

Georg Braulik,  
OSB/Vienna, Research fellow,  
University of Pretoria

## Ezekiel and Deuteronomy – “clan liability” in Ezekiel 18:20 and Deuteronomy 24:16 in consideration of Jeremiah 31:29-30 and 2 Kings 14:6\*

1. In Biblical Studies Ezekiel 18:20 and Deuteronomy 24:16 were regarded as *hinges representing a change in the History of Ideas* “from a primitive collectivism in ancient Israelite culture and religion to individualistic ethics in post-Exilic Judaism”.<sup>1</sup> This evolutionary image of Old Testament legal history and theology might to a large extent have been overcome today.<sup>2</sup> On the one hand, Ezekiel 18:20 deals with divine retribution, with theodicy<sup>3</sup> and with the responsibility of each generation; on the other hand, Deute-

\* Translation of a German paper, excerpts of which was delivered as Short Communication at the XVth IOSOT Congress in Oslo on August 4, 1998. It was then presented as a whole in English at the 41st Congress of the Old Testament Society of South Africa in Harrismith on September 17, 1998. The Comments have been partially reworked both in the German and English versions. In this article, I deal with the theme that I have announced in my article, “Die dekalogische Redaktion der deuteronomischen Gesetze: Ihre Abhängigkeit von Levitikus 19 am Beispiel von Deuteronomium 22,1-12; 24,10-22 und 25,13-16”, in my *Studien zum Buch Deuteronomium* (SBAB 24), Stuttgart 1997, 147-182, 176 n 96.

1. J Scharbert, *Solidarität in Segen und Fluch im Alten Testament und in seiner Umwelt 1: Väterfluch und Väterseggen* (BBB 14), Bonn 1958, 2.

2. Cf for example P Joyce, *Divine Initiative and Human Response in Ezechiel* (JSOT.S 51), Sheffield 1989; G H Matthies, *Ezechiel 18 and the Rhetoric of Moral Discourse* (SBL.DS 126) Atlanta/Georgia 1990, 113-158; J S Kaminsky, *Corporate Responsibility in the Hebrew Bible* (JSOT.S 196), Sheffield 1995, 155-178. Christoph Levin, *Die Verheißung des neuen Bundes: in ihrem theologiegeschichtlichen Zusammenhang ausgelegt* (FRLANT 137), Göttingen 1985, as result of his excursus on “Kollektive und individuelle Vergeltung” (40-46) even concludes: “Kollektive und individuelle Vergeltung im Alten Testament verhalten sich zueinander wie die beziehungsvolle Unterschiedenheit von Gottesgerechtigkeit und Strafrecht. Ein entwicklungsgeschichtliches Nacheinander von Kollektivstrafe und individueller Strafverfolgung besteht nicht. Damit ist nicht behauptet, daß das israelitische Rechtsbewußtsein im Verlauf der Geschichte keine Wandlungen erfahren hätte. Die Entwicklung, die wir beobachteten, verläuft jedoch genau umgekehrt: Seit der exilischen Zeit nimmt das Bewußtsein der überindividuellen und metaphysischen Dimension der Schuld auffallend zu” (46).

3. According to Ezekiel 18:25 and 29, the Israelites accuse Yahweh that his ways of his conduct (ךךך) is “against the rules”, “nicht sachgemäß, wir würden sagen: sie sind unlogisch. Es ist keine Logik in JHWHs Wegen, denn es ist eine Tatsache, daß die Gegenwart unter den Bedingungen antritt, die die Vergangenheit für sie bereitgestellt hat” (A. Schenker, *Saure Trauben ohne stumpfen Zähne. Bedeutung und Tragweite von Ez 18 und 33,10-20 oder ein Kapitel alttestamentlicher Moralthologie*, in: *Text und Sinn im Alten Testament. Textgeschichtliche und bibeltheologische Studien* [OBO 103], Fribourg/Göttingen 1991, 97-118, 106.) Through Ezekiel Yahweh Himself contradicts this accusation as is shown in the proverb 18:2 and its defence in verse 19, and thus develops Himself a “theodicy”. On theodicy and ethics cf also Matthies, *Ezechiel 18* (cf n 2), 208-216.

ronomy 24:16 deals with human legal practice in the event of legal cases deserving the death penalty, that is, with criminal law, and with the responsibility of the individual. However, both verses formulate *regulations on the effects of acts, which refuse transgenerational retribution or punishment.*

Ezekiel 18:20 reads as follows:

- a The person who sins, is the (only one) who will<sup>4</sup> die.
- ba The son shall not share<sup>5</sup> the guilt of his father, and the father shall not share the guilt of his son.
- bβ The righteousness of the righteous man will be on him<sup>7</sup> (alone), and the wickedness of the wicked will be on him (alone).

Deuteronomy 24:16 determines:

- aα Fathers shall not be executed<sup>8</sup> together with<sup>9</sup> sons,
- aβ and sons shall not be executed together with fathers;
- b each<sup>10</sup> shall be executed because of his own crime<sup>11</sup>.

4. A rendering in the injunctive would grammatically also be possible. However, a general statement in the future tense seems more plausible, since נשא (ב) עון – apart from the case of exclusion from the community – usually does not have the execution of a sentence by a human court as its background, but the belief in God's free execution of the punishment (cf W Zimmerli, *Die Eigenart der prophetischen Rede des Ezechiel. Ein Beitrag zum Problem an Hand von Ez. 14,1-11*, in: *Gottes Offenbarung. Gesammelte Aufsätze* [ThB 19], München 1963, 148-177, 160f). K-F Pohlmann, *Das Buch des Propheten Hesekeil (Ezechiel) Kapitel 1-19 übersetzt und erklärt* (ATD 22,1), Göttingen 1996, 258, also translates: "Die sündige Seele, sie wird sterben".

5. Wilhelm Gesenius, *Hebräisches und aramäisches Handwörterbuch über das Alte Testament* (bearbeitet von Frants Buhl), Leipzig 171921, 518, represents the expression נשא כעון, occurring only in Ezekiel 18:19, 20, with "mit daran tragen". According also to Alfred Bertholet, *Hesekeil. Mit einem Beitrag von Kurt Galling* (HAT I,13), Tübingen 1939, 64, "scheint 'mittragen' der besondere Sinn der Konstruktion אָפַן zu sein". The Zürich Bible (*Die Heilige Schrift des Alten und Neuen Testaments* Zürich: Zwingli Bibel, 1955, 835) translates: "die Schuld . . . mittragen".

6. The article here stands for the possessive pronoun – P Joüon/T Muraoka, *A Grammar of Biblical Hebrew. Part Three: Syntax. Paradigms and Indices* (Subsidia biblica 14/II), Rome 1993, par 137 f.

7. יהיה על basically stands for "come over him", "befall him" and then "rest upon him".

8. While the Masoretic text assumes execution, the Septuagint merely says: "will die" ἀποθάνουσι (16a) or (in accordance with εααστος) ἀποθάνειται (16b). The latter here translates the Hofal-form exactly the same as the Qal-form יָמוּת in Jeremiah 31:30 and Ezekiel 18:4, 20, where the theme is divine retribution. It thereby levels out an important difference. On the material difference, see M. Greenberg, *Some Postulates of Biblical Criminal Law*, in: M. Haran (ed), *Yehezkel Kaufmann Jubilee Volume. Studies in Bible and Jewish Religion Dedicated to Yehezkel Kaufmann on the Occasion of His Seventieth Birthday*, Jerusalem 1960, 5-28, 21f.

9. On this translation, cf too in Deuteronomy, 22:6 על הבנים לא תקח האם ("the [bird-]mother together with the young"); further Num 31:8 and Hos 10:14. On these and on further references, see L Köhler/W Baumgartner, *Hebräisches und aramäisches Lexikon zum Alten Testament. Lieferung III*, Leiden 1983, 782. Alfred Bertholet, *Deuteronomium* (KHC 5), Freiburg i. B. 1899, 76, remarks on Deuteronomy 24:16: "על = zu – hinzu". The Zürich Bible (*Die Heilige Schrift* [cf n 6], 214) translates: "Die Väter sollen nicht samt den Kindern, noch die Kindern samt den Vätern . . ."

10. שׂא expressly stresses the individual and is usually constructed with the plural – Joüon/Muraoka, *Grammar* (cf n 5), par 147d, whereas 2 Kings 14:6 already sites the text with the verb in the singular.

11. Apart from 15:9, the word אָפַן is confined to chapters 19-24 in Deuteronomy and it refers to ethical-

In the following presentation, the *literary-historical sequence of Ezekiel 18:20 and Deuteronomy 24:16* is of especial importance to me, since these two verses constitute a hinge for the relationship between Ezekiel and Deuteronomy in general. It is commonly presumed that there is an intertextual relationship between them, but to this day there are varied opinions on the direction of their dependence. A literary-historical course running from Deuteronomy 24:16 to Ezekiel 18:20 is generally assumed;<sup>12</sup> moreover, with regard to Deuteronomy, an old legal rule and its incorporation by the Deuteronomic legislator are distinguished from one another.<sup>13</sup> Over and against that, Ezekiel's divine regulation is only rarely taken as criterion, serving as point of orientation for Deuteronomic criminal persecution.<sup>14</sup> In the discussion of the intertextuality of Ezekiel 18:20 and Deuteronomy 24:16 two more passages have to be taken into consideration, which are related to each one of these texts regarding contents: *Jeremiah 31:29-30* and *2 Kings 14:6*.

I commence the investigation with Ezekiel 18:2-4, for this passage constitutes the starting point of the broad theological and ethical discourse, which eventually reaches its climax in 18:20. At the same time, it also displays the greater resemblance to Jeremiah 31:29-30. Subsequently I shall try to clarify the relation of the two texts to Deuteronomy 24:16. I shall only deal with 2 Kings 14:6 at the end, because in this verse Deuteronomy 24:16 is already being cited as *written down in the Book of the Law of Moses*.

## 1. THE PROVERB ON SOUR GRAPES AND THE INTERRELATION OF LIABILITY BETWEEN THE FATHERS AND THEIR SONS IN EZEKIEL 18:2-4, 20 AND JEREMIAH 31:29-30

2. *Ezekiel 18:2-4* addresses itself against a "simile-saying"<sup>15</sup> on the behaviour and fate of two generations, which was circulating among the people.<sup>16</sup>

social as well as cultic offences of individuals.  $\text{חַטָּאת}$  refers to a "(punishment of) sin(s)" when the offence expressly (also) concerns God and is punished by Him (15:9; 23:22, 23; 24:15), to a "crime" that is punished with the death sentence by a human court of law (21:22; 22:25; 24:16), or to an "offence" when none of the other is mentioned (19:15). The "Einheitsübersetzung" also represents the expression accordingly. In each case, nevertheless,  $\text{חַטָּאת}$  can only be atoned for through death. This was proved by Klaus Koch,  $\text{חַטָּאת}$  *hātā'*, in: *ThWAT II*, 857-870, 864f.

12. Cf for example C Steuernagel, *Das Deuteronomium* (HAT I/3,1), Göttingen <sup>2</sup>1923, 14; M Greenberg, *Ezekiel 1-20. A New Translation with Introduction and Commentary* (AncB 22), New York 1983, 333; M Fishbane, *Biblical Interpretation in Ancient Israel*, Oxford 1988, 337-34; M. Rose, *5. Mose. Teilband 1: 5. Mose 12-25. Einführung und Gesetze* (ZBK AT 5.1), Zürich 1994, 274f; E Nielsen, *Deuteronomium* (HAT I/6), Tübingen 1995, 227; E. Otto, *Von der Programmschrift einer Rechtsreform zum Verfassungsentwurf des Neuen Israel. Die Stellung des Deuteronomiums in der Rechtsgeschichte Israels*, in: G. Braulik (Hrsg), *Bundesdokument und Gesetz. Studien zum Deuteronomium* (HBS 4), Freiburg i. B. 1995, 93-104, 94f; Kaminsky, *Corporate Responsibility* (cf n 2), 164-168.

13. P Buis/J Leclercq, *Le Deutéronome (Sources bibliques)*, Paris 1963, 162f; A D H Mayes, *Deuteronomy* (NCBC), Grand Rapids, Michigan 1981, 326. Greenberg, *Some Postulates* (cf n 9), 30, is of the opinion that "the principle of individual culpability in precisely the form taken in Deut. 24.16 is operative in the earliest law collection of the Bible", but can nevertheless name no precedent for the co-liability of fathers with their sons who have become guilty of a crime. R Westbrook, *Studies in Biblical and Cuneiform Law* (CRB 26), Paris 1988, 94 n 24 surely maintains it only for rare cases, but nevertheless does not present any example thereof.

14. Bertholet, *Deuteronomium* (cf n 8), 76.

15. On  $\text{חַטָּאת}$  in Ezekiel cf Matthies, *Ezekiel 18* (cf n 2), 79-86.

16. The Masoretic text  $\text{עַל אֲדָמַת יִשְׂרָאֵל}$  is often so understood as if the quoted saying is applied "in

2ba *The fathers have eaten sour grapes,  
β and the teeth of their<sup>17</sup> sons were set on edge.*<sup>18</sup>

The proverb interprets the eating of sour grapes as “guilt”, and its result, namely that the teeth are set on edge, as “death”,<sup>19</sup> which is the reason why Ezekiel explicitly uses these terms below. The causal nexus seems to be just as inescapable as it seems to be absurd: “sons” endure the consequences of the fateful deeds of their “fathers”. From Ezekiel’s point of view, the saying implies the claim, “that Yahweh might haphazardly give preferential treatment to the one generation and might discriminate against the other”.<sup>20</sup> This style of speaking will be inappropriate<sup>21</sup> in future (v 3). God uses it to contrast the whole people or the individuals as new מִשָּׁל:<sup>22</sup>

4a *All living – they belong to me,  
the life of the father as well as the life of the son – they belong to me.*

As lord of all people, God equally and immediately opposes the father and the son, or the generations, and judges them for himself. Therefore, the following statement holds true contrary to the public opinion:

the land of Israel”. The lament of the people in Lamentations 5:7 would then confirm the original location of the proverb in Palestine. The collapse of Judah and Jerusalem 587/86 would arise from this as *terminus post quem* – so for example N Kilpp, *Eine frühe Interpretation der Katastrophe von 587*, in: *ZAW* 97 (1985) 210-220, 213f (with further author’s notes). The proverb however does not have to limit itself to the inhabitants of Judah, because since לָא also designates that “about which” one speaks, the proverb can also “concern” the fate of the land of Israel. William H. Brownlee, *Ezekiel 1-19* (WBC 28), Waco, Texas 1986, 277, for example, understands it in this way: “concerning the land of Israel”; likewise Kaminsky, *Corporate Responsibility* (cf n 2), 155. The Septuagint localises the proverb “among the children of Israel” – G Fohrer, *Ezekiel. Mit einem Beitrag von Kurt Galling* (HAT I,13), Tübingen: Mohr 21955, 97. He connects the saying with the exiles of the first deportation of 598 B C (loc cit 98 and 99). Johan Lust, *Ezèchiel en de zure druiven*, in: *Collationes 17* (1987) 131-138, 135 n 8, refers to the papyrus 967 with a Septuagint variant which matches the Masoretic text, and localises Ezekiel’s audience within those who remained in the land after the first deportation.

17. The article, which is absent in the parallel Jeremiah 31:28, here as in Ezekiel 18:20 refers to the possessive pronoun. Cf n 5 above.

18. In both verbal sentences the long-form prefix conjugation in the non-primary position expresses a general set of circumstances of the past, which is not to be represented in the present tense, despite its express designation as לָא and for example against W. Zimmerli, *Ezekiel. 1. Teilband Ezekiel 1-24* (BK XIII/1), NeuKingsrchen-Vluyn 1969 [21979], 391 and 392f, or Pohlmann, *Hesekiel* (cf n 4), 257 and 264 n 373 – cf W Groß, Otto Rössler und die Diskussion um das althebräische Verbalsystem, in: *BN 18* (1982) 28-78, 65f.

19. In Ezekiel 18 “death” refers to “the premature extinction of the people, Israel” (Matthies, *Ezekiel 18* [cf n 2], 74) and forms the rhetorical counterpart to “life” and “blessing” in the promised land. Chapter 18:21-23 shows that a sinful conduct does not automatically lead to death, but that the sinner receives time to repent. “Presumably the death sentence has already been passed, and experienced. Similarly, the alternatives of life and death do not pertain to avoiding judgement, but avoiding extinction as a people. Ezekiel assumes the survival of a remnant, but judges those who remain as wicked. Thus, whether Ezekiel 18 addresses those who experienced the first deportation, or those who have just returned from exile, the judgement on the behaviour remains until the choice is made to repent” (loc cit 77).

20. Pohlmann, *Hesekiel* (cf n 4), 267.

21. Greenberg, *Ezekiel* (cf n 12), 325, in an explanatory way translates “you shall have no more occasion”, since the subsequent divine rule will exclude any further wrongdoing (327).

4b *The person [life] who [that] sins – it (alone) will die.*

In God's view foreign guilt cannot burden another person and therefore it cannot be taken away. Only human life that further remains in sin will be sentenced. Thus, each one is responsible himself for the correlation between his conduct and his situation and, thereby, for his life or his death.

This rejection of the word on grapes is systematically explicated below. I shall return to this later. The discourse in any event reveals that neither guilt nor innocence is passed on from father to son. Verse 20 draws the conclusion from this. It once more reiterates the divine saying in verse 4, which links the punishment – death – to the sin and then expressly denies any liability for the guilt either of "son and father" or of "father and son":

20ba *The son shall not share the guilt of his father,  
and the father shall not share the guilt of his son.*

Thus, the *moral autonomy* runs backwards as well as forwards.<sup>23</sup> There is neither clan merit nor clan guilt: *Righteousness is only of benefit for the righteous person, and guilt only weighs heavily on the guilty person* (v 20bβγ).<sup>24</sup> Thereby, the "exegetical deduction of the theological problem from a proverb"<sup>25</sup> in Ezekiel 18 has reached its first climax and conclusion. Thus, Ezekiel does not replace collective ethics with individual ethics, but above all, defends moral freedom.<sup>26</sup> The proverb on sour grapes is associatively close to *the vine saying of 19:10-14* because of its critical manner of speaking. As *Karl-Friedrich Pohlmann* thinks, it might already have preceded the discussion of chapter 18 "as final remark said with resignation" in the context of this vine saying.<sup>27</sup> Then, in the word "fathers" we may find a resonance of the criticism "of the decision-making political groups of the late monarchy that are held responsible for the prevailing suffering".<sup>28</sup> In addition, the "story" of the vine (17:5-10) repeatedly coincides with the lament for the tragic fate of the vine as it is given in 19:10-14.<sup>29</sup> Consequently, there is also a linking of the motif of the grapes with the immediately preceding chapter. The placing of chapter 18 can perhaps be attributed to the fact "that chapter 17, like 19, reveals the judgement in a succession of kings. In contrast to that, chapter 18 wants to overcome any fatalistic misunderstanding of the sequence of judgements".<sup>30</sup> Furthermore, "the topic 'guilt, being captivated by guilt, and the possibility

22. Matthies, *Ezechiel 18* (cf n 2), 85.

23. Greenberg, *Ezechiel* (cf n 12), 327.

24. So the rendering of the "Einheitsübersetzung".

25. H Schulz, *Das Todesrecht im Alten Testament. Studien zur Rechtsform der Mot-Jumat-Sätze* (BZAW 114), Berlin 1969, 178.

26. "Ezëchiel is niet revolutionair vernieuwend omdat hij een collectieve moraal vervangt door een individuele, of een verantwoordelijkheid-over-generaties door een verantwoordelijkheid binnen dezelfde generatie. Hij is wel baanbrekend in zijn verzet tegen het determinisme en zijn verdediging van de vrijheid" (Lust, *Ezëchiel* [cf n 15], 138).

27. *Hesekiel* (cf n 4), 266.

28. Kilpp, *Interpretation* (cf n 15), 220.

29. Cf the long excursus on the relation between the two texts (and Ezekiel 31\*) in Pohlmann, *Hesekiel* (cf n 4), 242-246.

30. Zimmerli, *Ezechiel* (cf n 18), 110\*.

of changing one's ways' is also programmatically presented and treated in two quite prominent structuring passages of the book" – namely in 3:17-21, that is, in the introduction, and in 33:10-20, that is, in the introduction of and the transition to the salvation sayings.<sup>31</sup> Thus, the proverb and the problem of being captivated by guilt are well embedded in the immediate context as well as in the greater structure of the book.

3. *Jeremiah 31:29-30* belongs to a revision of Jeremiah's "booklet of consolation",<sup>32</sup> which is usually considered Deuteronomistic.<sup>33</sup> The verses are part of Yahweh's speech in 31:3, 27-34<sup>34</sup> and announce full salvation to the Babylonian exiles for the immediate future – "see, the days are coming" (30:3; 31:27, 31, 38). Materially it is rooted in the remission of sins<sup>35</sup> and culminates

31. Pohlmann, *Hesekiel* (cf n 4), 260.

32. N Lohfink, *Der junge Jeremia als Propagandist und Poet. Zum Grundstock von Jer 30-31*, in: *Studien zum Deuteronomium und zur deuteronomistischen Literatur II* (SBAB 12), Stuttgart 1991, 87-106, and id, *Die Gotteswortverschachtelung in Jer 30-31*, in: *ibid* 107-123 [30:1, 3, 27-34 form a uniform prose text which can be ascribed to the "Deuteronomistic" stratum and which "comments upon" or reinterprets the older text which it embraces, in an already advanced exilic age (115). The latter, older text mainly consists of a poem of Jeremiah dating from the later Josianic era]. The origin of the text as reconstructed by Lohfink has frequently been received (with variations).

33. Against that, Walter Groß, *Neuer Bund oder Erneuerter Bund: Jer 31,31-34 in der jüngeren Diskussion*, in: B J Hilberath/D Sattler (Hrsg), *Vorgeschmack. Ökumenische Bemühungen um die Eucharistie. Festschrift Theodor Schneider*, Mainz 1995, 89-114, 106ff, and id, *Erneuerter oder Neuer Bund? Wortlaut und Aussageintention in Jer 31,31-34*, in: F Avemarie/H Lichtenberger (Hrsg), *Bund und Tora. Zur theologischen Begriffsgeschichte in alttestamentlicher, frühjüdischer und urchristlicher Tradition* (WUNT 92), Tübingen 1996, 41-66, 58-62, pleaded for a non- and post-Deuteronomistic character of Jeremiah 31:31-34. Konrad Schmid, *Buchgestalten des Jeremiabuches. Untersuchungen zur Redaktions- und Rezeptionsgeschichte von Jer 30-33 im Kontext des Buches* (WMANT 72) NeuKingschen-Vluyn 1996, 74-80 and 189-196 has further argued against Lohfink, "Jeremia" (cf n 32) and "Gotteswortverschachtelung" (cf n 32), as well as against Levin, *Verheißung* (cf n 2) [Jeremiah 30:1-3; 31:27-30, 31-34 are "anti-Deuteronom(ist)ic" entries, stemming from the late-fourth century, into Jeremiah 30-33 (302-304, 348, 372f), the texts of which have resulted "nahezu ausschließlich durch schriftgelehrte Tätigkeit" (Schmid, *Buchgestalten* 196)]. Cf, following that, W Groß, *Der neue Bund in Jer 31 und die Suche nach übergreifenden Bundeskonzeptionen im Alten Testament*, in: *ThQ* 176 (1996) 259-272, 260 n 2; most lately id, *Zukunft für Israel. Alttestamentliche Bundeskonzepte und die aktuelle Debatte um den Neuen Bund* (SBS 176), Stuttgart 1998, 138f and 144-146. Based on his observations, Groß does reckon with the possibility or likelihood of a late introduction of Jeremiah 31:31-34 to 30:(1-)3 and 31:27-30, but nevertheless does not consider it to be compelling (Zukunft, 139).

34. According to Levin, *Verheißung* (cf n 2), 30 and 167, there is no stratigraphical connection to 30:1-3. In 31:27-34, Levin (55-60; *Übersicht der literarkritischen Analyse* 60) reckons with a growth process in four stages: (1) two early-exilic words of salvation, 31:27a, 29a<sup>2</sup>γb-30a, 31a, 34abα<sup>1</sup> as basic structure; (2) supplementation through the two promises of sowing anew and a new covenant in verses 27b-29aα, 31b-32, 33b, 34ba<sup>2</sup>βγ; (3) in "late Old Testament times", an explanation of the covenant promise through the Torah written on the heart in verse 33a; (4) verse 30b is a gloss. Schmid, *Buchgestalten* (cf n 33), 69-71, has discussed this "kleinräumig operierende Literarkritik" (194) and rejected it with solid reasons. His arguments can likewise be used against the expulsion of Jeremiah 31:29-30 by William L Holladay, *Jeremiah 2. A Commentary on the Book of the Prophet Jeremiah Chapters 26-52* (Hermeneia), Minneapolis 1989, 154 and 163, as being a passage which contradicts Jeremiah 31:33-34, which is stylistically and thematically dependent on Ezekiel 18 and which may have been inserted during the fifth century. On both assertions, cf below. On the joint model of Levin und Holladay cf Schmid, loc cit 193f and 195f.

35. On the fact that ׀, the introductory particle to the concluding sentence 31:34bβ, refers back to the whole series of previously announced deeds of Yahweh, cf Lohfink, *Gotteswortverschachtelung* (cf n 32), 113f and especially n 21; Schmid, *Buchgestalten* (cf n 33), 79.

in the “new covenant” (v 33a)<sup>36</sup> along with the renewed relationship towards God (“Covenant Formula”, v. 33b) and the general recognition of God (v 34). The new covenant results in the return to the land of the fathers (30:3), in the increase of men and livestock and in the reconstruction of society (31:27-28).<sup>37</sup> This entire change, however, is reflected in the vernacular which succinctly summarizes the effects of previous and future history – between the material consequences of the new covenant (30:3; 31:27-28) and its presuppositions on the theology of grace (31:33-34). Verse 29, being a quotation within the quotation of God’s speech, reports what the people are saying now, and verse 30 what they will be able to say then:

- 29aβγ *In those days one will no longer say,*  
 γ *“The fathers have eaten sour grapes,*  
 b *and the teeth of the sons were set on edge.”*  
 30a *Instead [one will say],*<sup>38</sup> *“Everyone will die for the sake of his own guilt.*  
 b *Whoever*<sup>39</sup> *eats sour grapes, his own teeth will be set on edge.”*

The metaphor of the unripe grapes treats the causality between the sin of the fathers and the fate of their sons ironically, and signifies the correlation of liability, which declares “the logic of history” an “absurdity”.<sup>40</sup> Unlike Ezekiel 18:2, the interconnection between the generations is here not formulated as a universally applicable aphorism, but it is focused on the experience of the present,<sup>41</sup> where the exiles have to atone for the guilt of previous

36. The only appropriate translation of the expression *ברית חדשה* with “new covenant”, which occurs only in Jeremiah 31:33 in the Old Testament, stresses the discontinuity of the new, different way of sealing of the covenant and the new, unbreakable covenant community with the broken covenant. Its interpretation as ‘renewed’ covenant nevertheless has a certain right to it, too, since it underscores its continuity on the basis of the equal although differently mediated Torah, the renewed relationship to God (“Covenant Formula”); and, of course, the partners Yahweh and Israel. On its exegetical, theological and philological aspects, cf Groß, *Erneuerter oder Neuer Bund?* (cf n 33), 45-48 and 50-53; id, *Zukunft* (cf n 33), 146-149; further Schmid, *Buchgestalten* (cf n 33), 66-69.

37. If the destruction of Jerusalem in 586 BC and the deportation to Babylon were the perceivable signal of the broken covenant, the return of the exiles and a new beginning of life in Jerusalem had to be the perceivable signal of the new covenant: “Rückkehr und Verzeihung sind die beiden zueinander gehörenden Rahmenseignungen des jeremianischen Gesamttextes vom ‘neuen Bund’.” (N Lohfink, *Der niemals gekündigte Bund. Exegetische Gedanken zum christlich-jüdischen Dialog*, Freiburg 1989, 63f.) Therefore the forgiveness of sins in Jeremiah 31:31-34 is not reserved for the last act, the sealing of the covenant (against Groß, *Zukunft* [cf n 33], 141), which will follow “erst in einem nicht präzisierten zeitlichen Abstand von der Rückführung (30,3) und der Vermehrung (31,27.28)” (against 144).

38. The fact that the conjunction *כי אם* introduces the sentence contradicting the negated sentence, and that it logically here requires the repetition of the temporal word “say” because of the condensed way of expression, was already recognised by Scharbert, *Solidarität* (cf n 1), 219f, and was lastly proven extensively by J Schoneveld, *Jeremia XXXI 29, 30*, in: *VT 13* (1963) 339-341. Kaminsky, *Corporate Responsibility* (cf n 2), 147ff, also assumes this understanding.

39. In the Septuagint an equivalent to *כל-האדם* does not occur. This *lectio brevior* might be the more original. The Masoretic text underscores the general validity of the retaliative justice.

40. Levin, *Verheißung* (cf n 2), 39.

41. Other than is the case in the parallel statement in Ezekiel 18:2b, Jeremiah 31:29ay with the suffix conjugation in non-primary position, syntactically formulates a set of circumstances which is a matter of the past in relation to the point of time which is of concern there, but out of which a still-continuing situation arises – cf Groß, *Verbalsystem* (cf n 18), 63 and n 147. Correspondingly, only Ezekiel denotes

generations. This guilt is real and is not being denied. In contrast to Lamentations 5:7 and the confession of sins in verse 16b, nothing is said in Jeremiah 31:29-30 about the recognition of one's own guilt.<sup>42</sup> However, the breaking of the covenant (v 32)<sup>43</sup> with its resumption – as is implied by the temporal indication “*after those days*” (v 33) – and the remission of sins (v 34) prove that the present generation too is to be considered guilty. This epoch is contrasted by a future era, which will be different. The change that verses 29-30 are referring to, is reflected only in the recognition of the people. However, factually it is the *result of the new covenant* that does not only change men in a far-reaching manner, but also results in the change of God's praxis itself. The future vernacular takes for granted (31:20) that God's previous promise had come true, namely, that “Jacob's sons” will continue to exist as community (30:20) or that Rachel's “sons” will return to their native land (31:17). Because the Torah is given into Israel's midst as well as inscribed into the heart of each individual, and because the new covenant will thus indefinitely remain valid,<sup>44</sup> God will

the word as מַשַּׁל (18:2,3). The expression כָּל־הָאָרֶץ, in the Masoretic text testified to only in Jeremiah 31:30b, still reinforces this generalising tendency.

42. For example against Kaminsky, *Corporate Responsibility* (cf n 2), 151.

43. “Soweit im Jer-Buch die Generationen unterschieden und die Vergehen der Vätergeneration genannt werden, dient das nicht etwa dazu, die schuldigen Väter von der nicht schuldigen gegenwärtigen Generation, die das Gericht schon hinter sich hätte, abzuheben, sondern umgekehrt dazu, die unbewiesene Schuld der gegenwärtigen Generation als Endpunkt einer langen Schuldgeschichte seit den Anfängen zu erweisen.” (Groß, *Erneuter oder Neuer Bund?* [cf n 33], 56f.) In a precise analysis of “den Bund brechen (הִפִּיל הַפֶּר)” in the book of Jeremiah, Groß proves loc cit 52-58, that “mit Bundesbruch sowie dessen Folgen die bisherige Geschichte Israels bis zum Exil einschließlich, aber auch seine Zukunftshoffnungen interpretiert werden” (53). A consequent understanding in the sense of treaty law is therefore not to be expected here. Also according to Groß, *Zukunft* (cf n 33), 140-143, the continuum of guilt applies to the paternal generation (31:32) just as to the addressees of the new covenant, the house of Israel and the house of Judah (31:31): “der *Berit*-Bruch ist ein kontinuierlicher und dynamischer Vorgang . . . aus 31,33 ist zu erschließen: Er besteht im Ungehorsam gegen die (Sinai/Horeb-)Tora YHWHs” (143).

44. Schmid, *Buchgestalten* (cf n 33), 68f; Groß, *Der neue Bund* (cf n 33), 262. The “new covenant” of Jeremiah 31:31-34 is therefore determined as “lasting covenant” in 32:37-41 (Schmid, *Buchgestalten* [cf n 33], 72 and 101-103; Groß, *Der neue Bund* [cf n 33], 269f; id, *Zukunft* [cf n 33], 151). Schmid, *Buchgestalten* (cf n 33), 68f and 72f, in connection with Groß, *Neuer Bund* (cf n 33), 106-110, constructs, in my opinion, factually incorrect alternatives to Deuteronomy, and had not proved the “kritische Aufnahme deuteronomisch-deuteronomistischer Aussagen” (73) by Jeremiah 31:31-34 from Deuteronomy 4:29-31 and 30:1-14. On this, a few examples without claims of comprehensiveness. The fundamental change does not only according to Deuteronomy 4:29 and 30:2 occur during the exile, before the return, but also according to Jeremiah 31:34bßy, the forgiveness of sins is the prerequisite for the new covenant and the complete turnabout. In Deuteronomy 30, “Covenant” is evidently consciously not mentioned – cf N Lohfink, *Der Neue Bund im Buch Deuteronomium?* (ZAR 4 [1998] 100-125, 115-118). The “circumcision of the heart” through which Israel can love its God and can fulfill the commandments, which is also promised to the coming generations (30:6), nevertheless certainly has its theological analogy in the new covenant of Jeremiah 31:33, which transports Israel into “einen qualitativ ganz neuen Status” (73). The fact that Deuteronomy 30 thereby in the end differentiates itself *essentially* from Jeremiah 31, in that “Deuteromyn 30 als Forderung in die Jetztzeit des Lesers hineinpricht, während Jer 31 den Leser auf seine – nicht in seinem Handlungsbereich liegende – Zukunft aufmerksam macht” (loc cit), for the “implicit reader” does not do justice to the differentiated relation between grace, repentance and obedience to the commandments in Deuteronomy 30:1-14 – on this, cf G Braulik, *Gesetz als Evangelium. Rechtfertigung und Begnadigung nach der deuteronomischen Tora*, in: *Studien zur Theologie des Deuteronomiums* (SBAB 2), Stuttgart 1988, 123-160, 154-160. In the different presentations of God as the



also never again interrupt the promised blessing in the land by a deportation. For this reason, according to verses 29-30 the new experiences will contrast to the present experiences.<sup>45</sup> God will transform the "collective" interrelation of guilt, which is experienced as absurd, into a likewise "collective" interrelation of mercy,<sup>46</sup> within which,<sup>47</sup> therefore, only the individual who sins, can be repaid.<sup>48</sup> The interpretation of 31:29-30 can be summarized with *William McKane* as follows:

It is the change in Yahweh's attitude to Israel and Judah which is the crucial factor, the transition from judgement arising from the sins of the fathers to rebuilding and replanting in a new society . . . It is in the context of this community (vv. 27-28) where Yahweh's theodicy is benevolent that the individual can exert his concern for righteousness effectively, while Yahweh's rule will be so installed that evil-doing is checked. Hence it is not the case that theodicy will be henceforth individualized; rather it is the new nation of Israel and Judah created by Yahweh, which makes the great change possible. The moral seriousness of the individual has now creative contribution to make to public life and the efforts of the evil-doer to sabotage the community will be frustrated and punished.<sup>49</sup>

"Recreator of the heart" (Deuteronomy 30:6; Ezekiel 36:26-27 and Jeremiah 31:33 [on this, cf though n 48]), one would fundamentally reckon with a "gemeinsamen theologischen Erwartungshorizont" (Gottfried Vanoni) in der Exilszeit", in which it is not to be excluded "daß eine bestimmte Schrift eine auch schon von anderen Schriften her bekannte Sache bewußt in eigener Terminologie ausdrücken wollte" (Lohfink, *Der Neue Bund* [cf n 44] 116f). On this, cf also the discussion of the difficulties by W McKane, *Jeremiah. Volume II: Commentary on Jeremiah XXVI-LII* (ICC), Edinburgh 1996, 821-827.

45. This set of circumstances already argues in favour of a beginning of the realisation of the new covenant already with the return from the exile – against Groß, *Zukunft* (cf n 33), 144 and 149. Cf Lohfink, *Der niemals gekündigte Bund* (cf n 37), 69.

46. It is certainly so that "die Gaben bzw Folgen des Bundes" are individualised, "aber Empfänger des neuen Bundes bleibt doch das Kollektiv (31,31c: Haus Israel und Haus Juda; 31,33b: Haus Israel). Einem auf Individualisierung des neuen Bundes hinauslaufenden Mißverständnis wehrt auch die zur Herzenstora (31,33e) parallele, aber auf die Gemeinschaft des Hauses Israel zielende Formulierung, YHWH werde seine Tora 'in ihre Mitte' geben (31,33d)" (Groß, *Der neue Bund* (cf n 33), 262 n 12). Likewise Groß, *Zukunft* (cf n 33), 151: "Die *Berit* bleibt ganz kollektiv gedacht."

47. Kaminsky, *Corporate Responsibility* (cf n 2), 154, therefore over-interprets the determination of the People when he is of the opinion that "it intentionally rejects the notion of trans-generational retribution, and the individualistic language it uses implies that it rejects all forms of punishment displacement". The text does not reflect on this. According to Groß, *Zukunft* (cf n 33), the new *berit* is "so vollständig Gnaden-*Berit*, daß sie sich gegen alle denkbaren Widerstände durchsetzt" (151). Groß thereupon further deduces: "Damit allerdings sind alle Gefährdungen menschlicher Freiheit ausgetrieben. Diese *Berit* läßt die Bedingungen menschlicher Geschichte hinter sich, die Souveränität des göttlichen Heilswillens hat sich auf Kosten des Menschen durchgesetzt" (152). This "Jenseits der Geschichte" of the new covenant (cf 152 n 57), however, no more allows itself to be harmonised with the thoroughly mundane societal Torah.

48. In the comparison of the two epochs in verses 29 and 30, "geht es also nicht darum, daß die 'kollektive' Vergeltung in Zukunft von der 'individuellen' abgelöst wird", as Siegmund Böhmer, *Heimkehr und neuer Bund. Studien zu Jeremia 30-31* (GTA 5), Göttingen 1976, 73, rightly remarks. Yet, the advancement in understanding does not lie in the fact that one dissociated "sich in der 'Heilszeit' nicht selbstgerecht von der Schuld der Väter . . . sondern . . . das Geschick, das 587 hereingebrochen ist, als gerechtes Handeln auch gegenüber der eigenen Schuld anerkennen" (against Böhmer, loc cit). While Groß, *Zukunft* (cf n 33), 139, reckons with the rejection of collective retaliation in favour of individual retaliation for 31:29-30, he regards 31:27-30 as being in tension with the collective new order of 31:31,34 with its collective forgiveness of sins.

49. *Jeremiah* (cf n 44), 816.

31:29-30 fits into its context. It contradicts the remission of sins (v 34), factually already preceding it, just as little as it does the Torah, which is inscribed into the heart of each individual (v 33) and which thoroughly reckons with the possibility of "sin"<sup>50</sup> for example in Deuteronomy 24:16. Moreover, motifs of undeserved suffering as well as of just penalization can already be detected earlier in the book of consolation Jeremiah 30-31.<sup>51</sup> On the one hand, Rachel who weeps for her children does not deserve this loss, but will be rewarded for her trouble through their return (31:15-18). On the other hand, Ephraim had to pay for his guilt, but repents after his deportation and will meet God's mercy (31:18-20). The fact that the vernacular is cited also finds its analogous counterpart in the preceding context: In 31:23 God promises that, after the change of fortune in Israel, people will again say a word of blessing over one another, as was the case once in the past, and quotes it verbatim.<sup>52</sup> Thus, like Ezekiel 18, Jeremiah 31:29-30 is also embedded in its context, although here the relations are considerably looser.

4. What, then, is the relationship between *Ezekiel 18:1-20* and *Jeremiah 31:29-30*? From the authenticity of Ezekiel 18 and from the Deuteronomic origin of Jeremiah 31:29-30 one inferred that *the direction of dependence runs from Ezekiel to Jeremiah*. This is especially true, if the proverb constitutes a reaction to the first deportation of the year 597 BC,<sup>53</sup> as this also suggests the placing of Ezekiel 18 into the chronology of the book of Ezekiel,<sup>54</sup> or even if Jeremiah 31:29-30 is regarded as being only post-Deuteronomic.<sup>55</sup>

Conversely, it cannot be inferred from an allegedly clear "distance to the situation of formation of the aphorism in Ezekiel,"<sup>56</sup> that *the proverb which is handed down in the book of Jeremiah* might have given cause to Ezekiel's "theological tract" – if it exists at all, it remains a pure and chronologically indefinite matter of discretion. The following factual argument, though, is of greater importance: Jeremiah 31:29-30 might actually not manage "the division of deed and result between two different generations, as it is mentioned by the proverb", but understands it as still being valid for the present. Only the future time of

50. For example against R P Carroll, *The Book of Jeremiah: a commentary* (OTL), London 1986, 609: "Everybody will bear the responsibility of their own actions. As a note of realism among the golden dreams of the utopian future it is quite out of place." Likewise against Holladay, *Jeremiah 2* (cf n 34), 163. Groß, *Zukunft* (cf n 33) rightly stresses that Yahweh inscribes "die Tora in das Erkenntnis- und Willenszentrum jedes einzelnen Israeliten . . . so daß jeder einzelne YHWH erkennt und aus seinem Innersten zum Tora-Gehoram angetrieben wird" (150). The text nevertheless does not speak of the fact that Yahweh intervenes "in die schöpfungsmäßige Konstitution der Israeliten" and redresses "den Konstruktionsfehler seiner Ägypten-Berit . . . indem er nicht die Bedingungen, sondern den Adressaten der *Berit* im Herzen verändert" (against 151f). Then it would have primarily been Israel, and not so much the covenant, that would actually be new. The possibility for the individual to sin, thus further remains given.

51. B A Bozak, *Life "Anew". A Literary-Theological Study of Jer. 30-31* (AnBib. 122), Roma 1991, 136-138.

52. Bozak, *Life* (cf n 51), 153.

53. Fohrer, *Ezechiel* (cf n 15), 99f; W Rudolph, *Jeremia* (HAT I,12), Tübingen 31968, 200 and n 1; further extensively and with a view to the placement of Ezekiel 18 as well as the chronology of the book, Joyce, *Divine Initiative* (cf n 2), 55f.

54. Cf Pohlmann, *Hesekiel* (cf n 4), 21; with reference to Ezekiel 18 especially also 275f.

55. So lastly Groß and Schmid, on this, cf n 33.

56. Against Kilpp, *Interpretation* (cf n 15), 214.

salvation might then be able to put an end to this situation. “Ezekiel 18, however, might then represent an advanced stage of reflection, at which the proverb” might “presently already be logically and theologically untenable”.<sup>57</sup> Thereby, however, wrong alternatives are constructed. Said trenchantly, they are: The flight into a divine remission of sins and the new creation in the future (Jer 31:33), versus the human rational jettisoning of guilt and creating a new heart in the present (Ezek 18:31). The proverb each time has a different expressive function in its context. These different functions can already be seen in the fact that Jeremiah 31 again takes up the metaphor on grapes in God’s rejection, too (verse 30b), whereas 18 only develops God’s objection and does not return to the simile-saying of the people. The proverb constitutes the horizon of an extensive prophecy of salvation in Jeremiah 31:29;<sup>58</sup> in Ezekiel 18:2 it constitutes the impetus for the interpretation of the sentence, with the help of which both prophetic texts get at the personal responsibility: ‘The person who sins – he (alone) will die’ (Ezekiel 18:4b) or ‘Everyone will die for the sake of his own guilt’ (Jeremiah 31:30a). In addition, Jeremiah 31 also denies the validity of the familiar quotation for the present at least indirectly, as the generation of the ‘sons’ is in need of the remission of sins and is, consequently, guilty.<sup>59</sup> In any event, one cannot reconstruct any literary dependence, in whatever direction, from this evidence.<sup>60</sup>

Here we can continue with the following observations. The phrase מוֹת (ב) עוֹן used by Jeremiah 31:30a, is nowhere else employed in the book of Jeremiah, but occurs relatively frequently in the book of Ezekiel: 3:18, 19; (7:16); 18:17, 18; 33:8(2x), 9.<sup>61</sup> It might have been formulated only by Ezekiel.<sup>62</sup> He speaks of “dying for the sake of one’s own guilt”

57. Kilpp, *Interpretation* (cf n 15), 214f with reference to several older authors. He however concedes that different points of view do not have to fall in different times and that the judgements could also have had their origin independent of one another (215).

58. A “prophecy of salvation” however, into which the proverb would be bound according to Levin, *Verheißung* (cf n 2), 38 n 13, and in which “überlieferungsgeschichtlich härterem Zusammenhang” the Ezekiel version in written form would be presented, is an inadmissible postulate (Schmid, *Buchgestalten* [cf n 33], 70).

59. Neither is the repentance theology represented by Ezekiel absent in Jeremiah 30-31, cf Bozak, *Life* (cf n 51), 138f. It not only concerns the return of the people to the land, but also the return to Yahweh (31:18). As even Groß, *Zukunft* (cf n 33), 145 n 44 concedes, we hear resonances, “neben der Bitte um Rückkehr diejenige um Umkehr zu YHWH”. 31:27-34 was written for this context of the book of consolation and is therefore, as Schmid, *Buchgestalten* (cf n 33), 73 rightly stresses, not to be interpreted without it – against Groß, *Erneuerter oder Neuer Bund?* (cf n 33), 59f. The concern is therefore not merely whether the aspect of repentance in the text framing his pericope was “absichtlich nicht aufgegriffen oder stillschweigend integriert und mitverstanden” by the author of 31:31-34 – against Groß, *Zukunft* (cf n 33), 145 n 44, who here sees an “unsolved problem of method” and then chooses the first alternative.

60. Neither is it to be made understandable by falling back upon Jeremiah 18:7-10, supposedly a “gedanklich-stilistischen” parallel which, like 31:29-30, was to be composed by a non-Deuteronomistic circle of tradents who were dependent on the prophet Jeremiah – against D Vieweger, *Die Arbeit des jeremianischen Schülerkreises am Jeremiabuch und deren Rezeption in der literarischen Überlieferung der Prophetenschrift Ezechiel*, in: *BZ* 32 (1988) 15-34, 21-24; id, *Die literarischen Beziehungen zwischen den Büchern Jeremia und Ezechiel (Beiträge zur Erforschung des Alten Testaments und des antiken Judentums 26)*, Frankfurt/M 1993) 76-84. Vieweger would still have to individually prove the dependence of Ezekiel on Jeremiah 18:7-10 and 31:29-30, for which he argues.

61. Ezekiel 3:20 and 18:24, where עוֹן is replaced by מוֹת are to be added to these. The literary categorisation of the references to Ezekiel or Deuteronomy, is partially discussed.

62. R Knierim, *Die Hauptbegriffe für Sünde im Alten Testament*, Gütersloh 1965, 217.

almost exclusively in those texts, which revolve around guilt and being captivated by guilt, and appear to be genuine in the book of Ezekiel.<sup>63</sup> In addition to that, in the second instance, the legal form of the clause Jeremiah 31:30a or Ezekiel 18:4b, 20a is determined by "the legal form of the clauses on capital punishment".<sup>64</sup> Whereas it is unknown to the context of Jeremiah 30-31, in Ezekiel 18:4b it excellently fits the ensuing units 5-9, 10-13, 14-20 (which might have developed from the formula for the capital clause as far as Gattung is concerned) as the generalizing résumé of capital law.<sup>65</sup> Thirdly, Jeremiah 31:29-30 links sentences or phrases which are distributed among separate passages in Ezekiel 18, namely among verses 2, 4b (= 20), as well as 17 or 18 (מִוֶת (ב) עוֹן). It seems to be more plausible – not least because of the two above-mentioned observations – that Jeremiah 31:29-30 combines different elements, than the assumption that Ezekiel 18 took it from Jeremiah and distributed it among different verses of its discourse. Thus, one can conclude with a definite degree of certainty, that *Ezekiel 18 provided the model for Jeremiah 31:29-30*.

## 2. THE LITERARY RELATIONSHIP BETWEEN EZEKIEL 18 AND DEUTERONOMY 24:16

### 2.1 Arguments for the dependence of Ezekiel on Deuteronomy 24:16 are invalid

5. *Ezekiel 18:20* constitutes the central statement of the whole chapter-long dispute, and the nodal point of its two parts.<sup>66</sup> It connects the ethical behaviour of the generations (vv 5-18) with that of the phases in one's life (vv 21-24). Below, I will restrict myself to the first part *18:1-20 being the decisive context for our question*,<sup>67</sup> which I regard as a single unit, as most recent investigations do.<sup>68</sup> The saying on the sour grapes (18:2),<sup>69</sup> which was cited at the beginning, provokes God's contradiction through Ezekiel. He counters programmatically – "The person who sins (alone) is the one who will die" (verse 4b). This principle is discussed in detail in the following discourse by applying truly pedantic legal casuistry in the behaviour and situation of three generations (vv 5-9; 10-13; 14-17). Within its setting, both

63. Cf n 31.

64. H. Schulz, *Todesrecht* (cf n 25) 172, where, however, only Ezekiel 18 is taken into consideration.

65. Op cit 168-178, especially 178.

66. On the structure and Gattung of Ezekiel 18, cf Matthies, *Ezechiel 18* (cf n 2), 33-60.

67. Other than in the exemplifications of the first part, which contrasted the relation of people of different generations to one another, different phases in the life of an individual human being are discussed in the second part. In Deuteronomy 24:16, however, it finds no equivalent.

68. Against this, Pohlmann, *Hesekiel* (cf n 4), 260f, considers Ezekiel 18:1-20 not only to be the "older textual unity" over against 18:21-31, but also to be a process of reflection, in which "mehrere Hände beteiligt gewesen sind".

69. According to Pohlmann, *Hesekiel* (cf n 4), 265, the proverb is an expression of a "fatalistic resignation" (265). From this is however by no means to be deduced that in verse 2 the connection in fate between fathers and sons was not clear and that the intention of its message therefore stands in contradiction to verse 19 (against 262f and 272). This is especially true when one only needs to see the realistic assessment behind the question of v 19, "daß sich die Schuld der Väter auswirkt, und daß es keine Möglichkeit gibt, sich diesen Auswirkungen zu entziehen . . . Aus den daraus resultierenden resignativen Gedanken versucht die Argumentation in 18,14-20 herauszuhelfen" (273). Against this, cf also Schenker, *Saure Trauben* (cf n 3), 105, according to which the *maschal* of verse 2 as it is explained in verse 19, contains "no criticism". It is only determined despairingly in 33:10, that no one can escape the past.

conceivable sequential schemes "righteous father and sinning son" (vv 5-9 and 10-13) as well as "sinning father and righteous son" (vv 10-13 and 14-17) can be acted out. With that, however, the problem of collective liability does not shift to the level of judgement on individuals independent of their contemporaries. Coping with the national catastrophe is still at issue; the individual persons also signify their generations.<sup>70</sup> Therefore, the "interlocutors" only take up the last case, that of the law-abiding son of a sinning father, because it is in accordance with their own experience of life and their self-consciousness (v 19):

- a. *And (yet) you ask, "Why does the son not share the guilt of his father?"*  
 ba. *The son, however,<sup>71</sup> has realized justice and righteousness.*

Thus, the problem is not the co-liability, but the impunity of the son of a guilty father.<sup>72</sup> This is by no means absurd.<sup>73</sup> If the descendants namely also have to atone for the guilt of their fathers, as the proverb indeed says (v 2),<sup>74</sup> then the fate of and responsibility for the exilic generation of the sons<sup>75</sup> weigh solely upon the ancestors. The situation of the sons seems to be unavoidably determined and as such, to be independent from their ethical behaviour. Ezekiel refers them to the right behaviour of the "son", which the expression "justice and righteousness" already refers back to at the beginning of the dispute in verse 5. Then, however, he contradicts the objection in principle. He emphatically repeats the legal principle of verse 4b, in verse 20a

*The person who sins (alone) is the one who will die,*

and interprets it with two axioms in verse 20b,

- ba. *The son shall not share the guilt of his father,  
 and the father shall not share the guilt of his son.*  
 bb. *The righteousness of the righteous man will be on him (alone),  
 and the wickedness of the wicked man will be on him (alone).*

1. This is stressed for example by Joyce, *Divine Initiative* (cf n 2), 46f.

71. The  $\gamma$  at the beginning of 18:19b is in any event intended antithetically, so for example Bertholet, *Hesekiel* (cf n 6), 64; Brownlee, *Ezekiel* (cf n 15), 278.

72. Schenker, *Saure Trauben* (cf n 3), 105.

73. Against Kilpp, *Interpretation* (cf n 15), 212 – cf for example Joyce, *Divine Initiative* (cf n 2), 48f.

74. Through the contrasting of fathers and sons, the proverb however is constructed in antithesis to the whole and it distributes the continuity of conduct and situation (*Tun-Ergehen-Zusammenhang*) upon both generations (Kilpp, *Interpretation* [cf n 15], 216f). Nevertheless, experiences from the family circle prove that the fathers, too, are affected by the results of their guilt.

75. According to Fishbane, *Biblical Interpretation* (cf n 12), 338, Ezekiel has sharpened the question of dispute around individual responsibility "by narrowing the scope of individual responsibility to each and every separate action". This opinion was rightly opposed by Matthies, *Ezekiel 18* (cf n 2), 142, and Kaminsky, *Corporate Responsibility* (cf n 2), 169f. Scharbert, *Solidarität* (cf n 1), 225, had earlier already stressed that for Ezekiel "geht es in erster Linie um die Rechtfertigung der Vergeltungslehre im Schicksal des Volkes". He knows about "das solidarische Verflochtensein der Generationen untereinander, aber . . . auch die Freiheit der persönlichen Entscheidung, sodaß sich keine Generation und kein Individuum auf die Sünden der Väter ausreden oder in den Verdiensten der Väter einen Freibrief sehen könnte".

The first axiom (v 20ba) replies to the proverb, the second (v 20bβ) continues the principal thesis and links up with the second part of the discussion.<sup>76</sup> Ezekiel commences in this explication (v 20ba) with the righteous son, who will not share the guilt of the father. The interlocutors were enquiring about him. The opposite case ensues though, namely that the father shares the guilt of his son. With that, Ezekiel goes beyond the consequences that have been taken into consideration so far. But he also has to present this case in order to substantiate the legal maxim "only the sinner dies" with regard to the moral autonomy of each generation.<sup>77</sup>

The legal principle and the explicit double aspect of retribution, denying the sharing of punishment, connect Ezekiel 18:20 with Deuteronomy 24:16:

- aa *Fathers shall not be executed together with sons,*
- aβ *and sons shall not be executed together with fathers;*
- b *each shall be executed because of his own crime.*

What distinguishes the two verses from each other, is the order of the legal principle and of the scheme according to which the persons involved, are mentioned. Ezekiel 18:20 starts with the legal principle "only the one who sins, will die", because it has to give the cues at the end of the verse with the expressions "justice" and "righteousness", which verse 21 then takes up. In Deuteronomy 24:16 the short formula of the punitive law appears at the end of this law with the keyword "crime" *אשמה*. It is used likewise at the end of the preceding law 24:14-15, but at the end of verse 15 it denotes "sin". With regard to the sequence son – father, the structure of Ezekiel 18:20 can be explained from the preceding dispute. To this end, the Deuteronomic law conversely mentions the fathers, who must not be executed together with their guilty sons, first. The fact that the fathers are given a place before their sons, corresponds to their social position, according to which the legal material is systematized within old oriental codices and in Deuteronom.<sup>78</sup>

Regarding the question of the direction of literary dependence, this means that neither the supposedly unexpected reciprocity one encounters in Ezekiel – "not the sons together with fathers, not the fathers together with sons" (18:20) – nor the fact that Ezekiel starts with the "sons" in this case, that is, that he inverts the sequence "fathers" – "sons", forces us to assume the priority of Deuteronomy, within which the double aspect of the co-liability and the sequence "fathers" – "sons" might be original,<sup>79</sup> for both alleged anomalies of Ezekiel can be explained from the context. Moreover, secondly, one also scarcely has to expect "the further development of Deuteronomy 24:16 in Ezekiel 18:5-20" because of the fact that Ezekiel actually does not "broadly expound . . . the principle of individual retribution", but above all refutes the proverb on the sour grapes (18:2-4).<sup>80</sup> Co-liability across the

76. Matthies, *Ezekiel* (cf n 2), 43.

77. Cf Joyce, *Divine Initiative* (cf n 2), 48f.

78. Cf H Petschow, *Zur Systematik und Gesetzestechnik im Codex Hammurabi*, in: *ZA* 57 (1965) 146-172, 170f.

79. Against Greenberg, *Ezekiel* (cf n 12), 332f.

80. Schenker, *Saure Trauben* (cf n 3), 111, is even pointedly of the opinion: "Ezekiel ersetzt hier nicht Verantwortung der Nachfahren für die Schuld ihrer Väter durch eine rein individuelle Verantwortlichkeit. Was ja den vier Exemplifizierungen der Verse 5-28 gemeinsam ist, das ist die viermal gegebene Möglichkeit, durch Änderung das Steuer herumzuwerfen, sowohl im Übergang von einer alten zu einer neuen Generation als auch in der Ablösung einer Lebenseinstellung durch ihr Gegenteil innerhalb derselben Existenz. Wo kein solcher Wandel von Gesinnung und Haltung stattfindet, gilt für Ezechiel

generations, as it is formulated by Deuteronomy for the "fathers together with sons", is introduced by Ezekiel only after the objection of his adversaries (v 19) and at the end of the first part of the speech (v 20) as an intensification and completion of personal liability.<sup>81</sup> Thus, one might not be able to maintain with Joel S Kaminsky:

Verses 1-20 are the theological construction that is spun out from the legislation found in Deut. 24:16. The influence of Deut. 24:16 is so far-reaching that it controls the shape of this oracle . . . Thus Ezekiel creates a hypothetical drama to explore the theology found in the first two clauses of Deut. 24:16.<sup>82</sup>

## 2.2 The reasons given for Ezekiel's dependence on the small social Torah, Deuteronomy 24:10-18 are not valid

6. The Deuteronomic prohibition of "clan liability"<sup>83</sup> differs from its context, where the form of address "you" is used, in its use of the impersonal-apodictic "he"-style.<sup>84</sup> An older model for 24:16, which was fitted in editorially, has been inferred from this inhomogeneous stylization. However, it could not be located within the Old Testament or old oriental law – at least according to its phrasing.<sup>85</sup> The statement of the Deuteronomic law, too, does "not" give the impression of having been "prepared in content at all" – it even appears "surprising".<sup>86</sup> Nevertheless, it is not an "inserted promise" either.<sup>87</sup> Rather, it is well integrated into the structure and the forensic veneer of the small "social Torah" Deuteronomy 24:10-18. I have described this in detail elsewhere,<sup>88</sup> and thus, I shall here be content with giving some comments.

Firstly, palindromic patterns are produced. This is done through legal themes, namely through the first and last law, on pledges (24:10-13 and 17b). The two middle laws are related to each other via the formula for the pronouncement of the verdict of guilt, both at

nach wie vor das Gesetz, daß sich Schuld weiter auswirkt, über den Täter hinaus auch auf seine Nachkommen."

81. Against Otto, *Programmschrift* (cf n 12), 94f.

82. Against *Corporate Responsibility* (cf n 2), 164. Against the thesis of Kaminsky that Deuteronomy 24:16 has probably originated from the history around Amaziah, who pardoned the sons of the murderers of his father when he killed the latter (2 Kgs 14:5-6), cf below n 107.

83. Fishbane, *Biblical Interpretation* (cf n 12), 336, translates Deuteronomy 24:16 as follows: "Fathers shall not be put to death *instead* of their sons, nor shall sons be put to death *instead* of their fathers . . ." [italics mine]; the law therefore arguments against "vicarious punishments". Blood feud, "ruler punishment" and vicarious talion are thwarted by parts of the legal clause itself – for example, against R Albertz, *Täter und Opfer im Alten Testament*, in: *ZEE* 28 (1984) 146-166, 165 n 23: "die Formulierung des individuellen Schuldprinzips Deuteronomyn 24,16 soll wohl den stellvertretenden Vollzug der Blutrache an anderen Familienmitgliedern verhindern"; Westbrook, *Studies* (cf n 13), 98f.

84. The sequence of prohibitive (24:16a) and command (verse 16b) also occurs in verses 10b and 11a as well as in verses 14 and 15a\*. However, an accompanying command is absent following the two prohibitives of verse 17.

85. Cf for example Nielsen, *Deuteronomium* (cf n 12), 227.

86. R P Merendino, *Das deuteronomische Gesetz. Eine literarkritische, gattungs- und überlieferungsgeschichtliche Untersuchung zu Deuteronomy 12-26* (BBB 31), Bonn 1969, 304.

87. Against E Gerstenberger, *Wesen und Herkunft des "apodiktischen Rechts"* (WMANT 20), Neukirchen-Vluyn 1965, 86, and Levin, *Verheißung* (cf n 2), 41.

88. On this, cf Georg Braulik, *Die deuteronomischen Gesetze und der Dekalog. Studien zum Aufbau von Deuteronomium 12-26* (SBS 145), Stuttgart 1991, 103-105.

the payment of wages to the day labourer (“no punishment for a sin will come upon you”, v 15) and the fixing of punishment within the prohibition of clan liability (“each shall be executed because of his own crime”, v 16). In addition, these relationships are intensified by legal-religious terms: צדקה (v 13) – חטא (v 15) חטא (v 16) – משפט (v 17). Secondly, the four laws are assigned to divine (vv 10-13 and 14-15) or human judgement (vv 16 and 17) in pairs. The needy (עני) or the poor (אביון) (vv 12, 14, 15) have God as their advocate. On the other hand, human administration of justice has to obey the principle of personal responsibility in dealing with capital crimes (v 16) and to carry through the principle of legal equality in the case of the “foreigner, who is an orphan” (v 17a) and is thus socially weak.

I emphasize this coherence of the social Torah because of its decisiveness for our question, for the entire Deuteronomic social Torah is verbally closely connected to Ezekiel’s disputational speech and its “arrangements of justice and injustice according to the model of a catechism”.<sup>89</sup> I will elucidate this fact later. Of course, with that I do not maintain that equal vocabulary serves the same message here as well as there.<sup>90</sup> This does not even apply to the “fathers” and “sons”, denoting the successive generations of the people in Ezekiel 18, but in Deuteronomy 24:16 refer to the individual members of the family. Furthermore, “dying” because of sin (עון), about which God is speaking through Ezekiel, after all does not mean the “execution” imposed by Deuteronomy for crime (חטא).<sup>91</sup>

7. However, the connection between Ezekiel’s catalogues and the Deuteronomic law, which I will presently deal with, is complicated by the fact that *Ezekiel 18 and Deuteronomy 24* obviously fall back upon the social regulations of Ex 22:20-26.<sup>92</sup> Michael Fishbane<sup>93</sup> regards Exodus

89. Bertholet, *Hesekiel* (cf n 6), 69. On the lists of laws, their various contents and structures, their Sitz im Leben and their intention, cf Matthies, *Ezekiel 18*, 88-105.

90. On comparing the regulations on pledging, Otto, *Programmschrift* (cf n 12), 94, might charge me with that.

91. Against Fishbane, *Biblical Interpretation* (cf n 12), 338. Apart from the contextually determined formula מרת יומת in 18:3 (Greenberg, *Ezekiel* [cf n 12], 331) which is not used in Deuteronomy, Ezekiel uses only the Qal (vv 4, 18, 20, 21, 24, 26, 28, and not the Hofal as in Deuteronomy 24:16.

92. For Ezekiel, cf especially Ezekiel 18:7, 12, 16 with Exodus 22:20, 25 and Ezekiel 18:8, 13, 17 with Exodus 22:24; on Deuteronomy, cf in the following. The literary criticism and redactional history of the social regulations of protection of Exodus 22:20-26 are reconstructed in different ways in the most recent studies on the Book of the Covenant: E. Otto, *Wandel der Rechtsbegründungen in der Gesellschaftsgeschichte des antiken Israel. Eine Rechtsgeschichte des “Bundesbuchs” Ex XX 22XXIII 13 (SB III)*, Leiden 1988, 5, 38-40, 58-60 [collective liability originates from the sacral law and is introduced in Ex 22:23 “Deuteronomy in das theologisch interpretierte soziale Schutzrecht . . . Unterdrückung wird zu einem dem sakralrechtlichen Vergehen entsprechenden Angriff gegen JHWH” – 92 n 208]; L. Schwienhorst-Schönberger, *Das Bundesbuch (Ex 20, 22-23, 33). Studien zu seiner Entstehung und Theologie* (BZAW 188), Berlin 1990, 331-359 [Ex 21:23 is “zwar nicht auf einen deutlich abgrenzbaren deuteronomistischen Sprachbereich zu beschränken, ist aber gleichwohl in der deuteronomistischen Sprache und Theologie belegt” – 357]; Y. Osumi, *Die Kompositionsgeschichte des Bundesbuchs Exodus 20, 22b-23, 33* (OBO 105), Fribourg/Göttingen 1991, 69, 170-174, 195-200 [with the plural redaction of Ex 22:20b, 21, 23, 24b we are dealing with a “vordeuteronomische Bearbeitung”, through which the Book of the Covenant could have been made into a textbook for the Jerusalem sanctuary – 211]. The label “Deuteronomistic”, as it is used by Otto and Schwienhorst-Schönberger for passages of the Book of the Covenant, however says nothing about their relation to the “Deuteronomistic” texts of Deuteronomy, belonging to various layers. The Deuteronomistic



22:20-23:12 as source for Deuteronomy 24:10-25:1. The correspondences might be as follows:

- |                     |   |                           |
|---------------------|---|---------------------------|
| (1) Exodus 22:24    | — | Deuteronomy 24:10-11      |
| (2) Exodus 22:25-26 | — | Deuteronomy 24:12-13, 17b |
| (3) Exodus 22:20-21 | — | Deuteronomy 24:14-15      |
| (4) Exodus 23:6     | — | Deuteronomy 24:17a        |
| (5) Exodus 23:11-12 | — | Deuteronomy 24:19-21      |
| (6) Exodus 23:7     | — | Deuteronomy 25:1          |

Against this, one has to stress that only the correspondences given in (2) and (4) are accurate. However, Deuteronomy 24:17 (2) rather takes up Exodus 22:21 (3). Ex 23:6 (4) lies outside the social legislation which is of interest here. Exodus 22:24 (1) is being dealt with elsewhere, namely in Deuteronomy 23:20-21. Yet, the verbal and material differences in (3), (5), and (6) are already so large that no real correspondences can be proven – at least as they are usually encountered between the Book of the Covenant and Deuteronomy. Moreover, the “reference texts” already appear in Exodus 23, thus again outside of the relevant protective regulations in Exodus 22:20-26.

Exodus 22:23 is of decisive importance.<sup>94</sup> God sanctions the protection of orphans and widows against social oppression with his wrath, which will flare up if they were to be exploited. And furthermore: “I will kill you with the sword, so that your wives will become widows and your sons will become orphans.” The threat of Yahweh’s wrath never justifies single laws of the law code in Deuteronomy, but is connected with the infringement of the first commandment of the Decalogue. However, within the other parts this threat not only causes the death of individuals, but also of all Israel. Compared with the concrete announcements of penalization in Exodus 22:23, extermination is also much more abstract in Deuteronomy. Most of the sixteen references of *בחרגן* occur in Ezekiel,<sup>95</sup> but none of them in Deuteronomy, which does not use *הרגן* with Yahweh as subject at all. Otherwise too, Yahweh is the (logic) subject only in Ezekiel 26:6 (of *הרגן* niph), except in Exodus 22:23 and in two verses in Amos (4:10; 9:1). Could Exodus 22:23 not be the point of reference for Ezekiel 18? Unlike Deuteronomy 24:16, the Book of the Covenant and Ezekiel especially speak of divine and not of human retribution.<sup>96</sup> At any rate, this has the following

character of the texts listed by Otto, *Wandel*, 5f, was extensively discussed and turned down by Norbert Lohfink, *Gibt es eine deuteronomistische Bearbeitung im Bundesbuch?*, in: *Studien zum Deuteronomium und zur deuteronomistischen Literatur III* (SBAB 20), Stuttgart 1995, 39-64. Thereupon Eckart Otto, *Die nachpriesterschriftliche Pentateuchredaktion im Buch Exodus*, in: Marc Vervenne (ed), *Studies in the Book of Exodus: Redaction – Reception – Interpretation* (BETL CXXXVI), Leuven 1996, 61-111; 70-75, tried to interpret the verses Exodus 22,2aβb, 21, 23, 24 as revisional layer of the Pentateuch Redactor. A radical redetermination of the relation between the legal corpora, however without its necessary textual analysis, was lastly presented by Jan van Seters, *Cultic Laws in the Covenant Code and their Relationship to Deuteronomy and the Holiness Code*, in: *Studies in the Book of Exodus*, 319-345. According to him, all of the Book of the Covenant would already predate the Deuteronomic Code and the Holiness Code, and it would be a composition of the Exilic Yahwist.

93. *Biblical Interpretation* (cf n 12), 340.

94. Against the Deuteronomistic character of this verse, cf Lohfink, *Deuteronomistische Bearbeitung* (cf n 92), 61-63.

95. Ezekiel 23:10; 26:6; 8; 11, 15.

96. Since Deuteronomy 24:16 did not develop from Exodus 22:23, the insertion of the prohibition of clan liability into the Deuteronomic social Torah does not allow itself to be made plausible with its background of the Book of the Covenant – against Mayes, *Deuteronomy* (cf n 13), 326.

implications for the question of literary dependence: There is an alternative text to Deuteronomy 24:16, which Ezekiel 18 could take up theologically, namely Exodus 22:23. Consequently, Deuteronomy 24:16 is not required to account for Ezekiel 18 at all.<sup>97</sup>

8. I now come to the *elements that Deuteronomy 24:10-17 have in common with Ezekiel 18:5-20* and which can be compared with one another.

(1) Pledging is made a subject of discussion of the first and last law of the social Torah, which is structured palindromically, in Deuteronomy 24:10-13 and 17, and is also dealt with in Ezekiel 18:7, 12, 16. However, the differentiations, which are made, vary as far as details are concerned. The fact that social behaviour results in "righteousness" in Deuteronomy 24:13 as well as Ezekiel 18:20 is decisive, though.

Deuteronomy 24:13	לך תהיה צדקה לפני יהוה אלהיך <i>You will have righteousness before Yahweh your God.</i>
Exodus 18:20	צדקת הצדיק עליו תהיה <i>Righteousness of the just will be on him.</i>

Within these two texts, the phrase צדקה היא is used again only in Deuteronomy 6:25 apart from the two verses mentioned.<sup>98</sup>

(2) The two framing laws of the social Torah refer to each other not only regarding subject matter, namely in the regulations on pledging, but moreover, "righteousness" (צדקה) in Deuteronomy 24:13 has its conceptual counterpart in "justice" (משפט) in verse 17. The terms צדקה and משפט are connected with each other in Ezekiel 18 as frequently as in no other Old Testament book.<sup>99</sup>

(3) Deuteronomy 24:14 speaks of עני ואביון in the subsequent law on the payment of wages to the day labourer, as Ezekiel 18:12 does. The double expression occurs in Deuteronomy only in 15:11, in the book of Ezekiel otherwise only in 22:29. Incidentally, it is absent in the Book of the Covenant.

(4) Deuteronomy 24:14 employs the verb עשק qal, which also occurs in Ezekiel 18:18, to formulate the prohibition of economic exploitation and blackmail of this "poor and miserable one".<sup>100</sup> It is also missing in the Book of the Covenant.

97. Fishbane, *Biblical Interpretation* (cf n 12), 340f, on the other hand understands Deuteronomy 24:16 as "aggadic-legal revision" of Exodus 22:23 and sees in Deuteronomy 24:16 "the apodictic rejection of vicarious punishment", which is quoted by Ezekiel or which he alludes to. The regulations associated with it, those of 23:20-21 (prohibition against charging interest), 24:6 (forbidden items of pledge) and the social regulations of 24:10-15, 17, he regards as "the matrix for the prophet's stock of examples in his aggadic discourse" (339). This forces him to make the assumption which is traditio-historically troublesome without a question, that Ezekiel has chosen the human penal law of Deuteronomy 24:16 as a model for Divine retribution, "precisely because he knew that it is itself an aggadic revision of an earlier traditum on divine capital punishment" (loc cit). In summary: "By juxtaposing Deut. 24:16 and cases from the civil law with its rejection of the proverb, he implies an exegetical analogy: all cases, theological and civil, are alike" (loc cit). This conclusion has been contradicted with good reasons by Joyce, *Divine Initiative* (cf n 2), 54, and Kaminsky, *Corporate Responsibility* (cf n 2), 169f.

98. On these two texts, cf Braulik, *Gesetz als Evangelium* (cf n 44), 134-140.

99. Ezekiel 18:5, 19, 21, 27 and 33:14, 16, 19; cf also 45:9. In Ezekiel, apart from chapter 18, צדקה only occurs in associated texts: 3:20; 14:14, 20; 33:12, 13, 14, 16, 18, 19; 45:9; likewise צדיק in 3:20 and 45:10. On this, cf Matthies, *Ezekiel 18* (cf n 2), 174f.

100. In Deuteronomy, עשק Qal Passive otherwise occurs only in Deuteronomy 28:29, 33; in the book of Ezekiel the verb is still used in 22:29(2x) with the הארץ as subject. On the abuse of power, as it is described with עשק in these references, cf Westbrook, *Studies* (cf n 13), 35-38 and 20f.

(5) Finally, the verb חָבַל, which otherwise is only used in Deuteronomy 24:6 and Ezekiel 18:16 within both books, occurs in the prohibition of distraint in Deuteronomy 24:17. The term is also used in Exodus 22:25. However, the case which is dealt with there – the coat which has been taken as pledge and which has to be returned before sunset – has its legal parallel not in Deuteronomy 24:17 (or 24:6), but in Deuteronomy 24:12-13.

Result: The question of literary dependence cannot be restricted to Ezekiel 18 and Deuteronomy 24:16, but has to be extended to the Deuteronomic small social Torah as a whole. Eckart Otto<sup>101</sup> has taken this fact into account. I summarize his arguments and will each time proceed to counter them.

(1) Ezekiel 18:6 might provide for the “fundamental abandonment of distraint”, Deuteronomy 24:10-13 only restricts the retainment of pledges. Therefore, Ezekiel 18:16 might rather develop the Deuteronomic lien as “fundamental prohibition of distraint”.

Against that, one has to say that Ezekiel 18:7 speaks of the return of the pledge, 18:12 of the refusal to return it. Both aspects presuppose distraint. Thus, the relationship with Deuteronomy 24 cannot be ascertained from Ezekiel 18:16 alone. Whether Ezekiel 18:16 really constitutes the “fundamental prohibition of distraint”, or just repeats 18:7 and 12 in an abbreviated way, has to remain open. However, Deuteronomy 24:10-13 further differentiates distraint casuistically, which is not laid down by law in Ezekiel 18:7, 12. Because of that, the Deuteronomic law on distraint also goes beyond the Book of the Covenant Exodus 22:25-26, where only the cases of distraint of the coat and the duty to return it before sunset, are dealt with. Thus, it is the Deuteronomic law on distraint that develops Ezekiel 18:7 and 12. However, perhaps one should not infer too much from that, as Ezekiel 18 does not carry out subtly differentiated casuistry in general.

(2) Ezekiel 18:12-13, 16-17 might combine the law on distraint with the prohibition on claiming interest. Because of that, Deuteronomy 23:20 might be combined with Deuteronomy 24:10-13 under the influence of Ex 22:24-26.

Against that: In Ezekiel 18:12 and 13 the “combination” of the prohibition of distraint and that of claiming interest is interrupted by a part in-between, and in 18:16 and 17 by four parts in-between. Thus, there is no actual connection, as is the case in Exodus 22:24-26. In Deuteronomy the regulations are separated from each other even further. Does this constitute an additional stage of development, which reaches beyond Ezekiel?

(3) Deuteronomy 24:10-13 might denote the pledge with עֲבוּת. In contrast to that, Deuteronomy 24:6, 17 and Ezekiel 18:12, 16 might use חָבַל / חָבַלָה, as the Book of the Covenant already does in Exodus 22:25. This may mean that the regulations on pledging in Deuteronomy 24:6 and 17, which are formulated with חָבַל, may frame the laws of Deuteronomy 24:10-13, which are phrased with עֲבוּת. Ezekiel 18 might again have abandoned this terminological differentiation in Deuteronomy 24 in favour of the “uniform employment of the terms חָבַל / חָבַלָה” in accordance with Exodus 22:25-26.

Against that: This is a *petitio principii*, as there is no justification for the idea that Ezekiel 18 again abandons the terminological development of Deuteronomy 24 according to its model, Exodus 22. Moreover, this hypothesis might even be more complicated (and therefore of secondary importance in view of scientific theory) than the assumption that Deuteronomy 24 developed the terminology used hitherto, particularly since the law on distraint is improved not only terminologically, but simultaneously, factually too. Furthermore, 24:6 and 17 are no “frame” to 24:10-13. This relationship contradicts not only the intermediate laws, but also the structure of the social Torah.

101. *Programmschrift* (cf n 12), 94f.

Thus, the discussion of the arguments, which were brought forward hitherto, reveals that Ezekiel's literary dependence on Deuteronomy 24:16 cannot be proven. At the same time, it showed the multiple intertextuality between Ezekiel 18 and Deuteronomy 24:10-18. If one does not regard its thematic and lexematic correspondences as coincidences, they can be only explained by saying that *Ezekiel 18* constituted the model for Deuteronomy 24:10-18. Then, *Jeremiah 31:30a* virtually has to be excluded as the sole and merely textual model for Deuteronomy 24:16 within this frame of reference.<sup>102</sup>

### 3. 2 KINGS 14:6 AS EXAMPLE OF OBEDIENCE COMPARED WITH DEUTERONOMY 24:16

9. King Amaziah of Judah came into power on the occasion of a coup that some high officials had carried out against his father (2 Kgs 12:21-22). As soon as he had secured his reign, he had the murderers of his father killed (2 Kgs 14:5). Unlike the events reported in 1 Kings 15:29 and 16:11, in which a usurper in each case extinguished the whole dynasty of his predecessor after his accession of the throne,<sup>103</sup> Amaziah punished only the guilty conspirators according to the Mosaic Torah. 2 Kings 14:6 reports this event:

- a *Yet he did not have the sons of the assassins put to death,*  
 ba *as it is written in the scroll of the instruction of Moses,<sup>104</sup>*  
     *that Yahweh had commanded:*  
     *Fathers are not to be put to death together with<sup>105</sup> sons*  
     *and sons are not to be put to death together with fathers;*  
 β *rather, each one shall die<sup>106</sup> because of his own crime.*

This citation from scripture is the only within the Deuteronomistic History that is quoted verbatim from the Mosaic Torah. It nevertheless merges Deuteronomy 24:16 with Jeremiah 31:30a:

102. According to Levin, *Verheißung* (cf n 2), 41, although the dependence of the apodictic legal clause Deuteronomy 24:16 on Jeremiah 31:29-30 cannot be proved conclusively, it is nevertheless probable and it is best explained "als Weiterbildung der jeremianischen Verheißung ins Grundsätzliche". Arguing for it may be the fact that the principle of individual criminal prosecution is countered in Deuteronomy 24:16: "nicht der Kollektivhaftung allgemein, sondern wie in Jer 31 der gemeinsamen Haftung von Vätern und Söhnen". However, arguing against Levin is the fact that the same applies also to Ezekiel 18 (vv 19-20).

103. Levin, *Verheißung* (cf n 2), 42f rightly stresses that "der Kontrastbezug 1 Kön 15,29; 16,11 nicht die ältere Strafrechtspraxis bekundet, sondern den Vernichtungskampf konkurrierender Dynastien, einen Kampf nicht um Schuld und Strafe, sondern jenseits des Rechts um die Macht".

104. 2 Chronicles 25:4 syntactically rearranges the lexemes in such a way – בתורה בספר משה – that the subsequent relative clause most likely refers to Moses, "whom Yahweh commanded".

105. The context here also proves that in this law על has already been understood in the sense of "with, together with" within the Deuteronomistic History.

106. The translation follows the Ketib. The Qere, in applying the Hofal יומת, already adapts itself to the quoted law but, other than Deuteronomy 24:16, it still remains in the singular. Only the parallel in 2 Chronicles 25:4 eventually reads the Hofal plural יומתו in all of the three cases. Although the Septuagint places εααστος . . . αποθαινεται – the singular, therefore – in Deuteronomy 24:16b and likewise in 2 Kings 14:6 on account of its greater grammatical sense, it also adapts itself in 2 Chronicles 25:4 to the trend of the Masoretic text of Chronicles in accordance with the plural of the citation from Deuteronomy 24:16 and connects εααστος with the plural αποθαινουσνται which, other than in the Hebrew, is a difficult form in the Greek language.

אם כי "rather", but especially the singular of the verb, which is unusual with the stressed אש in the sense of "each",<sup>107</sup> and the qal-form אכרת "shall die" are taken from the "parallel" Jeremiah 31:30a.

The formulation אספר בתורת משה, which is used to refer back to Deuteronomy, is extremely rare. It is attested to in two other cases: in Joshua 8:31 at the building of the altar on Mount Ebal, which fulfils Deuteronomy 27:5, and in Joshua 23:6; within the framework of the farewell address of Joshua. A relative clause dealing with the legislator and using צוה, follows only in Joshua 8:31, although in doing so it is not dealing with the command of God here, but with that of Moses. The expression אספר בתורת משה, that is, without any mark indicating the quotation, can also be found in Nehemiah 8:1, but here, as in 2 Kings 14:6, it is connected to a command of Yahweh.<sup>108</sup> Thus, 2 Kings 14:6 attests to Amaziah, who was well-pleasing to God; his obedience to the Law, with a remark rich in content, summarizing all available expressions, tracing back the Mosaic instruction to the highest authority and quoting "verbatim" from this scripture. This has no intra-Biblical counterpart. The unique praise might appear highly appropriate in the light of the several accounts in the Deuteronomistic History of the almost routine practice by which the kings would wipe out their rivals and those families that were hostile to them (Judg 9:5; 2 Sam 21:8-9; 1 Kgs 15:29; 16:11-12; 2 Kgs 10:11 and 17; 11:1). However, the dynasties of the Northern Kingdom, from Jeroboam to Ahab, are certainly massacred because the wrath of God is active against them.<sup>109</sup> The extent to which 2 Kings 14:6 is connected to the concept of God's wrath in the context of Deuteronomistic interpretation, and the expressive function of this passage against this background, yet has to be investigated.<sup>110</sup>

107. Joüon - Muraoka, *Grammar* (cf n 5), par 147d.

108. Against that, 1 Kings 2:3; Ezra 3:2 and 2 Chronicles 23:18 refers to אספר בתורת משה, without making reference to the scrolls themselves.

109. Norbert Lohfink, *How the Deuteronomists Wrestled with the Wrath of God* (unpublished paper read at the CBA-Meeting in Scranton, August 1998) has proved this connection between the "extermination" (אש) of dynasties and the "provocation" (כעס) of the wrath of God in 1 Kings 15:29 and 30 (House of Jerobeam); 1 Kings 16:12 and 13 (House of Baasha); 1 Kings 16:26, 33; 21:22; 22:54 and 2 Kings 10:17 (House of Ahab).

110. Kaminsky interprets Deuteronomy 24:16 against the horizon of 2 Kings 14:5-6 and is of the opinion "that Deut. 24:16 was originally intended to restrain kings from killing the families of rivals" (*Corporate Responsibility* [cf n 2], 127). The hypothesis is only with difficulty reconciled with the idea that it was the wrath of Yahweh that has repeatedly lead to the massacre of royal houses. Moreover, the fact that clan liability was not only practised by kings and against dynasties of rulers, but also by other people and in other cases of incrimination, also argues against the hypothesis. The cases mentioned above are: against the family of Achan (Josh 7:22-24), the sons of Naboth (2 Kgs 9:26), the inhabitants of Jabesh-Gilead (Judg 21:10-11) and the priests of Nob (1 Sam 22:18-19). It may moreover be that, as is proved by Moshe Weinfeld, *Jeremiah and the Spiritual Metamorphosis of Israel*, in: *ZAW* 88 (1976) 17-56, 36f and especially 37, n. 72, against Greenberg, *Some Postulates* (cf n 9), 23f, the basic distinction made by the Bible in contrast to Ancient Near Eastern legal and treaty literature, between the collective punishment by God and that practised by humans, and furthermore on human execution, between legal and illegal collective execution, may not be quite as sharp as is argued by Greenberg. The massacre of the priests of Nob and the killing of the sons of Naboth are surely marked as crimes; the collective retaliation, however, is not condemned. Deuteronomy 24:16 "refers to any sin involving capital punishment, including a sin against God, the punishment for which is inflicted by man. And indeed so the redactor of the Book of Kings, the Deuteronomist, understood it in 2 Kings 14:6. Regicide and treason against a king were looked upon as treachery against God, for which a collective punishment was previously imposed (cf the priests of Nob and the sins of Nabot)" (38f). Cf, too, P. J. Verdam, "On ne fera point mourir les enfants pour les pères" en droit biblique, in: *RIDA* 3 (1949) 393-416.

Along literary-critical lines, it can simply be assumed that Deuteronomy 24:16 and Jeremiah 31:30 already predated 2 Kings 14:6<sup>111</sup> and were recognized in their interrelation. With this, the author might have illustrated an important law of the Torah through a paradigmatic story – in this case we can abandon the question of whether he told it himself, or just commented upon it as being in agreement with the Law, through his addition. The designation as ספר תורה namely reminds of the self-designation of Deuteronomy. The authorization of the legal document by Yahweh, though, elevates the claim of the Deuteronomic Torah. The Deuteronomistic History, too, does never refer to a command of God when it speaks of the תורת משה (Josh 8:32; 1 Kgs 2:3; 2 Kgs 23:25). Therefore, one should hardly be able to assign 2 Kings 14:6 to a specific stratum of revision, for instance, to the so-called “Deuteronomistic nomist”.<sup>112</sup> Perhaps the anthological technique of the composite citation can be interpreted as a late phenomenon. In any event, these observations make it unlikely that 2 Kings 14:6 was the source of inspiration for Deuteronomy 24:16,<sup>113</sup> even not only through the note that Amaziah spared the sons of the murderers.<sup>114</sup> It is just as unlikely, though, that the redactor of the small Deuteronomic social Torah or the author of Deuteronomy 24:16, could have written the reference 2 Kings 14:6.<sup>115</sup>

#### 4. CONCLUSION

10. There is a series of thematic points of contact and striking lexemic correspondences between the dispute of Ezekiel 18 and the “social Torah” in Deuteronomy 24 which suggests an intended intertextuality. It considerably goes beyond the connection between the general principle in Jeremiah 31:30a and Deuteronomy 24:16, which in any case does not bring out anything new compared with Ezekiel 18:20. One could therefore leave Jeremiah 31:29-30 out of consideration as starting-point for Deuteronomy 24:16. When any dependence of Ezekiel upon Deuteronomy is excluded, then it follows with a certain probability, on account of the observed intertextuality, that *Ezekiel 18* conversely constituted the model for Deuteronomy 24:10-18. To some extent, this argues for the idea that, apart from the Book of the Covenant, Deuteronomy roundabout the end of the Exile

111. This however does not mean that Deuteronomy 24:16 already had to belong to Proto-Deuteronomy – against Steuernagel, *Deuteronomium* (cf n 12), 141; with reference to Steuernagel lately taken up by Nielsen, *Deuteronomium* (cf n 12), 227.

112. Against E Würthwein, *Die Bücher der Könige: 1. Kön. 17 – 2. Kön. 25* (ATD 11,2), Göttingen 1984, 371; G Hentschel, *2 Könige* (NEB 11), Würzburg 1985, 64.

113. Buis/Leclercq, *Deutéronome* (cf n 13), 162f, expressly reject that and in reaction postulate a pre-Deuteronomic law: “il serait fort peu probable qu’un acte isolé d’un roi, qui, de plus, agissait comme personne privée, suffise à introduire une règle juridique aussi générale. Elle n’est pas non plus la création du Deutéronomiste, qui l’aurait formulée autrement. C’est une loi ancienne conservée par certaines traditions et recueillie par le Deutéronome”.

114. Against G A Smith, *The Book of Deuteronomy* (The Cambridge Bible for Schools and Colleges), Cambridge 1918, 283; B Lindars, *Ezechiel and Individual Responsibility*, in: *VT 15* (1965) 452-467, 455, especially n 2.

115. Against H G May, *Individual Responsibility and Retribution*, *HUCA 32* (1961) 107-120, 117, who determines, without supplying an argument: “It was the later Deuteronomist, responsible for the insertion of Deut. 24:16, who gave the legislation an historical precedent, the sort of thing the P source often does, by adding the notation in 2 Kings 14:6 that Amaziah did not kill the children of the servants who slew his father, because of the legislation in the book of the law of Moses, quoting from Deut. 24:16.”

or shortly afterwards took over the theological doctrine and language shape of Ezekiel 18 (which also reworks the Book of the Covenant) for its small social Torah, but transformed it all into its own Deuteronomic social-juridical theology.<sup>116</sup>

For the *redaction history of Deuteronomy* this conclusion has at least a double consequence. Since Deuteronomy 24:10-18 was probably only created by the “decalogic redaction” of the Deuteronomic code, the dependence of the “social Torah” upon Ezekiel 18 in the first place is also a *terminus ante quem non* for the dating of the whole “decalogic redaction”, although more complicated hypotheses of origin cannot be excluded.<sup>117</sup>

Secondly, with *Gordon H Matthies* who has up to the present time expounded the material of the law in Ezekiel 18 most extensively,<sup>118</sup> one can ask:

If the lists in Ezekiel . . . contain both ritual and moral injunctions, does that mean that they are intended to inform concerning the ideal behavior of the pious? Could it be that Ezekiel is actually modelling his list after the decalogue with its “first table” of laws relating to God, especially the first two commandments? He would thereby be calling for public recognition of the continuity validity of the covenant to which both the people and Yahweh were committed, as well as a renewal of piety expressed in a transformation of behavior befitting one who wishes to worship that God? Loyalty to Yahweh (cultically and ethically) will bring the reward of “life”.<sup>119</sup>

If this is the case, then the “catechism-like lines”<sup>120</sup> in Ezekiel 18 as well as the related “community catechism”<sup>121</sup> of Leviticus 19<sup>122</sup> might belong to those texts in which the “decalogic redaction” with its legal systematics, and therefore essentially also the end redaction of Deuteronomy, had found a *literary model*.<sup>123</sup>

116. That which could not be brought into discussion in this context, namely that the redaction to which Deuteronomy 24:10-18 can be accounted, might already predate the “Priestly Tradition” of the so-called Holiness Code – cf Braulik, *Die dekalogische Redaktion* (cf n \*); *ibid*, *Weitere Beobachtungen zur Beziehung zwischen dem Heiligkeitgesetz und Deuteronomium 19-25*, in: *Studien zum Buch Deuteronomium* (cf n \*), 183-223 – not least of all also argues in favor of this. On the texts, cf *Matthies*, *Ezechiel 18* (cf n 2), 163-181.

117. This confirms my previous thesis, built on much sparser argumentative grounds in Braulik, *Die deuteronomischen Gesetze* (cf n 88), 116f.

118. *Ezechiel 18* (cf n 2), 86-105.

119. *Loc cit* 105.

120. Fohrer, *Ezechiel* (cf n 15), 98.

121. Erhard S Gerstenberger, *Leviticus* (ATD 6), Göttingen 1993, 240.

122. Braulik, *Die dekalogische Redaktion* (cf n \*), 174-177.

123. I thank Alfred Friedl and Hanneke de Vos for the translation and proof-reading of the English text.