

WHY IS THE OLD TESTAMENT (AND NEW TESTAMENT) NOT REALLY A TESTAMENT? LEGAL PERSPECTIVE BASED ON THE LAW OF OBLIGATIONS¹

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Abstract: The title New (and Old) Testament is commonly used in the English-speaking world to denote the corpus of biblical books that form the key source for the teaching of one of the most widespread religions in the world, Christianity. However, the first part of the book, as the source for the second part, is central to another world religion, Judaism, which is the cornerstone for the emergence and subsequent development of Christian teaching. The issue of terminology for the designation of these books is not relevant for the source religion (Judaism), but is somewhat crucial for the understanding and interpretation of the Scripture in the Christian theology. Just as it is not right to divide the sacred and secular in ancient times concerning everyday life, it is not proper to set aside the law from the divine, since the right relationship with a deity was key to the prosperity of the nation and this relationship was based on mutual expectations and obligations. This aspect of the relationship with the divine in the sense of an obligation is what we want to explore in this article, thus answering also the terminological issues arising from the use of the word testament to designate the biblical corpus, along with other terms such as πίστις and ομολογώ.

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The idea of the covenant made between God and his people is one of the central themes of the biblical corpus. The promise of the New Covenant written into the hearts of the chosen people then gives rise to the theology represented by Christianity, and yet, in some instances, theologians and translators resort to the use of the term Testament when translating the title (at least) of the two parts of the Christian Bible. Although the choice may arise from the ancient use of the term διαθήκη, is the choice of such a designation appropriate for the relationship presented by the “Old Testament” (also just “OT”) as the source of the Covenant?

It has already been pointed out² that the concept of contract is somewhat central to the biblical books. There, we have concentrated on the use of the terms and some similarities, as well as differences, between the cultic experience as a contract with the divine in Roman and Jewish culture. Here, we want to concentrate on the sheer legal aspects of this relationship within the scope of the law of obligations from the Jewish and Roman legal perspective, since contracts fall under the area of the law of obligations, within private law, meaning that they are tied to specific persons, not property as such. We want to demonstrate that the biblical books operate with legal terminology tied to the law of obligations when referring to the covenant with God and the covenant relationship, and that this relationship should not be perceived as a testament, but rather as a contract with all its implications. However, for this purpose, we will also revisit the terminological issue of the use of the word διαθήκη as the translation for the original Hebrew term בְּרִית (berít).

1 Obligations in Jewish and Roman Law

In the context of the law, contracts fall under the area of the law of obligations, within private law, meaning that they are tied to specific

² See DANČIAKOVÁ, V. T.: Zmluvy s bohmi: zmluva ako základ vzťahu medzi človekom a božstvom. In: *Právněhistorické studie*, 2025, vol. 55, n. 3, p. 55-69, ISSN 0079-4929.

persons, not property as such. In Roman law, we can find some important fragments concerning the obligations in the Institutes of Justinian and the Digest. The Institutes of Justinian are, in general, a much later source and reflect centuries of the development of Roman jurisprudence. Anyway, they provide a neat definition of an obligation:

Nunc transeamus ad obligationes. obligatio est iuris vinculum, quo necessitate adstringimur alicuius solvendae rei, secundum nostrae civitatis iura. (Inst. Iust. 3.13.pr.)

Let us now move on to the discussion of obligations. An obligation is a tie of law by which we are so constrained that, by necessity, we must render something according to the laws of our state.³

We want to point out two more fragments, one concerning the source of obligations, which can also be found in a much earlier source, the Institutes of Gaius, and the other one (even more important) concerning their nature and what is necessary for their creation:

*Obligationes aut ex contractu nascuntur aut ex maleficio aut proprio quodam iure ex variis causarum figuris. (D. 44.7.1.pr.)*⁴

Obligations arise either from contract or from wrongdoing, which is the same in Jewish law,⁵ or by some special right from various types of causes.⁶

*Obligationum substantia non in eo consistit, ut aliquod corpus nostrum aut servitutem nostram faciat, sed ut alium nobis obstringat ad **dandum** aliquid vel **faciendum** vel **praestandum**.*

1. Non satis autem est dantis esse nummos et fieri accipientis, ut obligatio nascatur, sed etiam hoc animo dari et accipi, ut obligatio constituatur. Itaque si quis pecuniam suam donandi causa dederit mihi, quamquam et

³ SANDARS, T. C.: *The Institutes of Justinian with English Introduction, Translation, and Notes*. London: Longmans, Green and Co., 1922, p. 319.

⁴ Also Gai. Inst. 3.88: *Nunc transeamus ad obligationes, quarum summa diuisio in duas species diducitur: omnis enim obligatio uel ex contractu nascitur uel ex delicto*.

⁵ SKOLNIK, F.: *Encyclopedia Judaica. Vol. 15. Nat-Per*. Farmington Hills: Keter Publishing House Ltd., 2006, p. 369, ISBN 978-0-02-865943-5.

⁶ WATSON, A.: *The Digest of Justinian*. Volume 4. Philadelphia: University of Pennsylvania Press, 1998, ISBN 978-0-8122-2036-0, p. 153.

donantis fuerit et mea fiat, tamen non obligabor ei, quia non hoc inter nos actum est.

2. *Verborum quoque obligatio constat, si inter contrahentes id agatur: nec enim si per iocum puta vel demonstrandi intellectus causa ego tibi dixero "spondes?" et tu responderis "spondeo", nascetur obligatio.* (D 44.7.3. pr.-1)

The essence of obligations does not consist in that it makes some property or a servitude ours, but that it binds another person to give, do, or perform something for us.

1. Moreover, it is not enough for an obligation to be created that money belongs to the giver and becomes the property of the receiver, but also that it be given and accepted with the intent that an obligation be constituted. Therefore, if someone has given his money to me with intent to make a gift, then, even though it both belonged to the giver and became mine, I shall not be bound to him, because that is not what was transacted between us.

2. A verbal obligation is also contracted, if this was the intention of the parties; for instance, if I should say to you by way of jest, or for the purpose of explaining what a stipulation is, "Do you promise me So-and-So?" and you answer, "I do promise," an obligation will not arise.⁷

The second fragment mentioned is important in relation to the character of an obligation in Jewish law. In Jewish law, the key type of contract was a real contract, meaning that in order to make a contract valid, a simple agreement, a consensus, was not enough, but the delivery (of at least one of the parties) was necessary, or a legal act that was formal, ceremonial in character, which we can also observe in the Roman *ius civile*⁸ as the original form of the Roman law that was later amended and supplemented by the activity of the praetors through their judicial activities. The creation of an obligation in Jewish law automatically also created a lien on property of the debtor (especially immovables) in favour of the creditor. In general, the sides were

⁷ WATSON, A.: *The Digest of Justinian*, p. 155.

⁸ *Mancipatio, stipulatio, nexum, manus iniectio, sponsio.* HOROWITZ, G.: *The Spirit of Jewish Law: A Brief Account of Biblical and Rabbinical Jurisprudence With a Special Note on Jewish Law and the State of Israel.* New York: Central Book Company, 1963, p. 445-446.

universally described as lender (*malveh*) and borrower (*loveh*), which applied to all obligations.⁹

It seems that in the earliest form of the Jewish law, the obligation was strictly tied to the person obliged (*shi'bud hagguph* – personal bond), even to the extent that it is uncertain if they could be passed on to heirs. This personal connection could also be seen in the mode of executing claims from such obligations, since the name for lien (*Shi'bud*) is derived from *a'bad*, to serve, which refers to the possibility of enslaving the defaulting debtor or his children.¹⁰ The same can be found in the oldest procedure of the Roman litigation in one of the actions for execution *legis action per manus iniectioem*, which was aimed at seizing the person of the debtor.

Herzog contrasts the two legal systems in the concept of Jewish obligation *hiyub*, saying that, contrary to Roman law, which tied the obligation to the person, Jewish law tied it to the property (of the person) since the Roman law under the XII Tables gave the creditor power over the person of the debtor, which was later changed only to theoretical concept.¹¹ The procedure to seize the debtor is outlined in Table 3 paragraphs 1 - 5, as follows:

1. – *AERIS CONFESSI REBUSQUE IURE IUDICATIS
XXX DIES IUSTI SUNTO.*

2. – *POST DEINDE MANUS INIECTIO ESTO. IN IUS
DUCITO.*

3. – *NI IUDICATUM FACIT AUT QUIS ENDO EO IN
IURE VINDICIT, SECUM DUCITO, VINCITO AUT
NERVO AUT COMPEDIBUS XV PONDO, NE
[MAIORE], AUT SI VOLET [MINORE] VINCITO.*

4. – *SI VOLET SUO VIVITO. NI SUO VIVIT, QUI <EUM
VINCTUM HABEBIT,> LIBRAS FARRIS ENDO DIES
DATO. SI VOLET, PLUS DATO.*

5. – *Erat autem ius interea paciscendi ac NISI PACTI
FORENT, HABEBANTUR IN VINCULIS DIES
SEXAGINTA. INTER EOS DIES TRINIS NUNDINIS
CONTINUIS AD praetorem IN COMITIUM
PRODUCEBANTUR, QUANTAEQUE PECUNIAE*

⁹ SKOLNIK, F.: *Encyclopedia Judaica*. Vol. 15., p. 368-369.

¹⁰ HERZOG, I.: *The Main Institutions of Jewish Law. Vol. 2. The Law of Obligations*. London: The Soncino Press, 1939, p. 4 – 5; HOROWITZ, G.: *The Spirit of Jewish Law*, p. 472.

¹¹ HERZOG, I.: *The Main Institutions of Jewish Law*, p. 3-4.

IUDICATI ESSENT, PRAEDICABATUR. TERTIIS AUTEM NUNDINIS CAPITE POENAS DABANT, AUT TRANS TIBERIM PEREGRE VENUM IBANT (Gell., 20, 1, 46. 47).

1. – Thirty days shall be allowed by law for payment of confessed debt and for settlement of matters adjudged in court.

2. – After this time the creditor shall have the right of laying hand on the debtor. The creditor shall hale the debtor into court.

3. – Unless the debtor discharges the debt adjudged or unless someone offers surety for him in court the creditor shall take the debtor with him. He shall bind him either with a thong or with fetters of not less than fifteen pounds in weight, or if he wishes he shall bind him with fetters of more than this weight.

4. – If the debtor wishes he shall live on his own means. If he does not live on his own means the creditor who holds him in bonds shall give him a pound of grits daily. If he wishes he shall give him more.

5. – . . . Meanwhile they shall have the right to compromise, and unless they make a compromise the debtors shall be held in bonds for sixty days. During these days they shall be brought to the praetor into the meeting place on three successive market days, and the amount for which they have been judged liable shall be declared publicly. Moreover, on the third market day they shall suffer capital punishment or shall be delivered for sale abroad across the Tiber River.¹²

In biblical times, obligations were generally created in the form of a solemn promise¹³ as a form of religious acts, which were a covenant,

¹² JOHNSON, A. CH. et al.: *Ancient Roman Statutes*. Austin: University of Texas Press, 2012, p. 10, ISBN 1-58477-291-3.

¹³ Today this manner is reflected in the church marriages as the heir of the biblical tradition, where the creation of marriage is accompanied by the exchange of the marriage vows (promises) where God is the witness. PĚTIOVÁ, V.: Aktuálne výzvy manželskej pastorácie pre farnosť. In *Historia et theoria iuris*, 2023, vol. 15, n. 1, p. 52-63, ISSN 1338-0133. Another form would be vows made at entering a specific office in the Latin Church that are also made

an oath, and a vow, while a vow, strictly speaking, did not establish a contract, being “*a one-sided promise made to the Deity*” and as a result did not result in a legal claim.¹⁴ On the other hand, a covenant is the closest biblical term to contract. The problem is that the universal term denoting a contract in Jewish law is missing, as concrete terminology was preferred.¹⁵

Similar types of obligations, among the oldest, can also be found in Roman law. The one that was quite widespread and survived up until the classical period is definitely the *stipulatio (sponsio)*, which was created as a legally binding, enforceable solemn promise, in which the promise was placed under the protection of the gods. The religious aspect can be seen in the original form, which was accompanied by the pouring of sacrificial wine, symbolising the spilling of blood should the contract be breached.¹⁶ Later, this ceremony disappeared, and only the formula remained in the form of “*Spondesne? Spondeo.*” Another type that appealed to the god Jupiter for protection was *iusiurandum* as a unilateral contract accompanied by religious sanction in the form of denial of the god’s protection, which means that anyone could slay the culprit.¹⁷

Reference to obligations based on a solemn promise can be found in D. 44,7,3,2:

Verborum quoque obligatio constat, si inter contrahentes id agatur: nec enim si per iocum puta vel demonstrandi intellectus causa ego tibi dixero "spondes ?" et tu responderis "spondeo ", nascetur obligatio.

A verbal obligation also is constituted if that is performed between contracting parties; for if, say, in a joke or in order to demonstrate its nature, I have said to you, "do you

in the sense that God is the witness and guarantor. PÉTIOVÁ, V.: Obeta života z lásky v kanonizačnom procese. In *Nové horizonty*, 2023, vol. 17, n. 2, p. 62-70, ISSN 1337-6535.

¹⁴ HOROWITZ, G.: *The Spirit of Jewish Law*, p. 445.

¹⁵ SKOLNIK, F.: *Encyclopedia Judaica. Vol. 5. Coh-Doz*. Farmington Hills: Keter Publishing House Ltd., 2006, p. 189-190, ISBN 978-0-02-865933-6.

¹⁶ *Sponsio* is derived from the Greek word σπονδή, referring to a wine offering poured to the gods and as such was also used in the meaning of a truce or treaty, also referring to money payments. LIDDELL, H. G., SCOTT., R.: *A Greek-English Lexicon*. Oxford: Clarendon Press, 1996, p. 1629.

¹⁷ BUCKLER, W. H.: *The Origin and History of Contract in Roman Law*. Cambridge: Cambridge University Press, 2016 (reprint of edition London: C. J. Clay and Sons, 1895), p. 6-7, 13-16, ISBN 978-1-316-62315-2.

promise," and you replied, "I promise," no obligation is created.¹⁸

Of the four basic types of contracts, being the *real*, *literal*, *verbal*, and *consensual*, the oldest halacha only knew the first two types;¹⁹ the written was known as a sealed document, *shetar*, the seals meaning the attestation of the witnesses by signatures. The real obligation was secured by handing over (delivery) the thing (*meshikah*) that constituted the transfer of possession. There were, however, certain other types of contracts that used fiction. The first was conveyance (*kinyan*), at least in a symbolic manner (delivering something symbolising the obligation), used for future performance, and admission as proof of an obligation created that could be made orally before witnesses.²⁰

Contrary to the Jewish law, then, the Roman law did know verbal contracts based on strict formality, but also those that were rather informal, such as *pactum*. On the other hand, a verbal obligation in Jewish law could be treated as a written one if it was done in front of witnesses.²¹

The key element of contracts in Roman law and Jewish law as well²² was mutual trust (*fides* or πίστις²³), as well as the position before God (or gods), and breaking a contract could be equalled to sacrilege.²⁴

For the purpose of this article, the most important form of obligation is a covenant or oath as “a ceremonial act between two parties and in each other’s presence.” These ceremonies were often accompanied by specific action, such as building a memorial of a certain form or (and) a communal meal (we will present these cases in more detail in the next section). Such a form can also be seen in *sponsio* that was accompanied by a ritual. Although the Jewish law did not know the concept of

¹⁸ WATSON, A.: *The Digest of Justinian*, p. 155.

¹⁹ HOROWITZ, G.: *The Spirit of Jewish Law*, p. 445, 447.

²⁰ Ibidem, p. 446, 451-457; SKOLNIK, F.: *Encyclopedia Judaica. Vol. 5.*, p. 190-191. The admission form of an obligation is very well attested in papyrological evidence, which we will show later.

²¹ SKOLNIK, F.: *Encyclopedia Judaica. Vol. 15.*, p. 371.

²² Here we could refer, for example, to the law of deposit. See BIRKS, P. *The Roman Law of Obligations*. Oxford: Oxford University Press, 2014, p. 144-145, ISBN 978-0198719281; BERGER, A.: *Encyclopedic Dictionary of Roman Law*. Philadelphia: The American Philosophical Society, 1953, p. 346, 500; BĚLOVSKÝ, P.: *Obligace z kontraktů. Smlouva a její vymyhateľnost v Římském právu*. Praha: Auditorium, 2021, p. 268, ISBN 9788087284919; HERZOG, I.: *The Main Institutions of Jewish Law*, p. 175.

²³ In Greek Jewish sources such as Philo of Alexandria or Josephus Flavius.

²⁴ BUCKLER, W. H.: *The Origin and History of Contract in Roman Law*, p. 4 – 6. See also R. Akiva (*Sifra Hovat* 22,4), Philo of Alexandria *Spec. Leg.* 4.30-32, and Josephus Flavius *Ant.* 4.285-257.

a purely verbal contract, we can see that even the Roman ones were quite ceremonial.

The concept of an obligation based on sacred trust, as a relationship that is protected by gods, was common to both legal systems, and thus creates a base for common understanding of the biblical concept of covenant for both New Testament writers, as well as readers (listeners) that were shaped by their local, but also Roman legal system and culture. This common understanding of the relationship between a deity and a human as a form of a contract that is well known in the ancient world could also be one of the key elements in the spread of early Christianity.

2 The Biblical Covenant as an Obligation

The basis of the biblical covenant can definitely be found in the OT. The idea of a Covenant undoubtedly passes to the New Testament; however, the logical consistency of the two concepts could be disputed, as we would like to show in this paper. For the OT, the key term to denote the covenant is Hebrew בְּרִית (*berit*),²⁵ which can be found in the text of the OT in a total of 284 occurrences. Although the situations in which the term is used differ, the common feature is that it denotes a form of agreement in its broadest sense and can be described as “a general obligation concerning two parties”.²⁶ This obligation can be divided into two main types based on the character of the parties involved: 1) a covenant between human parties; 2) a covenant between God and a human party (whether an individual, group, or a nation). The ones, where there is a human party involved, can then be divided into: 1) treaties (in the form of international agreements or alliances – Hos. 12:1-2; vassal treaties – Josh. 9:11 – 15; 1 Sam. 11:1; 2 Sam. 3:12; treaties about peace or friendship – Gen. 14,13; 21::22ff; 26:27ff; 31:43-44; 1 Kings 5:26; 15:18-19; 1 Sam. 23:18; 2) constitutions; 3) agreements, oaths (Mal. 2:14 – marriage agreement).²⁷

As we have stated above, the covenant was a specific type of ceremonial obligation that did not survive, according to Horowitz,²⁸ the

²⁵ For the possible origin of the word, see ISAAC, E. Circumcision as a Covenant Rite. In: *Anthorpos*, 1964, vol. 59, n. 3/4, p. 446-447.

²⁶ SKOLNIK, F.: *Encyclopedia Judaica*. Vol. 5., p. 249.

²⁷ STRONG, J.: *The new Strong's complete dictionary of Bible words*. Nashville: Thomas Nelson Publishers, 1996, p. 333, ISBN 978-0785211471.

²⁸ HOROWITZ, G.: *The Spirit of Jewish Law*, p. 450.

biblical period. Is there, however, a possibility that the covenants in the OT were also secured by one of the forms that was recognised as binding from the beginning?

The use of the term was analysed in 178 cases by Manby in relation to parties, obligations, signs, and rituals (with other features as well, but those are of no interest to us now).²⁹ We would like to use this analysis to demonstrate our point that the covenant in the OT should be, in fact, regarded as an obligation. For this purpose, we would like to introduce more of a statistical approach, presenting several specific cases and combinations of features as key elements.

Of the listed entries, in 108 cases, there is a visible sign for the covenant stated. The majority of the cases list circumcision as the sign (52 cases), second in place tablets of stone in the ark of the covenant (or only tablets or ark – 28 cases). There are five distinct cases of salt being the sign, and five cases of Sabbath. In 18 cases, signs are of various types (rainbow, stone pillar, number of lambs, etc.). Of all the occurrences, only two record a covenant between human parties, the rest being a covenant where one party is God.

Of the cases stating circumcision as the sign, 23 cases constitute an everlasting³⁰ covenant, of which 14 are written, and 9 are unwritten. 28 cases refer to long duration of the covenant, of which 25 are written, and three are unwritten. In 8 cases, the covenant is also accompanied by a form of ritual: 1) Gen. 17:2, 4, 7, 9-11, 13, 14, 19, 21, in 17:1-27 (everlasting, unwritten); 2) 2 Kings 23:3, in 23:1-3 (long duration, written); 3) 2 Chron. 6:14, in 6:12-42 (everlasting, written); 4) 2 Chron. 15:12, in 15:1-19 (lifetime, unwritten); 5) 2 Chron. 29:10, in 29:1-36 (long duration, unwritten); 6) Neh. 1:5, in 1:1-11 (everlasting, written); 7) Neh. 9:32, in 9:1-38 (long duration, written); 8) Zech. 9:11, in 9:11-13 (long duration, written).

There are a total of 32 instances when creation of a covenant was accompanied by a form of ceremony (ritual), highlighting the necessary formalism, 26 of which are nevertheless simultaneously accompanied by a sign, 15 of which are also written.

Out of the 28 cases in which the signs accompanying the covenant were tablets of stone in the Ark of the Covenant (or part of it), all take

²⁹ MANBY, T.: *An Exegetical and Canonical Analysis of Leviticus 26: Laws, Covenants, Promises, and Warnings*. Saarbrücken: VDM Verlag Dr. Müller, 2009, p. 85-90, 207-222, EAN 9783639170658.

³⁰ The term is taken from Manby's analysis.

the form of a written covenant (the tablets), seven stating the long duration of the covenant with the rest being without a time reference.

Of the instances mentioning signs, in 103 cases, God is one of the parties involved (either referred to as *Yahweh*, *adonai*, or *elohim*), with 78 cases having a written form. In 23 cases, they are also accompanied by a ceremony or ritual, of which 16 are written.

With respect to the cases where there is no sign of the covenant, 14 are in written form, and the other 6 are accompanied by a certain ritual. 10 of the written ones are between human parties, mostly treaties between nations. This means that out of 178 instances of creating a covenant analysed by Manby, only 52 cases are without any accompanying form or symbol.

Of the unwritten ones without a sign (28 in total) that were between human parties, or a human, a beast, or some creation, four included at least a ceremony/ritual, and 10 were written, meaning that half of the covenants (treaties) are secured by an extra act. Of the 28 cases of covenants without the sign, in which there is a God as one of the parties, 4 are in writing, and 2 are accompanied by a ceremony or ritual, leaving the other 22 without any formal requirements. A total of 36 cases seem to be based only on an oral agreement between the parties, mostly being the covenant made with God.

Considering the previous general part on the law of obligations in Roman and Jewish law, we can see that the biblical accounts of the creation of various covenants, for the most part, fulfil the requirements for a binding and enforceable type of covenant under Jewish law. Unmistakeably, the written form present in most cases (126) is a key element since, as we have said, it was one of the recognised forms.

With respect to the cases that do not report a written form, we suggest that the mentioned sign is the key element that could be understood in the form of an acquisition (the visible form accompanying the legal act to ensure its validity). Obviously, it is not the delivery of the thing itself (although in the instances where land is promised to the people, it was actually delivered), but in the form of a symbolic delivery within the obligation and perhaps could be understood as the above-mentioned *kinyan*,³¹ which would perhaps be most obvious in the cases that state the circumcision as the sign of the covenant, where there is the human counterpart actually promising their

³¹ For the ritual cutting of an animal as a sign and proof of the covenant (obligation) see ISAAC, E.: *Circumcision as a Covenant Rite*, p. 445.

loyalty to God, specifically, offering a piece of their body to conclude the obligation.

Circumcision is, in fact, how a Jew enters into the covenantal relationship and becomes a part of the chosen nation.³² The tie to the covenant is also present on the benediction given by a father upon circumcision: “*Who hath sanctified us by His commandments and hath commanded us to bring him into the covenant of our father Abraham*”.³³ The benediction not only shows that circumcision is, in fact, the formal requirement for creation of the contract, but also that the contract is the same as was concluded with Abraham, thus suggesting that the series of other covenants mentioned in the OT are merely *novationes* of the original one, which is a well-known practice even in the Roman law of obligation, where any change (concerning the subject) in a contract needed to be amended through *novatio*. The OT concept of various covenants mentioned, therefore, would be intelligible to a Roman as well.

The ceremonial character would also be well-known to Romans, who performed their formal legal acts (although verbal) in a form of ceremony that had to be followed precisely to be valid, which was also reflected in the Roman cult. For the practice to create a legally binding agreement with a deity, the ritual had to be performed exactly according to form, and any mistake resulted in the need to repeat the procedure from the beginning.³⁴

The ceremonial part, which is said to be tied to the covenant, is present only in a minority of cases. For these, there is no unified form for covenant-making. An attempt to find a form was the etymology of the word *carat* used as a technical term for creating (cutting) a covenant, since the root means to cut and could refer to cutting an animal in half and walking between the halves, but this is attested only in a few instances (Gen. 15:7-18; Jer 34:10-19; Deut. 21:1-9; probably

³² ANWAR, M. S.: Circumcision: a religious obligation or ‘the cruelest of cuts’? In *British Journal of General Practice*, 2010, ss. 59-61, p. 59, DOI 10.3399/bjgp10X482194; ISAAC, E.: *Circumcision as a Covenant Rite*, p. 444-454.

³³ GANZFRIED, S. (GOLDIN, H. E. transl.): *Code of Jewish Law. A Compilation of Jewish Laws and Customs*. Vol. 4. New York: Hebrew Publishing Company, 1961, p. 43.

³⁴ ORLIN, E.: Urban Religion in the Middle and Late Republic. In RÜPKE, J.: *A Companion to Roman Religion*. Oxford: Blackwell Publishing Ltd., 2007, p. 59, ISBN 978-1-4051-2943-5; see also DANČIAKOVÁ, V. T.: Zmluvy s bohmí: zmluva ako základ vzťahu medzi človekom a božstvom. In: *Právněhistorické studie*, 2025, vol. 55, n. 3, p. 55-69.

also Judg. 19:29, and 1Sam. 11:7).³⁵ The practice could again be compared to Roman cultic practices, where an animal sacrifice was one of the means to create a contract in the sense of *do ut des* with a deity, forcing the deity to uphold their part of the contract by performing the obligation on the human part.

What about the cases that do not have any prescribed form for a binding type of obligation? What is at stake is their enforceability. Considering the cases of a covenant between human parties, only 14 of those are without any proof of their creation. The rest are 22 cases of covenant with God, which, however, constitutes a minority of cases. Anyway, in the instances including God as a party, there can (or should not) hardly be any doubt about the trustworthiness of this side of the covenant, and still, there is no way to enforce the performance of an obligation from a deity.

From biblical stories, we see that those who broke the covenant (obligation) were the human counterparts that led to repeated renewals and subsequent promise of the “new” covenant. For human covenants, few can be discarded as rather fantastical, as they do not record any earthly dealings. Three are part of the story of Job, and there he makes a covenant with stones (Job 5:23), his eyes (Job 31:1), and the Leviathan (Job 41:1). The other two are part of prophecies in Daniel (9:27 and 11:22). Two cases are in the Psalms, only referring to some past covenant in 55:20 (the same as in Prov. 2:17 and referring to a nation uniting against God’s people in 83:6ff. Another case is Isa. 28:15 mentioning a covenant of the rulers in Jerusalem made with death, probably referring to idolatry and thus dealing with the breaking of the original covenant with God. Some cases state covenants (treaties) between foreign countries, and, naturally, the writer did not have to know all the details.

The obligation that we are most interested in is the covenant between God and a human party, since this type of contract is present in the Roman cultural context as well. Let us look at the character of the obligation in the OT. The main trouble that arises, especially from the translation of the original Hebrew word *בְּרִית* using the Greek term *διαθήκη*, which reduces the meaning to a unilateral legal act – the

³⁵ LÉON-DUFOUR, X. et al.: *Slovník biblickej teológie*. Trnava: Dobrá kniha, 2015, p. 1053 – 1054, ISBN 9788071419006; JACOB, E.: *Theology of the Old Testament*. New York/ Evanston: Harper & Row Publishers, 1958, p. 210, 213; BROWN, F. et al.: *A Hebrew and English lexicon of the Old Testament: with an appendix containing the biblical Aramaic*. Oxford: Clarendon Press, 1906, p. 137.

testament, with God being the only one obliged.³⁶ To uphold the fact that the human partners are the one that actually have obligations and are often punished for the breach of the covenant, we would have to come up with a theory that the testament was somehow conditional upon the proper conduct of the heirs. A concept, I suggest, too complicated to be a valid option.

It is true that even the OT covenant does occur in a form of a relationship, or treaty, where the superior person takes the inferior one under their protection based on their own initiative, expecting loyalty.³⁷ However, that loyalty needs to be exercised in some specific way, which creates a form of obligation on the side of the inferior partner.

As can be seen from numerous cases in the OT, a covenant was not seen as a unilateral legal act, but as a form of a contract (all the cases recorded by Manby state two parties). Some may be unilateral, as is perhaps the case of the covenant made with Noah in Gen. 6:18 and 9:1-9, or the first covenant made with the patriarch Abraham and through him meant for Israel in Gen. 15:1-21. These two cases can be seen as a *stipulatio* (or the more ancient form of the *sponsio*), since no obligation on the human counterpart is mentioned.³⁸ On the other hand, still, we could say that God at least expected obedience, loyalty (Noah was expected to build the ark upon His word), which would be an obligation imposed upon the human counterpart.

Considering the next mention of a covenant in Gen. 17:1-27, we see an example of a bilateral obligation, since the promise made by God is accompanied by a condition/obligation on the human partner to undergo circumcision in order to enter into the covenant. This particular case could be seen as an act needed to create the contract, the *kinyan*, in the form of handing over a piece of a body, since the well-being of a person and their descendants is the object of the covenant. Still, without the action of the human partner, the contract cannot be effective. Anyone who would not be circumcised is to be killed for breaking the covenant.³⁹

³⁶ LÉON-DUFOUR, X. et al.: *Slovník biblickej teológie*, p. 1058; KITTEL, G. et al.: *Theological Dictionary Of The New Testament. Abridged in One Volume*. Grand Rapids: William B. Eerdmans Publishing Company, 1985, p. 143.

³⁷ SKOLNIK, F.: *Encyclopedia Judaica. Vol. 5.*, p. 249.

³⁸ KWAKKEL, G.: Berith and Covenants in the Old Testament. A Contribution to a Fruitful Cooperation of Exegesis and Systematic Theology. In: BURGER, H. et al.: *Covenant: A Vital Element of Reformed Theology*. Boston/Leiden: Brill, 2022, p. 28-29, ISBN 978-90-04-50332-8.

³⁹ Circumcision would also be practiced upon dead and buried persons (infants) if they were not yet decomposing. GANZFRIED, S.: *Code of Jewish Law. Vol. 4.*, p. 44.

14 Any uncircumcised male who is not circumcised in the flesh of his foreskin shall be cut off from his people; he has broken my covenant.” (Gen. 17:14)

On the other hand, even in this case, the text opens with the order given to Abraham to walk before God and be blameless (Gen. 17:1). The trust and obedience to God are the basic obligations of the human party of the covenant.⁴⁰ The most obvious bilateral obligation can be found in the making of the Ten Commandments at Mount Sinai (Ex. 34:1-34), since the commandments are specifically given as obligations of the nation of Israel to keep as their part of the contract; moreover, we have an example of a written obligation (the tablets with the commandments). The breach of the contract or the change in society structure (change from tribal union to kingdom) then initiates numerous renewals of the covenant,⁴¹ as well as the promise of a “new” covenant,⁴² as stated in Jer. 31:33:

33 But this is the covenant that I will make with the house of Israel after those days, says the Lord: I will put my law within them, and I will write it on their hearts, and I will be their God, and they shall be my people.

As we have already said, the renewals of the covenant can be seen as a *novatio*, since the new versions terminate the original ones and in order to amend the contract according to changed circumstances, which was not possible through simple additions to the original ones.⁴³

We have already referred to the similarity with the Roman law and culture in that the Roman cult also functioned on the principle of creating a contract with a deity in order to ensure either personal or communal well-being, which was based on the creation of an innominate contract (*do ut des, do ut facias, facio ut des, facio ut*

⁴⁰ JACOB, E.: *Theology of the Old Testament*, p. 211.

⁴¹ Jer. 22:9; Isa. 24:5; Jer. 11:8; Jer. 11:10; Hos. 8:1; Mal. 2:8.

⁴² Isa. 55:3; Isa. 61:8; Jer. 31:31; Jer. 31:33; Ezek. 16:60.

⁴³ HOROWITZ, G.: *The Spirit of Jewish Law*, p. 472-473, 477; JACOB, E.: *Theology of the Old Testament*, p. 212; ZIMMERMAN, R.: *The Law of Obligation*. Oxford: Oxford University Press, 1996, p. 58-62, ISBN 0 7021 2347 1. One such novation is also the covenant in Exod 34, as the renewal was necessary due to the previous unfaithfulness of the people and breaking of the original tablets. A possible explanation is also the creation of a completely new contract (covenant) after the breach of the original one. For a theological point of view, see KWAKKEL, G.: *Berith and Covenants in the Old Testament*, p. 30.

facias).⁴⁴ Just like in the case of the biblical covenant with God, these innominate contracts made with a deity were hardly enforceable and should the gods not fulfil their part of the agreement, the human party could either question the proper form of the ritual performed (if they adhered to it) or the trustworthiness of the divine counterpart.⁴⁵ The main difference between the two systems is that in the Bible, it is God who initiates the covenant, whereas in the Roman cult, it is the human who, by performing a formal act, creates the obligation also on the side of the divine partner by offering their part of the performance. Another common feature of both is the purpose of these obligations and the cultic rites performed, which is to ensure the well-being of the whole community, called שָׁלוֹם (*shalom*)⁴⁶ in the Jewish community and *pax deorum* in the Roman one, by maintaining a good relationship with the deity. In both systems, this is ensured through contracts, creating obligations on both sides, which necessitated the transfer of the cult from the private, family sphere into state hands, making it a public interest.⁴⁷ This theme, however, is not the object of this paper.

3 Διαθήκη, ομολογώ, and πίστις as contractual language in the Bible

Based on the previous part, the covenant in the OT is definitely understood in the sense of a bilateral obligation that can be terminated and needs to be renewed due to its breach. The problem comes when we look at the Greek translation of the OT, the Septuagint (LXX), which was created in the span of three hundred years between the 3rd

⁴⁴ TURCAN, R.: *The Gods of Ancient Rome. Religion in Everyday Life from Archaic to Imperial Times*. Edinburgh: Edinburgh University Press, 2000, p. 3-4, ISBN 0 7486 1389 7; SCULLARD, H. H.: *Festivals and Ceremonies of the Roman Republic*. London: Thames and Hudson, 1981, p. 25, ISBN 978-0801414022; METZGER, E., BARRY, N.: *Introduction to Roman Law*. Oxford: Oxford University Press, 1962, p. 189-190, ISBN 978-0-1-876063-4.

⁴⁵ ORLIN, E.: *Urban Religion in the Middle and Late Republic*, p. 59.

⁴⁶ God is identified with this peace in Judg. 6:24: 24 Then Gideon built an altar there to the Lord and called it, "The Lord is peace." To this day, it still stands at Ophrah, which belongs to the Abiezrites.

⁴⁷ JACOB, E.: *Theology of the Old Testament*, p. 213; deCAZANOVE, O.: Pre-Roman Italy, Before and Under Romans. In RÜPKE, J.: *A Companion to Roman Religion*. Oxford: Blackwell Publishing Ltd., 2007, p. 49, ISBN 978-1-4051-2943-5; GALINSKI, K.: Continuity and Change: Religion in the Augustan Semi-Century. In: RÜPKE, J.: *A Companion to Roman Religion*. Oxford: Blackwell Publishing Ltd., 2007, p. 74, ISBN 978-1-4051-2943-5; ORLIN, E.: *Urban Religion in the Middle and Late Republic*, 2007, p. 59.

and 1st century BCE.⁴⁸ The term used to translate the Hebrew כְּרִית was Greek διαθήκη, which, in fact, means testament. Some consider this to be a means of interpretation to emphasise the authority of the one initiating the creation of the legal act.⁴⁹ In two cases, the term is used to translate terms such as testimony (Ex. 27:21) and law (Jos. 4:16).

Although the main meaning of the word refers to the last will. It is not the only possible translation:

1. In Hellenistic Greek, as an order or institution⁵⁰
2. A technical term of the Hellenistic Greek for a testament (last will)⁵¹
3. Aristofanes uses the term in the meaning of contract⁵²
4. Liddel-Scott names possible meaning as a compact, covenant, disposition or even deposit⁵³
5. Sophocles names even the meaning of *foedus*.⁵⁴ In the Roman understanding, this was a treaty that established alliance, mutual friendship and peace for eternity,⁵⁵ which also reflects the relationship between the God and his people as presented in the OT.

⁴⁸ AITKEN, J. K.: *The T&T Clark Companion to the Septuagint*. London: Bloomsbury T&T Clark, 2015, p. 3-4, ISBN 978-0-56720-007-5.

⁴⁹ LÉON-DUFOUR, X. et al.: *Slovník biblickej teológie*, p. 1058; KWAKKEL, G.: *Berith and Covenants in the Old Testament*, p. 35.

⁵⁰ KITTEL, G. et al.: *Theological Dictionary Of The New Testament*, p. 143; PANCZOVÁ, H.: *Grécko-slovenský slovník. Od Homéra po kresťanských autorov*. Bratislava: Lingea, 2012, p. 333, ISBN 9788081450211.

⁵¹ KITTEL, G. et al.: *Theological Dictionary Of The New Testament*, p. 143; PANCZOVÁ, H.: *Grécko-slovenský slovník*, p. 333; STRONG, J.: *The new Strong's complete dictionary of Bible words*, p. 60, 601; GRIMM, C. L., THAYER, J. H. (ed., transl.). *A Greek-English Lexicon of the New Testament*. Piscataway: Gorgias Press, 2010, p. 136-137, ISBN 978-1-61719-677-5; LIDDELL, H. G., SCOTT, R.: *A Greek-English Lexicon*, p. 394

⁵² PANCZOVÁ, H.: *Grécko-slovenský slovník*, s. 333; STRONG, J.: *The new Strong's complete dictionary of Bible words*, p. 60, 601; GRIMM, C. L., THAYER, J. H.: *A Greek-English Lexicon of the New Testament*, p. 136 – 137.

⁵³ LIDDELL, H. G., SCOTT, R.: *A Greek-English Lexicon*, p. 394-395.

⁵⁴ SOPHOCLES, E. A.: *Greek Lexicon of the Roman and Byzantine Periods*. New York: C. Scribner's Sons, 1900, s. 360 – 361. The contract made between a deity and a human counterpart could be perhaps seen as a treaty, as it often includes protection from enemies. Also, the Hebrew term is, in fact, used for treaties among nations. This would also correspond with the Roman understanding of *foedus*, as a treaty of alliance, mutual friendship and peace for eternity, which also reflects the relationship between God and his people.

⁵⁵ For sources, see *Romanorum et Carthaginiensium foedus* (509 BCE), *Romanorum et Aetoliorum foedus* (212/211 BCE), *Romanorum et Iudaeorum foedus* (160 BCE), and *Foedus Romanorum et Hyrcani* (132, 126, and 107 BCE). SHERWIN-WHITE, A., CORNELL, T.: *foedus*. In: *Oxford Classical Dictionary*. [online]. Publiher., 2015 [cit. 2025-06-24]. Available at: <https://oxfordre.com/classics/view/10.1093/acrefore/9780199381135.001.0001/acrefore-9780199381135-e-2693>.

The original meaning of the Hebrew text can hardly be reduced to a unilateral testamentary disposition that could only come into effect upon the death of the testator. As can be seen from the dictionary entries mentioned, the testament is not the only available translation, and in this regard, we propose the solution that the translator did not know of the prevalent meaning as a testament and came into contact with the Greek term in the sense of an agreement, covenant, or treaty.⁵⁶ This must be considered since the LXX “*always exclusively referenced the Hebrew text and reflects developments in the Jewish understanding of scripture and in the Jewish faith*”.⁵⁷ However, the problem of the interpretation in the sense of testament must have been present already at the beginning of the common era, since the translation of the OT into Greek by Aquila and Symmachus, dating to the second century CE, prefers the word συνθήκη, having a much clearer meaning as an agreement or a contract.⁵⁸

On the other hand, the use of διαθήκη in the LXX translation could be the catalyst for later interpretation of the New Testament events, and perhaps this shift was also what caused the creation of the new translation by Aquila and Symmachus. Although for the OT the choice of διαθήκη has no real meaning since the context in which the word is used clearly refers to the bilaterality of the legal act created, the situation changes in the New Testament, in which the word is used in only 33 places. The translation of the word in the sense of testament enabled the interpretation of the life and work of Jesus in a way that is established in the Church creeds. The interpretation of Jesus in the sense of incarnated God may not only be dependent upon biblical prophecies of the OT, understanding of the meaning of the Sacrifice of Passover or the title Lord (Κυριος)⁵⁹ used for him, but also on the understanding of the διαθήκη as the testament.

As we have already mentioned, for the testament to come into effect, the death of the testator is necessary. This view is hardly present in the OT, and even the apocalypses do not provide the image of the death of

⁵⁶ According to the legend, the LXX was created by priests upon the order of a Ptolemaic king; however, the level of Greek used in the books varies and is not high enough to uphold the standards of a king, especially one from a Greek dynasty. AITKEN, J. K.: *The T&T Clark Companion to the Septuagint*, p. 4.

⁵⁷ KERUZER, S.: *The Bible in Greek. Translation, Transmission, and Theology of the Septuagint*. Atlanta: SBL Press, 2015, p. 3, ISBN 978-0-88414-095-5.

⁵⁸ PANCZOVÁ, H.: *Grécko-slovenský slovník*, p. 1165.

⁵⁹ The word is used as a translation for Hebrew *Adonai*, which is used to refer to God without saying His name.

God himself.⁶⁰ Here, we want to propose a hypothesis that the use of διαθήκη in the New Testament was one of the key factors that enabled the interpretation of Jesus in the sense of one of the persons of god. If we understand this covenant in the sense of a testament, we need to expect the party making it to die. In the context of the New Testament, this was fulfilled by the words of Jesus during the Last Supper and his subsequent death on the cross.

If we look at the texts mentioning the term διαθήκη, the earliest reference in the NT scriptures in the gospels is Mark 14:24 during the last supper (καὶ εἶπεν αὐτοῖς Τοῦτό ἐστιν τὸ αἷμά μου τῆς διαθήκης τὸ ἐκχυννόμενον ὑπὲρ πολλῶν. - And He said to them, "This is My blood of the covenant, which is poured out for many.), which is the basis for the synoptic gospels. The next reference is in Matthew 26:28 and Luke 22:20 in the same context; however, Luke also mentions the covenant in 1:72, which refers to the promises of the OT covenant. Acts mentions the word twice (3:25; 7:8), and in both instances it is a reference to the OT covenant. Considering the earliest texts of the NT, we need to turn to the letters of Paul,⁶¹ who mentions the covenant: 1) Rom. 9:4 and 11:27, both referring to OT promises; 2) 1 Cor. 11:25 specifically mentioning the NEW covenant within the context of the Last Supper (the words of Jesus); 3) 2 Cor. 3:6 and 3:14 mention the NEW and OLD covenant; 4) Gal. 3:15-17 explaining that the Covenant made with Abraham was not nullified (the verse 15 could also be understood within the principle *pacta sunt servanda*)⁶²; 5) Gal. 4:24 mentioning the covenant with Abraham (his women Hagar and Sarah).

From the mentioned sources, the ones that can be closely tied to the meaning of testament are the ones tied to the Last Supper, following the death of Jesus as a testator (synoptic gospels and 1 and 2 Corinthians). Nevertheless, the use of the term in such a context does open the possibility of the interpretation of Jesus as incarnated God and the covenant as a testament that came into effect at the moment of the death of God (in the person of Jesus).

We want to argue that the key to interpreting the term lies in the LXX, as a thoroughly Jewish translation of the Hebrew scripture. The legend of its creation in the Letter of Aristeas tells of experts (72 of

⁶⁰ See DANČIAKOVÁ, V. T.: *Vzťah prítomnosti a budúcnosti v Ježišovej zvesti*. Dizertačná práca. Bratislava: Právnická fakulta Univerzity Komenského v Bratislave, 2020, p. 66-97.

⁶¹ We are only considering the authentic ones: Romans, 1 and 2 Corinthians, Galatians, Philippians, 1 Thessalonians, and Philemon.

⁶² *15 Brethren, I speak in terms of human relations: even though it is [only] a man's covenant, yet when it has been ratified, no one sets it aside or adds conditions to it.*

them) being called upon by Ptolemy II Philadelphus (285 – 246 BCE) to provide the translation of the Law. The work, however, is a thoroughly Jewish agenda, as well as the famous letter telling of its commission.⁶³ The key factor for the interpretation of the text is the language used, which is the koine Greek. This was not the high Greek of the classical era; it was the language of the foreigners who learned it and used it as the *lingua franca* of the ancient world of their time, in the sense of their understanding of the workings of the language. The Jewish background is then visible in this regard as well, since the Greek used for translation is very Semitic in character (which is, however, not only due to Jewish influence but also to the Semitic environment as such, Egypt), and the overall level of the Greek (called translation Greek in this case) used is not very high. Moreover, the choice of the word need not be the invention of the translator, but rather an already existing use recorded.⁶⁴ As a result, the use of the term διαθήκη must have been the result of the Jewish cultural context in which the translation occurred, and since it translates the Hebrew בְּרִית, it could not be understood as testament, since the context of the OT use does not allow it.

Another key term we want to mention is πίστις, which usually refers to faith with 243 occurrences in the NT. However, the word also carries a legal meaning, which we want to highlight as a crucial factor of understanding the relationship between God and His people, as a relationship based on a contract with mutual obligations. The possible translations of the word are: 1) trust, faith, confidence, assurance; 2) good faith, honesty; 3) credit (even in a commercial sense); 4) position of trust, trusteeship; 5) pledge, guarantee; 6) argument, proof; 7) safe-conduct, safeguard or even suzerainty.⁶⁵

We want to argue that the faith that is mentioned as the key element of the covenant (especially in the NT) should not only be understood as unconditional trust in the sense of personal relationship, but also as trust

⁶³ DINES, J. M.: *The Septuagint*. London/New York: T&T Clark LTD, 2004, p. 27-33, ISBN 0 567 08464 7.

⁶⁴ MARCOS, N. F.: *The Septuagint in Context. Introduction to the Greek Versions of the Bible*. Leiden/Boston: Brill, 2000, p. 3-16, ISBN 90 04 115749; DINES, J. M.: *The Septuagint*, p. 109-129.

⁶⁵ LIDDELL, H. G., SCOTT, R.: *A Greek-English Lexicon*, p. 1408. Another possible meaning is „authentication“. BEEKS, R.: *Etymological Dictionary of Greek*. Leiden/Boston: Brill, 2010, p. 1161, ISBN 978 90 04 17418 4. Of course, there is a plethora of translations tied to the theological aspect of the meaning of the word as a result of Christian tradition. GRIMM, C. L., THAYER, J. H.: *A Greek-English Lexicon of the New Testament*, p. 513-514.

necessary for many legal relationships (especially the ones that are informal) in the sense of *bona fide*. The strong legal background can also be seen from the translations offered for the word. For this purpose, we want to mention the Babatha Archive papyri with a stipulation clause at the end of the contract (P. Yadin 17, 18, 20, 21, 22, and P Hever 65): πίστεως ἐπηρωτημένης καὶ ἀνωμολογημένης (in faith/trust the question was asked and answered)⁶⁶. Some see this mention of πίστις as equivalent to Roman *bona fide*,⁶⁷ but this cannot be maintained in the specific cases since *stipulatio* is a *stricti iuris* contract. In addition, the phrase can be found in Greek in the form of καλῆ πίστις (also in the Archive in P. Yadin 16, 28, 29, 30).⁶⁸ On the other hand, we cannot reduce the *bona fide* only to the phrase in Greek καλῆ πίστις. The trust in the sense of *bona fide* is essential, for example, for the Roman contract of *depositum*, but the same can be seen in the Greek texts of Jewish authors Josephus Flavius (*Ant.* 4.285-257) and Philo of Alexandria (*Spec. Leg.* 4.30-32), who simply use the word to refer to the same principle of trust (*bona fide*). So, at least the Greek-speaking Jewish authors understood the term in the sense equivalent to Roman *bona fide*. Also, in ancient Roman law, the religious law was one of the modes to enforce an agreement since the breach of a contract was seen as the violation of fides, a sacred bond formed between the parties, which was the essence of every contract, and its violation was considered an act of impiety.⁶⁹ Thus, πίστις is not only an expression of religious experience, but the essence of the covenantal relationship, a sacred trust between the parties.⁷⁰

The last term we want to mention is the Greek ομολογώ. That can be found in a total of 26 places in the NT, with various translations offered such as acknowledge, profess, confess, assure, or promise. The legal background of the term can be seen very well in the papyrological evidence, where most of the entries mentioning the term are legal documents (contracts).⁷¹ For the understanding of the term, we could

⁶⁶ Our translation.

⁶⁷ See CHIUSI, T. J.: 7 Legal Interactions in the Archive of Babatha: P. Yadin 21 and 22. In: CZAJKOWSKI, K. et al.: *Law in the Roman Provinces*. Oxford: Oxford University Press, 2020, p. 101, ISBN 978-0-19-884408-2.

⁶⁸ LIDDELL, H. G., SCOTT, R.: *A Greek-English Lexicon*, p. 1408.

⁶⁹ BUCKLER, W. H.: *The Origin and History of Contract in Roman Law*, p. 4.

⁷⁰ Besides the *i* meaning, we can also trace another legal meaning, which is as a „solemn promise“, that can be seen in relation to *stipulatio*. PANCZOVÁ, H.: *Grécko-slovenský slovník*, p. 1001.

⁷¹ See database *papyri.info*. The analysis of all the search entries would be a separate study that would require a significant amount of time. Which however is the ultimate goal of the author.

turn again to the Babatha Archive, where we find the work in several papyri (P. Yadin 5, 11, 17, 18, 20, 21, 22, and P. Hever 65). The word *ομολογώ* opens the contract itself, and except for P. Yadin 5 and 11, these are then concluded by the stipulation clause mentioned earlier. All of these contracts are created as unilateral obligations, and it has been argued that they need to be seen as stipulations,⁷² since also the Institutes of Gaius 3.93 name the term as an equivalent to Latin *spondeo*.

The term is mentioned as well in a series of other papyri dated between 50-200 CE, such as: *AnalPap* 30 (103 CE), contract of employment in *bgu.7.1647* (129 CE), loan and payment of a debt in *P.Mich.* 9 568 (92 CE), or a contract of sale of camels in *bgu.11.2112* (25-75 CE), just to name a few. The possible interpretation of the use of *ομολογώ* then is to see it as a stipulation under Roman law. On the other hand, here, we want to refer to the first part of the paper where we named two additional ways of securing enforceability of an obligation, which were *kinyan* (see the circumcision above) and an admission of the obligation made before witnesses, which basically acknowledged its existence. We dare say that the use of the Babatha archive combines the admission of Jewish law⁷³ with the stipulation of Roman law, and the two do not exclude each other.

In the sense of this admission, we can also consider the NT occurrences as referring to the covenant and becoming part of it or staying in the covenant by acknowledging its existence and adherence to it. The stipulation of and admission in the form of a solemn promise can be found in Acts 7:17, referring to the promise/covenant of God to Abraham, and in Matt. 14:17, where King Herod gives a promise to the daughter of Herodias. Matt. 7:23 can be seen in the light of denying certain people a part in the covenantal relationship, and in a similar sense is the text of Matt. 10:32-33, where acknowledging people by Jesus makes them part of the covenant, thus giving an admission of the covenantal obligations (with parallel text in Luke 12:7). The text in John 1:20 resembles more of a judicial confession (or denial). The next one in John 9:22 is a bit mixed, since it translates the word as confessing, but it is not a confession, but an acknowledgement of the status of Jesus as Christ and faith in Him. Similar is the context of John

⁷² See DANČIAKOVÁ, V. T.: The interaction between Roman *ius civile* and local provincial legal tradition: papyri P. Yadin 21 and P. Yadin 22 as Roman *stipulatio*. In: *Bratislava Law Review*, 2024, vol. 8, n. 1, p. 69-82, ISSN 2585-7088.

⁷³ HOROWITZ, G.: *The Spirit of Jewish Law*, p. 446, 451-457.

12:42. Acts 23:8 talks about the belief system of Jewish groups and Acts 24:14 is a judicial confession.⁷⁴ The use of the term in Rom 10:9-10 can be understood as admission since there a person acknowledges the work of Jesus and thus becomes part of the covenant.

Conclusion

The importance of considering Roman legal thought when dealing with biblical texts stems from the fact that the latter part of the biblical corpus, the New Testament, was created within the boundaries of the Roman Empire. The authors of the NT corpus themselves lived within the boundaries of the Roman Empire. Paul claims to be a Roman citizen, and even Luke is thought to be perhaps Roman, or at least promoting the gospel in the Roman environment. Moreover, the contacts between the Jewish people and the Romans predate the actual joining of the Jewish territories to the Roman state. Yet another reason is to show that the ancient cultures, although much distant in the understanding of the divine, were not so different after all and shared many legal concepts and a basic understanding of the functioning of society.

The everyday interaction within the Roman Empire functioned on legal relationships that were possible due to similarities between various legal traditions, which gave rise to the concept of *ius gentium*, a term denoting shared legal traditions of nations that were common to all. At the core was the understanding that certain legal concepts are shared between nations, and a common ground can be found in legal disputes to resolve them. This understanding of shared legal institutions is also reflected in the papyri, for example, in the use of *stipulatio*, a solemn promise to ensure the validity and enforceability of contracts at Roman courts.

As we have shown, in the law of obligations, a sort of sacred trust was necessary to uphold the obligation. The earliest forms of obligation in both Roman and Jewish law were solemn promises (*iuriurandum*, *sponsio* in Roman law, and covenant, oath, or vow in Jewish law) with religious sanction.

However, the obligations were not only the basis of everyday encounters between humans, but they were equally important tools of securing the right relationship with their divine protectors, via personal

⁷⁴ These confessions are also one of the possible translations for *ομολογώ*.

interactions or via official state cult. This relationship was not static, based on one ancient obligation at the beginning, but it was a living organism that changed, adapted, and was updated through the centuries in both of the cultures. To maintain the relationship with a deity, a series of rituals was created to show the ongoing participation in the obligational relationship, or to create, or even ratify, new obligations (contracts or treaties) if necessary. Formality and ceremony were also commonly shared and must have helped in the spread of the Gospel. The Romans could accept it, because they understood the mechanism that ruled the relationship between a person and a deity, an obligation, a contract.

Thus, the biblical covenant must be seen in the same light. It was a bilateral obligation that was subject to change, especially since the human partner of the obligation proved to be the most unreliable and unstable. The change and need for renewal stemmed either from the breach of the covenant by the human partners or due to a change in the structure of the human society that necessitated an update of the covenantal relationship as the biblical society developed from small units of patriarch and their offspring, to a group of tribes, and final to a kingdom represented by a king as the guarantor of keeping the covenant. The fact that breach of the covenant was possible shows that it was not a unilateral legal act, not even a unilateral obligation, as both parties, God and the human counterparts, had their duties to perform, in which the humans repeatedly failed. Ultimately, the constant failure necessitated a proposal of a new, everlasting covenant that will be written into hearts, and here we come to the New Testament.

The key element for understanding the character of the covenant is the translation of the Old Testament into Greek, where the translator used the Greek term *διαθήκη* as an equivalent of Hebrew *בְּרִית*, which cannot be reduced to a unilateral legal act in the sense of testament. The reference point here is LXX as a Jewish translation, and thus the term must be understood as the original Hebrew term as a bilateral obligation, a contract. Even in the NT (Gospels and Paul), the references to the covenant are often made in relation to the OT covenant, and the only cases that could be seen in the sense of testament are the ones connected with the Last Supper and the death of Jesus. The NT reference could be understood in the sense of testament, as it seems to be a final offer that a person either accepts or declines, and there are no renewals or amendments made since the NT by God. However, the death of the testator required by a testament needs to be examined as

a possible exegetical tool used by later generations that dictated the development of Christian dogmatics.

Nevertheless, the legal language nature of the relationship between a deity (God) and its people can also be seen in such crucial term such as πίστις that cannot be reduced to “faith” in the sense of religious experience, but is an inherent part of legal language and denotes the trust between parties of an obligation in the sense of *bona fides*, even to the level of offering a guarantee for fulfilling the obligation. Along with the term, there is the word ομολογῶ, which is often used in the sense of confessing a trust in someone, confessing a belief, which also needs to be seen in relation to the Jewish admission, giving the statement that the person is to be tied by the obligation, that the person did enter the obligational relationship. Confessing Jesus as Christ is not merely stating His status but means that the person becomes a member of God's chosen nation, belongs to God, is obliged to trust and obey His commandments, and in return can rely on His protection, guidance, and the bestowal of eternal life.

The formality in creating certain legal acts (also contracts, such as *stipulatio*), which was present in both legal systems, could also be seen as the key factor behind the arguments that led to the Jerusalem council recorded in the book of Acts. Entering into the contract with the Jewish God required a certain form to be followed, the circumcision, which the pagan (even Roman) followers understood very well from their legal-cultic experience. Thus, the issue needed to be addressed, whether they are to enter the covenant the same way, becoming part of the Jewish nation or not.

At the end, we would like to point out the striking similarity between the Last Supper and Roman law concerning the law of obligations, namely the *sponsio*. Jesus ties the pouring of the wine to the symbolism of his blood being poured. The same was done at *sponsio*, the term, as we have mentioned above, referring to the pouring of wine that symbolised the blood that would be spilt if the contract is breached. This also offers a possible new interpretation in relation to how the text could be understood by Roman followers.

We understand that the paper opens new themes to discuss and research, which will be done in the planned volume on the Roman legal context of the Acts of the Apostles, along with new interpretations offered for the relevant biblical texts. However, we want to conclude that the obligational relationship between God and His nation is clear and would be understood by the Romans of the NT era, which was

a factor in their conversion to Christianity. They joined because the concept was not foreign and offered them the much-desired personal experience they had tried to find in the oriental mystery cults before.

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