THE TESTAMENTAL SIGNIFICANCE OF διαθήκη IN HEBREWS 9:15-22

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ABSTRACT

This article scrutinises the meaning of διαθήκη in Hebrews 9:15-22. By examining the pertinent lexical and translation factors and the nature of Hellenistic wills in the light of examples taken from the Oxyrhynchus Papyrus, the writer applies these criteria to an understanding of the argument of Hebrews 9:15-22. He concludes that the word διαθήκη can there only mean ‘testament’ and not ‘covenant’.

1 INTRODUCTORY REMARKS

In the secular world of the First Century AD the word διαθήκη was universally understood as referring to a last will and testament (Moulton & Milligan 1952:148; Arndt & Gingrich 1979:182). Such wills were widespread in the Roman Empire and differed only slightly in material aspects in Greece, Italy, Palestine and Egypt. For the most detailed works on the formal legal aspects of Taubenschlag (1948,1955 2 vols); Arrango-Ruiz (1974); Preissigke and Kiessling (Eds 1915-1965); Berger (1946;32ff; 1968:78; 445-455; 539-54), and Kreller (1919). For additional literature, see Johnsson (1978:239-251) and Grasser (1986:160-179). It is, in fact, very unlikely that someone living at that time would have associated the term with a ‘covenant’ in a religious sense, or in the sense of an ‘agreement’ or ‘contract’. Nonetheless, two modern writers insist that the word must always and exclusively be understood in the New Testament (including the passage under review) as ‘covenant’ (Kilpatrick 1977:263-265; Hughes 1979:26-96).

This article will argue to the contrary, namely that in Hebrews 9:15-22, διαθήκη clearly refers to a testament alone and not to a covenant. In so doing, it will examine lexical and translation aspects, the nature of Hellenistic wills in the light of the Oxyrhynchus Papyrus and the application of these criteria to an understanding of διαθήκη in Hebrews 9:15-22.

2 LEXICAL AND TRANSLATION FACTORS

Tov (1976:534) states that of the 287 occurrences of the word נְקֶשׁ in the Old Testament, 264 are rendered διαθήκη in the LXX. Of the remaining 23
occurrences, 19 are absent from the Greek text. This leaves 4 occurrences, three of which are rendered διαθήκη and the last instance appears to have been misread. Tov's observations become all the more significant when it is realised that, whereas συμβ. does occur in the LXX and is the usual term (along with συγγραφή for a covenant, it is nonetheless not once employed as a translation of ἱερός. Both συμβ. and συγγραφή are absent from the New Testament. This can only mean one thing; however else ἱερός was understood by the LXX translators, it is clear that, for them, it was not equivalent in meaning to συμβ. (‘agreement’). But this still does not tell us what, precisely, διαθήκη means. Without enlarging on Tov's article, it will nonetheless be useful briefly to review his comments on the importance of bearing in mind two aspects in particular, namely, (a) a writer's intention, and (b) two dimensions of διαθήκη.

In regard to (a) Tov points out that a tension is often to be detected between the meaning of the words intended by the Greek translator and meanings attributed to the same words in the writings of the Church Fathers in their translations made of the LXX. This may, for example, arise in the case of polysemous words. Tov (1976:530) cites, among other examples, Genesis 1:16. The Hebrew בָּלָהָב (‘to rule over’ or ‘regulate’) is translated εἰς ἀρχάς in the LXX, but is translated in initium in the Old Latin. This was obviously done on the assumption that ἀρχή (pl ἀρχάς) means ‘beginning’ — clearly a misunderstanding of the Greek translation. Then, too, another level of meaning may be inferred when developments take place within the LXX itself. Thus Tov (1976: 533) rejects any idea of a Hebraism in the LXX being explained in terms of a Jewish dialect of the Greek language (‘Jewish Greek’). Tov defines a Hebraism as ‘a Greek word, phrase or syntagma which transfers certain characteristic Hebrew elements into Greek in an un-Greek fashion’ (1976:533). Instead he sees it as being more directly the result of stereotyped (automatic) representation of Hebrew words in the LXX. A good example of such stereotyping is the equivalence of ἱερός/διαθήκη. It seems that at a certain stage in the translation process, διαθήκη was used automatically as an equivalent of ἱερός. The lexicographical description of the equivalence ἱερός = διαθήκη becomes further complicated by the fact that διαθήκη in the LXX does not reflect the most frequent meaning of διαθήκη in the contemporary Koine, namely ‘testament’.

In regard to (b) Tov takes into consideration the implications of the Pentateuchal ἱερός between God and His people. He then reconstructs two dimensions of διαθήκη:

(a) A unilateral agreement (‘testament’) with strong bilateral tones.

(b) A second dimension of διαθήκη which is fairly identical with ἱερός in most cases.
The implications of Tov’s findings will become more apparent when the positions of Kilpatrick and Hughes are evaluated and when the passage under review is carefully scrutinised. Before passing on to such examination a brief study and analysis of the peculiarly testamental terms occurring in Hebrews 9:15-22 will be undertaken. The following words/phases, in addition to, but in conjunction with, διαθήκη, occur: μεσίτης, θάνατος, κληρονομία (v15); θάνατος ἀνάγκη φέρεσθαι, διαθέμενος (v16); ἐπὶ νεκρῶς, βεβαιά, ἵστυε, ὑπὸ ζη ὁ διαθέμενος (v17); κανίζω (v18) and αἷμα διαθήκης (v20). A detailed study of these words is not possible here, but the following may be noted.

(a) Taken globally, these terms are consistent with the terminology found in examples of Hellenistic wills (See paragraph 2, page 4). There is the testator (ὁ διαθέμενος) who must die (θάνατος). This death must be proved (ἀνάγκη θέρεσθαι). There is, moreover, mention of the inheritance (κληρονομία) and of the mediator (μεσίτης). This is scarcely the terminology applicable to a covenant. It should also be noted that the entire passage is written from the standpoint of soteriology. Those who are called (ἐκκλησίαν) are heirs of an eternal inheritance.

(b) Taken individually, we note that Hughes singles out the term μεσίτης, alleging that it is never used in connexion with a will, (although he nowhere cites its use in connexion with a covenant 1979-64). Admittedly the use of μεσίτης in the present context is unusual, but it cannot, a priori be ruled out as having nothing to do with a testament. It is interesting to note that μεσίτης, in a Christological sense, is found in only four instances in the New Testament: one in I Timothy 2:5 and the other three in Hebrews. What is important is the necessity for the death of the testator to take place, and for it to be proved (φέρεσθαι). The other terms, which consistently occur within the context of a testament will be further described in the following section (Cf Louw and Nida 1988: 667-668 on φέρω).

3 THE NATURE OF A HELLENISTIC WILL

It has been observed (above) that by the time of the New Testament, wills were widespread and well known throughout the Roman empire. From the Egyptian papyri, dating from c 250 BC – 250 AD, some twenty-six wills were, in all, examined. The most frequently (almost exclusively) used technical term to designate a last will and testament is διαθήκη (verb διαθηματίζειν). According to Taubenschlag (1955:190) this term was adopted from ancient Greek law. Nowhere in the papyri or in any other extant Greek text from the Hellenistic period is the noun used to denote a compact or a contract. Even in cases where the death of the testator is not required (for example where it is decreed by God) διαθήκη...
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The testamental significance of διαθήκη nonetheless is 'not the result of an agreement between two parties like a compact or contract.' (Arndt and Gingrich 1979:182).

Furthermore, there is not only a close correspondence between Greek, Roman and Egyptian wills in terms of their juridical elements, but there is even verbal and precise correspondence in terms of the phraseology of stereotyped clauses. These relate primarily to the introductory clause regarding for example, the soundness of the testator's mind, his power to act sovereignly, etc, all of which become virtually stereotyped. A typical example is, for instance, that of a certain Dionysios (c117AD) cf Oxyrhynchus Papyrus 489.

The several aspects of a will may be summarised under two main divisions:

(a) General characteristics. These include the body of the will comprising both an objectively worded part which was stereotyped and indicated that the will had been drawn up before a 'notary' (στρατηγός, ἄγορανόμος), as well as a subjectively worded part. This latter part included the disposition. In this the διαθέμενος acts sovereignly and unilaterally.

(b) Specific legal elements. These include inter alia provisions regarding, for example, administration costs, penalty clauses, the need for the testator to die before the will became probate, the κληρονόμοι, who must be heredes legitimi (Taubenschlag 1948: 261-265), the document (διαθήκη) which had to be drawn up ἐν ἄγωνα (in public), and various provisos.

It is necessary to pause in order to draw a clear distinction between the validity of a will and its probation. A will was valid (κυρία. See, for example, Elephantine Papyrus 1:14) the moment it was legally drawn up and witnessed (or notarised). Virtually every example of a will in the papyri includes the statement διαθήκη κυρία. But it did not become probate until the death of the testator who, during his lifetime, retained full power over his estate. An example that may be cited, among others, is Oxyrhynchus Papyrus 490. This distinction between the validity of a will and its probation will be borne in mind when examining the argument of Hughes in regard to the explanation of Hebrews 9:15-22.

4 AN EXAMINATION OF THE ARGUMENT OF HEBREWS 9: 15-22

Having, in the previous chapter, shown the inadequacy (temporary nature) of the Mosaic covenant, the author of Hebrews concludes: 'what is obsolete and aging will soon disappear' (8:13 NIV). Chapter 9 commences with a description of the earthly sanctuary under the 'first' (διαθήκη understood, 9:1-5). This is followed by two antithetical clusters describing, respectively, the priestly ministry under the first διαθήκη (9:6-10) and priestly ministry under the new διαθήκη (9:11-14). Thus far διαθήκη has more the meaning of 'covenant.' But
with the introduction of the next two clusters (9:15-18 and 9:19-22), διαθήκη evidences a shift in meaning.

In the first instance, Christ's work as mediator of the new διαθήκη is linked to His death. It is as the result of this death that the heirs (κεκλημένοι v15) receive the promise of an eternal inheritance (αὐτῶν κληρονομίας: 25). V16 is very specific: it stipulates that for a testament to be effectuated, the death of the testator (διαθέμενος) must be proved (φερεσθαί), something reiterated in v17b). In v17a there is an explanatory statement: διαθήκη γάρ ἐπὶ νεκροῖς βεβαια, which appears to be a statement of general practice. It is indeed difficult to associate such language with a 'covenant' in the sense of a contractual agreement where the death of either party would nullify (or render void) the contract. It is also difficult to understand such a covenant in terms of heirs and an inheritance.

Nonetheless, Kilpatrick is emphatic that the 'troublesome' (sic) equation διαθήκη = testament should once and for all be dropped (1977:265). If by this equation he is referring to Riggenbach's argument (1908:289-316) that διαθήκη always means testament, well and good, but to exclude, a priori any such possibility appears to be somewhat tendentious. He clearly does not take into consideration the matter of the writer's intention, as outlined by Tov (page 2 above). Such is Kilpatrick's determination to disallow any testamental reference in διαθήκη that his next step is to argue away two other 'troublesome' terms used in conjunction with διαθήκη in the Hebrews 9 pericope. One such term is κληρονομία. His argument is not, however, based on aspects of language and translation and will not be pursued here. The other is the term διαθέμενος. The fact that the διαθέμενος has to die, is seen as an arbitrary use of that term. What the writer really meant, is that the making of a sacrifice is essential to covenant-making. He then proceeds to reinterpret (retranslate?) Hebrews 9:16-17 thus:

For where there is a covenant, the death of him who made it must occur, for a covenant over dead bodies (that is the sacrificial victims) must be valid for it never is in force when the maker is alive (1977:265).

This translation cannot be defended. Quite apart from the fact that it arbitrarily assumes that ἐπὶ νεκροῖς means the dead bodies of sacrificial animals, it represents a confusion of the identity of the covenant-maker (ὁ διαθέμενος) with such dead animals! Kilpatrick finds difficulty with the plural νεκροῖς and even suggests that the writer 'may have got his Old Testament wrong at this point' (1977:265). But examples of the use of the plural instead of the singular in Greek are too numerous to warrant citation. Kilpatrick, however, finds a solution to the problem by regarding νεκροῖς as 'sacrificial victims.' It is submitted that a better way to understand the plural νεκροῖς is to see it in an iterative sense (that is, 'every time a death occurs'). The relational ἐπὶ would then assume a temporal
significance: 'at', or 'when', or 'upon'. Since the ὁταν (v16) is universal ('whenever', or 'wherever'), it is clear that the plural ἐπὶ λειπόντως is fitting. It is certainly difficult to understand how ἐπὶ λειπόντως could mean 'over dead bodies.' Kilpatrick's translation suffers from a further defect: where else in covenant-making is it required that the covenant-maker must die? To say that the author of Hebrews 'got his Old Testament wrong' is to overlook his unparalleled knowledge of Old Testament policy and practice. In addition, the author of Hebrews displays a clear grasp, not only of the triad of covenant offices (Prophet, High Priest and King) but also their Messianic interrelation.

Of greater cogency is the argument of Hughes (1979) in his impressive and well documented article. Commenting on the use of διαθήκη in Hebrews 8:6,9,10; 9:4,15; 10:16 and 12:24 (but excluding 9:15-22) he says that in order to translate the word in these places as either 'testament' or 'disposition' requires that one must assume one of three possibilities: either the author was ignorant of its Old Testament meaning and interpreted it in the light of its (current) Hellenistic usage, or that in the Old Testament τύντω (as mediated by the LXX) means either 'testament' or 'disposition', or that the author has chosen to employ the word in its then current Hellenistic sense of 'testament' or 'disposition' and has consequently developed his theology (either in whole or in part) of the καινὴ διαθήκη around this new meaning (1979:29).

He rightly concludes that the attempt to interpret every passage in which διαθήκη occurs, on the basis of one's interpretation of 9:15-22 (that is 'testament') seems at best tendentious and, further, to interpret instances where διαθήκη is used in conjunction with the policy, practice, outlook and expectations of the Old Testament as 'testament' or 'disposition' because of such conclusions regarding 9:15ff is unsound practice (1979:30).

Hughes, however, goes further by denying even in 9:15-22 any reference to 'testament' in the word διαθήκη. His argument is very detailed — too detailed for elaboration here. In sum, his thesis may be stated as follows: 'since the object of the treaty-making ceremony was to establish a legally bonded relation between the two parties, animals were used to represent the party who ratified the treaty (covenant). The person(s) himself did not have to die in order for the treaty (covenant) to be ratified. Because of the necessity (ἀνάγκη) for representing the death of "the ratifier", the author of Hebrews has used the verb "phero"' (1979:42).

Several important objections must be raised against this explanation: First, Hughes ignores those Old Testament covenants where animal sacrifice was not required. For example, the David/Jonathan covenant in which the typical formula (Heb) is used (1 Sm 18:3).

Second, he introduces a new thought, not shared by Old Testament scholars that the death of the ratifier had to be represented (by dead animals):
Third, he assumes (without adducing evidence) that ‘covenant’ and ‘treaty’ are synonymous, betraying an ignorance of covenant form and type in the Old Testament. (Cf Kraus 1965; Baltzer 1971 and Clements 1965).

Fourth, Hughes’ explanation of φέρω is unsatisfactory. He looks for the meaning in different contexts and overlooks its legal significance in regard to testaments. (Cf ‘fero’ Lewis and Short: 1969).

Fifth, he falls prey to the same error as Kilpatrick regarding ἐπὶ νεκροῖς as meaning ‘over dead bodies.’

Sixth, he goes beyond asserting that the death of the ratifier had to be represented by dead animals to declare (in regard to the phrase ὁτε ζῆ ὁ διαθέμενος) that a covenant ‘is ....never valid while the one who ratifies (it) is living’ (1979:45-46).

5 SUMMARY AND CONCLUSIONS

Over against the views of Kilpatrick and Hughes it may be argued that the terminology of Hebrews 9:15-22 (see page 3 above), far from belonging to the realm of covenant (or treaty) aptly describes that of Hellenistic wills with which the writer of Hebrews (and his readers) must have been familiar. But what precisely is the connexion then between testament and covenant? The present writer submits that part of the problem in the past has arisen from the practice of regarding covenant and testament as either antithetical or mutually exclusive concepts, hence an inability to find common ground (Cf Pretorius: 1972, 37-50).

Hughes chooses to ignore important terms such as κληρονόμος (and κληρονομία) which simply do not fit the notion of covenant. The same may be said of κεκλημένοι. Indeed this latter term may supply a clue to the link between covenant and testament. The κεκλημένοι are clearly bound up with God’s elective purpose which in turn is connected to the covenant ‘I will be their God and they will be my people’ (Jr 31:33). It is thus the covenant that constitutes men and women children of God. As children (τέκνα) they qualify as heirs (heredes legitimi), heirs of God and heirs of salvation! (Heb 1:14. Cf Rm 8:14-17 and Gl 4:4-7 where it is through the Spirit that believers are adopted as sons and thus qualify as heirs of God).

We have then the picture of God who, as it were, makes out a will. To the rightful heirs (κεκλημένοι, κληρονομία) He bequeaths the promise of eternal life (Heb 9:15). The testator (Christ) must die before the testament becomes probate (βεβαλα, ἵσχευ) not κυρία (valid).

In this way, the tension between covenant and testament is resolved: the covenant becomes the basis of the testament.

WORKS CONSULTED

1 General


2 Papyri

BGU Berliner griechische Urkunden (aus den Staatlichen Museen: Berlin 1895-)


P Oxyr *Oxyrhynchus Papyrus* (51 Vols). Grenfell, B P and Hunt, A S eds. London: Egypt Exploration Fund 1896-


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