

The Direction of Dependence between the Laws of the Pentateuch

The Priority of a Literary Approach*

Benjamin KILCHÖR

Evangelische Theologische Faculteit Leuven
Staatsunabhängige Theologische Hochschule Basel

Although the source analysis of the Pentateuch came out of observations concerning the book of Genesis, with Wellhausen's *Prolegomena zur Geschichte Israels*¹, the foundation of the relative chronology of sources or redaction layers, which is held by the majority of scholars down to the present day in varying models, rests on observations that he made in the laws of the Pentateuch, particularly the altar laws, the sacrifices and the feasts. More recently, however, in models of the composition of the Pentateuch, the laws are often completely absent. This is the case *e.g.* for the approach of Rendtorff² who restricted himself more or less to the stories of the Patriarchs, as well as for the continuation of his approach by Blum who considered in a first monograph³ only the stories of the Patriarchs and in a second monograph⁴ the rest of the Pentateuch narratives, excluding the laws. Another example is Levin⁵ who omitted the laws completely. Even for Whybray, in his methodological Study on the Making of the Pentateuch⁶, which is probably the most fundamental criticism of the Documentary Hypothesis, and the traditio-critical approach as well, up to now (still valid, in my opinion), the laws are of no consideration worth mentioning.

Van Seters (who broke with the relative chronology of Wellhausen) went a step further: he started with the stories of the Patriarchs⁷ and

* A preliminary version of this paper was presented at the Doctoral Colloquium of the *Evangelische Theologische Faculteit* in Leuven in September 2012. I'd like to say a big thank to all participants for their feedbacks and I am most grateful to my fellow student Kris Holroyd for improving the English of this paper.

1. J. WELLHAUSEN, *Prolegomena zur Geschichte Israels*, Berlin, Georg Reimer, 1905⁶.
2. R. RENDTORFF, *Das überlieferungsgeschichtliche Problem des Pentateuch* (BZAW, 147), Berlin – New York, de Gruyter, 1977.
3. E. BLUM, *Die Komposition der Vätergeschichte* (WMANT, 57), Neukirchen-Vluyn, Neukirchener, 1984.
4. E. BLUM, *Studien zur Komposition des Pentateuch* (BZAW, 189), Berlin, de Gruyter, 1990.
5. C. LEVIN, *Der Jahwist* (FRLANT, 157), Göttingen, Vandenhoeck & Ruprecht, 1993.
6. R.N. WHYBRAY, *The Making of the Pentateuch: A Methodological Study* (JSOTS, 53), Sheffield, Sheffield Academic Press, 1987.
7. J. VAN SETERS, *Abraham in History and Tradition*, New Haven, CT – London, Yale University Press, 1975.

continued then with the narratives around Moses⁸ until he finally surveyed the laws⁹. However, when Van Seters turned to the laws, his Pentateuch model was already achieved, and he tried to confirm it rather than to examine the relationship between the laws open and unbiased. This tendency, which loomed already in several articles that Van Seters published prior to his monograph 2003, is criticised correctly by Otto¹⁰. According to Otto, there are four pillars to build on¹¹:

1. The Covenant Code (CC) as the oldest and pre-josianic legal body.
2. The pre-dtr-dtn Deuteronomy (D) as late preexilic interpretation of the Covenant Code.
3. The Decalogue which is edited exilic-dtr.
4. The Holiness Code (H) as interpretation of all of Deuteronomy, the Covenant Code and the Decalogue in the framework of the Pentateuch redaction.

Yet, this is not the result of a survey started from the final text, but rather the starting point for Otto's research. A look into the monumental list of publications of Otto shows that he started his research with CC, went further to D and faced finally the Pentateuch redaction (and H). Therefore, his pillars are not really surprising for he didn't leave the conventional setting.

There are, of course, further studies that deal with the relationship between the laws of the Pentateuch. A study of Cholewiński¹² that compares D and H, a monograph of Levinson¹³ that deals with legal

8. J. VAN SETERS, *The Life of Moses: The Yahwist as Historian in Exodus – Numbers*, Louisville, KY, Westminster/John Knox Press, 1994.

9. J. VAN SETERS, *A Law Book for the Diaspora: Revision in the Study of the Covenant Code*, Oxford – New York, Oxford University Press, 2003.

10. "Die Umkehrung des überlieferungsgeschichtlichen Verhältnisses zwischen Bundesbuch und Deuteronomium ist Konsequenz einer Pentateuchhypothese, die bei der Genesis ansetzend sich zunächst nicht um die Rechtskorpora von Bundesbuch, Deuteronomium und Heiligkeitgesetz kümmert, um dann im nachherin, wenn die These an den erzählenden Partien des Tetrateuch entwickelt ist, das literarische Abhängigkeitsverhältnis zwischen den Rechtskorpora zu klären. Das Ergebnis ist die These, dass das Bundesbuch niemals eigenständig war, sondern von einem 'Jahwisten' verfasst wurde. Der genau umgekehrte Weg sollte eingeschlagen werden und die Rechtskorpora das Gerüst für eine Bestimmung der diachronen Relationen im übrigen Penta- und Hexateuch abgeben" (E. OTTO, *Das Deuteronomium: Politische Theologie und Rechtsreform in Juda und Assyrien* [BZAW, 284], Berlin – New York, de Gruyter, 1999, p. 306, n. 451).

11. E. OTTO, *Die nachpriesterschriftliche Pentateuchredaktion im Buch Exodus*, in M. VERVENNE (ed.), *Studies in the Book of Exodus: Redaction – Reception – Interpretation* (BETL, 126), Leuven, University Press, 1996, 61-111, pp. 64f.

12. A. CHOLEWIŃSKI, *Heiligkeitgesetz und Deuteronomium* (AnBib, 66), Rome, Biblical Institute Press, 1976.

13. B.M. LEVINSON, *Deuteronomy and the Hermeneutics of Legal Innovation*, New York – Oxford, Oxford University Press, 1997.

innovation in D, or a study of Stackert¹⁴ that compares several laws of D and H too, to name but three.

Cholewiński in particular is quoted affirmative often where scholars decide to presuppose the priority of D over H. However, Cholewiński didn't argue for the priority of D over H at all! Rather, he presupposed this relative chronology in his study and simply tried to analyse the hermeneutic program of H's revision of D. But he didn't even raise the question whether the dependency could be explained *vice versa*¹⁵. Another weakness of Cholewiński's approach is that he barely takes into account parallel texts of CC for discussing the relationship between the laws.

The same is, to a certain degree, true for both Levinson and Stackert. Although they discuss alternative models sometimes, their results are often anticipated by their approach. Levinson, for example, shows in a beautiful scale how Deut 16,1-4 combines Exod 23,15+18 with Exod 13,3-10¹⁶. Yet he abstains from including Exod 12 (according to him a priestly post-D text) into his comparison, which could be insightful, as I will show below¹⁷. Similarly, Stackert, when discussing the relationship between the slavery laws, first excludes Exod 21,2-11 and compares only Deut 15,12-18 and Lev 25,39-55¹⁸. In his examples, most of the elements in which H depends on D, D actually shares with CC. But when Stackert comes to CC (not before p. 150), he is already sure that H in all these elements depends on D, so that he doesn't consider other possibilities of dependency seriously.

Though all of the aforementioned scholars made important contributions with their observations and conclusions; nevertheless, this short critical overview raises the question: What is the alternative? Let me first

14. J. STACKERT, *Rewriting the Torah: Literary Revision in Deuteronomy and the Holiness Legislation* (FAT, 52), Tübingen, Mohr Siebeck, 2007.

15. Cf. the criticism of Cholewiński by J. JOOSTEN, *People and Land in the Holiness Code: An Exegetical Study of the Ideational Framework of the Law in Leviticus 17–26*, Leiden, Brill, 1996, p. 11: "It must be said, however, that his argumentation is rather a-prioristic. Alternative models [...] are not taken into consideration".

16. LEVINSON, *Deuteronomy and the Hermeneutics of Legal Innovation* (n. 13), p. 76.

17. In a contribution more recent Levinson surveyed the slave laws by considering all three of them. But while it is the main result not only of the present paper, but of a former article of mine too (B. KILCHÖR, *Frei aber arm? Soziale Sicherheit als Schlüssel zum Verhältnis der Sklavenfreilassungsgesetze im Pentateuch*, in VT 62 [2012] 381-397), that several laws of H may predate those of D, Levinson deals with the relationship between Deut 15,12-18 and Lev 25,39-55 in a very short and, in my eyes, insufficient way (B.M. LEVINSON, *The Manumission of Hermeneutics: The Slave Laws of the Pentateuch as a Challenge to Contemporary Pentateuchal Theory*, in A. LEMAIRE [ed.], *Congress Volume Leiden 2004* [VTSup, 109], Leiden – Boston, MA, Brill, 2006, 281-324, pp. 316-319). And, most important, he does not lay all three texts next to each other and regards them together, but rather compares in each case two of them without involving the third one.

18. STACKERT, *Rewriting the Torah* (n. 14), pp. 142-152. Cf. most recently KILCHÖR, *Frei aber arm?* (n. 17), pp. 387-393, for my criticism of Stackert's argumentation concerning the slavery laws.

note some points an alternative should contain and then demonstrate my approach by using two examples.

To begin with, an approach to examine the relationship between the laws of the Pentateuch should...

- a. ... not be based on any kind of model of the composition of the Pentateuch, which is won out of the narratives, esp. the Patriarch narratives.
- b. ... not presuppose a certain religio-historical theory and then just assign the different laws to particular religio-historical strata, for the religio-historical theories must come out of the texts (and archaeological surveys), not *vice versa*.
- c. ... start with the final text.
- d. ...exploit the full comfort of having not just two parallel traditions, but often three, sometimes even more.
- e. ...survey the literary relationship between the texts prior to the relationship of content, for comparisons of content can usually be explained in both directions.
- f. ...look for the larger context and see whether the order of one text can be explained by the order of the other text¹⁹.

What I propose, therefore, is to collect all the legal texts within the Pentateuch that share a common topic area and then to compare their literary relationship by tabularizing their vocabulary and laying the texts side by side in a synopsis²⁰. Now, I want to outline this by two examples: (1) the laws of Passover, (2) some social laws.

I. THE LAWS OF PASSOVER

The laws of Passover/Mazzot are to be found in Exod 12,1-28; 13,1-16; 23,15+18; 34,18+25; Lev 23,5-8; Deut 16,1-8²¹. What I did first was

19. Cf. E. OTTO, *Innerbiblische Exegese im Heiligkeitsgesetz Levitikus 17–26*, in H.-J. FABRY – H.-W. JÜNGLING (eds.), *Levitikus als Buch* (BBB, 119), Berlin – Bodenheim b. Mainz, Philo, 1999, 125-196, pp. 138f.: “Die bisherige Diskussion der Forschung hat sich dabei zu sehr auf den je einzelnen Rechtssatz konzentriert und den jeweiligen Kontext der Redaktion vernachlässigt. Erst wenn die Anordnung in einem Text durch die in einem anderen Text als vorgegebene erklärlich wird, kann für die Beantwortung der Frage nach der Rezeptionsrichtung Boden unter den Füßen gewonnen werden”.

20. Indeed, G. LASSERRE, *Synopse des lois du Pentateuque* (VTSup, 59), Leiden, Brill, 1994, has presented synopses for all the laws of the Pentateuch, fully aware of how fundamental the comparison of the texts on a literary level is: “Un seul coup d’œil offre déjà une appréhension riche et suggestive, un regard attentif permet de vérifier bien des hypothèses et d’en fonder de nouvelles”. It is very crucial, however, how the synopses are arranged and which texts are chosen, as I will demonstrate in the two examples below.

21. The law in Num 28–29 does not deal with the festivals itself primarily, but rather with the festival offerings. The text concerning the Passover sacrifice is in its wording very

to tabularize all of the vocabulary that at least two of the texts have in common. This led to the insight that Deut 16,1-8 shares some vocabulary just with Exod 23,15+18 (// Exod 34,18+25), some with Exod 13 and some with Exod 12. Lev 23 can be disregarded, for all it shares with Deut 16,1-8 they share with the other three texts too²².

As already mentioned, Levinson shows in a synopsis how Deut 16,1-4 combines Exod 23,15+18 and Exod 13,3-10²³. However, because he assigns Exod 12,1-20 to P and regards P as postdeuteronomistic (both of which is majority opinion²⁴), he omits Exod 12,1-20 from his synopsis²⁵. In the following table I present the synopsis of Levinson within dashed lines²⁶; furthermore, I extend it from Deut 16,1-4 to 16,1-8 and add parallels from Exod 12,1-20. I restrict it to the English translation.

| Deut 16,1-8 | Exod 23,15+18 | Exod 13,3-10 | Exod 12,1-20 |
|---|--|--|---------------------------------------|
| (1) <i>Observe the month of Abib and offer a Passover to Yahweh your God.</i> | (15) The Festival of Unleavened Bread shall you <i>observe</i> : | | |
| | Seven days shall you eat unleavened bread, as I commanded you, at the appointed time | | (11) ... <i>a Passover to Yahweh.</i> |
| For in the month of Abib Yahweh your God led you out of Egypt at night. | in the month of Abib, for in it you went out of Egypt. | (4) in the month of Abib (9) Yahweh led you out of Egypt | |
| | None shall appear before me empty-handed. | | (8) ... <i>at this night...</i> |

similar to that in Lev 23, as can be seen in the synopsis of J.A. WAGENAAR, *Origin and Transformation of the Ancient Israelite Festival Calendar* (BZAR, 6), Wiesbaden, Harrassowitz, 2005, 173-180 (cf. LASSERRE, *Synopse* [n. 20], pp. 61-62). Therefore, it is not necessary to deal with it separately. Furthermore, Num 9,1-14 is not a law but part of the narrative of the Sinai pericope. The time designation במועדו (Num 9,2+3) clearly refers to the date already given and many formulations (e.g. בן הערבים in Num 9,3+5+11, cf. Exod 12,6; עד בקר in Num 9,12, cf. Exod 12,10) are leading straight to Exod 12.

22. LASSERRE, *Synopse* (n. 20), p. 61-63, has made a decision different from mine in his selection of the parallel texts. He incorporates Lev 23,4-8 and Num 28,16-25, yet letting aside Exod 12+13, which he attaches separately (p. 63). Due to this decision the composition of Deut 16,1-8 out of Exod 23,15+18; 13,3-10 and 12,1-12 cannot be seen in his synopsis.

23. LEVINSON, *Deuteronomy and the Hermeneutics of Legal Innovation* (n. 13), p. 76.

24. Others, like I. KNOHL, *The Sanctuary of Silence: The Priestly Torah and the Holiness School*, Minneapolis, MN, Fortress, 1995, p. 52, ascribe Exod 12,1-20 to H.

25. Similarly S. GESUNDHEIT, *Three Times a Year: Studies on Festival Legislation in the Pentateuch* (FAT, 82), Tübingen, Mohr Siebeck, 2012, p. 99, takes only Exod 12,15-16 into account as a parallel text of Deut 16,1-8, omitting the other parallels, which I show in the synopsis below.

26. There are some additions of mine within the dashed lines, however.

(2) You shall slaughter the Passover to Yahweh your God, from the flock and the herd, at the place that Yahweh will choose as a dwelling for his name.

(3) *You shall no eat anything leavened with it*
Seven days shall you eat unleavened bread with it – bread of distress –,

for *in haste* you came out of the land of Egypt,

that you *remember the day of your departure* all the days of your life.

(4) *No sourdough shall be seen with you in all your territory* for seven days, *nor shall any of the flesh* which you sacrificed on the evening of the first day *remain until the morning*.

(18) *You shall not offer anything leavened with the blood of my sacrifice;*

nor shall any of the fat of my Festival offering remain until the morning.

(6) *Seven days shall you eat unleavened bread and on the seventh day – a Pilgrimage to Yahweh.*

(3) *Remember this day of your departure out of Egypt...*

(7) *No sourdough shall be seen with you in all your territory.*

(15) *Seven days shall you eat unleavened bread.*

(11) You shall eat it *in haste...* (17) Because at this day I led you out of the land of Egypt.

(5) And you are not permitted to slaughter the Passover within any of your doors that Yahweh your God is giving you, (6) but at the place that Yahweh your God will choose as a dwelling for his name, there shall you slaughter the Passover in the evening at sunset, at the time when you went out of Egypt.

(7) And you shall prepare it and eat it at the place that Yahweh your God will choose,

and you shall turn in the morning and go to your tents.

(8) Six days you shall eat unleavened bread and on the seventh day shall be a assembly for Yahweh your God; *no work shall you do.*

(15) *at the time when you went out of Egypt.*

(6) Then the whole assembly of Israel shall slaughter between the evenings.

(9) You shall not eat any of it raw or prepared in water, but roasted over the fire...

(10) And you shall let none of it remain until the morning; anything that remains until the morning you shall burn.

(16) On the first day there shall be a holy convoking and on the seventh day there shall be a holy convoking. *No work shall you do on them.*

Indeed, it seems that the basic law underlying Deut 16,1-8 is that of Exod 23,15-18²⁷. A literary comparison of Deut 16,16 and Exod 23,17 would furthermore show that the whole law of feasts in Deut 16,1-16 in its framing follows the law of feasts of Exod 23,15-17. Yet, this basic law is not only supplemented by details of Exod 13,3-10, but also of Exod 12,1-20, namely the expression *פסח לילה* (לילה), the reference to the haste (*בהפזון*) and then several elements that associate with the way and time of the preparation as well as with the celebration of the feast. All these elements Deut 16,1-8 shares only with Exod 12,1-20 and with no other Passover legislation. Conspicuously, these accordances fill just the gaps where Deut 16,1-8 does not affiliate with the other two texts. What is left as deuteronomic special material are the passages that refer to the cult centralisation of Deut 12, namely Deut 16,2.5.7aβ. Just by analysing the literary accordances of the Passover laws in the Pentateuch and by presupposing neither a religio-historical model nor a theory of the making of the Pentateuch, it is in this way possible to decide the direction of dependence by arguments that aren't reversible.

From here, it is possible to analyse the development of the content of the legislation: is there continuity or substitution? Expansion or summarization? Replacing or supplementation? All these questions of content cannot help to decide the direction of dependence anyway. It doesn't matter for the question of direction *e.g.* whether one understands the verb *בשל* (Exod 12,9 and Deut 15,7) in a general sense ("prepare") like McConville²⁸ or in a specific sense ("boil") like Levinson²⁹, for an explication is possible in both directions³⁰. Therefore, the direction of dependence should be argued by arguments of language, not of content. This is what I call, in the title of this paper, the priority of a literary approach.

The same approach leads to a second interesting conclusion concerning the Passover legislation of the Pentateuch, which can best be shown in a further synopsis:

27. Note that there are a few formulations where Exod 34,18+25 differs from Exod 23,15+18 and agrees with Deut 16 against Exod 23. If Exod 34 depends on Exod 13 and 23, as BLUM, *Studien zur Komposition des Pentateuch* (n. 4), p. 69, and more detailed in *Das sog. "Privilegrecht" in Exodus 34,11-26: Ein Fixpunkt der Komposition des Exodusbuches?*, in VERVENNE (ed.), *Studies in the Book of Exodus* (n. 11), 347-366 has shown convincingly in my eyes, then it seems that Deut 16 not only presupposes Exod 23 but also Exod 34 (cf. GESUNDHEIT, *Three Times a Year* [n. 25], pp. 147-149).

28. J.G. MCCONVILLE, *Law and Theology in Deuteronomy* (JSOTS, 33), Sheffield, Academic Press, 1984, p. 117.

29. LEVINSON, *Deuteronomy and the Hermeneutics of Legal Innovation* (n. 13), p. 73.

30. However, in a forthcoming article I argue that McConville is right (cf. B. KILCHÖR, *בשל – das Essen ist bereit*, in ZAW 125 [2013, forthcoming]).

| | | |
|---|---|---|
| <p>Lev 23,5-8</p> <p>(5) In the first month, on the fourteenth, there is a Passover for Yahweh.</p> <p>(6) And on the fifteenth of the same month is the feast of the unleavened bread for Yahweh; seven days you shall eat unleavened bread.</p> <p>(7) On the first day there shall be a holy convocation; you shall not do any work.</p> <p>(8) And you shall bring to Yahweh offerings by fire for seven days. On the seventh day there shall be a holy convocation; you shall not do any work.</p> | <p>Exod 12,1-16</p> <p>(6) ... you shall keep it until the fourteenth day of the month.</p> <p>(11) It is a Passover for Yahweh.</p> <p>(15) Seven days you shall eat unleavened bread.</p> <p>(16) On the first day there shall be a holy convocation;</p> <p>on the seventh day there shall be a holy convocation; you shall not do any work.</p> | <p>Exod 23,15</p> <p>(15) The feast of the unleavened bread you shall observe: Seven days you shall eat unleavened bread.</p> |
|---|---|---|

Against the widely held consensus, there is no evidence at all that the Passover law of H depends on that of D. Cholewiński, who carefully outlines the way in which Lev 23,5-8 deals with Deut 16,1-8³¹, failed to consider all the other Passover texts in the Pentateuch to see that Lev 23,5-8 in no way depends on Deut 16,1-8 but rather on Exod 12,1-20 and 23,15. At least, it would have been his task to explain, why about 80% of Lev 23,5-8 run parallel with texts of Exod (while the residual 20% do not coincide with Deut 16), when Lev 23,5-8 in fact deal with Deut 16,1-8.

II. SOCIAL LAWS

The starting point for this survey was the legislation concerning the resident alien, orphan and widow. The respective laws are to be found in Exod 22,20–23,9, Lev 19,9-10.33-34 and Deut 24,17-22. I realised that while Deut 24,17-18+22 are parallel to Exod 22,20-21 and 23,6+9 particularly, Deut 24,19-21 runs parallel to Lev 19,9-10. Based on this observation I widened the survey to Deut 24,8–25,4 which is treated by several scholars who advocate a Decalogue-structure of Deut 12–26³² as belonging together under the heading of the eighth/ninth (depending on how you count) word of the Decalogue (false witness)³³.

31. CHOLEWIŃSKI, *Heiligkeitsgesetz und Deuteronomium* (n. 12), pp. 182-194.

32. E.g. S.A. KAUFMAN, *The Structure of the Deuteronomic Law* (Maarav, 1/2), New Haven, CT, Yale University Press 1978/1979, p. 125; G. BRAULIK, *Die deuteronomischen Gesetze und der Dekalog: Studien zum Aufbau von Deuteronomium 12–26* (SBS, 145), Stuttgart, Katholisches Bibelwerk, 1991, pp. 102-107.

33. Further texts with a parallel topic are Lev 23,22 and Deut 27,19. Since Lev 23,22 is identical almost verbatim to Lev 19,9-10, it is not necessary to integrate it in the synopsis. The same is true for Deut 27,19, which curses the breaking of Deut 24,17 literally.

What I show in the following table is particularly related to the above-noted criterion f (“...look for the larger context and see, whether the order of one text can be explained by the order of the other text”)³⁴.

| Deut 24,8–25,4 | Exod 22,20–23,9 | Lev 19 | Others |
|---|---|---|---|
| <p>(8) Guard against the plague of leprosy that you keep on strongly doing all that the levitical priests teach you just as I have commanded them.</p> <p>(9) Remember what Yahweh your God did to Miriam on the journey of your departure from Egypt.</p> <p>(10) When you lend to <i>your fellow</i> a loan of any kind, don’t go into his house to take a pledge.</p> <p>(11) Outside you shall stay and the man to whom you lend shall bring the pledge to the outside.</p> <p>(12) And <i>if</i> the man is poor you shall not sleep with his pledge.</p> <p>(13) You shall surely <i>bring back to him</i> the pledge <i>by sunset</i> and he shall <i>sleep</i> with his <i>mantle</i> and bless you. And <i>it shall be</i> righteousness to you before Yahweh your God.</p> <p>(14) <i>You shall not oppress a day-labourer</i> poor and needy, neither your brother nor your stranger who is in your land in your doors.</p> <p>(15) In his day you shall give him his wages and the sun shall not go down upon it. For he is poor and lifted his soul unto it. And he shall not cry against you to Yahweh and it will be sin to you.</p> <p>(16) Fathers shall not be put to death for their sons, nor shall the sons be put to death for their fathers. Each one shall be put to death for his <own> sin.</p> | <p>(25) <i>If you take as pawn the mantle of your fellow,</i></p> <p><i>by sunset</i> you shall <i>bring it back to him.</i></p> <p>(26) For this is his covering for his part, his <i>mantle</i> for his skin. Wherein shall he <i>sleep</i>? And <i>it will be,</i> when he cries to me, I will hear for I am gracious.</p> | <p>(13) <i>You shall not oppress your fellow and not steal.</i></p> <p>You shall not keep over night the reward of a <i>day-labourer</i> for you until the morning.</p> <p>(15) You shall not do injustice in the <i>judgement...</i></p> | <p>Lev 13–14: Priestly Laws concerning leprosy</p> <p>Num 12: Yahweh punishes Miriam with leprosy</p> |

34. Since LASSERRE, *Synopse* (n. 20) takes CC as guidance text for his synopses of the Pentateuchal legislation, Deut 24,8–25,4 is spread over the whole book (§§104, 25, 55, 105, 24, 106, 107). By this means it is not apparent that Exod 22,20–23,9 and Lev 19 contain the textual material that explains the composition of Deut 24,8–25,4. Again, this shows how important the decisions underlying the arrangement of a synopsis are.

| | | | |
|--|---|--|--|
| <p>(17) <i>You shall not pervert the judgement of the stranger nor of the orphan.</i> And not take in pledge the garment of the <i>widow</i>. (18) Remember <i>that</i>³⁵ <i>slave you were in Egypt.</i> And <i>Yahweh your God</i> redeemed you from there. Therefore I command you to do this.</p> <p>(19) When you <i>harvest your harvest of your field</i> and forget a sheaf in the <i>field</i>, you shall <i>not</i> return to get it. <i>For the stranger</i>, for the orphan and for the widow shall it be, that <i>Yahweh, your God</i>, may bless you in all the work of your hands.</p> <p>(20) When you beat your olive tree, you shall not strip what is left. <i>For the stranger</i>, for the orphan and for the widow shall it be.</p> <p>(21) When you gather <i>your vineyard</i>, you shall not glean what is left. <i>For the stranger</i>, for the orphan and for the widow shall it be.</p> <p>(22) And remember <i>that</i> <i>slave you were in the land of Egypt.</i> Therefore I command you to do this.</p> <p>(25,1) When there is a <i>lawsuit</i> between men and they approach to the judgement and the judges, they shall <i>declare as right the righteous</i> and declare as guilty <i>the guilty</i>.</p> <p>(2) And be it that the guilty is a son of strikes, then the judge may cause him to fall and him before him, with a number according to his guilt.</p> <p>(3) Forty strikes and not more, that he doesn't continue to strike him above these. The wound would be much and your brother be despised in your eyes.</p> <p>(4) Don't muzzle an ox while he is threshing.</p> | <p>(23,6) <i>You shall not pervert the judgement of your needy in his lawsuit.</i> (22,20) <i>And the stranger</i> you shall not suppress nor squeeze. <i>Because strangers you were in the land of Egypt.</i> (21) Any <i>widow or orphan</i> do not humble.</p> <p>(23,9) <i>And the stranger</i> you shall not squeeze. And you know the heart of the stranger. <i>For strangers you were in the Land of Egypt.</i> (6) ... in his <i>lawsuit</i>. (7) A word of lie be far. And the innocent and <i>righteous</i> do not kill, for I do not <i>declare as right the guilty</i>.</p> | <p>(33) And when a <i>stranger</i> dwells among you in your land, do not suppress him. (34b) <i>Because</i> strangers <i>you were in the land of Egypt.</i> I'am <i>Yahweh your God</i>.</p> <p>(9) In your <i>harvest of the harvest</i> of the land you shall <i>not</i> finish harvesting the edges of <i>your field</i> and the gleaning of your harvest you shall not gather.</p> <p>(10) <i>Your vineyard you shall not glean</i> and fallen grapes of your vineyard not gather. For the poor and <i>for the stranger</i> you shall leave them. I am <i>Yahweh your God</i>.</p> | |
|--|---|--|--|

35. The word "that" in italics corresponds with "because" in Exod 22,20 and Lev 19,34 (hebr. כִּי).

While Deut 24,8-9 explicitly refers³⁶ the contents of Lev 13–14 and Num 12³⁷, Deut 24,10–25,4 obviously combines issues from Exod 22,20–23,9 and Lev 19 alternately. Only Deut 24,16 and 25,4 are without parallel in the whole legislation of the Pentateuch³⁸.

It seems that D correlates laws from CC with laws from H. Deut 24,10-13, for example, takes up Exod 22,25-26 which deals with the case that someone takes the mantle of a fellow in pawn. Deut 24,14-15 then turns to the day-worker (שכיר) – It is forbidden to withhold his wages – which has a parallel in Lev 19,13. Is there any thematic connection between Deut 24,10-13 and 14-15? Or for what reason does the author of D put them together? The answer can be found in Lev 19,13 where it is formulated in a parallelism that you shall not oppress your fellow (רע) and not withhold the reward of a day-worker (שכיר). D thus finds the link between רע and שכיר in Lev 19,13 and combines therefore Exod 22,25-26 with Lev 19,13.

Then, while Deut 24,14-15 follows Lev 19,13, in Lev 19,15 the topic of the משפט is addressed, what leads D back to CC, namely to Exod 23,6. Within Deut 24,17-22 again, CC and H is combined. The program against

36. The phrase כֹּאשֵׁר צִוִּיתָם is a clear back reverence to an existing commandment. D.E. SKWERES, *Die Rückverweise im Buch Deuteronomium* (AnBib, 79), Rome, Biblical Institute Press, 1979, p. 194, in his monograph on back reverences in the book of Deuteronomy, tried to avoid the conclusion that D here depends on P by suggesting that Lev 13–14 belongs to an old collection of laws, which are integrated in the Priestly Source later. In this case, Deut 24,8 would not refer Lev 13–14 directly, but an older *Vorlage*. Similarly, N. LOHINK, *Das Hauptgebot: Eine Untersuchung literarischer Einleitungsfragen zu Dtn 5–11* (AnBib, 20), Rome, Biblical Institute Press, 1963, p. 60, formulated very carefully that Deut 24,8 referred a Priestly Torah, which is not submitted in Deuteronomy itself. However, I suggest that the reason for this cautiousness of both to draw the quite obvious conclusion that Deut 24,8 refers Lev 13–14 is not so much a methodological one. Rather, it is because a respective direction does not really fit the conventional Pentateuchal theories.

37. Deut 24,8-9, of course, is seen by many scholars as late insertion. However, it is conspicuous how many scholars remain peculiarly silent on them (cf. e.g. the register in OTTO, *Das Deuteronomium* [n. 10], p. 426; VAN SETERS, *A Law Book for the Diaspora* [n. 9], p. 231). C. NIHAN, *From Priestly Torah to Pentateuch: A Study in the Composition of the Book of Leviticus* (FAT, II/25), Tübingen, Mohr Siebeck, 2007, at least mentions these two verses five times but without any hint on their relation to Lev 13–14 and Num 12. Thus, one is satisfied with the remark that Deut 24,8-9 is a very late addition (S. KREUZER, *Die Exodustradition im Deuteronomium*, in T. VEIJOLA [ed.], *Das Deuteronomium und seine Querbeziehungen* [SFEG, 62], Helsinki, Finnische Exegetische Gesellschaft; Göttingen, Vandenhoeck & Ruprecht, 1996, 81-106, p. 98: “sehr späte Ergänzung”). Yet the question remains why the text is inserted here, as Kreuzer notes: “Warum der Text hier eingefügt wurde, ist schwer zu erklären”.

38. Deut 24,16 takes up the word חטא, which is the last word in the previous verse. The closest parallel in the Pentateuchal legislation is Lev 20,20 (cf. Deut 24,16ב אִישׁ בְּחִטָּא אִישׁ וַיִּמְתְּנוּ and Lev 20,20 אִישׁ אֲשֶׁר יִשְׁכַּב אֶת דְּדֹתוֹ עִוְוֹת דְּדוֹ גֵּלְהָ חֲטָאָם יִשְׂאוּ עִרְרִים יִמְתְּנוּ). While Lev 20,20 states, that whoever has sexual intercourse with the wife of his uncle shall die without children, Deut 24,16 declares that sons shall not die for the sins of their fathers. Even more difficult is Deut 25,4. According to BRAULIK, *Die deuteronomischen Gesetze und der Dekalog* (n. 32), p. 106, it is inspired by Deut 24,20, since חבט and דוש belong to the techniques of harvest (cf. Isa 28,27-28), and by Deut 25,1-3, because דוש can mean corporal punishment too (cf. Judg 8,7).

poverty, formulated in Deut 15,4-11, which runs through the whole of Deuteronomy, avoids referring to the stranger, the orphan and the widow as עני and אביון. So does Deut 24,17-22. Therefore, Deut 24,17-18 can combine Exod 23,6, which refers to the אביון, with Exod 22,20-21. In this way, the formulation of Exod 23,6 in D no longer refers to the poor but to the stranger, the orphan and the widow. The link to insert Lev 19,9-10 here is its combination of the stranger with the עני. As the אביון of Exod 23,6 is related to the orphan and the widow, so, too, is the עני here. In this manner Deut 24,17-22 contracts Exod 22,20-21 and Lev 19,9-10 in the legislation of the stranger, orphan and widow.

Why Deut 25,1-3 follows on Deut 24,17-22 is best explained by Exod 23,6-7. While, as already mentioned, Deut 24,17 draws on Exod 23,6, Deut 25,1 is linked to Exod 23,6-7. The last word of Exod 23,6 is ריב (“lawsuit”) and Deut 25,1 starts with כי יהיה ריב (“when there is lawsuit”). Then, Deut 25,1 applies the principle of Exod 23,7: Since one shall, according to Exod 23,7, not kill the righteous (צדיק), because God does not justify (צדק) the guilty (רשע), the court shall, according to Deut 25,1, justify the righteous and condemn the guilty. Beyond that, the use of the word משפט in Deut 25,1 may draw on Lev 19,15 still.

As in the case of the Passover legislation, the arguments for the direction of dependence are not reversible. If the order D-H-CC, suggested by Van Seters, would be correct, then H would have picked just two issues out of Deut 24,8–25,4. Furthermore, while Deut 24,17-22 deals with the stranger, orphan and widow, H would not just have cancelled the orphan and widow but also have chosen just to adopt verses 19-21. Even more conspicuous, CC takes just the remaining issues that are not dealt with in Lev 19. Finally, a very late editor would have added Deut 24,8-9 for no apparent reason. The explanatory power of this model is meagre.

But it doesn't appear to be better for the mainstream model CC-D-H. Then, Deut 24,8–25,4 would have adopted three issues of CC. These topics would have been added by deuteronomistic special material. H would only have taken up issues out of Deut 24,8–25,4, which have no parallel in CC, even though H, and Lev 19 in particular, does not at all avoid the treatment of topics in parallel with CC. Furthermore, while D would have replaced the אביון of Exod 23,6 by stranger, orphan and widow, Lev 19,9-10 would have changed this back, preferring the term עני instead of אביון. Again, a very late editor would have added Deut 24,8-9 for no apparent reason.

In my opinion this supports only one conclusion, namely that Deut 24,8–25,4 not only presupposes Exod 22,20–23,9, but also the mentioned laws of Lev 19³⁹.

39. G. BRAULIK, *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 Id. (ed.), *Bundesdokument und Gesetz: Studien zum Deuteronomium* (HBS, 4), Freiburg, Herder, 1995, 1-25, pp. 12-18, comes to the same conclusion on a different way.

CONCLUSION

It is not my claim to prove with these two examples that D draws on CC and P/H in general. However, I claim that I have demonstrated in the case of these two laws that a comparison, which doesn't start from a certain theory but remains on the literary level, results in a direction of dependence that is against the *opinio communis*. This raises the question: in how many further cases may D draw not only on CC but also on P/H?

Yet the goal of this paper is more humble than to establish a new order of the relationship between the Pentateuchal law codices. It's more about method than about Pentateuchal theory. The two examples shall demonstrate in somewhat different ways my considerations outlined at the beginning. Any theory about the relationship of the different laws and legislations in the Pentateuch should start with comparisons of all available texts on a *literary* level. Any approach that starts either from theories won out of the narratives of the Pentateuch or from religio-historical development models as well as any approach that starts not by comparing *all* available texts, is less objective than the approach presented here.

My two examples are chosen with caution, for they cover different fields of my "literary" approach. The first example – the comparison of the Passover legislation – is limited to a small issue and compares all texts dealing with this issue. The second example – the social legislation – is based on this same kind of comparison of single units, but what I presented here is already the next step: the comparison of a larger sequence of several topics. Here, I surveyed the sequence of Deut 24,8–25,4. Of course in the same way other sequences could be investigated, *e.g.* Lev 19. Indeed, I did the same for Lev 19, which is quite complicated and needs more space than here available. In my opinion Lev 19 can be understood very well without presupposing D anyway.

Any legal history that appeals to a certain diachronic chronology of the different laws in the Pentateuch should at least undertake such a literary countercheck.

Strandbadstrasse 1
CH-8620 Wetzikon
Switzerland
benjamin.kilchoer@sthbasel.ch

Benjamin KILCHÖR

ABSTRACT. — Several studies that deal with the making of the Pentateuch leave the legal texts completely aside in their investigation. If the laws are considered at all, they are treated often within a framework that already presupposes their relative chronological order. In this article I make a case for an approach that I call a "literary" one. The idea is first to compare all the laws concerning a

certain topic on the level of language, not content, and to check in a synopsis whether a younger law combines older laws. This can be done not only for a single topic, but also for a sequence of topics. In two examples this approach is demonstrated: first, for a single topic, by means of the Passover legislation; secondly, for a sequence of topics, by means of some social laws. The advantage of this approach is to bring the discussion to a level more objective and to avoid arguments that are almost always reversible.