

A SECOND BEST VOYAGE: JUDAISM AND JESUS ON OATHS AND VOWS

A Second Best Voyage: Judaism and Jesus

on

Oaths and Vows

By

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ABSTRACT

The language of oaths and vows -- reserved in the Bible for extraordinary situations -- by the end of the Second Temple period had become the language of the marketplace. Carelessness in swearing oaths and taking vows regularly led to swift regret. Religious leaders within Judaism accordingly found themselves confronted with two questions: Which oath and vow-formulae were binding? And how did one gain release from an oath or vow?

A number of persons and groups within Judaism offered solutions to these problems: Philo, the Dead Sea Covenanters, the Pharisees, and Jesus, whose solution was the most radical of all. The thesis examines all these answers, sets all of them in context, and relates them to one another. It is particularly concerned to relate the answer of Jesus to those of his contemporaries.

The peculiarly Jewish bent of the question of oaths has led some to doubt the authenticity of Jesus' prohibition. That is, the discussion in Matt 5:33-37 may have entered the tradition, not from Jesus, but directly from Judaism. Here, however, it is important to identify the occasion of Jesus' prohibition, to locate it in the context of Jesus' concern for sins of the tongue, the sanctification of God's name, and the radical demands of the Kingdom of God. A series of observations relevant to historicity, including a look at such comparable pericopes as Matt 23:16-22 and Mark 7:11, vindicates the prohibition of Jesus as probably historical.

A new question arises, however, respecting the history of this tradition within the Matthean redaction. Did Matthew modify or deflect the thrust of Jesus' word? The critical probabilities favour a negative answer. Matthew at this point was probably Jesus' best interpreter.

The dissertation proposes and defends the independent integrity of the stands on oaths and vows adopted by Philo, Qumran, and the Pharisees. It is their concern for the proper use of oaths that invites comparison with Jesus. The contrast between the answer of Jesus and other Jewish responses to the issue of oaths and vows is irreducible to the time-honoured distinctions between principle and casuistry, transparency and hypocrisy. Rather, the key question bears on whether the Hebrew Bible is the definitive authority. Jesus, with his distinctive vision of the Kingdom of God and its demands, disregards some of the problems with which others contend and claims an authority that transcends that of Moses: the will of God.

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I dedicate this dissertation to my parents. My mother will probably read it no further than the abstract and this acknowledgement, so I want her to know that the integrity with which I have tried to approach my work has been by her example. I have never met a more honest or sincere person than my mother. My father has taught me the value of hard work and determination and the personal reward they bring.

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PREFACE

This dissertation contains quotations from and references to a wide range of documents. I use the Revised Standard Version of both the Hebrew Bible and the New Testament. I take English translations of classical literature, Philo of Alexandria, and Flavius Josephus from the Loeb editions. Abbreviations for journal titles and primary source references and transliteration of Greek, Hebrew, and Aramaic quotations are based upon the standards set by the Journal of Biblical Literature for its contributors. Any deviation from the above mentioned practices will be noted when it occurs.

ABBREVIATIONS

| | |
|---------------------|--|
| <u>AJT</u> | <u>American Journal of Theology</u> |
| <u>ANRW</u> | <u>Aufstieg und Niedergang der römischen Welt</u> |
| <u>ASTI</u> | <u>Annual of the Swedish Theological Institute</u> |
| <u>BASOR</u> | <u>Bulletin of the American Schools of Oriental Research</u> |
| <u>Bib</u> | <u>Biblica</u> |
| <u>BZ</u> | <u>Biblische Zeitschrift</u> |
| <u>BZNW</u> | <u>Beiheft zur ZNW</u> |
| <u>CBO</u> | <u>Catholic Biblical Quarterly</u> |
| <u>EncJud</u> | <u>Encyclopedia judaica</u> |
| <u>ETL</u> | <u>Ephemerides theologiae lovanienses</u> |
| <u>EvT</u> | <u>Evangelische Theologie</u> |
| <u>ExpTim</u> | <u>Expository Times</u> |
| <u>HTR</u> | <u>Harvard Theological Review</u> |
| <u>HeyJ</u> | <u>Heythrop Journal</u> |
| <u>HUCA</u> | <u>Hebrew Union College Annual</u> |
| <u>IDB</u> | <u>G. A. Buttrick (ed.), Interpreter's Dictionary of the Bible</u> |
| <u>Int</u> | <u>Interpretation</u> |
| <u>JBL</u> | <u>Journal of Biblical Literature</u> |
| <u>JNES</u> | <u>Journal of Near Eastern Studies</u> |
| <u>JQR</u> | <u>Jewish Quarterly Review</u> |
| <u>JSJ</u> | <u>Journal for the Study of Judaism in the Persian, Hellenistic and Roman Period</u> |
| <u>MGWJ</u> | <u>Monatsschrift für Geschichte und Wissenschaft des Judentums</u> |
| <u>NovT</u> | <u>Novum Testamentum</u> |
| <u>NTS</u> | <u>New Testament Studies</u> |
| <u>RAC</u> | <u>Reallexikon für Antike und Christentum</u> |
| <u>RB</u> | <u>Revue biblique</u> |
| <u>RevExp</u> | <u>Review and Expositor</u> |
| <u>RevQ</u> | <u>Revue de Qumran</u> |
| <u>Scrb</u> | <u>Scripture Bulletin</u> |
| <u>Scrip. Heir.</u> | <u>Scripta Hierosolymitana</u> |
| <u>SIDIC</u> | <u>Service International de Documentation Judeo-Cretienne</u> |
| <u>SJT</u> | <u>Scottish Journal of Theology</u> |
| <u>TLZ</u> | <u>Theologische Literaturzeitung</u> |
| <u>TRE</u> | <u>Theologische Realenzyklopädie</u> |
| <u>TSK</u> | <u>Theologische Studien und Kritiken</u> |
| <u>TTZ</u> | <u>Trierer theologische Zeitschrift</u> |
| <u>TWNT</u> | <u>G. Kittel and G. Friedrich (eds.), Theologisches Wörterbuch zum</u> |

| | |
|------------|---|
| <u>UF</u> | <u>Neuen Testament</u> |
| <u>ZAW</u> | <u>Ugarit-Forschungen</u> |
| | <u>Zeitschrift für die alttestamentliche Wissenschaft</u> |
| <u>ZNW</u> | <u>Zeitschrift für die neutestamentliche Wissenschaft</u> |
| <u>ZST</u> | <u>Zeitschrift für systematische Theologie</u> |

ABBREVIATIONS FOR PRIMARY SOURCES

| | |
|----------------------------|--|
| <u>BS</u> | <u>Beth She'arim Vol 2 The Greek Inscriptions</u> |
| <u>C</u> | <u>Elephantine Papyri</u> ed. A. E. Cowley |
| <u>CI</u> | <u>Codex Iustinianus</u> ed. P. Krueger |
| <u>CII</u> | <u>Corpus Inscriptionum Iudaicarum</u> ed. J. B. Frey |
| <u>CPJ</u> | <u>Corpus Papyrorum Judaicarum</u> ed. Joseph Fitzmyer |
| <u>CT</u> | <u>Theodosiani Libri XVI cum Constitutionibus Sirmonidianis et Leges Novellae ad Theodosianum Perlinentes</u> ed. T. Mommsen and P. M. Meyer |
| <u>PGM</u> | <u>Papyri graecae magicae</u> ed. K. Preisendanz |
| <u>P. Lond.</u> | <u>Greek Papyri in the British Museum London</u> ed. F. G. Kenyon and H. I. Bell |
| <u>P. Oxy.</u> | <u>Oxyrrhynchus Papyri</u> ed. B. P. Grenfell and A. S. Hunt |
| <u>P. Straß</u> | <u>Griechische Papyrus der Kaiserlichen Universitäts und Landesbibliothek zu Strassburg</u> ed. F. Presigke |
| Qumran | |
| CD | <u>Damascus Document</u> |
| 1QS | <u>Community Rule</u> |
| 11Q Temple | <u>Temple Scroll</u> |
| 4Q Beat | <u>4Q Beatitudes</u> |
| 1QH | <u>Hôdāyôt</u> |
| Philo of Alexandria | |
| <u>Decal.</u> | <u>De Decalogo</u> |
| <u>Deus</u> | <u>Quod Deus ist immutabilis</u> |
| <u>Fug.</u> | <u>De fuga et inventione</u> |
| <u>Hypoth.</u> | <u>Hypothetica</u> |
| <u>Ios.</u> | <u>De Iosepho</u> |
| <u>Leg. 1-3</u> | <u>Legum allegoria I, II, III</u> |
| <u>Mos. 1-2</u> | <u>De vita Moysis I, II</u> |
| <u>Mut.</u> | <u>De mutatione naminum</u> |
| <u>Plant.</u> | <u>De plantatione</u> |
| <u>Post.</u> | <u>De posteritate Caini</u> |
| <u>Praem.</u> | <u>De praemiis et poenis, De execrationibus</u> |
| <u>Prob.</u> | <u>Quod amnis probus liber sit</u> |

| | |
|------------------|--|
| <u>Sacr.</u> | <u>De sacrificiis Abelis et Caini</u> |
| <u>Somn.</u> 1-2 | <u>De Somniis</u> I, II |
| <u>Spec.</u> 1-4 | <u>De specialibus legibus</u> I, II, III, IV |
| <u>Virt.</u> | <u>De virtutibus</u> |

Josephus

| | |
|-------------|---------------------------------------|
| <u>Ant</u> | <u>Antiquitates Iudaeorum</u> |
| <u>JW</u> | <u>Bellum Iudaicum</u> The Jewish War |
| <u>Life</u> | <u>Vita</u> |
| <u>AgAp</u> | <u>Contra Apion</u> |

Early Christian Literature

| | |
|----------------------|---|
| <u>Aug.</u> | St. Augustine |
| <u>De S.D.</u> | <u>De Sermone Domini in monte</u> |
| <u>EnP.</u> | <u>Enarrationes in Psalmos</u> |
| <u>Clem.</u> | Clement of Rome |
| <u>C. Cels.</u> | Origin <u>Contra Celsum</u> |
| <u>Chrys.</u> | John Chrysostom |
| <u>Catech.</u> | <u>Catecheses ad illuminandos</u> |
| <u>Jud.</u> | <u>Adversus Iudaeos</u> |
| <u>In act. apos.</u> | <u>In Acta apostolorum homiliae</u> |
| <u>Herm. Vis.</u> | <u>The Shepherd of Hermas</u> |
| <u>H. E.</u> | Eusebius <u>Historia Essclesiastica</u> |
| <u>Mart. Pol.</u> | <u>The Martyrdom of Polycarp</u> |
| <u>Strom.</u> | <u>Clement of Alexandria Stromates</u> |
| <u>Tert.</u> | Tertullian |
| <u>Apol.</u> | <u>Apologeticum</u> |
| <u>De idol.</u> | <u>De Idolatria</u> |

INTRODUCTION

"By the 'second best voyage' is doubtless meant: If fair winds fail, take to the oars" (Men. 241). So writes Menander in his play Thrasyleon. Philo of Alexandria relates that people applied this proverbial saying to the act of swearing. The implication is clear. When one struggles to be believed and others doubt one's word, an oath provides means to gain credibility. The cynicism expressed in this thought was, perhaps, widespread in the societies of Philo's time. But Philo's disparagement of oaths reflects a particular polemic against oath-taking practices shared by many of his Jewish contemporaries. At the centre of this polemic lay the concern that oaths improperly formulated or falsely made ran the risk of taking God's name in vain.

During the late Second Commonwealth, under the influence of foreign practices, some Jews adopted the casual use of oaths in their speech, uttered oaths without any intention of keeping them, and formulated their oaths without reverence for God or his name. The questions what constitutes a valid oath and how one abrogates an oath without offending God gained attention in the legal discussions of Judaism. The same questions were addressed to the problem of vows. The answers to these questions

varied from group to group and individual to individual. The issue of oaths and vows is representative of the Judaism of the time in that it is impossible to discern an orthodoxy or orthopraxy. What united the various voices was their common attempt to construct a fence to protect the laws of the Pentateuch. This study examines the diversity of responses to the problem of the proper formulation of oaths and vows and their abrogation offered within Second Temple Judaism.

The discussion of Second Temple Judaism carries us back to a time when oaths and vows were types of religious expression each with distinct formulations and purposes. People took vows to dedicate belongings or themselves to God. People swore oaths in order to confirm their words in contexts ranging from judicial proceedings and contractual agreements to the disputes of the marketplace. In modern usage there is little or no distinction between the act of swearing and that of vowing: both are synonymous with promising. The two have been married in modern scholarship as topics which we should treat side by side. One of the objectives of this study is to pay attention to the distinctions between oaths and vows drawn by the literature of the Second Temple.

The ancient tradition also stands in sharp contrast to the modern view of perjury as a legal concern. The oath-taker appealed to God as a witness to a statement or a

promise; therefore, perjury, the violation of an oath, was an offence against God. In modern times, when one swears falsely, it is the legal system, rather than God, with which one must reckon, and the law is concerned primarily with perjury heard within its courts.

In the usage of the Second Temple period, an oath, šēbû‘â, was a statement of fact or a promise in which the speaker invoked God to witness to his or her sincerity and to punish the speaker if a falsehood was uttered or a promise was left unfulfilled. Biblical oaths included two forms of attestation: the "assertory" oath which related to past or present facts and the "promissory" oath which related to future conduct.¹ The speaker placed himself or herself under sanctions to speak the truth. The oath explicitly or implicitly contained a self-curse.

Although every oath involved a curse, ‘ālâ, a curse could stand independent from an oath. A curse in the context of an oath was an imprecation. In other contexts, the term may refer to misfortune or a ban upon someone or something.

Another term related to swearing is the verb adjure, hišbîa‘. To adjure someone is to place a person under an oath or entreating someone to engage in some action as if he or she were under oath.

¹ Cf. Henry Campbell Black, Black's Law Dictionary, 4th edition (St. Paul: West Publishing Co., 1968) 1220.

A vow, neder, involved the dedication or consecration of a thing or person to the service of God. The vows of the Hebrew Bible often took the form of a promise made on conditional terms. The speaker promised to perform a specified act in homage to God, if God first fulfilled the speaker's request. Although both oaths and vows could contain promises, the vow functioned in a manner inverse to the oath. If oaths presupposed God's power to curse, vows presupposed God's willingness to bless.

This study has two parts. The aim of Part One is to reconstruct one aspect of late Second Temple Judaism: the treatment of oaths and vows. The first chapter examines the laws of the Pentateuch which govern oaths and vows, as well as how oaths and vows were actually formulated and fulfilled throughout the Hebrew Bible. It serves three functions for the discussion of the late Second Temple material. First, it provides a clear definition of the difference between oaths and vows against which developments in usage during the intertestamental period can be measured. The second function is to provide the common background for the diverse positions within Second Temple Judaism. The words of scripture informed the views of Jews and fuelled their disputes. Accordingly, the third function of Chapter One is to explain the basis for disagreement. The different interpretations of the Hebrew Bible's laws give rise to divergent answers to the questions, how should one formulate

oaths and vows, and what does one do when one cannot or should not fulfil an oath or a vow?

In the time that intervened between the writing of the Hebrew Bible and the discussion of the late Second Temple, a number of developments occurred which made the taking of oaths and vows problematic in Jewish society. The second chapter of this study documents three developments: the rise of the question what constitutes a valid oath or vow formula, the growing abuse of these forms of speech, and the decline in confidence in oaths. It, thereby, provides the setting for the polemic over oaths and vows.

The three chapters which follow examine the positions of Philo of Alexandria, the Qumran Covenanters, and the Pharisees. The place each accords oaths in their literature or tradition speaks of the gravity of the issue in their time. The study of these three positions provides insight into the diversity of the expression of Judaism and the similarity of concerns. The chapter on Philo discusses how his treatment of oaths and vows reflects his Jewish identity and his fidelity to biblical law. The second chapter examines the use of oaths and vows by a community within Judaism. The Qumran covenanters used oaths as a means of self-definition, but they also created statutes to limit the use of oaths and vows within their community. The third chapter reconstructs the Pharisaic teachings on oaths and vows. The Pharisees attempted to protect the laws of the

Torah and to guide their society in the proper use of oaths and vows. One theme recurs throughout these chapters: the words with which one formulates an oath are as important as honouring one's oath.

The aim of Part Two of this study is to reconstruct Jesus' teaching on oaths and vows and to understand his place within Judaism with respect to this teaching. The treatment of the New Testament material as a historical source requires attention to the question of the historicity of the Jesus-sayings. This study argues that the proper place to begin the investigation is the context in first-century Judaism. The first part of the study provides the necessary groundwork with which to proceed to a discussion of Jesus' intention.

The discussion of the New Testament material proceeds through three stages. The first chapter provides a preliminary exegesis of the relevant texts. The New Testament provides three pericopes with which to examine Jesus' view of oaths and vows: Matt 5:33-37 and its echo in James 5:12, Matt 23:16-22, and Mark 7:1-15 par..

At the second stage, the effects of Matthean redaction come under examination. Matthew warrants isolated treatment, because he alone preserves the teaching on oaths as a Jesus-tradition. Moreover, this study argues that Matthew's version of the prohibition of swearing preserves rather than distorts Jesus' intention. The manner in which

Matthew does alter his material strengthens its polemical tone; therefore, it is necessary to examine Matthew's motives and the effects of his editorial handiwork.

The third stage isolates the concerns of the historical Jesus. Jesus' concern for oaths -- set in the context of his call for the sanctification of God's name and his eschatological expectations -- are shown to be distinctly Jewish. Nevertheless, Jesus disagreed with his contemporaries in the discussion of oaths and vows. His solution to the problem of swearing, as it is presented in Matthew's gospel, was radical: "Do not swear at all" (Matt 5:34). The seemingly absolute nature of this prohibition raises the questions: what was Jesus' intention and how did his response relate to those of his contemporaries? Where does Jesus' agreement with first-century Judaism end and his disagreement begin?

The final chapter provides a dénouement to Part Two. It examines the early Christian community's use of oaths and its treatment of the prohibition of swearing. The study ends with a brief account of the reasons the church continued to employ oaths. Avoidance of oaths did not become a norm in Christianity despite the words of Jesus in the Gospel of Matthew.

CHAPTER ONE

THE HEBREW BIBLE

The study of the use of oaths and vows in the Hebrew Bible provides a basis for understanding the treatment of these utterances in Second Temple Judaism. The focus of the following discussion lies upon the use of the Hebrew terms for swearing an oath or taking a vow, the formulation of oaths and vows, the differences between the two, and the laws governing each.

Contemporary English does not normally discriminate between the terms oath and vow. Both often occur as synonyms for promise in modern usage. The aim of this chapter is therefore to lay out the conceptual framework and to provide the original denotation of each term. The noun "oath" refers to the invocation of God as a witness to the truth of an asseveration or a promise. The noun "vow" refers to the dedication of an object or an act in service of God.

A. SEMANTIC OBSERVATIONS AND CLARIFICATIONS

The Hebrew word which consistently signifies the English word oath is šēbûʿâ. The verb for taking an oath or swearing is the niphal form of the root šbʿ. The origin of the word lies buried in pre-biblical history. Scholars offer two possibilities. The similarity to the number seven

(šeba) and the ancient practices of accompanying an oath with a sacrifice leads Johannes Schneider to argue that the ancient Israelites sealed or concluded their oaths by sacrificing seven animals; therefore, he renders šāba^ץ "to come under the influence of seven things."¹ The textual support is thin. In Gen 15:10 and Jer 34:18, sacrifices are associated with oaths, and in Gen 21:28-31, Abraham and Abimelech's oath is witnessed by the slaughter of seven lambs. This oath lends its name to Beer Sheba which can be translated Well of Seven, but Well of the Oath is a more likely possibility.

Johannes Pedersen offers a second explanation for the origin of šēbū^ץâ. He finds a parallel with the Arabic word Saba^ץa which signifies a curse or malediction and uses the phrase beissen wie ein Raubtier, that is, to bite like a beast of prey, to convey the import of the Hebrew.² This explanation agrees with the understanding in the Hebrew Bible that a curse is an integral aspect of an oath (cf. Num 5:21 and Isa 65:15) and that it will unrelentingly overtake whoever swears falsely (Zech 5:5).

Pedersen's rendering ties the word šēbū^ץâ closely with other Hebrew words associated with an oath. The noun

¹ Johannes Schneider, "Horkos," in TWNT 5 (1967): 459.

² Johannes Pedersen, Der Eid bei den Semiten in seinem Verhältnis zur verwandten Erscheinungen sowie die Stellung des Eides im Islam (Strassburg: Verlag von Karl J. Trubner, 1914) 5.

ʔālâ usually means a curse but on occasion clearly signifies an oath. For example, in Gen 24:8 God's promise to Abraham is called my oath mišbūʕātî, but in Gen 24:41 it is called my oath mēʔālātî.³ Herbert Brichto argues that ʔālâ is being used here as "a synecdoche of the part for the whole."⁴ More frequently, ʔālâ appears together with berit or šebūʕâ and refers to the curse which accompanies an oath.⁵ ʔārûr the most common word for curse, also appears often with šebūʕâ.

The association of ʔālâ and ʔārûr with oaths leads to their use as synonyms for šebūʕâ in later Rabbinic literature⁶ and to the habitual practice in the Targums of translating the word ʔālâ, when it does not mean oath, with yēmāʔ or yēmēy "to swear"⁷ or with the paēl form of qwm which means to establish an oath or vow.⁸ The early association of oaths with a curse is supported throughout

³ Cf. Gen 26:28, 31.

⁴ Herbert C. Brichto, The Problem of "Curse" in the Hebrew Bible (Philadelphia: Society of Biblical Literature & Exegesis, 1963) 24. Lillian R. Klein, The Triumph of Irony in the Book of Judges (Sheffield: Almond Press, 1988) 149, claims that the principle meaning of ʔālâ is "to invoke God", but the weight of the evidence points to Brichto's conclusion.

⁵ Cf. Num 5:21; 1 Kgs 8:31; 2 Chr 6:22; Neh 10:30.

⁶ Cf. b. Šebu. 35b, 36a.

⁷ Compare Exod 13:19 and Exek 16:59.

⁸ E.g., 1 Sam 14:24.

the literature.⁹

When šb takes the hiph'il form, it assumes a causative meaning "to make someone swear" (e.g., Num 5:21). The verb ʔlh in its hiph'il form (1 Sam 14:24; 1 Kgs 8:31; 2 Chron 6:22) and the phrase gôl ʔālâ (Lev 5:1) may also signify an act of adjuration that placed someone under oath. The usage of these words within the Bible is ambiguous, but the translators of the Targums and the LXX eliminate uncertainty for their readers by using forms of the Aramaic ym and the Greek horkismos. In their translations, an oath has clearly been invoked.

The Hebrew noun for vow is neder and the verb follows the same root in the gal perfect. The majority of occurrences of neder refer to offerings, specifically free-will offerings. Other occurrences refer to a supplication to God. No semantic confusion is created by the variety of its usages for some act of offering or dedication is always entailed in the act of vowing.

B. THE ELEMENTS OF THE OATH

An oath is divisible into three parts: first, the statement of fact in an assertory oath or the statement of intention in a promissory oath, secondly, the witness or

⁹ Brichto, The Problem of "Curse" in the Hebrew Bible, 119, discusses the confusion of qillēl "to abuse" with "to curse" which arises in the later literature. This confusion has bearing on Mark 7:1-23 and Matt 15:1-20 and will be discussed later on page 210.

invocation, and thirdly, the religious sanctions against whoever violates the oath, that is, a self-imposed curse.

The first element takes one of two forms: an assertion or a promise.¹⁰ Although this distinction is not made explicit until the Mishnah (m. Šebu. 1:1), recognition of the different forms is helpful in analyzing the oaths of the Hebrew Bible. Assertory oaths, which confirm that a statement about the past or present is factual, tend to be judicial or official in nature. The Torah prescribes only one explicit oath and three possible other oaths of this sort. The first is a decisive oath. The party in the suit cannot prove his charge, in which case the decision is based on the oath of the accused. In the case of the death, injury, or loss of an ass, ox, sheep, or any beast in a neighbour's keeping, the neighbour swears by the Lord (šēbū^c-at YHWH) that he has not touched the owner's property. The owner, then, is obliged to accept the oath and not seek restitution (Exod 22:10-12; MT 22:9-11). The oath serves as proof of innocence in the absence of witnesses.

The remaining three assertory oaths take the form of adjurations in which the speaker places someone or a group under oath. In Lev 5:1 the following ruling appears:

If anyone sins in that he hears a public adjuration to testify (qôl ʔālâ) and though he is a witness, whether he has seen or come to know the matter, yet

¹⁰ Henry Campbell Black, Black's Law Dictionary (St. Paul, 1968) 1220; Rudolf Hirzel, Der Eid (Leipzig, S. Hirzel, 1902) 6.

does not speak; he shall bear his iniquity.

A similar injunction appears in 1 Kgs 8:31-32 and 2 Chron 6:22-23 in the context of Solomon's prayer of dedication for the Temple:

If a man sins against his neighbour and is made to swear an oath (ʔālā lehaʔlōtō) and comes and swears his oath (ʔālā) before thine altar in this house, then hear thou in heaven and act, and judge thy servants condemning the guilty by bringing his conduct upon his own head, and vindicating the righteous by rewarding him according to his righteousness (1 Kgs 8:31-32).

A third apparent call for an oath occurs in Num 5:19-22 and is directed to a woman suspected by her husband of adultery:

The priest shall make her take an oath (wēhišbīā^ʿ), saying, "If no man has lain with you, and if you have not turned aside to uncleanness, while you were under your husband's authority, be free from this water of bitterness that brings the curse (hā ālā). But if you have gone astray, though you are under your husband's authority, and if you have defiled yourself, and some man other than your husband has lain with you, then" (let the priest make the woman take the oath of the curse [wēhišbīā^ʿ ... bišēbū^ʿat hāʔālā], and say to the woman) "the Lord make you an execration (lēʔālā) and an oath (wēlišēbū^ʿā) among your people, when the Lord makes your thigh fall away and your body swell; may this water that brings the curse pass into your bowels and make your body swell and your thigh fall away," And the woman shall say, "Amen, Amen."

All three of these adjurations place someone other than the speaker under a conditional curse.

Herbert Brichto argues that none of the above should be considered oaths. According to Brichto, the fact that the conditional curse is invoked upon a second or third (grammatical) person rather than the speaker is an important

consideration.¹¹ He calls all three "adjuratory imprecations" and denies the presence of an oath in all three.¹² Brichto points out that in Lev 5:1 the curse is effective if the adjuration is unheeded or unacknowledged.¹³ He argues that ʔālâ in 1 Kgs 8:31-32 (and Chron 6:22-23) should be taken to mean a contingent imprecation. The passage calls for the imprecation to be made before the altar. The focus is upon the primacy of Jerusalem as a cultic centre.¹⁴ He claims that the hiph'il of šb^c in Num 5:19-22 has no causative force.¹⁵ The woman does not actually take an oath; instead, she is a "victim of a spell."¹⁶

Brichto's distinction between first person and second or third person conditional curses in the case of Num 5:19-22 definitely does not stand. The woman's response "Amen, Amen" effectively renders everything addressed to her in the second person a first person statement. His analysis of Lev 5:1 and 1 Kgs 8:31-32 may indicate the nature of the public use of curses in the Ancient Near East. What is important for our study, however, is that later Jewish

¹¹ Brichto, The Problem of "Curse" in the Hebrew Bible, 40-41.

¹² Ibid., 47.

¹³ Ibid., 41.

¹⁴ Ibid., 54-55.

¹⁵ Ibid., 50.

¹⁶ Ibid., 52.

exegetes understood all three to invoke oaths. The translators of the Septuagint and the Targums remove any ambiguity about the presence of an oath in Lev 5:1 by translating gôl ʔālâ phōnēn horkismou and gāl mômê. Mishnah Šebu^cot also treats the gôl ʔālâ as an adjuration to swear an oath. The rabbis infer from Num 5:19-22 that all adjurations require the response "Amen."¹⁷ If an adjuration goes unacknowledged, then it is a curse and it is not necessarily effective.

There are very few examples of oaths of an assertory nature within the narrative material of the Hebrew Bible. Esau confirmed the sale of his birthright with an oath (Gen 25:35), David asserted that he would swear to the fact that Saul had concealed from Jonathan his intention to kill David (1 Sam 20:3), and Ahab made the assorted nations swear that Elijah was not in their midst (1 Kgs 18:10). The dearth of assertory oaths in the narrative texts parallels the infrequent use of oaths in judicial cases. According to Deuteronomic law, judgement of guilt is determined on the basis of witnesses to a crime and not on the basis of oaths which clear the accused from suspicion of guilt (Num 35:30; Deut 17:6; 19:15).

The majority of oaths in the Hebrew Bible are promissory: "oaths which bind the party to observe a certain

¹⁷ Cf. Sifre Num. 15; Num. Rab. 9:34-35; 10:7; m. Šebu 4:3.

course of conduct, or to fulfil certain duties in the future."¹⁸ Two categories can be isolated, occasional oaths and oaths of covenant. The occasional oaths include promises such as Abraham's oath not to deal falsely with Abimelech's offspring, the promise to carry Jacob's remains back to Canaan (Gen 47:31), and the promise of Joshua's spies to Rahab to keep faith with her family on the condition that she not betray them (Josh 2:12-14). For the most part, oaths are fulfilled. The text betrays its aversion to false oaths by putting them in the mouth of those cut off from God. Saul swore that David would not be put to death, but he soon sought to kill him (1 Sam 19:6, 15). On an earlier occasion, Saul adjured (wayyōʾel) the people: "Cursed (ʾārūr) be the man who eats food until it is evening and I am avenged on my enemies" (1 Sam 14:24). This adjuration is later called an oath (1 Sam 14:27-28). When Saul discovered that Jonathan had tasted honey, he cursed him once again in the language of an oath: "God do so to me and more also; you shall surely die, Jonathan" (1 Sam 14:44). Saul's words carried no authority in the face of a more noble oath sworn by the people that they would protect Jonathan (1 Sam 14:45). The ill-conceived oath serves a literary function. It casts doubt on Saul's competency to lead. It also foreshadows the end of his dynasty. Saul's

¹⁸ Black, Black's Law Dictionary, 1220.

self-cursing finds fulfilment.¹⁹

The category, oaths of covenant, contains examples of diplomatic oaths, such as Abimelech's oath which binds him to Isaac (Gen 26:28-31), the covenant between Jacob and Laban at Mizpah (Gen 31:53), and the Israelites' oath to the Gibeonites (Josh 9:15). The majority of international treaties found in the Hebrew Bible are covenants not accompanied by oaths.²⁰ Oaths of covenant between the Israelites and other peoples are rare for reasons which will become apparent when one examines the second aspect of the oath, the witness.

The most important oaths of the Hebrew Bible are repeated or alluded to with greater frequency than can be recounted here. These are God's promises to the patriarchs to give them the land of Canaan (Gen 22:16-18; 24:7; 26:2-5; 28:13-18). These promises are fulfilled in part when the Israelites return from the Egyptian exile and enter the promised land (Deut 1:8). The establishment of the sworn covenant at Mount Sinai is seen as the fulfilment of another aspect of God's promise, that he would be the God of the people of Israel (Deut 29: 12-14).

The Deuteronomist treats the covenant at Sinai as a

¹⁹ Cf. P. Kyle McCarter, Jr., I Samuel, AB 8 (New York: Doubleday & Company Inc., 1980) 250-252.

²⁰ Delbert R. Hillers, Treaty-curses of Old Testament Prophets (Rome: Pontifical Institute, 1964), treats the similarity between Ancient Near Eastern Treaties and the Covenant with the Lord.

reciprocal oath.²¹ Both God and Israel swear oaths binding themselves to the covenant. The Deuteronomist habitually uses the words bērît and ʔālâ (e.g., Deut 29:11, 13) to express the idea that the mutually agreed upon covenant falls under divine sanctions.²² Under Asa's reforms the covenant is explicitly affirmed by an oath (wayyišābēʿû; 2 Chron 15:12-15); so, again, at the rebuilding of the Temple under Ezra and Nehemiah (Ezra 10:5ff; Neh 10:29). In Daniel, the covenant is referred to as "the curse and oath (hāʔālâ wəhaššebūʿâ) which are written in the law of Moses" (Dan 9:11). God's oath is often a synonym for the covenant (Deut 1:8; 4:31; 6:10; Jer 32:22; Isa 19:18). This recognition of the covenant as an oath plays an important role in the literature of the Second Commonwealth.

The second element of the oath is the invocation of a witness. Saul Lieberman uses the technical language "oath-term" to refer to the witness in an oath.²³ According to the Torah, oaths were to be sworn in God's name (Deut 6:13, 10:20).²⁴ The use of reference to God in the oath links the false oath to blasphemy: "You shall not swear

²¹ A. E. Crawley, "Oath," in Encyclopedia of Religion and Ethics 9 (1917): 430.

²² Cf. Brichto, The Problem of "Curse" in the Hebrew Bible, 31.

²³ Saul Lieberman, "Oaths and Vows," in Greek in Jewish Palestine (New York: Philipp Feldheim Inc., 1965) 129.

²⁴ Cf. also Josh 23:7; Isa 65:16; Jer 12:16 and Sipre Num. 14.

in my name with intent to deceive and thus profane the name of your God" (Lev 19.12). A number of phrases are used: ha-YHWH "by the life of the Lord" (1 Sam 19:6; 28:10; 1 Kgs 1:29; Jer 4:2, 38:16; Hos 4:15),²⁵ ʔēlōhîm ʿēd bēnê ûbēnekā "may the Lord be a witness between us" (Gen 31:50), YHWH elōhê Yiśrāʔēl "Lord God of Israel" (1 Sam 20:12), baYHWH "by the Lord" (Josh 2:12; 9:18; 1 Sam 24:21 [MT 24:22]; 2 Sam 19:7(8), bēʔlōhîm "by God" (1 Sam 30:15), bēʔlōhîm ʔāmēn "by the God of Truth" (Isa 65:16), and běšēm YHWH "in the name of the Lord" (Isa 48:1). The oaths cited in the Hebrew Bible conform with Deuteronomy's commandment with few exceptions.

In apparent exception to the law of Deut 6:13, Jacob swore at Mizpah in the name of the fear of Isaac his father (Gen 31:53). Frank Moore Cross identifies this passage as "the most archaic description of a covenant" in the Bible and labels "the fear of Isaac" an "archaic epithet."²⁶ Given that Laban had already identified the God of Abraham and the God of Nahor as witnesses, Jacob seems to have used this phrase as a circumlocution for the divine name. Targum Onkelos to Genesis makes this assumption by rendering the

²⁵ See Moshe Greenberg, "The Hebrew Oath Particle Hay/He", 36-37, who argues that the he particle must be treated as the noun life and parallels Mishnaic Hebrew oath formulary, such as bēḥayyê hammelek "by the life of the king."

²⁶ Frank Moore Cross, Canaanite Myth and Hebrew Epic (Cambridge: Harvard University Press, 1973) 269.

oath "by Him, whom his father feared."²⁷

Two further exceptions to the commandment to swear in God's name cannot be explained away as elaborate circumlocutions. In Gen 24:15 and 1 Sam 17:55, the biblical authors seem to have used inappropriate oath-terms for literary purposes. In Genesis, Joseph swore by the life of Pharaoh as part of his disguise as an Egyptian governor (Gen 42:15). The second anomaly occurs when Abner, in response to Saul's question about the shepherd David's identity after the killing of Goliath, swore an assertory oath "As your soul lives, O King" that he could not tell Saul (1 Sam 17:55). The possibility exists that this inappropriate oath is a literary device intended to draw parallels with Chapter 14 where Saul, having made inquiries of God about the battle with the Philistines, received no answer, Jonathan rather than Saul was victor, and Saul swore his damning oath. In Chapter 17, Saul again received no answer and was not the victor in battle. In this case, Abner's choice of witness for his oath points to the impotency of Saul's reign.²⁸

Since Israel was supposed to swear only by God's name, the Israelites were severely limited in participating in international oaths in which the foreign party would

²⁷ The Targum Onkelos, translated by Bernard Grossfeld (Wilmington, Del.: Michael Glazier Inc., 1988) 114.

²⁸ Cf. Robert Polzin, Samuel and the Deuteronomist: A Literary Study of the Deuteronomistic History, vol. 2 (San Francisco: Harper & Row, 1989) 171-176, for further analysis of the significance of this parallel.

demand recognition of their gods' authority. The examples of treaties found in Ancient Near Eastern documents contain lists of witnesses which include deities belonging to both parties as well as geographical phenomena, such as mountains, rivers, heaven and earth, and even the winds and the clouds.²⁹ An oath which acknowledges a status of vassalage under another nation's authority concomitantly acknowledges the power of the ruler's god to punish any violation of that oath. Assyrian treaties, in particular suzerainty treaties in which only the vassal would swear the oath, sometimes omitted the vassal nation's deities entirely.³⁰

One case of an oath-sealed covenant serves as a negative example to warn the Israelites against entering into oath-bound treaties. When the Gibeonites tricked the Israelites into making a covenant with them in Joshua 9, it was by the Lord, the God of Israel, that the two parties swore. The oath was binding despite the deception and the Israelites regretted the covenant with a people dwelling among them. The covenant prevented them from fulfilling God's command to destroy all the peoples of the land. The Israelites' response to this problem was to relegate the

²⁹ George E. Mendenhall, Law and Covenant in Israel and the Ancient Near East (Pittsburgh: The Biblical Colloquium, 1955) 34.

³⁰ Dennis J. McCarthy, Treaty and Covenant: A Study in Form in the Ancient Oriental Documents and in the Old Testament (Rome: Biblical Institute Press, 1978) 111.

Gibeonites to the status of slaves. As such, their covenant recognized the supremacy of the Israelite God and in no way subjugated the Israelites to the authority of the Gibeonite gods.

The Hebrew Bible retains a rare example of a suzerainty treaty in which Zedekiah, under compulsion, swore an oath of fealty to Nebuchadnezzar. The oath was sworn by God (bēʾlōhīm; 2 Chron 36:13). This deviation in the Ancient Near Eastern practice of including both nations' gods is attested by the prophet Ezekiel's account of Zedekiah's infidelity to the oath. According to Ezekiel, God was offended by the Israelite's disloyalty; therefore, God used Nebuchadnezzar as his agent of punishment for the violation of the oath (Ezek 17:11-24). Zedekiah not only broke his covenant with Babylon, he offended Israel's covenant with God (Ezek 17:19).³¹ Ezekiel places emphasis upon the original acts of rebellion against God, that is, the foreign alliances with Egypt, Assyria, and the land of Chaldea (Ezek 16:26, 28, 29). His concern for the observance of the laws of Leviticus explains his position that the oath with the Babylonian king had to be upheld, but his condemnation of Israel begins with the violation of the

³¹ Cf. Moshe Greenberg, Ezekiel 1-20: A New Translation with Introduction and Commentary, AB vol. 22 (Garden City, New York: Doubleday & Company, Inc., 1983) 322, who demonstrates that Ezek 17:19 refers to the oath and the covenant between Israel and God, the violation of which is mentioned in Ezek 16:19-63.

oath which bound the Israelites to the laws of Leviticus.

Central to Ezekiel's prophecy is the belief that the Israelites have profaned God's name. The author mentions profanation of the name nine times (Ezek 20:9, 14, 22, 39; 31:20, 21, 22, 23; 39:7). In response, God acts to "sanctify" his name (Ezek 20:9, 14, 22; 36:21, 22, 23; 39:25). Although Israel's infidelity has dishonoured God's name, God will demonstrate his fidelity to his oath by delivering Israel (Ezek 36:22) and making himself known to the nations (Ezek 36:23).³²

In Ezekiel's prophecy, God swears by his own witness: "As I live (ḥa-ʾānī), says the Lord God" (Ezek 20:31, 33). In the same manner, when God makes his promise to the patriarchs and in his oaths to the people of Israel, he swears by an assortment of phrases which refer to himself: yāšā "by myself" (Isa 45:23), bēnapšō "by himself" (Amos 6:8), bišmī haqādōl "by my great name" (Jer 44:26), bēqādēšī "by my holiness" (Ps 89:35 [MT 89:36]; Num 4:2), and bīminō ūbizrōaʿ ʿūzzō "by my right hand and mighty arms" (Isa 62:8). An exception occurs when, in Amos, he is said to have sworn "by the pride of Jacob" (biqʾōn Yāʿqōb; Amos 8:7). Earlier in Amos, the more conventional "by myself" appears (Amos 6:8). The curious later choice may strike a chord of irony, for God swears by the sin for which Israel

³² Cf. Paul Joyce, Divine Initiative and Human Response in Ezekiel (Sheffield: JSOT Press, 1989) 101-3.

is condemned.³³ Then again, the phrase may be a circumlocution for the divine name. 1 Sam 15:29 similarly refers to God as the splendour of Israel (nēṣah Yiśrāʾēl)³⁴, and in Genesis, we find two other comparable appellations, "the Mighty one of Jacob" and "the Shepherd, the Rock of Israel" (Gen 49:24). Essentially, God conforms to the Deuteronomic law by swearing only by himself.

The Deuteronomic covenant provides one more exception to the above rule. On three occasions, God invokes the forces of nature as witnesses: "I call upon heaven and earth to witness against you" (Deut 4.26, 30.19, 31.28). According to Moshe Weinfeld, God is exempt from acting as witness because he is party to the covenant.³⁵ This exception may provide the source for the practice of swearing by heaven and earth to which Jesus, Philo, and the Mishnah allude.

The third part of an oath, the religious sanction, is a self-imposed curse. This imprecation may be implicit rather than clearly stated.³⁶ According to Sipre Num. 14, we learn from Num 5:16-22, where the curse is explicit, that

³³ Cf. James Luther Mays, Amos: A Commentary (Philadelphia: Westminster Press, 1969) 145.

³⁴ Ibid., 145.

³⁵ Moshe Weinfeld, Deuteronomy and the Deuteronomic School (Oxford: At the Clarendon Press, 1972) 62. Note Josh 24:27.

³⁶ Brichto, The Problem of "Curse" in the Hebrew Bible, 24.

all oaths include a curse. Sheldon Blank explains that the belief in the power of the spoken word led the oath taker to hesitate to pronounce the curse.³⁷ Only in situations of extreme need, such as that of Job in Chapter 31, does an individual demonstrate his integrity by open declaration of self-curses.³⁸

The curses associated with oaths invoke poetic justice. This is evident in the case where the imprecation is explicit. For example, the adulterous woman who drank the waters of bitterness that brought the curse supposedly suffered a miscarriage or untimely birth (Num 5.27). If Israel were to violate its sworn covenant with God, and thereby reject God, its punishment would be the opposite of its blessing. Rather than chosenness, they would meet with utter rejection. Rather than inheriting the land of Israel, they would face exile. Punishment or destruction was meted out by God in the same measure as the perjurer offended God.³⁹

As the witness to the oath, God is also responsible for the fulfilment of the curse.⁴⁰ The most common formula

³⁷ Sheldon Blank, "The Curse, Blasphemy, the Spell, and the Oath," HUCA 23 (1950-51): 92.

³⁸ Marvin Pope, "Oaths," IDB 3 (1962): 577.

³⁹ David Daube, Studies in Biblical Law (Cambridge: Cambridge at the University Press, 1947) 172.

⁴⁰ Brichto, The Problem of "Curse" in the Hebrew Bible, 37.

for a curse is the expression "God do so to me and more also of the same." God is the offended party; he has been made an accomplice to a lie. Johannes Pedersen's analysis expresses the significance of such a lie:

He who swears by the name of Yahweh when he speaks such words makes a caricature of an act. He fills himself with the supreme strength of life in order to produce that which is void of life. Such is the use of the great name no true Israelite can undertake.⁴¹

The text affirms Pedersen's understanding by presenting few accounts of broken oaths.

Since God's justice is absolute, there is no flight from the curse once an oath has been broken. The metaphoric language of Zech 5:3-4 makes this clear:

I see a flying scroll; its length is twenty cubits, and its breadth ten cubits This is the curse that goes out over the face of the whole land; for everyone who steals shall be cut off henceforth according to it and everyone who swears falsely shall be cut off henceforth according to it. I will send it forth, says the Lord of hosts, and it shall enter the house of the thief, and the house of him who swears falsely by my name; and it shall abide in his house and consume it, both timber and stones.

The violators of oaths in the Hebrew Bible consistently meet with punishment, but the curse does not necessarily fall upon the head of the one who breaks the oath. When Saul puts the Gibeonites to death despite their oath-sealed treaty (Josh 9:15), the punishment, a three-year famine,

⁴¹ Johannes Pedersen, Israel: Its Life and Culture, vol. 1 (London: Oxford University Press, 1924) 413-14.

occurs during David's reign (2 Sam 21:1-14). The modern concepts of individualism and collectivism should not be applied loosely to ancient societies, but it should be noted that the effects of the actions of an individual within Israelite society were not always expected to fall upon the shoulders of that individual alone.⁴²

The fear of the curse lends force to the Torah's prohibition against violating an oath:

When a man vows a vow to the Lord, or swears an oath to bind himself by a pledge, he shall not break his word: he shall do according to all that proceeds out of his mouth (Num 30:3).

Once an oath is uttered, the oath-taker is bound to fulfil it. The Torah does provide for a few exemptions. In Gen 24:8, Abraham's servant's oath to find Isaac a wife is not binding in the event that the woman is unwilling to return with him.⁴³ Num 30:3ff empowers a father or husband to invalidate the oaths or vows of women in his household, if he expresses his disapproval on the day that he hears of her vow or pledge. Another release from the fulfilment of an oath obtains with respect to rash oaths:

If anyone utters with his lips a rash oath to do evil or to do good, any sort of rash oath that men swear, and it is hidden from him, when he comes to know it he shall in any of these be guilty. When a man is guilty in any of these, he shall confess the sin he has committed, and he shall bring his guilt offering to the Lord

⁴² Cf. Josef Scharbert, "'Fluchen' und 'Segnen' im alten Testament," Bib 39 (1958): 1-17; Ezek 18:20.

⁴³ Cf. Horst Seebass, "Eid II," TRE 9 (1982): 376.

for the sin which he has committed, a female from the flock, a lamb or a goat, for a sin offering; and the priest shall make atonement for him for his sin (Lev 5:4-6).

To swear falsely is to profane the name of the Lord (Lev 19:12), but if one does swear falsely with regard to another's property, and incurs guilt, the Law provides for restitution through the restoration of the property plus an added fifth of its value accompanied by a guilt offering of a ram (Lev 6:1-7 [5:20-26]). In these last two cases, the oath is not invalidated but rather forgiven in accordance with the sacrificial cult which atones for sin.

The law provides no instructions for one who utters an oath but later comes to regret it. By its letter, one is obliged to do as one has promised. Two stories appear in narrative texts in which the oath-takers used their ingenuity in order to fulfil the letter of the law but not the intent of their oaths. David found a way of seeking revenge upon Shimei for his support of Absalom (2 Sam 16:5-8) even though he had given him his oath that he would not kill him (2 Sam 19:23). Upon his own death bed, David suggested that Solomon do away with Shimei (I Kgs 2:9). Solomon devised a scheme whereby Shimei died for violating his own oath not to leave Jerusalem (I Kgs 3:36-46). In the second example, the Israelite people at Mizpah had come to regret their oath that they would not give their daughters in marriage to a Benjaminite after it became apparent that the tribe of Benjamin, having lost their own women in their

war against Israel, would die out (Judg 21:1-7).⁴⁴ The people invented a loophole. During the following yearly pilgrimage to Shiloh, they invited the Benjaminites to seize the girls of Shiloh when they came out to dance. If their brothers or fathers complained, the Benjaminites were to respond:

Grant them graciously to us; because we did not take for each man of them his wife in battle, neither did you give them to them, else you would now be guilty (Judg 21:22).

No one violated the oath, but the oath carried no consequences.

The texts express no sense of shame about these methods. Solomon is pronounced wise and the salvation of the tribe of Benjamin must be seen in the light of later history when Judah and Benjamin constitute the people of Israel.⁴⁵ Later interpreters of Judges concur that Israel had to evade the oath. In the Rabbinic interpretation, God's promise to Jacob included Benjamin; therefore, the avoidance of the oath's intent was sanctioned by God.⁴⁶

⁴⁴ The oath to which they refer is the herem "ban" intimated at the end of Judges 20. Cf. Robert G. Boling, Judges: Introduction, Translation, and Commentary, AB vol. 16a (New York: Doubleday & Company Inc., 1975) 291 n.5.

⁴⁵ Ibid., 292. Also the conclusion to Judges (21:25) is not a commentary on Judg 21:11-24 but rather refers to the rejection of the Lord's kingship (Judg 17:6; 18:1; 19:1); Ibid., 293. Judg 21:25 originally provided the conclusion to chapter 19. Cf. Jack A. Soggin, Judges: A Commentary (London: SCM Press, 1981) 293.

⁴⁶ Lam. Rab. 33.

Josephus, in his treatment of the incident, adds that there were "some of the opinion that they should disregard these oaths as having been sworn under the sway of passion, without reflection or judgement" (Ant 5.2.12 §169). These interpreters seem to have applied the law of rash oaths (Lev 5:4-6) in order to argue that the Benjaminites could have been released from their oath.

The emphasis in the Hebrew Bible rests upon the sanctity of oaths. In the words of Johannes Pedersen: "The oath is pronounced out of the strength of God and with him as a participant."⁴⁴ The offerings which often accompany an oath mark its holiness (e.g., Gen 31:53),⁴⁸ the performance of oaths in holy places acknowledges the role of God in judicial oaths (e.g., Num 5:16), and the presence of sacred objects witnesses to their sanctity (e.g., Gen 24:2,9; 47:29).⁴⁹ The preponderance of promissory oaths rather than assertory oaths suggests that oaths were not used in casual contracts. It seemed to be used sparingly in Israelite society. A record of its abuse is virtually non-

⁴⁴ Pedersen, Israel, vol. 1, p. 449.

⁴⁸ R. Campbell Thompson, Semitic Magic: Its Origins and Development (London: Luzec & Co., 1908) 217, views the entire practice of sacrificing associated with both oaths and vows as an indication that the taking of the oath or vow itself rendered an individual tabu. The sacrifice atones and allows the individual to reenter society.

⁴⁹ Cf. Pedersen, Israel, vol. 1, p. 449, and Pope, "Oaths," 575-577. Both passages call for the hand to be placed upon the circumcision [that is, the thigh], first of Abraham and then of Jacob.

existent, thereby heightening the sense that oaths were to be fulfilled.

C. VOWS

The Hebrew Bible makes a clear distinction between oaths and vows. Although both contain promises, the vow functions in a manner inverse to the oath. If oaths presuppose God's power to curse, vows presuppose God's willingness to bless. Whereas an oath assumes that "if I do or do not do X, then may God do Y to me," the vow proposes "if the Lord will do X, then I will do Y."⁵⁰ Vows commonly follow a three-part formula: one, an address often contained in narrative, two, the protasis "if the Lord will do something (infinitive absolute with a finite verb in the imperfect)", and three, the apodosis "then (waw consecutive) I will do such and such (perfect consecutive)."⁵¹

Five examples of vows closely follow the form outlined above. In all five, the speakers are in distress and petition God's help. God fulfils all five petitions, and the vow-takers fulfil their vows in accordance with the

⁵⁰ Tony Cartledge, "Conditional Vows in the Psalms of Lament: A New Approach to an Old Problem," in K. Hogland, The Listening Hear: Essays in Honour of Roland E. Murphy (Sheffield: JSOT Press, 1987) 82.

⁵¹ Simon Parker, "The Vow in Ugaritic and Israelite Narrative Literature," UF 11 (1979): 694. David Marcus, Jephthah and his Vow (Lubbock: Texas Tech Press, 1986) 8, notes an exception to the infinite absolute in the protasis of Jacob's vow.

injunction of Num 30:3. These include Jacob's promise:

Then Jacob made a vow (wayyiddar ... neder) saying, "If God will be with me (ʔim-ʔelōhîm ʕimmādî), and keep me (ûšemāranî) in this way that I go, and will give me bread to eat and clothing to wear, so that I come again to my father's house in peace, then the Lord shall be my God (wěhāyâ YHWH lî lēʔlōhîm), and this stone, which I have set up for a pillar, shall be God's house; and of all that thou givest me I will give the tenth to thee' (Gen 28:20-22).

The second vow seeks military success (Num 21:2). When the Canaanite king of Arad initially prevailed against the advancing Israelites, Israel made the following vow to the Lord: "If thou wilt deliver (ʔim-nātôn tittēn) this people to my power, I will destroy (wěhaḥāramtî) their cities." The third vow, that of Jephthah, also seeks a military victory (Judg 11:30). This example demonstrates the irrevocable nature of vows. Jephthah makes the following promise:

If thou wilt deliver (ʔim-nātôn tittēn) the Ammonites into my hands, then whoever comes forth from the doors of my house to meet me, when I return victorious from the Ammonites, shall be the Lord's, and I will offer him up for a burnt offering (wěhāyâ laYHWH wěhaʕālītîhû ʕôlâ) (Judg 11:30).

The result is pathos. It is Jephthah's daughter, his only child, who comes to greet him and whom he has to sacrifice in grief rather than triumph. The narrative overtly praises the daughter's willing participation in the fulfilment of the vow. No overt condemnation of the vow appears. The fact that God fulfils the condition seems to validate the vow. We will return to this vow.

The two remaining examples provide a contrast between a vow that seeks to honour God and one that is merely self-serving. In the first, Hannah beseeches the Lord for a child:

And she vowed a vow and said, "O Lord of hosts, if thou wilt indeed look (ʔim-rāʔoh tirʔeh) on the affliction of thy maidservant, and remember me, and not forget thy maidservant, but wilt give to thy maidservant a son, then I will give (ʔnētattîn) him to the Lord all the days of his life, and no razor shall touch his head" (1 Sam 1:11).

The request is granted and the vow fulfilled promptly once the child has been weaned (1 Sam 1:28). The last vow is not paid promptly. Absalom uses the ruse of needing to fulfil a vow made to the Lord four years previously in order to go to Hebron where he launches his attempt to usurp his father's throne (2 Sam 15:7-8). He claims that he vowed a vow saying, "If the Lord will indeed bring me back (ʔim-yāšyōb yešîbēnî), then I will offer worship (wēʕābadtî) to the Lord" (2 Sam 15:8). The tardiness in his payment is problematic to later commentators. Exodus Rabba reads forty years later and takes Absalom's vow to be that of a Nazirite.⁵² In the eyes of later commentators, Hannah's vow respects and Absalom's vow ignores the Torah's commandment:⁵³

When you make a vow to the Lord your God, you shall not be slack to pay it; for the Lord your God will surely require it of you, and it would be sin in you

⁵² Exod. Rab. 9:24; 10:17.

⁵³ Cf. Philo Deus 5; Josephus Ant 5.10.3 §347.

(Deut 23:21).

The difference between the two vows is indicative of the Bible's portrayal of the characters of the vow-takers: the woman is modest and faithful, and the son, arrogant and treacherous.⁵⁴

The conditional nature of other vows in the Hebrew Bible is less apparent. The description of the Nazirite vow in Num 6:1-20 explains how one fulfilled this particular vow, but not the circumstances under which the vow was made. During the tenure of the vow, the man or woman abstained from wine and "strong drink." The Nazirite did not cut his or her hair or come into contact with a corpse. If he or she did the latter by accident, the corpse rendered him or her unclean, and he or she had to shave his or her head after seven days. The next day he or she offered two turtle doves or young pigeons, as sin-offering and whole-offering, and the priest made expiation for the sin incurred. He or she then consecrated his or her head and rededicated himself or herself for the complete tenure of his vow. When the term was complete, he or she brought the following offerings: an unblemished yearling ewe as a sin-offering, an unblemished ram as a shared-offering, and a basket of unleavened cakes and one of wafers, both mixed with oil, as grain and drink offerings. He then shaved his

⁵⁴ G. Henton Davies, "Vow," IDB 4 (1962): 793, adds Jonah 1:16 and Ps 132:25 to this list.

or her head, and the hair was burned. The priest placed the boiled shoulder of the ram plus one cake and one wafer on the palms of the Nazirite's hands and then presented them to the Lord as a gift. The vow was then complete.

The purpose here of describing the law in its entirety is to stress the inconvenience and expense of bringing a Nazirite vow to completion. Only one Nazirite appears in the Bible: Samson (Judg 13:5,7; 16:17), and he was a Nazirite for life.

Tony W. Cartledge argues that the Nazirite vow, as well as the vows found in the Psalms of lament, were also conditional arrangements with God, that is, a form of bargain.⁵⁵ According to Cartledge, Samson and Samuel's Nazirite status reflects an early stage in the tradition in which Nazirites were divinely appointed and not under vows.⁵⁶ Josephus' account of the Nazirite vow substantiates the claim that later vows were conditional:

For it is usual with those who have been afflicted with distemper, or with any other distress to make vows; and for thirty days before they are to offer their sacrifices, to abstain from wine, and to shave the hair of their head (JW 2.15.1 §313).⁵⁷

⁵⁵ Tony Cartledge, "Were Nazirite Vows Unconditional?" CBQ 51 (1989): 415.

⁵⁶ Ibid., 412.

⁵⁷ The Nazirite vow of Helene of Adiabene, predicated on the condition that her son Izates returns from war alive, conforms to this account (m. Nazir 3:6). Cf. also Ant 20.2.5 §49.

The practices of the Second Temple period seem to represent a development in which Nazirite vows become a formalized expression of the ad hoc vows found in the biblical narratives.

A second practice whereby an individual was dedicated to God involved the vow of valuation. The sacrifice of Jephthah's daughter seems to reflect an early stage in this practice where the individual was actually sacrificed. Lev 27:2-8 describes a system which set a specific sum of money to be offered in lieu of the living person. This system of valuation also extended to unclean beasts and property (Lev 27:11-25) and provided a clause to allow for the priest's discretion in determining a value in the case of the poor (Lev 27:8).

Cartledge also contends that the Psalms of lament contain conditional vows. The poetic syntax obscures their conditional character by dropping the ʔim from the protasis and replacing it with kî, which should, according to Cartledge, be translated if. The apodosis loses its waw consecutive and gains an imperative or jussive verb.⁵⁸

Psalm 61 displays this structure:

For thou (kî-ʔattâ), O God, have heard my
vows
thou hast given me the heritage of

⁵⁸ Cartledge, "Conditional Vows in the Psalms of Lament," 85 and 90. Cf also Cartledge, "Were Nazirite Vows Unconditional," 416; Pss 22:22-23; 35:8-9, 17-18, 27-28; 51:16, 17, 20-21; 61:7-9; 69:30-31; 71:13-14, 21-22; 79:12-13; 109:29-30.

those who fear thy name.
Prolong (tôsîp) the life of the king;
may his years endure to all
generations!

May he be enthroned for ever before
God;
bid steadfast love and faithfulness
watch over him (yinsěruhû)!
So will I ever sing praises to thy
name,
as I pay my vows day after day (Ps 61:5-8
[MT 6-9]).

These vows differ from those in narrative in that the sacrifice which fulfils a vow is subordinate, for the most part, to worship or praise.⁵⁹ They nevertheless share with other biblical vows the occasion of distress⁶⁰ as well as the intention to influence God's actions.⁶¹

The remainder of references to neder in the Hebrew Bible seem to refer to the vow as a sacrificial offering. Deut 12:11 lists votive offerings (mibḥar nidrêkem) which one vows to the Lord among the offerings to be brought to the dwelling-place of God's name.⁶² The use of neder to refer to an offering may reflect a preceding conditional

⁵⁹ Cf. Ps 51:14. The Deuteronomist and the Psalmist share a train of thought that God does not so much desire sacrifice as worship and devotion. According to Weinfeld, Deuteronomy and the Deuteronomic School, 212, Deuteronomy portrays sacrifice as a personal offering rather than an institution and God's acceptance of the sacrifice as an acknowledgement rather than a need. This attitude also finds expression in Qoh 5:1-5 and Sir 18:22.

⁶⁰ Cf. Pss 22:26; 50:14; 56:13; 61:6-9; 66:13; 116:14-18.

⁶¹ Pedersen, Israel, vol. 1, p. 455.

⁶² Cf. Num 29:39.

agreement that led to an item's dedication.⁶³

This relationship of vows to sacrifice is important to the later association of vows with gorbān. Qorbān in the Hebrew Bible refers to a sacrifice or offering (e.g., Lev 2:12 and Num 7:17) rather than the process by which something is offered. By the late Second Commonwealth, gorbān became an oath or vow-formula. In the case of the vow of gorbān, no gift was necessarily given to God as a gift. The item that was designated as gorbān was more closely related to the wine which was prohibited to the Nazirite than the sacrifices which completed the vow. Qorbān was drawn into the language of vows by virtue of its role as an offering, and eventually was adopted into the language of oaths. As an oath-term, no sacrifice was presupposed, and the cultic meaning became obscured.⁶⁴

Just as with oaths, the biblical text focuses upon the fulfilment of vows rather than their violation. It describes the animals which were suitable for the fulfilment of a vow in Lev 22:17-30 and Num 15:1-10. The laws were strict. No substitutions were allowed for animal offerings which were acceptable (Lev 27:9-10). Vows had to be fulfilled promptly with the exception of the provisions for the invalidation of women's vows mentioned earlier (Num

⁶³ Pedersen, Israel, vol 1, p. 324.

⁶⁴ For a more extensive discussion of gorbān see pp. 69-75.

30:3-16; Deut 23:21).

The injunction that a vow, once undertaken, had to be fulfilled (Deut 23:21-23, cf. also Num 30:3) emphasizes the caution with which one should assume a vow by adding that "if you choose not to make a vow, you will not be guilty of sin"; in other words, do not make vows casually, for they are not necessary. Unlike the narrative accounts of oaths, there is no case where the fulfilment of a vow was avoided. As Prov 20:25 states: "A man is trapped who rashly dedicates something, and stops to consider after making the vow."⁶⁵

The distinction between oaths and vows in the Hebrew Bible is clear. The words one chose, the occasions on which one spoke, and the events set in motion differed in accordance with whether one took an oath or a vow. Their similarity rested in the special relationship with God which was established once either was uttered. That relationship required that one be faithful to one's words.

Fidelity to God is the prevailing concern throughout the biblical literature in its treatment of oaths and vows. Disparagement of the taking of oaths or vows occurs with a view to the possibility of perjury or the failure to fulfil an oath or vow. The hesitation of Deut 23:22 with respect to vows recurs in Qoheleth: "Better not to vow at all than

⁶⁵ Translation by R. B. Y. Scott, Proverbs and Ecclesiastes: Introduction, Translation, and Notes, AB Vol. 18 (New York: Doubleday & Company Inc., 1965) 120.

to vow and fail to pay" (Qoh 5:4). The concern is to avoid incurring guilt. Malachi curses "the cheat who has a male in his flock, and vows it, and yet sacrifices to the Lord what is blemished..." (Mal 1:14). The prophets also rail against false oaths (Jer 5:2; 7:8-9; Mal 3:5; Zech 5:2).

The prophets expressed a second concern with respect to the abuse of oaths and vows, that is, the problem of idolatry. To swear by other gods or to make vows to other gods was a betrayal of the covenant (Jer 5:7; 44:25; Hos 4:15; Zeph 1:5). Joshua expressed this belief in his second to final address to the Israelites:

Be very steadfast to keep and do all that is written in the book of the law of Moses, turning aside from it neither to the right hand nor to the left, that you may not be mixed with these nations left here among you, or make mention of the names of their gods, or swear by them, or serve them, or bow down to them (Josh 23:6-7).

Association with other peoples led to occasions where mutual oaths were taken, at which time one was confronted with the problem of which god or gods to call upon as witness.

Oaths and vows were not, as a rule, disparaged. Those who took honourable oaths received great praise:

If you swear by the life of the Lord, in truth, in justice and uprightness, then shall the nations pray to be blessed like you and in you shall they boast (Jer 4:2).⁶⁶

Punishment for denying God's covenant was the withdrawal of the privilege to invoke God's name in an oath (Hos 4:15 and

⁶⁶ Cf. Jer 12:16; Pss 15:4; 24:4; 63:11; 1 Kgs 17:1; 2 Kgs 2:2; Isa 19:18; 65:6.

Jer 44:26). Qoheleth, in his comparison of wisdom and folly, claimed that the man who took an oath and the one who did not were all the same (Qoh 9:1-2), but even his cynicism did not prevent him from stating that one should not balk at swearing by God (Qoh 8:2). The close connection of vows with the sacrificial cult and temple worship gained them a place of favour within the Psalms.⁶⁷ The foremost question in the minds of the biblical authors remained how oaths and vows should be fulfilled and not whether they should be fulfilled.

The problem of release from oaths and vows developed in the post-biblical period. Biblical narrative offered some precedence for circumventing oaths but none for vows and no precedence for the abrogation of either. Later generations found this problematic and were forced to find justification for release. An examination of the commentaries and tradition surrounding Jephthah's vow illustrates this development. Josephus describes the sacrifice of the daughter as "a sacrifice neither sanctioned by the law nor well pleasing to God, for he had not by reflection probed what might befall or in what aspect the deed would appear to them that heard of it" (Ant 5.7.10 §266). The Targum states that after the death of Jephthah's daughter, it was prohibited to offer a child as a holocaust.

⁶⁷ Cf. Pss 50:14; 56:12; 61:5-8; 65:1; 66:13; 76:11; 116:14.

It also would have her redeemed, presumably by means of the Levitical laws of valuation (Tg. Ps.-J. Judg 11:39). The midrashic literature assumes that Phineas could have absolved Jephthah of the vow altogether (Gen. Rab. 60:3; Lev. Rab. 37:4; Qoh. Rab. 10:7). This tradition may have existed as early as the Second Temple period, for Philo also claims that the High Priest was qualified to absolve vows (Hypoth. 7.5-6). The rabbis also question the formulation of the vow:

Jephthah made a request in an improper manner, as is proved by the text, Then it shall be, that whatsoever cometh forth of the doors of my house to meet me , I will offer it up (Judg 11:31). Said the Holy One, blessed be He: "If a camel, or an ass, or a dog had come out, would you have offered it for a burnt-offering?" So the Holy One, blessed be He, answered him correspondingly by bringing his daughter to hand (Lev. Rab. 37:4).⁶⁸

Jephthah's inappropriate vow is punished by its fulfilment.⁶⁹

The legacy of the Hebrew Bible for Second Temple Judaism with respect to oaths and vows included precedents for their formulation and laws governing their fulfilment. Foremost in this inheritance was the understanding that oaths and vows were binding utterances, the violation of

⁶⁸ Cf. Gen. Rab. 60:2 and b. Ta'an. 4a.

⁶⁹ The midrash also claims that Jephthah is punished by the manner of his own death: "Jephthah died through his limbs dropping off. Wherever he went a limb would drop off from him, and it was buried there on the spot. Hence it is written, 'Then died Jephthah the Gileadite, and he was buried in the cities of Gilead.' It does not say, in a city of Gilead, 'but in the cities of Gilead.'" (Gen. Rab. 60:3).

which was a sin against God. Given that oaths were to be sworn in God's name, the false oath was a profanation of his name. With a view to the fulfilment of the Torah, later interpreters came to question the legitimacy of the utterance of some oaths and vows and the binding nature of others.

CHAPTER TWO

THE RISE OF EXCESSIVE OATH AND VOW TAKING

In the Second Temple period, a new concern with oaths entered the literature of Israel. Whereas the biblical texts suggested that oaths were not taken lightly, and the prophets remonstrated the people about taking them by the wrong gods, the observant Jews of the Second Temple indicated an excessive and casual use of God as a witness had become a problem. Vows also seem to have become a popular form of religious expression. Ben Sirach is the principal witness to the first tendency. He writes:

Do not accustom your mouth to oaths,
and do not habitually utter the name of the Holy
One;
for as a servant who is continually examined under
torture will not lack bruises
so also the man who always swears and utters the
Name will not be cleansed from sin.
A man who swears many oaths will be filled with
iniquity and the scourge will not leave his house,
if he offends, his sin remains on him;
and if he disregards it, he sins doubly;
if he has sworn needlessly, he will not be justified
for his house will be filled with calamities (Sir
23:9-11).

Ben Sirach, a Jewish scribe of the early second century BCE, writing in Jerusalem, observed the practices of rich young men who were taking oaths needlessly, and he concluded that these oaths were no less sinful than false oaths.

Josephus' interpretation of the third commandment supports our inference from Ben Sirach: "the third

commandment (teaches us) not to swear by God on any frivolous matter" (Ant 3.4.5 §91), thereby suggesting that people had come to swear needlessly. The problem of excess bears directly upon the issue of release from oaths and vows, in that an oath or vow taken without forethought was likely to be regretted or prove unfulfillable.

The intrusion of Hellenistic custom into the practice of taking oaths is well documented in early Rabbinic literature. Saul Lieberman, in his article "Oaths and Vows," examines and explains significant examples from the Tannaitic material.¹ This study will confirm Lieberman's findings within the literary evidence from before the destruction of the Second Temple.

The accumulation of evidence pertaining to the use of oaths and vows poses problems. The evidence of abuse is preserved principally in the polemic against it. Oaths and vows are for the most part oral utterances; as such, they rarely find their way into the written record. The extant examples of oaths and vows are few. Has posterity, one wonders, preserved exceptions to the rules? Or do we have merely the tip of the iceberg? In order to prove the latter, a diversity of evidence, ranging from legal practices of the diaspora to Josephus' account of the House of Herod, must be brought to bear on the question. A three-

¹ Saul Lieberman, "Oaths and Vows," in Greek in Jewish Palestine (New York: Philipp Feldheim Inc., 1965) 115-43.

fold development with respect to oaths is evident in the record. First, the occasion for the rise of substitutes for God's name as witness opens the door to meaningless formulae. Secondly, the incursion of foreign influences and practices leads to a proliferation of the use of oaths and vows, sometimes for purposes as inappropriate as magic spells. Thirdly, there results incredulity associated with oaths and in some cases disparagement of their use. Vows are also subject to development. They become formalized in a way conducive to easy adoption and so to prompt regret.

A. THE RISE OF SUBSTITUTES

The injunction to swear by God's name, which is followed quite faithfully within the corpus of the Hebrew Bible by the inclusion of the tetragrammaton or some form of "Elohim" in the oath-formula, poses a problem by the end of the Second Commonwealth. By the third century BCE, people had begun to avoid the use of the tetragrammaton in both speech and writing, and some were even reluctant to use several of the biblical names for God: El, Elohim, Ehyeh-Asher-Ehyeh, Adonia, Shaddai, or Elohe-Tseba ot.² Leonard W. Levy, in his study of blasphemy, counts only seven appearances of the tetragrammaton in the parts of the Hebrew Bible believed to be composed after 300 BCE, compared

² Steven T. Katz, Jewish Ideas and Concepts (New York: Schocken Books, 1977) 41.

to 6,000 times prior to this date.³ According to the Tosephta, the priests ceased pronouncing the tetragrammaton distinctly after Simon the Just.⁴ The LXX betrays its scruples against uttering the divine name by translating it with the Greek Kyrios.⁵ The Targums use the phrase "by God's Memra", when translating oaths by the Name.⁶ By the first century CE, use of the tetragrammaton was, in theory, restricted to the High Priest in the Temple.⁷

³ Leonard W. Levy, Treason Against God: A History of the Offense of Blasphemy (New York: Schocken Books, 1981) 25.

⁴ T. Sota. 13:7.

⁵ This claim has come under attack recently in light of the discovery of early Greek manuscripts which retain the tetragrammaton or its Greek transliteration. Albert Pietersma, "Kyrios or tetragram: The Renewed Quest for the original LXX," in Albert Pietersma and Claude Cox, De Septuaginta (Missasauga: Ben Ben Publications, 1984) 85-101, disputes the position that the original LXX kept the tetragrammaton which was later substituted with kyrios. He demonstrates that "kyrios as a surrogate for the tetragrammaton is original LXX," 97, and he argues for a later "systematic replacing of the familiar and hallowed kyrios with the parochial Hebrew tetragram," 100.

⁶ Cf. Tg. Onq. Gen 21:23; 22:16; 24:3; Exod 6:8; Num 14:30, and The Targum Onqelos to Genesis, translated with critical introduction and notes by Bernard Grossfeld (Wilmington, Del.: M. Glazier, 1988) 27ff. According to Elias Bickerman, Jews in the Greek Age (Cambridge Mass.: Harvard University Press, 1988) 282, the use of God's name in judicial oaths continued for a longer time.

⁷ M. Sota. 7:6; m. Yoma 6:2; cf. also Philo Mos. 2.152.

Pronouncing the divine name came to be equated with blasphemy.⁸ Targum Onqelos's version of Lev 24:16 broadens the crime of the Bible in which someone curses God by name to the act of pronouncing the Name, so that the penalty of stoning applied equally to both. The LXX also creates the same implication by using onamazōn, to "name" or "express", rather than kataraoimai "curse." The Rabbinic interpreters of scripture also understood nōqēb in Lev 24:6 to mean "pronounce."⁹

The Second Temple commentators and translators of the Hebrew Bible associated abuse of God's name explicitly with swearing. Moreover, in the perception of some, the abuse of God's name extended beyond false swearing to needless swearing. In the Hebrew Bible, Exod 20:7 reads "You shall not take (tiśśāʔ) the name of the Lord your God in vain, for the Lord will not hold him guiltless (yēnaqqeh) who takes his name in vain."¹⁰ In Targum Onqelos, the same passage reads "Do not swear (tômê) in vain with the name of

⁸ Cf. m. Sanh. 10:1: "one who pronounces the name or spells it has no share in the world to come." The Mishnah otherwise restricts the meaning of blasphemy to the cursing of God by his name; cf. m. Sanh. 7:5. Cf. Levy, Treason against God: A History of the Offense of Blasphemy, 23-24.

⁹ The Targum Onqelos to Leviticus and the Targum Onqelos to Numbers, translated, with apparatus, and notes by Bernard Grossfeld (Wilmington, Del.: M. Glazier, 1988) 55 n.5; Sipra 'Emor 14:19; b. Sanh. 56a-b.

¹⁰ According to Anthony Phillips, Ancient Israel's Criminal Law (Oxford: Basil Blackwell, 1970) 53-54, Exodus 20:7 originally referred to neither blasphemy nor oaths.

the Lord your God, for the Lord will not acquit (yězakkêy) one who swears falsely with his name (děyômēy běšēmēh lěšāgrā).¹¹ The LXX rendition of the same passage does not alter the meaning of to take, but accents the severity of abuse by rendering yěnaqqeh as katharisē, the Lord will not cleanse or purify. Josephus also understands tiśśā as to swear (omynai), but for him "in vain" signifies swearing in frivolous matters and not falsely (Ant 3.5.5 §91). Philo associates taking God's name in vain with unfulfilled oaths (Decal. 84-86) and needless swearing (Decal. 92) and calls the latter a blasphemy (Decal. 93) punishable by the severest of punishments (Decal. 95), presumably death.¹²

E. E. Urbach argues that the compunctions against the use of the divine name arose in response to its misuse.¹³ The magical papyri attest to the invocation of

¹¹ Cf. also Tg. Ps.-J.; Tg. Neof. and Frg. Tg. (P), Sipra Qêdôšim 2:6; b. Šebu. 20b; Pesiqta Rabbati Yodh Haddibrôt Paršah Tinyanuta 22, all of which render "to take" as "to swear."

¹² For Philo's understanding of the death penalty see pp. 86-87.

¹³ Ephraim E. Urbach, The Sages (Cambridge: Harvard University Press, 1987) 134. A. Marmorstein, The Old Rabbinic Doctrine of God (London: Oxford University Press, 1927) 17ff, argues that the decline of the use of the tetragrammaton is a direct result of the influence of the Greek philosophic view of the namelessness of God. He sees m. Ber. 9:5, which recalls the ruling "that a man should salute his fellow with the Name," as evidence of opposition to this influence. Harry Wolfson, Philo, vol. 1 (Cambridge: Harvard University Press, 1947) 113, points out the absence of any evidence for a Hellenistic philosophy of the namelessness of God.

God, often in a garbled form of the tetragrammaton or one of God's biblical names, for use in spells, curses, and amulets. Most of the papyri belong to the fourth century CE, but the Egyptian provenance of this material and the evidence that magical literature was suppressed under Augustus (Suet. Aug 31.1), thereby accounting for the lack of papyri from the time of the Second Temple, corroborates Urbach's theory. The belief in the efficacy of uttering the divine name in magical formulae, however, may have been a response to the reverence accorded the tetragrammaton by the Jews. Some spells explicitly evoked the "unutterable name" or "the Lord whose secret name is unspeakable."¹⁴ The equation of God's name with power drew it into magical practices and, as will become apparent, drew oaths into magical formulae as well.

Whatever the reasons, the decline in the use of the divine name had consequences for the taking of oaths. If out of reverence one hesitated to utter the biblical names, what expression did one use to refer to God? To take the polemical material at its word, there seems to have been no uniformity in practice. People swore by heaven or the Temple,¹⁵ objects associated with God, or by seemingly

¹⁴ For good examples see PGM 3.592 and PGM 21.1-29.

¹⁵ For an instance of "by heaven" in contemporary gentile literature see Plutarch Moralia 1048. For "by the temple," see Martial Epigrammata 11.94, where Martial calls for an oath by the Thunderer's temple.

unrelated choices, such as, by one's mother or father.¹⁶

Under Greek influence, a wide diversity of objects slipped into oath-formulae, and oath-formulae slipped into speech at moments not called for by biblical law or deemed appropriate by reverent Jews.¹⁷

B. GREEK INFLUENCE

The Greek world knew no legislation that limited the choice of invocation in a private oath. People often chose the god or gods most closely associated with their occupations, such as Ares for soldiers or Aphrodite for courtesans.¹⁸ Until the fourth century BCE, it was common practice to invoke three gods in succession. This led, in turn, to inclusive invocations or the rattling off of a long list of gods and, eventually, a long list of objects loosely connected with religious cults.¹⁹ Lycurgus preserves the oath of the young Athenian entering into his military service:

Witnesses of these shall be the gods Agraulos,
Hertia, Enyo, Enyalios, Ares, Athena the

¹⁶ Cf. Philo Spec. 2.2-3.

¹⁷ According to Bickerman, The Jews in the Greek Age, p. 822, Greek society habitually expressed itself with religious language, thus allowing oaths to slip into speech at inappropriate moments, for example, Socrates' "by the dog" and "by the beech tree," and Zeno's "by the goat."

¹⁸ Joseph Plescia, The Oath and Perjury in Ancient Greece (Tallahassee: Florida State University Press, 1970) 5.

¹⁹ Ibid., p.6.

Warrior, Zeus, Thallo, Auxo, Hegemone,
Heracles, and the boundaries of my native land,
wheat, barley, wines, olive trees, fig
tree.²⁰

The Greek and Latin literature preserves countless examples of meaningless and unnecessary oaths.²¹ Perhaps the Greek's habit of swearing too often and without thought of culpability led to the Roman saying Graeca fides which implied that the Greek's word was worthless.²²

Saul Lieberman argues that, under Greek influence, people adopted strange and capricious formulae.²³ He cites several examples from the Tannaitic material: an oath by the life of the fig picker²⁴ and a vow by a fish net.²⁵ Josephus betrays a Jewish sensibility against swearing by terms unrelated to God when he claims that Socrates' death was due, in part, to his practice of swearing strange oaths (AgAp 2.7 §263). Socrates was wont to swear by the dogs (Arist. Wasps 83). These curious oaths of the common people

²⁰ Lycurgus Leocrates, 76-77, Strobaeus Florilegium 43-48; Pollux 8.105; cf. Plescia, The Oath and Perjury in Ancient Greece, 17.

²¹ Rudolf Hirzel, Der Eid (Leipzig: S. Hirzel, 1902) 25.

²² For this association see Plescia, The Oath and Perjury in Ancient Greece, 87. Also in 2 Macc 15:10, Maccabeus points out the treachery of the Gentiles and their failure to fulfil oaths.

²³ Lieberman, "Oaths and Vows," 117.

²⁴ T. Sanh. 5:1; Lieberman, "Oaths and Vows," 155.

²⁵ M. Ned. 2:5; Lieberman, "Oaths and Vows," 128.

are rarely preserved in the literature written by the educated and religious élite. Most oaths in the intertestamental literature call upon God in some manner or other. Some of these circumlocutions, for example, "in the name of the Lord of the spirits who veiled the distinction between light and darkness" (1 Enoch 41:8), nevertheless, can appear very odd.

The literature does illustrate the Greek and Ancient Near Eastern practice of stringing together numerous names. In the Genesis Apocryphon of Qumran Cave 1, Lamech makes his wife swear "by the Most High, by the Great Lord, by the King of all ages with the sons of Heaven" (1QapGen 2.4). The author of 1 Enoch works drama into his oath by building up to as close an explicit naming of God as he dare: "I swear to you, righteous ones, by the glory of the Great One and by the glory of his Kingdom, and I swear to You (even) by the Great One" (1 Enoch 103:1). Josephus relates several occasions when oath-takers piled up oaths. When John's plot against Josephus failed, he wrote a letter of defence which, according to Josephus, "ended with oaths and horrible imprecations" (Life 2 §101).²⁶ Philo is critical of this practice and explains the motivation for it as a belief that the more oaths, the greater the security of their object

²⁶ See also Life 53 §275: Jonathan's party's assertion of loyalty; Ant 20.3.2 §62: Izate's promise to the Parthians; Ant 14.1.2 §7: Aristobulus and Hyrcanus' agreement. Josephus merely alludes to these oaths; he never repeats them verbatim.

(Spec. 2.8). It also seems probable, in the case of pious oaths, that the oath-taker wished to be clear about whom he referred to without using names.

According to Philo, one substitute which avoided the divine name by being purposely obtuse was nē ton -- or ma ton --, "'Yes, by --' or 'No, by --'" (Spec. 2.4).²⁷ This oath is similar to the practice of the Achaeans and Dorians who swore nē Dia or ma Dia.²⁸ The question whether this is the source for the injunction in Matt 5:37 and James 5:12 will be raised later.

Varied and perhaps meaningless formulae led to the possibility that one would feel less bound by an oath sworn by an object than by an oath with God as a witness. The seemingly endless possibilities for invocation called for a delineation of binding formulae as will be evident in the examination of Philo, the Dead Sea material, and the Pharisaic evidence.

C. INCREDULITY ASSOCIATED WITH OATHS

The explanation of why people came to swear excessively cannot rest solely upon a mimicry of the oath-formulae of Hellenistic societies. An alteration in the

²⁷ Cf. Samuel Belkin, Philo and the Oral Law (Cambridge: Harvard University Press, 1940) 142; E. R. Goodenough, Jewish Jurisprudence of the Jewish Courts in Egypt (Amsterdam: Philo Press, 1968) 43.

²⁸ Plescia, Oaths and Perjury in Ancient Greece, 4.

consciousness of the oath as a sacred act must first have taken place. More important than the abuse of oaths in Hellenism was their legitimate use. With the international commercial and political interaction of the late Second Commonwealth and the increased bureaucratization of life came the increased necessity of taking oaths. The oath took place in a secular forum in which its form was preserved, but its religious resonance was lost. Once the religious meaning was dropped, it was a short step to the spontaneous rattling off of oaths.

Much of the material pertaining to the Jews comes from the diaspora. Without doubt, the diaspora Jew was more inclined than his Palestinian counterpart to participate in non-Jewish courts. For example CPJ 19, from Fayûm (226 BCE), presents the request of Heraleia, a Jewess, that the king swear in a court in her complaint against Dositheos, also a Jew, who had publicly insulted her. Philo also describes the practice of swearing in Alexandrian Jews for jury duty, a practice probably borrowed from Alexandrian courts (Decal. 27.141).²⁹

There is evidence, nonetheless, within the later Jewish literature, that points to the adoption in Palestine of oaths in Jewish courts and legal practices not prescribed by the Bible. Moreover, while the ordinary Jew in Judaea could avoid Roman courts, he could not avoid all Roman

²⁹ Belkin, Philo and the Oral Law, 126.

institutions which employed oaths. One example demonstrates the continuity between diaspora and Judaeae Judaism. Under Roman law, the registration of real property for taxation purposes called for an oath of declaration. From Fayûm (c. 101 CE) comes a case in which a Jew, Soteles, requested that his son, Josepos, be inscribed as dead in order to prevent his enrolment for the poll-tax. He closed with an oath by the Emperor Caesar Nerva Tirgas Augustus (CPJ 427). A second example of a oath in a census declaration was taken by Pascheis grandson of one Sambatheios in 90 CE at Hermoupolis Magna. Pascheis swore by the Tyche of Imperator Caesar Domitianus Augustus Germanicus (CPJ 485). Soteles and Pascheis would have been observing a form of bureaucracy; the oath itself probably held no special meaning for them.³⁰ It is probable that Jews were required

³⁰ Edwin Seidl, Der Eid in römisch ägyptischen Provinzial-recht, vol 1 (Munich: C. H. Beckische Verlags Buchhandlung, 1933) 49, argues that the oath associated with enrolment was a matter of protocol and not obligatory. He bases this on his distinction between fakultativ versus obligatorisch oaths. The problem with Seidl's argument lies in his use of this distinction to define the Roman distinction between iuriurandum necessarium which were used to render judgements and iuriurandum voluntarium which were not enforceable judgements but agreements which gave the plaintiff grounds for an actio ex iureiurando. Cf. Leopold Wenger, Institutions of the Roman Law of Civil Procedure (New York: The Liberal Arts Press, 1940) 22, 286. The second oath could be required by law. Seidl argues that because not all enrolment declarations in the papyri material include oaths, it is evident that the declarant could choose to take the oath or not (50). It seems more likely that the censor determined when oaths were necessary or that the oath took an oral form at the time of declaration and would not be included in the list of property.

to take such oaths at the time of Quirinius' census.³¹ Under Roman law, a declaration under oath was required by the censor.³² The censor took an oath of integrity (Iusiurandum calumniae) which held him accountable for his census. He, in turn, could demand, as was his right, an oath to guarantee the veracity of property declarations. Given the nature of the census and the personal liability of the censor, it seems probable that such an oath would have been required in Judaea.

The declaration was no less complicated than a modern census. It included the status of the ownership of a domicile, the age and number of dependents and their relationship to the head of the household, and the extent of property belonging to each.³³ The oath accompanying the census declaration would have recognized the Emperor's direct authority over one's person and one's property. The individual oath-taker placed himself in direct subservience to the Emperor. Tacitus, in his *Annals*, makes the observation that the oath which the consuls, senate and other distinguished men of Rome took to Tiberius was a cheerful compliance to slavery (Annals 1.7). Judas the

³¹ Cf. Ant 18.6.1 §2 and Luke 2:2.

³² Dion 2.25, 4.15; Livy 43.14.5; Cicero De orat. 2.14.260, De off. 3.29.108. C.f. Theodor Mommsen, Römisches Staatsrecht, vol. 1 (Leipzig: S. Hirzel, 1887) 373.

³³ Cf. Seidl, Der Eid im römische ägyptischen Provinzialrecht, vol. 1, 46.

Galilean and a Pharisee, Saddok, the instigators of the Jewish revolt, objected to the census for precisely this reason. According to Josephus, they claimed that it "carried with it a status amounting to downright slavery" (Ant 18.1.1 §4).

Oaths asserting ownership of property are found extensively in the papyri.³⁴ The Judaeian record is not available. Evidence dating before the Hellenistic period, however, illustrates the use of oaths in the commercial sphere in the diaspora. Oaths asserting ownership of property appear in the Elephantine papyri. In one case, a Jew named Mahseiah swore an oath by YHW (byhw) that a piece of land belonged to him (C 6). Another oath, sworn by a Jewess, settled property claims in a divorce dispute (C 14). C 44 contains a defendant's oath in litigation concerning the ownership of an ass. The final example, C 45, is a contract which describes an oath imposed before judges over the theft of a fish. These oaths are all early examples of the enhanced opportunity to take oaths within Egyptian courts, and they illustrate a shift in emphasis from promissory to assertory oaths.³⁵

Ze'ev Falk finds evidence in the Tannaitic literature of an increased use of assertory oaths in

³⁴ E.g., P. Oxy 175 and 638; Chr 2.212; P. Straß b 24; P. Lond 941; CPJ 225.

³⁵ Reuven Yaron, Introduction to the Law of the Ancient Papyri (Oxford: Clarendon Press, 1961) 32.

judicial decisions during the late Second Commonwealth.³⁶ Biblical law contains little evidence of decisory oaths, perhaps only the oath of deposit in Exod 22:6-14, but the Mishnah records administration of oaths in a variety of claims (m. B. Mes. 1:1).³⁷ M. Ketub. 1:1-4 records a series of disputes in which oaths were introduced. Oaths were taken to contradict a single witness (Sipre Deut. 19:15). M. Šebu. 7:8 lists individuals upon whom oaths can be imposed: "the hireling, he that has been robbed, he that has been wounded, he whose fellow-suitor is not trusted even if he takes an oath, and a shopkeeper over his account book."³⁸ Solomon Zeitlin sees this Mishnah as a record of the introduction of the legal oath into Jewish society at the time of Alexander Jannaeus. He argues that the economy became much more complicated by the addition of the notion of partnership and agency to the basic structure of private versus God's, i.e. temple and priest's, property.³⁹ Under

³⁶ Ze'ev Falk, Introduction to the Jewish Law of the Second Commonwealth, vol. 1 (Leiden: E. J. Brill, 1976) 130-131.

³⁷ The Mishnah also indicates a trend to try to restrict these oaths: "a person who finds a lost article need not swear, as a precaution for the general good" (m. Git. 5:3).

³⁸ Josephus intimates that the practice of using oaths was extensive, but whether he is appealing to Roman or Jewish custom is not certain (Ant 17.5.6 §129).

³⁹ Solomon Zeitlin, The Rise and Fall of the Judaean State, vol. 1 (Philadelphia: Jewish Publication Society of America, 1968-78) 431.

foreign influence, it would seem that the Jewish courts came to make greater use of oaths.⁴⁰

Other areas in which oaths were used extensively in the Roman administration of such provinces as Egypt include oaths of office and the oaths accompanying the reports of officials.⁴¹ Strategoi, in particular, took and used oaths often. Avigdor Tcherikover concludes in the *Prolegomena* to his Corpus Papyrorum Judaicarum that the number of Jews in public offices in Alexandria was probably considerable.⁴² Papyri evidence points to Jews in police and administrative offices and, in particular, tax-gathering. With respect to at least the last, Jewish counterparts existed in Judaea under Roman rule.

The practice of magic in the Hellenistic world is well documented. The Jews may have been an exception in the ancient world in their aversion to such practices.⁴³ Despite their scruples against magic, the language of their oaths and vows found its way into incantations. Oaths were used as adjurations to bind spirits, angels, or even God to

⁴⁰ See Bernard S. Jackson, Essays in Jewish and Comparative Legal History (Leiden: E. J. Brill, 1975) 248, for the same conclusion.

⁴¹ Seidl, Der Eid im römischen und ägyptischen Staatsrecht, 73ff.

⁴² Avigdor Tcherikover, Corpus Papyrorum Judaicarum, vol. 1 (Cambridge: Harvard University Press, 1957) 17.

⁴³ Cf. Deut 18:10-11; 2 Kgs 21:6; 2 Chr 33:6; Jer 27:9; Mich 5:11.

some course of action. That act was either exorcism or a curse.⁴⁴ In the Testament of Solomon, for example, oaths are used repeatedly to gain control over evil demons. Beelzeboul confesses under such a spell that "if anyone adjures me with an oath (called) 'the Eloni' a great name for his power, I disappear" (6.8). This text may have been composed from any time between 100 and 300 CE, but the demonology seems to be earlier.⁴⁵ According to 1 Enoch 69:14, the Evil One, before his fall, told Michael his secret name, presumably God's name, to be used in an oath by which all souls and demons could be caused to tremble. Enoch reveals that this same oath was the power by which the cosmic order was created and sustained (1 Enoch 69:16-26). The underlying assumption is that an oath could be used to control or manipulate these forces.

The spell was a rather confused oath; it purported to assert a fact. Instead of witnessing to the truth of a claim, however, the spell tried to turn a wish, often a

⁴⁴ For an oath invoking a curse see Bowl 6 in Joseph Naveh and Saul Shaked, Amulets and Magic Bowls: Aramaic Incantations of Late Antiquity (Leiden: E. J. Brill, 1985) 164. For oaths of exorcism see Amulet 4:28, 12:1, and Bowl 12 in Naveh and Shaked, 56. 95 and 164; Amulet 9 (Oxyrrhynchus T. Colon, Inv. No. 6) in Naveh and Shaked, 82-83; Genizah 5, T-S K 1.70 in Naveh and Shaked, 224-5.

⁴⁵ D. C. Duling, "Testament of Solomon: A New Translation and Introduction," in James H. Charlesworth, The Old Testament Pseudepigrapha, vol. 1 (New York: Doubleday, 1983) 942.

curse, into a fact by invoking a witness. The witness was then bound to a course of action.

Vows seem to have been treated synonymously with curses, insofar as the two words appear in association in the incantations.⁴⁶ Papyri which discuss the act of vowing indicate that the vow was a spell in which someone had made an offering to a spirit or to God, that is something was paid to a spirit in order to seal a curse.⁴⁷ It was an inverted biblical vow: "Since I have dedicated this to you, do this for me."

The witness to ordinary oaths is silent in the late Second Temple literature of Judaea, but the same is not true for extraordinary oaths, specifically oaths of allegiance and loyalty. The Hebrew Bible contains few oaths of international treaty. In order to ratify them, one might be called upon to acknowledge foreign gods. International treaties brought Israel into closer association with other peoples. The danger of commercial and cultural exchange was a possible infiltration of foreign gods into Israelite worship (cf. Josh 23:7). Jubilees shares this negative

⁴⁶ Cf. Lieberman, "Oaths and Vows," 119 n. 27. For vows included in lists with curses see Bowl 1:1-2 in Naveh and Shaked, 124, and Amulet 4:6 in Naveh and Shaked, 54; Gordon L, Archiv Orientalní, IX in Charles D. Isbell, Corpus of the Aramaic Incantation Bowls (Missoula Montana: The Society of Biblical Literature, 1975) 127.

⁴⁷ Cf. Gordon 4, Orientalia, XX in Charles A. Isbell, Corpus of the Aramaic Incantation Bowls 97:3 : "they have vowed and fulfilled/paid (nāḏērū wē³ašlīmū) to the gods of heaven and the gods of earth" (my translation).

attitude and expresses regret over Isaac's oath to Abimelech, and in its gloss on Gen 26:30-31 attributes the misfortunes of dry wells to the oath (Jub 24:25-26). Under the Roman Empire, oaths of allegiance to the emperor and state were common. In the eastern provinces, where the emperor cult prevailed, these oaths were taken by the Emperor or his genius.⁴⁸ That Jews were totally exempt from all aspects of emperor worship is a common misconception. In recognition of their religious sensibilities, Jews were allowed to use different forms: prayers and sacrifices on the Emperor's behalf. It is possible that they were allowed to alter oath-formulae for allegiance.⁴⁹

Josephus records two occasions on which the Jews of Judaea swore allegiance to Roman Emperors. The first occurred under Herod when "the whole Jewish people affirmed by an oath that it would be loyal to Caesar and to the king's government..." (Ant 18.2.6 §41). On an earlier occasion, the majority of the population had sworn an oath of loyalty to Herod that they would be friendly to his rule

⁴⁸ Cf. Lilly Ross Taylor, The Divinity of the Roman Emperor Philadelphia: Porcupine Press, 1975) 199.

⁴⁹ Alfred Rabello, "The Legal Condition of the Jews in the Roman Empire," in ANRW 11.13.703 and E. Mary Smallwood, The Jews Under Roman Rule from Pompey to Diocletian (Leiden: E. J. Brill, 1976) 147-148.

(Ant 15.10.4 §368).⁵⁰ The second oath to a Roman ruler took place under Vitellus' administration. Upon receiving news of Tiberius' death, he administered to the people an oath of loyalty to Gaius (Ant 18.5.3 §124).

Jean Juster claims that the Jews of the diaspora were more flexible about taking these sorts of oaths.⁵¹ Under Ptolomy Philometor, they submitted to an oath by God and the king to follow the law in their submissions against the Samaritans (Ant 13.3.4 §76), and the Alexandrian Jews submitted to an oath of loyalty to Vespasian (JW 4.10.6 §617). Nevertheless, on one occasion, the Jews of Alexandria may have been stricter than their Judaeans brothers in their refusal to take an oath. According to Josephus, Apion accused the Alexandrian Jews of refusing to honour Gaius' statues and to swear by his name (Ant 18.8.1 §258).

At least two groups in Judaism refused to take part in these Judaeans oaths of loyalty. The Pharisees and the Essenes refused and were excused from the oath to Herod (Ant 15.10.4 §370-371), and the Pharisees refused the oath to

⁵⁰ On the distinction between these two oaths, which are often treated as one occasion in the secondary literature, see Emil Schürer, The History of the Jewish People in the Age of Jesus Christ, edited by Geza Vermes, Fergus Millar, and Matthew Black (Edinburgh: T & T Clark, 1979) 314 n.94 and Smallwood, The Jews under Roman Rule, 98.

⁵¹ Jean Juster, Les Juifs dans l'empire romain (New York: Bert Franklin, 1914) 344.

Caesar and Herod and were fined.⁵² This last oath was not necessarily in Caesar's name.

Superficially, the problem of the oath of loyalty, acknowledging another's gods, was avoided; but to a discerning eye, the alterations were only cosmetic. Granted the Essenes probably did not take the first oath because they made a practice of avoiding oaths (JW 2.6.2 §86 and Ant 15.10.4 §371). Nevertheless, the request to take an oath should have been offensive. Two parts of an oath call for God's authority: the witness and the curse. In a typical oath of loyalty to Gaius, the dropping of his name did not make the oath acceptable under biblical law. The following oath is the loyalty oath of Aritium (37 CE). It begins: "On my conscience" (ex mei animi sententia), a formula recognized by Roman law, and contains the explicit curse:

If consciously I swear falsely or am proven false may Jupiter Optimus Maximus and the deified Augustus and all other immortal gods punish me and my children with loss of country, safety, and all my fortune.⁵³

In other words, if this oath was breached, Caesar had the right to punish the perjurer. He, then, had the authority of a divine witness to the oath. Thus, one could avoid

⁵² Eliezer Paltiel, From Protectorate to Empire (University of Pennsylvania: unpublished dissertation, 1976) 230-231, following Morton Smith and Jacob Neusner, concludes that the Essenes and Pharisees cooperated with the oath to Gaius on the assumption that Josephus would not have hesitated to record acts of sedition if they had occurred.

⁵³ A. C. Johnson et al, Ancient Roman Statutes (Austin: University of Texas Press, 1961) Doc. 161.

calling Gaius a god, but by virtue of taking an oath of loyalty to him, one could not avoid acknowledging his authority and the authority of his gods. The Pharisees, who held strictly that God alone was master (Ant 18.1.3 §22), would therefore have avoided such oaths. The Jews who did take these oaths were not sensitive to this fact. Such official oaths had, perhaps, become perfunctory and meaningless acts.

The step from submitting to oaths without ascribing them meaning to casually taking meaningless private oaths seems short. Joseph Plescia documents how oaths lost their sacred character when Athenian law became a set of rational principles rather than religious precepts and the punishment for perjury fell into the hands of the legal administration.⁵⁴ The end result was a lack of faith in the veracity of oaths. A comparable decline in confidence in private oaths is evident in the literature of the late Second Commonwealth. Very few oaths in the Hebrew Bible are broken, but when Jubilees recasts the story of Esau and Jacob, Esau swears an oath to his father and one to his mother not to seek evil against Jacob, but promptly breaks it after their death stating: "Mankind and beast of the field have no righteous oath which they have surely sworn forever..." (Jub 37:18). In 1 and 2 Maccabees, the only

⁵⁴ Plescia, The Oath and Perjury in Ancient Greece, 71 and 102.

oath that is not intentionally broken is nevertheless unfulfilled. Nicanor swears, "If you do not hand Judas over to me, I will level this precinct of God (the Temple), and I will build here a splendid temple to Dionysius" (1 Macc 7:35; cf. 2 Macc 14:32-33). Nicanor is cut down in battle before he can lay a hand to the Temple.

Josephus' account of the history of the Second Jewish Commonwealth is a history of broken oaths. For the most part, people who took oaths were not to be believed. Their broken oaths often lead to their own destruction. For example, Josephus directly attributes the collapse of the Hasmonean dynasty and the arrival of Roman rule to Hyrcanus and Aristobulus' infidelity to an oath (Ant 14.1.2 §7; 14.4.5 §77). Although Josephus places in the mouth of Ptolemy (Soter) praise for Jewish fidelity to their oaths (Ant 12.1.1 §8), the only nation whom he portrays as faithful to their oaths are the Romans. In this indirect praise of the Romans, Josephus may reflect actual practice. Whereas Cicero claimed that false swearing was not necessarily perjury, in dealings with Roman enemies he was adamant that the laws regulating warfare called for fidelity to oaths (De Off. III 29 (107)). The Jews who took oaths during the war with Rome, in contrast, were without conscience. For example, when the Roman garrison capitulated to Eleazar, his envoys swore pledges of security to the soldiers, but as soon as the Romans laid down their

arms, Eleazar's party fell upon them and massacred them. The Romans died with the words "the covenant" and "the oath" on their lips (JW 2.7.10 §449-453).

Philo sums up the prevailing attitude of Diaspora Judaism, and, perhaps, also Judaeen Judaism by the end of their war: "the mere fact of his swearing casts suspicion on the trustworthiness of a man." He applied the Greek proverbial saying "a second-best voyage" to the use of oaths (Decal. 84). By this saying, he suggests that whoever resorted to oaths demonstrated his or her desperation to be believed.

D. VOWS

While some people were making casual use of oaths, others appear to have been casually assuming the obligation of vows. Ben Sirach again proves to be a witness to this habit of his society. He warns against uttering vows without first asking oneself if one is willing or prepared to fulfil one's vow in the event that God fulfils the request: "Before making a vow, prepare yourself, and do not be like a man who tempts the Lord" (Sir 18:23). He ridicules the individual who regrets his vow: "Let nothing hinder you from paying a vow promptly and do not wait until death to be released from it" (Sir 18:22).

Evidence points to the problem of people taking Nazirite vows who were unable, at their resolution, to pay

for the sacrifices necessary to bring the vow to completion. When Agrippa II returned to Palestine in 44 CE, he "arranged for a considerable number of Nazirites to be shorn" (Ant 19.6.1 §294).⁵⁵ One assumes, as H. Louis Feldman points out, that all of these vows had not come to an end simultaneously. These seem to be people whose period of dedication was indefinitely extended due to a want of funds. Paul, in Acts 21:23-26, also pays for a number of Nazirite vows which seem to have been unavoidably prolonged. The Talmud preserves a tradition in which Simon the Just refuses to partake in the guilt-offering brought by the Nazirite (b. Ned. 9b). David Halivni Weiss argues:

Simon was against the practice prevalent in his time, and even more common in subsequent times, of contracting Nazirite vows for primarily non-religious reasons, and in some cases for no other reasons than to prove an argument.⁵⁶

The Mishnah cites a case in which a man exclaims upon seeing a koy "may I be a Nazirite if this be a wild animal" (m. Nazir 5:7). The contraction of Nazirite vows in haste or in a frivolous manner no doubt led to regret.⁵⁷

The literature also records another vow, qorbān, which gained currency during the Second Commonwealth. A. I.

⁵⁵ Cf. Louis H. Feldman's note to this passage in Josephus, vol. 9 (London: William Heinemann Ltd., 1965) 256 Q.

⁵⁶ David Halivni Weiss, "On the Supposed Anti-asceticism or Anti-nazritism of Simon the Just," in JQR 58 (1967-68): 248.

⁵⁷ Cf. b. Ned. 36a and b. Nazir 5a.

Baumgarten has delineated three uses of gorbān within the Rabbinic discussion and the late Second Temple sources. First, gorbān was a vow to dedicate something to the Temple.⁵⁸ Baumgarten identifies Josephus' vow of valuation (Ant 4.4.4 §73) and the fragment of a stone vessel inscribed gorbān found close to the Temple precinct as examples of this vow.⁵⁹ According to Josephus::

Those who describe themselves as corban to God, meaning what Greeks would call "a gift" - when desirous to be relieved of this obligation must pay down to the priests a fixed sum, amounting for a woman to thirty shekels, for a man to fifty, for those whose means are insufficient to pay the appointed sum, the priests are at liberty to decide as they choose (Ant 4.4.4 §73).

Josephus follows the laws of valuation found in Leviticus (Lev 27:4-8)⁶⁰

In its second use, gorbān could be a vow of abstinence in which a dedicated object is forbidden, because it is like a gorbān (kēgorbān).⁶¹ The Jebel Hallet et Tûri ossuary and the vow in Mark 7:11 provide examples of this use of

⁵⁸ A. I. Baumgarten, "Korban and the Pharisaic Paradosis," JNES 16-17 (1984-85): 6.

⁵⁹ Ibid., 7. Cf. Benjamin Mazar, "The Excavations South and West of the Temple Mount Jerusalem," BA 33 (1970): 55.

⁶⁰ Josephus neglects Lev 27:57, the valuation for the young and old.

⁶¹ Cf. j. Ned. 1.4.37a.

qorbān.⁶² The following is Baumgarten's translation of the ossuary inscription: "Everything which a man will find to his profit in this ossuary is like an offering to God from the one within."⁶³ Because the bones of the ossuary are not an appropriate offering, the intention must be to render them like an offering.⁶⁴

Several other Jewish grave inscriptions may present the same practice as the Jebel Hallet et Tûri ossuary. Five of those found identify the grave as an altar.⁶⁵ Laurence Kant associates these with necro-worship. But an equally plausible conclusion, given the find in Kidron, is that the deceased wished the grave undisturbed and, therefore, used language to render it prohibited by religious sanctions.⁶⁶

⁶² A.I. Baumgarten, "Korban and the Pharisaic Paradosis," 6, 16. Cf. Joseph A. Fitzmyer, "The Aramaic Qorbân Inscription from Jebel Hallet Et-Tûri and Mark 7.11/Matt 15.5," JBL 78 (1959): 60-65. Cf. also J. Duncan M. Derrett, "KORBAN, O ESTIN DŌPON," NTS 16 (1969-70): 364-8, who argues first that in Mark 7:11 the son also denied himself use of the property and second that the ossuary was an offering for the deceased at the resurrection.

⁶³ *Ibid.*, 7.

⁶⁴ *Ibid.*, 7

⁶⁵ Cited in Laurence Kant, "Jewish Inscriptions in Greek and Latin," in ANRW 20.2.704: CII 680a = BS 50; CII 1062; BS 142; Heirapolis, Phrygia, s IIIp in Robert, Épitaphes juives, 386ff, and no. 46 in Pennachietti, Nuove iscrizioni di Hierapolis Frigia, 319.

⁶⁶ On the topic of tomb robbery and laws in the ancient world see A.D. Nock, "Tomb Violations and Pontifical Law," in Essays on Religion and the Ancient World (Cambridge: Harvard University Press, 1972) 527-33.

An example from Mishnah tractate Nedarim: "May what I eat of thine be Qorbān (m. Ned. 1:4), illustrates a practice of abstaining from some item as an expression of piety. What the vow-taker contracts is that the item designated as qorbān is like a dedicated offering in that he may no longer make use of it without violating the law of sacrilege, for which he must bring a guilt offering plus an added fifth in order to receive expiation (Lev 5:15).⁶⁷ The qorbān vow is, therefore, a form of double indemnity whereby one incurs the guilt of neglecting or violating a vow as well as the guilt of misappropriation of dedicated property, if one violates one's vow.⁶⁸ It is, by an overwhelming majority, this type of vow which the rabbinic literature addresses.

Thirdly, qorbān could be an oath-term. Baumgarten notes: "The Rabbis would not admit the validity of oaths sworn explicitly by the korban."⁶⁹ Josephus confirms that

⁶⁷ Philo may allude to the qorbān vow of abstention in his Hypothetica: "a chance word of dedication spoken unawares deprives him (a man) of all (his possessions) and if he repents or denies his promise, his life is forfeit also. The same holds of any other persons over whom he has authority. If a man has devoted his wife's sustenance to a sacred purpose he must refrain from giving her that sustenance; so with a father's gifts to his son or a ruler's to his subjects" (Hypoth. 7.4-5).

⁶⁸ For the association of broken vows and meilah see Philo Hypoth. 7.4.

⁶⁹ Baumgarten, "Korban and the Pharisaic Paradosis," 6.

people used gorbān as an oath when he cites a passage from Theophrastes' Laws:

The laws of the Tyrians prohibited the use of foreign oaths in enumerating which he includes among others the oath called "Corban." Now this oath will be found in no other nation except the Jews, and, translated from the Hebrew, one may interpret it as meaning "God's gift" (AgAp 1.22 §167).

Josephus does not explain how this oath was employed. This leaves room for some to speculate that the gorbān oath was actually the korban vow of abstinence.⁷⁰ Saul Lieberman contends, however, that the Tyrian law against foreign oaths would make sense only if gorbān was an oath and not a private vow.⁷¹

The argument that the gorbān oath was a vow appears in inverted form, that is, the gorbān vow of abstinence was actually an oath. George Wesley Buchanan has argued that Matt 15:5 (and its parallel Mark 7:11) is a minced oath or vow. He follows A. H. McNeile's suggestion that "'Corban' could be merely an oath: 'By the offering [on the altar]!'"⁷² Buchanan contends that an implicit curse follows the invocation of gorbān: "'korban! [may these evils

⁷⁰ Isaac Halevy, Doroth ha-rishonim, vol. 1 (Frankfurt a. M.: Yehuda Leib Nalde, 1906, Reprinted in Jerusalem, 1966) 314.

⁷¹ Lieberman, "Oaths and Vows," 130.

⁷² A. H. McNeile, The Gospel According to St. Matthew (New York: St. Martin's Press, 1965) 223.

fall upon me], if from me you receive benefit'." ⁷³ He supports his view by citing m. Ned 1:4: gorbān šeʔôkēl lāk, which he translates "korban ... [curses omitted] if I eat what is yours." In his view, the gorbān vow of abstinence is the same as the oath of gorbān to which Josephus refers in AgAp 1.22 §167. Ze'ev Falk refutes this view by arguing that Buchanan's examples can be understood as conditional vows. ⁷⁴ Buchanan has failed to recognize the legal fiction in which a person can treat his property as if it were an offering. The case in Mark 7:11 and Matt 15:5 finds a parallel in m. Ned. 5:6 where a son had prohibited to his father the use of his property. Nothing had actually been given to the temple.

The vows of Mark 7:11 and the Jebel Hallet Et-Tûri ossuary worked as means of prohibiting use of property not because of a conditional curse but because of the legal implications of their violation. If the parents or a grave robber had made use of the property designated gorbān, they would have become subject to the laws of meilah, misappropriation of sanctified property (Lev 5:15-16). Anyone who made use of sacred property unwittingly had to make full restitution plus an added fifth and bring a guilt-offering

⁷³ George Wesley Buchanan, "Some Vow and Oath Formulas in the New Testament," HTR 58 (1965): 317, 323.

⁷⁴ Ze'ev Falk, "Notes and Observations on Talmudic Vows," HTR 59 (1966): 310. Cf. also Solomon Zeitlin, "Korban," JQR 53 (1962-63): 161.

in atonement. For wanton use of sacred property, the rabbis ruled that the transgressor was liable to the lash as well as payment of restitution.⁷⁵ This use of law to deter someone from using property differs sharply from what we know of oaths of abstinence. Such oaths could not be used to prohibit a second or third party from using the oath-taker's property.

The great similarity between the activity of swearing to abstain from something and a vow of abstinence creates fertile ground for confusion for modern scholars, but the two activities can be distinguished. In the vow, the object was disallowed because it was dedicated property or because the legal fiction that it was dedicated had been established. In the oath nothing was dedicated. As Saul Lieberman points out, an oath of abstinence was a personal obligation.⁷⁶ According to the Rabbis, in Ruth 3:13 Boaz swears, "As the Lord lives, I shall not touch this woman tonight," and in 1 Sam 26:10-11 David swears, "As the Lord lives, ... the Lord forbid that I should put forth my hand against the Lord's anointed [Saul]." The rabbis claim that these oaths were used to exorcize one's yēser hāra , to prevent one from giving in to one's evil inclination. The one oath of abstinence in the New Testament served a similar purpose by bolstering the

⁷⁵ Cf. Danby, The Mishnah, 573 n. 2.

⁷⁶ Lieberman, "Oaths and Vows," 117-18.

oath-takers' resolve. In Acts 23:12 a group of Jews who have made a plot to kill Paul bind themselves by oath neither to eat or drink until they have completed their task. Perhaps the ruling of m. Šebu. 3:4 that one cannot take an oath to violate a commandment was operative here. It would hardly have been appropriate to swear a binding oath to kill someone when biblical law prohibited murder. These oaths of abstinence were different from vows; they contain self-imprecations which prevented the speaker from using an object or performing an act. The object had not been designated forbidden.

As in the case of the Nazirite vow, people seem to have been overly hasty in their use of gorbān and often eager to escape their obligations. The controversy between the Pharisees and Jesus found in Mark 7:11 and Matt 15:5 refers to such a situation. The evidence for regretted vows of gorbān are abundant in the Tannaitic literature, and Philo warns against a chance word of dedication. Because biblical law did not provide for this situation, other ways needed to be found to release people from their burden.

The vows of the Nazirite and gorbān mark a development in vow-taking practice which facilitated the ease with which they were taken. What we find is the adoption of vow-terms. The Nazirite vow required only the assertion "I will be a Nazirite" and the consequences were prescribed. The Mishnah contains numerous one-word

utterances that bound one to a vow. If one said Nazîk, Naziah, or Paziah, he became a Nazirite (m. Nazir 1:1). If one said gorbān, gonām, or gonās, one had taken a vow of abstinence (m. Ned. 1:2). The example of the gorbān vow in Mark 7:11 indicates that the Tannaim described practices common to the period prior to the destruction of the Temple. The ease with which one could contract a vow in the second Temple period was not paralleled by an easy fulfilment.

The Targums may reflect the formalization of vow-taking in the distinctions the translators make between the personal vows of Jacob, Jephthah, and Hannah on the one hand and vows of valuation and the Nazirite on the other. For the former, the translators use the paël of the verb gwm, to establish or confirm. Although this verb is transitive, no direct object appears in the text.⁷⁷ For the latter, they retain forms of nādar.

E. CONCLUSION

In the Hebrew Bible, oaths and vows were extraordinary expressions by which people entered into closer relationship with God. By the late Second Temple period, oaths and vows had become the language of the marketplace. For example, the increase of assertory oaths points to the common occurrence of oaths as solutions for

⁷⁷ Cf. Tg. Onq. Gen. 28:20; Num. 21:2; Tg. Ps.-J. Judg. 11:30; 1 Sam. 1:11.

disputes in human affairs. The result of this general abuse or misuse of oaths and vows became a headache for those who wished to guard the sacred quality of such utterances. As Ben Sirach puts it: "The talk of men given to swearing makes one's hair stand on end and their quarrels make a man stop his ears" (Sir 27:14). The questions which arose demanded answers: "Is this oath binding?" and "How do I obtain release from this vow?" Four voices from the period -- those of Philo, the Dead Sea Covenanters, the Pharisees, and Jesus -- attempted to establish guidelines for those who maintained some modicum of reverence for speech.

CHAPTER THREE

PHILO

The influence of Hellenism on Jewish formulations of oaths appears nowhere stronger than in the work of Philo of Alexandria. For Philo the earth, sun, stars -- in fact, all cosmological bodies -- fulfil the role of witness (Spec. 2.5). The discussion of Philo's treatment of oaths and vows in the secondary literature focuses almost exclusively upon the question whether Philo betrays Jewish or Hellenistic influences. Samuel Belkin, in his Philo and the Oral Law, marshals an overwhelming number of parallels to Philo's statements from the Rabbinic literature.¹ Although the sources are late, Belkin proves that other Jews could and did express the same ideas as Philo. By contrast, Isaak Heinemann argues that Philo's discussion of oaths and vows everywhere reflects the influences of Greek thought.² It is not the purpose of the present exposition to solve this debate, or to determine if Philo felt bound by Palestinian halakah. It is rather to explore one man's interpretation of one set of biblical laws.

¹ An earlier work by Bernhard Ritter, Philo und die Halacha (Leipzig: J. C. Hinrichs, 1879) attempts to prove that Philo was familiar with the Palestinian tradition.

² Isaak Heinemann, Philons griechische und jüdische Bildung (Hildesheim: Georg Olms Verlag, 1973) 82-96.

What becomes apparent in this inquiry is that Philo's concern for fidelity to oaths and vows derives from his fidelity to God and to the biblical text. His questions arise from his reading of the Bible. His seemingly casual assent to or dissent from the practices of the gentile society which surrounded him is, in fact, an expression of rigorous adherence to the laws of the Hebrew Bible. Rather than laxity, Philo exhibits strict observance. The Hellenistic hue into which he casts his commentary reflects the Hellenistic audience which he addresses, and more often than not, when Philo appears to be influenced by Hellenistic thought, he is, in fact, engaged in a refutation of its principles.

The importance of Philo for this study is not so much as a representative of Hellenistic Judaism, although he does provide evidence for the incursion of Hellenistic practices when he chooses to criticize them, but rather as an individual who attempts to apply consistently principles of rational interpretation; in short to bring the principles of truth and reason to practice. In doing so, he illustrates numerous problems of both interpretation and application of theory to praxis.

A. OATHS

For Philo, the third commandment, not to take God's name in vain, prohibits false swearing. In his explanation

of why the prohibition warrants the honour of its position in the decalogue, (Philo acknowledges that "custom makes light of oaths" [Decal. 85]), he provides a definition of "oath":

For an oath is an appeal to God as a witness in matters in dispute and to call Him as a witness to a lie is the height of profanity. (Decal. 86)³

Heinemann argues that here Philo has a Greek definition in mind, which he shares with Cicero, that an oath is a religious assurance. According to Cicero, "an oath is an assurance backed by religious sanctity; and a solemn promise given, as before God as one's witness, is to be sacredly kept" (De Off. 3.104). But Heinemann misses the thrust of Philo's remark. Philo, no doubt, was conscious of this Greek definition and could use it harmoniously with reference to the biblical usage. When one contrasts Philo's use of the definition with Cicero's, however, it becomes obvious that the two express very different understandings of the significance of fidelity to oaths, thereby placing Cicero firmly in the Graeco-Roman world and Philo squarely in the world of Judaism.

Cicero holds that the significance of an oath lies in one's obligation to justice and good faith (De Off. 3.104) and that, according to all philosophers, that is, both Stoics and Epicureans, the religious sanctions attached

³ Cf. Somn. 1.12; Leg. 3.205, and Plant. 82.

to the oath are meaningless because God is never angry or hurtful (De Off. 3.106). Personal integrity and good conscience are at stake. Consequently, Cicero can argue, on the one hand, that "swearing to what is false is not necessarily perjury, but to take an oath upon your conscience as it is expressed in our legal formulas is" (De Off. 3.108). On the other hand, he argues that oaths of treaty between enemies must be observed. Cicero draws a distinction between private and public or legal oaths. Perjury is, thereby, an offence against the state and no longer a religious matter.⁴ In contrast, Philo holds that the false oath is a denial of God's existence (Spec. 2.255).⁵

Just as the biblical text makes no distinction between the binding nature of various oaths on the basis of their contents, Philo treats all false oaths as an offence, even a profanity. Philo recognizes, in accord with Cicero, that the conscience necessarily suffers. He portrays the mind of the perjurer as "full of uproar and confusion, labouring under accusation, suffering all manner of insult and reviling" (Decal. 86). Consequently, reason tells one not to lie, but Philo points to a rational principle beyond

⁴ Cf. Samuel Belkin, Philo and the Oral Law (Cambridge: Harvard University Press, 1940) 144.

⁵ Ibid., 149. Cf. Midr. Tanhuma Matot 5: "The one who violates an oath denies the existence of God and remains unpardoned forever"; Sipre Deut. 221; b. Sanh. 45b.

the individual conscience, one which contradicts the Stoic and Epicurean position. He argues that it is an act of lunacy to invite a friend to be an accomplice to one's lie (Decal. 89), so how much more an act of madness "to call God to witness" to a lie (Decal. 90). Philo directs this argument to both the atheist, presumably the Epicureans, and the one who believes in the providence of God, the Stoics. Philo regards the Epicurean disbelief in providence as rejection of God and, hence, atheism.⁶ Later in the Decalogue, he seems to be mocking the Epicureans when he states, "In swearing by God you attribute a care for human affairs to one who in your view has no regard for them" (Decal. 91). The stab may also be aimed at the Stoic belief that the gods attend to great matters and the lives of great men but neglect small matters.⁷ In De specialibus legibus, Philo states explicitly, in contradiction to Stoicism, that the false oath arouses God's indignation (Spec. 2.11). He concludes that "anyone who treats what I have said with contempt may rest assured, first, that he is polluted and unclean": the use of God's name for evil speech is an act of pollution (Decal. 93); secondly, "the heaviest punishments are waiting to fall upon him" (Decal. 95). For Philo, reason and recognition that God is both creator and

⁶ Cf. Alan Mendelson, Philo's Jewish Identity (Atlanta: Scholar's Press, 1988) 48.

⁷ Cicero, Nat. deor 2.166-67.

ruler of the world stand in harmony, and reason does not allow one, as Cicero contends, to rule out God's judgement when one commits perjury.

When Philo does make distinctions between the binding nature of oaths, he refers to the biblical text:

all oaths (and vows) must be made good as long as they are concerned with matters honourable and profitable for the better conduct of public or private affairs and are subject to the guidance of wisdom and justice and righteousness (Spec. 2.12).

Conversely, Philo states that "religion forbids us to put ... into execution" oaths taken for improper purposes (Spec. 2.12-14). These include, for example, oaths to commit theft of murder, acts prohibited by biblical law. Philo may also have Lev 5:4-6 in view. To the category of improper oaths Philo also adds the oaths of those who have "lost the sense of companionship and fellow-feeling" or who "confirm the savagery of their temper with an oath" in which one swears to deny a person one's hospitality or one's assistance (Spec. 2.16).⁸ Philo provides justification for this distinction on the basis that "the law of our ancestors" commands justice and virtue.

Goodenough contends that Philo bases his argument on a Stoic principle, namely, that an oath functions just as

⁸ According to Isaak Heinemann, Philons griechische und judische Bildung, 90, Philo sees in the unsociability of oaths an offence against philanthrōpia. Mendelson, Philo's Jewish Identity, 103ff, in contrast, notes an apologetic stream in Philo's work to which this attack may belong. Philo is aware of the charge of misanthropy levelled at Judaism (cf. Diodorus Bibliotheca Historica 1.2; Hecataeus GLA no 11) and counters it by showing Judaism's opposition to anti-social behaviour (cf. Virt. 141; Spec. 2.167).

natural law does. It is an "automatically operating principle of nature."⁹ Consequently, he argues, "when an oath or vow comes into conflict with the natural laws of right and wrong, it is automatically invalid."¹⁰ Philo himself claims that the laws, that is, of the Torah, possess "intrinsically a fixity and stability which makes them equivalent to oaths" (Spec. 2.13). This is something quite different from what Goodenough describes. Philo argues that when one violates the Law in fulfilment of an oath, one incurs guilt not only for the unlawful act, but also for violating the oath which "seals...what is just and excellent" (Spec. 2.14), that is, the oath which establishes the fixed nature of the laws of the covenant. Although Philo argues that these laws are rational, he also recognizes that the covenant is an oath between God and humankind and that an oath for unlawful purposes is a violation of an earlier oath. Oaths of this sort are automatically invalid, because they disrupt the relationship between humankind and God. It, therefore, follows for Philo that such oaths are not to be carried out (Spec. 2.12), but rather the oath-taker must supplicate God and seek pardon (Spec. 2.15). How one goes about supplicating God conforms

⁹ E. R. Goodenough, The Jurisprudence of the Jewish Courts in Egypt: Legal Administration by the Jews under the Early Roman Empire as Described by Philo Judaeus (Amsterdam: Philo Press, 1968) 41.

¹⁰ Goodenough compares Philo with the Damascus Document's strict command not to fulfil an oath which is a violation of the law.

to the Mosaic law: through prayers (euchais - perhaps vows) and sacrifice (Spec. 2.17).¹¹ Although Philo speaks in the language of Stoics, his argument is premised upon the conviction that the covenantal law must be fulfilled.

Philo continues to direct his comments against the practices which stem from the reasoning that an oath can operate independently of a higher principle by levelling an attack against those, possibly the Epicureans, who "employ oaths to set the seal on their enjoyment of wealth which enables them to spend so freely" (Spec. 2.19). Philo's personal sensibility with regard to extravagant displays of wealth may lead him to the conclusion that "even the gracious nature of God deems them unworthy of his pardon" (Spec. 2.23). Here, the influence of Judaism upon Philo's thought is apparent, for the centre of his concern is recognition of God's authority and his law.

Although Philo's demand for truthfulness could be seen as a Stoic ideal, the penalty which he ascribes to the false oath and, as seen above, the inappropriate oath bears no resemblance to the tenets of Hellenistic legal philosophy or legal practice. Philo refers to a debate within Judaism

¹¹ It seems possible that euchais could refer to vows of offerings on this occasion rather than prayers, but then again the shift in language from Hebrew to Greek may lead Philo to conclude that the Bible calls for prayers and sacrifices.

over the penalty for perjury (Spec. 2.28).¹² The Hebrew Bible prescribes no penalty for perjury. According to Philo there are two categories of penalty for perjury, one from God, the other from people.¹³ God "suffers the guilty to remain forever in their well nigh hopeless uncleanness" (Spec. 2.27). Philo follows the LXX version of Exod 20:7, ou gar mē katharisē kyrios.¹⁴ According to Philo, Jews prescribe two penalties, death or the lash.¹⁵ Philo approves of the former (Spec. 2.28, 252). He describes those who prescribe death as "the better kind whose piety is extra-fervent" (Spec. 2.28). Rather than turning to Lev 24.16 to justify his position, even though he calls perjury blasphemy on other occasions (Fug. 83), Philo provides biblical support for his position through an argument from

¹² Philo's word for a false oath epiorkos seems to comprise both perjury (a false assertory oath) and the failure to fulfil a promissory oath. He never makes a clear distinction between the two. Cf. Heinemann, Philons griechische und jüdische Bildung, 86 and Rudolf Hirzel, Der Eid (Leipzig: S. Hirzel, 1902) 6. Philo refers first to one sort and then to another when addressing the same topic (cf. Decal. 84ff and Spec. 2.9). Cf. Belkin, Philo and the Oral Law, 145.

¹³ According to Heinemann, Philons griechische und jüdische Bildung, 93, Greek law does not prescribe a punishment for perjury.

¹⁴ Cf. F. H. Colson's note to his translation, Philo, vol. 7 (London: William Heinemann Ltd., 1958) 322 n.b.

¹⁵ Cf. Belkin, Philo and the Oral Law, 145. For the penalty of stripes see m. Šebu. 3:5.

minor to major.¹⁶ If the penalty for reviling a father or mother is death (Exod 21:17; Num 22:6), how much more should the punishment for perjury against the sacred title of God be death (Spec. 2.254)?¹⁷

Philo's faithfulness to the Jewish reverence for the divine name poses problems for him. On the one hand, his religious sensibilities lead him to statements which reflect conventional piety. He describes God's name, the tetragrammaton, as

a name which only those whose ears and tongues are purified may hear or speak in the holy place, and no other person, not in any other place at all (Mos. 2.114; cf. Decal. 93-94).

His philosophical reflections, on the other hand, lead him to a doctrine of the incomprehensibility of God, that is, that "all that follows in the wake of God is within the good man's apprehension, while He Himself alone is beyond it."

It is God's "subsistence from the things which He accomplishes" and not "His essence" that man comprehends (Post. 169).¹⁸ It follows for Philo, that God is

¹⁶ Mendelson, Philo's Jewish Identity, 25-26, notes that in Philo's interpretation of Lev 24:15, "Whosoever curseth his god," god refers to "gods of different cities who are falsely so-called" (Mos. 2.205) and indicates Philo and diaspora Judaism's need to display restraint by showing deference to pagan worship in order to avoid disputes.

¹⁷ Ibid., 52, Mendelson states that the death penalty for the Jewish community would signify the declaration that one is an apostate and exclusion from the community.

¹⁸ Cf. Harry Wolfson, Philo: Foundations of Religious Philosophy in Judaism, Christianity, and Islam, vol. 2 (Cambridge: Harvard University Press, 1947) 110-11.

unnamable.¹⁹ God himself, in Philo's gloss on Exod 3:14, qualifies the tetragrammaton by saying:

First tell them that I am He Who is, that they may learn the difference between what is and what is not, and also the further lesson that no name at all can properly be used of Me, to Whom alone existence belongs (Mos. 1. 75, cf also Somn. 1.67).

The reverence he accords the divine name reflects his conviction that to name God would be an act of arrogance tantamount to claiming that one can comprehend God. Consistent with this conclusion, Philo contends that one should not swear by God. On the basis of Deut 6:13 he holds:

Men who say that they swear by God should be considered actually impious, for naturally no one swears by Him, seeing that he is unable to possess knowledge regarding His nature. No, we may be content, if we are able to swear by His name, which means (as we have seen) the interpreting word (Leg. 3.207; cf. Mut. 18).

The seeming tension between Philo's belief that the tetragrammaton should not be uttered and the conviction that it is not actually a name is reconciled to some extent by Philo's interpretation of Lev 24.16, based on the LXX version, that "he that names the name of the Lord let him die" (Mos. 2.203). Just as one abstains from using personal names when addressing one's parents, one honours God by avoiding his name (Mos. 2.207). True to this logic, Philo

¹⁹ Wolfson, Philo, vol. 1, 113, refutes Marmorstein's theory that the doctrine of the namelessness of God is drawn from Greek philosophy.

limits himself to the Lord God as an appellation for God "by license of language" (Mut. 12) and argues that no title for God is to be used irreverently (Decal. 83).

When Philo selects appropriate language for framing oaths, he bears both his religious and philosophic convictions in mind by choosing words altogether unrelated to God's titles. He condemns the "lightness and needlessness" of those who swear by "the maker and Father of all," those who choose "tremendous titles" and use "name after name" (Spec. 2.6-8). Piety leads Philo to recommend an assortment of other phrases:

if indeed occasion should force us to swear,
the oath should be by a father and mother,
their good health and welfare, if they are
alive, their memory, if they are dead (Spec.
2.2).

He praises those who swear simply "'Yes, by --' or 'No, by --'" (Spec. 2.4) and approves of the use of "earth, sun, stars, heaven, the whole universe" (Spec. 2.5). In practice, he conforms both to his convictions as a philosopher and as a Jew.

Goodenough argues that Philo is simply finding justification for practices which had come into vogue through Greek influence.²⁰ All the terms for oath

²⁰ E. R. Goodenough, The Jurisprudence of the Jewish Courts in Egypt, 43. Goodenough also wrongly claims that oaths by these heavenly bodies are rejected in the Sermon on the Mount, Matt 5:33-37. These formulas are recognized by Jesus as referring to God and, therefore, held up as binding, that is, valid.

witnesses find parallels in Greek literature.²¹ Samual Belkin, in demonstrating these terms' place in the Rabbinic literature, points out that Midrash Tanhuma recognizes the oath "by the life of his father" on the basis of Gen 31:53. R. Eliezer in Cant. Rab. 8 recognizes the formula "by heaven and earth," and "Yes" (hēn šěbûĀ) is treated as a valid formula by b. Šebu. 36a.²² Goodenough also claims that Philo regards the astronomical bodies as lesser divinities.²³ This is clearly not Philo's intent, for he takes care later to warn against treating heavenly bodies or objects of human creation as things to be revered (Spec. 2.255). The prohibition of Exod 33:13 quoted by Philo in the LXX version, "Do not admit the name of other gods into thy soul..." (Spec. 2.256) comprehends that these bodies are no more animated than the works of man's creation.

Philo may draw his choices from custom, but he finds them suitable because of their metaphoric value. Parents are "copies of the divine power" in their generative capacity (Spec. 2.2). Jacob's oath by the fear of his father, according to Philo, adheres to this principle (Spec. 2.3). Because the cosmos precedes humankind in creation, and because the heavenly bodies express the unchangeability

²¹ DIELS Elementus 48; Hirzel, Der Eid, 16; Aristophanes Frogs 1374; and Plato Georgias 466e.

²² Belkin, Philo and the Oral Law, 141-42.

²³ Goodenough, The Jurisprudence of the Jewish Courts in Egypt, 43.

of God's nature, the earth and heavens are suitable substitutes for God as witness. Essentially, these oaths are taken by aspects of the divine nature, his creative power and his immutability. According to Philo, these phrases are not witnesses, they hold no divine power, they are mere substitutes. Although no oath should name God, all oaths call God to witness. No oath formula, unless intended to honour another divinity, fails to refer to God.²⁴

Because Philo considers words, such as heaven and earth, to be appropriate substitutes for God's name, the substitutions do not provide an occasion for release from an oath. Philo follows biblical law closely on this count. One does not so much dissolve an oath as admit guilt and perform the commensurate guilt offering (Spec. 2.15-16).²⁵ Given Philo's strict adherence to the binding authority of oaths and to the severity of the penalty for perjury, it is not surprising that he advises his reader to avoid swearing altogether. Philo finds nothing intrinsically evil in the oath itself. In his explanation of the name of the Well of the Oath, he states that one should not hesitate to take an oath to help decide matters in doubt, presumably legal disputes, "for he may rest assured that his name will appear

²⁴ Compare the evidence for Philo's fellow Alexandrian Jews when they refuse to swear an oath in the name of Gaius (Josephus Ant 18.8.1 §258).

²⁵ The oaths and vows of women are subject to the approval of husbands and fathers (Spec. 2.24ff).

in the register of those who have sworn truly" (Somn. 1.12). A truthful oath, for Philo, can be honourable. According to Philo, one's words on all occasions are to be regarded as oaths; swearing only casts suspicion on one's trustworthiness (Decal. 84) In this context, he cites the popular adage that oaths are "a second best voyage."

The saying "a second best voyage" (deuteros plous) in Greek literature is proverbial for "the next best way."²⁶ Menander provides a humorous explanation of the saying's meaning in his play Thrasyleon: "By the 'second voyage' is doubtless meant: if fair winds fail, take to the oars" (Men. 241). Unfortunately the context in the play has been lost; the quotation is preserved as a fragment. The saying seems to contain a nuance of desperation or failure. Socrates uses the saying in Plato's Phaedo when he describes his quest for the knowledge of the causes of everything. Unable to find a teacher or to discover the causes for himself, Socrates conducted "a second voyage" (Phd. 99d). He gave up "investigating realities" and decided that he "must have recourse to conceptions and examine in them the truth of realities" (Phd. 99d-e). Socrates' use of the expression "a second voyage" may be tongue-in-cheek. He mocks those who like Anaxagoras claim to know the cause of all things but merely identify elements like air and water.

²⁶ Cf. Francis G. Allison's note in Menander: The Principal Fragments (London: William Heinemann, 1964) 361 n.1.

Socrates, in his so-called next best approach, assumes the existence of causes, such as absolute beauty, and examines result, the beautiful object (Phd. 99b-100c). His meaning is clear: when one means will not achieve one's goal, one must abandon it for another means. When Philo applies the saying to oath-taking, he means, when one fails to make others believe, one resorts to oaths to inspire confidence. The attempt is desperate, for the fact that people do not believe the oath-taker without the oath, makes them more suspicious of his or her integrity when he or she appeals to God as a witness. The best course according to Philo is not to swear at all, for a rational nature always speaks the truth (Decal. 84).

Heinemann finds parallels to Philo's advice in Pythagorean and Stoic literature,²⁷ as well as in Philo's restriction of oaths to the god-fearing (Decal. 93).²⁸ Philo, however, is engaged in polemic against the practices of the society which surrounds him. According to Heinemann, the pride of the Stoics does not allow calling upon God as a witness.²⁹ Philo's concern for truthfulness is in honour of God rather than an instance of personal pride, and the

²⁷ Heinemann, Philons griechische und jüdische Bildung, 84. Cf. D.L. 8.22; Epict. Ench. 33.5; DIELS Elementum 48.2; Seneca Nat. qu. 2.32.3.

²⁸ Hirzel, Der Eid, 113.

²⁹ Heinemann, Philons griechische und jüdische Bildung, 87.

suggestion that he is dependent upon Hellenistic influences for the scruple not to swear seems absurd. To speak of Palestinian influence is unnecessary. The advice stems from his concern to avoid false swearing and impiety, the consequences of habitual swearing (Decal. 92), a conclusion that Philo is capable of arriving at after a few visits to the marketplace.

B. GOD'S OATH

In a context separate from his treatment of biblical laws governing oaths, Philo discusses the question why God on occasion takes oaths. Ronald Williamson sees Philo's question and answers as evidence of his "embarrassment on the subject of divine oaths" or his belief that these oaths are "a condescension of the sacred writer."³⁰ These passages, however, bear no trace of Philo's reservations against oaths. God, unlike humankind, cannot slip into habitual, meaningless or false swearing. In fact, Philo frames his discussion as a response to people who argue that it was inappropriate for God to swear by himself (Leg. 3.203). Their reasons are threefold: first, an "oath is added to assist faith,"³¹ secondly, all God's words are

³⁰ Ronald Williamson, Philo and the Epistle to the Hebrews (Leiden: E. J. Brill, 1970) 207.

³¹ Sidney Sowers, The Hermeneutics of Philo and Hebrews (Richmond: John Knox Press, 1956) 71, and Williamson, Philo and The Epistle to the Hebrews, 207, wrongly ascribe this argument to Philo. Williamson goes on to argue that Philo

oaths,³² and thirdly, the witness must be someone other than the oath-taker (Leg. 3.204-205). Philo replies with three arguments. First, "who else would be capable of bearing witness to Him?" (Leg. 3.205), and secondly, "He Himself is to Himself all that is most precious, kinsman, intimate, friend virtue, etc." (Leg. 3.205). To these he adds a third argument, something like this: only God can take an oath by God for only God comprehends His own nature. People act inappropriately by taking an oath by God (Leg. 3.206-208). Again in De sacrificiis Abelis et Caini, Philo takes on the "thousands" who claim that God's swearing "seems unworthy of Him" (Sacr. 91). Because "nothing is uncertain or open to dispute with God" and "no other god" is "His peer", he needs no witness (Sacr. 91). Philo refutes the first argument by pointing out that God's witness does not function to make God trustworthy but rather to assure the oath. In plain terms, God is conforming to the language of oaths so that one understands that his promise is an oath (Sacr. 93). Humankind in their weakness need assurance (Sacr. 94). Just as one anthropomorphizes God, one cannot comprehend the

regards the oaths as added by Moses "to assist faith" and that "Philo, at heart, did not believe that God swore oaths at all."

³² E. R. Goodenough, By Light Light (New Haven: Yale University Press, 1935) 68, extrapolates from this point in his conclusion that Philo "is hinting" that God is giving Abraham natural law when he gives his oath. But since the argument that God's words are oaths lies in the mouth of Philo's opponents, it would seem inappropriate to argue that Philo is referring to natural law.

nature of God's speech, so God makes it clear.

Consequently, Philo calls the oath a "crutch for our weakness" (Sac. 96).

If Philo were embarrassed by allusions to God swearing, would he draw greater attention to these oaths by elaborating upon them? The fact that God swears is only an exegetical problem insofar as others see it as a problem, and Philo regards the discussion as "excessive quibbling" (Leg. 3.206). Moreover, does the argument that God swore in recognition of human weakness signify a condescension on God's part? Philo's portrait of God's motives indicates otherwise. In De sacrificiis Abelis et Caini, God swears in order "to accompany conviction with help and comfort" (Sacr. 94). When Philo describes God's oath to Abraham, the fact of God's swearing points not to God's stooping to a human level, but God's raising of Abraham to a level of preeminence:

That God, marvelling at Abraham's faith in Him, repaid him with faithfulness by confirming with an oath the gifts which he had promised, and here He no longer talked with him as God with man but as a friend with a familiar. For He, with Whom a word is an oath, yet says "By myself have I sworn," so that his mind might be established more securely and firmly even than it was before (Abr. 273).³³

Philo's treatment of God's oath is in keeping with the understanding in the Hebrew Bible that God's promise is a

³³ Cf. Samuel Sandmel, "Philo's Place in Judaism," HUCA 25 (1954): 261.

gift and act of loving kindness.³⁴

C. ACCEPTABLE OATHS

Of special interest here is Philo's qualification of his advice against swearing. In De Decalogo he refers to cases of necessity (Decal. 85) and in De specialibus legibus to oaths of compulsion, to which one may swear and to which one is bound. He does not provide details of the circumstances but must be referring to official or judicial oaths. With respect to the prohibition against false witness, Philo mentions "oaths of the most terrific character" taken by jurymen (Decal. 141). This practice of swearing in judges is not attested to elsewhere in the Jewish tradition. Philo also alludes to the practice of making oaths of accusation in conjunction with the biblical commandment not to bring false witness (Lev 19:12). He describes a situation in which an accused thief attempts to defend himself by bringing false accusation against another and using oaths as means of proving his innocence (Spec. 4.40). Josephus also mentions this practice in conjunction with Herod's trial (Ant 17.5.6 §129). This form of defence, which Philo labels unscientific in recognition of Aristotle's five inartificial proofs (Rhet. 1.15.2), was

³⁴ Cf. Sacr. 57, "the covenant of God is an allegory of His gifts of grace."

used extensively in Greek courts.³⁵ Here is evidence of Hellenistic influences which may have crept into Jewish courts but not a practice which Philo condoned.³⁶ Philo's exceptions acknowledge the constraints placed upon the Jew by membership in a society dominated by Gentile law. On a theoretical level, he would avoid oaths; on a practical level, he must allow for their use.

Philo's scruples over oaths are also set aside when biblical law requires an oath, that is, in the case of deposit or trust, the only explicit assertory oath prescribed in the Bible (Exod 22:6-7; MT 22:9-11). Philo's account of the law of deposit indicates an innovation in the tradition in which the initial agreement is sealed with an oath by both parties (Spec. 4.31). Philo specifies three actions which one accused of fraud denies by oath: embezzling any part of the deposit, abetting another's embezzlement, or joining in the invention of a theft (Spec. 4.34).³⁷ Josephus and the Talmud also itemize the components of the denial. According to Josephus, the accused denies that property was lost voluntarily or out of malice and that the property was used (Ant 4. §287). According to the Talmud, he denies that there was neglect, a hand was put to the trust, and the trust is still in the

³⁵ E.g., Demothenes, Against Aristocrates, 67-68.

³⁶ cf Belkin, Philo and the Oral Law, 178.

³⁷ Cf. Virt. 171, Praem. 69.

possession of the trustee (b. B. Qam. 107b). Philo also adds that the oath is taken in the court of God rather than simply before God as the Bible prescribes (Exod 22:8; MT 22:10). The formalization of the second oath is attested to by Josephus, who has the trustee come before seven judges (Ant 4.3.1 §38).³⁸ Philo's qualified limitation of oaths is, therefore, bound by biblical law and legal convention.

D. VOWS

Philo recognizes the close relationship between oaths and vows when he digresses in his discussion of the third commandment to the laws of valuation (Lev 27).³⁹ The digression follows logically from his discussion of Num 30:4 which treats women's vows as well as oaths.⁴⁰ There is no evidence, however, that Philo ever confuses the two. Philo clearly acknowledges a difference between oaths and vows when he defines a vow as "a request for good things from God" (Sacr. 533; Immut. 87). This does not mean that he does not treat the two as analogous under the law. He

³⁸ Cf. Mek. Mishpatim 15, "before judges"; Belkin, Philo and the Oral Law, 171.

³⁹ Heinemann, Philons griechische und jüdische Bildung, 86, claims that Philo follows a Jewish predilection for what he calls the eidgelübde, but I find no evidence of this.

⁴⁰ The fact that Philo converts the biblical shekels into their equivalent in drachmas at a rate different from the LXX seems to indicate that the Jews of Alexandria put this law into practice. Cf. Goodenough, The Jurisprudence of the Jewish Courts in Egypt, 45.

ascribes the same penalty to an unfulfilled vow as to an unfulfilled oath, the forfeiture of life (Hypoth. 7.3). The Hebrew Bible makes no mention of a penalty for failure to keep a vow. Philo also applies the law of rash oaths to vows. Lawful vows like lawful oaths must be kept and, presumably, unlawful ones left unfulfilled.⁴¹

Another innovation to biblical law which Philo mentions is a means of release from vows. He writes:

The chief and most perfect way of releasing dedicated property is by the priest refusing it, for he is empowered by God to accept it or not. Next to this, that given by those who at the time have the higher authority may lawfully declare that God is propitiated so that there is no necessity to accept this dedication. Besides these there is a host of other things which belong to unwritten customs and institutes or are contained in the laws themselves (Hypoth. 7.5-6).

Samuel Belkin sees in Philo traces of the development of the Mishnaic law which allows judges to dissolve vows.⁴²

Certainly, Philo points to an early legal tradition upon which the midrashic tradition by which Phineas could have

⁴¹ The Mishnah distinguishes between oaths and vows on this count. A person cannot swear to violate a commandment (m. Ned. 2:2), but one can vow to violate a ritual commandment. Cf. Belkin, Philo and the Oral Law, 157.

⁴² Ibid., p. 166-68, Belkin outlines a four stage development:

- a) Old Testament laws of strict fulfilment
- b) Josephus' version of the oath against the Benjaminites in which one group considered the oath not binding
- c) Philo has priests dissolve vows
- d) Judges are allowed to dissolve vows.

He assumes that oaths and vows were treated as synonymous.

released Jephthah is based.

Philo shows no hesitation about taking vows. He seems unaware of the problem of unfulfilled Nazirite vows. In his treatment of the Nazirite vow, which he calls the "Great Vow", he commends it as a vow taken by the poor, those with "no material resources" (Spec. 1.248). It may be that Philo was not familiar with anyone who had actually taken a Nazirite vow. He is rigorous in his application of the biblical law in that vows must be fulfilled promptly (Hypoth. 7.3ff; Sacr. 53ff). He finds no objection, however, to the extrabiblical tradition of release from vows.

Philo's consistent fidelity to biblical law is striking for it reveals a profound familiarity with and faith in the text. Even more striking, however, is the consistency of thought within Philo's voluminous works, works which must have spanned several decades. An oath is an appeal to God in matters of dispute. God swears oaths as a comfort to men and women who in their weakness do not recognize the oath-like nature of God's words. God swears by himself because only God can comprehend his own nature. One cannot comprehend God and, hence, cannot name God, so one should not swear by God. Instead one swears by objects or people who express some divine quality. One's word should, like God's, always be an oath. When men and women use oaths, they run the risk of non-fulfilment or perjury;

therefore, one should avoid oaths and aspire to truthfulness. With an eye to practicality, Philo recognizes that one may be called upon to take an oath under compulsion or necessity and, in this case, one should not hesitate for when one honours one's word, one honours God. The same consistency appears in his treatment of vows. He turns his attention always to the honour of God: since vows seek to honour God, they should be fulfilled; but, again with practicality in mind, he recognizes that release from vows is necessary and a good thing when done in a lawful manner.

CHAPTER FOUR

THE QUMRAN COVENANTERS

The Qumran scrolls provide us with a glimpse of how a community within Second Temple Judaism used oaths and vows and how they contended with the problems associated with these utterances. The Qumran covenanters seem to have found solutions to the possible abuse of oaths or the consequences of regretted oaths and vows. Their community life excluded them from some situations in which oaths could be demanded or vows taken. Moreover their exegetical tradition made possible the formulation of laws which limited the form and power of, and the occasion for, oaths, as well as the content of oaths. Oaths were nevertheless important to the identity of the covenanters, for initiates were inducted into the community by swearing an oath of covenant.

A. THE SOURCES

Several factors make it difficult to explain the practices of the Qumran covenanters with respect to oaths and vows. First, it is possible that the various sources do not represent the doctrines of the same community. The presence of a scroll in the sectarians' collection does not guarantee that it is a community composition or that the covenanters subscribed to its doctrinal contents. Secondly,

the scrolls may be works which include material dating from the conception of the community to its final days when its structure had become rigidly defined. Or, ancient editors of the scrolls may have conflated different works written at different times. Thirdly, the sources do not agree. According to Philo, the Essenes abstained from oaths (Prob. 84) and according to Josephus, they avoided swearing (JW 2.8.6 §135), although he does note that they swore tremendous oaths at the time of their enrolment in the community (JW 2.8.7 §139).¹ The Qumran Scrolls, however, indicate that the covenanters were permitted to take oaths on occasions other than their enrolment (CD 9.8-13; 15.3-4; 16.6-12; 11Q Temple 53-54). Although these factors may be daunting, they are not insurmountable.

Two documents from Qumran form the core of the following discussion: the Community Rule (1QS) and the Damascus Document (CD).² The Community Rule contains reference to an oath of enrolment (1QS 5.8-13), as well as a ceremony of initiation into the community and renewal of the covenant in which this oath may have occurred (1QS 1.18-2.18). According to Jerome Murphy-O'Connor, these two

¹ E. F. Sutcliffe, The Monks of Qumran, (London: Westminster Press, 1960) 236 n.2, claims there is no contradiction in Josephus because the ostensible oaths are really vows. But here he has imposed a modern view in which vows have become synonymous with promissory oaths.

² Because all the fragments of the Damascus Document from Qumran have yet to be published, the following exposition will be based on the Cairo genizah manuscripts.

passages represent respectively a third and fourth or final stage in the evolution of the document.³ He asserts that columns 1-4 are a copyist's addition. We are, therefore, examining the community at a point of "crystallization," as Lawrence H. Schiffman has stated.⁴

The Damascus Document also refers to an oath of enrolment (CD 15.5 - 16.1). It also provides statutory material governing oaths of testimony (CD 9.8b-12), how and where oaths are to be made (CD 9.8b-10; 15.1-5), and some terse material dealing with vows and women's oaths (CD 16.6-19; 9.1). Like the Community Rule, the Damascus Document is the product of an evolutionary process or a redactor.⁵ Again we will follow Schiffman's lead by making observations about the community at the time when they had the complete document in hand.⁶

The use of the Damascus Document poses a second problem. Philip R. Davies contends that the identification of the Damascus Document with the Qumran community may be false, that the Damascus Document has been "colonised as a

³ Jerome Murphy-O'Connor, "La genèse littéraire de la Règle de la Communauté," RB 76 (1965): 533-34, 538-39.

⁴ Lawrence H. Schiffman, Sectarian Law in the Dead Sea Scrolls: Courts, Testimony and the Penal Code (Chico: Scholars Press, 1983) 6.

⁵ Cf. Jerome Murphy-O'Connor, "A Literary Analysis of Damascus Document XIX, 33-XX, 34," RB 79 (1972): 562-64.

⁶ Schiffman, Sectarian Law in the Dead Sea Scrolls, 9.

Qumran document."⁷ The majority of scholars reject Davies's position and hold that the similarity of language and principles shared in these documents justifies their common attribution.⁸ The following discussion takes a cautious approach. It assumes that a close relationship did exist between the Damascus Document and the Qumran community, but it notes that the Damascus Document may be later than the Community Rule. The differences between the two documents have some bearing upon the discussion of oaths and vows. The Community Rule exhibits a more fervent eschatology,⁹ and it focuses upon the organization of sectarian life at Qumran, whereas the Damascus Document treats a wider range of Jewish law and its observance by "camps."¹⁰ There are, however, no contradictions which concern the performance of oaths or vows. The Damascus Document and the Community Rule, therefore, will both be viewed as the products of the Qumran covenanters, but the

⁷ Philip R. Davies, The Damascus Covenant (Sheffield: JSOT Press, 1982) 16.

⁸ Cf. for example, Schiffman, Sectarian Law in the Dead Sea Scrolls, 12; H. H. Rowley, The Zadokite Fragments and the Dead Sea Scrolls (Oxford: Basil Blackwell, 1956) 31; J. T. Milik, Ten Years of Discovery in the Wilderness of Judaea (London: SCM Press, 1959) 38-39; Frank Moore Cross, The Ancient Library of Qumran and Modern Biblical Studies (New York: Doubleday and Company, Inc., 1958) 44.

⁹ Matthew Black, The Scrolls and Christian Origins: Studies in the Jewish Background of the New Testament (Cambridge: Cambridge at the University Press, 1956) 13.

¹⁰ Ibid., 18.

application of the legal material in the Damascus Document to sectarian life in camps will be recognized.

The Qumran material includes three additional references to oaths. 1QH 14.17-19 alludes to the oath of initiation, 4Q Beat 5 pronounces a blessing upon one who swears by wisdom, and the Temple Scroll (11Q Temple) 53-54 reiterates the laws of Num 30:6-16 and Deut 23:22-24. Given that the Temple Scroll displays a different principle of exegesis and seems to belong to a different, albeit closely related, group than the Community Rule and the Damascus Document, its rulings will be noted but will not contribute to a reconstruction of the views of the Qumran covenanters.¹¹

Philo and Josephus' descriptions of the Essenes include mention of the Essenes' avoidance of oaths (Prob. 84; JW 2.8.6 §135), and the latter includes an account of the oath of initiation (JW 2.8.7 §139-142). An unquestioned identification of the Essenes with the Qumran covenanters is not possible. Both Josephus and Philo appear to "hellenize"

¹¹ Cf. Lawrence H. Schiffman, "The Law of the Temple Scroll and its Provenance," Folio Orientalia 25 (1984): 85, 91. Hartmut Stegemann, "The Literary Composition of the Temple Scroll and its Status at Qumran" in George J. Brook Temple Scroll Studies (Sheffield: JSOT Press, 1989) 143, concludes that the Temple Scroll was composed independently of the Qumran community two centuries before the community came into existence. Yigael Yadin, The Temple Scroll, vol. 1 (Jerusalem: The Israel Exploration Society, 1983) 398-39, expresses a different view of the relationship of the scrolls. He labels the Temple Scroll "sectarian" and identifies it with the Essenes.

the groups which they describe, and Josephus may have synthesized observations drawn from a number of different groups under the heading "Essenes" (cf. JW 2.8.13 §160).¹² Rather than disregarding this material, we will use it to supplement the discussion but not to draw conclusions.¹³

B. THE OATH OF INITIATION

The oath undertaken at the time of initiation into the community epitomizes the covenanters' self-understanding. It reenacts Israel's response to the covenant, as depicted in Deuteronomy, when the Israelites accepted the oath and entered into the covenant (Deut 29:10-16). The covenanters' oath fulfils three functions: it renews the covenant, it separates the covenanter from the dominion of Belial, and it affirms the individual's obligation to fulfil

¹² Cf. Schiffman, Sectarian Law in the Dead Sea Scrolls, 1.

¹³ Hippolytus, Refutaio Omnium Haeresium, 9.22-24, contains an account of the Essenes similar to that of Josephus. According to Matthew Black, "The Account of the Essenes in Hippolytus and Josephus," in The Background of the New Testament and its Eschatology (Cambridge: Cambridge at the University Press, 1956) 187, Hippolytus possessed either a different edition of Josephus than we possess or Josephus' sources. Hippolytus, however, offers only one addition to our Josephus text with respect to the Essenes' oaths. Josephus claims that the Essenes swore to hate the unjust (misēsein de aei tous adikous). Hippolytus introduces a "Christian touch" (Matthew Black, "The Account of the Essenes in Hippolytus and Josephus," 174) by amending the text to read mēdena de mēte adikounta mēte echthron misēsein "hate no one, neither those who are unjust nor an enemy." Hippolytus adds nothing substantial to our discussion; therefore, he will not be consulted.

the Torah. It thereby forms the basis for all subsequent oaths.

Although three Qumran documents mention the oath of initiation, nowhere in the Qumran literature are the oath's contents spelled out. The Damascus Document describes it as an oath of "the covenant to return to the Law of Moses" (CD 15.5). The Community Rule elaborates upon this:

Whoever approaches the council of the community shall enter the Covenant of God in the presence of all who have freely pledged themselves. He shall undertake by a binding oath (bešebû at āssur) to return with all his heart and soul (Deut 6:4-5) to every commandment of the Law of Moses in accordance with all that has been revealed of it to the sons of Zadok, the keepers of the covenant and Seekers of His will, and to the multitude of the men of their covenant who together have freely pledged themselves to His truth and to walking in the way of His delight. And he shall undertake by the covenant to separate from all men of falsehood who walk in the way of wickedness (1QS 5.8-11).¹⁴

Hodayot 14 states simply that

As for me, I have known thy immense
goodness
And I have sworn an oath
Not to sin against thee
Nor to commit any evil in thy sight
Thus have I been brought into the society of the
members of my community (1QH 14.17-19).

How one avoids committing evil is made clear in the preceding verses of the hymn which proclaim that the elect neither rebel against God's commands nor alter God's words (1QH 14.14-15). The promise contained in the oath is

¹⁴ English translation by Geza Vermes, The Dead Sea Scrolls in English 3rd edition (London: Penguin Books, 1987). All subsequent quotations to 1QS and CD will be taken from this volume unless otherwise stated.

clearly that the initiate will return to the covenant of Moses, but that covenant would also have contained the statutes of the community which they had derived from the scripture by their unique principles of exegesis.

An exhaustive list of the statutes of the community would have been too long to have been enumerated in the oath. Lawrence H. Schiffman proposes that the list of offenses and punishments found in 1QS 6.24-7.25 served as a token sample of the whole of the community's regulations for the purpose of swearing the oath.¹⁵ According to the Community Rule, complete instruction in the rules of the community did not take place until after the oath had been sworn (1QS 6.15).

Josephus also provides a list of articles which he claims were sworn at enrolment:

[F]irst that he will practice piety towards the Deity, next that he will observe justice towards men: that he will wrong none whether of his own mind or under another's orders; that he will for ever hate the unjust and fight the battle of the just; that he will for ever keep faith with all men, especially with the powers that be, since no ruler attains his office save by the will of God; that should he himself bear rule, he will never abuse his authority nor, either in dress or by other outward marks of superiority, outshine his subjects; to be for ever a lover of truth and to expose liars; to keep his hands from stealing and his soul pure from unholy gain; to conceal nothing from the members of the sect and to report none of their secrets to others, even though tortured to death. He swears, moreover, to transmit their rules exactly as he himself received them; to abstain from robbery; and

¹⁵ Schiffman, Sectarian Law in the Dead Sea Scrolls, 156.

in like manner carefully to preserve the books of the sect and the names of the angels (JW 2.8.7 §139-142).

He calls these "tremendous oaths." There seems to be no compelling reason to doubt that Josephus has in mind the oath of enrolment described in 1QS 5.8-13 and CD 15.5b-12, but it is doubtful that he has accurately presented the substance of the oaths. He states that these oaths were sworn at the end of a two year probation. While Josephus claims to have had personal experience of the Essene sect (Life 2 §11), he did not reach the point of enrolment. He would, therefore, not have been in the position to know all the sect's statutes or the contents of the oath. Josephus ends his list of eleven oaths with the qualifying statement that "such are the (toioutois) oaths by which they secure their proselytes" (JW 2.8.7 §142). Toioutois implies that the list is neither exhaustive nor necessarily factual.¹⁶ Many of the rules are general principles which apply to any group within Judaism. Others, such as the rule governing dress, the admonition to secrecy, and the command to preserve the sect's books and the names of the angels, may have been practices which Josephus was able to observe.¹⁷ Josephus' list is probably the product of conjecture.

¹⁶ Cf. Todd S. Beall, Josephus' Description of the Essenes Illustrated by the Dead Sea Scrolls (Cambridge: Cambridge University Press, 1983) 76.

¹⁷ Ibid., 77. Beall notes that the Essene oath of Josephus "concerns the basic tenets of the sect and not specifically the Mosaic Law."

The reason for the absence of a complete version of this oath in the Qumran documents may be the possibility that the oath was never fully verbalized. The oath probably was sworn in the context of the ceremony of initiation and renewal of the covenant described in the beginning of the Community Rule. Yet, the description of the ceremony does not indicate at what point the oath was sworn. The solution to this enigma may be that the entire ceremony functioned as an oath.

Before examining how the ceremony may have functioned as an oath, we must first establish that the ceremony of initiation, which also seems to have been an event celebrating the renewal of the covenant, would have included an oath. The ceremony was an annual event (1QS 2.19). The covenanters saw the covenant as perpetual and requiring the same response from each generation:

And when the children of all those who have entered the covenant, granted to all Israel forever, reach the age of enrolment, they shall swear with an oath of the covenant (CD 15.5).

It is, therefore, probable that the oath was incorporated into the community's festival calendar.

A.R.C. Leaney has proposed Šabu^cô^t as the likely festival in which the ceremony could have taken place. Šabu^c-ô^t, the feast of weeks or Pentecost, had come to commemorate the giving of the Torah at Sinai in some quarters of Judaism

by the end of the Second Temple period.¹⁸ Discussions about the date or significance of šabuċôt in Rabbinic literature begin with the presupposition that the covenant at Sinai was made on šabuċôt.¹⁹ The characterization of the Pentecost of Acts 2 as a reenactment of the covenant event at Sinai demonstrates that the author of Acts shared this presupposition. The tongues of fire by which the Holy Spirit is imparted to the members of the church in Jerusalem (Acts 2:3) clearly parallels the image of God descending upon Mount Sinai in a fire (Exod 19:18).²⁰ More important to our discussion than the above sources is Jubilees, a work found at Qumran in fragmentary form and cited in CD 16.4 and a work which shares Qumran's solar calendrical system.²¹

¹⁸ A. R. C. Leaney, The Rule of Qumran and its Meaning, (London: SCM Press, 1966) 95-107. Cf. also Yagael Yadin, The Message of the Scrolls (London: Weidenfeld and Nicolson, 1957) 96; William Sanford LaSor, The Dead Sea Scrolls and the New Testament (Grand Rapids: William B. Eerdmans, 1977) 73; Bengt Noack, "The Day of Pentecost in Jubilees, Qumran, and Acta," in ASTI 1 (1962): 89.

¹⁹ T. Arak. 1:9-10; b. Šabb. 88a; b. Pesah. 68b; b. Ta'an. 28b; Cant. Rab. 4:4,1.

²⁰ Bengt Noack, "The Day of Pentecost in Jubilees, Qumran, and Acta," 91, states that "the idea of a new covenant as opposed to the old dispensation is wholly absent" in Acts. The idea of the renewal of the covenant, however, may be present.

²¹ On the calendar see Annie Jaubert, Le date de la Cène: Calendrier biblique et liturgie chrétienne (Paris: J. Gabalda, 1957) 59; J. M. Baumgarten, Studies in Qumran Law (Leiden: E. J. Brill, 1977) 101; A. R. C. Leaney, The Rule of Qumran and its Meaning, 95-104; 1Qp Hab 2.4-7.

It is possible that, along with its calendar, the community shared Jubilees' understanding of the feast of šabuċôt.

Jubilees sets the establishment of šabuċôt at the time of God's covenant with Noah (Gen 9:8-17) and claims:

Therefore, it is ordained and written in the heavenly tablets that they should observe the feast of Shevuoth in this month, once per year, in order to renew the covenant in all (respects), year by year. And all of this feast was celebrated in heaven from the day of creation until the days of Noah, twenty-six jubilees and five weeks of years. And Noah and his children kept it for seven jubilees and one week of years until the day of the death of Noah. And from the day of the death of Noah, his sons corrupted it until the days of Abraham, and they ate blood. But Abraham alone kept it. And Isaac and Jacob and his sons kept it until your days, but in your days the children of Israel forgot it until you renewed it for them on this mountain (Jub. 6:17-19).²²

God also establishes his covenant with Abraham at the time of the feast of weeks (Jub. 15:1-4). For the author of Jubilees, the feast of šabuċôt is not simply the harvest festival of Exod 34:22 but a renewal of the covenant. God establishes the covenant in perpetuity and Noah and his sons swear to that covenant on behalf of all generations (Jub. 6:10). The introduction of the feast of šabuċôt at Sinai is a reinstitution of the feast. The Ethiopic text of Jubilees' preservation of the Hebrew word šabuċôt may reflect the consciousness that the twofold nature of the

²² Translation by O.S. Wintermute, Jubilees: A New Translation and Introduction in The Old Testament Pseudepigrapha vol. 1, edited by James H. Charlesworth (New York: Doubleday & Company Ltd., 1983): 67-68.

feast (Jub. 6:13) is tied to the possible double meaning of the Hebrew consonants šb[◌]wt: the first, šabu[◌]ô[◌]t - weeks, refers to the end of the weeks of the agricultural year, and the second, šebu[◌]ô[◌]t - oaths, refers to the oaths that establish the covenant.²³ Solomon Zeitlin proposes that, since the book does not indicate an awareness of the relationship between the feast's name and the passage of seven weeks, the connotation of oaths is the singular sense of šabu ô[◌]t in Jubilees. The covenant established with Noah and at Sinai during šabu ô[◌]t is made with an oath (Jub. 6:11). It follows, therefore, that the renewal of the covenant entailed the swearing of an oath.

The attribution of the Jubilees' understanding of šabu[◌]ô[◌]t to the covenanters is speculative but it provides a plausible explanation of how the renewal of oaths could have become part of the ritual calendar. The covenanters could also have found precedent for their renewal of the oath in Neh 10:1-39.²⁴ Rabin identifies a "conspiracy of silence" in the Rabbinic literature, and in Josephus as well, which fails to quote Neh 10:27-30. Add to this conspiracy the absence of a tractate on the feast of šabu[◌]ô[◌]t, and one may

²³ Cf. Wintermute's translation, p. 67 n.f,g.

²⁴ Neh 10:1 and CD 10.12 both contain the word šāmānā with reference to the oath (cf. also Neh 9:14 and CD 3.14 for proof that the author of CD used Nehemiah).

have traces of an attempt to deny the legitimacy of Qumran practices by ignoring them.²⁵

The ceremony in the Community Rule follows the structure of blessings and curses and congregational response established in Deuteronomy.²⁶ Dennis J. McCarthy in his study of covenant forms in the Ancient Near Eastern documents and the Hebrew Bible demonstrates how Deut 4:44-28:68 exemplifies the structure of ancient treaties. He finds both of the two essential components of these treaties, "the expression of the will of the superior" and "its acceptance by the inferior party on oath," present in Deuteronomy.²⁷ The historical prologue in Deut 4:44-11:52 provides the grounds for the covenant: God's will.²⁸ The conditional blessings and curses of Deut 26:16-19; 28:1-68 are the sanctions to the obligations identified in Deut

²⁵ Cf. Chaim Rabin, Qumran Studies (Oxford: Oxford University Press, 1957) 5; Bent Noack, "The Day of Pentecost in Jubilees, Qumran, and Acta," in ASTI 1 (1962): 89; A. R. C. Leaney, The Rule of Qumran and its Meaning, 101, who argues that the Pharisees would have excluded "a tractate on a feast which their opponents (the men of Qumran) had monopolized."

²⁶ Cf. Jean Pouilly, La Règle de la Communauté de Qumrân: son Évolution littéraire (Paris: J. Gabalda et Cie, 1976) 72; Todd S. Beall, Josephus' Description of the Essenes Illustrated by the Dead Sea Scrolls, 76.

²⁷ Dennis J. McCarthy, Treaty and Covenant: A Study in Form in the Ancient Oriental Documents and in the Old Testament (Rome: Biblical Institute Press, 1978) 157.

²⁸ Ibid., 159-70.

12:1-26:15.²⁹ The Israelites' response to the curses, "Amen," indicates their ratification of the oath. The ceremony is a symbolic act which puts into effect the religious sanctions of the oath.³⁰ McCarthy notes that an explicit "Do you swear" does not appear in the Mati'ilu treaty or in Esarhaddon's vassal treaties; therefore, he is not surprised that an explicit oath formula is absent in Deuteronomy.³¹

The ceremony in the Community Rule follows the same structure as Deuteronomy and serves the same function: it binds Israel, here the covenanters, to God's covenant, that is his laws. It accomplishes exactly what the descriptions of the oath of enrolment in other places in the Qumran material claim the oath does. The ceremony begins with a blessing of God and a recitation of God's favours, as well as the sins of the Israelites. This prompts a confession of sin and an acknowledgement of God's forgiveness by the initiates (1QS 1.18-2.1). This prologue provides the grounds for the covenant: God's election of the community and the community's repentance and return to the covenant. The obligations of the covenant are not articulated; they are implied in the blessing. The Israelites, that is the

²⁹ Ibid., 172-87, 170-72.

³⁰ Cf. George E. Mendenhall, Law and Covenant in Israel and the Ancient Near East (Pittsburgh: The Biblical Colloquium, 1955) 34-35.

³¹ McCarthy, Treaty and Covenant, 182.

community, are to "walk perfectly in all His ways" (1QS 2.2). In 1QS 1.1-17, the meaning of this obligation is made clear. The Israelites are to obey God's commandments as understood by the community. The Priests then bestow a blessing derived from Num 6:24-26 on those who fulfil God's ways (1QS 2.3). Two sets of curses follow, the first against those who belong to the lot of Satan, that is, those outside the community (1QS 2.3-9),³² and the second against backsliders (1QS 2.12-17).³³ The second set of curses provides the conditional imprecation of the oath. If the initiate does not fulfil the covenant, "he shall be cut off from the midst of all the sons of light" (1QS 2.16). In actual terms, he will be expelled from the community, the soteriological consequences of which are consignment to destruction at the end of time. The Priests and Levites utter the curses and the initiates respond "Amen, Amen." Deuteronomy prescribes only one amen (Deut 27:15-26). The doubling seems to be based on the response to the adjuration in Num 5:22 or the response to Ezra when he blessed the Lord in Neh 8:6.³⁴ If the former is true, the authors of this ceremony understood the initiates' response as consent to an oath.

³² Cf. Deut 27:15.

³³ Cf. Deut 27:14-15 and 29:18-20.

³⁴ Leaney, The Rule of Qumran and its Meaning, 107, 135.

In light of what we know of Second Temple Judaism, no other group in Judaism required an oath of initiation. The habûrôt separated themselves by the observation of laws of tithing and ritual purity, but the sources provide no evidence that they swore oaths or took special vows of dedication.³⁵ The Pharisees, apparently, did not see a break in the continuity between the giving of the Torah in the Sinai and their contemporary Judaism.³⁶ Consequently, they did not see a need to renew the Covenant in a way that set them apart as an eschatological community of salvation.³⁷ The curses which the initiation ceremony places upon "the men of Satan", non-sectarian Israelites, invoke damnation (1QS 2.7).³⁸ For the covenanter, the oath functioned as a rite of purification by removing the

³⁵ Saul Lieberman, "The Discipline in the So-Called Dead Sea Manual of Discipline," JBL 71 (1952): 199-200; J.M. Baumgarten, Studies in Qumran Law (Leiden: E. J. Brill, 1977) 5. For the dissenting view see Jacob Neusner, "The Fellowship (Hăbûrâ) in the Second Jewish Commonwealth," HTR 53 (1960): 135-36, and Rabin, Qumran Studies, 21, who assume that oaths were taken.

³⁶ Cf. m. ʔAbot 1:1ff.

³⁷ E. P. Sanders, Jewish Law from Jesus to the Mishnah (London: SCM Press, Philadelphia: Trinity Press, 1990) 242, claims that "Sectarian in Judaism of the second temple period usually implies soteriological exclusivism."

³⁸ E. P. Sanders, Paul and Palestinian Judaism (Philadelphia, Fortress Press, 1976) 254, places this damnation or destruction at the end of an eschatological war, so that possibility of the wicked of 1QS joining the covenant community at the last moment remains open.

initiate from the realm of Belial (1QS 2.5) and placing him in the realm of the covenant of hesed (1QS 1.12).

Once within the covenant, the initiate becomes privy to the complete teachings of the community. He who is outside the community does not rank among the perfect because he has not received knowledge (da^cat) (1QS 3.1). He attempts to gain perfection:

but he shall neither be purified by atonement, nor cleansed by purifying water nor sanctified by seas and rivers, nor washed clean with any ablution. Unclean unclean shall he be. For as long as he despises the precepts of God he shall receive no instruction in the community of His counsel (1QS 3.4-6).

According to the Community Rule, the "man of falsehood" sins because he has failed to inquire into "the hidden things," that is, the statutes of the covenanters (1QS 5.11) which, according to the Damascus Document, are first made known to the initiate when he stands before the Guardian in the enrolment ceremony. The rule strictly prohibits the covenanter from explaining the statutes prior to this moment (CD 15.10-11).³⁹ The oath then represents the moment which divides the initiate from those outside the covenant. Given that one must accept the truth of the covenanters' teachings prior to being told what they are, entering the community is a blind step.

The Community Rule calls its teachings "marvellous mysteries" (brzy pl² w²mt) (1QS 9.18). These mysteries are

³⁹ Cf. 1QS 6.15.

protected by the oath of the covenant. As Richard Reitzenstein, in his work on Hellenistic mystery religions, points out, "without the oath (of initiation) the mystery is simply no mystērion."⁴⁰ In Josephus' account, the oath of the sect includes a promise "to conceal nothing from the members of the sect and to report none of their secrets to others even though tortured to death" (JW 2.8.7 §141). Josephus may be aware of an actual aspect of the conditions of enrolment. In his contact with the Essenes, during his attempt "to gain personal experience" of the sect (Life 2 §11), Josephus would have run up against the obstacle of secrecy. The oath draws the initiate out of the mundane into a state of purification, that is, he is raised to the stature of a member in the eschatological community. The tradition of an esoteric revelation gives validity to the separation of the community. The oath insures that secrecy is maintained, and the community can then impart its teachings to the initiate. The privacy and personal nature of an association with a new people consists in a "kind of knowing."⁴¹ The esoteric tradition is sustained and the

⁴⁰ Richard Reitzenstein, Hellenistic Mystery Religions (Pittsburg: Pickwick Press, 1978) 240.

⁴¹ *Ibid.*, 241.

separation of the community insured by the taking and renewing of the oath.⁴²

C. THE OATH FORMULA

The immediate question for this discussion is by what were these oaths sworn. On the basis of the statutes found in the Damascus Document, it would seem that the only formula recognized by the covenanters was "by the curses of the covenant" (CD 15.1-2).⁴³ The biblical source for the formulation of this oath is Deut 29:20: the individual who hears the terms of the oath of the covenant but inwardly holds that he can follow his own will is punished in accordance with "the curses of the covenant (ʔālôt habbērit) written in the book of the law." These are precisely the curses to which the initiate responds "Amen, Amen" in the covenant ceremony. In effect, the covenanters synthesize

⁴² According to Jean Pouilly, La Règle de la Communauté, 11, and Jerome Murphy-O'Connor, "La genèse littéraire de la Règle de la Communauté," 538-40, the ceremony belongs to the fourth stage of redaction of the Community Rule, a point in the community's history when fervour was diminishing. The function of the oath to shore up the lines of distinction between those inside the sect and those outside corroborates the theory that the ceremony gained emphasis in the literature at a time when this distinction needed support.

⁴³ Contra E. Qimron, "šbwʿt hbnym iin the Damascus Covenant 15.1-2," in JQR 81 (1990) 111-18. He argues that the "curses of the covenant" "cannot refer to the kind of oath that is permitted," but instead the phrase refers to the one oath that is permitted, that is, the oath of initiation. Qimron does not take into account CD 9.8-12, 15.3-5, or 16.10-12 which presuppose other permitted oaths besides the oath of initiation.

two components of the oath: the imprecation is treated as the witness to the oath.

The reference to an oath by wisdom in 4Q Beat seems to present an anomaly to the rule established in CD 15.1-2. According to the beatitude, "Blessed are those who swear by her [wisdom], and do not utter in the ways of foolishness"(4Q Beat 5).⁴⁴ George J. Brooke argues that the similarity of the language in 4Q Beat to the initiatory oath in 1QS 5.7-11 implies that 4Q Beat 5 alludes to the oath of initiation. The initiate swears "to live according to wisdom, which is the right interpretation of the Law."⁴⁵

The formula "by the curses of the covenant" is the prescribed solution to the covenanters' problem of the unutterability of the divine name. The Community Rule sentences, without exception, one who utters the divine name while reading scripture or praying to permanent dismissal from the community (1QS 6.27-7.2). The scruples against uttering God's name while swearing extend beyond the tetragrammaton to the common substitutes, Elohim and Adonai. According to the Damascus Document:

(He shall not) swear by (the Name), nor by Aleph and Lamed (Elohim), nor by Aleph and Dalet (Adonai), but by a binding oath by the curses of the covenant. He shall not mention

⁴⁴ This translation appears in George J. Brooke, "The Wisdom of Matthew's Beatitudes," ScrB 19 (1989): 35.

⁴⁵ Ibid., 40.

the Law of Moses for ... were he to swear and then break (his oath) he would profane the Name (CD 15.1-3).

An oath by the Torah, just as an oath made by placing one's hand on a Bible, assumes reference to God's name by virtue of the reference to texts which contain his name. Josephus provides a second possible explanation for the prohibition against the mention of the Law of Moses in an oath. He claims that "after God they [the Essenes] hold most in awe the name of their law giver, any blasphemer of whom is punished with death" (JW 2.8.9 §145).

The oath by the curses of the covenant permits leniency. One avoids swearing with reference to God lest one profane the Name, a sin which also calls for exclusion from the community. If one violates an oath by God's name, one commits a desecration. If one violates an oath by the curses of the covenant, the offense is serious but it is not blasphemy.⁴⁶ Although the curses of the covenant state that "He will be cut off from the midst of all the sons of light", a metaphoric death or spiritual death at the very least, the statutes allow for atonement:

But if he has sworn an oath by the curses of the Covenant before the judges and has transgressed it, then he is guilty and shall confess and make restitution; but he shall not be burdened with a capital sin (CD 15.3-5).⁴⁷

⁴⁶ Ibid., 136.

⁴⁷ The death penalty here is a metaphor for damnation rather than literal execution. Cf. Chaim Rabin, Qumran Studies, 72(5); Alan Mendelson, Philo's Jewish Identity

This passage may reflect the disagreement within Judaism over whether a broken oath calls for a strict ruling, death, or a light ruling, the lash. The disagreement appears in Philo's discussion of the law (Spec. 2.28, 252). Because biblical law provides no penalty for transgression of an oath, a community enforcing the Law must find one. No scriptural basis is provided to justify the leniency in the case of the covenanters, but the decision may have been reached on the basis of an argument applying the specific case of Leviticus' ruling on rash oaths (Lev 5:4) to the general case of all oaths.

The leniency of punishment and the formula of the oath are intimately bound together. The covenanters, unlike Philo, do not see oaths as necessarily calling upon God as a witness. They totally neglect the commandment of Deuteronomy 6:13 and 10:20 to swear by God. The Mishnah, by its acknowledgement of the binding nature of adjurations by aleph dalet or aleph lamed, as well as by Shaddai or any of the substitutes for God's name, seems to cohere with the Deuteronomic law closely. The formula, by the curses of the covenant, places the power for the execution of the penalty for perjury into the hands of the community. The community allows the oath-taker to confess and make restitution; they are the judges.

(Atlanta: Scholars Press, 1988) 52.

Josephus corroborates that the covenanters could be given to leniency. He describes the situation in which an individual who has been convicted of a serious crime and expelled is still bound by his oaths and, therefore, cannot partake in other people's food. The community, out of compassion, is at liberty to accept him back into the community (JW 2.8.8 §143).⁴⁸

D. OTHER OATHS

The Damascus Document assumes oaths other than the oath of initiation. Its statutes require that oaths be taken in the presence of judges or at their decree (CD 9.10; cf also CD 15.3-4). The law is based on 1 Sam 25:26 in which Abigail adjures David "as the Lord lives" not to take vengeance into his own hands.⁴⁹ Limiting the place and time in which one may take an oath provides a fence against both rash oaths and perjury. Just as the covenanters' prescribed formula reduces the power and penalty associated with the oath, their laws severely restrict opportunities to take oaths.⁵⁰

⁴⁸ In reality, if he has already violated part of his oath, one would expect the condemned to be willing to violate all of his oaths.

⁴⁹ M. Šebu. 5:4 contains the opposite ruling.

⁵⁰ Lawrence H. Schiffman, Sectarian Law in the Dead Sea Scrolls, 38, suggests that all oaths must be taken before judges in order to prevent vain or false oaths.

Two statutes govern the occasion for oaths. The first, cited above (CD 9.8-10): "a man who causes another to swear in the fields instead of before the judges, or at their decree, takes the law into his own hands," may refer to an oath of deposit (Exod 22:10-11; MT 22:13-14). The scenario in the Damascus Document seems to entail the same sort of property dispute between two parties as is envisaged in Exodus.⁵¹

The second statute refers to an oath of testimony. The owner of lost, presumably stolen, property shall "charge with an oath of the curse" (šēbū^ʿâ hā^ʾālâ) and he who knows something and does not speak is guilty (CD 9.11-12). The scriptural antecedent for this rule is probably Lev 5:1, the gôl ʾālâ, the adjuration to give testimony to a crime. CD 9.11-12 seems to stand in the same tradition of development as Targum Onqelos which calls the adjuration qāl mômê and Mishnah tractate Šebu^ʿot which calls it šēbū^ʿat hā^ʿēdūt (e.g, m. Šebu. 4:1). Like the Targum and the Mishnah, the Damascus Document makes explicit the presence of an oath in the biblical commandment, but it also retains the emphasis upon the curse. Schiffman suggests that the Damascus Document derives the phrase šēbū^ʿâ hā^ʾālâ from Numbers 5:21.⁵²

⁵¹ Ibid., 38. Schiffman believes that CD 9.8-10 refers to all oaths.

⁵² Lawrence H. Schiffman, Sectarian Law in the Dead Sea Scrolls, 111-13, Schiffman extends the analogy by concluding that the oath of testimony would have been made in court and those listening would have answered "Amen, Amen." Chaim

These oaths regulate the ownership of property. While the members of the community could hold private property (cf. CD 9. 11,14; 1QS 7.7), according to the Community Rule, they could not conduct commercial transactions with outsiders (1QS 5.14; 9.8-9).⁵³ The possibility remains open that the members of the "camps" of the Damascus Document could make financial exchanges with non-sectarian Jews. The single piece of evidence which mitigates this possibility is found in the regulations regarding interaction by community members with one who has been expelled. The text states, "let no man agree with him in property or work" (CD 20.7).⁵⁴ If we can extrapolate from this rule on the basis of the principle that one expelled from the community belongs to the same category as non-sectarians, then it seems plausible that the Damascus Document implies that the covenanters could not have financial contact with outsiders. Although it is possible that the covenanters were stricter toward those expelled

Milikowsky, "Law at Qumran: A Critical Reaction to Lawrence H. Schiffman, Sectarian Law in the Dead Sea Scrolls: Courts, Testimony, and the Penal Code," RevQ 46 (1986): 245, calls this conclusion a piece of "hypothetical midrash" which goes too far beyond CD 9.10-12 to be justifiable. The tannaitic rabbis, however, do draw the conclusion from Num 5:21 that the oath of evidence calls for an amen response (m. Sebu. 4:3). Schiffman's hypothesis may be correct, but it cannot be justified by CD 9.10-12.

⁵³ Black, The Scrolls and Christian Origins, 33-34.

⁵⁴ Translation in Schiffman, Sectarian Law in the Dead Sea Scrolls, 170.

than toward those who had never entered their community. It seems probable, however, that as a result of membership in the community, one would have limited opportunity to take the type of the oaths prescribed or allowed by the Law, for these oaths settled property disputes.

Provision is also made to limit the kind of oaths by which individuals might bind themselves. According to the interpretation of the author of the Damascus Document, in order to fulfil Deut 23:21, the commandment to fulfil one's vows, one cannot set aside one's oaths to keep a commandment of the law "even at the price of death." By the reverse token, one is prohibited from fulfilling oaths to depart from the Law (CD 16.6b-9).⁵⁵ In Schiffman's view, "the price of death" indicates that one should risk one's life to keep an oath if it concerns observance of an oath.⁵⁶ Schiffman suggests that the root pdh "setting aside" refers to some kind of substitution. He points to the possibility that in 1 Sam 14:45, the story of the redemption of Jonathan

⁵⁵ Geza Vermes' translation uses oath for "oath to fulfil the law" and vow for "oath to depart from the law." The Hebrew uses šēbū'at ʿāssur in the first clause; the text of the second clause is damaged, but Chaim Rabin, The Zadokite Document, 74, has reconstructed it with the word yāqīm, a word commonly used in the Targums for swearing. The passage clearly intends oath in both cases. This statute agrees with m. Ned. 2:2 and m. Šebu. 3:6.

⁵⁶ Lawrence H. Schiffman, "The Laws of Vows and Oaths (Num. 30, 3-16) in the Zadokite Fragments and the Temple Scroll," forthcoming in RevQ.

from Saul's oath may indicate that the oath could be set aside if a donation was paid in its place.⁵⁷

The discussion of oaths then proceeds to the laws of Num 30:7-9 governing a husband's authority to cancel his wife's oaths. According to the Damascus Document:

no husband shall cancel an oath without knowing whether it should be kept or not. Should it be such as to lead to transgression of the covenant, he shall cancel it and shall not let it be kept. The rule for the father is likewise (CD 16.10-12).

Schiffman hypothesizes that the sect had a set of restrictions similar to those of the Tannaim which specified the types of oaths a husband could annul.⁵⁸ The context and the wording of the statute, however, suggests that the guideline which the husband was to follow was that oaths to fulfil a commandment must be kept and those to violate a commandment must not be fulfilled.

At first glance, the author of the Damascus Document seems to confuse vows and oaths. Actually, the Damascus Document sets up an analogy between Deut 23:21 and Num 30:2. Both passages declare that utterances of the lips are binding. Because Num 30:2 refers to both oaths and vows, the author of the Damascus Document assumes that Deut 23:21 refers to both. This does not signify that oaths and vows are treated synonymously.

⁵⁷ Ibid.

⁵⁸ Ibid.

The covenanter's reading of Deut 23:21 colours his interpretation of Num 30:9 to such a degree that he departs radically from the text. According to Numbers, a husband or father, while the daughter is still in his household, can invalidate any of the woman's oaths or vows provided that he does so on the day he first hears of the utterance. This annulment extends to all vows or oaths that the woman may have made. The Damascus Document limits this power by insisting that the man first ascertain whether any oath should be fulfilled, that is, given the interpretation of Deut 23:21, whether it must be fulfilled (CD 16.10-12).⁵⁹ In this case, the man has only limited power to annul oaths.

The Temple Scroll agrees with the Damascus Document in its application of Deut 23:22-24 to oaths, but unlike CD 16.10-12, it follows Num 3:3-36 and treats vows as well as oaths. Moreover, the father or husband's authority to render an oath or vow null is limited only by the commandment that he do so on the day that he first learns of it. The Temple Scroll includes a more complete version of the biblical law by including the specific vow or oath of self-affliction and the law governing a widow's binding

⁵⁹ 11Q Temple 53.9-54.7 follows Num 30:3-16 and treats vows, as well as oaths, and the father or husband's authority to render an oath or vow is limited only by the command that he do so on the day that he first learns of it. Cf. Schiffman, "The Law of the Temple Scroll and its Provenance," 91.

utterances.⁶⁰ Schiffman concludes that the differences between the two documents indicate that the Temple Scroll either "stems from a related but separate group" or represents an earlier state in the historical development of the exegesis of the community than the Damascus Document.⁶¹

E. VOWS

The exegesis of Deut 23:21 in the Damascus Document does not draw any legal conclusions about the fulfilment of vows. Schiffman makes the observation that "it is as if the author purposely expunged vows from the text." Schiffman concludes that the author of the text may have believed that vows were forbidden.⁶² Other rulings in the document indicate that Schiffman is partially correct.

Statutes governing vows recognize both of the two common purposes for taking vows: dedication and abstinence. The first principle, an extension of Deut 23:48, which prohibits payment of a vow with the wages of a harlot or a dog, disallows the vowing of unlawfully acquired goods or the receipt of these goods by a priest (CD 15.13-14).

⁶⁰ Schiffman, "The law of Vows and Oaths (Num. 30,3-16) in the Zadokite Fragments and the Temple Scroll," 14.

⁶¹ Ibid., 15. Schiffman hypothesizes that the source of 11QTemple was located in Sadducean circles.

⁶² Schiffman, "The Law of the Temple Scroll and its Provenance," 91.

Earlier in the document, in the context of the prohibition against entry of the Temple, the covenanters receive the warning to "keep away from the unclean riches of wickedness acquired by vow (bēneder) or anathema (Devoting) (bēḥērem) or from the Temple treasure (ûbehôn hammēqadeš)" (CD 6.15-16). The condemnation of the temple cult as a matter of course affects the covenanters' attitude toward offerings and vows, but the reverse may also be true. The lack of honour attributable to what the priests were accepting in Jerusalem may have diminished the stature of the temple in the eyes of the covenanters. Josephus records such a lack of circumspection about the origin of offerings in his Jewish Wars (JW 4.3.10 §181).

The second principle seems to deal with vows of abstinence like the gorbān vow. It limits what a man may consecrate and, thereby, deny to himself or his family:

no man shall consecrate (yēqaddēš) the food of his house to God,⁶³ for it is as He said, Each hunts his brother with a net (ḥērem) (or votive offering: Mich 7:2) (CD 16.14-15).

The text is fragmentary at this point. Chaim Rabin's reconstruction suggests that the passage includes a prohibition against consecrating one's estate and the prescription for punishment for such vows before the judge.⁶⁴ By preventing the dedication of property

⁶³ Rabin, The Zadokite Document, 76, reads "the food of his mouth."

⁶⁴ Ibid., 76.

effectively negates the use of a gorbān vow such as that found in Mark 7:11, vows which condemn family members to poverty or suffering. By limiting what one may consecrate, the text seems to presuppose that some vows of abstinence are permissible. Unfortunately, the statutes are so terse that they provide no definitive rulings from which we can draw conclusions about the covenanters' use of vows.

Presumably, the covenanters followed a more extensive set of statutes which regulated binding oaths and vows than are found in the Damascus Document. The Damascus Document briefly alludes to a statute concerning binding vows based on Num 30:17 (CD 7.8) but provides no clue about its contents. The statutes at hand nevertheless provide insight into the tendencies which guided the covenanters' interpretation of the Law. First, statutes restricted the use of oaths and vows, thereby limiting the covenanters' opportunity to commit infractions. Secondly, the oath formula "by the curses of the covenant" reduced the severity of the violation of an oath, and thirdly, their exegetical techniques allowed them to transfer rulings governing vows to oaths, thereby limiting valid oaths to those which did not violate a commandment.

F. RECONCILING THE SOURCES

This chapter opened with the observation that Philo and Josephus, on the one hand, and the Qumran material, on

the other, seemed to disagree. Cecil Roth contends that this disparity on the question of oath-taking is one of a number of points of divergence which signify that the Qumran sect could not have been Essenes.⁶⁵ Given the marked tendency to restrict the use of oaths by the covenanters of the scrolls, the differences between the scrolls, and Josephus and Philo, are a result of varying interpretations of the practices of the same group. Josephus and Philo describe the communities to non-Jewish readers in somewhat "idealized accounts."⁶⁶ The tools which they employ to make the Essenes intelligible, coupled with their own particular interests, colour their descriptions.

Philo's treatment of the Essenes' refusal to sacrifice animals highlights the tendency to attribute philosophical principles to the sect.⁶⁷ According to Philo, the Essenes' avoidance of animal sacrifice is a sign of their devotion to God; they resolve "to sanctify their minds" in his service (Prob. 75). Philo seems to be appealing to a growing disdain within Hellenistic societies toward such sacrifice.⁶⁸ In all likelihood, the

⁶⁵ Cecil Roth, "Why the Qumran Sect Cannot Have Been Essenes," RevQ 1 (1959): 419.

⁶⁶ Cf. Milik, Ten Years of Discovery in the Wilderness of Judaea, 90, who believes that the accounts are nonetheless based on actual observations.

⁶⁷ Geza Vermes, The Dead Sea Scrolls: Qumran in Perspective (London: Collins, 1977) 128.

⁶⁸ Black, The Scrolls and Christian Origins, 39-40.

covenanters failed to offer animal sacrifice because they had broken with the institution which performed the sacrifices, the temple in Jerusalem. According to the Damascus Document, "None of those brought into the Covenant shall enter the Temple to light His altar in vain" (CD 6.12), and for this reason, they did not enter the temple. Evidence points to a disagreement about purification rites and not the legitimacy of sacrifice in general as the historical context for the Covenanters' practices.

Philo and Josephus display a similar tendency to provide a philosophical basis for the Essenes' oath practices. Just as Philo links his own abstinence from oaths with truthfulness, he ties the Essenes' motivation for the avoidance of oaths to veracity and personal integrity (Prob. 84). Josephus makes the same claim:

Any word of theirs has more force than an oath: swearing they avoid, regarding it as worse than perjury, for they say that one who is not believed without an appeal to God stands condemned already (JW 2.8.6 §135).

In Josephus' quest to describe the Essenes as a Jewish philosophy, he focuses upon parallels with the Pythagoreans, a comparison which he makes explicit in Ant 15.10.4 §371.⁶⁹ The association may have been triggered by its context:

⁶⁹ For Pythagoras on oaths, see Diodorus 10.9.2 and Iamblicus 47. Geza Vermes, The Dead Sea Scrolls: Qumran in Perspective, 129, attributes discrepancies to the attempt to draw similarities with the Pythagoreans. For a complete list of these parallels see T. Francis Glasson, Greek Influences in Jewish Eschatology, 236.

Josephus is discussing the Essenes' refusal to swear an oath of loyalty to Herod. Here is the historical basis for the claim that Essenes avoid oaths. The Essenes' refusal to take oaths which "appeal to God" agrees with their method of framing oaths without reference to God. "Profanation of the name" is a graver offence than perjury. Their covenant with God prevents them from taking oaths of loyalty to political institutions or in foreign courts or in front of nonsectarian judges. Philo and Josephus consciously draw a distinction between the oaths prescribed by Torah or by necessity and oaths taken in situations such as that of Herod's oath or in the marketplace. Consequently, the Essenes' position, with respect to the latter occasions, signifies for the two an avoidance of oaths.

The so-called rejection of oaths by the covenanters amounts to a limitation of oaths. They are concerned with reverence for God rather than with oaths as such. Their esoteric tradition limited the form and occasion in order to protect God's covenant, his oath with Israel and his name. Where scripture provided for oaths, they took them. In fact, an oath served to seal their special relationship with God as his eschatological community by severing them from their contemporary society. They did not envisage situations in which an oath or vow might come to be regretted. The covenanters, in their written record, do not even entertain the possibility that anyone should seek release.

CHAPTER FIVE

THE PHARISEES

The discussion of the Pharisees marks a departure from the chapters dedicated to Philo and the Dead Sea covenanters. Philo's abstractions and the covenanters' community rules represent idealized views. In what follows we shall depict the Pharisees as a group dealing with the actual problems of ordinary people who have taken oaths or vows and then are confused by problems of how or whether to fulfil them. Given the well-attested polemic against oath and vow-taking in Second Commonwealth literature, we may be sure that problems were numerous. To whom would the common man or woman go for advice on how to avoid the sin of neglecting an oath or vow? To whom did they attribute the authority to define a valid oath or vow, and who could actually grant them release from a vow? The answer, it seems, is "the scribes of the Pharisees" or "Pharisaic teachers."

A. SOURCES AND METHODOLOGY

The reconstruction of the Pharisaic position with regard to the making of oaths and vows and their dissolution requires that we bring together sundry strands of evidence from a variety of sources. Josephus and the New Testament

offer scraps of information. Fragments of the Pharisaic tradition have been woven into the fabric of the Rabbinic material. A comprehensive description of the Pharisaic treatment of the questions regarding binding oaths and vows and their release is not possible, but careful attention to seemingly unimportant pieces in one source sheds light on the significance of another piece in another source. Bit by bit, a general reconstruction becomes possible. Much of it, obviously, will remain hypothetical.

The problem that confronts the historian is how to treat the various sources. The Mishnah as a document of the Tannaim, the supposed heirs to the Pharisaic movement, should provide a wealth of information, but its redaction in 200-250 CE is far removed from the Second Temple period. Moreover, its authors define themselves as an entity distinct from the Pharisees.¹ Finally, the work of producing critical editions of the Rabbinic material has just begun. Nevertheless the Tannaitic material must not be neglected. The solution must lie in the task of methodically isolating data that may reasonably be attributed to the period before 70 CE.

The earliest strands of material which can be recovered with certainty are the Pharisaic-Sadducean debates. These provide a starting point. Earlier

¹ See Shaye D. Cohen, "The Significance of Yavneh: Pharisees, Rabbis and the End of Jewish Sectarianism" in HUCA 55 (1984): 29.

generations of scholars have identified the material attributed to the pěřûšîm ("separatists"), ḥabûrôt ("members of an association"), and the pre-70 CE hakāmîn ("Sages"), to the Pharisees. Subsequent correctives, by scholars such as Ellas Rivkin, isolate some of this material as demonstrably Pharisaic.² For our purposes, if the hakāmîn or pěřûšîm are pitted against the Sadducees, then these disputes can be attributed to a pre-70 CE stratum and are likely to be of Pharisaic origin.³

Agreement with principles attributed to the Pharisees in non-Rabbinic sources provides another standard by which to determine whether to attribute material to the Pharisees. This method has been employed successfully by a number of scholars. E. P. Sanders in his work Jewish Law from Jesus to the Mishnah uses Josephus' claim that the Sadducees rejected Pharisaic non-biblical traditions (Ant 13.10.6 §297).⁴ He finds a case for treating a tradition as genuinely Pharisaic in Mishnah tractate Erubin. M. Erub. 1:2 describes a dispute between the Houses of Hillel and Shammai which presupposes the practice of erub, "the fusion of sabbath day limits." Because erub is a tradition without biblical support, erub may be Pharisaic in origin.

² Ellas Rivkin, "Defining the Pharisees: The Tannaitic Sources," HUCA 40-41 (1969-70): 205-249.

³ Cf. E. P. Sanders, Jewish Law from Jesus to the Mishnah (London: SCM, 1990) 109.

⁴ *Ibid.*, 108.

The added datum that a Sadducee opposed the practice (m. Erub. 6:2) seals the case, and Sanders concludes that erub is a Pharisaic tradition.⁵ A. I. Baumgarten applies the same methodology in his discussion of m. Hag. 1:8 which claims that the notion of a Sage releasing vows has no biblical basis. He therefore treats the house disputes that accept the principle of release from vows as Pharisaic.⁶ As for the reliability of attributions to the pre-70 CE teachers, if a rabbinic tradition can be tied to the Pharisees by virtue of agreement with a description of the Pharisees in other sources, such as Josephus of the New Testament, then that saying can be treated as Pharisaic. The particular attribution to a specific individual is not so important as the placement of the ideas within the late Second Temple period.⁷

Where no external support can be found, the criterion of internal consistency can be applied. If a saying attributed to a pre-70 scholar displays a logic similar to that employed by other pre-70 scholars and does not presuppose the rulings of later rabbis, then it may

⁵ Ibid., 109.

⁶ A. I. Baumgarten, "Korban and the Pharisaic Paradosis," JNES 16-17 (1984-85): 12.

⁷ Cf. Jacob Neusner, The Rabbinic Traditions about the Pharisees before 70, vol. 3 (Leiden: E. J. Brill, 1971) 230; E. P. Sanders, Jewish Law from Jesus to the Mishnah, 168, who accepts that attributions of legal rulings are generally reliable.

possibly be a pre-70 CE teaching. Since this last criterion proves possibility but not probability, we will use it to make negative judgements. That is, if a tradition ascribed to a pre-70 Sage uses logic belonging to a post-70 development, then we will not consider the saying Pharisaic.

Following Neusner's treatment of the Tannaitic material, we shall treat the Mishnah and Tosefta as sources more reliable than Tannaitic midrashim, and the midrashim as more reliable than beraitot in the Palestinian and Babylonian Talmuds.⁸

Two final considerations play a role in our discussion. First, as Neusner observes, the majority of pre-70 CE sayings come from post-70 teachers, but they are so few in number that there is no evidence of a tendency by later teachers to make up material.⁹ Secondly, when the setting and details of a saying are proper to the Second Temple period, there is no need to conclude that the saying is Yavnean or Ushan fiction. A severe hermeneutic of suspicion should come into play only when a saying defies logic.

The New Testament provides the basis for an investigation of the Pharisaic teaching on oaths and vows, for Matt 23:16-22 criticizes a supposed Pharisaic teaching

⁸ Jacob Neusner, Eliezer Ben Hyrcanus: The Tradition and the Man, vol. 2 (Leiden: E.J. Brill, 1973) 226.

⁹ Jacob Neusner, The Rabbinic Traditions about the Pharisees before 70, vol. 1 (Leiden: E.J. Brill, 1971) 6.

which distinguishes between binding and non-binding oaths, and Mark 7:1-15 (par) criticizes a supposed Pharisaic ruling governing the release from the vow of gorbān. Since these traditions are polemic, they should not be taken at face value. Like the Rabbinic material, evidence from the New Testament must, if possible, be shown to agree with an independent source.

Josephus provides us with three accounts of the Pharisaic teaching: Ant 13.5.9 §171-3, 18.1.3 §12-15 and JW 2.8.14 §162-63 as well as numerous accounts of their activities throughout his histories. His presentation, in general, does not dovetail with what we find in the Rabbinic material or in the New Testament. His Pharisees indicate no particular interest in tithing or purity laws. It would seem that in his attempt to present the Pharisees as a philosophic tradition, not unlike that of the Stoics, he subordinates religious themes to concepts familiar to his Greco-Roman readership. One significant point emerges from his portrayal of the Pharisees: the Pharisees exercised more influence over the Jewish masses than any other religious group at the time.

The role of the Pharisees in late Second Temple Judaism has been a matter of heated debate. Morton Smith and Jacob Neusner have argued that different pictures of the Pharisees emerge when the evidence from the Antiquities is viewed separately from the evidence in the Jewish War. The

Pharisees of the Antiquities are more active in the political affairs of Palestine, and they enjoy the popular support of the masses (Ant 13.10.5 §288; 13.15.5 §401-2; 17.2.4 §41; 18.1.3-4 §14,17). In the Jewish Wars, their popularity and involvement in public affairs is less evident. This observation has led Smith and Neusner to conclude that Josephus' earlier work, the Jewish Wars, gives a truer representation of the Pharisees, whereas the Antiquities represents the heirs to the Pharisees' post-70 CE rise to power. Neusner, on this basis, forms his conclusion that the Pharisees were strictly a pietistic sect during the late Second Temple period.¹⁰

Daniel Schwartz, in opposition to Smith and Neusner, argues that Josephus in his Jewish Wars purposely obscures the Pharisees' political involvement during this era.¹¹ He claims that passages in the Antiquities which mention Pharisaic power "express hostility toward the Pharisees." He claims that these passages derive from one of Josephus' sources, a work by Nicolaus of Damascus and, therefore, Josephus did not invent statements about Pharisaic power.¹²

¹⁰ Morton Smith, "Palestinian Judaism in the First Century" in Israel: Its Role in Civilization, edited by Moshe Davis (New York: Seminary Israel Institute of the Jewish Theological Seminary, 1956) 74-78, and Jacob Neusner, From Politics to Piety: The Emergence of Pharisaic Judaism (Englewood Cliffs, N.J.: Prentice & Hall, 1973) 45-66.

¹¹ Daniel Schwartz, "Josephus and Nicolaus on the Pharisees" in JSJ 14 (1983): 169.

¹² Ibid., 165-67.

Schwartz concludes that the Antiquities presents the more accurate picture of the Pharisees' power.

The last word in this debate now belongs to Steve Mason. He rejects Schwartz's source analysis and credits "all the deliberate descriptions of the Pharisees" to Josephus.¹³ Moreover, in challenge to Smith and Neusner, he finds that Josephus' portrayal of the Pharisees is consistent throughout the Jewish Wars and the Antiquities.¹⁴ Mason demonstrates that Josephus was one of the Pharisees' detractors and that Josephus attests to and laments the Pharisees' influence over the masses from the Hasmonean period to the outbreak of the Jewish revolt.¹⁵ He points out that given Josephus' antipathy for the Pharisees, we can conclude that he has begrudgingly left us an accurate picture of the Pharisees' influence in Jewish society. In light of Mason's arguments, we will take Josephus' claims that the Pharisees held the support of the masses, were expert interpreters of the Torah, and were politically active to be accurate.

The discussion of oaths and vows proceeds from the consensus reached by the majority of the scholarly community over who the Pharisees were. Josephus and The Acts of the

¹³ Steve Mason, Flavius Josephus on the Pharisees (Leiden: E. J. Brill, 1991) 372.

¹⁴ Ibid., 308.

¹⁵ Ibid., 372-73.

Apostles call the Pharisees an hairesis. This has generated a discussion over whether the Pharisees were a political party, a school of thought, or a sect. They seem to have been a closed association whose members based their lives on a set of practices, a paradosis, which they held to be authoritative on the basis of its oral transmission by the elders (Gal 1:14, Acts 22:3; 28:17; Mark 7:3,5; Ant 13.10.6 §297). If m. Abot 1:1-12 represents the Pharisaic belief in this transmission, the Pharisees traced their paradosis back to Moses and the receipt of the written Torah at Mount Sinai. Josephus, however, makes no reference to the Mosaic origin of the Pharisaic paradosis; therefore, we must question whether the Pharisees held that their tradition was given at Sinai. Nevertheless, his account of the controversy between the Sadducees and the Pharisees confirms that the Pharisees considered their paradosis to be binding (Ant 13.10.6 §297).¹⁶ The Pharisaic paradosis entailed the observance of a standard of ritual purity beyond or in strict adherence to the requirements of biblical law. Furthermore, it included the proper tithing of agricultural produce, a standard for Sabbath observance, and a method of interpreting scripture which they held to be accurate and authoritative (Life 191; JW 1.5.2 §110; 2.8.4

¹⁶ Stephen Westerholm, Jesus and Scribal Authority (Lund: CKW Gleerup, 1978) 16, considers the absence of Sadducean criticism of the claim that the Pharisaic tradition was given at Sinai conclusive evidence that the Pharisees did not make this claim.

§162).¹⁷

The rationale for the Pharisaic concern for purity is a matter of debate. Jacob Neusner argues that the Pharisees observed the standard of ritual purity demanded of the Priesthood. In particular, they ate ordinary food in purity.¹⁸ E. P. Sanders takes issue with Neusner's conclusions. He argues that the Pharisees sought a higher than normal degree of purity for its own sake or as an expression of godliness.¹⁹ Handwashing was not a priestly rule but a Pharisaic innovation.²⁰ Sanders believes that the Pharisees washed their hands only before eating priest's food, before eating sabbath or festival meals, and before handling scripture.²¹ Sanders justifies his position by analyzing the Pharisaic purity debates on corpse impurity, the form of impurity which priests were to avoid. He finds that the Pharisees defined and extended corpse impurity, but they did not avoid it in the same way a priest would. He concludes that the Pharisees did not try to live like

¹⁷ See A.I. Baumgarten, "The Name of the Pharisees" in JBL 104 (1983): 411-28. Baumgarten argues that the Pharisees' name may reflect their claim to be "specifiers" (pārôšîm) of the law rather than their status as "separatists" (pěrûšîm).

¹⁸ Jacob Neusner, The Rabbinic Traditions about the Pharisees before 70, vol. 3, p. 288.

¹⁹ E. P. Sanders, Jewish Law from Jesus to the Mishnah, 192.

²⁰ Ibid., 163.

²¹ Ibid., 40.

priests.²²

Given the fact that our concern lies with the elaboration of this paradosis, the question whether the Pharisees sat on the Sanhedrin is of tangential interest. The question whether they were an exclusivistic group or whether they intended that everyone should practice their tradition, however, bears upon our discussion as well as the question of the degree of their popularity or authority with the masses. On this point, we will advance the position that the Pharisees were concerned with governing the behaviour of the common people by application of their teaching and that their rulings were often sought by the public. This study, however, agrees with E. P. Sanders that the Pharisees did not consider observance of their traditions necessary for salvation.²³

For the purpose of examining the Pharisees the order of discussion will be reversed. We will begin with vows and then proceed to oaths. The reason for this deviation from the established pattern is simple. A greater degree of confidence can be ascribed to the discussion of vows than that of oaths.

²² Ibid., 187.

²³ Ibid.,

B. Vows

The Mishnah offers a dangling thread, a point with which to begin the discussion of the Pharisaic tradition on vows. In tractate Hagiga, one finds the following statement:

[The rules about] release from vows hover in the air and have naught to support them; the rules about the Sabbath, Festival-offerings, and Sacrilege are as mountains hanging by a hair, for [teaching of] Scripture [thereon] is scanty and the rules many (m. Hag. 1:8).²⁴

The practice of release from vows finds its authority in a tradition other than scripture. The observation that a practice has no scriptural basis brings to mind the Sadducean criticism of the Pharisees. According to Josephus:

The Pharisees had passed on to the people certain regulations handed down by former generation and not recorded in the Law of Moses for which reason they are rejected by the Sadducean group, who held that only those regulations should be valid which were written down (Ant 13.10.6 §297).

M. Hag. 1:8 points back to a time when some rhetoric about the authority of an oral tradition was still necessary. Its apologetic addresses a criticism comparable or identical to the Sadducean polemic. M. Hag 1:8 may therefore represent a fragment of Pharisaic tradition which is concerned with

²⁴ T. Hag. 1:9 adds "but a sage loosens a vow in a word with his wisdom." Sipre Num. 73 on Num 10:1-10: "Scripture teaches that the release of vows is the duty only of experts."

release from vows.²⁵

Josephus provides one solid piece of evidence which indicates that the Pharisees concerned themselves with vows and one possible allusion to their claim to the authority to bind or release the individual to or from his vow. In his description of the Pharisees in Ant 18.1.3 §15, Josephus claims that "all vows (euchōn) and sacred rites of divine worship are performed according to their exposition."²⁶ One of the house disputes in Mishnah Nazir may illustrate what sort of guidance the Pharisees offered (m. Nazir 3:6). The question in debate concerns a man who has taken a Nazirite vow for a period of time outside the land of Israel and has returned to bring the vow to fulfilment. The debate rests on two assumptions: a Nazirite vow is valid only when

²⁵ Jacob Epstein in his Introduction to the Text of the Mishnah uses m. Hag. 1:8 as a proof text for the existence of a proto-Mishnah. He dates m. Hag. 1:8 to a time no later than Herod, because attestations by R. Eliezer and R. Joshua presume its present formulation. Cf. Baruch Micah Bokser, "Jacob N. Epstein on the Formation of the Mishnah" in The Modern Study of the Mishnah, edited by Jacob Neusner (Leiden: E.J. Brill, 1973) 41-43. Cf. also A. I. Baumgarten, "Korban and the Pharisaic Paradosis," 12. Jacob Neusner dates m. Hag. 1:8 to the Ushan period, A History of the Mishnaic Law of Appointed Times, vol. 5 (Leiden: E. J. Brill, 1981-82) 118.

²⁶ Louis H. Feldman translates euchōn "prayers" and offers "vows" as a alternative translation in a footnote. The question of how to translate this term centres upon the issue of whether vows or prayers were more closely related to rites in the Second Temple period. The association of euchōn with hierōn poiēseōs (literally holy acts) stresses formal acts of perscription; therefore, I favour the translation vows.

fulfilled in the Land of Israel, and a standard term of such a vow is thirty days. Neither of these presuppositions has scriptural basis. Beth Shammai argue that the man need only continue as a Nazirite for thirty days, whereas Beth Hillel argue that he should continue for the period that he vowed to be a Nazirite. Given the fact that scripture sets no duration for the observation of a Nazirite vow, the Pharisees seem to have provided exposition on duration in order to facilitate the fulfilment of these vows.²⁷

The second piece of evidence from Josephus is less conclusive than the first. Nevertheless, the wording echoes the language associated with vows. The context is the description of the power of the Pharisees under Alexandra Salome:

Beside Alexandra, and growing as she grew, arose the Pharisees, a body of Jews with the reputation of excelling the rest of their nation in the observances of religion and as exact exponents of the laws (tous nomous akribesteron aphēgeisthai) To them, being herself intensely religious, she listened with too great deference; while they gradually taking advantage of an ingenuous woman, became at length the real administrators of the state, at liberty to banish and to recall, to loose and to bind (lyein te kai desmein), whom they would (JW 1.5.2 §110-11).

Although this passage says nothing about the release from vows, Josephus' choice of language may be significant. As A. I. Baumgarten points out, when Josephus uses akribesteron

²⁷ This ruling is reiterated in the account of Queen Adiabene's vow which appears in a house dispute regarding the duration of vows (m. Ketub. 5:6).

to describe the Pharisaic exposition of the law, he selects a word which seems to be commonly associated with the Pharisees.²⁸ The same tendency to choose words already associated with the Pharisees may be reflected in the choice of lyein and desmein. The same pair of words appears twice in Matthew's Gospel in reference to the Church's authority to establish norms within the Christian community (Matt 16:19; 18:18).²⁹ The Hebrew equivalents of these two words, to bind lāʾēsōr and to loosen lēhittîr, may be the terminology which the rabbis employed throughout the halakot to describe legal decisions which bind one to or release one from religious obligations, pre-eminently vows. Josephus may be expressing in political terms the authority which the Pharisees claimed in religious terms.

A third possible allusion to the Pharisaic practice of releasing vows appears in Philo of Alexandria's Hypothetica. Philo knows of various means of release from vows:

The chief and most perfect way of releasing dedicated property is by the priest refusing it, for he is empowered by God to accept it or not. Next to this, that given by those who at the time have the higher authority may lawfully declare that God is

²⁸ A.I. Baumgarten, "The Name of the Pharisees", 413-4. Steve Mason, Flavius Josephus on the Pharisees, 131, confirms that Josephus reluctantly concedes that the Pharisees had a reputation for akribeia.

²⁹ Ze'ev Falk, "Binding and Loosening" in JSJ 25 (1975): 96-97: "this saying makes use of the rabbinical competence of making decisions in vows and other ritual questions, extending it to a monopoly on salvation."

propitiated so that there is no necessity to accept this dedication. Besides these there is a host of other things which belong to unwritten customs and institutes or are contained in the laws themselves (Hypoth. 7.5-6).

The agraphōn ethōn, "unwritten customs," to which Philo refers are vaguely suggestive of an oral tradition similar to that of the Pharisees. Unfortunately, the reference is too opaque to illuminate this discussion. We can conclude only that Philo knew of some practice of release from vows that represents a development in halakot beyond the strict obligation, found in scripture, to fulfil vows.

One final piece of data confirms that the Pharisees exercised authority to determine whether a vow was binding or not. In Mark's Gospel, Jesus criticizes the Pharisees for upholding a vow whereby a son has forbidden his parents to derive any benefit from his property, the vow of qorbān. The pericope presupposes a situation in which the Pharisees have been approached by either the parents or the son in order to grant release. The date assigned to the composition of Mark's Gospel to shortly before or after the destruction of the Temple substantiates the claim that the Pharisaic tradition included some teaching that granted their leaders the authority to release individuals from vows.

That Pharisees exercised the authority to grant release from vows is certain, but this raises the question what the grounds for release included. Ze'ev Falk in his

article "Binding and Loosening" identifies a development in legal terminology applied to release from vows. The earliest term hpr applied to a husband's (or father's) act of invalidating a wife's (or daughter's) vows (Num 30:13).³⁰ Htr replaces hpr in the next stage and refers to the permissive reply by which legal teachers released one from a religious obligation. At a later stage, the word pth, "open a way," was used to refer to the ingenuity with which the Sages devised justification for release, usually on the basis of regret.

A survey of the rabbinic material reveals a gradual liberalization or increase in the latitude of discretion which the Sages could employ. An example from the Babylonian Talmud reveals the considerable authority invested in the Sage. Botnith, the son of Abba Saul b. Botnith, examines R. Simeon son of Rabbi for evidence that he formulated a vow in error, that is without foresight, and can be absolved from his vow. He asks, "Did you vow in order that the Rabbis should thus wearily pass from sun to shade and from shade to sun?" (b. Ned. 23a). Botnith's reason for releasing the vow is the regret that R. Simeon feels. Had R. Simeon known that his vow would cause the rabbis difficulty in determining grounds for release he would not have taken his vow. The unforeseen desire to seek release provides sufficient grounds for absolution. In the

³⁰ Ibid., 97.

Tannaitic literature the examination of intention centres upon the actual substance of the vow. An example from the Tosefta illustrates this difference:

If he intended to take a vow by a whole offering and took a vow as a Nazirite, by an offering, and took a vow by an oath, it is not binding. [If] he intended to take a vow by a whole offering and took a vow by an offering, by a herem and took a vow by that which is sanctified [to the Temple], it is binding (t. Ned. 5:3).³¹

The earlier halakot indicate that the question whether an individual could gain release rested on whether the language which he or she had used was binding. That is, if one took a vow using a designated vow-term, such as those identified in the Mishnah: herem, Nazir, or qorbān, the vow was binding.³²

In a relevant house dispute, the binding power of certain terms in the formulation of vows is stressed. Beth Shammai contends that euphemisms for euphemisms are binding, that is a term which is not designated a substitute for the valid vow term is binding. Beth Hillel argues that they are not binding (t. Nazir 1:1). Two mishnayoth from tractate Nazir illustrate this disagreement. In both cases someone

³¹ Translation by Jacob Neusner, The Tosefta, vol. 3 (New York: KTAV, 1979) 114.

³² See Saul Lieberman, "Oaths and Vows" in Greek in Jewish Palestine (New York: Philipp Feldheim Inc., 1965) 131-2. Lieberman explains that according to Palestinian halaka a binding vow was composed of either a distinct vow term with a distinct or indistinct vow formula or an indistinct vow term with a distinct vow formula. An oath term could be used in a vow only with a distinct vow formula.

is taking a vow of abstinence. In the first case, the vow-taker claims he will be a Nazîr from dried figs and fig cake (m. Nazir 2:1). In the second, he designates a cow and then a dog as a Nazîr (m. Nazir 2:2). Beth Shammai argues that these vows are binding. R. Judah explains that Beth Shammai takes Nazîr in these cases as a euphemism for gorbān. Beth Hillel rejects this substitution. The assumption is that konam and konas are the appropriate substitutes for gorbān (m. Ned. 1:2). Nazîr is a substitute for a substitute. Behind the house dispute lies the presupposition that a set of definitive euphemisms for gorbān has been established.

A second ground for release discussed in the Mishnah is that a vow fits into one of four categories: vows of incitement (those made while bargaining or to incite someone to sell or buy), vows of exaggeration (vows with impossible conditions for fulfilment), vows made in error (cases in which the reasons for making the vow are based on false information), and vows of constraint (vows made under duress).³³ The last two categories are discussed in house disputes which may place these distinctions in the pre-70 CE period.³⁴ In all cases, there is something fallacious

³³ An anonymous mishnah (m. Ned. 3:4) understands vows of constraint to be vows whose fulfilment is hindered by unforeseen problems such as illness or natural disaster.

³⁴ For vows made in error see m. Nazir 5:1-2 and m. Ned. 3:2. For vows of constraint see m. Ned. 3:4.

about the vow itself.³⁵

Both release from vows on the basis of regret or for reasons extrinsic to the vow itself and the language of "opening a way," pth, which makes this form of release possible, originate after the destruction of the Temple. The first rabbi to "open a way" seems to have been R. Eliezer ben Hyrcanus: once "by reason of the honour due to a father and mother" (m. Ned. 9:1) and once "by reason of what befalls unexpectedly" (m. Ned. 9:3). In both cases, the Sages initially reject Eliezer's ruling, then later reverse their decision and accept it. Four more "openings" appear in the Mishnah: one introduced by R. Meir, "by reason of what is written in the law," two attributed to R. Akiba, "by reason of his wife's Kethubah" and "by reason of Festival days and Sabbaths," and a fourth anonymous ruling, "by reason of his own honour and that of his children" (m. Ned. 9:5,6,9). All of the above can be characterized as reasons of regret. For example, in R. Akiba's ruling, a man has taken a vow to have no benefit from his wife. The wife who suffers from such a vow is then entitled to her Kethubah, a financial settlement established in the marriage contract. If the husband regrets the vow, because he does not wish to pay the sum, he may be absolved from his vow.

On the basis of Eliezer's ruling in m. Ned. 9:1, the

³⁵ Jephthah's vow is treated as an inappropriate vow in Lev. Rab. 37.4 and could have been absolved as vow made in error. See also Gen. Rab. 40.3.

young man in Mark 7:11 could have gained release from his vow of gorbān, but it is clear that the ruling post-dates the context in Mark and that the Pharisees could only rule on the basis of the position that the use of gorbān in a vow renders it binding. If recourse to release on the basis of error, exaggeration, constraint, or incitement were available, none of the four was applicable to the case in Mark's Gospel.

The introduction of the practice of creating an opening marks a significant change in the understanding of vows. Previously the utterance of the word gorbān, for example, was a performative act. The object immediately assumed a consecrated status; it became gorbān, something from which the vow-taker could no longer derive benefit.³⁶ The early forms of release, in effect, state that something about the utterance of the vow, the wording or its false basis renders it void, that is, not binding. It is as though no vow took place. The later forms of release seem to acknowledge the vow as binding but such acknowledgement has been tempered by reality. Events that occur after the

³⁶ See Howard Eilberg-Schwartz, The Human Will in Judaism: The Mishnah's Philosophy of Intention, Brown Judaica series 103 (Atlanta: Scholars Press, 1986) 68-76, for a discussion of how the Sages are concerned with the "standard meaning" of words. The intention of the individual plays no role in determining the meaning of an utterance. Only the words one chooses bear on the question. Eilberg-Schwartz describes the performative nature of a vow in terms of the person's words entering the public domain, so that society determines the meaning of the words.

vow is made can provide a reason for not fulfilling the vow.

The pivotal role that the destruction of the temple played in the development of "opening a way" in order to release one from a vow is apparent in a mishnah from tractate Nazir (m. Nazir 5:4). Nathan the Mede attempts to release (htr) some Nazirites, who have returned to Jerusalem to find the Temple in ruins, from their vows. He asks, "Would ye have vowed to be Nazirites had ye known that the Temple was destroyed?" They reply "No." The Sages, however, rule that the release is only effectual if the Temple was destroyed before the vows were taken (m. Nazir 5:4). The assumption is that without the Temple, the utterance of the vow has no real consequences. No performative act has taken place. The Sages' ruling reflects the treatment of release from vows which prevailed prior to the destruction of the temple, because in early forms of release only something about the utterance of the vow, not events which occur after the vow is made, can release one from one's obligation. They do not hold a position comparable to that of R. Eliezer who, in m. Ned. 9:2, finds an opening on the basis of something that takes place after the vow is made. This rejection of the principles of release applied in Nedarim continues in the Palestinian and Babylonian rulings governing Nazirite vows. The Nazirite vow dies with the Temple; therefore, no development occurs in the language of release applied to the

Nazirite vow. The language of opening is rarely applied to the discussion of Nazirite vows.³⁷

The popularity of the qorbān vow of abstinence, reflected in the Rabbinic literature, may be a response to fill the void left by the Nazirite vow and vows of valuation after the Temple's destruction. The qorbān vow, because it does not actually dedicate something to the temple, does not have the same performative function as the Nazirite vow. Consequently, the way was clear for the rabbis to release people from the vow of qorbān without the restriction placed by the Sages in m. Nazir 5:4.

The earliest material indicating a Pharisaic practice of release from vows concerns vows of abstinence, such as the Nazirite vow. Mishnah Nedarim concerns itself almost exclusively with another such vow, the vow of qorbān. We have already traced the development of qorbān as an offering which fulfils a vow to Josephus' identification of qorbān with the vow of valuation. Qorbān was used as a vow of offering. Some object was designated as qorbān and then was given to the Temple. If a person wished to dedicate themselves to the Temple, he or she made a vow of valuation (Lev 27:4-8). According to Josephus, the Jews of his time used the word qorbān when formulating this vow (Ant 4.4.4

³⁷ The only example that I have found appears in b. Nazir 9a when Beth Hillel adopts the view of R. Jose and Beth Shammai adopts the view of R. Meir. It is obviously anachronistic.

§73). In the later literature, gorbān became a vow of abstinence whereby one denied himself or herself the benefit or use of something or whereby one denied another person the benefit or use of something. The latter use was rare.

The Mishnah's focus, coupled with the association of the gorbān vow with the Pharisaic tradition in Mark 7 and Matt 15, suggests that the gorbān vow may have had a place in the Pharisaic tradition. Two flags of caution should be raised. First, the gospel material is polemical, but it must be added that the exaggerated position of the gospels does not diminish the credibility of the information in general. Second, while the Tannaitic material recognizes the gorbān as binding, it does not necessarily sanction its use. M. Ned 2:5 instructs:

But the Sages say: They open for them a door (to repentance) from another side, and instruct them so that they shall not behave themselves lightly in what concerns vows.

Jacob Neusner identifies the attitude of the redactor:

"suitable folk (keshār^cīm) do not take vows to begin with, only evil people (reshā^cīm) do so."³⁸ When people are presented taking vows, they are depicted as impetuous, thoughtless, or acting in rage.

There is one ruling which indicates a use of a vow, such as gorbān, sanctioned by a Pharisee. In m. Git. 4:3, when a widow is unable to receive her Ketubah payment from

³⁸ Jacob Neusner, The Mishnaic Law of Women, vol. 3 (Leiden: E.J. Brill, 1980) 5.

the orphans who control her husband's estate and who refuse to allow her to take an oath that she has already received her money, Rabban Gamaliel the Elder ordains that she should take a vow. Herbert Danby offers the following example:

"Qorbān be to me the fruits of the earth if I have received my Ketubah!"³⁹ In this case, the vow acts like an oath in that it asserts the truth of her claim.⁴⁰ We will discuss this possible relationship between oaths and vows within the Pharisaic tradition at the end of the section on oaths.

The evidence for the pre-70 CE practice of defining and absolving vows is scant but persuasive. It is clear that Pharisees engaged in these activities, although it is also clear that the practice was a recent innovation in the late Second Temple period and increased in scope after the destruction of the Temple. The Pharisees' position that the words one chose determined whether a vow was binding limited their powers to release one from a vow. Only when the formulation of the vow was flawed did the Pharisees find grounds for release.

C. OATHS

Two pieces of solid historical data provide the

³⁹ Herbert Danby, The Mishnah, (Oxford: Oxford University Press, 1933): 311 n.4.

⁴⁰ The intended vow may also have been a vow of gorbān whereby the widow denied the orphans benefit of the money owing to her.

justification and springboard for the discussion of a Pharisaic tradition concerning oaths. According to Josephus, on two occasions the Pharisees refused to take official oaths of allegiance: once to Herod (Ant 15.10.4 §370) and once to Caesar and the king (Ant 17.2.4 §44).

Two interpretations of the data are possible. The first, that political objections prompted their refusal, and the second, that they refused on some religious basis. A close examination of the context of the oath to Herod eliminates the possibility that political objections were the basis for their refusal. The Pharisees did not oppose Herod's rule. In fact, Josephus depicts Samaias, one of these Pharisees, as the person who provides theological justification for Herod's rule (Ant 14.9.4 §172-174). Josephus' account of the conflict also suggests a motivation other than a political one:

Those who obstinately refused to go along with his (Herod's) (new) practices he persecuted in all kinds of ways. As for the rest of the populace, he demanded that they submit to taking an oath of loyalty, and he compelled them to make a sworn declaration that they would maintain a friendly attitude to his rule. Now most of the people yielded to his demand out of complacency or fear, but those who showed some spirit and objected to compulsion he got rid of by every possible means. He also tried to persuade Pollion the Pharisee and Samaias and most of their disciples to take the oath, but they would not agree to this, and yet they were not punished as were the others who refused, for they were shown consideration on Pollion's account (Ant 15.10.4 §368-370).

If the Pharisees had represented opposition to Herod's rule, Herod would not have offered clemency. This is a man who

had his own sons executed on the basis of mere suspicion of opposition.

On the occasion of the Pharisee's refusal to take an oath to Caesar and the king, Herod was not so lenient. Josephus claims that the Pharisees "were obviously intent on combating and injuring" Herod (Ant 17.2.4 §41). Herod responded by fining them, but when they predicted the end of his reign, he put some to death (Ant 17.2.4 §42-44). In Josephus' account, the Pharisees' refusal to swear allegiance functions as political protest.⁴¹ Nevertheless, the earlier precedent for refusal, as well as the fact that on this occasion the oath was to Caesar and in all likelihood included his name, provide sufficient grounds for exploring the possible religious grounds for objection to the oaths.

The oath of loyalty to Caesar may have raised two distinct issues for the Pharisees. The first problem would have been raised if the oath was sworn by the Emperor. In 3 BCE the people of Gangra and Plazimon-Neopolis swore oaths of loyalty by Augustus along with other gods.⁴² P. Oxy 1453 from 30 BCE contains an oath by a lamplighter sworn by Kaisara theon ek theous. An oath by the Emperor recognized

⁴¹ See Anthony J. Saldarini, Pharisees, Scribes and Sadducees in Palestinian Society, (Wilmington, Delaware: Michael Glazier, 1988) 98-100. Saldarini discusses the presentation of the Pharisees as a "hostile coalition" against Herod's rule.

⁴² Cf. P. Herrman, Der römische Kaisereid (1968) 123-4.

his direct authority over one's person and one's property, in that, by acknowledging Caesar as the witness to the oath, the oath-taker recognized Caesar's supreme authority in his capacity to punish infractions against the oath. The individual oath-taker placed himself in direct subservience to the emperor and violated a principle established in the Torah. According to scripture, oaths are to be made by God alone (Deut 6:13, 10:20). Josephus does not mention whether Caesar's name was invoked in the oath. His silence on this point suggests that a substitute term, such as "by my conscience," was used. Nevertheless, the oath placed power to punish whoever violated the oath in the hands of the emperor rather than in the hands of God.

The second problem with the oath of loyalty would have been the allegiance established by the oath. From the perspective of the prophets of the Hebrew Bible, by swearing an oath of allegiance to Caesar, the oath-taker betrayed his covenant with God (Jer 5:7, 44:25; Hos 4:15; Zeph 1:5). A group, such as the Pharisees, who excelled "the rest of their nation in the observances of religion, and as exact exponents of the laws" (JW 1.25.2 §110), would not readily concede to the demand to swear an oath to Caesar even if their political leanings were as favourable to Caesar as they had been to Herod when they refused to swear a similar oath on the earlier occasion.

Access to the Pharisaic teaching on how oaths should

be formulated can be gained by two approaches, through the Tannaitic material and through the writings of the Pharisees' opponents. The Tannaim base their discussion of what constitutes a binding oath on the assumption that all oaths should be by the tetragrammaton. This is stated most clearly in the Mekilta de Rabbi Ishmael in a discussion about the oath of bailment:

The oath of the Lord shall be between them both. An oath by the tetragrammaton. From this you can draw a conclusion with regard to all oaths prescribed in the Torah. Since all the oaths prescribed in the Torah are not explicit as to how they are to be taken and the Torah explicitly states in the case of them that it must be taken by the tetragrammaton it has thus made it explicit with regard to all oaths prescribed in the Torah that they must be taken only by the tetragrammaton. (Mek. Nez. 16)

The problem that legislators who were presented with this principle faced is its application in the light of the prohibition against uttering the tetragrammaton from the Second Temple period onward. The Tannaim, therefore, discuss appropriate substitutes.

That discussion, in the Mishnah, is directed specifically to adjurations, that is, when one states mašbîya^c ʾānî ("I make someone swear"), rather than oaths in general. Adjurations include the oath of testimony, the oath of bailment and the oath of bitter waters, that is, all oaths prescribed in the Torah. Extra-biblical oaths of an official or juridical nature are also depicted as adjurations. The oath that a widow swears in order to claim her Ketubah is exacted from her by the orphans who adjure

her mašbīlîn ʾôtâ (m. Ketub. 9:7-8). In effect all official oaths become adjurations. This is not unlike modern juridical oaths. The bailiff states "Do you swear to tell the truth" etc., and the oath taker responds "I do" in affirmation of the oath.

The appropriate substitutes for the divine name identified in the Tannaitic literature include "by Aleph-Dalet," "by Yod-He," "by Shaddai," "by Sabaoth," "by the Merciful and Gracious," "by him that is long suffering and of great kindness," or by anyone of God's attributes (m. Šebu. 4:13). The Tosefta includes "by the Torah" (t. Šebu. 2:16), "by Moses," which, according to Rabban Simeon b. Gamliel, means "by Him who sent Moses" (t. Šebu. 1:2), and three more attributes: "by the Perfect," "by the Righteous," and "by the Upright" (t. Šebu. 3:7).⁴³ The Mishnah explicitly rejects two substitutes, "by heaven" and "by earth" (m. Šebu. 4:13).

The above represents the premise upon which the Tannaitic discussion proceeds, but there is no internal evidence in the Rabbinic literature with which to ascribe it to a date earlier than the destruction of the Temple. Verification for a pre-70 stratum comes from the writings of the Pharisees' opponents: the Dead Sea Scrolls and the New

⁴³ The attributes are derived from Exod 34:6,7 and are the first of thirteen attributes which later traditions derive. This may be the earliest literary reference to the thirteen attributes.

Testament.

As we have seen in the chapter on the Qumran material, the Damascus Document provides a list of rejected oaths:

...(He shall not) swear by (the Name), nor by Aleph and Lamed (Elohim), nor by Aleph and Dalet (Adonai), but by a binding oath by the curses of the Covenant. He shall not mention the Law of Moses for ... were he to swear and then break (his oath) he would profane the Name (CD 15.1-3).

By virtue of the inclusion of such a list, one assumes that some group contemporary with the author of the text recognized the above rejected terms as valid substitutes. The possibility that this group is the Pharisees is increased by the fact that much of the Damascus Document contains polemic against the Pharisees. The author of the Damascus Document levels his attack, using a sustained metaphor in which his community represents the remnant of Judah and his opponents the errant Israel. The opponents, like the covenanters, entered into the new covenant "made in the land of Damascus" but subsequently "deserted to the Scoffers" (CD 7.21). They received numerous derogatory titles: "builders of the wall (CD 8.25), a title based on Mic 7:11 and Ezek 8:10, "the congregation of traitors" (CD 1.12), and "the seekers of smooth things" (CD 1.19). Through interpretation of the metaphors and the abuse, the history of this group emerges. At one time the "community of the new covenant" and these "backsliders" agreed, but later "a certain scoffer" persuaded the "backsliders" to

return to the mainstream of society in Jerusalem (CD 1.13-2.12).⁴⁴ The author of the document claims that their "breach of the covenant" was "avenged" because they were later delivered to the sword (CD 2.21). Although he states that they were "utterly destroyed," he contradicts himself by speaking of the punishment at the end of the present age (CD 8.34-35). The "seekers of smooth things" are apparently active as the author composes his document.

On the one hand, the document gives insufficient information to pinpoint an event to which the story of CD 1.21 may refer. On the other hand, it does use the term "seekers of smooth things" which also appears in Pesher Nahum. The event in this document can be identified. According to Pesher Nahum, "the young lion" crucified "those that sought smooth things" because they counselled Demetrius King of Greece to enter Jerusalem (pNah 1). This story probably refers to Alexander Jannaeus who crucified eight hundred Jews for their treachery (JW 1.5.3 §92-96). According to Josephus, the Pharisees sought revenge for this act when they gained power under Alexandra (JW 1.5.3 §113). Thus, the "seekers of smooth things" appear to be Pharisees.⁴⁵

⁴⁴ Geza Vermes, The Dead Sea Scrolls in English (Harmondsworth: Penguin Books Ltd., 1975) 62. Vermes identifies this united group with the Hasidim of 1 Macc 2:29-30.

⁴⁵ Ibid., 65.

In the Sermon on the Mount in Matthew, after a general prohibition against swearing, Jesus lists oath-terms which have been rejected by some unnamed group, but which he considers to be substitutes for the divine name. This list includes "by heaven," "by earth," "by Jerusalem," and "by one's own head" (Matt 5:34b-35). Presumably, someone or some group has identified these terms as invalid for the purpose of swearing, but nevertheless used them in informal settings. As we have noted, the first two terms are explicitly rejected in m. Šebu. 4:13. Given the source of other legal positions disputed by Jesus, it is highly likely that the position reflected in Matthew 5:34b-35 belongs to the Pharisees.

On the basis of the above evidence, the Pharisaic position would be that oaths by a recognized substitute of the divine name such as Adonai or "by the Torah," the law which contains the divine name, are binding and those by other terms, such as "by heaven" or "by earth" are not valid oath formulae. This conclusion, however, is flustered by a series of anomalies. The Rabbis and, more important, pre-70 CE Tannaim, swear throughout the Rabbinic material "by heaven," "by the Temple," or "the temple service," and "by the life of --." Later Rabbis seem to violate the standards which their predecessors established. Saul Lieberman notes this contradiction and argues that the Rabbis transcended the norms they established for others, because "they were

entitled and qualified to decide whether their oaths were justified by necessity."⁴⁶ It should be emphasized that the norms set out above pertain to official oaths, whereas the oaths sworn by the rabbis which violate these norms are not official oaths. For the most part, these oaths are used as declarative language to emphasize the status of a tradition as law or simply to accent the teacher's conviction that he speaks the truth.⁴⁷

More striking than the fact that Rabbis swear by terms other than substitutes for the divine name is the consistency with which each scholar uses one term. For example, R. Simeon ben Gamliel always uses the phrase "by this Temple" (m. Ker. 1:7; b. Nez. 166a) and R. Nehoria consistently employs "by heaven" (Sipre Deut. 306; b. Ber. 33b; b. Nazir 6b). This pattern seems to serve a literary purpose. In stories about kings, the ruler consistently swears "by heaven" (Gen. Rab. 33:1; Exod. Rab. 42:8), and when a common or poor person or some anonymous person swears, he uses the phrase "by the head" or "by your life" (Lev. Rab. 34:16; b. Pesah. 113b; m. Sanh. 3:2; Mek. Pisha 16). These phrases function either as mnemonic devices or as part of the characterization of the speaker.

Such devices are common to story-telling. A king, such as Shakespeare's Malcolm, swears an oath "by the grace

⁴⁶ Saul Lieberman, "Oaths and Vows", 115.

⁴⁷ Ibid.

of Grace" (Macbeth Act V, sc. vii), whereas the drunken porter of the same play swears "i' the other devil's name" (Act II, sc. iii). These anomalies in the Rabbinic literature, therefore, should not be considered in the same light as official oaths. They do not function to bind the speaker to his word; rather, they are non-offensive expletives. The prevailing attitude seems to be that explicitly binding formulas should be reserved for formal oaths. Other terms, which are not recognized substitutes for the divine name, do not render an oath binding; therefore, if these terms are used to colour speech, they do not function as binding oaths. This would account for the free use of such figurative language as "by heaven" throughout the Rabbinic literature despite the explicit statement that it is not a binding oath (m. Šebu. 4:13). These simply are not to be considered as oaths.

Whether the above attitude was operative during the late Second Temple period is difficult to determine. Nevertheless, the understanding that the choice of words determines whether an oath is binding prevailed before the destruction of the temple. The concern attributed to the Pharisees parallels that which is expressed in the New Testament polemic of Matt 23:16-22. The Pharisees distinguish between binding oaths and words which do not bind the speaker to what he or she has said.

The Pharisees do not seem to have exercised a power

to release one from an oath. We have a beraita which states "Beth Shammai say, There is no absolution (pth) from an oath; and Beth Hillel say, There is an absolution for an oath" (b. Ned. 28a). The beraita serves to explain why Beth Shammai does not let one vow with an oath-term under constraint, whereas Beth Hillel allows this practice. The notion of "opening a way" which was introduced by R. Eliezer appears to have been introduced into a discussion which supposedly took place earlier than R. Eliezer's time. Moreover, pth is a term applied to vows. Here it finds a new area of application, oaths. The beraita represents the trend in the Rabbinic literature to conform the laws governing vows to those of oaths and vice versa.

The Mishnah deals with problematic oaths by determining whether or not they are rash or vain oaths. A rash oath (šēbū'at bitūy), the oath of Lev 5:4, according to the Mishnah, is a harmless or useless oath. For example, if one were to swear that one will eat a loaf of bread, it is a rash oath, because one must eat (m. Šebu. 3:9). The notion of a vain oath (šēbū'at šāwē') seems to be derived from Exod 20:7, the commandment not to swear in God's name in vain (laššāwē'). In the Mishnah, this is an oath in which one swears to an obvious falsehood or to set aside a commandment. For example, if one were to swear that a pillar of stone was actually made of gold or on the condition that a camel could fly, one swears a vain oath (m.

Šebu. 3:8). If one were to swear not to construct a booth or carry a palm-branch, one also swears a vain oath (m. Šebu. 3:8).

What is of particular interest here is not the distinction between the two forms of false oaths but the remedy which the Mishnah prescribes. If one swears a rash oath wantonly, he is liable to stripes, unwantonly, to an offering of "higher and lower value" (Ĉôlâ wěyôrēd). The offender brings either the more expensive offering of two turtledoves or two pigeons or the less expensive offering of an ephah of fine flour, depending upon his ability to pay (Lev 5:6,7,11). If one swears a vain oath wantonly, the punishment is stripes; unwantonly, the speaker is exempt.⁴⁸ The prescription of stripes for a rash or vain oath, that is, a false oath, has no biblical precedent. What we have here is a datum which converges with material from other sources to indicate the presence of Pharisaic tradition.

As we have already seen in Philo's De specialibus legibus, Philo describes two categories of penalty for false oaths, one from God and the other from men. On the basis of his reading of the Septuagint version of Exod 20:7, Philo

⁴⁸ Mek. Bahodesh 7 explains why one who swears a vain oath is exempt from the obligation of bringing a sacrifice. First, the text argues that Exod 20:7 is included in Lev 5:4. It then claims that by distinguishing vain oaths from rash oaths, Exod 20:7 makes clear that one who swears a vain oath deserves a more severe punishment than the offering prescribed by Lev 5:4. Because one who swears a vain oath is flogged, he or she is exempt from the obligation of bringing a sacrifice.

argues that God suffers the perjurer to remain forever guilty. In Philo, however, people have two penalties: death, to which Philo subscribes, and the lash, which is recommended by those whom Philo describes as follows: "Those whose feelings of indignation are not so stern have the offenders scourged by order of the state [literally, by public consent] in a public place and in sight of all" (Spec. 2.28, 252). Philo does not identify this lenient party, but Josephus provides us with a story which associates the punishment of stripes as an alternative to death with the Pharisees (Ant 13.10.6 §294). Hyrcanus, when insulted by Eleazar, is prompted by Jonathan a Sadducee to ask the Pharisees what punishment is deserved. Given that Eleazar's lie is slanderous, the penalty expected is that of death, probably on the basis of Deut 19:19. The Pharisees, however, reply "stripes and chains." Josephus adds the explanation "for they did not think it right to sentence a man to death for calumny, and any way the Pharisees were naturally lenient in matters of punishment" (Ant 13.10.6 §294).⁴⁹

The sentence of stripes as an atonement for a false oath seems to be Pharisaic in origin. Mishnah tractate Makkot prescribes the lash for infractions against purity laws, tithing, the day of atonement, and the Nazirite vow,

⁴⁹ See Samuel Belkin, Philo and the Oral Law (Cambridge: Harvard University Press, 1940) 145.

some of which are concerns strongly associated with the Pharisees. Makkot also preserves a dispute between the Sadducees and the Sages in which the Sadducees say that the false witness is put to death after the falsely accused is put to death. The Sages argue that he is put to death after judgement has been given (m. Mak. 1:6). Although in this instance, the Sages, the opponents of the Sadducees and thus, probably, the Pharisees, take the stricter stand, this ruling must be placed in the context of other decisions by the Sages represented in Makkot. The punishment for all other false witnesses is stripes. The evidence from tractates Makkot and Šebu^cot is not in itself conclusive, but when read in light of the two passages from Philo and Josephus, all evidence converges upon the conclusion that the Pharisees used the punishment of stripes to atone for infractions against false oaths, as well as violations of their tradition.

The Tannaitic material, Josephus and Philo all indicate that at the heart of the Palestinian halakoth lies some layer of Pharisaic tradition which has become subsumed in its presuppositions and legal decisions. With a great deal of certainty, we can locate the penalty of the lash for the violation of an oath to this layer. With some speculation, we can also attribute the principle that oaths which bind are introduced with an oath-term recognized by the Pharisees as an acceptable substitute for the divine

name. If one utters an oath-formula using any other term, one's words are not treated as a binding oath.

D. RELATED QUESTIONS

The discussion of the Pharisaic tradition with regard to oaths does not end here. The New Testament and New Testament scholarship raise a series of questions. First, does the distinction between promissory and assertory oaths found in m. Šebu. 3:1 derive from a pre-70 CE stratum and can it, therefore, be applied to an interpretation of Matt 5:33-37? Secondly, in the same vein, can the Mishnaic distinction between oaths and vows with regard to observance of biblical commands be pre-70 CE and applicable to a reading of Mark 7:11? Thirdly, is the halakah of Matt 23:16-22 regarding oaths correctly attributed to the Pharisees? And finally, is there sufficient evidence of confusion of oaths and vows in the Tannaitic material to conclude that people confused oaths and vows in the time of Jesus?

The Mishnaic material which we have examined regarding official oaths, rash oaths and vain oaths makes no explicit distinction between oaths taken regarding matters which have occurred in the past, assertory oaths, and oaths about what will obtain in the future, promissory oaths. The introduction to the discussion of oaths in Mishnah Šebu ot, however, states:

"Oaths are of two kinds, which are indeed four" [namely] "I swear that I will eat" or "that I will not eat"; or "that I have eaten", or "that I have not eaten" (m. Šebu. 3:1).

The halakoth which follow immediately after this two tiered dichotomy between oaths regarding the past or future begin with a series of promissory oaths for which one is culpable (m. Šebu. 3:1-4). This series ends abruptly with a declaration that the distinction between past and future, as well as distinctions regarding ownership and substance, is immaterial to the question of liability. We learn that the distinction of m. Šebu. 3:1 devolves from a dispute between Akiba and R. Ishmael in which Ishmael asserts that one is liable only for oaths concerning the future. He reasons on the basis of Lev 5:4. Akiba, in disagreement, contends that Lev 5:4 extends to oaths concerning the past (m. Šebu. 3:5). Akiba's view prevails. According to Jacob Neusner, m. Šebu. 3:5 indicates that the authority whose theory has been expressed anonymously in m. Šebu. 3:1-4 is R. Ishmael. In agreement with Neusner, this distinction between promissory and assertory oaths cannot be dated earlier than Akiba and Ishmael, third generation Tannaim (c. 120 CE). Any application of this dichotomy with respect to pre-70 CE sayings, whether Pharisaic or those of Jesus, must be warranted by the contents of the sayings themselves, for there is no basis for assuming that such a distinction was current during the Second Temple period.

The Mishnah also makes a distinction between oaths

and vows with regard to the fulfilment of commandments. The examples given make the basis for distinction clear. If one vows "konam be the Sukkah I build," for example, the speaker renders that Sukkah qorbān, and the vow is binding. According to Palestinian halakoth, however, one cannot take an oath not to build a Sukkah (m. Ned. 2:2). The principle stated is that "none may swear an oath to transgress religious duties." The assumption is that one cannot disregard the prior obligation to keep a commandment. The ruling regarding oaths also appears in m. Šebu. 3:6. One is culpable only for oaths regarding free choice, that is, actions which one can choose to do or not to do.⁵⁰ The discussion which follows in the Tosefta enters into a complicated distinction between matters subject to choice and matters of substance, such as phylacteries, versus non-substantial matters, such as sleeping. The principle arrived at is that one can swear an oath regarding matters of choice and both substantial and non-substantial matters, whereas one can take vows regarding matters of choice and commandments but one can take vows only regarding substantial matters. The distinctions are clearly formulated. There is, however, no indication of a pre-70 CE ruling or discussion which presupposes any of these distinctions.

⁵⁰ The attribution is to a second generation tannaitic scholar (80-120 C.E.) R. Judah b. Bathyra.

The final questions regarding oaths returns us to the topic of gorban. First, did the Pharisees regard an oath by gorbān binding? The question arises by virtue of Saul Lieberman's reading of Matt 23:11-22 in which the Pharisees are accused of ruling that an oath by the gift of the altar or the gold of the temple is binding but an oath by the altar or the temple is not. Lieberman equates the gift of the altar and the gold of the temple with the word gorbān. His purpose is to demonstrate that gorbān was a term used by people when taking oaths.⁵¹ He does not argue whether or not the passage in Matthew is correct in attributing this ruling to the Pharisees.

In fact, in the Mishnah, oaths of abstinence are expressed with the explicit oath term "An oath" as in "An Oath! I will not eat of thine" (m. Ned. 2:2). The use of gorbān in the same context does not render the words binding. The Tosefta explains that the statement "gorbān! if I eat of thine" is understood to mean "by the life of the sacrifice" a term not recognized by the Tannaim to be a binding oath (t. Ned. 1:2).

The great similarity between the activity of swearing to abstain from something and a vow of abstinence creates fertile ground for confusion. The distinction between the two begins to break down in the later

⁵¹ Saul Lieberman, "Oaths and Vows," 130-1. See also b. Ned. 13a.

literature. Sipre provides a rather enigmatic explanation of the difference between an oath and a vow: "What is the difference between vows and oaths? The former is like vowing by the life of the king, the latter is like swearing by the King himself" (Sipre Num. 199). When one states by the life of the king one has made a vow; when one states "by the King" one has sworn an oath. In t. Sot. 6:1, the oath "as God lives" is treated as equivalent to "a vow by the life of the King."⁵² What may be at work in these sayings is the understanding that a vow may be used as a substitute for an oath on occasion. The formula "by the life of -- " could refer to a vow of valuation. We have already seen an example of the substitution of a vow for an oath in m. Git. 4:3. Mishnah Sanhedrin contains a case where a litigant demands an oath from another litigant by saying "vow to me by the life of thy head" (m. Sanh. 3:2). The Sages, contrary to R. Meir, treat the demand for a vow as binding as an appropriate oath. The House debate in m. Ned. 3:4 over whether one can vow in the form of an oath when taking a vow under duress may also reflect this practice. The vow in question is made to a murderer, robber, or tax-collector and is in effect an assertion that property is priest's due

⁵² The vow by the life of the king mentioned in Sipre recalls the form of oath to a Roman Emperor "by his genius," a substitute for an oath by the name of the emperor to which some early church fathers took objection. See Tertullian Apol. 32.3; 35:10; Origin Contra Celsus 502-503; Mart. Pol. 9-10.

or that the vow-taker belongs to the king's household in order to protect the vow-taker. The example given is "konam if my wife benefit from me." If the assertion is false, the wife is rendered gorbān to the husband. The purpose in the Rabbinic literature for substituting vows for oaths is based on the question of release. The vow under duress is not binding whereas a proper oath is binding. The substitutions are calculated on the basis of halakoth; they are not the result of confusion.

Tosefta Nedarim begins by distinguishing between an oath and a vow. It gives the following examples. "By the Name" is an oath; the oath term serves as a witness to the statement that follows. "For the Name" is a vow of dedication or abstinence, a vow of gorbān. The term indicates that something is being dedicated to God. When this vow is made on the condition that a statement is true, it performs the role of an oath, but it is governed by the laws of nedarim.

Some confusion of oaths and vows may have occurred at a popular level. The use of gorbān as an oath term may reflect this trend, but the very real distinctions made between oaths and vows in the Tannaitic material warns against assuming that oaths and vows were used interchangeably in the later Second Temple period or that a ruling governing oaths necessarily extends to vows.

E. CONCLUSIONS

The assorted data about the Pharisees and pre-70 CE halakot point to the following conclusions. The Pharisees differentiated between oaths and vows on the basis of their function. Oaths served to confirm the truth of a statement, and vows served to dedicate something either to the temple or to God for the purpose of abstinence. Evidence indicates that the Pharisees were concerned with defining and formalizing vows. The personal conditional vows of the Hebrew Bible give way to the vows of the Nazirite and qorbān, vows of abstinence with limited duration or with restrictions. Whether an oath or vow was binding depended upon the wording chosen by the speaker. The Pharisees, as interpreters of the Torah, claimed the authority to determine which oath terms served to bind one to one's words in the case of official oaths. In all probability, these terms were explicit substitutes for the divine name. The Pharisees' jurisdiction over official oaths probably extended to the observation of the Pharisaic penalty for perjury, that is, the lash. The lash became a means of atonement. The Pharisees also claimed the authority to grant release from vows, but only upon the limited grounds of a falsely formulated vow. This Pharisaic practice expanded in the Rabbinic period to far more extensive power to grant absolution on the basis of regret.

The purpose of these rulings was not to create

guidelines by which only the Pharisee governed his life as a member of a pietistic group. They provided the standards which legal proceedings followed, conditions through which vow-takers could fulfil their vows, and legal escape for individuals caught in distressing circumstances. The contribution which the Pharisees seem to have made to Jewish society was to formalize oaths and vows in order to provide clarity in their fulfilment.

CONCLUSION

PART ONE

Our study demonstrates the diversity of approaches to the practices of oath and vow-taking by representatives of Judaism in the Second Temple period for whom a written record is available. Despite the differences a common ground is apparent. At the heart of Philo of Alexandria, the Qumran covenanter, and the Pharisees' proscriptions about oath-taking is a concern for the sanctification of the name. An oath improperly formulated or broken ran the risk of taking God's name in vain.

The commandment in Exod 20:7 makes no mention of swearing, but by the end of the Second Temple period this law had undergone a development in its interpretation which made its application to swearing explicit. The Aramaic translators of the commandment understood it to mean not to swear in vain.¹ The meaning of "in vain" was not limited to false oaths. For Ben Sirach and Philo, the word vain applied to unnecessary oaths. In the Mishnah, a vain oath was not simply a false oath but an oath which asserted something which everyone knew to be false or an oath not to fulfil a commandment. Such oaths should not be fulfilled according to Tannaitic halakah. The meaning of "God's name"

¹ Tg. Onq.; Tg. Ps-J; Tg. Neof.; Frg. Tg. to Exod 20:7.

was not limited to the tetragrammaton. The Qumran covenanters avoided mention of any of God's names in their oaths lest by breaking an oath, one profane the name. Sipra Oědošim 2:6 makes a similar claim. The Rabbis argued that Lev 19:2, "You shall not swear by my name falsely," teaches that Exod 20:7 includes substitutes for the tetragrammaton because "by my name" indicates "whatever name I have."

These three representatives of Second Temple Judaism demonstrate a great divergence when they answer the question what is a valid oath-term. Philo and the Qumran covenanters avoided invocation of God's name or names altogether. The covenanters accepted only the formula "by the curses of the covenant." Philo recommended terms, such as "by heaven" or "by earth." Philo, however, asserted that God's name was invoked implicitly, because all oaths by definition were an appeal to God as witness and because these terms refer to some aspect of God's divine nature. The Pharisees seem to have demanded that oaths be sworn by explicit oath formulae, such as "I swear," or by recognized substitutes for the tetragrammaton. They seem to have followed the practices of the Hebrew Bible and, in particular, the commandment of Deut 6:13 and 10:20 that one swear by God's name.

It is important to recall that these people were concerned with descriptions of juridical and official oaths. The Qumran literature describes adjurations to swear oaths regarding property disputes and the oath of initiation into

the covenanters' community. The Mishnah also discusses proper formulae in the context of adjurations to swear oaths of testimony. The terms one chose determined whether one's fellows understood one's words to be binding declarations.

It is clear that there was no standard practice that ordinary people followed. If the Pharisees had a say in the proceedings of Palestinian courts, then it is likely that litigants and defendants swore by some substitute for God's name. But in the marketplace, people probably chose a wide variety of terms and whether they felt bound by their oaths depended upon conscience rather than fear of profanation of the divine name.

People had also become accustomed to taking vows. They dedicated property to the temple, and they took vows of valuation whereby they donated a sum of money in lieu of themselves. Vows of abstinence also became popular means of expressing piety. An individual could designate something or someone qorbān and forbid him or herself benefit from that item or person. This vow established a legal fiction. Although nothing was actually given to the temple, whatever was designated qorbān was forbidden as though it were an offering.

People who assumed these religious obligations were compelled by biblical law to fulfil them. The Hebrew Bible provided no clauses for release from vows. Nevertheless, legal means of release became possible during the Second

Temple period. Philo knew of at least one form, the rejection of an offering by the High Priest. This method of release, of course, applied only to vows in which something was actually given to the temple. The Pharisees seem to have developed grounds for release based upon the formulation of the vow. If a vow was formulated with an inappropriate term or if a vow was made in error or under duress, the vow was not binding. In the period after the destruction of the temple, the Tannaim developed reasons for release based upon the notion of regret.

The literature of the Second Temple period also attests to a clear distinction in usage between oaths and vows. An oath was a promise or a statement of fact in which one appealed to God as a witness. A vow was an utterance by which one made a dedication of God. Sometimes the terminology for oaths and vows could be the same. People seem to have used gorbān as both a vow and an oath-term. Moreover, oaths and vows could be used for similar purposes. People could take vows of abstinence or oaths of abstinence. In the vow, the object was disallowed because it was dedicated property or because the legal fiction that it was dedicated had been established. In an oath nothing was dedicated. The difference between oaths and vows of abstinence seems slight, but to a people accustomed to taking vows as an act of worship and oaths as a profession of intent, the differences were significant.

PART TWO
JESUS ON OATHS AND VOWS

INTRODUCTION

The sources for a reconstruction of Jesus' position on oaths and vows are quantitatively meagre. Matthew contains two pericopes on oaths, Matt 5:33-37 and 23:16-22, and Matthew and Mark present parallel versions of one tradition regarding vows, Mark 7:1-20 and Matt 15:1-15. James 5:12 offers a version of Matt 5:33-37, but the author of the epistle does not attribute it to Jesus. Moreover, one must entertain the possibility that the processes of transmission and redaction have added layers to, or even altered, Jesus' original words. The question at hand is where to begin looking for the core of Jesus' ideas.

Two possibilities present themselves. The first, adopted by scholars such as Paul Minear, is to begin with the central ethical teaching, the demand for truthfulness. The second, the approach of this study, is to begin with the historical context, the occasion which prompted Jesus to speak. The benefits of this approach are three. First, one grasps the significance of the question of oaths and vows, not simply for first century Judaism, but for Jesus. Second, once the particular concerns addressed in these pericopes become transparent, other aspects of Jesus' ministry, his understanding of the Law, the sanctification

of the name, and the kingdom of God come into focus. Finally, the ethical demand for truthfulness takes on nuances that might otherwise be overlooked.

We have expended considerable effort on the known Jewish background to the question of valid oaths and vows. Now we arrive at words attributed to Jesus:

Again you have heard that it was said to the men of old, "You shall not swear falsely, but shall perform to the Lord what you have sworn." But I say to you, Do not swear at all, either by heaven, for it is the throne of God, or by the earth, for it is his footstool, or by Jerusalem, for it is the city of the great King. And do not swear by your head, for you cannot make one hair white or black. Let what you say be simply "Yes" or "No"; anything more than this comes from evil. (Matt 5:33-37)

A great tension existed between the behaviour of the marketplace and the directions of religious leaders with regard to swearing. When one considers the very real possibility of committing an unpardonable offense against God, a very dear concern to Jesus' Jewish contemporaries, it is not implausible that Jesus himself addressed this concern. In the Jesus' material at hand, he can be seen to be addressing both the questions which were significant to his contemporaries (i.e., Which oaths are binding? How does one obtain release from vows?) and their answers to these questions.

Before we proceed to a discussion of Jesus' intention some attention will be given to methodology. The majority of scholars support the authenticity of Jesus'

prohibition against swearing. The principal question at hand is what did Jesus mean rather than what did Jesus say. Nevertheless, the modern exegete is confronted with the task of defending the value of any word or idea found in the gospels which he or she uses to illustrate Jesus' thought. Although the assorted criteria for determining authenticity and the various methodologies, such as form criticism and source criticism, for stripping off the layers of tradition are not to be considered as definitive tools for arriving at the ipsissima verba Jesu, they will be attended to and used with discrimination.

One method for determining the authenticity of a Jesus-saying is the test of uniqueness: if a saying "agrees neither with the early church nor with the Judaism contemporary with Jesus" it can be attributed to Jesus.¹ The radical nature of Jesus' prohibition sets him apart from his Jewish contemporaries and the evidence from the Patristic material indicates that the church had trouble avoiding oaths. Jesus' prohibition of swearing seems to be authentic according to this test.

A corrective must be applied to the use of the test of uniqueness. It would be ridiculous to assume that Jesus never said anything that agreed with the principles of his contemporaries or which gained currency in the later church.

¹ E. P. Sanders and Margaret Davies, Studying the Synoptic Gospels (London: SCM Press. 1989) 316.

Moreover, our knowledge of early Christianity and Second Temple Judaism is limited.² Our task in Part One of this study has been to expand our knowledge of Second Temple Judaism. We will now apply that knowledge to an examination of the horizons of Jesus' intention.³ Jesus did share a number of concerns with his contemporaries which is precisely why he chose to say something about oaths or vows.⁴ The discussion uses the context in Judaism reconstructed in Part One in order to establish where continuity existed.

We will also apply the criterion of internal coherence in judging the authenticity of the three sayings. This criterion works on two planes: coherence with other themes explored by Jesus which are thought to be genuine, such as Jesus' condemnation of sins of the tongue, and internal coherence with the sayings on oaths and vows. A seeming lack of coherence between Matt 5:33-37 and Matt 23:16-22 has led some scholars to reject the authenticity of the prohibition. In this case scholars are finding incoherency were none exists. In contrast, many

² Ibid., 316.

³ C.f. E. P. Sanders, Jesus and Judaism (London: SCM Press, 1985) 17.

⁴ See Morna Hooker, "Christology and Methodology" in NTS 17 (1970-71): 480-487. Hooker cautions against eliminating the areas of continuity between Jesus and Judaism and Jesus and the Church. She also warns that early Judaism and the early Church are unknown factors.

commentators have used Matt 5:33-37 to explain Jesus' intolerance of the gorbān vow. In this case, a false coherency has been established on the basis of a supposed confusion between oaths and vows.

Multiple attestation also plays a role in determining Jesus' original intention. According to this test, a saying can be confidently attributed to Jesus if it has been preserved in two or more independent sources.⁵ Matt 5:33-37 finds a parallel in James 5:12 and echoes in Matt 23:16-22. There is also the question whether 2 Cor 1:17-18 echoes Matt 5:37a "let what you say be simply Yes or No."

Source criticism does not play a major role in the following discussion. The two pericopes on oaths, because of their sole appearance in Matthew, have been assigned to his special tradition. The gorbān pericope appears in both Mark and Matthew. Given the near consensus regarding Marcan priority, we will take the Marcan redaction to be first. This does not signify that we take the Marcan form of a particular tradition to be first among parallels, nor does it signify a dogmatic adherence to the majority view.

In his work The Tendencies of the Synoptic Traditions, E. P. Sanders finds that "there are no hard and

⁵ Sanders and Davies, Studying the Synoptic Gospels, 323.

fast laws of the development of the Synoptic tradition."⁶ The early axiom of form criticism that the simpler form is always the earlier form does not stand. In this study, we shall give attention to the layers-of-tradition question, (a) i.e., whether any given pericope might have expanded or contracted an original saying; (b) whether the motive of the community or of the redactor has been to tone up or tone down, to add to, subtract from, or modify a given tradition. Jesus may not have said everything included in Matt 5:33-37. It is certain, however, that he said far more in the course of his ministry than appears in the gospels. No one limits oneself to single-statement paraenesis. His words must have evoked questions, generated debate. The gospel writer preserves none of this, but the possibility exists that in Matthew's unique concern for oaths, he has preserved Jesus' intent, that is, as Jesus' interpreter he got it right.

The discussion is divided into four chapters. The first chapter presents a preliminary exegesis of the texts relevant to our study: Matt 5:33-37, Mark 7:1-20 (par.), Matt 23:16-22, and James 5:12. This chapter offers an opportunity to examine the meaning of words and phrases in these passages unencumbered by the knotty questions of authenticity and layers-of-tradition.

⁶ E. P. Sanders, The Tendencies of the Synoptic Tradition (Cambridge: Cambridge at the University Press, 1969) 272. Cf. also Sanders and Davies, Studying the Synoptic Gospels, 128 and 136.

The exegesis of James 5:12 marks a transition to the questions of redaction criticism. Here we shall begin to examine how the editor has handled his material.

The second chapter examines Matthean redaction. Matthew is the only gospel writer to preserve the Jesus-sayings on swearing; therefore, his redactional motives become a concern of this study. Why was Matthew interested in the topic of oaths? How did he reinterpret or shape the tradition? The premise of the investigation is that once we understand how Matthew handles his material, we will not confuse Jesus with Matthew.

The third chapter turns to the question of Jesus' intention. How did Jesus treat oaths and vows? How did he regard the views of his contemporaries on the same topic? What was the context within Jesus' ministry for the prohibition against swearing? Our purpose is to recover an aspect of Jesus' thought: his concern about swearing. But we also seek to understand that concern within the broader context of his ministry, in particular his eschatological expectations for the coming of God's kingdom.

The fourth chapter provides a dénouement for part two of this study. The title of this study, A Second Best Voyage: Judaism and Jesus on Oaths and Vows, focuses attention upon a common thread running through the writings of Second Temple Judaism including the Jesus material. In some way or another, all of the representatives of Judaism

examined in this study displayed a hesitancy toward the act of swearing. All tried to limit this practice in order to prevent vain or false oaths. The practices of the early church seem to represent a departure from the concerns of Jesus and Judaism. The final chapter gives a brief account of what happens to Jesus' prohibition against swearing within early Christianity.

CHAPTER SIX

PRELIMINARY EXEGESIS

A. MATT 5:33-37

In Matthew's gospel, the prohibition against swearing stands in contrast to the biblical injunction against perjury. It is the fourth in a series of six antitheses which illustrate the righteousness which exceeds that of the scribes and the Pharisees.

The fourth antithesis begins by pitting the words said to the men of old against Jesus' admonition not to swear. The phrase "men of old" alludes to either those who received the Torah at Sinai or those who received a tradition of interpretation of that Torah.¹ If the latter

¹ For the former see Robert A. Guelich, The Sermon on the Mount: A Foundation for Understanding (Waco: Word Books, 1982) 179; J. P. Meier, Law and History in Matthew's Gospel: A Redactional Study of Mt. 5:17-48 (Rome: Biblical Institute Press, 1976) 134; F. C. Fenton, Saint Matthew (Harmondsworth: Penguin Books Ltd., 1963) 90-91. For the latter see Werner Georg Kümmel, "Jesus und der jüdische Traditions-gedanke" in ZNW 33 (1934): 126; Klaus Berger, Die Gesetzesauslegung Jesu (Neukirchen-Vluyn: Neukirchner Verlag, 1972) 461, who argues that the Jewish institutions oppose the community of God; Gerhard Barth, "Matthew's Understanding of the Law" in Tradition and Interpretation (Philadelphia: Westminster Press, 1963) 93-94, who claims the word "heard" means received a tradition and refers to the interpretation of the Hebrew Bible by the rabbinate; Wolfgang Beilner, Christus und die Pharisäer (Vienna: Herder, 1959) 96, Eduard Lohse, "Ich aber sage euch" in Die Ruf Jesus und die Antwort der Gemeinde (Göttingen: Vandenhoeck und Ruprecht, 1970) 191, who states that the contrast between "you have heard" and "I say" signifies a contrast of opinions; Strack and Billerbeck, Kommuntar zum

is true, then the contrast is between the scribes and Pharisees' interpretation of the Torah and Jesus' interpretation. The two legal citations which were said to those of old place the accent on the Torah given at Sinai, but the examples of oaths which clarify the intent of the prohibition and are supported by scripture throw the accent upon Pharisaic teaching.

The two legal citations are not direct quotations from scripture. The first, "You shall not swear falsely (ouk epiorkēseis)," expresses the intention of Lev 19:2, "And you shall not swear by my name falsely," and the Second Temple reading of Exod 20:7, "You shall not take the name of your Lord in vain." The wording of the second quotation, "perform (apodōseis) to the Lord what you have sworn," recalls the idiom for fulfilling vows more closely than the words associated with fulfilling one's oaths. Consequently, a majority of commentators have offered Deut 23:21, "When you make a vow to the Lord your God, you shall not be slack to pay it (apodounai - LXX)," and Ps 50:14 (MT 49:14), "Pay (apodos - LXX) your vows to the Most High," as the biblical

neuen Testament, vol. 1 (Munich: C.H. Beck'sche Verlagsbuchhandlung, 1922) 254, who base their interpretation on Ant, 13.10.5 §292 in which Eleazar, a Pharisee, uses the phrase "we have heard from our elders"; David Daube, "Ye Have Heard --- But I Say unto You" in The New Testament and Rabbinic Judaism (London: Athlone Press, 1956) 57, who argues, ēkousate - egō de legō is a Rabbinic form which contrasts a literal understanding of a rule with the actual significance of the rule. In Daube's judgement, no intentional conflict stands between the thesis and the antithesis.

antecedents to this citation.² The possible reference to vows raises the question whether the prohibition encompasses vows as well as oaths.

Most commentaries to the Gospel of Matthew begin with the assumption that oaths and vows were so confused by the end of the Second Temple that swearing covers both oath-taking and vow-taking.³ The notion that vows and oaths were at times confused on a popular level becomes a licence

² E.g., Robert H. Gundry, Matthew: A Commentary on its Literary and Theological Art (Grand Rapids: William B. Eerdmans, 1982) 91; J. P. Meier, Matthew (New York: Michael Glazier, 1980) 53; F. W. Beare, The Gospel According to Matthew (Oxford: Basil Blackwell, 1981) 155. Cf. also Num 30.2 which treats both oaths and vows.

³ The following authors refer to the confusion or synonymy of oaths and vows: F. W. Beare, The Gospel According to Matthew (Oxford: Basil Blackwell, 1981) 155-6; W. D. Davies, The Setting of the Sermon on the Mount (Cambridge: Cambridge at the University Press, 1964) 240; F. C. Fenton, Saint Matthew (Harmondsworth: Penguin Books Ltd., 1963) 91; Robert H. Gundry, Matthew: A Commentary on its Literary and Theological Art (Grand Rapids: Eerdmans, 1982) 91; Pinchas Lapide, The Sermon on the Mount: Utopia or Programme for Action, translated by Arlene Swidler (Maryknoll, New York: Orbis Books, 1986) 70-71; Jacob Mann, "Oaths and Vows in the Synoptic Gospels" in AJT 21 (1917): 269; T. W. Manson, The Sayings of Jesus (Cambridge: Cambridge at the University Press, 1963) 158; John P. Meier, Law and History in Matthew's Gospel: A Redactional Study of Mt. 5:17-48 (Rome: Biblical Institute Press, 1976) 53; Daniel Patte, The Gospel of Matthew: A Structural Commentary on Matthew's Faith (Philadelphia: Fortress Press, 1987) 80; Johannes Pedersen, Der Eid bei den Semiten in seinem Verhältnis zu verwandten Erscheinungen sowie die Stellung des Eides im Islam (Strassburg: Verlag von Karl J. Trubner, 1924) 123; Eduard Schweitzer, The Good News according to Matthew, translated by David B. Green (London: SPCK, 1976) 127; Georg Stählin, "Zum Gebrauch von Beteuerungsformeln in neuen Testament," NovT (1962): 116; Dieter Zeller, Die weisheitlichen Mahnsprüche bei dem Synoptikern (Würzburg: Echter Verlag, 1977).

for some exegetes to use the words vow and oath interchangeably. This tendency is epitomized by W. R. Albright and C. S. Mann's careless translation. They translate epiorkēseis and apodōseis as follows: "'Do not make vows rashly' but 'Be careful to pay any vow made to the Lord.'" They justify this translation by arguing that "vows were always accompanied by an oath."⁴ The literature of the Second Temple, however, indicates that vows and oaths were still recognized as distinct practices by its authors. On occasion, oaths and vows were governed by the same laws, particularly with respect to the demand that they be fulfilled. For example, the Qumran covenanters derived their statute that one must fulfil one's oaths to keep a commandment of the law and not fulfil oaths to depart from the law from Deut 23:21-23 (CD 16.6b-9). At times, oaths and vows used similar or identical terminology. For example, the word qorbān could be used as either an oath-term or a vow-term. Nevertheless, evidence suggests that as long as the temple was in operation, vows entailed a dedication of property to the temple or abstinence from something in dedication to God, whereas oaths served as a guarantee of one's honesty or intention.

The association of apodidōmi with euchē may lead the exegete to the wrong biblical antecedents. George Dunbar

⁴ W. F. Albright and C. S. Mann, Matthew: The Anchor Bible (New York: Doubleday & Company, 1971) 66.

Kilpatrick searches through Hellenistic and Greek literature in order to demonstrate that apodidōmi can be used with horkos and simply means "take (an oath)".⁵ This raises the possibility that the emphasis of the citation may lay on tō kyriō rather than the verb. If so the text is meant to evoke the law of Deut 6:13 and 10:20: swear your oaths by God's name. The examples that follow the prohibition support Kilpatrick's view by raising an objection against oaths based on the principle that binding oaths must call on God as a witness.

Robert Guelich offers an alternative solution to the confusion created by the second citation. He identifies the first clause as referring to assertive oaths, oaths made between two parties, and the second as promissory oaths, oaths made to God.⁶ There are several problems with Guelich's premise. First, the distinction between promissory and assertory is not supported by the

⁵ George Dunbar Kilpatrick, Origins of the Gospel According to St Matthew (Oxford: At the Clarendon Press, 1946) 21, cites Demosthenes 19.318 "For if he should accept the Phocians as allies, and with your help take the oaths of friendship to them (tous horkous autous apodoiē)"; Aeschines, Against Ctesiphon 3.74 "The members of the synod of the allies do on this day give their oaths (apodouvai de tous horkous tois presbasis) to the ambassadors from Philip", Dit. Syll. 150.15, and P. Oxy. 1026,1.6.

⁶ Robert A. Guelich, The Sermon on the Mount: A Foundation for Understanding, 212-214. Guelich uses the distinction to identify all material regarding promissory oaths as secondary. This includes Matt 5:33b, 34b-36. According to Guelich, the prohibition addresses only assertory oaths.

contemporary literature. Moreover, Lev 19:12 comprehends both kinds of oaths. The majority of oaths in the Hebrew Bible are in fact promissory; therefore, the intent of Lev 19:12 can be seen as "do not swear to what you know is false or to what you do not intend to do."

A satisfactory solution to the problem of Matt 5:33b is to see the citations as a summary of the Old Testament Law.⁷ The second citation is not necessarily an allusion to promissory oaths, but a true completion of the summary of the Torah, that is, make your oaths to God.⁸

The antithesis to these scriptural laws is the admonition "Do not swear at all." The holōs renders the prohibition absolute; no exceptions are envisioned or comprehended by the text. Does the observation of this pronouncement constitute the rejection of the Torah?⁹ It certainly does not constitute violation of the laws cited. By avoiding oaths one avoids perjury or the risk of not fulfilling a promise. The question whether the Torah is rejected presupposes attention to three biblically ordained oaths: the oath of testimony (Lev 5:1; cf. 1 Kgs 8:31-32; 2 Chr 6:22-23), the oath of bailment (Exod 22:10-12) and the

⁷ Cf. Stephen Westerholm, Jesus and Scribal Authority (Lund: CKW Gleerup, 1978): 107.

⁸ Cf. Robert Banks, Jesus and the Law in the Synoptic Tradition (Cambridge: Cambridge at the University Press, 1975) 194.

⁹ J. P. Meier, Matthew, 53, answers this question with a yes.

oath of bitter-waters (Num 5:19). The question whether or not the prohibition applies to these or official oaths cannot be satisfactorily answered by the text at hand.

We cannot use the examples which illustrate prohibited oaths to answer the question of the jurisdiction of the prohibition over official oaths. These examples -- by heaven, by earth, to Jerusalem, and by one's head -- are the oaths of the street, oaths used to colour one's speech or to make one's words seem credible.¹⁰ Jesus' problem with these oaths is that they were not treated as binding. The examples serve to illustrate "exceeding righteousness." They do not necessarily illustrate the oaths which one should avoid but the extent to which one should avoid swearing, that is, not only should one avoid binding oaths in order to avoid violating the commandments, but one should avoid oaths which one considers nonbinding.

The original context of these examples must be clarified. These examples were used as substitute oath-terms by individuals who wished to avoid the divine name.

¹⁰ The Greek preposition which usually follows the verb omnymi is kata but the first two examples take the less common preposition en and the third, eis. Robert Guelich, The Sermon on the Mount, 215, explains the shift from en to eis in the third example as a reflection of the rabbinic practice of swearing to Jerusalem, but the text to which he refers, t. Ned 1:3, refers to vows. Matthew may be using popular idiom. Dennis C. Duling, "'[Do Not Swear...] by Jerusalem because it is the city of the Great King' (Matt 5:35)," in JBL 110 (1991) 295, suggests that confusion between oaths and vows should be taken into consideration when accounting for the use of eis in Matt 5:35.

By avoiding the divine name, one could abrogate one's word without violating the laws of Lev 19:2 and Exod 20:7. As we have seen in earlier chapters, the interpretation of these laws led to differing conclusions about which oath terms one should use. The Qumran covenanters took the deadly sting out of false oaths by prohibiting reference to God in their oaths. Instead, they swore "by the curses of the covenant" (CD 15.1-3). Philo considered swearing by God to be impious, because it was an act of arrogance (Leg. 3.207; Mut. 18). He proposed that one swear by the good health and welfare or memory of one's parents or by the elements of the cosmos, such as heaven or earth, because of their metaphoric value (Spec. 2.35). Parents are "copies of the divine power" in their capacity to generate new life (Spec. 2.2) and the heavenly bodies express the unchangeability of God's nature. He also recommended a formula that left God's name unsaid: "'Yes, by --' or 'No, by --'" (Spec. 2.4). The Pharisees, however, found all of the above invalid insofar as the terms did not refer explicitly to God and did not satisfy the scriptural commandment of Deut 6:13 and 10:20. They ruled that one should use only the customary substitutes for God's name or the explicit oath-term šēbûā.¹¹ If one made an assertion or promise by heaven, for example, one's words would not be treated as a binding

¹¹ Saul Lieberman, "Oaths and Vows," in Greek in Jewish Palestine. (New York: Philipp Feldheim Inc., 1965) 135.

oath.

Matt 5:34b-35 makes an opposite claim to that of the Pharisees. The scriptural passages accompanying the examples explain that heaven, earth, and Jerusalem all can be used euphemistically to refer to God. According to the prophecy of Isaiah, "Heaven is my [God's] throne and the earth is my [God's] footstool" (Isaiah 66:1), and the Psalmist pronounces Jerusalem "the city of the Great King [that is, God]" (Ps 48:2); therefore, heaven, earth and Jerusalem can stand as substitutes for the divine name. Oaths made with these phrases fulfil the law in that they are made to God; therefore, they are all valid and binding. The extension of the argument would be that all oath terms refer ultimately to God. Implicit in this claim is a criticism against distinctions such as those made by the Pharisees or the Qumran covenanters. If all oaths refer to God, all oaths are equally binding; therefore, all oaths must be fulfilled. This demand exceeds the rulings of the Pharisees. The prohibition then applied to all oaths, even those which seem not to be governed by biblical law.

The last example differs grammatically from the previous three. In them, it is through the noun (ouranō/qē/Hierosolyma) that mēte connects the causal clause to the main clause. The fourth example has its own verb and is not connected to the other three syntactically. It serves a different function than the first three and, therefore,

requires an independent grammatical construction.

The last example, through irony, offers an insight into the objection against oaths. So far the pericope has indicated that oaths invoke God's witness and that reference to God makes oaths objectionable, but the question why has not been clearly addressed. Why would one object to calling upon God in an oath? The response to this oath, that one cannot turn a hair on one's head either white or black, points to the arrogance of such an oath, in that when swearing one presupposes that one has a say in whether one lives or dies.¹² A common saying expresses this: "Man proposes: God disposes." Oaths bind by the sanctions imposed by the curse stated or implied within the oath-formula. The fourth example makes the curse explicit. When one swears by one's head, one means, "if my oath is false or unfulfilled, may I die." If the oath is broken, the curse goes into effect. Since God is the oath guarantor, he is bound to inflict the curse. The oath then encroaches upon the divine prerogative by attempting to bind God to a course of action. The oath may be offensive because it is arrogant, but also because it is irreverent: it associates God with a curse.

The pericope ends with a simple alternative to swearing: "Let what you say be simply 'Yes' or 'No'."

¹² Cf. Jakob Jonssen, Humour and Irony in the New Testament (Reykjavík: Bókautgáfa Menningarsjóds, 1965) 169.

Numerous scholars argue that this is a surrogate oath-formula.¹³ H. T. Wrege, for example, contends that it is an oath-formula without an oath guarantor.¹⁴ It would then function in the same way as Philo's "'Yes, by --' or 'No, by --'" (Spec. 2.4). Yes and no were used in oath-formulae in the ancient world. The Achaian and Dorian people used nē Dia or ma Dia ("Yes, by God" or "No, by God") as a simple, universal formula.¹⁵ The rabbis argued that yes or no said twice was an oath:

R. Eleazar said: "No" is an oath: "Yes" is an oath, as it is written: And the waters shall no more become a flood; and it is written: For this is as the waters of Noah unto Me; for as I have sworn [that the waters of Noah would no more go over the earth...]. But that "Yes" is an oath how do we know? It is reasonable; since "No" is an oath, "Yes" is also an oath. Said Raba: But only if he said, "No! No!" twice; or he said "Yes! Yes!" twice, for it is written: And all flesh shall not be cut off any more by the waters of the flood; [and also] and the waters shall no more become a flood. And since "No" [must be said] twice [to imply an oath], "Yes" [must] also [be said] twice (b. Šebu. 36a).

Philo and the Achaian/Dorian formulae both refer to God, one implicitly, the other explicitly. The Rabbinic oath is too late to have any bearing on our discussion.

¹³ E.g., Georg Strecker, Der Weg der Gerechtigkeit: Untersuchung zur Theologie des Matthäus (Göttingen: Vandenhoeck und Ruprecht Verlag, 1971) 80-81; Eduard Schweizer, The Good New According to Matthew, 37.

¹⁴ H. T. Wrege, Die Überlieferungsgeschichte der Bergpredigt (Tübingen: J.B. Mohr, 1968) 73.

¹⁵ Cf. Joseph Plescia, The Oath and Perjury in Ancient Greece (Tallahassee: Florida State University Press, 1970) 4.

The doubling of yes or no should not be seen as an invitation to confirm a statement. Joachim Jeremias explains that the doubling is a semitic means of expressing temporal distribution. He suggest the following translation: "Always consider your yes a yes and your no a no."¹⁶ Ernst Kutsch examines parallels in Sumerian and Akkadian incantations in which the yes of the mouth is contrasted with the no of the heart and comes to the same conclusion as Jeremias.¹⁷ The point then is that one should say what one means and do so on every occasion.

The conclusion of the pericope is that "anything more than this [that is, more than direct speech] comes from evil" (Matt 5:37b). The focus returns to the superfluity of oaths in speech but with the added claim that the use of oaths is not merely unnecessary but derives from evil or the evil one (tou ponērou). The genitive form can refer to either the evil one (ho ponēros) or evil and malevolence (to ponēron).¹⁸ The former may be the more likely choice, for in John 8:4, Satan is described as the father of lies and

¹⁶ Joachim Jeremias, New Testament Theology: The Proclamation of Jesus (New York: Charles Scribner's Sons, 1971) 220. Cf. also Georg Stählin, "Zum Gebrauch von Beteuerungsformeln in neuen Testament," 119.

¹⁷ Ernst Kutsch, "Eure Rede aber sei ja ja, nein nein," EvT 20 (1960): 212-3.

¹⁸ Cf. Gustaf Dalman, Die Worte Jesu (Darmstadt: Wissenschaftliche Buchgesellschaft, 1965) 352; F. C. Fenton, Saint Matthew, 91.

dishonesty.¹⁹ It is difficult to know how the claim that oaths are from evil is to be understood. It may mean that taking oaths does not rescue a liar from his fate,²⁰ or that if there were no deceit in the world, then there would be no need for oaths. Oaths, therefore, sanction deceit.²¹ The saying may express cynicism about the honesty of human speech. The fact that many scholars see this as a redactional addition opens the door for further exploration in the context of the discussion of Matthean redaction.

B. MATT 23:16-22

The second Jesus-saying on oaths appears as the third in a series of seven woes against the scribes and the Pharisees. Erhard Gestenburger observes that a woe-oracle was originally a call to pity a wrongdoer, but it had developed into a curse-like form.²² The woe-oracle against the scribal or Pharisaic casuistry on swearing is vitriolic

¹⁹ Floyd Filson, A Commentary on the Gospel according to St. Matthew (London: Adam & Charles Black, 1960) 88.

²⁰ Samuel Sandmel, Judaism and Christian Beginnings (New York: Oxford University Press, 1978) 317.

²¹ Cf. Otto Bauernfeind, "Der Eid in der Sichte des neuen Testamentes" in Eid Gewissen Treupflicht, edited by H. Bethke (Frankfurt: Stimme Verlag, 1965) 97; John Gordon Jamesson, The Gospel of the Kingdom in the Sermon on the Mount (London: William Hodge & Company Limited, 1951) 27; Floyd Filson, A Commentary on the Gospel according to St. Matthew, 88.

²² Erhard Gerstenburger, "The Woe Oracles in the Prophets," JBL 81 (1962): 249-63.

in its condemnation. The charge of hypocrisy, favoured in the other six oracles, is dropped for the title "blind guides." The contrast between what one says or does is not at issue.²³ The dispute is over the Pharisaic distinction between binding and non-binding oath-terms. The Pharisees are blind guides because the demarcations which they see between the two categories do not exist.

Matt 23:16-22 presents two arguments against the Pharisaic distinctions regarding oaths. The first follows a chiastic structure which lays out the Pharisaic position and then refutes it:

"If anyone swears by the temple, it is nothing, but if any one swears by the gold of the temple, he is bound by his oath." You blind fools! For which is greater, the gold or the temple that has made the gold sacred? And you say, "If any one swears by the altar, it is nothing; but if any one swears by the gift that is on the altar, he is bound by his oath." You blind men! For which is greater, the gift or the altar that makes the gift sacred? (Matt 23:16-19).

The nouns are arranged in the following pattern: temple, gold, gold, temple; altar, gift, gift, altar.

The precise terms of reference or distinctions drawn in Matt 23:16-19 have been explained by Saul Lieberman. According to Lieberman, the oath by the gold of the temple or the gift of the altar, rendered into Hebrew zāhāv hahêkāl or hôn hammēqadeš were equivalent to qorbān, a recognized

²³ Cf. F. W. Beare, The Gospel according to Matthew, 454; Werner Georg Kümmel, "Die Weherufe über die Schriftgelehrten und Pharisäer (Matthäus 23, 13-36)" in W. Eckert Antijudaismus in neuen Testament? (Munich: Chr. Kaiser Verlag, 1967) 137.

vow-term. As an oath-term, gorbān was not acceptable; it did not constitute a substitute for God's name.²⁴ The altar and the temple were acceptable vow-terms as long as they include the necessary kě prefix (kamizbēah and kahêkāl, m. Ned. 1:3), but they were rejected outright as oath-terms (t. Ned. 1:3). Lieberman identifies in the Rabbinic discussions the following rules governing whether a vow or oath was binding. When a vague term was used with an uncertain oath or vow-formula, its validity was contested. If the formula was explicitly a vow-formula, the term which accompanies it could be vague. An oath had to have an explicit oath-term.

The distinctions which Lieberman delineates for vows can be applied to verses 16 and 18. The gold of the temple and the gift of the altar are equivalent to gorbān and are binding. The temple and the altar are not explicit vow-terms because they lack the necessary kě prefix. They are not therefore necessarily binding terms.²⁵ The distinctions between the terms are Rabbinic and probably Pharisaic, but the application of the distinction to

²⁴ Saul Lieberman, "Oaths and Vows," 130-1.

²⁵ Contra Paul Minear, "Yes or No: The Demand for Honesty in the Early Church," 34, and Robert H. Gundry, Matthew: A Commentary on its Literary and Theological Art (Grand Rapids: William B. Eerdmans, 1982) 462, the distinctions have nothing to do with the location of a surety, that is, the inability of a creditor to seize or place a lien on the gold or gift of the altar when a debtor defaults and violates an oath.

swearing is not.

The criticism of these distinctions in verses 17-19 points out the irony in granting greater value to the gold and the gift than the temple and altar which, by their holiness, sanctify the gold or gift (cf. Exod 29:37).²⁶

The next section of the pericope picks up two key words of the chiasm, altar and temple, and introduces a second argument against Pharisaic logic. This new argument is similar to the one made in Matt 5:34b-36. When one swears by these terms, one's words comprehend more than altar and temple: "So he who swears by the altar, swears by it and everything on it, and he who swears by the temple, swears by it and by him who dwells in it" (Matt 23:20-21). The first verse upholds the binding power of the oath by the gift of the altar. The second verse introduces the idea that an oath by the temple is actually an oath by God and is, therefore, binding. The word temple acts as a circumlocution for the divine name.²⁷ Sjef van Tilbourg calls verses 20-21 a bridge to a new motif found in verse 23, the oath by heaven. Here the argument is identical to that found in Matt 5:34b. One who swears by heaven, swears by the throne of God and ultimately by God. The criticism of distinctions of detail fades into the background and the

²⁶ J. P. Meier, Matthew, 270, Daniel Patte, The Gospel of Matthew, 325.

²⁷ F. C. Fenton, Saint Matthew, 372.

idea that all oath-terms really refer to God comes into focus.²⁸

This pericope leaves the exegete with two questions. Given that Matt 23:16-22 ends with the conclusion that all oaths are binding, does the saying uphold the practice of oath-taking and contradict Matt 5:33-37? And does the datum that Matt 23:16-19 more accurately describes Pharisaic distinctions about vows than those about oaths signify that the tradition originally dealt with vows? We will address both these questions in the discussion of Matthean redaction.

C. MARK 7:11/MATT 15:1-20

Mark and Matthew present similar versions of a dispute between Jesus and the Pharisees in which the Pharisees criticize Jesus' disciples for not observing a handwashing tradition. Jesus replies with a three-fold countercharge. He accuses them of hypocrisy and supports his accusation with a quotation from Isaiah. He contends that they abrogate the commandments to honour one's parents (Exod 20:12, Deut 5:16) and not to abuse them (Exod 21:17) by upholding the vow of qorbān. Then, he questions the Pharisaic notion of purity. Our discussion is concerned with the qorbān unit and the question whether it originated

²⁸ F. W. Beare, The Gospel according to Matthew, 454; David E. Garland, The Intention of Matthew 23 (Leiden: E. J. Brill, 1979) 136.

with the historical Jesus. Here is the single occasion in which Jesus is depicted as saying something about a vow. The controversy seems to be composite in nature and to have undergone redaction prior to appearing in Mark's Gospel. Nevertheless, the place of the gorbān saying in its context in the gospels may shed light on any teaching which Jesus did on the practice of taking vows; therefore, we shall examine the entire controversy.

The two versions, Mark 7:1-23 and Matt 15:1-20, differ in wording and order, but share the same basic contents: the charge by the Pharisees and the three-fold countercharge by Jesus. Matthew appears to have reworked the Marcan account, omitting Mark's explanations of Jewish customs and moving the Isaiah unit so that it follows logically from the gorbān text.²⁹ As a result, his is the superior literary product.³⁰ Mark then seems to be earlier than Matthew and is the version which we will examine here. Matthew's alterations will be examined in the context of the discussion of Matthean redaction.

The controversy begins when a group of scribes and Pharisees who have come from Jerusalem gather around Jesus and observe that the disciples do not eat with washed

²⁹ J. P. Meier, Matthew, 167.

³⁰ Stephen Westerholm, Jesus and Scribal Authority, 71.

hands.³¹ The puzzle of what the scribes and Pharisees are doing in Galilee spying on the disciples may be solved by the observation of Michael J. Cook that this text originally belonged with the disputes of Mark 2 on eating with sinners and tax-collectors, fasting, and plucking heads of grain on the Sabbath. Mark or an earlier redactor could have contrived the arrival of the Pharisees in Mark 7 in order to adapt the pericope to its new setting between the two miracles on feeding.³²

The charge that the disciples eat with defiled, that is, unwashed hands probably refers to a Pharisaic tradition. Hands would be washed in order to prevent transmission of impurity through liquid to bullin, unconsecrated food. The tradition seems to represent an extension of the laws of purity which govern the priesthood and consecrated food (Exod 30:18-21) to other contexts. Jacob Neusner suggests that the Pharisees practised this degree of purity in order to "pretend to be priests by eating the ordinary food at home as if they were priests engaged in eating the priestly portion of Holy Things in the Temple."³³ E. P. Sanders

³¹ The historicity of the opening has been doubted. Cf. Wolfgang Beilner, Christus und die Pharisäer, 75; E. P. Sanders, Jewish Law from Jesus to the Mishnah, 91.

³² Michael J. Cook, Mark's Treatment of the Jewish Leaders (Leiden: E. J. Brill, 1978) 47.

³³ Jacob Neusner, "Scripture and Tradition in Judaism" in W. S. Green Approaches to Ancient Judaism, vol. 2 (Chico: Scholars Press, 1980) 190.

contends that "Pharisees seem to have washed their hands only before handling priest's food, before eating their own Sabbath and festival meals, and after handling scriptures."³⁴ We can be certain that Mark has given a sharper polemical tone to the question by adding that "all Jews" washed their hands before eating.³⁵

Whether or not the practice could be ascribed to the Pharisees was once hotly contested.³⁶ Recent scholarship indicates that handwashing may have indeed been an established, albeit recent, practice in Jesus' time.³⁷ If this pericope reflects a real confrontation, why the Pharisees would have expected the disciples to follow their tradition remains uncertain. Perhaps, as Stephen Westerholm suggests, the Pharisaic zeal for their relatively recent innovation carried them away.³⁸

³⁴ E. P. Sanders, Jewish Law from Jesus to the Mishnah, 40.

³⁵ Rudolph Pesch, Das Markus Evangelium (Freiburg: Herder, 1977) 276, claims that Mark turns the conflict into one between Christianity and Judaism. Cf. also David Flusser, Jesus (New York: Herder and Herder, 1969) 46.

³⁶ Cf. Adolf Büchler, Der galiläische 'Am-ha' Ares des zweiten Jahrhunderts (Hildesheim: Georg Olms, 1968) 130; "The Law of Purification in Mark vii. 1-23," ExpTim 21 (1909): 34-40, argues that the reproaches and statements of Mark 7:1-23 refer to priests.

³⁷ Cf. Stephen Westerholm, Jesus and Scribal Authority, 73; Robert P. Booth, Jesus and the Laws of Purity: Tradition History and Legal History in Mark 7 (Sheffield: JSOT Press, 1986) 200-3; E. P. Sanders, Jewish Law from Jesus to the Mishnah, 31.

³⁸ Stephen Westerholm, Jesus and Scribal Authority, 74.

Jesus' countercharge begins with the accusation that the Pharisees are hypocrites. He backs the charge up with scripture:

This people honors me with their lips,
but their heart is far from me;
in vain do they worship me,
teaching as doctrines the precepts of men (Mark 7:6-7).

The quotation from Isa 29:13, nearly identical to the LXX, justifies the charge of hypocrisy by suggesting that the Jews do not keep the divine law but rather human ordinances, traditions of men.³⁹ The quotation, however, is not appropriate to the original charge regarding handwashing, for no commandment of God is violated by the observance of the tradition.

The first countercharge seems to anticipate the second. By upholding the gorbān vow, Jesus argues that the Pharisees do have trouble keeping the law. A specific incident is cited. The vow-taker, a son, has said to his parents, "What you would have gained from me is Corban"

³⁹ Bernhard Lindars, New Testament Apologetics: The Doctrinal Significance of the Old Testament Quotations (London: SCM Press, 1961) 165; Johannes Horst, "Gedanken und Bemerkungen" in TSK 87 (1914) 433; Ernst Haenchen, Der Weg Jesu (Berlin: Walter de Gruyter & Co., 1968); Klaus Berger, Die Gesetzesauslegung Jesu (Neukirchen & Vluyn: Neukirchener Verlag, 1972) 486. These, along with many other scholars, question the authenticity of the Isaiah quotation because its significance hinges on the LXX meaning. Compare, "Because this people draw near with their mouth and honour me with their lips, while their hearts are far from me, and their fear of me is a commandment of men learned by rote" (MT Isa 29:13). In the Masoretic text, the Jews keep the law but not with their hearts.

(Mark 7:11). Nothing is actually given to the temple on this occasion; the property is rendered like qorbān. A legal fiction is established.⁴⁰ The parents, or the son himself, perhaps have inquired of the Pharisees whether the vow was binding. This vow rendered into Hebrew probably followed the pattern delineated in the Mishnah, qônām šeʾatâ nehēneh lî (m. Ned. 8:7). A distinct vow-formula is preceded by a valid vow-term, qorbān. The Pharisees, therefore, found the vow binding. Perhaps the case had become a cause célèbre.⁴¹ The later Rabbinic tradition permits release from this vow on the basis of filial piety (m. Ned. 9:1), but there is no reason to suppose that Mark 7:11 and Matt 15:10 do not reflect an earlier stage of

⁴⁰ See A. I. Baumgarten, "Korban and the Pharisaic Paradosis" in JNES 16-17 (1984-5): 14-15; Ze'ev Falk, "Notes and Observations on Talmudic Vows" in HTR 59 (1966): 311-2; Jacob Mann, "Oaths and Vows in the Synoptic Gospels" in AJT 21 (1917): 268; John Bowman, The Gospel of Mark: The New Christian Jewish Passover Haggadah (Leiden: E.J. Brill, 1965): 167, and Solomon Zeitlin, "Korban" in JQR 53 (1962-3): 160-3. The following scholars treat korban as "gift" following Mark's gloss and the Matthean translation: Willoughby C. Allen, A Critical and Exegetical Commentary on the Gospel According to St. Matthew (Edinburgh: T&T Clark, 1912): 164; J. Duncan M. Derret, "KORBAN, O ESTIN DŌPON" in NTS 16 (1969-70): 365; Johannes Horst, "Gedanken und Bemerkungen: Die Worte Jesu über die kultische Reinheit und ihre Verarbeitung in den evangelischen Berichten" in TSK 87 (1914): 435, and B. W. Bacon, Studies in Matthew (London: Constable & Company Limited, 1930): 299.

⁴¹ Cf. Wolfgang Beilner, Christus und die Pharisäer, 79; Vincent Taylor, The Gospel According to Mark: The Greek Text with Introduction, Notes and Indexes (London: Macmillan, 1966) 340.

thought.⁴²

Mark 7:11 depicts the Pharisees upholding Deut 23:21 and Num 30:2 (MT 30:3) by regarding gorbān a binding vow. In Mark 7:10-11, Jesus contends that a scriptural commandment is violated. He cites two verses: the first, "Honour your father and your mother" (Exod 20:12; Deut 5:16), and the second, "He who speaks evil of father and mother, let him surely die" (Exod 21:17; Lev 20:9). The import of the first quotation is clear; the youth dishonours his parents by failing to provide for them. The second quotation is more problematic. Vincent Taylor contends that the original Hebrew saying quoted the Masoretic text and used the verb mēqallel to which he imputes the meaning "he that curses."⁴³ But mēqallel also means "abuse/treat harshly or injuriously."⁴⁴ The second quotation merely provides a casuistic support for the first quotation and

⁴² Contra Klaus Berger, Die Gesetzesauslegung Jesu, 1972): 494; Hans Hübner, Das Gesetz in der synoptischen Tradition (Witten: Luther Verlag, 1973) 150; Solomon Zeitlin, "The Pharisees and the Gospels" in Studies in the Early History of Judaism (New York: KTAV Publishing House, 1974) 265. These three scholars argue that Mark 7:11 is at odds with Pharisaic practice.

⁴³ Vincent Taylor, The Gospel According to Mark: The Greek Text with Introduction, Notes and Indexes (London: Macmillan, 1966) 340.

⁴⁴ Herbert Chaim Brichto, The Problem of "Curse" in the Hebrew Bible (Philadelphia: Society of Biblical Literature and Exegesis, 1963) 120.

does not introduce a different violation.⁴⁵

Jesus does not directly address the question whether the gorbān vow is binding or whether vows in general should be observed. His comments are not addressed to the vow-taker but to the Pharisees who draw distinctions between valid and invalid vow-terms.

The pericope ends with a logion on purity addressed to the people rather than the Pharisees: "There is nothing outside a man which by going into him can defile him; but the things which come out of a man are what defiles him" (Mark 7:15). This logion applies directly to the original accusation.⁴⁶ One washes one's hands to avoid transmitting ritual impurity to the food one eats. This standard of purity goes beyond biblical commandments governing ordinary food (Deut 12:15, 20-21).⁴⁷ According to Mark 7:15, the food which the disciples have eaten with unwashed hands cannot defile them.

The logion is an example of semitic antithetical parallelism. According to Blass-Debrunner (§448), because of the ouden ... alla structure of the parallelism, the second limb should be translated in a relative sense: "the

⁴⁵ Cf. Rudolf Pesch, Das Markus Evangelium (Freiburg: Herder, 1977) 374.

⁴⁶ Stephen Westerholm, Jesus and Scribal Authority, 83, calls this a logical setting for the saying.

⁴⁷ Cf. Roger P. Booth, Jesus and the Laws of Purity (Sheffield: JSOT Press, 1986) 174.

things outside do not defile one as much as things inside."⁴⁸ Joachim Jeremias contends that in these semitic parallelisms, the emphasis lies on the second limb.⁴⁹ The logion may, therefore, be closely linked to the gorbān unit in its concern for the defilement of human utterances. The purity logion may have been transmitted with the gorbān saying.

Mark repeats the logion in a private teaching to the disciples and adds the gloss, "Thus he declared all food clean" (Mark 7:19).⁵⁰ We can safely step outside the strictures of a preliminary exegesis to pronounce that this statement originated in the church after a heated and probably lengthy debate over the observance of dietary laws. The logion, in its context in a dispute between Jesus and the Pharisees, addresses the practice of handwashing which goes beyond what is commanded by scripture. The focus is clearly on the traditions of the elders and not standards of dietary purity ordained by the Bible.

D. JAMES 5:12

⁴⁸ Ibid., 69-70, argues that this reading has not been universally accepted and the application of a relative sense is highly subjective.

⁴⁹ Joachim Jeremias, Theology of the New Testament: The Proclamation of Jesus (New York: Charles Scribner's Sons, 1971) 14-18.

⁵⁰ Stephen Westerholm, Jesus and Scribal Authority, 84, notes that Mark 7:19 syntactically as well as logically represents a parenthesis in the argument.

Among the gospels, the prohibition against swearing is peculiar to Matthew, but the Letter of James provides a parallel. Differences between the two versions in length and wording give rise to several questions. Is the form of James independent of Matthew? If the answer is yes, then does James present a more primitive tradition than that found in Matthew? And if the answer is again yes, does the absence of attribution to Jesus signify that the prohibition is not ipsissima verba Jesu. Several considerations indicate that the last two questions can be answered with a definite no, and that while James provides us with an alternate version of the prohibition, his version does not provide insight into Jesus' teaching on oaths.

The hypothesis that the Letter of James is dependent upon the Gospel of Matthew has been supported and best articulated by Massey H. Shepherd. He argues that the number of parallels between the gospel and the epistle -- he counts eight -- and their relation to every section and theme in the epistle speak of Matthew's influence. Not all of the parallels, however, bear close scrutiny. For example, Shepherd compares Matt 7:26, "And every one who hears these my words and does not do them," to James 1:23, "If anyone is a hearer of the word and not a doer."⁵¹ but he disregards the Pauline parallel in Rom 2:13. Other

⁵¹ Massey H. Shepherd, "The Epistle of James and the Gospel of Matthew" in JBL 75 (1956): 45.

pieces strain to fit. Shepherd compares Matt 15:1, "Not what goes into a mouth defiles a man, but what comes out of the mouth, this defiles a man," with James 3:10, "Out of the same mouth come blessing and curse."⁵² The most striking parallel is Matt 5:33-37 and James 5:12, but the similarity of language may be attributed to the source of the saying in the genuine teachings of Jesus.⁵³ Shepherd acknowledges that James did not have a written copy of the gospel before him. Instead, he suggests that James was familiar with the gospel because he had heard it read in his church.⁵⁴ He observes that the Didache and the letters of Ignatius of Antioch quote Matthew extensively. This observation suggests to him that by the time these works, including James, were written Matthew had already attained a status tantamount to canonical.⁵⁵ Shepherd's theory has not been widely accepted by subsequent scholarship.⁵⁶ The

⁵² Ibid., 46.

⁵³ Cf. Sophie Laws, A Commentary on the Epistle of James (San Francisco: Harper & Row, 1980) 224; Patrick J. Hartin, James and the Q Sayings of Jesus (Sheffield: JSOT Press, 1991) 190.

⁵⁴ Shepherd, "The Epistle of James and the Gospel of Matthew," 47.

⁵⁵ Ibid., 48-49.

⁵⁶ Cf. John A. T. Robinson, Redating the New Testament (London: SCM Press, 1976) 125; Eduard Lohse, "Glaube und Werke - zur Theologie des Jakobusbriefes," ZNW 48 (1957): 10; John B. Polhill, "The Life-Situation of the Book of James," RevExp 66 (1969): 372; Patrick J. Hartin, James and the Q Sayings of Jesus, 23.

possibility that James was familiar with an oral tradition which was independent from Matthew's gospel remains persuasive.⁵⁷

The solution to the problems which James poses lies in an understanding of the letter's literary character. It is not a personal letter addressed to a specific community with unique concerns on a particular occasion.⁵⁸ It is a paraenetic discourse which provides instruction on Christian conduct.⁵⁹ The references to suffering and trials are sufficiently vague that they may address any Christian community at any time. The letter contains a series of admonitions thematically connected but in no consistent order.⁶⁰ Its purpose is to pass on ethical maxims in a form so generalized as to be utilized by any Christian. As a result the historical situation which gave rise to an admonition, such as the prohibition against swearing, is lost.⁶¹

⁵⁷ Lohse, "Glaube und Werk - zur Theologie des Jakobusbriefes," 10, concludes that the Jesus sayings belong to a non-synoptic stream.

⁵⁸ Martin Dibelius, James: A Commentary on the Epistle of James (Philadelphia: Fortress Press, 1976) 1-2.

⁵⁹ Ibid., 3.

⁶⁰ Bo Reicke, The Epistles of James, Peter and Jude (New York: Doubleday & Company Inc., 1964) 3, argues that the order of the material is "dependent on the conditions current in the communities which stir and trouble the author."

⁶¹ Cf. John B. Polhill, "The Life-Situation of the Book of James," RevExp 66 (1969): 387.

Without specific historic allusions with which to locate the Letter of James, it is impossible to determine its date of composition or its authorship. Exegetes strive in vain to find some reference, some hook, on which to hang a conclusion about dating. They end up drawing conclusions on the basis of the absence of evidence. For example, John A. T. Robinson observes a lack of reference to the defeat of Judaism or the break between the church and the synagogue and places the date of composition before the end of the first-century CE. Further observations concerning the absence of reference to the fall of Jerusalem, the Jewish revolt, and the Gentile mission cause him to push back the date to the late forties.⁶² Others argue that the absence of reference to Jewish ceremonial practices places it beyond the concerns of the early Jewish-Christian community.⁶³

Attempts to arrive at a date of composition on the basis of comparisons with other literature of the same genre fail. The Letter of James bears resemblance to works of intertestamental Jewish literature, such as Ben Sirach, the Wisdom of Solomon, the Letter of Aristeas, and the Testament of the Twelve Patriarchs. As a result, some scholars

⁶² Robinson, Redating the New Testament, 135-138.

⁶³ C. E. B. Cranfield, "The Message of James," SJT 18 (1965): 182-93; Hans Windisch, Die katholischen Briefe (Tübingen: J. C. B. Mohr, 1930) 4.

identify it as an early Jewish Christian text.⁶⁴

Similarities with Cynic and Stoic diatribes lead others to a different conclusion: it is a Gentile Christian composition.⁶⁵ Still others note the similarity to three second century Christian texts: the Shepherd of Hermas, the Epistle of Barnabas, and the Didache, and they conclude that the Letter of James is also a work of the second century.⁶⁶

Genre does not help to identify the letter's place in the history of early Christianity.

Three observations remain which support the conclusion that the letter is a late first century or early second century composition. First, James 2:14-26 seems to represent a reaction to a form of ultra-Paulinism with libertarian tendencies which could have belonged to early second century Christianity. Secondly, the trials mentioned in James 1:2, 12; 2:6; 4:6 and 5:10 may correspond to the persecution of Christians in the diaspora which occurred at the end of Domitian's reign, 81-96 CE.⁶⁷ Thirdly, the late acceptance of the letter in the canon and

⁶⁴ Cf. E. M. Sidebottom, James, Jude and 2 Peter (London: Thomas Nelson and Sons, Ltd., 1967) 4-5.

⁶⁵ James Hardy Ropes, A Critical and Exegetical Commentary on the Epistle of St. James (Edinburgh: T & T Clark, 1916) 13.

⁶⁶ Cf. Kurt Aland, "Jakobusbrief," in Die Religion in Geschichte und Gegenwart (Tübingen: J. C. B. Mohr, 1959) 526-28; Lohse, "Glaube und Werke - zur Theologie des Jakobusbriefes," 10.

⁶⁷ Reike, The Epistles of James, Peter and Jude, 5.

the lack of reference to it until the third century provides circumstantial evidence to conclude that it is late.⁶⁸

The ability to identify the authorship of the letter depends largely upon the possibility of dating the work. The James who wrote the letter may be James, the brother of Jesus, or James son of Zebedee, or an unknown James. The author makes no claims to apostolic authority and the letter provides no internal clues with which to ascribe it to either of the known James. The apostle James died in 43 CE; therefore, it is unlikely that he is the author.⁶⁹ The quality of the Greek, the absence of approval of Jewish law, and a denial by Eusebius (H.E. 2.23, 24) speak against the authorship of the brother of Jesus.⁷⁰ The single point to recommend his authorship is the paraenetic style of the letter. Martin Dibelius makes the argument that, since Jesus used this style, it is logical to ascribe a similar style to his brother.⁷¹ The frequent use of the paraenetic style in later Christian literature makes it impossible to assign the text with any great confidence to one particular person. The author remains unknown.

What we are left with is a document which seems to

⁶⁸ Werner Georg Kümmel, Introduction to the New Testament (Nashville: Abingdon Press, 1966) 285.

⁶⁹ Dibelius, James, 12.

⁷⁰ Cf. Reicke, The Epistles of James, Peter and Jude, 4.

⁷¹ Dibelius, James, 17.

be highly eclectic and to draw its material from several sources.⁷² The author was familiar with traditions about Jesus which appear in the synoptic gospels, but he either did not know the gospels or he chose not to use them.

The paraenetic nature of the letter has direct consequences for how we treat the parallel to Matt 5:33-37. The tendency to generalize ethical exhortations results in the dropping of the context in which the exhortation either first occurred or was passed down.⁷³ The rule of thumb that the shorter form is probably the original form, therefore, cannot be applied.⁷⁴ The tendency was probably to drop material in order to make the saying more pithy and universal in application. No attempt was made to explain the theological foundation for an ethical demand.⁷⁵ With these considerations in mind, we can turn to the version of the prohibition which James offers.

The prohibition appears near the end of the epistle and seems to bear no relationship to its context. After a lengthy exhortation to patience, the author suddenly breaks

⁷² Polhill, "The Life-Situation of the Book of James," 370.

⁷³ Harold S. Songer, "The Literary Character of the Book of James," RevExp 66 (1969) 387.

⁷⁴ Contra Laws, A Commentary on the Epistle of James, 223; Dibelius, James, 251; Theodor Zahn, Das Evangelium des Matthäus (Leipzig: A. Doeschertsche Verlagsbuchhandlung, 1922) 90.

⁷⁵ Songer, "The Literary Character of the Book of James," 382-3.

his line of thought with the words "But above all, my brethren, do not swear, either by heaven or by earth or with any other oath, but let your yes be yes and your no be no, that you may not fall under condemnation" (James 5:12). The emphatic "above all" and the address "my brethren" seem to be additions to the tradition which serve to tie the prohibition to its context in the letter.⁷⁶

The following is a synopsis of the parallels between James 5:12 and Matt 5:33-37:

| | |
|-------------------------|--------------------------------------|
| <u>mē omnyete</u> | <u>mē omosai holōs</u> |
| <u>mēte ton ouranon</u> | <u>mēte en tō ouranō</u> |
| <u>mēte tēn gēn</u> | <u>mēte en tē gē</u> |
| | <u>mēte eis Hierosolyma</u> |
| | <u>mēte en tē kephalē sou omosēs</u> |
| <u>ētō de hymōn</u> | <u>estō de ho logos hymōn</u> |
| <u>to Nai nai</u> | <u>Nai nai</u> |
| <u>kai to Ou ou</u> | <u>ou ou</u> |
| <u>hina mē hypo</u> | <u>to de perisson toutōn ek</u> |
| <u>kprisin pesēte</u> | <u>tou ponērou estin</u> |

James' version is a common Greek construction and Matthew's version is a semitic construction.⁷⁷ The inclusive clause "or any other oath" produces the same effect as Matthew's holōs by rendering the prohibition absolute.⁷⁸ The two examples are identical to Matthew's first examples but no scriptural citations follow. If James is shortening a tradition, the point of dropping the theological

⁷⁶ Dibelius, James, 248, argues that the "above all" finds no antecedent in the letter; therefore, he concludes that it may derive from another context.

⁷⁷ Cf. Robert Guelich, The Sermon on the Mount, 214.

⁷⁸ Johannes Schneider, "horkos," in TWNT 5 (1967): 461.

explanations is to reduce the saying to pure paraenesis. Dibelius finds James' reason in the second injunction, "Let your yes be yes." The slight variation from Matthew's text which consists of the inclusion of the definite article to and a kai places emphasis upon unequivocal speech, whereas the intent in Matthew is to avoid verbosity.⁷⁹ Dibelius concludes that the concern is for truthfulness: "Let your 'yes' be true and your 'no' be true."⁸⁰ The threat of judgement would then be a warning against untruthfulness.⁸¹

The place of the prohibition in the letter is not tied to its immediate context. Thoughts occur in a random order following a number of themes, such as faith in testing (1:2-4,12) and wisdom (1:5, 22-25; 3:12-18) and including restraint of the tongue (1:19, 26; 3:5-19; 4:13-17; 5:9). The prohibition belongs to this last category.

The point of the admonition against swearing is not merely a demand for truthfulness but a call for restraint in speech. One should be slow to speak (1:19). Christians should not speak evil against one another" (4:11). If one "does not bridle his tongue," he "deceives his heart"; his "religion is vain" (1:26). The result of unbridled speech

⁷⁹ Cf. Reicke, The Epistles of James, Peter, and Jude, 56.

⁸⁰ Dibelius, James, 249. Cf. also Minear, "Yes or No: The Demand for Honesty in the Early Church," .

⁸¹ Dibelius, James, 250.

is condemnation (2:12; 4:11, 16). The author cautions his reader that "the tongue is a little member and boasts of great things" (3:5), and may be the cause of catastrophic harm: "The tongue is an unrighteous world among our members, staining the whole body, setting on fire the cycles of nature, and set on fire by hell (3:6).... From the same mouth come blessing [of God] and cursing [of others]" (3:10). The letter-writer's demand for purity of speech excludes not only lies but also cursing, ill-feeling, and rash expressions of anger. This purity also comprehends a notion of freedom from arrogant boasting which entails seemingly innocent plans for the future. The author chides those who say, "Today or tomorrow we will go into such and such a town and spend a year there and trade and get gain" (4:13). Instead, he instructs them to say, "If the Lord wills, we shall do this or that" (4:15). The Christian should demonstrate consciousness of God's will in what he or she says.

The intention of the saying against oaths seems to be to control private assertions or promises bound by oaths. One other possible antecedent in the letter may open this limitation of the prohibition up to question. In an admonition against partiality for the rich, the author accuses the rich of oppressing his readers, dragging them into court, and blaspheming "the honourable name" which was invoked over them (3:6-7). Although the reference is vague, it seems to

refer to a specific situation. Rich people had dragged poor Christians into court, perhaps on charges of defaulting on loans, rent, or pledges.⁸² In the courts of the Gentile world, defendants would have been made to swear oaths. If the avoidance of oaths was an established practice in the communities which James addressed, and if the members of those communities were being dragged into courts, then the prohibition may intend public, as well as private oaths. This observation remains conjectural.

A firm foundation is prepared in advance of the admonition not to swear. The concern need not be limited to truthfulness. It may comprehend exhortations not to make boast of one's intentions (4:13), not to speak in excess of what is necessary (1:26), and not to utter a curse (3:10). The focus upon unequivocal speech expressed by James' version of "Let your yes be yes and your no be no" is not simply a demand for truthfulness; it echoes a demand for single-mindedness stated earlier in the letter (1:8). The threat of condemnation is a consequence of falsehood as well as of a wide variety of sins associated with speech and with oaths. Even if the prohibition in James is earlier than Matthew's version, it does not limit the thrust of the prohibition to truthfulness.

The theme of truth which does occur twice in the letter refers to the truth of God's saving event in Christ.

⁸² Maynard Ried, 63; Dibelius, James, 138.

In the first chapter we read: "Of his own will he brought us forth by the word of truth that we should be a kind of first fruits of his creatures" (1:18). The letter closes with a reference to one who "wanders from the truth" (5:19). One who wanders from the truth is not a liar but one who departs from or fails to believe in the doctrinal teachings of early Christianity.

The question remains whether the origin of the prohibition lies in something other than Jesus' ministry. James does not attribute these words to the Lord. On the one hand, this is a datum; on the other, it should not cause surprise, since James never explicitly cites Jesus. Paul and Peter also use Jesus-sayings without acknowledging their source (e.g, Rom 12:14; 13:7-9; 1 Peter 3:9). Apparently, these two authors assumed that their readers already knew the source. If James operates under the same assumption, then the prohibition, far from being obscure, may have been so well known, that he included 5:12 in the awareness that his words carried added authority as words of the Lord.

We draw two negative conclusions from the study of the prohibition against swearing in the Letter of James. First, owing to its paraenetic purpose, we cannot conclude that the paraenetic form of the prohibition is the original form. And secondly, we cannot use the context of the prohibition in the letter to limit the prohibition's original intention to a demand for truthfulness.

E. Conclusion

The above exegesis provides us with the meaning of words, phrases, and verses within the pericopes which deal with oaths or vows. We now proceed to the task of determining the meaning of these parts in the context of the whole, either Matthew's gospel or Jesus' ministry.

CHAPTER SEVEN

MATTHEAN REDACTION

Matthew's unique interest in oaths among the gospel writers has made him suspect according to some scholars in quest of the historical Jesus. The charge is that he has deflected the thrust of Jesus' words to serve his own redactional interests. In asking ourselves is this so, we must surely acknowledge that Matthew has had a hand in the shape of his gospel. The task of composing a gospel dictates that material be selected and arranged along a programmatic design. But the accusation that Matthew has altered the thrust of Jesus' words with respect to oaths and vows may be overly cynical. Before we can begin to address the contrast between Jesus and Matthew, we must first establish what Matthew's redactional motives were and how he edited his material.

Redaction criticism follows two distinct methodologies. "Horizontal" criticism relies upon the findings of source and form criticism in order to distinguish redactional from traditional material.¹ This method poses several problems. First, we cannot trace with certainty the sources behind Matthew. Secondly, differences

¹ Cf. William G. Thompson, "Reflections on the Composition of Mt. 8:1-9:34," CBO 33 (1971): 365.

between Matthew and Mark or a reconstructed Q may be attributable to traditions received by Matthew. Thirdly, the "horizontal" approach limits us to material with one or more parallel traditions. Consequently we will also employ the second methodology of redaction criticism, "vertical" criticism. "Vertical" criticism examines the text as a literary unity and asks questions about the structure of the gospel and usage of terms or concepts elsewhere in the gospel.²

A. MATTHEW'S REDACTIONAL MOTIVES

All three of the pericopes concerning oaths and vows are situated in the context of polemic against the scribes and the Pharisees. Matthew's intention is to set Jesus in contrast to his Jewish contemporaries. Jesus addresses legal matters with an authority which outstrips the legal experts of his day, in particular the Pharisees whom Josephus describes as exact exponents of the law³ and who, according to Matt 23:2, sit on Moses' seat.

B. W. Bacon and George Dunbar Kilpatrick have put forward the theory that Matthew composed his gospel in five parts which correspond to the five books of the Penta-

² Ibid., 366.

³ Cf. JW 1.5.1 §108-10; 2.8.14 §162; Life 2 §9.

teuch.⁴ According to this theory, Matthew casts Jesus in the role of the law-giver. He is a second or new Moses who delivers his new law at a new Mount Sinai in the Sermon on the Mount. His authority supersedes that of the established legal experts.

Bacon's theory has come under attack because evidence in the gospel points to Matthew's continued acceptance of the old law.⁵ Matt 5:18 is an explicit affirmation of the Torah. The question of Matthew's understanding of the role of the law in his community has generated a heated debate, the outcome of which has consequences for our discussion. Some scholars propose that the controversies were intra muros, that is, the community still regarded itself as part of Judaism. As Günther Bornkamm points out, Matthew's community seems to have observed the law, they paid the Temple tax (Matt 17: 24-27),

⁴ B. W. Bacon, Studies in Matthew (London: Constable & Company Limited, 1930) 82, 168; George Dunbar Kilpatrick, Origins of the Gospel According to St. Matthew (Oxford: At the Clarendon Press, 1946) 107-8. Cf. also Julius Daniel Schniewind, Das Evangelium nach Matthäus (Göttingen: Vandenhoeck und Ruprecht Verlag, 1937) 38.

⁵ Gerhard Barth, "Matthew's Understanding of the Law," in Günther Bornham, Gerhard Barth, and Heinz Joachim Held, Tradition and Interpretation (Philadelphia: Westminster Press, 1963) 67; Günther Bornkam, "End-Expectation and Church in Matthew," in Günther Bornkamm, Gerhard Barth, and Heinz Joachim Held, Tradition and Interpretation, 35; Benno Przybylski, Righteousness in Matthew and His World of Thought (Cambridge: Cambridge University Press, 1980) 81.

and they shared in the consequences of the Jewish revolt.⁶ G. D. Kilpatrick's version of the intra muros position includes the proposition that the community stood independent of the synagogue and that the gentile mission was well underway, but the attachment to Judaism prevailed.⁷ Others propose that the split from Judaism was complete, that the community was extra muros. On the basis of the polemical material against Jesus' Jewish opponents, Douglas Hare contends that Matthew's community saw themselves as neither a new or a true Israel.⁸ Sjef van Tilborg takes a similar position when he argues that the language used to insult or abuse the Jews reflects a close relationship.⁹

A compromise between these positions may be

⁶ Bornkamm, "End-Expectation and Church in Matthew," 22. Cf. also Reinhart Hummel, Die Auseinandersetzung zwischen Kirche und Judentum im Matthäusevangelium (Munich: Chr. Kaiser Verlag, 1966) 159; W. D. Davies, The Setting of the Sermon on the Mount (Cambridge: Cambridge at the University Press, 1964) 290, 332.

⁷ George Dunbar Kilpatrick, Origins of the Gospel According to St. Matthew (Oxford: At the Clarendon Press, 1946) 101-23.

⁸ Douglas R. A. Hare, The Theme of Jewish Persecution of Christians in the Gospel According to St. Matthew (Cambridge: Cambridge at the University Press, 1967) 170.

⁹ Sjef van Tilborg, The Jewish Leaders in Matthew (Leiden: E.J. Brill, 1972) 171. Cf. also Georg Strecker, Der Weg der Gerechtigkeit: Untersuchung zur Theologie des Matthäus (Göttingen: Vandenhoeck und Ruprecht, 1971) 34; Kristar Stendahl, The School of Matthew and its Use of the Old Testament, 2nd edition (Philadelphia: Fortress Press, 1968) xiii.

possible. The polemical material in Matthew points to a community in transition. The split with the synagogue has probably occurred but recently. The wounds are fresh; hence, the language is abusive. Lloyd Gaston contends that the polemic against the Pharisees and Judaism functions as an apologetic for the failed mission to Israel and as a justification for the Gentile Mission.¹⁰ Matthew's understanding of the law perpetuates a tie to the thought world from which the mission arose in order to present the dispute between Jesus and his Jewish contemporaries in which Jesus' opponents fail to recognize his authority.

In order to account for the discrepancies in the gospel, John P. Meier has put forward the theory that Matthew inherited three strata of material. One belonged to extreme Judaizers who insisted that Jesus was sent to "the lost sheep of Israel" (Matt 15:24), that the apostles were not to go to the gentiles (Matt 10:5-6) and that the law in its entirety remained in place (Matt 5:10).¹¹ Another stratum belonged to James' group who advanced the radicalization of the law represented by passages such as the antitheses on murder and adultery.¹² Matthew derived

¹⁰ Lloyd Gaston, "The Messiah of Israel as Teacher of the Gentiles," Int 29 (1975): 24-40.

¹¹ John P. Meier, Antioch and Rome: New Testament Cradles of Catholic Christianity (New York: Paulist Press, 1983) 53.

¹² *Ibid.*, 54.

his last stratum from the gentile mission. This included passages regarding false piety in alms-giving, prayer, and fasting (Matt 6:1-6, 16-18) and directions for the gentile mission (Matt 28:16-20). On a more conjectural level, Meier proposes that "stringent moral demands that revoked the letter of the Mosaic law" also belonged to this stratum. He includes the prohibitions against swearing (Matt 5:33-37) and retaliation (Matt 5:38-39) among these demands.¹³ According to Meier, Matthew found all three strata mixed together in the catechism. Rather than reconciling conflicting material, Matthew placed it in the context of his view of salvation history which was divided into three parts: the period of the Old Testament when the law reigned over the Jews alone, the period of Jesus' ministry during which the law was radicalized, and the age of the universal church in which the law no longer prevailed.¹⁴

Meier's model allows the contradictions to stand. These tensions in the gospel were the legacy of a tradition which held that the law and the prophets provided

¹³ Ibid., 54, Meier includes Matt 5:33-37 because he claims it revokes the Mosaic law. He does not stand alone in this assertion, cf. F. W. Beare, The Gospel According to Matthew (Oxford: Basil Blackwell, 1981) 156, but he cannot claim unanimity among scholars on this point, cf. Joachim Jeremias, New Testament Theology: the Proclamation of Jesus (New York: Charles Scribner's Sons, 1971) 220, Christian Dietzfelbinger, "Die Antithesen der Bergpredigt im Verständnis des Matthäus," ZNW 10 (1979) 11, and A. H. McNeile, The Gospel According to St. Matthew (New York: St. Martin's Press, 1965) 67.

¹⁴ Meier, Antioch and Rome, 80.

authoritative proof of Jesus' messiahship while at the same time believing that Jesus' authority superseded the authority of the biblical law. Matthew's understanding of this relationship between old and new coloured the way he edited the materials which he received. Matthew saw continuity between the fate of the community and the religion of Israel. One of the most solid pieces of proof for this continuity is Matthew's use of the word righteousness. As Benno Przybylski demonstrates, Matthew's notion of righteousness is concerned with human behaviour and does not comprehend the Pauline concept of divine gift.¹⁵ Matthew uses this Jewish notion of righteousness in polemical situations. The discussion of righteousness provides the common ground for discussion within the gospel between Jesus and his Jewish contemporaries. Jesus demands a righteousness which exceeds the expectations of the scribes and Pharisees. The concern for righteousness on Jewish terms perpetuates the dialogue with Judaism in contexts where Luke has dropped polemical material all together. Przybylski does not place the concept of righteousness in a central role in Matthew's gospel. It is a provisional concept used to provide a point of contact with first century Palestinian Jews. Matthew abandons the concept of righteousness for the language of perfection when

¹⁵ Benno Przybylski, Righteousness in Matthew and His World of Thought (Cambridge: Cambridge at the University Press, 1980) 114-5.

he addresses the criterion for entrance to the kingdom (Matt 5:48).¹⁶ Matthew makes the theme of righteousness central in the texts under our scrutiny only for the purpose of polemic.

The Moses typology which Bacon and Kilpatrick identify signifies continuity with Judaism rather than schism. The parallels to Moses are clear: the slaughter of the innocents, the Sermon on the Mount, and the division of the gospel into five discourses. Jesus stands in receipt of God's law.¹⁷ He presents the true interpretation of that law, the interpretation which represents God's will. W. D. Davies observes that the law is "intensified in its demand" and "reinterpreted in a higher key."¹⁸ The law that Jesus offers is not a new law but a reinvigorated interpretation of the law. Jesus' role, in this polemical material, is analogous to the position of the leadership of the Qumran community in that he does not bring a new covenant but a renewal of the covenant.¹⁹ The validity of the law is

¹⁶ Ibid., 116-8.

¹⁷ Krister Stendahl, The School of St. Matthew (Philadelphia: Fortress Press, 1968) 24-27, claims that Matthew presents Jesus as the wisdom of God.

¹⁸ Davies, The Setting of the Sermon on the Mount, 103.

¹⁹ M. D. Goulder, Midrash and Lection in Matthew (London: SPCK, 1974) 252, contends that the Sermon on the Mount is intended to represent the Pentecost Lectionary and as such represents the new Christian law. But as we have seen, Pentecost commemorated the renewal of the covenant as well as the giving of the law. It is highly speculative to maintain that the Sermon on the Mount is a Pentecost sermon

maintained, but the traditional exponents of that law and their exegesis are rejected, or as Douglas Hare puts it, they are treated ambivalently.²⁰ In a manner similar to the Qumran covenanters, Jesus supplements the demands of the Hebrew Bible.²¹ Jesus, in the role of the teacher of Torah, does not supplant Moses but stands as heir to Moses as the one who presents the true interpretation of the Sinai law.²² In doing so, he supplants the Pharisees who sit on Moses' seat.

The righteousness that Jesus offers through his interpretation of the law is a better righteousness, one that exceeds that of the Pharisees.²³ Because Jesus' interpretation is authoritative or a correct expression of God's will, his words are treated as commands to be fulfilled (Matt 7:24; 28:20). Gerhard Barth suggests, Matthew's emphasis upon works and judgement according to the observance of Jesus' demands promoted the development of a notion of nova lex in the early church, but Matthew himself

or a new Torah. The sermon may, however, stand in a tradition within Judaism of a renewal and reinterpretation of the law.

²⁰ Hare, The Theme of Jewish Persecution of Christians in the Gospel According to St. Matthew, 142.

²¹ Strecker, Der Weg Der Gerechtigkeit, 146.

²² Adolf Schlatter, Der Evangelist Matthäus: Seine Sprache, sein Ziel, seine Selbständigkeit (Stuttgart: Calwer Vereins-buchhandlung, 1929) .

²³ Barth, "Matthew's Understanding of the Law," 60.

was not the author of this innovation.²⁴

The polemic against the Pharisees serves to support two of Matthew's objectives. When Matthew presents Jesus prevailing over his opponents in legal debates, he demonstrates both Jesus' authority to interpret God's will and his as well as the church's capacity to define how people should live their lives. The polemic also serves to explain Israel's position in Matthew's view of salvation history. The failure of the Jewish people to accept the proclamation of Christ remains problematic for Matthew. The destruction of the Temple becomes proof of the condemnation which results from this rejection. The scribes and Pharisees, cast in the role of leadership, are the ones responsible for this condemnation.

Given the role of polemic in the gospel, the importance of these disputes does not necessarily lie in their particular content as much as the shape they take. Matthew does not create the terms of these disputes; he takes what he finds in the tradition and places it in contexts and adds accents which serve his purpose. His creative energy seems to have been directed more to the task of editing than composing.

B. MATT 5:33-37

Redaction criticism, for the most part, has approached

²⁴ Ibid., 159.

Matthew's antithesis on oaths with the presupposition that James' version is closer to the original, because it is paraenesis. Gerhard Dautzenberg argues that it is more logical to suppose that paranaesis was turned into an antithesis than that an original antithesis was transformed into paranaesis.²⁵ The advantages of this belief are readily apparent. Anything not found in James can be attributed to a development in the tradition. The axiom that paranaesis is the earlier form, however, cannot be taken as a given. In the discussion of James 5:12, we have already examined the motivation for paring down the tradition; therefore, we cannot assume that James did not drop material which we find in Matthew. Moreover, as Rainer Riesner has demonstrated, antithetic parallelism is found in 80% of synoptic units of Jesus-sayings; and antithetic parallelism, since it is disproportionately well attested, is to be classed as a typical trait of Jesus' style of thought and speech.²⁶

The question at hand is whether this particular antithesis is the creation of Matthew. The proponents of Matthean composition of Matt 5:33-37 focus upon the interest

²⁵ Gerhard Dautzenberg, "Ist das Schwurverbot Mt 5,33-37 Jak 5,12 ein Beispiel für die Torakritik Jesus?" BZ 25 (1981): 61.

²⁶ Rainer Riesner, "Der Ursprung der Jesus - Überlieferung," in TZ 38 (1982): 507. Cf. also Jeremias, The Proclamation of Jesus, 14, who observes that antithetic parallelism occurs "well over a hundred times in the sayings of Jesus."

in legal concerns or the practicality of the content of the antithesis.²⁷ For example, F. W. Beare attributes to the Matthean redaction the concern to guide the actual business of living. Hence, the prohibition of oaths is a Matthean contribution.²⁸ We can draw a distinction, however, between Matthew's way of colouring Jesus' sayings so that they could be construed as the words of a rabbi and Jesus' own words about conduct as a charismatic prophet commenting on the ills of his time.²⁹

Paul Minear contends that Matt 5:33 is "a foil for Jesus' command for honesty" and that there is no logical reason why "the command for transparently honest speech should be contrasted with the law against perjury." He concludes that "the contrast between the command to perform oaths to God and the command to avoid oaths altogether is awkward and imperfect."³⁰ Minear's conclusion that the prohibition is a demand for honesty precedes his argument

²⁷ Cf. Jack Suggs, "The Antitheses as Redactional Products" in Georg Strecker Jesus Christus in Historie und Theologie (Tübingen: J. C. B. Mohr, 1975) 433; Joseph Klausner, Jesus of Nazareth (New York: MacMillan Co., 1925) 122 and 373-4.

²⁸ F. W. Beare, The Gospel According to Matthew (Oxford: Basil Blackwell, 1981) 146.

²⁹ For the distinction between rabbi and charismatic prophet see Martin Hengel, The Charismatic Leader and his Followers (New York: Crossroads, 1981) 42-50, 62-66, and E. P. Sanders, Jewish Law from Jesus to the Mishnah (London: SCM Press, 1990) 3.

³⁰ Paul Minear "Yes or No: The Demand for Honesty in the Early Church," NovT 13 (1971): 3.

against the authenticity of Matt 5:33. The prohibition does follow logically from the legal citations. The consequence of not swearing at all is a complete avoidance of the sin condemned by the biblical commandments.

We abandon the puzzle whether Matthew is responsible for the antithetical structure of the prohibition of swearing for a more productive line of inquiry. What is the significance of the prohibition in light of the context in which Matthew has placed the antithesis?

The context of the prohibition in the Sermon on the Mount throws an accent on the practice of avoiding oaths as part of the demands of the kingdom. Matthew places the prohibition, along with the five other antitheses, between the parentheses of Matt 5:20, "For I tell you, unless your righteousness exceeds that of the scribes and the Pharisees, you will never enter the Kingdom of Heaven," and the parable of the house built on the rock: "Everyone then who hears these words of mine and does them will be like a wise man who built his house upon a rock" (Matt 7:24). The aspects of the prohibition which sharpen its apodictic thrust are likely candidates for the title, "Matthean additions."

The absolute nature of the prohibition then becomes important. The presence of holōs within the prohibition serves to bolster its gravity. The single occurrence of holōs in Matt 5:34 -- it is to be found nowhere else in the gospels -- leads several exegetes to conclude that it is a

Matthean addition.³¹ This reason seems hardly sufficient to draw such a conclusion. The little word holōs carries a lot of weight in the scholarly discussion of the breadth of the prohibition. If the word turns a prohibition against superfluous oaths into a prohibition against all oaths, as Meier contends, the prohibition becomes a rejection of the Torah because the Torah prescribes oaths on occasion.³² If the legal texts cited in the original thesis of the pericope alluded to these oaths, Meier's conclusion would be incontestable. There is no indication, however, within the antithesis or the gospel that Matthew has these juridical oaths in mind. Within the context of the pericope, the absolute prohibition against oaths, as a response to the law against perjury and the law to pay one's oaths to God, is an extension of the intention of the biblical laws to honour God.

The scriptural references which accompany the examples of oaths to be avoided may also be Matthean additions. The use of scripture serves two purposes. First, it illustrates Jesus' command of the law and the prophets. Jesus' prohibition proceeds from his

³¹ Gerhard Dautzenburg, "Ist das Schwurverbot Mt 5,33-37 Jak 5,12 ein Beispiel für die Torahkritik Jesus?" 56; Dieter Zeller, Die weisheitlichen Mahnsprüche bei den Synoptikern (Würzburg: Echter Verlag, 1977) 124; Robert H. Gundry, Matthew: A Commentary on its Literary and Theological Art (Grand Rapids: William B. Eerdmans Publishing Company, 1982) 92.

³² Meier, Matthew, 53.

authoritative interpretation of scripture.³³ The citations serve a second purpose. They provide a refutation of the Pharisaic position that oaths which do not use appropriate oath-terms are not binding. The use of Isa 66:1 and Ps 48:2 affirm that casual expressions, such as by heaven or by earth, can be construed as allusions to God and are therefore binding.³⁴ The avoidance of such terms placed the righteousness of the follower of Jesus' word above the righteousness of the Pharisees who did not consider heaven and earth binding terms. Jesus' prohibition of oaths in Matthew proceeds from a polemical challenge to the Pharisaic teaching on oaths.

Given that the examples of heaven and earth also appear in James 5:12, it is all but certain that Matthew inherited these terms. The absence of the third and fourth examples leaves them open to discussion. In quest of a possible motivation for the addition of the oath "to the Jerusalem," M. D. Goulder has proposed that Matthew had Ps 24 in mind. According to the psalmist, one who swears falsely shall not "ascend the hill of the Lord" (Ps 24:3-4).³⁵ Matthew could have added the third example because of his concern for the Temple cult and the destruction of

³³ Bornkamm, "End-Expectation and Church in Matthew," 35.

³⁴ Cf. Robert A. Guelich, The Sermon on the Mount: A Foundation for Understanding (Waco: Word Books, 1982) 215.

³⁵ Goulder, Midrash and Lection in Matthew, 260.

the Temple. Dennis C. Duling has constructed an elaborate theory on the basis of the "socio-political meaning" of the phrase "Great King."³⁶ He contends that the "Great King" title alluded to an earthly king, in particular, Herod Agrippa II. He then suggests that Matt 5:35 is the product of early Christians who rejected this oath to their prosecutor.³⁷ L. E. Elliot Binns, however, provides James' motivation for dropping Jerusalem. He sees this deletion as evidence of James' desire "to minimize the prestige of that city."³⁸ The argument that oath-terms which are not treated as binding should be treated as binding is established by the first two examples; therefore, the addition or retention of Jerusalem adds nothing substantive to the pericope.

The fourth example requires more serious consideration than the oath to Jerusalem. From the perspective of form criticism, the example of "by one's head" is treated as an accretion. The grammatical independence of Matt 5:36 has been used as an argument for

³⁶ Dennis C. Duling, "'[Do Not Swear...] by Jerusalem because it is the city of the Great King' (Matt 5:35)," in JBL 110 (1991) 293.

³⁷ Ibid., 308-9.

³⁸ L. E. Elliot-Binns cited in E. M. Sidebottom, James, Jude and 2 Peters (London: Thomas Nelson and Sons, Ltd., 1967) 60 n.12.

the independent transmission of this part of the saying.³⁹ The introduction of a new argument in vs 36, however, requires an independent grammatical construction. Georg Strecker points to the popular use of this oath in Hellenistic society as proof that vs. 36 is a secondary accretion provided by a Hellenistic Christian community.⁴⁰ Against this conclusion, we cite examples of a similar oath, "by the life," which appears in the Rabbinic literature.⁴¹ Furthermore, since the influences of Hellenistic swearing were felt prior to Jesus' ministry, it is quite likely that "by one's head" was as common an oath as "by heaven" during the late Temple period. Robert Guelich offers a third argument that vs. 36 is an accretion. He proposes that Matthew added the fourth example in order to provide continuity between the prohibition and the sayings on anxiousness for tomorrow found latter in the sermon (Matt 6:25-34).⁴² The possibility of a relationship between the prohibition's intent and other Jesus-sayings, however, raises an argument for authenticity which we will address

³⁹ Stephenson H. Brooks, Matthew's Community: The Evidence of his Special Sayings Material (Scheffield: JSOT Press, 1987) 38-39.

⁴⁰ Georg Strecker, The Sermon on the Mount (Nashville: Abingdon Press, 1988) 79.

⁴¹ Cf. Lev. Rab. 34:16; b. Pesah. 113b; m. Sanh. 3:2; Mek. Pisha 16.

⁴² Guelich, The Sermon on the Mount: A Foundation for Understanding, 216.

later.

The presence of the recommendation that one say yes or no in both Matthew and James indicates that it was part of the original saying. Georg Strecker has put forward the argument that Matthew's version provides a substitute oath for his community's use.⁴³ As we have seen, Joachim Jeremias provides a satisfactory account of the form of the saying in Matthew. It is a semitic doubling in order to provide a sense of temporal distribution.⁴⁴ Moreover, the direction of redaction points to a sharpening of the prohibition rather than its softening.⁴⁵

If commentators agree on one thing, it is the assignment of Matt 5:37b to Matthean redaction.⁴⁶ James 5:12, however, contains reference to condemnation. This similarity between Matthew and James indicates that a stratum earlier than Matthew made explicit that the taking of oaths opposed God's will. Matthew may have altered the tradition by inserting into the pericope a catch-word ponēros which runs throughout the sermon. Evil will be

⁴³ Strecker, Der Weg der Gerechtigkeit, 133-4.

⁴⁴ Jeremias, The Proclamation of Jesus, 220.

⁴⁵ Robert Guelich, "The Antitheses of Matthew V.21-48: Traditional and/or Redactional?" NTS 22 (1976-77): 455-7.

⁴⁶ Ibid., 218; J. P. Meier, Law and History in Matthew: A Redactional Study of Mt. 5:17-48 (Rome: Biblical Institute Press, 1976) 155; Brooks, Matthew's Community: The Evidence of his Special Sayings Material, 38; Strecker, Der Weg der Gerechtigkeit, 133, and Gundry, Matthew: A Commentary on its Literary and Theological Art, 93.

uttered against the disciples on Jesus' account (Matt 5:11); the disciples are not to resist one who is evil (Matt 5:39); God "makes the sun rise on the evil and the good" (Matt 5:45); if one's eye is evil, then "the whole body will be full of darkness" (Matt 6:23). The word ponēros is repeated three more times before the end of the sermon (Matt 7:11,17,18). The key to Matthew's usage may be the use of tou ponērou in the Lord's prayer: "And lead us not into temptation but deliver us from evil" (Matt 6:13). The righteousness demanded in the sermon participates in the kingdom of God. Swearing then belongs to the evil from which the righteous are delivered.

Matthew may also have inherited a tradition which associated false swearing with evil. A tradition beginning in Zechariah portrays the curse of an oath as a scroll which "will enter...the house of him who swears falsely by my name: and it shall abide in his house and consume it, both timber and stones" (Zech 5:4). This image is developed by Ben Sirach:

A man who swears many oaths will be filled with iniquity and the scourge will not leave his house; if he offends, his sin remains on him, and if he disregards it, he sins doubly; if he has sworn needlessly, he will not be justified for his house will be filled with calamities (Ben Sirach 23:10-11).

In Ben Sirach, needless as well as false swearing brings a curse upon one's house. Both Matthew and James may be heirs to this tradition. In Ben Sirach, the oath-taker is not

justified. James' notion of condemnation also sets the consequences of swearing in the context of judgement. Matthew casts the sin-bearing oath into the standing contrast between God and evil, or the Evil One, that prevails in his gospel. God's will stands in opposition to Satan's reign. Matt 5:36b, the final example, prepares for the contrast between God's will and Satan's reign. On the side of God's will comes the appropriate response, obedience and reverence.⁴⁷ Oaths, as the assertion of one's will over God's will, belong on the side of Satan's reign.⁴⁸

Another possible source for Matthew's attribution of oaths to evil is a tradition found in 1 Enoch in which the knowledge of oaths is given to humans by the evil one (1 Enoch 69:15). Knowledge of oaths gives people power to evoke the fallen angels and to manipulate the cosmic order. If Matthew were aware of this tradition, he may have been equating the "more" of Matt 5:37b with the use of oaths in magical practices.

Another source for the claim that oaths are from evil may have been Jesus' own ministry, namely his concern for sins of the tongue. B. F. Meyer calls his condemnation of sins of the tongue a distinctive signature of his

⁴⁷ Cf. Jeremias, The Proclamation of Jesus, 179.

⁴⁸ Cf. Meier, Law and History in Matthew's Gospel, 155.

teaching.⁴⁹ Jesus condemns the use of excessive phrases in prayer (Matt 6:7) and use of demeaning insults as in "You fool" (Matt 5:22). The virtue of one's words depends upon the state of one's heart (Matt 12:34 and Luke 6:45); "for by your words you will be justified, and by your words you will be condemned" (Matt 12:37). "What comes out of a man is what defiles a man" (Mark 7:20) or "what comes out of the mouth proceeds from the heart, and this defiles a man" (Matt 15:18). If this is the antecedent for Matt 5:37b and James 5:12, whether or not Jesus attributed oaths to evil or the evil one is not significant. The point is that oaths belong in the same category with other sins of the tongue and are, therefore, to be avoided.

The combination of Jesus' prohibition and the assignment of the oath to evil places stress upon the absolute nature of the pronouncement. Either one does as Jesus says or one belongs with those who oppose God's will and stand on the side of evil. Doing Jesus' words fulfills the requirements of righteousness.

The antithesis on swearing serves a polemical purpose in Matthew. Matthew's efforts to contrast Jesus and his Jewish opponents promotes a tendency to cast Jesus' words in the form of commandments. Jesus' demand is absolute; it outstrips the claims on human behaviour imposed

⁴⁹ B. F. Meyer, The Aims of Jesus (London: SCM Press Ltd., 1979) 146.

by the Pharisaic or scribal interpretation of the law. The accent in Matthew is upon fulfilment of the intent of the Mosaic law and not its overthrow.

C. OTHER OATHS IN MATTHEW'S GOSPEL

Matthew's emphasis upon the absolute nature of the prohibition emerges in other contexts in the gospel. On this count, Matthew is consistent in his thought; the act of swearing an oath stands in opposition to Jesus' authority and God's will. Matt 23:16-22 and evidence of Matthean redaction in three incidents of swearing in the narrative sections of the gospel -- Herod's oath to his step-daughter, Peter's denial, and Caiaphas' adjuration -- demonstrate that Matthew consistently upheld the prohibition.

Numerous scholars contend that Matthew is inconsistent and hold up Matt 23:16-22 as an example of a flat contradiction to Matt 5:33-37.⁵⁰ Matthew's redactional efforts, however, tie traditional material (Matt 23:16-19) to the antithesis on swearing and demonstrate a conscious attempt to relate the two pericopes. The significant difference between Matt 23:16-22 and Matt 5:33-

⁵⁰ Minear, "Yes or No: The Demand for Honesty in the Early Church," 6. Gustaf Dalman, Die Worte Jesu (Darmstadt: Wissenschaftliche Buchgesellschaft, 1965) 206; Schlatter, Der Evangelist Matthäus, 678; Hummel, Die Auseinandersetzung zwischen Kirche und Judentum im Matthäusevangelium, 79; McNeile, The Gospel According to St. Matthew, 334; Brooks, Matthew's Community: The Evidence of his Special Sayings Material, 69.

37 is that the first upholds the principle that all oaths refer to God and are binding, and the second enunciates the same principle but sets it aside. Given the context of the woe in Matthew's gospel, however, the conflict between the woe and the antithesis does not exist. In the antithesis, Jesus considers all oaths which he cites to be binding. It is the utterance of the oaths which he prohibits, not the fulfilment of the oaths once uttered. For Matthew, the prohibition is a command for the church, an example of better righteousness. The woe addresses the Pharisaic or scribal belief that not all uttered oaths are binding. Because the woe is an accusation against the Pharisaic teaching, it stops short of the prohibition and examines only the logic of the Pharisaic position.⁵¹ The conclusion of this examination is the condemnation of the Pharisees, not an affirmation of their teaching. The extrapolation from this criticism to the conclusion that Matt 23:16-22 condones the taking of oaths is unwarranted.⁵²

The evidence of redactional activity in Matthew 23:16-22 indicates that Matthew was conscious of the similarity in themes between the woe-oracle on swearing and the prohibition against swearing, and he used this

⁵¹ Cf. Barth, "Matthew's Understanding of the Law," 152.

⁵² Cf. David E. Garland, The Intention of Matthew 23 (Leiden: E.J. Brill, 1979) 132; Meier, Matthew, 269; Gundry, Matthew: A Commentary on its Literary and Theological Art, 403.

similarity to heighten the polemical tone of the woe.

The chiasmic structure of Matt 23:16-19 attests to its integrity as a unit. The elements of the verses -- altar, gift of the altar, temple, and gold of the temple, reflect a period prior to the destruction of the temple.⁵³ We can conclude that Matthew had inherited a tradition concerning Jesus' criticism of a Pharisaic legal distinction. On the basis of what we know of Pharisaic tradition, the original chiasm probably treated the distinction between valid and invalid vow-terms. Matthew may have substituted swearing for vowing because of the close resemblance to the logic of Matt 5:34b-35 regarding the binding power of rejected oath-terms.

Matt 23:20-23 introduces a second argument in opposition to the Pharisaic position which makes the association between the woe and the antithesis explicit. The argument proceeds from the inclusive meaning of the oath-terms, altar and temple, to the association of Temple with God's dwelling place. The argument then parallels that found in Matt 5:35b: the Temple as God's dwelling place like Jerusalem as God's city is a substitute for God's name. Once Matthew establishes the parallel line of argument between the woe and the antithesis in vss. 20-21, he jumps to the language of Matt 5:33b and leaves the terms of the

⁵³ Beare, The Gospel According to Matthew, 454, believes that interest in the terms of the woe would have been antiquarian even to Matthew's contemporaries.

original tradition of vss. 16-19 behind. He inserts the argument "he who swears by heaven, swears by the throne of God and by him who sits upon it" (Matt 23:22). Matthew could not make the association between the woe and the antithesis more explicit unless he had invoked the prohibition itself. Matthew's redactional motive for this association is clear. The condemnation associated with swearing in Matt 5:33-37 sharpens his polemical focus.

The entire series of woe-oracles is not only a polemic against the scribes and the Pharisees but a description of the status of Israel. Matthew concludes chapter 23 with a prediction of the judgement of this generation for their acts of violence against God's prophets, wisemen, and scribes (Matt 23:34-36). The woe-oracles indict the scribes and the Pharisees, for their role in the rejection of Jesus by the Jews (Matt 23:31).⁵⁴ The prophecy of judgement (Matt 23:35) and the lament over war-ravaged Jerusalem (Matt 23:38) pronounce their conviction for the crime. Matthew is clearly writing after the destruction of the temple and Jerusalem (Matt 23:34), and he draws the following conclusion from history: as a

⁵⁴ Cf. Hummel, Die Auseinandersetzung zwischen Kirche und Judentum im Matthäusevangelium, 87-89; Lloyd Gaston, "The Messiah of Israel as Teacher of the Gentiles: The Setting of Matthew's Christology," Int 29 (1975): 29-30; Garland, The Intention of Matthew 23, 34, who argues that the Pharisees are a theological construct for "that generation." For the motif of rejection by this generation see Matt 11:29; 12:23; 12:24, 34, 38-42. For the motif of condemnation see Matt 21:19. 32, 41, 43; 22:7; 30:31.

consequence of Israel's rejection of Jesus, God has rejected Israel.⁵⁵

Matthew tailors three stories to fit the motif of the offensiveness of oaths. In the Marcan account of the Baptist's death, Herod swears (ōmosen) to Herodias' daughter that he will give her whatever she asks as a reward for dancing before him (Mark 6:23). She demands the head of John the baptist, and Herod, who feels bound by the oaths (tous horkous) which he has sworn before his guests, complies (Mark 6:25-26). Luke drops the oath all together (Luke 9:7-9), but Matthew retains the story and makes one slight, but pointed, alteration. He replaces ōmosen with meth' horkou hōmologēsen "he promised with an oath," so that the word oath appears twice, once in verse 7 and again in verse 9 (Matt 14:7). The language of Matt 5:33 is evoked.⁵⁶

The subtle emphasis upon the word horkos in Matt 14:7-9 might pass for insignificant if not for two other occasions where Matthew inserts the word or one of its cognates. In his reworking of the Marcan account of Peter's denial of Jesus, Matthew uses oaths to build dramatic tension. Mark's Peter stiffens his protest by cursing himself (anathematizein) and swearing (omnynai) only on the

⁵⁵ Cf. Garland, The Intention of Matthew 23, 32.

⁵⁶ Cf. Guelich, The Sermon on the Mount: A Foundation for Understanding, 288.

third denial (Mark 14:71). Luke drops both the oath and the curse (Luke 22:60). In Matthew, Peter begins with a simple denial (Matt 26:70), but on the second count, he adds an oath (ērnēsato meta horkou) (Matt 26:72) and thereby builds to self-cursing (katathematizei) and swearing (omnye) on his last assertion (Matt 26:74).

Note that while the scene reads like a play in both Mark and Matthew's versions, the oaths and curses are set in indirect speech. The writers entered their disapproval by alluding to and not reiterating Peter's sin of speech. Matthew, more than Mark, stressed this violation in light of his inclusion of the antithesis against swearing.⁵⁷

Peter's denial accented by his oaths acts as a foil for Jesus' refusal to swear earlier in the chapter. In Jesus' trial before Caiaphas, Mark contains no adjuration (Mark 14:53-65), but in Matthew Caiaphas adjures (exorkizō) Jesus, "by the living god, tell us if you are the Christ, the Son of God" (Matt 26:63). Jesus does not provide the response required to render an adjuration an oath. Instead of "Amen," he replies "you have said so" (Matt 26:64). The adjuration, therefore, remains incomplete.⁵⁸

Some scholars have pointed to this adjuration as

⁵⁷ Ibid., 530; cf. also Barth, "Matthew's Understanding of the Law," 145.

⁵⁸ See Richard S. McConnell, Law and Prophecy in Matthew's Gospel (Basil: Friedrich Reinhardt Kommissions Verlag, 1964) 64; Johannes Schneider, "omnyō," TWNT 5 (1967): 465.

evidence against the authenticity of the prohibition.⁵⁹ Matthew, however, does not contradict himself. The adjuration is uttered by one of Jesus' opponents. The trial scene shows signs of redaction. Matthew may have added the adjuration to make the trial conform more closely to what he would have anticipated, or he intended first to cast aspersions on the High Priest by having him violate Jesus' commandment of Matt 5:34a and then to exalt Jesus who fulfills his own prohibition by eschewing the oath.

Whenever an oath appears on someone's lips in Matthew's gospel, it is a red flag warning the reader that the speaker's words are an offense against God's will. Jesus' prohibition against oaths is treated as a commandment. Rather than contradicting himself, Matthew consistently upholds this commandment throughout his gospel and makes editorial changes to traditions which he has inherited so that the lesson which the prohibition teaches is repeated. Oaths are from evil. They are found on the lips both of those who persecute Jesus, the scribes, Pharisees, Herod, and Caiaphas, and one who denies him,

⁵⁹ Otto Bauernfeind, "Der Eid in der Sicht des neuen Testamentes" in H. Bethke, Eid Gewissen Treupflicht (Frankfurt: Stimme Verlag, 1965) 93; Hermann L. Strack and Paul Billerbeck, Kommentar zum neuen Testament, vol. 1 (Munich: C. H. Beck'sche, 1906) 165; J. G. Jameson, The Gospel of the Kingdom in the Sermon on the Mount (London: William Hodge and Company Limited, 1981) 26; Georg Stählin, "Zum Gebrauch von Beteuerungsformeln in neuen Testament," NovT 5 (1962): 124; Schniewind, Das Evangelium nach Matthäus, 118.

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⁵⁹ Otto Bauernfeind, "Der Eid in der Sicht des neuen Testaments" in H. Bethke, Eid Gewissen Treupflicht (Frankfurt: Stimme Verlag, 1965) 93; Hermann L. Strack and Paul Billerbeck, Kommentar zum neuen Testament, vol. 1 (Munich: C. H. Beck'sche, 1906) 165; J. G. Jameson, The Gospel of the Kingdom in the Sermon on the Mount (London: William Hodge and Company Limited, 1981) 26; Georg Stählin, "Zum Gebrauch von Beteuerungsformeln in neuen Testament," NovT 5 (1962): 124; Schniewind, Das Evangelium nach Matthäus, 118.

Peter.

The presence of these statements about oaths only in Matthew raises the question why Matthew preserves the tradition. The prohibition of swearing does fit into Matthew's redactional motives; otherwise he, like the other gospel-writers, would not have included it. The controversies with the Pharisees and the confrontation with Judaism are prevalent throughout the gospel, and the oath issue is part of the criticism against the Pharisees' claim to authority pitted against the church's claim to authority. Consequently, the inclusion of a discussion of oath-terms in the woe-oracles emphasizes the pericope's continuing importance for the Matthean community which defines itself against Judaism, and in particular against the heirs to Pharisaic and scribal Judaism. The problem of oath and vow-taking, however, did not begin with the church. Its roots lie within Jesus' ministry. The language and issues of this particular pericope indicate its origin prior to the conflict of Matthew's church. The dispute, rather than the terms of the dispute, accounts for its adoption into the Matthean controversy.

D. MATT 15:1-20

Matthean redaction of Mark 7:1-23 points to his

theme of "better righteousness."⁶⁰ If we presuppose that Matthew possessed the same version of Mark 7:1-23 that we possess, then Matthew appears to have streamlined and rearranged Mark's version in order to highlight the contrast between Pharisaic righteousness, represented by the tradition of handwashing, and the righteousness of the heart.

Matthew begins by removing the clutter of Mark's explanation of handwashing as a Jewish custom. His audience, perhaps, was familiar with the practice of handwashing and knew that it was not practiced by all Jews.⁶¹ The polemical focus, nevertheless, is sharpened. Mark's question, "Why do they [the disciples] not live (peripatousin) according to the traditions of the elders?" (Mark 7:5) becomes an accusation, "Why do you transgress (parabainousin) the traditions of the elders?" (Matt 15:2). The confrontation is between Pharisaic tradition and the disciples, not between Judaism and the church.

Matthew's rearrangement of the countercharges strengthens Jesus' attack against the Pharisaic reproach of himself and the disciples. First, he meets the charge with the countercharge "Why do you transgress the commandment of God for the sake of your tradition?" (Matt 15:3). Next

⁶⁰ Cf. Klaus Berger, Die Gesetzesauslegung Jesu (Neukirchen-Vluyn: Neukirchner Verlag, 1972) 502.

⁶¹ Cf. Meier, Matthew, 167.

Matthew substitutes "for God commanded" (Matt 15:4) for Mark's "Moses said". Matthew drops the Hebrew gorbān from the example of the Pharisees violation of the commandment to honour one's parents and not to curse them. His concern is not with the particulars of the son's vow -- the Hebrew and Mark's gloss are a distraction -- the contrast is between the Pharisees' tradition and God's law. The hostility of Matthew's Pharisees calls forth the vehemence of Jesus' response.

By advancing the gorbān unit to first place, Matthew gives the charge of hypocrisy added weight. Unlike the Marcan accusation, Matthew's follows logically from the gorbān unit. In the Marcan version, the charge of hypocrisy does not quite fit the occasion of handwashing, since handwashing does not conflict with any command of God.⁶² In Matthew, the doctrines of men described in the Isaiah quotation refer to the upholding of the gorbān vow rather than handwashing. The Pharisees demonstrate their hypocrisy by setting aside the laws against honouring parents and speaking evil of them while claiming obedience to God.

In the third countercharge, the defilement logion, Matthew again drops Mark's editorial comments. The declaration that all foods are clean is absent in the private explanation to the disciples, and the pericope closes with a

⁶² Johannes Horst, "Gedanken und Bemerkungen; Die Worte Jesus über die kultische Reinheit und ihre Verarbeitung in den evangelischen Berichten," TSK 87 (1914): 434.

clear statement that eating with unwashed hands does not defile. Mark's intention is to point out the invalidity of the Levitical laws of purity.⁶³ Matthew rejects only the validity of the Pharisaic tradition.⁶⁴

It is possible that Matthew's redaction stands closer to the original controversy than Mark's version.⁶⁵ Matthew removes the church's interpretation of the logion on defilement, so that the controversy is not a rejection of Levitical purity. He demonstrates how the gorbān unit belongs to the charge about handwashing. The cut and paste appearance of Mark's version is replaced by a logically consistent unity which may indicate that Mark's disjointed version is the result of his own redaction. The charge and the three countercharges could have been transmitted as a unit.

E. CONCLUSIONS

In Matthew's effort to cast Jesus in the role of interpreter of the law par excellence, the adversary of and

⁶³ Georg Kümmel, "Jesus und der jüdische Traditionsgeanke," ZNW 33 (1934): 124; Barth, "Matthew's Understanding of the Law," 86-87.

⁶⁴ Hans Hübner, Das Gesetz in der synoptischen Tradition (Witten: Luther Verlag, 1973) 177, points to Matthew's use of ou in Matt 15:11 rather than ouden (Mark 7:15) as a weakening of the logion and a confirmation of Matthew's intent to limit it to Pharisaic tradition.

⁶⁵ Ibid., 178, 181, Hübner argues that Matt 15 is a Repristinierung and a Rejudaisierung of the Marcan pericope. Cf. also Berger, Die Gesetzesauslegung Jesu, 498.

victor over the Pharisees, the gospel writer sets out to heighten the tension between the Pharisees and Jesus. The prohibition of swearing becomes a condemnation of Pharisaic legal distinctions. These distinctions become the subject of attack a second time in the woe-oracles. The Pharisaic question why the disciples do not observe their tradition becomes a confrontation between God's commands and the Pharisaic precepts. In the process, Jesus' words take on the form of legal pronouncements which provide a foil for those of his rivals. Complete avoidance of oaths becomes a prescription for fulfilling Jesus' "better righteousness." Matthew seizes upon opportunities which he finds in inherited material to draw attention to oath-taking. Matthew does all of the above, but he also inherits some of this material. For Matthew, the controversy often seems more important than the particulars of the controversy. For the particular issues, he may have relied upon tradition. The question remains before us, can the prohibition against oaths find a logical place in Jesus' ministry, and if so, what would the thrust of that prohibition have been?

CHAPTER EIGHT

JESUS

Did Jesus utter the prohibition against swearing? And if so, what was his intention? In order to answer these questions, we must reconstruct the context in which Jesus could have uttered such a prohibition. Two possibilities present themselves. Jesus began with a concern for honesty. The prohibition against oaths was then a secondary concern. If all speech is honest, then oaths are redundant. The alternative is to postulate that Jesus actually questioned the swearing practices of his contemporaries, that he found oaths objectionable for more than the one reason suggested by the first possibility. When we place Jesus in the context of his Jewish milieu and then examine the prohibition in the context of his ministry, the latter possibility becomes the most probable.

A. PAUL MINEAR'S THESIS

The case that Jesus' intent was to demand honesty has been laid out most effectively by Paul Minear in his article "Yes or No: The Demand for Honesty in the Early Church." Minear begins by examining the assorted versions of the Jesus saying on oaths, and he concludes that the saying reported in Justin Martyr's *Apology* (1, 16, 5)

provides the nucleus to which accretions, in particular the illustrations, were added.¹ The Martyr's version is very similar to the language of Matthew with the exception of the "let your yes be yes..." which agrees with James' form:²

Concerning the command not to swear at all, but always to speak the truth, he commanded as follows: "Don't swear at all, but let your yes be yes and your no, no. Anything more than this comes from the Evil One. (Justin, Apol. 1.16.5)

Nevertheless, Minear rejects E. P. Sanders' position that Justin used Matthew but dropped Matthew's illustrations because he "was interested only in the principle."³

According to Minear, the rationale of the illustrations -- first that evasion of divine sanctions is impossible and secondly that swearing is futile since one has no power over one's fate -- are alien to the thought of Matt 5:37, "Let your yes be yes and your no, no."⁴ He concludes that the illustrations are secondary. Moreover, the addition of the opening antithesis took place when Matthew placed the core

¹ Paul Minear, "Yes or No: The Demand for Honesty in the Early Church," NovT 13 (1971): 7.

² A. J. Bellinzoni, The Sayings of Jesus in the Writings of Justin Martyr (Leiden: E. J. Brill, 1967) 66, believes that Apol. 1.16.5 was based on a text of Matt 5:33-37 that had either been harmonized with James 5:12 or with the paraenetic tradition that underlies James 5:12.

³ E. P. Sanders, The Tendencies of the Synoptic Tradition (Cambridge: Cambridge University Press, 1969) 57, 67.

⁴ Minear, "Yes or No: The Demand for Honesty in the Early Church," 2.

saying in the context of the other antitheses.⁵ As we observed in the chapter on Matthean redaction, Minear finds no logical relation between the laws and the prohibition. Minear concludes that the objective of the additions was an attack against swearing which shifted the focus of the positive command for honest speech to the secondary and negative, "swear not at all."⁶

Minear discerns four stages of redaction. The nucleus was the positive command for transparently honest speech with the ban on oaths included as a secondary concern. At stage one, the examples of oaths which illustrate the negative command were added (Matt 34b, 35). At stage two, the fourth illustration appeared in the tradition (Matt 5:36). In the third stage, the antithetical structure was added and the saying was fused with the prohibition of anger and lust. Matthew probably found the three antitheses in the M material and, at stage four, he added them to the other antitheses "to serve as a far-reaching definition of the ethic of the church as opposed to the ethic of the synagogue."⁷

Minear supports his claim that the demand for honest speech is the core or centre of the saying by finding parallels in Matt 12:24-37, 15:18-20, Eph 4:25, 4:30, and 2

⁵ Ibid., 2.

⁶ Ibid., 3.

⁷ Ibid., 3.

Cor 1:17.⁸ The association of lying with the evil one is also found in Matt 8:19, 1 John 3:12, Acts 5:3, Eph 4:27, 5:6, and Rev 12:9. He argues that "the polemic which induced the addition of Matt 5:33" should be treated with suspicion because of the ample evidence that shows that rabbis frequently spoke about the need for truth and integrity in speech.⁹ The original saying is "a sign of transformation." "The emergence of a new community in which both teachers and members accept and obey the demands of absolute trustworthiness in speech" marks "an eschatological transformation of the world."¹⁰

B. THE CONTEMPORARY SITUATION

The problem with Minear's argument is that he sees the polemic of Matt 5:33 and 34b-36 as an attack against a lack of concern for truthfulness on the part of the rabbis. Given that the rabbis demanded truthfulness, such a polemic would have been unnecessary. But truthfulness was not at the heart of the controversy over oaths. The question which our Second Temple sources address is what constitutes a valid and binding oath. A reconstruction of the contemporary situation reveals that Jesus' words would have

⁸ Ibid., 9-11.

⁹ Ibid., 11-12, Minear cites Ruth. Rab. 7:6; B. Mes. 4:2; b. B. Mes. 49a; b. Pesah. 113b; j. Ber. 1:8; Sipre Num. Naso 2; Pesiq. R. 108a.

¹⁰ Ibid., 13.

addressed a concern other than truthfulness.

The problem of excess swearing in the late Second Temple has been delineated in Chapter Two. People had become accustomed to uttering oaths with greater frequency and on a wider range of occasions than spiritual leaders deemed necessary. The central concern for those who attempted to legislate oaths or to recommend appropriate oath formulae was reverence for God's name. The association of God's name with a false oath was not only a lie which damaged human relationships by making one person suspicious of another's integrity. The false oath was a profanation of God's name: it was blasphemy. A false oath profaned God's name either by associating it with a lie or by abrogating a promise, in particular the covenant between God and Israel. Profanation of God's name also included use of God's name in superfluous oaths. Ben Sirach, for example, indicates that unnecessary oaths also fall into the category of blasphemy (Sir 23:9-11).

The solutions to the problem of oath-taking found in the literature vary. There was no consensus of opinion. The Pharisees defined valid oaths as those which explicitly mentioned God's name; therefore, oaths by terms such as heaven or earth were declarative language but not binding oaths. The Qumran covenanters avoided invoking God's name and allowed themselves only one oath-formula, "by the curses of the covenant." The violation of the oath by the curses

of the covenant was a less serious offence than blasphemy. Philo also objected to invocation of God's name, so he recommended alternatives, such as earth and heaven, the oaths which the Pharisees rejected. On the basis of his understanding of physics, Philo argued that these terms represented the divine quality of changelessness. But these terms were to be used for oaths which one was compelled by law to swear. Better still, according to Philo, one should avoid swearing in general.

C. JESUS' RESPONSE

In the Jewish milieu of the Second Temple stood Jesus calling for repentance and the coming of the kingdom. One of the problems under critique by his contemporaries was the practice of swearing. The issue was in the air. Jesus did not create a controversy; he found it, and he approached it from the perspective of his proclamation. In this respect, Minear is correct: the focus was a description of the eschatological community. But that community was defined by two relationships: one between people and the other between people and God. The issue of oaths belonged to the second relationship. Jesus addressed the problem with a simple solution: if you do not want to offend God, "Do not swear at all." Included in this prohibition were both false and true oaths.

Jesus' words, placed in the context of his Jewish

milieu, raise a number of questions. First, as we have seen Philo, who recommended not swearing, and the Qumran Covenanters, who avoided oaths, made allowance for the biblical oaths of deposit and testimony. Was Jesus' prohibition limited by the same constraints, and if not, did the prohibition constitute a rejection of the Torah? Secondly, if Jesus expressed the same concern for sanctification of the name as his contemporaries, there should be indications of this in other contexts in the Jesus material. What proof do we have that Jesus shared this concern? Thirdly, did Jesus mean one should avoid truthful oaths because they might inadvertently lead to false oaths or was he saying that truthful oaths as well as false oaths find no place in the kingdom of heaven? And fourthly, are there any other points of convergence between the prohibition and other teachings credited to the historical Jesus?

1. The Torah

Joseph Klausner makes the argument that Jesus' rejection of oaths is an "exaggerated Judaism; it is the ruin of national culture, the national state, and national life." He asks, without oaths "how could the state endure?" He concludes that the rejection of oaths equals the rejection of Torah, and therefore he claims that Jesus'

prohibition is impractical.¹¹ But the question whether Jesus rejected the Torah presupposes that Jesus shared an understanding of the law with the Pharisees. Stephen Westerholm has laid this presupposition to rest. The Pharisees viewed the scriptural law as statutes to which they added their extra-biblical laws. Westerholm holds out three proofs that Jesus did not share this view. First, Jesus assigned little weight to commandments of tithing and ritual purity. A statutory view of the law required that all laws were equally binding. Secondly, Jesus did not feel compelled to fulfil the letter of the law. The Pharisees, in contrast, introduced legislation or resorted to legal fiction in order to resolve inevitable conflicts that arose when one believed that the letter of the law must be fulfilled. And thirdly, Jesus condemned categorically activities, such as divorce and swearing, which he held to be immoral. Given that the law allowed these activities, those who held a statutory view accommodated divorce and swearing.¹²

We can approach the question did Jesus reject the Torah from a second direction that again leads to a negative response. The occasion to demand or take an oath presupposed distrust. Legally prescribed oaths are rare in

¹¹ Joseph Klausner, Jesus of Nazareth (New York: Macmillan Co., 1925) 373-74.

¹² Stephen Westerholm, Jesus and Scribal Authority (Lund: CKW Gleerup, 1978) 128-29.

the Hebrew Bible. An oath was required only in one of the following situations: either a woman was suspected of adultery, but there were no witnesses, or a man was suspected of not faithfully disposing of a trust, or one was adjured to come forth and give evidence if one was a witness to a transgression. In the last case, one must presuppose that the witness had failed to come forth voluntarily. By way of contrast, Jesus demanded uprightness (Matt 5:20), abstinence from the condemnation of others (Matt 7:1), and reconciliation with one's accuser before a dispute could come to trial (Matt 5:25 par.). With a view toward the kingdom of God, Jesus certainly did not envision situations where an oath was warranted.

Before we leave the topic of Torah piety, we shall explore a third orientation to the question. Jesus' proclamation hinges upon an earnest criticism of people's orientation toward God. Implicit to his call is the belief that neither the Torah nor tradition is a sufficient basis upon which one can base one's life. While the antithetical structure of the Matthean version of the prohibition may be secondary, its implication is in keeping with Jesus' ministry. It emphasizes that people's prior understanding is false and what they are doing is insufficient. Some argue that Jesus radicalizes the Torah. Radicalization implies an alteration or change in the law, but Jesus' objective is not to change the law but to bring about an

alteration in people's relationship to God. The thrust of Jesus' words is to usher in the kingdom of God, a kingdom which calls for radical circumspection of word and deed. The reign of God demands a response from people; they "accept" it or "inherit" it, but they must be "fitted" for it.¹³ Jesus is laying out the conditions for the eschaton.

2. The Sanctification of the Name

One of the conditions for participating in the eschaton is the hallowing of God's name. In Jesus' view, submitting to the kingdom involves a renewal or reinvigoration of reverence for God that comprehends God's name. The introduction to the Lord's prayer is a direct reference to this understanding: "Let your name be hallowed! Let your reign come" (Matt 6:9 par.). If Joachim Jeremias is correct, Jesus inherited this petition from the Jewish liturgy, the Kaddish which is an eschatological prayer:

Exalted and hallowed be his great name
in the world which he created according to his
will.
May he rule his kingdom
in your lifetime and in your days and in the
lifetime of the whole house of Israel, speedily
and soon. And to this say, amen.¹⁴

¹³ See B. F. Meyer, The Aims of Jesus (London: SCM Press Ltd., 1979) 131. Meyer examines the verbs which Jesus uses when describing the kingdom.

¹⁴ Translation in Joachim Jeremias, The Lord's Prayer, English translation by John Reumann (Philadelphia: Fortress Press, 1964) 21.

The Kaddish echoes the expectation of the Book of Daniel that God will establish a kingdom that shall endure (Dan 2:44). The one who offers the prayer expresses the desire that he or she will live to see salvation.¹⁵ The Kaddish and the Lord's Prayer share an understanding of a second aspect of this future kingdom. In the present age, that in which Satan rules, God's name does not receive sufficient reverence. In the age to come, his name will be hallowed.¹⁶

The scriptural basis for the view that God's name has been profaned in the present age and will be restored in the future is found in Ezek 36:23. God decrees, "I will vindicate the holiness of my great name, which has been profaned among the nations, and which you have profaned among them; and the nations will know that I am the Lord ... when through you I vindicate my holiness before them."¹⁷ The profanation of God's name occurred when Israel violated their sworn covenant (Ezek 16:59), but God for the sake of his own name will not violate his oath to the Israelites

¹⁵ Cf. Baruch Graubard, "The Kaddish Prayer," in Jacob P. Petuchowski and Michael Brocke The Lord's Prayer and Jewish Liturgy (New York: The Seabury Press, 1978) 63.

¹⁶ Joachim Jeremias, New Testament Theology: The Proclamation of Jesus (New York: Charles Scribner's Sons, 1971) 198.

¹⁷ Cf. Alfons Deissler, "The Spirit of the Lord's Prayer in the Faith and Worship of the Old Testament," in The Lord's Prayer and Jewish Liturgy, 7, who draws a connection between Ezekiel's prophecy and the opening petition of the Lord's Prayer.

(Ezek 20:14-15). According to Isa 29:23, when God restores Israel the house of Jacob will sanctify God's name. Both Isaiah and the Lord's Prayer indicate that the human response to God's restoration of Israel, a perfect order in which the blind shall see and the deaf shall hear (Isa 29:18; Matt 11:5; Luke 7:22), is the hallowing of God's name.¹⁸ The author of Jubilees' view of his own age also contains the notion that the profanation of God's name is a sign of the corruption of the times soon to be followed by God's eschatological judgement (Jub 23:21).¹⁹ If Jesus' career anticipated a restoration of the first age, an event prophesied by Ezekiel as well as Deutero-Isaiah, then it is possible that Jesus inherited the understanding that God's name had been profaned through the violation of the sworn covenant and the expectation that God's name would be hallowed with the restoration of Israel. Jesus' concern for sanctification of God's name and the avoidance of profanation of that name through false oaths was therefore grounded in the expectation of the coming kingdom.

Jesus' reverence for the name is born out by his propensity to use the divine passive. According to Joachim

¹⁸ Ibid., 7; cf. Meyer, The Aims of Jesus, 140, who connects Jesus' use of Isaian language -- the paradise images and motifs (e.g., Matt 11:5-6) -- with Ezekiel and Deutero-Isaiah's correlation of "the expected time of salvation with the paradise of the first age."

¹⁹ Cf. G. L. Dauvenport, The Eschatology of the Book of Jubilees (Leiden: E. J. Brill, 1971) 32.

terms ultimately refer to God. If one should not swear by terms which indirectly refer to God, how much more should one avoid oaths which explicitly refer to God?

The rejection of oaths on the grounds that they invoke God's name finds a place in Jesus' concern for the sanctification of the name. The violation of an oath profanes God's name. The simplest means of avoiding violation of an oath is to avoid the oath in the first place.

3. The Problem of Truthful Oaths

A second theological consideration is at work in the prohibition. This consideration is reflected by the fourth example, the oath by one's head. According to this example, an oath encroaches upon the divine domain. It presupposes that one can influence God's actions by invoking a self-curse, and it assumes that one can have the foresight or insight necessary to be certain that one's oath is true. The assertion that this is Jesus' concern can be supported by three arguments. The image of the hair on one's head was an expression that Jesus used on other occasions. A coherence of thought can be established between Matt 5:36 and Matt 10:30 par.

Besides the use of head and hair in Matt 5:36, the phrase, hair of your head, appears twice in the sayings of Jesus. We find it in Matt 10:30 (par Luke 12:7), "Why, even

the hairs of your head are numbered," and in Luke 21:18, "But not a hair of your head will perish." Luke uses the latter saying a second time in his Acts of the Apostles. Paul utters the line in a prophecy that no one on board a foundering ship will die (Acts 27:22).²³ Both sayings are at odds with their gospel setting.²⁴ This dissonance suggests that Matt 10:30 and Luke 21:18 are authentic Jesus-sayings. We have attestations for the use of the phrase "hairs of the head" in three layers of the tradition, in logia common to Matthew and Luke and in both Matthew's and Luke's special sayings material.

Luke 21:18 appears in the context of a description of the persecution of the disciples. A comparison with its Marcan parallel indicates that the line "But not a hair of your head will perish" has been inserted into the passage. The preceding verses describe floggings in synagogues and the warning that "some of you [the disciples] they will put to death" (Luke 21:16). The description of the persecution jibes with the experience of the early community. The sudden interjection of Luke 21:18, a saying that expects the end of this eschatological age prior to the death of its

²³ Philip Francis Esler, Community and Gospel in Luke Acts (Cambridge: Cambridge University Press, 1987) 104, suggests that Luke's use of the saying is pointed. Paul invokes these words just after he encourages all on board to share in a meal. The survival of the shipwreck becomes a symbol of universal salvation.

²⁴ Cf. I. Howard Marshall, The Gospel of Luke (Exeter: The Paternoster Press, 1978) 769.

audience, is jarring. Luke seems to have added an authentic Jesus-saying into an apologetic for the suffering of the early Christian community.

Matt 10:30 par. reflects redactional treatment comparable to Luke 21:18. The context is the commission and instruction of the disciples. The saying "the hairs of your head are all numbered" has been inserted between an illustration regarding God's care of sparrows and the conclusion that the disciples are more valuable than many sparrows.²⁵ The idea that hairs are numbered fits neither the imagery nor the flow of thought.

The correspondence between Matt 5:36 and Matt 10:30 par. is not limited to a similarity of expression. The same underlying theological consideration is at work in both sayings. Dale C. Allison in his article "The Hairs of your Head are all Numbered" provides an important insight into the meaning of Matt 10:30 par.²⁶ Commentators usually take the saying to be an assertion of "the watchfulness of the father's care."²⁷ Allison points out that the saying

²⁵ T. W. Manson, The Teaching of Jesus: Studies of its Form and Content (Cambridge: Cambridge at the University Press, 1963) 108.

²⁶ Dale C. Allison, "The Hairs of your Head are All Numbered," ExpTim 101 (1990): 334-36.

²⁷ A. H. McNeile, The Gospel according to Saint Matthew (New York: St. Martin's Press, 1965) 145; cf. also John P. Meier, Matthew (New York: Michael Glazier, 1981) 112; Manson, The Sayings of Jesus, 108; Marshall, The Gospel of Luke, 514; J. Gnilka, Das Matthäusevangelium, vol. 1 (Freiburg: Herder, 1985) 388-89.

asserts that hairs are numbered but not that one will be rescued from tribulation.²⁸ He explores similar passages in the Hebrew Bible (1 Sam 14:45; Pss 40:12; 69:4) in which the image of hair is used like the image of the sands of the sea (cf. Gen 32:13; 41:49; 1 Kgs 4:20, 29; Jer 33:22; Hos 1:10; Rev 20:8) to "represent a number beyond one's ability to count."²⁹ He then points to the use of the divine passive in "the hairs of your head are all numbered" as an indication that for God, unlike for human beings, the task of counting hairs is not impossible.³⁰ He finds numerous example of the contrast between God's omniscience and human ignorance in the Jewish wisdom traditions (cf. Job 38:37; Sir 1:2; 4 Ezra 4:7; 1 Enoch 93:14; Apoc. Sedrach 8:7, 9; b. Sanh. 39a). He also observes that several of these passages (Job 38:37; 4 Ezra 4:7; Apoc. Sedrach 8:7,9) use this contrast in a discussion of why evil has no rational solution.³¹ Matt 10:30 par. may then be seen as "an attempt to offer intellectual consolation for the problem of evil rather than a promise of some kind of protection."³²

A similar claim about God's omniscience is made in

²⁸ Allison, "The Hairs of your Head are All Numbered," 334.

²⁹ Ibid., 334.

³⁰ Ibid., 335.

³¹ Ibid., 335.

³² Ibid., 335.

Matt 5:36. God knows all. One cannot account for everything that happens, nor can one anticipate God's plan for the future. The Lord's Prayer expresses this belief succinctly in the petition, "Thy will be done" (Matt 6:10). The invocation of God as witness to human plans is therefore inappropriate. The correspondence of thought in Matt 10:30 par. and Matt 5:36 as well as the common language suggest that the two sayings share a common source, the ministry of Jesus.

The last argument for the authenticity of Matt 5:36 is a stylistic consideration. Verse 36 expresses a sense of humour consonant with other sayings found in the gospels. In an analysis of Jesus' humour, Jakob Jonssen points out a number of witticisms based upon comical or absurd ideas.³³ Jesus asks, "Are grapes gathered from thorns, or figs from thistles?" (Matt 7:16). He ridicules Gentiles for thinking that the length of a prayer determines its value (Matt 6:7). He uses the comic image of someone placing a lamp under a bushel (Mark 4:2 par.) or feeding pearls to a swine (Matt 7:6) or giving children either stones or a serpent to eat (Matt 7:8-10). Jesus seems to have been wont to make wry observations.

In all three of the Jesus' sayings pertaining to oaths and vows, some element of humour is at play. In Matt

³³ Jakob Jonssen, Humour and Irony in the New Testament (Reykjavík: Bókaútgáfa Menningarsjóds, 1965) 169.

5:36, a serious major conclusion is drawn from an absurd and minor point, "do not swear by your head, for you cannot make one hair white or black." In Matt 23:16-19, Pharisaic logic is made ridiculous because it rejects the major for the minor, and again in Mark 7:11, the Pharisees are made to look absurd for holding the qorbān vow valid. The use of humour and irony are characteristics of the ipsissima vox Jesu.

D. COHERENCY

The coherence between the prohibition of swearing and both Jesus' concern for the sanctification of the name and his assertion that God's will rather than human will determines the course of events has already been established. The prohibition also finds a place in Jesus' condemnation of sins of the tongue. Matthew and James made this association, for the former ascribed oaths to the evil one (Matt 5:37b) and the latter claimed that swearing led to condemnation (James 5:12). Words against sinful speech appear in all three of the synoptic gospels. Evil thoughts often expressed in speech, such as slander, deceit, pride and foolishness, proceed from one's heart and defile one (Mark 7:20; Matt 15:18; Luke 6:45). The empty phrases in Gentile prayers are not merely superfluous; Jesus adds "Your father knows what you need before you ask him" (Matt 6:8). The empty words offend the omniscience of God. Angry words

place one under condemnation (Matt 5:22). Finally, one will be judged by one's words (Matt 12:37). An oath is twice offensive. It places human will over God's will and it invokes God's name in order to secure human asseverations and promises.

The tradition associating both false and true oaths with sin was not the invention of Jesus. Ben Sirach expressed this thought when he claimed that the home of one who swore needlessly would be filled with calamities (Sir 23:11). Many Second Temple works point to a belief that some oaths truthful or otherwise should not be uttered. The Qumran covenanters refrained from swearing by God's name (CD 15.1-3), and Philo considered oaths by God's name impious (Leg. 3.207; Mut. 18). Jesus, nevertheless, is the only one to ban oaths completely.

The argument for coherency meets one challenge. Some scholars contend the Jesus' use of the word ʔāmēn, as in Mark 8:12, constituted an oath.³⁴ The debate has advanced through the work of Klaus Berger and John

³⁴ Cf. Georg Stählin, "Zum Gebrauch von Beteuerungsformeln in neuen Testament," NovT 5 (1962): 122-29. Stählin calls this an elliptical self-curse. The use of ʔāmēn in this way is extrabiblical. Stählin compares this to God's oaths in Exod 14:20 or Isa 14:23, that is, Jesus acts and speaks as God. The inclusion of ʔāmēn then lends Jesus words a greater degree of sanctity. Hermann L. Strack and Paul Billerbeck, Kommentar zum neuen Testament, vol. 1 (Munich: C. H. Beck'sche, 1922) 242, cites Rabbinic usage of ʔāmēn as a Bekräftigung, Schwur, and Übernahme, 242; Gerald Friedlander, The Jewish Sources of the Sermon on the Mount (New York: KTAV, 1969) 60; Gustav Dalman, Jesus Jeshua (New York: KTAV, 1971) 30.

Strugnell. Berger argues that ʔāmēn is an abbreviation for an oath derived from the Semitic responsory usage and adopted by apocalyptically oriented Hellenistic Judaism.³⁵ Strugnell retorts that ʔāmēn is "an ordinary affirmatory reaction" and not an oath.³⁶ He points to a seventh-century BCE Hebrew ostrakon with ʔmn on it to throw doubt upon the Hellenistic origin. He, then, demonstrates the use of ʔmn in this context functions as an adverb affirming a fact rather than a response to an oath.³⁷

The context in which ʔāmēn appears determines its meaning. In the Hebrew Bible, it affirms the words which precede it.³⁸ This usage is attested in the New Testament in 1 Cor 14:16; 2 Cor 1:20; Rom 5:14; 7:12; 19:4; 22:20. Jeremias contends, however, that Jesus' use of ʔāmēn presents an unprecedented usage.³⁹ In the gospels ʔāmēn coupled with legō hymin (soi) functions as an introductory formula designed to strengthen a person's words. Jeremias draws an analogy between this phrase and the messenger-

³⁵ Klaus Berger, "Zur Geschichte der Einleitungsformel 'Amen, ich sage euch,'" ZNW 63 (1972): 45-75.

³⁶ John Strugnell, "'Amen, I say unto you' in the Sayings of Jesus and in Early Christian Literature," HTR 67 (1974): 180.

³⁷ *Ibid.*, 179-80.

³⁸ Cf. Gustaf Dalman, Die Worte Jesu (Darmstadt: Wissenschaftliche Buchgesellschaft, 1965) 226-29; Strack-Billerbeck vol. 1, 242-44; vol 3, 456-61.

³⁹ Jeremias, The Proclamation of Jesus, 35-36.

formula "Thus says the Lord." If Jeremias is correct, Jesus' use of ʔāmēn should not be associated with swearing. Matthew did not seem to consider ʔāmēn an oath. If he had, it would be ironic incompetence to have placed a prohibition against swearing in a speech that contains the so-called ʔāmēn oath on two occasions (cf. Matt 5:18; 5:26).

E. JESU IPSISSIMA VERBA

Paul Minear is correct in placing greater confidence in the words common to the various versions of the prohibition against oaths. James 5:12 and Matt 5:33-35 represent multiple attestations of one saying. The question whether the antithetical form was dropped by James or added by Matthew is an insolvable riddle. We do know that the antithetical structure serves Matthew's objective to create definitive guidelines for righteous behaviour. Nevertheless the polemic it addresses existed in the Judaism that Jesus knew. People asked which oaths if broken violate the laws cited in the thesis (Matt 5:33). The words "Do not swear at all" are an appropriate response to a problem within Judaism. Moreover, they are one piece with Jesus' view of the role of the sanctification of God's name in the coming kingdom. The antithetical structure of the saying in Matthew therefore illuminates Jesus' intention.

We draw a similar conclusion about Matthew's possible addition of the biblical citations following the

examples of oaths to be avoided. Matt 5:34b-35 focuses attention on the fact that an oath is an invocation of God.

The fourth example, "by one's head," is attested only by Matthew. Nevertheless, its language and theology is coherent with other Jesus' sayings, so that we can treat it as authentic with reasonable certainty.

The two versions of the yes or no saying have generated a debate over which is closest to Jesus' original words. The argument is unnecessary quibbling. The question is did Jesus say estō de logos hymōn, Nai nai, ou ou (Matt 5:37a), a semitic doubling to indicate temporal distribution, that is, "Always consider your yes a yes and your no a no."⁴⁰ The alternative is that Jesus' words are preserved in James' Greek translation, ētō de hymōn to Nai nai, kai to Ou ou, a slightly more sophisticated formulation demanding that one be unequivocal in one's speech. When one examines the two formulations carefully, however, there is little difference in the two statements. The difference is imposed by the contexts.

Matt 5:37a is a response to a question of the contemporary debate: What should you say? The answer: "Just say yes or no." James 5:12 is a response to the question why one should not take oaths. The answer: "always say what you mean." Jesus, of course, could have intended both meanings, but James does appear to elaborate upon

⁴⁰ Ibid., 220.

Jesus' prohibition and requires an extension of the discussion. Nevertheless, the possibility remains that Matthew and James received the same tradition and translated it differently with each translation reflecting the emphasis of their point, whereas the original could have implied both. The distinction, in the end, is slight and, perhaps, insignificant. Both require that one say what one means.

The similarity of Matt 5:37a or James 5:12 to discussions in the Rabbinic literature raises the question of authenticity on the basis that the criteria of dissimilarity cannot be applied. R. Huna in the name of R. Samuel b. R. Isaac states, "The yes said by a righteous person is yes, their no is no" (Ruth Rab. 3:18) Passages in b. B.Mes. 49a, Sipra Qedoshim 8:7, and Exod. Rab. 15:2 all contain similar statements.⁴¹ All, however, are too late

⁴¹ b. B. Mes 49a: "R. Jose son of R. Judah said: What is taught by the verse, 'A just hin [shall ye have]; surely 'hin' is included in 'ephah'? But it is to teach you that your 'yes'[hin] should be just and your 'no' should be just! - Abaye said: That means that one must not speak one thing with the mouth and another with the heart; Sipra Qedoshim 8:7: "you should have a yes that is a yes, and a no that is a no."; Exod Rab. 15:2 "If you say 'Yes' it will be 'yes', and if you say 'No' it will be 'no'. See also Sipra Bahodesh 4:91: "Respond 'Yes' to a positive command and 'No' to a negative command; j. Sebu. 4:7: R. Jacob bar Zabedi raised the question before R. Abbahu: "But is such an action no a case in which one's yes is a no, and for righteousness [the Torah requires] that one's yes be a yes!"; b. Šebu. 36a: R. Eleazar said: 'No' is an oath: 'Yes' is an oath, as it is written: And the waters shall no more become a flood; and it is written: For this is as the waters of Noah unto Me; for as I have sworn [that the waters of Noah would no more go over the earth...]. But that 'Yes' is an oath how do we know? It is reasonable; since 'No' is an oath, 'Yes' is also an oath. Said Raba: But only if he said, 'No! No!' twice;

to have bearing on the question of authenticity. Moreover, the idea that one's yes should mean yes is virtually universal to ethical systems. The choice of words is too simple to be considered unique to Jesus. What renders Jesus' words unusual is the emphasis upon circumspection as a replacement for the use of oaths.

James Charlesworth sets aside the claim to authenticity on account of the clear parallel to 2 Enoch 49:1-2 in which Enoch states:

For I am swearing to you, my children - But look! I am not swearing by any oath at all, neither by heaven nor by earth nor by any other creature which the Lord created. For <|the Lord|> said, "There is no oath in me, nor any unrighteousness, but only truth. So, if there is no truth in human beings, then let them make an oath by means of the words 'Yes, Yes!' or if it should be the other way around, 'No, No!' And I make an oath to you - 'Yes, Yes!' - that even before any person was in his mother's womb, individually a place I prepared for each soul...(2 Enoch 49:1-2 Manuscript J).⁴²

The text is problematic. Manuscript A reads: "For I, I am swearing to you, my children, that before any person existed, a place of judgement was prepared for him." The variant material in Manuscript J seems to be added. It contradicts the statement that Enoch is swearing, and it is

or he said 'Yes! Yes!' twice, for it is written: And all flesh shall not be cut off any more by the waters of the flood; [and also] and the waters shall no more become a flood. And sin 'No' [must be said] twice [to imply an oath], 'Yes' [must] also [be said] twice.

⁴² James Charlesworth, Jesus within Judaism: New Light from Exciting Archaeological Discoveries (London: SPCK, 1989) x.

awkward and seems to be a clear case of Christian interpolation in order to create continuity with gospel material.⁴³ The text claims that God took no oaths, a statement blatantly false in light of the Hebrew Bible. The notion of a Lord who takes no oath must refer to Jesus. The passage seems to be aware of an alternate or later tradition than Matthew's, one that treats Jesus as Truth incarnate. If this is the case 2 Enoch presents us with a case for multiple attestation.

The final clause in the prohibition of swearing also finds attestation in both Matthew and James. Matt 5:37b claims oaths are from the evil one and James 5:12 contends that swearing leads to condemnation. The original saying probably included a similar notion that oaths were a sin of the tongue. The theme of sins of speech is characteristic of Jesus' teaching.⁴⁴

Two further considerations lead to the conclusion that the prohibition belongs to the authentic sayings of Jesus and is not a church construction. The first of these is the fact that the church largely ignored the prohibition. The second consideration is that comparison to other groups in Judaism indicates that a ban on swearing would not be the

⁴³ Cf. Meier, Law and History in Matthew's Gospel, 153 n.68, for arguments against using 2 Enoch and F. I. Anderson's notes to his translation of 2 Enoch in James H. Charlesworth, The Old Testament Pseudepigrapha, vol. 1 (New York: Doubleday, 1985), 176-77.

⁴⁴ Cf. Meyer, The Aims of Jesus, 146-47.

product of a community. While the Qumran Covenanters refrained from swearing oaths outside the community, they used oaths within their own society. These two observations raise the question whether it is more likely that a community created the prohibition or that the prohibition was the creation of an individual. Philo comes close to the ban on oaths when he recommends that they be avoided, but he accommodates official or biblical oaths. Only an individual who claimed a great deal of authority or did not hold a statutory view of the law would make such an absolute demand. Jesus seems to be the best candidate for the authorship of the prohibition.

F. JESUS ON VOWS

While the case has been made that Jesus denounced swearing, the same cannot be said about vowing. The prohibition against oaths should not be extended to vows.⁴⁵ There is a dearth of evidence that the two activities of swearing and vowing were treated as synonymous. The explicit saying regarding a vow in the gospels, the vow of

⁴⁵ George Wesley Buchanan, "Some Vow and Oath Formulas in the New Testament," HTR 58 (1965): 323-24. J. Duncan M. Derrett and Samuel Belkin put forward the case that Jesus contends that the vow should be "void ab initio" on the basis that Jesus would have held anti-social oaths or vows such as this as not binding. J. Duncan M. Derrett, "KORBAN, O ESTIN DOPON," NTS 16 (1969-70): 367; Samuel Belkin, "Dissolution of Vows and the Problem of Anti-Social Oaths in the Gospels and Contemporary Jewish Literature," JBL 55 (1936): 234.

gorbān, reflects the rejection of the statutory view of the law which upheld the vow. Mark 7:11 and Matt 15:5 reject only the vow of gorbān and not all vows.

Jesus seems to have been concerned with vows because the Pharisees held that they could differentiate between those that bind and those that do not. In their tradition governing vows, he found grounds for criticizing Pharisaic reasoning in general. Matt 23:16-19 may lay out Jesus' view of their logic. Although in Matthew's woe-oracle, the chiasm is about swearing, it is at odds with what we know of Pharisaic teaching. No Rabbinic evidence can be brought forward to support the position that the Pharisees argued that oaths by the gift of the altar or the gold of the temple were binding. Saul Lieberman, however, finds evidence that the logic was applied to vows. The same logic at work in Matt 23:16, 18 is the logic that led the Pharisees to uphold the vow of gorbān as they are criticized for doing in Mark 7:11. The terms "by the gift of the altar" and "by the gold of the temple" are substitutes for the valid vow-term gorbān; therefore, vows by these terms are binding.

The thrust of the gorbān pericope focuses upon Jesus' questioning of Pharisaic authority, not on the validity of vows. Jesus does not offer in this context an alternative way out of the predicament that the vow-taker has created. Jesus points out the dilemma of the one who

finds himself in the jurisdiction of Pharisaic authority. If he disregards his vow, he violates Deut 23:21-23 and Num 30:2 (MT 30:3). If he observes his vow, he dishonours his parents. By turning to the Pharisees, the son or his parents have looked to a remedy which creates rather than eliminates problems.

Jesus may have had little regard for the gorbān vow. It was not a biblical vow, but a practice that the Pharisees accepted as a legitimate vow.⁴⁶ In the Mishnah, the Rabbis acknowledge its practice as binding, but by their examples, they highlight the potential perversity of such a vow. Jesus could have rejected gorbān as a legal fiction. His focus, however, was to criticize the Pharisaic tradition and expose the dangers which obtain when one accorded the Pharisees authority. Jesus' response to the gorbān vow illustrates his understanding of both Torah and Pharisaic tradition, that is, the law is not a sufficient guide for directing one's life. Consequently, the Pharisaic claim to authority was flawed, because it required that on occasion one set aside one law in favour of the fulfilment of another.

G. CONCLUSION

Jesus' views that the utterance of the divine name

⁴⁶ Cf. Jacob Mann, "Oaths and Vows in the Synoptic Gospels," AJT 21 (1917): 267.

was blasphemous and that improper speech reflected impurity jar with modern sensibility. Equally unpopular is the claim that Jesus meant to prohibit all oaths. The total elimination of oaths would create problems for the administration of legal systems, economies, and the state's authority. But Jesus did not affirm the social order of his contemporaries. This much is clear. His rejection of the social institution of swearing did not make him an ancient anarchist. Oaths as the agent of social order were not at issue, but oaths as an invocation of God were the focus of Jesus' pronouncement. The oath assumed a knowledge of God and presupposed a relationship with God that Jesus rejected. People could not presuppose that they could comprehend all eventualities. The oath did this on two counts. First, by linking God's name to an assertion or promise the oath-taker inverted the proper order of authority and assumed that he or she knew what God alone could know. Secondly, the oath contained a curse. The demand that God punish in the event that the oath proved false signified that the oath-taker asserted some control over God and the order of creation. These two offenses obtained whether the oath was true or false. The thinking seems out-of-date today. Why should God be offended by such seemingly innocent utterances especially if they were faithfully performed? At the basis of Jesus' ban lies an understanding of speech that these utterances could offend God, however inadvertently uttered

or innocently expressed. The demand is for a radical introspection predicated on the belief that people will be held accountable and will stand in judgement for both actions and word. The demand comprehends the breaking in of the eschaton. The focus is not upon simple truthfulness between people, but upon an orientation toward God that anticipates the eschaton. The expectation lies at the heart of the Lord's prayer, "Hallowed be thy name, thy kingdom come."

Jesus' Jewish contemporaries did not hold oaths to be one of the better things, but one of the necessary things. The understanding that oaths were not to be taken lightly underscores the legislation of the Qumran community and the Pharisees. They would have concurred with Philo that oaths were a "second best voyage." Jesus followed the sentiments of his contemporaries with respect to the critique of oath-taking practices and the concern for honouring God, but he stood apart in his view that oath-taking was not just a second best voyage but an ill-fated voyage.

CHAPTER NINE

THE EARLY CHURCH

The avoidance of oaths did not become a normative practice in Christianity. The Jesus-saying prohibiting swearing was either ignored by most of the New Testament writers or unknown to them. Early Patristic authors differed widely on how Matt 5:33-37 was to be interpreted. The application of the saying to official oaths led to the rejection of the oath by the genius of the emperor, but other oath-terms were permissible. Even the name of Jesus became an acceptable oath-term in early Christian literature.

A. PAUL

If Paul knew of the Jesus saying against swearing -- we cannot be certain that he did -- he did not seem to consider it an absolute prohibition.¹ On several occasions in his letter-writing, Paul used declarative language which called God to witness to the truth of his statements. Some scholars, have argued that these oaths are irreconcilable with the demand of Matt 5:33-37; others have argued that

¹ Georg Dautzenberg, "Ist das Schwurverbot Mt 5, 33-37; Jak 5,12 ein Beispiel für die Torakritik Jesu?" *BZ* 25 (1986) 63-64, claims that Paul's use of mild oaths indicates that he did not know a prohibition against swearing.

these are not oaths at all, and others have proposed that Paul's use of oaths is justifiable even in light of Jesus' words.

The only hint that Paul knew of Jesus' saying about oaths occurs in the second letter to the Corinthians in Paul's self-defence against the charge that he was vacillating (2 Cor 1:17,18). The fact that Yes and No are repeated recalls Jesus' words in Matt 5:37a². Paul had stated his intention to visit the community on the way to Macedonia and again on his return trip to Judaea but had failed to do so. He then argues:

Do I make my plans like a worldly man, ready to say Yes and No at once? As surely as God is faithful, our word to you has not been Yes and No. For the Son of God, Jesus Christ, whom we preached among you, Silvanus and Timothy and I, was not Yes and No; but in him it is always Yes. For all the promises of God find their Yes in him (2 Cor 1:17-20).

David Wenham contends that a reconstruction of the background to this passage provides proof that Paul knew the prohibition. The Corinthians had accused Paul of violating Jesus' command by making his Yes, No and his No, Yes. The Corinthians and not Paul quoted Matthew's gospel. 2 Cor 1:17-20 is Paul's denial. Wenham attributes the divergence from Jesus' words in Paul's response occurs to Paul's use of

² Against this view Jean Héring, The Second Epistle of Saint Paul to the Corinthians (London: Epworth Press, 1967) 10, argues that the doubling of the yes and no may be a later attempt to harmonize the text to Matthew's Gospel.

the words of the Corinthians.³ Jesus' "nai nai, ou ou" and Paul's "nai kai ou" have entirely different meanings and the possibility that these two sayings are connected is slim. Nevertheless, if Wenham is correct and Paul did know Jesus' teaching on oaths, the presence of the phrase "as surely as God is faithful" -- an oath-term -- in verse 18 indicates that Paul's interpretation of the saying differed from Matthew's understanding.⁴ Paul did not view it as a statutory declaration of how a Christian ought to behave.

Otto Bauernfeind counts an oath every 4000 words in the Pauline corpus and concludes that Paul was probably accustomed to using oaths daily. He believes that if Paul's oaths violated a known Jesus-tradition, his opponents would have criticized this habit.⁵ Against this view David Wenham argues that Paul did not use the sort of oaths prohibited by Matt 5:33-36.⁶ In Wenham's view Paul would have differentiated between oaths, such as "by heaven," and calling God to witness. Georg Stählin entertains the same

³ David Wenham, "2 Corinthians 1:17,18: Echo of a Dominical Logion," NovT 28 (1986): 275-76.

⁴ Rudolf Bultmann, The Second Letter to the Corinthians (Minneapolis: Augsburg Publishing House, 1985) 39, identifies "as surely as God is faithful" as an oath-formula.

⁵ Otto Bauernfeind, "Der Eid in der Sicht des neuen Testaments," in Hildburg Bethke Eid Gewissen Treupflicht (Frankfurt: Stimme Verlag, 1965) 92.

⁶ Wenham, "2 Corinthians 1:17,18: Echo of a Dominical Logion," 277.

distinction. He compares Paul's use of declarative formulae to Jesus' use of Ἀμήν. Paul's use of God as a witness reflects his belief that his entire work occurs in the context of God's will. Everything that he says or does is witnessed by God and, in turn, witnesses to God's yes in Christ.⁷

Despite Wenham and Stählin's efforts, several Pauline verses remain problematic. Rom 1:9, Gal 1:20, 1 Cor 15:31, and 2 Cor 1:23 all appear to be oaths.⁸ Augustine cites 1 Cor 15:31, "I protest, brethren, by my pride in you which I have in Christ Jesus our Lord, I die everyday," as incontrovertible proof that Paul swore oaths (De S.D. 1:51). Apparently there were exegetes in Augustine's time comparable to Wenham and Stählin who argued that Paul's words did not constitute an oath. Augustine accuses them of "quibbling." He argues that the purpose of Jesus' command is to prevent useless swearing (De S.D. 1:51). Swearing, according to Augustine, "is to be accounted not among the better things but the necessary ones," and Paul out of necessity uses oaths. Augustine's argument is appropriate given the context in Paul's letters in which these oaths appear. Paul defends his apostolic authority and the truth

⁷ Cf. Georg Stählin, "Zum Gebrauch von Beteuerungsformeln in neuen Testament," NovT 5 (1962): 131.

⁸ Cf. F. F. Bruce, 1 and 2 Corinthians (London: Oliphants, 1971) 149: "His [Paul's] language takes the form of an oath, introduced by the Greek particle ἔ."

of his gospel. Augustine contends that in the face of the weakness of doubt, Paul has no choice but to resort to oaths.

The absence of certainty about Paul's knowledge of Matt 5:33-37 prevents us from drawing a conclusion about Paul's interpretation of this saying. It is nevertheless clear that Paul considered himself free of the conditions which Matthew and James associated with oaths. A reexamination of 2 Cor 1:17-20 with its blend of an oath and a possible echo of a dominical logion makes this clear. As Victor Furnish notes, Paul uses a theological argument to defend himself against the charge that he has violated his promise.⁹ Paul states "all God's promises find their Yes" in Christ (2 Cor 1:20). Paul considers his words a confirmation of this Yes. Bound neither by evil nor condemnation, Paul did not consider his words to be in excess of what was necessary or beyond the approval of God.

B. GOD'S OATHS

A second tradition regarding oaths, separate from Jesus' prohibition, appears in the New Testament. This tradition, originating with the early church, makes the claim that God's oaths found in scripture are fulfilled in the Christ event.

⁹ Cf. Victor Paul Furnish, II Corinthians, AB vol. 32a (New York: Doubleday & Company, Inc., 1984) 145.

In a discourse on Christian hope, the author of the Letter to the Hebrews makes use of three of God's biblical oaths. He begins his argument with the a priori assumption that Christ is either the fulfilment of these oaths or the surety that these oaths pertain to Christians. According to Heb 6:13-20, God's oath to Abraham that he would bless and multiply him (Gen 22:16-17) will not prove false but should inspire confidence, because Jesus has entered into the sanctuary behind the curtain as a forerunner on behalf of the church. The author makes the assumption that the Christ event is the fulfilment of the oath and that the oath does not simply pertain to Abraham and his race, but gives cause to the recipients of the letter to have hope (Heb 6:8-10). The author's meaning becomes clearer when he turns to the subject of the priesthood of Melchizedek. God's oath in Ps 110:4, "The Lord has sworn and will not change his mind, 'You are a priest for ever after the order of Melchizedek,'" is addressed to Jesus and is fulfilled by Jesus' sacrificial death (Heb 7:20-28). The author then jumps from the oath of Ps 110 to the promise of a new covenant found in Jer 31:31-34 (Heb 8:8-12). Christ's ministry promised in Ps 110.4 is also a fulfilment of God's promise of a better covenant (Heb 8:6-7). According to Heb 7:22, Jesus is "the surety" of this covenant. The author of the letter seems to be treating all of God's oaths as analogous in that they all are confirmed or fulfilled by the Christ event.

The understanding that Jesus' crucifixion and resurrection were the fulfilment of God's scriptural oaths is not unique to the letter to the Hebrews. Luke refers to God's oaths, once in his gospel and once in Acts. John the Baptist's father Zechariah prophesies that the time of fulfilment for God's oath sworn to Abraham in Gen 22:16-17 has come (Luke 1:73). The author of the canticle considers the contents of the oath to be the gift of deliverance rather than the gift of the promised land (cf. Mic 7:20; Jer 11:5).¹⁰ The events of the first Christian Pentecost are understood as the culmination of the fulfilment of God's oath to David in Ps 132:11: "The Lord swore to David a sure oath from which he will not turn back: One of the sons of your body I will set on your throne" (Acts 2:30-33; cf. 13:32-33). According to Luke, the resurrection of Christ, his exaltation, and the outpouring of the holy spirit are anticipated by this prophecy. Luke also links these events to Ps 110 (Acts 2:34). The association of Ps 110 with Christ is also evident in 1 Cor 15:25, Col 3:1, Eph 1:20, Mark 12:36 par., and 14:62 par. God's oaths are a prominent feature of the promise-fulfilment motif of the New Testament.

The argument that God's oaths are fulfilled in Christ is sustained in the early Patristic literature. The

¹⁰ Cf. Joseph Fitzmyer, The Gospel According to Luke, AB vol. 28 (New York: Doubleday, 1981) 384-85.

author of the Epistle of Barnabas explains that God has given the covenant which he swore to the fathers but he has not given it to the Jews. According to the epistle, the Israelites forfeited their reward when they made molten images. The proof for this conclusion lies in Moses' response to their sin: he broke the tablets of the covenant. Christians, through Jesus, then inherit the covenant (Barn. 14:1).

The author of the Shepherd of Hermas relies upon the tradition that God fulfils his oaths in Christ to construct an argument that there is no repentance for sin after baptism. In a vision, Hermas reads, "The Master swore by his glory concerning his elect, that if, after this day [the day of baptism] has been fixed, there is yet sin they will not obtain salvation" (Herm. Vis. 65). In a second reference to the oath, Hermas reads, "For the Lord has sworn by his Son that they who deny their Lord have been rejected from their life" (Herm. Vis. 6:8). God's biblical oaths serve as precedent for other oaths that provide the proof for doctrinal positions.¹¹ Moreover, Jesus' name becomes an appropriate oath-term in Christian literature.

The positive treatment of oaths in these early Christian works, particularly in Hebrews, suggests to some

¹¹ Cf. also 1 Clem. 8:2 for the argument that God desires the repentance of a sinner rather than his death because he has sworn so.

that the Jesus-saying on oaths was unknown to these authors.¹² The question at hand is whether acknowledgement that God's oaths in the Hebrew Bible are meaningful signifies that human beings should take oaths. Or conversely, if one refrains from oaths, one must disparage God's oaths. The letter to the Hebrews makes two points about God's oaths. God has no one greater than himself so he swears by himself (Heb 6:13-16), and the institution of the priesthood of Aaron is set aside and replaced by the order of Melchizedek, a priesthood established later than the law by means of an oath. The priesthood of Melchizedek, therefore, is eternal (Heb 7:18-28). The only point made about man's oaths is that "men indeed swear by a greater than themselves, and in all their disputes an oath is final for confirmation" (Heb 6:16). Anthrōpoi without the article strikes a contrast between man and God. Philip Edgecombe Hughes believes Heb 6:16 emphasizes the "general unreliability of human utterance: for which the use of the oath has become common practice."¹³ Donald Guthrie believes Heb 6:16 is an allusion to Matt 5:37 and disparages

¹² J. Moffat, A Critical and Exegetical Commentary on the Epistle to the Hebrews (London: T & T Clark, 1924) 87; Ronald Williamson, 201-2; Kristar Stendahl, "Matthew," in Matthew Black Peake's Commentary on the Bible (Middlesex: Thomas Nelson and Sons, 1976) 777; Hugh Montfiore, A Commentary on the Epistle to the Hebrews (London: Adam & Charles Black, 1964) 114.

¹³ Philip Edgecombe Hughes, A Commentary on the Epistle to the Hebrews (Grand Rapids: Wm B. Eerdmans, 1977) 232.

human oaths.¹⁴ Tertullian, who certainly knew Matthew, shows no traces of concern about God's habit of oath-taking when he writes "O blessed we, for whose sake God swears" (De paenitentia 4).¹⁵ Philo, despite his own personal abstinence from oaths on the grounds that they call into question one's integrity, never entertains the notion that God's integrity can be questioned. The fact that scripture portrays God as taking oaths becomes an opportunity to discuss God's beneficence (Leg. 3.203). The status of scripture prevents Philo or the early Christians from taking statements, such as Matt 5:33-37, and applying them to the Bible. Moreover, it simply was not in the way of ordinary thought to equate God's acts with people's habits. Finally, the fact that the allusion to God's oaths in Hebrews does not elicit a reference to Jesus' teaching on oaths should come as no surprise. There is general absence of the words of Jesus' in the Letter to the Hebrews.¹⁶

The allusions to God's oaths in the New Testament do not contradict the thrust of the Jesus-saying in Matt 5:33-37. Their importance to the early church's understanding of the Christ event, however, may have overshadowed the Jesus

¹⁴ Donald Guthrie, The Letter to the Hebrews (Grand Rapids: Wm B. Eerdmans, 1983) 150-51.

¹⁵ Cf. also Tert. Adversus Marcionem 2.26.

¹⁶ Hans Kosmala, Hebräer Essener Christian Studien zur Vorgeschichte der frühchristlicher Verkündigung (Leiden: E.J. Brill, 1959) 14.

tradition.

C. THE EARLY CHURCH FATHERS

The early Patristic material contains evidence of a development which led to a limited application of the prohibition against swearing. During the period represented by this material the opposition to Christianity shifted from Jewish to Roman persecution. In an attempt to make Christians recant their beliefs, Roman officials exhorted Christians to swear oaths by the genius of the emperor. Faithful Christians refused. The prohibition against all oaths was applied to one particular oath, the oath by the emperor's genius. Other oaths, however, were permissible.

Evidence for Christian resistance to the imperial oath in the context of persecution is extensive. The earliest example occurs in the Martyrdom of Polycarp. Before Polycarp is tossed to the wild beasts, the Pro-consul tries to persuade him to deny his Christian convictions and repent by swearing by the tychēn of Caesar and saying "Away with the Atheists" (Mart. Pol. 9:2).¹⁷ Polycarp responds, "How can I blaspheme my King who saved me?" (9:3). The demand for the oath is repeated again (10:1), and again Polycarp refuses, arguing that "we have been taught to

¹⁷ Tychēn is the customary Greek translation for the oath 'per genium.' Cf. Kirsopp Lake's note to his translation in The Apostolic Fathers, vol. 2 (London: William Heinemann Ltd., 1976) 324 n.1.

render honour, as is meet, if it hurt us not, to princes and authorities appointed by God. But as for those, I do not count them worthy that a defence should be made to them." Polycarp objects to both the oath-term and to the contents of the oath. In Acts of the Scillitan Martyrs 3-8 (c. 180 CE), A Pro-consul ordered twelve Christians to "swear by the genius of our Lord emperor and make supplications for his security." All refuse and all die. Tacitus confirms that Christians would not take the oath of loyalty to the emperor (Ann. 16.22).

These Christians protested against the oath of loyalty not necessarily on the principle that oaths were prohibited but on the principle that oaths to foreign gods were objectionable. When Apollonius was ordered to swear by the genius of Commodus the emperor, he cited Matt 5:33-37 but conceded that he was willing to swear by the true God (Acta Apollonius 30-35). In his Apologeticum, Tertullian objects to the oath by the genius of the emperor because genius is another word for demon. He is willing, however to swear by the emperor's health (Tert. Apol. 32:3; 35:10). Origen in Contra Celsum states that Christians "do not swear by the fortune (genius) of the Emperor, in the same way as we do not swear by any other supposed God" (C. Cels. 8.65). Celsus had apparently criticized Christians for refusing the oath by the genius of the emperor and argued that their position was illogical because "earthly things have been

given to him, and whatever you receive in this life you receive from him" (C. Cels. 8.65). This Christian stance on swearing resembles the association of oaths to foreign gods with idolatry found in the Hebrew Scriptures.

By the mid-third century, Roman officials had ceased to demand oaths from Christians for the purpose of prosecution or persecution.¹⁸ Now the problem confronting Christians resulted from their participation in Roman society. Those who wished to serve in the military or take public office first had to take an oath of allegiance to the Emperor. On the basis of Matt 5:33-37, Tertullian urged Christians not to take military oaths (De idol. 19) and claimed that Christians holding public office could not take an oath (De idol. 17). Eusebius records the case of a soldier named Basilides who refused to swear an oath because oaths were absolutely forbidden (H. E. 6.5).

Roman administrators were not prepared to forgo the oath of office or allegiance; therefore, Christians were faced with a choice: be excluded from public service or take the oath. Two developments occurred which made the latter choice possible. First, interpretation of Matt 5:33-37 allowed for truthful oaths, and second, Roman law allowed for Christian oaths.

¹⁸ Cf. Robert H. Grant, "Sacrifices and Oaths as Required of Early Christians," in Patrick Granfeld and Joseph A. Jungmann Kyriakon: Festschrift Johannes Quasten, vol. 1 (Münster: Aschendorffsche Verlagsbuchhandlung, 1973) 17.

Augustine saw room for official and judicial oaths in Jesus' teaching. According to his interpretation of Matt 5:37a, the prohibition applied to the perfect and spiritual being. In the realm of perfection, no lies are to be found. According to Augustine, "a lie partakes of non-being, not being." "Let what you say be simply 'Yes' or 'No,' anything more than this comes from evil," provides Augustine with the scriptural proof for his ontological argument (EnP. 5).

Augustine's interpretation of Matt 5:34a in De Sermone Domini in monte is consistent with this view. He contends: "The Lord's command not to swear was given that a person might not run into using oaths as something good, and by his readiness to swear because of habit, lapse into false swearing" (De S.D. 51-52). If a Christian makes proper use of oaths when necessity required one, then he or she does not violate Jesus' intent.

For the Christian exegetes of the third and fourth centuries who addressed Jesus' words on oaths, the concern was truthfulness or sincerity. St. Cyprian of Carthage used Matt 5:37 to criticize the bishops of Africa for vacillating on a judgement already passed (Letters 59). Clement of Alexandria wrote that oaths opened the door to perjury and more lies, whereas a life calculated to inspire confidence prevented the demand for an oath. Instead of an oath, he recommended the profession, "I say truly" (Strom. 7.8). St. Basil also linked lies with swearing (Letters 22).

Throughout the Patristic literature oaths and lies stand in apposition to truthful speech.

Within the panegyric of John Chrysostom, who held staunchly to an absolute prohibition of oaths, we can reconstruct the logic of Christians who decided that they could take a truthful oath. Chrysostom dedicated two of his baptismal instructions and lengthy sections of other discourses and homilies to admonitions against all swearing, but it is clear from his writings that few Christians were like-minded. In his ninth baptismal instruction, "Against the Habit of Swearing," he gives the reason for his preoccupation with the topic: "Swearing is a serious sin, a very serious sin. It is very serious because it does not seem to be serious, and I am afraid of it because nobody is afraid of it" (Catech. 9.38). In a passage in his In Acta apostolorum homiliae, Chrysostom seems to be aware of the proverbial saying "a second best voyage" with reference to swearing. He writes: "To swear no oath is truly a safe haven against being drowned by the storms which assail us" (In act. apos. 13). Other Christians seem to have argued that Jesus' words applied only to perjury (Catech. 9.37; cf. Homily on the Sermon on the Mount 17) or to unnecessary oaths (Catech. 9.45). One of their number had forced a woman to swear an oath about some dispute in a synagogue (Jud. 1). More commonly, Christians swore oaths with one hand upon the gospels (Homily to the People of Antioch 15).

Chrysostom was convinced that Christians who swore oaths failed to fulfil Jesus' command. His reasons for condemning oaths proceed from the conviction that Jesus' words were authoritative and binding: "You heard the Master say not to swear at all; henceforth refrain from meddling with things which the Master has ordained" (Catech. 1.42).¹⁹ Later he adds, "If He has commanded it, we must obey" (Catech. 9.41). In his Tenth Baptismal Instruction, he uses the example of Herod's oath to illustrate the evil of swearing and in this context provides a secondary argument. Herod's oath created the situation in which one stands on a precipice. On the one side lies the sin of a broken oath, and on the other, the sin of fulfilling one's oath (Catech. 10.25-27). But this is only a digression, for Chrysostom responds to the question "Suppose I swear justly?" with the question "How is this just when the law is transgressed? How is this just when God forbids it, but you do it?" (Catech. 10.28). Chrysostom's objection to swearing stems from his belief that Jesus' word is law.

The practices which Chrysostom abhorred seem to have been the norm in the fourth century church. St. Jerome describes an oath of allegiance taken at baptism in which the new Christian swore "For His name's sake" that he or she "would spare neither mother or father" (Letters 14). Clearly, oaths were adopted in administrative practices

¹⁹ Cf. also Hom. in Gen. 15; Var. gr. sac. 162-66.

within the church.

At some point in the history of the Roman state and the Christian church, Christians were allowed to swear oaths in courts or other official contexts by the name of God or by placing their hand upon the Christian scriptures. In a document dating 395 C.E. the emperors Arcadius and Honorius sanctioned the use of the name of Almighty God in judicial oaths and gave this oath the same status under Roman law as an oath sworn by the emperor's safety (CT 2.9.3).²⁰ The norm, established by the time of Justinian's law code, was the oath sworn with one hand on the gospels.

Christians swore oaths as plaintiffs and defendants in lawsuits (CI 1.3.25), took enlistment oaths of the governmental service (CT 16.5.48), swore to depositions (CI 1.4.19), and sealed sales agreements with oaths (CI 1.2.14).²¹ Christian clergy were required to place those who sought sanctuary in their church precincts under oath (CI 1.12.6).²² The prohibition against swearing found limited application in that the clergy were themselves

²⁰ "Mandate of Arcadius and Honorius on Divine Oaths in Pacts and in Transactions," in P.R. Coleman-Norton, Roman State and Christian Church: A Collection of Legal Documents to A. D. 535, vol. 2 (London: SPCK, 1966) 461.

²¹ Ibid., IT 1.3.25 Mandate of Marcian on Clerical Defendants in Lawsuits, 860; CT 16.5.28 Mandate of Honorius and Thodosius II on Heretics in Government Service, 533-34; CI 1.2.19 Mandate of Anastasius I on Selection of Christians as Civic Defenders, 950; CI 1.2.14 Mandate of Leo I and Anthenos on Alienation of Ecclesiastical Property, 877.

²² Ibid., CI 1.12.6 Mandate of Leo I on Sanctuary, 877.

forbidden to take an oath (CI 1.3.25), but this concession for the clergy was revoked in 531 C.E. under Emperor Justinian (CI 4.16.1).²³

How can we account for the sanctioned use of oaths in Christianity in light of the prohibition in Matt 5:33-37? We can solve the riddle easily with regard to the New Testament material by arguing that the authors did not know of any Jesus-saying prohibiting oaths. The same cannot be said for the later Christian authors. It is possible that once the words left the Jewish milieu the notion of sanctification of the name lost its resonance. The emphasis then shifted to truthful speech and appropriate oaths. By the fourth century, when Christianity assumed the stature of a state religion, oaths probably proved too useful to give up.

²³ Ibid., CI 1.3.25 Mandate of Marcian on Clerical Defendants in Lawsuits, 860; CI 4.16.1 Mandate of Justinian I on Biblical Oaths in Lawsuits, 1092-93.

CONCLUSION

The purpose of the foregoing study has been to reconstruct the conceptual framework in Second Temple Judaism for the formulation and performance of oaths and vows. The following is a statement of our major findings:

1. Oaths and vows during the Second Temple period were types of religious expression each with distinct formulations and purposes. By way of contrast with modern English usage, no general confusion is discernible in the literature of the period. Any apparent confusion of oaths and vows reflects either the application of laws governing one to the other or the use of vow-terms or vows as substitutes in oath formulae.
2. The avoidance of utterance of God's name and the association of false swearing with blasphemy led to the questions: How should one formulate an oath? And which oaths are binding?
3. The superfluous swearing in Second Temple society was a result of increased use of oaths in bureaucratic and legal settings. Excessive swearing led to a decline in the confidence in the oath as a guarantor of truth.

4. Vows became formulaic utterances, easy to take, swift to be regretted. This problem prompted the questions: Which vows are binding? And how does one gain release from a vow?

5. Philo's advice against swearing is not dependent upon Pythagorean or Stoic practices but a concern for avoiding invocation of God. He stops short of prohibiting all oaths with a view to practicality and the prescribed oaths of scripture.

6. The Qumran covenanters did not reject oaths but limited their use. Again they were concerned with avoidance of the invocation of God and in particular God's name. Their status as an eschatological community limited the occasions for swearing and making vows and confined oaths to one formula, "by the curses of the covenant." They thereby evaded the problem of false oaths and regretted vows.

7. The Pharisees' response to the problems of their society was to identify binding oath and vow-terms and to provide guidelines for their fulfilment and means of atonement for their violation. Unlike Philo or the Qumran covenanters, the Pharisees took the command of Deut 6:13 par. literally and considered various circumlocutions for the divine name to be binding oath-terms. Oaths which did not invoke God's name were not considered binding. The Pharisees seem to

have assisted vow-takers in the dissolution of their vows, but the grounds for release available to them were limited to improper formulation of vows. Later Tannaim developed more elaborate grounds for release on the basis of regret.

8. In Matthean redaction, the Jesus-sayings on swearing and vowing take on a greater polemical thrust. As a result Jesus seems to set himself apart from his Jewish contemporaries. The "better righteousness" of Jesus and his followers is a sign of their election and Israel's supersession in salvation history.

9. Jesus' intent in prohibiting swearing is to establish the conditions appropriate to his eschatological expectations. The prohibition participates in Jesus' concern for the sanctification of God's name and the avoidance of sins of speech. The former fits into the conceptual framework of his Jewish contemporaries. The Jesus-saying on qorbān does not provide sufficient data with which to reconstruct Jesus' view on vowing. His criticism of the qorbān vow is a rejection of Pharisaic logic rather than vows in general.

10. Early Christians continued to use oaths despite the Jesus-saying prohibiting swearing. The first Christians focused on Jesus as the fulfilment of God's oaths. Under

Roman persecution, Christians were concerned with avoiding oath-formulae which recognized the divinity of the emperor. Later, when Christianity had become a recognized religion, oaths proved to be an administrative necessity.

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