The Biblical Herem

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CHAPTER 6

THE "TETRATEUCH"

I: EXODUS 22:19

Exod 22:19 reads in MT: "Whoever sacrifices to the gods shall be put to death," except it be to YHWH alone." The question as to whether the מָצֵא is original to the verse has been raised by A. Alt. Using the Samaritan Pentateuch and the LXX Alexandrian codex (and the capital punishment formula of the Covenant Code) as a starting point, he arrived at the following 'reconstructed' text: מַכֶּה לָלֶאֲלָא הַמָּכָה מָצֵא אֹתָה מָצֵא, or, "Whoever sacrifices to other gods shall be put to death." In other words, were we to follow Alt, we would then be in a position to dismiss this verse from consideration. More important, however, is the significance such a dismissal would have for the history of biblical religion and the דָּרְשׁו. For even a passing mention in the the oldest legal collection in the Torah, the Book of the Covenant, would be sufficient indication of דָּרְשׁו as a living practice from an ancient period. As such it would function as a precedent and basis for the laws of Deuteronomy regarding דָּרְשׁו, especially in Deuteronomy 13:13-19 (the existence of which mitigates in favor of the MT here). It would also offer indirect support for the antiquity of the דָּרְשׁו-narrative found in 1 Samuel 15. As discussed in the previous chapter, this verse, if not in need of reconstruction, has profound implications for understanding why the terminology of מְנָא was borrowed from polytheism.

It would seem that in this instance Alt, a scholar of undisputable brilliance, went beyond the evidence. The weight of his reconstruction is too heavy to be supported by the versions. In the first place, neither the Samaritan pentateuch nor the LXXA are to be considered textual witnesses of the first order of reliability. R. Weiss has pointed to the numerous variants made by Sam. in the Covenant Code in particular, and has demonstrated their secondary character (e.g. changing רְמָא, "ox," to בָּרָא, "cattle"). The same writer attributed the addition of מְנָא "others," to the ideological preference to refrain from using the plural form of god, מְנָא for any god other than YHWH, and judged the MT form of Exod 22:19 to be the original. The second witness, the A codex of the LXX, was once considered suitable for a critical edition of the Septuagint, but Rahlfs's demonstration of the error of this view has been accepted.4

Apart from these caveats, another and more serious difficulty with Alt's proposal is that even the textual traditions which Alt cited, while they featured מְנָא, also included מְנָא or its equivalent in Greek...rosis that doesn't occur at all, and in the case of Sam. the word מְנָא appears after מָצֵא. It

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1 A. Alt, "The Origins of Israelite Law," in his Essays on Old Testament History and Religion (Garden City, N.Y., 1968), 144, n.73.
2 R. Weiss, "Concerning One Type of Revision in the Samaritan Pentateuch," (Heb.), Studies in the Language and Text of the Bible (Jerusalem, 1981), 199-205.
3 Ibid. 170.
4 S. Jellicoe, The Septuagint and Modern Study (Ann Arbor, Michigan), 17f.
thus appears that if we take the nature of the two variant versions into account, the MT is in fact defensible. The substitution of לֶחֶם לְבַעַת for מִשְׁמֵי אֲרוֹן may represent either a homogenization by Sam. or more likely, the desire to avoid the use of מִשְׁמֵי אֲרוֹן for other gods mentioned by Weiss, and this tradition could have influenced LXXA. From a literary point of view, the wording of the pericope of Exod 22:17-19 is unusual (cf. v.17 כִּי לֹא אֶל-לְוָה) and Alt also tried to adjust v.18 to fit his conceptual scheme, but this emendation, too, has been shown to be unnecessary. From a literary point of view, the wording of the pericope of Exod 22:17-19 is unusual (cf. v.17 כִּי לֹא אֶל-לְוָה) and Alt also tried to adjust v.18 to fit his conceptual scheme, but this emendation, too, has been shown to be unnecessary.\(^5\) It makes no real difference. The important thing is that there is no textual tradition which does not feature the נָשָׁה. Its excision from the text must then, in the final analysis, rest on extrinsic grounds which lack sufficient weight. Moreover, the deuteronomic legislation on idolatry in Deuteronomy 13 is clearly an expansion of this ordinance; from what we have seen, there is no reason to suppose that Deuteronomy invented the idea of connecting idolatry with the נָשָׁה.

There is one more consideration in favor of retaining the MT, and that is a similar verse in 2 Kgs 5:17, the relevant part of which reads as follows:

\[
ִ֖י לֵאַל-נִשְׁפָּהַת שָׁבָּרָה שְׁלֹ֑ה לַאָלָלָהַת אֲלוֹתֵי ה יִֽהְוֶה
\]

For your servant will not make holocausts and sacrifices to other gods but only to YHWH.

The verse bears an obvious resemblance to Exod 22:19. In fact, the use of the word נָשָׁה might even seem to strengthen Alt’s argument, except that the above evidence already shows the MT is sound. What is interesting is the style of the verse, which is third person and which reads awkwardly to modern readers, especially the last clause, נַשֵּׁה, which has something of the same quality as the final clause of Exod 22:19. In other words, both cases were perfectly normal ways of expressing what they meant to say by the standards of biblical Hebrew.

The question that then arises is, what does נַשֵּׁה mean in the context of this verse? According to Noth, it means exclusion from the community, hence inevitable death.\(^7\) Yet death was not the unavoidable concomitant of exclusion from the community in the ancient world. The most famous example is that of Socrates, who in the Crito declined the opportunity to escape Athens and live elsewhere. Another example is that of Jereboam, who lived to return and rule the Northern kingdom. Moreover, the נָשָׁה is in every instance associated with some form of active intervention to bring about death.

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\(^5\) Ibid. 244f..  
The exception, Ezra 10:8, comes from another period and situation not at all comparable to that of the Covenant Code. The LXX translations as "destroyed," "be utterly destroyed" are nearer the mark. It is unlikely that the penalty for sacrificing to strange gods would be less than that of cursing one's parents (Exod 21:14), for example.

There is a common thread between this verse and Deut 7:25-26. One makes an offering at a cult site, which in a pagan temple would involve the gods' images. The use of the term נֵזֶר in this verse, incidentally, is interesting. Since sacrifice was a universal form of worship from Mesopotamia to Rome and beyond, although the concept behind it varied, the use of the term here is a good, concrete way of expressing the idea of "thou shalt put no other gods before me." More than that, a major function of ancient sacrifice was to propitiate the gods and thus help maintain the world order of the individual and the community. The use of the word נֵזֶר in relation to what the biblical author(s) saw as a major deviation from the proper mode of sacrifice (which had to be to YHWH alone), demonstrates one again the close relationship between the פָּרָה, the respect for the sacral nature of god, and the consequent assurance of world order. The line that moderns draw between monolatry and monotheism can be, as this verse shows, exceedingly fine, if visible at all, since if there are gods that exist but should not be sacrificed to, they are superfluous to the world order, and are otiose at best.

This verse, like Deut 7:25-6, thus expressed the idea of an absolute prohibition of associating with idols which, if transgressed, put one beyond the possibility of atonement and with it, reintegration into the world order. The consequence would be simply to be devoted to destruction. We may well contrast this verse with Lev 27:29, "every human object of devotion that is devoted can not be redeemed; he shall surely be put to death." "Shall be put to death" is added because the context is more benign—it deals with vows—so the necessity for death is not as obvious. Also, it comes from a later age, perhaps the period of the non-lethal פָּרָה found in Ezra 10:8. In Exodus, as the LXX translations attest, the addition of a נֵזֶר clause would not only have been superfluous but even weakened the sense. The crime was no ordinary one and the law called for no ordinary response. The idea of YHWH as a jealous god is expressed here in its intensity. To invoke a foreign god was to ascribe to an illusion the power to order the universe. The idolatrous sacrificer actively attempted to sanctify the unholy. This is stated in Deut 32:17; "they sacrificed to demons, non-god(s)." This impinged on YHWH's exclusive sanctity, which manifested itself throughout the world (Isa 6:3), a dangerous way to behave.

II: PRIESTLY WRITINGS AND THE HEREM

In the writings of the priests (including Ezekiel) we find the פָּרָה in a peaceful, cultic setting, nestling amid the minutiae of the cultic regulations. The war-פָּרָה has been somewhat 'civilianized,' and it has been reduced to a technical term among other technical terms. The theory behind the usage in
the priestly writings is not perfectly clear. The הֶרֶם still reflects its etymology as a form of separation, inviolability, and holiness. The element of destruction is also still present. The concept has been of necessity reinterpreted to fit its new context. The idea of dedicating booty to YHWH has been extended in the cult to include the priests, as with animals in certain sacrifices (cf. Num 18:14, Ezek 44:29b). Yet while the superficial character of the הֶרֶם is still to be seen, these few verses tell us much less than we would like to know about the religious value the cultic הֶרֶם had for the priests and the religious thinkers among them. All these passages, whatever their history, date in their present form from the post-586 period. Leviticus 27 seems to reflect a time when the sacrificial cult was again active.

The relationship between Num 18:14 and Ezek 44:29b is of immediate interest, and narrowly defined, is easily clarified. We say 'narrowly defined' because we do not wish to enter here into the larger question of the blocks of material in which they are embedded, which also have a certain relationship. Ezek 44:29 reads:

“They (the priests) shall consume the grain offering, the sin offering, and the guilt offering; and all הֶרֶם in Israel shall be theirs.”

This is the equivalent of Num 18:9,14, which is addressed to Aaron as follows:

9. "This shall be yours from the most holy, from the fire; all the offerings (including) all their grain offerings, all their sin offerings, and all their guilt offerings, which they give to me (ranking as) most holy, shall be yours and your descendants. (14) All הֶרֶם in Israel shall be yours.

This is a case in which there can be little doubt that the Ezekiel text is the secondary rendering. It has conflated two verses which stand well on their own and in so doing, it has substituted הֶרֶם for the second מַעֲרֵךְ to YHWH.” I spoke of the הֶרֶם as a technical term in the priestly writings: it appears to denote, in a scale of cultic value which (neglecting the negative side) ranges from “profane” to “holy” to מַעֲרֵךְ (“most holy”), something on the plane of the latter. This helps shed light on why in the priestly writings the connection of הֶרֶם and death is maintained (Leviticus 27, see below). Both Ezekiel 44 and Numbers 18 stress the dangerous aspect of the holiness of God when not correctly approached (cf. Num 18:1-5, Ezek 44:1-3); all the more so when the “most holy” aspect is invoked via הֶרֶם (Lev 27:28-9). The
question arises as to whether this equation of הַיְבֹרָה שַׁפֵּן and בָּרָה is an innovation of late priestly circles. It is almost certainly not an innovation. The reason why may be demonstrated from 1 Samuel 21, where the fleeing David arrives at Nob, seeking among other things food and weapons. When Ahimelech has only holy (שַׁפֵּן) bread to offer, David assures him that he and his men have abstained from women the requisite length of time, curiously enough, and that the ritual precautions would be observed. Hearing this, Ahimelech released the bread from the sanctuary. It is striking how easily the bread made the transition from שַׁפֵּן to what was really the profane sphere. Had the bread been “most holy,” i.e. הַיְבֹרָה שַׁפֵּן or בָּרָה, Ahimelech could scarcely have given David the bread. In other words, both בָּרָה and its ‘equivalent,’ הַיְבֹרָה שַׁפֵּן are irreversible in their sanctity and inviolability alike. The fatal quality of that which is הַיְבֹרָה שַׁפֵּן is brought out in Num 4:19, and in Lev 27:28-9, where the inviolability of הַיְבֹרָה שַׁפֵּן is equated with the בָּרָה, with death the projected result. However, whereas the execution of the person who is בָּרָה is left to human agency (cf. Joshua 7), the violation of הַיְבֹרָה שַׁפֵּן involves such an immediate infringement on YHWH’s ‘person,’ as it were, that God’s immediate intervention was the consequence (so 2 Sam 6:7f., implied in Num 4:19).

Leviticus 27 is a unique chapter in the book and in the Torah. It is a self-contained unit appended to the Holiness Code (Leviticus 17-26). It has some connection both to H, e.g. in its references to the Jubilee Year (featured in H in Leviticus 25), and to the Priestly Code of the first section of Leviticus (particularly, as Noth pointed out, to the הַיִּבְרֵיהַ-section of Lev 5:14-6:7). Therefore the chapter is in all likelihood latest as well as last.

While the chapter thus constitutes something of an anomaly, it also has the appearance of a purposeful, organized unit composed at a single time by an author or authors who participated in the traditions of Leviticus as a whole, though perhaps standing outside the immediate circles of the authors of Leviticus 1-26. At the same time, it is hard to date the practices prescribed in the chapter as opposed to the--presumably late--form in which they were distilled in order to fit into this chapter. We must first look at the chapter’s beginning--in some measure its self-definition--and then analyze the passages which refer to בָּרָה (Lev 27:21,28-9) in the light of their context and each other. I shall not attempt to define more narrowly the provenance of the chapter as a whole, as such a difficult undertaking would lead us too far astray.

The chapter begins in this way: “The Lord said to Moses thus: ‘Speak to the Israelites and say to them that a man who makes a vow of separation to the Lord of the value of human lives...’” The translation of the rare expression רַק הַיְבֹרָה, which occurs only here and in Num 6:2, I owe to B. A. Levine, who derives the apparent root אָלֶף from אָלָף, “to divide, separate,” an idea

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8 There is a risk in treating of texts from different periods “synchronously,” but there is a high level of conservatism in these matters (cp. Ugaritic and even Hittite ritual texts), and the paucity of biblical material makes such a procedure unavoidable.

that fits in perfectly with Num 6:2, which deals with another type of vow of separation, that of the Nazirite. None of the other renderings of the verb, e.g. the BDB’s rendering, “to make a difficult vow,” make as much sense of the verb as this construal. The verses which employ the piel form of the vow (Lev 22:21, Num 15:3,8) denote a special votive offering as opposed to a voluntary offering (דָּרֵךְ), which is basically a matter of routine in the life of the cult. This looks like a related idea, but different enough to require a different verbal stem.

In Leviticus 26, as v.2 indicates, things of the highest value are at stake, including human life. At issue are vows (דָּרֵךְ) of setting things apart, meaning not only by the milder form of dedication (שֵׁקֶר) but also the הֵרֵם. In Numbers 6, we have yet a different mode of setting apart and of dedication, that of the Nazirite, who must accept the responsibility of certain special restrictions on his conduct for the rewards of the especially sanctified life. Thus, although it cannot be pressed too far, there is something of a parallel between the two chapters, and the use of the expression, הֵרֵם נָזִיר “to make vow of separation,” in both could hardly be more appropriate.

This way of headlining the two chapters, as it were, with the conspicuous use of הֵרֵם נָזִיר is also important in another way. In Numbers 6, no one would question that the separation vow is the theme of the entire unit, in modern days called a chapter. In Leviticus 27, amid the technicalities, it is easy to lose sight of the fact that, whether the individual cases involve property redemption or lack of same, each case must be understood primarily in terms of a vow of separation (temporary or not). Any other concept not mentioned explicitly, such as punishment, should be introduced only if the sense requires it. This is important in dealing with the הֵרֵם. The three germane verses read as follows:

27:21 The field shall become holy to the Lord when it is released in the jubilee year, like a(n irrevocably) devoted field; it shall become the priest’s property.

27:28 But every devoted thing that a man devotes to the Lord from all that he has, from man and beast and from his inherited land, shall not be sold or redeemed; especially, all that is (irrevocably) devoted is most holy to the Lord.

27:29: Every human object of devotion that is devoted cannot be redeemed; he shall surely be put to death.

Each of the verses poses problems and/or possesses peculiarities, which make it difficult to arrive at a definitive interpretation. C. H. W. Brekelmans, in attempting to solve the enigma of these verses, began by examining the
relationship of Lev 27:28 to 29, and concluded, as have others before him, that Lev 27:29 should be regarded as an interpolation.\(^\text{10}\) However, I believe that methodological considerations require that one should first compare Lev 27:21 and 28, and then consider Lev 27:29. This flows from the understanding that these three verses—or at least two of them—are organically tied to the surrounding material, and that to begin by treating any of these verses as originally separated from the immediate environment is a dubious procedure (even if it should turn out to be correct in the case of Lev 27:29).

Lev 27:21, in any case, cannot be read in isolation. Indeed, it is an integral part of what may rightly be called a paragraph, which begins in Lev 27:16. The topic of the paragraph is the consecration of land, its valuation, and possibilities of selling or redeeming it. The mention of מָנוּ (Lev 27:21) in this context, appears as passing and almost incidental. It is, however, noteworthy, that the verse explains the lighter, and hence presumably more usual case by likening it to the case of the מִנוּ-field, which must have been the most stringent case. This apparent paradox can easily be resolved on examination of the particular case. A landowner consecrated his land, did not redeem it, but then sold it to a presumably unsuspecting buyer. The end result is the logical one that the unredeemed, consecrated land should end up as part of the sacred holdings. The most important consideration here is that the sale, itself a form of separation, was illegal. The case, which involves apparent dishonesty on the part of the seller, must have been relatively infrequent, but at the same time, extremely frowned upon, which accounts for the almost casual use in passing of the technical usage of מָנוּ here. But it is also important to notice that some sort of equivalence between מָנוּ and מִנוּ is posited in Lev 27:21. This anticipates the more obvious connection drawn in Lev 27:28. The focus of the law of v.21 is on the disposition of the land, not on the punishment of the dishonest seller whose fate is left open. We see that this chapter is not focused on punishment. This contrasts with the seventh law of the Code of Hammurapi, which calls for the death penalty in such a case. However, Lev 27:21 does assume, in accordance with Num 18:14 (=Ezek 44:29b), that an object classified as מִנוּ, here a field, belongs to the priests. The exact disposition of such a field has been something of an enigma. It is possible that the example of the Greek parallel cited in ch. 3, drawn from the speeches of Aesches, holds a clue. The land devoted to Apollo, Artemis, Leto and Athena Pronaea was to be left untilled, as in the manner of some early Hittite texts and indeed Joshua 6, where Joshua curses those who would rebuild on the site. If so, this land would lie fallow. The priests would thus ‘own’ the land, but not benefit from it. This seems unlikely. More probably, as devoted cities became grazing grounds for the sacred bulls of early Hittite religion, so mutatits mutandis YHWH granted the priests the right to use the field of מִנוּ of Lev 27:21 in Num 18:14, but such land was inalienable and could not be sold to

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any secular interest (cf., Lev 27:28). This is the best reconstruction the meager evidence seems to allow, but it is necessarily incomplete at best.

The next step is to compare Lev 27:21 to 28 in order to see prepare the ground for testing the claim that Lev 27:29 is an interpolation by seeing just what the content of the levitical הביר is. Upon examination it becomes apparent that it is best to use not Lev 27:21 alone, but Lev 27:20 as well, for this is a case where too slavish a dependence on the verse divisions obfuscates the actual relationships of the clauses, which should not be severed so absolutely. This gives the following, much improved grounds for comparison, starting with Lev 27:20-21:

Lev 27:28

It does not require a very close examination to see that with the addition of Lev 27:20, the two passages take on a much closer resemblance than would otherwise be the case. Although they make different points, there is a striking overlap of vocabulary and concepts. There is a total of eight words or roots which occur in both, which is remarkable in two such brief passages, which as can easily be seen, are of nearly the same length. Beyond the arithmetical considerations is the conceptual congruity if not identity of the two passages. Here are the eight:

a man's field / not be redeemed / sell / (most) holy to YHWH /׳יהוה / his holding.

Most of the chapter's leading themes are reflected here, with the exception of the jubilee year. Still, most of the other important motifs are present. The triple axis of land-man-god, which is absolutely essential to Israel's history, is found here. That triple relationship is most intensely figured in the Exodus-Conquest sequence, but it appears as a theme of other types of literature as well. In these verses, the lawgiver is treating of questions of individual land possession and its relation to the deity who gave the land (and all property) as an חלolicies (= הלאה) to individual Israelites, who might then dispose of it in one way or another, either in ordinary ways such as selling, or in extraordinary ways so that the land ends up as “belonging to YHWH,” by the interpretation of Num 18:14, i.e. the property of the priests. The matter is quite complex, and the possibilities include redemption, or contrariwise, זרע (= מכשנ שומך) where the land or other property becomes irrevocably devoted to the deity. Does Lev:27:29 fit into this matrix, or not?
Lev 27:29:

כַּלְּעָהָם אֱלֹהִים קָדָם מְרָמָהָם לָא יִשְׁרֵי מִדָּתָם.

In fact, the terminology fits well into that of the chapter and the surrounding verses, as evidenced by the use of the roots נָרָה and רָמָה, and the word דִּתָּה. In fact, the latter two are found only in the immediate vicinity of Lev 27:27 and 28 respectively. While this may not be a decisive consideration, it should not be ignored either, for it is typical of the associational principle of the chapter's organization, which is a natural principle in this kind of legal document.

In the light of these facts, a more decisive proof is not necessary, since the burden is on those who hold to the interpolation theory to disprove the prima facie case against it. Yet clearly, Lev 27:29 fits well into a chapter dedicated to separation oaths (תֵּיתָּה תִּתֵּית) dealing with human life, which ordinarily is to be redeemed (so Lev 27:3-8). Finally, Lev 27:28 would be incomplete without it, since otherwise one would not know the disposition of the person of דִּתָּה.

Nonetheless, scholars who have studied this verse have been hard put to account for the harsh verdict. M. Greenberg sums up the matter pithily:

The situation envisaged by the law of Leviticus 27:29 is obscure. Some take it to refer to a person condemned for idolatry...others, to the victim of a public vow (cf. the case of Jephthah's daughter).11

The suggestion that the case of Jephthah's daughter could be routinized by the law cannot be entertained. The narrative itself (Judges 11:34ff.) portrays the situation that arose in the story as grotesque and as the occasion for a special mourning observance--giving the story an element of etiology. Moreover, in the Jephthah story the gruesome outcome of the vow flowed from the vow's open-ended nature which made it impossible to predict what would be necessary for its fulfillment. No such irresponsible vow is made here. Any vow made in this context of priestly supervision must be seen as a sober and responsible act. The Jephthah vow occurred in a time of war, not (as here) peace. The randomness of the choice of the victim (who was sacrificed, not 'banned') goes against the grain of the דִּתָּה, since unlike Achan (see our treatment below), Jephthah's daughter had done nothing to infringe on the divine sphere or to endanger the world order of Israel. The case of Jephthah's daughter seems altogether too distant and too problematic to help with the priestly דִּתָּה.12

The other explanation is, that Lev 27:29 reflects, like Exod 22:19 and Deut 7:25-6, 13, the association of idolatry with דִּתָּה. This would be consistent with what we know from elsewhere, and is much to be preferred to relat-

12 However, Prof. Jacob Milgrom informs me that he disagrees on this point; it should be interesting to see his comments in the second volume of his AB Leviticus II commentary, now in preparation.
ing the passage to the story of Jephthah. Nevertheless, this explanation does not account for why this verse appears in its present context (a problem for the interpolation theory as well), of vows of separation, nor the lack of explicit connection between the הֵרֵם and idolatry or even contact with idols.

It is on the subject of who can be devoted that the connection between vv.28 and 29 assumes importance. Lev 27:28 carefully limits vows of הֵרֵם to the property of the man devoting. This property includes “all that is his, from men and cattle and from the field of his inheritance.” Since we know from Lev 27:29 that the fate of the human being devoted is death, it is clear that a principal purpose of Lev 27:28 is to prevent the powerful landowner from devoting people other than those under his ownership, such as relatives or other freemen. In other words, his power to devote people was limited to slaves. Furthermore, we can assume that the slaveowner was not in a position to devote his Israelite slave. The latter had a special status and was to remain enslaved for a limited period of time—six years—according to the legislation of Exod 21:1-12 (cp. Deut 15:12-18); the fact that this legislation was sometimes honored more in the breach than in the observance (cf. Deut 15:18, which tries to coax the reluctant slaveowner into freeing his Hebrew slave and Jer 34:9ff., wherein an attempt is made to put Deuteronomy’s legislation into effect), is immaterial to the intent of the lawgiver. The slave to be devoted must have been a foreigner. This would not in itself have acted as an incentive for making such a vow, as there are ways of showing one’s piety other than depriving oneself of productive labor. Foreign slaves would have been viewed as more expendable, and less (potentially) a part of society—even possibly a threat to it and its world order. Again, one might point out that if the case in question related to idolatry, it would not be placed with vows of separation, the subject of this tightly-knit chapter. The evidence from Deuteronomy, at any rate (and Exod 22:19 is consistent with it), indicates that the execution of an individual is a communal matter; it was not the job of the individual to eliminate his compatriots when he suspected them of worshipping alien gods.

The idolatry theory has another weakness. Lev 27:28 deals with a situation in which the animals and the property of the man as well as his human property can be devoted to the Lord and one assumes from the wording that this devotion is out of the free will of the landowner, unlike the case of idolatry (Exod 22:19).

If we put the matter into the framework provided by Num 21:1-3, where a vow of הֵרֵם was made by the embattled community in order to receive in return the aid of YHWH against the enemy, we see that we may have here, in altered form, the same mechanism at work. A landowner, despairing of his prospects, might be moved to devote irrevocably his property—from his land to his slave—hoping for YHWH to respond favorably and restore him to prosperity. Just like an average person who impinges on YHWH’s immediate vicinity, the “most holy” or וֹסָפְּרָה, a person devoted to הֵרֵם, as a result, not of war, but because of his or her status as a slave, would have to die. In this stratum of writings, then, the הֵרֵם continued to preserve something of its original force, though formulated in a hierocratic way, i.e. it has been placed
at a remove from its “Holy War” origins and formulated as part of the priestly code of technical expression.

The use of the terms הָרֹא and דְּמַע in Lev 27:28-9 shows that the lawgiver is still thinking in terms of the “vow of separation” (דְּמַע חֲזֶקָה), for it is the same terminology used throughout the chapter. In the case of idolatry, the דְּמַע stipulations are absolute, and there could be no question—especially in the priestly circles from which the text of Leviticus 27 emerged—as to whether the דְּמַע could be mitigated by paying an equivalent sum of money. After all, many lesser offenses merit death according to Torah law. The point that emerges from Lev 27:28-9 is not that the slave has done something to set off the immutable workings of the דְּמַע, for the whole tendency of the Torah in treating capital punishment indicates that the law itself would contain a justification or explanation of the nature of the offense (where it was not self-explanatory). Rather the slave has been set apart, devoted to YHWH because the master hoped for something in return, in a way close to that of Num 21:1-3 (where the spoils certain to accrue in victory had to be devoted to God instead). Once that had been done, it became irrevocable (ָכִּי מָּכָה) since the matter had been translated to the highest sphere (“most holy”). This illustrates what was said above, viz. that the דְּמַע had become part of the technical vocabulary of the priests.

One aspect of Lev 27:29 is surprising in the light of Num 18:14 (=Ezek 44:19b), which places the spoils of the דְּמַע under the exclusive control of the priests. It would have suited the interest of the priests to take such devoted slaves and employ them on the temple estates, as they did, for example, in ancient Mesopotamia.13

Yet despite the ‘secularization’ that Noth saw in this chapter,14 there still remained, for the framers of these laws of דְּמַע, an overriding religious priority. The priests of all people entertained seriously and benefited personally from the idea of holiness, and they ranked דְּמַע with its idea of consecration by destruction, as we have seen, with the highest degree of holiness. The classification was in keeping with the general notion that YHWH was the arbiter of destinies and that even animal blood was not to be consumed by humans, while human blood was not to be shed without YHWH’s sanction. On the other hand, they had their avenues of recruiting temple labor, while they preserved, at least in the letter of their laws, the dreadful aspect of דְּמַע.

A wholly different question is addressed by Ezek 44:29b in conjunction with Num 14:9,14, as to whether the דָּם sacrifice has properties analogous to דְּמַע. It is clear that these texts differentiate between the various offerings, including דָּם, and דְּמַע. Numbers treats of them in different verses while establishing that all of them are assigned to the priests. The Book of Ezekiel

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14 M. Norh, Leviticus, 203f.
combines Num 18:9 & 14 into one verse. But it differentiates קדש from the sacrifices; the מיזא is clearly not one of them. This does not mean that the מיזא was never used as a means of atonement—this would have been a usage of the vow- 미래 just mentioned, since the landowner would have probably attributed his failing fortunes to his failures in religion (at least some of the time)—but it does mean, as already suspected, that the two terms could not be simply be identified with each other.

After all that has been said, the question Greenberg raises as to what situation was envisaged by Lev 27:28-9 has not been fully answered. My argument was that the laws of these verses applied only to foreign slaves, and was only for times of acute distress when the owner sought help from YHWH in this manner. Lev 27:21 shows that property could be irrevocably willed to the deity (אמרת ידו), thus coming under the management of YHWH’s representatives on earth, the priests (Num 18:14, Ezek 44:21b). What is implied by the use of the term מיזא in the first connection, and probably in the second as well, is that the deity, i.e. the priests (representing YHWH), had the right of refusal, just as YHWH did in Num 21:1-3. A misfortune-maddened landowner could scarcely be in a position to devote at will dozens of slaves or herds of valuable cattle. Thus in this model, there would be strong disincentives at both ends. The legislation of Lev 27:28-29 was not devised in order to create a bloodbath, nor should transactions involving the “most holy” take place as a matter of routine. The priests had nothing to gain by approving human slaughter; only real distress allied with true piety could have justified a man of property’s devotion of a human being meeting with acceptance from YHWH or his priests. Furthermore, the priests could not—no bureaucracy could—allow the devotion of properties into their jurisdiction to occur in a way completely outwith their control. According to Lev 27:21,28, the מיזא became part of the priests’ holdings, and came under their management; hence they had to have control over what would come under that heading. As Leviticus 22, a chapter which deals with the lower level of “sacred donations”¹⁵ or שמ_means, illustrates, these donations were highly regulated to screen out the unacceptable. Using the Talmud’s logical principle of going from the “light” or lesser case to the “heavy” or graver case (known as נוֹמֵן לַפּ), this must also have occurred at the “most holy” level. The dynamics of the vow of מיזא as well as the practicalities of the situation thus unite to show that the priests had the right of refusal, which kept the vow מיזא under control. The priestly right of refusal is implicit in the nature of a vow. YHWH had to agree to cooperate in Num 21:1-3 or victory would have been denied Israel. The vow does not accomplish the votary’s will by compulsion of the divine, but is a bargain which can be declined by the party of the second part, here represented by the priests.

Whatever the date of Leviticus 27 (and the other passages), the priestly מיזא is evidently a later adaptation of the war- 미래. That the priests could not let the מיזא die in the period after its application in warfare ceased is an im-

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pressive indication that the סֵדֶּר was closer to the heart of biblical religion than moderns have wanted to accept (another indication is the group of passages, beginning with Exod 22:19, that relate to the anti-iconic nature of YHWH). Josh 7:1, 22:24, which in speaking of the סֵדֶּר use the priestly term for a sin against the divine, יֵעֵֽבְרָי, also attest the degree of the priestly investment not only in the peacetime סֵדֶּר, but in the war-סֵדֶּר as well. Most significant, perhaps, is that Lev 27:28's יָדַע לְעַל אֶת הָעֵדֶּר מֵאֹלַּה יִשְׂרָאֵל echoes the language of 1 Sam 15:3, יָדִיעֲךָ הָנָּכָר, which helps explain the former verse's peculiar formulation. It reflects an effort, despite the difference in situations, to establish continuity with the war-סֵדֶּר, which was ultimately the source of the priestly סֵדֶּר's legitimacy.

The retention and institutionalization of the סֵדֶּר envisaged in Leviticus 27, and the equation of the סֵדֶּר to the מִשְׁפָּֽט or "most sacred,"¹⁶ unite to show the positive light in which those most involved in maintaining the daily practice of YHWHistic religion, the priests, viewed it. The equation just alluded to is evidence the term סֵדֶּר was preserved because it reflected a core conception of the holiness of God, which the priests were reluctant to discard. Indeed, although the prophets criticized the institution of sacrifice, we have no prophetic denunciation from any period which criticizes any aspect of the סֵדֶּר any more than the prophets denounce holiness in general. Due to the unsystematic nature of the ancient Near Eastern law code, we may safely guess that we have in these few passages only the surviving remnant of a much more multifaceted priestly סֵדֶּר or "teaching" on the subject. But we cannot know from these indications whether the priests applied Exod 22:19, the law against idolatry, to choose the most obvious example. Nevertheless, enough remains to us to characterize the priestly סֵדֶּר as an expression of the ancient perception of the essential nature of the סֵדֶּר, which the priests were able to express in their own language and in almost physical terms by giving it equivalence to the "most holy" or מִשְׁפָּֽט, also a name for the holiest place found in the sanctuary of YHWH.

III: NUMBERS 21:1-3

This pericope has been thought to be either awkwardly placed, or out of place, by the vast majority of scholars, although it is not easy to pinpoint the 'correct' place into which it would fit. An alternative theory would be that Num 21:1-3 was part of the core material, but that through the activity of one or more redactors new sections were added and the original structure changed to accommodate them. If we look at Numbers 20-21 and delete the story of Aaron's death, as well as the "brazen serpent" account, what would remain would resemble nothing so much as Exodus 16-17, which also contains "complaint material" climaxing with battle. Here, should this hypothesis be worth considering, the battle account has ended up being prefixed to a

¹⁶ For a contrasting view, see J. Milgrom in Numbers: The Traditional Hebrew Text with the New JPS Translation, The JPS Torah Commentary (Phila., 1990), 151-2, 429.
‘complaint section’ because the latter had been displaced by another account, possibly that of the serpent. Originally (according to this hypothesis) the loss in battle was as a result of the people’s complaint at either Meribah or the Reed Sea Road. The reference to the Reed Sea seems designed to remind the reader or listener of the people’s conduct after the crossing of the Sea (i.e. Exodus 16-17), assuming that Num 21:4a belongs to the same source as 1-3 (generally attributed to JE), or, if it doesn’t, as seems more likely, that it still reflects an equally old tradition. It is important to notice that, as things stand now, there is no reason given for the success of the King of Arad against Israel in Num 21:1.

Another way of looking at it is that of A. M. Goldberg, who says that the pericope is a piece of a broader framework; the victory is a counterpart to the defeat at the same site in Num 14:45, and is completed by the victories over Sihon and Og. This leaves the question just posed unanswered as to why the initial defeat occurred. It is interesting that the final shape of the chapter includes no less than three etiologies; that of Hormah, the bronze serpent, and Beer (v.16). If my hypothesis outlined above is correct, however, the etiological principle of organization of the chapter—assuming it is not just incidental—is due to a secondary redaction.

We come then to the next problem, that raised long ago by G. B. Gray, namely the question of whether the phrase, “king of Arad” represents a gloss, as he suggested. Indeed, the reading “The Canaanite, the king of Arad, inhabitant of the Negeb,” is unusual and looks awkward—at least to us. Yet it is perfectly good Hebrew. Gray said that once Arad is mentioned, the last clause becomes redundant, but that is not convincing in context, especially as redundancy was a highly valued trait in ancient Near Eastern literature. The sense of the phrase becomes clear from the mention of the cities put to the coni in Num 21:2. The king’s base or capital city was Arad, but he sojourned in other places as well, a practice attested among later monarchs, such as the English Tudors (who called it a “progress”), for highly practical reasons. Whatever the case was in the LBA, in biblical times there were dozens of cities in the Negeb, including the Arad area, which doubtless gave the writer the idea of the additional cities (beyond Arad). However, the presence or absence of the king of Arad in this pericope is not a matter of the first importance for our subject, while the question of the coni in this passage is.

Following Num 21:1, in which a Canaanite king attacks Israel and defeats it, taking prisoners, Israel makes a vow (Num 21:2) in which it swears

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18 A. M. Goldberg, *Das Buch Numeri, Das Welt der Bibel, Kleincommentar* (Dusseldorf, 1970), 94.
that upon YHWH's giving the enemy into Israel's hand, it would devote (שָׁרַד), i.e. consecrate to destruction, the enemy cities. The second verse reflects the situation of the first, that Israel does not stand well with YHWH, for otherwise it would not have to bargain for YHWH's help. It is notable that Moses does not intercede for Israel here. In fact, with the exception of the serpent episode, Moses's role in this chapter is either strikingly absent or quite perfunctory (as in Num 21:17), until the last episode of Og, which is viewed by most scholars as derived from Deuteronomy. Num 21:21, "Israel sent messengers to Sihon, king of the Amorites," contrasts with Num 20:14, "Moses sent messengers from Kadesh to the king of Edom." This odd feature of Numbers 21 may be a secondary consequence of the kind of reshuffling postulated earlier. It is reasonable to infer also that Num 20:1-3 is either a version of an actual historical event that was projected back into Moses's time or of a type of event that occurred more than once.

In considering the שָׁרַד in and of itself, this passage is of prime importance, quite aside from the historicity of the event, which is impossible to prove or disprove. According to E. Stern, the archeologist, no excavational evidence shedding light on the שָׁרַד exists. What is important here is the concept of applying the שָׁרַד as a result of a vow, which C. H. W. Brekelmans rightly takes as evidence of the 'positive quality' of the שָׁרַד. (see above, II). Despite the fact that the שָׁרַד involves refraining from plundering, it should be understood, as the same author says, as placing the spoil in God's sphere (thus putting it positively). Brekelmans' point is that the שָׁרַד is not understood as an Đi, i.e. vow of restriction, or negative vow.

Two remarks immediately suggest themselves. The first is that the possibility of a war-שָׁרַד vow makes the idea of a peacetimeשָׁרַד-vow plausible, and this applies to Lev 27:28-9. Secondly, the Bible portrays two possible ways of initiating the war-שָׁרַד; either as commanded by deity, as exemplified by the שָׁרַד in the Book of Joshua, or by a vow of the community, providing that YHWH has decided to accept it. Once YHWH has accepted it, then victory is assured. One reason why Moses could not be the initiator here, is that in general theשָׁרַד is utilized for conquest traditions, in which Moses could have no part (except in Transjordan). In this pericope, Moses is still active, but it was felt unsuitable to give Moses the role of either intercessor (see above) or generalissimo, if only as a concession to the fact that the Arad area was to come to have a place in

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22 According to S. R. Driver, A Critical and Exegetical Commentary on the Book of Deuteronomy, ICC (Edinburgh, 1895), 47, the idea was A. Dillman's in his commentary Numeri, Deuteronomium, und Josua, Kurzgefasste Exegetische Handbuch zum A.T.


24 Cf. the appendix to ch. 4.

Israel's Weltordnung (in a way Transjordan could not). But this is not a conquest pericope in the strict sense, as G. W. Coats has pointed out, and Israel did not take possession of the cities, which is one reason the war-herem of Num 21:1-3 fitted into the schema of the chapter.

An important feature of Num 21:1-3 is the etiological dimension of the passage, as evinced in the word play of herem/הָרֶם. C. H. W. Brekelmans thought v.3b an addition, which solved the problem of the nature of the etiology; it was secondary. Yet the grounds on which he defended this are questionable—his reasoning involved some dubious considerations of an Arabian locale for Atharim. On the other hand, B. O. Long, who devoted a book to biblical etiologies, saw this etiology as part of the integral literary structure of the passage while still taking it seriously as a battle report. The biblical narrative abounds with small passages leading up to an etiology, which to the writers was the raison d’être of the individual passage. This pericope falls in that pattern. If one subtracts the etiology, too little foundation remains to be built upon.

There is no reason to doubt that, the archeology of Arad aside, this practice of a vow to put to the דִּינֶה in return for YHWH's support was an actuality in ancient Israel. This is the strictly historical importance of the pericope, and for the understanding and history of דִּינֶה the considerations adduced above regarding the use of the vow in peace add to this unique little section’s importance. One might add that, in a previously discussed parallel of Livy, in which he (IX:7-X:11) described an outmoded Roman practice, the initiator of the vow is, along with the enemy, dedicated to the gods. No one would be likely to initiate such a vow, except in such a case as Livy expounds, where the legions were in deep trouble in the battlefield. A similar dynamic is found here. Israel was in trouble, and it resorted to a vow of דִּינֶה in order to retrieve the situation. Lives were at risk, so the price of divine aid, forfeiture of booty, was easy to pay.

The Torah contains a full range of uses of the דִּינֶה, from the legal subtleties of Deuteronomy and Leviticus to the war-דִּינֶה of Deuteronomy 2-3 and Num 21:1-3. The legal material has presented the greater challenge, because it is necessary to try to uncover the agenda of the legislators from the meager remains of their work as it has come down to us. The incident of Num 21:1-3 is a good lead-in to the Book of Joshua, which uses the root דִּינֶה more than any other book in the Bible. It presages the events at Ai (Joshua 8), which also began with disaster and ended with a successful דִּינֶה. It is now time to turn to the most eventful of books from the point of view of the דִּינֶה.

27 C. H. W. Brekelmans, De herem, 68.
28 Ibid. The NJV notes that the meaning of the word is doubtful and that it may not even connote a place name.