

FROM OLD TO NEW “Covenant” or “Testament” in Hebrews 9?

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1. *Legal and Liturgical Dimensions of “Covenant”*

The Book of Hebrews has typically been regarded as anomalous in biblical studies for a variety of reasons, one of which is its unusual emphasis on the concept of “covenant” (διαθήκη), which is treated differently and much more extensively in Hebrews than in any other New Testament book. Just over half of the occurrences of the word διαθήκη in the New Testament (17 of 33) are in Hebrews alone. Moreover, Hebrews is unique in the emphasis it places on “covenant” as a *cultic* and *liturgical* institution.

A new phase in modern studies of the biblical concept of “covenant” (ברית מִט, διαθήκη LXX) began in the middle of the last century with George E. Mendenhall’s work comparing the form of Hittite vassal treaties to the Sinai covenant of Exodus.¹ Scholars since Mendenhall have either challenged or defended his arguments for the antiquity of the covenant concept in Israelite religion, but have generally stayed within the framework Mendenhall established for the discussion, viewing “covenant” as a legal institution and using the extant treaties between ancient Near Eastern states as the primary texts for comparison and engagement with the biblical materials.² Thus, covenants in biblical scholarship have generally been considered under the aspect of “law.”

Scholarship has tended, however, to neglect the pronounced cultic-liturgical dimension of these ancient Near Eastern treaty-covenants.³ The covenants were often concluded by lengthy invocations of nearly the entire Near Eastern pantheon,

1 George E. Mendenhall, *Law and Covenant in Israel and the Ancient Near East* (Pittsburgh: The Biblical Colloquium, 1955).

2 Notice how often “law” or “treaty” occurs in the titles of the following important studies on biblical covenants: Herbert B. Huffmon, “The Covenant Lawsuit,” *Journal of Biblical Literature* 78 (1959): 285–295; Dennis J. McCarthy, *Treaty and Covenant*, *Analecta biblica* 21 (Rome: Pontifical Biblical Institute, 1963 [2d ed., 1978]); Meredith G. Kline, *Treaty of the Great King: The Covenant Structure of Deuteronomy: Studies and Commentary* (Grand Rapids: Eerdmans, 1963); Rintje Frankena, “The Vassal Treaties of Esarhaddon and the Dating of Deuteronomy,” *Oudtestamentische studiën* 14 (1965):140–154; Hayim Tadmor, “Treaty and Oath in the Ancient Near East: A Historian’s Approach,” in *Humanizing America’s Iconic Book*, eds. Gene M. Tucker and Douglas A. Knight (Chicago: Scholars Press, 1982), 125–152; George E. Mendenhall, “The Suzerainty Treaty Structure: Thirty Years Later,” in *Religion and Law* (Winona Lake: Eisenbrauns, 1990), 85–100.

3 An exception is the essay by John M. Lundquist, “Temple, Covenant, and Law in the Ancient

calling upon the gods to witness elaborate sacred oaths confirmed by ritual sacrifices and to enforce those oaths with blessings for faithfulness and curses for transgression.⁴ Thus, the establishment of covenants consisted essentially of a liturgy: ritual words and actions performed in the presence of divinity. The liturgical dimension of covenant-making appears quite clearly in the Old Testament, where the covenant is established through cultic ritual (see, for example, Exod. 24:4–11), and where liturgical functionaries or “celebrants” (that is, priests and Levites) mediate the covenant blessings and curses on behalf of God (Num. 6:22–27; Deut. 27:14–26).

Reflecting on the Old Testament traditions of “covenant,” the author of Hebrews, while not forgetting the legal dimension, places the *liturgical* (or cultic) in the foreground. This is most obvious in chapters 8–9 of Hebrews,⁵ in which the author contrasts two covenant orders: the old (Heb. 8:3–9:10) and the new (Heb. 9:11–28). Both covenant orders have a cultus which includes a high priest (Heb. 8:1, 3; 9:7, 11, 25, ἀρχιερέυς) or “celebrant” (Heb. 8:2, 6, λειτουργός) who performs ministry (Heb. 8:5; 9:1, 6, λατρεία) in a tent-sanctuary (Heb. 8:2, 5; 9:2–3, 6, 8, 11, 21, σκηνή), entering into a holy place (Heb. 8:2; 9:2–3, 12, 24, ἅγια) to offer (Heb. 8:3; 9:7, 14, 28, προσφέρω) the blood (Heb. 9:7, 12, 14, 18–23, 25, αἷμα) of sacrifices (Heb. 8:3–4, 9:9, 23, 26, θυσία) which effects purification (Heb. 9:13, ἀγιάζω; Heb. 9:14, 22–23, καθαρίζω) and redemption (Heb. 9:12, 15, λύτρωσις) of worshippers (Heb. 8:10, 9:7, 19, λαός; Heb. 9:9, 14, λατρεύοντες) who have transgressed cultic law (Heb. 8:4; 9:19, νόμος).⁶ The mediation of both covenants is primarily cultic, the sacred realm of liturgy.

The legal nature of the covenant is not absent, however. The two aspects of the covenant, legal and liturgical, are inextricably bound in a reciprocal relationship. On the one hand, cultic acts (that is, sacrificial rites) establish the covenant (Heb. 9:18–21, 23), and also renew it (Heb. 9:7; 10:3). On the other hand, the covenantal law provides the legal framework for the cult, determining the suitable persons, ma-

Near East and in the Hebrew Bible,” in *Israel’s Apostasy and Restoration: Essays in Honor of Roland K. Harrison*, ed. Gileadi Avraham (Grand Rapids: Baker, 1988), 293–305.

4 See J. B. Pritchard, ed., *Ancient Near Eastern Texts*, 200–201; 205–206; 532–535; 538–541.

5 On the cultic background of chapter 9, see James Swetnam, “A Suggested Interpretation of Hebrews 9,15–18,” *Catholic Biblical Quarterly* 27 (1965): 375; Johannes Behm, “διαθήκη,” *Theological Dictionary of the New Testament*, G. Kittel and G. Friedrich, eds., 2:131–132; Ceslas Spicq, *L’Épître aux Hébreux*, 2 vols. (Paris: Gabalda, 1952), 2:246–247; Albert Vanhoye, *Old Testament Priests and the New Priest According to the New Testament*, trans. J. B. Orchard; *Studies in Scripture* (Petersham, MA: St. Bede’s, 1986), 176–177.

6 See William L. Lane, *Hebrews 9–13*, Word Biblical Commentary 47b (Dallas: Word, 1991), 235: “The manner in which the argument is set forth presupposes the cultic orientation of 9:1–10 and its leading motif, that access to God is possible only through the medium of blood (9:7). The basis for the exposition in 9:11–28 is not primarily theological. It is the religious conviction that blood is the medium of purgation from defilement. ... 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.”

terials, acts, and occasions for worship (Heb. 7:11–28; 9:1–5). Thus, the liturgy mediates the covenant, while covenant law regulates the liturgy.

The unity of the legal and liturgical aspects of the covenant are united in Christ himself, who is simultaneously king (the highest legal authority) and high priest (the highest liturgical celebrant). This dual role of Christ as priest and king, running as a theme throughout the book, is announced already in Hebrews 1:3, where Christ “sits down at the right hand of the Majesty in heaven” (a royal act) after having “provided purification for sins” (a priestly function). It is brought to its quintessential expression by the use of Melchizedek—both “King of Salem” and “Priest of God Most High” (Heb. 7:1)—as a principal type of Christ.

Hebrews’ vision of a cultic covenant, with close integration of law and liturgy, is difficult for modern scholarship to appreciate. Western modernity, as heir to the Enlightenment concept of “separation of church and state,” has tended to privatize liturgy and secularize law, resulting in an irreconcilable divorce between the two. On the occasions when liturgy does appear in the public square, it is generally either dismissed as superstition or explained away as ritualized politics. In any case, Hebrews confronts us with a radically different vision: law and liturgy as distinguishable but inseparable aspects of a single covenant relationship between God and his people.

In order to understand the Book of Hebrews, we must be prepared to enter into its own cultural worldview, with its unity of liturgy and law. Doing so will elucidate a long-standing interpretive *crux*: the meaning of διαθήκη in Hebrews 9:15–18. The methodology that I employ is in some ways classical textual exegesis, that is, examining the grammar and syntax of the text in the light of its historical and religious context. But since I emphasize the legal and liturgical aspects of the covenant in their integration, a more deliberate application of the social-scientific approach is appropriate. This methodology is associated with the scholarship of Bruce J. Malina, John J. Pilch, Richard Rohrbaugh, and others.⁷ David A. deSilva has applied social-scientific methods specifically to the interpretation of Hebrews.⁸

7 Bruce J. Malina, *The New Testament World: Insights from Cultural Anthropology*, 3d ed. (Louisville, KY: Westminster John Knox, 2001); Bruce J. Malina, *Christian Origins and Cultural Anthropology: Practical Models for Biblical Interpretation* (Atlanta: John Knox, 1986); Bruce J. Malina, *Windows on the World of Jesus: Time Travel to Ancient Judea* (Louisville: Westminster/John Knox, 1993); John J. Pilch, *Introducing the Cultural Context of the New Testament* (New York: Paulist, 1991); John J. Pilch and Bruce J. Malina, *Handbook of Biblical Social Values* (Peabody, MA: Hendrickson, 1998); Richard Rohrbaugh, ed., *The Social Sciences and New Testament Interpretation* (Peabody, MA: Hendrickson, 1996); David G. Horrell, *Social-Scientific Approaches to New Testament Interpretation* (Edinburgh: T&T Clark, 1999); Philip F. Esler, ed., *Modelling Early Christianity: Social-Scientific Study of the New Testament in its Context* (London: Routledge, 1995).

8 David A. deSilva, *Despising Shame: Honor Discourse and Community Maintenance in the Epistle to the Hebrews*, Society of Biblical Literature Dissertation Series 152 (Atlanta: Scholars Press, 1995); David A. deSilva, *Perseverance in Gratitude: A Socio-Rhetorical Commentary on the Epistle “To the Hebrews”* (Grand Rapids: Eerdmans, 2000).

Regrettably, most of the social-scientific study of the New Testament in the past few decades has focused on the Greco-Roman world and not on the significance of the unique cultural institutions of First and Second Temple *Israel* (or Judea) themselves—the covenant, cult, priesthood, temple, etc.—and how these institutions shaped the cultural worldview of the New Testament authors. John Dunnill’s monograph *Covenant and Sacrifice in the Letter to the Hebrews* represents a breakthrough in this regard.⁹ Dunnill not only applies social-scientific methods to the analysis of the distinctly Israelite-Jewish values and cultural institutions characterizing the Book of Hebrews, but also incorporates methodological insights from the religious anthropology of Mary Douglas and Victor Turner.¹⁰ In what follows, I will build on Dunnill’s work while attempting to unravel the difficulties presented by Hebrews 9:15–18.

2. *Hebrews 9:15–18: A Crux Interpretum*

Hebrews’ concept of covenant, with liturgy and law intertwined, may actually be at work in the one passage of Hebrews where the author seems to dispense with his usual cultic categories for understanding covenant. Ironically, the problematic passage occurs in the middle of Hebrews 9, the chapter with the densest concentration of cultic language and imagery in the book. In Hebrews 9:16–17, according to most commentators, the author abandons his Israelite, cultic understanding of *διαθήκη*, “covenant,”¹¹ and appeals to the Greco-Roman, secular definition of *διαθήκη* as “last will or testament.”¹² In the usual translations, the author seems, in the course of Hebrews 9:15–18, to slip between the two quite distinct meanings in a facile manner:

For this reason he is the mediator of a new covenant (*διαθήκη*), so that those who are called may receive the promised eternal inheritance, because a death has occurred that redeems them from the transgressions under the first covenant (*διαθήκη*). For where a will (*διαθήκη*) is involved, the death of the one who made it must be established. For a will (*διαθήκη*) takes effect only at

9 John Dunnill, *Covenant and Sacrifice in the Letter to the Hebrews*, Society for New Testament Studies Monograph Series 75 (Cambridge: Cambridge University Press, 1992). For an expansion of Dunnill’s groundbreaking insights into the inseparable link between the legal and liturgical aspects of “covenant” in ancient Israel, see Scott Hahn, *Kinship by Covenant* (New Haven: Yale University Press, 2009).

10 Mary L. Douglas, *Natural Symbols: Explorations in Cosmology*, 2d ed. (New York: Routledge, 1996); Mary L. Douglas, *Purity and Danger: An Analysis of Concepts of Pollution and Taboo* (New York: Routledge, 1966); Victor W. Turner, *The Ritual Process: Structure and Anti-Structure* (Ithaca, NY: Cornell University Press, 1966).

11 On the use of *διαθήκη* with the meaning “covenant” in most Jewish Hellenistic literature, see Behm, *Theological Dictionary of the New Testament*, G. Kittel and G. Friedrich, eds., 2:126–129.

12 For *διαθήκη* in secular Greek, see Behm and Quell, *Theological Dictionary of the New Testament*, G. Kittel and G. Friedrich, eds., 2:106–134, especially 124–126.

death, since it is not in force as long as the one who made it is alive. Hence not even the first covenant (διαθήκη) was inaugurated without blood (Heb. 9:15–18 NRSV).

As can be seen, the NRSV follows the majority of commentators and translators by taking διαθήκη in the sense of “will” or “testament” in Hebrews 9:16–17, even though the word clearly has the meaning “covenant” in verses 15 and 18, and indeed in every other occurrence in Hebrews.¹³ Nonetheless, it is not difficult to see why this approach enjoys majority support.¹⁴ In Hebrews 9:15, the context seems to demand the sense of “covenant,” since only a covenant has a mediator (μεσίτης) and reference is made to the first διαθήκη, which the author clearly regards as a covenant. However, in Hebrews 9:16, the requirement for the “death of the one who made it” would seem to suggest the translation “will” or “testament,” since covenants did not require the death of their makers. Likewise, in Hebrews 9:17, 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. However, in Hebrews 9:18, the topic returns again to “the first διαθήκη,” that is, the Sinai event, which can scarcely be anything but a covenant.

While there seems to be a semantic requirement that the meaning of διαθήκη alternates between “testament” and “covenant,” the resulting argument is, logically speaking, *very* unsatisfying. A “testament” simply is not a “covenant,” and it is hard to see how the analogy between the two has any validity. In a “testament,” one party dies and leaves an inheritance for another. In a “covenant,” a relationship is established between two living parties, often through a mediator. Testaments do not require mediators, and covenants do not take effect upon the death of one of the parties. Moreover, it is hard to understand either the “new” or the “old” covenants—as portrayed in Hebrews—as a “testament.” If the old covenant is understood as a “testament,” God would be the “testator”; yet it is absurd to think of God dying and leaving an inheritance to Israel. In the new covenant, Christ indeed dies, but he is a mediator (Heb. 9:15; 12:24), not a “testator.” Moreover, he 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).

13 See the NEB, JB, TEV, NIV, NAB (only the NASB translates “covenant” in vv. 16–17). Commentators endorsing “testament” in vv. 16–17 include: Gerhardus Vos, *The Teaching of the Epistle to the Hebrews* (Grand Rapids: Eerdmans, 1956), 27–48; George W. Buchanan, *To the Hebrews*, Anchor Bible 36 (Garden City: Doubleday, 1972), 151; Thomas G. Long, *Hebrews*, Interpretation: A Bible Commentary for Teaching and Preaching (Louisville: John Knox, 1997), 99; Harold W. Attridge, *Hebrews*, Hermeneia (Philadelphia: Fortress, 1989), 253–256; Paul Ellingworth, *Commentary on Hebrews*, New International Greek Testament Commentary (Grand Rapids: Eerdmans, 1993), 462–463; Victor C. Pfitzner, *Hebrews*, Abingdon New Testament Commentaries (Nashville: Abingdon, 1997), 131; Craig R. Koester, *Hebrews*, Anchor Bible 36 (New York: Doubleday, 2001), 418, 424–426.

14 See Swetnam, “Suggested Interpretation,” 374–375, for a succinct summary of the case.

Clearly, then, the mode of the inheritance of salvation in Hebrews is based on a Jewish covenantal and not a Greco-Roman testamentary model.¹⁵ Therefore, it is hard to see how the analogy the author draws in Hebrews 9:15–18 has any cogency. The awkwardness of the argument has led a few commentators to propose taking διαθήκη as “covenant” in Hebrews 9:16–17 (see below), but most retain the sense of “testament” while expressing their discomfort. Here are two examples:

Among the many references to covenants, new and old, the word-play on διαθήκη which compares them to a secular will seems strangely banal, and the argument that Jesus’ death was necessary because “where there is a will the death of the testator must be established” ([Heb.] 9:16) is simply irrelevant to the theology of the new covenant.¹⁶

[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.¹⁷

It is manifest that the idea of “testament” fits very awkwardly into the passage.¹⁸ One must therefore ask the question: is it really the case that the author of Hebrews, usually so theologically and rhetorically brilliant, has committed here a logical and theological *faux pas*, tearing the otherwise seamless coherence of his homiletical

15 See Dunnill, *Covenant and Sacrifice*, 46–47: “Though Hebrews exhibits Alexandrian [that is, Hellenistic] terminology ... in every case the substance of the thought is Jewish ... The Hellenistic element overlays a mind thinking in the categories of the Old Testament cultus.” Although it came to be used in later periods, the institution of the testament is not native to Israelite-Jewish culture, which traditionally practiced *intestate* (non-testamentary) succession, in which the first-born son enjoyed a privileged share. The first-born had no privileged status in Greco-Roman succession (see Larry R. Helyer, “The *Prōtotokos* Title in Hebrews,” *Studia Biblica et Theologica* 6 [1976]: 17). That the author of Hebrews thinks in terms of Israelite-Jewish inheritance custom can be seen in the strategic use of the concept πρωτότοκος (first-born) in Heb. 1:6 and 12:23.

16 Dunnill, *Covenant and Sacrifice*, 250–251.

17 Behm, *Theological Dictionary of the New Testament*, G. Kittel and G. Friedrich, eds., 2:131. Many other advocates of διαθήκη-as-testament also feel the tension caused by the abrupt switch in meaning. See, for example, 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 “playful” rhetorical argument which—while not logically valid—would amuse the audience or readership with its clever word-play (Attridge, *Hebrews*, 253–254; 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.

18 See George D. Kilpatrick, “Διαθήκη in Hebrews,” *Zeitschrift für die neutestamentliche Wissenschaft* 68 (1977): 263.

masterpiece?¹⁹ I am inclined to think not. In what follows, I will propose that if διαθήκη is understood as “covenant” in Hebrews 9:16–17, there is a way of interpreting the passage which confirms the coherence of thought of the author, who seems to be explicating the *legal implications* of the *liturgical act* which established the first covenant.

First, I will point out certain frequently-overlooked difficulties with the usual interpretation of διαθήκη as “testament” in Hebrews 9:16–17. I will then critique some previous attempts to understand διαθήκη as “covenant” in these verses. Finally, I will outline an original interpretive proposal which has greater explanatory power than others have offered to date.

2.1 Difficulties with διαθήκη as “Testament”

The troubles with διαθήκη as “testament” in Hebrews 9:15–18 go deeper than the mere fact that the word so translated renders the argument of the passage obscure if not simply fallacious. John J. Hughes has pointed out these difficulties at length elsewhere.²⁰ I will summarize some of Hughes’ observations here, focusing on the lexical, grammatical, and legal problems with rendering διαθήκη as “testament” in these verses.

2.1.1 Lexical Issues

Outside of Hebrews 9:16–17, the author of Hebrews uses διαθήκη only in its Septuagintal sense of “covenant” (ברית).²¹ Moreover, the term διαθήκη (and the concept of “covenant”) occurs more often and receives greater attention and emphasis in Hebrews than in any other New Testament book.²² Most of the occurrences of the

19 On the coherence and brilliance of Hebrews’ thought and expression, see Attridge, *Hebrews*, 1: “[Hebrews is] 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”; Vanhoye, *Structure and Message*, 32–33: “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 especially in the harmony of his composition”; Dunnill, *Covenant and Sacrifice*, 8: “[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*”; and Brooke F. Westcott, *The Epistle to the Hebrews: The Greek Text with Notes and Essays*, 2d ed., 1892, reprint (Grand Rapids: Eerdmans, 1980), xlv–xlvii: “The style is ... characteristic of a practised scholar. It would be difficult to find anywhere passages more exact and pregnant in expression. ... The writing shows everywhere the traces of effort and care. ... Each element, which seems at first sight to offer itself spontaneously, will be found to have been carefully adjusted to its place, and to offer in subtle details results of deep thought.” See also Swetnam, “Suggested Interpretation,” 375.

20 John J. Hughes, “Hebrews IX 15ff. and Galatians III 15ff.: A Study in Covenant Practice and Procedure,” *Novum Testamentum* 21 (1976–77): 27–96.

21 See Behm, *Theological Dictionary of the New Testament*, G. Kittel and G. Friedrich, eds., 2:132; Lane, *Hebrews*, 230.

22 See Vos, *Hebrews*, 27.

word (15 of 17) occur in the extended discussion of Christ-as-high-priest from Hebrews 7–10, with seven occurrences in Hebrews 9 alone. Since the word is central to the author’s thought, and in every instance outside of Hebrews 9:16–17 has the meaning “covenant,” Hughes remarks: “As a matter of a priori concern one should at least be exceedingly cautious in attributing a meaning to διαθήκη in [Heb.] 9:15–22 that is so foreign to the author’s use of the word elsewhere.”²³

2.1.2 Grammatical Issues

Several scholars have noted grammatical irregularities in the use of φέρεσθαι (Heb. 9:16b) and ἐπὶ νεκροῖς (Heb. 9:17a).²⁴ If Hebrews 9:16b had testamentary practice in view, one would expect ὅπου γὰρ διαθήκη, διαθέμενον ἀνάγκη ἀποθανεῖν, “where there is a testament, it is necessary for the testator *to die*” (italics added). The circumlocution actually found in 9:16, θάνατον ἀνάγκη φέρεσθαι τοῦ διαθεμένου, seems unnecessary. The NRSV translates, “the death of the one who made it must *be established*” (italics added), but similar usage in the rest of the New Testament or the LXX cannot be found. Φέρω frequently occurs in legal contexts (biblical and non-biblical), but in the sense of “bring a report, claim, or charge,” not a *death*. The expression should be φέρεσθαι ἀνάγκη τὸν λόγον τοῦ θανάτου, “it is necessary for the report of the death to be brought.”²⁵

Another grammatical strain occurs at Hebrews 9:17a, διαθήκη γὰρ ἐπὶ νεκροῖς βεβαία, which the NRSV renders, “a will takes effect only at death.” A literal translation, however, would read “for a διαθήκη is confirmed *upon dead [bodies]*.” The phrase ἐπὶ νεκροῖς cannot be taken as “at death” (ἐπὶ νεκρῶ or ἐπὶ νεκρώσει), although this is the sense demanded by a testamentary interpretation of διαθήκη.²⁶ The use of the plural (νεκροῖς, “dead [bodies]”) is particularly awkward if indeed the author was intending to speak of the death of the testator.²⁷

Both of these grammatical irregularities become intelligible when διαθήκη is taken as “covenant” in the manner I will outline below.

23 Hughes, “Hebrews IX 15ff.,” 32–33.

24 See Kilpatrick, “Διαθήκη,” 265; Westcott, *Hebrews*, 301.

25 Lexicographers treat it as a special case of φέρω, being unable to produce any analogous citations. See Liddell-Scott-Jones, *Greek-English Lexicon* 1923a (def. A.IV.4, “announce”), W. Bauer, W. F. Arndt, and F. W. Gingrich, 3d ed., rev. by F. W. Danker, *Greek-English Lexicon of the NT* 855b (def. 4.a.b, “establish”), L&N 667b–668a (§70.5, “show”). Note Ellingworth’s honesty: “Exact parallels to this statement have not been found” (*Hebrews*, 464); and Attridge’s polite understatement: “The sense of φέρεσθαι is somewhat uncertain” (*Hebrews*, 256).

26 Lane, *Hebrews*, 232; George Milligan, *The Theology of the Epistle to the Hebrews* (Edinburgh: T&T Clark, 1899), 169.

27 Attridge admits, “The phrase referring to the testator’s death, ‘for the dead’ (ἐπί νεκροῖς), is somewhat odd” (*Hebrews*, 256). Likewise, Swetnam recognizes the oddity and offers a singular explanation for it (“Suggested Interpretation,” 378).

2.1.3 Legal Issues

Hughes demonstrates that the characteristics of a διαθήκη in Hebrews 9:16–17 do not, in fact, correspond to those of secular Hellenistic or Roman διαθήκη και (covenants). For example, the ratification or validation (βεβαίωσις) of wills in Hellenistic, Egyptian, and Roman law was not “over the dead [bodies]” (Heb. 9:17, ἐπὶ νεκροῖς):

It is simply untrue and completely lacking in classical and papyrological support to maintain that, given the legal technical terms (βέβαιος, ἰσχύω, and perhaps ἐγκαινίζω) and their consistent meanings, a will or testament was only legally valid when the testator died ... It is impossible, not just unlikely, that [Heb. 9:16–17] refer to any known form of Hellenistic (or indeed any other) legal practice.²⁸

A Hellenistic will was legally valid (βέβαιος) not when the testator died, but when it was written down, witnessed, and deposited with a notary.²⁹ Moreover, the inheritance was not always subsequent to the death of the testator, as Hebrews 9:17 would imply. Distribution of the estate while the testator(s) was/were still living (*inter vivos*) was widespread in the Hellenistic world.³⁰ Only a few instances of *donatio inter vivos* (“distribution while still living”) known to the readers of Hebrews would have subverted the emphatic statement of Hebrews 9:17b (ἐπεὶ μήποτε ἰσχύει ὅτε ζῆ ὁ διαθέμενος [“since it is not in force while the testator is alive”])³¹ and destroyed its rhetorical effectiveness.³²

28 Hughes, “Hebrews IX 15ff.,” 61.

29 Hughes, “Hebrews IX 15ff.,” 60.

30 Hughes, “Hebrews IX 15ff.,” 62, citing Hans 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., eds. Shemuel Safrai and Manahem Stern, Compendia rerum Iudaicarum ad Novum Testamentum, sec. 1 (Assen: Van Gorcum, 1974), 1:534–560, at 543; and Rafal Taubenschlag, *The Law of Greco-Roman Egypt in Light of the Papyri 322 BC–640 AD*, 2d ed., (Warsaw: Panstwowe Wydawnictwo Naukowe, 1955), 207–208.

31 On μήποτε as a strong negative, see Ellingworth, *Hebrews*, 464. The sense would not be “wills do not usually have force while the testator lives,” but “they *certainly* do not,” or perhaps “they *never* do” (see NIV, ASV).

32 Subsequent responses to Hughes’ demonstration (“Hebrews IX 15ff.,” published 1979) of the lack of correspondence between Heb. 9:16–17 and Greco-Roman testamentary law have been surprisingly weak. Curiously, Attridge, publishing almost thirteen years after Hughes’ seventy-page *Novum Testamentum* article, makes no reference to Hughes or his arguments (see Attridge, *Hebrews*, 255–256 n. 25, 419). Ellingworth, while aware of Hughes, does not rebut him, although his comment “ἀνάγκη is here used [in v. 16] not strictly of a legal requirement” (*Hebrews*, 464) seems a concession to Hughes’ evidence that testaments were validated by a notary and not by death. Likewise, Koester, who feels Hughes’ arguments more strongly, has to nuance and mitigate the sense of Heb. 9:17 to accommodate Hughes’ point that the language is not legally accurate (*Hebrews*, 418, 425). Koester also cites a papyrus death-notice as proof of his

2.2 Previous Proposals for διαθήκη as “Covenant” in Hebrews 9:16–17

The various difficulties with reading διαθήκη as “testament” noted above have led several scholars to maintain the author’s usual meaning “covenant” for διαθήκη in Hebrews 9:16–17.³³ These scholars have, in my opinion, moved the discussion in the proper direction by seeking to explain Hebrews 9:16–17 in terms of the cultic rituals involved in biblical and ancient Near Eastern covenant-making. In these rites, the covenant-maker (ὁ διαθέμενος) swore a self-maledictory oath (that is, a curse upon himself), which was then ritually enacted by the death of animals representing the covenant-maker.³⁴ The bloody sacrifice of the animal(s) symbolized the fate of the covenant-maker should he prove false to his covenantal obligations.³⁵ The meaning of Hebrews 9:16–17 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 bodies (sacrificial animals), since it is never valid while the covenant-maker is still ritually “alive.”

2.2.1 The Covenantal Background of Hebrews 9:16–17

As background for the covenantal interpretation of Hebrews 9:16–17, it may be useful to cite some relevant examples to demonstrate the following: (1) biblical and ancient Near Eastern covenant-making entailed the swearing of an oath, (2) this oath was a conditional self-malediction, that is, a curse, (3) the content of the curse usually consisted of the covenant-maker’s death, and (4) the curse-of-death was often pre-enacted through sacrificial rituals.

(1) COVENANT-MAKING AND OATH-SWEARING

The swearing of an oath was closely associated with the making of a covenant. In fact, the two terms, oath (אָלֶה) and covenant (בְּרִית), are sometimes used interchangeably, for example, in Ezekiel 17:13–19:

And he took one of the seed royal and made a *covenant* (בְּרִית) with him, putting him under *oath* (אָלֶה). (The chief men of the land he had taken away, that the kingdom might be humble and not lift itself up, and that by keeping his *covenant* it might stand.) But he

assertion that “legally people had to present evidence that the testator had died for a will to take effect” (*Hebrews*, 418, 425), but the papyrus cited does not actually mention a will or inheritance as being at issue in the notice of death.

33 See, for example, Westcott, *Hebrews*, 298–302; Milligan, *Hebrews*, 166–170; Brown, *Hebrews*, 407–419; Hughes, “Hebrews IX 15ff.,” 27–96; Lane, *Hebrews*, 226–252; Darrell J. Pursiful, *The Cultic Motif in the Spirituality of the Book of Hebrews* (Lewiston, NY: Edwin Mellen, 1993), 77–79.

34 For example, Westcott, *Hebrews*, 301; Hughes, “Hebrews IX 15 ff.,” 40–42; Lane, *Hebrews*, 241–243.

35 Hughes, “Hebrews IX 15ff.,” 41; Lane, *Hebrews*, 242.

rebelled against him by sending ambassadors to Egypt, that they might give him horses and a large army. Will he succeed? Can a man escape who does such things? Can he break the *covenant* and yet escape? 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. . . . Because he despised the *oath* and broke the *covenant*, because he gave his hand and yet did all these things, he shall not escape. 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 (italics added, RSV).

In light of Ezekiel 17:13–19 and similar texts, the close inter-relationship between “covenant” and “oath” is a commonplace among scholars who work with ancient Near Eastern covenant materials:³⁶

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”).³⁷

[B]erith as a commitment has to be confirmed by an oath: Gen. 21:22ff.; 26:26ff.; Deut. 29:9ff.; Josh. 9:15–20; 2 Kings 11:4; Ezek. 16:8; 17:13ff.³⁸

(2) COVENANT OATH AS CONDITIONAL SELF-MALEDICTION

The oath by which a covenant was ratified was a conditional self-malediction (self-curse), an invocation of the divinity to inflict judgment upon the oath-swearer should he fail to fulfill the sworn stipulations of the covenant. A fourteenth-century

36 See Gordon P. Hugenberger, *Marriage as a Covenant: A Study of Biblical Law & Ethics Governing Marriage, Developed from the Perspective of Malachi*, Vetus Testamentum Supplements 52 (Leiden: Brill, 1994), 183–184. Oath (אָלָה) and covenant (בְּרִית) appear in semantic proximity in the following texts: Hos. 10:4, Deut. 29:11, 13 MT (ET 29:12, 14); Ezek. 16 as shown above; and Gen. 26:28. In Gen. 24:1–67, אָלָה and שָׁבַע are used interchangeably; and elsewhere (Deut. 4:31; 7:12; 8:18; 31:20; Josh. 9:15; 2 Kings 11:4; Ezek. 16:8; Ps. 89:3) it is apparent that שָׁבַע (to “swear an oath”) and בְּרִית (to “cut” or “make a covenant”) are functionally equivalent. For a Phoenician example of the relationship between curse and covenant, see Ziony Zevit, “A Phoenician Inscription and Biblical Covenant Theology,” *Israel Exploration Journal* 27 (1977): 110–118.

37 Hugenberger, *Marriage as Covenant*, 4; citing James Barr, “Some Semantic Notes on the Covenant,” in *Beiträge zur Alttestamentlichen Theologie: Festschrift für Walther Zimmerli zum 70. Geburtstag*, eds. Herbert Donner, Robert Hanhart, and Rudolf Smend (Göttingen: Vandenhoeck & Ruprecht, 1977), 23–28.

38 Moshe Weinfeld, “בְּרִית *b'rith*,” *Theological Dictionary of the Old Testament*, G. J. Botterweck et al. (eds.), 2:256. See also Hugenberger, *Marriage as Covenant*, 182–184.

B.C.E. Hittite covenant expressed this principle as follows: “May the oaths sworn in the presence of these gods break you like reeds, you ... together with your country. May they exterminate from the earth your name and your seed.”³⁹ Likewise, in Ezekiel 17:13–19, it is evident from the divine threats to enforce the oath that the making of the covenant involved a conditional curse-of-death (see, for example, Ezek. 17:16, 19). The word “curse” came to be functionally equivalent to “covenant” and “oath.” Hugenberger remarks, “The fact that קָלַח (originally meaning “curse,” cf. Gen. 24:41; Deut. 29:19 MT [ET 29:20]; 30:7; Isa. 24:6; Jer. 23:10; Pss. 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.”⁴⁰

(3) DEATH AS THE CONTENT OF THE CURSE

That the curse for covenant violation 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 28,⁴¹ and in other biblical passages which explicitly mention the violation of the covenant being sanctioned by death⁴² or mortal punishment.⁴³ Likewise, among extant ancient Near Eastern covenant documents, death by excruciating or humiliating means, accompanied by various other calamities, is frequently the content of the oath-curse.⁴⁴ At Qumran it is a commonplace that “the sword avenges the covenant”⁴⁵ resulting in death.⁴⁶ Dunnill’s observation is apposite:

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

39 J. B. Pritchard (ed.), *Ancient Near Eastern Texts* 206b.

40 Hugenberger, *Marriage as Covenant*, 194. Sometimes the curse is only implicit. See Hugenberger, *Marriage as Covenant*, 200–201. Some biblical examples are 1 Sam. 3:17; 14:44; 20:13; 25:22; 2 Sam. 3:9, 3:35; 19:14 MT; 1 Kings 2:23; 2 Kings 6:31; Ruth 1:17; Jer. 42:5, in all of which the content of the curse is left unexpressed, but may be presumed to be death.

41 See Lev. 26:14–39, especially v. 30, but also vv. 16, 22, 25, 38; Deut. 28:15–68, especially vv. 20, 22, 24, 26, 48, 51, 61.

42 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.

43 For example, to be “devoured” (Deut. 31:16); “consumed” and “burned” (Isa. 33:8–12; Jer. 11:10, 16); “destroyed” (Hos. 7:13 [see 6:7]).

44 See J. B. Pritchard (ed.), *Ancient Near Eastern Texts* 179–180, 201, 205, 532, 534, 538–541. Note, too, that while not all the curses are death *per se*, usually they are means of death: plague, famine, siege, military defeat, etc.

45 See *Damascus Document* from the Genizah in Cairo I, 3; I, 17–18; III, 10–11; 4Q266 2 I, 21; 4Q269 2 I, 6; 4Q390 1 I, 6. The reference to the “sword” is probably inspired by Lev. 26:25.

46 See *Damascus Document* from the Genizah in Cairo XV, 4–5; 1Q22 1 I, 10.

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.⁴⁷

(4) THE CURSE OF DEATH RITUALLY ENACTED

Several ancient Near Eastern documents record the symbolic enactment of the curse-of-death during the covenant-making ritual. One of the most celebrated examples is the eighth-century treaty of Ashurnirari V and Mati'ilu, the King of Arpad, which includes the following enacted curse-ritual or *Drohritus*:

This spring lamb has been brought from its fold ... to sanction the treaty between Ashurnirari and Mati'ilu. If Mati'ilu sins against (this) treaty made under oath by the gods, then, just as this spring lamb ... will not return to its fold, alas, Mati'ilu ... [will be ousted] from his country, will not return to his country, and not behold his country again. This head is not the head of a lamb, it is the head of Mati'ilu. ... If Mati'ilu sins against this treaty, so may, just as the head of this spring lamb is torn off ... the head of Mati'ilu be torn off.⁴⁸

Hugenberger draws the following conclusion:

In light of this and many similar examples [for example, *Ancient Near Eastern Texts* 539f], 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” [כָּרַת] a covenant as well as “cutting” a curse.⁴⁹

The Bible records similar curse-rituals. Abraham's bisection of animals in the covenant of Genesis 15 represented a self-curse of death for the covenant-maker—in this case, God himself. The significance of the *Drohritus* is elucidated by Jeremiah 34:18–20,⁵⁰ where the Lord addresses the leaders of Jerusalem and Judah, who had

47 Dunnill, *Covenant and Sacrifice*, 249. See O. Palmer Robertson: “The death of the covenant-maker appears in two distinct stages. First it appears in the form of a symbolic representation of the curse, anticipating possible covenantal violations. Later the party who violates the covenant actually experiences death as a consequence of his earlier commitment” (*The Christ of the Covenants* [Grand Rapids: Baker, 1980], 11–12).

48 J. B. Pritchard (ed.), *Ancient Near Eastern Texts* 532b.

49 Hugenberger, *Marriage as Covenant*, 195; Quell, *Theological Dictionary of the New Testament*, G. Kittel and G. Friedrich, eds., 2:108. In light of the evidence that Hugenberger and others have adduced, Koester's statement that “there is little evidence that sacrifices represented the death of the one making the covenant” is in error (*Hebrews*, 418).

50 The scholarly support for viewing Gen. 15 as a self-maledictory ritual enactment in light of Jer.

made a solemn covenant to release their slaves during the siege of Jerusalem but promptly reneged on their commitment when the siege was lifted:

I will make the men who violated My covenant, who did not fulfill the terms of the covenant which they made before Me, [like] the calf which they cut in two so as to pass between the halves: The officers of Judah and Jerusalem, the officials, the priests, and all the people of the land who passed between the halves of the calf shall be handed over to their enemies, to those who seek to kill them. Their carcasses shall become food for the birds of the sky and the beasts of the earth (NJPS).

Significantly, each of the biblical covenants that concern the author of Hebrews involves a *Drobritus* symbolizing the curse-of-death. The covenant (or covenants) 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).⁵¹ 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 covenant stipulations (Exod. 24:3–8), conveying the concept, “As was done to the animals, so may it be done to us if we fail to keep the covenant.”

2.2.2. *The Exegesis of Hebrews 9:16–17 with διαθήκη as “Covenant”*

The advocates of διαθήκη-as-covenant propose this biblical and ancient Near Eastern background of covenant-by-self-maledictory-oath as the context for Hebrews 9:16–17. In Hebrews 9:16, according to this view, φέρεσθαι should be translated “bring into the picture” or “introduce.”⁵² The “death” (θάνατος) that must be “brought into the picture” (φέρεσθαι) is the death of the covenant-maker (ὁ διαθέμενος), symbolically represented by the sacrificial animals. Thus, Hebrews 9:16 (ὅπου γὰρ

34 is strong, although some dispute it. See Quell, *Theological Dictionary of the New Testament*, G. Kittel and G. Friedrich, eds., 2:116; Hugenberger, *Marriage as Covenant*, 195 n. 109.

51 On the possibility that the covenant-making ceremonies in Gen. 15 and 17 are not parallel accounts of the same event but intentionally different covenants, see T. Desmond Alexander, “A Literary Analysis of the Abraham Narrative in Genesis” (Ph.D. diss.; The Queen’s University of Belfast, 1982), 49, 160–182. Heb. 6:13–18 and 11:17–19 focus on the formulation of the Abrahamic covenant-oath found in Gen. 22:15–18. On the self-maledictory symbolism of circumcision, see Meredith G. Kline, *By Oath Consigned: A Reinterpretation of the Covenant Signs of Baptism and Circumcision* (Grand Rapids: Eerdmans, 1968), 39–49, 86–89, especially 43; Hugenberger, *Marriage as Covenant*, 196; and Dunnill, *Covenant and Sacrifice*, 177 n. 72. On the interrelationship of the three Abrahamic covenant-making rituals, see Dunnill, *Covenant and Sacrifice*, 177; Hahn, *Kinship by Covenant*, 101–135.

52 Hughes cites 2 Pet. 2:11, John 18:29, and 1 Clem. 55:1 as examples of similar usage (“Hebrews IX 15ff.” 42–43). See W. Bauer, W. F. Arndt, and F. W. Gingrich (3d ed.; rev. by F. W. Danker), *Greek-English Lexicon of the NT* 855b (def. 4.a.β).

διαθήκη, θάνατον ἀνάγκη φέρεσθαι τοῦ διαθεμένου) should be translated, “For where there is a covenant, it is necessary to introduce the [symbolic] death of the covenant-maker.” The following statement of Hebrews 9:17, “for a covenant is ratified over dead [bodies],” is a fairly accurate description of biblical and ancient Near Eastern covenant-making practice. Hebrews 9:17b, “since it [a covenant] is never in force while the covenant maker lives,” makes sense if ὅτε ζῆ ὁ διαθέμενος (“while the covenant-maker lives”) is understood symbolically, that is, to mean “while the covenant-maker is still ritually alive, not yet having undergone the death represented by the sacrificial animals.”

Hebrews 9:18–22, which speaks of the sprinkling of blood at the establishment of the first covenant at Sinai, follows naturally from Hebrews 9:16–17 (ὅθεν, “hence”). Hebrews 9:16–17 states that a covenant requires the ritual death of the covenant-maker; Hebrews 9:18–22 points out that in fact the first covenant was established in this way, with the blood of the representative animals being sprinkled over the people and all the implements of the covenant cult.

2.2.3 Difficulties in the Case for διαθήκη as Covenant

In many respects the case for διαθήκη-as-covenant in Hebrews 9:16–17, as it has been argued to date, is appealing. It retains continuity with the author’s Jewish, cultic understanding of the nature of “covenant,” and produces a logically sound reading of Hebrews 9:15–18. However, there are at least two serious objections to the view as outlined above.

First, covenants were not always ratified by the ritual slaughter of animals. William Lane goes so far as to say, “The formulation [Heb. 9:17, ἐπεὶ μήποτε ἰσχύει ὅτε ζῆ ὁ διαθέμενος] 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” (italics added).⁵³ While it is true that many covenants were solemnized in this way, one cannot assert that a “representative death” was *always* necessary.⁵⁴ There was no monolithic form for covenant-making in the Bible or the ancient Near East. Moreover, it was the oath rather than the sacrifices that sufficed to establish a covenant, as Hugenberg and others have demonstrated.⁵⁵

Second, it does not seem plausible that the two phrases θάνατον ἀνάγκη φέρεσθαι τοῦ διαθεμένου, “it is necessary for the death of the covenant-maker to be borne,” and ὅτε ζῆ ὁ διαθέμενος, “while the covenant-maker is alive,” are

53 Lane, *Hebrews*, 243.

54 Brown, *Hebrews*, 415: “Far less have we evidence that the death of the sacrificial victim was necessary to the validity of every arrangement to which the word rendered ‘covenant’ may be applied”; Attridge, *Hebrews*, 254: “There are covenants recorded in scripture where no inaugural sacrifice is mentioned.”

55 Hugenberg, *Marriage as Covenant*, 196–197, and Weinfeld, G. J. Botterweck et al. (eds.), *Theological Dictionary of the Old Testament* 2:256 and scripture references cited therein.

intended in a figurative sense. The author *does* appear to be speaking of the actual death of the covenant-maker.⁵⁶

These two objections suggest that, although the reading of διαθήκη as “covenant” may be an improvement over the alternative “testament,” a better case must be made for it.

2.3 A New Proposal: *The Broken Covenant and the Curse-of-Death*

An interpretation of Hebrews 9:16–17 that renders the text intelligible and coheres with the theological system expressed in the rest of the epistle is possible, if one recognizes that the particular covenant occupying the author’s thought in Hebrews 9:15–22 is 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 Hebrews 9:16–17 should be understood. In what follows I will offer my exegesis of Hebrews 9:16–17 phrase by phrase.

2.3.1 Ὅπου γὰρ διαθήκη (Heb. 9:16a)

Hebrews 9:16–17 is a parenthetical explanation of the genitive absolute construction in Hebrews 9:15, θανάτου γενομένου εἰς ἀπολύτρωσιν τῶν ἐπὶ τῇ πρώτῃ διαθήκῃ παραβάσεων, “a death having occurred for the remission of transgressions *under the first covenant*” (italics added). The purpose of Hebrews 9:16–17 is to explain *why a death was necessary*, given the predicament of the broken first covenant.

In Hebrews 9:16, when the author says “For where there is a covenant,” the reader must also incorporate from Hebrews 9:15 the concept παραβάσεων γενομένων, “transgressions having taken place.” In other circumstances—for example, if there were no covenant in place, or if a different kind of relationship was in place (for example, a trade contract)—transgressions would not result in death, or would simply not be of concern. However, the author of Hebrews emphasizes, ὅπου γὰρ διαθήκη, θάνατον ἀνάγκη φέρεσθαι τοῦ διαθεμένου, “*where there is a covenant, it is necessary for the death of the covenant-maker to be endured [when transgressions have taken place].*” The fact that a covenant is in force renders the situation of transgression deadly. The author’s point becomes clearer when ὅπου is taken causally, that is, not as “where” but as “whereas” or “since.”⁵⁷ Verse 16 could be rendered, “*Since there is a covenant, it is necessary for the death of the covenant-*

56 Robert P. Gordon, *Hebrews* (Sheffield: Sheffield Academic Press, 2000), 103–104: “V. 16b refers unmistakably to the death of the ratifier of the will/covenant as being essential for its implementation. ... Interpreting this as the symbolic death of the ratifier ... requires a lot of reading between the lines in v. 16b and even more so in v. 17”; see also Vos, *Hebrews*, 39.

57 See W. Bauer, W. F. Arndt, and F. W. Gingrich (3d ed.; rev. by F. W. Danker), *Greek-English Lexicon of the NT* 576a (def. 2b); Louw-Nida *Lexicon of the NT* 782a (§89.35); Liddell-Scott-Jones, *Greek-English Lexicon* 1242a (def. II.2). Ὅπου is clearly causal in 1 Cor. 3:3, 4 Macc. 14:11, 14, 19; possibly also in 4 Macc. 2:14 and 6:34. Ὅπου occurs in Heb. 6:20; 9:16 and 10:18. In both Heb. 9:16 and 10:18 the causal meaning (“whereas, since”) seems to provide a better reading than the usual rendering.

maker to be borne.” Under different circumstances, the fact that there had been transgressions (παραβάσεις) may have been inconsequential or given rise to some lesser punishment, but “since there is a covenant”—particularly one that has been ratified by a bloody *Drohritus* (Heb. 9:18–22), that is, which entails a curse-of-death for violations—“the death of the covenant-maker must be borne.”

2.3.2 θάνατον ἀνάγκη φέρεσθαι τοῦ διαθεμένου (Heb. 9:16b)

A broken covenant of this kind demands the curse-of-death. The biblical and extra-biblical examples of death as the sanction for covenant-breaking (see above) support the author’s assertion. Some commentators have voiced the opinion that “covenants or contracts, of whatever sort, simply do not require the death of one of the parties,”⁵⁸ but in the understanding of the author of Hebrews, covenants of this sort (ratified by sacrifice) certainly *do* require the death of one of the parties when broken.

An explanation of the circumlocution θάνατον ἀνάγκη φέρεσθαι τοῦ διαθεμένου is in order. Φέρω should be taken in its common meaning “to bear, to endure,”⁵⁹ rather than the otherwise-unattested meanings most modern versions and lexicons provide here for the phrase θάνατον φέρεσθαι.⁶⁰ The phrase διαθέμενον ἀνάγκη ἀποθανεῖν, “it is necessary for the covenant-maker to die,” would be more succinct, but the difference in emphasis between “the covenant-maker must die” and “the death of the covenant-maker must be borne” is significant, if subtle. In the first formulation, the subject of the verbal idea is the *covenant-maker*, in the second, it is the *death*. The second formulation does not actually specify who must die, only that the covenant-maker’s death must be endured. The author leaves open the possibility that the death of the covenant-maker might be borne by a designated representative, for example, the high-priest Jesus. He only stresses that, because of transgression (Heb. 9:15), *someone* must bear the curse-of-death, without specifying whom. 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 (Heb. 9:15).

The concept of someone “bearing” (φέρω) the death of the covenant-maker in Hebrews 9:16, like the “bearing (ἀναφέρω) the sins of many” in Hebrews 9:28, may be shaped by the use of φέρω in Isaiah 53 LXX, where (ἀνα)φέρω is consistently used in the sense “bear something for another.”⁶¹ Hebrews 9:28 (τὸ πολλῶν ἀνενεγκεῖν ἁμαρτίας) is a clear reference to Isaiah 53:12 LXX (καὶ αὐτὸς ἁμαρτίας πολλῶν ἀνήνεγκεν), which suffices to show that Isaiah 53 is in the mind of the

58 Attridge, *Hebrews*, 256.

59 W. Bauer, W. F. Arndt, and F. W. Gingrich (3d ed.; rev. by F. W. Danker), *Greek-English Lexicon of the NT* 855a (def. 1c); Louw-Nida *Lexicon of the NT* 807a (§90.64); Liddell-Scott-Jones, *Greek-English Lexicon* 1923a (def. A.III). In Heb. 13:13 φέρω is used in this sense (τὸν ὄνειδισμόν αὐτοῦ φέροντες). See also Heb. 12:20 (οὐκ ἔφερον γὰρ τό διαστελλόμενον); Isa. 53:4 LXX (οὗτος τὰς ἁμαρτίας ἡμῶν φέρει); Jer. 51:22 LXX; Ezek. 34:29, 36:6 LXX.

60 See discussion above, especially n. 25.

61 See Isa. 53:3, 4, 11, 12.

author in Hebrews 9. Thus, it may well be that the use of φέρω in the sense of “bear on another’s behalf” in Isaiah 53:3–4 elucidates the use of φέρω in Hebrews 9:16.

2.3.3 διαθήκη γὰρ ἐπὶ νεκροῖς βεβαία (Heb. 9:17a)

The sense of Hebrews 9:17a (“a [broken] covenant is confirmed upon dead [bodies]”) is that, after a covenant has been broken (the situation under the first covenant), 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.⁶²

The use of the plural ἐπὶ νεκροῖς, “dead bodies”—problematic under the testamentary reading—is not unexpected under the reading proposed here. The situation the author envisions is the first covenant, made by the people. Ὁ διαθέμενος and ἐπὶ νεκροῖς refer to the people of Israel in the collective singular and the plural form respectively. The grammatically-singular “people” (see Heb. 9:19, λαός) is the “covenant-maker” (ὁ διαθέμενος) at Sinai; yet “dead bodies” (νεκροί, see Deut. 28:26 LXX) would result if the curse-of-death was actualized upon them.

2.3.4 ἐπεὶ μὴποτε ἰσχύει ὅτε ζῆ ὁ διαθέμενος (Heb. 9:17b)

The bold statement of Hebrews 9:17b, “since it certainly is not in force while the covenant-maker lives,”⁶³ expresses the following principle: for the covenant-maker(s) to remain alive after violating the covenant indicates that the covenant has no binding force (μὴποτε ἰσχύει). 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?” (RSV). For the author of Hebrews, as well as for Ezekiel, the answer is an emphatic “No!” (see Heb. 12:25!). The survival of the covenant-maker after the violation of his sworn commitment demonstrates the impotence of the covenant and the powerlessness of the oath-curse. A covenant is not *in force* if it is not *enforced*.

2.3.5 ὅθεν οὐδὲ ἡ πρώτη χωρὶς αἵματος ἐγκεκαίνισται (Heb. 9:18)

Hebrews 9:18–22 explicitly concerns the first Sinaitic covenant, strengthening the case that this broken covenant is the assumed context of Hebrews 9:16–17. The sense of Hebrews 9:18, ὅθεν οὐδὲ ἡ πρώτη χωρὶς αἵματος ἐγκεκαίνισται, may be “hence, neither was the first covenant inaugurated without blood,” the emphasis being on the fact that, at its very inauguration, the first covenant liturgically pre-enacted the death of the covenant-maker should the covenant be transgressed.⁶⁴ Thus, the reader should not doubt that the Sinaitic covenant was one that entailed

62 See Lev. 26:14–39, especially v. 30, but also vv. 16, 22, 25, 38; Deut. 28:15–68, especially vv. 20, 22, 24, 26, 48, 51, 61. As was noted above for the ancient Near Eastern oath-curses, although not all the curses of Lev. 26 and Deut. 28 are *immediate* death, virtually all the curses are *means* of death: plague, disease, enemy attack, wild animals, siege, famine, etc.

63 For μὴποτε as a strong negative (“certainly not”) see Ellingworth, *Hebrews*, 464.

64 See Vanhoye, *New Priest*, 203.

the curse-of-death. The flow of thought from Hebrews 9:16–17 to 9:18–22 could be paraphrased as follows: “A broken covenant requires the death of the covenant-maker (Heb. 9:16–17); hence, the first covenant liturgically portrayed the death of the covenant-maker by bloody sacrifice (Heb. 9:18–21). Nearly everything about the first covenant was covered in blood, representing the necessity of death for the forgiveness of transgressions of the covenant (Heb. 9:22, see 9:15).”

3. Conclusion and an Avenue for Further Study

At the beginning of this essay, we discussed the close integration of the legal and liturgical aspects of the covenant in the thought-world of Hebrews. However, Hebrews 9:15–18 appeared to be counter-evidence for this integration. In Hebrews 9:16–17, the author appears to use *διαθήκη* in a sense quite different from his customary usage, stepping outside Israelite-Jewish cultic categories in order to draw an analogy from Greco-Roman law, whose relevance is anything but clear.

I have argued that the solution to the puzzle of Hebrews 9:16–17 is not to abandon the cultic-covenantal framework of the author’s thought, with its close relationship between liturgy and law, but to enter into that framework more deeply. If it is understood that the context for the statements of Hebrews 9:16–17 is the broken first covenant mentioned in Hebrews 9:15, one can see that the author is drawing out the *legal* implications of the *liturgical* ritual (that is, bloody sacrifices) that established the first covenant: a broken covenant demands the death of the covenant-maker (Hebrews 9:16), and it is not being enforced while the offending covenant-maker lives (Hebrews 9:17).

Therefore, Hebrews 9:16–17 does not involve an abrupt, unmarked switch in context (from Jewish to Greco-Roman), nor does the author argue for a strained analogy between a “covenant” and a “testament.” Verses 16–17 simply restate a theological principle summarized in the verse they seek to explicate (Heb. 9:15): the first covenant entailed the curse-of-death for those who broke it (Heb. 2:2; 10:28), which Christ takes upon himself as Israel’s corporate representative (Heb. 2:9, 14; 9:28), thus freeing those under the first covenant from the curse-of-death (Heb. 2:15; 10:14) and providing for them a new and better covenant (Heb. 9:28; 10:15–17; 12:22–24).

If I have been correct in my exegesis of Hebrews 9:16–17, then the statement of v. 17b certainly opens up an avenue for further study: ἐπεὶ μήποτε ἰσχύει ὅτε ζῆ ὁ διαθέμενος, “since [the covenant] is certainly not in force while the covenant-maker lives.” According to my paradigm, the author is speaking about the broken Sinaitic covenant: having been broken (at the golden calf apostasy), it is not in force (or being enforced) until the covenant curse (that is, death) is actualized upon the covenant-maker (Israel). The covenant-curse of death is only finally visited upon Israel when Christ dies as their representative (Heb. 9:15). But this implies that, in the author’s view, there is an extended hiatus in Israel’s history between the violation of the first covenant (Exod. 32:1–14) and the death of Christ, during which the first

covenant was, in a sense, not “strong” or “in force” (μήποτε ἰσχύει), held in abeyance, its curses not being actualized. It is as if, after the golden calf, a verdict is reached, the sentence handed down, but the execution suspended indefinitely. What justified this suspension?

The answer is to be found in the narrative of Exodus 32. After the covenant has been broken God threatens to enforce it: “Now let me alone, so that my wrath may burn hot against them and I may consume them; and of you I will make a great nation” (Exod. 32:10 NRSV). But Moses pleads with God to relent, based on the divine oath to the Patriarchs: “Remember Abraham, Isaac, and Israel, your servants, how you swore to them by your own self” (Exod. 32:13 NRSV). Moses is referring to God’s oath at the Aqedah (Gen. 22:15–18), the only record of God swearing by himself to the Patriarchs. On Mt. Moriah, after the near-sacrifice of Isaac, God spoke to Abraham:

By Myself I swear, the LORD declares: Because you have done this and have not withheld your son, your favored one, I will bestow My blessing upon you and make your descendants as numerous as the stars of heaven and the sands on the seashore; and your descendants shall seize the gates of their foes. All the nations of the earth shall bless themselves by your descendants, because you have obeyed My command (Gen. 22:16–18 NJPS).

In Exodus 32:13, Moses appeals to this oath, making the following argument to God: “You cannot annihilate Israel for violating their covenant-oath, for if you do, you would violate your own self-sworn oath to bless and multiply Abraham’s descendants.” In other words, the covenant *curses* of Sinai could not be enforced upon the people of Israel because of God’s prior oath to Abraham to *bless* his descendants (that is, Israel).

The Levitical priesthood, according to the narrative of the Pentateuch, is established in response to the golden calf apostasy (Exod. 32:29). The author of Hebrews notes that “on the basis of [the Levitical priesthood] the law was given to the people” (Heb. 7:11). This would refer to the fact that the bulk of the sacrificial system (Lev. 1–7, 16), as well as the Deuteronomic Code, was given to Israel subsequent to the golden calf episode and the elevation of the Levites. The author of Hebrews may have held the view that this Levitical cultic system was “weak and useless” (Heb. 7:18) because it was only a symbolic or pedagogical apparatus designed to remind Israel of her covenant violations (Heb. 10:3) until one could come who was capable of bearing the curse-of-death of the (broken) covenant on behalf of the whole nation (Heb. 2:9; 9:15), thus enabling God to enforce the first covenant without undermining his self-sworn oath to bless the “seed of Abraham” (Gen. 22:15–18; Heb. 6:13–20).

The author of Hebrews places considerable weight on divine oaths in general,⁶⁵ and devotes particular attention to this divine oath at the Aqedah (Gen. 22:15–18) in Hebrews 6:13–20. He mentions the Aqedah again in Hebrews 11:17–19. Dunnill remarks:

The story of the “Binding of Isaac” [is] a theme which has vastly greater significance, not only for this chapter but for the theology of the letter as a whole, than its rather brief appearance ([Heb.] 11:17f) would suggest. [It is of] fundamental importance for the letter’s Christology. ... It acts as the organizing centre of Hebrews 11 and as a “foundation sacrifice” for the faith-covenant established through Jesus.⁶⁶

In Jewish tradition, the Aqedah took place on the Day of Atonement, and the rituals of the Day of Atonement were interpreted as a yearly anamnesis of Isaac’s “sacrifice.”⁶⁷ Thus, the author’s theology of the Day of Atonement, articulated throughout Hebrews 9:1–28, may have an integral relation to the significance he sees in the Aqedah and the divine oath given there (Heb. 6:13–20; 11:17–19).

In sum, it may be that the author of Hebrews regards the divine oath to Abraham at the Aqedah as a foundational act for Israel, which is renewed in Christ. The divine oath of the Aqedah is an expression of God’s providential mercy, inasmuch as it prevents the full enforcement of the curses of the first covenant (Exod. 32:13–14) until the coming of the Christ, who can bear the curse-of-death on behalf of all (Heb. 2:9; 9:15) and restore for Israel the Abrahamic blessing (Heb. 6:13–20; Gen. 22:15–18). Christ’s death is simultaneously the legal execution of the curses of the old covenant and the liturgical ritual of sacrifice which establishes the new. Hebrews’ theology on this point would be strikingly similar to Paul’s in Galatians 3:6–25, which is unsurprising given the numerous connections between Galatians and Hebrews already noted by other scholars.⁶⁸ In any event, the complex of issues surrounding the divine oath at the Aqedah, the “weakness” of the Sinaitic covenant rituals, and the author’s bold statement in Hebrews 9:17b certainly merits further study.⁶⁹

65 Dunnill, *Covenant and Sacrifice*, 249: “Oaths and the finality they confer are deeply important in Hebrews, especially the unique status and revolutionary consequences of divine oaths.” The author discusses the divine oath of Num. 14:20–23 (through Ps. 95:7–11) in Heb. 3:7–4:11 and that of Ps. 110:4 in Heb. 7:20–22. For an expanded treatment, see Hahn, *Kinship by Covenant*, 278–331.

66 Dunnill, *Covenant and Sacrifice*, 173.

67 See Dunnill, *Covenant and Sacrifice*, 174–175.

68 For example, Ben Witherington III, “The Influence of Galatians on Hebrews,” *New Testament Studies* 37 (1991): 146–152.

69 See Hahn, *Kinship by Covenant*, 101–175; 278–331. This article is a revision of an article that appeared in *Hebrews: Contemporary Methods—New Insights*, ed. Gabriella Gelardini (Leiden:

Brill, 2005), 66–88, under the title, “Covenant, Cult, and the Curse-of-Death: Διαθήκη in Heb 9:15–22.”