

d: it implies Christ's transition from earth to heaven where he serves as the heavenly high priest, and it communicates the cultification that Christians obtain in order to approach the heavenly sanctuary.<sup>51</sup>

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## COVENANT, CULT, AND THE CURSE-OF-DEATH: ΔΙΟΘΗΚΗ IN HEB 9:15–22

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### 1. *Covenant and Cult in Hebrews*

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” (διόθηκη), 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 διόθηκη 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” (כְּבֻדָּה MT, διοθήκη 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.<sup>1</sup> 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.<sup>2</sup> Thus, covenants

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

<sup>2</sup> Notice how often “law” or “treaty” occurs in the titles of the following important studies on biblical covenants: Herbert B. Huffmon, “The Covenant Lawuit,” *JBL* 78 (1959): 285–295; Dennis J. McCarthy, *Treaty and Covenant* (AnBib 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); Rinjke Franken, “The Vassal Treaties of Esarhaddon and the Dating of Deuteronomy,” *OTS* 14 (1965): 140–154; Hayim Tadmor, “Treaty and Oath in the Ancient Near East: A Historian's Approach,” in *Humanizing America's Lionic Book* (ed. Gene M. Tucker and Douglas A. Knight; Chico: 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.

in biblical scholarship have generally been considered under the aspect of "law."

Scholarship has tended, however, to neglect the fact that even these ancient Near Eastern treaty-covenants had a pronounced cultic-liturgical dimension.<sup>3</sup> The covenants were often concluded by lengthy invocations of nearly the entire Near Eastern pantheon, 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.<sup>4</sup> 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 OT, where the covenant is established through cultic ritual (e.g., Exod 24:4–11) and liturgical functionalities or "celebrants" (i.e., priests and Levites) mediate the covenant blessings and curses on behalf of God (Num 6:22–27; Deut 27:14–26).

Reflecting on the OT 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 chs. 8–9 of Hebrews,<sup>5</sup> 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, ἀρχιερέως) or "celebrant" (Heb 8:2, 6, λειτουργός) who performs ministry (Heb 8:5; 9:1, 6, λειτουργία) 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, ἅγιος) to offer (Heb 8:3; 9:7, 14, 28, προσφέρειν) 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, λειτουργοῦντες) who

<sup>3</sup> An exception is the essay by John M. Lundquist, "Temple, Covenant, and Law in the Ancient Near East and in the Hebrew Bible," in *Israel's Apostasy and Restoration: Essays in Honor of Roland K. Harrison* (ed. Gleason A. Wharton; Grand Rapids: Baker, 1988), 293–305.

<sup>4</sup> Cf. ANET 200–201; 205–206; 532–535, 538–541.

<sup>5</sup> On the cultic background of Heb 9, see James Swetnam, "A Suggested Interpretation of Hebrews 9:13–18," *CBLQ* 27 (1965): 375; Johannes Behm, "Suchen," *TDNT* 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, Mass.: St. Bede's, 1986), 176–177.

have transgressed cultic law (Heb 8:4; 9:19, νόμος).<sup>6</sup> 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 (i.e., 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, materials, 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 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 Heb 1:3, where Christ "sits down at the right hand of the Majesty in heaven" (i.e., 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 critiqued (reductionistically) 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. It is my thesis in this study that, in order to understand the Book of Hebrews, we must be prepared to enter into its own cultural

<sup>6</sup> Cf. William L. Lane, *Hebrews 9–13* (WBC 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 delinquency. . . . 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."

worldview, with its unity of liturgy and law; and that doing so will elucidate a long-standing interpretive *crux*: the meaning of  $\delta\iota\alpha\theta\eta\kappa\eta$  in Heb 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 scholars Bruce J. Malina, John J. Pileh, Richard Rohrbaugh, and others.<sup>7</sup> David A. deSilva has applied social-scientific methods specifically to the interpretation of Hebrews.<sup>8</sup>

Regrettably, most of the social-scientific study of the New Testament in the past decades has focused on the Greco-Roman world, not the significance of the unique cultural institutions of First and Second Temple Israel (or Judea) herself—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.<sup>9</sup> 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.<sup>10</sup> In what follows, I will build on Dunnill's

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

<sup>8</sup> David A. deSilva, *Desisting Shame: Honor, Discourse, and Community Maintenance in the Epistle to the Hebrews* (SBLDS 152; Atlanta: Scholars Press, 1995); idem, *Persuasive in Gratitude: A Socio-Rhetorical Commentary on the Epistle "To the Hebrews"* (Grand Rapids: Eerdmans, 2000).

<sup>9</sup> John Dunnill, *Covenant and Sacrifice in the Letter to the Hebrews* (SNTSMS 75; Cambridge: Cambridge University Press, 1992).

<sup>10</sup> Mary L. Douglas, *Natural Symbols: Explorations in Cosmology* (2d ed.; New York: Routledge, 1996); idem, *Purity and Danger: An Analysis of Concepts of Pollution and Taboo*

work while attempting to unravel the difficulties presented by Heb 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 Heb 9, the chapter with the densest concentration of cultic language and imagery in the book. In Heb 9:16–17, according to most commentators, the author abandons his Israelite, cultic understanding of  $\delta\iota\alpha\theta\eta\kappa\eta$ , "covenant,"<sup>11</sup> and appeals to the Greco-Roman, secular definition of  $\delta\iota\alpha\theta\eta\kappa\eta$  as "last will or testament."<sup>12</sup> In the usual translations, the author seems, in the course of Heb 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 ( $\delta\iota\alpha\theta\eta\kappa\eta$ ), 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 ( $\delta\iota\alpha\theta\eta\kappa\eta$ ). For where a will ( $\delta\iota\alpha\theta\eta\kappa\eta$ ) is involved, the death of the one who made it must be established. For a will ( $\delta\iota\alpha\theta\eta\kappa\eta$ ) takes effect only at death, since it is not in force as long as the one who made it is alive. Hence not even the first covenant ( $\delta\iota\alpha\theta\eta\kappa\eta$ ) was inaugurated without blood. (Heb 9:15–18 NRSV)

As can be seen, the NRSV follows the majority of commentators and translators by taking  $\delta\iota\alpha\theta\eta\kappa\eta$  in the sense of "will" or "testament" in Heb 9:16–17, even though the word clearly has the meaning "covenant" in vv. 15 and 18, and indeed in every other occurrence in Hebrews.<sup>13</sup> Nonetheless, it is not difficult to see why this approach

(New York: Routledge, 1966); Victor W. Turner, *The Ritual Process: Structure and Anti-Structure* (Ithaca, N.Y.: Cornell University Press, 1966).

<sup>11</sup> On the use of  $\delta\iota\alpha\theta\eta\kappa\eta$  with the meaning "covenant" in most Jewish Hellenistic literature, see Behm, *TDNT* 2:126–129.

<sup>12</sup> For  $\delta\iota\alpha\theta\eta\kappa\eta$  in secular Greek, see Johannes Behm and Gottfried Quell, *TDNT* 2:106–134, esp. 124–126.

<sup>13</sup> Cf. NEB, JB, TEV, NIV, NAB (only the NASB translates "covenant" in vv. 16–17). Commentators endorsing "testament" in vv. 16–17 include: Gerhards Vos, *The Teaching of the Epistle to the Hebrews* (Grand Rapids: Eerdmans, 1956), 27–48; George W. Buchanan, *To the Hebrews* (AB 36; Garden City: Doubleday, 1972), 151; Thomas C. Long, *Hebrews* (IBC; Louisville: John Knox, 1997), 99; Harold W. Aurig, *Hebrews* (Hermeneia; Philadelphia: Fortress, 1989), 253–256; Paul Ellingworth,

enjoys majority support.<sup>14</sup> In Heb 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 Heb 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 Heb 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 Heb 9:18, the topic returns again to “the first *διαθήκη*,” that is, the Sinai event, which can scarcely be anything but a covenant.

Nevertheless, while the alteration between the meanings “testament” and “covenant” seems required semantically, the resulting argument is not logically satisfying. 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 require 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).

Clearly, then, the mode of the inheritance of salvation in Hebrews is based on a Jewish covenantal and not a Greco-Roman testamentary model.<sup>15</sup> Therefore, it is hard to see how the analogy the

<sup>14</sup> *Commentary on Hebrews* (NICNTC; Grand Rapids: Eerdmans, 1993), 462–463; Victor C. Pfitzner, *Hebrews* (ANTC; Nashville: Abingdon, 1997), 131; Craig R. Koester, *Hebrews* (AB 36; New York: Doubleday, 2001), 418, 424–426.

<sup>15</sup> See Swenham, “Suggested Interpretation,” 374–375, for a succinct summary of the case.

<sup>16</sup> Cf. Dunnill, *Covenant and Sacrifice*, 46–47: “Though Hebrews exhibits Alexandrian [i.e. 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 *inheritance* (non-testamentary) succession, in which the first-born son enjoyed a privi-

author draws in Heb 9:15–18 has any cogency. The awkwardness of the argument has led a few commentators to propose taking *διαθήκη* as “covenant” in Heb 9:16–17 (see below), but most retain the sense “testament” while expressing their discomfort:

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” (9:16) is simply irrelevant to the theology of the new covenant.<sup>16</sup>

Basically the idea of testament fits into the passage very clumsily.<sup>17</sup>

[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.<sup>18</sup>

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*, a minor blunder tearing the otherwise seamless coherence of his homiletical masterpiece?<sup>19</sup> I am inclined to think

leged share. The first-born had no privileged status in Greco-Roman succession (see Larry R. Helyer, “The *Prōtotochos* Title in Hebrews,” *Studia Biblica et Theologica* 6 [1976]: 17). The fact that the author of Hebrews thinks in terms of Israelite-Jewish inheritance custom can be seen in the strategic use of the concept *πρωτοτοκος* (first-born) in Heb 1:6 and 12:23.

<sup>16</sup> Dunnill, *Covenant and Sacrifice*, 250–251.

<sup>17</sup> George D. Kilpatrick, “*Διαθήκη* in Hebrews,” *ZNW* 68 (1977): 263.

<sup>18</sup> Behm, *TDMT* 2:131. Many other advocates of *διαθήκη*-as-testament also feel the tension caused by the abrupt switch in meaning, e.g., F. F. Bruce, *The Epistle to the Hebrews* (rev. ed.; NICNT; Grand Rapids: Eerdmans, 1990), 461; Pfitzner, *Hebrews*, 131; Ellingworth, *Hebrews*, 462; Swenham, “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 (Atridge, *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 exemplum 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.

<sup>19</sup> 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”; Albert Vanhooye, *The Structure and Message of the Epistle to the Hebrews* (Subsidia Biblica 12; Rome: Pontifical Biblical Institute, 1989), 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

not. In what follows, I will propose that if διαθήκη is understood as “covenant” in Heb 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 Heb 9:16–17; second, critique some previous attempts to understand διαθήκη as “covenant” in these verses; and finally, outline an original interpretive proposal which, I believe, has greater explanatory power than others offered to date.

## 2.1. *Difficulties with Διαθήκη as “Testament”*

The troubles with διαθήκη as “testament” in Heb 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.<sup>20</sup> 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 Heb 9:16–17 the author of Hebrews uses διαθήκη only in its Septuagintal sense of “covenant” (ἡ διαθήκη).<sup>21</sup> Moreover, the term διαθήκη (and the concept of “covenant”<sup>22</sup>) occurs more often and receives greater attention and emphasis in Hebrews than in any other New Testament book.<sup>22</sup> Most of the occurrences of the word (15 of 17) occur in the extended discussion of Christ-as-high-priest from

reading of Hebrews communicates. . . . It is generally agreed that Hebrews exhibits a marked theological coherence,<sup>23</sup> and Brooke F. Westcott, *The Epistle to the Hebrews: The Greek Text with Notes and Essays* (2d ed., 1892; repr., 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.” Cf. also Sweetnam, “Suggested Interpretation,” 375.

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

<sup>21</sup> Cf. Behm, *TDNT* 2:132; Lane, *Hebrews*, 230.

<sup>22</sup> Cf. Vos, *Hebrews*, 27.

Heb 7–10, with seven occurrences in Heb 9 alone. Since the word is central to the author’s thought, and in every instance outside Heb 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.”<sup>22</sup>

### 2.1.2. *Grammatical Issues*

Several scholars have noted grammatical irregularities in the use of φέρεσθαι (Heb 9:16b) and ἐπι νεκροῖς (Heb 9:17a).<sup>24</sup> If Heb 9:16b had testamentary practice in view, one would expect ὅπου γὰρ διαθήκη, διαθήμενον ἀνάγκη ὀρθοῦσθαι, “where there is a testament, it is necessary for the testator to die” (italics added). The circumlocution θάνατον ἀνάγκη φέρεσθαι τοῦ διαθήμενου 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.”<sup>25</sup>

Another grammatical strain occurs at Heb 9:17a, διαθήκη γὰρ ἐπι 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].” Ἐπι νεκροῖς cannot be taken as “at death” (ἐπι νεκρῶ or ἐπι νεκρόσσει), although this is the sense demanded by a testamentary interpretation of διαθήκη.<sup>26</sup> 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.<sup>27</sup>

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

<sup>23</sup> Hughes, “Hebrews IX 15ff.,” 32–33.

<sup>24</sup> Cf. Kilpatrick, “Διαθήκη,” 265; Westcott, *Hebrews*, 301.

<sup>25</sup> Lexicographers treat it as a special case of φέρω, being unable to produce any analogous citations. Cf. LSJ 1923a (def. A.IV.4, “announce”), BAGD 855b (def. 4.a.b, “establish”), L&N 667b–668a (§70.5, “show”). Note Ellingworth’s homonymy: “Exact parallels to this statement have not been found” (*Hebrews*, 464) and Aulridge’s polite understatement: “The sense of φέρεσθαι is somewhat uncertain” (*Hebrews*, 256).

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

<sup>27</sup> Aulridge admits, “The phrase referring to the testator’s death, ‘for the dead’ (ἐπι νεκροῖς), is somewhat odd” (*Hebrews*, 256). Likewise, Sweetnam 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 Heb 9:16–17 do not, in fact, correspond to those of secular Hellenistic or Roman διαθήκη. 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.<sup>28</sup>

A Hellenistic will was legally valid (βεβαίος) not when the testator died, but when it was written down, witnessed, and deposited with a notary.<sup>29</sup> Moreover, the inheritance was not always subsequent to the death of the testator, as Heb 9:17 would imply. Distribution of the estate while the testator(s) was still living (*inter vivos*) was widespread in the Hellenistic world.<sup>30</sup> Only a few instances of *donatio inter vivos* known to the readers of Hebrews would have subverted the emphatic statement of Heb 9:17b (ἐπεὶ μὴ ποτε ἰσχύει ὅτε ζῆν ὁ διαθεύμενος)<sup>31</sup> and destroyed its rhetorical effectiveness.<sup>32</sup>

<sup>28</sup> Hughes, “Hebrews IX 15ff.,” 61.

<sup>29</sup> Hughes, “Hebrews IX 15ff.,” 60.

<sup>30</sup> Hughes, “Hebrews IX 15ff.,” 62, citing Hans J. Wolf, “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 Manahem Stern; CRINT, sec. 1; Assen: Van Gorcum, 1974), 1:534–560, here 543; and Rafal Tambenschlag, *The Law of Greco-Roman Egypt in Light of the Papyri 322 BC–640 AD* (2d ed.; Warsaw: Wydawnictwo Naukowe, 1955), 207–208.

<sup>31</sup> On *μὴ ποτε* 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” (cf. niv, asv).

<sup>32</sup> 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, Athridge, publishing almost thirteen years after Hughes’ seventy-page *NewT* article, makes no reference to Hughes or his arguments (Cf. Athridge, *Hebrews*, 255–256 n. 25, 419). Ellingworth, while aware of Hughes, does not rebut him, although his comment “ὄχι ποτε 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 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.

### 2.2. *Previous Proposals for Διαθήκη as “Covenant” in Heb 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 Heb 9:16–17.<sup>33</sup> These scholars have, in my opinion, moved the discussion in the proper direction by seeking to explain Heb 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 διαθεύμενος) swore a self-maledictory oath (i.e., a curse), which was then ritually enacted by the death of animals representing the covenant-maker.<sup>34</sup> The bloody sacrifice of the animal(s) symbolized the fate of the covenant-maker should he prove false to his covenantal obligations.<sup>35</sup> The meaning of Heb 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 Heb 9:16–17*

As background for the covenantal interpretation of Heb 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, i.e., 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 (ῥῆς) and covenant (ῥῆ-ῶ), are sometimes used interchangeably, e.g., in Ezek 17:13–19:

<sup>33</sup> E.g., Westcott, *Hebrews*, 298–302; Milligan, *Hebrews*, 166–170; John Brown, *An Exposition of the Epistle of the Apostle Paul to the Hebrews* (ed. D. Smith; New York: R. Carter, 1862; repr. Edinburgh: The Banner of Truth Trust, 1972), 407–419; Hughes, “Hebrews IX 15ff.,” 27–96; Lane, *Hebrews*, 226–252; Darvall J. Pursitt, *The Cultic Motif in the Spirituality of the Book of Hebrews* (Lewiston, N.Y.: Edwin Mellen, 1993), 77–79.

<sup>34</sup> E.g., Westcott, *Hebrews*, 301; Hughes, “Hebrews IX 15ff.,” 40–42; Lane, *Hebrews*, 241–243.

<sup>35</sup> Hughes, “Hebrews IX 15ff.,” 41; Lane, *Hebrews*, 242.

And he took one of the seed royal and made a *covenant* (רָצַוָּה) with him, putting him under *oath* (רָצַוָּה). (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 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 require upon his head. (italics added, RSV)

In light of Ezek 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:<sup>36</sup>

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”).<sup>37</sup>

[*Berith* as a commitment has to be confirmed by an oath: Gen. 21:22ff.; 26:26ff.; Deut. 29:9ff. (10ff.); Josh. 9:15–20; 2 K. 11:4; Ezk. 16:8; 17:13ff.]<sup>38</sup>

(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.

<sup>36</sup> See 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), 183–184. Curse (רָצַוָּה) and covenant (רָצַוָּה) appear in semantic proximity in the following texts: Hos 10:4; Deut 29:11, 13 m<sup>r</sup> (ET 29:12, 14); Ezek 16 as shown above; and Gen 26:28. In Gen 24:1–67, רָצַוָּה and רָצַוָּה are used interchangeably; and elsewhere (Deut 4:31; 7:12; 8:18; 31:20; Josh 9:15; 2 Kgs 11:4; Ezek 16:8; Ps 89:3) it is apparent that רָצַוָּה רָצַוָּה and רָצַוָּה רָצַוָּה are functionally equivalent. For a Phoenician example of the relationship between curse and covenant, see Zlony Zevit, “A Phoenician Inscription and Biblical Covenant Theology,” *IEJ* 27 (1977): 110–118.

<sup>37</sup> Hugenberger, *Marriage as Covenant*, 4; citing James Barr, “Some Semantic Notes on the Covenant,” in *Beiträge zur Altestamentlichen Theologie: Festschrift für Walter Zimmerli zum 70. Geburtstag* (ed. Herbert Donner, Robert Hanhart, and Rudolf Smend; Göttingen: Vandenhoeck & Rupprecht, 1977), 23–28.

<sup>38</sup> Moshe Weinfield, “רָצַוָּה בְרִית,” *TDOT* 2:256. See also Hugenberger, *Marriage as Covenant*, 182–184.

A fourteenth-century BCE 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.”<sup>39</sup> Likewise, in Ezek 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 (e.g., Ezek 17:16, 19). The word “curse,” in fact, came to be functionally equivalent to “covenant” and “oath.” Hugenberger remarks, “The fact that רָצַוָּה (originally meaning “curse,” cf. Gen 24:41; Deut 29:19 m<sup>r</sup> [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.”<sup>40</sup>

(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 Lev 26 and Deut 28,<sup>41</sup> and in other biblical passages which explicitly mention the violation of the covenant being sanctioned by death<sup>42</sup> or mortal punishment.<sup>43</sup> 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.<sup>44</sup> At Qumran it is a commonplace that “the sword avenges the covenant”<sup>45</sup> resulting in death.<sup>46</sup> Dunnill’s observation is apposite:

<sup>39</sup> ANET 206b.

<sup>40</sup> 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 m<sup>r</sup>; 1 Kgs 2:23; 2 Kgs 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.

<sup>41</sup> 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.

<sup>42</sup> 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.

<sup>43</sup> E.g., to be “devoured” (Deut 31:16); “consumed” and “burned” (Isa 33:8–12; Jer 11:10, 16); “destroyed” (Hos 7:13 [cf. 6:7]).

<sup>44</sup> Cf. ANET 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.

<sup>45</sup> See CD 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.

<sup>46</sup> See CD XV, 4–5; 1Q22 1 I, 10.

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.<sup>47</sup>

(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'ihu, the King of Arpad, which includes the following enacted curse-ritual or *Drohnias*:

This spring lamb has been brought from its fold . . . to sanction the treaty between Ashurnirari and Mati'ihu. If Mati'ihu sins against (this) treaty made under oath by the gods, then, just as this spring lamb . . . will not return to its fold, alas, Mati'ihu . . . [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'ihu. . . . If Mati'ihu sins against this treaty, so may, just as the head of this spring lamb is torn off . . . the head of Mati'ihu be torn off.<sup>48</sup>

Hugenberger draws the following conclusion:

In light of this and many similar examples [e.g., *ANET* 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" [T7] a covenant as well as "cutting" a curse.<sup>49</sup>

The Bible records similar curse-rituals. Abraham's bisection of animals in the covenant of Gen 15 represented a self-curse of death for the covenant-maker—in this case, God himself. The significance

<sup>47</sup> Dunnill, *Covenant and Sacrifice*, 249. Cf. 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).

<sup>48</sup> *ANET* 532b.

<sup>49</sup> Hugenberger, *Marriage as Covenant*, 195; Quell, *TDNT* 2:108. In light of the evidence 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 puzzling (*Hebrews*, 418).

of the *Drohnias* is elucidated by Jer 34:18–20,<sup>50</sup> where the Lord addresses 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:

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 carcases shall become food for the birds of the sky and the beasts of the earth. (NRS)

Significantly, each of the biblical covenants that concern the author of Hebrews involves a *Drohnias* 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).<sup>51</sup> 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 Heb 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 Heb 9:16–17. In Heb 9:16, according to this view,

<sup>50</sup> The scholarly support for viewing Gen 15 as a self-maledictory ritual enactment in light of Jer 34 is strong, although some dispute it. See Quell, *TDNT* 2:116; Hugenberger, *Marriage as Covenant*, 195 n. 109.

<sup>51</sup> 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, esp. 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.



φέρεσθαι should be translated “bring into the picture” or “introduce.”<sup>52</sup> 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, Heb 9:16 (ὄρου γὰρ διαθήκη, θάνατον ἀνάγκη φέρεσθαι τοῦ διαθέμενου) 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 Heb 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 εἴη ὁ διαθέμενος (“while the covenant-maker lives”) is understood symbolically, i.e., 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 Heb 9:16–17 (θῆναι, “hence”). Hebrews 9:16–17 states that a covenant requires the ritual death of the covenant-maker; Heb 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 Heb 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 Heb 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, ἐπὶ πῦρρος ἰσχυεῖ ὅτε εἴη 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).<sup>53</sup> While it is true that many covenants were solemnized in this way, one cannot assert that a “representative death” was *always*

necessary.<sup>54</sup> 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 Hugenberger and others have demonstrated.<sup>55</sup>

Second, it does not seem plausible that the two phrases θάνατον ἀνάγκη φέρεσθαι τοῦ διαθέμενου, “it is necessary for the death of the covenant-maker to be borne,” and ὅτε εἴη ὁ διαθέμενος, “while the covenant-maker is alive,” are intended in a figurative sense. The author *does* appear to be speaking of the actual death of the covenant-maker.<sup>56</sup>

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 Heb 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 Heb 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 Heb 9:16–17 should be understood. In what follows I will offer my exegesis of Heb 9:16–17 phrase by phrase.

#### 2.3.1. “*Ορου γὰρ διαθήκη (Heb 9:16a)*”

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

<sup>52</sup> 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.”

<sup>53</sup> Hugenberger, *Marriage as Covenant*, 196–197, and Weinfeld, *TDOT* 2:256 and scripture references cited therein.

<sup>54</sup> Robert P. Gordon, *Hebrews* (Sheffield: Sheffield Academic Press, 2000), 103 (14): “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”; cf. also Vos, *Hebrews*, 39.

<sup>52</sup> 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 BAGD 855b (def. 4.a.β).

<sup>53</sup> Lane, *Hebrews*, 243.

In Heb 9:16, when the author says "For where there is a covenant," the reader must also incorporate from Heb 9:15 the concept *καταθέσεων γενομένων*, "transgressions having taken place." In other circumstances—for example, if there were no covenant in place, or if a different kind of relationship were in place (e.g., 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 πέπεσθαι 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, i.e., not as "where" but as "whereas" or "since."<sup>57</sup> Verse 16 could be rendered, "Since there is a covenant, it is necessary for the death of the covenant-maker to be borne." Under different circumstances, the fact that there had been transgressions (*καταβάσεις*) 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 *Dyothius* (Heb 9:18–22), i.e., which entails a curse-of-death for violations—"the death of the covenant-maker must be borne."

### 2.3.2. *θάνατον ἀνάγκη πέπεσθαι 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,"<sup>58</sup> 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 πέπεσθαι τοῦ διαθεμένου* is in order. *Φέρω* should be taken in its common meaning "to bear, to endure,"<sup>59</sup> rather than the otherwise-unattested

<sup>57</sup> Cf. BAGD 576a (def. 2b); L&N 782a (§89.35); LSI 1242a (def. II 2), "Oron is clearly causal in 1 Cor 3:3, 4 Macc 14:11, 14, 19; possibly also in 4 Macc 2:14 and 6:34. "Oron 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.

<sup>58</sup> Attridge, *Hebrews*, 256.

<sup>59</sup> BAGD 855a (def. 1c); L&N 807a (§90.64); LSI 1923a (def. A.III). In Heb

meanings most modern versions and lexicons provided here for the phrase *θάνατον πέπεσθαι*.<sup>60</sup> The phrase *διαθεμένου ἀνάγκη ἐπιθεοῦν*, "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, e.g., 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, i.e., those under the first covenant (Heb 9:15).

The concept of someone "bearing" (*φέρω*) the death of the covenant-maker in Heb 9:16, like the "bearing" (*ἀναφέρω*) the sins of many" in Heb 9:28, may be shaped by the use of *φέρω* in Isa 53 LXX, where (*ἀνὸς*)*φέρω* is consistently used in the sense "bear something for another."<sup>61</sup> Hebrews 9:28 (*τὸ πολλῶν ἀνεγκεῖν ἐμαρτίας*) is a clear reference to Isa 53:12 LXX (*καὶ ἀνὸς ἀμαρτίας πολλῶν ἀνήνεγκεν*), which suffices to show that Isa 53 is in the mind of the author in Heb 9. Thus, it may well be that the use of *φέρω* in the sense of "bear on another's behalf" in Isa 53:3–4 elucidates the use of *φέρω* in Heb 9:16.

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

The sense of Heb 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.<sup>62</sup>

13:13 *φέρω* is used in this sense (*τὸν ὀνειδισμὸν αὐτοῦ φέρωντες*). Cf. also Heb 12:20 (*ὅτι ἐφέρον γὰρ τὸ διαστρέλλομενον*); Isa 53:4 LXX (*ὄντος τὰς ἀμαρτίας ἡμῶν φήσεται*); Jer 51:22 LXX; Ezek 34:29; 36:6 LXX.

<sup>60</sup> See discussion above, esp. n. 25.

<sup>61</sup> Cf. Isa 53:3, 4, 11, 12.

<sup>62</sup> 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. As was noted above for the ancient Near Eastern "curses," although not all the curses of Lev 26 and Deut 28 are *immediate* death,

The use of the plural ἐπι νεκρούς, “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 ἐπι νεκρούς refer to the people of Israel in the collective singular and the plural form respectively. The grammatically-singular “people” (cf. Heb 9:19, λαός) is the “covenant-maker” (ὁ διαθέμενος) at Sinai, yet “dead bodies” (νεκροί, cf. Deut 28:26 lxx) would result if the curse-of-death was actualized upon them.

### 2.3.4. ἐπι μήποτε ἰσχύει ὅτε ζῆν ὁ διαθέμενος (Heb 9:17b)

The bold statement of Heb 9:17b, “since it certainly is not in force while the covenant-maker lives,”<sup>63</sup> expresses the following principle: for the covenant-maker(s) to remain alive after violating the covenant indicates that the covenant has no binding force (μήποτε 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!” (cf. Heb 12:25f). 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. ὁθεν οὐδὲ ἡ πρόωτη χάρις αἰματός ἐκκαίνισται (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 Heb 9:16–17. The sense of Heb 9:18, ὁθεν οὐδὲ ἡ πρόωτη χάρις αἰματός ἐκκαίνισται, 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.<sup>64</sup> Thus, the reader should not doubt that the Sinaitic covenant was one that entailed the curse-of-death. The flow of thought from Heb 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, cf. 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, Heb 9:15–18 appeared to be counter-evidence for this integration. In Heb 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 Heb 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 Heb 9:16–17 is the broken first covenant mentioned in Heb 9:15, one can see that the author is drawing out the *legal* implications of the *liturgical* ritual (i.e., bloody sacrifices) that established the first covenant: a broken covenant demands the death of the covenant-maker (Heb 9:16), and it is not being enforced while the offending covenant-maker lives (Heb 9:17).

Therefore, Heb 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 Heb 9:16–17, then the statement of v. 17b certainly opens up an avenue for further study: ἐπι μήποτε ἰσχύει ὅτε ζῆν ὁ διαθέμενος, “since [the covenant] is certainly

<sup>63</sup>virtually all the curses are *means* of death: plague, disease, enemy attack, wild animals, siege, famine, etc.

<sup>64</sup>For μήποτε as a strong negative (“certainly not”) see Ellingworth, *Hebrews*, 464.

<sup>65</sup>Cf. Vanhoye, *New Prisk*, 203.

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 (i.e., 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" (*μηρορε ιογυοεν*), 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 Exod 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 *nrsy*). 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 *nrsy*). Moses is referring to God's oath at the Agedah (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 *nps*)

In Exod 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 (i.e., 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,<sup>65</sup> and devotes particular attention to this divine oath at the Agedah (Gen 22:15-18) in Heb 6:13-20. He mentions the Agedah again in Heb 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 (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.<sup>66</sup>

In Jewish tradition, the Agedah took place on the Day of Atonement, and the rituals of Day of Atonement were interpreted as a yearly anamnesis of Isaac's "sacrifice."<sup>67</sup> Thus, the author's theology of the Day of Atonement, articulated throughout Heb 9:1-28, may have an integral relation to the significance he sees in the Agedah 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 Agedah as a foundational act for Israel, which is renewed in Christ. The divine oath of the Agedah is an expression of God's providential mercy, inasmuch as it prevents the

<sup>65</sup> 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.

<sup>66</sup> Dunnill, *Covenant and Sacrifice*, 173.

<sup>67</sup> See Dunnill, *Covenant and Sacrifice*, 174-175.

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 Gal 3:6–25, which is unsurprising given the numerous connections between Galatians and Hebrews already noted by other scholars.<sup>88</sup> 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 Heb 9:17b certainly merits further study.

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<sup>88</sup> E.g., Ben Witherington III, "The Influence of Galatians on Hebrews," *NTS* 37 (1991): 146–152.

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