his brother

<sup>&</sup>lt;sup>156</sup> Yaron 1960:32.

<sup>&</sup>lt;sup>157</sup> Harrison 1968:150.

<sup>&</sup>lt;sup>158</sup> *Ibid.*, the noun owing its origin to the use of  $\delta_1 \alpha \tau i \theta \epsilon \sigma \theta \alpha_1$  in a formula that goes back to Solon: see Demosthenes, *c. Stephanus* ii.14 quoted by Harrison 1968:84f. n.6.

<sup>&</sup>lt;sup>159</sup> Harrison 1968:150 n.3.

<sup>&</sup>lt;sup>160</sup> We may compare Jacob's adoption of Ephraim and Menasseh: Gen. 48:5.

<sup>&</sup>lt;sup>161</sup> Harrison 1968:150 n.4.

<sup>&</sup>lt;sup>162</sup> Norton 1908:5, 31, quotation from 1908:34 n.1.

<sup>&</sup>lt;sup>163</sup> Harrison 1968:153, citing at n.3 Demosthenes (41) Spoudias 16.

<sup>&</sup>lt;sup>164</sup> Harrison 1968:153.

 $<sup>^{165}</sup>$   $\dot{\alpha}\nu\tau\dot{i}\gamma\rho\alpha\varphi\alpha$ , the same term used in the Testaments of the Twelve Patriarchs: see s.5, infra.

<sup>&</sup>lt;sup>166</sup> Norton 1908:61f.: normally with friends (sometimes, more than one), occasionally with officials, but no evidence of registration.

<sup>&</sup>lt;sup>167</sup> Norton 1908:63-65.

<sup>&</sup>lt;sup>168</sup> Norton 1908:65; Harrison 1968:154.

<sup>&</sup>lt;sup>169</sup> Taubenschlag 1955:204.

<sup>&</sup>lt;sup>170</sup> A photograph of the top of the stele may be seen at http://www.livius.org/ct-cz/cyrene/cyrene.html.

had tried to assassinate him,  $^{\rm 171}$  and sought the support of Rome, through the following will:  $^{\rm 172}$ 

In the fifteenth year, in the month of Loios. With good fortune. This is the will ( $\tau \alpha \delta \epsilon \, \delta \iota \hat{\epsilon} \theta \epsilon \tau \sigma$ ) of king Ptolemy the younger, son of king Ptolemy and queen Cleopatra... a copy of which has been sent to Rome. . . Should any mortal fate befall me before I can leave behind heirs to the throne, I bequeathe my kingdom that belongs to me to the Romans, for whom I have from the beginning preserved friendship and alliance with sincerity. To them also I entrust the task of protecting my interests, praying to them in the name of all the gods and with their own consent, that if any enemies attack either the cities or the country, they should give help with all their power in accordance with the friendship and alliance we concluded with each other and in accordance with justice.<sup>173</sup>

From the fact that the king had already sent a copy of the will to Rome, it is obvious that the assistance he is seeking is during his lifetime (as indeed is confirmed by Polybius<sup>174</sup>), not after his death. Volterra argues, in fact, that the "will" must have been preceded by intensive diplomatic negotiations.<sup>175</sup> In short, we have here a "will", using the terminology of the verb which generated the noun  $\delta t \alpha \theta \eta \kappa \eta$ , which reflects a bilateral treaty between the king and the Romans, in effect, a 'testamentary pact' (the *Erbvertrag*, apparently still recognised in Swiss law). We may note that this evokes the scholarly analysis of the origins of the biblical *berit* in ancient near eastern treaties. There is an alliance in which one side offers protection, the other loyalty to the protecting ruler.<sup>176</sup> Nor does this text from Cyrene stand alone.<sup>177</sup>

Thus we have in the Greek and Hellenistic worlds (in addition to outright gifts, immediately effective although intended to function as an inheritance, found also in the Hebrew Bible<sup>178</sup>

- <sup>174</sup> *Supra* n.171.
- <sup>175</sup> Volterra 1991:554f.
- <sup>176</sup> See literature cited at n.52, *supra*.

<sup>&</sup>lt;sup>171</sup> Polybius 33:11: "At the time when the senate dispatched Opimius to make war on the Oxybii the younger Ptolemy came to Rome and appearing before the senate accused his brother, asserting that he was responsible for the plot against himself. Exhibiting the scars left by his wounds, and laying full stress besides in his speech on the atrocity of the deed, he pleaded for pity. Neolaïdes and Andromachus also came as envoys from the elder king to defend him against these accusations, but the senate would not even listen to their defence, so much were they prepossessed by the younger brother's charges. Ordering these envoys to leave Rome at once, they appointed five legates, headed by Gnaeus Merula and Lucius Thermus, to support the younger brother, and furnishing each of them with a quinquereme ordered them to re-establish Ptolemy in Cyprus, writing to their allies in Greece and Asia to the effect that they had their permission to assist his return" (Loeb translation, at http://penelope.uchicago.edu/ Thayer/E/Roman/Texts/Polybius/33\*.html).

<sup>&</sup>lt;sup>172</sup> Oliverio, La stele di Tolemeo Neòteros (1932), kindly drawn to my attention by Daniela Piattelli.

<sup>&</sup>lt;sup>173</sup> Translation of M.M. Austin at http://www.livius.org/ct-cz/cyrene/cyrene\_t\_01.html.

<sup>&</sup>lt;sup>177</sup> Volterra, 1991:561–74, discusses other wills bequeathing kingdoms to the Roman people: those of Attalus, king of Pergamum (138–33 BCE), also found in an inscription (OGI no.338) as well as in literary sources, which also here use the noun  $\delta t \alpha \theta \eta \kappa \eta$  (which, Volterra notes, the Romans called *testamentum*); Cicero on the will of Nicomedes, king of Bithynia; and the will of Alexander (II?), king of Egypt. He suggests that all of them, if not apocryphal, will have resulted from suggestions made by the Romans or from bilateral agreements with them. As to why this form, rather than that of a *foedus*, was used, he concludes (573f.), following Bonfante and Sciajola, that the Romans conceived of the acquisition of a kingdom in terms of inheritance because the original Roman significance of the *testamentum* was the designation by the *paterfamilias* of who would succeed him as sovereign of the family group: this was now applied to the transfer of sovereignty over a political group. For Attalus, see also Moulton and Milligan 1908:563f.

<sup>&</sup>lt;sup>178</sup> *Gen.* 25:5–6, Abraham's gift to the sons of Keturah, before he "sent them away". Rabbinic interpretation includes Ishmael here, since v.6 refers to "the sons of the concubines" (plural, taken to include Hagar). See Jackson, "Prodigal", 123–26.

and the New Testament<sup>179</sup>) both bilateral dispositions taking effect partially immediately and partially on death ( $\mu\epsilon\tau\dot{\alpha}$   $\tau\dot{\eta}\nu$   $\tau\epsilon\lambda\epsilon\upsilon\tau\dot{\eta}\nu$ ) and unilateral dispositions, themselves sometimes taking effect partially during the testator's lifetime.<sup>180</sup> The term  $\delta\iota\alpha\theta\dot{\eta}\kappa\eta$  is typically used of the latter, but may also, especially in its verbal forms ( $\tau\alpha\delta\epsilon$   $\delta\iota\epsilon\theta\epsilon\tau\sigma$ ), be used of the former.

We find no evidence of these forms in the Hebrew Bible, which gave preference to what today we would call intestate succession, although there is abundant evidence from the narratives that the will (in the non-legal sense) of the head of the family could, in various ways, achieve much the same thing. Thus we hear that Job (42:14) "gave" (vayiten) his daughters an "inheritance" (naḥalah) alongside<sup>181</sup> their brothers; Ishmael (Gen. 21:8–21) and Esau (Gen. 25, 27) are both excluded, and Joseph (via Ephraim and Menasseh) supplants Reuven in respect of the double portion (Gen. 48:5). Moreover, the story of the "sale" of the birthright in Gen. 25 appears to presuppose that the expectancy is transferable before the death of the father.<sup>182</sup> However, the texts provide no information in any of these cases as to the point of time at which these various arrangements were intended to take effect.

By the time of the Mishnah, two forms of testamentary disposition<sup>183</sup> had developed:

(a) the matenat bari,<sup>184</sup> the (inter vivos) "gift of a healthy man", a form of gift – requiring a normal form of property transfer (*qinyan*),<sup>185</sup> which could take the form of a written deed<sup>186</sup> – some aspects of which took effect immediately while others were delayed until after death<sup>187</sup>, and

<sup>&</sup>lt;sup>179</sup> The issue in the parable of the prodigal son (Luke 15:11–32): did the advance to the younger son effectively disinherit him from any later entitlement?; see Jackson, "Prodigal", 119–34.

<sup>&</sup>lt;sup>180</sup> *Pace* the view of E. Bammel, "Gottes  $\Delta$ IA $\Theta$ HKH (Gal. 3.15–17) und das jüdisches Rechtsdenken", *NTS* 6 (1960), 313–19, reported by Llewellyn, "Revocation", 44, that both Greek and Roman wills took effect (entirely) on the death of the testator.

<sup>&</sup>lt;sup>181</sup> Heb: *betokh*, the same term as is used of the plea of the daughters of Zelophehad and the decision in their favour (*Num.* 27:4, 7), but not in the rules laid down for the future. It is thus possible to argue that the decision in the case was a compromise: the daughters shared the estate with their uncles, while for the future daughters would inherit the full estate.

<sup>&</sup>lt;sup>182</sup> See further, *infra*, text at n.224.

<sup>&</sup>lt;sup>184</sup> The terminology bari occurs in Mishnah Baba Batra 9:7.

<sup>&</sup>lt;sup>185</sup> See Mishnah Baba Batra 9:7.

<sup>&</sup>lt;sup>186</sup> Mishnah Baba Batra 8:5, 7.

<sup>&</sup>lt;sup>187</sup> Mishnah *Baba Batra* 8:7(b): "If a man assigned his goods to his son to be his after his death, the father cannot sell them since they are assigned to his son, and the son cannot sell them since they are in the father's possession. If his father sold them, they are sold [only] until he dies; if the son sold them, the buyer has no claim on them until the father dies. The father may pluck up [the crop of a field which he has assigned] and give to eat to whom he will, and if he left anything already plucked up, it belongs to [all] his heirs." Thus, the donor retained a usuffruct and the donee a future interest, which could be alienated (with the consent of the donor, during his lifetime): see Jackson, "The Jewish Background . . .", 117f. It is thus misleading to speak, as does Llewellyn, "Revocation", 44, in terms of a division between ownership and possession. On the exclusion of after-acquired property, see n.140, *supra*.

(b) the *matenat shekhiv mera*,<sup>188</sup> the revocable<sup>189</sup> disposition of an estate by one "lying sick", which some argued should be subject to fewer formalities<sup>190</sup> and which took effect on death.<sup>191</sup>

It has, however, been persuasively argued that these two forms – and particularly the distinction between a healthy and a sick (in fact, terminally ill) "testator"<sup>192</sup> – represent a Jewish adaptation of the earlier Hellenistic forms<sup>193</sup> – designed in part to restrict freedom of testation, seen as an encroachment on the biblical rules of ("intestate") succession,<sup>194</sup> with their superior status as part of the written Torah. Thus, it is thought that there was a stage when Jews adopted the Hellenistic forms: the *meta ten teleuten* (some examples of which have survived in 2nd cent CE papyri<sup>195</sup>) but without its restriction to a "healthy" man, and the  $\delta_{I\alpha}\theta_{\eta\kappa\eta}$ , the principal difference between them being that the former, taking effect in part immediately, was irrevocable, while the latter was revocable (until death).<sup>196</sup>

However, the expansive range of the Greek  $\delta$ ιαθήκη was received also in the rabbinic Hebrew loan-word  $\tau$  (*diatiki*), clearly referring to a written document,<sup>197</sup> though it remains debatable whether the word is being used simply as a name for the rabbinic *shekhiv mera*<sup>198</sup> (though it could also be used of a *bar*<sup>199</sup>) or whether it reflects the genuine adoption of

<sup>190</sup> Yaron 1960, esp. at 6 ff., on Mishnah *Baba Batra* 9:7, and B.B. 175a (etc.): "The words of a *shekhiv mera* are as if written and delivered."

<sup>191</sup> For Amoraic texts requiring that the death must result from the sickness during which the "will" was made, see Yaron 1960:83f.

<sup>192</sup> Yaron 1960:47-49.

<sup>193</sup> Katzoff 1989:204 argues that the Jewish *diatiki* and *matenat bari* can have been modelled on analogous Greek institutions only before the middle of the first century CE, since from that time until the Byzantine period the Greek *meta tēn teleutēn* was assimilated to the *diathēkē* and "usually made revocable" (*scil.* by an explicit clause). In the middle ages, the Jewish *matenat bari* also came to be revocable, by the insertion of an appropriate clause.

<sup>194</sup> Yaron 1960:48f.

<sup>195</sup> On P. Yadin 7 and 19, see Rivlin 2005:165–67, 180–82. *Aliter*, on P. Yad. 19, Katzoff 1994.

196 Yaron 1960:47f.

<sup>197</sup> See the quotations in Sperber 1984:84–86, e.g.: Mishnah *Moed Katan* 3:3, "And these may be written out during mid-festivals... testaments (*diatiki*); Mishnah *Baba Metsia* 1:7, "If [a man] found... a will...". The citations of Behm 1965:125, from Strack-Billerbeck III, 545, for the loan word's meaning in Hebrew and Aramaic as "order" or "disposition", are all several centuries later.

<sup>198</sup> Llewellyn, "Revocation", 45, claims that in the amoraic period the *diatiqi* was called *matenat shekhiv mera*. Some sources require a form of *qinyan*. Yaron 1960:32 insists: "Jewish law does not know any unilateral disposition in contemplation of death . . . (rather, it involves) the co-operation of two parties, donor and donee . . . a formal 'act of acquisition' is indispensable . . .". See esp. Mishnah *Baba Batra* 8:6, discussed in n.203, *infra*. For earlier literature which takes a different view, see Rivlin 2005:172 nn.25–26.

<sup>199</sup> Tosefta Baba Batra 8:9: "a bari" who wrote a deyathiqi . . .", discussed by Yaron 1960:64f. See also Yaron 1960:26–28, on the matanah as following the terminology of the Egyptian  $\mu\epsilon\tau\alpha$   $\tau\eta\nu$   $\tau\epsilon\lambda\epsilon\nu\tau\eta\nu$ , translated as le'ahar mitah (preceded by mehayyom, "from today"), citing as the earliest example of the latter BGU 993 of 127 BCE.

<sup>&</sup>lt;sup>188</sup> The terminology occurs in Mishnah *Baba Batra* 9:6. Often conventionally referred to (as here) simply as the *shekhiv mera*.

<sup>&</sup>lt;sup>189</sup> Yaron 1960:77, 81–84, noting that Tosefta *Baba Batra* 8:10 (which speaks of a *diatiki*, though Yaron takes it to be referring to a *shekhiv mera*; *aliter* Rivlin, n.200, *infra*) allows revocation after recovery, thus implying that the *shekhiv mera* is then revocable rather than automatically void, whereas the preferred solution was that of Mishnah *Peah* 3:7 as interpreted by Jerusalem Talmud *Peah* 3:9, restricting such revocation to the period of illness, and making the *shekhiv mera* automatically void on recovery. He goes on to discuss Amoraic sources which support the latter conclusion. By Amoraic times it was clearly revocable by a later such declaration: see Yaron 1960:72f., on Jerusalem Talmud *Baba Batra* 8:8; Babylonian Talmud *Baba Batra* 151a.

a foreign institution (the Greek form of will<sup>200</sup>),<sup>201</sup> perhaps by adaptation of a rabbinic form.<sup>202</sup> No actual example of such a *diatiki* has survived. There is, however, a tannaitic source which is taken to rule that the written document, unlike the Hellenistic  $\delta_{1\alpha}\theta_{\eta}\kappa_{\eta}$ , had to be delivered to the heir or other recipient,<sup>203</sup> and once delivered could not be revoked until after recovery<sup>204</sup> (thus, in effect, a conditional *matenat bari*). There is an amoraic dictum that a later *diatiki* (automatically) revokes an earlier one: *diatiki mevattelet diatiki*, but its status has been disputed.<sup>205</sup> Yaron is clearly of the view that it never generated a "will" in the sense of the Roman *testamentum*.<sup>206</sup>

The methodological difficulties involved in ascertaining the inter-relationships between some of these different forms include: (1) the lack of terminological precision and consistency, particularly as regards the term  $\delta \iota \alpha \theta \eta \kappa \eta$  and its associated verbal forms, which could refer to both gifts in contemplation of death or wills, even though the latter appears to have been the more typical;<sup>207</sup> (2) the fact that the Greek *meta ten teleuten* is found in papyrological practice documents<sup>208</sup> rather than formal statements of law, while the converse largely applies to the Rabbinic *matenat bari*; (3) while the Rabbinic *diatiki* is mentioned in the Mishnah

<sup>202</sup> The rule that it required the agreement of the recipient (Tosefta *Baba Batra* 11:6) suggests that it may have been conceived as an adaptation of *qinyan shtar*.

<sup>208</sup> See n.195, *supra*.

<sup>&</sup>lt;sup>200</sup> On which see *supra*, text at n.156–168. Most significant is Tosefta *Baba Batra* 8:10, cited by Rivlin 2005:172f., which gives the formula to be used by one who "writes a diyatiqi" (הכותב דייתיקי) and distinguishes it from that for a המתנה .

<sup>&</sup>lt;sup>201</sup> Llewellyn, "Revocation", 47, cites Tosefta *Baba Batra* 9:14: "He who writes  $\delta t\epsilon \theta \dot{\epsilon} \mu \epsilon \nu$  in Greek, behold this is a gift (*matanah*)". But even this is not conclusive. It could mean either that the rules of *matenat bari* apply to it, or that it is classified in Jewish law as a gift (thus harmonising it with Jewish rules), even though it operates according to hellenistic practice. See also Katzoff 1989:203, citing  $\delta t\epsilon \theta \dot{\epsilon} \mu \epsilon \nu$  as an example of "quotations from language which might have been used by laymen in transactions concerning whose legal significance the rabbis had to decide . . . Many words appear as terms for foreign institutions whose legal effect in Jewish law had to be determined specifically because they were foreign."

<sup>&</sup>lt;sup>203</sup> Mishnah Baba Batra 8:6 rules: "One who died and a *deyathiqi* was found bound to his thigh, – this is nothing. But if (he had delivered it and) through it had caused another – whether of his heirs or not of his heirs – to acquire (זיכה בה לאחר), his words stand" (translation of Yaron 1960:65). The Hebrew does not mention delivery, but this is (rightly) supplied by Yaron as the appropriate form of acquisition (*ginyan*) for a *shtar*. See also Kloppenborg 2008:176.

<sup>&</sup>lt;sup>204</sup> Yaron 1960:66 interprets the second clause of Mishnah *Baba Batra* 8:6 in the context of the first, as presupposing death, so that the *deyathiqi*, once delivered, was *not* revocable prior to recovery (such revocability being a creation of the Amoraim: Yaron 1960:64). He sees Tosefta *Baba Batra* 8:10–11, discussed at 1960:65f., as representing a later stage, but one which allows revocability only before delivery. On the other hand, Rivlin 2005:173f. takes Tosefta *Baba Batra* 8:9 to mean that "delivery of the deed itself did not constitute cession of the possession, but rather final intent to bequeath the possession. Since the bequest would only take effect after death, the donor could retract it at any time"; he does not here address the contrary arguments of Yaron on Tosefta *Baba Batra* 8:9–11.

<sup>&</sup>lt;sup>205</sup> Yaron 1960:71f. regards Jerusalem Talmud *Baba Batra* 8:8 as spurious. But see also Cohen 1966:I.33–35, citing (at 34 n.26) Jerusalem Talmud *Sanhedrin* II:6 (20c), "any diatiki which is partly annulled in entirely void", in the context of a discussion of *2 Cor.* 3:6. On this text, see also Llewellyn, "Revocation", 45–46. See also Babylonian Talmud *Baba Batra* 135b, 152b; Jerusalem Talmud *Baba Batra* 8.16 (16b 59).

<sup>&</sup>lt;sup>206</sup> Yaron, quoted *supra* n.198. Of course, this does not mean that the latter institution, and its Hellenistic partial forerunner, were unknown to and never used by Jews. See Katzoff, quoted n.201, *supra*. Rivlin 2005:172–79 (and see further Rivlin 1999;chs.7–8, esp. at 138–42, 161–70) finds evidence of an early but limited use of the *diatiki* in Jewish sources which did take effect only on death: see n.200, *supra*. Milgram 2012 (who does not here address the issue of the *diyatiqi*) sees a reflection of this issue in the view of Rabbi Yohanan ben Berokah in Mishnah *Baba Batra* 8:5 (despite the fact that he appears to be referring to an oral declaration, the context there being the *matenat bari*): "If he said [*'amar*] this of one that was qualified to inherit from him, his words do not remain valid."

<sup>&</sup>lt;sup>207</sup> See text at nn.156–161, *supra*.

73

and related documents, its legal characteristics are not systematically set out, so that it remains debatable whether the loan word is simply an earlier name for the rabbinic *shekhiv mera*, or the genuine adoption of a foreign institution, perhaps by adaptation of a rabbinic form.<sup>209</sup>

# 4. THE RELATIONSHIP BETWEEN COVENANT AND INHERITANCE IN THE HEBREW BIBLE

Before proceeding further in our quest, it will be useful to review some aspects of the relationship between covenant and inheritance in the Hebrew Bible itself. For the relationship between covenant and inheritance involves issues with close parallels in theology and law, including the nature of that which is inherited (material and/or spiritual); inclusion in and exclusion from the inheritance; the nature of the testamentary "act" and the time of its coming into effect; its revocability and the relationship between successive testamentary acts.

The close relationship between the concepts of covenant and inheritance is apparent already in the covenant with Abraham (to which particular significance is attached in the New Testament<sup>210</sup>). In *Gen.* 17 we read:

(1) When Abram was ninety-nine years old the LORD appeared to Abram, and said to him, "I am God Almighty; walk before me, and be blameless. (2) And I will make my covenant (בדית)<sup>211</sup> between me and you, and will multiply you exceedingly." (3) Then Abram fell on his face; and God said to him, (4) "Behold, my covenant is with you, and you shall be the father of a multitude of nations. (5) No longer shall your name be Abram, but your name shall be Abraham; for I have made you the father of a multitude of nations. (6) I will make you exceedingly fruitful; and I will make nations of you, and kings shall come forth from you. (7) And I will establish my covenant between me and you and your descendants after you throughout their generations for an everlasting covenant (לברית עולם), to be God to you and to your descendants after you, the land of your sojournings, all the land of Canaan,<sup>213</sup> for an everlasting possession (*la'aluzat olan*, <sup>214</sup>); and I will be their God."

<sup>&</sup>lt;sup>209</sup> See the previous paragraph, *supra*.

<sup>&</sup>lt;sup>210</sup> Both in its own right, and by contrast with the Sinaitic covenant (on which, see the discussion of *Gal.* 3 and 4 in section 6, below). See further Forman 2011. For a discussion of the Abrahamic passages in the New Testament in the context of a theology of justification by faith, see Alexander 1994.

<sup>&</sup>lt;sup>211</sup> Even here, Behm 1965:132f. tries to avoid "covenant" in his account of Luke's reference to the Abrahamic narrative: in 1:72 "... διαθήκη is used of the promise to Abraham.... the context here is so fully in line with the OT and Judaism that there can be no doubt that the word is used in the traditional sense of the declaration of the will of God concerning future salvation, promise and self-commitment", though covenant is clearly in the text: "to perform the mercy (έλεος) [promised to] our fathers, and to remember his holy covenant (διαθήκης), the oath which he swore to our father Abraham" (RSV 1:72–73).

<sup>&</sup>lt;sup>212</sup> Note the future verb; not apparently a speech act (such as *hinei ani noten lekhah*), even though the making of the covenantal promise itself does appear as a speech act, with *hinei: אררי ארד* (v.4). So this appears to be a promise rather than an immediate gift to Abraham (perhaps reflecting the same juridical notion, that the recipient must "take possession": see, however, Daube's interpretation of the acts of viewing the land by Abraham (*Gen.* 13:14–15) and Moses (*Deut.* 34:1) and the temptation of Jesus (*Matt.* 4:8–9, cf. *Luke* 4:5ff.) as symbolic takings of possession, comparable to the Roman *finium demonstratio*: Daube 1947:24–39 and Daube 1957. On the absence of covenant terminology in the promise of the land in Deuteronomy, see Jackson 2000:257f.

<sup>&</sup>lt;sup>213</sup> The promise of the land occurs several times in the Abrahamic narrative: *Gen.* 13:15 and 15:18, as well as here. The promise is presented as part of a covenant in chs.15 and 17, but not ch.13. On the Pauline interpretation of the Abrahamic covenant tradition, see *infra*, s.6.

<sup>&</sup>lt;sup>214</sup> The terminology of inheritance, in relation to the land, is even clearer in Solomon's prayer (1 Kings 8:36):

(9) And God said to Abraham, "As for you, you shall keep my covenant (את בריתי תשמור), you and your descendants after you throughout their generations. (10) This is my covenant, which you shall keep (זאת בריתי אשר תשמרו), between me and you and your descendants after you: Every male among you shall be circumcised (זאת בריתי אשר תשמרו). (11) You shall be circumcised in the flesh of your foreskins, and it shall be a sign of the covenant (והיה לאות ברית) between me and you. (12) He that is eight days old among you shall be circumcised; every male throughout your generations, whether born in your house, or bought with your money from any foreigner who is not of your offspring, (13) both he that is born in your house and he that is bought with your money, shall be circumcised. So shall my covenant be in your flesh an everlasting covenant. (14) Any uncircumcised male who is not circumcised in the flesh of his foreskin shall be cut off from his people; he has broken my covenant."

Even without the element of circumcision (whether regarded as a condition or a sign of the covenant – or, indeed, both<sup>216</sup>), this is more than either unilateral grace or justification by faith: the basic covenantal model, of an exchange of loyalty for protection, is here instantiated by the imperative "walk before me, and be blameless" on the one side, the promise of posterity and the land on the other. This covenant is, in principle, permanent, as is the promise of the land.<sup>217</sup> But this clearly does not make it either unconditional,<sup>218</sup> or guaranteed to all of Abraham's progeny, as the later narrative clearly demonstrates. Rather, it reflects a particular position on an issue on which the biblical narratives reflect different views: can a covenant "descend" automatically to subsequent generations, or must it be reaffirmed by successive generations? Despite the language of *Gen.* 17, there are indications that the latter view may originally have prevailed.<sup>219</sup> Indeed, this very passage continues with Abraham raising with God the status of Ishmael,<sup>220</sup> to which God replies (v.19): "Sarah your wife shall

<sup>&</sup>quot;give rain upon *your* land, which you have given to *your people* for an *inheritance* (τίπτατα)." Does that mean an inheritance from the original donces or an inheritance from God, or both? The latter possibilities are not theologically excluded, since inheritance of property is typically effected during the lifetime of the owner in the Bible. See, e.g., the succession to Isaac (below), and the (happy) conclusion to the book of Job: *Job* 42:15: "And in all the land there were no women so fair as Job's daughters; and their father gave them inheritance among their brothers."

 $<sup>^{\</sup>rm 215}\,$  Despite the RSV, here quoted, the verb is active.

<sup>&</sup>lt;sup>216</sup> See further Bernat 2009:36-40.

<sup>&</sup>lt;sup>217</sup> Note the parallel expressions לברית עולם and לאחזת עולם in vv.7 and 8.

<sup>&</sup>lt;sup>218</sup> Pace Weinfeld TDOT II.270–71, who argues (based on ANE, esp. Hittite, grants), that "loyalty to God is presupposed, [but] it does not occur as a condition for keeping the promise." He suggests that for Abraham (here citing Gen. 15 and 17 together, *aliter* in Weinfeld 1970) that it is a reward for past loyalty (*Gen.* 26:5, cf. 22:16–18. But these are (in terms of the narrative) later than *Gen.* 17). At II.278 he comments on the idea of exclusive loyalty as stressed by Hosea, Jeremiah and Ezekiel in the form of the marriage metaphor. But idolatry is *the* prime cardinal sin in the Bible, and the reason for God's withdrawal of protection (and exile). See further n.111, *supra*.

<sup>&</sup>lt;sup>219</sup> I have argued at some length, in 2000:ch.9, that the covenantal relationship was originally conceived to be personal (like a contract) to the parties, and hence needed to be renewed in each generation. In *Deut.* 5:2–5 this problem is addressed through the fiction of presence: "The LORD our God made a covenant with us in Horeb. Not with our fathers did the LORD make this covenant, but with us, who are all of us here alive this day." Cf. *Deut.* 29:14–15: "Nor is it with you only that I make this sworn covenant, but with him who is not here with us this day as well as with him who stands here with us this day before the LORD our God."

<sup>&</sup>lt;sup>220</sup> Gen.17:18: "And Abraham said to God, 'O that Ishmael might live in your presence!' (19) And God said, "Sarah your wife shall bear you a son indeed; and you shall call his name Isaac; and I will establish my covenant with him for an everlasting covenant (לברית עולם), and with his seed after him. (20) And as for Ishmael, I have heard you; Behold, I have blessed him, and will make him fruitful, and will multiply him exceedingly; twelve princes shall he father, and I will make him a great nation. (21) But my covenant will I establish with Isaac, whom Sarah shall bear to you at this set time in the next year." Blessing and promise (Ishmael) are clearly distinct from a covenant relationship (Isaac). See, however, Paul's interpretation of the relationship in Gal. 4, discussed in s.6, infra.

bear you a son indeed; and you shall call his name Isaac; and I *will establish* my covenant with him for an everlasting covenant (הקמתי את בריתי אתו לברית עולם), and with his [Isaac's] seed (לורעו) after him." Within one and the same verse, there is no perceived contradiction between the principle of an everlasting covenant and the promise to renew an (already everlasting) covenant with the next generation.<sup>221</sup>

When we reach the narratives of the succession to Isaac, the pattern of disinheritance of the non-favoured elder son (Esau) is repeated, but this time with an interesting additional dimension. We have two narratives (which source critics might assume are alternative accounts of the same outcome),<sup>222</sup> that of the sale of the mess of pottage (Gen. 25:27-34), and that of Jacob's impersonation of Esau, prompted by Rebekkah (Gen. 27). But the two use different terminology:<sup>223</sup> the object of Jacob's acquisition in Gen. 25 is the "birthright" (bekhorah, v.32), impliedly of property, resulting in a sale: "So he (Esau) . . . sold his birthright to Jacob" (וימכר את בכורתו ליעקכ). We may note that Isaac is still alive. If he had already conveyed the birthright to Esau, this was an inter vivos gift (and, by implication, one taking immediate effect, insofar as Esau was able, without further reference to Isaac, to sell it on).<sup>224</sup> However, the terminology of the narrative of Gen. 27 is different; it concerns not Jacob's acquisition of the *bekhorah* but rather of the *berakhah*, the blessing. This is not to be explained away as a scribal error:<sup>225</sup> what is at stake in Gen. 27 is most definitely a blessing, and one which is directed to the future leadership of the household: "Be lord over your brothers, and may your mother's sons bow down to you" (Gen. 27:29). True, property is also mentioned, but that too is a promise of future divine benevolence, not of present property: "May God give you of the dew of heaven, and of the fatness of the earth, and plenty of grain and wine" (Gen. 27:28, cf. Esau's complaint in v.37). Again, we may note that this is not a deathbed scene. Though blind, Isaac was to survive at least another 20 years, since he was still alive when Jacob returned from the household of Laban (Gen 35:27–29),<sup>226</sup> and finally settled scores with Esau.<sup>227</sup> Nevertheless, we do have to ask whether Isaac's blessing was really

<sup>225</sup> We may note that the two terms have the same three letters in their root, though in a different order: בכרה and ברכה Klitsner 2006:52f. n.7 suggests that "the switching of the order of letters subtly reflects and underscores the switching of the order of the sons", and proposes further instances later in the story. I am indebted to Peretz Rodman for the reference to Klitsner.

<sup>&</sup>lt;sup>221</sup> Though the Genesis narrations in respect of both Isaac and Jacob speak in terms of renewals of the blessings (*Gen.* 26:3–5, *Gen.* 28:3–4, 13–14: see Jackson 2000:241–43) rather than the covenants.

<sup>&</sup>lt;sup>222</sup> Daube 1947:199 is attracted to this view.

<sup>&</sup>lt;sup>223</sup> Recognised explicitly in the text, when Esau complains to Isaac in *Gen.* 27:36: "... he has supplanted me these two times. He took away my birthright; and behold, now he has taken away my blessing." For comparison of the two narratives, indicating the presence of fraud also in *Gen.* 25, see Daube 1947:191–200.

<sup>&</sup>lt;sup>224</sup> If, on the other hand, Isaac had not already conveyed the birthright to Esau, perhaps Esau was not so stupid or cavalier as is normally thought: he is selling only an expectancy, and may already have seen the straws in the wind. Taubenschlag 1959:I.618 notes that in Gortynian and Attic law children "have already in the time of their parents the right of expectancy, of agreement and consent", citing earlier secondary literature; he also observes (at 620) that the satisfaction (of inheritance rights) during the life-time of the father is known in Attica, Gortyn and with the hypomnematic Locrians.

<sup>&</sup>lt;sup>226</sup> Cf. Lincoln 1999:16 and 14f. in relation to Hebrews 12:17.

<sup>&</sup>lt;sup>227</sup> I recently heard an interesting new interpretation of this, in a sermon by Rabbi Ariel Abel. *Gen* 33:11 has Jacob say to Esau: "Accept, I pray you, 'דרכת' that is brought to you, because God has dealt graciously with me, and because I have enough." Though the RSV (along with, e.g., ASV, ERV, JPS, NASB), translates ברכת' (in line with Rashi) rather than "my blessing" (as in KJV and many others), Rabbi Abel suggested that it refers back to the blessing fraudulently obtained by Jacob in *Gen*. 27. But the context is against this. The text continues: "Thus he urged him, and he took it." Moreover, the text in vv.5–9 shows clearly that Esau understood that he was being offered gifts (including servants), and *Gen*. 33:10 uses the term ' $\alpha$  uses the term.

irrevocable. Esau challenges it, on the grounds of fraud, but Isaac replies that there is nothing he can do: "Your brother came with guile, and he has taken away your blessing."<sup>228</sup> Yet there is a special feature in both narratives which may explain the irrevocability. In *Gen.* 25, the fraudulent sale is fortified by an oath.<sup>229</sup> The blessing (and associated curse) has a similar status: it involves an invocation of the deity.<sup>230</sup>

When Jacob is himself on his deathbed, he blesses his sons in turn. The sequence commences with: "Gather yourselves together, that I may tell you what shall befall you in days to come"<sup>231</sup> (*Gen.* 49:1), but concludes with a colophon clearly identifying what has been said as a series of "blessings": "All these are the twelve tribes of Israel; and this is what their father said to them as he blessed them, blessing each with the blessing suitable to him" (*Gen.* 49:28, using the terminology of  $\square$ ). But these "blessings" are far from universally positive. On several occasions they are closer to curses, linked to moral rebuke of past behaviour: thus, Reuben,<sup>232</sup> Simeon and Levi,<sup>233</sup> Benjamin.<sup>234</sup> We are, indeed, already approaching the genre of "Testament" literature (s.5, below). Nowhere here is there any reference or allusion to property inheritance; the practical significance of this "testament", like that of Isaac's  $\square$  (*Gen.* 27), is in the realm of family (in future, national) leadership: Reuven, the natural firstborn, is deprived of leadership (*Gen.* 49:4), which is conferred on Judah (*Gen.* 49:8: "your father's sons shall bow down before you", echoing the language of Isaac to Jacob in *Gen.* 27:29).

Elsewhere in the Pentateuch, the issues of property and "spiritual inheritance" are linked. Of Levi, it is written (*Deut.* 10:9): "Therefore Levi has no part nor inheritance with his brothers; the Lord is his inheritance (נחלתו)". And the *torah* itself is described in *Deut.* 33:4 as "the inheritance (מורשה) of the congregation of Jacob".<sup>235</sup> Even more striking is the description of Israel as God's גוחלה, <sup>236</sup> as in *1 Kings* 8:53: "For you did set them apart from among all the people of the earth, to be your inheritance". Lipiński comments: "The use of this figurative expression does not emphasize the transfer or inheritance of property, but rather the constant, enduring nature of its possession." <sup>237</sup> But the spiritual aspect of this enduring relationship is surely not to be excluded.

237 Lipiński, ibid.

 $<sup>^{\</sup>rm 228}\,$  v.35. Cf. the conclusion of v.33.

<sup>&</sup>lt;sup>229</sup> Daube 1947:196.

<sup>&</sup>lt;sup>230</sup> As in *Gen.* 27:29 (part of Isaac's blessing of Jacob): "Cursed be every one who curses you, and blessed be every one who blesses you."

<sup>&</sup>lt;sup>231</sup> Despite באחרית הימים, this is not an eschatological prophecy; rather, it refers to events within the knowledge of the biblical writers. On Simeon and Levi, see n.233, *infra*.

<sup>&</sup>lt;sup>232</sup> Gen. 49:4: "Unstable as water, you shall not have pre-eminence because you went up to your father's bed; then you defiled it – you went up to my couch!", referring to Reuven's attempt to "anticipate his inheritance" (cf. Absalom with David's concubines: 2 Samuel 16:21–25) by bedding Bilhah (Gen. 35:2).

<sup>&</sup>lt;sup>233</sup> One might take *Gen.* 49:7 ("I will divide them in Jacob and scatter them in Israel") as referring to the postconquest tribal division of the land, with Levi not given a tribal allocation. But the verse refers jointly to both Simeon and Levi, alluding in vv.5–6 to their behaviour towards Shechem after the rape of Dinah (*Gen.* 34).

<sup>&</sup>lt;sup>234</sup> Gen. 49:27: "Benjamin is a ravenous wolf, in the morning devouring the prey, and at even dividing the spoil" appears to refer to the behaviour of members of the tribe in *Judg*. 19 and its repercussions in chs.20-21.

<sup>&</sup>lt;sup>235</sup> Perhaps more accurately "heritage". The term ירושה, more commonly used for inheritance, is not used here (though the two terms come from the same root, ע-ו-ש). Lohfink *TDOT* VI.376 rejects altogether this "metaphorical" interpretation (מורשה) in apposition to *torah*), that the Torah is the "possession" or "heritage" of the sons of Jacob, and translates: "Moses gave us a law (thus translating *torah*), [and in addition he gave to us,] to the assembly of Jacob, a land for possession", based on "the double duty of words in poetic parallelism".

<sup>&</sup>lt;sup>236</sup> Many sources cited by Lipiński, "גחל, *āaḥal*", *TDOT* IX.331.

### 5. THE TESTAMENT GENRE

Against this background,<sup>238</sup> the development in intertestamental times of the Testament genre<sup>239</sup> appears to be a natural development. Indeed, the foremost<sup>240</sup> example follows directly on from *Gen.* 49, being the "Testaments of the Twelve Patriarchs",<sup>241</sup> which, though it has survived in a Greek version (with Christian editing) from the 2nd century CE,<sup>242</sup> has antecedents at Qumran – in particular an Aramaic antecedent of the Testament of Levi<sup>243</sup> and a Hebrew text of the Testament of Naphtali.<sup>244</sup> Schiffman has argued that such testaments most likely go back to the Hasmonaean period, although some appear to be even earlier, perhaps emanating from circles that preceded the Qumran sect.<sup>245</sup>

Both the title of the "Testaments of the Twelve Patriarchs", and that of each individual "Testament"<sup>246</sup> use the term  $\delta_{1\alpha}\theta_{\eta}\kappa\eta^{247}$  and Origen<sup>248</sup> refers to it as *testamentum*. No doubt

<sup>243</sup> 1Q21 and 4Q213-14: see Frey 2010:363–66, noting that it was originally thought to be the original of the Greek TLevi in the Testaments of Twelve Patriarchs, but it differs significantly from the literary testament genre in that Levi speaks as if he is already dead. See also DeSilva 2012:204, 297 n.71.

<sup>246</sup> On the MS evidence, see further Charles 1913:II.283. Samely, *Inventory* s.v. Testament of Reuven, 1.1.5: "Important text witnesses attest to a heading which is not integrated with the body of the text or the introductory frame, implying one or more of the kinds of information under 1.1.1–4, namely "The Testament of Reuben, the first-born son of Jacob and Leah", or "The Testament of Reuben regarding thoughts" (*diathēkē Reubem peri ennoion*). This is a second heading, following an initial heading with the text "The Testaments of the Twelve Patriarchs" (so that the word "testament" occurs three times in as many small text units, each time in incomplete sentences)."

<sup>248</sup> Origen, *Hom. in Jesu Nave (Joshua)* 15.6: Sed et in aliquo quodam libello, qui appellatur *Testamentum duodecim patriarcharum*, quanvis non habeatur in canone, talem tamen quemdam sensum invenimus . . . (Migne XXVI.904). Jerome, *Tractatus de Psalmo* XV (*Corpus Christianorum, Series Latina* (CCSL) 78:376) also refers to it, but does not include

<sup>&</sup>lt;sup>238</sup> Frey 2010:346 takes the Hebrew Bible antecedents to include also the farewells of Joshua (*josh.* 23–24, on which see Jackson 2000:267–70), Samuel (*I Sam.* 12), and David (*I Kings* 2:1–10; *I Chron.* 28–29).

<sup>&</sup>lt;sup>239</sup> A distinction is sometimes made between testamentary literature and "literary testaments", the latter being more narrowly defined in terms of genre. See, most recently, Frey 2010:349-51 and n.270 below; DeSilva 2012:175–76.

<sup>&</sup>lt;sup>240</sup> On other examples of the testamentary genre in the Pseudepigrapha, including the Testaments of Abraham, Isaac and Jacob (sometimes combined as the Testaments of the Three Patriarchs), the Testaments of Job, Moses (*assumptio Mosis*) and Solomon, the Ascension of Isaiah and some other testamentary texts found within larger collections such as 1 Enoch, 2 Enoch and the *Liber Antiquitatum Biblicarum*, see Frey 2010:347.

<sup>&</sup>lt;sup>241</sup> Again, the 12 sons of Jacob, not the Twelve Tribes. DeSilva 2012:175-236 (ch. 8) and notes at 294–303 is entirely devoted to the Testament of the Twelve Patriarchs.

<sup>&</sup>lt;sup>242</sup> For the most recent discussion of Jewish or Christian origins of the Testaments of Twelve Patriarchs, see DeSilva 2012:194–222, arguing for a Jewish origin.

<sup>&</sup>lt;sup>244</sup> 4Q215, first plate. DeSilva 2012:204 points out that the Testament of Naphtali's genealogy of Bilhah and Zilpah is found elsewhere only in 4Q215 1:2–5.

<sup>&</sup>lt;sup>245</sup> Schiffman 1994: "The Testaments of Levi and Naphtali are traditionally placed in the context of the Testaments of the Twelve Patriarchs, a collection of twelve such texts preserved in Greek. The Greek text is surely not the original version, for throughout there are Christian additions. That at least some of the twelve testaments were originally Jewish, not Christian, has been proven conclusively by the finding at Qumran of an Aramaic version of the Testament of Levi and a Hebrew text of the Testament of Naphtali. Some of the messianic material in these texts, previously believed to be Christian, is now understood to be Jewish, reflecting various messianic doctrines evident in the Qumran texts, sectarian and otherwise. Further, it seems that for the entire collection of testaments, the Christian interpolations are actually secondary additions to a Jewish core. The testaments are most likely dated to the Hasmonacan period, although some books are earlier, perhaps emanating from circles that preceded the Qumran sect. Noteworthy is the presence in the Greek Testaments of the Twelve Patriarchs of the idea of two messiahs—one descended from Aaron and one from Israel—a notion prominent among the Qumran sectarians."

<sup>&</sup>lt;sup>247</sup> See de Jonge 1978, e.g. at 1 (Reuven). Frey 2010:373 notes that the text "remarkably" uses *diathēkē* "according to the general, non-religious usage, not according to the LXX usage rendering the Hebrew *beril*", and points out (at 347 n.8) that (only) in the Christian passage at tBenj 3:8 is διαθήκη used in the sense of covenant.

this may have been fortified by the use of  $\delta i\alpha \theta \eta \kappa \eta$  in Hellenistic literature to refer to "a philosophical testament, i.e. the spiritual legacy of a sage".<sup>249</sup> Particularly interesting in this respect is the Testament of Kahat,<sup>250</sup> son of Levi<sup>251</sup> and father of Amram,<sup>252</sup> found at Qumran.<sup>253</sup> In it, Kahat entrusts Amram, his son, with all the books he received from Levi, who in turn had received them from his forefathers.<sup>254</sup> We have here a concrete link between property and "spiritual" inheritance. One version of the Testament of Abraham also mentions property. Abraham is commanded by the archangel Michael: "Now, therefore, Abraham, make a will (governing) the things of your household and concerning your sons",<sup>255</sup> though there is no record in the document of Abraham having actually done so.

It is not quite correct to describe the *Testaments of the Twelve Patriarchs* as a "pseudepigraphical work comprising the dying commands of the twelve sons of Jacob".<sup>256</sup> Each Testament has a brief narrative framework,<sup>257</sup> enveloping the words ascribed to the patriarch (who speaks frequently in the first person<sup>258</sup>). That envelope consists in an opening formula recording the convening by the Patriarch of a deathbed assembly of his sons, to whom he spoke orally,<sup>259</sup> and a concluding statement recording his death and burial after he had finished his discourse.<sup>260</sup> Only five of the twelve Testaments use  $\delta_{I\alpha} \partial_{\eta} \kappa_{\eta}$  in the opening formulae<sup>261</sup>

<sup>252</sup> To whom is ascribed the Vision of Amram, 4Q543-495, which Frey 2010:361 regards as "the work from the Qumran library for which the genre "testament" is most appropriate".

*Testamentum* in the title: "In libro quoque Patriarcharum, licet inter apocryphos computetur, ita inveni . . ." (the apparatus identifying the precise source of what follows: Migne, *Patrologia Graeca*, 2, 1108A).

<sup>&</sup>lt;sup>249</sup> Behm 1965:124, citing Menippus, according to Diogenes Laertes VI, 101 (though he mentions only that Menippus left a text entitled "Wills"); Apollonius, according to Philostratus *Vit. App.* VII.35 (which tells us only that Apollonius "wrote his testament in the Ionian style of language"); Peregrinus Proteus (of Parium, 2nd cent CE), according to the (satirical) Lucian, *De Peregrini Morte* (on which see Bremmer 2007).

<sup>&</sup>lt;sup>250</sup> 4Q542: see Frey 2010:367.

<sup>&</sup>lt;sup>251</sup> To whom an Aramaic Testament is also ascribed: see n.243, *supra*.

<sup>&</sup>lt;sup>253</sup> Frey 2010:369 attaches particular significance to this group of texts: "The origin of the particular genre of the literary testament as developed in Second Temple Judaism and adopted in the early Christian tradition is, therefore, not the tradition of the partiarchal blessings in Genesis, nor the book of Deuteronomy, but a type of priestly wisdom which was shaped in a particular literary form as testaments of the heroes of the priestly line, Levi, Qahat, and Amram."

<sup>&</sup>lt;sup>254</sup> Schiffman, *Reclaiming*, points out that a similar notion – Levi's inheriting the books of Jacob – appears in *Jul.* 45:16.

<sup>&</sup>lt;sup>255</sup> Recension B 7:17 (written in Greek during the first century CE in Egypt). The Greek is διάθες τὰ τοῦ οἶκου σου. The issue is prompted by *Gen.* 25. The LXX of *Gen.* 25:5-6 uses simply ἐδωκε, translating the HB *natan.* See Sanders 1983:869. The Greek text of M.R. James 1892 is available from the SBL Online Critical Pseudeipgrapha, at http://ocp.tyndale.ca/testament-of-abraham; see Sanders 881 for later editions. An English translation (not that of Sanders, also based on James) is available at http://reluctant-messenger.com/testament\_of\_abraham.htm.

<sup>&</sup>lt;sup>256</sup> http://en.wikipedia.org/wiki/Testaments\_of\_the\_Twelve\_Patriarchs.

<sup>&</sup>lt;sup>257</sup> Schiffman 1994 describes the genre thus: "These are essentially the last words of famous personages, in the form of discourses delivered before death. The classic examples begin with a frame narrative declaring that what follows is the testament of the relevant character. Often, these texts, like the last words of Joseph or Moses in the Torah, include revelations of the future of the Jewish people or calls for repentance."

<sup>&</sup>lt;sup>258</sup> E.g. Testament of Reuben, 1:4, 5, 6, 7, 8, 9, 10; 2:1, 2; Testament of Simeon, 2:1, 2, 3, 6, 7, 9, 11, 12, 13, 14.

<sup>&</sup>lt;sup>259</sup> Thus Samely, *Inventory*, on the Testament of Reuben: "The overall package provides a double characterization of the text's existence: as something that once was said (commanded) by Reuben to his sons; and as something that is now being said."

<sup>&</sup>lt;sup>260</sup> E.g. Testament of Levi 19:4–5: "And thus Levi ceased commanding his sons; and he stretched out his feet on the bed, and was gathered to his fathers, after he had lived a hundred and thirty-seven years. And they laid him in a coffin, and afterwards they buried him in Hebron, with Abraham, Isaac, and Jacob." Cf. Testament of Judah 26:4, etc.

<sup>&</sup>lt;sup>261</sup> E.g. TReuben: "The copy of the Testament ( Ἀντίγραφον διαθήκης) of Reuben, even the commands which he gave his sons before he died in the hundred and twenty-fifth year of his life". See also TNaphtali, TGad, TAsher, TJoseph. The others use "words" (λόγων) rather than "Testament".

(though all do in the present titles), but all presuppose that the words were spoken orally (as in the Hebrew Bible, e.g. Isaac, Jacob, above) before being written down. Some (e.g. Asher and Levi) actually state that the speaker was still healthy,<sup>262</sup> adding in Levi's case "for it had been revealed to him that he should die", but all imply that the scene occurred in the last year of life and was in fact followed by the "testator's" death; by contrast, some date the speech as "before he died" (TTSimeon, Levi, Zebulun, Judah), or even more specifically "When he was about to die" (TJoseph) or "at the time of his death" (TNaphtali).

In addition to this narrative framework (the enunciation of the oral testament, and its aftermath), the Testament genre displays the following features:

- 1 The "testator" speaks in the first person<sup>263</sup>
- 2 He reflects on his personal history from a moral point of view<sup>264</sup>
- 3 He gives moral advice<sup>265</sup> (sometimes formulated as "commands")<sup>266</sup>
- 4 The Testament does *not* deal with property;<sup>267</sup> in this respect, it is the forerunner of the "ethical will" genre.<sup>268</sup>
- 5 The document concludes with the testator's death *and* burial.<sup>269</sup>

Yet this is hardly unfamiliar. Do we not encounter much the same features in the book of Deuteronomy? Indeed, scholars have variously associated both the book as a whole<sup>270</sup> and chapters 31–34 in particular with the testamentary genre.<sup>271</sup> Thus:

<sup>268</sup> See Dan, "Wills, Ethical", noting that "talmudic literature contains many aggadic passages quoting or purporting to quote deathbed instructions by great sages to their pupils" (see ch.1 of Abrahams, 1926/2006), but who identifies the prototype of the mediaeval ethical will (for two examples, from the 12th and 14th cents, see http://www.fordham.edu/halsall/source/jewish-wills.asp) as the Book of Proverbs.

<sup>269</sup> E.g. TReub 7:2, TLevi 19:5, TJudah 26:4; TZebulun 10:7; TDan 7:2; TGad 8:5; TAsher 8:2; TJoseph 20:6; TBenjamin 12:3.

<sup>270</sup> Frey 2010:346 takes Deuteronomy (which is "as a whole designed as an extensive farewell discourse of Moses before his death") to be the most prominent and influential example of the farewell discourse genre in the Hebrew Bible. In response to discussion (at 375), however, he distinguished Deuteronomy from the testamentary speeches in the Testaments of the Twelve Patriarchs, which adopt "numerous elements from the earlier [Levi] line of Aramaic texts preserved at Qumran. Deuteronomy is, of course, a "testamentary" text but not a literary testament of the type and genre defined above."

<sup>271</sup> DeSilva 2012:175. Priest 1983:I.923 observes: "The most obvious relationship between the Testament of Moses and the Hebrew canon is with Deuteronomy, especially chapters 31 to 34 of that book. The basic outline of the Testament of Moses follows the pattern of those chapters to such an extent that the Testament of Moses may be considered a virtual rewriting of them. This is true not only with respect to general outline but also regarding specific allusions and theological perspective. Deuteronomy 31–34 is clearly the author's model, though he has recast his own work in light of the history of the people from the conquest to his own day and through the prism of his own apocalyptic outlook."

<sup>&</sup>lt;sup>262</sup> TLevi 1:2; TAsher 1:2. Perhaps this alludes to Isaac's condition in *Gen.* 27 (blind, but due to survive for at least 20 years more: see above, at n.227). Or it might possibly be an anticipation to the rabbinic *matenat bari /shekhiv mera* distinction.

<sup>&</sup>lt;sup>263</sup> See n.258, *supra*.

<sup>&</sup>lt;sup>264</sup> E.g. TSimeon chs.2–3.

<sup>265</sup> E.g. TGad ch.7.

<sup>&</sup>lt;sup>266</sup> E.g. TJudah 13:1; TBenjamin 1:1.

<sup>&</sup>lt;sup>267</sup> Explicitly so in ch.10 of TBenjamin 10:2–4: "Know ye, therefore, my children, that I am dying. (3) Do ye, therefore, truth and righteousness each one to his neighbour, and judgement unto confirmation, and keep the law of the Lord and his commandments. (4) For these things do I leave you instead of inheritance."

- 1 The "testator" speaks in the first person<sup>272</sup>
- 2 He reflects on his personal history from a moral point of view<sup>273</sup>
- 3 He gives moral advice (often formulated as "commands")<sup>274</sup>
- 4 The Testament does *not* deal directly with property<sup>275</sup>
- 5 The document concludes with the testator's death and burial.<sup>276</sup>

This appears to have been recognised in antiquity, in the incompletely preserved<sup>277</sup> Testament<sup>278</sup> (or Assumption<sup>279</sup>) of Moses, whose form is that of a farewell speech (here, commissioning Joshua as his successor – a not inappropriate application of the patriarchal model of *Gen.* 27 and 49 in the new circumstances)<sup>280</sup> and whose theology also owes at least some debt to Deuteronomy.<sup>281</sup>

Arguments have been advanced for the influence of both this document<sup>282</sup> and the *Testaments of the Twelve Patriarchs*<sup>283</sup> on the New Testament, but largely in terms of matters of detail. It would not, however, be difficult to identify the recurrent themes of the Testament genre in the Gospels (in which the figure of Moses is a significant model for Jesus<sup>284</sup>), and indeed elsewhere in the New Testament, as overlapping with those of second commonwealth testamentary literature.<sup>285</sup> Thus:

<sup>275</sup> Other than the "virtual" taking of possession of the land by Moses: see n.212, *supra*. There is also a transfer of leadership to Joshua at *Deut.* 31:7–8, 23 (here by God directly), 34:9 (in the voice of the narrator).

<sup>&</sup>lt;sup>272</sup> The voice of the narrator in Deuteronomy provides a frame, with only occasional interjections between the Mosaic discourses: *Deut.* 1:1–5, 4:41–49, 10:6–9 (??), 27:1, 9, 11, 29:1–2, 31:1, 7, 9–10, 14–25 (including speeches of God), 30, 32:44–45, 32:48–33:1 (including a speech of God), 34. The blessings to each of the 12 tribes in Deut 33 are each prefaced by the narrator's introduction. The use of the first person is prominent throughout the first (historical/biographical) discourse, *Deut.* 1:6–4:40 and elsewhere (e.g. 10:10–11), and also in relation to laws and immediate instructions: *Deut.* 4:8, 41, 5:1, 6:4, 7:11, 10:13, 11:8, 13, 27, 28, 32, 27:1, 4, 10, 28:1, 13, 14, 15, 30:2, 8, 11, 15, 32:44, often using the formula "which I command you this day" (even in the legal discourse of *Deut.* 12–26, as in 13:18, 15:, 15:, 9:9). On this formula, in relation to the revelational claims of Deuteronomy, see further lackson 2000:159–61.

<sup>&</sup>lt;sup>273</sup> As especially in the first discourse, *Deut.* 1:6-4:40 and elsewhere, e.g. *Deut.* 9:13-21.

<sup>&</sup>lt;sup>274</sup> E.g. *Deut.* 4, 8:2–10, 9:4–12, 11.

<sup>&</sup>lt;sup>276</sup> Deut. 34:5–6.

<sup>&</sup>lt;sup>277</sup> There is only one MS, dating from the 6th century, written in Latin but apparently translated from a Greek version itself translated from a semitic original: see Priest in Charlesworth 1983:L919f. The first three lines are missing, but are part of a narrative introducing Moses' speech. The text breaks off mid-sentence in ch.12, though it appears to be preparatory to an account of Moses' death, and there are references in the surviving text to Moses' impending death: 1:15, 3:3; 10:12, 14. For different views of the dating and provenance, see Priest, *ibid.*, at 920–22 (opting for the first cent. CE).

<sup>&</sup>lt;sup>1</sup>278 Cf. Priest 1983:I.925. At 11:1, we read: "And when Joshua heard the words of Moses, so written in his testament, . . ."

<sup>&</sup>lt;sup>279</sup> On the relationship of this text to the Assumption of Moses, see Priest 1983:I.925.

<sup>&</sup>lt;sup>280</sup> Priest, *ibid.*, and 919, noting especially the dependence on *Deut.* 31 and 34. The speech, however, is largely predictive, of both Israelite history into the second commonwealth period and of the end of days: see further Priest at 919.

<sup>&</sup>lt;sup>281</sup> Priest, 1983:I.922, in relation to the punishment of evildoers and the rewarding of the righteous (at 12:10–11), and as quoted in n.271, *supra*.

<sup>&</sup>lt;sup>282</sup> Priest 1983:I.924.

<sup>&</sup>lt;sup>283</sup> Charles 1913:II.291f. described the influence of the Testaments of the Twelve Patriarchs on the New Testament as "very extensive", the Pauline borrowings, in particular, being "too numerous to be dealt with here". Later scholarship has been more critical.

<sup>&</sup>lt;sup>284</sup> See my "Jésus et Moïse. . ." (1981/1992, the latter in English).

<sup>&</sup>lt;sup>285</sup> Frey 2010:347f.: "In emerging Christianity there was also a production of new testamentary passages and texts, now attributed to important figures of emerging Christianity, to Jesus and to the predominant apostles." See further text at n.290.

- 1 Jesus uses the first person in his teaching (especially in the Antitheses of the Sermon on the Mount), which distinguishes him from contemporary Rabbis<sup>286</sup>
- 2 He reflects on his personal history from a moral (here eschatological?) point of view<sup>287</sup>
- 3 He gives moral advice (often formulated as "commands")<sup>288</sup>
- 4 The Testamentary passages do not deal directly with property
- 5 The Gospels stress Jesus' death *and* burial (the empty tomb evoking the unknown grave of Moses<sup>289</sup>).

Scholars have, however, gone beyond this in identifying specific "testamentary passages" in the New Testament. Frey cites, as the most prominent example, the Farewell Discourse(s) of Jesus in *John* 13:31–17:26, to which he adds "Jesus' commission to the disciples in Matthew 28:16–20, Paul's farewell address to the Ephesian elders in Acts 20:17–38, and, among the later epistles, 2 Timothy and 2 Peter, which both present a literary testament of respectively Peter and Paul in post-apostolic times."<sup>290</sup> Moreover, we find an explicit identification of Jesus as "testator" in Lactantius,<sup>291</sup> who links this with *Jer.* 31:31 (also rendering "covenant" in that passage by *testamentum*):

But all Scripture is divided into two Testaments. That which preceded the advent and passion of Christ – that is, the law and the prophets – is called the Old; but those things which were written after His resurrection are named the New Testament. The Jews make use of the Old, we of the New: but yet they are not discordant, for the New is the fulfilling of the Old, and in both there is the same testator, even Christ (*et in utroque idem testator est Christus*), who, having suffered death for us, made us heirs of His everlasting kingdom, the people of the Jews being deprived and disinherited. As the prophet Jeremiah testifies when he speaks such things: [Jer 31:31–32] "Behold, the days come, saith the Lord, that I will make a new testament (*testamentum novum*) to the nation of Israel and the house of Judah, not according to the testament (*testamentum*) which I made to their fathers, in the day that I took them by the hand to bring them out of the land of Egypt; for they continued not in my testament, and I disregarded them, saith the Lord..." For that which He said above, that He would make a new testament to the house of Judah, shows that the old testament which was given by Moses was not perfect; but that which was to be given by Christ would be complete.<sup>292</sup>

Lactantius appears to have been prompted in this by two New Testament passages (discussed below), *Gal.* 3:15–18 and *Heb.* 9:15–22, which invoke the legal institution of the will as a theological analogy. Indeed, it has been suggested that these passages may allude to

<sup>&</sup>lt;sup>286</sup> E.g. *Matt.* 5:21–22: "You have heard that it was said to the men of old, 'You shall not kill; and whoever kills shall be liable to judgment.' But I say to you that every one who is angry with his brother shall be liable to judgment." On this, see Daube 1956:55–62.

<sup>&</sup>lt;sup>287</sup> Gerald Downing kindly points me to *Luke* 22.24–38, 52-53; *John* 14.9–25; 15.15–25; 16.4, 25–28, 33; 17.4, 6-8, 11–12[!], 14, 18, 22, 26; and the BNTC commentary of Lincoln 2005:14–17, 384.

<sup>&</sup>lt;sup>288</sup> Again, the Sermon on the Mount, and Daube, *supra* n.286.

<sup>&</sup>lt;sup>289</sup> Deut. 34:6.

<sup>&</sup>lt;sup>290</sup> Frey 2010:347f.

<sup>&</sup>lt;sup>291</sup> 240–320. A convert to Christianity, he ultimately became an advisor to Constantine, but is said to have been "considered somewhat heretical after his death": http://en.wikipedia.org/wiki/Lactantius. According to Campenhausen 1964:62, he had a good knowledge of the law, but according to his own testimony never appeared publicly as a practicing lawyer or speaker.

<sup>&</sup>lt;sup>292</sup> Ante-Nicene Fathers, Vol VII: Lactantius, *Divine Institutes*, Book IV, Chap. XX, available at http://www. sacred-texts.com/chr/ecf/007/0070102.htm, quoted by Martin, "What is the "New Testament"? Is it the same as the New Covenant?"; Latin at Migne, PL VI.514–15 and see n.44, *supra*.

*Luke* 22:29, where Jesus at the last supper "seems to leave a testament":<sup>293</sup> "And I assign ( $\delta_{I}\alpha\tau_{I}$  $\theta\epsilon\mu\alpha_{I}$ ) to you, as my Father assigned ( $\delta_{I}\epsilon\theta\epsilon\tau\sigma$ ) to me, a kingdom".<sup>294</sup> We may perhaps link this to *John* 3:35,<sup>295</sup> where Jesus is presented as the heir of a spiritual inheritance, which he is seeking to pass on: "(32) He bears witness to what he has seen and heard, yet no one receives his testimony ( $\mu\alpha\rho\tau\nu\rho_{I}\alpha\nu$ ); (33) he who receives his testimony sets his seal to this, that God is true. (34) For he whom God has sent utters the words of God, for it is not by measure that he gives the Spirit; (35) the Father loves the Son, and has given all things into his hand."

## 6. THE LEGAL ANALOGY IN THE NEW TESTAMENT

*Gal.* 3:15–18 and *Heb.* 9:15–22<sup>296</sup> present the same issues as the LXX use of  $\delta_{1\alpha}\theta_{1}^{\prime}\kappa_{1}$ : (i) does the usage derive from the legal or theological register, and (ii) if the legal, what kind of "testament" does the author have in mind? But in one important respect the issue in the New Testament passages is different: the use of  $\delta_{1\alpha}\theta_{\eta}\kappa_{\eta}$  here does not come about as a translation (we may assume that both authors took it from the LXX), but rather is used in the context of a theological argument.<sup>297</sup> The linguistic issue now is no longer that of a "complete overlap in meaning between the Hebrew and the Greek" but rather whether a legal analogy is incorporated within such a theological argument. But there are different genres of theological argument, appropriate to different audiences. Neither Paul nor the author of Hebrews was writing a treatise on systematic theology, designed for a theological peer group. Their writings were a form of preaching, designed to influence action, addressed to a *koine* lay audience. Then (as now) analogies from everyday life represent a rhetorical device designed not only to clarify otherwise potentially obscure theological concepts, but also to impress the audience that the writer/speaker is "one of them", belongs to the same community. It is in that context that they invoke just those aspects of the legal analogue which were most pertinent to the particular theological message they were seeking to convey.

In Galatians 3:15–18, the issue is the interpretation of the Abrahamic covenant (arguably, in relation to the land), and its inviolability from the later Mosaic law:

(15) To give a human example (κατὰ ἀνθπωπον λέγω<sup>298</sup>), brethren: no one (οὐδεις) annuls (ἀθετει<sup>299</sup>) even (ὅμως) a man's will (διαθήκην), or adds (ἐπιδιατάσσεται<sup>300</sup>) to it, once it has been ratified (κεκυρωμένην).

<sup>&</sup>lt;sup>293</sup> Héring 1970:80 in the context of *Heb.* 9 (below). Cf. Bruce, *Hebrews*, 212 n.126.

<sup>&</sup>lt;sup>294</sup> Moffatt 1924:127: "... according to one tradition he (Jesus) had spoken of himself figuratively as assigning rights to his disciples", quoting the Greek formulation.

<sup>&</sup>lt;sup>295</sup> Kindly drawn to my attention by Jennifer Dines.

<sup>&</sup>lt;sup>296</sup> Commentators on one of the passages often overlook the parallel usage in the other (e.g. Lincoln 1999:4, citing Bauer; Allen 2010:479).

<sup>&</sup>lt;sup>297</sup> Nevertheless, Porter 2003:278f. argues for an application here of the Louw-Nida approach to the LXX usage (*supra*, at n.38): "Paul apparently uses diaqh/kh in Gal. 3:15 to introduce the wider notion of the content of an agreement between two parties, in this case quite probably a testament or will, in order to reformulate his idea in terms of the specific covenant with Abraham in v.17. In other words, in Pauline usage, even if instances of the Hellenistic usage are not numerically predominant, the specific usage of the theological notion is a focused use of the broader category of testament or will – that is, a covenant is a testament or will made under particular circumstances, in which God is one of the parties."

<sup>&</sup>lt;sup>298</sup> For discussion of this expression, see Llewellyn, "Revocation", 44f. and footnotes.

<sup>&</sup>lt;sup>299</sup> The negation of  $\tau i \theta \eta \mu i$ .

<sup>&</sup>lt;sup>300</sup> The term for a codicil was  $\dot{\epsilon}\pi i \delta i \alpha \theta \eta \kappa \eta$ .

- (16) Now the promises (ἐπαγγελίαι) were made to Abraham and to his offspring. It does not say, "And to offsprings (σπέρμασιν)," referring to many; but, referring to one, "And to your offspring (σπέρματι)," which is Christ.
- (17) This is what I mean: the law (νόμος), which came four hundred and thirty years afterward, does not annul (άκυροῖ) a covenant (διαθήκην) previously ratified (προκεκυρωμένην) by God, so as to make the promise void (καταργῆσαι).
- (18) For if the inheritance (κληρονομία<sup>301</sup>) is by the law (ἐκ νόμου), it is no longer by promise (δι' ἐπαγγελίας); but God gave it to Abraham by a promise.
- (19) Why then the law? It was added because of transgressions, till the offspring should come to whom the promise had been made; and it was ordained by angels through an intermediary (ἐν χειρί μεσίτου<sup>302</sup>).
- (20) Now an intermediary ( $\mu\epsilon\sigma i\tau\eta\varsigma$ ) implies more than one; but God is one.

The text has long served as a battle ground between two radically opposed approaches,<sup>303</sup> which we may term "covenant throughout" on the one hand,<sup>304</sup> "legal analogy" on the other.<sup>305</sup> While the opening  $\kappa\alpha\tau\alpha$   $\dot{\alpha}\nu\theta\pi\omega\pi\sigma\nu$   $\lambda\epsilon\gamma\omega$  appears to be an explicit indicant of an allusion to everyday life,<sup>306</sup> the major objection to the "legal analogy" approach has been that the legal analogy fails, since the ability of the testator (unless excluded from  $\sigma\dot{\nu}\delta\epsilon\iota\varsigma^{307}$ ) to annul<sup>308</sup> or add codicils<sup>309</sup> to a formally valid<sup>310</sup> is well established in contemporary law.<sup>311</sup> But

<sup>&</sup>lt;sup>301</sup> Forman 2011 concentrates on the usage of κληρονομία and cognates, rather than διαθήκη, and specifically on four indisputably Pauline passages where the former root is used. This wider notion of "inheritance" encompasses what we would call intestate as well as testate succession (used, he notes at 64, in the LXX to render the root ', and thus avoids the theological issues prompted by the use of the latter (*testamentum*) model. For a conceptual rather than linguistic account of Paul's concept of inheritance (though focussing on κληρονομία rather than διαθήκη), see Hester 1968, who rightly stresses the dual character of the concept, as both legal and theological.

 $<sup>^{302}</sup>$  On μεσίτης in *Gal.* 3:19f. see Walker 1906:96–98 (taking the reference to be to Moses, rather than Christ, despite some patristic views to the contrary); Walker 1906:113–17 (for Paul's view of the role of this μεσίτης as mediating between Promise and Fulfilment). See further *infra*, text at n.366, in the context of the use of the term in *Heb.* 9:15.

<sup>&</sup>lt;sup>303</sup> On the earlier literature, see Moulton and Milligan 1914:148f., commenting that "even a Jew like Paul, with Greek in the very fibre of his thought, could never have used  $\delta$ . for *covenant* without the slightest consciousness of its ordinary and invariable contemporary meaning. He would use the "Biblical" word – "Biblical" in this case being synonymous with archaic – but always with the possibility of a play on the later meaning of the word . . ."

<sup>&</sup>lt;sup>304</sup> E.g. Hughes 1979; Lincoln 1999.

<sup>&</sup>lt;sup>305</sup> E.g. Walker 1906.

<sup>&</sup>lt;sup>306</sup> Walker 1906:94f. notes that κατὰ ἀνθπωπον λέγω appears also in *Rom.* 3:5 and *1 Cor.* 9:8 (κατὰ ἀνθπωπον λαλῶ) and in all it means "to express one's thought – even about the ways of God – in a form taken from human affairs". For further discussion of this expression, see Llewellyn, "Revocation", 44f. and footnotes.

<sup>&</sup>lt;sup>307</sup> See Walker 1906:157–59 discussing earlier views and concluding that it means that "no other person" may annul or add to such a will, even though this is stating an obvious fact.

<sup>308</sup> George 1994:245.

<sup>&</sup>lt;sup>309</sup> Walker 1906:101–04, citing (later) Roman law sources and arguing that Paul here presents the law as a codicil to an already valid will. See also Bruce 1982:170.

<sup>&</sup>lt;sup>310</sup> On the criteria of formal validity (reflecting a range of legal sources from different jurisdictions and periods), see Walker 1906:136, 141f. (discussing earlier views of deposit in an official Record Office), Hughes 1979:60 ("properly drawn up, attested, sealed and deposited with the public official responsible for the safe-keeping of such documents"), Bruce 1982:170f. ("signed, sealed and delivered"), Dunn 1993:182 ("signed and witnessed"), George 1994:245 ("promulgated"), Hahn 2005:74 ("written down, witnessed and deposited with a notary", based on an alternative formulation of Hughes).

<sup>&</sup>lt;sup>311</sup> Llewellyn, "Revocation", 42, notes exceptions to this in the form of grounds on which a valid will may subsequently be challenged. Moreover, though the *terms* of a valid will may not be altered, it may be revoked in favour of a later will.

does κεκυρωμένην refer to formal validity? The verb has a very general sense,<sup>312</sup> and is used in the NT only here and in 2 Cor. 2:8, the latter in a non-legal setting: "So I beg you to reaffirm your love for him". κεκυρωμένην may equally refer to the coming into effect of the will (a quite different matter<sup>313</sup>) on death<sup>314</sup> – as is clearly the case with the διαθήκη in *Heb*. 9:16f. (discussed below), which may well have taken its clue from the Pauline text: once the testator has died, the terms of a will are inviolable (just as is a covenant, once brought into effect by God).

Paul draws an analogy between διαθήκη in the theological sense of *berit* ( $\epsilon r \tau n$ ) and διαθήκη in its everyday (*koine*) legal sense. It is difficult to see how the argument could work if διαθή κη had one, single sense in the passage. What kind of inviolable human covenant could Paul have had in mind in v.15?

But what kind of will does Paul here have in mind?<sup>315</sup> Those who wish to avoid the difficulty that, unlike a human testator, God does not die,<sup>316</sup> have sought to argue that Paul is referring to either the Hellenistic (*meta tēn teleutēn*) or Jewish (*matenat ban*) forms of will,<sup>317</sup> rather than a  $\delta_{1\alpha}\theta\eta'\kappa\eta$  which takes effect only at death.<sup>318</sup> Llewellyn, however, concludes in

<sup>316</sup> Behm 1965:129 correctly avoids this form of reductionism: "The many legal terms used in the passage make it clear that he is here using the word  $\delta_{I\alpha}\alpha\eta_{K\eta}$  in the sense of Hellenistic law . . . This illustration from the legal sphere throws light on God's dealings in salvation history. As a valid will cannot be contested or altered by additions, so the promise of God [ $\epsilon \pi \alpha \gamma \gamma \epsilon \lambda(\alpha)$ ] which is His original "testament" cannot be invalidated by the Law [*nomos*] which came later." He adds: "The point of comparison is simply that of inviolability, unalterability and therefore absolute validity. No regard is paid to the fact that in the case of God's testament the presuppositions of this validity . . . are very different from that of a human will, i.e. the death of the testator."

<sup>317</sup> Selb, Bammel (summarised and discussed by Llewellyn, "Revocation", at 43f.). Hester 1968:72 wrongly takes the *matenat bari* to be a death-bed disposition.

<sup>318</sup> The verbal form  $\tau \alpha \delta \epsilon \, \delta i \epsilon \theta \epsilon \tau o$  appears to be older than the nominal form  $\delta i \alpha \theta \eta \kappa \eta$ , the latter being more closely associated with a will rather than a  $\mu \epsilon \tau \alpha \tau \eta \nu \tau \epsilon \lambda \epsilon \upsilon \tau \eta \nu$ . Thus Wolff 1974:543 writes: "Hence – in Egypt at any rate – the validity of a testamentary disposition, whether drafted unilaterally and destined to take effect at the testator's death ( $\delta i \alpha \theta \eta \kappa \eta$ ), as *donatio* or parental distribution taking effect immediately, or as a contact between a married couple, depended on certain formal conditions: it had to be drawn upon in writing (in Roman times, at the latest, in a notarial instrument), and in the presence of witnesses (six in Egypt)."

<sup>&</sup>lt;sup>312</sup> From κυρὸω, to make valid or reaffirm. Moulton and Milligan 366 show that the verb is not technical for a particular form of validation. See also Hughes 1979:67f. Yaron 1960:23 cites (Justinian's) Digest 32.37.5, where the early jurist Scaevola quotes a clause in codicils: βούλομαι πάντα τα ὑποτεταγμένα κύρια είναι, and (from the same jurist) Digest 34.4.30.1: βούλομαι βέβαια είναι τα ὑποτεταγμένα, as having influenced the opening clauses of *depathiqi* discussed in the Babylonian Talmud (B.M. 19a and B.B. 135b).

<sup>&</sup>lt;sup>313</sup> This distinction is overlooked by commentators, who sometimes use the terms "valid" and "operative" as if they were synonymous. See, e.g., Hughes 1979:44, 60f., Lincoln 1999:15. The distinction may be illustrated from modern legislative practice: a UK statute may pass all its required parliamentary stages and receive the royal assent, and yet not become operative, since it may include a clause which postpones its "coming into effect" until a certain date or the fulfilment of a certain condition. On some occasions, such a valid statute has never become operative, since it has been repealed before it ever came into effect.

<sup>&</sup>lt;sup>314</sup> Cf. Walker 1906:102; Bruce 1982:170.

<sup>&</sup>lt;sup>315</sup> Walker 1906 discusses the earlier dispute between Halmel 1895, who sees it as a Roman will, and Ramsay 1899, who sees it as Greek. But it is clear that Ramsay (criticised by Schmiedel 1901) was using the term "will" loosely in the Greek context, as referring to *inter vivos* dispositions in contemplation of death: see s.3, *supra*. The debate was generated in part by the controversy over whether Paul's audience was North Galatian (in terms of this issue, Roman-influenced) or South Galatian (Greek-influenced). Walker 1906 provides a summary and evaluation, concluding that the differences between the legal models is too insubstantial to form a basis for decision. The debate may now be regarded as of purely historic interest, given the growth of the available data and advances in legal historical analysis. But the view that Paul is alluding to a Roman form of inheritance has been maintained more recently by Hester 1968:20, partly because of the theological pertinence of Roman law's concept of universal succession (including liabilities as well as assets).

85

favour of a model such as is reflected in P. Yadin 19,<sup>319</sup> "a transaction comparable to the *matenath bari* which was irrevocable". He argues from this that "in the second century AD the Jewish deed of gift when made in Greek used the expression  $\delta_{1\varepsilon}\theta\dot{\varepsilon}\mu\varepsilon\nu$  or  $\delta_{1\varepsilon}\dot{\theta}\varepsilon\tau\sigma$  and thus could have been called a  $\delta_{1\alpha}\theta\dot{\eta}\kappa\eta$ . If the same practice and terminology can be assumed to have been in use in the first century, then it is to such an instrument that Paul, a Greek-speaking Jew, referred at Gal. 3.15 . . . the term could designate both a will and a gift." <sup>320</sup> This last observation is important and correct, but it would appear simpler to take it here as referring to a will, not least in the light of *Heb*. 9:16f.<sup>321</sup>

Paul compares the legal διαθήκη to the relationship between the Abrahamic covenant (itself described as a διαθήκη in v.17, despite the emphasis on "promise", iπαγγελία) and the mosaic law. The law, despite its very clear association with rrightarrig

<sup>323</sup> But not consistently: see *Gal.* 4:21–31, discussed below.

 $^{324}$  A salvific promise, according to Behm 1965:179-81. It has been noted that  $\epsilon\pi\alpha\gamma\gamma\epsilon\lambda i\alpha$  is not used at all in the LXX. Paul's use of  $\delta\iota\alpha\theta\eta\kappa\eta$  in v.17 serves to link the comparison with a will with what his readers may recognise as his intended LXX referent.

<sup>325</sup> Exod. 19:3-8 esp. v.8; 24:3-8, esp. v.7.

<sup>326</sup> (19) Why then the law? It was added because of transgressions, till the offspring should come to whom the promise had been made; and it was ordained by angels through an intermediary. (20) Now an intermediary implies more than one; but God is one. (21) Is the law then against the promises of God? Certainly not; for if a law had been given which could make alive, then rightcousness would indeed be by the law. (22) But the scripture consigned all things to sin, that what was promised to faith in Jesus Christ might be given to those who believe. (23) Now before faith came, we were confined under the law, kept under restraint until faith should be revealed. (24) So that the law was our custodian until Christ came, that we might be justified by faith. (25) But now that faith has come, we are no longer under a custodian; (26) for in Christ Jesus you are all sons of God, through faith. (27) For as many of you as were baptized into Christ have put on Christ. (28) There is neither Jew nor Greek, there is neither slave nor free, there is neither male nor female; for you are all one in Christ Jesus. (29) And if you are Christ's, then you are Abraham's offspring, heirs according to promise.

<sup>327</sup> We may compare the divorce controversy in *Matt.* 19, where the Mosaic divorce law of *Deut.* 24:1–4 is presented as merely a concession to human nature ("the hardness of your hearts"), and as not modifying the original creation-based dispensation of the relations between husband and wife, the one-flesh model (*Gen.* 2:24). See further Jackson, *Essays*, 198–99, 206–10; *idem*, 2010:351.

<sup>328</sup> Bruce 1982:172 cites Walker 1906:105–07 for the view (of Halmel, which Walker rejects) that the argument reflects the Roman requirement that a will must indicate a *certa persona*, but prefers to explain the exegesis in terms of Jewish theology.

<sup>329</sup> Sce also Hester 1968:47–50; Forman 2011:4, 8, 9, 174–76 (in the latter passage discussing whether Paul understands this as a "spiritual inheritance"). For Forman 243, Paul's argument is anti-imperial: "He reminds the Christians at Rome that, contrary to accepted opinion, it will not be Nero but God who brings peace and wholeness to the world." His message is eschatological and universalist, the land no longer being Canaan but the whole (of this, physical) world and its inhabitants.

<sup>&</sup>lt;sup>319</sup> See n.195, *supra*.

<sup>&</sup>lt;sup>320</sup> Llewellyn, "Revocation", 46f.

<sup>&</sup>lt;sup>321</sup> If, then, in terms of both Paul's own background and his intended (Judaising) audience in Galatia, one assumes that Paul is referring to a Jewish rather than a Hellenistic practice, this would appear to be a pre-Mishnaic Jewish adoption of the Hellenistic will: see text at nn.197–206, *supra*.

<sup>&</sup>lt;sup>322</sup> *Exod*. 19:3–8, esp. v.5; 24:3–8, esp. v.3.

referent of the singular (zarakha: lit. "your seed") in Gen. 17:7–8.<sup>330</sup> But Paul must have known, from his background and education,<sup>331</sup> that  $\nu$  (zera) in Biblical Hebrew (and, indeed, its rendering as  $\sigma \pi \epsilon \rho \mu \alpha$  in the LXX<sup>332</sup>) is normally a generic or collective noun,<sup>333</sup> even if exceptionally it is used with a singular referent.<sup>334</sup> Interestingly, Philo poses a similar question regarding the formulation of LXX Gen. 17:16, where God promises Abraham that Sarah will bear a son ( $\tau \epsilon \kappa \nu \sigma \nu$ ); why not many children? ( $\pi o \lambda \lambda \alpha \tau \epsilon \kappa \nu \alpha$ ), asks Philo.<sup>335</sup> The reply here is not in terms of a particular referent; rather, Philo argues from the superiority of quality over quantity, such quality being identified with a Platonic original, archetypal idea, and links to this an etymology of  $\tau \epsilon \kappa \nu \sigma \nu$ .<sup>336</sup>

Paul makes no allusion to a "new covenant" in this passage;<sup>337</sup> rather, he seeks to defend the integrity of the original Abrahamic covenant, even against modification by the mosaic law. But his expression "no one annuls even a man's will or adds to it" may well allude to *Deut.* 4:2 (cf. 13:1, MT), "You shall not add to the word which I command you, nor take from it", which is to be found in Deuteronomic narrative rather than law.<sup>338</sup>

In Gal. 4:21-31, however, Paul does identify the Sinaitic law as the content of a covenant:

Tell me, you who desire to be under law ( $\dot{\upsilon}\pi\dot{\upsilon}\nu\dot{\omega}\mu\upsilon\nu$ ), do you not hear the law? (22) For it is written that Abraham had two sons, one by a slave and one by a free woman. (23) But the son of the slave was born according to the flesh ( $\kappa\alpha\tau\dot{\alpha}\sigma\dot{\alpha}\rho\kappa\alpha$ ), the son of the free woman through promise ( $\delta i$ '  $\dot{\epsilon}\pi\alpha\gamma\gamma\epsilon\lambda(\alpha\varsigma)$ . (24) Now this is an allegory ( $\dot{\alpha}\lambda\lambda\eta\gamma\rho\rho\upsilon\dot{\mu}\epsilon\nu\alpha$ ): these women are two covenants ( $\delta\dot{\upsilon}o\delta\iota\alpha\theta\eta\kappa\alpha$ ). One is from Mount Sinai, bearing children for slavery; she is Hagar. (25) Now Hagar is Mount Sinai in Arabia; she corresponds to the present Jerusalem, for she is in slavery with her

<sup>&</sup>lt;sup>330</sup> Dunn 1993:183 notes other possible source texts: *Gen.* 13:15 (for which Daube argues at 1956:438f., taking account also of Josephus), *Gen.* 13:17 LXX, 15:18, 17:8, 24:7. Collins 2003:82 follows Bruce in rejecting *Gen.* 17 as the text which Paul is interpreting, on theological grounds: Paul would not refer to the promise of the land in seeking to address gentiles, nor does it fit with Paul's reference some verses earlier (*Gal.* 3:8) to *Gen.* 12:3, the promise that all the nations would be blessed "in you". He assumes that Paul's source is the LXX (while at the same time invoking Paul's access to the original Hebrew, citing also *Gal.* 1:14, *Acts* 22:3, at 86 n.29), and seeks to identify the target text by reference to dative usages in the LXX. He opts ultimately for a christological reading of *Gen.* 22:18, even while conceding that "since this is an allusion . . . . we do not need a direct match". But Paul may well be paraphrasing the Hebrew T:7–8.

<sup>&</sup>lt;sup>331</sup> Acts 26:5, cf. Acts 23:6 ("I am a Pharisee, a son of Pharisees"), *Phil.* 3:5 ("a Hebrew born of Hebrews; as to the law, a Pharisee").

<sup>&</sup>lt;sup>332</sup> George 1994:246f.

<sup>&</sup>lt;sup>333</sup> Dunn 1993:183: "of course, it was a collective singular", though noting that "seed" could also refer elsewhere to Isaac (citing Daube: see next note), "so that a rhetorical play on the ambiguity is invited." Bruce 1982:172 notes that Paul was well aware that the collective noun could indicate a plurality of descendants as well as a single descendant, citing *Rom.* 4:18, where he identifies Abraham's offspring (*Gen.* 15:5, *TyTt*) with the many nations of *Gen.* 17:5, interpreting the latter as gentile believers. Wilcox 1979:3 notes that the Targumin translate *zena* as "sons", but cites *Jub.* 16:17f, where the angels tell Abraham that "all the seed of his sons should be Gentiles, and be reckoned with the Gentiles; but from the sons of Isaac one should become a holy seed, and should not be reckoned among the Gentiles. For he should become the portion of the Most High. ..." (Charles' translation). This one son would be pre-eminent in relation to fulfilment of the promise relating to Abraham's 'seed'.

<sup>&</sup>lt;sup>334</sup> See Daube 1956:438–444 esp. 444 on *Gen.* 4:25, where Eve greets Seth as "another seed instead of Abel", cf. Bruce 1982:173; Alexander (internet version) 8-9.

<sup>&</sup>lt;sup>335</sup> De mutatione nominum 145, cited by Bruce 1982:172.

<sup>&</sup>lt;sup>336</sup> De mutatione nominum 145–47. The conclusion of the argument is evocative of Paul's characterisation of Sarah/Isaac as against Hagar/Ishmael in Gal. 4, discussed below.

<sup>&</sup>lt;sup>337</sup> Indeed, he uses this concept only twice: in *Gal.* 4:21–31, discussed below, and *2 Cor.* 3:3–18.

<sup>&</sup>lt;sup>338</sup> Paul's terminology does not correspond to that of the LXX of these Deuteronomic verses. But Paul had no need for recourse to the LXX.

children. (26) But the Jerusalem above is free, and she is our mother. (27) For it is written [*Isa*. 54:1], "Rejoice, O barren one who does not bear; break forth and shout, you who are not in travail; for the children of the desolate one are many more than the children of her that is married." (28) Now we, brethren, like Isaac, are children of promise. (29) But as at that time he who was born according to the flesh persecuted him who was born according to the Spirit ( $\tau \dot{o}\nu \kappa \alpha \tau \alpha \pi \nu \epsilon \hat{\nu} \mu \alpha$ ),<sup>339</sup> so it is now. (30) But what does the scripture say? "Cast out ( $\mathbf{E}\kappa\beta\alpha\lambda\epsilon$ ) the slave and her son; for the son of the slave shall not inherit ( $\kappa\lambda\eta\rho\sigma\nu\rho\mu\eta\sigma\epsilon$ ) with the son of the free woman." [*Gen*. 21:10<sup>340</sup>] (31) So, brethren, we are not children of the slave but of the free woman.<sup>341</sup> (5:1) For freedom Christ has set us free; stand fast therefore, and do not submit again to a yoke of slavery.

Here, it is clearly implied that the covenant of flesh/law (Hagar/Sinai), inherited by Ishmael as the older son, has been revoked<sup>342</sup> by disinheritance in favour of that of promise/freedom from sin (Sarah/Jerusalem), represented by Isaac. Again, the imagery of inheritance (here, disinheritance<sup>343</sup>) is used in juxtaposition to the notion of covenant, here referring to the Genesis narrative of the expulsion of Hagar and Ishmael – which is also used in early rabbinic literature in relation to claims to the promised land,<sup>344</sup> part of the very promise of God to Abraham in *Gen.* 17. Taking these two chapters of Galatians together, we see that the argument from the revocability or irrevocability of "testamentary" arrangements<sup>345</sup> depends very much upon the theologically desired outcome: the Abrahamic covenant is not revoked by that at Sinai, but that at Sinai is revoked (figuratively, by the expulsion of Hagar and disinheritance of Ishmael) by that represented by Isaac/Christ. But Paul does not pursue the mechanism of revocation or non-revocation, and in particular whether a later testament *automatically* revokes an earlier one.

The stress on death as the point at which a  $\delta_{I\alpha}\theta\eta\kappa\eta$  takes effect is most prominent in Hebrews 9:15–22 (a passage which has been described as "pivotal in the exposition of Jer 31" <sup>346</sup>):

(15) Therefore he (Jesus) is the mediator ( $\mu\epsilon\sigma(\tau\eta\varsigma^{347})$  of a new covenant ( $\delta\iota\alpha\theta\eta\kappa\eta\varsigma$  $\kappa\alpha\iota\nu\eta\varsigma$ ), so that those who are called<sup>348</sup> may receive ( $\lambda\alpha\beta\omega\sigma\iota\nu$ ) the promised eternal inheritance ( $\tau\eta\nu$   $\epsilon\pi\alpha\gamma\gamma\epsilon\lambda(\alpha\nu$   $\tau\eta\varsigma$   $\alpha(\omega\nu)(\omega)$   $\kappa\lambda\eta\rho\sigma\nuo\mu(\alpha\varsigma)$ ,<sup>349</sup> since a death has

<sup>&</sup>lt;sup>339</sup> The opposition between  $\kappa \alpha \tau \dot{\alpha} \sigma \dot{\alpha} \rho \kappa \alpha$  and  $\kappa \alpha \tau \alpha \pi \nu \epsilon \hat{\upsilon} \mu \alpha$  might appear to imply a divine conception for Isaac. However, Bruce 1982:217 strongly rejects this (though citing, e.g., Marius Victorinus *ad loc.*: non ex copulatione): Abraham's real paternity is implied in v.22, and even more clearly in *Rom.* 4:18–21.

<sup>&</sup>lt;sup>340</sup> The whole quotation is identical to the LXX, with the exception of Paul's omission of τάυτη after παιδίσκη on each of its two occurrences.

<sup>&</sup>lt;sup>341</sup> Cf. Philo, as in n.336, *supra*.

<sup>&</sup>lt;sup>342</sup> Dunn 2003:146f. prefers to see the contrast as between two different conceptions of the covenant with Abraham: "Hagar represents the covenant misconceived. Only the free woman represents the covenant of promise" (146 n.94). Yet Hagar and Ishmael were firmly excluded (v.30) on the basis of this misconception.

<sup>&</sup>lt;sup>343</sup> The μ, here translated  $\mathbf{E}_{\kappa}\beta\alpha\lambda\varepsilon$ , is used of both divorce and disinheritance (which in a polygamous society often went together, as here). Cf. *Judg.* 11:2 regarding Jephtha; Jackson 2008:126, 191.

<sup>&</sup>lt;sup>344</sup> See Jackson, "Prodigal" 123–26, on the fictitious lawsuit before Alexander the Great (*Midrash Rabbah* LXI:7; Babylonian Talmud, *Sanh.* 91a on *Gen.* 25:6), and more generally on the "dismission" of an heir by sending him away with gifts (based on *Gen.* 25:5–6).

<sup>&</sup>lt;sup>345</sup> Here it is Ishmael's presumptive intestate succession rights which are revoked by Abraham.

<sup>346</sup> Attridge 1989:253.

<sup>&</sup>lt;sup>347</sup> Cf. Heb.12:24. Behm 1965:131 translates μεσίτης as "guarantor" (criticized by Vos).

<sup>&</sup>lt;sup>348</sup> On the comparison of the elect, those who are "called" ( $\kappa \epsilon \kappa \lambda \eta \mu \epsilon \nu \sigma t$ ), with those named in a will, see Buchanan 1972:151.

<sup>&</sup>lt;sup>349</sup> Taken to refer to the world to come. For its association in rabbinic sources with the land, see Buchanan 1972:150f.

occurred which redeems them from the transgressions under the first covenant (πρώ τη διαθήκη).

- (16) For where a will (διαθήκη) is involved, the death of the one who made it must be established (θάνατον ἀνάγκη φέρεσθαι<sup>350</sup> τοῦ διαθεμένου<sup>351</sup>).
- (17) For a will (διαθήκη) takes effect (βεβαία<sup>352</sup>) only at death (ἐπὶ νεκροῖς), since it is not in force (ἰσχύει) as long as the one who made it (ὁ διαθέμενος) is alive.<sup>353</sup>
- (18) Hence even the first (covenant) was not ratified without blood (όθεν οὐδ' ἡ πωρτη χωρὶς αἰματος ἐνκεκαίνισται).
- (19) For when every commandment of the law (κατὰ τὸν νόμον) had been declared by Moses to all the people, he took the blood of calves and goats, with water and scarlet wool and hyssop,<sup>354</sup> and sprinkled both the book itself and all the people,<sup>355</sup>
- (20) saying, "This is the blood of the covenant  $(\tau \hat{\eta} \varsigma \delta_1 \alpha \theta \hat{\eta} \kappa \eta \varsigma)$  which God commanded you."

<sup>&</sup>lt;sup>350</sup> Though not found as a technical term specific to wills (Allen 2010:482), it is used frequently in the legal context of evidence being "brought": Koester 2001:418 cites Hunt and Edgar II.no.310. See also Moffatt 1924:128; Bruce 1965:207; Attridge 1989:256; Hahn 2005:73. Lincoln 1999:25 notes that φ ε ρ ε σ θ αt in the LXX is usually a translation for ∎ α in the HB, though the context in the *hiphil* and *hophal* forms is predominantly cultic (making offerings and sacrifices). Similarly, Swetnam 1965:388: "attested" (approving the view that the grammar of v.16, without a main verb, suggests a legal maxim). Hughes 1979:42, 65 and Hahn 2005:80 (in the context of a "covenant throughout" interpretation of the passage) see the death of the covenant maker as symbolically "brought" into the picture. See further *infra*, text at nn.367–377.

<sup>&</sup>lt;sup>351</sup> Moffatt 1924:127 notes that ό διαθέμενος (cf. in v.17) is the technical term for "testator". Cf. Attridge 1989:256. See also Bruce 1965:212, citing i.a. (in n.126) Simpson 1946:189 on the use of ἀδιαθετος for intestate; Hughes 1979:39, who acknowledges the legal meaning but still prefers to view it as reflecting the LXX use of διατίθημι to translate *karat* in חברת ברית Cf. Lincoln 1999:21–24, noting Liddell & Scott, *ad loc.*, for the usage "to arrange, distribute (pieces of a sacrifice)".

<sup>&</sup>lt;sup>352</sup> Better, with Attridge 1989:256 (comparing Heb. 2:2), "valid". Cf. Digest 34.4.30.1, in n.312, supra.

<sup>&</sup>lt;sup>353</sup> This last clause represents a major difficulty for the "covenant throughout" interpretation (discussed below). How can a covenant not be in force so long as the covenant-maker is alive? Lincoln 1999:19f. cites with approval the translation of vv.16–17 by Lane 1991: "For where there is a covenant, it is necessary for the death of the one who ratifies it to be brought forward, for a covenant is made legally secure on the basis of the sacrificial victims, since it is never valid while the ratifier lives." But this last clause is falsified by the fact that once the sacrifice has been made, the "ratifier" does live, yet the covenant *is* valid. Hahn 2005:80 would like it to mean: "while the covenantmaker is still ritually alive, not yet having undergone the death represented by the sacrificial animals." But at 81 he concedes that the language does not appear to be figurative and argues that "after a covenant has been broken . . . the only means of enforcing the covenant is to actualize the covenant curses, which ultimately result in the death of the covenant-maker-turned-covenant-breaker" (83, cf. 84), instancing the Sinai covenant broken at the golden calf apostacy (86).

<sup>&</sup>lt;sup>354</sup> Hyssop appears in a range Hebrew Bible texts: *Exod.* 12:22 (in preparing to smear the blood of the paschal lamb on the doorposts of the Israelites in Egypt), *Lev.* 14:4, 6 (in the rite for cleansing the "leper"), 14:49, 51-52 (in the rite for cleansing a "leprous" house), *Num.* 19:6 (in the rite of the red heifer, for cleansing those rendered unclean by contact with a dead body).

<sup>&</sup>lt;sup>355</sup> Apparently referring to the covenant ceremony of *Exod*. 24:3–8, though including some extra details that do not appear in Exodus (see, e.g., n.354, *supra*): "Moses came and told the people all the words of the LORD and all the ordinances; and all the people answered with one voice, and said, 'All the words which the LORD has spoken we will do.' (4) And Moses wrote all the words of the LORD. And he rose early in the morning, and built an altar at the foot of the mountain, and twelve pillars, according to the twelve tribes of Israel. (5) And he sent young men of the people of Israel, who offered burnt offerings and sacrificed peace offerings of oxen to the LORD. (6) And Moses took half of the blood and put it in basins, and half of the blood he threw against the altar. (7) Then he took the book of the covenant, and read it in the hearing of the people; and they said, 'All that the LORD has spoken we will do, and we will be obedient.' (8) And Moses took the blood and threw it upon the people, and said, 'Behold the blood of the covenant which the LORD has made with you in accordance with all these words.'"

- (21) And in the same way he sprinkled with the blood both the tent and all the vessels used in worship.
- (22) Indeed, under the law (κατὰ τὸν νόμον) almost everything is purified with blood, and without the shedding of blood there is no forgiveness of sins.

Here, too, the comparison of covenant with testament, perhaps reflecting the influence of the passage in *Gal.3*,<sup>356</sup> though widely acknowledged,<sup>357</sup> has also been vigorously contested: there are those who argue strongly for a "covenant throughout" interpretation of the passage.<sup>358</sup> The argument here is not based on any claim (as is made for Galatians) that the "legal analogy" interpretation is impossible,<sup>359</sup> although it is attacked on the grounds that the plural form  $\dot{\epsilon}\pi$ )  $\nu\epsilon\kappa\rho\hat{o}c$  (v.17) is inappropriate for the legal context: it is only one death, that of the testator, which is required to bring the will into force.<sup>360</sup> There is, however, evidence of a singular reading,  $\nu\epsilon\kappa\rho\hat{o}c$ .<sup>361</sup> It is also argued that the figure of Jesus as  $\mu\epsilon\hat{o}(\tau\etac)$  does not fit well the context of comparison with a will.<sup>362</sup> But, as argued above, the appropriate criterion is not that of "complete overlap" (which can lead to contortions<sup>363</sup>),

<sup>363</sup> Thus Behm 1965:131f. sees the situation in Hebrews as "much the same as in Paul", with here (again) the use of testament as "a general illustration from experience". He nevertheless (perhaps because here "regard is paid to the fact that in the case of God's testament the presuppositions of this validity . . . are very different from that of a human will, i.e. the death of the testator") argues that this does not justify us in deducing that the term is used in the sense of "testament". "To the depiction of the superiority of the high-priestly ministry of Christ in heaven, which through his sacrificial death accomplished an eternal redemption (9:1-14), the author adds (9:15f.) an explanation for the necessity of the death of Christ to salvation.... But what is the necessary connexion between the death of Christ and the new  $\delta_{1\alpha}\theta_{1\alpha}^{\dagger}$  The author answers in 16f ... If a  $\delta_{1\alpha}\theta_{1\alpha}^{\dagger}$  is to come into force, death is presupposed. In the light of the external similarity that there is both death and a  $\delta_{1\alpha}\theta_{1\alpha}$ , he jumps from the religious to the current legal sense of  $\delta_{1\alpha}\theta_{1\alpha}$ , even at the risk of involving himself in contradictions which show that there is no real parallel. The Christ, who is  $\mu \epsilon \sigma i \tau \eta s$ , must act as testator for God, whose will it is, but who does not die. [But] a consistent application of the testament metaphor (which he thinks is excluded by the term translated "ratified" in v.18) would lead to the absurd idea that in the institution of the first  $\delta_1 \alpha \theta \eta \kappa \eta$  the death of the sacrificial beasts represented that of the testator, i.e. God. . . .  $\delta_{1\alpha}\theta_{\eta}\kappa_{\eta}$  is everywhere else used in Hb in the sense of "disposition" ... of God, which reveals to men His will, and especially His saving will, or it is the order thereby established as a divine institution." He goes on (at 132) to discuss Heb. 8, based on Jer. 31:31 (see n.50, supra).

<sup>&</sup>lt;sup>356</sup> So Hoppin 2004:151, citing Witherington 1991.

<sup>&</sup>lt;sup>357</sup> E.g. Moulton and Milligan 1908:563f.; Héring 1970:79. Allen 2010:477f. provides a lineup of 12 scholars favouring the legal analogy and 9 favouring covenant throughout, and sumarises the arguments at 477-81. See also Swetnam 1965 for an attempt to view vv.16–17 as comparing the new covenant to a testament, and the old as an imperfect testament which prefigures it (largely retracted in Swetnam 2008, in the light of Hahn 2004).

<sup>&</sup>lt;sup>358</sup> Notably: Anon 1968; Hughes 1979; Lane 1991; Lincoln 1999; Hahn 2005; Allen 2010.

<sup>&</sup>lt;sup>359</sup> Indeed, Campbell 1972 argues that "the author of Hebrews (and his readers) was familiar not only with the true Old Testament conception of *b'rith* as disposition, but also with the contemporary Greek usage of  $\delta$ ιαθήκη as outlined above, and that the two words express fundamentally the same idea" (at 111).

<sup>&</sup>lt;sup>360</sup> Hughes 1979:43f., 46; Hahn 2005:80. But the interpretation of vekpoic as referring to the sacrificial animals is weakened by the fact, noted by Lincoln 1999:26, that the term is used in the LXX almost only in regard to dead people, the one exception being the dead lion of *Ecdes*. 9:4.

<sup>&</sup>lt;sup>361</sup> See Tischendorf, 8th ed. (from the biblos apparatus).

<sup>&</sup>lt;sup>362</sup> Hughes 1979:64 cites Behm 1912:79 n.1 for the absence of the phrase (v 15) μεσίτης διαθήκης from the papyri "nor indeed in the legal sphere of testaments" and argues against an argument to the contrary based on Clement, *Stromata* V.8.55.4. Attridge 1989:255 argues: ". . . because the covenant/testament requires the testator's death, and the "living God" (9:14) cannot, by definition, die, that is the mediator's role." But that would assume that, for the author of Hebrews, Jesus was not divine. One could, of course, view v.15 as indicating two distinct roles for Jesus: as μεσίτης of the new covenant on the one hand, and as a redemptive sacrifice on the other. Proponents of the "covenant throughout" position include McKnight and Church 2004:205; Hahn 2005:70, who sees Christ as a mediator (*Heb*. 9:15; 12:24), not a "testator", and one, moreover, who "does not die in order to *leave* an inheritance to the Church, but rather to *enter* the inheritance himself (Heb 1:3–4, 2:9, 9:11–12, 10:12–13), which he then "shares with his "brothers" (Heb 2:10–3:6)".

and it is clear that v.15, despite its use of  $\kappa\lambda\eta\rho\sigma\nu\sigma\mu$ ( $\alpha$ , is concerned with  $\delta\iota\alpha\theta\eta\kappa\eta$  as covenant,<sup>364</sup> not will. In fact, the allusion in  $\mu\epsilon\sigma$ ( $\tau\eta\varsigma$  may well be to the patron/client relationship (as, even more clearly, in *Gal.* 3:19-20<sup>365</sup>), in which, deSilva has argued, the patron often served as an intermediary or "broker" to a higher status patron, and which he sees as applied to Jesus as a mediator of God's patronage.<sup>366</sup>

The alternative, "covenant throughout", interpretation of the passage involves taking  $\acute{o}$   $\delta_{1\alpha}\theta \acute{\epsilon}\mu\epsilon\nu\sigma\varsigma$  in vv.16 and 17 as the covenant maker, and the requirement of his death in those verses as a cultic requirement of covenant making.<sup>367</sup> In the Hebrew Bible, animal sacrifice is often<sup>368</sup> (but not always<sup>369</sup>) involved in covenant making. Equally, various biblical sources pronounce a curse on the covenant breaker.<sup>370</sup> These sources are then combined to interpret the animal sacrifice as a symbolic self-imprecation by the covenant maker:<sup>371</sup> by the animal sacrifice, he "brings into the picture"<sup>372</sup> an image of his own death should he breach the covenant. Ancient Near Eastern documents are cited as recording such symbolic enactment of their death curses during covenant-making rituals.<sup>373</sup> However, in the new covenant, Jesus takes the place of the animals; it is his blood that "redeems them [the covenant breakers] from the transgressions under the first covenant" (v.15). That, of course, is a rather different function from that of symbolically representing the penalty for breach of

<sup>&</sup>lt;sup>364</sup> The "spiritual testament" genre, whose history is sketched in sections 4-5 above, serves as an important bridge between the two senses of  $\delta_1 \alpha \theta \eta \kappa \eta$ .

<sup>&</sup>lt;sup>365</sup> See n.302, *supra*.

<sup>&</sup>lt;sup>366</sup> See DeSilva 1999:33 on the role of the "mediator" in patronage (but without connecting this to  $\mu\epsilon\sigma(\tau\eta\varsigma$  terminology); 1999:49 on Jesus as "sole mediator" who "connects those who make themselves his clients to another patron" (1999:53), with many sources from the synoptics as well as Paul (1999:56–61). He integrates this with a traditional theological understanding in arguing that "even such a mediator is God's gift to the world" (1999:53), stressing in particular the gift of Jesus's death, which "has opened up for his clients access to God the Father, the great Patron" (58).

<sup>&</sup>lt;sup>367</sup> Advanced, with some variations, by Hughes 1979, Lincoln 1999, Hahn 2005, Swetnam 2013:152–155. *Contra*, Bruce, who accepts that the basing of the new covenant on the death of Jesus is found elsewhere also in the NT: esp. (earliest) *1 Cor.* 11:25 "This cup is the new covenant of my blood" (1965:209), while rejecting the view that the death of the sacrifice is the symbolic death of the maker of the covenant (1965:212).

<sup>&</sup>lt;sup>368</sup> See Weinfeld *TDOT* II.259–61 for the range of expressions, other than *karat berit*, for making a covenant. Nor does such sacrifice always denote a symbolic self-imprecation by the covenant maker: see Hasel, *TDOT* VII.350–51 on *Gen.* 15.

<sup>&</sup>lt;sup>369</sup> Conceded by Hahn 2005:80f., *pace* Lincoln 1999:5: "a covenant is always made over the death of a sacrificial victim".

<sup>&</sup>lt;sup>370</sup> Hahn 2005:76f., "Covenant Oath as Conditional self-malediction", citing *Ezek.* 17:16 and the covenant curses of *Lev.* 26 and *Deut.* 28. But we may note that these are all threatened curses for covenant violation, not actual self-maledictions. For the latter, the self-imprecator must either utter the curse him/herself or hear it and respond "Amen", as in the *solah* procedure against a wife suspected of adultery in *Num.* 5:22, and the curses of Mount Ebal in *Deut.* 27:14–26 (which may or may not form part of the anticipated covenant ceremony – if that it be – after entry into the land, described in *Deut.* 27:1–8; in fact, the term *berit* is not used in this chapter at all).

<sup>&</sup>lt;sup>371</sup> Hughes 1979:41.

<sup>372</sup> See n.350, supra.

<sup>&</sup>lt;sup>373</sup> Hahn 2005;78, citing the 8th cent BCE treaty of Ashurnirari V and Mat'ilu King of Arpad (Pritchard *ANET* 1969:532–33; the text was earlier quoted by Hasel, *TDOT* VII.350), which includes: "This head is not the head of a lamb, it is the head of Mat'ilu . . . If Mat'ilu sins against this treaty, so may, just as the head of this spring lamb is torn off . . . the head of Mat'ilu be torn off." The treaty in effect pronounces a curse, but without using the word curse and without indicating that there was an oral curse. Cf. the Vassal Treaties of Esarhaddon (at *ANET* 1969:539): "May the great gods of heaven and earth . . . curse you angrily . . ." (§56) . . . May these gods look on if we rebel or revolt against Esarhaddon" (§57). Lincoln 1999:16f. also refers to the ancient Near Eastern tradition of treaties, noting that all these cultic elements (including vows, blessings and curses, and a sacrifice) are not found in all of them.

the new covenant which Jesus is initiating. But since the function of the new covenant is in part to remedy the defects of the old (as in *Jer.* 31, but in a different way), adherents of this view attribute to the death of Jesus a dual role, on the one hand of "fulfilling" the old covenant, on the other of initiating the new.<sup>374</sup> But if the new covenant anticipates (like that of Jeremiah, but in a different way) no future sin,<sup>375</sup> why should its initiation require a death?<sup>376</sup> It is difficult to resist the conclusion that there is an element of circular reasoning in this: the Hebrew Bible is interpreted in the light of the New Testament,<sup>377</sup> and the New Testament is then seen as a fulfilment of the Old.

As in Galatians, it is clear here that the choice of legal model is driven by the theological message. This is a form of testation that takes effect only (and not merely partially, as in the *meta ten teleuten / matenat bari* model) on death — thus, as we shall see in the next section, the Roman model. The argument of the pericope is thus: (a) the new covenant ( $\delta \iota \alpha \theta \eta \kappa \eta$ ) initiated by Jesus, by virtue of which the elect receive an eternal inheritance ( $\kappa \lambda \eta \rho \rho \nu \rho \mu i a$ ), involves a death which redeems them from the sins incurred under the first covenant (v.15); (b) [don't be surprised at that], since [as you know] a will ( $\delta \iota \alpha \theta \eta \kappa \eta$ ) does not come into force until the death of the testator is established (vv.16–17); (c) and even the first covenant involved the sacrifice of blood, albeit the blood of animals<sup>378</sup> (*Exod*. 24) (vv.18–20), which in the law of the first covenant, too, had the function of purification and forgiveness of sins.

In both Galatians and Hebrews, the Vulgate (as elsewhere) consistently translates  $\delta_{1\alpha}\theta_{\eta\kappa\eta}$  as *testamentum*.

#### 7. THE ROMAN TESTAMENTUM AND ITS THEOLOGICAL ATTRACTION

While the precise legal referent of the New Testament uses of  $\delta \iota \alpha \theta \eta \kappa \eta$  in these passages (a function in part of the primary audience they are assumed to be addressing<sup>379</sup>) may be subject to discussion, what is indisputable is that they use legal analogies from inheritance primarily for their connotations regarding (according to the theological context) revocability or irrevocability. Tertullian, who is credited with legal knowledge,<sup>380</sup> must have been aware of this. But when we pose the same question of the precise legal referent to Tertullian's use

<sup>&</sup>lt;sup>374</sup> Hughes 1979:48f., 51, 52–57, using the language of consummation in relation to the old covenant; Lincoln 1999:8.

<sup>&</sup>lt;sup>375</sup> At least on the part of those "elected" (n.348, *supra*) to be justified by faith. Hughes 1979:82 comments on the Galatians passage: "By undergoing the curses of the Mosaic covenant, he [Jesus] makes available reception of the blessing promised to Abraham," basing himself on the immediately preceding passage: *Gal.* 3:10–14, which commences (3:10): "For all who rely on works of the law are under a curse; for it is written, "Cursed be every one who does not abide by all things written in the book of the law, and do them." We may note that the proof-text (*Deut.* 27:26) curses those who actually violate the law, while Paul extends this to all who rely on the law, because of the potential of violation.

<sup>&</sup>lt;sup>376</sup> For Hughes 1979:38f., the significance of death here is that "Christ had to die in order to become the priestly mediator of the new covenant . . . not to explain why a death had to occur before there could be an external inheritance."

<sup>&</sup>lt;sup>377</sup> Dines 2004:145 observes that for early Christian writers "the NT . . . was the point of departure for understanding the OT." That tradition persists.

<sup>&</sup>lt;sup>378</sup> Not the blood of Moses: Héring 1970:80, and see further 80f. on the relationship to Exod. 24.

<sup>&</sup>lt;sup>379</sup> See Llewellyn, "Revocation", 45f. and n.58.

<sup>&</sup>lt;sup>380</sup> See n.62, *supra*.

of *testamentum*, the answer appears less complicated. On the one hand, *testamentum* did not have a well-established theological meaning, unlike the LXX use of  $\delta_{1\alpha}\theta_{\eta}\kappa_{\eta}$ ; on the other hand, the terminology and rules of the Roman law of succession were (by this time) more precise than those of their Greek, Hellenistic or Jewish predecessors.

It may be useful, first, to summarise (from the discussion in s.3) the different forms of testamentary disposition (Greek, Jewish and Roman):

Outright inter vivos gifts	which may be intended either as a pay-off, effectively disinheriting the donee from any later entitlement or as an advance or even a gift without any prejudice to later entitlement; <sup>381</sup>
The spiritual "testament"	not involving property at all, but moral/religious advice; <sup>382</sup>
The Greek μετὰ τὴν τελευτήν	bilateral dispositions taking effect partially immediately and partially on death; <sup>383</sup>
The Greek διαθήκη	typically, a unilateral disposition but sometimes taking effect partially during the testator's lifetime; <sup>384</sup>
The Rabbinic matenat bari	an <i>inter vivos</i> , bilateral transfer (effective immediately and thus irrevocable), in which the donor retained a usufruct and the donee a future interest, which could be alienated (with the consent of the donor) during his lifetime; full ownership passed to the donee only on the death of the donor; <sup>385</sup>
The Rabbinic shekhiv mera	an informal will, oral or written, by a terminally ill testator, effective on death, revocable and automatically revoked if the "testator" recovered; <sup>386</sup>
The Rabbinic <i>diatiki</i>	a written document, whose precise history and legal significance for Jewish law remains unclear, but which apparently required delivery, and once delivered was irrevocable until after recovery. <sup>387</sup> Automatic revocation by a later <i>diatiki</i> is unclear; <sup>388</sup>
The Koman usuamentum	various <i>ius civile</i> (ceremonial) forms, replaced in practice by Tertullian's time by the praetorian <sup>389</sup> written will, <sup>390</sup> whose characteristics are discussed below.

<sup>&</sup>lt;sup>381</sup> See n.344, *supra*.

<sup>&</sup>lt;sup>382</sup> Gen. 27, 49 (s.4, *supra*); the Testament genre (s.5, *supra*).

<sup>&</sup>lt;sup>383</sup> See text at nn.117–141, 150–180, 185–196, *supra*.

<sup>&</sup>lt;sup>384</sup> See text at nn.71–76, *supra*.

<sup>&</sup>lt;sup>385</sup> See text at nn.184–187, 192–196, *supra*.

<sup>&</sup>lt;sup>386</sup> See text at nn.188–191, *supra*.

<sup>&</sup>lt;sup>387</sup> See text at nn.197–204, *supra*.

<sup>&</sup>lt;sup>388</sup> See text at nn. 205–206, *supra*.

<sup>&</sup>lt;sup>389</sup> And thus available also to *peregrini*, though this became irrelevant when the edict of Caracalla in 212 CE (18 years before Tertullian's death) conferred Roman citizenship on all free inhabitants of the Empire.

<sup>&</sup>lt;sup>390</sup> On Roman wills in the papyri, see Taubenschlag 1955:193–200: he notes that up to Alexander Severus, Roman testaments generally were mancipatory wills written in Latin and translated into Greek, but thereafter they were written in Greek (193f.).

We may now list the characteristics (several of them unique<sup>391</sup>) of the Roman will, which may have proved theologically significant:

- a) Writing: While the original forms of Roman<sup>392</sup> will did not require writing,<sup>393</sup> by the 2nd century CE this had become a *de facto* requirement: the prateorian will, by granting bonorum possessio cum re (i.e. even against the civil law heir), was termed testamentum, and required both writing and sealing (by seven witnesses).<sup>394</sup>
- b) Whereas the *matenat bari* came into effect (at least partially) immediately, the praetorian testamentum came into effect only at death, and was therefore "ambulatory": it included everything in the "estate" at time of death.
- c) The practorian testamentum was entirely unilateral, requiring no consultation with or participation of the intended beneficiaries.
- d) The Roman *testamentum* conferred complete freedom of testation,<sup>395</sup> though the disinheritance<sup>396</sup> of an heir who would have been entitled at civil law could be challenged through the querela inofficiosi testamenti.<sup>397</sup>
- e) The Roman testamentum was revocable.398 Indeed, as in modern law, a later will automatically (and completely) revoked an earlier one.<sup>399</sup>

So viewed, it is not difficult to appreciate the theological attraction of describing the Christian scriptures as the "New Testament".<sup>400</sup> A written document was required (notwithstanding the oral teaching which preceded it), especially given the relation of the Christian teachings to the earlier written text of the Hebrew Bible. If Jesus was the supposed "testator" (with Lactantius), the significance of his death was not only that of a redemptive

<sup>&</sup>lt;sup>391</sup> Yaron 1960:34: "The differentiation between gifts in contemplation of death and testamentary dispositions is more pronounced in Roman law. Indeed, the Roman testament has been held to be of a unique nature, which renders difficult its comparison even with the Greek testament" (citing Bonfante, *Scritti Giuridici* I (1926), 328ff.). <sup>392</sup> For the history, see Gaius, *Institutes*, II.101–104, 115–117, 119; Buckland 1963:283–86; Watson 1971:8–21.

<sup>&</sup>lt;sup>393</sup> On the form of the mancipatory will, see Buckland 1963:284; Long, "Testamentum", 6, 8-9 (internet version); Watson 1971:12.

<sup>&</sup>lt;sup>394</sup> Buckland 1963:285: this was not true in theory for the civil law (mancipatory) will, but in practice was adopted even there, in order to secure the praetorian remedies.

<sup>&</sup>lt;sup>395</sup> A rule going back to the Twelve Tables: "Uti legassit super pecunia tutelave suae rei ita jus esto" (Ulp. Frag tit. XI. 14). See Long 1875:7. Some classes of heirs could be disinherited only expressly (nominatim): see Buckland 1963:321-324. Behm 1965:124 notes that in the Hellenistic period the testator "normally" has full power of disposition.

<sup>&</sup>lt;sup>66</sup> See also Lactantius: "the people of the Jews being deprived and disinherited" (text at nn.291–292, *supra*).

<sup>&</sup>lt;sup>397</sup> See Buckland 1963:327–332; Long, "Testamentum" 11-12 (internet version).

<sup>&</sup>lt;sup>398</sup> Llewellyn, "Revocation", 42, compares the Roman with the Greek will in this respect, as distinct from the meta tēn teleutēn.

<sup>&</sup>lt;sup>399</sup> Gaius, Institutes, II.144: "Posteriore quoque testamento quod iure factum est superius rumpitur". The rule is ascribed to the emperor Antoninus Pius (138-161 CE) in P. Wash. Univ. 13, a papyrus of 161-169 CE from Oxyrhynchus, ll.2-3 of which are restored as "in accordance with the instructions that divus Aelius Antoninus that in making a second will he has annulled the first": see Llewellyn, "Revocation", 41. This apparently contrasts with earlier Hellenistic practice, about which Llewellyn, *ibid.*, at 42, remarks: "The preparation of a new will did not of itself revoke a former will. Indeed, insofar as there was no contradiction, both wills were allowed to stand.'

<sup>&</sup>lt;sup>400</sup> The exact historical process by which this became normative is beyond the scope of the present paper; light may be cast upon it by further study of the Beuron database. It is striking that the Vulgate translation is even more consistent in rendering occurrences of  $\delta_{1\alpha}\theta_{\eta}\kappa_{\eta}$  in the New Testament as *testamentum* than is the LXX in translating *berit* as  $\delta_{1}$  αθήκη. The same issues arise here in the former as in latter context (on which see text at n.149, *supra*). Yet it is difficult to imagine that Jerome's understanding of berit as pactum/foedus was entirely erased when testamentum was used in NT passages referring to the covenants of the Hebrew Bible.

sacrifice,<sup>401</sup> but was also needed to render the new covenant binding and unchangeable. The "ambulatory" character of the testament also served to emphasise the totality of his teaching, up to and including the words on the cross. Its unilateral character would reinforce the teaching of grace or promise, as opposed to a bilateral covenant. Its freedom of testation served to bring within its terms a universal audience, but also to exclude those who did not fully subscribe to its teachings.

Most important, it completely revoked any earlier *testamentum*. Tertullian strongly states his supersessionism in *Adversus Judaeos*:

Who else, therefore, are understood but we, who, fully taught by the new law, observe these practices, – the old law being obliterated, the coming of whose abolition the action itself demonstrates. Therefore, as we have shown above that the coming cessation of the old law and of the carnal circumcision was declared, so, too, the observance of the new law and the spiritual circumcision has shone out into the voluntary observances of peace.<sup>402</sup>

If so, we may ask, why was the 'Old Testament' included in the Christian Bible at all (evidenced at least from Origen's Hexapla from the late 2nd cent)? We may recall that Tertullian's reference to the two "testaments"<sup>403</sup> was in the context of his rebuttal of Marcion,<sup>404</sup> who rejected the "Old Testament" completely, on the more radical ground that its source was not the God recognised by Christians. For Tertullian equally to have abandoned the "Old Testament" entirely might have appeared to concede too much to his opponent (not to mention the value of the "Old Testament" as indicating prophecies which would be fulfilled in the "New"<sup>405</sup>). Or, more fully: the revelation to the Jews spoke of a covenant to them which would be replaced by a "new covenant" (*Jer.* 31:31), now revealed in the "New Testament".

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<sup>&</sup>lt;sup>401</sup> See *Heb.* 9:15ff., discussed in the latter half of section 6, *supra*.

<sup>&</sup>lt;sup>402</sup> Adversus Iudaeos III.10: Qui igitur intelleguntur alii quam nos qui in nova lege edocti ista observamus obliterata veteri lege cuius abolitionem futuram actus ipse demonstrat? Igitur sicuti supra ostendimus, quod vetus lex et circumcisio carnalis cessatura pronuntiata est, ita et novae legis et spiritalis circumcisionis observantia in pacis obsequio eluxit. In the English translation of the Ante-Nicene fathers, ch.3 carries the title: "Chapter III. – Of Circumcision and the Supercession of the Old Law" (as at http://www.tertullian.org/anf/3/anf03-19.htm#P2021\_691723), though this does not appear in the Latin text at http://www.tertullian.org/latin/adversus\_judacos.htm.

<sup>&</sup>lt;sup>403</sup> Cf., in the sense of covenants, Vulg. Gal. 4:24: sunt duo testamenta.

<sup>404</sup> See n.60, *supra*.

 $<sup>^{405}</sup>$  I have argued, for example, that *Matt.* 5:17-18 ("Do not suppose that I have come to abolish the law and the prophets; I did not come to abolish, but to complete/fulfil. I tell you this: so long as heaven and earth endure, not a letter not a stroke will disappear from the law until all that must happen has happened . . . ") alludes to the law of the prophet in *Deut.* 18:14–19: see Jackson, "The Prophet and the Law . . . " in *Essays*, 20.

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# AN ARAMAIC DISPUTE BETWEEN THE MONTHS BY SAHLAN BEN AVRAHAM

# Michael Rand\*

ABSTRACT: The article offers an overview of the corpus of poetic disputes between the months composed in Aramaic, together with a critical edition of one such poem, איתחברו ירחי שתא by Sahlan ben Avraham (Fustat, 11th century). The critical edition is accompanied by translations of the poem into Hebrew and English. Part of the text given in the critical edition is based on a copy found in a Genizah document copied in the 13th century by Yedutun Ha-Levi, now known as שוס לי סדר פוסטאט. The history of publication of this document is reviewed, and a description of its remaining fragments (including a new fragment identified as part of the present edition) is given.

## INTRODUCTION: ARAMAIC DISPUTES BETWEEN THE MONTHS

The corpus of Late Antique Jewish Palestinian Aramaic poetry<sup>1</sup> may be conveniently divided into three categories on the basis of the *Sitz im Leben* of the poems: 1) poems that are connected in one way or another to the liturgical reading of the Aramaic Targum (i.e., socalled Targum poetry), 2) poems that are intended for para-liturgical occasions, in particular wedding poems and dirges, and 3) poems that are intended for incorporation into the liturgy proper.<sup>2</sup> Cutting across this three-way distinction on the basis of locus (i.e., appearing in all three categories) is a literary type whose position within the corpus is quite prominent: the dialogue poem. In turn, a special sub-category of this type is the dispute poem. Dialogue poems in general and dispute poems in particular are of great interest to those who wish to trace the origins and development of Jewish Aramaic poetry on account of the fact that they are well attested in the roughly contemporaneous Christian Syriac poetic culture. Taken together with additional parallels between the two traditions, this shared feature points in the direction of the existence of a Late Antique Levantine aesthetic, which finds expression in

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<sup>&</sup>lt;sup>1</sup> This corpus has been conveniently collected in M. Sokoloff and J. Yahalom, שירת בני מערבא (Jerusalem: The Israel Academy of Sciences and Humanities, 1999). Several of its aspects are the subject of an extensive and penetrating analysis by M. Kister, "שירת בני מערבא – היבטים בעולמה של שירה עלומה", *Tarbiz* 76 (2006/07), 105–84.

<sup>&</sup>lt;sup>2</sup> The first two categories reflect the status of Aramaic as the vernacular of Late Antique Palestine. Given the present state of our knowledge of the corpus, the third category is essentially restricted to *qinot*, i.e., poetic dirges composed for the liturgy of the Ninth of Av. For an analysis of this group of poems, see M. Rand, "Observations on the Relationship between JPA poetry and the Hebrew Piyyut Tradition – The Case of the *Kinot*," in *Jewish and Christian Liturgy and Worship: New Insights into Its History and Interactions*, eds. A. Gerhards and C. Leonhard (Leiden: Brill, 2007), 127–44. There is no reason to suppose that a relationship of dependence exists between the Aramaic and Hebrew *qinot* – i.e., that the former are somehow an imitation of the latter, or vice versa. It is quite likely that at some point in Late Antiquity, Aramaic and Hebrew *qinot* were simply composed alongside one another, with the Hebrew *qinot* eventually winning out by being incorporated permanently into the liturgy (with the result that the genre was cultivated and developed by successive generations of liturgical poets) while the Aramaic *qinot* were discarded, to be re-discovered among the literary remains preserved in the Cairo Genizah.

the poetic corpora of the various relevant Aramaic literary cultures – Christian Syriac, Jewish Aramaic and Samaritan – and, by extension, in the traditions of Hebrew *piyyut* and Greek Church poetry, which are closely related to the Jewish and Christian corpora, respectively.<sup>3</sup> In the case of dispute poems, moreover, the existence of the genre in both Jewish Palestinian Aramaic as well as Syriac is to be attributed to a common ancestry, since such poems are attested in the Mesopotamian, Sumero-Akkadian tradition, which constitutes a substratum of Aramaic literary culture.<sup>4</sup>

Among the dispute poems, a coherent group is constituted by those which describe a precedence dispute between the months of the year. One such poem is attested in Syriac,<sup>5</sup> and the following examples are known in Jewish Aramaic:<sup>6</sup>

- איתחברו ירחי שתא *ithabbaru yarhe shatta* "The months of the year joined together": This is the only poem in the list by a known author: Sahlan ben Avraham. A discussion and critical edition are provided below.
- איתכנשו כל ירחיא itkannashu kol yarhayya "All the months gathered" (2): Published in M. Klein, Genizah Manuscripts of Palestinian Targum to the Pentateuch (Cincinnati: Hebrew Union College Press, 1986), 1.186-89. This poem is attested in ms. T-S NS 186.21, photographs of which are given in ibid., 2.163–64.
- ובי סלק משה ... ובי סלק משה ... ובי סלק משה ... and in me Moses went up" (3): Published in Sokoloff and Yahalom, שירת בני מערבא, 238–39 and Klein, *Genizah Manuscripts*, 1.190–1. This poem is attested in ms. T-S H 10.78, photographs of which are given in ibid., 2.176.
- אתכנשון כחדה כל ירחייה *itkannashun ka-hada kol yarhayya* "All the months gathered together"
  (7): Published in Sokoloff and Yahalom, שירת בני מערבא, 230–4 and Klein, *Genizah Manuscripts*, 1.201–5. This poem is attested in ms. T-S H 11.51, photographs of which are given in ibid., 2.165–171. Strictly speaking, it is not a dispute, as only Nisan speaks,

<sup>&</sup>lt;sup>3</sup> See O. Münz-Manor, "Liturgical Poetry in the Late Antique Near East – A Comparative Approach," *Journal of Ancient Judaism* 1 (2010), 336–61.

<sup>&</sup>lt;sup>5</sup> This poem is published in Brock, "Dispute of the Months."

<sup>&</sup>lt;sup>6</sup> A similar list is provided in Murray, "Aramaic and Syriac Dispute-Poems," 166–8. Murray did not have the advantage of being able to refer to Sokoloff and Yahalom, שירת בני מערבא (as he himself notes on p. 165, note 37). In any case, the list given here updates that of Murray. Where relevant, the number of the poem in Murray's list is indicated in parentheses immediately following the *incipit* in the list given above. Poem 6 on Murray's list is 'הרה לקידוש ירחי', אתבחר לקידוש ירחי', advantage of the poem in Murray's list is and the list given above. Poem 6 on Murray's list is 'הרה לקידוש ירחי', אתבחר לקידוש ירחי, 222–9) and poem 8 is 'רביש' ירחי', advantage of the months'' (Sokoloff and Yahalom, איבחר לקידוש, 222–9). Neither poem is a dispute, as noted by Murray himself.

addressing each of his opponents in turn and arguing for the inadmissibility of each to be the "Redeemer" month. The poem is therefore the exact opposite of a precedence debate, as each of the months (with the exception of Nisan) is (dis)qualified by reference to some negative feature.<sup>7</sup> However, it shares enough features with the other items in this list to justify its inclusion (see below).

Where data are available, we see that the poetic disputes, which serve as targumic embellishments of החדש השנה לכם ראש חדשים ראשון הוא לכם לחדשי השנה (Exod. 12:2), are cast in the same basic mold. Each begins with an introduction, in which the gathering of the months is described. The theme of gathering is given expression in the opening lines of the poems, which are essentially stereotypical: איתחברו ירחי שתא, איתכנשו כל ירחיא, אתכנשון בחדה כל ירחייה.<sup>8</sup> The introduction is followed by a presentation of arguments by each month in turn, beginning with Ivvar (i.e., the month immediately following Nisan). In the case of אתכנשון כחדה כל ירחייה, this feature is paralleled by the fact that Nisan begins his tirade against his opponents with Iyyar. There are several possibilities for the end of the debate. In איתחברו ירחי שתא the closing argument is given by Nisan, with the specification that his claim rests on the "authority of the Most High" (l. 60). The victory of Nisan is therefore implied rather than asserted explicitly. In איתכנשו כל ירחיא Nisan does not present arguments. Rather God, the presiding judge, rules in favor of Nisan immediately following Adar's arguments. In the case of אתכנשון כחדה כל ירחייה, after Nisan finishes his harangue with Adar, he pronounces himself the victor, again on God's authority: "The Mighty One made me a redeemer for his people" (l. 44; translation mine).

In addition to the poems listed above, the following two items should also be noted:

- *יוהוה כיון דאיתגלי יו va-hava kevan de-itgele YY* "And when the Lord was revealed" (1, 5): This dispute between the months is not cast in a poetic form, but rather in that of a prose targum expansion (*tosefta*) to Exod. 12:2. The literary structure of this expansion, however, entirely corresponds to that of the poetic disputes. It is attested in two versions, which are recensions of the same basic text. The first recension is published in M. Klein, *The Fragment-Targums of the Pentateuch* (Rome: Biblical Institute Press, 1980), 1.72–3. A translation is given in ibid., 2.37–39. An alternative translation, including suggested emendations to the Aramaic text, is provided by Brock, "Dispute of the Months," 209–211. The second recension, beginning with קיריס והווה כד אתגלי קיריס ווא *va-hava kad itgele qiris* "And when the Lord was revealed", is published in Klein, *Genizah Manuscripts*, 1.194–5. It is attested in ms. Ox. Heb. e.73, photographs of which are given in ibid., 2.173–74.
- *itreme polemos* [transcription following the vocalization in the manuscript] "A dispute arose" (4): This short targumic poem to Exod. 12:2, which at present consists of four stanzas, has been published on several occasions, the two latest being: Kister, "היבטים", 115 A. Berberian, "היבטים", עדויות חדשות ופשרן", Leshonenu 75 (2012), 112. It is attested in ms. Ox. Heb. e.73 (see previous item). In its present form, it appears foreshortened, with the first two stanzas describing the gathering of the months and their resolve to cast lots so as to determine which of them will be the month of them.

<sup>&</sup>lt;sup>7</sup> This poem is further distinguished from the other debate poems by the fact that in it the months are identified with their respective zodiac signs.

<sup>&</sup>lt;sup>8</sup> The latter two *incipits* are simply textual variants. In the case of the third *incipit* the word כחדה is crossed out in the manuscript.

Israel's redemption, while in the third and fourth stanzas Nisan summarily dismisses his opponents, claiming the prize for himself.

# SAHLAN'S POEM

The poem איתחברו ירחי שתא *ithabbaru yarhe shatta* "The months of the year joined together" was composed by Sahlan ben Avraham, whose acrostic signature appears in the last stanza: סהלאן.<sup>9</sup> Sahlan was a prominent member of the Babylonian community in Fustat, and was active in the beginning of the 11th century.<sup>10</sup> His poem therefore postdates the other, Late Antique, poetic disputes listed above by some 500 years. However, its inclusion within the present corpus is amply justified on the grounds of its structural similarity to the Late Antique poems. In terms of overall structure, we have already seen that all of the poems begin with Iyyar and end with the victorious Nisan. More specifically, Sahlan's poem contains a number of verbal parallels to the poems איתכנשו כל ירחיא *itkannashu kol yarhayya* "All the months gathered" (see the commentary to ll. 8, 27, 53) and ובי סלק משה. ... ובי סלק משה. ... u-vi sleg Moshe "... and in me Moses went up" (see the commentary to ll. 13-14, 19, 28, 29, 32, 35, 38, 48). In fact, Fleischer, who first published Sahlan's poem (see below), noted the parallels between it and and correctly judged the latter to have served as a model for the former.<sup>11</sup> Finally, as with the Late Antique poems, Sahlan's poem also seems to have been originally intended as a targumic embellishment of Ex. 12:2, as indicated by the fact that the targum to this verse is referred to in its last line (see the commentary, ad loc.). As a faithful imitation, therefore, Sahlan's poem may be considered an additional witness to the essentially Late Antique genre under discussion here.<sup>12</sup>

Sahlan's poem is distinct from the Late Antique debate poems in the matter of dialect. Whereas the latter were intended for use with the Palestinian Targum and (for the most part) reflect the Jewish Palestinian Aramaic idiom in which it was composed, the former was to be employed with Targum Onqelos (see note 14), and is composed in an Aramaic that imitates that of this Targum, with occasional slips into Babylonian Aramaic: "גמר" (l. 12), "the Lord" (l. 37), אגמר (l. 41), and "הרמון "authority, permission" (l. 60; see the commentary, *ad loc.*).<sup>13</sup>

<sup>&</sup>lt;sup>9</sup> The poet appears to have signed his name twice. In the first case, ס is found in the partially preserved word [..] סיד (l. 60), while הלא וו drived from אנא (l. 61). In the second case, ס is once again found in [..] סיד (l. 60), or is provided by הלא (l. 61), הלא אנה (l. 62; if my restoration is correct, see the commentary, *ad loc.*), and j by (l. 63).

<sup>&</sup>lt;sup>10</sup> For Sahlan, see E. Bareket, "סהלאן בן אברהם", *Tarbiz* 52 (1982), 17–40.

<sup>&</sup>lt;sup>11</sup> See E. Fleischer, "עוד לעניין 'ראש ראשי חודשים", Sidra 7 (1991), 56–57, note 18.

<sup>&</sup>lt;sup>12</sup> Sahlan composed a second Aramaic poem in honor of Nisan: אלהא אדירא שמיה elaha addira shemeh "His name is Mighty God" – published in E. Fleischer, "ראש ראשי חדשים", *Tarbiz* 37 (1968), 269–70. This poem, however, does not belong to the dispute genre.

<sup>&</sup>lt;sup>13</sup> The poem also contains two morphological Hebraisms: "all of them" (1. 51), פרש "He expounded" (1. 53) together with two apparent lexical Hebraisms: עדי "wearing" (1. 27), דבר "He spoke" (1. 58). Incidentally, the latter usage seems to also be attested in א מרחשון יו... ובי סלק (1. 21). In their commentary, the editors opine that the meaning of דבר ירחא מרחשון יו... א מרחשון וווי (1. 21). In their commentary, the editors opine that the meaning (or: spoke at length)." This interpretation is reinforced by the fact that the first line of every strophe of this poem contains some verb of speech, and line 21 is the opening line of the strophe dedicated to Heshvan.

## THE FIRST ORDER OF FUSTAT

At present, Sahlan's poem is attested within the context of a *qiddush* ceremony in honor of the New Moon of Nisan that was celebrated on the eve of the New Moon in the "Palestinian" synagogue of Fustat in the beginning of the 13th century.<sup>14</sup> This ceremony is primarily attested in a document of central importance for the study of (the last phase of) the Palestinian liturgical ritual, the bulk of which is preserved in ms. T-S H 12.11.<sup>15</sup> The document is currently known as א סדר פוסטאט, "The First Order of Fustat." In the course of preparing an edition of Sahlan's poem, it became evident that more fragments of this document have been preserved than has hitherto been recognized. In order to underscore this point, it is necessary to briefly review the history of its publication.

In an article entitled "ראש ראשי (1968), Fleischer called attention to ms. T-S H 12.11, a liturgical document consisting of three bi-folia, which he divided into two groups of three folia each (i.e., the three bi-folia belong to the same quire, with a gap between the first three and the last three folia): 1) Purim, Parshat Parah, Parshat Ha-Hodesh, Rosh Hodesh Nisan; 2) Simhat Torah, Shabbat Ve-Zot ha-Berakha, Shabbat and Rosh Hodesh, Shabbat Parshat Yitro, Hanukkah.<sup>16</sup> Fleischer later published a facsimile of this manuscript, in which the order of the two groups is reversed, so that the material for Rosh Hodesh Nisan now appears at the end of the preserved quire (rather than in the middle, at the end of the first three folia).<sup>17</sup> As we will see presently, the latter is the correct order. In the same article, Fleischer announced the discovery of an additional bi-folium belonging to the same document, only the bottom halves of whose leaves are preserved: T-S 13 H 3.11. One leaf of this bi-folium contains material for Rosh Hodesh Nisan, while the other leaf contains the remains of text in the upper portion of the recto, the rest of the recto and the verso being left empty. The material for Rosh Hodesh Nisan *follows* the material for the same occasion contained in T-S H 12.11.

In his publication, Fleischer ignored the fact that T-S 13 H 3.11 is a bi-folium (here and in subsequent publications, he consistently refers to the manuscript as a קד, "folio"), whereas

<sup>&</sup>lt;sup>14</sup> Though the present context of the poem is liturgical, we must distinguish between the core, statutory liturgy and various liturgical occasions bearing a semi-popular character, of which the present case is one. A similar view is taken by Fleischer, "עוד לעניין", 63, who refers to "the explicitly popular character" of the *qiddush* ceremony, calling it "a sort of spring festival" (transl. mine). The poem's basic function as a targumic embellishment is clearly indicated by its referring to the targum in its last line (see above), together with the fact that in the manuscript (T-S 13 H 3.11) it is immediately followed by material from Targum Onqelos: Ex. 12:3 (followed by a short Aramaic litany), Ex. 12:1-3 (for the text, see Fleischer, "ראש ראשי ראשי חדשי", 272–3). The view expressed here is *pace* Fleischer, "עוד לעניין", 63, note 35, who argues that the poem, together with its predecessors, was composed specifically for the festive *qiddush* ceremony. Firstly, Fleischer admits a logical inconsistency in referring to this ceremony as being both "popular" (see above) and "official" (thus in note 35). Furthermore, it is clear that the collection of poems employed in this ceremony is highly celectic, as noted already in ibid., 57. Sahlan's targumic embellishment is therefore simply just another genre thrown into this celectic mixture, and there is no particular reason to believe that it was written *ab initio* for the occasion. The fact that it is composed in Aramaic in no way singles it out, as other Aramaic elements not belonging to the dispute genre are also employed in the same ceremony (see for instance note 12).

 $<sup>^{15}</sup>$  This is the shelf-mark as it appears on the casing of the manuscript. In the publications that will be reviewed below, Fleischer refers to it mostly as T-S H 12.11a.

<sup>&</sup>lt;sup>16</sup> Fleischer, "ראש ראשי חדשים", 266–7.

<sup>&</sup>lt;sup>17</sup> The facsimile appears at the end of E. Fleisher, הנעיה בתקופת הנניזה (Jerusalem: Magnes, 1988). A facsimile of the verso of the leaf containing the material for Rosh Hodesh Nisan is also given in Klein, *Genizah Manuscripts*, 2.172. The image is labeled "folio 6v," indicating that Klein also positions the leaf last in the preserved quire.

this fact actually solves the problem of the order of the two groups in the three bi-folia of T-S H 12.11. As noted above, the second leaf of T-S 13 H 3.11 is blank in the bottom of the recto and in the entire verso. The most likely assumption, therefore, is that this leaf constitutes the end of the original codex. This being the case, the only possible juxtaposition between the two manuscripts is one in which the material for Rosh Hodesh Nisan contained in T-S 13 H 3.11 follows the material for the same occasion contained in T-S H 12.11, while at the same time the second, partially blank, leaf of T-S 13 H 3.11 is positioned last among the leaves of the two manuscripts. These two criteria can only be satisfied if the three bi-folia of T-S H 12.11 are grouped together in one quire with the material for Rosh Hodesh Nisan last, while the bi-folium T-S 13 H 3.11 is positioned as the outer bi-folium of the following quire, with the leaf containing material for Rosh Hodesh Nisan coming first.

In his article, Fleischer published the material for Rosh Hodesh Nisan contained in the first leaf of T-S 13 H 3.11. At the preserved top of the recto he recognized the damaged remains of the tail end of a poem containing a dispute between the months, surmising that it might belong to the poem אתרמי פולומוס.<sup>18</sup> At the beginning of the corresponding verso, he identified the damaged text of the *aiddush* itself.<sup>19</sup> As we will see presently, the end of the poem actually belongs to Sahlan's איתחברו ירחי שתא.

In a follow-up article, "הדשות לעניין 'ראש ראשי חדשים" (1981), Fleischer published ms. Mosseri VIII 394, a leaf that immediately follows the first leaf of T-S 13 H 3.11.<sup>20</sup> The number of known manuscripts belonging to the First Order of Fustat thus rose to three.

In a third article on the subject, "עוד לעניין 'ראש ראשי חודשים" (1991), Fleischer identified ms. T-S NS 236.5, which does not belong to The First Order of Fustat, but also contains (poetic) material pertaining to Rosh Hodesh Nisan.<sup>21</sup> The parallel to the First Order of Fustat was established on the basis of a poem appearing in both documents: אלהא אדירא elaha addira shemeh "His name is Mighty God" (see note 12). After this poem, T-S NS 236.5 contains the beginning of איתחברו ירחי איתחברו, which Fleischer published.<sup>22</sup> He then published the continuation of איתחברו ירחי שתא on the basis of ms. T-S NS 125.96, and its direct continuation, ms. T-S NS 325.69.23 However, it escaped Fleischer's notice that T-S NS 325.69 is the missing upper portion of the first leaf of T-S 13 H 3.11, so that the damaged tail end of the dispute poem appearing at the top of the recto of T-S 13 H 3.11 belongs to this copy of איתחברו ירחי שתא.24

Accordingly, the number of known manuscripts containing fragments of the First Order of Fustat is five. These constitute the remains of two adjacent quires, the latter presumably

<sup>&</sup>lt;sup>18</sup> Fleischer, "гили питина, 272, 277.

<sup>&</sup>lt;sup>19</sup> Fleischer, "ראש ראשי חודשים", 274, 277.

<sup>&</sup>lt;sup>20</sup> E. Fleischer, ""דרשות לעניין 'ראש ראשי הדשים, in Studies in Aggadah, Targum and Jewish Liturgy in Memory of Joseph Heinemann, eds. J.J. Petuchowski and E. Fleischer (Jerusalem: Magnes, 1981), 111-32 [Hebrew section].

Fleischer, "עוד לעניין", 49–65.
 Fleischer, "עוד לעניין", 52.
 Fleischer, "עוד לעניין", 53–5.

<sup>&</sup>lt;sup>24</sup> Fleischer came tantalizingly close to recognizing that the two manuscripts represent the same source. In his discussion of איתחברו ירחי שתא he cites as a typological parallel the tail end of the dispute poem in T-S 13 H 3.11, again opining (this time without any hesitation) that it belongs to אתרמי פולומוס - see Fleischer, "עוד לעניין", 56, note 17. Furthermore, he recognized that the actual *giddush* ceremony described on the verso of T-S NS 325.69 is parallel to the *qiddush* ceremony described in the verso of the relevant leaf of T-S 13 H 3.11, without realizing that these are two halves of one and the same text - see ibid., 56 (in the notes to the transcription).

being the last of the original codex. The first quire is constituted by the three consecutive bi-folia making up T-S H 12.11, with the material for Rosh Hodesh Nisan coming last. The last folio of this quire is represented by the leaf preserved as T-S NS 125.96. The first folio of this quire, i.e., first leaf of the original bi-folium whose second leaf is T-S NS 125.96, is missing. (If, therefore, we assume a quire consisting of five bi-folia, it necessarily follows that a single, inner bi-folium is missing from this reconstructed quire.) The second quire, which immediately follows the first, consists of the bi-folium T-S 13 H 3.11, which constitutes its outer bi-folium. The upper portion of the first leaf of T-S 13 H 3.11 is T-S NS 325.69. This first leaf is followed by another: Mosseri VIII 394.

In a final article treating of the document under discussion here, Fleischer summarized his findings and named it א סדר פוסטאט.<sup>25</sup> In an important discovery, he also identified the compiler/copyist of this document: Yedutun Ha-Levi. Yedutun was the *hazzan* of the Palestinian synagogue in Fustat in the first quarter of the 13th century, a poet in his own right, whose career is chiefly identified with his unflagging and ultimately unsuccessful efforts to save the remaining vestiges of the Palestinian liturgical rite from being abrogated in favor of the triumphant Babylonian rite.<sup>26</sup> The First Order of Fustat was drawn up by Yedutun as part of his campaign.

### CRITICAL EDITION

Below I provide a critical edition of Sahlan's dispute poem, on the basis of:

- T-S NS 236.5 (ll. 1–15)
- T-S NS 125.96, T-S NS 325.69/T-S 13 H 3.11 (ll. 19–63)

A composite image of T-S NS 325.69/T-S 13 H 3.11 may be viewed on the website of the Taylor-Schechter Genizah Research Unit.<sup>27</sup> As the two manuscript witnesses do not overlap, restorations in square brackets are always conjectural. A Hebrew translation is provided alongside the Aramaic text. An English translation is provided in the following section.

Editorial Sigla:

- [..] = less than one word missing
- [...] = one word or more missing (may be repeated in order to fill out a line)
- <> = restoration of a scribal abbreviation
- $\aleph$  = doubtful reading

 $<sup>^{25}</sup>$  E. Fleischer, התפילה השלוש המאה בראשית בפוסטאט בראשית ארץ-ישראל בני הנסת הכנסת ארקי,  $Asufot\ 7\ (1993)\ 217-60.$ 

<sup>&</sup>lt;sup>26</sup> For Yedutun and his carcer, see Sh. Elizur, "שירי ר' ידותון הלוי החבר" in *Diné Israel – Studies in Halakhah and Jewish* Law 26–27 (2009/2010) 301–8 [Hebrew section].

 $<sup>^{\</sup>rm 27}$  Website: http://www.lib.cam.ac.uk/Taylor-Schechter/fotm/november-2011/index.html (Fragment of the Month, November 2011).

#### אחר

אִיתְחַבָּרוּ יַרְחֵי שֵׁתָּא בְּאוֹרֶף זִימְנָא כַּד הֲזָה עִיתָּא בַּאֲתָבוּתְהוֹן מִלְתָא מִלְתָא כָּל חַד אֲמַר כִי לִי יָאֲתָא רְבוּתָא

<פז<מון>5

גַּלִּי אִיֶּיר טְעֵים מַלּוּלִיה וַעֲנֶה וְחַבְרוֹהֵי לְקָבְלֵיה דְּבַר בִּי רַחֲמָנֶה עַמֵּה מְנַטְלֵיה וָאָחֵית לֵיה מַנָּא וָאָוּכְלֵיה

-פז<מון 10

הֵלָּא סִיוָן לְהוֹן עַנָה כַּד חֲזֵה עוֹבָד יָאיָא הוּא חֲשִׁיבָה קַמֵּי רָמָא וּבִי סְלֵק [משֶׁה] לְמָרוֹמָא וְאָחֵית הְּרֵין לוּתֵי קָיָאמָא

[פזמון] 15

[1]
[]
[π]
עַלַלְתָּא לְכַנְּשָׁא []

פז<מון> בַּאֲתָבוּתְהוֹן 20

טוּבַאי אֲמַר אָב מָכָּל יַרְחָא וְאַתְיֵקֵר עֲלֵיהוֹן לְאִישְׁתַּבָּחָא יַחֲדוֹן בִּי עַמָּא מְשַׁבְּחָא דְּבִי יִתְנַחֲמוּן אֲבַלָּיֶא וּבִי יִתְיָלִיד מְשִׁיחָא

<מון> 25

כַּד שְׁמַע אֱלוּל דָא מִילָה וְהוּא עָדֵי כְּלִילָא לִיבָּא דְאַבְנָא בִי יֶעְדֵי מִפַּהֲלָה וְתַתְבָנֵי קַרְיָתָא יַקִירִתָּא לָאִישׁתַּכְלָלָא

> 30 מַן דְּכְוָתִי בְּכֵוּלְכוֹן אֲמַר תִּשְׁרִי דְּבִי צְּבֵי רְבּוֹנֵי וּמֶרִי נְהִירִין בִּי עַמֵיה בְּמִפַּק [...] וְיַסְגוֹן תַגָּא בִי וְיָתֶסַף שָׁפְרִי

התחברו ירחי השנה באורך הזמן כאשר היתה העת בהשיבם מלה מלה כל אחד אמר לי יאָה גדולה

> גילה אייר טעם מילולו וענה וחבריו למולו נהג בי הרחמן עמו עמוסו והוריד לו המן ואוכלו

הלא סיון להם ענה כראוי מעשה היאֶה הוא נחשָב לפני הרם ובי עלה משה למרום והוריד שני לוחות הברית

> [...] [...] [...] לאסוף התבואה

אשרַי אמר אב מכל ירח והתנשא עליהם להשתבח ישמחו בי העם המשובח שבי יתנחמו אבלים ובי יוולד המשיח

> כאשר שמע אלול זאת מילה והוא עוֹדָה כתר לב של אבן בי יעבור מהקהל ותיבנה הקריה היקרה להשתכלל

> > מי כמוני בכלכם אמר תשרי שבי רוצה רבוני ומרי מזהירים בי עמו בצאת [...] וירבו בי חג ויתוסף שפרי

פז<מון>

- ַסַגְיוּת מִלִּין אַסְגֵיא [מַרְחֶשָׁוָן] [אַ]מַר לְהוֹן אַנָא הוּא דְּעַבְדִית אָצְטְלָוָן עְבַד מְרְיָא [בִּי פְּרִי]שְׁוָן וּנְצַחוּ בְּנֵי חַשְׁמוֹנֵי עַל מַלְכֵי יָוֶן פוֹ<מוזָ>
  - 40 פּוּמֵיהּ [פְּתַח כִּסְלֵו וַאֲ]מֵר וּלְחַבְרוֹהִי טַעְמֵיהּ אַנְמַר צְלוֹתְהוֹן דְעַמָּא [... ..]מי מר וּמִעַיֵּיקהוֹן אִיתִּבַר וָאִיטִמַר

פז<מון>

- 45 קָם [טֵבֵת ... ... ...]תֹא וַאֲנָא בִּי שֵׁזִיב רַחְמָנָ[א אֻ]מְׁתָא רְבָת בִּי [... .....] וּבַטֵּילִית גְזֵירְתָא דְהָמָן בֶּן [הַמְדָ]תָא פז<מוז>
- ַזּבְדָא [... ....] וּבְדָא וְעַל כֵּוּלֶן אִיתְיַקַר [..] דא שְׁבָחָא [... ... ...]דה דְבִי פֵּירֵשׁ משֶׁה אֻלְפָּן אוֹרַיְתָא הָדָא פז<מון>
  - 55 [ת..........]ה וַעֲנָא וְחַבְרוֹהִי קֵדְמֵיה תְּנָא לִי הוּא [......] [דְ]בִי אִיתְיָלִיד עָנְוְתָן דְדַבַּר עֵימֵיה

פז<מון>

60 סִּּדְוָן דְּגִיּ[סָן .....]בֹּא בְּהַרְמוֹן עִילָאָה הַלָּא אָנָא בֵישָׁא וְכָל יְרַח בָּתְרָאָ[ה] [לִי יָאֲ]תָא רְבוּתָא וּמַלְכוּתָא וַאֲנָא נְשִׂיאָה נָהוֹרִי נְהוֹר סַגִּיא וַאַנָא יֵרַחָא קַדְמַאָה

רוב מילים הרבה מרחשון אמר להם אני זה שעשיתי לבושים עשה האדון בי ניסים וניצחו בני חשמוני על מלכי יון

> פיו פתח כסליו ואמר ולחבריו דיבורו לימד תפילותם של העם [...] ומציקם נשבר ונעלם

קם טבת [...] ואני בי הציל הרחמן האומה גדלה בי [...] וביטלתי גזרה של המן בן המדתא

שבט [...] ובדה ועל כולן התנשא [...] השבח [...] שבי ביאר משה לימוד התורה הזאת

> [...] וענה וחבריו לפניו עטרה לי היא [...] שבי נולד ענו שדיבר עמו

[...] של ניסן [...] ברשות עליון הלא אני ראש וכל ירח אחרון לי יאָה גדולה ומלכות ואני נשיא אורי אור גדול ואני הירח הראשון

שלם קיצא דבני יתיב חברון / על יד משה ואהר[ן]

109

#### קיצורים

- (2003) נעם = ו' נעם, מגילת תענית, ירושלים תשס"ד (
- M. Sokoloff, A Dictionary of Jewish Babylonian Aramaic, Ramat Gan/Baltimore/ = סוקולוף London 2002
  - (ראה ברשימת הפיוטים בגוף המאמר) איתכנשו כל ירחיא" = מהד' קלייז (ראה ברשימת הפיוטים בגוף
  - "... ובי סלק" = מהד' סוקולוף ויהלום (ראה ברשימת הפיוטים בגוף המאמר)
    - ת"א = תרגום אונקלוס

#### פירוש הפיוט

לפיוט שלנו יש להשוות את המדרש על החודשים הנדרש על אס' ג, ז: "בא לו [המן] לחדשים... ועלה לניסן זכות הפסח, לאייר זכות המן, לסיון זכות מתן תורה, לתמוז זכות הארץ, לאב והפכתי אבלם לשטון [יר' לא, יג], לאלול זכות החומה דכתיב ותשלם החומה בעשרים וחמשה לאלול [נח' ו, טו], לתשרי זכות הרגלים, לחשוון זכות שרה, לכסליו וטבת זכות חנוכה, לשבט זכות אנשי כנסת הגדולה, באדר שמח" (מדרש אבא גוריון ג [ש' בובר, ספרי דאגדתא, וילנה 1886, עמ' 25]; וראה את המקבילה באסת"ר ז, יא).

8 דבר בי רחמנה עמה מנטליה: השווה: "בי יתפרק עמא מנטלא" ("איתכנשו כל ירחיא", ע"א, טור 4). 9 ואחית ליה מנא וכו': ראה שמ' טז, א ואילד. ואוכליה: בכתב היד: "ואיכליה". 12 כד חזה: כנראה יש לראות כאן את הצירוף "כדחזי" הרווח בת"א. עובד יאיא: הכוונה כנראה למעשה שהתרחש בחודש היאה, כלומר בסיוז. 13–14 ובי סלק וכו': הטורים מקבילים ל-"... ובי סלק", טורים 3–4. 13 ובי סלק וכו': ראה שמ' יט, א ואילד. משה: ההשלמה על פי הטור המקביל ב-"... ובי סלק", טור 3. 19 עללתא לכנשא: השווה "דיכלון וישבעון מן פירי עללתה" ("... ובי סלק", טור 8). 21 מכל ירחא: במקום: "מכל ירח"; השווה טור 61. 24 דבי יתנחמון וכו': השווה: "עובדא הוה בחד יהודאי דהוה קאים רדי. געת תורתיה קומוי. עבר חד ערביי ושמע קלה. אמ' ליה. בר יודאי בר יודאי. שרי תורתד ושרי קנקנד. דהא חריב בית מוקדשא. געת זמן תניינות. אמ' ליה. בר יודאי בר יודאי. קטור תוריך וקטור קנקניך. דהא יליד מלכא משיחא" וגו' (ירושלמי ברכות ב, ג [ה ע"א]; ראה גם איכ"ר א, טז [עמ' 89–90]). 27 והוא עדי כלילא: השווה: "אנא הוא דנסיב כלילא" ("איתכנשו כל ירחיא", ע"א, טור 6). עדי: הכוונה כנראה לפועל עברי, דוגמת "ועדית עדי" (יח' כג, מ). על ידי השימוש הזה נוצר משחק לשון נופל על לשון עם הפועל הארמי "יעדי" שבטור הבא. 28 ליבא דאבנא וכו': אלול הוא חודש התשובה. השווה: "ליביהון ועיניהון עתיד למחדשא" ("... ובי סלק", טור 15). 29 ותתבני קריתא וכו': ראה במדרש החודשים המובא לעיל. והשווה גם "ובי עתיד למתבניא בית מקדשא קדישא" ("... ובי סלק", טור 16). הלשון על פי עזרא ד, יג; שם, טז. 32 נירין בי עמיה וכו': השווה "נהוריה דישראל אנא שרויה" ("... ובי סלק", טור 19). במפק 33 .... שמא הצירוף הלקוי רומז ל-"מפקה דשתא" המתרגם "תקופת השנה" (שמ' לד, כב; ת"א). ויסגון חגא בי: ראה במדרש החודשים המובא לעיל. ויתסף: כנראה במקום "ויתוסף". הניקוד על פי כתב היד: "ויהַסף". 35 סגיות מלין וכו': השווה "סגין דבר ירחא מרחשון" ("... ובי סלק", טור 12). 36 דעבדית אצטלון: ראה את פירוש פליישר על אתר: "כנראה: שעשיתי לבושים (של מלכות)". והשווה: "והוא עדי כלילא" (טור 27). 38 ונצחו בני חשמוני וכו': השווה "עבדון קרב ואצלחון בנוי דחשמונאי" ("... ובי סלק", טור 23). פליישר בפירושו על אתר מפנה למגילת תענית: "בעשרים ותלתא למרחשון" סתור סורגיא מן עזרתא" יחד עם דברי הסכוליון (כ"י פרמה): "מפני שבנו שם גוים מקום והעמידו עליו את הזונות. וכשתקפה יד בית חשמונאי נטלוהו מהז וסתרוהו" (נעם, עמ' 239–242). ויש לציין שגם במדרש החודשים המובא לעיל עניין חנוכה חל על שני חודשים. 43 ומעייקהון וכו': הכוונה שוב לנצחון בני חשמונאי על היוונים. 64-46 ואנא בי שזיב וכו': הכוונה לעלייתה של אסתר לגדולה וביטול גזירת המז על ידיה; השווה "ותלקח אסתר אל המלך אחשורוש... בחדש העשירי הוא חדש טבת" (אס' ב, טז). 48 ובטילית גזירתא: ללשון השווה "ובטלת גזירה" ("... ובי סלק", טור 11). 53 דבי פירש וכו':

על פי דב' א, ג-ה; והשווה את דברי ת"א: "שרי משה פריש ית אולפן אוריתא הדא" (שם, ה). השווה גם "ויפרש להון אולפן אוריתא" ("איתכנשו כל ירחיא", ע"ב, טורים 3–4). פירש: צורת בניין פיעל העברי, במקום: "פָּרַש". 56 וענא וכו': השווה טור 7. 58 דבי איתיליד וכו': הכוונה ליום הולדת משה בז' באדר. עמקום: "פָּרַש". 56 וענא וכו': השווה טור 7. 58 דבי איתיליד וכו': הכוונה ליום הולדת משה בז' באדר. ענותן: הכינוי על פי במ' יב, ג ותרגומו. דדבר עימיה: ניקוד הפועל על פי כתב היד: "דְדַבַר", והוא כנראה הפועל העברי". ענותן: הכינוי על פי במ' יב, ג ותרגומו. דדבר עימיה: ניקוד הפועל על פי כתב היד: "דְדַבַר", והוא כנראה הפועל העברי "לדבר". הרעיון נגרר כנראה אגב הכינוי למשה; השווה שם, ב. אך השווה "דְבַר... עַמֵהּ" (טור 8). 50 בהרמון: המילה מתועדת בארמית בבלית, וצורתה שם "הַרְמָנָא"; ראה סוקולוף, עמ' 300. (טור 8). 50 בהרמון: המילה מתועדת בארמית בבלית, וצורתה שם "הַרְמָנָא"; ראה סוקולוף, עמ' 300. (טור 8). 50 בהרמון: המילה מתועדת בארמית בבלית, וצורתה שם "הַרְמָנָא"; ראה סוקולוף, עמ' 300. לומר (טור 8). 50 בהרמון: המילה מתועדת בארמית בבלית, וצורתה שם "הַרְמָנָא"; ראה סוקולוף, עמ' 300. לאולה המשיח, כלומר (טור 8). 50 בהרמון: המילה מתועדת בארמית בבלית, וצורתה שם "הַרְמָנָא"; ראה סוקולוף, עמ' 300. לגאולה העתידה לבוא בניסן; השווה "נהירא שמו [של משיח] שנאמר ונהורא עמה שרא [דנ' ב, כב], לגאולה העתידה לבוא בניסן; השווה "נהירא שמו [של משיח] שנאמר ונהורא עמה שרא [דנ' ב, כב], לגאולה העתידה לבוא בניסן; השווה "נהירא שמו [של משיח] שנאמר ונהורא עמה שרא [דנ' ב, כב], נהירא כתיב" (איכ"ר א, טז [עמ' 100]). סגיא: המילה מנוקדת בכתב היד: "סגיאָ". ואנא ירחא קדמאה: על פי "קדמאי הוא לכון לירחי שתא" (שמ' יב, ב; ת"א).

# TRANSLATION

The months of the year joined together In the length of time, when the moment arrived. In bandying about words Each one said, "Preeminence is my due."

5 Refrain

Iyyar lay bare the meaning of his talk And spoke, his fellows before him. "In me the Merciful One led out the people borne by Him, And brought down for them manna and food."

10 Refrain

Indeed Sivan answered them, "As is fitting, the deed of one worthy is reckoned before the High One. And in me Moses ascended on high And brought down the two Tablets of the Covenant."

### 15 [Refrain]

[...] [...] [...]

[...] to gather the harvest.

20 *Refrain*: In bandying about

"Blessed am I," said Av, "among all the months." And he esteemed himself above them, giving himself praise. "In me the praised nation will rejoice For in me mourners will be consoled and in me the Messiah will be born."

25 Refrain

When Elul heard these words, He wearing the crown,

112	MELILAH MANCHESTER JOURNAL OF JEWISH STUDIES
	[He said,] "In me the heart of stone will pass from the congregation And the precious city will be rebuilt to perfection."
30	"Who is like unto me amongst you all," said Tishrei, For it is in me that my Lord and Master takes pleasure. His people are radiant in me, at the going out of [] And they multiply feasts in me, and my splendor waxes."
	Refrain
35	Marḥeshvan multiplied a plethora of words. He said to them, "I am he who made garments. The Lord performed miracles in me And the sons of Ḥashmonay were victorious over the kings of Greece."
	Refrain
40	Kislev opened his mouth and said, Instructing his fellows in his meaning. "The people's prayer [] And their oppressor was smashed and disappeared."
	Refrain
45	['Ievet] arose [] "And as for me, in me the Merciful One saved the nation. In me [] became great, And I abrogated the decree of Haman the son of Hamdata."
	Refrain
50	Shevat [] and invented [] And he esteemed himself above them all []. "Praise [] For in me Moses expounded the teaching of this Torah."
	Refrain
55	[] And spoke, his fellows before him. "The crown is mine [] For in me the humble one was born, with whom [God] spoke."
	Refrain
60	[] of Nisan [] by authority of the Most High. "Am I not the head and every [other] month last? Preeminence and kingship are my due, and I am the prince. My light is a great light, and I am the first month."

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