A Broken Covenant and the Curse of Death: A Study of Hebrews 9:15-22

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THE INTERPRETATION of Heb 9:15-22 is a traditional crux of NT scholarship. At issue is whether to take the word διαθήκη in vv. 16-17 according to its secular Hellenistic meaning, "testament," or its Septuagintal meaning, "covenant" (ברית).[1] In this article, I will review and evaluate the arguments for understanding διαθήκη as either "testament" or "covenant" in vv. 16-17. Finding the rendering "covenant" to be superior but the usual case for it flawed, I will defend this translation based on a significantly different interpretation of Heb 9:15-22.

I. The Majority Opinion: Διαθήκη as "Testament" in Hebrews 9:16-17

A. The Case for Διαθήκη as "Testament"

The Septuagintal usage of διαθήκη as the equivalent of the Hebrew ברית is reflected throughout Hebrews and in the NT in general, with the possible exception of Gal 3:15.[2] Nonetheless, most modern translations and commentators

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[1] A testament is "an act by which a person determines the disposition of his or her property after death" (*Merriam-Webster's Collegiate Dictionary* [11th ed.; Springfield, MA: Merriam-Webster, 2003]) 1291. For διαθήκη as "testament" in secular Greek, see Johannes Behm and Gottfried Quell, "διαθήκη," *TDNT*, 2. 106-34, esp. 124-26. Gordon P. Hugenberger (*Marriage as a Covenant: A Study of Biblical Law & Ethics Governing Marriage, Developed from the Perspective of Malachi* [VTSup 52; Leiden: Brill, 1994] 11) defines "covenant" (ברית) as a "relationship of obligation under oath." For διαθήκη as the LXX equivalent of ברית, see Behm, "διαθήκη," *TDNT*, 2. 126-27.

[2] See John J. Hughes, "Hebrews IX 15ff. and Galatians III 15ff.: A Study in Covenant Practice and Procedure," *NovT* 21 (1976-77) 27-96, esp. 32-33; Behm, "διαθήκη," *TDNT*, 2. 134: "In both form and content the NT use of διαθήκη follows that of the OT."

take διαθήκη in the sense of "will" or "testament" in Heb 9:16-17, and as "covenant" in vv. 15 and 18.[3] It is not difficult to see why this approach enjoys the support of a majority of scholars.[4] In v. 15, the context seems to demand the sense of "covenant," since only covenants have mediators (μεσίτης) and reference is made to the first διαθήκη, which the author clearly regards as a covenant. However, in v. 16, the requirement for the "death of the one who made it" would seem to suggest the translation "will" or "testament" for διαθήκη, since covenants did not require the death of their makers. Likewise, in v. 17, the statement that a διαθήκη takes effect only at death and is not in force while the maker is alive seems to apply only to a testament. In v. 18, however, the topic returns again to "the first διαθήκη," that is, the Sinai event, which can scarcely be anything but a covenant.

B. The Critique of Διαθήκη as "Testament"

Although the basic case for the διαθήκη as "testament" in Heb 9:16-17 can be readily seen, this translation labors under a number of difficulties.[5] For the sake of the following discussion, the difficulties may be categorized as *legal* and *textual,* and the textual difficulties may be subdivided into *grammatical, lexical, syntactical,* and *contextual* issues.

1. Legal Issues

Although it is generally assumed that vv. 16-17 can be understood only in light of Greco-Roman legal practices, John J. Hughes has demonstrated that the characteristics of a διαθήκη in these verses do not, in fact, correspond to those of secular Hellenistic or Roman διαθῆκαι. The testamentary interpretation tends

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[3] See *NEB, JB, TEV, NIV, NAB* (only the *NASB* translates "covenant" in vv. 16-17). Commentators endorsing "testament" in vv. 16-17 include Geerhardus Vos, *The Teaching of the Epistle to the Hebrews* (ed. and re-written by Johannes G. Vos; Grand Rapids: Eerdmans, 1956) 27-48; George Wesley Buchanan, *To the Hebrews:* Translation, comment, and conclusions (AB 36; Garden City, NY: Doubleday, 1972) 151; Thomas G. Long, *Hebrews* (IBC; Louisville: John Knox, 1997) 99; Harold W. Attridge, *The Epistle to the Hebrews: A Commentary on the Epistle to the Hebrews* (ed. Helmut Koester; Hermeneia; Philadelphia: Fortress, 1989) 253-56; Paul Ellingworth, *The Epistle to the Hebrews: A Commentary on the Greek Text* (NIGTC; Grand Rapids: Eerdmans, 1993) 462-63; Victor C. Pfitzner, *Hebrews* (Abingdon New Testament Commentaries; Nashville: Abingdon, 1997) 131; Craig R. Koester, *Hebrews:* A new translation with introduction and commentary (AB 36; New York: Doubleday, 2001) 418, 424-26.

[4] See James Swetnam, S.J., "A Suggested Interpretation of Hebrews 9,15-18," *CBQ* 27 (1965) 373-90, esp. 374-75, for a succinct summary of the case.

[5] These difficulties have previously been pointed out, to a greater or lesser degree, by B. F. Westcott, *The Epistle to the Hebrews:* The Greek Text with Notes and Essays (2nd ed.; London: Macmillan, 1892) 298-302; George Milligan, *The Theology of the Epistle to the Hebrews: With a Critical Introduction* (Edinburgh: Clark, 1899) 166-70; John Brown, *The Epistle to the Hebrews* (Edinburgh: Clark, 1899) 407-19; Hughes, "Hebrews IX 15ff.," 28-66; William L. Lane, *Hebrews 9–13* (WBC 47B; Dallas: Word, 1991) 226-52; and Darrell J. Pursiful, *The Cultic Motif in the Spirituality of the Book of Hebrews* (Lewiston, NY: Mellen, 1993) 77-79.

to treat βέβαιος and ἰσχύω in v. 17 as synonyms for "executed" (i.e., a will is executed only at death), but no such meaning or usage is attested for either term.[6] In legal contexts, ἰσχύω means "to be valid," and βέβαιος means "valid, confirmed, ratified."[7] Thus, v. 17 is speaking of the validation, not the execution, of διαθῆκαι. Hughes points out, however, that the validation or ratification (βεβαίωσις) of wills in Hellenistic, Egyptian, and Roman law was not "over the dead [bodies]" (ἐπὶ νεκροῖς, v. 17): "It is simply untrue and completely lacking in classical and papyrological support to maintain that . . . a will or testament was only legally valid when the testator died. . . . [I]t is impossible . . . that [vv. 16-17] refer to any known form of Hellenistic (or indeed any other) legal practice."[8] To the contrary, a Hellenistic will was legally secure and valid (βέβαιος) not when the testator died but when it was written down, witnessed, and deposited with a notary.[9] Moreover, the inheritance was not wholly subsequent to the death of the testator, as v. 17 would imply; distribution of the estate while the testator(s) was still living (*donatio inter vivos*) was quite widespread in the Hellenistic world.[10] Although inheritance after the death of the testator may have been more frequent in practice, only a few instances of *donatio inter vivos* known to the readers of Hebrews would have subverted the emphatic statement of v. 17b (ἐπεὶ μήποτε ἰσχύει ὅτε ζῇ ὁ διαθέμενος) and destroyed its rhetorical effectiveness.[11] Exegetes have perhaps too quickly assumed that ancient and modern testamentary practices were similar, and thus that the statements of vv. 16-17 described contemporary legal practice.[12]

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[6] The idea of "execution" would be expressed with a different term, perhaps ποιέω, τελειόω, or (συν)τελέω. For a full discussion of the terminological issues, see Hughes, "Hebrews IX 15ff.," esp. 60-62.

[7] For ἰσχύω, see BAG(D), 383b-84a, and LSJ, 844a; for βέβαιος, BAG(D), 138a, and LSJ, 312a.

[8] Hughes, "Hebrews IX 15ff.," 61.

[9] Ibid., 60.

[10] Ibid., 62, citing H. J. Wolff, "Hellenistic Private Law," in *The Jewish People in the First Century: Historical Geography, Political History, Social, Cultural and Religious Life and Institutions* (2 vols.; ed. Shemuel Safrai and Menahem Stern; CRINT, sect. 1, v. 1; Assen: Van Gorcum; Philadelphia: Fortress, 1974) 1. 534-60, here 543; and Rafal Taubenschlag, *The Law of Greco-Roman Egypt in Light of the Papyri 322 BC–640 AD* (2nd ed.; Warsaw: Panstwowe Wydawnictwo Naukowe, 1955) 207-8.

[11] On μήποτε as a strong negative, see Ellingworth, *Hebrews,* 464.

[12] Responses to Hughes's critique of the testamentary interpretation have been weak. Curiously, Attridge (*Hebrews,* 255-56 n. 25, 419), publishing almost thirteen years after Hughes's seventy-page article in *Novum Testamentum,* makes no reference to Hughes or his arguments. Ellingworth (*Hebrews,* 464) does little to rebut him. Koester (*Hebrews,* 418, 425) does nuance and mitigate the sense of Heb 9:17 to accommodate Hughes's point that the language is not legally accurate, and he cites a papyrus death notice as proof of his assertion that "legally people had to present evidence that the testator had died for a will to take effect" (*Hebrews,* 418); but the papyrus cited does not actually mention a will or inheritance as being at issue.

2. Grammatical Issues

The other difficulties with translating διαθήκη as "testament" are evident from the text itself and require little knowledge of the book's historical context. First, under the assumption that διαθήκη means "testament," there are grammatical irregularities in the use of φέρεσθαι (v. 16b) and ἐπὶ νεκροῖς (v. 17a).[13] If v. 16b referred to testamentary practice, one would expect ὅπου γὰρ διαθήκη, διαθέμενον ἀνάγκη ἀποθανεῖν, "where there is a testament, it is necessary for the testator *to die.*" Why the circumlocution θάνατον ἀνάγκη φέρεσθαι τοῦ διαθεμένου? The NRSV renders "the death of the one who made it must *be established,*" but there is no other example of such usage in the rest of the NT or the LXX. Φέρω is frequently used in legal contexts, both within and without the biblical corpus, but in the sense of "to bring a report, claim, or charge," not to confirm a *death;* one would expect φέρεσθαι τὸν λόγον τοῦ θανάτου, "a report of the death to be brought." The idiosyncrasy of the phrase is demonstrated by the way lexicographers treat it as a special case, being unable to produce analogous citations.[14] An explanation of the phrase based on a nontestamentary interpretation of διαθήκη will be offered below.

Another grammatical strain on the testamentary paradigm occurs in v. 17a, διαθήκη γὰρ ἐπὶ νεκροῖς βεβαία, which the NRSV renders "a will takes effect only at death." Literally, however, the phrase reads "for a διαθήκη is confirmed *upon dead [bodies].*" There is no justification for taking ἐπὶ νεκροῖς as "at death" (ἐπὶ νεκρῷ or ἐπὶ νεκρώσει), although this is the sense demanded by a testamentary interpretation.[15] If indeed the author was intending to speak of the death of the testator, the phrase is awkward, especially the use of the plural (νεκροῖς, "dead [bodies]").[16] Again, a nontestamentary solution will be explored below.

3. Lexical Issues

Moving from grammatical to the lexical observations, it is all but incontestable that, outside of 9:16-17, the author of Hebrews uses διαθήκη only in its

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[13] See G. D. Kilpatrick, "Διαθήκη in Hebrews," *ZNW* 68 (1977) 263-65, here 265; Westcott, *Hebrews,* 301.

[14] See LSJ, 1923a, s.v. φέρω, def. A.IV.4, "announce"; BAG(D), 855b, s.v. φέρω, def. 4.a.β, "establish"; also Johannes P. Louw and Eugene A. Nida, *Greek-English Lexicon of the New Testament Based on Semantic Domains* (2 vols.; 2nd ed.; New York: United Bible Societies, 1988) 1. 667b-68a ("show," §70.5). Note Ellingworth's honesty (*Hebrews,* 464): "Exact parallels to this statement have not been found"; and Attridge's (*Hebrews,* 256) polite understatement: "The sense of φέρεσθαι is somewhat uncertain."

[15] Lane, *Hebrews,* 232; Milligan, *Hebrews,* 169.

[16] Attridge (*Hebrews,* 256) admits, "The phrase referring to the testator's death, 'for the dead' (ἐπὶ νεκροῖς), is somewhat odd. . . ."

Septuagintal sense of "covenant" (בְּרִית).[17] Moreover, the word is clearly important to the author; the term διαθήκη and the concept of "covenant" occur more often and receive greater attention and emphasis in Hebrews than in any other NT book.[18] Of the thirty-three occurrences of διαθήκη in the NT, seventeen—just over half—are in Hebrews. Of these, fifteen are in the extended discussion of Christ as high priest from chap. 7 through chap. 10. The word occurs seven times in chap. 9 alone, far more than in any other chapter of Hebrews or the NT. Thus, since the word is important and frequently used by the author, and in every instance outside vv. 16-17 has the meaning "covenant," Hughes's assertion is justified: "As a matter of a priori concern one should at least be exceedingly cautious in attributing a meaning to διαθήκη in ix 15-22 that is so foreign to the author's use of the word elsewhere."[19]

4. Syntactical Issues

In addition to the lexical data, the syntax of the unit 9:11-22 strongly militates against taking διαθήκη in vv. 16-17 in a sense different from that which it bears in the rest of the passage.[20] Verse 15 opens with καὶ διὰ τοῦτο, signaling "a strong inferential/causal relationship between vv. 15-22 and 11-14."[21] It is because Christ has entered into the heavenly holy place by his own blood (vv. 11-14) that he has become the mediator of a new covenant (διαθήκη, v. 15).[22] Thus, the meaning of διαθήκη in v. 15 is qualified by the covenantal concepts present in vv. 11-14. The second clause of v. 15, introduced by ὅπως, is a final clause indicating the purpose or result of Christ's mediatorship of the new covenant, namely, that the "elect" may obtain the eternal inheritance.[23] Within this final clause there is a genitive absolute construction, θανάτου γενομένου . . . παραβάσεων, explaining the circumstances attendant on the acquisition of this inheritance: a death has taken place. The words ὅπου γὰρ in v. 16 introduce a parenthetical explanation of this genitive absolute, explicating why it was that a death had to take place. Verse 17 provides further explication (γάρ) of v. 16. The first word of v. 18, ὅθεν ("hence"), implies that the next unit (vv. 18-22) follows logically from the statements of the previous one (vv. 16-17). Therefore, vv. 18-22 are syntactically linked to vv. 16-17, which are, in turn, linked as an explanation to a clause of v. 15, "which itself is the climax of vv. 11-14."[24] The subunits vv.

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[17] See Behm, "διαθήκη," *TDNT,* 2. 132; Lane, *Hebrews,* 230.

[18] See Vos, *Hebrews,* 27.

[19] Hughes, "Hebrews IX 15ff.," 32-33.

[20] The following syntactical arguments have also been proposed by Hughes, "Hebrews IX 15ff.," 35-59; and Lane, *Hebrews,* 231, 234-35.

[21] Hughes, "Hebrews IX 15ff.," 33.

[22] See Ellingworth, *Hebrews,* 460.

[23] See Lane, *Hebrews,* 231.

[24] Hughes, "Hebrews IX 15ff.," 34.

11-14, v. 15, vv. 16-17, and vv. 18-22 flow, at least syntactically, from one to another as stages in a logically progressing argument.[25] It would be a priori unlikely for the author of Hebrews, in the midst of this tightly knit argument, to use διαθήκη in vv. 16-17 in a sense entirely different from its meaning in the rest of the passage; and unlikely or not, it would seriously damage the logical coherence of the whole argument.[26] The manifest brilliance and subtlety of both rhetoric and theological argument manifest throughout the rest of the epistle lead us to expect better things of this author.

5. Contextual Issues

Moreover, the incongruity of διαθήκη-as-testament for the author of Hebrews is much deeper than grammar, diction, and syntax. Essentially, the model of the secular Hellenistic testament is incongruous with the literary-theological context of the epistle as a whole, particularly with the soteriological paradigm that the author has been carefully developing in chaps. 1–9 and continues to develop through the end of the discourse.[27] While this incongruity has many aspects, the two explored here will be in relation to the author's view of *inheritance* and emphasis on *cult*.

a. Covenant and Inheritance in Hebrews. The model of the process of inheritance in the Epistle to the Hebrews has little in common with testamentary practice. Those described as heirs in Hebrews are always either Christ (κληρονόμος, 1:2, 4) or his "brethren" (ἀδελφοί, 2:11, 17), that is, those of the previous (6:12; 11:7, 8) or present (3:1, 12; 10:19) age who are united to him by faith (κληρονόμοι, 6:17; cf. 1:14; 6:12; 9:15).[28] In neither case does the process of inheritance follow a testamentary model. With respect to Christ, he is the "heir of all things" (κληρονόμον πάντων, 1:2) by virtue of being the Son par excellence (1:2, 4), that is, the Firstborn (πρωτότοκος, 1:6). However, he does not receive his inheritance during his earthly life (5:7-8); rather, he receives the inheritance through suffering, death, and resurrection (2:9; 9:11-12; 10:12-13). In his present, heavenly state, he is enjoying the κληρονομία (2:9).

This runs counter to a testamentary model, in which only God (the Father, 1:5) could function as the testator, since he dispenses the inheritance. Yet it is impossible for God to die. Ironically, it is not God, the "testator," but Christ, the *heir*, who must die to receive the heavenly inheritance.[29] In the understanding of

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[25] See Ellingworth's syntactical analysis of 9:15-22 (*Hebrews,* 459-62).

[26] "Such a sudden transition, from one sense to another of the same word is, from a logical point of view, unsatisfactory . . ." (F. F. Bruce, *Hebrews* [NICNT; Grand Rapids: Eerdmans, 1964] 361); "The author . . . was obviously a person of too clear a mind to argue in this way" (Brown, *Hebrews,* 408).

[27] "Such an illustration [i.e., of a testament] would not have been in keeping with the writer's *own usual train of thought*" (Milligan, *Hebrews,* 169; italics mine).

[28] On the faithful of both covenants forming one body in Hebrews, see Larry R. Helyer, "The *Prōtotokos* Title in Hebrews," *Studia Biblica et Theologica* 6 (1976) 3-28, esp. 15.

[29] "Although God promised the new covenant (8:10), Jesus is the testator who dies" (Koester, *Hebrews,* 418).

inheritance in Hebrews, God gives a heavenly inheritance to Christ, "the heir of all things," after the death, resurrection, and exaltation of Christ the heir, whereas in a Hellenistic testament, a testator gives an earthly inheritance to his heir(s) near the end of his (the testator's) life—in the case of *donatio inter vivos*—or at his death. The most striking difference between the model of inheritance in Hebrews and a testament is that, consistently in Hebrews, it is the *heir* rather than the *testator* who must die before the inheritance is bestowed.

Matters are even more complex with respect to the inheritance of the "brothers" (ἀδελφοί, 2:11, 17; 3:1, 12; 10:19) or "elect" (κεκλημένοι, 9:15), that is, the faithful. Here there is a two-stage process, an "already" and a "not yet." By virtue of Christ's death and subsequent exaltation, the faithful now have access to the very presence of God (4:16) and have received a kingdom (12:28). Yet there is still need for patience and endurance (6:11-12), of undergoing struggle and suffering (12:3-4), in order to "enter the rest" (4:11) and "receive what is promised" (10:36), which persevering believers will experience in its fullness at the return of Christ (9:27-28) or at their own deaths, should they die during their remaining struggle (12:4).

In the inheritance of the faithful, Christ functions as *mediator,* not *testator* (9:15). The status of testator for Christ would be, in any event, ironic, since he is the "heir of all things" (κληρονόμος πάντων, 1:2, cf. 1:6). There is no transferal of the inheritance *from* Christ *to* his siblings. Rather, the faithful receive the heavenly inheritance (3:1; 11:6; 12:22) proleptically upon Christ's death and exaltation (10:19-22), since the fact that Christ has entered the promised heavenly inheritance gives hope that the siblings will attain it also (6:19-20). Christ shares the inheritance with the faithful provisionally in the present and in fullness at his return (9:28).

Again, the incongruity of the testamentary model should be readily apparent. A testament has no place for a mediator or a two-stage disposition of the inheritance. Moreover, in the model used in Hebrews, no one plays a role analogous to a testator. God does not die; therefore he cannot be a testator. Christ dies not to transfer the inheritance to his heirs but to enter the inheritance himself, which he then shares with his siblings. A legal testament does not, of course, foresee the resurrection of the testator and would be invalidated by it. What would become of the inheritance if the "testator" were no longer dead?

In the model of inheritance with which the author of Hebrews is clearly working, Semitic categories of covenant and familial solidarity apply. Christ is the firstborn son (πρωτότοκος, 1:6) in the *familia Dei,* who, upon entering his inheritance, shares it with his "brothers" (ἀδελφοί, 2:11 *et passim*). The term πρωτότοκος, "firstborn," is strategically deployed in *inclusio*-like fashion near the beginning (1:6) and end (12:23) of the epistle, referring to Christ and the "church" (ἐκκλησία) respectively. The significance of primogeniture in the minds of the author and his

audience presupposes that both are thinking in terms of the Jewish-Israelite practice of *intestate* (i.e., nontestamentary) *succession,* in which the firstborn was granted primacy.[30] In Greek and Roman testamentary succession, the firstborn enjoyed no such status; therefore, the full significance of the use of the term πρωτότοκος would have been lost on a non-Jewish audience. Larry R. Helyer comments:

> The Jewish system of inheritance derived from the Pentateuchal laws . . . and were [*sic*] based upon the theory of intestate succession. In this system primogeniture played an important role. . . . Within the Graeco-Hellenistic sphere . . . the heir . . . did not succeed universally to the estate. . . . The Romans disliked intestate succession. . . . Only in Jewish law did the first-born hold a guaranteed position of honor. . . . The Old Testament concept of primogeniture [is] a feature not found in the Roman-Hellenistic systems. . . . *Prōtotokos* in its passive meaning of first-born "is rare outside the Bible and *does not occur at all prior to the LXX.*"[31]

Thus, the Greco-Roman concept of "testament" is in strong tension with the way inheritance is consistently presented throughout Hebrews and runs counter to the strategic deployment of the term "firstborn" in 1:6 and 12:23.

   b. *Covenant and Cultus in Hebrews.* The concept of the secular Hellenistic testament is at odds also with the author's deep concern for cult and liturgy.[32] This concern is evident from the structure of the book, which may be described as alternating between cultic and parenetic units.[33] The cultic units may also be described as "doctrinal," since they carry the burden of the book's doctrinal argument. To put it succinctly: the author of Hebrews theologizes almost invariably in cultic terms. In fact, the book has been described as a "liturgy for the Day of Salvation,"[34] its purpose being "to contrast two priesthoods."[35]

   It is not surprising, then, that the author of Hebrews treats "covenant" not only in legal (6:13-21) but also in cultic and liturgical terms.[36] Nowhere is this

[30] See (unsigned) "A Lawyer Looks at Hebrews 9:15-17," *EvQ* 40 (1968) 151-56, here 152-53; and Westcott, *Hebrews,* 299.

[31] Helyer, "*Prōtotokos,*" 17 (emphasis mine).

[32] See Pursiful, *Cultic Motif,* 4: "The depiction of spirituality in Hebrews is cultic through and through and . . . the author's usage of cultic imagery is in fact central to his pastoral goals"; Vos, *Hebrews,* 43: "The Epistle considers the Christian state as in the main a *cultus.* . . . All through the ninth chapter the worshipper is represented as one who serves. . . . We have here specifically ritual language"; and Attridge, *Hebrews,* 253: "Hebrews, however, presumes that priesthood and cult constitute the conerstone of a people's relationship to God (7:11-12). . . ." For a definition of "cult" and "ritual," see Pursiful, *Cultic Motif,* 11-12.

[33] E.g., John Dunnill, *Covenant and Sacrifice in the Letter to the Hebrews* (SNTSMS 75; Cambridge: Cambridge University Press, 1992) 118. Dunnill gives the cultic units as 1:1-14; 2:5–3:6a; 4:14–5:10; 6:13–10:22; 12:18-24; 13:8-16; and the parenetic units as 2:1-4; 3:6b–4:16; 5:11–6:12; 10:19–12:17; 12:25-29; 13:1-25. There is some overlap.

[34] Ibid., 115-48.

[35] Milligan, *Hebrews,* 130.

[36] See Pursiful, *Cultic Motif,* 158: "A covenant implies a cultic order . . ."; Behm, "διαθήκη," *TDNT,* 2. 132: "The author finds the essence of the two διαθῆκαι in the cultic aspect."

more true than in chaps. 8–9.[37] In these chapters, the author contrasts two covenant orders: the old (8:3–9:10) and the new (9:11-28). The density of cultic language used to describe the two covenants is remarkable. Both covenants have a cultus that includes a high priest (ἀρχιερεύς, 8:1, 3; 9:7, 11, 25) or "celebrant" (λειτουρ-γός, 8:2, 6) who performs ministry (λατρείας, 8:5; 9:1, 6) in a tent-sanctuary (σκηνῆς, 8:2, 5; 9:2-3, 6, 8, 11, 21), entering into a holy place (ἁγία, 8:2; 9:2-3, 12, 24) to offer (προσφέρειν, 8:3; 9:7, 14, 28) the blood (αἷμα, 9:7, 12, 14, 18-23, 25) of sacrifices (θυσίας, 8:3-4; 9:9, 23, 26), which action effects purification (ἁγιάζειν, 9:13; καθαρίζω, 9:14, 22-23) and redemption (λύτρωσις, 9:12, 15) of worshipers (λαός, 8:10; 9:7, 19; λατρεύοντοι, 9:9, 14) who have transgressed cultic law (νόμος, 8:4; 9:19).[38] The mediation of both covenants is primarily cultic, the sacred realm of liturgy, not the secular realm of law. In other words, in both cases *the cult mediates the covenant,*[39] and *the covenant structures the cult.*[40] Albert Vanhoye comments on this fact:

> Our author rightly sees very close ties between cult and covenant. The value of a covenant depends directly on the act of worship which establishes it. A defective liturgy cannot bring about a valid covenant. . . . The reason for this is easily understood. The establishment of a covenant between two parties who are distant from each other can only be accomplished by an act of mediation and, when it is a question of mankind and God, the mediation has of necessity to be conducted through the cult.[41]

Christ as high priest is mediator of a new and better covenant (8:6; 9:15), founded on a perfect sacrifice (10:14), which expiates transgressions under the law of the former covenant (9:15, 19, 26) and provides entrance to the true and heavenly tabernacle (8:2; 10:19), even to the heavenly holy of holies (6:19-20), the very presence of God.

In contrast to this, a secular "testament" involves neither cult nor liturgy, mediator nor priesthood, sacrifice nor sanctuary, cultic law nor transgression thereof. It operates in an entirely different conceptual and social sphere; it is a strictly legal relationship of Gentile origin. One is at a loss to know how the author or his

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[37] On the cultic background of chap. 9, see Swetnam, "Suggested Interpretation," 375; Behm, "διαθήκη," *TDNT,* 2. 131-32; Ceslas Spicq, *L'Épître aux Hébreux* (2 vols.; EBib; Paris: Gabalda, 1952) 2. 246-47; Albert Vanhoye, S.J., *Old Testament Priests and the New Priest According to the New Testament* (trans. J. Bernard Orchard, O.S.B.; Studies in Scripture; Petersham, MA: St. Bede's, 1986) 176-77.

[38] See Lane, *Hebrews,* 235: "The essence of the two covenants is found in their cultic aspects; the total argument is developed in terms of cultus. . . . The interpreter must remain open to the internal logic of the argument from the cultus."

[39] See Charles P. Anderson, "Who Are the Heirs of the New Age in the Epistle to the Hebrews?" in *Apocalyptic and the New Testament: Essays in Honour of J. Louis Martyn* (ed. Joel Marcus and Marion L. Soards; JSNTSup 24; Sheffield: JSOT Press, 1989) 255-77, esp. 271.

[40] See Dunnill, *Covenant and Sacrifice,* 104; Anderson, "Who Are the Heirs?" 272.

[41] Vanhoye, *Old Testament Priests,* 181-82.

audience would have seen a relationship between a "testament" and the cultic contours of the covenant developed in the epistle. At a climactic point in the author's theological argument,[42] wherein he attempts to demonstrate the necessity of Christ's sacrificial death (9:16-17), must one abruptly switch to nonbiblical, noncultic, secular Greco-Roman legal categories in order to interpret his meaning?

C. Summary: The Incongruity of Διαθήκη as "Testament"

The common themes of all the arguments against the rendering of διαθήκη by "testament" in Heb 9:16-17 are *incongruity* and *inconsistency*. Such a rendering is incongruous and inconsistent with Hellenistic and Roman legal practice, the grammar of the verses, the syntax of the entire unit, the author's usage of διαθήκη elsewhere, and the author's theological-conceptual system, illustrated here by his model of inheritance and his emphasis on cult. If διαθήκη means "testament" in vv. 16-17, one has to acknowledge that the idea of testament does not fit the passage very well, and Johannes Behm is correct in saying that "[the author] jumps from the religious to the current legal sense of διαθήκη . . . involving himself in contradictions which show that there is no real parallel."[43]

Granted that the concept "testament" in vv. 16-17 is incongruous on several levels with its literary-theological context, one must still ask if coherence of thought can be expected from the author of Hebrews. Prescinding from the particular case of 9:16-17, the impressive rhetorical and theological skill evident in the rest of the epistle would lead one to think so. Harold W. Attridge describes the epistle as "the most elegant and sophisticated . . . text of first-century Christianity. . . . Its argumentation is subtle; its language refined; its imagery rich and evocative . . . a masterpiece of early Christian rhetorical homiletics."[44] Vanhoye invites his readers to "pause for a moment to admire the literary perfection of [this] priestly sermon. . . . One sees how the author is concerned about writing well . . . [his] talent is seen

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[42] On the centrality of 8:1–9:28 in the epistle, see Albert Vanhoye, *Structure and Message of the Epistle to the Hebrews* (Subsidia Biblica 12; Rome: Biblical Institute, 1989) 40a-b; idem, *Old Testament Priests,* 150, 173-77; James Swetnam, S.J., "The Structure of Hebrews: A Fresh Look," *Melita Theologica* 41 (1990) 25-46, esp. 39.

[43] Behm, "διαθήκη," *TDNT,* 2. 131. Many other advocates of διαθήκη-as-testament also feel the tension caused by the abrupt switch in meaning, e.g., Bruce, *Hebrews,* 461; Pfitzner, *Hebrews,* 131; Ellingworth, *Hebrews,* 462; Swetnam, "Suggested Interpretation," 373. Currently, it seems popular to defuse this tension somewhat by describing the author as engaged in a "playful" rhetorical argument that, while not logically valid, would amuse the audience or readership with its clever wordplay (Attridge, *Hebrews,* 253-54; similarly Long, *Hebrews,* 98-99). Unfortunately, in order to be rhetorically effective, an argument must at least appear to be valid. A blatantly false example cited as proof or a syllogism whose errors are apparent to all tends to discredit the speaker and his argument. It is doubtful whether the argument of Heb 9:16-17 would have had even apparent validity under a testamentary interpretation.

[44] Attridge, *Hebrews,* 1.

especially in the harmony of his composition."[45] Even more strongly, John Dunnill asserts that the interpreter must "capitalize on the strong impression of the *unity* of its imaginative world which any reading of Hebrews communicates. . . . It is generally agreed that Hebrews exhibits a marked theological *coherence*. . . . There is here no suspicion of provisional or *ad hoc* conclusions on even the least central topics; rather the theological viewpoint seems to spring forth . . . fully armed."[46] Similar testimonies could be multiplied.[47]

Certainly, we are not dealing with a document written in haste or by an incompetent or uneducated author. Although tensions may still be present in the works of even the best of writers, in the case of Hebrews there is at least enough evidence of the author's literary, rhetorical, and theological expertise to justify proceeding on the presumption that (1) the author's statements made sense to himself, (2) he expected that they would make sense to his audience, and (3) they cohere with the overall structure of his thought.

Therefore, it seems fair to ask whether it is the author or the exegetes who have "jumped" from one sense to another in vv. 16-17, involving themselves in contradictions.[48] It may be preferable to exhaust all possible meanings of διαθήκη in vv. 16-17 within the literary-theological framework that is so obviously the context of this author's argument before resorting to the desperate expedient of an interpretation that essentially decontextualizes these verses.

II. The Minority Opinion: Διαθήκη as "Covenant"

Although they are clearly a minority, several scholars have made attempts to interpret διαθήκη in Heb 9:16-17 within the Israelite cultic and covenantal framework of Hebrews.[49] These scholars have argued that vv. 16-17 refer to ancient rites of making a covenant, in which the covenant maker (ὁ διαθέμενος) swore a self-maledictory oath, which was then ritually enacted by the death and dismemberment of animals representing the covenant maker.[50] The bloody sacrifice of the animal(s) signified the fate of the covenant maker, should he prove false to his obligations under the covenant.[51] Thus, the meaning of vv. 16-17 may be paraphrased as follows: "Where there is a covenant, it is necessary that the death of the covenant maker be represented (by animal sacrifices); for a covenant is confirmed over dead (sacrificial animals), since it is never valid while the covenant maker is still ritually 'alive.'"

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[45] Vanhoye, *Structure and Message,* 32-33.

[46] Dunnill, *Covenant and Sacrifice,* 8.

[47] E.g., Swetnam, "Suggested Interpretation," 375; and Westcott, *Hebrews,* xlvi-xlvii.

[48] *Pace* Behm, *TDNT,* 2. 131.

[49] See the scholars cited in n. 5 above.

[50] E.g., Westcott, *Hebrews,* 301; Hughes, "Hebrews IX 15 ff.," 40-42; Lane, *Hebrews,* 241-43.

[51] Hughes, "Hebrews IX 15ff.," 41; Lane, *Hebrews,* 242.

A. *The Covenantal Background of Hebrews 9:16-17*

To provide the background for the covenantal interpretation of Heb 9:16-17, it may be useful to cite some relevant examples to demonstrate the following: (1) the making of covenants in the Bible and the ancient Near East invariably entailed the swearing of an oath; (2) this oath was a conditional self-malediction, that is, a curse; (3) the curse typically consisted of the covenant maker's death; and (4) this curse of death was often ritually enacted.

1. Covenant Making and Oath Swearing

The swearing of an oath was so closely associated with biblical and ancient Near Eastern covenant making that the two terms, oath (אלה) and covenant (ברית), are sometimes used interchangeably, e.g., in Ezek 17:13-19:

> [13]And he took one of the seed royal and made a *covenant* (ברית) with him, putting him under *oath* (אלה). . . . [15]But he rebelled against him. . . . Will he succeed? Can a man escape who does such things? Can he break the *covenant* and yet escape? [16]As I live, says the LORD GOD, surely in the place where the king dwells who made him king, whose *oath* he despised, and whose *covenant* with him he broke, in Babylon he shall die. . . . [18]Because he despised the *oath* and broke the *covenant* . . . he shall not escape. [19]Therefore thus says the LORD GOD: As I live, surely my *oath* which he despised, and my *covenant* which he broke, I will requite upon his head.

Because of Ezek 17:13-19 and similar texts, the close interrelationship between "covenant" and "oath" is commonplace in covenant scholarship.[52] Gordon Hugenberger states, "It is now recognized that the *sine qua non* of 'covenant' in its normal sense appears to be its ratifying oath, whether this was verbal or symbolic (a so-called 'oath sign')";[53] and Moshe Weinfeld concludes, "*berith* as a commitment has to be confirmed by an oath," citing Gen 21:22; 26:26; Deut 29:9 MT (Eng. 10); Josh 9:15-20; 2 Kgs 11:4; Ezek 16:8; 17:13.[54]

2. Covenant Oath as Conditional Self-Malediction

The oath by which a covenant was ratified was almost invariably a conditional self-malediction (self-curse), an invocation of God or the gods to inflict judgment on the one swearing the oath should he fail to fulfill the sworn stipulations of the covenant. For example, in Ezek 17:13-19, it is evident from the divine promises to enforce the oath that the making of the covenant involved a

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[52] See Hugenberger, *Marriage as a Covenant,* 183-84. Cf. Hos 10:4; Deut 29:11, 13 MT (Eng. 12, 14); Ezekiel 16; and Gen 26:28. See also Gen 24:1-67 in light of Deut 4:31; 7:12; 8:18; 31:20; Josh 9:15; 2 Kgs 11:4; Ezek 16:8; Ps. 89:3.

[53] Hugenberger, *Marriage as a Covenant,* 4, citing James Barr, "Some Semantic Notes on the Covenant," in *Beiträge zur Alttestamentlichen Theologie: Festschrift für Walther Zimmerli zum 70. Geburtstag* (ed. Herbert Donner, Robert Hanhart, and Rudolf Smend; Göttingen: Vandenhoeck & Ruprecht, 1977) 23-28.

[54] Moshe Weinfeld, "בְּרִית *berîth,*" *TDOT,* 2. 256; see also Hugenberger, *Marriage as a Covenant,* 182-84.

conditional curse of death (e.g. vv. 16, 19). Hugenberger comments, "The fact that
אָלָה (originally meaning "curse," cf. Gen. 24:41; Deut 29:19 MT [ET 20]; 30:7;
Isa. 24:6; Jer. 23:10; Ps. 10:7; 59:13) is used [to mean "covenant"] serves to
emphasize the hypothetical self-curse which underlies biblical oaths—that is, if
the oath should be broken, a curse will come into effect."[55] The self-curse is
present even in cases where the actual content of the curse is idiomatically elided.[56]

3. The Curse of Death

That the curse for breaking a covenant oath was typically death can be seen
quite clearly in the passage from Ezekiel cited above (17:16), in the covenant
curses of Leviticus 26 and Deuteronomy 28, and in other biblical passages that
explicitly mention the violation of the covenant and associate it with death or
mortal punishment.[57] Likewise, among extant ancient Near Eastern documents
containing covenants, death—often death by excruciating or humiliating means,
accompanied by various other calamities—is almost invariably the content of the
curse that accompanies the oath.[58] In the *Damascus Document* and other Qumran
texts, it is a commonplace that "the sword" avenges the covenant, resulting in
death.[59] Thus, Dunnill asserts:

> In both Greek and Hebrew [oaths] often take the form of a *conditional self-curse,* the
> swearer invoking upon his or her own head penalties to follow any breach of the
> undertaking. . . . Even where the context is non-legal and the vagueness of the penalty
> shows the formula on the way to becoming a figure of speech, in every case the
> invocation of death is the guarantee of sincerity, placing the whole person behind the
> promise made.[60]

4. Ritual Enactment of the Curse of Death (Drohritus)

In many instances, the self-malediction of death was ritually enacted during
the making of the covenant. One of the most celebrated examples is the eighth-
century treaty of Ashurnirari V and Matiʾilu, the king of Arpad. The conclusion
of the treaty includes a ritual enactment of the curse, or *Drohritus:*

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[55] Hugenberger, *Marriage as a Covenant,* 194.

[56] Ibid., 200-201; see also 1 Sam 3:17; 14:44; 20:13; 25:22; 2 Sam 3:9; 3:35; 19:14 MT; 1 Kgs
2:23; 2 Kgs 6:31; Ruth 1:17; Jer 42:5, in all of which the curse of death is elided.

[57] Cf. the covenant curses: Lev 26:14-39, esp. v. 30, but also vv. 16, 22, 25, 38; Deut 28:15-68,
esp. vv. 20, 22, 24, 26, 48, 51, 61; other curses of death: Deut 4:23, 26; 17:2-7; Josh 7:11, 15; 23:16;
Jer 22:8-12 (both death and death in exile); Jer 34:18-21; Hos 8:11; and curses of mortal punishment:
to be "devoured" (Deut 31:16), "consumed" and "burned" (Isa 33:8-12; Jer 11:10, 16), "destroyed"
(Hos 7:13; cf. 6:7).

[58] See *ANET,* 179-80, 201, 205, 532, 534, 538-41. Not all of these curses are of death per se,
but usually they are means of death, e.g., plague, famine, siege, military defeat, etc.

[59] CD 1.3, 17-18; 3.10-11; 15.4-5; 1QDM (1Q22) 1.10-11; 4QD^a (4Q266) 2 i.21; 4QD^d (4Q269)
frag. 2 line 6; 4Q388a 1 ii.5; 4Q390 frag. 1 lines 9-10; 4Q390 2 i.4; cf. Lev 26:25.

[60] Dunnill, *Covenant and Sacrifice,* 249; see also O. Palmer Robertson, *The Christ of the
Covenants* (Grand Rapids: Baker, 1980) 11-12.

This head is not the head of a ram; it is the head of Mati'ilu, the head of his sons, his nobles, the people of his land. If those named [sin] against this treaty, as the head of this ram is c[ut off,] his leg put in his mouth [. . .] so may the head of those named be cut off.[61]

Hugenberger comments, "In light of this and many similar examples [e.g., *ANET*, 539-40], it is possible . . . that the prominence of such cutting oath-signs in the ratification ceremony for covenants gave rise to the widespread terminology of 'cutting' [כרת] a covenant as well as 'cutting' a curse. . . ."[62]

The self-maledictory and representative nature of certain covenant-making rites in the Bible is relatively clear; for example, Abraham's bisection of animals in the covenant of Genesis 15 represented a self-curse of death for the maker of the covenant—in this case, God himself. The significance of the *Drohritus* is elucidated by Jer 34:18-20.[63] Addressing the leaders of Jerusalem and Judah, who had made a solemn covenant to release their slaves during the siege of Jerusalem but promptly reneged on their commitment when the siege was lifted, the Lord promises to make those who broke the covenant "like the calf which they cut in two so as to pass between the halves . . . their carcasses shall become food for the birds of the sky and the beasts of the earth" (Jer 34:18, 20). As in Ezek 17:13-19 above, God appears in Jer 34:18-20 as the witness and guarantor of the oath, executing the curse of death, which had been ritually enacted during the covenant-making ceremony, upon the heads of those who broke the covenant.

It is significant that each of the biblical covenants that concern the author of Hebrews involves a *Drohritus* symbolizing the curse of death. The covenant with Abraham (Heb 6:13-18; 11:17-19) is confirmed by the bisection of animals (Gen 15:9-10), the rite of circumcision (Gen 17:10-14, 23-27), and the "sacrifice" of Isaac (Gen 22:13; Heb 6:14; 11:17-19).[64] Likewise, the Sinai covenant is solemnized by the sprinkling of the people with the blood of the animal sacrifices after their solemn promise to obey the stipulations of the covenant (Exod 24:3-8), implying, "As was done to the animals, so may it be done to us if we fail to keep the covenant."

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[61] Dennis J. McCarthy, S.J., *Treaty and Covenant: A Study in Form in the Ancient Oriental Documents and in the Old Testament* (AnBib 21; Rome: Pontifical Biblical Institute, 1963) 195.

[62] Hugenberger, *Marriage as a Covenant,* 195; Quell, "διαθήκη," *TDNT,* 2. 108.

[63] On Genesis 15 as a *Drohritus* in light of Jeremiah 34, see Quell, "διαθήκη," *TDNT,* 2. 116; Hugenberger, *Marriage as a Covenant,* 195 n. 109.

[64] Heb 6:13-18 and 11:17-19 address the formulation of the Abrahamic covenant found in Gen 22:15-18. On circumcision as *Drohritus,* see M. G. Kline, *By Oath Consigned: A Reinterpretation of the Covenant Signs of Baptism and Circumcision* (Grand Rapids: Eerdmans, 1968) 39-49, 86-89, esp. 43; Hugenberger, *Marriage as a Covenant,* 196; and Dunnill, *Covenant and Sacrifice,* 177 n. 72. On the interrelationship of the three Abrahamic covenant-making rituals in Hebrews, see ibid., 177.

B. Διαθήκη *as Covenant: Exegesis of Hebrews 9:16-17*

This biblical and ancient Near Eastern background of covenant by self-maledictory oath is proposed for the context of Heb 9:16-17 by those who understand διαθήκη there as "covenant." They interpret the verses in the following manner: in v. 16 (ὅπου γὰρ διαθήκη, θάνατον ἀνάγκη φέρεσθαι τοῦ διαθεμένου), φέρεσθαι should be translated "bring into the picture" or "introduce."[65] The "death" (θάνατον) that must be "brought into the picture" (φέρεσθαι) is the symbolic death of the covenant maker (τοῦ διαθεμένου), who is represented by the sacrificial animals. This is the *Drohritus*. Thus, v. 16 should be rendered: "For where there is a covenant, it is necessary to introduce the [symbolic] death of the covenant maker." The statement following in v. 17, "for a covenant is ratified over dead [bodies]," when understood to refer to a rite of animal sacrifice, is an accurate description of biblical and ancient Near Eastern covenant-making practice. The second half of v. 17, "since it [a covenant] is never in force while the covenant maker lives," also makes sense if ὅτε ζῇ ὁ διαθέμενος ("while the covenant maker lives") is understood symbolically and ritually to mean "while the covenant maker is still ritually alive, not having undergone the death represented by the sacrificial animals."

Under this interpretation, vv. 18-22, which speak of the comprehensive sprinkling of blood at the inauguration of the first covenant at Sinai, follow naturally from vv. 16-17 (ὅθεν, "hence"). Verses 16-17 state that a covenant requires the ritual death of the covenant maker through representative animal sacrifices; vv. 18-22 point out that, in fact, the first covenant was established in just this way, with the blood of the representative animals being sprinkled over the people and over all the physical implements of the covenant cult.

C. Difficulties in the Case for Διαθήκη *as Covenant*

The reading of διαθήκη as covenant in Heb 9:16-17 preserves continuity with the rest of the author's theological system and facilitates the logical flow of the unit 9:15-22. However, there are two significant objections to this exegesis as it has been argued to date.

First, it is not the case that covenants were always ratified by the ritual slaughter of animals. William Lane makes the bold statement, "The formulation [ἐπεὶ μήποτε ἰσχύει ὅτε ζῇ ὁ διαθέμενος, v. 17] accurately reflects the legal situation that a covenant is *never* secured until the ratifier has bound himself to his oath by means of a representative death."[66] However, although many covenants were solemnized

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[65] Hughes ("Hebrews IX 15ff.," 42-43) cites 2 Pet 2:11; John 18:29; and *1 Clem.* 55:1 as examples of similar usage. See BAG(D), 855b, s.v φέρω, def. 4.a.β.

[66] Lane, *Hebrews,* 243.

by ritual sacrifice, it cannot be maintained that such sacrifices were always necessary.[67] It is the oath rather than the sacrifices that sufficed to establish a covenant,[68] and, if Hugenberger is correct, in certain covenants even the oath was implicit.[69]

Second, the interpretation of διαθήκη as covenant requires taking both θάνατον ἀνάγκη φέρεσθαι τοῦ διαθεμένου, "it is necessary for the death of the covenant maker to be borne," and ὅτε ζῇ ὁ διαθέμενος, "while the covenant maker is alive," in a figurative sense, which, although possible, does not seem to be their most plausible meaning. The author *does* appear to be speaking of the actual death of the covenant maker.[70] These two objections suggest that, although the understanding of διαθήκη as "covenant" may be an improvement over the alternative "testament," the case for such a reading is flawed.

III. A New Proposal: A Broken Covenant and the Curse of Death

It is possible to propose an interpretation of Heb 9:16-17 that renders the text more intelligible and coheres with the theological system expressed in the rest of the epistle. The key to this interpretation is to recognize the particular covenant that occupies the author's thought in vv. 15-22: the first, or Sinai covenant, seen as a *broken* covenant. It is not covenants in general, but the broken Sinai covenant that forms the context within which the statements of vv. 16-17 should be understood.

A. Exegesis of Hebrews 9:16-17

1. Ὅπου γὰρ διαθήκη . . .

The foregoing syntactical analysis demonstrated that vv. 16-17 are a parenthetical explanation of the genitive absolute construction in v. 15: θανάτου γενομένου εἰς ἀπολύτρωσιν τῶν ἐπὶ τῇ πρώτῃ διαθήκῃ παραβάσεων, "a death having occurred for the remission of transgressions *under the first covenant.*" Thus, the purpose of vv. 16-17 is to explain *why a death was necessary,* and the immediate context of discussion is the situation of the broken first covenant.

When in v. 16 the author says, "For where there is a covenant," the reader must also understand from v. 15 the concept παραβάσεων γενομένων, "transgressions having taken place." A covenant is a specific type of relationship with social, legal, and cultic aspects. In the case of other types of relationships (e.g., in testaments or trade contracts), it does not make sense to speak of transgressions, and they would not incur the sanction of death. If there were no covenant, no death would be necessary. However, the author of Hebrews asserts, ὅπου γὰρ

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[67] Brown, *Hebrews,* 415; and Attridge, *Hebrews,* 254.

[68] See Weinfeld, "בְּרִית," *TDOT,* 2. 256, and scriptural references cited therein.

[69] Hugenberger, *Marriage as a Covenant,* 196-97.

[70] See Robert P. Gordon, *Hebrews* (Readings: A New Biblical Commentary; Sheffield: Sheffield Academic Press, 2000) 103-4; and Vos, *Hebrews,* 39.

διαθήκη, θάνατον ἀνάγκη φέρεσθαι τοῦ διαθεμένου, "where there is a cove-
nant, it is necessary for the death of the covenant maker to be endured [when
transgressions have taken place]." This reading becomes clearer when ὅπου is
taken causally, that is, not "where" but "inasmuch as" or "since."[71] Verse 16
might better be rendered, "*Since* there is a covenant, it is necessary for the death
of the covenant maker to be borne." The sense is this: under different circum-
stances, the fact that there had been transgressions (παραβάσεις) might have
been inconsequential or given rise to some lesser punishment, but "since there is
a covenant"—at least one that has been ratified by a bloody *Drohritus* (vv. 18-22),
entailing a curse of death for unfaithfulness—"the death of the covenant maker
must be borne."

2. θάνατον ἀνάγκη φέρεσθαι τοῦ διαθεμένου . . .

A broken covenant of this kind, the author asserts, demands the curse of
death. Elsewhere, the author of Hebrews shows that he is aware that the conse-
quence for violation of the first covenant was death (2:15; 3:17; 10:28). The
biblical and extrabiblical examples cited above of the curse of death as the sanc-
tion for breaking the covenant support the author's assertion. Thus, the commonly
expressed opinion that "covenants or contracts, of whatever sort, simply do not
require the death of one of the parties" must be modified.[72] In the understanding
of the author, covenants of this sort certainly *do* require the death of one of the
parties when they are broken.

At this point, an explanation of the circumlocution θάνατον ἀνάγκη φέρεσθαι
τοῦ διαθεμένου is in order. Here φέρω should be taken in its common meaning,
"to bear, to endure,"[73] rather than in the otherwise unattested meanings most
modern versions and lexicons provide.[74] Why not the more succinct διαθεμένον
ἀνάγκη ἀποθανεῖν, "it is necessary for the covenant maker to die"? The differ-
ence in emphasis between "the covenant maker must die" and "the death of the
covenant maker must be borne" is subtle but significant. In the first formulation,
the *covenant maker* is the subject of the infinitive; in the second, it is the *death.*
The second formulation does not actually specify who must die, only that the death
pertaining to the covenant maker must be endured. By phrasing the principle in
this way, the author leaves open the possibility that the death of the covenant

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[71]   See BAG(D), 576a, s.v. ὅπου, def. 2b; Louw and Nida, *Greek-English Lexicon,* 1. 782a,
§89.35; LSJ, 1242a, s.v. ὅπου, def. II.2. Ὅπου is clearly causal in 1 Cor 3:3; 4 Macc 14:11, 14, 19;
possibly in 4 Macc 2:14 and 6:34. Ὅπου occurs in Heb 6:20; 9:16; and 10:18. In both 9:16 and 10:18,
the causal meaning ("inasmuch as, since") seems to provide a better rendering than the usual one.

[72]   Attridge, *Hebrews,* 256.

[73]   BAG(D), 855a, s.v. φέρω, def. 1c; Louw and Nida, *Greek-English Lexicon,* 1. 807a, §90.64;
LSJ, 1923a, s.v. φέρω, def. A.III. In Heb 13:13, φέρω is used in this sense (τὸν ὀνειδισμὸν αὐτοῦ
φέροντες); see also Heb 12:20; Isa 53:4 LXX; Jer 51:22 LXX; Ezek 34:29; 36:6 LXX.

[74]   See the discussion above, esp. n. 14.

maker might be borne by a designated representative, for example, the high priest Jesus. He wishes only to stress that, because of transgression (v. 15), *someone* must bear the curse of death; he does not specify who. In fact, in the view of the author, ultimately Christ endures the curse of death on behalf of the *actual* covenant makers, that is, those under the first covenant (9:15).

The concept of someone "bearing" (φέρω) the death of the covenant maker in 9:16, like "bearing (ἀναφέρω) the sins of many" in 9:28, may be shaped by the use of φέρω in Isaiah 53 LXX, where (ἀνα)φέρω is repeatedly used in the sense "bear something for another" (see Isa 53:3, 4, 11, 12). In addition to φέρω and ἀναφέρω, Isaiah 53 and Hebrews 9 share a intriguing number of keywords.[75] There are also profound theological parallels: in both, the victim undergoes a vicarious death on behalf of the many and then receives his inheritance.[76] A thorough examination of Isaiah 53 in relation to Hebrews is not possible here, but the clear reference to Isa 53:12 in Heb 9:28 suffices as evidence that Isaiah 53 was in the mind of the author of Hebrews. It is therefore plausible that the use of φέρω in the sense of "bear on another's behalf" in Isa 53:3-4 lies behind the use of φέρω in Heb 9:16.

3. διαθήκη γὰρ ἐπὶ νεκροῖς βεβαία . . .

The sense of the following phrase, v. 17a (διαθήκη γὰρ ἐπὶ νεκροῖς βεβαία, "a [broken] covenant is confirmed upon dead [bodies]"), is that after a covenant has been broken (i.e., the situation under the first covenant), the only means of upholding the covenant is to actualize the covenant curses, which ultimately, if not immediately, result in the death of the covenant-maker-turned-covenant-breaker.[77]

The use of the plural ἐπὶ νεκροῖς, "dead bodies," seems odd if vv. 16-17 envision the death of a single testator; but it is not unexpected under the interpretation proposed here. The author has in mind primarily the first covenant, just mentioned in v. 15, wherein the people of Israel were covenant makers (Exod 24:3-11).[78] Ὁ διαθέμενος and ἐπὶ νεκροῖς both refer to the people of Israel, one

[75] E.g., φέρω (Heb 9:16; Isa 53:3, 4); ἀναφέρω (Heb 9:28; Isa 53:11, 12); θάνατος (Heb 9:15, 16; Isa 53:8, 9, 12); ἁμαρτίας (Heb 9:26, 28; Isa 53:4-6, 10-12); κληρονομ- (Heb 9:15; Isa 53:12); καθαρίζω (Heb 9:22-23; Isa 53:10); λαός (Heb 9:19, Isa 53:8).

[76] Cf. Heb 9:15, 28 with Isa 53:11-12; Heb 9:12, 15 with 53:12.

[77] Cf. Lev 26:14-39, esp. v. 30, but also vv. 16, 22, 25, 38; Deut 28:15-68, esp. vv. 20, 22, 24, 26, 48, 51, 61. Though not all the curses of Leviticus 26 and Deuteronomy 28 are *immediate* death, virtually all the curses are means of death: plague, disease, enemy attack, wild animals, siege, famine, and so on.

[78] It might be objected that the Israelites could not be considered the covenant maker(s) (ὁ διαθέμενος) at Sinai (Exod 24:1-8), because God is usually identified as the maker of the covenant (cf. Heb 8:9, 19; 10:16) and the covenant is frequently referred to as "his [God's] covenant" or "my [God's] covenant" in both testaments. However, a covenant necessarily included at least two parties— thus the use of a mediator [μεσίτης, 8:6; 9:15])—and either party might be said to have "made" the

in the collective singular and the other in the plural form. At Sinai, the grammatically singular "people" (λαός—see v. 19) is the "covenant maker" (ὁ διαθέμενος); yet the actualization of the curse of death upon them would result in "dead bodies" (νεκροί, cf. Deut 28:26 LXX).

4. ἐπεὶ μήποτε ἰσχύει ὅτε ζῇ ὁ διαθέμενος . . .

The principle underlying the bold statement of v. 17b, "since it certainly is not in force while the covenant maker lives,"[79] is this: for the covenant maker(s) to remain alive after breaking the covenant indicates that the covenant has no teeth, no binding force (μήποτε ἰσχύει). As a biblical illustration of this principle, it is useful to recall the rhetorical question of Ezek 17:15: "But he rebelled against him . . . Will he succeed? Can a man escape who does such things? Can he break the covenant and yet escape?" For the author of Hebrews, as for Ezekiel, the answer is an emphatic *no* (see Heb 12:25). Should the covenant maker survive after violating his sworn commitment, it would demonstrate the impotence of the covenant and the powerlessness of the curse accompanying the oath. A covenant—or any law, for that matter—is not *in force* if it is not *enforced.*

5. ὅθεν οὐδὲ ἡ πρώτη χωρὶς αἵματος ἐγκεκαίνισται . . .

The following verses (9:18-22) explicitly concern the first Sinaitic covenant, strengthening the case that this broken covenant is the assumed context of vv. 16-17. The units vv. 16-17 and vv. 18-22 are linked by the conjunction ὅθεν ("hence"), implying a strong inferential/causal relationship between the two. The sense of v. 18, ὅθεν οὐδὲ ἡ πρώτη χωρὶς αἵματος ἐγκεκαίνισται, may be, "Hence, neither was the first covenant inaugurated without blood," the emphasis

covenant (cf. 2 Sam 3:21 with 2 Sam 5:3). In Exod 24:3-11 (cf. the ritual of Gen 31:43-54), the Israelites clearly engage in a sacrificial ritual establishing the covenant between themselves and the Lord according to the principle of Ps 50:5, which speaks of those "who *made* a covenant with me *by means of sacrifice*" (LXX 49:5: τοὺς διατιθεμένους τὴν διαθήκην αὐτοῦ ἐπὶ θυσίαις). The sprinkling of the blood upon the people is a self-maledictory rite analogous to passing between the sacrificial animals in Jer 34:8-22, wherein the people of Jerusalem are explicitly said to have "made" (ἐποίησαν) "my [the Lord's] covenant" (διαθήκην μου; see Jer 41:18 LXX [34:18 MT], also v. 14). Thus, Ps. 50:5 and Jer 34:18 show that humans can be "makers" of the Lord's covenant (as do 1 Sam 18:3 and 23:18 vis-à-vis 20:8; Ezek 17:13 vis-à-vis 17:19; Deut 29:1 Eng. [28:69 MT]; Josh 24:25; 2 Kgs 11:17 [= 2 Chr 23:16]; 2 Kgs 23:3; 2 Chr 15:8-15, esp. vv. 11-12; 2 Chr 29:10 [cf. vv. 20-36]; and CD 20.12). Occasionally, the Lord's covenant is even identified by the human party: Ps 89:39 ("the covenant of your servant"); Ezek 16:61 ("your [Jerusalem's] covenant"); Deut 4:31; Mal 2:10 ("the covenant of our/your fathers"); and in nonbiblical literature, 1QM 17.7 (ברית ישראל, "Israel's covenant"); CD 15:5 (ברית לכל ישראל, "covenant of all Israel"); *Let. Barn.* 4:8; 9:6 (διαθήκη αὐτῶν, "their [the Israelites'] covenant"); CD 1.4; 6.2; 4Q269 frag. 2 line 5; 6Q15 frag. 3 line 5 (ברית ראשנים, "ancestors' covenant"); CD 8.18; 19.31; 1QM 14.8 (ברית האבות, "forefathers' covenant"); CD 12.11 (ברית אברהם, "Abraham's covenant").

[79] For μήποτε as a strong negative ("certainly not"), see Ellingworth, *Hebrews,* 464.

being on the fact that, at its very inception, the first covenant already symbolized and predicted the necessity of the death of the covenant maker in the case of transgressions.[80] Therefore, the reader should have no doubt that the Sinaitic covenant was one that entailed the curse of death. The relationship between vv. 16-17 and 18-22 would be as follows: "A broken covenant requires the death of the covenant maker (vv. 16-17); hence, the first covenant prefigured the death of the covenant maker by extensive self-maledictory blood rituals (vv. 18-21). In fact, nearly everything about the first covenant was covered in blood, prefiguring the necessity of death for the forgiveness of transgressions of the covenant" (v. 22; cf. v. 15: θανάτου γενομένου εἰς ἀπολύτρωσιν ... παραβάσεων).

B. Summary: The Broken First Covenant and the Curse of Death

To summarize: since both the preceding clause, which the author seeks to explicate (θανάτου γενομένου ... παραβάσεων in v. 15), and the succeeding verses (18-22) explicitly treat of the first, now-broken Sinaitic covenant, it is reasonable to assume that this broken first covenant forms the context for the statements of vv. 16-17. Moreover, if this context is assumed, the statements of vv. 16-17 do make sense as they stand: a broken covenant demands the death of the covenant maker and is not enforced while the covenant maker remains alive. This reading preserves the logical progression of the whole passage (vv. 11-22).

In vv. 16-17, therefore, the author does not abruptly switch contexts from the Hebrew cult to the Greco-Roman court. The author does not argue for a strained comparison between a covenant and a testament but restates a cultic, religious, and theological paradigm articulated elsewhere in Hebrews: the first covenant entailed the curse of death for those who broke it (2:2; 10:28), and Christ takes that curse upon himself on their behalf (2:9, 14; 9:15, 28), thus freeing those under the first covenant from the curse of death (2:15; 10:14) and providing for them a new and better covenant (9:28; 10:15-17; 12:22-24).[81] In fact, this paradigm is summarized succinctly and precisely in 9:15, which is explicated in vv. 16-17. It would seem a strength of this proposed exegesis of vv. 16-17 that it requires positing no novel or strained rhetorical or theological argument behind the disputed verses, but sees in them a rearticulation and development of theological principles expressed elsewhere in the epistle.

IV. Conclusion

Although the rendering "testament" enjoys the support of the majority of commentators on Heb 9:16-17, there are strong reasons for believing that διαθήκη

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[80] See Vanhoye, *Old Testament Priests,* 203.

[81] The argument outlined above is similar to that of Gal 3:10-14 and could be added to the list of striking similarities between Hebrews and Galatians that have been enumerated by Ben Witherington III, "The Influence of Galatians on Hebrews," *NTS* 37 (1991) 146-52.

in these verses may not bear that meaning. Reading διαθήκη as "testament" results in statements at odds with contemporary legal practice, and it is also inconsistent with the grammar of the verses, the syntax of the unit vv. 11-22, the author's use of διαθήκη elsewhere, and the overall literary-theological context of the epistle.

A minority of scholars read διαθήκη as "covenant" and understand the statements about the death of the covenant maker in vv. 16-17 as pertaining to the latter's symbolic or ritual death through representative sacrificial animals. This proposal, however, is based not only on the false assumption that animal sacrifices were always necessary for the establishment of a covenant but also on an awkward figurative reading of the "death" and "living" of the covenant maker.

I have proposed here that the context for the statements of Heb 9:16-17 should be the broken first covenant, which is indeed the topic of concern in the final clause of v. 15, of which vv. 16-17 are an explication. Taking the introductory ὅπου of v. 16 in a causal sense clarifies this reading. If a broken covenant is assumed as the basis for the assertions of vv. 16-17, the meaning of the text becomes intelligible: a broken covenant demands the death of the covenant maker (v. 16); it would invalidate the covenant if the covenant breaker were to remain alive (v. 17). The fact that both the preceding verse (v. 15) and the succeeding unit (vv. 18-22) deal explicitly with the first covenant supports my contention that it is the situation under the first covenant, wherein transgressions (παραβάσεις) took place, that is the premise of vv. 16-17.

A Broken Covenant and the Curse of Death:
A Study of Hebrews 9:15-22

by
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