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USES OF BLOOD: RE-READING MATT. 27:25

ABSTRACT. ‘The entire people cry out, “His blood be on us and on our children.”’ Is this the epochal ‘no’ of Israel renouncing its birthright? The legal precedent is not in delict but in contract, in treaties and covenants in which an entire people bind themselves and their descendants, their entire nation, in perpetuity by an imprecatory curse-oath identifying themselves and their descendants with a blood sacrifice that seals the contract. Legally, treaties and covenants require contemporaneous ratification. The author of Matthew’s gospel obtains the acclamations of the other actors, Pilate, the soldiers, the chief priests, scribes and elders and from the sign atop the cross by the formulaic talisman, ‘King of the Jews’ or ‘Israel’s King’ that each recite. He obtains the crowd’s acclamation from Pilate using together the words ‘Christ’ (Messiah) and ‘blood’ and employing a Jewish hand washing ritual. The purpose of the hand washing ritual was to forgive Israel for the guilt of innocent blood. However, Pilate uses this ritual meant to forgive Israel for its extreme opposite perverse purpose to condemn Israel. But the crowd uses the words ‘blood on’ in a different sense that evades Pilate’s request. ‘Blood on’ in the sacrificial system meant acceptance of a sacrificial blood offering.

KEY WORDS: acceptance, adultery, blood, contract, covenant, hand washing, ordeal, Matthew 27:25, sacrifice, treaty

Matthew 27:25, ‘The entire people cry out, “His blood be on us and on our children”,’ has been interpreted as the epochal ‘no’, the central renunciation by the Jewish people of their Messiah and their acceptance of guilt for his death.¹ And that, as a result, Jews abandoned and forfeited their position as the chosen people, and Christianity is the ‘true Israel’.² It has been called a blood libel against the Jewish

¹ U. Luz, *Matthew 21–28*, Helmut Koester ed., James E. Crouch, trans. (Minneapolis: Fortress Press, 2005), 499, 502; U. Luz, *Matthew 1–7*, H. Koester ed., J.E. Crouch, trans. (Minneapolis: Fortress Press, 2007), 55 (‘Matthew’s gospel is a response to the no of Israel’s majority to Jesus’); D.P. Senior, *The Passion Narrative According to Matthew* (Louvain: Leuven University, 1975), 257.

² Senior, *Passion Narrative*, 252–260 (based on Trilling’s *Das Wahre Israel*); A.-J. Levine, *The Social and Ethical Dimension of Matthean Salvation History* (Lewiston: Edwin Mellen Press, 1988), 270.

people; no other single passage of scripture has been so influential in fostering anti-Semitism.³

The Holocaust and Vatican II brought about a sea change in Christian attitudes toward Jews. It seemed ridiculously unfair that the crowd that represented in number 'much less than a thousandth of all the Jews who were alive then'⁴ could cause all Jewish people then and in the future to bear guilt for Jesus' unjust execution. So, scholars spent a great deal of effort to limit the scope of Jewish guilt, by limiting it, for example, to the Jewish leaders, who instigated the crowd, or to a single generation and their immediate children or to the inhabitants of Jerusalem.⁵ These efforts, though well intentioned, missed the point because they assumed that which should have been investigated, whether the crowd's oath deals with guilt or with something else.

As well established as the acceptance of guilt interpretation became in history, there is no clear evidence of it in the historical record close to the time Matthew's gospel was written (*circa* 75–85).⁶ The earliest explicit reference to the crowd's oath meaning Jewish guilt is by Justin Martyr *circa* 165 after the disastrous Bar Kokhba revolt of 132–135 and the ensuing massive Roman persecution of Jews and Jewish religious practice. And there is reason to suspect that originally the crowd's oath did not have the meaning ascribed to it in the second half of the second century. Modern interpreters suggest that the crowd's oath reflects a

³ M. Hay, *The Roots of Christian Anti-Semitism* (New York: Freedom Library Press, 1981), 12 (Encountering this phrase was often the first time children heard about Jews); R.E. Brown, *The Death of the Messiah: from Gethsemane to the grave: a commentary on the Passion narratives in the four Gospels* (New York: Doubleday, 1994), 832; Randy Kennedy, "'Passion' Film Is Incendiary, 2 Jewish Leaders Report," *New York Times*, January 23, 2004, A12, Eastern edition (quoting Rabbi James Rudin, senior inter-religious advisor for the American Jewish Committee: 'The religious taproot for what has become the blood libel, and collective guilt and the charge of deicide against the Jews'); *Encyclopedia Judaica*, 2nd ed. s.v. 'Anti-semitism'; Luz, *Matthew 21–28*, 133. For an example of an anti-Semitic reading see T.W. Mossman, trans., *The Great Commentary of Cornelius A. Lapide*, 5th ed. (Edinburgh: John Grant, 1908), 267–268.

⁴ Luz, *Matthew 21–28*, 501 & n. 77 (quoting Pinchas Lapide, *Wer war schuld*, 88).

⁵ A.J. Saldarini, *Matthew's Christian-Jewish Community* (Chicago and London: University of Chicago Press, 1999), 32–34; D.J. Harrington, *The Gospel of Matthew* (Collegeville, Minnesota: Liturgical Press, 1991), 389–390 & n. 25; D. Hamm, "Are the Gospel Accounts Anti-Jewish," *Journal of Religion and Film* 8:1 (2004).

⁶ E. Massaux, *The Influence of the Gospel of Matthew on Christian Literature Before Saint Irenaeus*, A.J. Bellinzoni ed., N.J. Belval and S. Hecht trans., *New Gospel Studies* 5/2 (Leuven: Peeters Mercer, 1990), 205–207, 220, 351, 354 (No reference to 'His blood' oath in Christian literature before Irenaeus (*circa* 130–202)).

back casting by the evangelist of the painful separation of church and synagogue.⁷ But this assumes too much, for the gospel apparently preceded this separation. The first century Christian community included many Pharisees and many thousands of Jewish believers in Jesus, who were zealous observers of Jewish law.⁸

Recently, a few scholars have suggested that the crowd's oath does not mean guilt at all, or that the word 'blood' in the oath is a double entendre with two equally valid meanings.⁹ At the Last Supper Jesus revealed that his blood is the blood of the covenant (Matt. 26:28).

⁷ Luz, *Matthew 21–28*, 509.

⁸ Acts 15:5, 15:7–10, 21:20; A.G. Wright, R.E. Murphy and J.A. Fitzmyer, "A History of Israel," in *The New Jerome Biblical Commentary*, R. E. Brown, J. A. Fitzmyer and R. E. Murphy, eds. (Englewood Cliffs: Prentice Hall, 1990), 1252 (As late as the martyrdom of Simeon, Bishop of Jerusalem, in 107 many thousands of the circumcised had come to believe in Christ. Jewish Christians continued to rule the Jerusalem church until the time of Hadrian). It is a common misperception that the destruction of the Temple in 70 was widely regarded at the time by Christians as punishment for Jewish involvement in Jesus' death. The Bar Kokhba rebellion had more significant consequences for Jewish-Christian relations and the Roman persecutions of Jews in the second century were far worse than those at the time of the first century rebellion. See *Anchor Bible Dictionary* s.v. 'Jewish-Christian Relations 70–170.' One early factor that likely contributed to the split between Christianity and Judaism was the Jewish *birkat ha-minim* blessing (curse) against heretics begun in approximately 90 as part of the synagogue liturgy. But, Matthew's Gospel seems to have preceded the *birkat ha-minim* and was written when Christianity was a force within Judaism. See W.R. Wilson, *The Execution of Jesus* (New York: Charles Scribner's Sons, 1970), 836; John 9:22; 12:42, 16:2, 19:38; *Encyclopedia Judaica*, s.v. 'Birkat Ha-Minim'; Berachos 28b5 & n. 47, 29a1. All references to the Talmud are to the ArtScroll Series of the Babylonian Talmud published in English by Mesorah Publications, Brooklyn, NY. I have not abbreviated herein the names of tractates of the Talmud because they would be less meaningful to most readers than the full name.

⁹ Levine, *Matthean Salvation History*, 269 (Levine without giving a citation says that Matt. 27:25 'may be connected with the institution of the Eucharist in 26:28 (in which) Jesus offers the cup to his followers and states, 'this is my blood of the covenant'...The crowd has, in very ironic circumstances, bestowed a blessing upon itself and its offspring'); T.B. Cargal, "His Blood Be Upon Us And Upon Our Children: A Matthean Double Entendre?," *New Testament Studies* 37 (1991), 104, 109; D. Hamm, supra n. 5 (In a dramatic irony the crowd intending to claim responsibility for Jesus' execution, unwittingly invoked a blessing upon themselves); J.P. Heil, *The Blood of Jesus in Matthew: A Narrative-Critical Perspective*, in *Perspectives in Religious Studies* 18 (1991), 117–124, (ironic and 'unwitting' invocation of the saving atoning blood of Christ shed so that (their) sins might be forgiven); J.P. Heil, *The Death and Resurrection of Jesus* (Minneapolis: Fortress Press, 1991) (For Heil the guilt formulation coexists with its opposite); Luz, *Matthew 21–28*, 509 (citing Franz Mussner, 'savior's blood').

There is no more important verse in the Synoptic gospels and no more weighty phrase than 'blood of the covenant'. It would be dreadful literary style for the evangelist to have Jesus supply the crucially important lexicon that defines his blood and then for the crowd to use 'his (my) blood' in a different, competing and detracting sense. In order to work as a matter of literature, the crowd's oath has to be confirmatory, not contradictory; an echo, not a dissonance; supportive of the evangelist's central message, not at odds with it. The crowd's oath, which is a unique Matthean addition, is a redaction, which by definition is characterized by extreme brevity leaving out all non-essentials. A redaction to be effective should never contain a digression, which a meaning of guilt would entail. Also, guilt for the 'death' of one who rose from the dead after a mere 3 days to enjoy eternal life at the right hand of God is trivial compared with the central message of the gospel.

In the first century when Matthew's gospel was written, rules relating to witnesses and witnessing had great fascination for rabbinic thought.¹⁰ Principles of testimonial corroboration were expanded to more remote situations; something called the law of witnesses in transferred operation.¹¹ The crowd's oath is an example of this phenomenon. Though they were not present at the Last Supper and have no knowledge of Jesus' words, yet the crowd also uses the all-important words 'his (my) blood' that Jesus recited outside their presence. In that culture this was meant to be a divinely inspired corroboration that confirms Jesus' pronouncement.

The crowd's and Jesus' use of the same phrase, 'his (my) blood', is not by coincidence. Where a text is susceptible of a brilliantly elegant meaning, it is likely that the author was aware of it; it did not just find its way into the text by inadvertence. What makes the hypothesis that both Jesus and the crowd use the words 'his (my) blood' in the same sense so

¹⁰ D. Daube, "Witnesses in Transferred Operation," in *Talmudic Law*, vol. 1, *The Collected Works of David Daube*, Calum M. Carmichael ed. (Berkeley: Robbins Collection, 1992), 397.

¹¹ A legend prominent in the early first century held that the 72 translators of the Hebrew Bible into the Greek Septuagint worked each strictly on his own, yet they produced completely identical translations, which confirmed and corroborated the divine inspiration of the text. *Ibid.*, 397–400. In the original story the translators met regularly to compare ideas and arrive at agreed renderings, but from the early first century we have the notion that they worked entirely each on his own but nonetheless produced identical versions. This legend is recorded in Philo, *On the Life of Moses*, 2.6–7 and in the Talmud, Megillah 9a2 *et seq.* D. Daube, "Witnesses in Bible and Talmud," *Collected Works*, 1:422.

robust is that under the scientific principle of elegance, the hypothesis proves itself. The better, more elegant textual reading tends to be the correct one because it is likely the one that the author had in mind.

There is as well an important lesson to be learned from the notion that the word 'blood' might be a double entendre. Double entendres are frequently not just double meanings, but the two meanings are often diametrically opposite meanings. In one sense, there is a radical change from the guilt interpretation because, instead of saying Jesus is rejected, the words signify an acceptance of a covenant made or delivered by Jesus. But in reality it is not so radical a change because double entendres frequently involve opposite meanings.

WHERE PRIOR INTERPRETERS WENT WRONG

In the guilt interpretation, as used by both Pilate and the crowd, the word 'blood' has the same meaning. Since Pilate in his statement to the crowd uses 'blood' to mean guilt, the crowd's response to Pilate does likewise. This is in fact wrong. The crowd uses the word 'blood' in a different sense from that used by Pilate.

Pilate's statement to the crowd in Matthew 27:24, 'I am innocent of the blood of this just man', refers to guilt.¹² The question to be examined is whether the crowd's answer in Matthew 27:25 uses 'blood' as guilt. The assumption that the Roman Pilate and the Jewish crowd are of one mind is manifestly incorrect. Unlike in Mark, where Pilate is 'willing to content (or satisfy) the people' (Mark 15:15), in Matthew there is unremitting hostility between Pilate and the crowd, to the point that the very text under examination reports the crowd is 'rioting' against Pilate (Matt. 27:24). This great hostility between Pilate and the crowd is an animating assumption; in effect, a stage direction that allows one to read the episode with an appreciation for what the author intended.

Let us examine Pilate through Matthew's first century Jewish eyes. Pilate is portrayed as a relatively stock literary figure of a consummately bad judge, and Jesus' trial is portrayed as consummately illegal.¹³ Pilate is portrayed as consummately corrupt. The message from

¹² Luz, *Matthew 21-28*, 493 & n. 7.

¹³ In literature, the law is most often portrayed in a negative light. People regard the law as arbitrary, random, coercive, unfair and given to errors of fact and law resulting in miscarriages of justice. R.A. Posner, *Law and Literature* (Cambridge, Massachusetts: Harvard University Press, 1988), 77.

his wife about her dream is delivered to Pilate while he is seated on the seat of judgment. Receiving whispers in his ear while seated on the seat of judgment was considered the epitome of judicial corruption.¹⁴ Another epitome of judicial corruption was that a judge's practice was not only to condemn the innocent (Jesus), as though that were not enough, but to free the guilty as well (Barabbas).¹⁵ (In Daniel 13:53, the false witnesses, who testified that Susannah committed adultery, were judges whose practice was to condemn the innocent and free the guilty.)

Pilate's hand washing was based upon a Jewish ritual to absolve the land (and its people) of the pollution for an *unsolved* murder.¹⁶ There was no comparable ritual in Roman or any other ancient society of the time. The oath in the hand washing ritual was, 'Our hands did not shed this blood and our eyes did not see (the deed).' That meant, 'I did not commit the murder, and I do not know who did.'¹⁷ Pilate's statement to the crowd, 'See to it yourselves' (Matt. 27:24) is an apparent allusion to the words of the hand washing oath, 'Eyes have not seen.' By saying that the crowd should 'see to it', Pilate

¹⁴ Sotah 47b4-5 & nn. 43-44. The corrupt practices of judges, including the practice of receiving whispers in the ear while seated on the seat of judgment, were among the abuses that produced the state of lawlessness that led to the abolition of the hand washing ritual. Hence, the detail that Pilate received an undisclosed message while seated on the seat of judgment is an indication that his hand washing was ineffective.

¹⁵ The hand washing ritual could not occur when murderers abounded. By releasing Barabbas, Pilate fostered the abundance of murderers. This is a further allusion that Pilate's hand washing is ineffective.

¹⁶ B.T. Viviano, "The Gospel According to Matthew," in R.E. Brown, J.A. Fitzmyer and R.E. Murphy, eds. *The New Jerome Biblical Commentary* (Englewood Cliffs: Prentice Hall, 1990), 672 (Jewish not Roman); Senior, *Passion Narrative*, 170 ('Evoking an Old Testament ritual'); Douglas R. A. Hare, *Matthew* (Louisville: John Knox Press, 1993), 317 (Probably inspired by Deut. 21:6-7; hand washing seems not to have been a rite of innocence in pagan society); The New American Bible (1970), 1059; J.P. Meier, *Matthew* (Wilmington, Delaware: Michael Glazier, 1980), 342; C.C. Martindale, *The Gospel According to Saint Matthew* (New Westminster, Maryland: Newman Press, 1957), 210; W.D. Davis and D.C. Allison, *The Gospel According to Saint Matthew*, in International Critical Commentary 3 (Edinburgh: T&T Clark, 1997), 590 & n. 51. It is important to note that the Jewish hand washing ritual was not like Lady McBeth's obsessive washing of her hands, to wash away the 'Damn spot' of blood. Quite the contrary, it was to indicate there never had been any blood whatever on the hand washer, a complete and total non-involvement.

¹⁷ Sotah 45b7, 47a4-5, 47b1 & n. 4, 6. It is enough that someone saw the murder. He or she need not have recognized the murderer as someone they know. The witness to the murder could be anyone, anywhere, including a gentile woman at the ends of the earth.

indicts himself. Since people have 'seen' the murder, Pilate's hand washing cannot exculpate, atone or absolve him.

The hand washing ritual had a distinct aspect of Jewish nationalism. In the rabbinic exegesis, it was the quintessential case of a ritual that had to be recited in Hebrew, a language Pilate would not have known nor employed.¹⁸ To put it in context, a second ritual that had to be in Hebrew was the speech given to the soldiers of Israel before going into battle with the army of a foreign enemy.¹⁹

Furthermore, the hand washing ritual was extremely disfavored so that it became a first century legal *cause célèbre*. In a time of general lawlessness when notorious murderers abounded, it was considered hypocritical to say that the identity of the one who committed a murder was unknown.²⁰ Therefore, the rabbis interpreted the rules surrounding the hand washing ritual ever more strictly until as a legal dead letter it was finally abolished (*circa* 65).

But it is far worse than that. For anyone versed in Jewish law, Pilate's actions were a monstrous, dastardly farce of an evil gentile using Jewish law and ritual, not only incompetently, but to produce a quintessentially unjust result. Tractate Sanhedrin of the Talmud lists those relatively few groups and individuals who are denied a place in the World to Come. Among them are the judges of Sodom, who put Jewish laws and rituals to the most perverse uses possible to produce quintessentially unjust outcomes, a case of the best of laws perverted for the worst of results.²¹

Pilate is reminiscent of these judges of Sodom because he uses a Jewish ritual whose purpose was to 'Forgive your people Israel...Do not allow (the guilt for) innocent blood to remain with them' (Deut. 21:8), not for its intended purpose under Jewish law, to *absolve* or *forgive* Israel, but for the very opposite of its intended purpose, to *condemn* and hold Israel accountable and himself quit. From a Jewish perspective, this result is so evil and monstrously perverse that God must prevent it.

¹⁸ Sotah 44b.

¹⁹ Sotah 32a1.

²⁰ Sotah 47b3 & n. 29.

²¹ Sanhedrin 107b5 *et seq.*; 109a4-b2 & n. 53. For example, according to the laws of the judges of Sodom where a man struck his fellow's pregnant wife and she miscarried, the judges would say to the husband, give your wife to the attacker so that he may impregnate her for you and thereby replace the unborn child whose death he caused (parodying Ex. 21:22). Sanhedrin 109b & n. 1.

Some have felt that for a Roman prefect to undertake a Jewish rite makes the historicity of the incident doubtful.²² In fact, a despised gentile (the representative of hated Rome) undertaking a Jewish legal rite and employing it for the most perverse purpose imaginable marks the incident as falling squarely within a specific Jewish literary genre of the time. Furthermore, Pilate's hand washing does not come out of nowhere. It comes from the message in his wife's dream from God, to 'have nothing to do with'. This complete and total non-involvement is the legal standard required for the hand washing ritual to occur, and it is the standard that the rabbis reinterpreted to abolish progressively the ritual.

These factors are vital to an understanding of the Matthean story and would have been evident to a contemporary Jewish audience but not to gentiles.²³

THE ENTIRE PEOPLE AND THEIR CHILDREN

The guilt interpretation held all Jews of Jesus' day and all subsequent generations cursed and guilty. Since the Holocaust and Vatican II it has been believed that far fewer than all Jews then and certainly not all Jews now are cursed or guilty in Jesus' death. In fact, the evangelist did indeed mean to include all Jews then and all subsequent generations of Jews in the crowd's oath, and the oath is indeed a curse. But it is contractual, not delictual involving guilt.

²² Meier, *Matthew*, 342.

²³ Thus, the story of Pilate's hand washing is Janus faced so that the conduct of Pilate and the Romans seems more beneficent and that of the Jewish crowd more sinister to a Roman or gentile audience, while the reverse appears to a Jewish audience. Nevertheless, whatever beneficent veneer may be seen on Pilate's actions legally is thin finding little justification under Jewish, Roman or any other law. But, if the intended audience of the Gospel was Jewish in the first place, then why the need for obscure meanings? Mankind is divided into outsiders and insiders: the latter alone are meant to understand. 'The words are closed up...many shall be tested, the wicked none of them shall have understanding, but the wise shall understand.' Dan. 12:9-10; D. Daube, "The Abomination of Desolation," *Collected Works*, 2:664 *et seq.* The weaker party may despise the stronger and leave it in the dark both because instruction would invite punishment and because it would be to cast pearls before swine. Fables were traditionally prominent in expositions designed to affirm Judaism's superiority to other religions. And, one might add, Jesus' use of riddles and parables is so extensive that finding a coded communication in Matthew should not be surprising.

In Mark, the Jewish crowd is just that, a crowd. However, in Matthew 27:25, the evangelist switches from using the word he had been using to refer to the crowd, *ochlos*, meaning 'crowd', to the word *laos*, meaning the entire or whole people or nation, in the Hebrew idiom 'the chosen people' or 'God's people, Israel.'²⁴ This sort of reference to an entire people assembled for an event was a very common, indeed, a customary term in the making of treaties and covenants. In this context it means that the bound contracting party is Israel, the entire people or nation, not merely a subset thereof who are present. This is found, for example, in the poetic language of 2 Samuel 19:14, 'He bowed the heart of all the men of Judah as the heart of one man,' or in Deuteronomy 29:13–14, 'Not with you alone do I seal this covenant and oath but (also) ... with him who is not here with us this day.'

Matthew's gospel also includes in the crowd's oath their children, *tekna*, meaning descendants. Like the phrase 'entire people,' the inclusion of children is a fingerprint that identifies the oath as covenantal. The addition of children gives the sense, 'The souls of all future Jews were brought to Moses to join in the (covenant) oath.'²⁵ The reference to 'children' in ancient treaties and covenants indicates the duration of the treaty or covenant as being for the 'lives of the gods',²⁶ i.e., in perpetuity. The principal import of the eternal duration of the oath was that it was *sacred*. Ancient covenants and treaties were enforced by God or the gods. The gods were parties to the contract. Typically, the covenant gods would enter into a sacrificial animal, which when it was eaten by the celebrant became a part of that person and his seed to be passed down through future generations. The succession treaty of Assyrian King Esarhaddon (672) by way of example provides that, 'Just as this bread and wine enter your intestines, so let the oath enter your intestines and the intestines of your sons and daughters.'²⁷ The covenant curses could also be absorbed through the skin by anointing: 'As oil penetrates your flesh, so may they (the gods) make this curse enter into your flesh.'²⁸ 'May

²⁴ Luz, *Matthew 21–28*, 493 & n. 7, 501. It is conceivable that the author meant the 'entire people' in the sense that the entire people were to stone a blasphemer. But, that setting is more appropriate for a small tribal unit than Jesus' Roman trial.

²⁵ Shevuot 39a2 & n. 29.

²⁶ *Anchor Bible Dictionary*, s.v. 'Treaties in the Ancient Near East.'

²⁷ J.B. Pritchard, ed., *Ancient Near Eastern Texts*, 3d ed. (Princeton, N.J.: Princeton University Press, 1969), 536, 539.

²⁸ *Ibid.*, 540.

cursing cloth him like a robe. May it enter his belly like water, seep into his bones like oil' (Psalms 109:18).

The typical mechanics of making an ancient treaty or covenant were that the vassal king would sacrifice an animal, while identifying himself with that animal and its fate, to the effect, 'this is my body, this is my blood'. This is an imprecatory curse oath. He would furthermore extend the oath to include his entire family and descendants and sometimes even deceased ancestors.²⁹ Then, the 'entire nation', virtually represented by the assembled multitude, would join in the sacrifice and extend it to their descendents as well.³⁰ To give an example from a fifteenth century Hittite treaty:

You men of Ismerika will come. You shall place your own wives, sons and relatives by marriage under this oath. These oath gods shall seize whoever transgresses the oath, and shall destroy him, together with his household, his field, his vineyard, his threshing-floor, his oxen, and his sheep. They shall roast his renown and his progeny like grain.³¹

This contract form spread throughout the Mediterranean world. For example, the Roman treaty oath given in Livy (and received from the Etruscans) recited: 'Oh Jupiter, so strike the Roman people, as I shall this day strike this swine; and do thou strike them so much more, as thou art more able and powerful!'³²

²⁹ See, e.g., G. Beckman, *Hittite Diplomatic Texts*, 2nd ed., ed. Harry A Hoffner (Atlanta: Scholars Press, 1999), 2, 17, 33 (from fifteenth century Hittite treaty); Pritchard, *Ancient Near Eastern Texts*, 532 (Assyrian treaty); C. Phillipson, *The International Law and Customs of Ancient Greece and Rome*, vol. 1 (New York: Arno Press, 1979), 386, 388; J. Plescia, *The Oath and Perjury in Ancient Greece* (Tallahassee: Florida State University Press, 1970), 62, 67; M. Wise, M. Abegg and E. Cook, trans., *The Dead Sea Scrolls* (New York: HarperSanFrancisco, 1996), 123, 125 (oath of convert).

³⁰ Ex. 24:7–8; Josh. 24:22; Pritchard, *Ancient Near Eastern Texts*, 397. Note, however, unlike the treaty-breaching king and his heirs to the throne, in practice the populace was largely spared and enslaved as a valuable moveable economic asset called 'transportees.' R.H. Beal, "Hittite Military Organization," in *Civilizations of the Ancient Near East*, J.M. Sasson ed. (New York: Charles Scribner's Sons, 1995), 545, 553.

³¹ Beckman, *Hittite Texts*, 17.

³² Livy *History of Rome* 1.1.24; G.E. Mendenhall, "Puppy and Lettuce in Northwest-Semitic Covenant Making," in *Bulletin of the American Schools of Oriental Research* 133 (1954) 26, 29–30 (parallelism between Roman and Jewish ceremony and formula of curses); P. Sanders, "So May God Do To Me!," *Biblica* 85 (2004).

As a matter of legal form, treaties and covenants require contemporaneous acceptance and ratification by the subject people entering into the treaty or covenant as well as their leader.³³ Popular acceptance and ratification was especially required where issues of sovereignty were involved and particularly where the king making the covenant or treaty was captured and in custody. Thus, the situation of Jesus making his covenant as a prisoner of the Romans was the paradigmatic case in which popular ratification by Jesus' people, Israel, was required for the new covenant to become valid.³⁴

The notion advanced by prior interpreters that 'out of rejection comes new life'³⁵ legally speaking is weak, illogical and lacking any foundation. Legally, covenants are based upon acceptance, not rejection. From a legal standpoint, the crowd *qua* Jewish people must fulfill *their* role of entering into Jesus' covenant in order to produce and create the covenant. In the Greek world compliance with the niceties of treaties and covenants was flaunted. The Greeks were notorious for using sophistry to evade treaties.³⁶ Greek treaties even developed clauses prohibiting their sophistic interpretation. But, for Jews there was a deep and abiding respect for legal niceties.

CONTRACT NOT DELICT

The guilt interpretation held that the crowd's oath bound all Jews for all time. Since the Holocaust and Vatican II, it has been regarded as preposterous that a relative handful of people could bind those uninvolved and the unborn. In fact, the evangelist intended that all,

³³ 2 Chron. 34:29–32; M. Weinfeld, *Deuteronomy and the Deuteronomic School* (Oxford: Clarendon Press, 1972), 57, 59, 64, 101; Phillipson, *Greece and Rome*, 1:383–385; Plescia, *Oath and Perjury*, 59–60; Theodor Meron, *The Authority to Make Treaties in the Late Middle Ages*, 89 A.J.I.L. 1, 2–4, 13–14 (1995).

³⁴ Meron, *Authority to Make Treaties*; S.B. Crandall, *Treaties*, 2nd ed. (Washington DC: John Byrne & Company, 1916), 4 (An example is Santa Anna relinquishing Texas after the battle of San Jacinto at a time when he was being held prisoner).

³⁵ D. Senior, *The Gospel of Matthew* (Nashville: Abingdon Press 1997), 169.

³⁶ D.J. Bederman, *Reception of the Classical Tradition in International Law: Grotius, De Jure Belli ac Pacis*, 10 Emory Int'l L. Rev. 1, 20 (1996); Phillipson, *Greece and Rome*, 1:118; C. Phillipson, *The International Law and Custom of Ancient Greece and Rome*, vol. 2 (Buffalo: William S. Hein, 2001), 57; R.H. Underwood, "False Witness: A Lawyer's History of the Law of Perjury, 10 Ariz.", J. Int'l & Comp. L. 215, 227–230 (1993).

including those uninvolved and unborn, be bound, but not in delictual guilt; solely in contract.

It is by the legal form of a sacred *contract, ex ante* (at inception in the making of the contract before any breach) that those absent and the unborn are bound. Under the law of treaties (at least prior to the 1969 Vienna Convention on the Law of Treaties),³⁷ a relative handful of people could *contractually* bind an entire nation in perpetuity.³⁸ In delict, on the other hand, the basis of liability is *ex post*, after and by reason of a subsequent delict. In other words, except in a hyperbolic sense that extends to the whole world,³⁹ the crowd could not cause *delictual* guilt to extend to all Jews of that time or all time thereafter or to all people.

Furthermore, under Jewish law of the time it was never proper to punish a parent for that parent's *delictual* transgressions by punishing their children.⁴⁰ Where a person cursed another and that person's children (as David did to Joab in 2 Sam. 3:28–29), the curse recoils and falls on the curser and his or her children.⁴¹ And, it was forbidden to curse oneself *delictually*.⁴² It is inconceivable that the author of Matthew's gospel, who went to great pains to show that Jesus fulfilled the prophecies of the Hebrew Bible, would portray Jesus' covenant as blatantly violating these bedrock legal principles against *delictual* self curses. Also, it would have been counter-productive for the author to curse *delictually* those whom he was seeking to proselytize.

While there are dozens of examples in the ancient historical record of this all inclusive *ex ante contractual* oath form in treaties, covenants and oaths of allegiance,⁴³ I have found no examples in

³⁷ <http://untreaty.un.org/ilc/texts/texts.htm>.

³⁸ D.J. Bederman, *International Law in Antiquity* (Cambridge: Cambridge University, 2001), 138, 144, 183; D. Daube, "Covenanting Under Duress", *Collected Works*, 1:23, 26; Meron, 'Authority to Make Treaties,' 117; Crandall, *Treaties*. The notion that those not present, the uninvolved and future generations can be bound has existed in the law of treaties until very recently. For example, the Treaty of Versailles after the First World War bound all Germany and future Germans. The law has changed somewhat with the 1969 Vienna Convention on the Law of Treaties that provides for limitations and defenses to prior doctrine.

³⁹ Shevuos 39b1 & n. 7; Bava Basra 10b; Berachos 17a; Sotah 46a1 & n. 2.

⁴⁰ Sotah 47a3 & n. 24; Makkos 2b1.

⁴¹ Sanhedrin 48b4–5; Makkos 2b1.

⁴² Shevuos 36a3 & n. 45.

⁴³ Pritchard, *Ancient Near Eastern Texts*, 353–354 (Hittite soldier's oath of allegiance contains a curses upon descendants).

antiquity of a crowd or entire people making a *delictual* first party, self-curse upon themselves, their entire nation and their descendants. The examples given to support the guilt interpretation (Josh. 2:19, 2 Sam. 1:16, Jer. 26:15, 1 Kings 2:33, Jon. 1:14, Matt. 23:35 and Acts 18:6) are readily distinguishable from Matthew 27:25 as not involving either a *self* curse, or not involving the entire nation or not involving its children.⁴⁴ These differences are important. They change the entire sense and meaning.

THE MEANING OF THE WORD 'BLOOD' IS CHANGED

The guilt interpretation holds that the word 'blood' means guilt. In fact, 'blood' meaning guilt is a mere secondary or subsidiary meaning. The dominant meaning of 'blood' is kinship, real or fictive.⁴⁵ Treaties and covenants always involved the creation of 'blood' fictive kinship relationships – originally as 'father and son' (adhesion covenants) or between 'loving brothers' (parity covenants) and then later with the new covenant associated especially with Jeremiah 31:31 *et seq.* between God and his people as 'husband and wife'.

The words 'blood on' in Matthew 27:25 come from an extremely famous and important Bible passage, Exodus 24:8, in which Moses put half the blood of the covenant sacrifice *on* the Altar and half *on* the people and intoned, 'Behold the blood of the covenant.' The sacrificial blood was put by Moses on the people to have them accept the covenant. This is the famous 'blood of the covenant' that also appears in Zechariah 9:11 and in the Last Supper and in 1 Corinthians 11:25. Hebrews 9:19 *et seq.* uses blood in the same way. Moses put the covenantal sacrificial blood on the people, and Jesus' blood has that same function for the blood of his covenant.

The word 'blood' can mean 'sacrifice'.⁴⁶ In the context of a sacrifice, 'blood on' means acceptance. Sacrificial blood 'on' has an entirely different meaning than regular blood 'on'. 'Innocent blood' in the sense of guilt cries out to be freed and 'taken back' by the redeemer of the blood.⁴⁷ This concept was expanded over time to

⁴⁴ The phrase used as an acceptance of guilt or responsibility was very common as in, where one puts himself in danger 'his blood will be on his own head.' Pesachim 112a1. Or, 'don't place blood in your house,' i.e., don't eat unhealthy food. Pesachim 109b3 & n. 8.

⁴⁵ See *Anchor Bible Dictionary*, s.v. 'Blood.'

⁴⁶ Zevachim 4b.

⁴⁷ D. Daube, "Law in the Narrative," *Collected Works*, 3:65–66, 75.

mean that God or the state *would* redeem back innocent blood.⁴⁸ For Jesus to be *the Redeemer par excellence*, and yet for his blood, the blood of the Redeemer himself, to be left unredeemed is, legally speaking, absurd. This redemption of innocent blood does not occur with sacrificial blood that, quite the opposite, is permanent and never changes. 'His blood' used in a sacrificial or covenantal sense means a permanent transformation, not a transitory state that cries out for return, to be redeemed.

Animal blood sacrifices required an offer and an acceptance, achieved in Jewish practice through 'throwing' the blood of the sacrifice. The offer occurred when the life blood was thrown (poured in the case of Passover or sprinkled, daubed or most commonly and proverbially 'thrown' in other rituals); the acceptance occurred when it landed on the surface of the person or object at which it was 'thrown'.⁴⁹ Of the four sacrificial ritual steps (*avodot*), killing the animal, catching its blood, transporting the blood and throwing it 'on', the last ritual step (*avodah*) known as *zerikah*, the landing of the blood, the acceptance, was the most important and the 'primary' step of the blood sacrifice.⁵⁰

It is commonly and incorrectly thought that the prohibition against eating animal blood indicates that Judaism is hemophobic, and the role of Jesus' blood in Christianity marks a clear break with Jewish practice. In fact, in Judaism blood was not a dreaded and abhorred taboo. The reason for the prohibition against consuming blood is that blood represents life, and life is a sacred gift from God.⁵¹ Far from being abhorred, blood was revered.⁵² There is also no absolute distinction between human and animal blood. The word *korban* meaning sacrifice could be applied to an animal sacrifice or to a human martyr. Animal blood was held in such high regard that

⁴⁸ *Ibid.*

⁴⁹ Ex. 24:8; Lev. 8:14 *et seq.*, 14:1 *et seq.*; Zevachim xlii, xlvi-ii; Zevachim 29b2 & n. 13 (Accepted blood 'permits' the eating of the Passover meal); Pesachim 78b2 & n. 19 (But acceptance is unaffected by a failure to eat the sacrifice); Zevachim 47b2 & n. 13; (Sacrificial blood in Moses' covenant analogous to blood in other sacrifices); Pesachim 96a1 & n. 5 (Doorposts and lintels were altars to fulfill the blood application); Pesachim 116b2 & n. 27 (A Passover blessings recites, 'whose blood will reach the wall of Your Altar for gracious acceptance. And we will thank you with a new song for the redemption of our souls').

⁵⁰ Zevachim 24b3; Zevachim 34b4 & n. 28 ('(A)n offering is absolutely meaningless without *zerikah*'); Zevachim 25b4 & n. 31 (*Zerikah* had to occur by sunset on the day of the slaughter).

⁵¹ Zevachim 26b1.

⁵² See *Anchor Bible Dictionary*, s.v. 'Blood.'

human blood could hardly be held in higher regard. Persons who killed an animal without having the priest cast its blood on the altar were considered to have committed murder (Lev. 17:4).⁵³ Animal sacrifice was as a substitute for the person; the animal's blood ransomed the human celebrant's life (Lev. 17:11).⁵⁴

Blood had a particularly vivid role in the Passover sacrifice. The drain of the Temple Courtyard was stopped up so that the blood of thousands of sacrificed Pascal lambs accumulated until it covered the entire Courtyard floor and rose up knee deep so that the priests passing the blood to the Altar had to stand on elevated stones fixed in the Courtyard floor.⁵⁵

This bloody scene must have been an indelible memory to those who witnessed it, which would have been thousands of people since the lambs' owners usually slaughtered the animals. However, this evocative imagery of blood died out after 70 when animal sacrifice in Judaism ended, and a substantial amount of ancient reflection and observances built up around it was lost.⁵⁶

THE IMMEDIATELY PRECEDING STORY OF JUDAS FORETELLS THE CHANGE IN THE MEANING OF THE WORD 'BLOOD' IN THE CROWD'S OATH

It has long been seen that in Matthew the fates of Judas and the Jewish people are parallels.⁵⁷ In fact, this observation is correct. However, until recently it was not appreciated that both involve a transformation in the meaning to the word 'blood', and that in Matthew Judas is worthy of paradise.

The evangelist alerts the reader that the meaning of 'blood' in the crowd's oath will be changed because it is changed in the immediately preceding story of Judas. The eternal name of the cemetery bought with Judas' blood money ('the price of blood' (Matt. 27:6)) is the Field of Blood (Matt. 27:8). The name 'Field of Blood' has two derivations. The first is from the source of funds used to buy the field, blood money. The term 'blood money' itself has two sub-derivations.

⁵³ R. Alter, *The Five Books of Moses* (New York, London: W. W. Norton, 2004), Lev. 17:4 & n. (Violation of this rule required cutting the violator off from the people and even applied to non-Jewish residents).

⁵⁴ *Ibid.*, 17.11 & n.

⁵⁵ Pesachim 65b1-2 & nn. 4-5, 78b2.

⁵⁶ D. Daube, "He That Cometh", *Collected Works*, 2:434.

⁵⁷ Senior, *Passion Narrative*, 257.

The first is as a *contractual* bounty for delivering or betraying a person; the second is as a *delictual weirgild*, a calibrated man price.⁵⁸

The second derivation of the name Field of Blood is from the use to which the field is put: as a burial place (for those unfortunates who otherwise might not have a place of burial). In the sense that burial is afforded for those for whom it otherwise would be denied, burial produces 'life', in the sense of an afterlife, burial being required for resurrection of the body and life in the World to Come. Thus, the taint of Judas' blood money is contrasted with the very great good in Jewish practice of affording burial for those in need of it,⁵⁹ as Judas did, and as in a parallel episode Joseph of Arimathaea did for Jesus' corpse.

The meaning of 'blood' is transformed from pollution of the blood money to the purification worked by the money put to good use. That blood can mean purification in a covenantal context is seen in Hebrews 9:19–23.⁶⁰ Analogously, Pilate's transfer of the blood of Jesus to the crowd involves a similar transformation in meaning in the word 'blood'.

With respect to the fate of Judas, whose name is meant to evoke Judah, Judea and Jews, Matthew regarded Judas as fully worthy to be in paradise because he repented, returned the blood money and received an honorable burial.⁶¹ To debar Judas from paradise, Acts 1:15–20 changes the manner of Judas' death to falling headlong, swelling up and bursting asunder. Rabbinic thought was so obsessed with resurrection of the body and life in the World to Come that Pesachim records the Egyptian soldiers, who in the Exodus were drowned in the Red Sea, were spat out onto the shore so that they too received the honorable death and burial necessary for resurrection of the body and life in the World to Come.⁶² Even the world's worst sinner, one for whom it would have been better not to have been born than to have committed so grievous a sin, by a *reductio ad absurdum*, yet may be saved (for to argue otherwise would be to limit the salvific power of God).⁶³

⁵⁸ J.P. Heil, "The Blood of Jesus in Matthew: A Narrative-critical Perspective", *Perspectives in Religious Studies* 18 (1991) 117, 122–124.

⁵⁹ Sotah 45b5 & n. 39 (Binding obligation to bury unattended corpse on anyone who comes across it).

⁶⁰ See also *Anchor Bible Dictionary*, s.v. 'Blood.'

⁶¹ Daube, "Judas," 787, 790; C. Carmichael, 'The Divine in the Law,' *Law and Religion*, A. Lewis and R. O'Dair, eds. (Oxford: University Press, 2001) 27, 34–36.

⁶² Pesachim 118b1 & n. 8–10.

⁶³ Sanhedrin 82a, 103b–104a. In legends of the Middle Ages, Jesus and the Virgin would rob the devil of even some of his most promising candidates.

KING OF THE JEWS

In the guilt interpretation, while the other actors prophetically though unwittingly proclaim Jesus 'King of the Jews', the crowd's oath in the midst of these is different and not an acclamation. In fact, the crowd's oath is an acclamation and part of the crescendo of acclamations by all the actors.

All four gospels contain a play within the (Passion) play: within the story of the trial there is a story of investing Jesus as the King of the Jews.⁶⁴ It was common in antiquity to use the treaty and covenant form to invest a vassal king. Suzerain nations typically controlled vassal nations by means of such treaties. And, around the time Matthew's gospel was written, Jews were painfully conscious of Israel's treaty relations with Rome. Thus, the actors in the gospel's covenantal play within a play include all the parties who would customarily attend a royal investiture, the suzerain or his representative (Pilate), representatives of the suzerain people (the Roman soldiers), the divinity(ies), the vassal king (Jesus) and the vassal people (the Jewish people). Making oral declarations in the manner of covenanting, all of these actors unwittingly but prophetically proclaim Jesus.

Pilate asks Jesus, 'Are you the King of the Jews?'⁶⁵ 'Thou sayest it', Jesus' 'studiously ambiguous',⁶⁶ diplomatic sounding⁶⁷ answer cleverly⁶⁸ turns Pilate's question into an affirmative statement.⁶⁹ This exchange suggests triply that, indeed, Jesus is the King of the Jews,

⁶⁴ Josephus relates that one of the leaders of the Jewish revolt against the Romans and a would be messiah, Simon bar Giora, a man of humble background came to be regarded as king by masses of people. When Jerusalem and the Temple were being destroyed Simon surrendered to the Romans in highly dramatic fashion attired in a royal purple mantle as a king on a state occasion. The Romans executed him with pomp and ceremony as the vanquished king of the Jews. Josephus, *Jewish Wars* 7.2.2. 29; *Anchor Bible Dictionary*, s.v. 'Messianic Movements in Judaism'; E. Schwartz, "The Trials of Jesus and Paul", *Journal of Law and Religion* 9:2 (1992) 501, 504 ('(T)itle 'King of the Jews' which hung with him (Jesus) on the cross – as if the Romans meant to execute the aspiration along with the pretender').

⁶⁵ Schwartz, "Trials," 502.

⁶⁶ Hare, *Matthew*, 315; Viviano, "Matthew," 671.

⁶⁷ Daube, "Judas," 795–797.

⁶⁸ Daube, "Judas," *Collected Works*, 783, 796; D. Daube, "Fraud on Law for Fraud on Law," *Collected Works*, 3:300 *et seq.*

⁶⁹ Hare, *Matthew*, 315; Senior, *Passion Narrative*, 228.

that Pilate recognizes it, and most tellingly that Pilate's recognition of the fact helps make it so.

Next, we have the crowd's oath, and after that the mock coronation of Jesus by the soldiers. With all the royal accoutrements of a coronation, a crown, scepter and a royal-appearing cloak, the soldiers genuflect and proclaim, 'Hail Jesus, King of the Jews.' The entire Roman cohort (ordinarily 600 men) participate, which parallels the entire Jewish people. The ceremony occurs in the praetorium, the place most appropriate for investing a king. The next acclamation comes from the sign above the cross, 'This is Jesus, King of the Jews.'

Next, in a change from Mark, in Matthew, the Jewish chief priests, scribes and elders proclaim openly to the reader: 'He is Israel's king.'⁷⁰ In saying 'He is Israel's king' they are reciting the words of the sign above the cross that faces them only putting it in a Jewish rather than a gentile formulation. The message here is that '(i)n a deeper sense everything that the Jewish leaders state only ironically is true.'⁷¹

By having all the actors, one after another, acclaim Jesus, the evangelist produces a powerful literary crescendo; a dramatic irony in which all the contracting parties acclaim him and in doing so play their part to help bring to life his covenant.

UNWITTING AGREEMENTS

Except in a folkloric sense, from a modern perspective the actors' acclamations of Jesus would not be effective because they were unwittingly given. But, in ancient times, far more than today, unwitting agreements were considered valid.

The kingly investiture of Jesus is a 'mocking declaration which nevertheless voices the unrecognized truth';⁷² an 'ironic homage...prophetic in its proclamation'.⁷³ Though unwitting and ironic, the acclamations yet in some way feel strangely effective as though his *is* a real coronation. But, how can a mockery be effective as though it had been sincere? And if these acclamations were ineffective, why did the evangelist bother with them? The answer is that what the actors said unwittingly in justice they should have said in earnest and so, the

⁷⁰ Luz, *Matthew 21–28*, 538 ('He is Israel's king, now let him come down from the cross and we will believe in him. He trusts in God; let him now rescue him if he is pleased with him. For he said: "I am God's son"' (Matt. 27:42)).

⁷¹ Luz, *Matthew 21–28*, 539.

⁷² J.P. Meier, *The Vision of Matthew* (New York: Paulist Press, 1979), 201.

⁷³ Senior, *Passion Narrative*, 271.

result is the same as if they had said it in earnest. People are bound by their words of promise no matter how intended, especially when those words produce just ends and just deserts.⁷⁴

In primitive law, obligations were created by the performance of rituals, not by the intent of the parties.⁷⁵ The result produced by words was crucially determined by the precise formula of the words themselves with the intent or understanding of their declarer largely or entirely irrelevant. As put by New York Justice Benjamin Cardozo, 'The precise word was the sovereign talisman, and every slip was fatal.'⁷⁶ Among other sources, Cicero's *De Officiis*, 1.10–13; 3.14–15 and Bava Basra 47b–48a (*Taluhu vezavin; zevinei zevini*)⁷⁷ of the Talmud show that the topic of unwitting or unwilling agreements was very much in the consciousness of people around the time Matthew's gospel was written. And, certainly, the Bible is full of examples of unwitting agreements – Isaac's blessing of Jacob mistaking him for Esau,⁷⁸ Jacob's marriage to Leah mistaking her for Rachel, the Israelite's treaty with the Gibeonites⁷⁹ mistaking them for

⁷⁴ C.M. Carmichael, *Law and Narrative in the Bible* (Ithaca: Cornell University Press, 1985), 152 (Oaths are like prayers. 'The words of the agreement, like those of a blessing, once uttered, are beyond recall. They have entered the realm of the numinous'). The Roman *stipulatio* contract called the 'single most important institution developed by Roman law' followed this form and principle. A.M. Prichard, *Leage's Roman Private Law*, 3rd ed. (New York: St. Martin's Press, 1967), 332; E. A. Farnsworth, *The Past of Promise: An Historical Introduction to Contract*, 69 Col. L. Rev 576, 588 *et seq.* (1969).

⁷⁵ J.Q. Whitman, *The Legacy of Roman Law in the German Romantic Era* (Princeton: Princeton University Press, 1990), 123.

⁷⁶ *Wood v. Lucy, Lady Duff Gordon*, 222 N.Y. 88, 91, 118 N.E. 24 (1917).

⁷⁷ (Even if, or even when) 'they hanged him' (in a tree) 'and he sold' (an object or a piece of land) 'the sale is a sale' (which is valid). This rule does not sanction coercion or other sharp practices. It is a presumption of 'willingness' at times irrefutable that limits evidence of coercion, similar to Roman law.

⁷⁸ D. Daube, "Intellectual Authorship," Gifford Lecture, unpublished, copy on file with author, noted the parallel between Rebekah's agreement with Jacob for Jacob to obtain Isaac's blessing (Gen. 27:13, 'Upon me be thy curse, my son: only obey my voice') and the crowd's agreement with Pilate in Matt. 27:24–25, 'His blood be on us.'

⁷⁹ Josh. 9:3–27; 2 Sam. 3:7 *et seq.*, 21.1–14; Sanhedrin 35a1. Saul's breach of the treaty with the Gibeonites leads to the crucifixion of the seven sons of Saul, the premier crucifixion story of the Old Testament, and the saving of their corpses from desecration by the saintly woman at the foot of their crosses, Rizzpah. Crucifixion, ironically, was the quintessential punishment for the lowest stratum of society, slaves, and the highest, kings, who breach treaties, and their sons eligible for the throne.

non-Canaanites, with whom treaties were permitted, for example. In another subtle example of an unwitting agreement, Herod, who authorized the Magi to pay homage to the newborn king, and deputized them to act as his agents, says to them, 'bring me word that *I too* may pay him homage.'

I am not suggesting that any statement insincerely given can be construed to have its literal meaning. Not everyone who says to Jesus, 'Lord, Lord' makes an agreement to make it so (Matt 7.21). Unwitting agreements with limited exception tend to follow set legal and literary formulae.

The contract is oral and in the form of question and answer. The legal format of the answer is always in the affirmative. The contractual rituals are always acted out or reenacted live and in the present tense (like a Passion play, Mass or Passover seder). The contract form is unilateral, not bilateral, and unconditional (like a marriage or baptismal vow). There are no outs, no 'if, ands or buts.'

The promise is formulated by the promisee to whom performance is due, not the promisor, who performs the promise.⁸⁰ In many contracts the terms of the promise are formulated by the promisor, the person who is to do the work, and who is often more familiar with what the work entails. In the form we are discussing, it is the other way around. The person to whom the work is due frames the promise, which is why it makes sense that the intent of the promisor is irrelevant and only the precise words count. However, the formula must be adhered to in every detail, otherwise it is irrefutably assumed this contract form was not intended. Thus, Pilate proffered innocent blood (guilt), but the crowd did not assent. Instead it reformulated Pilate's statement, which as reformulated accepted Jesus' sacrificial covenantal blood.

In the literary form of unwitting agreements the author is an omniscient narrator, whose audience sees, knows and hears what the actors do not. The actors are unaware that the consequences of their words are different, indeed the opposite, of what they intend.⁸¹ The audience wants to scream out to the actors because they are deaf and blind to what is really going on. This is known as *peripeteia*, reversal of intention. Everything the actors say recoils and veers to its

⁸⁰ Farnsworth, *Past of Promise*, 588 *et seq.* (1969); Tony Weir, "Contracts in Rome and England," 66 *Tulane L. Rev.* 1615, 1618, 1622 (1991-92), 1622; Pesachim 115b3 & n. 26-27, 116a2 & n. 32.

⁸¹ H. House, *Aristotle's Poetics* (London: Rupert Hart-Davis, 1956), 96-97; F. Fergusson, introduction to, Aristotle, *Poetics* (New York: Hill & Wang, 1969), 7-17.

opposite, and the very words or means the actors choose produce the result they least expect.⁸² For this device to work, the actors' choice of words or means has to be based on some subconscious awareness or suspicion of the truth of what they say. That is what produces the justice of the result.

THE SOURCE OF THE CROWD'S OATH: THE ORDEAL FOR SUSPECTED INFIDELITY

In the guilt interpretation, the crowd's oath is seen as different from the acclamations of the other actors. In fact, it is different because it derives from a different source. But, contrary to the guilt interpretation, it is an acclamation of Jesus nonetheless.

The crowd's oath is an odd-man-out. The acclamations of the other actors and the sign above the cross all come from the simple, obvious formulaic talisman, 'King of the Jews' or 'Israel's King.' In Matthew, in addressing the crowd Pilate refers to Jesus, not as 'King of the Jews' (Mark 15:9, 12) but instead as 'called Christ' (Matt. 27:22). While all nations may have their own kings, the Messiah is uniquely Jewish, and hence Jesus *qua* Messiah evokes the strong bond between the Jewish people and all things messianic. The crowd's oath signifies that the Jewish people have the covenantal bond that produces their legitimate interest and jurisdiction in the matter of Jesus *qua* Messiah.

The crowd's oath derives from the divine covenant described in that day in terms of the new covenant of 'husband and wife' (Jer. 31:3 *et seq.*) and constantly characterized in the later prophets in terms of 'to whore after,' 'to play the harlot'. Metaphorically, the crowd is the bride of Christ undergoing a test of fidelity. Barabbas figures in this metaphor as the other man. The crowd's oath derives specifically from the imprecatory oath of the ordeal of the suspected adulteress in Numbers 5:12 *et seq.*

This derivation begins with Pilate's hand washing. In the rabbinic exegesis, Pilate's hand washing projects its opposite, which is the ordeal of the suspected adulteress. The hand washing ritual was the quintessential case of a Jewish ritual that had to be said in the holy tongue, Hebrew. Quite the opposite, the ordeal was the quintessential case of the Jewish ritual that had to be said in the language the woman understood best, her vernacular tongue, typically Aramaic.

⁸² House, *Poetics*, 97.

Although the hand washing ritual and the ordeal are opposites, they are not true opposites because they are connected – they are a diptych. The connection between the two is the hinge word ‘God’. As a test of her fidelity the woman had to drink the bitter waters. The words of the imprecatory oath from Numbers 5 were written by the priest on a parchment and then erased into the bitter waters.⁸³ These words included the ineffable holy Hebrew name of God (the mere mention of which was blasphemy). God’s name was the active ingredient.⁸⁴ And its erasure was like a destruction of (a part of) God, analogous to the death of God’s son, Jesus, on the cross. The inclusion of God’s holy Hebrew name in the bitter waters was the connection between the hand washing ritual and the ordeal. It was as if the holy Hebrew language gave of its most precious gift, God’s holy name, to be eaten and drunken in the otherwise supremely vernacular ordeal.

Because God’s ineffable name is tantamount to God himself, in the ordeal, the suspected adulteress in a sense ate and drank God. Thus, in a regular trial the outcome is usually limited to either punishment or freedom. Reward does not figure in the case. Because of the involvement of God in an ordeal, the result is either punishment or *reward*.⁸⁵ Thus, a woman who failed died along with her fetuses, but a woman who passed was transformed and blessed with children born without any pain. This ‘eating and drinking of God’ in the ordeal with its consequences either positive or negative is uncannily like the earliest Christian Eucharist recorded in 1 Corinthians 11:27 *et seq.* That Eucharist was a test in which the worthy eater and drinker of the *specie* was blessed while the unworthy was punished. This passage gave rise in the Middle Ages to the Ordeal by Eucharist used particularly by clergy of which there are many colorful examples.⁸⁶

Just as the hand washing ritual and the ordeal are a diptych connected by the hinge word ‘God’, so too Pilate’s hand washing and the crowd’s oath have been called ‘a calculated diptych connected by

⁸³ Num. 5:23. In rabbinic law the erasure of God’s holy name was so serious that until then, the woman could back out of the ordeal. Once the words were erased, she had to drink. Sotah 20a2 & n. 15; 24a1 & n. 8.

⁸⁴ Sotah, iv.

⁸⁵ Berachos 28b2–3 & n. 19.

⁸⁶ H.C. Lea, *Superstition and Force: Torture, Ordeal, and Trial by Combat in Medieval Law* (New York: Barnes & Noble Books, 1996) (original 1870), 267–72; R. Bartlett, *Trial by Fire and Water* (Oxford: Clarendon Press, 1986), 89.

the word “blood”.⁸⁷ Pilate’s hand washing and the crowd’s oath are nearly complete opposites. Coming from the message in his wife’s dream of ‘have nothing to do with’ (Matt, 27:19), the legal standard for the hand washing ritual is total non-involvement. Through a projection of opposites, God’s message in the dream is indirectly the source and cause of the crowd’s oath. The opposite of the hand washing standard of ‘have nothing to do with’, the crowd’s oath means total involvement, a *nec plus ultra* of all the people and their descendants committed to and having maximal jurisdiction over Jesus *qua* Messiah based upon the closest of bonds, the bond of blood. The hinge between the two, Pilate’s hand washing and the crowd’s oath, is Jesus’ blood.

Pilate’s hand washing and the crowd’s oath are nearly total opposites in yet a further respect. The hand washing ritual involved the killing of an animal, a heifer, whose neck was broken. From the perspective of the Jewish crowd, by ritually washing his hands Pilate has associated the death of Jesus called Christ with the killing of the heifer in the hand washing ritual. However, under Jewish law, associating the slain heifer of the hand washing ritual with the death and blood of one called Messiah presents an absolutely ridiculously dissimilar combination that could only be composed by a foolish gentile.⁸⁸ This is once again consistent with Pilate acting like a Judge of Sodom: he puts Jewish law to a consummately incorrect and perverse use.

Yet, the very inaptness of Pilate’s analogy contains a thread that brings to mind to the Jewish crowd a very apt analogy of an animal slain in a Jewish ritual that properly evokes the imagery of blood and of the Messiah: the Pascal lamb and Passover, which is the day of the Last Supper and the trial.⁸⁹ The Passover holiday was associated with the covenant, resurrection, the Messiah and the sacrificial blood of slain Pascal lambs.⁹⁰ While the numerous differences and distinctions between the slain heifer and the Pascal lamb are far too many to list here (one blemished, the other not, etc.),⁹¹ suffice it to note that the slain

⁸⁷ Meier, *Vision of Matthew*, 199; Luz, *Matthew 21–28*, 492.

⁸⁸ The slain heifer represented a sort of common ‘everyman’ unlike the special figure of the Messiah. Sotah 46b1 (ordinary murder).

⁸⁹ D. Daube, “The Significance of the *Afikoman*,” *Collected Works* 2:425 *et seq.*; Daube, “He That Cometh,” 2:433 *et seq.*

⁹⁰ Pesachim 92b2; Daube, “*Afikoman*,” Daube, “He that Cometh.”

⁹¹ Sotah 44b5–6 & nn. 9, 13, 45b2–4 & nn. 12, 19, 21, 46b1, 46b6, 47a4; Pesachim 64a2–3, 64b1.

heifer was the rare case of an atonement that was not a sacrifice,⁹² while the Pascal lamb was the rare case of a sacrifice that was not an atonement.⁹³

Also, the hand washing ritual and the ordeal were closely connected historically. They were both highly disfavored and for similar reasons and were both abolished at about the same time.⁹⁴ Thus, these two rituals became joint legal *causes célèbres* that were associated with each other. The individual by far most influential in this process, whose teachings are well known to have been remarkably like those ascribed to Jesus, was Johanan ben Zakkai.⁹⁵ It is evidently because of their association and prominence in Judaism of the first century that traces of these two rituals are found in Matthew.

Finally, there is an extremely important parallel between the ordeal and treaties and covenants – they both contain as their most outstanding feature imprecatory oaths.⁹⁶ Functionally, their imprecatory oaths were almost interchangeable.⁹⁷ Their oaths are analogous and their respective analogies extend;⁹⁸ their various rules apply to and read on each other.⁹⁹ They both use the key word *alah* meaning curse or oath

⁹² Sotah 46a1; *Encyclopedia Judaica*, s.v. 'Eglah Arufah.'

⁹³ Pesachim 61b1. Unlike in John where Jesus is the Pascal sacrifice of the day before Passover and his death atones, in Matthew (26:28) the connection between the blood of the covenant and the forgiveness of sin is from Jer. 31:34.

⁹⁴ In the extremely lascivious Greco-Roman world, it was felt that by reason of the grievous sins of the men and priests, they were in no position to subject women to the ordeal. Instances where the bitter waters exposed infidelity decreased causing the Divine Name to be erased for no purpose and people to disparage the entire rite. Sotah 47a5 & n. 48; D. Daube, "The Old Testament in the New: A Jewish Perspective," *Collected Works*, 2:58 (Rabbis troubled by the crass inequality between the sexes in this area').

⁹⁵ *Encyclopedia Judaica*, s.v. 'Sotah;' *Encyclopedia Judaica*, s.v. 'Eglah Arufah;' Sotah 47a5 & n. 48; Luz, *Matthew* 1–8, 55 ('The similarity between the Gospel of Matthew and many of the traditions about (Johanan ben Zakkai) is amazing').

⁹⁶ The *Encyclopedia Britannica*, 11th ed. (1911), s.v. 'Comparative Jurisprudence' attributes to nineteenth century German, Otto Schrader, the observation that the central idea of the ordeal is the imprecation.

⁹⁷ Sotah 17a1 & n. 9; 18a2 & n. 14; Shevuos 35a4 & n. 39, 35b4–36a3 & n. 47.

⁹⁸ This is the test for the hermeneutical principle *gezeirah shavah*. Sotah 44b7 & n. 32; Zevachim 48a2 & n. 19 ('There is no such thing as a partial *gezeirah shavah*,' i.e., the analogies must extend).

⁹⁹ See generally Chapter Four of Tractate Shevuos; Shevuos 35a4 & n. 39, 35b4–5 & nn. 46–48; Sotah 17a1 & n. 9 (similarity of ordeal and covenant curse/oaths).

(Deut. 29:19–20; Num. 5:21).¹⁰⁰ Both were set in a liturgical ceremony. Both involved giving up one's fate to God. Just as the covenant oath involved the oath takers' children, the oath of the ordeal involved the woman's fetuses.¹⁰¹

NOT A TRIAL BUT A TEST, AN ORDEAL

In the guilt interpretation great emphasis was placed upon responsibility for Jesus' suffering and death. In fact, the evangelist portrays Jesus' Passion as more like an ordeal than a trial.

Just as the trial contains a play within a play about the investiture of a king, the trial is itself a story within a story or play within a play. The larger story or play is of an ordeal or test. The trial resembles an ordeal, but not a trial, because Jesus does not attempt to avoid his fate. He does not seek to avoid the arrest he sees coming, he does not mount a defense or seek to prevent the death he knows he will have to endure (Matt. 27:12–14). And Jesus' 'execution' is most unlike any normal execution because he comes back to life. Indeed, Jesus publicly predicted that he would rise from the dead (Matt. 27:63).

As in an ordeal, in the Agony in the Garden, Jesus drinks the bitter cup and put his fate in the hands of God, 'thy will, not mine' (Matt. 26:39). Not defending but putting one's fate in the hands of God is the hallmark of an ordeal. Also, God intervenes in Jesus' trial in the form of Pilate's wife's dream. This unique intervention of God in the proceedings is typical of an ordeal but not of a trial. And Jesus' trial did not involve the limited choice between punishment or freedom of a trial; it involved reward (eternal life) characteristic of an ordeal.

Thus, viewed as an ordeal, the crowd may endorse the test of Jesus to produce a sign to reveal whether Jesus is the Messiah.¹⁰² However, the crowd is oblivious as to what should be, and to the audience is, obvious: just as Jesus is undergoing a test that will show whether he is the Messiah, they too are undergoing a test. In the beginning, their

¹⁰⁰ B.A. Levine, *Numbers 1–20* (New York: Doubleday, 1993) 197. There is a third type of oath, a certain type of witness' testimonial oath in a monetary matter that also uses the word *alah* and is related in its laws to the covenant and ordeal oaths. Shevuot 35a4 & n. 39 (similarity of testimonial and covenant oaths); 35b4–5 & nn. 46–48, 54–58 (similarity of ordeal and testimonial oaths).

¹⁰¹ Levine, *Numbers*, 34, 198 (embryo), 201 (miscarriage, abortion), 203–04 (loss of fetus). 'Fetuses' can also mean 'nation.' Sotah 41b3 & n. 30.

¹⁰² Matt. 12:38 (Evil and adulterous generation that seeks a sign).

test is the choice, 'which of the two', Jesus or Barabbas.¹⁰³ The crowd absolutely knows that the correct choice between Barabbas and Jesus is Jesus. But, the crowd is blinded by monomania. Although up to this point in the gospel, crowds have been neutral or often positive in their response to Jesus,¹⁰⁴ they are so intent upon defeating the hated Roman that (with a moments' encouragement from the chief priests while Pilate is receiving his wife's message (Matt. 27:17-21)) in order to mock Pilate, they purposely choose the worse as the better. As the means to thwart the chief priests, Pilate chooses the crowd. But the chief priests use the crowd, the means Pilate chose, to thwart him. Then to thwart the crowd Pilate uses a Jewish ritual, but to thwart Pilate the crowd uses a more apt Jewish ritual. Pilate says that their 'right' to have Jesus executed is by murder. The crowd remonstrates that *their* right is by the Jewish covenant. Metaphorically, in the test of her (in)fidelity, the woman impugned proclaims her intimacy with her husband.

It is the crowd's subconscious awareness of the simple truth that they should free Jesus and condemn Barabbas that, along with Pilate's stimulus by using the words 'blood' and 'Christ', produces the crowd's choice of means to mock Pilate in their oath. They choose the oath that reflects their quintessentially strong bond with Jesus called Messiah.

This theme of an ordeal is further emphasized in the story of Peter denying Jesus three times before the cock crows. Peter too undergoes a test.

CONCLUSION

Pilate, the Roman soldiers and the sign above the cross all prophetically acclaim Jesus 'King of the Jews'. In Matthew, Jesus' enemies, the Jewish chief priests, scribes and elders, also acclaim Jesus 'Israel's king'. An analysis of the legal formula and allusions employed by the evangelist in the crowd's oath elucidates that it too is an acclamation of Jesus, albeit in a slightly different context of Jesus 'called Christ'. The crowd's oath is part of the crescendo of acclamations by all of the actors. This simple, elegant, succinct reading

¹⁰³ Viviano, *Matthew*, 672 (In a change from Mark, Matthew sharpens the choice).

¹⁰⁴ Senior, *Gospel of Matthew*, 170; Matt. 21:46 (Chief priests fearful of arresting Jesus for fear that crowds would riot).

requires only the very minimal assumption that is supplied by the text and is uncontroversial in history: the hostility between Israel and Rome, to produce a surprisingly different generalized explanation. It is also entirely consistent with and explained by important developments in rabbinic law of the first century. Prior exegesis that involves proliferating heroic assumptions of a paradox, multiple authors, historical back casting, historical invention, etc. are refuted. Doctrines that read the crowd's oath to reject Jesus, the epochal 'no', are not based upon the meaning of the oath the evangelist expressed. 'See to it *yourself*' (Matt. 27:24).

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