

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

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

Scott W. Hahn

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

The Book of Hebrews has typically been regarded as anomalous in biblical studies for a variety of reasons, one of which is its unusual emphasis on the concept of “covenant” (διαθήκη), which is treated differently and much more extensively in Hebrews than in any other New Testament book. Just over half of the occurrences of the word διαθήκη in the New Testament (17 of 33) are in Hebrews alone. Moreover, Hebrews is unique in the emphasis it places on “covenant” as a *cultic* and *liturgical* institution.

A new phase in modern studies of the biblical concept of “covenant” (כְּתֻבָּה MT, διαθήκη LXX) began in the middle of the last century with George E. Mendenhall's work comparing the form of Hittite vassal treaties to the Sinai covenant of Exodus.<sup>1</sup> Scholars since Mendenhall have either challenged or defended his arguments for the antiquity of the covenant concept in Israelite religion, but have generally stayed within the framework Mendenhall established for the discussion, viewing “covenant” as a legal institution and using the extant treaties between ancient Near Eastern states as the primary texts for comparison and engagement with the biblical materials.<sup>2</sup> Thus, covenants

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

<sup>2</sup> Notice how often “law” or “treaty” occurs in the titles of the following important studies on biblical covenants: Herbert B. Huffmon, “The Covenant Lawuit,” *JBL* 78 (1959): 285–295; Dennis J. McCarthy, *Treaty and Covenant* (AnBib 21; Rome: Pontifical Biblical Institute, 1963 [2d ed., 1978]); Meredith G. Kline, *Treaty of the Great King: The Covenant Structure of Deuteronomy: Studies and Commentary* (Grand Rapids: Eerdmans, 1963); Rinjke Franken, “The Vassal Treaties of Esarhaddon and the Dating of Deuteronomy,” *OTS* 14 (1965): 140–154; Hayim Tadmor, “Treaty and Oath in the Ancient Near East: A Historian's Approach,” in *Humanizing America's Lionic Book* (ed. Gene M. Tucker and Douglas A. Knight; Chico: Scholars Press, 1982), 125–152; George E. Mendenhall, “The Suzerainty Treaty Structure: Thirty Years Later,” in *Religion and Law* (Winona Lake: Eisenbrauns, 1990), 85–100.

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

Scholarship has tended, however, to neglect the fact that even these ancient Near Eastern treaty-covenants had a pronounced cultic-liturgical dimension.<sup>3</sup> The covenants were often concluded by lengthy invocations of nearly the entire Near Eastern pantheon, calling upon the gods to witness elaborate sacred oaths confirmed by ritual sacrifices and to enforce those oaths with blessings for faithfulness and curses for transgression.<sup>4</sup> Thus, the establishment of covenants consisted essentially of a liturgy: ritual words and actions performed in the presence of Divinity. The liturgical dimension of covenant-making appears quite clearly in the OT, where the covenant is established through cultic ritual (e.g., Exod 24:4–11) and liturgical functionalities or "celebrants" (i.e., priests and Levites) mediate the covenant blessings and curses on behalf of God (Num 6:22–27; Deut 27:14–26).

Reflecting on the OT traditions of "covenant," the author of Hebrews, while not forgetting the legal dimension, places the *liturgical* (or cultic) in the foreground. This is most obvious in chs. 8–9 of Hebrews,<sup>5</sup> in which the author contrasts two covenant orders: the old (Heb 8:3–9:10) and the new (Heb 9:11–28). Both covenant orders have a cultus which includes a high priest (Heb 8:1, 3; 9:7, 11, 25, ἀρχιερέως) or "celebrant" (Heb 8:2, 6, λειτουργός) who performs ministry (Heb 8:5; 9:1, 6, λειτουργία) in a tent-sanctuary (Heb 8:2, 5; 9:2–3, 6, 8, 11, 21, σκηνή), entering into a Holy Place (Heb 8:2; 9:2–3, 12, 24, ἅγιος) to offer (Heb 8:3; 9:7, 14, 28, προσφέρειν) the blood (Heb 9:7, 12, 14, 18–23, 25, αἷμα) of sacrifices (Heb 8:3–4, 9:9, 23, 26, θυσία) which effects purification (Heb 9:13, ἀγιάζω; Heb 9:14, 22–23, καθαρίζω) and redemption (Heb 9:12, 15, λύτρωσις) of worshippers (Heb 8:10, 9:7, 19, λαός; Heb 9:9, 14, λειτουργοῦντες) who

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

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

<sup>5</sup> On the cultic background of Heb 9, see James Swetnam, "A Suggested Interpretation of Hebrews 9:13–18," *CBLQ* 27 (1965): 375; Johannes Behm, "Suchen," *TDNT* 2:131–132; Ceslas Spicq, *L'Épître aux Hébreux* (2 vols.; Paris: Gabalda, 1952), 2:246–247; Albert Vanhoye, *Old Testament Priests and the New Priest According to the New Testament* (trans. J. B. Orchard; Studies in Scripture; Peterham, Mass.: St. Bede's, 1986), 176–177.

have transgressed cultic law (Heb 8:4; 9:19, νόμος).<sup>6</sup> The mediation of both covenants is primarily cultic, the sacred realm of liturgy.

The legal nature of the covenant is not absent, however. The two aspects of the covenant, legal and liturgical, are inextricably bound in a reciprocal relationship. On the one hand, cultic acts (i.e., sacrificial rites) establish the covenant (Heb 9:18–21, 23), and also renew it (Heb 9:7; 10:3). On the other hand, the covenantal law provides the legal framework for the cult, determining the suitable persons, materials, acts, and occasions for worship (Heb 7:11–28; 9:1–5). Thus, the liturgy mediates the covenant, while covenant law regulates the liturgy.

The legal and liturgical aspects of the covenant are united in Christ himself, who is simultaneously king (the highest legal authority) and high priest (the highest liturgical celebrant). This dual role of Christ as priest and king, running as a theme throughout the book, is announced already in Heb 1:3, where Christ "sits down at the right hand of the Majesty in heaven" (i.e., a royal act) after having "provided purification for sins" (a priestly function). It is brought to its quintessential expression by the use of Melchizedek—both "King of Salem" and "Priest of God Most High" (Heb 7:1)—as a principal type of Christ.

Hebrews' vision of a cultic covenant, with close integration of law and liturgy, is difficult for modern scholarship to appreciate. Western modernity, as heir to the Enlightenment concept of "separation of church and state," has tended to privatize liturgy and secularize law, resulting in an irreconcilable divorce between the two. On the occasions when liturgy does appear in the public square, it is generally either dismissed as superstition or critiqued (reductionistically) as ritualized politics. In any case, Hebrews confronts us with a radically different vision: law and liturgy as distinguishable but inseparable aspects of a single covenant relationship between God and his people. It is my thesis in this study that, in order to understand the Book of Hebrews, we must be prepared to enter into its own cultural

<sup>6</sup> Cf. William L. Lane, *Hebrews 9–13* (WBC 47b; Dallas: Word, 1991), 235: "The manner in which the argument is set forth presupposes the cultic orientation of 9:1–10 and its leading motif, that access to God is possible only through the medium of blood (9:7). The basis for the exposition in 9:11–28 is not primarily theological. It is the religious conviction that blood is the medium of purgation from delinquency. . . . The essence of the two covenants is found in their cultic aspects; the total argument is developed in terms of cultus. . . . The interpreter must remain open to the internal logic of the argument from the cultus."

worldview, with its unity of liturgy and law; and that doing so will elucidate a long-standing interpretive *crux*: the meaning of  $\delta\iota\alpha\theta\eta\kappa\eta$  in Heb 9:15–18.

The methodology that I employ is in some ways classical textual exegesis, that is, examining the grammar and syntax of the text in the light of its historical and religious context. But since I emphasize the legal and liturgical aspects of the covenant in their integration, a more deliberate application of the social-scientific approach is appropriate. This methodology is associated with the scholars Bruce J. Malina, John J. Pileh, Richard Rohrbaugh, and others.<sup>7</sup> David A. deSilva has applied social-scientific methods specifically to the interpretation of Hebrews.<sup>8</sup>

Regrettably, most of the social-scientific study of the New Testament in the past decades has focused on the Greco-Roman world, not the significance of the unique cultural institutions of First and Second Temple Israel (or Judea) herself—the covenant, cult, priesthood, temple, etc.—and how these institutions shaped the cultural worldview of the New Testament authors. John Dunnill's monograph *Covenant and Sacrifice in the Letter to the Hebrews* represents a breakthrough in this regard.<sup>9</sup> Dunnill not only applies social-scientific methods to the analysis of the distinctly Israelite-Jewish values and cultural institutions characterizing the Book of Hebrews, but also incorporates methodological insights from the religious anthropology of Mary Douglas and Victor Turner.<sup>10</sup> In what follows, I will build on Dunnill's

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

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

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

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

work while attempting to unravel the difficulties presented by Heb 9:15–18.

## 2. *Hebrews 9:15–18: A Crux Interpretum*

Hebrews' concept of covenant, with liturgy and law intertwined, may actually be at work in the one passage of Hebrews where the author seems to dispense with his usual cultic categories for understanding covenant. Ironically, the problematic passage occurs in the middle of Heb 9, the chapter with the densest concentration of cultic language and imagery in the book. In Heb 9:16–17, according to most commentators, the author abandons his Israelite, cultic understanding of  $\delta\iota\alpha\theta\eta\kappa\eta$ , "covenant,"<sup>11</sup> and appeals to the Greco-Roman, secular definition of  $\delta\iota\alpha\theta\eta\kappa\eta$  as "last will or testament."<sup>12</sup> In the usual translations, the author seems, in the course of Heb 9:15–18, to slip between the two quite distinct meanings in a facile manner:

For this reason he is the mediator of a new covenant ( $\delta\iota\alpha\theta\eta\kappa\eta$ ), so that those who are called may receive the promised eternal inheritance, because a death has occurred that redeems them from the transgressions under the first covenant ( $\delta\iota\alpha\theta\eta\kappa\eta$ ). For where a will ( $\delta\iota\alpha\theta\eta\kappa\eta$ ) is involved, the death of the one who made it must be established. For a will ( $\delta\iota\alpha\theta\eta\kappa\eta$ ) takes effect only at death, since it is not in force as long as the one who made it is alive. Hence not even the first covenant ( $\delta\iota\alpha\theta\eta\kappa\eta$ ) was inaugurated without blood. (Heb 9:15–18 NRSV)

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

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

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

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

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

enjoys majority support.<sup>14</sup> In Heb 9:15, the context seems to demand the sense of “covenant,” since only a covenant has a mediator (*μεσίτης*) and reference is made to the first *διαθήκη*, which the author clearly regards as a covenant. However, in Heb 9:16, the requirement for the “death of the one who made it” would seem to suggest the translation “will” or “testament,” since covenants did not require the death of their makers. Likewise, in Heb 9:17, the statement that a *διαθήκη* takes effect only at death and is not in force while the maker is alive seems to apply only to a testament. However, in Heb 9:18, the topic returns again to “the first *διαθήκη*,” that is, the Sinai event, which can scarcely be anything but a covenant.

Nevertheless, while the alteration between the meanings “testament” and “covenant” seems required semantically, the resulting argument is not logically satisfying. A “testament” simply is not a “covenant,” and it is hard to see how the analogy between the two has any validity. In a “testament,” one party dies and leaves an inheritance for another. In a “covenant,” a relationship is established between two living parties, often through a mediator. Testaments do not require mediators, and covenants do not require the death of one of the parties. Moreover, it is hard to understand either the “new” or the “old” covenants—as portrayed in Hebrews—as a “testament.” If the old covenant is understood as a “testament,” God would be the “testator”; yet it is absurd to think of God dying and leaving an inheritance to Israel. In the new covenant, Christ indeed dies, but he is a mediator (Heb 9:15; 12:24), not a “testator.” Moreover, he does not die in order to *leave* an inheritance to the Church, but rather to *enter* the inheritance himself (Heb 1:3–4; 2:9; 9:11–12; 10:12–13), which he then shares with his “brothers” (Heb 2:10–3:6).

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

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

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

<sup>16</sup> Cf. Dunnill, *Covenant and Sacrifice*, 46–47: “Though Hebrews exhibits Alexandrian [i.e. Hellenistic] terminology . . . in every case the substance of the thought is Jewish . . . The Hellenistic element overlays a mind thinking in the categories of the Old Testament cultus.” Although it came to be used in later periods, the institution of the testament is not native to Israelite-Jewish culture, which traditionally practiced *inheritance* (non-testamentary) succession, in which the first-born son enjoyed a privi-

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

Among the many references to covenants, new and old, the word-play on *διαθήκη* which compares them to a secular will seems strangely banal, and the argument that Jesus’ death was necessary because “where there is a will the death of the testator must be established” (9:16) is simply irrelevant to the theology of the new covenant.<sup>16</sup>

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

[The author] jumps from the religious to the current legal sense of *διαθήκη* . . . involving himself in contradictions which show that there is no real parallel.<sup>18</sup>

Is it really the case that the author of Hebrews, usually so theologically and rhetorically brilliant, has committed here a logical and theological *faux pas*, a minor blunder tearing the otherwise seamless coherence of his homiletical masterpiece?<sup>19</sup> I am inclined to think

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

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

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

<sup>18</sup> Behm, *TDMT* 2:131. Many other advocates of *διαθήκη*-as-testament also feel the tension caused by the abrupt switch in meaning, e.g., F. F. Bruce, *The Epistle to the Hebrews* (rev. ed.; NICNT; Grand Rapids: Eerdmans, 1990), 461; Pfitzner, *Hebrews*, 131; Ellingworth, *Hebrews*, 462; Swenham, “Suggested Interpretation,” 373. Currently it seems popular to defuse this tension somewhat by describing the author as engaged in “playful” rhetorical argument which—while not logically valid—would amuse the audience or readership with its clever word-play (Atridge, *Hebrews*, 253–254; similarly Long, *Hebrews*, 98–99). Unfortunately, in order to be rhetorically effective an argument must at least appear to be valid. A blatantly false exemplum cited as proof, or a syllogism whose errors are apparent to all, tends to discredit the speaker and his argument. It is doubtful whether the argument of Heb 9:16–17 would have had even apparent validity under a testamentary interpretation.

<sup>19</sup> On the coherence and brilliance of Hebrews’ thought and expression, see Attridge, *Hebrews*, 1: “[Hebrews is] the most elegant and sophisticated . . . text of first-century Christianity. . . . Its argumentation is subtle; its language, refined; its imagery rich and evocative. . . . a masterpiece of early Christian rhetorical homiletics”; Albert Vanhooye, *The Structure and Message of the Epistle to the Hebrews* (Subsidia Biblica 12; Rome: Pontifical Biblical Institute, 1989), 32–33; “Pause for a moment to admire the literary perfection of [this] priestly sermon. . . . One sees how the author is concerned about writing well . . . [his] talent is seen especially in the harmony of his composition”; Dunnill, *Covenant and Sacrifice*, 8: “[The interpreter must] capitalize on the strong impression of the unity of its imaginative world which any

not. In what follows, I will propose that if διαθήκη is understood as “covenant” in Heb 9:16–17, there is a way of interpreting the passage which confirms the coherence of thought of the author, who seems to be explicating the *legal implications* of the *liturgical act* which established the first covenant.

First, I will point out certain frequently-overlooked difficulties with the usual interpretation of διαθήκη as “testament” in Heb 9:16–17; second, critique some previous attempts to understand διαθήκη as “covenant” in these verses; and finally, outline an original interpretive proposal which, I believe, has greater explanatory power than others offered to date.

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

The troubles with διαθήκη as “testament” in Heb 9:15–18 go deeper than the mere fact that the word so translated renders the argument of the passage obscure if not simply fallacious. John J. Hughes has pointed out these difficulties at length elsewhere.<sup>20</sup> I will summarize some of Hughes’ observations here, focusing on the lexical, grammatical and legal problems with rendering διαθήκη as “testament” in these verses.

### 2.1.1. *Lexical Issues*

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

reading of Hebrews communicates. . . . It is generally agreed that Hebrews exhibits a marked theological coherence<sup>23</sup>; and Brooke F. Westcott, *The Epistle to the Hebrews: The Greek Text with Notes and Essays* (2d ed., 1892; repr., Grand Rapids: Eerdmans, 1980), xlv–xlvii: “The style is . . . characteristic of a practised scholar. It would be difficult to find anywhere passages more exact and pregnant in expression. . . . The writing shows everywhere the traces of effort and care. . . . Each element, which seems at first sight to offer itself spontaneously, will be found to have been carefully adjusted to its place, and to offer in subtle details results of deep thought.” Cf. also Sweetnam, “Suggested Interpretation,” 375.

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

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

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

Heb 7–10, with seven occurrences in Heb 9 alone. Since the word is central to the author’s thought, and in every instance outside Heb 9:16–17 has the meaning “covenant,” Hughes remarks: “As a matter of a priori concern one should at least be exceedingly cautious in attributing a meaning to διαθήκη in [Heb] 9:15–22 that is so foreign to the author’s use of the word elsewhere.”<sup>22</sup>

### 2.1.2. *Grammatical Issues*

Several scholars have noted grammatical irregularities in the use of φέρεσθαι (Heb 9:16b) and ἐπι νεκροῖς (Heb 9:17a).<sup>24</sup> If Heb 9:16b had testamentary practice in view, one would expect ὅρου γὰρ διαθήκη, διαθέμενον ἀνάγκη ἀποθαιέν, “where there is a testament, it is necessary for the testator to die” (italics added). The circumlocution θάνατον ἀνάγκη φέρεσθαι τοῦ διαθεμένου seems unnecessary. The NRSV translates, “the death of the one who made it must be established” (italics added), but similar usage in the rest of the New Testament or the LXX cannot be found. Φέρω frequently occurs in legal contexts (biblical and non-biblical) but in the sense of “bring a report, claim, or charge,” not a *death*. The expression should be φέρεσθαι ἀνάγκη τὸν λόγον τοῦ θανάτου, “it is necessary for the report of the death to be brought.”<sup>25</sup>

Another grammatical strain occurs at Heb 9:17a, διαθήκη γὰρ ἐπι νεκροῖς βεβαία, which the NRSV renders, “a will takes effect only at death.” A literal translation, however, would read “for a διαθήκη is confirmed upon dead [bodies].” Ἐπι νεκροῖς cannot be taken as “at death” (ἐπι νεκρῶ or ἐπι νεκρόσει), although this is the sense demanded by a testamentary interpretation of διαθήκη.<sup>26</sup> The use of the plural (νεκροῖς, “dead [bodies]”) is particularly awkward if indeed the author was intending to speak of the death of the testator.<sup>27</sup>

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

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

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

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

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

<sup>27</sup> Aulridge admits, “The phrase referring to the testator’s death, ‘for the dead’ (ἐπι νεκροῖς), is somewhat odd” (*Hebrews*, 256). Likewise, Sweetnam recognizes the oddity and offers a singular explanation for it (“Suggested Interpretation,” 378).

### 2.1.3. *Legal Issues*

Hughes demonstrates that the characteristics of a διαθήκη in Heb 9:16–17 do not, in fact, correspond to those of secular Hellenistic or Roman διαθήκη. For example, the ratification or validation (βεβαίωσις) of wills in Hellenistic, Egyptian, and Roman law was not “over the dead [bodies]” (Heb 9:17, ἐπὶ νεκροῖς):

It is simply untrue and completely lacking in classical and papyrological support to maintain that, given the legal technical terms (βέβαιος, ἰσχύω, and perhaps ἐγκαινίζω) and their consistent meanings, a will or testament was only legally valid when the testator died. . . . It is impossible, not just unlikely, that [Heb 9:16–17] refer to any known form of Hellenistic (or indeed any other) legal practice.<sup>28</sup>

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

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

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

<sup>30</sup> Hughes, “Hebrews IX 15ff.,” 62, citing Hans J. Wolf, “Hellenistic Private Law,” in *The Jewish People in the First Century: Historical Geography, Political History, Social, Cultural and Religious Life and Institutions* (2 vols.; ed. Shemuel Safrai and Manahem Stern; CRINT, sec. 1; Assen: Van Gorcum, 1974), 1:534–560, here 543; and Rafal Tamborski, *The Law of Greco-Roman Egypt in Light of the Papyri 322 BC–640 AD* (2d ed.; Warsaw: Wydawnictwo Naukowe, 1955), 207–208.

<sup>31</sup> On *μὴ ποτε* as a strong negative, see Ellingworth, *Hebrews*, 464. The sense would not be “wills do not usually have force while the testator lives,” but “they certainly do not,” or perhaps “they never do” (cf. *NTV*, *ASV*).

<sup>32</sup> Subsequent responses to Hughes’ demonstration (“Hebrews IX 15ff.,” published 1979) of the lack of correspondence between Heb 9:16–17 and Greco-Roman testamentary law have been surprisingly weak. Curiously, Athridge, publishing almost thirteen years after Hughes’ seventy-page *NewT* article, makes no reference to Hughes or his arguments (Cf. Athridge, *Hebrews*, 255–256 n. 25, 419). Ellingworth, while aware of Hughes, does not rebut him, although his comment “ὄνομα ζῆν is here used in v. 16] not strictly of a legal requirement” (*Hebrews*, 464) seems a concession to Hughes’ evidence that testaments were validated by a notary and not by death. Likewise, Koester, who feels Hughes’ arguments more strongly, has to nuance and mitigate the sense of Heb 9:17 to accommodate Hughes’ point that the language is not legally accurate (*Hebrews*, 418, 425). Koester also cites a papyrus death-notice as proof of his assertion that “legally people had to present evidence that the testator had died for a will to take effect” (*Hebrews*, 418, 425), but the papyrus cited does not actually mention a will or inheritance as being at issue in the notice of death.

### 2.2. *Previous Proposals for Διαθήκη as “Covenant” in Heb 9:16–17*

The various difficulties with reading διαθήκη as “testament” noted above have led several scholars to maintain the author’s usual meaning “covenant” for διαθήκη in Heb 9:16–17.<sup>33</sup> These scholars have, in my opinion, moved the discussion in the proper direction by seeking to explain Heb 9:16–17 in terms of the cultic rituals involved in biblical and ancient Near Eastern covenant-making. In these rites, the covenant-maker (ὁ διαθεύμενος) swore a self-maledictory oath (i.e., a curse), which was then ritually enacted by the death of animals representing the covenant-maker.<sup>34</sup> The bloody sacrifice of the animal(s) symbolized the fate of the covenant-maker should he prove false to his covenantal obligations.<sup>35</sup> The meaning of Heb 9:16–17 may be paraphrased as follows: Where there is a covenant, it is necessary that the death of the covenant-maker be represented (by animal sacrifices); for a covenant is confirmed over dead bodies (sacrificial animals), since it is never valid while the covenant-maker is still ritually “alive.”

#### 2.2.1. *The Covenantal Background of Heb 9:16–17*

As background for the covenantal interpretation of Heb 9:16–17, it may be useful to cite some relevant examples to demonstrate the following: (1) biblical and ancient Near Eastern covenant-making entailed the swearing of an oath, (2) this oath was a conditional self-malediction, i.e., a curse, (3) the content of the curse usually consisted of the covenant-maker’s death, and (4) the curse-of-death was often pre-enacted through sacrificial rituals.

(1) *Covenant-Making and Oath-Swearing.* The swearing of an oath was closely associated with the making of a covenant. In fact, the two terms, oath (ῥῆς) and covenant (ῥῆ-ῶ), are sometimes used interchangeably, e.g., in Ezek 17:13–19:

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

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

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