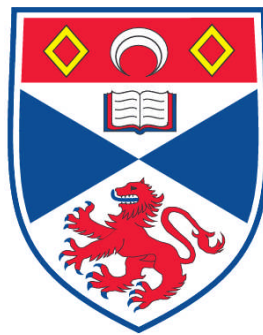


**BLIND INJUSTICE : JESUS' PROPHETIC WARNING AGAINST
UNJUST JUDGING (MATTHEW 7:1-5)**

Christopher N. Chandler

**A Thesis Submitted for the Degree of PhD
at the
University of St. Andrews**



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Blind Injustice
Jesus' Prophetic Warning against Unjust Judging
(Matthew 7:1-5)

Christopher N. Chandler

PhD

30 June, 2009

Abstract

This dissertation seeks to provide a plausible alternative to the consensus interpretation of Jesus' "do not judge" teaching in Matt 7:1-5. While the overwhelming majority of recent interpreters understand "do not judge" (7:1) and its concurrent sayings such as "take the log out of your own eye" (7:5) to promote a nonjudgmental attitude, this monograph seeks to situate this block of teaching within a Jewish second-Temple *judicial* setting. To this end, an overview of the judicial system during the second Temple era is provided, after which it is argued that Matt 7:1-5 is the Matthean Jesus' halakhic, midrashic comment upon the laws for just legal judging in Lev 19:15-18, 35-36 by which he prophetically criticizes unjust legal judging. Jesus' brother James takes up this teaching in Jas 2:1-13, using it to exhort Jewish Christian leaders who judge cases within Diaspora synagogues/churches. Such an alternative interpretation of Jesus' "do not judge" teaching in Matt 7:1-5 matches well other passages in Matthew which likewise speak of judicial, brotherly conflict such as 5:21-26 and 18:15-35. Some early Christian writers who quote or allude to Matt 7:1-5 reflect a judicial understanding of these verses as well, often relating Matt 7:1-5 to Lev 19:15-18, 35-36 and/or drawing parallels between Matt 7:1-5 and one or more of the NT judicial texts which, this thesis argues, is related to it (Matt 5:21-26, 18:15-35; Jas 2:1-13).

Declaration

I, Christopher N. Chandler, hereby certify that this thesis, which is approximately 80,000 words in length, has been written by me, that it is the record of work carried out by me and that it has not been submitted in any previous application for a higher degree.

I was admitted as a research student in September, 2004 and as a candidate for the degree of Doctor of Philosophy in May, 2005; the higher study for which this is a record was carried out in the University of St Andrews between 2004 and 2009.

30th June, 2009

I hereby certify that the candidate has fulfilled the conditions of the Resolution and Regulations appropriate for the degree of Doctor of Philosophy in the University of St Andrews and that the candidate is qualified to submit this thesis in application for that degree.

30th June, 2009

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A few others outside of my formal advising deserve appreciation. I find it interesting if not serendipitous that the first two texts I translated while learning Greek were the Sermon on the Mount and the book of James. Through this process these two texts were burned into my mind and therefore thanks should go to Dr. Mike Baird of Grand Canyon University for his relentless efforts to teach his students the Greek language. Craig A. Evans has been a constant mentor and advisor, and his research into the life of Jesus and into Temple corruption during the first century A.D. has inspired much of the ethos of this project, even if this is expressed only indirectly throughout the thesis. Darian Lockett and Mariam Kamell both pointed me to resources within Jamesian scholarship which have made my research on James all-the-more smooth. I would be remiss if I didn't mention the friendship and academic support of Dr. Mark Elliott. Mark's seminar on Leviticus in 2006 inspired the methodology of Chapter two in which I

trace how some early interpreters understood the laws for just judging from Lev 19. Our many conversations about life and academics over not a few pints have proven rich.

I would like to thank my in-laws who willingly allowed me to take their daughter and grandchildren to a distant land for yet more schooling. My own parents have sacrificed much and given beyond expectation to support us throughout this process, and it is to them that this thesis is dedicated. Lastly, my love and sincere appreciation goes to my loving wife who has been a constant source of support and who has cared for our three children our years in Scotland while I spent countless hours at the Roundel researching and writing.

To my parents who taught me love and forgiveness, justice and discipline, who instilled in me the value of study, and who have supported me in all things.

Introduction

There is hardly a more well-known phrase of Jesus used in Western culture today than “do not judge.” “Even people who know very little about the Bible are usually familiar with Jesus’ saying ‘Judge not, that ye be not judged’ ...” writes Roger Olson in a 2005 piece in *Christianity Today*. He further explains that “it is Jesus’ most popular saying because our culture values tolerance so highly.”¹ On the other side of the pond, John Nolland hits the mark when he describes Jesus’ “do not judge” teaching and its significant role in our culture today:

The call not to judge has made its way deeply into popular imagination: “Who am I to judge?” Unfortunately the applications people often make (giving personal space to others; modesty about one’s own capacity to discern what is right; the desire not to be faced with responsibility for decisions in complex or disputed matters) probably have little to do with the intention of either Jesus or the Gospel writers. In a postmodern context there can be a siren call to a radical pluralism. As popularly understood, the principle is soon set aside when the wrong done by the other person touches a place of deep personal investment.²

This co-opting of Jesus’ words in service of “a siren call to a radical pluralism” has been resisted by some. Indeed biblical interpreters should be wary when a sacred, ancient text supposedly teaches an –ism of our own day. Indeed, as Nolland points out, this principle of nonjudgemental tolerance so highly valued in Western culture breaks down, “when the wrong done by the other person touches a place of deep personal investment.”³ Thus the church, in tacitly accepting how Jesus’ “do not judge” teaching is understood in popular culture, provides little more than what the world already has on offer. Richard Hays, for instance, laments the fact that in his own Methodist

¹ Olson 2005: n.p.

² Nolland 2005: 317-318.

³ Nolland 2005: 318.

demonimation, “an easy de facto acceptance of divorce” is often justified by appealing to Matt 7:1 in conjunction with “a tacit social agreement that we should all look the other way.”¹ This is perhaps one of the more egregious examples of how “do not judge” has been misused to the detriment of both believers inside the church as well as being detrimental to the church’s witness in the world.

In lieu of the ubiquitousness of such a saying of Jesus in popular Western culture, biblical scholars are quick to point out that Jesus’ words in Matt 7:1-5 are some of the most misquoted and mis-appropriated verses in all of the New Testament.² Very few, however, have attempted to provide a substantial hermeneutical alternative to this vast misappropriation. Therefore, it was deemed worthy to attempt such a task in this volume.

The idea for this thesis was one of the many “seeds” planted during an intense period in my life which I can only describe—after the Spanish mystic Saint John of the Cross—as my “dark night of the soul” which occurred while I served as a pastor at Shadow Hills Baptist Church, Las Vegas. In preparation to teach a course on Jesus and the Gospels for Bethany University, Santa Cruz, I was exploring the relationship between the Sermon on the Mount and the epistle of James when I had an epiphany (on par, I was later to discover, with Leo Tolstoy’s awakening regarding Matt 7:1ff) that “do not judge” concerned the courts and that it was related to Jas 2:1-13. Thus began what I conceived would be a purely New Testament project.

How I was to prove my case—the “method” I would “use”—became the object of much consternation during the beginning stages of my doctoral work. Such angst was shared by not a few colleagues working during the same period I was toward a PhD in biblical studies. The current crisis in which the discipline of biblical studies finds itself has made writing a doctoral thesis less-than-straightforward. At the same time, exciting things were happening throughout my tenure at St. Mary’s College, St. Andrews, in terms of the intersection of Scripture and Theology—a factor which made clarifying one’s hermeneutical starting point imminent and important, even if that clarification is still in the process of being refined today.

¹ Hays 1996: 348. Many such examples could be given. My thanks goes to my colleague Andy McCoy for pointing out the relevance of this one.

² Cf. Witherington 2006: 154; Turner 2008: 205.

It should be well noted, therefore, that this project is primarily *hermeneutical* in nature, rather than purely historical. I began, however, with the assumption that I would have to engage in strictly historical-critical work since this has been the guild's primary hermeneutic for well over a century. But I found more and more that many of the standard strictures which came with historical criticism proved to be too confining in order to make the hermeneutical shifts I felt were necessary to adequately argue for a new reading of Matt 7:1-5. Moreover, as Chapter one demonstrates, the standard interpretation of Matt 7:1-5 throughout the period of historical criticism in the 19th and 20th centuries in which the tools of historicism had been rigorously applied to Matt 7:1-5 had left much to be desired. It naturally follows that using such narrow methodology as historical criticism would return such a thin reading of Matt 7:1-5 as one finds in the 19th and 20th centuries. And if I were to play by these same rules in order to argue for such a drastically different reading, I would have my work cut-out for me. Proving, for instance, that Jas 2:1-13 mirrors the Matthean Jesus' teaching in Matt 7:1-5 would take some doing since, within the world of the historical criticism of the Bible, how and whether these two documents are related is up for sharp debate. To claim that Jesus in Matt 7:1-5 is referring in some way to the laws for just judging from Lev 19 would also be a leap since Lev 19 is not specifically quoted or referred to in Matt 7:1-5 and to claim a connection between the two would be to go against the grain of how we have defined when a NT text is referring to an OT text (quotation, echo, allusion, etc.). Even relating the judging in Matt 7:1-5 to other passages on judgement within Matthew, such as 18:15-18, could be considered questionable since—in the world of redaction- and source-critical approaches—the two passages may have originally had separate contexts and therefore may not have originally been intended to be read in light of one another. Whether 7:1-5 is a coherent unit (or whether 7:1-2 and 7:3-5 were originally separate pieces of tradition) has even been tabled as an issue for debate. The student beginning his doctoral research on a project with such diverse elements as Matthew, James, and Leviticus, combined with the potential problems and pitfalls at every turn created by the legacy of 19th century historicism, can easily become overwhelmed and despondent.

Indeed, it has become increasingly difficult for biblical scholars attempting to play by the rules of historical criticism to engage in projects which are hermeneutically or

theologically constructive. But Rowan Williams misrepresents the case when he says, “historical criticism may have an interest as archaeology, but it contributes little or nothing to the business of interpretation.”¹ On the contrary, Gadamer’s *Truth and Method* has taught us that the supposedly objective scientific approach typified by historical criticism does indeed interpret—however incipiently—and that such interpretations are often hostile to Christian orthodoxy.² In my view, historical criticism is neither wholly devoid of interpretation (minimalistic as it may be) nor wholly hostile to Christian faith and can yield varying results depending upon the wielder of such a sword.³ Therefore, I have often made use of historical critical tools at various points when I felt it necessary to aid in the construction of my case. However, I have found the method as a sole proprietor too constrictive to achieve the aims I set out for this thesis.

It should also be said that this project has not been approached *methodologically* from a liberationist perspective (a common misconception whenever I’ve explained my thesis to academic inquirers during my Ph.D. candidacy). Liberationist and other postmodern theories of hermeneutics seem to me to have the potential of providing an alternative but thin reading at best, and to be deconstructive of meaning at worst. But such postmodern theories of hermeneutics do seek to ask questions which are largely different than those normally posed from within Western culture.⁴ However, liberationist ideology can be viewed as a kind of shrew-ish handmaiden to postmodern pluralism, and so applying it in order to overturn a pluralistic reading would have proven tricky. On the other side of this equation, the postmodern reaction against modernism’s historicism has proven difficult for the vast majority of historical critical scholars doing valuable work. As Don Hagner quips in a reflection upon the writing of his two volume commentary upon Matthew, “What chutzpah it is, in this postmodern era, to publish a commentary on

¹ Williams 2003: 217-218.

² See, for instance, the discussion in Bartholomew 2000 of how the once explicit philosophical underpinnings of historical critical scholarship have subtly become implicitly assumed and subsumed within the methodology. Note also Allison’s (2000b) observation that 19th and 20th century portraits of the historical Jesus have a tendency towards secularization.

³ See, in the same volume as Bartholomew’s piece, Riches 2000a. Witness, also, the careers of Richard Bauckham, Markus Bockmuehl, Craig A. Evans, Don Hagner, Martin Hengel, and Graham Stanton (to name just a few) whose scholarship have largely operated within the highest standards of historical critical strictures but whose work in biblical studies and history has been hermeneutically and even theologically constructive. Many others could be added to this list.

⁴ Riches 1996: 433.

the Gospel of Matthew that pretends to be anything more than subjective reflections of a very personal kind.” He further inquires,

Do I really think that I have expounded *what the evangelist meant*? Do I think I have done anything more than present some things that Matthew *can be taken* to mean? Is the commentary really anything more than what *I* happen to think Matthew may have meant? Is what I present simply what I *want Matthew to mean*?¹

So, rather than throw out the liberationist baby with the historical critical bathwater (or vice-versa), I have sought to ask questions of Matt 7:1-5 which are different than those posed by Western notions of pluralism and tolerance but which do so in a historically viable way. To what does the student turn, then, for both perspectival punch and genuine historical verisimilitude? For me, the question was even more practical: how could I most convincingly prove that Matt 7:1-5 is best understood to concern the courts? That approach, for me, turned out to be effective history. In my view, an effective history approach often asks more appropriate questions of the text than liberationist approaches do and, furthermore, often also proves to be more historically organic (at least hermeneutically) than 19th century historical critical inquiry has conventionally been.

Certainly many today within biblical studies and related historically-oriented disciplines will not agree with this chosen methodology. I acknowledge that it may take some time for such a methodology to catch on. For instance, within scholarship regarding halakhah (in which my project stands), the need for attending to the effective history of the text seems still a long way off. Thus, Lutz Doering spends the bulk of a 29 page article on methodology for comparing halakah in the Dead Sea Scrolls engaged largely in the refinement of historical-critical methodology so that he calls for “a *source-, form-, tradition-, and redaction-critical analysis* of Mishnah, Tosefta, and early midrashim, as well as an assessment of baraitot and individual traditions in the Talmudim.”² Only

¹ Hagner 1995a: 51.

² Doering 2006: 32.

sparingly does he give a nod to the notion of effective history as applied by H. R. Jauß.¹ Almost as an afterthought, Doering devotes exactly one sentence—the last—to the potential of effective history to help us understand halakah: “It seems likely that reader and reception-oriented approaches could also help reformulate and deepen our study of the predominantly *legal* texts among the Scrolls ... but this must be left to further enquiry.”²

Within the NT guild proper, however, the call for an alternative to the narrow and egocentrically focused conversation among scholars of only the last half century has been steadily growing.³ The publication of Ulrich Luz’ three volume commentary on Matthew which pays great attention to the effective history of Matthew has gone a long way in furthering the conversation. In his 2004 Presidential Address to the *Studiorum Novi Testamenti Societas*, Wayne Meeks advocates (even if in passing) effective history as an important way forward in order to address the current malaise of NT studies.⁴ More robustly, Markus Bockmuehl has recently (2006) argued quite forcefully and hopefully for the employment of effective history as a way of bringing together the multi-faceted and fragmentary sub-disciplines and hermeneutical approaches within NT studies and, more importantly, as a way of recapturing the central theological claims of the NT.⁵ Indeed, the work of Dale Allison is a helpful heuristic here. For instance, his use of the effective history of the Cain and Abel story from Gen 4:1-16 in order to understand Matt 5:21-26—a text which has been very perplexing to many in the last century—is, in my view, extremely helpful and is used throughout this thesis (see Chapter four).⁶ Or his theologically fruitful suggestion gained from the searching of Matthew’s effective history that Matthew’s text regarding not resisting evil and the turning of the other cheek (5:39-42) is inspired by the suffering servant text of Isa 50:4-9 and, furthermore, that the abuse depicted in 5:39-42 is meant to foreshadow Jesus’ suffering and death on the cross in 26:67 and 27:30 which in turn likewise echo Isa 50:6 (cf. Allison 2005: 219-222). Surely, the potential for such vastly better explanations for difficult and elusive texts is enough to

¹ Doering 2006: 25, 38; cf. Jauß 1967. However, note Gadamer’s critique of how Jauß appropriates Kant (Gadamer 2006: 93, f.n. 82; 164, f.n. 30).

² Doering 2006: 42.

³ Cf. Bockmuehl 1995: 57; Allison 2008b: 237.

⁴ Meeks 2005: 165.

⁵ Bockmuehl 2006: 64-68.

⁶ Allison 2005: 65-78.

tempt even the staunchest historic-critic to broaden his or her “hermeneutical horizon” (to borrow Gadamer’s terminology) by unrolling the scroll of history a bit more rather than merely reconstructing select fragmented bits of the historical papyri.

Some in biblical studies may be tempted to argue that only post-Enlightenment critical evaluation is “objective” and therefore only modern history operating by its strict standards is “objective history” (as opposed to some ancient or pre-critical historical rendering which is somehow “biased”). But let us take an example from an arena which is supposed to be immune to such investigative myopia: anthropology. Since anthropologists are supposed to be aware precisely of “the other” and “the exotic,” it is all-the-more ironic when George Marcus and Michael Fischer criticize their anthropologist colleagues that in observing *their own* context and culture

they are careless precisely about that which would be sacred to the anthropologists in considering other cultures—indigenous commentaries. For the most part, anthropologists have taken the job of reflecting back upon ourselves much less seriously than that of probing other cultures.¹

It seems that the most difficult arenas for us to become more clear-sighted about are those which are closest to home. This is all-too-accurate as well in biblical studies today. Such self-introspective hermeneutical questions come into sharp focus when dealing with a text such as Matt 7:1-5. It is easy to point out the sins of our fathers engaged in the modernist project. It is much easier to look back and detect anti-Semitism in Wellhausen (Bartholomew 2000: 20) or Nazi-ism in Kittel (Meeks 2004) than to take the hermeneutical logs out of our own eyes today. But note Dale Allison’s journey from his training in a historical critical method and perspective to his subsequent decades-long foray into the history of interpretation and the fruitful exegetical insights he has gained from the latter in 2005; 2008a; 2008b.² Reflecting upon the reasons for his methodological conversion, Allison writes,

¹ Marcus and Fischer 1986: 111. I owe this quote to Rich Mouw (1994: 19).

² Allison’s comment that, “one of Origen’s sermons makes for a nice edifying break when I am otherwise occupied with the latest speculative book on the tradition-history of Q” (2008b: 237) playfully indicates his disenchantment with 20th century hermeneutics and his re-enchantment with pre-critical writers.

Maybe another factor is our desire to be more self-conscious and to understand better our own social location. By looking at how others have interpreted, overinterpreted, misinterpreted, and neglected the biblical texts, we become aware of how cultural prejudices and confessional stances and so on affect interpreters; we learn about readers, not just about texts. And in this way, we hope, maybe we can come to understand ourselves better, maybe even become better readers.¹

All history is interpreted history and therefore, as Gadamer argues, all interpretations of history are necessarily “prejudiced” for better or for worse.² Contra Kant, rationality is not neutral but, as MacIntyre (1988) avers, always traditioned. Polanyi (1958) recognized this even in the hard science of physics and, following Polanyi, Newbigin (1989) applies this to truth claims made within a pluralist culture. Therefore, we need to engage in what Marcus and Fischer call, “defamiliarization by cross-cultural juxtaposition.”³ Since all historical investigation is prejudiced, all rationality traditioned, the best way to understand the tradition in which a text stands is (according to Gadamer) to understand the effective history of that text.⁴ That is, to “defamiliarize” oneself with one’s own prejudices and biases and familiarize oneself with the prejudices and biases of others, effective history is a fruitful way of achieving “cross-cultural juxtaposition.” This can also help us not unwittingly rehash worn-out solutions and to conceive of more genuinely unique and fruitful answers to the text (since we are asking better questions of that text).

In the case of Matt 7:1-5, we are faced with a choice between two acutely juxtaposed effects with two radically opposed truth-claims. For one reading of “do not judge” implies that all truth is relative and that to assert one truth over against another is a *faux pas*. The other reading of “do not judge” implies the converse—namely, that truth is less than relative and is to be adjudicated properly and fairly; that, in the words of

¹ Allison 2008b: 237.

² Gadamer 2006: 268-291.

³ Marcus and Fischer 1986: 138.

⁴ Gadamer 2006: 299-306.

Jacques Derrida, there is an “indeconstructability of justice.”¹ Therefore, in paying attention to the effect which the text has had, one must still make judgements upon the text itself and upon the effects which the text has had.² Therefore one could, in essence, say that this project is pitting one effect of the text (that arising from within post-Enlightenment pluralism) over against another (that arising from within postbiblical Judaism and early Christianity). A judgement must be made between the two. The question then becomes not so much, “Which reading is *correct*?” (a question based upon objectivist assumptions) but rather, “Which reading is *coherent* or *plausible*?” (a question arising from a post-foundationalist perspective).

In my view, therefore, to acknowledge (as Samuel Sandmel does in his now famous 1962 article “Parallelomania”) that Paul or Philo or even Jesus were “exegetes” of Scripture is—with our truncated historical critical perspective, cut-off as it is from earlier tradition-history—not enough.³ For one is conceivably still left with the question of *how* unique (or similar) Jesus or Paul is in comparison with their contemporary writings and (besides being a question characteristic merely of the history of religions), this does not contextualize these NT characters enough: witness the failed criteria of dissimilarity.⁴ We must acknowledge not merely that the NT figures and writers were readers of Scripture. For from within a historical critical framework, this would merely imply that they are readers of Scripture in a vacuum as many historic-critics implicitly assumed they themselves are. On the contrary, it must be recognized that the NT characters stood firmly within *an interpretive tradition*—within a certain set of readings which they may have built upon or subverted, but which they could hardly have ignored the way most historic-critics do today.⁵

Along the lines of establishing an interpretive tradition for my project, I had discovered early on the possibility that Jesus was midrashing upon the laws for just

¹ Derrida 1990, cited in Brueggemann 1997: 740 who in turn cites it from Caputo 1993: 193.

² On the notion of judgements in interpretation, cf. Gadamer 2006: 27-31 and Yeago 1994.

³ Sandmel (1962: 6) acknowledged this with reference to what H. G. Kuhn (1960) termed, “*Traditionszusammenhang*.” Although from Sandmel’s comments on Philo (1962: 7-8), he does not seem to regard Philo’s historical reports as “reliable.” Contrast the value found in Philo to help one understand the tradition-history by Allison 2008b: 245-246.

⁴ Cf. the remarks of Bockmuehl 2006: 197-198.

⁵ By contrast, the names Dale Allison, Markus Bockmuehl, Craig A. Evans, Richard Hays, James Kugel, and Joseph Mueller come to mind as some who have been instructive in discovering and establishing such interpretive traditions.

judging in Lev 19. I was already well-aware that Jas 2:1-13 made extensive use of Lev 19, and when I discovered how extensively other texts which were often compared with James made use of Lev 19, as well as noticing how the rabbinic texts which commentators cited as parallel to Jesus' words on judging in Matt 7:1 also made use of Lev 19, I quickly realized that a "purely New Testament project" just would not do. Subsequent study on the judicial system at Qumran uncovered even more use of the laws for just judging from Lev 19 and I was well on my way to tracing the history of how these laws from Lev 19 regarding the judiciary were appropriated from Qumran to the rabbinic period. Fortunately, James Kugel had already begun such an investigation and I have been able here to build upon his work.

I realized that this thesis could not be restricted to the New Testament along historical critical lines if I were to be honest about the evidence and make sense of the text. Not only would a historical critical inquiry give me a thin reading of Matt 7:1-5, but such a narrow focus upon Matthew with only secondary attention being paid to extra-canonical texts would not do justice to the texts or their traditions either. However, while I admitted that while I couldn't be an expert in all of the texts (I couldn't even master Matthew or James, much less the Scrolls and the Apocrypha and Pseudepigrapha along with them!), I realized that I could take a cross-section of how the laws for just judging from Lev 19 were being used in these texts and thereby at least examine the judicial laws from Lev 19 in fairly great detail. It would be much like looking at the rings of a tree-stump. This had the advantage of observing continuity and discontinuity of a specific text (Lev 19:15-18, 35-36) over a large time period (from the Scrolls to the rabbinic literature). In this way, I happily saw as compatible with "effective history" the notion within the interpretive tradition of postbiblical Judaism and early Christianity of *midrash*, which I understand as essentially an ancient version of effective history.

In tracing how the judicial laws from Lev 19 were appropriated over time, I have been able to observe the similarities and differences in this interpretive tradition—how a number of texts over time treated these same laws. I found that this particular hermeneutical tradition is surprisingly consistent (although not, of course, without slight divergences). Discerning a consistent pattern within the tradition, then, would allow me to place Matt 7:1-5 and Jas 2:1-13 within this tradition of midrash upon Lev 19 to see

how they compare. Furthermore, midrash upon Lev 19:15-18, 35-36 subsequent to the Matthean Jesus may or may not read these laws through Jesus' teaching. James certainly seems to do so. On the other hand, a document like Polycarp's letter to the Philippians seems to have Matt 7:1ff as its primary reference but has either not lost or, alternatively, has in some way recognized a relationship between Matt 7:1ff and the judicial laws of Lev 19. By contrast, however, some texts within the effective history of Matt 7:1-5 have all but lost any connection to Lev 19:15-18, 35-36. There are yet more, potentially endless, variations. Clearly, one must be careful in discerning how a particular text fits into a stream of tradition.

I describe the midrashic tradition of a text in Chapter three as "a conversation about a text or, more often, a *conversation about a conversation* about a text." I also point out there that often such midrash can be "covert" or "implicit" so that "first-time readers of such a midrash, therefore, may miss the point entirely if they are not up-to-speed with the origin and history of the dialogue." By contrast, the informed reader is drawn powerfully into the conversation. As Allison notes,

[Allusions] are by definition, quiescent, and—this is what gives them their rhetorical power—they function without explicit authorial prompting.

Allusions demand both imagination and prior knowledge of an absent text.

It is put to the reader, attending to common words, themes, and images, to divine connections and pull together separated passages. To quote Blake:

"The wisest of the Ancient consider'd what is not too Explicit as the fittest for Instruction, because it rouzes the faculties to act."¹

To be sure, Paul is to be treated in his own regard when it comes to his handling of Scripture, something Richard Hays has aptly flagged up.² But this is no less true of Jesus

¹ Allison 2005: 234.

² Note Hays' critique of a simplistic equation of Pauline hermeneutics with conventional midrash (1989: 10-14) and his right insistence upon Paul's uniqueness in interpreting Scripture (1989: 16-24; 2005: 168-169).

or James as some of my own work illustrates.¹ Each participant adds his own unique voice to the conversation be it conventional or prophetic.

In view of such an approach, current scholarly notions of the New Testament's reference to the Old by way of quotation, allusion, or echo seem much less precise and therefore less applicable to this project.² If I could establish a hermeneutical tradition anchored in one text (Lev 19), proving that Matthew or 1QS was "alluding to" Lev 19 becomes much more straightforward because there is an entire tradition to situate each text within and compare it with.³ So too, establishing the date or milieu of a particular text, while not unimportant, carries less weight when using such an approach. As I state in Chapter four, "in my view, a less tenuous link between documents of common topic is their common exegetical heritage of verses from the Torah rather than a common (hypothetical) *Vorlage*." In this way, the use of effective history can help correct "the error of modern rationalism ... which identifies interpretation with genealogy."⁴

In this regard, it becomes crucial to erase the old rationalist division in biblical studies between the Old and New Testaments. In reuniting this former division one must be judicious, of course, for the hermeneutical and theological implications here are

¹ See my forthcoming, "'Love your Neighbor as Yourself' (Lev. 19.18b) in Early Jewish-Christian Exegetical Practice and Missional Formulation." In *"What Does the Scripture Say?": Studies in the Function of Scripture in the Gospels and Letters of Paul*. SSEJC 16. Edited by Craig A. Evans and H. Daniel Zacharias. T & T Clark.

² Note the complaint of Christopher Stanley regarding the lack of methodological agreement among those in the Society of Biblical Literature's Paul and Scripture Seminar:

Papers are presented and books and articles written with little or not effort to justify the methods and presumptions used. ... Of course, diversity and disagreement are a normal part of scholarly discourse on any subject. But in an area of research as narrow as Paul's use of Scripture, it seems that scholars out to be able to converse freely about employing different sets of presuppositions. Instead, most of the discussion and debate seems to take place among people who share common methodologies, with little dialogue across methodological lines. (Stanley 2008: 8).

In line with Bockmuehl's suggestion (2006: 64-68) that effective history can bring the various methodologies and sub-disciplines within the NT guild together, perhaps an effective history approach which traces an OT text into the NT and beyond can provide more common ground than the various approaches evident in the volume of Porter and Stanley (2008).

³ In this regard, see Evans and Sanders (1993) for their responses to Richard Hay's important book, *Echoes of Scripture in the Letters of Paul* (1989). Their comments, along with Hays' own response (2005: 163-189), push in the same general direction as I am advocating here—the notion of an entire hermeneutical tradition in which interpreters stand.

⁴ Williams 2003: 220.

massive.¹ However, an effective history of, say, the New Testament is inadequate if it does not grapple with its OT antecedents. Likewise, an effective history of the OT which does not adequately grapple with its effect in the NT—especially in light of the NT’s central figure of Jesus Christ—is anemic. Admirably, some have already begun to undertake the task of integrating these (Allison and Kugel stand out in this respect). Yet such integration still seems incomplete. James Kugel has paid attention to the effective history of the OT and traced it up to the NT, but paid little attention much beyond the NT. Markus Bockmuehl (and, from a more “genealogical” approach, Huub van de Sandt) has paid attention to placing the NT squarely within a second Temple and rabbinic Judaism, yet paid less attention to the actual effect of the Torah in this. Dale Allison’s work is characterized more by a concern with understanding the NT through its effect in the Fathers, with much less attention given to possible OT precursors. Scholars such as Mueller, Synek and Fonrobert studying the church orders of the second century and beyond have noted how the authors of these orders saw themselves not only as interpreters of the OT on par with the Mishnah and Talmud, but also as contributors to the NT. Yet while these approaches to effective history are each in their own way incomplete (as is my own), it is interesting to note here how scholars whose expertise resides in different eras can observe strikingly similar effective phenomenon. Only time will tell whether and to what degree such refinements to an effective history approach will bring the OT and NT together. It is hoped that such an approach will eventually go a long way in clarifying their relationship. Such a separation certainly need not remain for the Christian scholar. Jesus is the incarnate Word (John 1:1), the Wisdom of God (1 Cor 1:24, 30), and the one in whom the law and prophets are fulfilled (Matt 5:17-20; Rom 10:4).

The above review of my methodology sets the scene for the below overview of this monograph. Chapter one demonstrates a decisive shift in the interpretive history of Matt 7:1-5. Two hermeneutical options for these verses grew out of the Anabaptist debates of the mid 16th century over whether Christians could serve as legal judges, or “magistrates.” The Anabaptist position declared that Christ in Matt 7:1-5 prohibits

¹ This issue has been approached constructively in various ways by, among others, both “Old Testament scholars” such as Childs (1992) and Seitz (1998) as well as by “New Testament scholars” such as Hays (cf. 1989 and his comments in 2005: 176, 186).

Christians from serving as judges. The opposition interpretation deemed that “do not judge” has to do with private judging between individuals only and does not apply to the public judicial system. Shortly after these Anabaptist debates, this latter position won out and became the mainstream interpretation of Matt 7:1-5 up to the present.

The bulk of Chapter one, therefore, presents this inherited consensus interpretation of Matt 7:1-5, especially as we have received it over the past 100+ years. Over the past century there have been a small number of unheeded voices, however, which alternatively understand Matt 7:1-5 along legal or, more specifically, *judicial* lines. This chapter therefore concludes with an exploration of how Leo Tolstoy, Theodor Zahn, Adolph Schlatter and Sjef van Tilborg understand Matt 7:1-5, with a view towards how to build upon their work.

In order to begin to provide a plausible alternative reading of Matt 7:1-5, Chapter two seeks to sketch the judiciary in Jesus’ day both in Jerusalem as well as in the Diasporal towns and villages. Special attention is given to the role the laws for just legal judging from Lev 19:15-18, 35-36 play in discussions of the courts. Judicial corruption is also a theme among texts discussing this era, therefore corruption such as bribery will also be highlighted here.

Since the laws for just legal judging in Lev 19:15-18, 35-36 are used in early second Temple literature as well as later rabbinic texts in their discussion of just legal judging, Chapter three will consider the effective history of these verses. Crucial to the thesis of this dissertation is that if other Jewish exegetes used these verses from Lev 19 in their discussion of just legal proceedings, so Jesus could have and did make similar use of these verses.

With an overview of the judiciary in Jesus’ day from Chapter two and the halakhic discussions surrounding Lev 19:15-18, 35-36 of Chapter three in mind, Chapter four comprises the hermeneutical core of my argument wherein a judicial reading of Matt 7:1-5 is considered. This chapter seeks to demonstrate that Matt 7:1-5 is Jesus’ halakhic, midrashic comment upon Lev 19:15-18, 35-36. To this end, Jesus’ words in Matt 7:1-5 will be compared with similar sayings used elsewhere, especially in later rabbinic literature. While many such parallels have been previously listed by commentators, few have appreciated these parallels in their own rich legal and exegetical contexts and

engagement with Lev 19. Additionally, I will contend in Chapter four that the very structure of the words in Matt 7:1-5 betray a correspondence pattern of speech wherein both the sin and the judgement for that sin are named, constituting a prophetic interplay and critique. Finally, Matt 7:1-5 will be compared with two other Matthean texts concerning brotherly, judicial conflict—5:21-26 and 18:15-35.

Many studies have been done comparing the sayings in the epistle of James to those in the Sermon on the Mount/Plain. Very few, however, acknowledge a direct connection between Matt 7:1-5 and Jas 2:1-13, and the small minority who do recognize an association between these passages do not elaborate upon this relationship. Chapter five, therefore, attempts to explain this significant parallel, arguing that the epistle of James takes up Jesus' teaching on unjust legal judging in Jas 2:1-13, exhorting Jewish Christian leaders who judge cases within Diaspora synagogues/churches to judge their congregants justly, as both Torah and Jesus teach them to. There has been significant debate over whether Jas 2:2-4 depicts an ancient worship service or a judicial gathering. Chapter five, therefore, proposes to add significant weight to the latter side of this debate. As we shall see, this alternative proposal of reading Jas 2:1-13 as depicting a court scene is not new, and the parallel with Matt 7:1-5 along with a similar use of Lev 19 in both Matt 7:1-5 and Jas 2:1-13 will, it is hoped, convince interpreters that the reading which regards Jas 2:2-4 as a worship service is less than satisfactory.

A final chapter looks briefly at some of the effective history of Matt 7:1-5. Some early Christian documents such as *First Clement*, Polycarp's letter to the Philippians, as well as later church manuals such as the *Didascalia Apostolorum* quote portions of Matt 7:1-5 in ways which reflect a judicial understanding of these verses—many of them addressing concerns about legal abuses. These documents, furthermore, often seem to relate Matt 7:1-5 to the laws for just legal judging from Lev 19 and/or Matt 5:21-26, 18:15-35, Jas 2:1-13.

"Justice is blind" it is said. This is an old notion depicted most clearly by Lady Justice, the Roman goddess personifying the moral force which underlay the Roman as well as subsequent Western judicial systems. She stands holding scales of justice in her left hand symbolizing the making of a judicial decision, and a double-edged sword in her right symbolizing the punishment for crime. More importantly, she is blindfolded: a

powerful visual reminder that justice is to be meted out fairly and objectively, without regard for the social status of either defendant or plaintiff. The image of Lady Justice has so captured our imaginations that statues of her adorn modern court-houses around the world, and members of the U.S. Supreme Court are addressed as “Mr.” or “Mrs.” “Justice,” as if he or she were a personification of this ancient deity.¹

The metaphor of the eye or eyesight used to refer to the juridical can be found in the Old Testament. Deuteronomy 16:18-19 prescribes the appointment of “judges” (שֹׁפְטִים/κριτάς) in every tribe. But this office comes with a precaution: “Do not pervert justice (שֹׁפֵט/κρίσις); do not show partiality. Do not take a bribe because the bribe *blinds the eyes* of the wise and twists the words of the righteous (בָּקִי/δικαίω).” Exodus 23:8 commands against bribery with the same proverb put slightly differently: “You shall take no bribe, because the bribe *blinds those who see* and twists the words of the righteous.”

The idea that justice has to do metaphorically with eyesight is thus used in Israel’s Scriptures with a twist opposite to that of Lady Justice. For Israel, just legal judgement occurred only when the judge was clear-sighted, not blind. It is another valid, and yet converse, image of justice. An Israelite, therefore, rather than say “Justice is blind” might be more apt to quip, “Justice sees clearly,” or, as the title of his work suggests, “*Injustice is blind.*” Since it is held that Jesus too uses a judicial metaphor when he speaks of taking an obstruction out of the eye in order to create clearsighted justice (Matt 7:3-5), the metaphor of eyesight has inspired each chapter heading.

In his 1997 inaugural lecture as the Chair of Language, Literature & Theology at the University of Edinburgh, Larry Hurtado argues rather optimistically that NT study is relevant in the setting of a publically funded University precisely because the Western world is becoming more pluralistic.² But one would be hard pressed to argue that the study of the NT has significantly contributed to religious tolerance in the public sphere.³ Indeed, our own narrow exegetical practices since the Enlightenment have produced less tolerance for alternative views, not more.⁴ On the other hand, the exclusivity which the

¹ Cf. Hendry 1983: 121.

² Hurtado 1999.

³ So Bockmuehl 2006: 66-67, f.n. 54.

⁴ See Allison 2008a: 5-7 for remarks regarding his early exegetical practices, yet his hope that, “if cultural pluralism in Western society has generally encouraged tolerance, perhaps the exegetical pluralism exposed by the history of interpretation will similarly lead to an exegetical tolerance.”

Christian Scriptures proclaim is hardly conducive to their being a happy partner in pluralism's "all truth-claims are on equal footing" game—a fact made more acute in light of Hurtado's own work on the early worship of Jesus (2003; 2005), not less. Pluralism only tolerates so much—every dog has a tail in need of wagging. And indeed, in the case of Matt 7:1-5, my contention is that it seems not to be the case of the biblical tail wagging the dog of pluralism but of pluralism wagging the dog of biblical studies (or at least, Matt 7:1-5).

Chapter One

Judgementalism as Blind Hermeneutical Guide

That is my wife ... Such is the sole conjugal embrace I am ever to know—such are the endearments which are to solace my leisure hours! And this is what I wished to have ... this young girl, who stands so grave and quiet at the mouth of hell, looking collectedly at the gambols of a demon. ... Wood and Briggs, look at the difference! ... then judge me, priest of the Gospel and man of the law, and remember, with what judgment ye judge ye shall be judged!

—Rochester in Charlotte Brontë's *Jane Eyre*

This chapter seeks to outline the current consensus interpretation of Jesus' "do not judge" teaching in Matt 7:1-5/Luke 6:37-38, 41-42, as well as explore an alternative reading put forth by four significant but currently unheeded interpreters.¹

Matthew 7:1-5 reads:

Do not judge, so that you might not be judged. For with the judgement you judge you will be judged, and with the measure you measure, it will be measured to you. And why do you look at the speck in the eye of your brother, but the log in your own eye you do not notice? Or how can you say to your brother, "Let me cast the speck out of your eye," even while there is a log in your own eye? Hypocrite! First cast the log out of your eye, and then you will see clearly to cast the speck out of the eye of your brother.

We begin with one of the most often cited proponents of an alternative reading of Matt 7:1-5: Leo Tolstoy.

1. Leo Tolstoy

¹ Many regard Luke 6:39-40 as a Lukan insertion into a pre-existing block of teaching; this will be discussed further in Chapter three.

In 1884, Leo Tolstoy (1828-1910) wrote *What I Believe*,¹ his “most extensive exposition of the Sermon on the Mount.”² In it, he rejects the supposition that the Sermon is impossible to live, understanding it rather as clear and practical teaching.³ Tolstoy’s “master-key”⁴ for unlocking the rest of the Sermon is Matt 5:38-39—a passage he understands to teach non-resistance to any and all evil.⁵ The contradiction between this emphasis upon non-violence in the Sermon, and the violence done via the courts in his own time (with he an active member of these courts⁶), unnerved him.⁷ And after an epiphany-like moment, he realizes that “do not judge” is actually about the courts.⁸

Tolstoy engages in a miniature history of interpretation on Matt 7:1-5/Luke 6:37-38, 41-42. The popular consensus in his day is that “do not judge” means “speaking evil against our neighbour.”⁹ “I found that from the fifth century downwards,” he reports, “the Church had taken them as referring to the verbal condemnation of our neighbour—to slander.”¹⁰ Turning to the 19th century German Tübingen school, he similarly discovers that “do not judge” is “a prohibition of slander”¹¹ and that Luke’s explanatory “condemn”—in the eyes of these scholars—contains, “not the slightest hint [that it] may include the sentences of those tribunals from which millions suffer.”¹² So from 400-1900, Tolstoy

¹ Also titled, *My Religion*. Cf. Tolstoy 1902.

² Kissinger 1975: 53.

³ Tolstoy 1902: 13-14, 34.

⁴ Tolstoy 1902: 17.

⁵ Tolstoy 1902: 15, *passim*.

⁶ Bauman 1985: 18, 28.

⁷ Cf. Tolstoy 1902: 26-27; Bauman 1985: 18. Tolstoy’s suggestions to reform the corruption and favoritism he experienced while serving as an artillery officer in the Crimean War were not heeded. “Tolstoy’s later political anarchism derives in part from such disillusionments,” comments Orwin (2002: 51). In reaction to government corruption similar to the earlier Anabaptists, in the early 1880’s Tolstoy advocated small communities of loosely organized universal Christian brotherhoods and the concomitant dissolution of the State (Orwin 2002: 42).

⁸ The similar milieu of authoritarian oppression and revolutionary fervor in both Tolstoy’s Russia and Jesus’ Palestine are rightly noted by Greenwood 1975: 134. On corruption and revolution in Tolstoy’s Russia, cf. Orwin 2002: 51-52.

⁹ Tolstoy 1902: 36.

¹⁰ Tolstoy 1902: 37.

¹¹ Tolstoy 1902: 37.

¹² Tolstoy 1902: 38. On Tolstoy’s differing view of Jesus from that of Strauss and Renan, cf. Greenwood 1975: 131-132.

asserts, the dominant interpretation of “do not judge” is verbal slander apart from any legal sense.

Against this, Tolstoy asserts that Matt 7:1ff should be understood in a wider sense to include not only slander but also legal action.¹ He reasons, on the basis of the other legal material in the Sermon (especially the “eye for an eye” and the “do not resist evil” principles of 5:38-39), that “do not judge” also concerns legal matters.² Tolstoy also appeals to the epistle of James. He cites Jas 4:11-12, arguing that καταλαλέω in Jas 4:11 means not only “to slander, or speak evil of,” but also “accuse” in a legal sense.³ He then asserts that Jas 2:1-13 teaches the same thing as Matt 7:1ff, but the latter in a very “clear” and “definite” way.⁴

Tolstoy does lexical work on κρίνω, understanding it as, “the sentence of a tribunal, sometimes to express the idea of choice, but never that of speaking evil,” i.e., “slander.”⁵ He sees the “condemn” (καταδικάζω) of Luke 6:37 as “qualify[ing] the meaning in which [κρίνω] was used,” but that it, “never has any other meaning than to sentence as a judge.”⁶

Tolstoy might have won more adherents to his position had he stopped there. But Tolstoy took Jesus’ words not only literally but absolutely. “Do not judge” for him ultimately means, “we must not condemn [our neighbour] through any court of justice,”⁷ and that Christians must, “take no part whatever in the administration of the law.”⁸ According to Tolstoy, “Jesus forbade all earthly tribunals of justice.”⁹ Tolstoy’s logic is that if the main thrust of Jesus’ teaching was “do not resist evil,” and the job of the courts is to resist evil, then “do not judge” necessarily means all legal action must cease for the Christian.¹⁰ This

¹ Tolstoy 1902: 37-38.

² Tolstoy 1902: 31-32.

³ Tolstoy 1902: 32.

⁴ Tolstoy 1902: 33-34.

⁵ Tolstoy 1902: 39.

⁶ Tolstoy 1902: 39. Cf. Matt 12:7, 37; Luke 6:37; Jas 5:6.

⁷ Tolstoy 1902: 28.

⁸ Tolstoy 1902: 36.

⁹ Tolstoy 1902: 29.

¹⁰ Anabaptists also believed that, “the magistrate cannot forgive enemies. His was by its very nature ‘an office of wrath’” (Littell 1958: 105).

proved to be too much. Many subsequently rejected Tolstoy's radical view.¹ Indeed, within Tolstoy's ethic an incipient anarchy can be detected²—a fear some Anabaptists had incited even before Tolstoy emerged on the scene.³ Indeed, as Betz points out in our own day, to claim that Jesus is attempting to “stop judges in court from delivering honest and fair verdicts” does indeed seem anarchic.⁴

While I disagree with Tolstoy's ultimate conclusion that Jesus in Matt 7:1-5 teaches his followers to abstain from any participation in the State or the judiciary, it is my contention that Tolstoy's essential hermeneutical insight that the judging spoken of in Matt 7:1-5 does indeed refer to legal judging, and that a valid parallel to Matt 7:1-5 is Jas 2:1-13 (understood, of course, also to be about legal judging) are essentially correct.

Tolstoy's assertion that the consensus reading of Matt 7:1-5 goes back to the Church's earliest interpreters of the NT in the 400's may indeed be correct, although such an investigation remains outside of the scope of this project. However, a brief glimpse into the hermeneutical heritage of these verses reveals that Tolstoy was not the only person in history to understand these verses in Matthew to be about the courts.

2. The Anabaptists and the Debates over Magistrates

As the Reformation swept across Europe in the 1500s, pockets of Anabaptists sprang up in various places as one expression of reform. At the same time, European society was experiencing a separation between Church and State—a division which was due on the one hand to a desire of some reformers to reorganize the State, and on the other hand due to the on-going struggle of civic authorities to cope with the religious conflicts of the day. The Christian's relationship to the State is perhaps one of the sharpest points of contention between Anabaptists and other more mainstream

¹ Balmforth 1930: 167-168; Hunter 1953: 82; Tinsley 1965: 70; Fitzmyer 1970: 641; Thompson 1972: 116; Marshall 1978: 266; Caird 1979: 104; Guelich 1982: 350; MacArthur 1985: 431; Derrett 1989: 56; Luz 1989: 414-415; Bock 1994: 607; Betz 1995: 487, 490; Allison 1999: 152; Wierzbicka 2001: 185-186; Wright 2004: 69.

² Cf. Bauman 1985: 28.

³ Consider the Anabaptists at Münster; cf. Haude 2000: 23-32, 109-111.

⁴ Betz 1995: 490.

Reformers.¹ Furthermore, as power slowly shifted from the church to city officials in places such as Switzerland and England, it was “magistrates” (legal judges) who were often responsible for adjudicating such religious debates even though, as we shall see, these judges were sometimes involved in the debates themselves even as they judged them.²

There was considerable discussion over the role of the (increasingly secular) judge in Reformation Europe. The unquestioned power and corruption of judges, therefore, must be kept in mind in order to understand these discussions.³ The issue of the relationship between the Church and the State which bubbled up during the Reformation brought no simple or quick answers. It is wise to remember that it took Melancthon and Luther 25 years to hammer out a cogent position on magistrates *within* mainstream Reformed thought.⁴ The Anabaptist position on Church and State is likewise rich and varied.⁵

In Bern, Switzerland there were several significant disputations in the early decades of the 16th century in which, among other things, the relationship between civil authorities and the Church came under discussion.⁶ A main issue in these debates involves the “*oberkeyt*,” the magistrate or legal judge. These debates were largely predetermined by the Bern city officials who were in close collaboration with the Zwinglian clergy—the Anabaptists’ opponents.⁷ “Although they followed a pattern of correct legal procedure,” writes Gratz, “they could not be conducted in an impartial

¹ Cf. Kissinger 1975: 30-31. On the sharp Christian dualism of “two kingdoms”—the Church and the State—among Anabaptist thinkers, see Friedmann (1973: 38-40), Stayer (1976: 123-124) and Jürgen-Goertz (1996: 98-99). Although perhaps not as sharply as Anabaptists, protestants of a more magisterial stripe also believed in “two kingdoms,” many often holding that the worldly kingdom had a responsibility to act in line with the heavenly kingdom as much as possible, rather than withdrawing from the secular realm altogether as many Anabaptists did. Indeed, as Snyder (1985: 427) points out, the Peasant’s Revolt was partially a result of a discontent with one of the two kingdoms protestant peasants believed in. For a more nuanced discussion of why Anabaptists eventually separated from the popular church, see Jürgen-Goertz 1996: 86-87.

² Cf. Gratz 1953: 15; McClendon 1998: 117; Yoder 2004: 233-241.

³ See, for instance, *The Eleven Mülhausen Articles* of 1524 in Baylor 1991: 227-228. Cf. Yoder 1974: 134.

⁴ Estes 1998: 482-483.

⁵ Cf. especially Yoder 1974: 134-139 and Jürgen-Goertz 1996: 97-107.

⁶ Cf. Haas 1974. Appreciation is due to my colleague Stephen Eccher for directing me to Haas’ important source.

⁷ Matthijssen 1948: 21-22.

manner because the accuser was also the judge.”¹ Thus there was little genuine communication or debate going on.² The hermeneutic of love and tolerance advocated by the Bernese and Zwinglian officials is intriguing but cannot be given full treatment here, although understanding Matt 7:1-5 in terms of “love” is a theme we shall return to below.³

Not unrelated to the discussion of judges at Bern is the issue of church discipline. Although well-known for instituting “believer’s baptism,” equally or even more important in Anabaptist thought and practice is the revival of the “Ban” or “the Rule of Christ”—freely subjecting oneself to church discipline based upon Matt 18:15-18.⁴ Ideally discipline was to be carried out in a spirit of love and encouragement, and have the goal of forgiveness and restoration.⁵ But such discipline certainly also aided Anabaptists in achieving their goals of personal and corporate holiness.⁶ Such a system was, in Anabaptist thought, meant to replace the punishment meted out by State officials.⁷ To Anabaptists, then, the Ban is seen as a form of Church government and judgement.⁸ Zwingli and the Bernese officials, however, later saw such discipline as being transferred to State judges for implementation.⁹

While the stock passage referred to most by Anabaptists on this issue is naturally Matt 18:15-18, a number of other Scriptural passages are common in such debates. The woman caught in adultery in John 7:53-8:11 and the man who asks Jesus to arbitrate between him and his brother over their inheritance in Luke 12:13-14 occasionally pop up on the grid.¹⁰ Verses related to the judiciary from 1 Cor 5-7 quite often come into play,¹

¹ Gratz 1953: 15.

² Cf. Matthijssen 1948: 21-22; Friedmann 1973: 32.

³ Cf. Davis 1982: 51; Williams 1992: 593-594; Yoder 2004: 176-183. Yoder (2004: 181) quips that, “at one point the Bernese even dare to make the statement that the Scriptures are like a ‘wax nose’ that everyone can turn as they see fit, whereas only love offers a certain and clear ‘gauge.’”

⁴ The ban was a revival of a church practice and not a unique innovation; cf. Littell 1958: 89. As Snyder (1985: 428) points out, the ban may be a result of Sattler’s Benedictine background, or a result of Conrad Grebel’s influence. Cf. further Littell 1958: 86-87; Davis 1982: 45-46.

⁵ Littell 1958: 88; Friedmann 1973: 43, 45, 145; Keener 1999: 240.

⁶ Friedman 1973: 122; Jürgen-Goertz 1996: 87-88.

⁷ See, for instance, the sixth article of the Schleithem Confession (quoted in Stayer 1976: 120-121). Cf. Friedman 1973: 128.

⁸ Hubmaier 1989: 420.

⁹ Yoder 2004: 251.

¹⁰ For example, the Schleithem articles cite both of these passages (cf. Stayer 1976: 123); Hubmaier’s *On the Sword* cites only the latter (Baylor 1991: 188).

as does Mark 10:42 that Christians should not “lord it over” others like Gentile rulers.² An Anabaptist favourite to prove Christians should not serve as magistrates is Jesus’ injunction in Matt 5:39 not to resist evil, since magistrates by their very nature and function resist evil people.³ It is probably more than coincidence that Matt 5:38-39 later became Tolstoy’s “master-key” to unlock the rest of the Sermon.⁴ Not insignificantly, verses from Matt 7:1-6 appear, if only rarely, in such discussions.

In a Bern disputation in 1532, an Anabaptist brother argues on July 4th in favor of the Ban using not only Matt 18:15-18, but Rom 2:1ff, 1 Cor 5:3, and Matt 7:3.⁵ The fact that Matt 7:3 is placed directly alongside other texts discussing legal judging is significant. At the same debate, this time over the issue of magistrates/judges on July 16th, Matt 7:5 enters into the discussion, with the assumption that Jesus’ words here refer to the office of a legal judge.⁶

Like other Anabaptists, Hubmaier often uses Matt 18:15ff when debating the Ban.⁷ It is clear, however, that he understands Matt 18 in the same terms as Jesus’ “do not judge” commandment. Hubmaier writes,

... in these matters there are two kinds of commandment [about admonition]. The first orders each Christian in particular to admonish his sinning brother according to the order of Christ, Matt. 18:15f. The other commands the admonisher, that he must first take the plank out of his own eye in order to be able to see to remove the splinter which is in the eye of his brother, Matt. 7:4f; Luke 6:42. ... But the first commandment is not

¹ See for instance Hubmaier’s *On the Sword* (Baylor 1991: 189); the Bern Disputation of 1532 (Haas 1974: 122-125).

² Stayer 1976: 123.

³ See the Zwinglian reply to Hans Pfistermeyer (Haas 1974: 39). Luther said this passage could not be used to justify non-resistance because it referred only to the private individual and not to the state (Kissinger 1975: 21-22).

⁴ See Michael Sattler’s fourth article of the Schleithem Confession of 1527 (Stayer 1976: 119; cf. Snyder 1985: 427) and the disputations at Bern of 1532 and 1538 (Stayer 1976: 129). Miller (1995) discusses the seminal influence Tolstoy had upon Robert Friedmann, the Austrian Jew who not only became a scholar of Anabaptism, but a convert as well.

⁵ Haas 1974: 122-125.

⁶ Haas 1974: 177.

⁷ Hubmaier 1989: 410, 414-415, 417, 424.

done away with by the second. ... This is what Isaiah called being companions of thieves, Is. 1:22 [*sic*: 1:23].¹

Here, the discipline spoken of in Matt 18:15ff is equated with the discipline spoken of in Matt 7:4/Luke 6:42. Furthermore, Jesus' command not to judge in Matt 7, according to Hubmaier, does not abolish the responsibility to exercise brotherly discipline in Matt 18; in fact, they both promote discipline but from opposite angles. It is also telling that Hubmaier's final quotation of Isaiah 1:23 concerns corrupt legal judges.

Hubmaier's *On the Sword* (1527) discusses whether Christians should occupy positions of power or "wield the sword," beginning auspiciously with, "Let each one judge here as he would like to be judged by the Lord"—a loose quotation of Matt 7:2. Citing Luke's version of Jesus' "do not judge" teaching alongside 1 Cor 6:2-4, Hubmaier notes the paradox that, "as we should not judge, and yet should appoint judges who judge among us."² Hubmaier here understands Matt 7:1/Luke 6:37 ("as we should not judge") in exactly the same terms as 1 Cor 6:2-4 ("and yet should appoint judges who judge among us"). "Therefore," Hubmaier concludes, "Scripture calls judges, authorities, and executors of the law servants of God and not slayers (2 Chronicles 19; Romans 13)."³ Consequently, in Hubmaier's thought, the exhortations of Matt 7:1, 4 concern judging cases on par with Matt 18:15-18 and 1 Cor 6:2-4.

In an anonymous Anabaptist document beginning, "To the Assembly of the Common Peasantry" written in May 1525, the author argues that oppressive government officials can and should be deposed. Writing specifically of the overthrowing of legal judges, Matt 7:6 is quoted with the following comment:

Although this divine teaching is twisted in many ways, it is nevertheless based on the true meaning of the [biblical] texts about judges and about the powerful. This teaching makes it evident that neither the law nor the authority of the divine order is a true, holy sanction to evil people. It should be commanded that those whom Christ upbraided here as dogs and

¹ Hubmaier 1989: 380-381.

² Baylor 1991: 199.

³ Baylor 1991: 202.

swine should be thrown from their thrones! ... The rotten tree cannot bring forth good fruit; so it should be cut down and thrown into the fire, Matthew 18 [rather, Mt. 7:18]. It is not becoming that someone should want to remove a speck from the eye of another, and have a log in his own eye [Mt. 7:3f.]. ... But are not all these clear divine sayings directed against godless authority, which is not to be tolerated but to be deposed without any timidity? ... In sum, no partisan judge should be established [to judge their case]. For nothing will come of it except “If you help me, I will help you.”¹

It seems clear that this author understands Matt 7:3-5 and 7:6 as referring to corrupt legal judges and hence applies these verses to the legal judges of his own day.

Although unsystematic and not extensive, the above citations indicate that at least some Anabaptist writers interpreted the verses in Matt 7:1-6 literally as referring to legal judges. But since many Anabaptists eventually held that Christians should not serve as magistrates and to a large extent rejected civil government, those who disagreed with the Anabaptist position on this point denied that Matt 7:1ff annulled the office of the legal judge. Consider the remarks of some commentators upon Matt 7:1-5 writing between the 17th and beginning of the 20th centuries:

there are those whose office it is to judge—magistrates and ministers.
 Christ ... came not to unmake them, for by him *princes decree justice*.² ...
 Those who blame others, ought to be blameless and harmless themselves.
 Those who are *reprovers in the gate*,³ reprovers by office, magistrates and ministers, are concerned to *walk circumspectly* and to be very regular in their conversation ... (Matthew Henry, 1662-1714)⁴

¹ Translation from Baylor 1991: 120-122.

² A quotation from Prov 8:15.

³ Henry is here quoting a phrase (from Deut 21:19; 22:15?) referring to legal judges who, in biblical times, operated at the town gate.

⁴ Henry 1721: 87-88.

He does not prohibit the civil judgment of the courts upon evil doers, for this is approved throughout the whole Bible. (Barton Warren Johnson 1833-1894)¹

[Matt 7:1] does not prohibit ... judgment by civil courts, which is apostolically approved ... (John William McGarvey 1829-1911)²

Least of all does [Matt 7:1-2] apply to the sentence pronounced by a judge ... (John Peter Lange, 1802-1884)³

[Matt 7:1-5] rather refers to *private* judgment than *judicial*. (Albert Barnes, 1798-1870)⁴

It has no relation to the duties of magistrates. Jesus is not speaking to magistrates, and evidently his language is concerned with conduct in private life. ... the precepts are framed for domestic and social life, not directly at all events for civil government. (Walter F. Adeney, 1901)⁵

It seems that many of the above interpreters, beginning at most a century after the Anabaptist debates, are consciously reacting against a reading which favours the Anabaptist interpretation of “do not judge” in which Christians are not to serve as secular, legal judges. The last and latest citation—that of Adeney—indicates an important shift wherein understanding Jesus’ words to refer to “public” (legal) judging is dismissed in favour of “private,” interpersonal (i.e., non-legal) judging.⁶ Over time less and less interpreters seem to argue against a judicial interpretation, and more and more merely explain these verses as referring to interpersonal judging without any reference to legal

¹ Johnson 1891: n.p.

² McGarvey 1914: n.p.

³ Lange 1861: 274.

⁴ Barnes 1949: n.p.

⁵ Adeney 1901: 197-198.

⁶ Henry 1721: 87; Lange 1861: 274; Barnes 1949: n.p.; Johnson 1891: n.p., however, rejects this view.

judging as an interpretive option.¹ Thus, although Tolstoy finds among mainstream interpreters the consensus interpretation which read Matt 7:1-5 to be about interpersonal, verbal abuse from 400 onwards, sectarians like Anabaptists argued against the mainstream interpretation of Matt 7:1-5, reading it to apply specifically to the courts.

It would undoubtedly be fruitful and interesting to discuss the roots of pluralism, tolerance, and democracy with regard to the Reformers and Anabaptism and relate this to more current interpretations of Matt 7:1-5, but this would take another volume.² The next step this thesis shall take, rather, is merely to elucidate five main aspects of the consensus interpretation from a survey of over 100 commentaries upon Jesus' words "do not judge" from the middle of the 19th century to present. This should provide not only a clear picture of the consensus reading which seems to have emerged, but also implicitly give readers an idea of the cultural milieu such a reading has grown out of.

3. Four Aspects of the Consensus Interpretation

3.1. "Judging" means being Judgemental or Intolerant (Matt 7:1-2)

Since the mid-1800's, the characteristic of being inclusive and accepting of others, we are told, is principally what Jesus prohibits when he says, "do not judge." Commentators insist Jesus seeks to dissuade his listeners from being "judgemental"³ and exhorts them to be "nonjudgmental."⁴ According to Davies and Allison's majestic three volume commentary on Matthew, Jesus warns his disciples against "intolerance"⁵ in Matt 7:1-2/Luke 6:37-38 and preaches instead that they should exercise "tolerance."⁶ As François Bovon explains, "we, indeed, can and must represent our Christian convictions, but must leave the others free to act, and leave their decision to them."⁷

¹ Turner (2008: 205), for instance, simply refers to it as "interpersonal judgements."

² Cf. the comments of McClendon (1999: 253, 255-256) and Yoder (2004: 248, 253-254).

³ MacArthur 1985: 430, 434; Morris 1992: 168; Garland 1993: 86; Bock 1994: 605, 610; Jones 1994: 47; Keener 1999: 240; Bovon 2002: 250; Liroy 2004: 173; Turner 2008: 206.

⁴ Carter 1996: 142; Goulder 1988: 371; Witherington 2006: 155.

⁵ Davies and Allison 1988: 669; so Hunter 1953: 83.

⁶ Davies and Allison 1988: 668; so Morris 1992: 164; Hagner 1993: 170; Allison 1999: 152.

⁷ Bovon 2002: 242.

This prohibition is not so much about the avoidance of an action but an *attitude*¹—a “judgmental attitude,”² a “condemnatory attitude,”³ a “disparaging opinion,”⁴ a “fault-finding mentality,”⁵ or “a negative evaluation of others.”⁶ This attitude is variously defined as levelling criticism against another.⁷ These criticizers are characterized as “self-righteous,”⁸ “hard-hearted,”⁹ “hypercritical,”¹⁰ and pedantic.¹¹ Their demeanour is “harsh,”¹² “severe,”¹³ “rigid,”¹⁴ “unfair,”¹⁵ and “censorious”¹⁶ (an older English word meaning “severe,” “stern” or “contemptuous”). Such people are “unmerciful, unforgiving, unkind ... and totally lacking in compassion and grace.”¹⁷ Betz says this disposition involves, “a lack of sympathy and understanding, if not a pathological delight.”¹⁸ Such judging involves, “a feeling of superiority”¹⁹ and “the temptation to look down on [others].”²⁰ This may involve gossip or “talking behind the

¹ Browning 1960: 82; Ellis 1974: 116; Marshall 1978: 265, 266, 267; MacArthur 1985: 429-430; Vaught 1986: 161; Morris 1992: 165; Bock 1994: 605-606; Betz 1995: 490; Wierzbicka 2001: 181; cf. Lioy 2004: 172-173; France 2007: 273; Witherington 2006: 155.

² Schweizer 1976: 168; Gundry 1982, 121; Blomberg 1992: 128; Hagner 1993: 168; Lioy 2004: 173; Talbert 2004: 131; cf. MacArthur (1985: 429) and Garland (1993: 86), “judgmental spirit.”

³ Hill 1972: 146; Thompson 1972: 117; France 1985: 142. Cf. Blomberg 1992: 127; Bock 1994: 605.

⁴ Jacobus 1862: 83.

⁵ France 2007: 274.

⁶ Blomberg 1992: 127.

⁷ Jacobus 1862: 83; Hunter 1953: 83; Fenton 1963: 109; Filson 1971: 104; Thompson 1972: 116; Marshall 1978: 269; MacArthur 1985: 434; Vaught 1986: 156, 160; Bruner 1987: 273-274; Lachs 1987: 137; Goulder 1988: 374; Evans 1990b: 108; France 1994: 913; Jones 1994: 47; Betz 1995: 490; Reiser 1997: 264; Mounce 2002: 64; Lioy 2004: 172-173; France 2007: 273-274.

⁸ Gundry 1982: 121; Vaught 1986: 156, 157; Davies and Allison 1988: 670; Hagner 1993: 169; Betz 1995: 490.

⁹ Ridderbos 1987: 144.

¹⁰ Hendriksen 1973: 357, 358; so Keener 1999: 240, “critical”; Witherington 2006: 155, “critical”; France 2007: 273, “unfairly critical.”

¹¹ Betz 1995: 490.

¹² Jacobus 1862: 83; Kelly 1868: 123; Manson 1930: 71; Manson 1949: 56; Cox 1952: 60; Filson 1971: 104; Hendriksen 1973: 357; Beare 1981: 189; Hendry 1983: 114; Ridderbos 1987: 144; Morris 1992: 164, 165, 167; Hagner 1993: 169; Bock 1994: 607; Betz 1995: 490; Mounce 2002: 64; Lioy 2004: 173.

¹³ Jacobus 1862: 83; Lioy 2004: 173.

¹⁴ Turner 2008: 205.

¹⁵ Betz 1995: 490; Lioy 2004: 173; Witherington 2006: 154.

¹⁶ Jacobus 1862: 83; Kelly 1868: 118, 121; Morison 1870: 110-112; Plummer 1898: 189; Gibson 1900: 92; Adeney 1901: 197, 198; Micklem 1917: 64; Robinson 1928: 60, 61; Manson 1930: 71; Green 1936: 147; Manson 1949: 56; Jameson 1951: 80; Hunter 1953: 82; Browning 1960: 82; Filson 1971: 104; Hill 1972: 146; Hendriksen 1973: 357; Ellis 1974: 116; Marshall 1978: 266; Caird 1979: 104; Guelich 1982: 350; Hendry 1983: 114; MacArthur 1985: 430; Goulder 1988: 369; Morris 1992: 164, 165; Hagner 1993: 169, 170; Bock 1994: 605; Mounce 2002: 64; Lioy 2004: 172, 173; Turner 2008: 205, 206.

¹⁷ MacArthur 1985: 430.

¹⁸ Betz 1995: 490.

¹⁹ Vaught 1986: 157, emphasis mine.

²⁰ Wright 2004: 70; so MacArthur 1985: 430.

back,”¹ and may result in social exclusion.² One might even say Jesus is targeting “spiritual judges.”³

This interpretation hinges upon understanding the verb “judge” (κρίνω) as a fundamentally malevolent activity. Betz writes, “The context clearly implies that *krinein* refers to the perpetual human obsession to criticize and correct the behavior of other people.”⁴ Therefore, many commentators readily adopt the Lukan addition “condemn”—understood as a negative and offensive attitude—to define “judge.”⁵

But “judging,” according to the standard line, is more than a mere *inward* attitude. Judging is not just a posture of defence which retreats inwardly; it goes on the offensive, exercising personal opinion and making character judgements upon others.⁶ “Do not judge” is therefore a prohibition against those who wish to divide between, “good people, for example, ‘myself,’ and bad people, who are not ‘like me’.”⁷ It is the Pharisees, furthermore, who typify this aggressive, morally superior attitude.⁸ According to Davies and Allison:

Because so much of the sermon on the mount contrasts the Pharisees with the followers of Jesus, and because, in the synoptic tradition, the Pharisees are so often presented as wrongly passing judgement on others (e.g. Mt 9.10-13; 12:1-8; Lk 7.39; 15.1-2; 18.9-14), the command not to judge may in part be intended to implicate the Pharisees, those who, in Matthew’s opinion, condemn and judge others.⁹

¹ Bullinger (1504-1575) cited in Luz 1989: 414.

² Cf. Vaught 1986: 157; Jones 1994: 47.

³ MacArthur 1985: 430.

⁴ Betz 1995: 490.

⁵ Plummer 1898: 189; Lenski 1943: 288; Trilling 1969: 128; Hill 1972: 146, 147; Hendriksen 1973: 357; Ellis 1974: 116; Marshall 1978: 265; Guelich 1982: 350; Hendry 1983: 114-115; Hendrickx 1984: 151; Schweizer 1984: 126; France 1985: 142; MacArthur 1985: 430; Vaught 1986: 156, 157; Bullinger (1504-1575) cited in Luz 1989: 414; Luz himself 1989: 415; Blomberg 1992: 128; Malina and Rohrbaugh 1992: 67; Morris 1992: 165; Garland 1993: 85; Gundry 1994: 120; Allison 1999: 152; Bovon 2002: 241; Lioy 2004: 172; Wright 2004: 69; Nolland 2005: 318-319; Witherington 2006: 155.

⁶ Hendriksen 1973: 356.

⁷ Wierzbicka 2001: 182.

⁸ Gundry 1982: 121; Talbert 2004: 131.

⁹ Davies and Allison 1988: 668 followed by Turner 2008: 204. Cf. Lenski 1943: 288; MacArthur 1985: 429.

Betz, likewise, says those with a judgemental attitude, “put themselves ... into a position of ‘holier than thou’,”¹ and affirms that the “typical characters are the Pharisees.”²

Numerous gospel episodes supposedly support this. Betz cites the parable of the Pharisee and the tax collector (Luke 18:9-14), and points to the older brother in the parable of the prodigal son (Luke 15:25-32).³ In the quote above, Davies and Allison cite similar texts to illustrate the Pharisees’ judgementalism: two episodes in which the Pharisees critique Jesus for dining with “sinners” (Matt 9:10-13; Luke 15:1-2); the scene in which Pharisees question Jesus’ disciples for eating grain on the Sabbath (Matt 12:1-8); the sinful woman anointing Jesus in the presence of the Pharisees (Luke 7:39); and (like Betz) the parable of the self-righteous Pharisee and the penitent tax collector (Luke 18:9-14). These snapshots of Jesus’ ministry highlight the supposed judgemental attitude of the Pharisees towards sinners.⁴ And while many of these pericopes could be understood to concern the Pharisees’ regard to uphold the law, these passages are taken to be about the morally superior attitude of the Pharisees and their posture towards others, and therefore are used in support the nonjudgementalism Jesus supposedly teaches in Matt 7:1-5.

Another oft-cited passage supposedly demonstrating the Pharisees’ typical “holier than thou” attitude while simultaneously proving that Jesus practiced the kind of tolerance he teaches in Matt 7:1-2 is the episode of the woman caught in adultery in John 7:53-8:11.⁵ Indeed, “let the one ... without sin be the first to cast a stone” (John 8:7) may be quoted in popular circles nearly as often as “do not judge” is in order to prove Jesus’ nonjudgementalism.

The message of Matt 7:1-5/Luke 6:37-38, 41-42, according to most commentaries then, is something along these paraphrased lines: “Do not be judgemental and intolerant,

¹ Betz 1995: 490; cf. Wierzbicka 2001: 183. Kelly 1868: 126 argues similarly with regard to 7:6.

² Betz 1995: 490, f.n. 524; cf. Ellis 1974: 116; Zahn 1984: 302; Bock 1994: 610; Gundry 1994: 121; Green 1997: 275; Wierzbicka 2001: 181-182.

³ Betz 1995: 490, f.n. 524 followed by Wierzbicka 2001: 181-182.

⁴ Schweizer (1976: 168) likewise views Matt 7:3-5 as directed at “the judgmental attitude that reproached him for associating with tax collectors and prostitutes.”

⁵ Hill 1972: 147; Marshall 1978: 270; Guelich 1982: 353; Hendry 1983: 122, f.n. 12; Hendrickx 1984: 151; Luz 1989: 416; Wierzbicka 2001: 182-183.

having a harsh and critical attitude. After all, Jesus, unlike the Pharisees, did not act ‘holier than thou’—better than everyone else.”

A number of problems, however, arise from the above reading. For instance, does, “you will be *sternly* judged by God if you are severe in judging others,”¹ produce an adequate eschatological deterrent? If a *harsh*, judgemental attitude on earth meets merely a *harsh*, judgemental attitude from God, are violators of this prohibition to expect mere divine guilt-trips as a consequence?² Clearly the consensus reading has the potential of breaking down into a farce.

Furthermore, we need not assume κρίνω has only one, negative meaning—that of making character judgements. In my view it is inaccurate to assume that any and all judging is negative. On the contrary, “judgment is *neutral* in intent.”³ Judging, therefore, whether understood as an attitude or otherwise, is not intrinsically negative and condemnatory. Judging itself is a neutral act which can *result* in either a positive or negative evaluation.⁴ This is not to say that judging is never biased. Judgement, of course, can be made partially or impartially. Judging itself, however, need not be regarded as fundamentally malevolent. Some commentators of Matt 7:1-5 therefore rightly emphasize the need for discernment and moral clarity (see below).

There are, however, more serious questions begged by the consensus reading of “do not judge.” Questions such as, How can such a position be reconciled with Jesus’ very harsh and critical denunciation of the scribes and Pharisees later in Matthew’s gospel (23:1-36) and in Matthew’s Sermon itself (5:20; 6:1-18)?⁵ Or how can Matthew picture Jesus criticizing his listeners using the abrasive epithet “hypocrite” (Matt 7:5) in the very same teaching in which he faults his listeners for their failure to be gentle and non-judgemental? If “do not judge” is an exhortation against having a harsh or critical attitude, it would seem

¹ Filson 1971: 104, emphasis mine.

² Turner 2008: 205 takes this line.

³ Hendry 1983: 114, emphasis mine. Cf. Vaught 1986: 156.

⁴ Cf. Blomberg 1992: 127.

⁵ So Davies and Allison 1988: 668; Talbert 2004: 136-137; Hauerwas 2006: 84; Witherington 2006: 154. Theologian Peter J. Leithart (2003: 53) gauges, “the whole structure of the Sermon on the Mount [as] confrontational”; MacArthur (1985: 431) overstates the matter but nevertheless strikes a similar note: “No more controversial or judgmental sermon has ever been preached.”

that Matthew clumsily portrays Jesus too as a hypocrite—guilty of the very sin he condemns.¹

3.2. Judging is Prohibited because we, being Evil, are Blind to our own Faults (Matt 7:3-5)

A second characteristic of the consensus, arising from the imagery of the log and the speck, provides an anthropological explanation as to why judging the morals of another is prohibited. Judging is prohibited precisely because we, being utterly depraved, will never be able to remove all of the sin from our lives and therefore will never be in a morally adequate position to question the faults of another. Any judging we engage in is, therefore, unavoidably hypocritical. Consequently, all judging should be left up to the only perfect and sinless judge—God. Davies and Allison provide the typical perspective:

μὴ κρίνετε implies that the individual, acting upon what Luther called “self-centred wisdom”, is playing the judge (cf. Jn 5.30). He is taking up a rôle he should not be playing because it is reserved for the only capable judge, God.²

The log and speck imagery, then, is meant to shock disciples out of denial concerning their own sinfulness.³ This has a psychological effect, shifting the focus from the shortcomings of others to one’s own faults, thus discouraging a judgemental attitude towards others. This Reformation reading of Matt 7:3-5 deserves extended comment to tease out its full implications.

First, there seems to be an implicit assumption of an inherent inability to remove or even recognize one’s own sin. Jesus is reckoned to be teaching that because “we will never be mature”⁴ nor holy,¹ and because there will always remain, “a blindness to [our]

¹ Cf. Bovon 2002: 250; Turner 2008: 205.

² Davies and Allison 1988: 668. Cf. Allison 1999: 152.

³ Nolland 2005: 319.

⁴ Vaught 1986: 161.

own failings,”² we will never be in a position to judge another. This interpretation hinges upon understanding the log and speck in 7:3-5 as generally signifying “moral failures.”³ “Κάρφος stands for small moral defects,” explain Davies and Allison, “while its antithesis, δοκός, stands for sizeable moral defects.”⁴ Since we “will never be able to get rid of all [our] own hindrances,” comments David Hill, we can never “see absolutely clearly”⁵ to judge others. The reasoning is that no one could ever be objective enough about another, precisely because of his or her own failings.⁶ “There is so much evil in ourselves, that we should be most careful how we condemn it in others.”⁷ The commandment to remove one’s own “log” before attempting to remove another’s “speck” (7:5) is therefore understood by some as deeply ironic.⁸ So Hendrickx can quip, “since you will never be able to get entirely rid of your ‘log’, never attempt to remove the ‘speck’ in your brother’s eye. Removing the ‘log’ from your own eye will take a lifetime!”⁹ The message, then, is clear: “No man is free from sin, and therefore no man has the right to condemn another.”¹⁰

This inability or refusal to deal with one’s own moral inadequacies geneally, we are told, is what Jesus criticizes when he says, “take the log out of your own eye.” Jesus’ teaching, then, targets those in deep psychological denial of their own personal shortcomings. “By judging others,” Bonhoeffer writes, “we blind ourselves to our own evil.”¹¹ This is the person who “blinds oneself by rationalizing away one’s guilt.”¹²

Carl Vaught emphasizes how such judgementalism, “often says more about the one who makes the criticism than it does about its target.”¹³ “Jesus . . . knows that the

¹ Wierzbicka 2001: 184.

² France 1985: 142. So Bonhoeffer 2003: 129; Witherington 2006: 155.

³ Blomberg 1992: 128; Wright 2004: 70; cf. Hunter 1953: 83; Ridderbos 1987: 144.

⁴ Davies and Allison 1988: 672; Allison 1999: 153. Cf. Lenski 1943: 290; Miller 1963: 82; Witherington 2006: 156. Cf. Zahn 1984: 304.

⁵ Hill 1972: 147.

⁶ Wierzbicka 2001: 184; Bonhoeffer 2003: 127. Cf. Manson 1930: 72.

⁷ Gibson 1900: 92.

⁸ Hill 1972: 147; cf. discussion in Gundry 1982: 121-122; Hendrickx 1984: 152-153; France 1985: 143; Betz 1995: 488.

⁹ Hendrickx 1984: 153; so Hill 1972: 147.

¹⁰ Manson 1949: 57.

¹¹ Bonhoeffer 2003: 129. So Augustine (cf. Hauerwas 2006: 86).

¹² Keener 1999: 241.

¹³ Vaught 1986: 157.

criticism of others often occurs in inverse proportion to one's own spiritual condition," he explains.¹ He further describes this psychological process:

The more I condemn myself unconsciously, the more severe my criticism of others, and the more I criticize another, the more often a disparity exists between the explicit standard I apply to myself and the standard I employ in judging others. Judgment of another is often the externalization of an inner cauldron ...²

Not only is such criticism presented as revealing the critic's inner psychological state, it also produces a negative emotional response from the criticized. "Psychologically ... a critical spirit receives from others a harsh response."³ Bruner writes, "critical persons feel (psychologically) and receive (socially) the same devastating criticism they dispense, and these experiences are the source of much psychic and social distress."⁴ This "psychological sense"⁵ of Jesus' words understands "judging" as a disposition which affects one's psyche for good or ill.

Therefore, since we are utterly sinful and incapable of objectivity, all judging should be left to God who is sinless and therefore the only capable judge.⁶ Only God, the reasoning goes, can look into the recesses of the human heart to judge a person's motives.⁷ T. W. Manson writes, "the whole business of judging persons is in God's hands, for He alone knows the secrets of men's hearts."⁸ To presume to judge, therefore, is "to play God."⁹ "Judgement is God's prerogative alone," stresses Hagner.¹⁰ "The final

¹ Vaught 1986: 158.

² Vaught 1986: 160. So Robinson 1928: 60.

³ Mounce 2002: 64.

⁴ Bruner 1987: 273.

⁵ Bruner 1987: 273.

⁶ Argyle 1963: 60; Miller 1963: 82; Tinsley 1965: 70; Trilling 1969: 128; Schweizer 1976: 168; Guelich 1982: 350; Hendrickx 1984: 151; MacArthur 1985: 437; Vaught 1986: 159; Davies and Allison 1988: 668; Hagner 1993: 169; Bock 1994: 606; Wierzbicka 2001: 183; Bonhoeffer 2003: 127, 129; Witherington 2006: 155; Turner 2008: 204.

⁷ Miller 1963: 82; MacArthur 1985: 433; Vaught 1986: 159

⁸ Manson 1949: 56; cf. Cox 1952: 60; Ridderbos 1987: 144; Allison 1999: 152.

⁹ MacArthur 1985: 433; Wright 2004: 70.

¹⁰ Hagner 1993: 169. So Miller 1963: 82; Ellis 1974: 116; Marshall 1978: 265; Bovon 2002: 242.

judgment belongs to God alone,” Keener explains, “and those who seek to judge others now usurp God’s position.”¹

Yet human beings seemingly cannot help but judge, the argument goes, even if such judging be hypocritical. “This malevolence manifests itself in a secret eagerness to find fault.”² “Human nature, being what it is,” Betz tells us, “tends to exaggerate the flaws of others and to overlook one’s own flaws.”³ Manson concisely summarizes this paradox: “our natural inclination is to make ourselves happy and our neighbours virtuous.”⁴ “What Jesus is concerned about,” explains Wierzbicka, “is ... the presumption of condemning other people (who do bad things) as bad people and setting ourselves above them as their judges—as if we were not like them ourselves and never did bad things.”⁵ Allison writes, “human beings unhappily possess an inbred proclivity to mix ignorance of themselves with arrogance toward others ...”⁶ Such statements carry the implicit assumption in them that any and all “judging” is inherently hypocritical. This assumption is clear in Luz’ comment that, “It seems to me questionable in Matthew’s sense whether then the assistance of the brother or sister, whose log was removed, at the removal of the splinter can still have the character of ‘judging’.”⁷ Bonhoeffer, likewise, assumes it is judging *itself* which is intrinsically evil, not a certain kind of judging.⁸ Accordingly, Luz sees the cessation of all human judging as the proper eschatological goal.⁹ According to this reading of Matt 7:3-5/Luke 6:41-42 then, judgemental disciples of Jesus are guilty of Pharisaic hypocrisy. Indeed, “in the hearts of all, including even Christ’s followers, there houses a Pharisee.”¹⁰

The solution to this state of denial is to realize that we have offended God infinitely more than our brother or sister could have ever offended us. Therefore, we must acknowledge how much greater a debt God has forgiven us of, in comparison to any debt

¹ Keener 1999: 240.

² Morison 1870: 111.

³ Betz 1995: 492.

⁴ Manson 1949: 58; cf. Hendrickx 1984: 151.

⁵ Wierzbicka 2001: 181.

⁶ Allison 1999: 153; also quoted approvingly in Witherington 2006: 155.

⁷ Luz 1989: 418.

⁸ Cf. Bonhoeffer 2003: 129.

⁹ Luz 1989: 416.

¹⁰ Hendriksen 1973: 358.

we might need to forgive a brother of.¹ “Does not the very word ‘plank’ hint that our own sinfulness before God quite dwarfs our brother’s fault?” asks Hunter.² Some even compare the log and the speck analogy in 7:3-5 to the large debt forgiven by the King (God) and the small debt not forgiven by the unmerciful servant in the parable of Matt 18:23-34.³ According to Luz, therefore, Jesus’ “do not judge” teaching “recommends limitless forgiving,” just as Jesus’ parable of the unmerciful servant does.⁴

It is this “self-conscious admission of one’s own spiritual poverty”⁵ and debt before God⁶ which serves to shock Jesus’ listeners out of this state of psychological denial. In this way, the prohibition to “take the log out of your own eye” becomes an instrument “for introspection and self-evaluation.”⁷ The disciple is now “conscious of his own guilt.”⁸ At the very least, such recognition of one’s own debt to God results in a dramatic decrease in judging others⁹; at best, it may even qualify one “to pass moral judgment on and ... help others.”¹⁰ Guelich summarizes:

The force of the rhetorical questions (7:3-4) shocks one into realizing one’s own great failures and liability at the last judgment and leads to the seeking of forgiveness and mercy as a sinner. Only then, second, as a forgiven sinner to a sinner, can one go with the humble desire to help correct a brother whose failure, though visible, was of lesser significance than one’s own.¹¹

¹ Fenton 1963: 108; Ridderbos 1987: 144; Schlatter cited in Luz 1989: 416, f.n. 26; Luz himself 1989: 416; Liroy 2004: 173; cf. Hendrickx 1984: 151.

² Hunter 1953: 83; cf. Ridderbos 1987: 144.

³ Fenton 1963: 109; Hendrickx 1984: 151; Luz 1989: 416; Mounce 2002: 65.

⁴ Luz 1989: 416. So Tolstoy 1909: 43-44.

⁵ Vaught 1986: 163.

⁶ Trilling 1969: 129; Luz 1989: 416; Liroy 2004: 173.

⁷ Brooks 1985: 83, 84; Filson (1971: 104) writes, “Man’s chief and most exacting criticism should be self-criticism.”

⁸ Ridderbos 1987: 144.

⁹ Liroy 2004: 173.

¹⁰ Ridderbos 1987: 144; so Schlatter in Luz 1989: 416, f.n. 26.

¹¹ Guelich 1982: 31. Guelich reads this viewpoint into the entire Sermon: “confronted by the humanly impossible demands of 5:21-7:12, one turns again to God in destitution and with empty hands in search of the right relationship with God and others” (31).

But was Jesus implying such a complex and intricate theological anthropology when he said, “take the log out of your own eye”? At first blush, this would seem to be the case. But upon closer inspection, this point too breaks down.

Is all judging fundamentally hypocritical? Do all hearts “house a Pharisee”? Or are there some Nathanaels “in whom there is no guile?” (John 1:47). If Jesus assumes that his listeners have an inherent *inability* to remove or recognize their own shortcomings, why would he bother to exhort them to, “first cast out the log from your own eye” and then assume the result would be that they, “will see clearly to cast the speck out of the eye of your brother”? Would not the command “do not judge” in 7:1 be enough without the supposed irony of 7:5? While one may never be completely objective, the text assumes that a level of acceptable objectivity can be reached.¹

It seems that integrity, rather than objectivity, is the issue Jesus is driving at. The problem is not so much “unjustifiable condemnation”²—that is, condemning the innocent. For, “unless v. 5 is to be read as sarcastic (when the beam is removed, the speck will be found to be imaginary), it indicates that there is in fact a fault in the *brother*.”³ Even if the larger log is removed, “the splinter of the brother or sister remains a splinter,” and therefore remains to be dealt with.⁴ The prescription of how to deal with a sinning brother in Matt 18:15-17 would seem to affirm this. Therefore, the issue in 7:3-5 is not *unjustifiable* judging but rather *hypocritical* judging.⁵ Gundry is therefore right to stress that Matthew’s “emphasis [is] on *taking* the speck or plank out of the eye rather than on the *presence* of the speck or plank in the eye,” and therefore, rightly reasons that, “Jesus does not teach the wrongness of taking a speck out of a brother’s eye . . . rather, Jesus teaches the wrongness of doing so with the larger sin . . . on one’s own part.”⁶ Likewise, France’s observation is apropos: “the hypocrite’s error is not in his diagnosis, but in his failure to apply to himself the criticism he so meticulously applies to his brother.”⁷ The

¹ Cf. Wierzbicka 2001: 184.

² Albright and Mann 1971: 85; so Allen 1977: 67.

³ France 1985: 143.

⁴ Luz 1989: 417. So France 1985: 143; Vaught 1986: 161; Bruner 1987: 274-275; Morris 1992: 167; Garland 1993: 85; Gundry 1994: 122; Green 1997: 279; Wright 2004: 70.

⁵ Cf. Zahn 1984: 305; Betz 1995: 489; Keener 1999: 240; Witherington 2006: 154, 155.

⁶ Gundry 1982: 121-122; cf. Gundry 1994: 122.

⁷ France 1985: 143. Cf. Filson 1971: 104; Mounce 2002: 64

hypocrite is not an *inaccurate* judge but a “*perverse* judge.”¹ The point, then, cannot be that *all* judging is hypocritical; indeed, the existence of *hypocritical* judging assumes the possibility of genuine judging as well.

Furthermore, is it realistic—even *psychologically* speaking—to assert that humans are never to make value judgements, moral or otherwise? Hendry argues alternatively that, “it is an inescapable psychological fact that every person we meet makes an impression on us.”² Is Jesus really asking his disciples to live up to such an unattainable ideal? If so, why has God given humans the faculty of conscience—a guide for making such judgements?³ Such innate judgements seem unavoidable.

Granted, there is much wisdom in realizing that “the cure for [hypocrisy] is a mirror”⁴ and that, “man’s chief and most exacting criticism should be self-criticism.”⁵ We can heartily affirm with Augustine that we should look for evil first and foremost within our own souls before looking “out there.”⁶ This principle is found throughout ancient literature as sage advice.⁷ But is this the simple point the Matthean Jesus wished to make when he said, “take the log out of your own eye”? Or could he have been using the principle of introspection to refer to something else ... something more specific to be introspective about?

Is it accurate, in light of the biblical witness, to say all judging should be left to God? In Matthew and Luke, which both record Jesus’ “do not judge” teaching, Jesus promises the twelve disciples that they will judge the twelve tribes of Israel (Matt 19:28/Luke 22:30; cf. Matt 16:19).⁸ They may judge on the ultimate authority of God and his agent Jesus, but they judge nonetheless.⁹ Such authority may be understood as having sovereign authority over their subjects, but one could argue that legal judging is part and parcel of such ruling. Furthermore, as the Anabaptists understood, Matt 18:15-17 assumes that a disciple can and should point out and confront the “fault” of a brother.

¹ Bengel cited in Luz 1989, 414; emphasis mine.

² Hendry 1983: 113.

³ Hendry 1983: 120-121.

⁴ Caird 1979: 106.

⁵ Filson 1971: 104.

⁶ Cf. Hauerwas 2006: 86.

⁷ Cf. Keener 1999: 240-241.

⁸ So Nolland 2005: 318.

⁹ Cf. Hendry 1983: 117-118; Nolland 2005: 318. James 4:12 should likely be read in this same way; cf. chapter two.

How can Matthew present a Jesus who, on the one hand, teaches that humans are never to judge and, on the other hand, teaches his disciples how to judge correctly and promises they shall judge in the new creation? Perhaps most crucially, Matt 7:5 which assumes that proper judgement can and should be made—regardless of one’s interpretation of it—is seemingly rendered meaningless if any and all judgment is wrong.

It is perhaps understandable that interpreters, building upon Reformed tradition, automatically default to this theology when a passage with such aphoristic and seemingly contextual-less sayings is presented to them. To read Matt 7:3-5 with such a Reformed theological anthropology in mind, however, does not seem to do justice to this text.

3.3. The Absoluteness of this Interpretation and its Qualifications (7:1-5/Luke 6:37-38, 41-42)

Since our moral deficiencies are inescapable, the implication is that we should *never* judge. “Judging others is completely excluded, since we can never make ourselves perfect.”¹ In other words, the prohibition not to judge is *absolute*. However, interpreters variously qualify this strict commandment, thus revealing an irreconcilable contradiction within the consensus view. The following explicates this incongruity.

A number of commentators understand the prohibition in 7:1-2 as absolute, forbidding judging altogether.² This “*total* prohibition”³ means Jesus bids us never to judge at all. David Hill clarifies:

This is not simply a recommendation to be moderate in judgment on others. The meaning is that, if you condemn, you exclude yourself from God’s pardon ... these sayings ... are not intended to set forth conditions

¹ Marshall 1978: 270.

² Manson 1949: 56-57; Hill 1972: 146-147; Schweizer 1976: 168, 169; Marshall 1978: 267, 270; Beare 1981: 190; Guelich 1982: 349-351; Gundry 1982: 120; Hendrickx 1984: 150, 152-153; MacArthur 1985: 433; Ridderbos 1987: 144; Luz 1989: 416; Evans 1990a: 337, who understands it to be “an absolute eschatological ethic”; Green 1997: 275; Keener 1999: 239; Bonhoeffer 2003: 127; Hauerwas 2006: 85.

³ Guelich 1982: 351, emphasis mine.

for legitimate judging: they are meant to exclude all condemnation of others.¹

Davies and Allison even hold that μὴ κρίνετε, ἵνα μὴ κριθῆτε “reverses the *lex talionis*,”² so that by refraining from any and all judging, one avoids being judged.

Some, however, point out the seeming contradiction between the absolute prohibition *against* judging in 7:1 and the exhortation (after removing one’s log) *to* judge in 7:5.³ Interpreters are therefore forced in one of two directions. Commentators either opt to understand 7:5 as pure irony, or they qualify this seemingly absolute prohibition. David Hill advocates the first position.

Hill acknowledges that verse 5, “would seem to contradict what precedes [in 7:1-2] by allowing judgment of others after self-judgment has taken place.”⁴ However, since he understands the commandment in 7:5 to remove one’s own “log” as deeply ironic, he likewise believes verses 3-5 “are meant to exclude all condemnation of others.”⁵ For all its rigidity, at least Hill’s reading preserves the logic of the argument of 7:1-5.

Most interpreters, however, even though they may understand 7:1-2 as absolute, provide one or more qualifications to this seemingly rather unconditional prohibition. Almost inevitably, interpreters must admit, “there is ... a limit to not judging.”⁶ “Whatever v. 1 means,” writes Ivor Jones, “it does not imply avoiding judgement altogether.”⁷ The following are typical qualifications.

Interpreters inevitably admit that not all judgements are malevolent. Therefore, some argue that such judgements are “an inescapable aspect of human existence.”⁸ “It is

¹ Hill 1972: 146-147.

² Davies and Allison 1988: 668.

³ Chrysostom in Simonetti and Oden 2001: 147; Hill 1972: 147; Schweizer 1976: 168; Gundry 1982: 121-122; Hendrickx 1984: 152-153; Brooks 1985: 83; France 1985: 143. Indeed, Guelich (1982: 350) even observes that the practice of innocuous judging in *verse 2*, “appears incongruous with the absolute prohibition of judging [in verse 1]”; cf. Filson 1971: 104.

⁴ Hill 1972: 147.

⁵ Hill 1972: 147. Gundry (1982: 121-122), France (1985: 143) and Betz (1995: 488) reject this view.

⁶ Strecker quoted with approval by Talbert 2004: 137.

⁷ Jones 1994: 47. So Garland 1993: 85.

⁸ Vaught 1986: 156. So Hendry 1983: 119.

inevitable that we should hold opinions,” writes Robinson, “and almost inevitable that we should express them.”¹ Betz takes a slightly different angle:

It is true that human conduct inevitably involves taking the measure of each other; in this way human society establishes place, rank, affiliation, and rewards. ... This activity is acknowledged by the saying, but it is not condemned; it is observed as part of life.²

Such innate judgements, it is argued, cannot be avoided.

A second qualification draws upon practical wisdom, arguing that although we are not to be judgemental, Jesus is not teaching his followers to disregard their “critical faculties”³ or cease engaging in “critical thinking.”⁴ For, “it would ... be futile to forbid people to exercise their faculties of discernment.”⁵ “‘Don’t judge’ does not mean ‘don’t think.’”⁶ While they are told not to judge, the argument goes, “of course the disciples must discriminate”⁷ and make “careful judgements,”⁸ for “*right discrimination* ... is different from *ensorious judging*.”⁹ Indeed, such positive critical discernment aids one in decision-making.¹⁰

A third qualification balances the absoluteness of 7:1-2 with a reminder of the need for *moral* discernment. While exegetes may see some merit in tolerance, they often cannot reconcile the toleration of questionable ethics with the moral claims made by Jesus and/or the Christian faith. This moral qualification guards believers against sliding into a complete and utter adherence to tolerance. Moral discernment is needed precisely

¹ Robinson 1928: 60. So Hendry 1983: 113.

² Betz 1995: 490.

³ Thompson 1972: 116; France 1985: 142; Davies and Allison 1988: 674; Garland 1993: 85; Allison 1999: 155; Mounce 2002: 64; France 2007: 274.

⁴ Davies and Allison 1988: 668. So Schlatter 1957: 240; Bruner 1987: 272; Morris 1992: 164. Cf. Witherington 2006: 154.

⁵ Davies and Allison 1988: 668; Morris 1992: 164. So Hendriksen 1973: 357; Marshall 1978: 265-266; Hendry 1983: 113; Bruner 1987: 272, 275; Morris 1992: 164, 168; Keener 1999: 240; Bovon 2002: 242. Similarly Keener 1999: 240.

⁶ Bruner 1987: 275.

⁷ Argyle 1963: 60; cf. Hendriksen 1973: 357; Morris 1992: 164.

⁸ Jones 1994: 47. Cf. MacArthur 1985: 434.

⁹ France 1985: 144, emphasis mine.

¹⁰ Brooks 1985: 83; Vaught 1986: 156; Jones 1994: 47.

because without it, “[believers] could never choose between true and false religion.”¹ Büchsel quips, “this [prohibition against judging] does not imply flabby indifference to the moral condition of others nor the blind renunciation of attempts at a true and serious appraisal of those with whom we have to live.”² Some scholars specifically single out pluralism and/or moral relativity as phenomena which Jesus’ prohibition does not promote.³ Scholars of such opinion are adamant that “do not judge” does not encourage abstinence from distinguishing between right and wrong, good and evil.⁴ Hendry’s argument is insightful:

If the commandment of Jesus is absolute, if it forbids judgment of any kind, favorable or unfavorable, then it would seem to follow that we are forbidden to call anyone good. Can we really carry it that far?⁵

“The admonition not to judge,” Mounce explains, “is often taken incorrectly to imply that believers are not to make moral judgments about anyone or anything.”⁶ On the contrary, “It is a distinctive mark of the human being ... that it is capable of forming moral judgments, of determining that there are things we ought to do and things we ought not to do”,⁷ “truth is one of the things we value.”⁸ Furthermore, R. T. France argues, “the use of our critical faculties in making *value-judgments* is frequently required in the New Testament.”⁹ These scholars are keen, and in my view justified, to guard against understanding “do not judge” in Matt 7:1 as promoting moral relativism or pluralism.¹⁰

¹ Davies and Allison 1988: 668.

² Kittel 1984: 939. So Marshall 1978: 266. Beare 1981: 189; MacArthur 1985: 431; Vaught 1986: 157; Bonhoeffer 2003: 128.

³ MacArthur 1985: 430, 437; Wright 2004: 70. Not surprisingly, these are authors who also occupy ecclesiastical roles and are thus more sensitive to such congregational challenges.

⁴ Kelly 1868: 118; Manson 1949: 56; Cox 1952: 60; Brooks 1985: 83; Hendry 1983: 124; Garland 1993: 85; Bock 1994: 605, 607; Talbert 2004: 137. Hauerwas (2006: 85) states it differently: “For those who follow Jesus to act as if they can, on their own, determine what is good and what is evil is to betray the work of Christ.”

⁵ Hendry 1983: 118.

⁶ Mounce 2002: 64; so Ellis 1974: 116-117; Fitzmyer 1970: 642; Caird 1979: 106; Ridderbos 1987: 144; Hagner 1993: 169.

⁷ Hendry 1983: 119.

⁸ Vaught 1986: 156.

⁹ France 1985: 142, emphasis mine.

¹⁰ Cf. Nolland 2005: 317-318; Turner 2008: 205.

Perhaps the oldest qualification still maintained today, which we observed earlier as characteristic of 19th and early 20th century commentators, is that Jesus is targeting private correction between individuals when he says, “do not judge.”¹ Gundry, for instance, thinks Matt 5:21-26 and 7:1-2 prohibit *private* judging whereas Matt 18:15-18 describes approved, *public* judging.² Bock likewise understands “do not judge” as “fundamentally an individual ethic” rather than a public one.³

Recognizing the tension between the absolute command in 7:1-2 and the command to proper judging in 7:3-5, commentators hedge in one of two ways: they preserve the logic of the text’s argument to absolutely prohibit judging in 7:1-2, but violate the command to make proper judgements in 7:3-5 (Hill); or (as most do) they preserve the right—by qualification—to make certain judgements according to 7:3-5, but violate the logic of 7:1-2 which absolutely forbids judging. The key feature of the first position is whether to understand 7:5 as ironic or not; otherwise the command not to judge in 7:1 contradicts the command to judge properly in 7:5. But few attempt to defend 7:5 as ironic. For we have already seen that the brother with the splinter is at fault in some way too. Gundry, therefore, strikes an important note when he points out that to see 7:5 as ironic “is to miss the distinction between judging self-righteously, which is prohibited, and helping a brother overcome sin, which is not merely allowed, but commanded.”⁴ Furthermore, as Betz notes, the hyperbole of 7:5 is meant to highlight the dangers of fraternal correction⁵; but one would be hard pressed to read it as a statement of empty irony which serves no purpose but to badger its hearers. Indeed, the charge of hypocrisy in 7:5 loses all force if the statement is sarcastic, assuming it impossible to judge without hypocrisy in the first place. Therefore, rather than being ironic, 7:5 seems to *assume* that both removing the log and seeing clearly can and should be done.⁶ As Derrett comments, “Jesus agrees (7.5c) that a brother *should* rebuke a brother ...

¹ Cf. Hunter 1953: 82; Caird 1979: 106; Gundry 1982: 120; Bock 1994: 607; Allison 1999: 152; Keener 1999: 239.

² Gundry 1982: 120; Gundry 1994: 120.

³ Bock 1994: 607.

⁴ Gundry 1982: 121; Gundry 1994: 121, citing Luke 17:3; Gal 6:1; 1 Tim 5:20; 2 Tim 4:2; Titus 1:13; 2:15. So Ellis 1974: 116-117; Hunter 1953: 82; MacArthur 1985: 431; Wierzbicka 2001: 184.

⁵ Betz 1995: 488, 493. So Nolland 2005: 320, f.n. 444.

⁶ So Morison 1870: 113; Schweizer 1976: 169; Blomberg 1992: 128; Gundry 1994: 122.

Christian rebuke is *not* outlawed.”¹ Chrysostom, furthermore, saw 7:5 itself as Jesus’ own rebuke to his listeners.² Moreover, not only does 7:5 call for proper judging, so does 7:2!³ Indeed, if all judgement is wrong, 7:2 and 7:5 would seem to be rendered meaningless.

Indeed, “do not judge” is surely not meant to prohibit “helpful correction”⁴ or “constructive criticism and assistance.”⁵ Rather, as has already been argued, “it is intended to restrict *hypocritical* correction.”⁶ Betz provides a good summary of this qualification:

The SM passage has no intention to eliminate fraternal correction altogether, but to commend its proper usage. The dramatic and highly ironic manner in which the matter is presented draws attention to the dangers connected with the exercise of fraternal correction.⁷

The key attribute of the second position is the struggle to explain away the absoluteness of the prohibition in 7:1. If 7:2 and 7:5 assume some kind of acceptable judging is going on, then 7:1 cannot be absolute. A refutation of the various qualifications need not be given here, for there is surely some truth in most of them. Many would agree that it is human nature to judge; that we are not to lay aside our critical faculties; that guarding against pluralism and moral relativism are noble tasks; and that we can and should help a brother or sister in the quest for moral excellence. The qualification of whether Jesus in Matt 7:1-5 is speaking about private rather than public judging may be a less commendable discussion, since Matt 18:15 promotes private judging as a first step before more communal forms of judging are to occur. What should be observed here, however, is that the very urge to provide these qualifications by interpreters seem to arise from the cognitive dissonance created when the absolute prohibition not to judge clashes

¹ Derrett 1988: 276-277.

² Cf. Simonetti and Oden 2001: 147.

³ Cf. Filson 1971: 104; Guelich 1982: 350

⁴ Mounce 2002: 65.

⁵ Evans 1990b: 108. So Green 1936: 147; Blomberg 1992: 127.

⁶ Mounce 2002: 65, emphasis mine.

⁷ Betz 1995: 488. Betz (1995: 493) adds, “the rule implies that judging others is not as such a bad thing, but to do it rightly one must keep the proper procedures in mind” (so Allison 1999: 153; France 2007: 275). Cf. Hendriksen 1973: 358.

with the stark human reality that people must and do make judgement calls, and that in some cases it is beneficial to do so. Most interpreters cannot seem to accept that “do not judge” is an absolute command. But reading Matt 7:1 as absolute seems to violate the logic inherent within the text, since “do not judge” as inescapably absolute seems to contradict 7:2 and 7:5 in which it is assumed that judgement takes place.

A key question, then, lingers: Is there a way to maintain the absoluteness of the prohibition in Matt 7:1 *and* retain the assumptions of self-correction in 7:5 and therefore proper judging in 7:2, 5? For, a straightforward reading of 7:1 understands the prohibition as absolute, and a straightforward reading of 7:3-5 assumes one is actually able “first to remove the log from one’s own eye” and subsequently judge another properly. Therefore, if there is a way to understand 7:1 as an absolute prohibition without reading 7:5 as pure irony, this would preserve the logic of the text’s argument *and* avoid pressing 7:5 unnaturally. The simple answer, as has already been noted, is that Jesus is prohibiting *hypocritical* judging absolutely, rather than prohibiting absolutely any and all judging whatsoever. In my view, the prohibition should, therefore, be read as absolute. A fuller reason as to *why* it should be read this way should become clearer in Chapter four.

There is yet one final, crowning aspect to the consensus interpretation: love.

3.4. Love and Forgiveness are the Opposite of “Judging”

Especially in commentaries upon Luke’s version of the Sermon, but also in commentaries upon Matthew’s, “love” and “forgiveness” are seen as the antidote to such harsh and critical “judging.”¹ Victor Furnish similarly writes of Jesus’ ethic of love: “the meaning of the love which is commanded is apparent in Jesus’ repeated exhortations to refrain from judging others ...”² Condemnatory judgement and love are therefore seen as diametrically opposed: “At bottom ... there are only two standards for judgment ... that

¹ Plummer 1898: 189; Gibson 1900: 92; Schlatter [1929] 1957: 239-240; Balmforth 1930: 166-167; Manson 1930: 71; Green 1936: 146; Erdman 1949: 71-72; Jameson 1951: 81; Miller 1963: 81-82; Harrington 1967: 113; Trilling 1969: 128; Thompson 1972: 116, 117; Hendriksen 1973: 357-358; Marshall 1978: 267; Caird 1979: 104; Guelich 1982: 353; Bruner 1987: 273; Ridderbos 1987: 144, 146; Luz 1989: 413-414, 416, 418; Garland 1993: 85; Hagner 1993: 169-170; Bock 1994: 605, 607; Marshall 1994: 991; Green 1997: 275; Bovon 2002: 242; Bonhoeffer 2003: 127-129; Lioy 2004: 173. For Gundry (1982: 119), the opposite of judging is “doing good to others.”

² Furnish 1973: 195.

of *forgiving* love, and that of *avenging* justice.”¹ And since, “unfair or uncharitable judgments should be avoided,”² such judgementalism does not fulfil Jesus’ expectation to practice love and forgiveness. “Jesus ... urged His followers to exchange a critical and harsh spirit for one that was merciful and generous to others.”³ This implies “a forgiving, liberal spirit that ‘thinks no evil.’”⁴ Such harshness is inverted by 7:3-5 so that, “our severity should be applied to ourselves, our charity to others.”⁵ Hagner concludes that self-examination “will make more charitable one’s judgment of others.”⁶

But this notion of “love” which is the converse of judging is either understood in rather vague and general terms or left undefined altogether. The idea seems to be that of, “all-inclusive love, compromise, ecumenism, and unity.”⁷ Furthermore, this love has no prerequisites. Whereas “judging” is thought to be “conditionally offered love,” the love which is opposite judging is thought to be unconditional.⁸

When love is in fact defined, it is often understood as “gentleness.” Since the judging which Jesus prohibits is assumed to be cruel judging, “this is a warning to ‘gently scan your brother’.”⁹ Judging, if done at all, should not be mean, nasty, or too heavy-handed. It is something to be done with “delicacy.”¹⁰ Applied to the community of faith, this means “the Church cannot take up a hard, contemptuous and supercilious attitude towards those whom it regards as sinners.”¹¹ While “a harsh judgement *may* help a creature on the road to perdition,” surely a loving, gentle response is more effective at doing so.¹²

To justify love as the counter-ethic of judgementalism, appeal is made to the Golden Rule and/or the love commandment of Lev 19:18b.¹³ The logic behind such an

¹ Ridderbos 1987: 144, emphasis mine. Cf. Bonhoeffer 2003: 129.

² Cf. Hagner 1993: 169-170. So Witherington 2006: 154.

³ Lioy 2004: 173.

⁴ Manson 1930: 71

⁵ Gibson 1900: 92.

⁶ Hagner 1993: 170; cf. Witherington 2006: 155.

⁷ MacArthur 1985: 430.

⁸ Bonhoeffer 2003: 128.

⁹ Hunter 1953: 82. Cf. Hendriksen 1973: 358. Caird (1979: 106) assumes Jesus himself, “so often administered gentle reproof.”

¹⁰ Jameson 1951: 81; Vaught 1986: 161.

¹¹ Kittel 1984: 939.

¹² Manson 1949: 56, emphasis mine. Cf. Allison 1999: 153.

¹³ Cf. Albright and Mann 1971: 85; Allen 1977: 67; Beare 1981: 189; Hendry 1983: 114; Hagner 1993: The ambiguity and interchangeability between these two maxims will be discussed further in Chapter two.

appeal is reasonable enough. Leviticus 19:18b is used in Jesus' teaching on loving one's enemies in the Sermon (Matt 5:43-48/Luke 6:27-36), and in Luke's version this is juxtaposed directly with Jesus' prohibition against judging (Luke 6:37-42). So too the Golden Rule occurs in the Sermon: in Luke's section on loving one's enemies (Luke 6:31) and concluding Matt 7:1-12. It is the hypocrite of Matt 7:5/Luke 6:42 we are told who, by ignoring his own failings while critically pointing out the shortcomings of others, "violates the love commandment."¹ Leviticus 19:18b and the Golden Rule complement the prohibition against judging with such ease—both within the literary narrative and in their similarity of thought—that little further explanation need here be given.² The prohibition against (harsh) judging then, "may be regarded as one expression of the *ethic of love* that is the summary of the law and the prophets."³ In both versions of the Sermon, then, the quintessential opposite of judging is deemed to be love.

Just as Anabaptists questioned the hermeneutic of "love" which was advocated by their opponents in favor of "truth,"⁴ so we may be justified in questioning this hermeneutic of love today. However straightforward such a position might appear, it is not without difficulties. We have already observed that judging is essentially neutral. How can a trait as positive as love be deemed *opposite* judging, if judging is in fact neutral? To advocate love or charity in judging, then, seems to miss the point. I shall contend in Chapter four that love is in fact the opposite of the hypocritical judging Jesus prohibits. The "judging" Jesus prohibits, of course, shall be defined differently than "a harsh attitude."

Should not judging be done gently? Yes. For, the rebuke of a brother is to be done in gentleness as Paul indicates in Gal 6:1.⁵ But such gentleness is not the *opposite* of the process of judging and rebuke but a *necessary part of it*. Gentleness is important because without it, escalation may occur (cf. Matt 5:21-26) or damage to a brother done (cf. Matt 18:6, 10).

Presently, it is enough to rely upon Hanger's (1993: 176) explanation: "The golden rule is properly regarded as an exegesis of the great positive commandment of Lev 19:18 ... To 'love your neighbor as yourself' is the equivalent of doing to others what you would have them do to you."

¹ Hagner 1993: 170.

² This point shall be further elaborated in Chapter two.

³ Hagner 1993: 170, emphasis mine.

⁴ Yoder 2004: 182-183.

⁵ Cf. Hendriksen 1973: 358; Zahn 1984: 304; Blomberg 1992: 128; Bock 1994: 614-615.

Finally, how legitimate is it to appeal to Lev 19:18b or to its twin, the Golden Rule, to justify love as the counter-ethic of judgementalism? This question is so important that to adequately answer it, an entire chapter must first be devoted to understanding Lev 19:15-18 as a background to Matt 7:1-5 (Chapter three), before an answer to this can be suggested in Chapter four.

Although interpreters between the 17th and beginning of the 20th centuries largely seem to reject a reading of Jesus' "do not judge" teaching as referring to the law courts or at most dismiss such an interpretation as invalid (perhaps due to the extreme position of the Anabaptists), such an interpretation was at least often acknowledged as an interpretive option. Among the 100+ commentators from the middle of the 19th century to present surveyed above, however, the dominant interpretive framework—apart from a few ungenerous nods to Tolstoy—understands Matt 7:1-5 as referring to individual "judgementalism" or "intolerance." There are, however, some who stand out from this consensus.

3.5. Those who see Beyond the Consensus Position

To be fair, relatively neutral conclusions about what Jesus' words mean in Matt 7:1-5 can be drawn from some commentators.¹ Others even acknowledge the potential legal dimensions in these verses before dismissing a judicial reading in favor of the consensus.² Perhaps a more substantial contribution is the attempt to understand Matt 7:1-5 by comparison with 18:15-18. While a good number of (mostly Matthean) commentators make passing reference to Matt 18:15-18 in their comments upon 7:1-5,³

¹ Cf. Albright and Mann 1971: 85; Hendry 1983: 113-114, 121-122; Hendrickx 1984: 149-155; Luz 1989: 415; Betz 1995: 490; Nolland 2005: 319.

² Cf. Fitzmyer 1970: 641; Schweizer 1976: 168, 207; Guelich 1982: 350; Bruner 1987: 273; Derrett 1989: 56; Luz 1989: 414; Wright 2004: 69; France 2007: 274.

³ Lenski 1943: 288; Miller 1963: 82; Hendriksen 1973: 356; Green 1975: 94; Schweizer 1976: 169; Hendrickx 1984: 150; France 1985: 142; MacArthur 1985: 431; Bruner 1987: 273; Luz 1989: 418; Montague 1989: 101; Morris 1992: 164; Hagner 1993: 169, 170; Gundry 1994: 120; Jones 1994: 47; Keener 1999: 240; Nolland 2005: 319, f.n. 436; 320, f.n. 444; France 2007: 274-275, 277; Turner 2008: 206.

few take 18:15-18 seriously as a window into 7:1-5¹ so that formal “fraternal correction”² is in view in the latter. In Chapter four we shall return to Matt 18:15-18 to show—in general agreement with the Anabaptists—that 18:15-18 indeed stands in close continuity with 7:1-5 and that both are judicial in nature. But despite the merit of drawing a parallel between Matt 7:1-5 and 18:15-18, those who do so inevitably ignore or dismiss a legal interpretation of Matt 7:1-5. At least three writers since the mid-19th century besides Tolstoy, however, have intentionally chosen to understand Jesus’ “do not judge” teaching as referring to the law courts: Theodor Zahn, Adolph Schlatter, and Sjef van Tilborg.

Theodor Zahn (1838–1933), in his 1905 commentary on Matthew,³ argues that κρίνω does not mean “condemn” nor does it mean to make a moral judgement about others, but—especially when used intransitively—it has to do rather with the work of a legal judge.⁴ He therefore argues of such legal judging that, “this is not a concern of the disciples” and understands Jesus’ injunction in Matt 7:1-2 to be a prohibition against the disciples placing a legal judge in their midst. This is to prevent them from becoming subject to judicial action themselves. The idea, Zahn asserts, is that law reigns in the courtroom and the disciples are to be a community of grace. God will ultimately judge everyone, and the disciples—Jesus’ advises—will want to be treated with grace rather than law at the eschaton. This reading, Zahn argues, presents Jesus’ injunction as an achievable goal for the disciples rather than a utopian desire.⁵ Zahn does not show evidence of being influenced by Tolstoy, although his reading of Matt 7:1-2 is similar to the extent that Christ-followers are to refrain from allowing judicial proceedings in their midst.

In his 1929 commentary on Matthew⁶ Adolf Schlatter (1852–1938), similarly to Tolstoy and Zahn, understands “do not judge” to be about, “the renunciation of the law

¹ Cf. Trilling 1969: 129; Meier 1980: 69; Gundry 1982: 122; Hendrickx 1984: 149-155; Davies and Allison 1988: 673-674; Garland 1993: 85; Gundry 1994: 122; Jones 1994: 47; Betz 1995: 488, f.n. 501, 504; Allison 1999: 153-154, 155; Witherington 2006: 154, 156.

² Exceptions include: Meier 1980: 69; Davies and Allison 1988: 673-674; Betz 1995: 487; Allison 1999: 153.

³ Zahn’s commentary on Matthew was first published in Leipzig in 1905 and reprinted there in 1922. Cf. Zahn 1984.

⁴ Zahn 1984: 303.

⁵ Zahn 1984: 303-304.

⁶ Cf. Neuer 1995: 158 for a timeline on Schlatter’s publications.

court.”¹ He explains that the entire Jewish community participated in administering justice and therefore “judging” was a topic of great importance.² The disciples, furthermore, frequently experienced slander and hostility in the courts.³ Jesus’ words, therefore, admonish the disciples not to take revenge by pursuing litigation in return; they are to leave justice in God’s hands.⁴ This abandonment of vengeful litigation comes via forgiveness of one’s enemies which liberates one in a way which revenge cannot.⁵ Schlatter asserts that the kingdom of God does not come by force (i.e., extracting justice via the courts), but that the disciple is bound instead by the rule of love.⁶ Taking the fate of another into one’s own hands calls down divine justice upon oneself.⁷ For the disciple stands in the debt of God’s forgiveness and on that basis should extend forgiveness to others rather than pursue litigation.⁸ Judging is not so much repealed as it is rendered useless in light of the forgiveness of one’s neighbor, since forgiveness does not merely tolerate or manage evil but overcomes it.⁹ Schlatter’s view could be thus summarized: Jesus teaches his disciples to resist sin and evil via the higher law of love and forgiveness, rather than resist evil via strict retribution using the courts (which may escalate into retributive revenge rather than diffuse conflict).

The Dutch scholar Sjef van Tilborg (1939-2003), who references Schlatter’s commentary on Matthew in his own comments upon Matt 7:1-6,¹⁰ provides the most rigorous and tenable argument I have discovered for understanding Matt 7:1-5/Luke 6:37-42 to be about the judicial system.¹¹ What older scholars regarded as “private” judging, van Tilborg names as the “individualistic” interpretation—a reading he rejects.¹² He opts for a judicial reading of this passage and, furthermore, regards “do not judge” in

¹ Schlatter 1957: 238, “der Verzicht auf das Gericht.” F. W. Green (1936: 146-147) notes Schlatter’s position and, before rejecting it, adds that 1 Cor 6:1ff may support such a reading.

² Schlatter 1957: 238.

³ Schlatter 1957: 238.

⁴ Schlatter 1957: 239.

⁵ Schlatter 1957: 239.

⁶ Schlatter 1957: 239.

⁷ Schlatter 1957: 240.

⁸ Schlatter 1957: 240.

⁹ Schlatter 1957: 242.

¹⁰ Cf. van Tilborg 1986: 163, 325, f.n. 1.

¹¹ van Tilborg 1986: 163-188.

¹² van Tilborg 1986: 165.

Matt 7:1 to be absolute and without need of qualification.¹ He provides a biblical and historical survey of legal judges beginning with Exod 18:21 and Deut 1:17 regarding Moses' appointment of judges,² and notes that "the actual legal practice in Israel is kept within bounds by a constant critical undercurrent" provided by Israel's prophets and wisdom teachers.³ He briefly surveys what Philo, Josephus, and 'Abot say about the judicial system—including the fact that judges were to have integrity and refuse bribes. He concludes that, "in the first and second century criticism of the existing judicial system was widespread."⁴ van Tilborg further suggests that Matthew's readers may have "had bad experiences with the courts."⁵ He then does something most scholars fail to do: he looks up the non-canonical parallel sources so often cited to explain Matt 7:1-5/Luke 6:37-42 and reads them in their contexts. In so doing he demonstrates that these extra-canonical texts are likewise used in legal contexts. He sees legal overtones in the way similar measure sayings as that found in Matt 7:2 are used in other contemporary literature.⁶ Furthermore, he explains how the imagery of the log and the speck is used in *b. Baba Bat.* 15a in the context of a law court and how in *b. 'Arak.* 16b the log and the speck parable is used in a discussion of the reproof of a brother.⁷ van Tilborg provides a plausible case for understanding Matt 7:1-5 as Jesus' prophetic criticism of corrupt court practices.

Despite the efforts of Tolstoy, Zahn, Schlatter, and van Tilborg, the option of a judicial interpretation for Matt 7:1-5/Luke 6:37-38, 41-42 since the Anabaptists, has all but dropped off the hermeneutical map. Tolstoy's position smacks of anarchy and is usually dismissed out of hand. Zahn and Schlatter's works have long been ignored (especially in the English-speaking world) until recently.⁸ And although van Tilborg published his commentary on the Sermon on the Mount in English in 1986, scholars have neglected his comments upon Matt 7:1-5. For instance, in his 1995 commentary on the

¹ van Tilborg 1986: 166ff.

² van Tilborg 1986: 166-167.

³ van Tilborg 1986: 167.

⁴ van Tilborg 1986: 167-169. Cf. Schiffman 1998.

⁵ van Tilborg 1986: 169. Cf. Schlatter 1957: 238.

⁶ van Tilborg 1986: 171-175.

⁷ van Tilborg 1986: 176-177; a point also made by Derrett (1988: 273-274, 277, 280, f.n. 28; 1989: 56) who draws upon Doeve (1953: 197-199); see further chapter 3.

⁸ On Schlatter, cf. Neuer 1995.

Sermon Betz does not reference van Tilborg in his own comments upon this passage, and the bibliography of Hagner's two volumes on Matthew in 1993 does not even list it.

In the coming chapters, therefore, we shall build upon van Tilborg's important insights. What shall be added to van Tilborg's work is principally a discussion of the laws for just judging from Lev 19:15-18, 35-36 and their reception history (Chapter three), as well as how James (Chapter five) and other early Christian writers (Chapter six) make use of Jesus' "do not judge" teaching. (van Tilborg deals with none of these.) These, of course, shall inform my reading of Matt 7:1-5 (Chapter four), which in essence is the same as van Tilborg's, but which (hopefully) has more substance than his necessarily brief treatment of these verses.

Chapter Two

Visualizing a New Paradigm: Legal Judging in the Time of Jesus

For the LORD your God is God of gods and Lord of lords, the great God, mighty and awesome, who is not partial and takes no bribe, who executes justice for the orphan and the widow, and who loves the strangers, providing them food and clothing. You shall also love the stranger, for you were strangers in the land of Egypt.

—Deut 10:17-19

“The judge is the minister and steward of [God’s] judgment.”

—Philo of Alexandria

Now that the consensus reading of Matt 7:1-5 has been exposed as inadequate and a judicial reading of these verses by Tolstoy, Zahn, Schlatter, and Tilborg has been put forth as an alternative, a different context now needs to be visualized for interpreting Jesus’ “do not judge” teaching. If Matt 7:1-5 is indeed Jesus’ statement about the courts, it is important that an overview of the judicial system during the second Temple era be provided.

1. The Judiciary during the Second Temple Period

Historical records provide only a limited sketch of the inner workings of the judicial system during the second Temple era. Such reconstructions have already been done, most notably by Schürer, and space prevents another full-blown account being given here.¹ Nevertheless, from the later Mishnah, Josephus, and the earlier Philo—the principle sources from which we gain our knowledge of the judiciary during the Second Temple era—an enhanced survey of this system can be given here with a view towards highlighting how the Torah’s laws regarding the judiciary—especially the laws for just legal judging—were being applied in Jesus’ time.

1.1. Sanhedrin

¹ Schürer 1979: 199-226. See also Alexander 1988.

As Israel's exiles return from Babylon, a re-institution of the judicial system in Palestine commences with Ezra, as the Persian king Artaxerxes commissions him to appoint magistrates and judges (Ezra 7:25-26). "Elders" play an important role here.¹ The result is that during this pre-Hellenistic (Persian) period, an aristocratic council (γερουσία) forms to rule the Jewish state, which was originally headed up by the high priest.² This body was eventually replaced by five Sanhedrins under Pompeii's reorganization, with the Jerusalem Sanhedrin becoming central.³ According to Schürer, after the demise of the γερουσία,

the term συνέδριον is used here for the first time, and henceforward repeatedly, to denote the Jerusalem council. Since it is not usually applied to Greek city councils, the usage is somewhat peculiar, but is probably to be explained by the fact that the Jerusalem council was primarily regarded as a court of law (בֵּית דִּין). Indeed, this is the sense given to συνέδριον in later Greek usage.⁴

Josephus depicts a two-tiered legal system with this Jerusalem council as the Supreme Court. In the New Testament, therefore, the Jerusalem Sanhedrin, "frequently appears as the supreme Jewish court, in particular as the supreme Jewish court of justice."⁵ Anthony Saldarini's definition of this Sanhedrin describes a powerful legislative and religious body. It is,

the high priests' political council, the highest legislative body in Jewish Palestine, the supreme judicial court, the grand jury for important cases, the council of the Pharisaic school, and the final court of appeals in deciding halakic questions.⁶

¹ Ezra 5:5, 9; 6:7-8, 14; 10:8, 14. Noble and dignitaries play a similar function in Nehemiah (2:16; 4:8, 13; 5:7; 7:5); cf. Schürer 1979: 201.

² Schürer 1979: 203.

³ Schürer 1979: 202-204.

⁴ Schürer 1979: 205.

⁵ Schürer 1979: 206; cf. NT references there.

⁶ Saldarini 1992: 975.

The Sanhedrin in Jerusalem probably had authority over all of Judea during the Hasmonean era but lost some of its political clout after the death of Herod the Great.¹ When it came to Jewish law, however, the Sanhedrin in Jerusalem continued to assume *de facto* authority even over Jews beyond their immediate administrative control (e.g. the Sanhedrin's sending Paul to Damascus to arrest Christians and bring them back to jail in Jerusalem; Act. 9:1-2). "In a sense," writes Schürer, "the Sanhedrin exercised such jurisdiction over all the Jewish communities throughout the world. ... A measure of moral weight was attached to its decrees throughout the entire domain of traditional Judaism."² The Jerusalem Sanhedrin also provides a link between Rome and Jews in Palestine and preserves peace and order among the community there.³ But apart from (albeit heavy) Roman oversight, the Sanhedrin in Jerusalem held complete authority over the Jewish people in Jesus' day.⁴ If, therefore, Jesus is speaking about the courts in Matt 7:1-5, the Jerusalem Sanhedrin would likely have been in Jesus' purview, even if indirectly.

The number among the Sanhedrin in Jerusalem, again consisting of "elders," is said to be 70/72. Baumgarten suggests that since the LXX and Qumranic versions of Deut 32:8 identify the number of angels among the heavenly tribunal as corresponding to the 70 nations of the earth as seen in the table of nations from Gen 10, that this number served as a prototype for the earthly Sanhedrin.⁵ This suggestion has some merit in view of the fact that one of the Noachide commandments to be observed by all the nations preserved in Jewish thought was the need for just courts,⁶ and such a view of a Sanhedrin which would eventually be universal in scope would fit the eschatological Isaianic vision of Gentiles streaming into Jerusalem.⁷ Rabbinic exegesis, however, merely draws the number of 70/72 elders for the Sanhedrin from the 70/72 elders of Num 11:16-17 who receive the spirit of Moses to carry out their function, and it would seem we cannot go

¹ Cf. Schürer 1979: 206.

² Schürer 1979: 218.

³ Cf. Saldarini 1992: 976-977.

⁴ Schürer 1979: 200; Sanders 1992: 323.

⁵ Baumgarten (1976): 68, citing Ps 82 as an example of the interchange between celestial and human judges.

⁶ Especially *Jub.* 7:20; *t. 'Abod. Zar.* 8:4; cf. further Bockmuehl 2000: 150-162.

⁷ Isaiah 56, esp. v. 1.

much further beyond this evidence.¹ It is understandable why Jewish exegetes later justified or explained the number of elders among the Sanhedrin by appeal to the number of elders surrounding Moses in Num 11:16-17. For, the 70/72 elders of Num 11:16ff are the same 70/72 elders envisioned in Exod 24:1ff who by the rite of a blood covenant bind themselves to upholding YHWH's covenant laws of the Decalogue and the Covenant Code, which include those laws pertaining to their role as judges (cf. Exod 23:1-3, 6-9). The "elders" of Exod 24 refer back to Moses' selection of elders in Exod 18, and the *Mekilta de R. Ishmael* on Exod 18:18 makes this connection, depicting the court of Moses as comprising 72 members, 70 elders plus Moses and Aaron.² The rabbis therefore assume the Sanhedrin's existence since at least Mosaic times,³ although the elders of Moses' day were undoubtedly not as centrally organized as the later Sanhedrin—a body which was in a sense forced by foreign domination into becoming highly structured.⁴ It would seem, therefore, that in the mythical continuity between Moses' 70/72 elders and the 70/72 among the Sanhedrin, there also existed a mythical continuity between the elder's role as a judge alongside Moses and the judicial function of the elders of the Sanhedrin. Moreover, we have little reason to doubt that this number accurately reflects the historical reality during second Temple times. A colony of Babylonian Jews in Batanaea was represented by seventy distinguished men.⁵ Josephus reports that he set up 70 judges in Galilee as he defended Galilee against the Romans.⁶ Furthermore, when Josephus writes of the occasion on which the Idumeans and zealots overthrow the Temple in Jerusalem, he remarks that they then set up 70 judges in order to legally execute those they wanted to get rid of (i.e., judicial murder).⁷

This mythical continuity between Moses and later judicial scholars and judges is confirmed by the notion of an oral Torah given to Moses to guard the written Torah. Moses, of course, is depicted as the ideal judge in *'Avot*: "Moses attained merit and bestowed merit on the community. So the merit of the community is assigned to his [credit], as it is said, *He executed the justice of the Lord and his judgments with Israel*

¹ Cf. *m. Sanh.* 1:6.

² Cf. Baumgarten (1976): 75.

³ Schürer 1979: 200.

⁴ Schürer 1979: 201.

⁵ *J.W.* 2.18.6 § 482.

⁶ *Life* 14 § 79; *J.W.* 2.20.5 § 569-571; cf. van Tilborg 1986: 168.

⁷ *J.W.* 4.5.4 § 334-344. Cf. Schürer 1979: 210-211.

(Dt. 33:21).”¹ And the oral Torah governing Moses is also described by *’Avot*, which explains the guardians of the law thus: “Moses received Torah at Sinai and handed it onto Joshua, Joshua to elders and elders to prophets. And the prophets handed it on to the men of the great assembly. They said three things: ‘Be prudent in judgement.’ ‘Raise up many disciples.’ ‘Make a fence for the Torah’” (*m. Avot* 1:1). So the Mishnah envisions an oral Torah given to Moses at Sinai (if only at least “*in potentia*”²), passed on to the elders, and ultimately handed down to the “men of the great assembly”—a body supposedly to have existed from the time of Ezra to that of the high priest Simon the Righteous (cf. *m. ’Avot* 1:2). This oral Torah was intended to “make a fence for the (written) Torah.” The first saying of this oral Torah, significantly, regards delivering wise judicial verdicts—another way the written Torah is to be preserved. At least in later rabbinic times, therefore, the concept of doing justice in the courts had ideologically to do with keeping the Torah. *M. Avot* 1:1 illustrates the importance of the judicial system for later rabbinic Judaism, members of which deemed that wise judicial decisions were part and parcel of the keeping of the written law.

In order to manage so many people the Jerusalem Sanhedrin, which met in the Chamber of Hewn Stone on the Temple Mount,³ was aided (according to mishnaic tradition) by two lower courts: one at the gate of the Temple mount and one at the gate of the courtyard.⁴ But there were also smaller local courts in Diaspora cities and towns. We know more about how these smaller courts probably functioned than did the Great Sanhedrin in Jerusalem, although in all likelihood the former, smaller courts probably reflect in many ways the practices and procedures of the latter, central court.⁵ The following discussion of Diaspora courts especially bears upon our discussion of early Jewish-Christian assemblies in Chapters five and six.

1.2. Jewish Courts in Diaspora Synagogues

¹ *M. Avot* 5:18. On *Avot*, cf. Neusner 2005b: 8-11.

² Maccoby 1988: 6.

³ Saldarini 1992: 977.

⁴ Schürer 1979: 197-198. Cf. *m. Sanh.* 11:2.

⁵ Schürer 1979: 225-226.

Although Rome ruled much of the world at this time, Palestine and parts of the Jewish Diasporas East of Rome were only partially conquered—they stood on the fringes of the Empire.¹ Roman citizenship had its legal benefits, such as the protection of citizens “from arbitrary maltreatment by Roman magistrates” and judicial right of appeal to Caesar.² Nevertheless, while the adoption of the “pervasive legal culture” of Rome was the quintessential requisite of Roman citizenship,³ this was very limited in Palestine and the Jewish Diasporas of the first century.⁴ The Roman Empire’s heterogeneity, furthermore, required tolerance for a plurality of belief and practice.⁵ Rome’s tolerance of the Jewish people—like its policy of tolerance generally—was political: Rome could avoid unrest by supporting Jewish privileges, especially on the fringes of the Empire as well as in the strategically located Palestine.⁶ Even where Roman law was thought to predominate, Caesar Augustus gave Jewish citizens throughout the Roman Empire many special privileges.⁷

In 41/42 CE, Augustus issued a decree stating that such privileges were to be granted to Jews empire-wide.⁸ These included 1) the right to assemble (and build synagogues), 2) the right for Jews to collect and deliver their Temple tax to Jerusalem uninhibited, 3) exemption from Roman military service, 4) observance of the Sabbath, 5) observance of their food laws, and 6) the right “to live according to their own laws.”⁹ Philo affirms that Caesar Augustus permitted the Jewish people “to assemble together in the synagogues” which were “schools of temperance and justice.”¹⁰ Herod Agrippa I, in a statement Jewish thinkers of the second Temple period and beyond would no doubt agree with,¹¹ states that Caesar

¹ Cf. Sanders 1990: 17; Goodman 1991: 227; Shaw 2000: 370.

² Shaw 2000: 369-370.

³ Shaw 2000: 372-373.

⁴ Sanders 1990: 17.

⁵ Cf. Trebilco 1991: 9.

⁶ Trebilco 1991: 10-11.

⁷ *Ant.* 16.6.2 § 162-165; cf. 19.5.1 § 274-291. Octavian became ‘Caesar Augustus’ in 27 BCE and died in 14 CE. The privileges accorded to the Jews was part and parcel of his larger programme of giving the Republic and its provinces back to the Senate.

⁸ *Ant.* 16.6.2 § 162-165; cf. Trebilco (1991: 10) on the date of this decree.

⁹ Cf. Trebilco 1991: 12-19.

¹⁰ *Legat. Embassy* 311-312.

¹¹ Cf. *Jub.* 7:20; *t. ‘Abod. Zar.* 8:4.

Augustus' ruling is based upon natural law: "for it is by natural justice (δικαιοῦντος) each one should rule (κυριεύειν) over their own place, according to the judgement (ἐπίκριμα) of Caesar."¹ In other words, the self-government granted by Rome to Jewish inhabitants in the Empire was a law Jews already believed in. Furthermore, Augustus decreed specifically that Jews in the empire were not permitted to be taken to court (presumably a Roman court) on the Sabbath.² "This exemption from summons to a law court on the Sabbath or the day of preparation ensured that the Jews could observe the Sabbath fully by making certain that they would not be faced with the difficult choice between [maintaining] the Sabbath and obtaining justice."³

Such a decree granting the above privileges was not passed by Augustus out of the blue, but had behind it some legal precedent. Before Augustus, for instance, we find Julius Caesar scolding the citizens of Delos because they had forbid Jews "to assemble (συνάγεσθαι)" in that city.⁴ According to Josephus' chronology, Jews in Sardis had authority over their own legal affairs even before Caesar Augustus made the formal decree granting such special privileges. It is crucial to note that in these passages from Josephus the Jews have the right *to assemble and judge their own cases*. A quote from Josephus recounting an official letter to Sardis from the magistrate Lucius Antonius in Rome shows the judicial nature of their meetings:

our Jewish citizens [of Rome] came to me. They proved to have their own assembly (σύνοδον) for themselves, according to the laws of their forefathers, and their own place in which they *judge cases* (τά ... πράγματα ... κρίνουσιν) and disputes (τὰς ... ἀντιλογίας) with one another.⁵

The Sardians' reply also reveals the legal nature of these synagogue assemblies:

¹ *Ant.* 19.6.3 § 305.

² *Ant.* 16.6.2 § 163; cf. *Ant.* 14.10.24 § 260. Trebilco (1991: 197, f.n. 51) dates this decree to 12 BCE.

³ Trebilco 1991: 18.

⁴ *Ant.* 14.10.8 § 216.

⁵ *Ant.* 14.10.17 § 235, emphasis mine.

according to [their] supposed customs they [Jews in Sardis] might assemble (συνάγονται) and conduct themselves as citizens and *adjudicate* (διαδικάζονται) with themselves and also a place might be given to them in which to gather (συλλεγόμενοι) with [their] wives and children that they might perform the [rites] of their fathers—prayers and sacrifices to God.¹

In Egypt, besides having a large plot of land within Alexandria,

... there is also an ethnarch for them, who governs (διοικεῖ) the nation, and *distributes judgements* (κρίσεις) and takes care of councils (συμβολαίων) and laws, as if he were a ruler of free citizens.²

These privileges were replicated in many Imperial cities such as Cyrene and Ephesus by Roman officials who—following this decree of Caesar—in turn officially granted Diaspora Jews special privileges, including the right to judge their own legal cases.³ So it is no surprise to readers of Josephus that after Augustus makes his decree recorded in *Ant.* 16.6.2 § 162-165 that Julius Antonius, the proconsul to Ephesus, declares that Jews in Ephesus were permitted to govern their own legal affairs and live by their own laws within the Empire.

The Jewish inhabitants in Asia, on the ides of February, as I administrated justice (δικαιοδοτοῦντί) at Ephesus, showed to me that Augustus and Agrippa had permitted them to use their own laws and customs, and to offer those their first fruits, which each of them freely offers to the Deity on account of piety, and to carry them in a company together to Jerusalem without disturbance.⁴

¹ *Ant.* 14.10.24 § 260, emphasis mine. For Roman permission for Jews to assemble for worship, etc. (without specific reference to legal adjudication in these assemblies), see *Ant.* 14.10.8 § 216; 14.10.12 § 227; 14.10.23 § 257; 19.6.3 § 305.

² *Ant.* 14.7.2 § 117, emphasis mine.

³ Cf. *Ant.* 16.6.4-7 § 167-173.

⁴ *Ant.* 16.6.7 § 172.

Here we see the proconsul, as he “administrated justice,” acknowledging that the Jewish inhabitants of Asia Minor had the right to adjudicate their own affairs. Therefore, when Augustus declares in 41/42 CE that such privileges are to be granted to Jews empire-wide, many precedents for such a wide-sweeping ruling had already been made. Furthermore, it should be stressed that this universal decree included the right for Jews in the empire not only to follow their own laws but *to judge their own legal cases*.

Augustus’ decree, however, is not a hard and fast rule—each city being able to apply this general rule as it saw fit for its particular circumstances.¹ It is also worth noting that the decrees Josephus highlights are borne out of difficult situations.² Generally, however, Jews did manage their own legal affairs within the Roman Empire. This privilege is, of course, ultimately “according to the judgement of Caesar,” but there is a wide measure of freedom nonetheless. The legal privilege for Jews in the Diaspora of judging their own legal cases was a major function within the Jewish synagogues dispersed throughout the Empire. As Erich Gruen comments, “adjudication was no small part of Jewish activity in the institutions of the diaspora.”³ We may also safely assume that this right was certainly in play in Jerusalem since we observe that leaders in Jerusalem often went to Rome requesting such privileges for Jews in places like Asia Minor.⁴

It can be reasonably assumed, therefore, that the majority of legal judging which went on both in Jerusalem and in Diaspora synagogues was done by Jewish judges according to Jewish law under the auspices, of course, of Caesar.

1.3. How did the Local Courts Work?

¹ Cf. Trebilco 1991: 10.

² Trebilco 1991: 11.

³ Gruen 2002: 118.

⁴ Cf. *Ant.* 14.10.20 § 241-242.

Local Diaspora courts held sessions on Mondays and Thursdays,¹ but there were no proceedings on festival days or Sabbaths (a ban also attested by Philo and the *Damascus Document*).² And since capital sentences could not be pronounced until the day after the trial, such cases were not heard on the eve of a Sabbath or festival day.³ Difficult cases among the Diaspora were to be sent to Jerusalem so that “the high priest, the prophet, and the Sanhedrin” could judge the case.⁴ Schürer explains: “The Sanhedrin was above all the final tribunal for decisions on questions connected with the Jewish law: not in the sense that it was possible to appeal against the decisions of the lower courts, but that where the latter could not agree, people could go before the Jerusalem Sanhedrin. But once an issue was decided, the provincial judges of the lower courts were obliged on pain of death to adhere to the Sanhedrin’s ruling.”⁵

Local courts are designated by the term “council” (βουλή) or “sanhedrin” (συνέδριον).⁶ In towns of at least 120 adult males a lower or lesser Sanhedrin of twenty-three judges ruled.⁷ While the minimum number of judges needed to rule on certain cases (such as property cases) was indeed three,⁸ Schürer argues convincingly that the smallest local courts consisted of no less than seven magistrates.⁹ While these judicial bodies are mentioned in Josephus and the New Testament, such local courts are especially prominent in the Mishnah.¹⁰

Schürer aptly describes the machinations of the lower court from Mishnaic tradition:

¹ *m. Ketub.* 1:1. Note also *Did.* 8:1 which prescribes that Christians fast on Wednesdays and Fridays in contrast to ‘the hypocrites’ who fast on Mondays and Thursdays.

² *M. Betzah* 5:2. Cf. Philo *Migr.* 16 § 91; CD 10:18. “The importance of this is shown also by the Edict of Augustus which released Jews from the obligation to appear before a court on the Sabbath, *Ant.* 16.6.2 § 163; 16.6.4 § 168” (Schürer 1979: 223, f.n. 97).

³ *M. Sanh.* 4:1.

⁴ *Ant.* 4.8.14 § 218; cf. *Ant.* 9.2.1 § 5; *Spec. Laws* 4.36 § 190. It is unlikely that “the prophet” here is retrojection on Josephus’ part.

⁵ Schürer 1979: 218. Cf. *Ant.* 4.8.14 § 218; *m. Sanh.* 11:2.

⁶ Schürer 1979: 185. For βουλή cf. *J.W.* 2.14.1 § 271-273; Luke 23:50-51. Similarly in the NT, elders often met together in a “council” (συμβούλιον) over a decision (Matt 12:14; 22:15; 27:1, 7; 28:12; Mark 3:6; 15:1; Acts 25:12). In Matt 10:17/Mark 13:9 συνέδριον is used in the plural to speak of multiple local courts apart from Jerusalem.

⁷ *M. Sanh.* 1:6.

⁸ Cf. *m. Sanh.* 1:1-3, 3:1, 8:4; *m. Roš Hoš* 2:9, 3:1. *M. Avot.* 4:8 explains the principle of at least three judges by stating that only God is sufficient to judge by himself.

⁹ *Ant.* 4.8.14 § 214; cf. *Ant.* 4.8.38 § 287; *J.W.* 2.20.5 § 571. Cf. Schürer 1979: 186-188 and further references there. Qumran designates courts of ten judges; see below.

¹⁰ Schürer 1979: 185. Cf. *m. Šeb.* 10:4; *m. Sotah* 1:3; *m. Sanh.* 11:4.

According to the Mishnaic description of the Lesser Sanhedrin, the members of the court sat in a semi-circle (... literally, like the half of a circular threshing floor) so that they could see one another. Before them stood the two clerks of the court, one on the right hand and one of the left, and these write down the speeches pleading for acquittal and conviction.¹ In front of them were three rows of students, each in his own place.² The accused was required to show humility, to wear his hair long and to be dressed in a black garment.³ In cases involving a capital sentence, special forms of procedure were prescribed for the conduct of the trial and the pronouncement of judgement. In such instances the hearing was to begin with the argument for the defense, and this was to be followed by the argument for the prosecution.⁴ No one who had spoken for the accused could afterwards speak to his disadvantage, though the reverse was permissible.⁵ The students in attendance were permitted to speak only for and not against the accused, whereas on other occasions not involving a capital sentence they could do both.⁶ Sentence of acquittal was to be pronounced on the day of the trial itself, but one of conviction, not until the day after.⁷ Voting, for which each man stood,⁸ began “from the side” ... i.e. with the junior member of the court, whereas in certain non-capital cases, when the court was faced with difficult points of law relating to cleanness and uncleanness, it was the practice to begin with the most experienced member.⁹ A simple majority was sufficient for sentence of acquittal; for condemnation a majority of at least two was required.¹⁰ Thus if twelve of the twenty-three judges voted for acquittal and eleven for

¹ *m. Sanh.* 4:3.

² *m. Sanh.* 4:4.

³ Josephus, *Ant.* 14.9.4 § 172.

⁴ *m. Sanh.* 4:1.

⁵ *m. Sanh.* 4:1; 5:5.

⁶ *m. Sanh.* 4:1; 5:4.

⁷ *m. Sanh.* 4:1; 5:5.

⁸ *m. Sanh.* 5:5.

⁹ *m. Sanh.* 4:2.

¹⁰ *m. Sanh.* 4:1.

conviction, the accused went free. But if twelve were for conviction and eleven for acquittal, the number of judges had to be increased by two, and this process continued until an acquittal was secured or the majority required for a conviction was reached. The maximum arrived at hereby was seventy-one.¹

The context in which local Jewish courts in the Diaspora operated, as well as the way in which they conducted trials, should be borne in mind as texts such as Jas 2:1-13, addressed to those in the “diaspora” (Jas 1:1) are discussed in subsequent chapters.

1.4. The Qualifications for being a Judge

Philo provides our most thorough assessment of the function and qualifications of a judge. Quoting Deut 1:17, Philo indicates that, “the judge is the minister and steward of [God’s] judgment.”² The judge must act, “as if he were at the same time judging and being judged himself.”³ The implicit assumption is that the human judge will be judged by the ultimate judge—God. Philo’s perspective here matches quite closely that of Matt 7:1-2 in which the judge is judged by God. This is also likely the perspective with which to read Jas 4:12, which speaks of “the *one* lawgiver and judge.” In other words, Jas 4:12 is not a statement of quantity ruling out human legal judges, but it delineates with whom ultimate authority lay. Judgement is ultimately a divine prerogative, but God graciously delegates this prerogative out to his chosen human representatives, and they have a responsibility to represent him well through their just judgements.⁴

¹ *m. Sanh.* 5:5. Schürer 1979: 225-226.

² *Spec. Laws* 4.12 § 71.

³ *Spec. Laws* 4.9 § 57. Cf. van Tilborg 1986: 167. Fuller (1983: 262) comes to a similar conclusion regarding 1 Tim 5:19-25 in which Paul, using the legislation in Deut 19:15-20 regarding two or three witnesses (which Philo refers to just prior to this in *Spec. Laws* 4.9 § 53), exhorts Timothy to justly judge elders: “The point, then, is that Timothy must evaluate all accusations carefully because he will himself be so evaluated.”

⁴ Liou 2004: 174.

Philo assumes that judges should be impartial and unbiased, even if they are naturally suspicious of accusers since many accuse in an attempt to protect themselves.¹ Judges are to examine witnesses “with great care” (*m. Avot* 1:9). Philo asserts that judges especially should be “free from all unreasonable passions, and from all wickedness ... for it is an absurdity for these men to be themselves liable to the imputation of error, who undertake to dispense justice to others,”² otherwise hypocrisy is the result.³ Again, “the judge [ought] to be full of pure unalloyed justice, if he is to irrigate all who come before him with justice.”⁴ It is for this reason that Philo shies away from the idea of judges or a higher ruler being elected by the casting of lots, for even an unworthy person can have good fortune, reasons Philo.⁵

A judge is also to be impartial in his *investigation* of the facts.⁶ Nothing is to cause him bias, “such as relations, friends, countrymen or foreigners, enemies or hereditary connections, so that neither affection nor hatred may overshadow his knowledge of justice.”⁷ In contrast to the judge who shows partiality, a just and righteous judge ideally should not even know who the parties involved in a case are while he is assessing the evidence, but rather should look at the bare facts, the naked evidence, so as to remain as unbiased as possible.⁸

If indeed texts such as Matt 7:1-5 and Jas 2:1-13 are about legal judging, Philo’s statements that legal judges remain impartial and that they will ultimately answer to God as the supreme judge provide important insights into what were probably commonly held assumptions about those in the position to judge legal cases.

1.5. Laws Pertaining to Witnesses

¹ *Spec. Laws* 4.8 § 43.

² *Spec. Laws* 4.9 § 55.

³ *Spec. Laws* 4.35 § 183-185.

⁴ *Spec. Laws* 4.9 § 56.

⁵ There is some confusion regarding Philo’s position here since in *Spec. Laws* 4.9 § 55 Philo apparently assumes a judge can be selected by lot or election, but in *Spec. Laws* 4.29 § 151 Philo shuns the selection of a ruler by lot. Cf. further Schiffman 1983: 28.

⁶ *Spec. Laws* 4.12 § 70.

⁷ *Spec. Laws* 4.12 § 70.

⁸ *Spec. Laws* 4.12 § 71; cf. van Tilborg 1986: 168.

Josephus refers to the law of having two or three witnesses (Deut 17:6; 19:15; Num 35:30) and asserts that the character of witnesses should be high.¹ In his recounting of Naboth's vineyard, Josephus changes the two witnesses of the MT and LXX brought against Naboth to three, indicating that he viewed capital cases as requiring three, rather than two, witnesses.² Philo also quotes the legislation that more than one witness is needed for the proper judging of cases,³ and on this basis explains that a judge could suspend his ruling for lack of sufficient number of witnesses.⁴ The Mishnah debates the reason for the law of two or three witnesses from Deut 17:6.⁵ And Schiffman points out that although the three before whom the rebellious son is to be warned in *m. Sanh.* 8:4 are judges (cf. Deut 21:18-21), they nonetheless function as witnesses.⁶ Such information provides helpful background for verses such as Matt 18:16 (for which see Chapter six) in which Matthew's Jesus quotes the law of two or three witnesses in his teaching upon resolving brotherly conflict.

The Mishnah further outlines examples of those involved in shady business who could serve neither as judges nor witnesses.⁷ Also excluded as judges or witnesses were relatives or close friends of the litigants in a case.⁸ Women were not to testify due to their tendency towards un-careful speech, Josephus reasons, nor servants because their social status and desire to get ahead may interfere with the truthfulness of their testimony.⁹

In his explanation of the ninth commandment of the Decalogue prohibiting false testimony (Exod 20:16), Philo indicates that those who bear false witness violate the law in three ways: they corrupt "that holy thing, truth," they cooperate secretly with those who seek to manipulate the outcome of the court, and most grievous of all they provide the judge with false testimony when, in many cases, the only evidence a judge has is this very testimony.¹⁰ Moreover, Philo indicates that those who listen to these false witnesses

¹ *Ant.* 4.8.14 § 219; cf. *Life* 1.49 § 256-257.

² Compare 1 Kgs 21:10, 13 with *Ant.* 8.13.8 § 358. Cf. discussion in van Vliet 1958: 26-30; Schiffman 1983: 75.

³ *Spec. Laws* 4.9 § 53. Cf. Numbers 35:30; Deut 17:6; 19:15.

⁴ *Spec. Laws* 4.9 § 54.

⁵ *M. Mak.* 1:8-9. On the law of two or three witnesses in the NT, cf. van Vliet 1958: 1-6, 63-73.

⁶ Cf. Schiffman 1983: 76.

⁷ *M. Sanh.* 3:3; *m. Roš Hoš* 1:8.

⁸ *M. Sanh.* 3:4-5; *m. Mak.* 1:8.

⁹ *Ant.* 4.8.14 § 219; cf. *m. Roš Hoš* 1:8.

¹⁰ *Decal.* 27 § 138-140.

become “unjust and illegal judges, instead of just and legal ones”—albeit unknowingly and unintentionally.¹ In his longer exposition of the ninth commandment, Philo explains that the one who bears false witness is guiltier than the one who brings a charge against another falsely because, in an allusion to Exod 23:1, the former wishes “to co-operate with another in iniquity”—something Philo classifies as more wicked than trying to protect oneself through false accusation.² The false witness, according to Josephus, is to suffer the same penalties he wished to inflict upon the falsely accused.³

1.6. The Legal Protection of Orphans, Widows, and Foreigners in Court

Without a head of household to protect them and represent them in court, the orphan, widow, and foreigner became especially susceptible to being taken advantage of in any number of legal situations. Widows who went to court over debts which they could not pay often ended up as slaves for their debt.⁴ Therefore, the responsibility of gods and their representative earthly rulers to provide legal protection for the defenceless orphan, widow, and foreigner is a common tenet throughout ancient Near Eastern literature, and the same is true among Israel’s literature.⁵ Gustav Stählin summarizes it well:

There is constant complaint at the wrongs done to widows, e.g., Is. 10:2; Ez. 22:7; Job 24:3; cf. 22:9 and esp. Ps. 94:6, and also at the rights withheld from them, Is. 1:23; Jer. 5:28. Warnings are often issued against injustice to widows, Ex. 22:22; Dt. 24:17; 27:19; Jer. 22:3; Zech. 7:10.

There is also a demand that they be helped to their rights, Is. 1:17. These

¹ *Decal.* 27 § 140-141.

² *Spec. Laws* 4.8 § 42. Philo alludes to Exod 23:1 again in 4.8 § 44 and to Exod 23:2 in 4.8 § 45-46. *Avot* 1:7 says, “Keep away from a bad neighbor. And don’t get involved with a wicked man. And don’t give up hope of retribution.” Involvement with the wicked may allude to Exod 23:1 about joining with the wicked to engage in violent, false testimony. If this is the case, one could also see the mention of “neighbor” in the first saying being related to the judicial prohibitions of Lev 19:15-18 and mention of “retribution” in the third saying an allusion to bearing a grudge in Lev 19:17. If this is the case, here we could have a melding of two passages both having to do with the laws for just judging (Exod 23:1; Lev 19:15-18) into one set of wise sayings.

³ *Ant.* 4.8.15 § 219.

⁴ Stählin 1984: 443.

⁵ Deut 27:19; Josh 20:9; Job 31:20; Job 31:20; Isa 1:17, 23; Ezek 22:29; Zech 7:9-10; Sir 4:9-10. Cf. Fensham 1962: 130-137; 1982: 1166; Stählin 1984: 441-448; Mafico 1992: 1105; Curtis 1988: 5; Nardoni 2004: 1-41.

and other passages make it plain that the main plight of widows was in the legal sphere. It was hard for them to get their rights and they were often deprived of them.¹

The notion of protecting these vulnerable three can be seen to be derived in some instances from the Torah's laws for just judging. Deuteronomy 24:17, for instance, says, "you shall not pervert justice" (לֹא תִטֶּה מִשְׁפָּט), in an exhortation to protect the vulnerable triad.² This exact phrase (לֹא תִטֶּה מִשְׁפָּט) occurs earlier in Deut 16:19 in the measure to appoint just judges in Deut 16:18-20, a piece of legislation which is most likely based upon the foundational laws regulating the judiciary in Exod 23:1-3, 6-9, which also likewise contains the phrase לֹא תִטֶּה מִשְׁפָּט, (Exod 23:6). Thus Harold Bennett can conclude that Deut 24:17, "refers to reaching nonbiased [juridical] decisions" regarding the widow, orphan, and foreigner in their lawsuits.³ Similarly, part of the laws for just judging was the command not to afflict or oppress the foreigner (Exod 23:9; Lev 19:33, see further Chapter five).

The notion of providing "widows and orphans" justice in court remains an important theme during the Second Temple era, and plays an important role among the Second Temple and early Christian documents discussing judicial fairness as we shall observe in later chapters (see especially Chapter three and Chapter five on Jas 1:27). In Philo we have an extended discussion about how these defenseless three are to be treated in court. Philo says that in general the most important cases are not those between the wealthy powerful and their peers, but between the wealthy powerful and those of no means in which the sole hope of the poor man lies in the willingness of the judge to be fair and honest.⁴ With specific regard to the orphan, widow, and alien, Philo states that these are powerless and therefore it is right (citing Deut 10:17) that God is the mighty and powerful supreme judge for them.⁵ As stated previously, this vulnerable triad had no

¹ Stählin 1984: 445.

² Phillips (1970: 15) explains that in pre-exilic times, "women did not enter into the covenant relationship, and were therefore outside the scope of the criminal law. They had no legal status ..." and that this was only later revolutionized by the Deuteronomists's legislation in which women were included in the covenant and fully bound by its obligations (Phillips 1970: 16).

³ Bennett 2002: 100-101.

⁴ *Spec. Laws* 4.33 § 172.

⁵ *Spec. Laws* 4.34 § 176-177.

judicial representative. According to Philo, therefore, the alien should be protected because he has left polytheism to worship and serve the one true God and in so doing has abandoned his protective kin; the orphan deserves special protection because he is deprived of his parents who are his natural judicial defenders and protectors; and justice should be done for the widow because she too lost her judicial defender when she lost her husband.¹ Rulers, therefore, should act like God, who defends and protects these who have lost their legal guardian.²

This idea also coheres well with the fact that parents could serve as judges over their children³ (something Josephus and Philo both affirm⁴) and Philo's placing the burden upon the parents to teach their children judicial honesty.⁵ Indeed, Philo argues by analogy that a judge should defend those under his care the way a father would his children, that he may be honored by them as if they were his real children, indicating further that parents were the judicial defenders and protectors of their children.⁶

This discussion in Philo alerts readers to the fact that concern that justice be done for the orphan, widow, and foreigner *in court* was still a concern in the first century. Such an assumption is crucial for understanding verses such as Jas 1:27 which speaks of the affliction of orphans and widows before launching into a discussion about partiality in judging.

1.7. Bribery

Despite the expectations that a judge's ruling be done with integrity, and in light of the vulnerability of the orphan, widow, and foreigner, quite often we find the primary sources mentioning and even warning against bribery within the judicial system. Just as we observed Deuteronomy depicting God as a just judge in the face of judicial corruption during the monarchy, so the Mishnah likewise warns against judicial corruption by depicting God as, "the one who judges, he is the one who gives evidence, he is the one

¹ *Spec. Laws* 4.34 § 178.

² *Spec. Laws* 4.35 § 187. Cf. *b. Shebu.* 30a.

³ Cf. Deut 21:18-21; Wright 1992: 764; cf. 766-768.

⁴ *Ant.* 4.8.24 § 260.

⁵ *Spec. Laws* 4.11 § 68. One wonders whether Philo had in mind Samuel's sons who had become corrupt judges (cf. 1 Sam 8:1-3).

⁶ *Spec. Laws* 4.35 § 184.

who brings suit, and he is the one who is going to make the ultimate judgment. Blessed be he, for before him are not (1) guile, (2) forgetfulness, (3) respect for persons, (4) bribe taking, for everything is his.”¹

Josephus opines that the ruling of judges should in general be listened to, unless proof can be given that a judge has taken a bribe and perverted justice, or passed an unjust sentence.² When Josephus set up 70 judges in Galilee, he himself also serves as a judge and declares that he strove to keep himself clear of bribery.³ Josephus reasons: “for it is not fitting to deal generously for a bribe, nor openly show honour to a litigant when judging cases, but justice should be placed above all things.”⁴

Philo quotes Exod 23:3, that a judge is not to show partiality to a poor man in his judgement of cases,⁵ and reasons that,

many such ornaments as these [compassionate principles] are woven into and inserted among the laws, in order to enrich the poor on whom it is always proper to have compassion except at the time of giving judgment, for compassion is due to misfortunes; but he who behaves wickedly with deliberate purpose is not unfortunate but unrighteous, and punishment is due to the unrighteous just as honours should be confirmed to the just, so that no wicked man who is in difficulties, and who conceals the truth ought to escape punishment through the pity excited by his poverty, since he has done what deserves not pity (how should it?) but great anger.⁶

Philo says judges are supposed to stay away from bribery, quoting Exod 23:8—the law against judges receiving bribes given with the poignant proverb that, “a bribe blinds the ones who see and twists the words of the righteous.”⁷ Philo explains that a

¹ *m. Avot* 4:22.

² *Ant.* 4.8.14 § 216.

³ *Life* 14 § 79; cf. *J.W.* 2.20.5 § 569-571.

⁴ *Ant.* 4.8.14 § 216. Josephus later recounts the episode of Samuel’s sons who accept bribes as judges (*Ant.* 6.3.1 § 31-37).

⁵ *Spec. Laws* 4.13 § 72.

⁶ *Spec. Laws* 4.13 § 76-77.

⁷ *Spec. Laws* 4.11 § 62; cf. Deut 16:19.

judge who takes a bribe, even if the end decision results in the guilty party being declared guilty and the innocent declared innocent, is corrupt. For, Philo explains,

a righteous judge ought to exhibit two things, a judgment in strict accordance with the law, and incorruptibility; but he who is a judge for bribes, even though he decides justly, does without perceiving it defile a thing which is beautiful by nature.¹

The judge who receives bribes is also guilty of coveting money, Philo teaches, which opens the door to other iniquities. Furthermore, “he is injuring the man whom he ought to benefit; by making him pay a price for justice.”² Philo describes those who take bribes as “those men who sell just and legal decisions for money, and not only in the courts of justice, but everywhere in every part of land and sea ...”³ Philo places the blame for judicial injustice upon the family, implicating those who have nurtured their sons in an atmosphere of deceit, so that they grow up to become unjust judges.⁴ Finally, Josephus writes that the punishment for the judge who takes bribes is capital.⁵

The issue of judicial corruption surfaces in the texts to be reviewed in Chapter three, and Chapter four will argue that Jesus in Matt 7:1-5 is critiquing such judicial corruption. For now, however, we shall content ourselves to answering the question, Who was in judicial power?

1.8. Who were Israel’s Judges?

After the destruction of Jerusalem by the Romans in 70 CE, the Sanhedrin ceased to exist. Yet at Jamnia (Jabneh) there was an academy and a so-called court (בית דין)

¹ *Spec. Laws* 4.11 § 64.

² *Spec. Laws* 4.11 § 65.

³ *Spec. Laws* 4.11 § 66.

⁴ *Spec. Laws* 4.11 § 68. One wonders whether Philo had in mind Samuel’s sons who had become corrupt judges (cf. 1 Sam 8:1-3).

⁵ *C. Ap.* 2.28 § 207. On the possible influence of Plato upon Josephus here, cf. Barclay 2007: 289-290, f.n. 837. On the death penalty for breaking Noachide commandments such as fair adjudication, cf. Bockmuehl 2000: 160.

subsequently established.¹ This center of nascent rabbinic Judaism initiated by Yohanan ben Zakkai depicts the earlier Jerusalem Sanhedrin, by way of analogy to Jamnia's later rabbinical courts of justice, as composed purely of a group of halakhic scholars. The Mishnah even identifies pairs of Pharisees as presidents and vice-presidents of the Sanhedrin at various times. But exactly how much power and influence do they have in the first century A.D. before 70, while the Temple is still standing?

In the former *γερονσία*, “the decisive authority in this supreme court lay without doubt in the hands of the priests,” who also served as judges over legal cases.² This is affirmed by Ben Sira who, writing c. 200 BC, continues to assume that priests both expound the law and judge cases (Sir 45:17). The *Temple Scroll*, which is at least as old as Ben Sira if not older, envisions priests and other Levites judging cases based upon the law (11QT^a LVII, 11b-14a).³ In its presentation of Genesis, *Jubilees* (c. 150 BC) likewise assumes that the descendants of Levi (priests) function as leaders and judges (*Jub.* 31:15). But did the Sanhedrin of Jesus' day look the same or even hold the same authority?

Throughout the 1960's, 70's, and 80's, historians commonly assumed that by the time of Jesus, administrative and religious power had all but shifted from the hands of the priestly aristocracy comprised mostly of Sadducees (whose name probably derives from the priestly line of “Zadok”) to lay scribes composed mostly of Pharisees.⁴ This view was popularized by Joachim Jeremias in his 1958 piece, *Jerusalem zur Zeit Jesu*.⁵ Jeremias writes that during “the first century AD until the destruction of the Temple, the struggle for supremacy between the ancient ruling class and the new [upper, scribal class] reached its peak, and the balance began to be tipped by degrees in favour of the new class.”⁶ He attributes their dominance not to their expertise in the law, but to the supposed fact that

¹ Cf. Schürer 1979: 209.

² Schürer 1979: 202.

³ Dates for the *Temple Scroll* vary widely. Barbara Theiring (1989) dates the document according to the paleographical date of the manuscripts and therefore locates it during the reign of Herod the Great, although few accept this (cf. Brooke 1989: 15). Laperrousaz 1989 dates it to the first part of the first century BC. Yadin 1983: 386-390; Fitzmyer 1978: 503; and Brooke 1988: 42 date 11QT^a toward the end of the second century or earlier, while Stegemann (1992: 160, f.n. 14) dates it two centuries earlier. For further dating proposals and their reasons, cf. Brooke 1989: 14-15.

⁴ Cf. Schürer 1979: 405-407; Sanders 1992: 25.

⁵ Jeremias 1958; ET 1969.

⁶ Jeremias 1969: 233.

they were guardians of a secret, esoteric knowledge.¹ Scholars subsequent to Jeremias have adopted and defended similar views.²

In 1992, however, E. P. Sanders rightly critiqued Jeremias for his claim that, “the important posts in Jewish public life [including judges] had, by the first century, passed out of the hands of the priestly aristocracy and into the hands of lay scribes, most of whom he [Jeremias] identified as Pharisees.”³ Sanders surmises that this view probably derives from the undue influence of the phrase “scribes and Pharisees” used throughout Matthew 23.⁴ Sanders further explains: “Most modern scholars, ... think that in the Judaism of Josephus’ day the priests had *surrendered* their traditional role as biblical experts and magistrates (judging cases on the basis of biblical law), and that the Pharisees or lay scribes had taken over these roles.”⁵ He offers the alternative view that priests retained such responsibilities although, “they did not have a monopoly of them.”⁶ Sanders summarizes:

¹ Jeremias 1969: 237-241. Jeremias (1969: 241) even claims that before being written down (in the form of the Mishnah) in the second century to counter the NT canon, halakic oral tradition, although taught publicly in synagogues, was tantamount to a set of esoteric teachings because, it “could only be transmitted orally from teacher to pupil.”

² Such as Maccoby, Rajak, and Hengel; cf. Sanders 1992: 175-177.

³ Sanders 1992: 174. A similar critique of this view was made four years earlier by Steve N. Mason (1988). In my view Sanders is correct to critique Jeremias, but he is wrong to lump Emil Schürer in with Jeremias in his critique, assuming Jeremias received this view from Schürer (cf. Sanders 1992: 177; 516, f.n. 22). Schürer’s three volume, *A History of the Jewish People in the Age of Jesus Christ (175 B.C.-A.D. 135)*, published between 1885 and 1891, is a careful historical work which has been massively influential. And while Schürer held that, “increasingly ... lay Israelites took over the study of the Torah [from priests] ...” and during Hellenistic times, “it was no longer the priests but the scribes who were the zealous guardians of the Torah,” he did not hold a position akin to Jeremias’ on the issue of who was in judicial power (Schürer 1979: 323; see further 322-336).

Although Schürer held *generally* that scribes gradually overtook the role of priests as scholars of the Torah and therefore as judges, (1979: 324, 334-335) elsewhere he plainly acknowledges: 1) that priests served as judges in Josephus’ day, (*Ant.* 4.8.14 § 214; something Schürer 1979: 187 declares is not without OT precedent; cf. Deut 21:5; 1 Chr 23:4; 26:29; Deut 16:18) 2) that, “the decisive authority in [the] supreme court [of the Sanhedrin] lay without doubt in the hands of the priests,” (1979: 202) and 3) that, even “the Mishnah [in] certain special cases demanded the inclusion of the priests on the panel of judges” (1979: 202; cf. *m. Sanh.* 1:3; *m. Ketub.* 1:5; *t. Sanh.* 4:7; *Sifre Deut* § 153)—a document which, as Sanders points out, treats priests “as if they had never mattered” (Sanders 1992: 178). In fact, Schürer reckons that the depiction of a Pharisee as president of the Sanhedrin in the Mishnah is historically inaccurate since Josephus and the New Testament always depict the High Priest as president of the Sanhedrin (1979: 215).

⁴ Sanders 1992: 175.

⁵ Sanders 1992: 172-173.

⁶ Sanders 1992: 172-173. Steve N. Mason (1988) argues similarly that the priests largely maintained administrative control through the first century C.E.

In general, Josephus regarded the priests as the nation's rulers and judges: God assigned administration to "the whole body of priests", who exercised "general supervision" and also tried cases and punished malefactors (*Apion* 2.165, a "theocracy"; 2.184-187). Later he states that the high priest governed "with his colleagues" (*Apion* 2.194), and on another occasion he attributes to the nation the view that it was "the custom of the country" to be ruled by priests (*Ant.* 14.41).¹

Not only does Josephus inform readers that priests were the administrators of the government and therefore judges, but that the high priest was chief among such administrators and judges.² From the trial of James ("the brother of Jesus"), for instance, we observe the high priest assembling the Sanhedrin and acting as supreme judge.³

Sanders, however, seems to play down Pharisaic influence in the first century a bit too much.⁴ For although the priests remained in control in the first century, the evidence from documents such as 4QMMT, the Gospels, and Josephus seems to confirm that Mishnaic claims to Pharisaic influence from the Maccabean revolt through Hasmonean times and even up to the revolt of A.D. 66 are not wishful historical revisions, but are more accurate than previously thought.⁵ Despite the claim by Morton Smith and Jacob Neusner that Pharisees were a relatively un-influential sect before 70, Steve N. Mason has convincingly argued that Josephus, although a critic of the Pharisees, acknowledges their dominant influence before 70. Relying upon the crucial evidence of Josephus, therefore, Mason locates the debates between Jesus and the Pharisees in such important passages as Matt 23:2-3 (the *Sitz im Leben* of which is normally sought among the post-70 conflict between the church and the Pharisee-dominated synagogues) within the life of Jesus.⁶

¹ Sanders 1992: 171.

² Cf. *Ant.* 10.10.1 § 251; *C. Ap.* 2.22 § 185-187; Schürer 1979: 215.

³ *Ant.* 20.9.1 § 199.

⁴ Cf. Sanders 1992: 388ff.

⁵ On the Pharisees influence according to the Gospels and Josephus, cf. Mason 1990; on the Pharisees in 4QMMT, cf. Schiffman 1992; 2003: 19-20. Although thought-provoking, I am not yet convinced of Sigal's thesis that "Pharisees" designates an amalgamation of "separatists" who disassociated themselves from the establishment and who find little sympathy from the pre-70 proto-rabbis, the latter of which Sigal views as more akin to Jesus' thinking and teaching ([1986] 2007, esp. 59-60).

⁶ Mason 1990.

The Pharisees, furthermore, seem to play an increasing role *among the Sanhedrin*, first under Salome Alexandra (76-67 BCE) and then even more so under Herod the Great (73 BCE-4 CE), until they gain dominance post-70.¹ This is in fact the picture one gets in the Gospels in which the Pharisaic scribes are never far removed from, yet seem subservient to, the chief priests.² Furthermore, one cannot ignore the influence of the Pharisees among the common people in the first century A.D., an aspect which is highlighted (but only to be lamented) by both Josephus and Luke.³ We may agree with Schürer, therefore, when he concludes that,

From the unanimous testimony of Josephus and the New Testament, it is quite clear that the high-priestly aristocracy, supported by distinguished laymen, stood at the head of the Sanhedrin until the end. ... Thus the Sanhedrin of the Roman period consisted in a mixture of aristocratic–priestly and lay–Sadducees and learned Pharisees.⁴

In the Sanhedrin which later replaced the priest-led *γερουσία*, therefore, priests continued to play the major role, although Pharisees exerted enormous influence. So Sanders is right to conclude regarding the role of the scholar and judge during the time of Jesus that, “priests had not vacated the field.”⁵ But it should also be stressed that Pharisees did not play *no* role, but were a significant part of this legal administration too, undoubtedly serving as judges in some instances. In fact, Josephus notes how the Pharisees are gentler in court than the Sadducees.⁶

It should also be emphasized that priests were experts in the law.⁷ Again, following Sanders’ line, it wasn’t as if Pharisees were the experts on halakah and priests mere bureaucrats.⁸ Josephus, himself a priest, expects his readers to assume he too is an

¹ Schürer 1979: 210.

² Cf. Matt 21:15; Mark 11:18, 27; 14:1, 53; Luke 19:47; 20:1, 19; 22:2; 23:10. In these ten instances of the phrase “the chief priests and scribes” in the New Testament, “the scribes” are always listed second, with the exception of some manuscripts at Luke 20:19 in which occurs the reverse order.

³ Mason 1995: 177.

⁴ Schürer 1979: 210.

⁵ Sanders 1992: 177.

⁶ *Ant.* 13.10.6 § 293-296; 20.9.1 § 199. Cf. Stemberger 1995: 16-17, 87-88.

⁷ Mason 1988; Sanders 1992: 171-172; cf. *Life* 196-198.

⁸ So Mason 1988.

expert in the law.¹ “As an individual, [Josephus] was more expert than most, but interpretation of scripture was, in his view, a priestly function.”² The Sadducean priestly aristocrats could hardly have justified their legal rulings and interpretations of the law apart from some claim to biblical expertise. But it should not be forgotten that Pharisees too were considered experts in Scriptural law. The Pharisees, furthermore, are singled out by Josephus as non-priestly experts in the law, many of whom are professional lawyers or scribes.³ Therefore, although the priests are still largely in charge of adjudicating cases in the first century based upon their study and interpretation of biblical law, the Pharisees are intricately involved in the legal system too undoubtedly also serving as judges and legal experts.

The fact that *priests* served as legal *judges* who administered the law based upon the Torah, meant that their position was not only legislative/executive, but also of course religious. Sanders further indicates

that priests served as *magistrates* and judges, those who applied the law, besides being directly stated by Josephus (*Apion* 2.187), is confirmed by the story of the healing of the leper in Mark 1.40-45. Jesus cured him, and then told him to show himself to the priest, who alone could determine whether or not the former leper was now cleansed.⁴

This episode Sanders cites of the leper who must see a priest to make a legal ruling upon whether the leper is cleansed or not indicates the interconnectedness of the sacred and judicial roles of the priest. Josephus’ comments indicate the same:

These men had the main care of the law and the other parts of the people’s conduct committed to them; for they were the priests who were ordained

¹ Cf. Mason 1988: 658-660; Sanders 1992: 172; *J.W.* 3.252.

² Sanders 1992: 172.

³ Cf. Sanders 1992: 172; Schürer 1979: 212-213.

⁴ Sanders 1992: 177.

to be the *inspectors* of all, and the *judges* in doubtful cases, and the punishers of those that were condemned to suffer punishment.¹

[The priest's] business must be to offer sacrifices to God ... to see that the laws be observed, to determine controversies, and to punish those that are convicted of injustice ...²

Legislative halakhah based upon Torah and the administration of such law via the judicial system were part and parcel of the same program of holiness, whatever the degree of executive power on the one hand or scholarly expertise on the other the Sanhedrin had at various times in its history.³ Again, however, one should not lose sight of the fact that Pharisees too were also highly concerned with religious and cultic holiness. This puts Jesus' conflict with both the priests and Pharisees, over both issues of purity as well as the law, in context.

While the "elders" are still the local authorities in the Diaspora towns of Israel during the post-exilic era and are the cadre from which some local judges are drawn,⁴ Sanders argues that priests served as both teachers of the law and judges not only at the Temple in Jerusalem, but also in Diaspora towns as well.⁵ Furthermore, while there were about 6,000 Pharisees in Jesus' day there, Sanders estimates there were 18,000 to 20,000 priests and Levites.⁶ To become an expert in the law, one had to have the leisure to study. Sanders finds it probable that most priests owned land, lived off of the tithes of food, and used part of their time in the study of the law.⁷ He therefore argue:

I think that it is unreasonable to suppose that the small number of Pharisees, most of whom probably worked from dawn to dusk six days a week, also served their communities as lawyers and scribes, while the

¹ *C. Ap.* 2.22 § 187, emphasis mine.

² *C. Ap.* 2.24 § 194.

³ Cf. Saldarini 1992: 979.

⁴ Schürer 1979: 184-185.

⁵ Sanders 1992: 170-171, 179-182; cf. Sanders (1990: 17-18) who says (18) this fact "has been sadly neglected."

⁶ Sanders 1992: 181.

⁷ Sanders 1992: 179, 181.

large number of priests and Levites, who were on duty in the temple only a few weeks a year, who could not farm, and who were educated in the law, did nothing. It is much more likely that many ordinary priests and many of the Levites put their learning to good use and served as scribes and legal experts.¹

So while the traditional “elder” or head of a major family may have performed some “minor judicial duties”² in the Diaspora, Sanders reckons Josephus to be historically believable when he says that it was mainly priests who served as judges.³ Indeed it is conceivable that these priestly adjudicators, when not serving in the Temple in Jerusalem, performed the function of a judge the rest of the year in a Diaspora town or village.

Again, however, Sanders seems to downplay the judicial authority of the Pharisee in Diaspora towns too much. For during Josephus’ stint as a general in Galilee, the well known Pharisee Simon ben Gamaliel travels from Jerusalem to Galilee in an attempt to have Josephus removed from his post by means of an unfair legal trial. When at first he does not succeed, he resorts to bribing the high priest Ananus, after which he is able to have Josephus deposed.⁴ Matthew’s gospel similarly indicates a situation in which Pharisees are highly influential in Diaspora towns. For, as Kingsbury notes, Matthew provides incidental comments which associate the chief priests and elders more closely with the Temple while the scribes and Pharisees are connected more often than not with the synagogues of the Diaspora (6:2, 5; 12:2, 9, 14; 23:6, 34).⁵ In Matthew’s gospel, therefore, it is likely that the scribes and Pharisees are intimately involved in the dragging of Jesus’ disciples into “their synagogues” for trial and punishment (10:17). Furthermore, even if the scene in Matt 10 in which Jesus’ disciples are dragged into court applies especially to a time after Jesus is absent and the persecution of Christians is rife, one need not discount the judicial power of the Pharisees before 70, as Mason’s argument demonstrates. Therefore, it may be that while the priests remained the judicial authority

¹ Sanders 1992: 180-182.

² Sanders 1992: 182.

³ Cf. Sanders 1992: 182; *C. Ap.* 2.22 § 187.

⁴ *Life* 189-198. Cf. Mason 1990: 370.

⁵ Cf. Kingsbury 1995: 180-181.

in the Temple in Jerusalem and thus (to a great extent) throughout Israel and the Diaspora, the Pharisees—who were also influential in the Sanhedrin before 70—were likely a dominant judicial force, especially among Diaspora synagogues as both legal experts (lawyers) and judges.

Such a scenario as outlined above in which priests stand at the head of a judicial committee comprised of scribal experts such as Pharisees as well as elders is not unlike what we find at Qumran.

2. The Judiciary at Qumran

Now that the judicial system of Jerusalem and the wider Diasporas have been established, it is necessary to provide a very brief overview of the judicial system at Qumran. This is important not least because many of the texts to be discussed in Chapter three come from Qumran, but also because Qumran's laws of reproof are also important for illuminating the reproof texts of early Christianity.

Those who settled at Qumran appear to have instituted their own renewed system of governance apart from Jerusalem. The reason for such a sectarian gathering in the first place seems to be a desire to retreat away from the impurity which Jerusalem had come to be characterized by.¹ Their motive seems less to have been to create something *new* than to create something—in their minds at least—faithful to the *old*. The covenanters at Qumran most likely created their own system of governance not because they believed they had some new utopian way of governing themselves, but because they were dissatisfied with the way the main system in Jerusalem was being run. As we shall observe presently, their laws and rules of governance are not radically different *in principle* from the accounts in Philo and Josephus—the latter of which at least is particularly favourable towards the Jerusalem court.

2.1. Priests among the Judiciary

¹ Schiffman 1983: 13 defines this less specifically as “the impurity of the general Jewish society.”

Considering all of the discussion about and emphasis upon their judicial system by the Qumran covenanters, Lawrence Schiffman observes that, “the courts occupied a central place in the sect ...”¹ Qumran likely had a high court which functioned much like the Sanhedrin in Jerusalem.² Priests stood at the head of the hierarchy at Qumran,³ and in line with what we observed from Sanders regarding how the majority of non-sectarian judges’ posts were likely filled by priests, Schiffman tentatively suggests that the main judges at Qumran were likely Zadokite priests.⁴ Indeed, both the *Rule of the Community* and the *Damascus Document* purport to have a priestly group behind them called “the sons of Zadok” (1QS V, 1-4a; CD-A III, 20b-IV, 4a). Based upon CD XIV, 12-16, Schiffman surmises that, “the judges were regular appointees who were available whenever cases demanded their attention and who handled other matters as well.”⁵ Josephus speaks of Essene courts of ten and 100, and this is consistent with the data found at Qumran.⁶ A lower court of ten is spoken of at Qumran; four were to be from the tribes of Levi and Aaron, and six from Israel (CD-A X, 5; cf. 4Q266 8 III, 5; 4Q270 6 IV, 16). 1QS VI, 3-4 says this lower court of ten should have, in addition to these ten, at least one priest,⁷ while 4QOrd 2-4, 4-6 similarly pictures a lower court of twelve consisting of ten men and two priests, which was sufficient to rule on capital cases.⁸ The necessity of having a priest or two among the lower court of ten points at least to priestly oversight, if not direct involvement, of less important judicial affairs.⁹

2.2. Judges at Qumran

¹ Schiffman 1983: 23.

² Cf. Sutcliffe 1959; Schiffman 1983: 25-26.

³ Cf. 1QS VI 8b-10a; Schiffman 1975: 68; Schiffman 1983: 31.

⁴ Schiffman 1983: 26-27, 45, f.n. 60 argues that even the tannaitic *Sifre* Deut 153 and *b. Yoma* 26a indicate that priests were a part of the Great Sanhedrin. As noted above, Josephus (*Ant.* 4.8.14 § 214) also affirms Levitical participation in the courts (cf. Schürer 1979: 187).

⁵ Schiffman 1983: 29.

⁶ *J.W.* 2.8.9 § 145-146; cf. Schiffman 1983: 24.

⁷ I cannot agree with Schiffman’s (1983: 26) assessment that, “this text does not actually deal with a court.” See further chapter three.

⁸ Compare “the Community council” of 1QS VIII, 1-4a which consists of “twelve men and three priests.” Cf. Schiffman 1983: 26, who notes the difficulty of locating 4QOrd 2-4, 4-6 historically within the Qumran corpus.

⁹ Cf. Schiffman 1983: 26.

Not everyone served as a judge according to the *Damascus Document*. Ten, however, were chosen from the congregation, hence the need for everyone of age to be *qualified* to serve as a judge (CD-A X, 4-5; cf. 4Q266 8 III, 4; 4Q270 6 IV, 16).¹ These men were to be between 25 and 60 years of age (CD-A X, 6-8a; 4Q266 8 III, 6; 4Q270 6 IV, 17),² and to be, “learned in the book of HAGY and in the principles of the covenant” (CD-A X, 6; 4Q266 8 III, 5-6; 4Q270 6 IV, 17). The maximum age of the judge is 60 years old (CD-A X, 6-8a; 4Q266 8 III, 6b-7), the reason being given that due to humanity’s unfaithfulness senility occurs during old age, rendering one unfit to serve as a judge within the community (CD-A X, 8b-10a; 4Q266 8 III, 7-9a; 4Q270 6 IV, 18-19; cf. the reference to weakened eyes in CD-A XV, 16). The connection between the age limits for judges at Qumran (ages 25-60) and the age limits for Levitical service in both Num 8:24-25 (ages 25-50³) and CD-A XIV, 7-9 (ages 30-50⁴), is not insignificant in light of the priestly nature of the judiciary. Schiffman plausibly suggests the sect required such priestly age limits for judges (and soldiers) because they, “sought to elevate all its members to the highest status of Levitical sanctity and, in so doing, to ensure the holiness of their courts and military camps.”⁵

2.3. Witnesses at Qumran

Just as we observed that in order to become an “elder” and thus participate in legal affairs in the Torah one had to have reached puberty, at Qumran a person could not serve as a witness in a capital case who had not reached the age of maturity (CD-A IX, 23b-X, 2a; cf. 4Q270 6 IV, 13-14), which Schiffman plausibly suggests is twenty (cf.

¹ On courts consisting of ten judges, compare Ecc 7:19, Ruth 4:2; cf. Schiffman 1983: 24.

² Compare the minimum and maximum ages for military service in the *War Scroll*, which is likewise 25-60 years old (1QM VI, 13-VII, 3; cf. 1QSa 1:6-19) as well as the *Temple Scroll* which puts the age of soldiers between 20-60 who are “enemies of bribery, skilled men in war” (11QT^a LVII, 9) in a passage just before mention of twelve princes, twelve priest and twelve Levites to judge cases (11QT^a LVII, 11b-14a). Cf. Schiffman 1983: 30.

³ On extension of service beyond 50 and up to 60 years old, cf. Schiffman’s (1983: 32-34) explanation.

⁴ On ages 25-30 being a preparation for full service, cf. Schiffman 1983: 32.

⁵ Schiffman 1983: 32. Note Milikowsky’s criticism (1986: 241), however, of Schiffman’s unnecessary harmonization of the age of judge and soldiers.

1QSa I, 8b-9a).¹ Conversely, reaching this age also meant charges could be brought against him.²

As Josephus affirmed the need for integrity among witnesses, so CD-A X, 2 (4Q270 6 IV 14; cf. CD-B XX, 19) indicates witnesses should be those who “fear God,” a designation which may point at least to membership within the sect but should not be limited merely to this.³ Similarly, one could not serve as a witness against one’s neighbor if that one had “deliberately transgressed” and had not yet been purified and restored into the community (CD-A X, 2b-3; cf. 4Q270 6 IV, 14b-15a).

2.4. The Law of Witnesses

Just as Philo, Josephus and the Mishnah report the on-going application of the law of two or three witnesses from Deut 17:6, 19:15 and Num 35:30, so those at Qumran have their specific interpretation and applications of it. A single witness is not enough to convict someone of a capital offence but three independent witnesses who report the same person committing the same crime is enough (CD-A IX, 16b-20a; cf. 4Q270 6 IV, 13).⁴ As discussed above, Josephus holds a similar view.⁵ Two witnesses were sufficient to convict someone of a non-capital offence, such as a legal matter concerning finances, provided they are trustworthy and report the offence to the Inspector on the same day the offence is committed (CD-A IX, 20b-23a; cf. 4Q270 6 IV, 12b).

2.5. Laws of Reproof

¹ This is based upon the phrase *על הפקודים לעבור*, “crossed over among those enrolled,” from CD-A X, 1-2 (also similarly 1QSa I, 8b-9a; CD-A XV, 5) used in Exod 30:14, 38:26 (cf. Num 1:3; 1 Chr 27:23); Schiffman 1983: 56-60.

² Cf. Schiffman 1983: 63-64

³ Cf. Schiffman 1983: 60.

⁴ Cf. Schiffman 1983: 78.

⁵ On this point, see further Neusner 1973, 1978; Schiffman 1975, 1983: 77-81; Rabinovitch 1977; and Jackson 1975, 1978.

At Qumran, the concept of “reproof” (יכח) is no mere social convention indicating verbal correction.¹ Used within the context of the laws of reproof (CD-A IX, 2-8; cf. 5Q12 1, 1-5), יכח should be understood as a legal, technical term and “provides the key to the understanding of numerous passages in Qumran literature.”² Each offence required this formal procedure of “reproof” whereby witnesses officially reproved a culprit before an examiner before such testimony could be used as a basis for future trial and conviction. It is crucial to note that such procedures for reproof are based upon the laws for just judging in Lev 19:15-18, specifically 19:17 in which the verb יכח occurs (cf. CD-A VII, 2-3; IX, 2-8 [cf. 5Q12 1, 1-5]; see further Chapter three). The rule of reproof requires a witness to report an offence immediately, lest he himself come to infringe the command not to bear a grudge or take revenge from Lev 19:18a. The offence was to be reported to the Inspector (who recorded the offence³) with the offender present⁴ on the same day it occurred,⁵ or the witness became liable for the crime he failed to report.⁶ According to 1QS VI, 1, a person was not to bring charges against another before the court (probably in view here is the court of ten in 1QS VI, 3) unless these proper procedures for rebuke had first been carried out.

Based upon the fact that sect members were not to engage in rebuke with outsiders (1QS IX, 16-18), Schiffman believes that this process of reproof “was not part of the legal system in the rest of Palestine,” but rather, “was developed uniquely by the sect.”⁷ But the passage he refers to (1QS IX, 16-18) is polemical, and counsels abstaining from engaging in rebuke with “the men of the pit” and “men of injustice”—phrases

¹ This is how Betz (1995: 488) seems to understand “reproof.” He argues that the LXX’s word for “reproof” (ἐλέγχω) in Lev 19:17 is “derived from the Greek philosophical tradition” and was an important part of the Greek educational system. And while he acknowledges the word’s presence among Jewish wisdom, Qumranic, and early Christian texts, he concludes that “in the final analysis, such correction is identical with paraenesis itself.” I cannot agree. In legal documents from Qumran, in Matthew (18:15), James (2:9), in the *Didache* (4:3) as well as other places, this word has legal connotations as the rest of this study demonstrates generally.

² Schiffman 1983: 90.

³ Cf. Schiffman 1983: 95 who notes that the presence of such documents at Bar Kokhba make their absence at Qumran a mystery.

⁴ CD-A IX, 17-18.

⁵ Compare 1QS V, 26. 4Q270 6 III, 9b is the same as CD-A VII, 3 and IX, 6 here, each reading, “from one day to another.” But 4Q267 9 I, 1 reads, “from one month to the other ...”

⁶ Cf. Schiffman 1983: 91, 96-97 who refers (91) to the law against being a malicious witness citing Deut 19:16-21, *m. Mak.* 1:6 (cf. Exod 23:1). Philo says the same about oath-breakers in *Spec. Laws* 2.26.

⁷ Schiffman 1983: 96.

which likely indict the Pharisees as the culprits.¹ One could argue, furthermore, that the procedures in Matt 18:15-18—a passage Schiffman himself refers to in his discussion of reproof²—represent one formulation of rules for rebuke emanating from Palestine, a point to which we shall return in Chapter six. To put the advice regarding outsiders from 1QS IX, 16-18 in context, one should keep in mind Paul’s counsel to the Christians at Corinth not to take their lawsuits before Gentile courts in 1 Cor 6:1-6. Such procedures of reproof, therefore, may have been formulated differently by different groups, but they should not be seen as unique to Qumran.

3. Summary

The above sketch of the judiciary, beginning with Moses’ appointment of elders to judge cases in Exod 18 and continuing with the legislation of Exod 20, 23, Lev 19, as well as the judicial reforms found in Deuteronomy, provides readers with a context in which to place Jesus’ “do not judge” teaching in Matt 7:1-5. These Scriptures are re-appropriated for the Jewish judiciaries of the second Temple period as the formation of the Sanhedrin in Jerusalem as well as the Mishnah, Josephus, and Philo’s appropriation of the laws concerning the judiciary attest to. This review of the judiciary, especially those portions covering the second Temple period in Jerusalem, the Diaspora, and at Qumran, sets the tone for the rest of this monograph.

In the next chapter, we shall move from this bird’s eye view of the judiciary during Jesus’ day to the intricacies of how the laws regarding just legal judging, especially from Lev 19, were taken up and applied in various quarters at the time. Chapters four, five, and six will place the teachings of the Matthean Jesus and James squarely within this judicial world.

¹ Cf. Schiffman 1992: 218-221.

² Cf. Schiffman 1983: 92.

Chapter Three

Leviticus 19: 15-18, 35-36 as Midrashic Halakhic Lens

You shall not do injustice in judging a case ... but you shall judge your neighbor with justice. ... Love your neighbor as yourself. I am the LORD.

—Lev 19:15, 18b

1. Introduction

Historical records provide only a limited sketch of the inner workings of the judicial system during the second Temple era. Such reconstructions have already been done, most notably by Schürer, and space prevents another full-blown account being given here.¹

The tack which shall be taken in this chapter, therefore, is to trace the exegetical heritage of the laws for just judging from the Torah which were variously applied and referred to in discussions of the courts during the second Temple era by writers such as Philo, Josephus, and in the Mishnah. Beginning with the last two commandments of the Decalogue (Exod 20:16-17), the growth of the laws regulating Israel's judicial system will be sketched. We shall subsequently introduce the theory that one of these texts containing such laws—Lev 19:15-18, 35-36—stands behind Jesus' words in Matt 7:1-5. To provide a context for such a theory, the bulk of this chapter will be devoted to the Jewish exegetical and halakhic traditions surrounding Lev 19:15-18, 35-36 before turning to the core argument of this monograph in Chapter four: that Matt 7:1-5 is the Matthean Jesus' prophetic critique of the judicial system.

2. The Laws for Just Judging in the Torah

2.1. Exodus 20:16-17

¹ Schürer 1979: 199-226. See also Alexander 1988.

2.1.1. The Ninth Commandment against False Witnesses

The institution of Israel's judicial system (Exod 18:13-27) is followed in the narrative by the cutting of the covenant (19:4-6) with its covenant stipulations in the Decalogue (20:1-17). The ninth commandment reads, "You shall not bear false witness against your neighbor" (20:16). This commandment is more than a mere prohibition against lying but had originally to do with bearing false witness in court.¹ The legal technical terms in the prohibition indicate the juridical nature of this commandment. The phrase "false/deceptive witness" (עֵד שֶׁקֶר) is a phrase which, "arises out of the concrete legal procedure of Israel" while the verb, "answer" (עָנָה), "points to the reciprocal response of the parties in a trial."² The prohibition against giving false testimony is obviously directed at the witnesses, but it could also apply to those judging the case since judges could also serve as witnesses.³ This inclusive dynamic of the potential moral culpability specifically of the *judges*, and not merely the witnesses, is also affirmed by the later expansion of the tradition to include laws specifically designed to prevent abuse of the system by judges.⁴

2.1.2. "Neighbor" (רֵעַ)

The term "neighbor" (רֵעַ) in Exod 19:16 is an important term. Moses' adjudication of legal cases in chapter 18 is "between a man and his neighbor (רֵעֵהוּ)" (18:16). Furthermore, the tenth commandment on coveting—a prohibition which, as shall be argued below, is highly related to the ninth commandment—makes use of the word "neighbor" three times. According to Childs, רֵעַ in 19:16, "refers to the full citizen within the covenant community."⁵ The significance of this term will become more evident

¹ Cf. Noth 1962: 166; Phillips 1970: 142-145; Childs 1974: 424-425.

² Childs 1974: 424. Cf. Phillips 1970: 142.

³ Phillips 1970: 142.

⁴ Exod 23:1-3, 6-9, to be discussed below.

⁵ Childs 1974: 424 (cf. Phillips 1970: 144). The fact that Moses greeted Jethro as, "a man to his neighbor (אִישׁ לְרֵעֵהוּ)" need not nullify Childs' point that a neighbor is a "full citizen within the covenant community." For note Jethro's confession of YHWH's greatness in 18:11 (cf. Childs 1974: 329).

below as the exegetical discussions surrounding the legislation against unjust judging in Lev 19:15-18a along with the injunction to “love your neighbor (לרעה) as yourself” in Lev 19:18b are reviewed. Suffice it to say here, this commandment is a covenant stipulation meant to protect fellow covenanters by preventing false testimony against another member of the covenant community. The ninth commandment, therefore, assumes a working judicial system, and by virtue of the key term רע, this commandment against illicit judicial testimony harkens back in the narrative of Exodus to Moses as the ideal judge and to the installment of elders under him to deal with lawsuits (18:13-27).

2.1.3. The Tenth Commandment against Coveting

The tenth commandment is related to the ninth not only by virtue of the term “neighbor” in each, but also because the two commandments are related thematically. The emotion behind “covet” also implies subsequent action,¹ specifically “the act of taking possession.”² Noth describes this as “the attempt to attach something to oneself *illegally*.”³ The commandment, therefore, “attacks theft at its root.”⁴ What may well be envisioned is the taking of a neighbor’s possessions (20:17) by means of false testimony in court (20:18). Phillips, therefore, may be partially correct that, “the original purpose of the tenth commandment was to guarantee the democratic nature of the administration of justice in Israel by prohibiting seizure of one’s neighbor’s house.”⁵ “This would make very good sense,” he adds, “coming after the commandment against acting as a false witness ...”⁶ The tenth commandment is included in our discussion here because similar extensions of the ninth commandment which guard against illegitimate judicial actions can be detected in later expansions of the tradition.

2.1.4. Judicial Murder

¹ Cf. discussion in Childs 1974: 426-428.

² Childs 1974: 426, referring to J. Herrmann.

³ Noth 1962: 166, emphasis mine.

⁴ Nardoni 2004: 78. Cf. Miller 2004: 14-16.

⁵ Phillips 1970: 18; cf. 149-152. So Nardoni 2004: 78.

⁶ Phillips 1970: 151.

It is important here to note, that the commandment against bearing false witness aims not only at creating just judicial testimony nor only at preventing the loss of land, but one of its main rationales is also to prevent “judicial murder.”¹ Later expansions of this tradition indicate that one such calamitous outcome of bearing false witness was the death of the innocent which, as can be observed from Deut 19:16-19, was seen as an intentional legalization of murder (Exod 23:7; Lev 19:16; Deut 19:16-21; cf. Deut 27:25).² “The motive for this crime could ... be to secure the murder of someone whom one wished disposed of, as in the classic example of the judicial murder of Naboth ...” in 1 Kings 21:1-16.³ This story begins with Ahab *coveting* Naboth’s vineyard (1 Kings 21:1-2), and Naboth appealing to his “inalienable”⁴ right to his land inheritance (21:3). Jezebel then baldly arranges with the “elders” and “nobles”⁵ (21:8, 11) for two false witnesses to testify against Naboth so that he might be stoned to death (21:10, 13). In so doing, Jezebel and Ahab violate the ninth commandment against bearing false witness, the tenth against coveting and seizing a neighbor’s property,⁶ and commit judicial murder as well. The concept of judicial murder also appears among later developments of the commandment against bearing false witness, as will be noted below.

2.2. Laws for Just Judging in the Covenant Code (Exod 23:1-3, 6-9)

The Covenant Code (Exod 21:2-23:33) is inspired by the Decalogue which precedes it in Exodus and is a fuller exposition of the ten core laws.⁷ Therefore, the laws regarding just judging in Exod 23:1-3, 6-9 take their cue most naturally from the ninth commandment against bearing false witness (20:16) and its counterpart in the tenth against coveting a neighbor’s possessions (20:17).⁸ This expansion reads:

¹ Cf. Phillips 1970: 142-145.

² Cf. Phillips 1970: 143-145.

³ Phillips 1970: 144.

⁴ Cf. Wright 1992: 763-764; Wright 2006: 291-292.

⁵ This term “would appear to indicate the upper classes” (Phillips 1970: 18).

⁶ Wright (1992: 764) comments: “The only legal method by which land in the OT period ‘changed hands’ was by inheritance within the family. Even Ahab recognized this, when faced with Naboth’s stand on this principle (1 Kings 21).”

⁷ Cf. Mendenhall 1954a: 39.

⁸ Cf. Phillips 1970: 144-145.

You shall not spread a false report. You shall not join hands with the wicked to act as a malicious witness. You shall not follow a majority in wrongdoing; when you bear witness in a lawsuit, you shall not side with the majority so as to pervert justice; nor shall you be partial to the poor in a lawsuit. ... You shall not pervert the justice due to your poor in their lawsuits. Keep far from a false charge, and do not kill the innocent and those in the right, for I will not acquit the guilty. You shall take no bribe, for a bribe blinds the officials, and subverts the cause of those who are in the right. You shall not oppress a resident alien; you know the heart of an alien, for you were aliens in the land of Egypt.¹

This expansion of the law against giving false testimony includes more specific violations for the witnesses such as: “spreading a false report” (23:1a), cooperating with the wicked by being a malicious witness (23:1b), and siding with popular opinion in one’s testimony (23:2). But this passage also includes among its expanded violations of giving false testimony, infringements specific to *judges*. These include: showing favoritism toward the poor in judging a lawsuit (23:3),² denying justice to the poor in their lawsuit (presumably in favor of the rich?, 23:6), entertaining false charges resulting in judicial murder by putting an innocent person to death (23:7),³ accepting bribes (23:8),⁴ and “oppressing” the foreigner by failing to provide justice in court (since the foreigner had no advocate among Israel’s elders; 23:9).⁵

2.3. Priestly Laws for Just Judging (Lev 19:15-18, 33-36)

The ninth commandment is repeated in Deut 5:20, and the expansions of the ninth and tenth commandments in Exod 23:1-3, 6-9 are summarized in the appointment of

¹ Exod 23:1-3, 6-9, NRSV.

² Fensham 1982: 1166 sees Exod 23:3 arising from the obsession of some judges to protect the poor at all costs.

³ Cf. Phillips 1970: 142-145.

⁴ Note how, similarly to Exod 23:7-8, Deut 27:25 combines bribery with judicial murder.

⁵ Cf. Phillips 1970: 17.

judges under Jehoshaphat's reform in Deut 16:18-20.¹ The next significant development of these laws against unjust judging comes not in Deuteronomy (which merely repeats these laws), but in Leviticus. Leviticus 19:15-18, 33-36 expands upon Exod 23:1-3, 6-9. The text reads as follows:

You shall not do injustice (לֹא תַעֲשֶׂה צְדָקָה) in judging a case (בְּמִשְׁפָּט/ἐν κρίσει). You shall not show partiality to the poor, nor show honor to the great, but you shall judge (תִּשְׁפֹּט/κρίνεις) your neighbor with justice (בְּצֶדֶק/ἐν δικαιοσύνῃ). You shall not go about with slander among your people; you shall not stand against the blood of your neighbor. I am Yahweh. You shall not hate your brother in your heart, but reprove your neighbor frankly lest you bring sin upon yourself. You shall not take revenge nor shall you bear a grudge against the descendants of your people, but you shall love your neighbor as yourself. I am Yahweh. ... When a foreigner sojourns among you in your land, you shall not oppress him. Like a full citizen from among you will the foreigner sojourning among you be to you. And you shall love him as yourself, because you were foreigners in the land of Egypt. I am YHWH your God. You shall do no injustice (לֹא תַעֲשֶׂה צְדָקָה) in judging (בְּמִשְׁפָּט/ἐν κρίσει) by measurement of length, by weight, or by measure of capacity.² You shall use just scales, just weights, a just ephah, and a just hin. For I am YHWH, your God, who brought you out of the land of Egypt.³

The law regarding partiality between rich and poor from Exod 23:3, 6 is repeated in Lev 19:15, with the added emphasis upon balanced justice: “you shall judge your neighbor with justice.” The phrase beginning Lev 19:15—“do not do injustice in

¹ Mention of “partiality” using the facial metaphor in Deut 16:19, however, bears resemblance to Lev 19:15.

² Although the Hebrew differentiates between measures of length and capacity as reflected in my translation above, the Greek word for measure, μέτρον, is a more general term used for any kind of measurement. Also of note is the imagery of a “yoke” (ζυγός) in Lev 19:35-36 to describe the balance of measurement scales.

³ Lev 19:15-18, 33-36 author's translation.

judgement”—is repeated verbatim in 19:35 and very likely “serves as a general heading” to each unit.¹ The prohibition against slander from Exod 23:1 is restated in Lev 19:16 with the additional clarification, “you shall not stand against the blood of your neighbor.” Understanding the difficult phrase *לֹא תִעֲמֹד עַל־דָּם רֵעֶךָ* is greatly aided by the idea of judicial murder discussed above,² and the NIV’s rendering—“do not do anything that endangers your neighbor’s life”—is helpful here.

The just and equal judgement of foreigners in court from Exod 23:9 finds a parallel in Lev 19:33-34, indicating that the legislation in Lev 19:15-18 is related to that of 19:33-34 just as these traditions are in closer textual proximity in Exod 23:1-3, 6-9.³

A number of new elements are introduced by Leviticus into the legislation of Exod 23:1-3, 6-9. The idea of rebuking a brother is introduced (19:17), as is seeking revenge and/or bearing a grudge (19:18a). The famous proverbial maxim to love one’s neighbor as oneself (19:18b) is added to sum up this section of legislation begun in 19:1.

Just judgment in Leviticus, furthermore, includes honest measurements and scales (19:35-36). That these latter verses are related to the laws in 19:15-18 can be deduced from the fact that (besides its occurrence in Deut 32:4 in a description of God) the word *עָוֹל*, “injustice,” or “unrighteous” occurs in the Pentateuch only at Lev 19:15 and 19:35, besides its appearance in Deut 25:16 in a similar section about just weights and measures (cf. Deut 25:13-16).⁴ In fact, as already noted, the exact phrase, “do not do injustice in judgment” occurs in both Lev 19:15 and 19:35—the only two such occurrences in Leviticus. Moreover, the only two places in Leviticus in which the phrase, “love ‘X’ ... as yourself” occur are in 19:18 and 19:34—further indicating that 19:15-18 is highly related to 19:35-36.

The connection between 19:15-18 and 19:35-36 was not lost on early interpreters of these verses, as can be observed among writers within the canon itself who (at least according to the LXX version) make this association. For instance, writers often relate the actions of the powerful oppressor (*δυνάστου*) from Lev 19:15 to the use of unjust weights and measures from Lev 19:35-36. Alluding to a combination of Lev 19:35-36

¹ Magonet 1983: 151-152, 156.

² Cf. Phillips 1970: 145.

³ Cf. Exod 20:10; 22:21.

⁴ Carmichael 1967: 204.

and Lev 19:15 respectively, Hos 12:7 (LXX 12:8) says, “the merchant in whose hands are unjust scales (ζυγὸς ἀδικίας) loves to oppress (καταδυναστεύειν).” Amos 8:4-5 similarly combines Lev 19:15 with Lev 19:35-36 in speaking of those who, “oppress (καταδυναστεύοντες) the poor of the land” and who “make small the measure (μέτρον) and enlarge the weights (στάθμια) and make unjust scales (ζυγὸν ἄδικον).” Likewise, in Ezek 45:9-10 oppression (καταδυναστεύειν) alludes to Lev 19:15 and is the opposite of just scales and just measures (ζυγὸς δίκαιος καὶ μέτρον δίκαιον)—an obvious reference to Lev 19:35-36. This connection is made by postbiblical writers as well, as shall be demonstrated below.

Excursus: “Neighbor” in Lev 19:15-18

The term “neighbor” (עֲרֵב) in Lev 19:15-18 undoubtedly comes from the occurrence of this term once in the ninth and three times in the tenth commandment (Exod 20:16-17; cf. 18:16). The term is copiously used throughout Lev 19:15-18, even being accompanied by the addition of three other synonyms: “neighbor” (עֲרֵב) occurs once each in 19:16, 18; “fellow” (עֲמִית) appears once each in 19:15, 17; “people” (עַם) is found once each in 19:16, 18; and “brother” (אָח) only once in 19:17.

Besides being a noticeably profuse addition to this set of laws, I introduce this here for at least two reasons. First, these terms help to define this block of teaching as a coherent unit. There seems to be a “deliberate alternation” of these terms here which argues their “interchangeability”¹ since, with the exception of “brother” which occurs only once, each of these terms occurs twice within the span of verses 15-18 although they do not occur together outside of these verses in the immediate context before or after verses 15-18.²

Leviticus 19:15-18, 33-36 is the fullest expansion of the laws for just judging in the Pentateuch. Recognizing this to be so, these verses were often taken up and

¹ Kugel 1987: 45; Kugel 1994: 216.

² Only עֲמִית occurs once in 19:11 and עֲרֵב once in 19:13. Magonet (1983: 153) provides a good diagram for these terms here.

commented upon by Torah scholars of the second Temple period. We now turn to the theory of J. W. Doeve which purports that Jesus was one such scholar.

3. The Sermon on the Mount as Midrashic Halakhah: Lev 19:15-18, 35-36 and Matt 7:1-5

3.1. J. W. Doeve's Theory

In an early critique on form criticism, Jan Willem Doeve postulated in his *Jewish Hermeneutics in the Synoptic Gospels and Acts* (1953) that the Sermon on the Mount represents Jesus' hermeneutical engagement with the Torah.¹ He noted that the material in the Sermon followed the order of topics found in sections of the Torah, hypothesizing that larger units of tradition, "perhaps were already expressed in this form by Jesus himself," or were purposefully arranged in association with texts Jesus commented upon.² This, he likened, to later rabbinic midrashim upon the Torah, although "not in the strict sense [of] a commentary on the text."³

According to Doeve's scheme, Leviticus chapters 18 and 19 play a large role in the Sermon, corresponding to the materials in Matt 5:21-48 and 7:1-12, and forming the core material around which the Sermon is built, with Lev 19:15-18a "forming an especially important point of concentration."⁴ The section on oaths in Matt 5:33-37, for instance, is related to Lev 19:12 which says, "And you shall not swear falsely by my name and profane the name of your God. I am the LORD."⁵ Matthew 5:43-47 on loving one's neighbors as well as one's enemies follows the order of commandments found in Lev 19:18b ("love your neighbor as yourself") and 19:34 ("love [the foreigner] as yourself").⁶ The laws for just judging in Lev 19:15-18a, Doeve postulated, stand behind both the "eye for an eye"/litigation over one's tunic material in Matt 5:38-42, as well as

¹ Doeve 1953: 191-200. On Jesus as a learned Torah scholar generally, see Flusser 2007.

² Doeve 1953: 192. Matthew 5:21-42, for instance, follows the order of similar topics from Exod 20:13-21:25.

³ Doeve 1953: 193.

⁴ Doeve 1953: 197, 199. Cf. Derrett's 1988: 274.

⁵ Doeve 1953: 193.

⁶ Doeve 1953: 193.

the prohibition against judging in 7:1-5.¹ Curiously, however, Doeve does not see Lev 19:15-18a as being behind Matt 5:25-26—material exhorting reconciliation before litigious escalation occurs.

Doeve's work is picked up by J. Duncan M. Derrett in 1988, with Derrett reproducing Doeve's list of parallels in an appendix.² Derrett, drawing upon rabbinic and other second-Temple Jewish sources, argues that "do not judge" refers to the necessary and good requirement of the Torah's injunction in Lev 19:17 to rebuke a brother.³ But Derrett's application of Jewish sources is un-careful and lacks thoroughness. Furthermore, from a remark in his 1989 commentary that, "the judging of [Matt] 7:1 is hardly what Tolstoy supposed, judicial activity,"⁴ it appears that he does not see any legal implications from understanding Lev 19:15-18a as standing behind Matt 7:1-5. Derrett's contribution, however, is that in addition to Lev 19:15-18a being behind Matt 7:1-5, he sees the laws about just weights and measures from Lev 19:35-36 as also being a part of the exegetical text being commented upon in Matt 7:1-5.⁵ This is a helpful notation since, as we have already seen above, Lev 19:15-18 and 19:35-36 are highly related even in Leviticus itself, as was recognized by early interpreters of these verses within the canon and, as we shall see below, is recognized by postbiblical writers as well.

Unfortunately, Doeve does not go into great detail or expand his hypothesis by delving extensively into selected texts, nor does Derrett expand greatly upon Doeve's work. These authors provide little more than an impetus for how Lev 19 and Matt 7 are related and therefore further critical engagement with their work cannot be undertaken. However, in an effort to build upon the Doeve/Derrett thesis, the bulk of this chapter will seek to understand the exegetical heritage of Lev 19:15-19, 35-36 and Chapter four will then attempt to show the connection between Lev 19:15-19, 35-36 and Matt 7:1-5 by

¹ Doeve 1953: 197; followed by Derrett 1988: 274. Doeve (1953: 193) also connects the *lex talionis* of Exod 21:23b-25 with Lev 19:15-18a (and therefore with Matt 7:1-5). But, in my estimation, this connection can only be considered circumstantial. The *lex talionis* principle is often used in legal formulations and occurs in both Exod 21:23b-25 as well as Matt 7:1-2, but not in Lev 19:15-18a.

² Derrett 1988: 277; cf. Derrett 1989: 56-57.

³ Derrett 1988: 273-274, 277; 1989: 56. Cf. van Tilborg 1986: 176-177.

⁴ Derrett 1989: 56. So Betz (1995: 488), commenting that, "in the final analysis, such correction is identical with paraenesis itself."

⁵ Derrett 1988: 277.

showing lexical links between these texts as well as demonstrating how later rabbis used Lev 19:15-19, 35-36 in ways similar to Matthew's Jesus.

3.2. The Work of Karl-Wilhelm Niebuhr

Also deserving special mention is Karl-Wilhelm Niebuhr's important 1987 doctoral thesis, *Gesetz und Paränese: Katechismusartige Weisungsreihen in der frühjüdischen Literature*. While the view that Lev 19 consisted of some kind of center to the Torah had been generally regarded as a later rabbinic development (such as in *Sifra Qedoshim Parasha* §1 on Lev 19:1), Niebuhr's thesis argued that certain "Überlieferungskomplexen des Pentateuch" (Niebuhr 1987: 234) consisting of the Covenant Code (Exod 20-23; especially the Decalogue in Exod 20:2-17/Deut 5:6-21), and the Holiness Code (Lev 17-26; especially chapters 18/20 and 19), as well as Deut 27 can be found in *Pseudo-Phocylides*, Philo's *Hypothetica*, and Josephus' *Contra Apion*.¹ These complexes of tradition became an updated interpretation and application of Jewish law in the Diaspora.² According to Niebuhr, therefore, Lev 19 came to play a prominent role among Jewish ethical-paraenetical texts before and during the first century. One can understand why this would be the case, since Lev 19 contains some of the most universal ethical obligations, not least the commandment to love one's neighbor as oneself.³

The importance of Niebuhr's work is to ground Jewish and Christian ethical-paraenetical material from at least the first century B.C. onwards among specific Pentateuchal texts.⁴ He demonstrates this in detail with the *Testaments of the Twelve*

¹ Niebuhr 1987: 1-72. For a helpful chart of parallels between these three documents, cf. Wilson 2005: 20.

² Niebuhr 1987: 68-70.

³ Cf. Niebuhr's 1987 comments that, "Lev 19 bietet einen umfassenden Fundkodex der Verhaltensweisen und Pflichten im alltäglichen Umgang mit dem Nächsten sowie damit untrennbar verklammert einige der wichtigsten religiösen Grundgebote" (13), and that the use of Lev 19 in Ps.-Phoc. culminates in an "Allerweltsweisheit" (25). Similarly, van der Horst (1978: 67) remarks, "the spirit of [Ps.-Phoc.] is more congenial to the Wisdom literature. There ... we see a constant search for a universal ethics which shuns particularistic elements and is not averse to the good and useful elements in the ethics of the surrounding peoples."

⁴ Cf. Niebuhr 1987: 235-236.

Patriarchs and then demonstrates how this same Torah-complex can be used to better understand other contemporary Jewish-Christian paraenetical texts (in various genres).¹

One central theme within this material, Niebuhr points out, is the call to mercy towards the weak and disadvantaged within the community. This positive commandment towards justice and compassion includes the protection of orphans, widows, and foreigners in court, and is often inextricably bound up with warnings against greed and the unjust acquisition of wealth—including defrauding others via dishonest weights and measures.²

Niebuhr’s thesis is helpful in that it can now be recognized that the Pentateuchal texts delineated above regarding the judiciary—Exod 20:16-17; 23:1-3, 6-9; Lev 19:15-18, 33-36—fall within Niebuhr’s Torah-complex in use among Jewish ethical discussions from 100 B.C. onwards. This, therefore, makes the Doeve/Derrett theory of Matt 7:1-5 as a kind of midrash upon Lev 19:15-18, 35-36 a substantially more probable possibility.

While Niebuhr’s thesis is a considerable contribution which makes probable the Doeve/Derrett theory, the latter theory has to my knowledge, never been fully developed within New Testament studies.³ The rest of this chapter, along with Chapters five and six, is an attempt to do this. As a preface to this, however, it is necessary to define “midrash” as well as a related term, “halakhah.”

3.3. Matt 7:1-5 as Midrashic Halakhah upon Lev 19:15-18, 35-36

3.3.1. “Midrash”: Definition

¹ Niebuhr 1987: 73-231. Cf. Niebuhr 1987: 73 on his dating of *T. 12 Patr.*; see also his caution on the dating of the other texts he deals with (167-168).

² Niebuhr 1987: 232-233.

³ One gets the sense that it would be extremely illuminating to approach the entire Sermon on the Mount in this fashion, although attempts at this have (understandably) only focused upon select portions of the Sermon as I am doing here (van Tilborg 1986 is a notable exception). Recent examples of approaching at least portions of the Sermon midrashically and halakhically include Sigal (2007: 105-143) and Bockmuehl (2000:17-21)—both on Jesus’ halakah on divorce in Matt 5:31-32. Frey (2005) approaches Jesus’ halakah on the courts in Matt 5:25-26 in a similar fashion, but from the perspective of the sapiential instruction found at Qumran.

The term “midrash” is often used and understood in a less-than-precise way, especially among students of the New Testament.¹ Therefore, it is necessary here to provide a *general* working definition.

The word “midrash” derives from מדרש, “to search, to inquire.” Early on it connoted an inquiry of the LORD (or sometimes another god) via one of his prophets, but in second Temple times connoted an inquiry of the LORD via the study of God’s holy Scriptures.² The history of how scholars have understood midrash reveal at least two agreed upon aspects which help define it.³

First, midrash is intrinsically related to *canonical Scripture*.⁴ Midrash must “begin with a text of Scripture and proceed to comment upon it in some way.”⁵ The more literal midrash, in the words of Gezà Vérmes, “is organically bound to the Bible.”⁶ “Where a scriptural narrative is taken as the basis for comment,” France explains, “it exercises a decisive control on the writer.”⁷ Indeed, the origin of such midrashic activity can be found in the Scriptures themselves.⁸

The term “midrash” also describes the *genre* of a work which comments upon a canonical text by following its order as seen in the early pesharim of Qumran and later rabbinic works such as the *Mekilta*, *Sifra*, and *Sifre*.⁹ Texts such as Jubilees, the *Genesis Apocryphon*, and Pseudo-Philo’s *Liber Antiquitatum Biblicarum* belong to the category of “re-written Bible” and are therefore also considered midrashic in genre, even if only a “species of Midrash.”¹⁰ In this way, it is improper to classify the *genre* of the Mishnah and the Gospel of Matthew as midrash, but these can be said to *contain* midrash.¹¹ Texts

¹ France 1983: 290; Quarles 1998: 32-33.

² Cf. Zeitlin 1953: 21-26; Ellis 1988: 702-703; Evans 1992a: 544; Quarles 1998: 33. Urbach’s (1976: 116-117) definition of מדרש as “history” is unconvincing.

³ For a good summary of the scholarly history of midrash, cf. Quarles 1998: 33-46.

⁴ Nearly all scholars of midrash hold this position, including Zeitlin, Doeve, Gertner, Wright, Vérmes, Neusner, Maccoby, Porton, Quarles; for which see Quarles 1998: 33-46. Cf. also Ellis 1988: 703; Longenecker 1999: 22.

⁵ Quarles 1998: 39.

⁶ Vérmes 1970: 220, quoted in Quarles 1998: 41. So Neusner 2005a: 198.

⁷ France 1983: 291.

⁸ Vérmes 1970: 220, cited in Quarles 1998: 41; Ellis 1988: 703.

⁹ On the Qumran pesharim as midrashic, cf. Fraade 2000: 550. Bockmuehl (2005: 279) comments that, “the pattern of citation followed by an exposition remains consistent,” and “the order of exposition nevertheless follows the canonical sequence.” On the rabbinic midrashim, cf. Zeitlin 1953: 33-34; Evans 1992b: 128-133; Strack and Stemberger 1996: 233-276.

¹⁰ Chilton 1983: 10; cf. Bauckham 1983: 33-34.

¹¹ So Bauckham 1983: 62 (against Goulder); Moo 1983: 167; Neusner 1983: xvi (cited in Quarles 1998: 42).

whose genre can be classified as midrash are often more or less straightforward about which text is being commented upon.

But more than merely a genre, midrash can be more precisely defined as the *hermeneutical activity* of engaging with canonical Scripture.¹ Accordingly, Hillel is said to have formulated seven such hermeneutical rules for midrashic interpretation which was later expanded to thirteen by Rabbi Ishmael and thirty-two by Eliezer ben Yose the Galilean.² While such exegetical rules may engender scrutiny over their historic plausibility of their origin, the fact that they were at some point organized or codified indicates the importance of such Scriptural hermeneutics among ancient Torah interpreters.³ While some have categorized midrash as allegorical exegesis, or have classified midrash as a form of “haggadah”—a more loosely creative rendering of biblical narratives—Maccoby has shown this to be inaccurate.⁴ Others such as V  rmes and Neusner have rightly understood midrash to be concerned more with further *explaining* the text rather than creatively revising the text.⁵ Those engaged in midrashic activity, therefore, sought not so much to *create* tradition, but rather to explain, defend, and build upon existing tradition.⁶ Indeed, “most would have deemed their midrash as born out of a history of interpretation.”⁷ Even the eschatologically-oriented pesharim of Qumran, one could argue, are more concerned to derive meaning *from* the text for current application than to change the meaning of the biblical text itself. It is entirely plausible, therefore, as Marc Bregman writes concerning the impact of James Kugel’s work (to which we shall return below), “there existed well before the common era a substantial body of standard explanations of various problems and peculiarities in the biblical text.”⁸ In other words, in simple terms midrash can be defined as a conversation about a text or, more often, a *conversation about a conversation* about a text.

¹ V  rmes 1970; Chilton 1983: 9-10; Maccoby 1988; Quarles 1998: 53.

² Cf. Zeitlin 1953: 31; V  rmes 1970: 221-223; Evans 1992a: 544-545; Brewer 1992: 6-7; Strack and Stemberger 1996: 15-30.

³ Cf. Brewer 1992: 6-7.

⁴ Maccoby 1988: 22-25. See the critique of Ren  e Bloch in Sanders 1977: 27 and Quarles 1998: 35.

⁵ Cf. V  rmes 1970; Neusner 1983.

⁶ So France 1983: 291; Quarles 1998: 33. Quarles (1998: 41) commenting upon the work of V  rmes says, “midrash was not intended to be a creative activity.”

⁷ Quarles 1998: 42. So Chilton 1983: 10-11; France 1983: 291.

⁸ Bregman 1993: 288.

However, not all midrashic texts are straightforward about which Scripture they are commenting upon. While some midrashic texts clearly quote or refer to the biblical text under discussion, many others have a more subtle, “invisible” quality to them.¹ The difference between these two types of midrash has been called “covert” and “overt” by Gertner and “implicit” and “explicit” by Ellis.² That is, with regard to covert/implicit midrash, while a canonical text certainly stands behind a work or passage, that canonical text is fully assumed but not quoted or explicitly referred to. In other words, these midrashic texts concealing a Scripture behind them are like an on-going conversation about an *assumed* text. First-time readers of such a midrash, therefore, may miss the point entirely if they are not up-to-speed with the origin and history of the dialogue. For instance, although filled with midrashic, halakhic legal material based upon Torah, in the legal texts at Qumran, “almost never do we find an explicit quotation of the proof-text for a law.”³ In such legal texts at Qumran the midrashic activity is often implicit so that the canonical texts under discussion and the exegetical positions which are held are expressed “in nonexegetical, paraphrastic form.”⁴ It is exactly this kind of implicit midrash which, I argue, Matthew’s Jesus is engaging in when he presents his legally-oriented “do not judge” teaching in Matt 7:1-5.⁵ Leviticus 19:15-18, 35-36 although invisible and implicit, although expressed in nonexegetical and paraphrased form, fully stands behind Jesus’ words in Matt 7:1-5. Stated another way, in Matt 7:1-5 Jesus enters into an ongoing conversation among Torah scholars about Lev 19:15-18, 35-36.

Second, midrash is an attempt not only to explain a canonical text, but to *contemporize* and *apply* the text to one’s current time and situation.⁶ This was, in fact, “the purpose of midrash.”⁷ “Scripture ... engendered midrash, and midrash in its turn ensured that scripture remained an active and living force in Israel.”⁸ As Niebuhr has pointed out, this is what Pseudo Phocylides, Philo, and Josephus were doing with the

¹ Gertner 1962: 268, 271ff.

² Gertner 1962: 268-269; Ellis 1988: 703-709. Evans (1992a: 545-546) favors Ellis’ “implicit/explicit” characterization.

³ Schiffman 1983: 15.

⁴ Fraade 2000: 550.

⁵ For other examples of implicit midrash in the NT, cf. Ellis 1988: 704-706.

⁶ This too is held by Zeitlin, Doeve, Gertner, Wright, Vermes, Neusner, Maccoby, Porton, Quarles; for which see Quarles 1998: 33-47. Cf. also Schürer 1979: 339; Ellis 1988: 703; Longenecker 1999: 22.

⁷ Quarles 1998: 47.

⁸ Vermes 1970: 220, quoted in Quarles 1998: 41.

Jewish law in the context of the Jewish dispersion among Gentiles. As I shall argue in Chapter four, Matthew presents Jesus in 7:1-5 as applying and contemporizing Lev 19:15-18, 35-36 in a *prophetic* way to warn Israel's leaders against abusing their position as legal judges.

I would further emphasize another aspect of midrash which is perhaps less discussed, namely it's *judicial character*. That is, early on דרש connoted a legal inquiry as one would make of a judge, as in Exod 18:15 when the people come to Moses, the legislator and judge, to "seek" God's answer to a case; or when Isaiah exhorts Judah's leaders to "seek justice" for the orphan and the widow in their legal cases (Isa 1:17; cf. 16:5); or when Micah, as Judah is called upon to plead her case in God's cosmic court (Mic 6:1f), declares with prophetic irony that while the people *seek* answers from the LORD it is the LORD who *seeks* justice from them: "what does the LORD require (דורש) of you? To act justly to love mercy and to walk humbly with your God" (Mic 6:8). So a midrashic inquiry into God's will or into his revealed law was also often simultaneously an inquiry into judicial matters.¹

3.3.2. "Halakah": Definition

Another important term in need of definition, highly related to midrash, is "halakhah," which is derived from the verb הלך, "to go, walk." Among discussions of midrashic literature, it has been common to classify something as "haggadah" if it rewrites or comments upon a biblical *narrative*, and "halakhah" if it expands upon or in some way explains a biblical *law*. The tannaitic midrashim are basically halakhic in nature, despite the fact that some do contain appreciable amounts of haggadic material. The midrashim are commentaries upon the *legal* books of the Torah (Exodus-Deuteronomy), often refraining from comment upon the narrative portions of these texts.² And of course, as with the midrashim in general, a text can contain halakhic material without being midrashic/halakhic in genre.

¹ Cf. Wagner 1978: 296-298.

² Sanders 1977: 76; Chilton 1983: 9; Strack and Stemberger 1996: 247.

As E. P. Sanders has for the most part demonstrated, halakah should be viewed in relation to covenant, so that the formation of halakahic minutia arose from a desire to ensure the fulfillment of one's covenant obligations rather than as a means of achieving salvation.¹ The halakah, one might say, were created for those within the covenant who love God and fear of his judgment and therefore had a concern to keep his law, but not as a means of getting into that covenant in the first place. Within this covenantal framework, Sanders further explains:

The purpose of the halakah is to determine whether or not a biblical passage does in fact constitute a commandment, if there can be any doubt; to establish the application of a biblical commandment; to define its precise scope and meaning; and to determine precisely what must be done in order to fulfil it.²

Halakah, therefore, is basically a form of midrash meant "to develop and establish the law."³ The biblical commandment serves as "the eternal, unchanging principle" and starting-point of the discussion, while the halakah are a midrashic outworking of various ethical applications of that principle, often in an attempt to settle a legal dispute by providing a normative interpretation and applications of a commandment.⁴ The commandment against murder, for instance, is supplemented by halakhic discussions concerning whether murder in self-defense is acceptable or not, or whether one may kill to save the life of another in various circumstances.⁵ And the entire system, according to Sanders, is created in an effort to fulfill the human obligations of the covenant. Granted, there has been a significant response to Sanders' work and the above definition does not do justice to the intricacies involved in discussions regarding covenantal nomism.⁶ But for our purposes, it is enough simply to state that the establishment of halakhah is the

¹ Sanders 1977, esp. 81-84.

² Sanders 1977: 76.

³ Schürer 1979: 339.

⁴ Schürer 1979: 339; Maccoby 1988: 18; Chilton and Neusner 2004: 172. Cf. also Zeitlin 1953: 30-31; Vermes 1970: 222.

⁵ Maccoby 1988: 18.

⁶ For critiques of Sander's work, cf. Wright 1997 and the 2001 and 2004 volumes edited by Carson, O'Brien, and Seifrid.

establishment of how, within a covenantal framework and according to the Scriptures, one should live out a biblical law or how one should “walk.”

The halakah, set as they are within a covenant between a fundamentally moral God and his people who are to be holy as he is (cf. Lev 19:2), are also fundamentally and eminently *ethical* in orientation.¹ The study of Torah itself was not meant to be intellectual only, but *formative*.² In the words of Solomen Schechter, “the occupation of Torah was, according to the Rabbis, less calculated to produce schoolmen and jurists than saints and devout spirits.”³ So also the whole point of living out the halakah created from such Torah study is to achieve and/or maintain ethical holiness.

Since halakah is concerned with the outworking of ethical laws, this naturally means that halakah also inevitably deals with the motives of the heart, or the *intentionality of the will*.⁴ Halakah is meant to “correct the error of Eden” and this “by exercising the God-given power of free will in ways that show love of God and acceptance of God’s dominion.”⁵ Legislation aimed at moral intention is found in the original Mosaic legislation itself, as in the tenth commandment against coveting, as well as in the ninth commandment (by virtue of its interrelatedness to the tenth) against bearing false witness in court (Exod 20:16-17; cf. Exod 23:1-3, 6-9). It comes as no surprise, then, to find in Lev 19:17a—in a development of the Decalogue’s legislation against bearing false witness—a prohibition aimed towards moral intent: “do not *hate* your brother *in your heart*.”⁶ As Chilton and Neusner note in their explanation of halakhah, “intentionality ... matters [especially] in situations of conflict.”⁷ Jesus, of course, speaks in Matthew’s Sermon of the moral intention behind keeping the law (Matt 5:21-22, 27-28, *passim*), as did Hillel before him.⁸

While the halakic enterprise would seem to be aimed at the establishment of a minimum standard of the law, the reality of the complex interrelation between law and

¹ Cf. Urbach 1976: 114; Chilton 1983: 9; Doeve (cf. Quarles 1998: 34); Kugel 1994: 240; Schofer 2005; and esp. Bockmuehl 2000: 3-15.

² Schofer 2005: 5.

³ Quoted in Schofer 2005: 5.

⁴ Newman 1989: 82; Bockmuehl 2000: 8-10; Chilton and Neusner 2004: 173-174; Neusner 2005a: 175.

⁵ Chilton and Neusner 2004: 176.

⁶ So Bockmuehl 2000: 9.

⁷ Chilton and Neusner 2004: 177.

⁸ Strack and Stemberger 1996: 66 followed by Bockmuehl 2000: 9.

virtue cannot be explained so simply.¹ This is most poignantly illustrated by a Tannaitic explanation of Exod 18:20 which describes—in a passage portraying the establishment of judges in Israel—Moses teaching the people not merely to obey the letter of the law, but to go, “beyond the line of the law.”² The taking of oaths is a good example of going beyond the line of the law: oaths are permitted in Deut 23:21-23, warned against in Eccl 5:4-5, but Jesus, followed by James, counsels that it is best not to swear an oath at all (Matt 5:33-37; Jas 5:12).³ While Mainonides saw such behavior as supererogatory (i.e., optional) yet saintly behavior, and Nachmanides viewed it as obligatory to fulfill the divine commandment, the likely answer to this conundrum is “yes.”⁴ Such a concept cannot be viewed or described atomistically by a mere plea to historical or even legal categories, but belongs to a richer theological category. Viewed as “the definitive expression of divine revelation,” halakah is meant to cultivate the *imitatio dei*, the supreme virtues of which are compassion and mercy.⁵ “Viewed from this perspective,” writes Louis Newman, “halakha represents what we might call an ‘open-ended’ moral system. Within it, moral obligations are potentially limitless ...”⁶ Herein lay the struggle between a righteousness which keeps the letter of the law and one that keeps the spirit of the law (cf. Matt 5:17-20; 2 Cor 3:6b-18)—the difference of which is somewhat like the difference between learning to practice the mechanics of a father’s trade and becoming like one’s father. Perhaps this is what Jesus means when he speaks of the kingdom of God being “*within*” a person (Luke 17:21). The law prescribes specific outward behavior, but it ultimately demands much more of a person. This must be, in fact, what Jesus, James, and Paul mean when they use Lev 19:18b to say that love “*fulfills*” or “*perfects*” the law (Matt 5:17-20, 43-48; 19:16-22; 22:34-40/Mark 12:28-34/Luke 10:25-37; Jas 2:8; Gal 5:14; Rom 13:8-10).⁷

¹ So Maccoby 1988: 18; Newman 1989: 86-87.

² *Mek.* on Exod 18:20. On translations of this difficult phrase, cf. Newman 1989: 61, f.n. 2. For discussion of this tannaitic passage, cf. Berman 1977: 186-187; Newman 1989: 70; Sigal 2007: 96-97.

³ Sigal 2007: 93.

⁴ Cf. Newman 1989: 76-86.

⁵ Newman 1989: 82-83; Sigal 2007: 96-97.

⁶ Newman 1989: 83.

⁷ So Sigal 2007: 96-97.

Now that working definitions of “midrash” and “halakah” have been established, midrashic, halakhic treatments of Lev 19:15-18, 35-36 can be observed. The most significant work done in this area has been the work of James Kugel.

4. Jewish/Christian Midrashic Halakah Engaging Lev 19:15-18, 35-36

4.1. The Work of James Kugel on Lev 19:17

In a series of developing essays, James Kugel lays out some of the early exegetical history of Lev 19:17, at times including in his discussion some of the verses surrounding Lev 19:17.¹ One may draw three conclusions from Kugel’s work. First, he argues that the injunctions in Lev 19:17-18a are linked together by the “common thread” of these ethical injunctions being aimed at the “heart.”² Second (and this is his main conclusion), he sees two interpretive streams issuing forth from the tradition: the “moral” or “externalizing” interpretation, and the “judicial” reading.³ These two lines of interpretation, furthermore, come together in one text: Matt 18:15.⁴ From this conclusion Kugel draws a third implication: exegetes who interpret Lev 19:17 in isolation from its literary context tend towards a moralizing reading (such as in Proverbs), while exegetes who understand Lev 19:17 as related to its immediate surrounding context (Lev 19:15-18a) tend toward a legal reading (such as in *Sifra*).⁵ But there are a number of problems with these conclusions.

¹ The “reception history” of Kugel’s work on Lev 19:17 entails three versions: Kugel and Greer 1986; Kugel 1987; and Kugel 1994. The core argument remains the same even as each new version grows and develops. Some key additions, however, should be noted: his second redaction adds Proverbs as part of the reception history of Lev 19:17 (Kugel 1987: 45-47), and his third version includes a lengthy discussion of the insertion of Nah 1:2 in CD IX, 2-8 as well as a discussion of a number of additional Christian texts which take up Lev 19:17 including Matt 5:43-44 on hating/loving one’s enemies, 2 Thess 3:14-15 on excommunication, and Luke’s parable of the Good Samaritan in Luke 10:25-28 (Kugel 1994: 231-240).

² Kugel 1987: 44-45.

³ Kugel 1987: 57-61.

⁴ Kugel 1987: 61.

⁵ Kugel 1994: 230-231. Cf. Kugel’s earlier musings on this point in 1987: 60.

Kugel's first conclusion assumes that mention of "hate," "vengeance," or "bearing a grudge" in Lev 19:17-18a are merely attitudes which, in a legislative context, are very difficult to create laws for.¹ He maintains that,

the difficulty associated with trying to forbid "hatred" of one's brother is not the only such difficulty in this passage. Indeed, if its various injunctions have a common thread, it is apparently that *all* the things that they seek to govern are very difficult, or even impossible, to determine judicially. For how can one peer into the heart of a judge in order to be sure that he does no "injustice in judgment" but eliminates any internalized preference ...?²

Kugel begins with this distinction between heart and law and, therefore, his conclusion of a split in the hermeneutical tradition into either a moral or judicial reading is predictable. But in making this distinction, Kugel demonstrates that he misunderstands the nature of law and halakah, which are not merely legal in nature but which are in fact simultaneously "moral" too, and which do in fact incorporate the "heart" into their precepts, as our discussion concerning halakah above demonstrates. Furthermore, attitudes of the heart always can (but not always do) result in outward actions, and in my view this is the likely assumption not only of most subsequent interpreters but of the canonical text itself. This is not to say that a writer may not emphasize the moral over the legal, as Kugel demonstrates in highlighting some of these texts he does. But this distinction is not always drawn as sharply as Kugel's work leads one to believe.

Kugel's second conclusion of a split in the hermeneutical tradition which subsequently only comes together in Matt 18:15 is somewhat softened when he admits in a later revision that 1QS V, 24-VI, 1 "conflates" these two interpretive traditions, that CD IX, 2-8 "bears signs of a certain harmonizing activity" of the two readings, and that *Sifra*, although largely interpreting Lev 19:15-18 as legal in

¹ Kugel and Greer 1986: 90; Kugel 1987: 44; cf. discussion in Bockmuehl (2000: 8-10) who, citing Lev 19:17, states, "this principle of moral intention ... is not in fact alien even to the Mosaic legislation" (9).

² Kugel 1994: 215-216.

orientation, nonetheless interprets Lev 19:17 morally.¹ Thus Kugel is forced to concede in his final revision, “the two ways of interpreting Lev. 19:17 ... are ultimately rooted in the biblical text itself.”²

Kugel’s conclusion of two subsequent readings seems to be the result of a methodology which is too narrow. For the only texts in the Old Testament Kugel discusses as making use of Lev 19:15-18a are three texts from Proverbs (Prov 10:18; 25:9-10; 26:24-25) before launching into a discussion of Ben Sira’s use of these verses. This gives readers the impression that Lev 19:15-18a is early on picked up only by wisdom literature and interpreted “morally,” only later to be interpreted as “judicial” at Qumran. However, the Old Testament prophets, with their emphasis upon social and civil justice, make use of Lev 19:15-18 even more than Proverbs and more often than not seem to interpret these verses as regarding the judiciary.

One good example from the prophets is Jeremiah’s use of Lev 19:15-18. Jeremiah 7:5-6 exhorts its hearers “at the gate” (7:2)—the place of judicial reckoning—to deal justly with each other and especially with the vulnerable. The phrase, “if you truly do justice between a man and his neighbor” in Jer 7:5 seems to clearly allude to the law regarding just legal judging from Lev 19:15. The call here in Jer 7:5 to “truly do [justice] in judgement” (תַּעֲשׂוּ/פּוֹלֹדֻנְטֵס פּוֹיָהֶשֶׁתֶּ כְּרִיסִין) to one’s “neighbor” (רֵעֵהוּ/טוֹד פּלִישִׁיֹּן אֲטוֹד) echoes the exhortation in Lev 19:15 not to “do injustice in judgement” (בְּמִשְׁפָּט עֲלֵךְ לֹא-תַעֲשֶׂשׂוּ/וֹד פּוֹיָהֶשֶׁתֶּ אֲדִיקוֹן עֵן כְּרִיסֵי) but to judge one’s “neighbor” (רֵעֵהוּ/טוֹד פּלִישִׁיֹּן סוֹד) with righteousness. Jeremiah could easily understand מִשְׁפָּט here as referring to the action of a legal judge, since this word is often used in Jeremiah to refer to judicial activity (cf. 5:28; 12:1; 21:12; 22:3; 26:11, 16; 39:5; 52:9). The exhortation not to oppress the orphan, widow or foreigner in Jer 7:6, then, can be seen to echo the law in Deut 24:17 protecting this vulnerable triad within a judicial setting. Deuteronomy 24:17 contains the phrase, “you shall not pervert justice” (לֹא תִטֶּה מִשְׁפָּט) in an exhortation to protect the vulnerable triad, and this exact phrase (לֹא תִטֶּה מִשְׁפָּט) occurs earlier in Deut 16:19 in the measure to appoint just judges in Deut 16:18-20, a piece of

¹ Compare Kugel 1987: 61 with 1994: 228-232.

² Kugel 1994: 231.

legislation which is most likely based upon the foundational laws regulating the judiciary in Exod 23:1-3, 6-9, which also likewise contains the phrase *לֹא תִשָּׁפֵט מִשְׁפָּט*, (Exod 23:6).

Thus Harold Bennett can conclude that Deut 24:17, “refers to reaching nonbiased [juridical] decisions” regarding the widow, orphan, and foreigner in their lawsuits.¹

Jeremiah 7:5 and 7:6, therefore, mirror Lev 19:15 and Deut 24:17 respectively—the latter two passages being exhortations for judges to judge cases justly and which are ultimately based upon the laws for just legal judging in Exod 23:1-3, 6-9.

Jeremiah’s use of Lev 19:15-18 is picked up and expanded upon in Jer 9:4-5a, 8b-9 [MT/LXX 9:3-4a, 7b-8]. Jeremiah 9:4-5a says, “beware of a neighbor, do not trust your brother, for every brother is a deceiver and every neighbor goes about (*יִהְיֶה/πορεύσεται*) a slanderer (*רָכִיל/δολίως*). A man deceives his neighbor (*רָגַל/φίλου*) and no one speaks the truth ...” Note the close similarity in language to Lev 19:16 here. Jeremiah 9:5a speaks of the “neighbor” (*רֵעִי/πλησίον*), “brother” (*אָחִי/ἀδελφοίς*), and the one who “goes about a slanderer” (*יִהְיֶה רָכִיל יִהְיֶה רָגַל יִהְיֶה רָכִיל/πᾶς φίλος δολίως πορεύσεται*). Similarly, not only does Lev 19:15-18 use the same “neighbor” and “brother” language as Jer 9:5a does, but Lev 19:16 matches the statement in Jer 9:5a regarding the neighbor who “goes about a slanderer” in that the former specifically legislates that, “you shall not *go about a slanderer* among your people” (*לֹא תִשָּׁפֵט רָכִיל בְּעַמִּי/οὐ πορεύσῃ δόλω ἐν τῷ ἔθνει σου*). Jeremiah 9:8b says, “With his mouth he speaks ‘peace’ to his neighbor (*רֵעִי/πλησίον*), but inwardly (*בְּקִרְבּוֹ/ἐν ἑαυτῷ*) he sets a trap for him. ‘Shall I not avenge myself?’ declares the LORD.” Not only does the presence of “neighbor” and “brother” appear here again, but the language of “inwardly” seems similar (at least conceptually) to the phrase “in your heart (*בְּקִרְבּוֹ/ἐν ἑαυτῷ*)” from Lev 19:17. Setting a trap for one’s neighbor in Jer 9:8b sounds like it could have in view the prohibition against slander from Lev 19:16 or that against revenge in 19:18a. Finally, the LORD’s words in Jer 9:9, “Shall I not *avenge* (*נָקַם*) myself?” are paralleled in Lev 19:18a, “Do not seek *vengeance* (*נָקַם*) ...” If it is correct to understand Jer 7:5-6 discussed above to refer to legal judging in its midrash upon Lev 19:15-18, then it is reasonable to understand Jer 9:4-5a similarly. So although Jeremiah is clearly concerned with the moral intention of the heart (cf. 9:26), his critique seems to concern

¹ Bennett 2002: 100-101.

concrete legal abuses. Many other examples from the prophets could be given, although space prevents such a review.¹

But Kugel's treatment of the wisdom literature, from which he draws his conclusion of a moralizing tendency, is also problematic. He neglects texts which echo Lev 19:15 such as Job 34:19 and Ps 72:1-4, the latter of which declares God a just *judge* and charges his earthly king with just judgement. He also passes over Prov 11:12-13, "He who despises his neighbor is lacking in his heart, but a man of understanding remains silent. He who goes around a slanderer betrays a trust, but a trustworthy soul conceals a matter." Mention here of the "heart (לֵב)" echoes Lev 19:17a, "neighbor (לְרֵעֶהוּ)" alludes to Lev 19:16, 18, and "he who goes around a slanderer (הוֹלֵךְ רָכִיל)" is practically a quotation of Lev 19:16a.² Such a text could be understood as purely "moralistic," but it could equally be understood as wisdom for witnesses at a legal trial, since in fact it draws its language from the laws for just judging in Lev 19:16-18. For example, the truism that "a man of understanding remains silent" can be understood as a wisdom maxim generally. But given that this text draws upon Lev 19:16-18, would it not be more natural to assume that its primary application is to a judicial setting? "If this proverb is judicial in nature," one might ponder, "then why is Lev 19:15 not alluded to?" Although Lev 19:15 is not directly referenced, one might argue that it is *assumed* by the writer since the writer alludes to Lev 19:16-18 and the immediate context of a passage was almost universally assumed.³ Furthermore, there is a clear allusion to Lev 19:35-36 earlier in Prov 11:1, "Scales of deceit are an abomination to the LORD, but an honest weight is his delight." As noted earlier, the phrase beginning Lev 19:15—"do not do injustice in judgement"—is

¹ Ezekiel 22:6-12 seems to echo Lev 19:15 and surely alludes to Deut 16:18-20 (Exod 23:1-3, 6-9). Ezekiel 25:15 speaks of vengeance and malice in the heart echoing Lev 19:17-18. Amos 5:10 says, "you hate (שָׂנֵא) the one who rebukes (יָבֵן) at the gate"—language similar to Lev 19:17, "do not hate (שָׂנֵא) him in your heart; rebuke (יָבֵן) your fellow ..." Nahum 1:2, 4 speaks of vengeance, grudge-bearing, and rebuke from Lev 19:17-18. (Nahum 1:2 is even quoted in CD-A IX, 1-9 [v. 5] amidst other quotations from Lev 19:16-18. Kugel deals with the Nahum quotation in his final revision [1994: 232-234], but doesn't seem to acknowledge the fact that the reason Nah 1:2 is quoted amidst quotations from Lev 19:16-18 is because Nah 1:2 *itself* makes use of Lev 19:17-18 and is one interpretation of the latter and not merely a random proof-text. CD IX, 5 therefore appeals to Nah 1:2 to explain Lev 19:16-18 by means of *gezera shawa*—appeal to a passage with similar words or phrases to explain another passage.) Zechariah 8:16-17 exhorts truth-telling and justice in the courts, warning against plotting revenge or giving false testimony against one's "neighbor" (Exod 20:16; 23:1-2; Lev 19:15, and probably also Lev 19:16-18a). Less likely echoes among the prophets include Isa 3:5 (Lev 19:16, 18) and Jer 6:28 (Lev 19:16).

² A proverb similar to 11:12-13, Prov 20:19, is also practically a quotation of Lev 19:16a.

³ Cf. Brewer 1992: 167-169.

repeated verbatim in 19:35 and serves to head up each unit, further signaling a recognition that Lev 19:15-18 and 19:35-36 were to be read together.¹ Therefore, the author's reference to both Lev 19:16-18 as well as Lev 19:35-36 throughout the proverb indicate that Lev 19:15 is also likely assumed to part and parcel of the exegetical conversation. So while purely moral lessons could be drawn from Prov 11:12-13, it seems just as likely (if not more likely) that the reader who recognizes this proverb as a wisdom midrash upon Lev 19:15-18 could understand this proverb to be wisdom regarding how to handle oneself in situations involving *the courts*. Lastly, Kugel also ignores Ps 15 [MT/LXX: Ps 14] which can be seen to allude to the laws for just judging in Lev 19. Psalm 15:2-3 speaks of, "the one whose walk is blameless, who does righteousness, and who speaks the truth from his heart and who does not go about [slandering] with his tongue, who does not do evil to his neighbor (לֹרֵעֵהוּ/ πλησίον), nor take up reproach against those near him." Reference here to "righteousness" likely alludes to Lev 19:15, mention of the "heart" to Lev 19:17, slander to Lev 19:16, and wronging one's "neighbor" probably has Lev 19:18a in view. Moreover, verse 5 of Ps 15 speaks of he who does not take a bribe against the innocent, signaling that this Psalm which alludes to the laws for just judging in Lev 19 also likely understand them as litigious in nature.

The most serious case, however, comes in one section of proverbs Kugel *does* deal with—Prov 25:9-10. Kugel unnecessarily separates 25:9-10 from the proverb immediately preceding it (25:7b-8); but the two proverbs are parallel in topic and should be read together.² Prov 25:7b-8 reads,

That which is before your eyes, do not hastily bring to court (לֹרֵב). For
what will you do in the end if your neighbor (רֵעֶךָ) puts you to shame?

Prov 25:9-10 directly follows it with,

¹ Indeed, just as the laws for just judging from Lev 19:15-18 are taken up in Proverbs, so the laws for just weights and measures from Lev 19:35-36 (cf. Deut 25:13-16) are used throughout Proverbs (11:1; 16:11; 20:23). Cf. Carmichael 1967: 202.

² In a footnote, Kugel (1994: 241, f.n. 5) merely cites Prov 25:7-8, but it seems to bear little upon his reading of 25:9-10.

Bring to court your case (רִיבְךָ רִיב) with your neighbor (רֵעֶךָ) and do not betray the trust of another. Lest he who hears shame you, and your evil report come back upon you.

The reoccurrence of “neighbor” and “bring to court” in each proverb clearly indicates these twin proverbs were meant to interpret one another. The word “neighbor” and the idea of shaming another through the revealing of malicious secrets, indicates that these two proverbs are engaging in a subtle midrash upon the idea of “slander” in Lev 19:16—the idea in the proverb being that slander “can ultimately lead to retaliatory slandering of oneself by others.”¹ In my view, the language of “bring to court” and “case”—combined with allusion to Lev 19:16—is best understood as wisdom in handling one’s neighbor with regard to legal action *in court*: i.e., your slander which lands another in court may return to you with slander which lands you in court. But Kugel fails to acknowledge such a judicial reading as a possible interpretation, opting to emphasize a moralistic reading.²

It seems Kugel reads the wisdom literature as *purely moralistic*, rather than seeing wisdom texts as ethical expansions of how best to keep the law. Law and wisdom materials are often used together. In fact, some of the legal precepts concerning the judiciary, such as the law of two or three witnesses and that of false witnesses, are closely tied to wisdom traditions.³ The proverbs which midrash upon the Torah, therefore, should be considered wisdom regarding how best to keep the law, and in the case of Lev 19:15-18, these proverbs are wisdom concerned with the judiciary. For the prophets and even the wisdom literature to allude to verses from Lev 19:15-18 in their social critiques makes sense since, as we have seen above, Lev 19:15-18 is itself an expansion and interpretation of the ninth and tenth commandments from the Decalogue regarding just judicial procedures (Exod 20:16-17; 23:1-3, 6-9). In short, texts may moralize (especially proverbs) and there are undoubtedly some which do as Kugel points out (such as Prov 10:18; 26:24-25), but Kugel’s reading often misses any legal sense among texts which midrash upon the *judicial* text of Lev 19:15-18.

¹ Kugel 1987: 47.

² Cf. Kugel 1987: 46; 1994: 218.

³ Cf. Carmichael 1967; Jackson 1975: 171.

Kugel's third conclusion—that moral readings are the result of using Lev 19:17 in isolation and legal readings the result of reading Lev 19:15-18 together—seems, therefore, merely the faulty implication of a faulty premise. We have already observed how Kugel began revising his two-readings theory by admitting that 1QS V, 24-VI, 1, CD IX, 2-8, and *Sifra* all shows signs of both a mixed moral/legal reading just as Matt 18:15 does. We have also observed that the tradition before Qumran should not be pigeon-holed as merely moralistic (not even in Proverbs). Most significantly, however, is the tendency (in my view) of the majority of subsequent early interpreters of Lev 19:15-18 (or specific verses therein) to read these verses together as a unit. One need not assume (as Kugel seems to do) that a writer making use only of Lev 19:17 does not have the entirety of Lev 19:15-18 in view “behind the text” as it were informing his or her interpretation of Lev 19:17. Therefore, one need not necessarily understand treatments of Lev 19:17 as purely and merely “moral.”

Two additional criticisms should be noted. First, Kugel fails to deal adequately with the second Temple interpretive tradition and beyond. Kugel's growing corpus of texts with each new version of his work indicates that he has not taken a wide enough approach from the beginning to discern what is happening within this period of the tradition. His final version misses some important documents at Qumran which deal with these verses from Leviticus, the Christian tradition beyond the New Testament is ignored, and in rabbinic literature only *Sifra* is dealt with apart from the other Mishnaic traditions (especially the Talmuds). Among the texts which Kugel does deal with—such as Ben Sira, *T. 12 Patr.*, 1QS and CD—he does not seem to take into account the larger literary context of each document. For, as we shall see from our discussion below, there are many more relevant sections within these documents from which one may gain a fuller picture than Kugel's work portrays.

Second, Kugel makes no indication that Lev 19:15-18 was ever read in relation to 19:33-36, especially verses 35-36 regarding the just judgment of weights and measures. However, as Niebuhr's work indicates generally, and as we shall see below in specific instances, this is not an insignificant tendency within the tradition.

Kugel's claim of a theological split in the tradition of Lev 19:15-18, therefore, is just too broad a claim to make given his narrow methodology. Kugel would do well to

heed the remarks of E. P. Sanders over thirty years ago regarding the limits which tracing the exegetical traditions of a passage has in shedding light upon entire bodies of Jewish literature.¹

It is not claimed here that each document discussed below will be given its due treatment. Nor have I attempted to be exhaustive in gathering and discussing all of the texts which deal with these injunctions from Leviticus. In fact, due to space limitations I largely ignore the Old Testament texts which Kugel does (and does not) cover. However, I do hope that the discussion—at least for the second Temple texts—has been broadened somewhat. It should also be noted that of the texts which Kugel fails to deal with but which I include in the discussion, some are dealt with in this chapter (e.g., additional texts from 1QS and CD) while others are incorporated into later chapters (e.g., the Babylonian Talmud, the *Didascalia Apostolorum*, etc.). Additionally, some key texts which Kugel does discuss, such as Matt 18:15-18, have been reserved for later chapters.

4.2. Ben Sira

19:13 Rebuke (ἐλεγξον) a friend (φίλον), perhaps he did not do it; or if he did, so that he may not do it again.

19:14 Rebuke (ἐλεγξον) your neighbor (πλησίον); perhaps he did not say it; or if he said it, so that he may not repeat it.

19:15 Rebuke (ἐλεγξον) a friend (φίλον), for often it is slander; so do not believe everything you hear.

19:17 Rebuke (ἐλεγξον) your neighbor (πλησίον) before you threaten him; then give a place to the law of the most high.

Kugel argues that this passage from Ben Sira (early second century BC) is “the earliest datable ‘interpretation’ of the Leviticus injunction to reproach one’s fellow” from Lev 19:17.² Kugel reasons that *Sir.* 19:13-17 has in view Lev 19:17 not only because of

¹ Sanders 1977: 29.

² Kugel 1994: 218. On Ben Sira’s date, cf. Skehan and Di Lella 1987: 9.

the verb “reproach” is here coupled with “neighbor” as it is in Lev 19:17, but also because “neighbor,” “friend,” and “fellow” also occur here as they do in Lev 19:17.¹

However, we may make a number of observations that point to this section of Sirach as alluding to various parts of Lev 19:15-18, *not just* 19:17. First, slander is the topic of the previous passage, *Sir.* 19:5-12, so that Lev 19:16 is most likely in view. Here, Ben Sira advises the slanderer that the one who catches him “will hate (μισήσει) you” (19:9), echoing the “you shall not hate” (οὐ μισήσεις) command of Lev 19:17. If this is correct, Ben Sira is commenting upon Lev 19:16 and 19:17 *together*, reasoning from this passage in Leviticus that the one who slanders (Lev 19:16) runs the risk of being hated (Lev 19:17).

Kugel is right, of course, that Lev 19:17 is envisioned in *Sir.* 19:13-17. The final phrase of *Sir.* 19:17 to, “give a place to the law of the most high” sums up this section on rebuke and thus alludes specifically to the law about rebuke from Lev 19:17-18a.² *Sirach* 19:15, however, also speaks of “slander” perhaps with again Lev 19:16 in view (although *Sir.* 19:15 uses διαβολή, not δόλος as in the LXX of Lev 19:16).

Just after this section on reproof (*Sir.* 19:13-17), however, there are certain allusions to the just judging of Lev 19:15-18. In an allusion to the judicial “injustice” (ἄδικος) spoken of in Lev 19:15, *Sir.* 19:25 speaks of gaining a judicial verdict which is strict but “unjust” (ἄδικος) by those who, corrupted by bribery, create their own verdict. *Sirach* 19:26 envisions one who prays in the morning but is full of “deceit” (δόλου), perhaps alluding to the “deceit/slander” (δόλω) of Lev 19:16. Chapter 20 of Sirach continues this wisdom midrash upon Lev 19:15-18, as 20:2 speaks of rebuke (ἐλέγξει) being better than anger—certainly an allusion to Lev 19:17—and 20:4 depicting violence being done via the courts, alluding probably to the blood of one’s neighbor in Lev 19:16b or even to 19:18a and revenge being taken via the courts.

Therefore, we may tentatively suggest that Kugel’s discussion of Ben Sira in relation to Lev 19 is too narrow. First, it is better to speak of at least *Sir.* 19:5-20:4 as

¹ Kugel 1987: 48. Kugel seems to confuse the synonyms and translations here. Ben Sira interchanges φίλος, usually translated “friend,” and πλησίον, usually translated as “neighbor.” But φίλος does not occur in the LXX of Lev 19:17, nor is there a third Greek word for “fellow.” In the LXX of Lev 19:15-18, all three Hebrew synonyms—“neighbor,” “fellow” and “people”—are translated by πλησίον.

² MacKenzie 1983: 85; Skehan and Di Lella 1987: 289, 294.

reflecting Lev 19:15-17, rather than merely *Sir.* 19:13-17 reflecting Lev 19:17, since in all likelihood Ben Sira had more than just Lev 19:17 in mind as he penned chapters 19-20. Second, Kugel's classification of Sirach 19 as a purely "moralistic"—rather than "judicial"—reading of Lev 19 should be seriously questioned, for there are clear allusions to the judiciary in Sirach 19-20.¹

4.3. The Testaments of the Twelve Patriarchs

The *Testaments of the Twelve Patriarchs* (*T. 12 Patr.*) has been dated between 150-100 BCE,² although Aramaic fragments of the *Testament of Levi* found at Qumran have been dated earlier to between 191-155 BCE.³ Even though the document bears the marks of later Christian redaction,⁴ in light of the priestly corruption in Jerusalem and disaffection to Qumran, the priestly or levitical perspective from which *T. 12 Patr.* could have been written should be carefully noted.⁵ One might also add, not insignificantly, that in the fragments from Qumran, "the eschatological priest alludes to clashes with the wicked of his age."⁶ As we consider below the heavy interaction of CD and 1QS at Qumran with Lev 19:15-18, as well as *T. 12 Patr.*'s interaction with these same laws for just judging from Leviticus, it is not surprising to find fragments of *T. Levi* at Qumran. Indeed, some have seen a close relationship between the *Testaments* and the sectarian documents at Qumran.⁷ On the other hand, the earliest Greek manuscripts we have of the document come from 10th century A.D., having been preserved by Christians. Although, therefore, in its present form the *T. 12 Patr.* are more useful for understanding early Christianity's relationship to Judaism than Judaism before Christianity,⁸ based upon the

¹ Cf. Kugel 1987: 57.

² Cf. Kee 1983: 777-778; Kugel 1994: 220.

³ Cf. Vermes 1999: 24.

⁴ On this "thorny problem," cf. the remarks of Kee 1983: 777, Niebuhr 1987: 75-82, and de Jonge 2002: 371-378.

⁵ Cf. de Jonge 1953: 112; Slingerland 1984, who notes that the "we" section of *T. Levi* 19:2-3 points to the levitical authorship of *T. 12 Patr.*

⁶ Vermes 1999: 74.

⁷ Philonenko and Dupont-Sommer see a close relationship between *T. 12 Patr.* and the sectarian documents at Qumran; cf. Kee 1983: 778.

⁸ de Jonge 2002: 390-392. See now Davila 2005 who cogently argues for a methodology of beginning with the hard evidence of Christian manuscript data and working backwards to possible Jewish origins, rather than beginning with an assumption of Jewish origin with an eye toward Christian interpolations in the text.

passages discussed below it is likely in my view that *T. 12 Patr.* contains *interpretive traditions* which are quite old and which may have been held both by early Christians as well as Jews before Christianity (depending upon the particular tradition).

Although Kugel discusses only two passages from the *Testaments*, *T. Gad* 4:1-3 understood as “legal” and 6:1-5 as “moralistic,” there are other passages from the *T. 12 Patr.* which are connected to the laws for just judging in Lev 19.¹ Therefore, in addition to *T. Gad* which Kugel covers, the *Testament of Issachar* shall also be dealt with below.²

4.3.1. *Testament of Gad* 4:1-3³

Testament of Gad begins by describing the point of contention between Gad and Joseph. Gad, having retrieved a lamb from the mouth of a bear and seeing that it would not live, ate the lamb (1:7). Joseph then tells their father about the incident, for which Gad bears a grudge against Joseph (1:8). There was a “spirit of hatred” in Gad (1:9a) and Joseph “reproved” his brothers (1:9b) for eating when they shouldn’t have. In view of his participation in selling Joseph into slavery, Gad then warns his readers against hatred (3:3; 4:1) since hatred, “leads to lawlessness against the Lord himself” (4:1). This hatred and lawbreaking is expressed in terms of the laws for just judging from Lev 19:16-18 in *T. Gad* 4:1-3:

Beware, my children, of those who hate, because it leads to lawlessness against the Lord himself. Hatred does not want to hear repeated his commands concerning love of neighbor [Lev 19:18b], and thus it sins against God. For if a brother makes a false step [Lev 19:17], immediately it wants to spread the tale to everyone [Lev 19:16a], and is eager to have him condemned for it, punished, and executed [Lev 19:16b].⁴

¹ Cf. Kugel 1987: 57-58. Kugel’s position here is perhaps softened in 1994: 227-228 where he classifies *T. Gad* 4:1-3 as “judicial,” but removes any discussion of *T. Gad* 6:1-5 as “moralistic.”

² Cf. also *T. Zeb.* 8:1-5 and *T. Dan* 5:2-3 which, although having moralizing tendencies, could also bear traces of a legal reading.

³ It is perhaps not insignificant that Gnilka (1986: 262) and Garland (1993: 86) cite *T. Gad* 4:1-3 with reference to Matt 7:1-5, although this is not developed to any great extent in their commentaries.

⁴ Translation from Kee 1983: 815. In discussing passages which take up these laws for just judging, I have interjected brackets in these texts with references to verses from Lev 19:15-18 where I see a close parallel.

Kugel (1987: 50) sees here the obvious reference to Lev 19:18b and sees the references to “hatred” and a “brother” as reflecting Lev 19:17. Additionally, the references to “tale-bearing” or “slander” are in my view allusions to Lev 19:16a—something Kugel neglects to note. This tale-bearing, moreover, is portrayed as endangering a neighbor’s life so that he is falsely judged by a court and executed, which perhaps seems best understood as endangering a neighbor’s life in violation of Lev 19:16b. (It is also important to note that the author uses verses 16, 17 and 18b of Lev 19 *in tandem* so that the laws of unjust judging in Lev 19:16-18 are treated as a unit to be understood together.) Furthermore, reference to having a brother “condemned ... punished, and executed” indicates that the judicial system is certainly in view here, confirming that Kugel is correct to emphasize the legal dimension of *T. Gad* 4:1-3. However, that *T. Gad* 4:1-3 interprets Lev 19:16-18 as envisioning both legal judging *and* moral attitude can be deduced from the fact that 4:1 says that “hate” (moral attitude) leads to “lawlessness” (legal). Moreover, mention of wanting to immediately spread the tale and being “eager” to have a brother condemned speaks of the morals and motives behind such treacherous judicial dealings.

4.3.2. *Testament of Gad* 6:1-7¹

A passage similar to *T. Gad* 4:1-3 above is found in *T. Gad* 6:1-7, which Kugel classifies as “moralistic”:

Now, my children, each of you love his brother [Lev 19:17-18]. Drive hatred out of your hearts [Lev 19:17]. Love one another in deed and word and inward thoughts [Lev 19:17-18]. For when I stood before my father I would speak peaceably about Joseph, but when I went out, the spirit of hatred darkened my mind and aroused my soul to kill him [Lev 19:17]. Love one another from the heart [fusion of 19:18b and Lev 19:17a],

¹ While Kugel (1987: 50) limits his discussion to *T. Gad* 6:1-5, I have extended the discussion to include verses 6-7.

therefore, and if anyone sins against you, speak to him in peace [Lev 19:17b]. Expel the venom of hatred, and do not harbor deceit in your heart [Lev 19:17a]. If anyone confesses and repents, forgive him. If anyone denies his guilt, do not be contentious with him, otherwise he may start cursing¹ [Lev 19:16a?], and you would be sinning doubly. In a dispute do not let an outsider hear your secrets, since out of hatred for you he may become your enemy, and commit a great sin against you. He may talk to you frequently but treacherously, or be much concerned with you, but for an evil end, having absorbed from you the venom. Even if he denies it and acts disgracefully out of a sense of guilt, be quiet and do not become upset. For he who denies will repent, and avoid offending you again; indeed he will honor you, will respect you and be at peace. But even if he is devoid of shame and persists in his wickedness, forgive him from the heart and leave vengeance to God [Lev 19:17-18a; possible allusion to Nah 1:2].

Rather than extolling Joseph as other parts of the *Testaments* do, Gad shows how he bore a grudge against Joseph (6:2) while exhorting readers to love one's brother and not to bear a grudge (6:1, 3) but to, "forgive him from the heart and leave vengeance to God" (6:7). These are obvious references to Lev 19:17-18. But *T. Gad* 6:3c-7 provides additional wise advice for the one seeking to faithfully live out the commands of Lev 19:17-18. This includes confession and repentance as a prerequisite for forgiveness (6:3c), avoiding further argumentation at the denial of guilt (6:4, 6), reproving a brother in privacy (6:5), and forgiveness in the face of unrepentant, persistent wickedness (6:7).²

Although Kugel classifies *T. Gad* 4:1-3 (discussed above) as "judicial" and 6:1-5 as "moralistic," this is not altogether convincing. As noted above, *T. Gad* 4:1 speaks of both morals and laws before launching into a midrash upon Lev 19:15-18 in 4:2-3 where the judiciary is plainly in view. Here in chapter six of *T. Gad*, while the laws for just judging from Lev 19:17-18 are recounted throughout the first half of these verses (6:1-

¹ Kugel 1987: 51, f.n. 19 understands this as "swearing" so that "having been pressed by the reproacher, [the offender] might be tempted to swear a false or unnecessary oath as to his innocence."

² Kugel (1987: 52) notes a strong reminiscence of 6:5 with Prov 25:9-10.

3b), the latter half (6:3c-7) merely provides, in my view, a sagacious expansion of how best to follow these laws. Gad's *desire* to kill Joseph (6:2) is obviously a moral dilemma, and therefore this passage expands upon best how to keep one's morals—i.e., how to best tame the evil desires of one's heart—in such a situation. However, murder is a violation of Torah and thus this discussion about how not to murder someone for whom there is hatred is very much also a *legal* issue. Therefore, while this passage is obviously heavily “moralistic” in nature, it is not altogether free from being “legal.” As mentioned previously, the moralistic and legal aspects of Lev 19:15-18 are not easily separated and while *T. Gad* 6:1-7 is heavily weighted upon the moral side, the moral and legal are not altogether separate as Kugel assumes.

4.3.3. *Testament of Issachar*

The *Testament of Issachar* also takes up the laws for just judging from Lev 19. Issachar, depicted as a man of integrity (*T. Iss.* 3:2), declares that he was not “evil or slanderous to my neighbor” (3:3)—a likely reference to Lev 19:16a. Furthermore, Issachar is made to say, “I spoke against no one, nor did I disparage the life of any human; I lived my life with singleness of vision” (3:4-5). The note against disparaging human life (3:4) probably alludes to Lev 19:16b. If these are indeed references to the laws for just judging, the metaphor of vision in 3:5 fits nicely.¹

Issachar also teaches that, “the genuine man ... does not defraud his neighbor” (4:2), perhaps a reference to Lev 19:13. Issachar says of himself in 7:3b-4, 6b that,

I was not passionately eager for any desirable possession of my neighbor.
There was no deceit in my heart; no lie passed through my lips. ... The
Lord I loved with all my strength; likewise, I loved every human being as
I love my children ...

¹ On the metaphor of vision in relation to legal judging, cf. Exod 23:8; Deut 16:9 and further Chapter three in which the Pharisees are characterized as blind in Matthew.

Mention here of being “not passionately eager for any desirable possession of my neighbor” and the confidence that “no lie passed through my lips” in 7:3b-4 is a clear reference to the last two commandments against false testimony and coveting a neighbor’s possessions (Exod 20:16-17)—commandments which, as demonstrated above, are later expanded upon in Lev 19:15-18, 33-36. The statement about having “deceit” in the “heart” and loving others as his own children alludes to Lev 19:17-18, with verse 6b being a paraphrased combination of Deut 6:5 and Lev 19:18b (cf. *T. Iss.* 5:1-2).¹

Testament of Issachar 7:3b-4, 6b, therefore, fuses Exod 20:16-17 with Lev 19:17-18 which, as noted above, are related in the biblical canon itself. In *T. Iss.* 7:3b-4, 6b, there is a moralistic tone in the references to being “not passionately eager” and having “no deceit” in the “heart.” But the references to the commandments against false testimony and coveting from Exod 20:16-17 are clearly legal in nature, especially the reference to Exod 20:16 and false legal testimony in the phrase “no lie passed through my lips.” Therefore, just as with the original biblical commandments, in *T. Iss.* 7:3b-4, 6b there is both a moralistic tone combined with precepts which clearly relate to the judiciary.

4.3.4. Testaments of the Twelve Patriarchs Summary

Although the *T. 12 Patr.* clearly demonstrate moralizing tendencies when interacting with the precepts from Lev 19:15-18, the above survey has demonstrated that the *T. 12 Patr.*’s treatment of these verses often does not rule out the judicial dimensions of these verses. In fact, the way in which the *T. 12 Patr.* seems to blend the moral with the judicial when dealing with Lev 19:15-18 seems to confirm our thesis that the moral and judicial are present in the original commandments themselves and, more-often-than-not, in later tradition which takes up these commandments.

4.4. Qumran

¹ Kee (1983: 804, f.n. 7a) and de Jonge (2002: 384) take 7:6b to refer to a universal love for every human being rather than one’s covenant brother/neighbor. But this is not at all clear to me. In another place, however, Kee (1983: 780) states, “‘Neighbour’ ... seems to be understood in the Testaments as a fellow Israelite.”

Similarities between Matthew (especially the Sermon on the Mount) and the sectarian documents found at Qumran have often been noted.¹ Qumran had its own system of legal governance complete with rules concerning judges, witnesses, reproof, etc. Although space prohibits a full-blown discussion of Qumran's judicial system, we can turn to some specific texts from Qumran, observing how the rules for just judicial procedures among these sectarians are derived precisely from the laws for just judging in Lev 19 under discussion in this chapter.² If Jesus was indeed speaking about the courts in Matt 7:1-5, and he based his comments upon Lev 19:15-18, 35-36 as the Doeve/Derrett theory supposes, then these texts at Qumran become crucial in providing a plausible context for understanding Jesus' words.

The two main documents to be considered—the *Rule of the Community* (1QS) and the *Damascus Document* (CD)—are interrelated. 1QS is considered to be the older of the two, but since it contains less direct material bearing upon Lev 19:15-18, 35-36 and the judicial system, the discussion by-and-large will be centered around CD. The *Rule*, however, does provide many clues for putting this discussion in context.

4.4.1. Introduction

The *Rule of the Community*—"probably one of the oldest documents of the sect"³ and "one of the most important"⁴ dating to the latter part of the second century B.C.⁵—contains guidelines for rebuking a brother based upon Lev 19:17 as well as rules concerning slander using Lev 19:16. A number of judicial allusions in the document clue readers in to the importance of the courts at Qumran and the rules which govern them. Living justly and with sincerity of heart in following God's just decrees are essential elements for entry into the Community at Qumran. Among the guidelines for entry into the community is complete sincerity (II, 11-18), without which the purificatory rites are

¹ Cf. Martínez and Barrera 1995: 212-213; VanderKam 1994: 167; Kampen 2000; Stanton 2002: 85-107; Frey 2005; *passim*.

² On the judicial system at Qumran, cf. Schiffman 1983. On the use of Leviticus at Qumran generally, cf. Metso 2006.

³ Vermes 1975: 71.

⁴ Knibb 1987: 77.

⁵ Cf. Vermes 1975: 71; 1999: 32; Bockmuehl 1998: 541; Knibb 1987: 78; 2000: 794.

ineffective.¹ Far from a legalism imposed by force, the *Rule* envisions ideal candidates as those whose soul does not “[loathe] the disciplines of knowledge of just judgments” (III, 1a).

Although the *Damascus Document* often contrasts those who walk in perfection with those who walk in stubbornness of heart (see below), it is the *Rule* which is more explicit about its doctrine of the two spirits (cf. 1QS IV, 2-14). It contrasts “the spirit of the sons of truth” (IV, 6b) and the “spirit of deceit” (IV, 9; cf. III, 18-21b). The spirit of truth functions to “straighten out in front of him all the paths of true justice” (IV, 2) and produces “enthusiasm for the decrees of justice” (IV, 4). By contrast, the spirit of deceit produces “greed, sluggishness in the service of justice, wickedness, falsehood ... dishonesty ... blindness of eyes ...” (IV, 9, 11). Similarly, “deeds of injustice are an abhorrence to truth and all the paths of truth are an abhorrence to injustice” (IV, 17b). At the eschaton, “God will refine, with his truth, all man’s deeds, and will purify for himself the structure of man, ripping out all spirit of injustice from the innermost part of his flesh, and cleansing him with the spirit of holiness from all abominations of deception” (IV, 20b-21a) so that, “there will be no more injustice ...” (IV, 23b). This notion is mirrored in *T. Reub.* 3:6 which speaks of a “spirit of injustice” which fosters bribery. One therefore observes, from the doctrine of the two spirits in the *Rule*, that the issue of justice is at the heart of this important belief of the sect.

Those controlled by the spirit of deceit are often referred to in 1QS as “the men of injustice,” “the men of deceit,” or “the men of the pit.” The covenant community member is, by contrast, to “keep apart from the congregation of the men of injustice” (V, 1b-2a) who “walk along the path of wickedness” (V, 10b-11a). Likewise it is said in IX, 8b-9a of the full member that, “their goods must not be mixed with the goods of the men of deceit who have not cleansed their path to separate from injustice and walk in a perfect behavior.” A section covering “the regulations for the Instructor” (IX, 12-19a) teaches that, “he should not reproach or argue with the men of the pit but instead hide the counsel of the law in the midst of the men of injustice. He should reproach (with) truthful knowledge and (with) just judgment those who choose the path ...” (IX, 16b-18a). Not insignificantly, the Instructor’s “love” and “hatred” is spoken of here in contexts of

¹ Knibb 1987: 91.

reproof (IX, 16b, 21b), perhaps echoing the “love” and “hate” of Lev 19:17-18. The Instructor is to have “everlasting hatred for the men of the pit” (IX, 21c-22a), a phrase which Kugel is correct to see as a reformulation of the prohibition not to hate one’s fellow covenanter in the heart from Lev 19:17.¹ There seems to be a clear concern within the *Rule* that covenant members separate themselves from this group which is seen to represent wickedness and injustice. As sons of the spirit of truth, the novitiate, the full member, and even the Instructor are to keep away from those controlled by the spirit of deceit so as to ensure they maintain and practice justice and keep away from injustice.

The concluding hymn likewise declares,

I shall not repay anyone with an evil reward; with goodness I shall pursue man. For to God (belongs) the judgment of every living being, and it is he who pays man his wages. I shall not be jealous with a wicked spirit, and my soul shall not crave wealth by violence; I {shall not sustain angry resentment for those who convert} /shall not be involved/ in any dispute with the men of the pit /until the day/ of vengeance (X, 17c-19a).

The vow here not to “crave wealth by violence” in contrast to the “men of the pit” could be an indication of corruption and violent extortion of some kind.

References to “the men of injustice” and the like are polemical terms probably referencing the priests and Pharisees who are in control of the Temple at the time the *Rule* is written.² 1QS XI, 1-2a speaks of them as “the men of the bending (of the law), those who point the finger and speak evil, *Blank* and are keen on riches.” It would be natural to suppose, therefore, that part of the criticism leveled against the Temple authorities by documents such as the *Rule* could very well be, as we shall observe from the texts below, that they were involved in judicial injustice and were using their position as judges to gain wealth unjustly. Community members at Qumran are therefore made to “acquiesce to the authority of the sons of Zadok, the priests” (V, 2b) but refrain from dealings with priests in Jerusalem. And with an entirely alternate judicial system at

¹ Kugel 1994: 236.

² Cf. Schiffman 1992; Evans 1992b: 245.

Qumran governed by the laws of just judging from Lev 19:15-18, covenant members were provided a way to comply.

The *Damascus Document* also has concerns over justice and begins with an address to “all those who know justice (צִדִּיק),” and declares that God has a “dispute” (רִיב) with “all flesh” and he will carry out “judgment” (מִשְׁפָּט) against all who spurn him (CD-A I, 1-2). This former sin entailed, “diverging from tracks of justice (צִדִּיק),” resulting in the curses and vengeance of God’s covenant and the sword (CD-A I, 15b-18).

There is no doubt that these two documents from Qumran were concerned that covenant members practice justice. But it was their study of the Torah from which they derived their conviction of a just society.

4.4.2. Midrashic Halakah in 1QS and CD¹

The importance of the study and observance of the Mosaic Law for the Qumran community becomes apparent in the *Rule* from passages such as 1QS VI, 6b-8a in which the community engages in midrashic study of the law “day and night.”² An authoritative “Interpreter” (הַדְרֹשׁ) is at work among the community (VIII, 11-12), and the covenanters see themselves as withdrawing into the wilderness, according to Isa 40:3, to “prepare the way of the Lord” (1QS VIII, 12b-14; cf. IX, 19b-20). This preparation, furthermore, is understood to involve, “the *midrash* of the Torah (מִדְרַשׁ הַתּוֹרָה)” (VIII, 15; cf. 4Q258 VI, 7) and works itself out practically in halakhic guidelines for the community (IX, 12f).

One cannot fully enter into this community without first being cleansed “to walk (לַהֲלֹךְ) in a perfect way” (VIII, 18). 1QS speaks explicitly about the doctrine of the two spirits in terms of halakhic praxis as humans “walk” or “live” by one of the two

¹ Schiffman (2003: 5) notes the difficulty of using the term “halakah”—a technical term for *rabbinic* traditions and interpretations of the law—regarding the Qumran legal corpus. Similar cautions could be made regarding the term “midrash.” However, as Schiffman concedes, “there simply [are] no [terms] that can effectively describe the phenomenon of Jewish law, whether in the Qumran corpus, other second temple literature, or in [their] more usual rabbinic guise.” Furthermore, as David Instone-Brewer’s 1992 thesis has shown, such exegetical practices as being discussed here were in play well before 70 A.D. and the ensuing rabbinic period, whatever terminology is used to describe it.

² Knibb (1987: 116) remarks, “these lines epitomize the importance attached by the Qumran community to the study of the Old Testament, particularly the Mosaic law. Study of the law was essential if one was to know how to obey it, and study and observance of the law constituted the ideal on which the community’s existence was based ...”

incompatible spirits (IV, 15, 18, 23c-24a). In this struggle over just versus evil walking (I, 25), the spirits of “truth and deceit” make “the sons of justice *walk* (יִתְהַלְכוּ) on paths of light” and “the sons of deceit *walk* (יִתְהַלְכוּ) on paths of darkness” (III, 18-21b; cf. IV, 11; XI, 10). There is a contrast throughout both 1QS and CD between those who “walk in perfection” keeping covenant and Torah,¹ and those who “walk in stubbornness of heart” and live in wickedness contrary to covenant and Torah.² Abraham is an example of one who “walked” correctly, not in the straying ways of Noah before him or the Patriarch’s children after him (CD-A III, 2, 5). And the “builders of the wall” are depicted as those who “walk” in an unethical manner (CD-A IV, 19-21; cf. CD-B, XIX, 25, 31-32). Not insignificantly, 1QS VIII, 2 speaks of one man walking humbly with his fellow in what is a probable allusion to Lev 19:16, 18.³ The Qumran covenanters, therefore, identify themselves as a faithful remnant preparing for the Lord’s coming by living according to authoritative halakhic guidelines derived from the Torah by means of authoritative midrash.

The expectation of a teacher who would arise to teach the proper interpretation of the Torah seems a past event in the *Damascus Document*. In a period in which the sectarians considered ethics (not least *judicial* ethics) to have been discarded, an age in which the people were made “to walk” (לִהְתְּהַלֵּךְ) in wickedness (CD-A VI, 10), this community had awaited, “he who teaches justice (הַצֶּדֶק) at the end of days” (VI, 11), their messianic “interpreter (דוֹרֵשׁ) of the Torah” who fulfills Num 24:17 (VII, 18-20). The group represented in CD, therefore, is left behind to continue to study the Torah begun by their teacher. This interpretive study is in contrast to those who “sought (דָּרָשׁוּ) smooth interpretations,” where “smooth” (חֲלִיקָה) is likely a play upon “walk” (הֵלֵךְ), from which “halakhah” is derived (I, 18).⁴ Accordingly, it is important for this restored remnant at Qumran “to act according to the exact interpretation (כַּפְרוֹשׁ) of the law in which the forefathers were instructed until the period of these years is complete” (IV, 8-9a). The aim of the admonition in CD is therefore halakhically oriented, given to the sons of light

¹ CD-A I, 20-21; II, 15; VII, 4-5; XIV, 1-2; CD-B XIX, 4; 1QS I, 8, 15; II, 2; III, 9; V, 10; VIII, 4, 20-21; IX, 6, 8-9, 19.

² CD-A II, 17-18; III, 5; VIII, 9; CD-B XIX, 21; XX, 29; 1QS I, 6; II, 14, 26; V, 4; VII, 19, 24.

³ Note in both 1QS VIII, 2 and Lev 19:16, 18 not only the verb הֵלֵךְ (Lev 19:16) but also the word רֵעָה, “fellow” (Lev 19:16, 18).

⁴ Schiffman 1992: 220; 2003: 5.

so that they may live ethically or “walk (להתהלך) perfectly” (II, 15). CD-B XX, 6-7 also envisions an eschatological judgment according to “the *midrash* of the Torah (מדרש התורה) in which the men of perfect holiness *walked* (יתהלכו) ...” This entails judgment for those who have “walked (יילכו) in the stubbornness of their heart” and therefore have “no part in the house of the law” (CD-B XX, 9-10).

Although the words דרש and מדרש more often than not are used in 1QS and CD to refer to the study of Scripture, there are specific instances in which a legal “inquiry” is made over a community member or candidate being investigated, with each matter presumably judged according to the Scriptural regulations which have been formulated. Often an “inspection” of novitiates at various stages is spoken of (1QS V, 20-21; VI, 14, 17, 21; VIII, 24; CD-A XV, 11). In 1QS VI, 24 one finds in the context of judging legal cases the phrase “midrash of the community” (במדרש יחד), perhaps as a play upon the “searching” of the Torah in relation to the “searching” into the conduct of members of the community (cf. VIII, 24-26).¹ By contrast, community members are to “search” after God with their whole heart according to Deut 6:5 (1QS I, 1-2; V, 8-11).

The emphasis at Qumran upon their judicial system with its basis in the laws for just judging from Lev 19 form a noted part of this midrashic study and halakhic praxis. We now turn to these specific laws, the results of such midrashic halakhah upon Lev 19:16-18, within the *Rule* and the *Damascus Document*.

4.4.3. 1QS V, 24b-VI, 1a

Just as the *T. 12 Patr.* and Jesus in the gospels couple Deut 6:5 and Lev 19:18b,² the *Rule* similarly quotes Deut 6:5 (V, 8b-9a; cf. 1QS I, 1-2) before presenting a midrash upon Lev 19:16-18 in 1QS V, 24b-VI, 1a:

One should reproach [יכח; cf. Lev 19:17] one another in truth, in meakness
and in compassionate love for one’s fellow-man. *Blank* No-one should
speak to his brother in anger or muttering [Lev 19:16], or with a hard

¹ Cf. Evans 1992a: 544; Quarles 1998: 49-50.

² Cf. Mark 12:28-34; Matt 22:34-40; Luke 10:25-28. On the *T. 12 Patr.*’s use of the two greatest commandments, cf. de Jonge 2002.

[neck or with passionate] spirit of wickedness, and he should not detest him [in the fore]sk[in] of his heart, but instead reproach him that day so as not to incur a sin because of him. And in addition, no-one should raise a matter against his fellow [רע; cf. Lev 19:16, 18] in front of the Many unless it is with reproof in the presence of witnesses.” (1QS V, 24b-VI, 1a)¹

Although Kugel is right to point out that this midrash provides, “an antidote to hating one’s brother in one’s heart,”² the passage is clearly concerned with creating justice within their judicial system by following what they see as the proper interpretation of Lev 19:16-18, especially with its mention of bringing a charge before “witnesses.” Here again we observe that the moral and legal are not separated—the motive of the heart and the law are intertwined.³

4.4.4. CD-A I, 18b-II, 1

Two parallel passages—CD-A I, 18b-II, 1 and CD-A VI, 14b-VII, 4a—discuss the opponents of the sect and their unrighteous deeds which include, I shall argue, judicial corruption. The concern in the *Damascus Document* about justice and divine wrath due to injustice is explained at the beginning of the document:

For they sought easy interpretations, chose illusions, scrutinized loopholes, chose the handsome neck, acquitted the guilty and sentenced the just (צדיק), violated the covenant, broke the precept, banded together against the life of the just (צדיק) man, their soul abominated all those who walk in perfection, they hunted them down with the sword and provoked the dispute (לריב) of the people. And kindled was the wrath of God against

¹ Knibb (1987: 115) notes that this passage, not unimportantly, follows a three-stage reproof similar to that found in Matt 18:15-18.

² Kugel 1987: 53.

³ Regarding this passage, Kugel (1987: 52-53, 58) agrees.

their congregation, laying waste all its great number, for their deeds were unclean (לנדה) in front of him (לפניו). (CD-A I, 18b-II, 1)

Those who seek “easy interpretations” or “smooth things” and “scrutinized loopholes” are, in light of the Nahum peshet, probably references to the Pharisees in power in the Temple at the time at least this portion of CD was originally written.¹ In a plain reference to unjust judging, they “acquitted the guilty and sentenced the just” and “banded together against the life of the just.” The latter phrase is a quote from Ps 94:21a.² This Psalm calls upon God to judge the injustice of those who “slay the widow and the foreigner” and “murder the orphan” (94:6) and who “condemn the innocent to death” (94:21b). If these verses in Ps 94 were understood by the sectarians as references to judicial murder, this would give credence to the reasoning behind why Ps 94:21a is quoted in CD-A I, 20 within a discussion of those who “acquitted the guilty and sentenced the just.”

4.4.5. CD-A VI, 14b-VII, 4a

In CD-A VI, 14b-VII, 4a one discovers a parallel passage which provides a fuller treatment of the same topics found in I, 18b-II, 1. The covenanters are,

to keep apart from the sons of the pit; to abstain from wicked wealth which defiles, either by promise or by vow, and from the wealth of the temple and from stealing from the poor of his people, making widows their spoils and murdering orphans ... *for each to love his brother like himself* [Lev 19:18b]; to strengthen the hand of the poor,³ the needy and the foreigner; *Blank for each to seek the peace of his brother and not to be unfaithful against his blood relation* [Lev 19:16b]; to refrain from fornication in accordance with the regulation; *for each to reprove his brother* [Lev 19:17] in accordance with the precepts and *not to bear*

¹ Cf. Knibb 1987: 24; Brewer 1992: 195-196; Schiffman 1992: 220-221; Wacholder 2007: 151.

² Cf. Campbell 1995: 64.

³ Reference to the “hand” here may refer to the taking of oaths as in CD-A IX, 8-10.

resentment from one day to the next [Lev 19:18a]; to keep apart from every uncleanness according to the regulations, without anyone defiling his holy spirit, according to what God kept apart for them. (CD-A VI, 14b-17a; VI, 20b-VII, 4a, emphasis added)

A number of observations about this important section of CD should be made. Just as we observed in the *Rule* that the Qumran covenanters were to abstain from “the men of injustice,” “the men of deceit,” or “the men of the pit” in order to maintain justice, so here in the *Damascus Document* we find the “sons of the pit” are again polemicized against. This time, however, their sins are made more explicit by means of what the covenanters are to abstain from. Besides abusing the practice of Qorban, their abuses include pursuing “wicked wealth which defiles ... the wealth of the temple ... stealing from the poor of his people, making widows their spoils and murdering orphans ...” Such statements may well point to corruption within the Temple hierarchy and could easily be understood to involve judicial corruption. If what is envisioned here is the judicial system being used to gain “wicked wealth,” this provides a plausible context for understanding other statements in this section. “Stealing from the poor,” for instance, could envision a situation in which the wealthy are shown favoritism in court cases over against those who are financially disenfranchised and defenseless. In fact, Wacholder (2007: 225) points out that the verb גזל, “to steal/rob,” occurs nowhere else in CD except here at VI, 16. As a parallel, therefore, he offers the occurrence of גזל in 11QT^a LVII, 20-21 which speaks of an ideal king who, acting as judge,

shall not accept a bribe to pervert righteous judgment. And he shall not crave a field, a vineyard, any wealth, a house or any valuable thing in Israel or steal (וגזל) ...¹

Such robbery, then, would be by means of the judiciary. “Making widows their spoils” at the end of VI, 16 may likewise refer to the taking advantage of a widow’s possessions or

¹ Wacholder 2007: 225.

property via the judiciary. Finally, an allusion to judicial murder may be intended by the phrase “murdering orphans” in VI, 17.

Such a judicial reading of this text is strengthened by many factors. First, the latter half of this text contains numerous references to the laws for just legal judging from Lev 19:16-18, as indicated by italics with the verses in brackets.¹ The text seems to contrast the abuse of orphans and widows with the proper judging of legal cases, indicating that the abuse of the vulnerable in court is what is likely in view here. Furthermore, just as Ps 94:21a (probably understood to refer to unjust judicial practices) was quoted in CD-A I, 20, so here in VI, 17 is quoted another verse from Ps 94. Psalm 94:6 speaks of “murdering orphans,” which, as suggested above, could well have been understood by the sectarians to refer to judicial murder. Ps 94:6 is here quoted in combination with Isa 10:2, a verse which is concerned with justice if not specifically—with Ps 94—with fairness in the courts.² Lastly, in place of “sons of the pit” in CD-A VI, 11, the parallel fragment 4Q266 interestingly reads, “sons of [injust]ice” (4QD^a 3 II, 20-21), creating a more poignantly epithet for those involved in unjust judicial practices.

If it is correct to see these Pharisaic “sons of injustice” as those who abused the judicial system in order to gain “wicked wealth” from their position of power in the Temple, one can understand the priestly concern at Qumran to correct this abuse by providing just courts based upon Lev 19:16-18. From this observation one can begin to envision how Matthew’s Jesus, if he was addressing the abuse of the courts, might have been making similar use of Lev 19:15-18 as expressed in Matt 7:1-5.

4.4.6. CD-A VIII, 1b-7a

Another text provides an eschatological twist to the topic of unjust judging. CD-A VIII, 1b-7a reads:

Thus will be the judgment (משפט) of all those entering his covenant but who do not remain steadfast in them; they shall be visited for destruction

¹ Cf. Campbell 1995: 142-143; Wacholder 2007: 230, 232.

² Cf. Knibb 1987: 53; Campbell 1995: 145; Wacholder 2007: 226.

at the hands of Belial. This is the day when God will make a visitation. The princes of Judah are those upon whom the rage will be vented, for they hope to be healed but <the defect sticks (to them)>; all are rebels because they have not left the path of traitors and have fornicated themselves in paths of licentiousness, and with wicked wealth, avenging themselves [Lev 19:18a], and each one hating his fellow [Lev 19:17a]. Each one became obscured by blood relatives [Lev 19:16b], and approached for debauchery and bragged about wealth and gain. (CD-A VIII, 1b-7a; cf. CD-B XIX, 13b-19)

“The princes [or ‘rulers’] of Judah” comes from Hos 5:10 and here in CD-A VIII, 3b, they “most probably represent the leaders of contemporary Jewish society.”¹ The behavior of Israel’s leaders here find parallels to the behavior of the “sons of the pit” who are implicitly criticized in CD-A VI, 14b-VII, 4a discussed above.²

The phrase “wicked wealth” discussed earlier with regard to CD-A VI, 15 occurs again here in CD-A VIII, 5, and—as in the passage above—is understood in relation to not keeping the rules of just judging from Lev 19:16-18. Even more closely than CD-A VI, 14b-VII, 4a, this text associates “wicked wealth” with judicial abuses, and describes certain ones as “avenging themselves, and each one hating his fellow ... became obscured by blood relatives ...”—actions which are clear allusions to and violations of Lev 19:16b-18a.

If the texts from Qumran discussed thus far indicate judicial abuse, then CD-A VIII, 1b-7a can be understood similarly with the added description of God’s eschatological judgement upon those who violate the commandments of just judging from Lev 19:16b-18a by gaining “wicked wealth” via a sinister use of the courts. The result of such iniquity, the text later explains, is that the Lord sends the gentile “kings of Greece” (CD-A VIII, 11) to carry out “vengeance” (CD-A VIII, 12) upon them.³ Deut 9:5

¹ Knibb 1987: 67. Knibb also points out that in CD-B XIX, 15b-16a Hos 5:10 is quoted and therefore almost certainly alluded to in CD-A VIII, 3b. Cf. Campbell 1995: 149.

² So Knibb 1987: 67.

³ Note the prophetic correspondence pattern of speech here: they took “vengeance” against their brothers (CD-A VIII, 5-6), therefore “vengeance” is carried out against them (VIII, 12). This kind of correspondence pattern will be further discussed in Chapter three.

is also quoted later in CD-A VIII, 14-15 with a sense of thick irony—“Not because of your justice, or for the uprightness of your heart are you going to possess these nations, but because he loved your father and keeps the oath.” This is to show that if God’s wrath is restrained, it is because of his love for their fathers and his commitment to his word/oath, and not because of any justice they did; they were in fact abusing the judicial system.

Such readings of the above passages from the *Rule* and the *Damascus Document* not only have the potential to provide a more plausible context for understanding Matt 7:1-5 to be a call for justice among the judiciary based upon the laws for just judging from Lev 19, but also provide a helpful example of eschatological reciprocity in response to the abuse of judging. For here in CD-A VIII, 1b-7a, divine “judgment” falls upon those who abuse their position as judges. As we shall see in the next chapter, Matt 7:1-2 is best interpreted as an eschatological warning that those who engage in unjust legal judging will be judged by God.

4.4.7. Qumran Summary

While Kugel only deals with 1QS V, 24-VI, 1 and CD-A IX, 2-8 from Qumran, more and different texts from these two documents have been chosen here to focus upon in an effort to broaden the picture we get from Qumran.¹ Leviticus 19:16-18 is interpreted as eminently *legal* at Qumran, something Kugel concurs with. Judicial corruption among the Jerusalem priests and Pharisees, furthermore, is a main focus of those passages which make extensive use of the laws for just judging from Lev 19:15-18. This is not unlike the judicial readings and possibly priestly associations we find in Ben Sira and *T. 12 Patr.*

4.5. *Pseudo-Phocylides*

¹ Although CD-A IX, 2-8 is an important text for understanding Lev 19:15-18 and one which Kugel does deal with, there is not room here to do it justice. There are, furthermore, other texts which deal with the idea of “rebuke” at Qumran such as 4QBerakhot (4Q286-290) and *The Rebukes of the Overseer* (4Q477). These latter texts do not, however, significantly interact with Lev 19:15-18 and therefore have not been incorporated into this chapter.

Pseudo-Phocylides is a document of Diaspora provenance (perhaps Alexandria) probably written between 100 B.C. and A. D. 100, has a monotheistic outlook and, although seeming conceals a latent Jewishness, still has an “undeubably Jewish character.”¹ The author presents ethical precepts from the Old Testament in Greek Ionic poetry, most likely as wisdom for fellow Jews living in a Hellenized world, and perhaps as a gnomic textbook for educational purposes.² Although Kugel does not deal with it, Ps.-Phoc. is a crucial document for understanding how the laws for just judging from Lev 19 were understood during this time.

Niebuhr points out that while the Torah had by the early Jewish time gained normative theological status, the wisdom literature (within which Ps.-Phoc. falls) served more to stimulate the “spiritual-religious” (*geistig-religiöse*) aspects of life.³ And while this is true also of other wisdom literature discussed above such as Proverbs and Sirach, the point of the exercise of this chapter is not to deny this with respect to Lev 19:15-18, 35-36 being quoted in a wisdom text, but rather to differentiate between *an assumed reading* of Lev 19:15-18, 35-36 from the *function* of such a quotation of Lev 19:15-18, 35-36 within wisdom literature. The former being normative, theological, and (I argue) legal; the latter supporting the Torah’s normativity and theologicity, but having wisdom as its goal without necessarily ruling out a judicial dimension.

The poem begins with a summary of the Decalogue in lines 3-8.⁴ The document as a whole draws upon much of the complex of Torah sources delineated by Niebuhr (Exod 20-23; Lev 18-20; and Deut 5, 27).⁵ But Ps.-Phoc. especially draws upon Lev 18-20, and has its strongest correlations with Lev 19, the parallels of which mostly occur in lines 9-41.⁶ Pieter van der Horst, therefore, surmised early on that Lev 19 was seen by the

¹ van der Horst 1978: 70-76; 81-83; 1985: 565, 567-568, 570; 1988: 15; Johnson 1982: 393; Niebuhr 1987: 8, 67-68; Wilson 2005: 12-13. So Bockmuehl 2000: 156-157. van der Horst (1978: 65) comments, “... the name Israel does not pass his lips and anything particularistic has been omitted.”

² Cf. now van der Horst 1988: 15-16; Niebuhr 1987: 6, 68-69; Wilson 2005: 11-12.

³ Niebuhr 1987: 13.

⁴ van der Horst 1978: 112; 1985: 565, 572; Niebuhr 1987: 15-20; Wilson 2005: 73-76.

⁵ van der Horst 1978: 8-9; 1985: 572; Niebuhr 1987: 12-13. Cf. Wilson 2005: 19, who includes Deut 20-24.

⁶ van der Horst 1978: 7-8, 66-67; 1985: 572, f.n. 63 (citing Bernays as the first to point this out in 1856); Niebuhr 1987: 20-31. Cf. Johnson 1982 on how both Ps.-Phoc. and James use Lev 19.

author of Ps.-Phoc. as a kind of summary of the Torah.¹ In light of Niebuhr's work, van der Horst's early insight seems reasonable.² Pushing this thesis further, however, Niebuhr observes that Ps.-Phoc. 9-41 bears the stamp more of Lev 19 than the Decalogue itself.³ Therefore, in order to delineate Lev 19:15-18, 35-36 therein, lines 9-21 are especially pertinent⁴:

9 Always dispense justice and let not your judgment be influenced by favor.

10 Do not cast down the poor unjustly, do not judge partially.

11 If you judge evilly, subsequently God will judge you.

12 Flee false witness; award what is just.

13 Watch over a deposit, and in everything keep faith.

14 Give a just measure, and an extra full measure of all things is good.

15 Do not make a balance unequal, but weigh honestly.

16 And do not commit perjury, neither ignorantly nor willingly.

17 The immortal God hates a perjurer, whosoever it is who has sworn.

18 Do not steal seeds. Cursed is whosoever takes (them).

19 Give the laborer his pay, do not afflict the poor.

20 Take heed of your tongue, keep your word hidden in (your) heart.

21 Neither wish to do injustice, nor therefore allow another to do injustice.⁵

¹ van der Horst 1978: 66-67. He further remarks, "One might tentatively conclude that in Judaism at the beginning of our era Lev. XIX was regarded as a central chapter in the Torah" (67).

² Niebuhr 1987, esp. 20-26. Cf. van der Horst 1988: 10-12 for his interaction with Niebuhr's work.

³ Niebuhr 1987: 25. The parallels to Lev 19 in Ps.-Phoc. 9-41 may not be exact quotations, but the allusions and borrowing of language in these lines is clear. Rather than mere quotation, "the language is transformed" so that "it is a matter of *thematic* rather than verbal allusions" producing a "clustering effect" (Johnson 1982: 392-393). Niebuhr (1987: 25) calls the formulation, "völlig frei." Luke Timothy Johnson (1982: 393) suggests reasonably that Lev 19 therefore served "as an organizing principle" for Ps.-Phoc. Lines 22-41 show other affinities with Lev 19, especially lines 24, 39 with Lev 19:33 and lines 40-41 with Lev 19:34 (cf. Niebuhr 1987: 25).

⁴ Lines 22-41 also show affinities with Lev 19, especially line 24b with Lev 19:14; lines 24a, 39 with Lev 19:33; and lines 40-41 with Lev 19:34 (cf. van der Horst 1985: 57, f.n. g; Niebuhr 1987: 25).

⁵ Translation (and all hereafter) is from van der Horst 1985: 574. Wilson sees lines 9 and 21 as "broad topical statements" which bracket the "concrete injunctions" of 10-20 (Wilson 2005: 84). This puts line 15 at the center, not line 14 as Wilson maintains.

Line 9 should not be taken alone and therefore misconstrued as referring to “purely private judging.”¹ Niebuhr rightly takes lines 9 and 10 together and, following Bernays, points out that these precepts are based upon the laws for just judging in Lev 19:15ff, the LXX of which begins, οὐ ποιήσετε ἄδικον ἐν κρίσει.² Pseudo-Phocylides 9 similarly concerns doing “justice” (δίκαια) in “judgment” (κρίσιν) and further warns against “judgment for a favor/gift (χάριν).” The phrase “for a favor/gift (χάριν),” according to Wilson, “constitutes a warning against soliciting or accepting bribes.”³ Therefore, line 9 is addressed to “someone in a position to render [legal] judgment over others (cf. vv. 86-90).”⁴

Besides alluding to Lev 19:15ff, lines 9-10 find echoes of Exod 23:6-8 and Deut 16:18-20.⁵ But as noted above, these passages are already related to Lev 19:15-18 in the Pentateuch itself. Furthermore, it is on similar Scriptural basis that Philo denounces judges who take bribes.⁶ Moreover, the second half of line 10 echoes the facial metaphor of Lev 19:15 (cf. Deut 1:17, 16:19).⁷ Line 10 may also echo the biblical injunctions not to “afflict” (θλίψης) the foreigner which occur amidst the laws for just judging (Exod 23:9, προσήλυτον οὐ θλίψετε; Lev 19:33, προσήλυτος ... οὐ θλίψετε αὐτόν).⁸

Line 11 is important here, since there are obvious parallels with Matt 7:1-2.⁹ This line seems to reflect “the certainty of divine judgment,” whether in this life or the hereafter.¹⁰ Niebuhr comments that the importance of line 11 is that, “ethical instruction linked with a theological statement.”¹¹ The decisive idea here is the manner in which a legal official might be tempted to judge κακῶς—“evilly, badly.” Retribution for the mere

¹ Contra Geffcken cited in van der Horst 1978: 117.

² Niebuhr 1987: 21. For statistics on Ps.-Phoc.’s use of the LXX, cf. Niebuhr 1987: 9-12. Line 9 could equally parallel Lev 19:35ff, although in light of lines 10-12, I favor Bernays’ reading so that legal judges are plainly in view (so van der Horst 1978: 117-118; Wilson 2005: 84). On justice as a theme in Hellenistic Jewish ethics and as the epitome of the Mosaic law, cf. Wilson 2005: 84, f.n. 1 and literature cited there.

³ Wilson 2005: 89.

⁴ Wilson 2005: 89.

⁵ Wilson 2005: 89.

⁶ *Spec. Laws* 4.13 § 62, 64, 72.

⁷ Cf. van der Horst 1978: 118; Wilson 2005: 90.

⁸ Cf. Exod 22:20; Deut 23:17; Wilson 2005: 90, f.n. 24. Ps.-Phoc. 19 similarly says, “do not afflict (θλίβε) the poor” (Bernays reads θλίψης for ῥίψης in line 10 in light of line 19; cf. van der Horst 1978: 118; Wilson 2005: 88).

⁹ Cf. van der Horst 1978: 119; Wilson 2005: 91.

¹⁰ Wilson 2005: 90-91. Cf. van der Horst 1978: 119.

¹¹ Niebuhr 1987: 22, “V. 11 ist einer der wenigen Verse des PseuPhok, in denen die ethische Weisung mit einer theologischen Aussage verbunden ist.”

act of judging is not what the human judge fears at the eschaton, according to Ps.-Phoc. 11. Rather, such a judge trembles at retribution for *wicked* judging. This makes perfect sense in light of the reference to bribery in line 9 and partiality in judging in line 10.

Line 12 echoes the ninth commandment on not bearing false witness in Exod 20:16.¹ As observed above, this is the fundamental commandment expanded upon in the laws for just judging in Exod 23:1-3, 6-9 and Lev 19:15-18, 33-36. While it is better to see Ps.-Phoc. 12 as a free formulation of wisdom based upon the Torah-complex Niebuhr has delineated (being focused here upon the foundational commandment from Exod 20:16 and its developments) rather than pinpoint a particular verse which line 12 might be based upon, Lev 19:15-18 is nonetheless an important part of this complex.²

Therefore lines 9-12 are inspired by, and even at times directly based upon, the laws for just judging from Lev 19:15-18. These laws, furthermore, are understood to refer to *legal judging*. Therefore, Klaus Berger rightly calls lines 9-12 a series of “mirrors for the judge” (*Richterspiegel*).³

The related theme of “just dealing in economic matters” continues in lines 13-15.⁴ Lev 6:1-6 (MT/LXX 5:20-26) or Exod 22:6-12 regarding lost or stolen deposits is the likely inspiration here, although Bernays sees the triad against theft, lying, and deception from Lev 19:11 behind this verse.⁵ Lines 14-15 concern just measures and weights, and so echo Lev 19:35-36.⁶ The word “measure” is nearly a theme, occurring several times throughout the poem (cf. 14, 36, 69, 98).⁷ Mention of giving just and honest measures here in 14-15 finds a parallel in the mention of the allure of gold and silver in 43-44. The key for our purposes is that a clear allusion to Lev 19:35-36 occurs here in 14-15 in very close proximity to lines 9-12 which, as we have seen, regard just legal judging based

¹ Cf. van der Horst 1978: 120; Niebuhr 1987: 22; Wilson 2005: 91.

² Cf. Niebuhr 1987: 22.

³ Berger 1972: 343 cited in Niebuhr 1987: 21. Further exhortations for judges to justly judge legal cases are found in Ps.-Phoc. 86-87. Line 95—“trust not the people; the mob is fickle”—reminds one of Exod 23:2a, “Do not follow the crowd in doing wrong” (NIV)—a saying amidst laws for just judging. Lines 132-133 are also related to just legal proceedings: “It is unholy to hide a wicked man so as to prevent his being brought to trial; but one must return an evildoer forcibly.”

⁴ Wilson 2005: 84, 92.

⁵ Cf. van der Horst 1978: 120; Niebuhr 1987: 23; Wilson 2005: 92, f.n. 35.

⁶ So van der Horst 1978: 121-122; Niebuhr 1987: 23; Wilson 2005: 92-93. The word ἐτερόζυγον in line 15 is most likely inspired by ἐν ζυγοῖς and ζυγὰ in Lev 19:35-36 respectively, rather than deriving from Lev 19:19 (so Wilson 2005: 93; contra van der Horst 1978: 122).

⁷ van der Horst 1985: 571.

upon Lev 19:15-18. So it seems relatively straightforward that the author of Ps.-Phoc. understood Lev 19:15-18 to be highly related to Lev 19:35-36.

Finally, lines 20-21 are also significant. Bernays, followed by other early commentators, sees the source of line 20 to be Lev 19:17.¹ The maxim in line 20 counsels one to hide one's word inwardly. And while the term φρεσὶν here is strictly defined as "thinking" or "understanding," in light of the connection between line 20 and Lev 19:17, van der Horst and Wilson rightly translate this as "heart."² Not insignificantly, the LXX renders the phrase in Lev 19:17 concerning hating one's brother "in one's heart" with the synonymous τῇ διανοίᾳ—"in one's mind" or "understanding."³ Bernays also sees the source of line 21 as Lev 19:16.⁴ Wilson differs, seeing the background for this line as perhaps Exod 23:7.⁵ But as we have already noted above, and which Niebuhr's work confirms, the laws for just judging in Exod 23:1-3, 6-9 are related to Lev 19:15-18. Lines 20-21 also contain the idea of willful intention, something already noted as being contained within Exod 20:16-17 itself as well as in its expansion in Lev 19:15-18, especially 19:17 (see "'Halakah': Definition" section above).⁶ Sincerity in heart and speech is taken up again in Ps.-Phoc. 48, 50.

Two significant conclusions can be made from our brief survey of how Ps.-Phoc. makes use of Lev 19. First, the laws for just judging from Lev 19:15-18 are understood to refer specifically to *legal judging* (cf. especially lines 9-12). Second, Ps.-Phoc. links Lev 19:15-18 with Lev 19:35-36 by virtue of their being used in very close proximity— lines 9-12 and 14-15 respectively. This association of Lev 19:15-18 with 19:35-36 is also found in our next three sources—Philo, Josephus and *Sifra*—as well as in the Cain and Abel traditions.

4.6. Philo and Josephus

¹ Although van der Horst (1978: 126) disagrees.

² Cf. van der Horst 1978: 89; Wilson 2005: 88.

³ Also significant here is line 77, "do not imitate evil, but leave vengeance to justice," which seems reminiscent of Lev 19:18a.

⁴ Although again, van der Horst 1978: 127 disagrees.

⁵ Wilson 2005: 95. Line 21 parallels lines 132-134 (Wilson 2005: 96), which in my view may similarly echo Exod 23:1-2.

⁶ Cf. Wilson 2005: 96.

Philo of Alexandria (c. 15 B.C.E.-50 C.E.) is an exegete of the Pentateuch, albeit often using allegory and dressing his readings in Hellenistic philosophical garb.¹ His work largely reflects a Diaspora setting. Flavius Josephus (37/38 C.E.- c. 100 C.E.) is of priestly stock and therefore an expert interpreter of Torah. Although he has experience in Galilee, the judicial situation he describes reflects the situation in Palestinian more than the Diaspora.

Philo contains a shorter and longer discussion of Exod 20:16—the ninth commandment of the Decalogue—which Philo understands as prohibiting false testimony of witnesses in court.² In his longer exposition of this commandment, Philo provides further comment regarding witnesses and judges based upon the expansion of these laws in Exod 23:1-3, 6-9. The original commandment and its expansion in Exodus, we observed, is also related to Lev 19:15-18, 35-36.

Philo begins by explaining the prohibition by reference to Exod 23:1 regarding how the false witness cooperates with another in doing evil.³ Directly after this, he alludes to Exod 23:2 regarding not following a crowd in doing evil.⁴ Philo next refers back to Exod 23:1 in discussing how a judge should not listen to the false reports of witnesses.⁵ Then he turns to Exod 23:8 in his argument against judges taking bribes, and next cites Exod 23:3 in his discussion of how judges should not show partiality in legal judging.⁶ The laws for just judging from Exod 20:16 and 23:1-3, 6-9 are clearly in view here. As demonstrated above, the passages Philo quotes or deals with in his discussions of judicial fairness—Exod 20:16; 23:1-3, 8—are related to Lev 19:15-18. Again, this matrix of passages also fit within the scriptural and thematic purview outlined by Niebuhr.

But Philo himself makes a connection here between these texts and topics and the laws for just judging from Lev 19. After dealing with witnesses (*Spec. Laws* 4.8 § 41-54) and judges (*Spec. Laws* 4.9 § 55-78), and the legal protection of the vulnerable triad (*Spec. Laws* 4.34 § 176-179), Philo alludes in this same book to Lev 19:16 to make the

¹ Cf. Nickelsburg 2005: 212-221.

² *Decal.* 27 § 138-140; *Spec. Laws* 4.8 § 42-46.

³ *Spec. Laws* 4.8 § 42-44.

⁴ *Spec. Laws* 4.8 § 45-46.

⁵ *Spec. Laws* 4.9 § 59.

⁶ *Spec. Laws* 4.11 § 62; 4.13 § 72.

point that government officials should be loyal to the state and not engage in treason.¹ Those who do are considered “enemies,” who presumably deserve death.² Finally, Philo cites Lev 19:36 regarding weights and measures to indicate that the “superintendants of the market” should be honest and fair.³ In this way, therefore, Philo relates the laws for just judging in Exod 20:16; 23:1-3, 8 to similar laws in Lev 19:16, 36. Presumably, therefore, the “superintendants of the market” function similarly as judges since they too are to, “do no injustice *in judging* by measurement of length, by weight, or by measure of capacity” (Lev 19:35).

Furthermore, it can be said that Philo and Josephus both see this same, close connection between Lev 19:16 and 19:36. For in his *Hypothetica*, after citing a negative version of the golden rule (*Hypoth.* 7.6), Philo ties these same two passages together from Lev 19 by way of allusion: “That no one shall apply a false balance, or an inadequate measure [Lev 19:36] or bad money. That no one shall tell the secrets of his friends in a foreign land [Lev 19:16].”⁴ The use of Lev 19:16 as a law against treason or telling “the secrets of his friend in a foreign land” as found here in *Hypoth.* 7.8 and above in *Spec. Laws* 4.35 § 183, is also found in the *Temple Scroll* 11QT^a LXIV, 6c-8a which says, “If a man passes on information against his people or betrays his people to a foreign nation, or does evil against his people, you shall hang him on a tree and he will die.”⁵ In *Against Apion* (written after A.D. 94⁶), Josephus makes a statement similar to those above:

It is permitted to conceal nothing against friends, for it is not friendship which does not entrust all things [Lev 19:16]. Even if some enmity might come between them they are forbidden to speak [Lev 19:17-18a]. If any judge receives bribes [Exod 23:8], his punishment is death ...⁷

¹ *Spec. Laws* 4.35 § 183.

² *Spec. Laws* 4.35 § 185.

³ *Spec. Laws* 4.37 § 193; cf. *Her.* 162.

⁴ *Hypoth.* 7.8 (from Eusebius' *Prep. Ev.* 8.7.8). On the relationship of the golden rule to Lev 19:18b, cf. Alexander 1997.

⁵ Yadin (1971: 6; 1983: 374) sees here a midrash upon Lev 19:16. Cf. Maier 1985: 133.

⁶ On the date of *Against Apion*, cf. Nickelsburg 2005: 294; Barclay 2007: xxvi-xxviii.

⁷ *C. Ap.* 2.28 § 207.

The first part, “it is permitted to conceal nothing against friends,” is nearly identical in language to Philo’s use of Lev 19:16 regarding treachery. Directly before this is prescribed stoning for the son who does not honor his parents, and directly after this is prescribed the death penalty for the judge who receives bribes. That Josephus would include a prohibition against treason based upon Lev 19:16 amidst a list of violations requiring the death penalty should not surprise us in light of 11QT^a LXIV, 6c-8a cited above, which prescribes crucifixion for treason. After the prohibition against treason from Lev 19:16, Josephus speaks of enmity between two friends, echoing Lev 19:17-18a—verses used at Qumran to prohibit the bearing of a grudge until a later opportunity for revenge using the court presents itself.¹ Lastly, Josephus lists as capital the crime of a judge receiving bribes, which probably comes from Exod 23:8 (Deut 16:19)—an expansion of Exod 20:16 and which is related to Lev 19:15-18. Nine verses later, Josephus lists as one of the crimes deserving capital punishment the cheating of others by using false measures or weights—a clear allusion to Lev 19:35-36.² Similarly to Philo, therefore, Josephus understands Lev 19:16 to be about treason and connects this verse to Lev 19:35-36.

Comparable conclusions, therefore, can be made regarding Philo and Josephus as were deduced from Ps.-Phoc. First, since Philo understands Exod 20:16; 23:1-3, 8 and Josephus understands Exod 23:8 to be about legal judging, and since both relate these laws to Lev 19:16 it is highly likely that they understand the latter to be about legal judging as well. Second, since both Philo and Josephus connect Lev 19:16 and Lev 19:36 together (similarly to Ps.-Phoc.), they probably both see Lev 19:15-18 and 19:35-36 as related as well.

4.7. *Sifra* Lev 19:15-18, 35-36

Sifra is a tannaitic commentary on Leviticus, the final form of which can be dated to the second half of the third century, but the core traditions of which can be dated to

¹ CD-A IX, 1-8. Cf. Kugel 1987: 53-54; 1994: 224-225.

² C. Ap. 2.28 § 216.

well before A.D. 70.¹ This document engages in systematic exegesis of Scripture, incorporating oral traditions concerning the verses at hand found scattered throughout the Mishnah and Tosefta.²

Sifra's comment upon Lev 19:15-18 (*Parashat Qedoshim Pereq* §4) is too long to be reproduced in full here.³ However, a number of aspects of this document should be noted. First, just as many texts already discussed have done so implicitly, *Sifra* explicitly treats Lev 19:15-18 as a unit to be interpreted together. The comment begins with Lev 19:15 and ends with 19:18b. Second, as Kugel notes, *Sifra* takes Lev 19:15 as paradigmatic for 19:16-18.⁴ That is, since Lev 19:15 is understood to be about the judiciary, so the comments on subsequent verses should be taken to be about the courts.⁵ Third, *Sifra* records a rabbinic debate about how many times a person should rebuke a brother. As we saw in 1QS V, 24b-VI, 1a above, similar issues regarding how many times to rebuke a brother had grown up around discussions of Lev 19:17 as necessary halakhic supplements for how to uphold the command to rebuke in Lev 19:17. As we shall observe in Chapter four, Matt 18:21ff picks up this question surrounding how best to keep Lev 19:17, casting it in terms of how many times to *forgive* a brother, just after Matthew's Jesus provides some rules for just judging within the church (Matt 18:15-20). Fourth, in discussing Lev 19:15, *Sifra* contains a rabbinic discussion about the fairness of a judge allowing one party to sit while the other stands. This shall become important in our discussion of Jas 2:1-13 in Chapter five. Finally, *Sifra* on Lev 19:18a seems to interpret "you shall not take vengeance or bear any grudge" as both an act ("vengeance") as well as an attitude (bearing a "grudge"), further weakening Kugel's claim that Lev 19:17-18 lends itself to either a "moralizing" reading or a "judicial" one.

One final note should be made here. *Sifra* also recognizes the relatedness between Lev 19:15-18 and 19:35-36. *Sifra* on Lev 19:33-37 (*Parashat Qedoshim Pereq* §8) quotes Lev 19:18 to explain 19:34. In commenting upon the section on just weights and measures in 19:35-36, *Sifra* explains, "If the context is judgment in court, that has already

¹ Cf. Finkelstein 1989; Strack and Stemberger 1996: 263. This core tradition includes *Sifra*'s comments upon Lev 19:15-18 in a section titled "Qedoshim."

² Cf. Strack and Stemberger 1996: 262-263; Neusner 2005a: 56-63.

³ For the text, see Neusner 1988: 107-109.

⁴ Kugel 1987: 60; 1994: 230.

⁵ This is noted by Kugel (1987: 60-61; 1994: 230), although he thinks *Sifra* stops applying this legal reading at Lev 19:17.

been covered,” presumably referring back in Leviticus to 19:15-18. Finally, 19:35-36 is explained in *Sifra* thus: “This concerns measures and quantity, teaching that one who measures out is called a judge.” It seems fairly straightforward, therefore, that *Sifra* sees Lev 19:35-36 as related to 19:15-18. One final tradition connects these two pieces of legislation from Leviticus: the traditions about Cain and Abel.

4.8. The Cain and Abel Traditions

The Cain and Abel story from Gen 4:1-16 is a mere skeleton which later Jewish and Christian writers felt a need to fill in the details of in various ways with Abel always cast as righteous and Cain always portrayed as a wicked oppressor.¹ Both Philo and Josephus explain Cain’s name as meaning “possession” or “acquisition”—Philo describing Cain’s fault as believing all possessions in the world to be his possession rather than belonging to God.² They explain Cain as covetous and a lover of self.³ There is a further, crucial aspect to the Cain and Abel traditions which I would like to stress, however, since this tradition bears greatly upon our understanding of later Christian midrash upon Lev 19 in James and Matthew. This aspect of the tradition has to do with how Cain and Abel were understood to be related to the judiciary.

The idea of judging often accompanies the retelling of the Cain and Abel story. This is to be expected since the original story itself is, after all, about a murder. In *I En.* 22:7 the spirit of Abel continues to “sue” Cain’s seed until the final judgement (cf. vv. 4-14). Josephus presents God’s question to Cain regarding Abel’s whereabouts “as a kind of judicial cross-examination” (Kugel 1990: 176) after which, “God convicted [ἡλέγχεν; cf. Lev 19:17] Cain as the murderer of his brother.”⁴ The Mishnah (*m. Sanh.* 4:5), in an effort to explain the plural “bloods” of Abel which Cain spilt (Gen 4:10), admonishes witnesses in capital cases that all of the lives of the descendants destined to be born from

¹ *I En.* 22:5-7; *T. Ab.* 13:3-9; *T. Benj.* 7:3-8:2a; *LAB* 2:1-4; 4 Macc 18:11; *Cher.* 52, 64-65; *Sacr.* 2-5; *Worse* 32, 78; *Ant.* 1.2.1-2 §52-66; *Tg. Ps.-J.* and *Tg. Neof.* Gen 4:1-16; Matt 23:35; Luke 11:49-41; John 8:44 and 1 John 3:10-12; Heb 11:4; 12:23b-24; Jude 11; 1 *Clem.* 4:1-7; *Gos. Philip* 61:5-10; *m. Sanh.* 4:5; *Cav. Tr.* 7:18. For overviews of these traditions, cf. Kugel 1990; Ruzer 2001: 263-267; Byron 2006: 265-268.

² *Cher.* 52, 64-65; *Worse* 32; *Ant.* 1.2.1 § 52.

³ *Sacr.* 3; *Worse* 32, 78; *Ant.* 1.2.1 § 54; cf. *Cher.* 64-65.

⁴ *Ant.* 1.2.1. § 57.

the one wrongly convicted are, at the end of time, held against the witness who testifies falsely. The *Testament of Abraham* is an interesting case in this regard. Chapter twelve describes a scene in which a shining “son of God” sits judging souls, aided by three angels—one of whom holds a balance in his hand with which to weigh each soul. In chapter thirteen it is explained that Abel is this wonderfully bright judge upon the throne who “sits here to judge the entire creation, examining both righteous and sinners” (13:3).

Perhaps the most intriguing piece of this tradition highlighting the judiciary, however, comes from the Targums. The Targums provide further explanation of Cain’s killing Abel in Gen 4:8 in the form of a dispute between Cain and Abel which led up to Abel’s murder.¹ The conversation begins with a debate over whether the world was created “with mercies” or not. This is followed by Cain’s question about why Abel’s offering was accepted in contrast to his own offering. In *Tg. Ps.-J.* and *Tg. Neof.* 1 on Gen 4:8, this questioning is cast in the form of further debate between Cain and Abel. Cain, in an unambiguous reference to Lev 19:15, declares that there is “favoritism of persons in judgement” (*Tg. Ps.-J.*) while Abel asserts there is no favoritism in judgement. Cain then rebuts, “there is no judgement and no judge, there is no other world [i.e., ‘heaven’], and there is no giving of good reward to the righteous and there is no repaying from the wicked.” Abel then asserts the reality of each of these things Cain has just denied the existence of. Such a dialogue debating the existence of God and his final judgement, set in a discussion of whether or not the world was created “with mercies,” indicates that these “mercies” are probably to be understood similarly to the “measures” of God’s judgment, of which “mercy” was one. In other words, while Abel believes in the existence of a just God who will judge humans based upon their behavior, Cain believes in an arbitrary universe in which none will be held to account for their deeds.² Thus Cain, since there is no ultimate reckoning, can justify the killing of his brother Abel.

In his retelling of the tradition about Cain and Abel, Josephus recounts that it was Cain who, being known for gaining wealth by violence and robbery, introduced measures and weights into the world for this same, wicked end.³ Although Josephus does not cite it in this instance, only one law can be in view here: the law of just weights and measures

¹ For a compilation of these texts, cf. Chilton 1982: 555-557.

² Cf. Kugel 1990: 178.

³ *Ant.* 1.2.2 § 60-61.

from Lev 19:35-36 (cf. Deut 25:24-25), a law which, as just noted above, Josephus was familiar with and which he himself connects to the laws in Lev 19:15-18.

It is understandable why later writers would connect the Cain and Able story with the laws for just judging from Lev 19. Just as this seminal story involves *hatred* between two *brothers*, the laws for just judging prohibit the *hating* of one's *brother* in one's heart (Lev 19:17). Furthermore, in making use of both Lev 19:15 and Lev 19:35-36, the Cain and Abel tradition—like the many canonical and postbiblical writers observed above—connects these two pieces of related legislation. The theological implication of these traditions seems to be that since Cain believed there was no God to ensure the just judging of a person or the just judging of weights and measures, he can both kill his brother as well as introduce weights and measures to be used for ill. Cain, therefore, is not only the archetypal oppressor, but he oppresses people by means of crimes such as murder and unjust measures—crimes which stand in contradistinction to God's laws for just judging in Lev 19:15-18 and the just judging of measures in Lev 19:35-36. Cain commits these crimes precisely because he believes there will be no ultimate, cosmic judicial ramification since, after all, “there is favoritism of persons in judgement” and therefore (the reasoning goes) there must be no just God to reckon with.

Not only do these Cain and Abel traditions connect the laws in Lev 19:15-18 and 19:35-36 the way many other postbiblical writers do, they also feature significantly in the Jamesian and Matthean texts about brotherly conflict as Chapters three and four shall demonstrate.

5. Revising Kugel's Conclusions

Kugel has done a great service in plowing the way regarding how interpreters have read these verses from Leviticus. In an effort to further his work, I tentatively suggest some modifications to his conclusions.

5.1. Most interpreters understood Lev 19:15-18 as a unit to be interpreted together.

Kugel's third conclusion—that Lev 19:17 read alone is often interpreted morally while Lev 19:15-18 read as a unit is interpreted legally—is questionable for a number of reasons. In observing the texts which interpret verses from Lev 19:15-18, more often than not they wrestle with multiple verses or phrases within the entire passage rather than merely one verse (be it Lev 19:17 or otherwise). And even when focusing upon a single verse or phrase, there are often allusions or echoes of the surrounding verses from Lev 19:15-18 which help inform the reading of the one verse which is cited. Many other texts, however, deal extensively with multiple verses and phrases from among the entirety of Lev 19:15-18 revealing the interconnectedness with which interpreters often treated these verses. This is in keeping with Jewish exegetical practice at the time as reflected in Hillel's seventh rule of interpretation that "a matter is learned from its context." Likewise, David Instone Brewer can asserts in his extensive study of Jewish Exegesis before A. D. 70 that, "every single scribal exegesis examined could be quoted as an example to show that Scripture was interpreted according to its context."¹ Two further points should be noted here.

First, Lev 19:15 seems to be paradigmatic for 19:16-18, not only in the canonical text itself but among most interpreters of it. It was observed that the phrase beginning Lev 19:15, "do not do injustice in judgement," is repeated verbatim in 19:35 and therefore seems to serve as a heading for each section.² That 19:15 is paradigmatic for the verses which follow is explicit in *Sifra*, as Kugel notes. However, it is curious that such a paradigmatic verse as Lev 19:15 is rarely cited by subsequent interpreters. However, while most texts rarely cite 19:15, choosing rather to quote phrases from verses 16-18, in my view 19:15 is rarely cited precisely because most interpreters likely *assume* 19:15 as paradigmatic for the rest of the passage, operating "behind the scenes" as it were. After all, the meaning of 19:15 is relatively straightforward and is therefore in need of little interpretation or comment. The paucity of citations of Lev 19:15 may even support the notion that most interpreters assumed its presence. One might even argue that the only reason it is cited in *Sifra* is the fact that *Sifra* is a linear interpretation of the text, commenting upon nearly every verse or phrase. What *Sifra* states explicitly, therefore, is

¹ Cf. Brewer 1992: 167-169.

² See footnote 26 above.

likely implied in other texts. After all, *Sifra* stands within a stream of interpretive history, and from our survey above, reading 19:15 as paradigmatic would seem to stand in continuity, rather than contradistinction, with the judicial way in which interpreters understand 19:16-18. Second, as observed earlier, to read 19:15-18 as a unit makes good sense of the “neighbor” language and its synonyms concentrated in Lev 19:15-18. All of this implies that most interpreters likely understood Lev 19:15-18 as a unit to be interpreted together.

5.2. Lev 18:15-18 is often read in tandem with Lev 19:35-36

The assumption of Kugel’s work seems to be that the history of interpretation of Lev 19:15-18 understands this unit (or only 19:17) in isolation from other portions of Scripture which might illuminate its meaning. But it has been repeatedly argued in this chapter that Lev 19:15-18 and 19:35-36 are related. This can be seen in Lev 19 itself, and is evidenced in the way that these two units from Lev 19 are connected both by later canonical writers (Prov 11:1, 12-13; Hos 2:7; Amos 8:4-5; Ezek 45:9-10) as well as postbiblical writers (Ps.-Phoc. 9-12, 14-15; *Spec. Laws* 4.35 § 183; 4.37 § 193; *Hypoth.* 7.8; *C. Ap.* 2.28 § 207; 2.28 § 216; *Sifra* on Lev 19:15-18 [*Parashat Qedoshim Pereq* §4]; *Sifra* on Lev 19:33-37 [*Parashat Qedoshim Pereq* §8]).

The suggestion of Derrett, therefore, that *both* Lev 19:15-18 and 19:35-36 stand behind Matt 7:1-5 will become significant in Chapters three and four.

5.3. While the laws for just judging in Lev 19:15-18 surely involve moral issues of the heart, they are understood to be in essence about just legal judging.

Kugel’s first and second conclusions—that Lev 19:17-18 are linked by the common threat of “heart” issues which are difficult to legislate, and that two interpretations (the moral and legal) therefore subsequently arose—are in need of considerable modification.

If indeed Lev 19:15 is paradigmatic for 19:16-18, and 19:15 seems clearly to be about justice in the courts, then the entire passage presents an overall thrust of being

about the judiciary. This is not, however, to exclude the presence or importance of the “heart” amidst these verses.

Kugel’s arguments, “how can one peer into the heart of a judge in order to be sure that he has eliminated any internalized form of preference ... how can one legislate human emotions ... or the desire for revenge ...?”¹ are *non sequitur* arguments. For one could argue that all or nearly all keeping or breaking of the law has underlying motivations in the human heart—the tenth commandment against coveting, or laws against murder or adultery being prime examples. Rather than argue Lev 19:17-18 are linked together by the common thread that these are injunctions aimed at the heart, one would do better to argue that Lev 19:15-18—being understood together as a unit—present just judicial procedures as the main theme (which invariably includes motivations of the heart). Perhaps, one might argue in defense of Kugel, when a writer cites *only* Lev 19:17 or 19:17-18a (i.e., the “moral” section of Lev 19:15-18) that such a writer is indeed only focusing upon the moral aspects of the judicial legislation contained in Lev 19:15-18. But in the vast majority of cases (apart from a few proverbs), these verses are *not* cited in isolation but are interpreted with their surrounding verses. The example of Ben Sira above is a good case in point: it does not cite Lev 19:17 alone to be understood morally as Kugel argues, but rather alludes to various parts of Lev 19:15-17 and should be understood as eminently legal (although not without a moral aspect).

If Lev 19:15-18 is often understood as one unit, and Kugel admits that a number of texts actually do combine the moral and legal, and that even Proverbs (often, although not always) and Ben Sira combine these two interpretive streams (as I have argued), then Kugel’s thesis of two clear-cut streams—a moral and a legal stream—should be revised. Perhaps a richer interpretive option is apropos: namely, that both the moral and the legal can often be detected in a given text, even if a text may *emphasize* one or the other. In my view, there is much more continuity in the interpretive history of Lev 19:15-18 than Kugel’s work leads one to believe. Furthermore, even if a verse (such as Lev 19:17) seems to be separated into a “moral” principle as in some (but certainly not all) proverbs, the legal sense of Lev 19:15-18 should be understood to continue, in all likelihood, to inform such moral readings of singularly cited verses.

¹ Kugel 1987: 44.

Kugel's first and second conclusions, then, may be restated in this way: While the laws for just judging in Lev 19:15-18 surely involve moral issues of the heart, they are understood to be in essence about just legal judging.

5.4. The Priestly Nature of Lev 19:15-18, 35-36 and its Traditions

One final implication needs to be added here: that is, the *priestly nature* of these traditions. It should not be surprising that this book concerning those whom the Lord “called” (MT) or “the Levitical [things/book]” (LXX) produced traditions which have been traced to later priestly groups. The documents which we have been considering—Ben Sira, *T12 Pat*, 1QS, CD, perhaps even *Sifra*—all have strong connections to the priesthood. We also observed that midrashic, halakhic activity is a priestly activity. And since Lev 19:15-18, 35-36 and its subsequent traditions speak primarily about doing justice in legal judging—the function of which is primarily the realm of the priests even up to Jesus’ time (as noted in Chapter two)—it seems highly probable that Lev 19:15-18, 35-36 and its halakhic, midrashic expressions were legislation by and for *priests who functioned as judges*.

Armed with the Doeve/Derrett thesis that Jesus in Matt 7:1-5 is engaging in a halakhic midrash upon Lev 19:15-18, 35-36, and with a fresh view regarding how Jewish exegetes before and after Jesus treated Lev 19:15-18, 35-36, our attention can now be turned to understanding what Matthew’s Jesus means when he says, “Do not judge ...”

Chapter Four

“Do not Judge” as Eye-Opening Prophetic Criticism (Matt 7:1-5)

A love that sees no distinction between good and evil, but loves blindly merely for the sake of loving, is hatred, rather than love.

—Thomas Merton

The only time Christ is judgmental is on the subject of the poor.

—Bono

1. Introduction

Chapter one argued that the consensus reading since the middle of the 19th century of Matt 7:1-5 as a precept against judgmentalism is untenable. Yet Tolstoy, Zahn, Schlatter and van Tilborg present a viable alternative which understands Matt 7:1-5 to concern courts and judges—a view not unknown in centuries past. But despite recent efforts, the consensus still dominates today. It was deemed worthy, therefore, to develop this alternative reading more fully. To this end, Chapter three sought to gain insight into how interpreters before and after Matthew’s Jesus understood Lev 19:15-18, 35-36 since, according to a theory put forth in brief by Doeve and Derrett, Jesus too was likely midrashing upon these verses from Leviticus in Matt 7:1-5.

We now come to a more clear, if still imperfect, Archimedean point looming before us regarding Matt 7:1-5. The Doeve-Derrett theory that Jesus’ teaching in Matt 7:1-5 is a halakhic midrash upon Lev 19:15-18, 35-36 similar to other Torah scholars of his day still stands to be proven. Furthermore, the core argument of this thesis that Matt 7:1-5 concerns the judiciary also stands to be confirmed. But if the supposition that interpreters both before and after the first century A.D. largely understood Lev 19:15-18, 35-36 to be about courts and judges is even remotely persuasive, and if it can be convincingly demonstrated that Matt 7:1-5 is indeed a kind of implicit midrash upon Lev 19:15-18, 35-36, then it will naturally follow that Matt 7:1-5 is most likely the Matthean Jesus’ comment upon legal judging and the judiciary.

2. A New View of Jesus' "Do not Judge" Teaching (Matt 7:1-5)

2.1. Source-Critical Issues

Form and source criticism have left an enormously influential legacy upon gospels scholarship, and the Sermon on the Mount is of course no exception.¹ The sayings in Matt 7:1-5 are widely considered authentic words of Jesus.² It is often the case, however, that Matt 7:1-2 is understood as originally separate from 7:3-5. This is based upon the notion that Luke, who (it is argued) more often than not preserves a version more original to Q, has inserted two sayings (Luke 6:39-40) between what in Matthew is placed together (compare Luke 6:37-42 with Matt 7:1-5), and that this block of teaching as Matthew presents it must have been originally separate before Matthew placed them together.³ There is a shift from the second person plural in 7:1-2 to the second person singular in 7:3-5. Moreover, the repetition of κρίνω and μετρέω/μέτρον creates a unified sense within 7:1-2, and 7:3-5 forms a unit by the repetition of –βλέπω, κάρφος, ὀφθαλμός, ἀδελφός, δοκός and –βάλλω.⁴ Finally, a similar measure saying as found in Matt 7:2b is placed upon the lips of Jesus in Mark 4:24 without mention of “judging” or the log/speck proverb. Each of these arguments are used to affirm the notion that Matt 7:1-5 is a compilation of sayings which were originally separate.

However, some of source and form criticism's tenets (such as “Q” and “the historical Jesus”) are more and more being called into question.⁵ Furthermore, a strong case could be made *even on source/form-critical grounds* that Matthew preserves an earlier version of this teaching than Luke. Luz says of 7:1-5, “Matthean redaction can

¹ Cf. esp. Betz 1995.

² Cf. Luz 1989: 413, who says 7:1 “is almost universally attributed to Jesus” (so Reiser 1997: 265, 302-303) and of 7:3-5 Luz quips, “we have here one of the many instances where the criterion of dissimilarity fails completely. Verses 3-5 are a Jewish text which fits Jesus and therefore *can* be from Jesus!” Cf. similarly Schweizer 1976: 168.

³ Cf. Manson 1949: 55; Kloppenborg 1987: 181-182; Syreeni 1987: 137; Luz 1989: 413; Vaage 1989; Allison 1997: 84-85; Reiser 1997: 263; Nolland 2005: 317.

⁴ On repetition in 7:3-5, cf. Luz 1989: 413 who says these words give the text “a unified impression”; Hendrickx 1984: 152.

⁵ Serious questionings of “Q” include Farrer 1955; Sanders 1973; and more recently Goodacre 2000; 2002; Goodacre and Perrin 2004. Richard Bauckham (2006) has recently questioned form criticism's quest for “the historical Jesus” as a valid end-goal, arguing rather for “the Jesus of testimony.”

hardly be noticed.”¹ Hagner views the structure of 7:1-5, with the parallelism and succession of similar words in verse 2 (κρίματι κρίνετε κριθήσεσθε; μέτρῳ μετρεῖτε μετρηθήσεται) and the chiasmic structures of verses 3 and 4-5, as lending itself to easy memorization and thus representing authentic oral tradition from Jesus.² Ben Witherington writes, “Matthew 7:1-2 and 3-5 may originally have been separate sayings of Jesus ... but if so they have been aptly juxtaposed here.”³ Noted Q scholar Ron Piper opines that Matt 7:1-2 is the earliest version of this teaching so that other forms of the tradition such as *1 Clem.* 13:2 and *Pol. Phil.* 3:2 “are all elaborations of the short Matthean version.”⁴ Presumably, Luke could have expanded this original tradition found in Matthew in a way similar to *1 Clem.* 13:2 and *Pol. Phil.* 3:2. The phrase εἶπεν δὲ καὶ παραβολὴν αὐτοῖς in Luke 6:39 is, according to Piper, “almost certainly due to Lukan redaction.”⁵ Piper further admits that the parable in Luke 6:39, “appears as an intrusion into this context” and “does appear to be somewhat awkward in its context in Luke.”⁶ Piper also concedes that Luke 6:40 is indeed an insertion.⁷ It is significant, however, that Luke deems Jesus’ “do not judge” teaching significant enough to include it in his truncated Sermon on the Plain.

If, therefore, Matthew preserves an earlier block of teaching, Luke inserts the proverb about the blind leading the blind (Luke 6:39) because of the common eyesight metaphor found in the saying concerning a speck/log in one’s eye. Luke then follows this proverb in 6:39 with the master/disciple saying in 6:40, thus pairing together these two similarly themed sayings. John Nolland points out that, “the move from the plural in 7:1-2 to the singular in vv. 3-5 has a function similar to the same move in 6:1-4, 5-6, 16-18,” and so can be reckoned as part of Matthew’s writing style.⁸ The argument of common words in Matt 7:1-2 and 7:3-5 respectively does little to prove these two pieces were originally separate, furthermore, if the *meaning* of 7:1-2 matches well the *meaning* of 7:3-5—a view already hinted at above and one which shall be argued for more fully

¹ Luz 1989: 413.

² Hagner 1993: 168; similarly Wierzbicka 2001: 180.

³ Witherington 2006: 154.

⁴ Piper 1989: 38.

⁵ Piper 1989: 40.

⁶ Piper 1989: 39-40.

⁷ Piper 1989: 41-42.

⁸ Nolland 2005: 317.

below. Finally, sayings which make use of the measure-for-measure principle are in plentiful use in Jewish texts of this time as shall be illustrated below. Therefore Mark's use of this measure saying in Mark 4:24, without mention of "judging" or the speck/log proverb, should not be employed as evidence that Matthew's use of this measure saying in 7:2 was not somehow "original" to Matt 7:1-5 as, for instance, Luz does.¹ Such measure-for-measure sayings are proverbial and are thus easily employed in a variety of contexts. Indeed, the very nature of a proverb is its multidimensional pliability and applicability. Thus, Mark can include it in his cluster of parables and proverbs in Mark 4:1-29, and Matthew can present it as an original part of the block of teaching in Matt 7:1-5—each employed to different ends. Presumably, Jesus too could have likewise used the same proverb in different contexts for different purposes.

The most we can safely assume, therefore, is that Matthew transmits the block of teaching in Matt 7:1-5 and that he did so in order to faithfully reflect the teaching of Jesus. Matthew 7:1-5, therefore, is best understood as a unified block, and this is best interpreted as a larger part of Matthew's gospel.² Nonetheless, this block of teaching shall be dealt with below in two parts according to the standard division of 7:1-2 and 7:3-5. It is hoped, however, that the following argument will demonstrate that the *meaning* of 7:1-2 so closely matches the *meaning* of 7:3-5, and that reading these two sections as isolated entities makes much less sense than when they are read together. In other words, the assumption that Matthew places two formerly isolated pieces of teaching together for expediency *makes less sense of the text* than does the assumption that he presents what was originally a unified block.

2.2. Matt 7:1-2

The central theme set out in 7:1-2 is that of "judging" (κρίνω). Therefore defining this word is crucial for understanding the passage as a whole. Bauer's lexicon of the New Testament lists a range of meanings for the verb κρίνω:

¹ Luz 1989: 413

² Cf. Stanton 1987.

1. *separate, distinguish ...* 2. *judge, think, consider, look upon ...* 3. *reach a decision, decide, propose, intend ...* 4. as a legal t. t. [technical term] *judge, decide, hale before a court, condemn, also hand over for judicial punishment* (in a forensic sense ...) [used of both human and divine] 5. *see to it that justice is done ... to someone ...* 6. of the judgment which people customarily pass upon (and thereby seek to influence) the lives and actions of their fellowmen.¹

The sixth definition seems to be at the root of reading Matt 7:1-2 as being about “judgementalism” or “criticism.” Matthew 7:1-2 (in whole or in part) is, in fact, cited as the main passage bearing out this definition in not a few prominent lexicons—likely sources for many of the commentators cited in Chapter one.² This definition assumes κρίνω is used metaphorically while I shall argue below that κρίνω should be understood more literally, in line with BAGD’s fourth definition of κρίνω as legal judging.

2.2.1. Is Κρίνω used Metaphorically in Matt 7:1-2a?

Although κρίνω as it is used in Matt 7:1-2a is, in my view, legal in nature, the objection might well be raised: if κρίνω is legal, what if this legal language is used metaphorically in Matt 7:1-2 like one of the other metaphors in the Sermon such as salt, light, or bad fruit? The passage itself contains the image of the “eye” used metaphorically to speak of a fault/sin/offence. This is essentially the objection T. W. Manson raises when he writes,

these illustrations [of Matt 7:1-2; Luke 6:37-38] are drawn from the law-court and the marketplace; but the thing they illustrate is not a legal or a commercial relation between God and man or between man and man.

¹ BAGD 1979: 451-452, emphasis original.

² Thayer 1886: 360; Liddell and Scott 1966: 996; BAGD 1979: 453; Kittel 1984: 939. For a discussion of political correctness within BAGD/BDAG, cf. Poythress 2003, who raises the issue of “whether modern humanistic ethical sentiments about inclusiveness, tolerance, and religious pluralism are thought to be superior to the Bible, and are then allowed to sift through it, pronouncing judgment on what is acceptable” (583, f.n. 24).

What underlies all that Jesus here says is a simple and fundamental spiritual law. ‘Forgive and you will be forgiven; condemn and you will be condemned’ is not tit for tat, but the expression of the truth that nothing more surely shuts out a man from love than a censorious and unforgiving disposition. He who will not forgive closes his own heart against God’s forgiveness. He who despises and hates his fellow-man closes his own heart against God’s love.¹

What if, as Manson argues, Matt 7:1-2a makes use of the legal language of “judging” in order to communicate a “spiritual” truth? After all, Jesus’ advice counseling quick reconciliation before escalation to the courts in Matt 5:25-26 has from early times to present been interpreted allegorically—as concrete legal language used to illustrate the spiritual truth that one should be reconciled quickly before answering to God, the ultimate judge.² All of this would also fit the picture we find of the unmerciful servant in Matt 18:21-34 which, the Matthean Jesus explains, is an allegory illustrating God’s future judgement (18:35). However, there are good reasons why “judging” (as also “measuring”) should not be interpreted metaphorically in Matt 7:1-2.

First, if Matt 7:1-2a is legal language used metaphorically to communicate a moral or spiritual truth, what indications is the reader given to discern that this is indeed to be understood metaphorically? All the reader has is the term κρίνω itself and the proverbial speck/log saying in 7:3-5 without an elaborate context or explanation which might give one clues as to the metaphorical meaning, clues as to what kind of “judging” exactly is prohibited.

Secondly, it seems that when the judgment spoken of involves a correlating eschatological judgment, even this eschatological judgment is often understood as metaphorical. The assumption seems to be that although there is a final reckoning, the language of God as legal judge is somehow inadequate and that the “judging” in heaven

¹ Manson 1949: 56.

² Cf. France 1985: 121; Luz 1989: 290; Blomberg 1992: 108; Reiser 1997: 286-288; Theissen and Merz 1998: 268; Simonetti and Oden 2001: 106. Reiser extends the allegory further, reading Jesus as the “adversary” and Israel as the debtor (1997: 288). Although holding to an allegorical interpretation, France and Blomberg ironically also caution against further allegorizing! Against allegorizing in 5:21-26, cf. Hagner 1993: 118.

is not legal in nature. But this, in my view, misunderstands Matthew's worldview on this issue.

Matthew 7:1-2a—not unlike 5:21-22—speaks of both earthly as well as heavenly judgement. In Matthew's worldview, the judging which occurs on earth corresponds to judgement in heaven. This is reflected in Matt 16:19 and 18:18 in which Jesus says, “Whatever you bind on earth will be bound in heaven, and whatever you loose on earth will be loosed in heaven”—the latter occurring in a section on legal judging within the church (cf. 18:15-20, on which see further below). But why should heavenly judging be considered merely metaphorical in Matthew, when earthly judging in Matthew is often legal in nature, and Matthew connects this earthly, legal judging with heavenly judging? The more natural assumption for Matthew would seem to be that God, who is the giver of the law upon earth at Sinai, etc., would also be the judge in heaven of those who violate or keep his laws.

Deuteronomy 1:17, in a scene depicting Moses giving prescriptions for legal judges, speaks of earthly and heavenly judging as if they are corollaries of one another: “Do not show partiality in judging. You shall hear small and great alike. You shall not fear any man, because the judgment is God's ...” This depicts a dynamic relationship between the legal judging which happens upon earth by human judges and that which happens in heaven by God. Philo, basing his comments upon this very passage from Deut 1:17, likewise indicates that, “the [human] judge is the minister and steward of [God's] judgment.”¹ Therefore, as Hagner says, “the judgment of the local and main sanhedrins would have been anticipations of the final judgement ...”² Such also seems to be the perspective Matthew attributes to Jesus and which Matthew undoubtedly shared. In my estimation, therefore, when Matthew's gospel speaks of heavenly and earthly judging, both should usually be understood as concretely judicial in nature rather than merely metaphorical, and both are dynamically related. In Matthew's worldview, judging in heaven is every bit as legal as that upon the earth. (See further “The Correspondence Pattern of Prophetic Speech” below.)³

¹ *Spec. Laws* 4.12 § 71.

² Hagner 1993: 116.

³ On Matthew's interaction with a forensic worldview, see Riches 2000b, esp. pp. 197-202.

Thirdly, what of Matt 5:25-26? Should the court scene depicted in 5:25-26 be interpreted allegorically thus influencing an allegorical and/or metaphorical reading of the judging in 7:1-2a? While a fuller discussion of Matt 5:25-26 must be reserved for a later section in this chapter, it can be briefly stated here that Jörg Frey has convincingly argued against an allegorical reading of 5:25-26. He writes that, “the parabolic and eschatological interpretation of Matt 5:25-26 was mainly inspired by the Synoptic parallel in Luke 12:58-59, where the scene on the court trial is embedded in the context of other eschatological parables (Luke 12:35-48) and sayings ...”¹ He goes on to demonstrate Lukan redaction surrounding and within Luke 12:58-59 in contrast to the appropriateness of Matthew’s context for such a saying. Furthermore, reading Matt 5:25-26 eschatologically is driven not only by Lukan redaction, according to Frey, but by a theology of Jesus as an eschatological figure.² Frey, rather, compares the saying to sapiential instruction from 1Q/4Q Instruction on loans and surety, thus arguing for a literal rendering of Matt 5:25-26 as regarding legal judging over financial matters.³ While Matthew’s Jesus specifically indicates that the parable of the unmerciful servant in 18:21-34 is intended to be taken allegorically (18:35), in neither 5:25-26 nor in 7:1-2 is the reader told these teachings are to be taken in a similar manner. Therefore, just as readers should not assume that when Matthew writes of judging in heaven he is referring to a metaphorical activity, so readers should not assume earthly judging is metaphorical unless indicated by Matthew’s Jesus. However, while the “judging” in Matt 5:25-26 and 7:1-2a should not be understood as metaphorical or allegorical in my view, they *are* eschatological in nature since the judging which takes place upon earth finds a correlation with the judging which occurs in heaven.⁴

2.2.2. κρίνω as a Legal Term in Matthew (Matt 7:1-2a)

If, therefore, κρίνω is not to be understood as metaphorical in Matt 7:1-2a, how should it be understood? A survey of how this word and its cognates are used in

¹ Frey 2005: 11-12.

² Frey 2005: 12, citing Jeremias 1977.

³ Cf. Frey 2005: 11-39.

⁴ Although there is no specific mention of eschatological judging in Matt 5:25-26, earthly and heavenly (eschatological) judging is mentioned in 5:21-22, which Frey 2005:7-10 sees as related to 5:25-26.

Matthew's gospel reveals a strikingly consistent use of this word along with its compound and cognate forms as often bearing out the fourth definition in BAGD—legal judging.¹

Matthew's gospel uses words with the κρίν– root 28 times to speak of “judge” or “judgment.”² In the majority of cases (setting aside for the moment the five occurrences in Matt 7:1-2a), these words are used with the connotation of some kind of legal judging. Every occurrence, furthermore, is placed upon the lips of Jesus except the last instance in which Matthew, narrating the scene in which Jesus is detained for sentencing, says that on learning that Jesus had been “condemned” (κατακρίνω), Judas hung himself (27:3). A survey of this term in Matthew shall demonstrate its usage.

In Matt 5:21-22 Jesus deepens the ancient truism that the murderer will be legally liable “at the judgement” (τῇ κρίσει) by teaching that even anger makes one legally liable “at the judgement” (τῇ κρίσει). Besides the eschatological overtones in 5:22 (cf. “hell of fire”), mention of the Sanhedrin in 5:22 indicates that concrete legal judging in the human realm is also in view. With regard to disputes, the Matthean Jesus counsels quick reconciliation rather than escalation to the point of involving a legal judge (ὁ κριτῆς) in 5:25. In perhaps the most striking occurrence of a κρίν– word in 5:40, Jesus says, “to the one wishing to sue (κριθῆναι) you and take your tunic, give to him also your cloak.” The use of these words by Matthew's Jesus in a legal context in chapter five of the Sermon argue convincingly for the need to understand the κρίν– words later in the Sermon in Matt 7:1-2a as referring to legal judging as well. But the rest of Matthew's gospel bears out this legal definition too.

Matthew's Jesus often speaks of the eschatological “day of judgement” (10:15; 11:22, 24; 12:36, 41, 42), and likewise says the scribes and Pharisees will not escape “the judgement of hell” (23:33). Jesus promises the twelve disciples that they will sit upon twelve thrones “judging” the twelve tribes of Israel (19:28). In Matt 12:27 Jesus defends his ministry of exorcism by saying that the Pharisees' exorcists will be their “judges.”

¹ It is inaccurate in my view to understand Matthew's use of κρίνω as solely with reference to God's eschatological judgement as, for instance, Nolland (2005: 318) does.

² 5:21, 22, 25 (x2), 40, 7:1 (x2), 2 (x3), 10:15; 11:22, 24; 12:18, 20, 27, 36, 41 (x2), 42 (x2); 16:3; 19:28; 20:18; 21:21; 23:23, 33; 27:3. This excludes, of course, words such as ἀποκρίνομαι and ὑποκριτής, which, although having a κρίν– root, have in their compounded forms taken on meanings of their own.

Albeit eschatological, these sayings nonetheless assume a legal kind of judging is in view, as BAGD's fourth definition of κρίνω allows, and in concert with what I have argued for above regarding the dynamic relationship between judging in heaven and upon earth. Again, according to Matthew's usage, judging in heaven by God is every bit as legal as the judging on earth.

In 20:18, Jesus predicts he will be "condemned" (κατακρίνω) to death and in 27:3 Matthew narrates that Judas feels remorse when he discovers Jesus has been thus "condemned" (κατακρίνω). This is a forensic usage too. Concrete legal judging in the human realm is clearly in view, and this instance especially reminds readers of Jesus' teaching on legal judging from the Sermon on the Mount in 5:21-22, 25, 40 (if not Matt 7:1-5).¹

Five instances of a κρίν- word in Matthew are, however, used differently. The word διακρίνω is used meaning "interpret" (16:3) and "doubt" (21:21). (Interestingly enough, however, this word is used in 1 Cor 6:5 and Jas 2:4 in the context of legal judging.²) Matthew 12:18-21 is more general, speaking twice of "justice" for the nations. But this is a quotation from Isa 42:1-4. And while the quotation as a whole may be considered generally "non-Septuagintal,"³ Matthew's κρίσιν in 12:18, 20 matches the exact form of this word in the LXX of Isa 42:1, 3, 4 and therefore may derive from a Septuagintal usage. In Matt 23:23 Jesus criticizes the scribes and Pharisees for their neglect of "the weightier matters of the law: *justice*, mercy, and faithfulness." This usage also speaks more generally about justice, but legal justice should not be ruled out of the purview here since two of the attributes listed—justice and mercy—are used to describe the two measures by which God judges the world in Jewish thought (see further below).

Therefore, of the 23 usages in Matthew's gospel under consideration (28 minus the five occurrences in 7:1-5), 18 specifically describe legal judging whether eschatological or earthly. Of the other five observed, two likely come from the LXX of Isaiah (12:18-21), leaving only three instances in which Matthew himself uses a κρίν- word in a sense *different* than legal judging. In more than three-quarters of the instances

¹ Cf. Allison 2005: 219-222 who argues cogently for a parallel between Matt 5:39-42 and Jesus' treatment during his trial before the Sanhedrin (26:67) as well as before Pilate (27:30).

² For Jas 2:4 in a court context, see further Chapter five.

³ Hagner 1993: 336-337.

surveyed above, words with the κρίν– root in Matthew are used to speak of legal judging. Therefore, considering Matthew’s consistent use of κρίν– words more often than not to refer to legal judging, as well as the proximity of Matt 7:1-2a to a legal usage of these words earlier in the Sermon at 5:21-22, 25, 40, it is highly likely that the five usages of κρίν– words in Matt 7:1-2a are meant to be understood to refer to legal judging as well. If adopted as such, Matthew refers to legal judging in at least eight out of every ten times he uses a κρίν– word in his gospel.

To add to this strictly linguistic case, a further argument can be made that κρίνω is indeed intended to refer to the activity of the judicial system on the basis of Matt 7:1-2a being a midrashic, halakhic comment upon Lev 19:15-18.

2.2.3. Κρίνω in Matt 7:1-2a in Midrashic Perspective

So far it has been demonstrated that κρίνω and its cognates can and often do refer to legal judging on the lips of the Matthean Jesus. It has been further argued that the use of κρίνω in Matt 7:1-2a does not easily lend itself to a metaphorical understanding. Further to the argument that κρίνω should be understood concretely to refer to legal judging, rather than metaphorically to refer to a critical attitude towards others, is the wider thesis being undertaken here regarding Matt 7:1-5 as a halakhic, midrashic interpretation of Lev 19:15-18, 35-36.

If, as argued in Chapter three, Lev 19:15-18, 35-36 is the backdrop text for Matt 7:1-5, one might expect to find some verbal similarity between these two texts. In fact, κρίν– words feature in the LXX of Lev 19:15, 35—the two verses which serve as headings of, and therefore delineate the main topic for, each of these units in Leviticus. Leviticus 19:15 says, “You shall not do injustice in judging (ἐν κρίσει) a case. You shall not show partiality to the poor, nor show honor to the great, but you shall judge (κρινεῖς) your neighbor with justice.” Leviticus 19:35 says, “You shall do no injustice in judging (ἐν κρίσει) by measurement of length, by weight, or by measure of capacity.” The κρίσις and κρίνω of Lev 19:15, 35 find a correspondence to the κρίνω of Matt 7:1-2a. “Judging/judgment” (κρίνω/κρίσις), therefore, serves as the main theme of both 19:15-18 and 19:35-36 of Leviticus, as well as of Matt 7:1-5. If Jesus is here midrasing upon the

laws for just judging from Leviticus, then Jesus' statement on judging in Matt 7:1-2a would correspond to the laws on just judging in Lev 19:15, 35 thus:

“Do not judge (κρίνετε), in order that you might not be judged (κριθῆτε). For with the judgement you judge you shall be judged (ἐν ᾧ γὰρ κρίματι κρίνετε κριθήσεσθε).” (Matt 7:1-2a)

“you shall not do injustice in judging (ἐν κρίσει) a case ...
but you shall judge (κρινεῖς) your neighbor with justice” (Lev 19:15)

“you shall do no injustice in judging (ἐν κρίσει) ...” (Lev 19:35)

If, therefore, Lev 19:15-18, 35-36 is the backdrop text for Matt 7:1-5, and these verses from Leviticus have been understood by the majority of subsequent interpreters concretely to be about *legal* judging rather than merely providing a moral lesson (Chapter three), then the use of κρίνω in Matt 7:1-2a should be understood to refer to legal judging as well. To understand κρίνω in Matt 7:1-2a metaphorically as pointing to a moral or “spiritual” lesson is to go against the grain of how most interpreters before and after Jesus understood Lev 19:15-18, 35-36. Chapter three demonstrates that even when the wisdom literature engages in midrash upon the laws for just judging in Lev 19 that this is even sometimes understood as wisdom regarding how best to keep the laws of the judiciary and not merely moral in nature. Therefore, even if Jesus is understood to be teaching wisdom in Matt 7:1-2a—which may or may not be the case—this should be understood as wisdom regarding *legal judging*.

In Matt 7:1-2a, therefore, κρίνω is best understood concretely as a term referring to legal judging, rather than metaphorically pointing towards some other meaning. Furthermore, the very topic of “judging” and the very definition of κρίνω come from an exegetical engagement with the laws for just judging in Lev 19:15-18, 35-36.

2.2.4. Μετρέω in Matt 7:2b

To this central idea of “judging” in 7:1-2a, Matthew pairs “measuring” (μετρέω) in 7:2b, thus interpreting them as parallel terms.¹ Since the prohibition against “judging” in 7:1-2a has been generally understood as a call to cease from being judgmental or intolerant, “measuring” has naturally been understood to further communicate the same thing. As Hagner says, “the ‘measuring’ ... has to do with charitable judging.”²

Discussions of the “measure” and “measuring” in Matt 7:2b point out that the basic imagery of the measure derives from the marketplace in which grain is bought and sold by measure.³ The Mishnah even speaks of the “Jerusalem measure” in its discussion of grain offerings (*m. Men.* 7:1-2).⁴ But such measure sayings are also used to communicate the principle of reciprocity, as in our passage in Matt 7:2b which speaks of reciprocity with an eschatological ring: “with the measure you measure it will be measured to you.”⁵ Such eschatological reciprocity is often spoken of using measure-for-measure sayings in the Targums and rabbinic literature.⁶ *Mishnah Sotah* 1:7, for instance, uses the measure-for-measure saying to speak of divine retribution for adultery.⁷ This saying in Matt 7:2b is also found in the Isaiah Targum 27:8 to speak of God’s punishment of Rome for her oppression of Israel, a Targum that Bruce Chilton has argued Jesus most likely knew and “presupposed his hearers’ familiarity” with.⁸ Along similar lines, God is commonly spoken of in rabbinic literature as having two “measures” by which he judges the world, one of justice and one of mercy.⁹ Besides Matt 7:2b/Luke 6:38/Mark 4:24, these two measures of God’s judgement are reflected in the New Testament itself, most

¹ Reiser 1997: 263-264.

² Hagner 1993: 169.

³ Plummer 1898: 189; Adeney 1901: 197; Manson 1949: 56; Leaney 1958: 138; Couroyer 1970; Fitzmyer 1970: 641; Cardenal 1978: 122; Marshall 1978: 266; Caird 1979: 105; Beare 1981: 190; Davies and Allison 1988: 670; Nolland 1989: 301; 2005: 318; Betz 1995: 491; Kloppenborg 1996: 5; Bovon 2002: 242; France 2007: 275.

⁴ Cf. Jeremias 1969: 32-33.

⁵ Gundry 1982: 120.

⁶ Rüger 1969; Schweizer 1976: 169; Lachs 1987: 136. Although Ron Piper, relying mainly on Rüger, points out that this principle of just retribution is not only an apocalyptic concept but “was viewed in this life and not merely in the hereafter.” “One is,” according to Piper, “vulnerable to the same judgements” (1989: 38-39).

⁷ Cf. France 1985: 143.

⁸ Chilton 1984: 141. In Chilton’s apparatus of *Tg. Isa.* 27:8, he too assesses that the “measure” refers to “a unit of grain” (1987: 52).

⁹ For a survey of this concept, cf. Moore 1927: 386-400; Brady 2004.

clearly in Jas 2:13, but also in Matt 23:32.¹ The beatitude in Matt 5:7 is an excellent example of a measure-for-measure saying which simultaneously speaks of God's measure of mercy: "blessed are the merciful, for they will be shown mercy."²

There is not the space here to go much beyond the above sketch to survey the many instances of when the word "measure" is used or a measure-for-measure saying occurs within second Temple literature. This has been done elsewhere and I shall not repeat it here.³ In my view, what is often neglected, especially in discussions of the saying as it is used in Matt 7:2b, are the legal dimensions of the "measure" and such measure-for-measure sayings as well as how measure-for-measure sayings frequently connect a particular offence with a corresponding punishment which fits the crime. It is to this aspect we now turn.

2.2.5. Measure-for-Measure as a Legal Principle

Quite often, when a measure-for-measure maxim is employed, the discussion is a legal one involving a crime and a suitable penalty.⁴ The measure-for-measure principle "is found sporadically in ancient legal systems," writes Bauckham, "which sometimes prescribe quite specific punishments exclusively for a specific kind of crime."⁵ Josephus, for instance, writes that the false witness is to suffer the same penalties he wished to inflict upon the falsely accused.⁶ In the Scriptures, a measure-for-measure saying can be found as early as Genesis 9:6 which says, "whoever sheds the blood of man, by man shall his blood be shed." Jubilees 4:31-32 sees this principle at work in the Cain and Abel narrative of Genesis 6 just prior to the maxim stated in 9:6:

At the end of that jubilee Cain was killed one year after him. And his house fell upon him, and he died in the midst of his house. And he was killed by its stones because he killed Abel with a stone, and with a stone

¹ France, however, claims that the measure saying in Matt 7:2b is independent of the idea of God's two "measures"—mercy and judgement—by which he judges (1985: 143, f.n. 1).

² Cf. Nolland 2005: 319.

³ Cf. Strack and Billerbeck 1922: 444-446; Rüger 1969.

⁴ Himmelfarb 1983: 75-105.

⁵ Bauckham 1998b: 211.

⁶ *Ant.* 4.8.15 § 219.

he was killed by righteous judgment. Therefore it is ordained in the heavenly tablets: “With the weapons with which a man kills his fellow he shall be killed just as he wounded him, thus shall they do to him.”¹

The two examples above demonstrate how this principle is early used with reference to the crime of murder and so can be understood as a principle of justice concerning a legal matter. This reflects the Torah’s legal maxim of *lex talionis*—“an eye for an eye, and a tooth for a tooth” (Exod 21:24; Lev 24:20)—as well as the eschatological idea that a sin on earth receives a just punishment after death.² Commentators of Matthew likewise point out that the sayings in Matt 7:1-2 do indeed function as statements of *lex talionis*—as legal statements of punishments in kind, or as instances of poetic justice.³ Likewise, Eduard Schweizer makes the important observation of the measure-for-measure saying in Mark 4:24 that, “the addition in Mark 4:24 ... ‘it will be added to you’ ... points originally to a judicial setting.”⁴ The measure-for-measure principle and related sayings are, therefore, often used in legal contexts.

2.2.6. Μετρέω/μέτρον in Matt 7:2b in Midrashic Perspective

Just as it has been argued already that Matt 7:1-2a and κρίνω are best viewed as a midrashic comment upon the laws for just judging from Lev 19:15-18, 35-36, so Matt 7:2b and the parallel terms μετρέω/μέτρον therein should also be viewed midrashically. More specifically, however, the measure-for-measure saying of Matt 7:2b is midrashically linked to the law of just measuring by a judge in Lev 19:35.

Leviticus 19:35 says, “You shall do no injustice in judging by measurement (ἐν μέτροις) of length, by weight, or by measure of capacity.” Therefore, just as the κρίνω of Matt 7:1-2a finds a parallel in the κρίνω/κρίσις of Lev 19:15, 35, so the μετρέω/μέτρον of Matt 7:2b finds a parallel in the μέτρον Lev 19:35. If Jesus is here midrashing upon the

¹ Translation by Wintermute 1985: 64. Cf. Bauckham 1998b: 214.

² Himmelfarb 1983: 76; Bauckham 1998b: 212.

³ Robinson 1928: 60; Betz 1995: 490-491; Turner 2008: 205. By contrast, Davies and Allison 1988: 668 see Jesus’ prohibition in Matt 7:1-2 as *reversing* the *lex talionis*.

⁴ Schweizer 1976: 167-168, referencing Matt 25:29 and the parable of the talents.

laws for just judging from Leviticus, then Jesus' statement on measuring in Matt 7:2b would correspond to the laws on just weights and measures in Lev 19:35 thus:

“with the measure you measure it will be measured to you

(ἐν ᾧ μέτρῳ μετρεῖτε μετρηθήσεται ὑμῖν).” (Matt 7:2b)

“you shall do no injustice in judging by measurement (ἐν μέτροις) ...” (Lev 19:35)

If, therefore, Matt 7:1-5 is indeed a midrash upon Lev 19:15-18, 35-36 which understands these verses to be about the judiciary, then the μετρέω/μέτρον in Matt 7:2b should be understood to refer, by extension, to the legal act of a judge's measuring. Such measuring by a legal judge will become clearer in our discussion of Matt 7:3-5 below. Before discussing these verses, however, one final aspect of the measure-for-measure nature of Matt 7:1-2 must be addressed: the correspondence pattern of these sayings.

2.2.7. The Correspondence Pattern of Prophetic Speech in Matt 7:1-2

Not only are measure-for-measure sayings often used in a legal context—as in the use of the measure sayings in Matt 7:1-2 as a midrash upon Lev 19:15-18, 35-36—but the very nature of the measure-for-measure principle is meant to demonstrate a *correspondence* between the crime and the punishment. Such correspondence language is characteristic not only of the legal corpus but, as shall be observed below, of the prophetic literature as well.

Rather than merely operating as a principle of legal justice and fairness, the measure-for-measure principle more precisely betrays a correspondence pattern. “Ancient legal practice,” say Bauckham, “sometimes exhibits the notion that somehow the kind of punishment should *correspond* to the crime.”¹ In Exod 22:22-24, for instance, the Lord vows to punish those who oppress orphans and widows by making their wives widows and their children fatherless.

¹ Bauckham 1998b: 212, emphasis original.

Moreover, such correspondence speech is especially characteristic of the Old Testament prophets as scholars such as Claus Westermann, Patrick Miller, and others have demonstrated.¹ There is a pattern of correspondence “between sin and judgment, [between] crime and punishment” in this language of prophetic criticism.² As Miller explains, the “punishment will be according to, in some way like, or appropriate in either a literal or symbolic fashion to the sin committed.”³ In other words, the degree and kind of penalty has a direct correlation to the degree and kind of offence.⁴ This punishment is not to be seen as “retributive” so that the punishment comes as vengeance from the Lord. Rather, the penalty is a just and fitting punishment for the crime committed. “It is not capricious or irrational,” writes Miller, “because it corresponds to the sin.”⁵ This rhetoric of the prophets is designed to make the association between the sin and the corresponding punishment unmistakably clear.

It is not insignificant that some prophetic texts which betray such a correspondence pattern of sin and judgement use the language of litigation as their mode of critique, as in Hos 4:1 and 12:2 [MT/LXX 12:3] in which, “Yahweh has *a lawsuit* [לִישׁוֹן/κρίσις] ...[against his people]” (cf. Mic 1:2-7; Isa 1:2, 19-20). Since covenant language is by its very nature legal language, it is fitting that Yahweh bring a legal case against His people when violations of the contract have been committed. It is also of considerable importance that other prophetic correspondence texts such as Amos 5:10-12 and Isa 1:19-31 have as their very topic of criticism injustice in the courts.⁶ Injustice, unfairness, and discrimination within the judicial system are the abuses criticized in these prophetic oracles which utilize the correspondence pattern of prophetic speech.

But this idea is not only found in the Pentateuch and the Prophets, but extends well into the second Temple era. The idea that each sin has an analogous punishment, Bauckham explains, “becomes more specific in the idea of ‘measure for measure’ punishments.”⁷ For instance, not only is the death penalty prescribed for murder but, as in Jub 4:31-32 quoted above, the *kind* of crime is met with the same *kind* of punishment—

¹ Lohfink 1961; Westermann 1967: 160-161; Janzen 1972: 81-82; Miller 1982, esp. pp. 7-20.

² Miller 1982: 1.

³ Miller 1982: 1.

⁴ Miller 1982: 5.

⁵ Miller 1982: 20.

⁶ Cf. Miller 1982: 21-23; 37-41 on the correspondence pattern of prophetic speech in these passages.

⁷ Bauckham 1998b: 212.

stoning for killing with a stone. Or, in Jewish and Christian apocalyptic texts from the turn of the era to the fifth century, swearing falsely in court (along with other sins of speech) is uniformly met by the measure-for-measure punishment in hell of hanging by the tongue.¹ Tractate *Avot* of the Mishnah displays well the concept of measure-for-measure punishment. A saying attributed to Hillel in *Avot* 2:6 says, “he saw a skull floating on the water and said to it, ‘Because you drowned others, they drowned you, and in the end those who drowned you will be drowned.’” Within such texts, writes Bauckham,

is stated as a principle of divine punishment ... that the instrument of sin should be the *instrument* of punishment. For example, Cain killed Abel with a stone, and so he himself was killed by the stone of his house when his house fell on him (Jub 4:31). The Egyptians worshipped animals, and so, among the plagues of Egypt, they were punished by plagues of animals (Wis 11:15; 12:27; 15:18-16:1). Many examples could be given (cf. Jub 48:14; LAB 44:9; Wis 11:6; 18:4-5; Rev 16:6; b. Gitt. 57a; GenRab 1:18) ...²

“To receive something corresponding to what one has done oneself is to find, as it were, one’s own sin boomeranging back at one.”³ Bauckham points out, however, that

ancient legal systems—including Jewish Law—did not have a different punishment for each crime. But doubtless the thinking ... was that the ideal justice which earthly legal systems cannot achieve will be realized in God’s eschatological judgment. He will be able to allot a punishment precisely appropriate to each kind of crime.⁴

¹ Cf. Himmelfarb 1983: 72; 86.

² Bauckham 1998b: 214, emphasis original.

³ Bauckham 1998b: 213.

⁴ Bauckham 1998b: 211.

The point of such sayings is not to prescribe a multiplicity of earthly punishments, but to communicate the truth that God is supremely and exactly just. As Bauckham, in his discussion of hell and judgement, states negatively, “the overriding concern is that the wicked should face the truth of their own evil and suffer it.”¹

This notion of measure-for-measure justice—that the punishment is apropos to the crime—as it is used especially among the prophets, is often expressed through the repetition of action verbs. As Miller points out, such verbs are present “in both the accusation [of the sin] and the announcement of judgment.”² For example, Hos 4:6 says,

Because you have *rejected* knowledge, I *reject* you as my priest,
Because you have *forgotten* the law of your God, I will *forget* your sons.

Or Hos 4:8, 10,

They *eat* the sin of my people; they are greedy for their iniquity.
So they shall *eat* and not be satisfied.

Or Mic 2:1, 3,

Woe to those who *devise* wickedness, who plot evil on their beds!
Therefore, thus says the Lord: I am *devising* evil against this clan ...

The repetition of such action verbs has the ability of “conveying in one word the instrument, character, and punishment” of the sin.³ That is, the very punishment prescribed is the very sin for which the punishment is meted out—being rejected for rejecting, being forgotten for forgetting, eating without satisfaction for wicked eating, being devised against for devising wickedness, etc.

Such a pattern of correspondence is also detected in Matt 7:1-2. In fact, Luz sees in 7:1 an “eschatological elaboration of a general Old Testament conception of

¹ Bauckham 1998b: 221.

² Miller 1982: 2.

³ Miller 1982: 28.

correspondence.”¹ In Matt 7:1-2, one finds a repetition and correspondence of action words similar to the examples from the prophets listed above:

Do not *judge*, so that you might not *be judged*.

For with the judgement you *judge* you *will be judged*,

and with the measure you *measure*, it *will be measured* to you.

Read in light of this pattern of correspondence, the “instrument, character, and punishment” of the sin is conveyed in the single action word “judge” and its related verb “measure.” Therefore, the very sin at issue—*judging* (and measuring)—is named in the corresponding punishment of *being judged* (and having something measured back). The language of “judging” in Matt 7:1-2a, therefore, portrays both the sin being critiqued as well as the corresponding punishment of an eschatological reckoning. Like the speech so characteristic of the prophets, Jesus’ warning conveys a deep sense of irony and poetic justice. If Jesus’ language here is indeed a kind of prophetic criticism, the force of Jesus’ rhetoric takes form: Jesus rebukes those leaders in Israel who are being irresponsible in their rebuking, and in so doing Jesus keeps the law by participating in the Lord’s program of rebuke according to Leviticus 19:17 and does not share in the sins being committed. Jesus rebukes the rebukers and in so doing creates a prophetic rhetoric, the form of which fits precisely its content. Read in this way, the saying sounds more like one of Jesus’ prophetic criticisms aimed at a group such as the Pharisees, rather than a playful banter illustrating a non-condemnatory attitude.

This correspondence pattern by no means secures for the reader a precise definition of κρίνω. Although, the correspondence within Matt 7:1-2 loses much of its eschatological punch if the earthly judging spoken of is understood as mere judgmentalism, since such a reading implies that the divine punishment which offenders are to receive in return is merely a harsh and judgemental attitude and does not provide much of an eschatological deterrent. But if this judging and measuring is understood as being related to the judicial system by virtue of their being midrashic statements upon Lev 19:15-18, 35-36 as is being argued here, then reading Matt 7:1-2 in light of this

¹ Luz 1989: 416, f.n. 22, emphasis added.

correspondence pattern of prophetic speech makes good sense, with the punishment for such judicial injustice being God's cosmic judicial reckoning.

Jesus can therefore be said in Matt 7:1-2 to be engaged in an implicit midrash upon Lev 19:15-18, 35-36 which he uses prophetically to warn Israel of its impending judgement for violating the ethically-charged commandments for just courts and measures.¹ Historical proof of unjust legal actions during the time of Jesus or of Matthew, then, can only add force and weight to what the text already claims—Jesus' prophetic denouncement of and warning against unjust legal judging by Israel's judges. Because there is injustice in the courts, says Matthew's Jesus, in effect Israel's God "has a lawsuit" against them.

Not only are measure-for-measure statements often legal in nature (as in the examples of measure-for-measure sayings used with reference to the crime of murder), and not only do they often betray a pattern of correspondence between the crime and the punishment, but they are many times explicitly used with reference to the *judiciary*.

In CD-A VIII, 1b-7a, a text already discussed in Chapter three, the punishment for violating the law of Lev 19:18a regarding bearing a grudge in the context of the judiciary is that the Lord will take vengeance upon them. Since they took "vengeance" against their brothers (CD-A VIII, 5-6), "vengeance" will be carried out against them (VIII, 12) when the Lord sends the "kings of Greece" (CD-A VIII, 11) to punish them.

Moses reasons similarly, according to Philo, in keeping with the measure-for-measure principle: if he is an equitable judge he will receive kindness from God, but if an inequitable judge he is liable to suffer terrible dangers.² Furthermore, according to Philo, Moses vows to be a just judge who does not sway back and forth like the measures of a scale.³ Likewise, Pseudo-Philo's *Biblical Antiquities* 11:12 quotes Exod 20:16 and then applies the measure-for-measure principle: "*You shall not be a false witness against your*

¹ Neusner classifies three kinds of midrash: paraphrase, prophecy, and parable/allegorical (Neusner 1987: 6-8; cf. Quarles 1998: 42). Although Neusner understands prophecy via midrash as that of using an Old Testament text to demonstrate an imminent event, the *forth*-telling sense I am arguing for here should not be ruled out.

² *Spec. Laws* 4.32 § 166.

³ *Spec. Laws* 4.32 § 167.

neighbour, speaking false testimony, lest your guardians speak false testimony against you.”¹

Josephus says, “if anyone be believed to have borne false witness, let him, when he is convicted, suffer all the very same punishments which he against whom he bore witness was to have suffered.”² This is informative on two accounts. First, Josephus is referring to the laws in Deut 19:16-21 (since he had just referred, in *Ant.* 4.8.14 § 219, to the law of two or more witnesses from Deut 19:15), which is the only clear place in the Torah which makes explicit that the false witness who attempts to use the courts to engage in judicial murder is himself to be murdered.³ So the measure-for-measure principle is used first and foremost in the judicial context of Deuteronomy’s discussion of bearing false witness in 19:16-21. Second, Josephus makes this measure-for-measure principle more explicit by paraphrasing Deut 19:16 and 19:19 and splicing them together. So Josephus, paraphrasing Deuteronomy, uses the measure-for-measure principle explicitly with the core law of swearing falsely.

As Bauckham points out, in *Apoc. Pet.* 9:4 the punishment for false testimony against Christians (leading to their martyrdom) is a measure-for-measure punishment: the lips by which they have borne false witness are cut off and fire is put into their mouths and intestines, “so the lips and the mouth which uttered the lies are punished, and presumably the intestines too because the deceit comes from within the liar.”⁴ Here again, this principle is used with regard to false testimony in the courts.

The Mishnah tractate *Sotah* discusses the legal violation of a wife’s adultery and how various adulterous violations were to be handled in *court*. In 1:7, the halakhic discussion centers around Num 5:1-31, the authoritative text from Torah on the matter. At the head of this mishnah, *m. Sot.* 1:7 cites a measure-for-measure proverb, “By that

¹ Trans. Harrington 1985: 319, emphasis original. Harrington supposes the ‘guardian’ spoken of here likely refers to a guardian angel (cf. Harrington 1985: 319, f.n. k., citing *Ps.-Philo* 15:5, 59:4). But it seems unlikely that an angel would be depicted as violating God’s law by giving false testimony.

² *Ant.* 4.8.15 § 219.

³ Lev 19:16b is the other example, but because of the translational difficulties alluded to above, it remains the less clear case.

⁴ Bauckham 1998b: 217.

same measure by which a man metes out [to others], they mete out to him.”¹ Then a correspondence occurs:

She primped herself for sin, the Omnipresent made her repulsive.
 She exposed herself for sin, the Omnipresent exposed her.
 With the thought she began to sin, and afterward with the belly, therefore
 the thigh suffers the curse first, and afterward the belly.²

This is followed in 1:8 with the further examples of measure-for-measure punishments of Samson’s eyes are put out for following the desire of his eyes, and Absalom’s being hung by his hair because he was proud of his hair.³ Of *m. Sot.* 1:7 and its expansion in the Tosefta, Jacob Neusner comments:

In providing for just procedures and a fair outcome, sages identify the principle of the just match of sin and punishment that, to begin with, Scripture clearly contemplates. ... It introduces the proposition that God acts justly, and that is the point emphasized at Numbers 5.⁴

Here in *m. Sot.* 1:7, then, this measure-for-measure saying is used to describe the theological rationale for the punishment a woman receives for committing adultery, and this is applied specifically within a *judicial* setting.

These examples illustrate that not only does the measure-for-measure principle and related sayings make use of a correspondence pattern of speech within a general criminal or legal setting, but they are also many times specifically used in the context of the judiciary.

2.3. Matt 7:3-5

¹ Note I. Howard Marshall’s comment that here in *m. Sot.* 1:7, as in Luke 6:38, the third person plural passive is a divine passive referring periphrastically to God (Marshall 1978: 267).

² Translation of Neusner 1988: 449.

³ Cf. Bauckham 1998b: 214.

⁴ Neusner 2005a: 192.

If the main topic of 7:1-2 is that of judicial “judging” and “measuring,” one would expect 7:3-5 likewise to be related to these. Furthermore, if the argument that Matt 7:1-2 is related midrashically to the laws for just judging in Lev 19, and 7:1-2 and 7:3-5 are to be read as a unified block, then one would expect to find some relation between Matt 7:3-5 and Lev 19:15-18, 35-36. If indeed a connection between Matt 7:3-5 and Lev 19:15-18, 35-36 can be proven to exist (as with Matt 7:1-2), and the majority of interpreters of Lev 19:15-18, 35-36 have understood these verses to be about just legal judging as Chapter three has argued, then it will follow that Matt 7:3-5—being Jesus’ midrashic, halakhic comment upon these laws for just judging from Lev 19—likewise pertains to legal judging rather than judgementalism. Two texts from the Babylonian Talmud—*b. ‘Arak.* 16b and *b. B. Bat.* 15b—which many commentators cite but which seemingly only van Tilborg takes seriously as instructive for Matt 7:3-5, have the potential to prove just this. Indeed, these two Talmudic texts (especially *b. ‘Arak.* 16b involving Tarphon) are so similar to Jesus’ teaching in Matt 7:3-5 that many have seen in them an anti-Christian polemic and play upon the teaching of Jesus.¹

2.3.1. Matt 7:3-5 in Midrashic Perspective

Matthew 7:3 says, “Why do you look at the speck in the eye of your brother, but the log in your own eye you do not notice?” As van Tilborg has demonstrated, both Talmudic passages quote this or a similar proverb, and both passages are set within a rabbinic conversation concerning legal judging. What is missing in van Tilborg’s treatment, however, is recognition of the full significance of these texts containing midrashic comments upon the laws for just judging from Lev 19.

The first text—*b. ‘Arak.* 16b—contains perhaps the most significant use of the splinter/log proverb for our purposes. The discussion leading up to the proverb in 13b-16b concerns the topic of “slander” which, we have observed, is a topic often discussed in exegetical treatments of Lev 19:16. After this discussion of slander ends in *b. ‘Arak.* 16b, the topic of “rebuke” follows with multiple quotations of Lev 19:17 and subsequent

¹ Cf. Manson 1949: 58; Schweizer 1976: 169; Davies and Allison 1988: 671, f.n. 6 (citing Schlatter, Manson, and Jeremias); Luz 1989: 417, f.n. 28.

discussions about how to understand and apply Lev 19:17 and the principle of rebuke therein. In the midst of this comes our passage:

It has been taught [on Tannaite authority]: Said R. Tarfon, “I should be surprised if there is anyone left in this generation who accepts rebuke. If one says to someone, ‘Remove the chip from your eye,’ the other party responds, ‘Take the beam from your eye!’” Said R. Eleazar b. Azariah, “I should be surprised if there is anyone left in this generation who knows how to administer rebuke.”¹

When Yoḥanan ben Zakkai was succeeded at Yabneh by Rabban Gamaliel II (also called Gamaliel of Yabneh) between A.D. 80-90 and 110, it was Rabbi Eleazar ben Azariah who temporarily replaced Gamaliel II.² Tarphon is one of the younger of the second generation of Tannaites (as is Rabbi Yoḥanan ben Nuri, also mentioned in this text) who therefore probably lived and taught in the early decades of the second century.³ So the conversation in this text involves rabbis who lived and taught at the turn of the first century A.D.

Tarphon enters into the discussion of Lev 19:17 by reciting the speck/log proverb. His position is in support of those who rebuke, criticizing the scarcity in his generation of anyone who “accepts rebuke.” The speck/log proverb, then, is used to criticize those unwilling to receive rebuke. The passage, according to van Tilborg, is “about ‘reception’: how difficult it is and how it shows real wisdom.”⁴

Rabbi Yoḥanan ben Nuri follows in the discussion—appealing to the interpretive principle of explaining one passage by appeal to another with similar words or phrases (*gezera shawa*)—by quoting Prov 9:8, “Do not reprove a scorner, lest he hate you, reprove a wise man, and he will love you.” According to van Tilborg, this proverb “gives the point of the Talmud text. Brotherly correction is a fruit of wisdom.”⁵ But Yoḥanan ben Nuri had good reason to appeal to Prov 9:8, for it contains the words “reprove (יָצַח),”

¹ Translation from Neusner 2005d: 99.

² Cf. Ber 28a; Strack and Stemberger 1996: 69, 115, 124.

³ Cf. Strack and Stemberger 1996: 73.

⁴ van Tilborg 1986: 178.

⁵ van Tilborg 1986: 178.

“hate (שנא)” and “love (אהב)” —the first two of which occur in Lev 19:17 and the last in 19:18b. Therefore, Prov 9:8 is itself yet another wisdom midrash upon Lev 19:17-18, thus explaining its presence in this rabbinic discussion of Lev 19:17.¹

Certainly, this Talmudic text of the “sages” promotes wisdom. But, as argued in Chapter three, simply because these rabbinic sages and Prov 9:8 engage in wisdom midrash upon Lev 19:17-18a does not make the main topic of Lev 19:17-18a (or even their interpretation of these verses) *about wisdom*. This Talmudic text, therefore, is probably best understood as *wisdom concerning the legal procedure of rebuke*. If this is the case, the log/speck proverb used by Tarphon can be understood in this light. But as it stands, this latter point is largely implicit. The following Talmudic passage, however, shows a variation of the speck/log proverb used in a more explicit legal context.

The second text is *b. B. Bat.* 15b. In a passage in which the rabbis are trying to decide whether Job was a historical figure or not in order to place him in a historical (biblical) context, comes this text:

And said R. Yohanan, “What is the meaning of the verse, ‘And it came to pass in the days of the judging of the judges’ (Ruth 1:1)? It was a generation that sat in judgment on its judges. The judge would say to a man, ‘Remove the splinter from between your teeth,’ and he would reply, ‘Take the log from between your eyes.’ If the judge said, ‘Your silver is dross,’ [Isa 1:22] he would reply, ‘So your liquor is watered down.’”²

van Tilborg comments that, “it is striking that the saying is embedded in a ‘court’-context.”³ He explains that, “it begins with a quote from Ruth which is explained as dealing with an evil time in which the judges accuse each other of abuse of the Law. ... It ends with a quote from Isaiah ... [the context of which] ... is a time when the leaders are rebellious, robbers, coveting bribes and gifts without doing justice to the widows and the

¹ We saw this same phenomenon in the case of Nah 1:2—a midrash upon Lev 19:17-18—quoted in CD IX, 5 (see Chapter three).

² Translation from Neusner 2005c: 58.

³ van Tilborg 1986: 176.

orphans.”¹ Yohanan speaks of a time when, if a judge made a ruling, the person would reply to the judge with a critique, pointing out the judge’s hypocrisy. Two examples are given within the text:

Judge’s ruling: “Remove the splinter from between your teeth.”

Plaintiff’s reply: “Take the log from between your eyes.”

Judge’s ruling: “Your silver is dross.”

Plaintiff’s reply: “So your liquor is watered down.”

The common factor in both examples is that each contains a “measure”—the first of length, the second of liquid. Both examples also depict a judge ruling on each of these measures.

There is good reason to suppose that in view here is Lev 19:35-36 which stipulates just judgement in the measurement of length, weight, and liquid capacity.² It was noted in Chapter three that there are a number of indications that Lev 19:15-18 (just judging in the courts) is related to 19:33-36 (just judgement of measurements), especially by virtue of the fact that the exact phrase, “do not do injustice in judgment” occurs in both passages (Lev 19:15, 35) as does the phrase, “love ‘X’ ... as yourself” (19:18, 34)—the only two places in Leviticus for each of these to occur. The relatedness of these two passages is recognized in *Ps.-Phoc.*, Philo, Josephus, and *Sifra*. Philo and *Sifra*, furthermore, understand Lev 19:35-37 to pertain to measures which are adjudicated by a judge in the marketplace in which raw goods were sold by weight, length, or capacity. Philo *Spec. Laws* 4.37 § 193 and *Sifra* on Lev 19:35-37, in fact, speak of an attendant at the market who judges such measurements.

Therefore, in light of the fact that the speck/log proverb is quoted in *b. ‘Arak*. 16b amidst a discussion of Lev 19:17, and the relationship between Lev 19:15-18 and 19:35-36 is readily recognizable in *Ps.-Phoc.*, Philo, Josephus, and *Sifra*, there is good reason to suppose that these sayings in *b. B. Bat*. 15b—situated as they are in a context clearly

¹ van Tilborg 1986: 176-177; cf. Isa 1:23ff.

² For a survey of measures of length, weight, capacity, etc. in the ancient world, cf. Powell 1992.

concerned with judicial corruption—have in view the commandments in Lev 19:35-36 regarding just measurements by a judge. In other words, the examples of the wood (speck/log) and silver are based upon the fact that, according to Lev 19:35-36, judges made rulings upon the weight and measurement of such things.

In the second example of *b. B. Bat.* 15b, a judge rules that a man's silver, rather than being pure, contains dross. The response indicates the hypocrisy of the judge who rules on another's liquid measure when his own measure of liquid is impure. The first example illustrates the same thing, but involves a measure of length. In the case of the speck/log proverb, the commodity is lumber. When the judge asks for the splinter to be removed from one's teeth before measuring the wood, the retort to "take the log from between your eyes" likewise implies the hypocrisy of such a judge to rule on a measure of length when he himself violates so grossly the notion of justly judging length. In both cases, it is the unjust judging of such measures which is critiqued.¹

These Talmudic passages provide crucial hermeneutical keys for understanding Matt 7:3-5 as both being about legal judging as well as being based upon Lev 19:15-18, 35-36. Since *b. 'Arak.* 16b and *b. B. Bat.* 15b both use the speck/log proverb in discussions of legal judging based upon the laws for just judging from Lev 19:15-18, 35-36, it seems highly plausible that the use of the speck/log proverb in Matt 7:3-5 in a discussion based upon Lev 19:15-18, 35-36 should likewise be understood to be about legal judging. And since the main topic of Matt 7:1-2 has precisely to do with legal judges who "judge" and "measure," it seems natural to understand Matt 7:3-5 along these same lines. So whether such Talmudic texts are to be understood as anti-Christian polemic or not, it is clear that by their use of the speck/log imagery they presume a conversation about the laws for just judging from Lev 19 in a way nearly identical to the way Matthew's Jesus does.

Now that a plausible context for Jesus' "do not judge" teaching has been provided, nothing is left but to turn to the text in order to inquire as to exactly how Matt 7:1-5 should be understood in such a judicial context.

¹ The Mishnah discusses whether the filling of dry measures on a festival day is work (*m. Beṣah* 3:8), and a few verses later Rabbi Eleazar says, "A person takes a wood splinter which may be before him to pick at his teeth" (*m. Beṣah* 4:6) as the discussion regarding work continues. But the point of these texts, while using the same images of the measure and toothpick, seems different than either *b. 'Arak.* 16b or *b. B. Bat.* 15b.

3. The Judicial Interpretation of Matt 7:1-5

3.1. Three Possible Judicial Readings

In light of the above argument that the Matthean Jesus is engaging in a midrashic conversation upon the laws for just judging from Lev 19:15-18, 35-36—a conversation which is not largely metaphorical in nature but rather concrete in character—it can be plausibly concluded that Jesus’ “do not judge” teaching indeed regards legal judging. But how one interprets Jesus’ engagement with these laws on the judiciary and, more to the point, how one understands his words “do not judge,” is still yet another matter. There are at least three ways in which Jesus’ words in Matt 7:1-5 can be understood.

3.1.1. Jesus is Prohibiting Legal Judging Absolutely

First, Jesus could be understood as prohibiting any and all engagement in legal judging. “Do not judge,” then, could be understood as a prohibition against participating in the judiciary of the wider public (Tolstoy), or at least that the disciples were not to engage in litigation within their own gatherings (Zahn). The problems with reading Matt 7:1-5 as advocating a prohibition which is absolute—in this case one which absolutely prohibits legal judging—were duly noted in Chapter one and I shall not review them here. Suffice it to say, one cannot understand Jesus’ words not to judge in 7:1-2 as absolute when the activity of judging is plainly assumed in 7:5. Even if one assumes, along form- and source-critical grounds, that the prohibition against judging in 7:1 was at some point in the tradition an absolute prohibition since 7:1-2 and 7:3-5 were originally separate blocks of teaching, one still has to reckon with why Matthew would have taken such supposedly disparate pieces of tradition and juxtaposed them in such close proximity (unless, of course, one assume more knowledge about the tradition than Matthew!). Nor, similarly, can one reconcile reading 7:1-2 as prohibiting all judging while the Matthean Jesus gives guidelines for the proper judging of a brother in 18:15-18. It is for reasons such as these that I do not find this first option viable. Whatever kind of

legal “judging” Jesus is speaking about, he is not ruling the activity out altogether but rather criticizing an improper form of this “judging.”

3.1.2. Jesus is Warning Against the Wrongful Use of the Judiciary among his Disciples

Second, Jesus could be warning against the wrongful use of the judiciary among his disciples while not ruling out litigation altogether as the readings of Tolstoy and Zahn do. The exhortations, “Why do you look at the speck in the eye of your brother, but the log in your own eye you do not notice?” (7:3) and “first cast the log out of your eye, and then you will see clearly to cast the speck out of the eye of your brother” (7:5) are heard as applying to the one wishing to sue another. Schlatter’s suggestion that Jesus is prohibiting the use of the judicial system for the taking of revenge is helpful here. Therefore, in view of God’s judgement evidenced in statements like, “with the judgement you judge you shall be judged,” and “with the measure you measure it will be measured to you” (7:2), the hearer can assume that judging is indeed permitted but that he is to take his brother to court sparingly and judiciously and not maliciously or unjustly for fear of divine retribution.

This reading of course assumes that Jesus addresses potential litigants in a lawsuit, and therefore Jesus’ disciples are the natural addressees of the charge “do not judge.” More difficult to square with this reading, however, is to understand the charge of hypocrisy in 7:5 as being directed at Jesus’ disciples since this would be the only instance in Matthew in which “hypocrite” is directed at the disciples. On the other hand, such a reading of Matt 7:1-5 in which Jesus gives sapiential advice for litigants in a lawsuit appears to square well with Jesus’ advice in 5:21-26 to go to great lengths to avoid litigation if possible and fits nicely alongside the allowance for the proper judging of cases between brothers when necessary as in 18:15-18.

3.1.3. Jesus is Prophetically Warning against Unjust Judging

Third, Jesus could be prophetically speaking out against unjust judging. On this reading, Jesus' words in Matt 7:1-5 are not directed at Jesus' disciples but towards corrupt religious leaders who judge legal cases. In this regard, I find compelling Sjeff van Tilborg's suggestion that Jesus is speaking out against the judicial corruption in his day. The prohibition "do not judge," then, refers not to the horizontal act of suing but to the vertical act of a judge ruling upon a case. Such a reading does not rule out legal judging altogether but, in view of God's judgement, warns against the abuse of the judicial system from the top down by its judges. The exhortation to remove the log from one's own eye in 7:3-5 indicates, on this reading, what the judge needs to do before he can judge properly. The difficulty in understanding Matt 7:1-5 this way is how such a text squares with Matt 5:21-26 and 18:15-18 which are clearly meant to be advice for litigants, not judges. The term "hypocrite" in 7:5, on the other hand, more easily applies to corrupt or unjust legal judges than it does Jesus' disciples.

A key issue in deciding between the latter two readings is obviously whether "do not judge" is addressed to the potential litigant or to the judge—the former being sage advice, the latter prophetic critique. This issue, in fact, arises within the tradition itself. For while the early commandments against bearing false witness and against coveting (Exod 20:17-18) seem heavily weighted on the side of being directed at potential litigants rather than judges, such applicability of these more general laws toward the latter is not ruled out altogether (see discussion of Exod 20:17-18 in Chapter three). The presence of such an incipient applicability to judges within these foundational commandments is, in fact, why the later expansions of these commandments in Exodus and Leviticus not only include commands for potential litigants and/or witnesses (Exod 23:1-2; Lev 19:16-18) but also clearly provide specific commands for judges as well (Exod 23:3, 6-9; Lev 19:15).¹ The texts surveyed in Chapter three evidence various aspects of Lev 19:15-18 being applied both to the *litigant* (cf. *T. Gad* 4:1-3; 6:1-5; *T. Iss.* 4:2; 7:3b-4, 6b; 1QS V,

¹ I have included Lev 19:16 in the list of laws which pertain to litigants/witnesses for reasons of expediency. However, Lev 19:16, although based upon the commandment against being a malicious witness in Exod 23:1, could conceivably apply to either litigant or judge. And while it is very often applied to litigants and witnesses throughout the tradition, it is applied to the action of judges in *Sifra* on Lev 19:16 [*Parashat Qedoshim Pereq* §4]. Likewise, Philo applies the commandment against being a malicious witness in Exod 23:1, upon which Lev 19:16 is based, specifically to the judge (*Spec. Laws* 4.9 § 59). Such pliability in how these laws are appropriated needs to be constantly borne in mind.

24b-VI, 1a; CD-A VI, 14b-VII, 4a; CD-A VIII, 1b-7a; Ps.-Phoc. 12, 16) as well as to the *judge* (cf. *Sir.* 19:5-20:4; CD-A I, 18b-II, 1; Ps.-Phoc. 9-11). So the question as to whether “do not judge” on Jesus’ lips is directed toward litigants or toward judges is a legitimate one, especially in light of 5:21-26 and 18:15-18 which both address litigants. Therefore, in order to further assess whether Matt 7:1-5 is directed towards the litigant or the judge, further investigation must be made as to whom Matthew presents 7:1-5 as being addressed to, as well as to whom the term “hypocrite” in 7:5 most likely refers. How closely Matt 7:1-5 fits alongside 5:21-26 and 18:15-35 also needs to be taken into account.

3.2. To Whom is Matt 7:1-5 Addressed?

If readers are convinced thus far that Matt 7:1-5 is a halakhic midrash upon Lev 19:15-18, 35-36 so that Matthew’s Jesus here exhorts and warns against unjust legal judging, such a reading begs the question as to its intended audience. More often than not interpreters have understood 7:1-5 to be addressed to Jesus’ disciples¹ or to “Christians” (or “believers”)² so that in 7:3-5 both the “brother”³ being rebuked as well as the “hypocrite”⁴ doing the rebuking are insiders—fellow disciples of Jesus. It is, however,

¹ Adeney 1901: 198; Erdman 1949: 72; Fenton 1963: 109; Fitzmyer 1970: 641; Hill 1972: 146; Marshall 1978: 265, 269, 271; Caird 1979: 106; Garland 1979: 121; Gundry 1982: 119, 121; Hendrickx 1984: 149, 150; Schweizer 1984: 126; Betz 1985: 344; Brooks 1985: 82; MacArthur 1985: 431; Lachs 1987: 67, 138 f.n. 11; Ridderbos 1987: 146; Goulder 1988: 369, 370; Montague 1989: 101; Evans 1990a: 338; Garland 1993: 85; Bock 1994: 610; Gundry 1994: 119; Marshall 1994: 991; Betz 1995: 493; Luz 1995: 60; Lieu 1997: 50; Bonhoeffer 2003: 127; Meier 1980: 69; Witherington 2006: 156; France 2007: 273; Turner 2008: 204.

² Erdman 1949: 72; Harrington 1967: 113; Trilling 1969: 128; Beare 1981: 125; Betz 1985: 344, 347; Lambrecht 1985: 179; Davies and Allison 1988: 668, 669, 674; Luz 1989: 417; Montague 1989: 101; Hagner 1993: 169; Stanton 1995: 20; Carter 1996: 142, 245, 246; Lioy 2004: 173. Similarly, Ernst von Dobschütz classifies Matt 7:1-5 as part of Matthew’s “clearly catechetical interest” (in Stanton 1995: 34).

³ Cf. Lachs 1987: 137; Luz 1989: 417; Hagner 1993: 169; France 2007: 276. Allison writes of Matt 7:3-5, “Matthew usually uses ‘brother’ to mean Christian ‘brother,’ so it is natural to see here intraecclesiastical activity (so Augustine, Bengel, and most of Christian exegetical tradition)” (1999: 154). Turner reads it as “a fellow member of the community of disciples” (2008: 206).

⁴ Fenton 1963: 109; Brooks 1985: 82; Davies and Allison 1988: 673; Betz 1995: 493, f.n. 552. Hypocrite is “a word which Jesus generally uses to characterize the scribes and Pharisees of his day,” but here in 7:5 writes Hendriksen, “any person with a Pharisaic disposition is meant ... [so that] this passage applies to all” (1973: 358). “The metaphor [of the log and the speck] was originally addressed to the Pharisees (the word ‘hypocrite’ is never applied elsewhere to the disciples), but is transformed by Matthew into a parable for the disciples” (Hendrickx 1984: 152). “*Hypocrite* is only here applied to a disciple rather than to Jesus’ Jewish opponents” (France 1985: 143; cf. France 2007: 276). Montague writes: “Elsewhere Jesus has

less than clear whether Matt 7:1-5 is directed exclusively towards Jesus' immediate followers.

Self-introspective proverbial sayings similar to those in Matt 7:1-5 occur in both Greek and Hebrew thought, so comparative work scarcely provides the reader with any clues as to whom Matt 7:1-5 is addressed.¹ Within Matthew's gospel, however, there are several clues as to the intended audience.

First, the beginning of Matthew's Sermon depicts Jesus addressing his "disciples" amidst the attentive "crowds" in 5:1-2, and these same "crowds" are the ones amazed at the Sermon's conclusion in 7:28-29. There is, therefore, some ambiguity as to whom exactly the Sermon is addressed to, partially arising from the ambiguity of the statement in 5:2, "he began to teach *them* (αὐτοῖς)."² Does the plural pronoun "them" in 5:2 refer primarily to the disciples with the crowds only listening in?³ Is he addressing the disciples and the crowds equally?⁴ Due to the presence of both disciples and crowds, "most commentators rightly recognize that the discourse is directed at both."⁵

In his study, *The Crowds in the Gospel of Matthew*, Cousland argues that Matthew presupposes that the crowds, while not necessarily free of Gentiles, are depicted as predominantly Jewish—"the most decisive indication [being] 7:29" at the end of the Sermon in which the Jewishness of the crowds is betrayed by reference to "their scribes."⁶ In 9:33 and 15:31, furthermore, "the crowds" are explicitly associated with "Israel."⁷ Therefore, if Matthew depicts Jesus addressing the Sermon *both* to the disciples *as well as* to the crowds, and both groups can be considered to be of Israelite stock, one need not view the Sermon as addressed *only* to his disciples or to (anachronistically titled) "Christians." By contrast, Matthew depicts Jesus addressing a Jewish audience consisting of his disciples and the predominantly Israelite crowds.

applied this title to the scribes and Pharisees, but here for the first time he applies it to those of his own disciples ..." (1989: 101). "Here ['hypocrite'] is directed not against 'outsiders' but against a disciple ..." (Lieu 1997: 52). "In the Sayings Gospel Q the term 'hypocrite' occurs on only a single occasion (Q 6,42 = Matt 7,5). In that instance, it is addressed, not to the Pharisees, but in general to the one who sees the fault in one's brother or sister before noticing one's own mistakes" (Hartin 2000: 273-274).

¹ Cf. references in Manson 1949: 58; Bock 1994: 615; Betz 1995: 487, f.n. 493; Green 1997: 278-279

² Cf. Cousland 2002: 243, f.n. 10.

³ So, for instance, Hagner 1993: 85 and (on Luke's version) Goulder 1988: 348-349, 360.

⁴ So, for instance, Luz 1989: 224.

⁵ Cousland 2002: 243. Cf. van Tilborg 1972: 160; Kingsbury 1988: 107.

⁶ Cousland 2002: 68.

⁷ Cousland 2002: 70-72.

Regarding Matt 7:1-5 more specifically, could one regard the “brother” language of 7:3-5 as indicating fellow disciples of Jesus so that 7:1-5 as a whole can be understood to be addressing Jesus’ disciples? Besides being used to describe a close natural relation or member of one’s immediate family, the word “brother” is used in two senses in Matthew: to describe a fellow Israelite covenanter and to describe a member of the Kingdom of God apart from ethnic specification. Twice in Matthew’s gospel Jesus contrasts one’s “brother” with “Gentiles,” revealing the assumption that a “brother” refers to an ethnic Israelite covenanter (5:47; 18:15-17). Another, overlapping, definition is created when Jesus polemically speaks of a “brother” as one who is not merely an ethnic relation, but one who “does the will of my father in heaven” (12:46-50). This latter notion which asserts that more than mere ethnic identity is needed for membership in the Kingdom of God is prefigured in Matthew’s gospel by John the Baptist’s statement that, “God is able from these stones to raise up children to Abraham” (3:9), and finds expression later in both the parable of the sheep and goats in which the King declares members of his kingdom to be “my brothers” (25:40), as well as the scene of the resurrected Jesus calling his disciples “my brothers” (28:10). But in other, non-polemical passages which speak of settling a dispute with a “brother,” such as 5:22-24, 7:3-5, and 18:15-17, 21 (cf. 18:35), the assumption seems to be that “brother” is used in the former sense in which the brother spoken of is merely an ethnic Israelite. Betz provides a helpful corrective here regarding the use of “brother” not only in the Sermon generally but in Matt 7:3-5 specifically:

Different from the parallel in SP/Luke 6:41-42, the SM passage [Matt 7:3-5] concerns *fellow Jews* (“brothers”), rather than fellow *disciples*. One makes this inference from the context, since all sections in SM/Matt 6:19-7:11 deal with the larger Jewish society, and only in that framework with the group of disciples immediately in focus.¹

So while “brother” in 7:3-5 narrows our context to fellow Israelites (something already indicated by the Jewish “crowds” and “disciples” to whom the Sermon is addressed), it

¹ Betz 1995: 488, emphasis added. Cf. also Davies and Allison 1988: 512-513.

does not necessarily narrow it strictly to (Jewish) disciples of Jesus. Matthew 7:1-5 is, of course, addressed to Jesus' disciples. But nothing tells the reader that Matt 7:1-5 is addressed to Jesus' disciples *exclusively*. Instead, what one has is a Sermon addressed equally to both the crowds and Jesus' disciples. Therefore, as Betz' comment indicates, Jesus in the Sermon speaks to the wider society of Israel, even if his disciples are the immediate focus of this address. Perhaps a clearer indication as to whom 7:1-5 might be specifically directed can be found in the term "hypocrite" in 7:5.

3.3. To Whom might the term "Hypocrite" refer in Matt 7:5?

The term "hypocrite" is used by Matthew more extensively than any other NT writer, being employed in Matthew 13 of the 17 times it occurs in the NT. Of the remaining four, Matthew contains parallel sayings for two of these occurrences (Mark 7:6/Matt 15:7; Luke 6:42/Matt 7:5), leaving only two instances in the NT used absolutely uniquely outside of Matthew (Luke 12:56; 13:15). It is a favorite word of the first evangelist. The obviously redactional nature of this label indicates a theme, or at least an emphasis, of the first evangelist. Clues as to the nuances and flavor of such a title are therefore best derived from Matthew's usage of the epithet.

It is of course possible, with the majority, to see the Matthean Jesus directing his teaching on judging to his disciples so that the invective "hypocrite" is aimed at them. Although this is not impossible, this would be the only time in Matthew's entire gospel in which Jesus does so. This was pointed out by Joachim Jeremias half a century ago who suggested that 7:5 was originally directed at the Pharisees.¹ But even though Jeremias has persuaded some that 7:5 may have *originally* been aimed at the Pharisees in the *Sitz im Leben Jesu*, the consensus is still that *in Matthew* this epithet pertains to the disciples.²

¹ Jeremias 1955: 124. Those who agree include: Fenton 1963: 109-110; Cardenal 1978: 129-130; Garland 1979: 121; Meier 1980: 69; Ridderbos 1987: 144; Craddock 1990: 93; Wright 2004: 69. van Tilborg (1972) acknowledges 7:5 as the only usage which refers to the disciples (24) but doubts Jeremias' supposition that 7:5 was originally an anti-Pharisaic saying (13). The suggestion of Davies and Allison (1988: 673) that since this saying in *Gos. Thom.* II,26 does not contain the title "hypocrite" that it may not have been originally part of Jesus' words is speculative considering the authenticity of 7:3-5 as a whole (cf. Luz 1989: 314) as well as the presence of the title in Luke 6:42. The imperative force preserved in the canonicals is removed altogether in *Gos. Thom.* For a discussion of *Gos. Thom.*'s dependence upon the Synoptics, cf. Evans 2001: xl-xliii.

² Cf. Garland 1979: 121-122.

But one wonders why such a label, almost entirely reserved for others, would be here applied to the disciples? For, while the disciples are not necessarily painted in a good light by Matthew (he often critiques them for their lack of faith; cf. 6:30; 8:26; 14:31; 16:8; 17:20), he does not portray the disciples as *hypocrites*. By contrast, the disciples “are to become the shepherds of a scattered flock, the new tenants of an unprofitable vineyard (cf. 9:36; 10:6). ... They have been given unique vocational tasks and special authority to accomplish these tasks.”¹ In fact, throughout Matthew’s gospel “the disciples have a role corresponding to and in competition with that of the scribes and Pharisees.”² This contrast is evident in the Sermon itself where the disciples and crowds are contrasted with the scribes and Pharisees (5:20) and are not to be like “the hypocrites” (6:2, 5, 16).³ Neither are the “crowds” (to whom the Sermon is also addressed) suitable candidates for the title “hypocrite.” The crowds in Matthew are characterized as helpless sheep—wandering and leaderless, uncared-for and unwell (cf. 9:36).⁴ The crowds may even be characterized as fickle as they turn on Jesus at his trial due to the influence of the Jewish leaders (27:20). But they scarcely fit the profile of hypocrites, especially this early in Matthew’s narrative.⁵

By contrast, the title “hypocrite” in Matthew’s gospel is used in nearly every instance by Jesus to portray the scribes and Pharisees, *not* the disciples—much less the crowds. Indeed, Kingsbury’s literary analysis identifies the main trait of the Jewish leaders in Matthew as “evil,” a characteristic which, he avers, manifests itself mainly in the form of hypocrisy.⁶ In 15:1-20, Jesus calls the scribes and Pharisees “hypocrites” (15:7) for their nit-picky hand-washing rules, and this is in contrast to Jesus’ disciples who forfeit these rules (15:2). The crowds too are contrasted in Matthew with their wicked shepherds—the scribes, Pharisees, chief priests and elders—who mistreat the sheepish crowds.⁷ In his tirade against the scribes and Pharisees in chapter 23, six times

¹ Garland 1979: 37, emphasis mine, following Minear.

² Garland 1979: 37, following Minear. Cf. van Tilborg 1972: 26.

³ van Tilborg 1972: 8. Cf. Ridderbos 1987: 144; Davies and Allison 1988: 668. Luke’s Sermon, after depicting both disciples and crowds in 6:17 as recipients (cf. Goulder 1988: 348-349, 360-361), begins with a similar contrast: blessings directed towards Jesus’ disciples (6:20-23) versus woes directed towards those who hate the disciples (6:24-26).

⁴ Cf. Cousland 2002: 86-94.

⁵ On this point cf. Garland 1979: 39; Cousland 2002: 227-230.

⁶ Kingsbury 1995: 182-184.

⁷ Cousland 2002: 92. Cf. van Tilborg 1972: 142-160; Garland 1979: 36-41.

the refrain on the lips of the Matthean Jesus is, “Woe to you scribes and Pharisees, you *hypocrites!*” (23:13, 15, 23, 25, 27, 29). And again, this charge against the “scribes and Pharisees” stands in contrast to both the crowds and his disciples to whom the address of chapter 23 is given (23:1). Jesus dubs the Pharisees “hypocrites” in 22:18 when they try to trap him over the question of paying taxes to Caesar (22:15-22). The only instance in which the “hypocrites” are left unidentified is at 24:51, although here their assigned place in hell likely echoes the characterization of the scribe and Pharisee earlier in Matthew’s narrative as “a son of hell” in 23:15.¹

Another indication that the “hypocrite” in 7:5 may well refer to the scribes and Pharisees is the fact that the hypocrite in 7:5 is *blind* due to the visual impairment of a log in his eye. One often finds in Matthew’s gospel the scribes and Pharisees characterized as blind, and this is even at times coupled with the charge of “hypocrite.” After calling the scribes and Pharisees “hypocrites” in 15:7 for their false teaching comprised of the hand-washing tradition of the elders, Jesus goes on to describe them as “blind guides” who, due to their blindness, lead others into a pit (15:14). The polemical title “blind guides” seems to be a pun upon their role as Israel’s teachers, as “guide[s] for the blind” (cf. Rom 2:19).² This description of the scribes and Pharisees as “blind guides” introduced at 15:14 is picked up again in chapter 23 where *five times* they are referred to in this manner, and this amidst the charge, “hypocrites!” (23:16, 17, 19, 24, 26). Blindness and hypocrisy go together in Matthew, and the scribes and Pharisees are typified by both terms.

But are not the disciples sometimes characterized as blind? Although Mark presents the disciples as blind, Matthew has a tendency to blunt these descriptions. When Jesus warns his disciples of the yeast of the Pharisees and Herod, their slow response is met in Mark with Jesus’ ironical question, “Do you not yet perceive or understand? ... Do you have eyes but fail to see?” (Mark 8:17-18). Matthew, however, shows Jesus responding to this dullness with the characteristically Matthean retort, “O you of little faith ...” (16:8). Mark presents the request for power by “James and John, the sons of Zebedee” as blindness on the part of the disciples by placing the healing of blind Bartimaeus directly after their appeal (Mark 10:35-52). Matthew, however, softens this

¹ Cf. Garland 1979: 117.

² Cf. Garland 1979: 102.

blow to the disciples' image by portraying this request for power as coming from "*the mother of the sons of Zebedee*" (20:20), thus diminishing Mark's accusation that the disciples are blind. Again, the disciples might be said to lack faith in Matthew's gospel, but they are not faulted for their blindness as they are in Mark.

In Matthew therefore, the epithet "hypocrites" seems to be reserved for the scribes and Pharisees who, as blind and wicked shepherds, stand in contrast to the disciples as new shepherds of the defenseless crowds. Therefore, when the Matthean Jesus cries "hypocrite!" in 7:5, it is highly improbable that he is aiming his words towards his own disciples or towards the crowds. Rather, Jesus most likely directs the invective of 7:5 at the scribes and Pharisees whom Jesus consistently labels "hypocrite" throughout Matthew's gospel, and whom are contrasted with the crowds and disciples both in the wider scope of Matthew's gospel as well as in the Sermon itself.

But if Jesus' words in Matt 7:1-5 are directed at the scribes and Pharisees rather than the disciples and crowds to whom the Sermon is addressed, how is such a phenomenon to be accounted for? The narrative approach of Jack Dean Kingsbury is helpful here:

One of the curious features of Jesus' great speeches is that they contain sayings that seemingly are without relevance for the characters in the story to whom they are addressed. Time and again, Jesus touches on matters that are alien to the immediate situation of the crowds or the disciples. This peculiar phenomenon—that Jesus speaks past his stipulated audience at places in his speeches—compels one to ask whether Jesus is not to be construed as addressing some person(s) other than simply the crowds or the disciples in the story. And if so, who might this person (these persons) be?¹

This kind of "speaking past" the audience, Kingsbury argues, "can readily be detected in all the speeches."² In 5:11 and 10:18, for instance, the persecution and being taken to

¹ Kingsbury 1988: 107.

² Kingsbury 1988: 107.

court “on account of me (Jesus)” seems to envision a time when Jesus is no longer present and the persecution of Christians is rife.¹ Like the Sermon on the Mount, the speech in chapter 23 is addressed to “the crowds and his disciples” (23:1), yet much of it is clearly aimed at the hypocritical scribes and Pharisees. Therefore, it is reasonable to read Matt 7:1-5 and the charge “hypocrite” as likewise directed “past” the crowds and disciples and towards the scribes and Pharisees. Such a scene would not be unlike the episode depicted earlier in Matthew’s gospel when the Pharisees and Sadducees mingle in amongst the people being baptized to hear John the Baptist and receive from him the scathing title, “brood of vipers” (Matt 3:7).

Thus far, it has been observed that Matt 7:1-5 is best viewed as being addressed to the wider society of Israel and not exclusively to Jesus’ disciples. It has been also duly noted that “hypocrite” is a favorite term of Matthew’s to describe the scribes and Pharisees rather than the disciples. These preliminary conclusions seem to favor our third interpretive option that Jesus is speaking out prophetically against legal judges (“the scribes and Pharisees” according to Matthew’s presentation) for judicial abuses. The second option, namely that Jesus is warning his disciples against the wrongful/unjust use of the judiciary, seems less likely in view of these findings. Nevertheless, the fact remains that Jesus is throughout the Sermon addressing his disciples too, and the Matthean Jesus could have aimed his charge of hypocrisy towards them (however uncharacteristic of him to do so). Furthermore, yet to be examined are how two other significant passage in Matthew which have to do with legal judging compare with 7:1-5.

3.4. “Do not Sue”? or “Do not Judge”? : Matthew 7:1-5 in Light of 5:21-26 and 18:15-35

At least two other texts in Matthew—5:21-26 and 18:15-35—are highly related to Matt 7:1-5.² It is my contention that each of these three texts speaks of conflict with a

¹ Kingsbury 1988: 107-108.

² The continuity I see in these texts runs counter to the view of a few prominent Matthean scholars. Luz writes that Matt 7:1ff “does not seem to be influenced by the problems of the later community, e.g., the question of community discipline” (1989: 413) and “... it is remarkable that [Matthew] interprets the admonition [of 7:1ff] and the order for excommunication of his community (18:15-20) on the basis of forgiveness and perhaps also has criticized it indirectly (18:12-14, 21-35)” (418). Others (Hendrickx 1984:

brother in quite explicitly judicial terms, and that each has some affinity with the archetypal story of brotherly conflict within Israelite tradition: the story of Cain and Abel. Furthermore, as Chapter three observed, the traditions about Cain and Abel identify Cain as one who committed acts of murder and robbery and in so doing ignored both the laws for just judging in Lev 19:15-18 (especially 19:17 not to hate one's brother in one's heart) as well as just judging of measures in Lev 19:35-36. Therefore it is understandable why Jesus would use the Cain and Abel traditions to teach upon brotherly conflict which involves *the judiciary*. Jesus' focus in these texts, furthermore, is upon *reconciliation* and *restoration*, and they emphasize forgiveness and the showing of *mercy* toward one's brother in light of God's mercy and judgement. If this is the case, as shall be more fully argued for below, then Matt 5:21-26, 7:1-5 and 18:15-35 should be understood in many ways as mutually interpretive. However, while it is relatively straightforward that 5:21-26 and 18:15-35 deal explicitly with horizontal litigation, that is with litigation between two people involved in a lawsuit with one another, the question which concerns us in the comparison of these texts is how well 7:1-5 fits in alongside 5:21-26 and 18:15-35 as advice/teaching regarding litigation between embrowled in a judicial conflict with one another, or whether 7:1-5 should be understood to refer to the more vertical relationship between judge and litigant.

We begin with Matt 18:15-35, which is comprised of two related parts: 18:15-20 is Jesus' teaching about conflict, followed in 18:21-35 by a parable to illustrate the point.

3.4.1. Matthew 18:15-35

That this two-pronged section concerns *brotherly* conflict is not in doubt, since both 18:15 begins, "if your *brother* sins against you ..." and Peter's question in 18:21,

150; Davies and Allison 1988: 673-674) content that Matt 7:1-5 presents a rigid Jesus preaching an absolute prohibition against judging whereas this is softened in Matt 18:15-20. According to Davies and Allison, therefore, Jesus "will not have been interested in clarifying what preconditions are requisite if one is to make so bold as to estimate another's condition and offer advice for correction" (1988: 673-674). But such supposed softening of the teaching of Jesus by Matthew has been seriously challenged in other quarters (cf. Bockmuehl 2000: 17-21). If, however, Jesus is in some way critiquing unjust legal judging in 7:1-5 and the procedures for just and fair judging within the churches/assemblies is put forth in 18:15-20, then there is less discrepancy between these texts and therefore less reason to posit a discrepancy between a supposed rigid historical Jesus and a softer Matthean Jesus.

“How often shall I forgive my *brother* who sins against me?”¹ It was briefly mentioned above that within such Matthean passages which speak of conflict between brothers, the “brother” language (5:22-24, 7:3-5, and 18:15-17, 21; cf. 18:35) indicates a fellow Israelite covenanter rather than a “Christian” or a disciple of Jesus per se.² To be sure, most reading Matthew’s gospel in Matthew’s day were Christians, probably mostly Jewish Christians. But if we are to understand Matthew as portraying the *Jewish* Jesus, and if we are to take seriously that Jesus might have taught about such conflict amongst his Israelite brothers during his ministry, and that this is reflected in such passages as 5:21-26, 7:1-5 and 18:15-35 (and that these are not merely later post-resurrection teachings added by the evangelist), then “brother” should be understood as a fellow Israelite covenanter of whom the early Christians would have considered themselves to be in line with. Therefore, Jesus’ teaching about conflict between “brothers” in these three Matthean passages stands within a tradition about conflict between Israelite covenantal brothers, which Jesus teaches about and which Matthew presents to the Jewish Christians of his day.

Matthew 18:15 says, “If your brother (ἀδελφός) sins against you, go rebuke (ἐλέγξον) him between you and him alone. If he hears you, you have gained your brother (ἀδελφόν).” This verse clearly has the law of rebuking a brother from Lev 19:17 in view, the LXX of which reads, “Do not hate your brother (τὸν ἀδελφόν) in your heart, but rebuke (ἐλέγμῳ ἐλέγξεις) your neighbor and you will not receive his sin.”³

This exhortation to rebuke based upon Lev 19:17 is followed in Matthew by a three-stage formula for reproof: privately, with one or two others, and finally before the whole church (18:15-17). Such a multi-stage process of rebuke is not unique to Matthew and a literary origin, therefore, has been sought among a common (hypothetical) source.⁴

¹ The textual variant εἰς σέ in 18:15 may be an insertion by a copyist of the similar phrase εἰς ἐμέ from 18:21. However, the textual evidence for its inclusion is strong (cf. Dowd 2008: 139), and as Metzger (1994: 36) points out, it may just as well have been dropped to make the teaching in 18:15-20 more generally applicable, or due to an error of hearing (so Blomberg 1992: 278). Considering that the uncorrupted latter half of 18:15 assumes conflict between two people (Dowd 2008: 139), and the larger argument being undertaken here concerning Matthean passages as passages of conflict *between* brothers, I have chosen to retain this phrase as most probably original to 18:15.

² Contra Davies and Allison 1988: 674.

³ Cf. Blomberg 1992: 278; Hagner 1995b: 531; van de Sandt 2005: 175-176.

⁴ See, for instance, van de Sandt and Flusser 2002: 50, 352; van de Sandt 2005: 173-192. “Most scholars agree,” writes van de Sandt and Flusser, “that the version of the Two ways in the Didache goes back to an

But this multi-stage process of rebuke can be found among a number of texts which engage the laws for just legal judging from Lev 19 as shall be illustrated briefly below. In my view, therefore, such theories positing hypothetical sources and aimed at ascertaining literary dependence, do not account very well for the dynamic halakhic and exegetical engagement with the laws for just judging in Lev 19 found in texts with such a multi-stage process of rebuke. In my view, a less tenuous link between documents of common topic is their common exegetical heritage of verses from the Torah rather than a common (hypothetical) *Vorlage*.¹

By way of example and illustration, a handful of texts can be shown not only to evidence a multi-stage process of rebuke, but do so based upon the laws for just judging from Lev 19. A text from Qumran discussed briefly in Chapter three features a similar three-stage formula for rebuke in its midrash upon Lev 19:16-18:

One should reproach [יִכַּח; cf. Lev 19:17] one another in truth, in meakness and in compassionate love for one's fellow-man. *Blank* No-one should speak to his brother in anger or muttering [Lev 19:16], or with a hard [neck or with passionate] spirit of wickedness, and he should not detest him [in the fore]sk[in] of his heart, but instead reproach him that day so as not to incur a sin because of him. And in addition, no-one should raise a matter against his fellow [רַע; cf. Lev 19:16, 18] in front of the Many unless it is with reproof in the presence of witnesses." (1QS V, 24b-VI, 1a)

Much could perhaps be said in comparing these two texts. The simple point I would like to stress, however, is that both texts present a three-stage formula for rebuke in an effort to properly follow the law of judicial rebuke in Lev 19:17. The act of "rebuking" others was a crucial part of judicial procedure as evidenced at Qumran, and Chapter three

originally Jewish basic model" (2002: 49). A good portion of their book goes on to posit such an original Two Ways source.

¹ Mueller's approach (2007: 362-364, 376 citing especially Draper 1996) is similar to mine, and although he takes no position on the *Didache's* dependence on Matthew his conclusions regarding the *Didache's* exegetical tendencies do seem to push him in the direction of the *Didache's* close affinity with Jesus' teaching.

highlighted how Lev 19:17 often features as a main focus in exegetical discussions of the laws for just judging in Lev 19.¹ The word “rebuke” (יִכָּח), used within the context of the laws of reproof, should be understood as a legal, technical term and according to Schiffman, “provides the key to the understanding of numerous passages in Qumran literature.”² At Qumran, each offence required a formal procedure of “reproof” whereby witnesses officially reproved a culprit before an examiner before such testimony could be used as a basis for future trial and conviction, and such procedures for reproof are based upon the laws for just judging in Lev 19:15-18, 35-36 especially 19:17 in which the verb יִכָּח occurs (cf. CD-A VII, 2-3; IX, 2-8 [cf. 5Q12 1, 1-5]). This law of reproof was understood to aid in preventing one from bearing a grudge or taking revenge and thus violating Lev 19:18a. Thus Timothy Carmody has rightfully compared this multi-stage process of rebuke in 1QS V, 24b-VI, 1a, as well as in CD-A IX, 2-8, with Matt 18:15-17.³ But rather than a common *Vorlage*, I would suggest that the link between such texts is the attempt of these texts to follow the laws for just judging from Lev 19.

Huub van de Sandt has similarly compared the practice of reproof in Matt 18:15-17 with that in *Did.* 15:3.⁴ The command in 15:3 reads: “And rebuke (ἐλέγχετε) one another not in anger, but in peace, as you have in the gospel; and for anyone straying against another, he shall not speak nor hear from you until he repents.” Mention of “rebuke” (ἐλέγχετε) here once more evokes Lev 19:17, and the awkward stipulation that, “he shall not speak nor hear from you until he repents” seems to speak of one step in the process of reproof—that an unrepentant brother is to be estranged until he repents—a notion similar to the excommunication as a final step spoken of in Matt 18:17.

Chapter three has already noted how *Sifra* understands Lev 19:15-18 to concern judicial judging. In its discussion of Lev 19:17, *Sifra* similarly speaks of rebuking a person multiple times: “And how do we know that if one has rebuked him four or five times, he should still go and rebuke him again?”⁵

These texts evidence a multi-stage process of rebuke in their engagement with the laws for just judging from Lev 19, especially the commandment regarding rebuke in

¹ CD-A VII, 2-3; IX, 2-8; IX, 2-8 [cf. 5Q12 1, 1-5].

² Schiffman 1983: 90.

³ Carmody 1989. Cf. also Knibb 1987: 115.

⁴ van de Sandt 2005.

⁵ *Sifra* on Lev 19:17 (*Parashat Qedoshim Pereq* §4). Neusner 1988: 109.

19:17. Such also would seem to be the case in Matt 18:15-17. The clear allusion to Lev 19:17 in Matt 18:15 indicates that rebuke based upon Lev 19:17 is in view. Therefore, the multi-stage process of rebuke which follows in 18:15-17, which other texts midrashing upon Lev 19:17 seem also to evidence, seems to be one expression of how best to keep the law of Lev 19:17. In other words, the multi-stage process is a halakhic outworking of how best to follow Lev 19:17. Therefore, Matt 18:15-17 stands within the Jewish exegetical tradition of interpreting the laws for just judging from Lev 19:15-18, just as we have been arguing Matt 7:1-5 does.

Not only do verses 15-17 have legal proceedings in mind, but verse 18 would seem to as well. Interpreters have wrestled with understanding the authority to “bind” and “loose” given to Peter in 16:19 and to the wider disciples in 18:18.¹ Many, however, acknowledge one such interpretation of binding and loosing as involving teaching and the making of legally binding judicial decisions both of which are based upon Torah—in short *halakhic* activity.² This seems to be the way Matthew’s Jesus understands the activity of binding and loosing when he criticizes the scribes and Pharisees for the way in which they loose (λύσῃ) the commands of the law and teach others to practice the things they teach (5:19), as well as for their activity of binding (δεσμεύουσιν) heavy burdens upon people’s shoulders (23:4) in contrast to Jesus whose yoke and burden is light (11:29-30).³ Furthermore, 18:18 speaks of an earthly judgement which is every bit as legal as the heavenly judgement it is dynamically related to, a feature of the Jewish judicial worldview reflected not only in 16:19 but in 5:21-22 and 7:1-2a—the other Matthean judicial texts under consideration here.⁴

The law of two or three witnesses from Deut 17:6, 19:15 and Num 35:30 is referred to in Matt 18:19-20. Within Qumran, Philo, Josephus, and the Mishnah there is evidence of an on-going application of this law, and Hendrik van Vliet demonstrated half a century ago that this law was used profusely throughout the New Testament.⁵ CD-A IX, 16b-20a makes use of the law of two or three witnesses, and it is likely that this law is in

¹ Cf. Emerton 1962; Bornkamm [1970] 1995; Falk 1974; Derrett 1983; Bassar 1985; Hiers 1985.

² Cf. Bornkamm 1995: 103-104; Falk 1974; Derrett 1983; Bassar 1985: 299; Hiers 1985: 233-235; Powell 2003.

³ Powell 2003: 440-441.

⁴ Note also the reference to “heaven and earth” in 5:18 just before Jesus’ reference to loosing in 5:19.

⁵ CD-A IX, 16b-20a; 4Q270 6 IV, 13; CD-A IX, 20b-23a; cf. 4Q270 6 IV, 12b; *Ant.* 4.8.14 § 219; *Life* 1.49 § 256-257; *Spec. Laws* 4.9 § 53; *M. Mak.* 1:8-9; van Vliet 1958: 1-6, 63-73.

view similarly in 1QS V, 24b-VI, 1a quoted above, so that Lev 19:17 and Deut 19:15 and pars. are used together here.¹ Therefore van Vliet, arguing against many in his day, could rightly contend on the basis of the combination of Lev 19:17 and Deut 19:15 and pars. at Qumran, that Matt 18:15-20 formed part of the original teaching of Jesus and is not spurious.²

The saying of Jesus in Matt 18:19-20 sums up a section about the procedures for settling a legal dispute between two “brothers.” Hill draws a parallel between Matt 18:19 and 1 Cor 6:1, both of which contain the word *πρᾶγμα*, noting that this word refers to “a case (juridical).”³ The assembly which Matthew depicts Jesus speaking about in Matt 18:20—“where there are two or three gathered (*συνηγμένοι*) in my name, there I am in their midst”—is therefore a gathering for a legal purpose. Beare rightly assumes that, “the Christian group [is] in session as a court of discipline.”⁴ Commentators have compared Matt 18:20 to *m. 'Avot* 3:2⁵ or 3:3,⁶ which describe how, when two or three are gathered to discuss the Law, God’s *Shechinah* presence is in their midst. Perhaps an even more relevant rabbinic parallel occurs a few verses later at *m. 'Avot* 3:6⁷ in which Psalm 82:1 [LXX 81:1]—“God stands in the congregation of God, amidst the gods/judges he judges”—is cited to prove that God’s *Shechinah* presence dwells among three who are studying Torah. In light of the quotation from Psalm 82:1, however, the three Torah scholars in the Mishnah are most likely also three legal judges. A verse of the Sanhedrin tractate of the *Tosephta*, in a section delineating which cases are to be tried by three judges, likewise quotes Psalm 82:1 [LXX 81:1], to prove that God’s presence dwells among three *judges* (*t. San* 1:9). It is not surprising to discover, then, that the Targum of Psalm 82:1 explicitly reads, “God’s *Shechinah* (אלהים שכינתיה) dwells” rather than merely the MT and LXX’s “God *stands* (אלהים נצב/ὁ θεὸς ἕστη).”⁸ Understanding Matt 18:20 to be about two or three *judges* deciding a case, then, not only stands in this same tradition displayed in the rabbinic writers but it also coheres well with Hill’s point that *πρᾶγμα* in

¹ Cf. van Vliet 1958: 72.

² van Vliet 1958: 94-95, f.n. 6.

³ Hill 1972: 276.

⁴ Beare 1981: 380.

⁵ Hill 1972: 276; France 2007: 276; Gundry 1982: 370; Hagner 1995b: 533.

⁶ Cf. Allen 1977: 199; Beare 1981: 380-381.

⁷ So Beare 1981: 380 citing Schlatter; Hagner 1995b: 533.

⁸ Emphasis added.

verse 19 refers to a judicial case in which at least two must agree. Reading in line with the tradition represented in *m. 'Avot* 3:6/*t. San* 1:9, then, we may see the occurrence of συναγωγή in Matthew 18:20 as a reference to a legal assembly which is conducted within the church in order to decide a dispute, and the “two or three” who come together are witnesses and/or judges involved in a legal matter.

Matthew 18:15-20, therefore, stands well within the Jewish teaching upon brotherly conflict within the judiciary. Verses 15-17, 19-20 make similar use of relevant Scriptures (Lev 19:17; Deut 19:15) which are in play as early as Qumran. And, as envisioned by 18:18, such conflict within the community would undoubtedly involve hermeneutical, halakhic activity by leaders along with associated judicial pronouncements. Therefore, although Matt 18:15-20 could be seen as disparate pieces of judicial legislation applied to brotherly conflict, Günther Bornkamm was justified to argue nearly 40 years ago for the coherence of Matt 18:15-20.¹ Furthermore, the above survey has demonstrated the centrality of Lev 19:17 as the legislative basis for adjudicating a conflict between two litigants. Leviticus 19:17 in fact lends itself to such a usage as evidenced in the texts surveyed above and this commandment not to “hate your brother in your heart” is also of central importance for Matt 18:15-20. Therefore, the halakhic underpinnings of Matt 18:15-20 support the view that this text concerns judicial conflict between two potential litigants. The passage following this, 18:21-35, also supports these observations.

The illustrative parable which follows Jesus’ teaching on conflict in 18:15-20 is provoked by a key question asked by Peter in 18:21, “How often shall I forgive my brother who sins against me? Up to seven times” to which Jesus replies, “I say to you not seven times, but seventy-seven times” (18:22). Peter’s question and Jesus’ answer plays upon another aspect of the Cain tradition from Genesis 4.² In Gen 4:15, the LORD declares that the one who kills Cain will be avenged seven-fold. Lamech, after declaring that he killed a young man for injuring him (4:23) declares, “If Cain is avenged seven times, then Lamech seventy-seven times” (4:24). The *Testament of Benjamin* also features the figures of Cain and Lamech from Genesis 4 in *T. Benj.* 7:3-5. The text reads:

¹ Bornkamm [1970] 1995: 102-103, 107-108.

² So Blomberg 1992: 281.

... Cain was handed over by God for seven punishments, for in every hundredth year the Lord brought upon him one plague. When he was two hundred years old suffering began and in his nine hundredth year he was deprived of life. For he was condemned on account of Abel his brother as a result of all his evil deeds, but Lamech was condemned by seventy times seven. Until eternity those who are like Cain in their moral corruption and hatred of brother shall be punished with a similar judgment.¹

Since we have observed how other parts of the Cain and Abel tradition depict Cain as a violator of the laws for just judging from Lev 19, it is likely that Cain's "hatred of brother" in 7:5 above reflects his violation of the law against hating one's brother in one's heart from Lev 19:17. Furthermore, *T. Benj.* 8:1-2 continues with an allusion to Lev 19:17-18 as Benjamin counsels his children to "run from evil, corruption, and *hatred of brothers*; cling to goodness and *love*."² Such a reading of *T. Benj.* would certainly be in line with how Matthew pairs the teaching about rebuke from Lev 19:17 in Matt 18:15ff with this question about forgiveness in Matt 18:21-22 based upon the Cain and Lamech episode.

Peter and Jesus, therefore, seem ensconced in a midrashic conversation, based on the sevenfold vengeance spoken of in Gen 4:15, 24, to extrapolate how much *forgiveness* is due in the face of such vengeance. Peter's question reflects an inverse correlation to Cain's vengeance—"shall I forgive my brother ... up to seven times?" Jesus' reply reflects an inverse correlation to Lamech's vengeance, "not seven times, but seventy-seven times." Such forgiveness is then illustrated with the parable involving the merciful king (God) and the unmerciful servant (18:23-34). This parable, furthermore, concludes with Jesus' exhortation to "forgive your brother from *your heart*" (18:35), which again refers to the command in Lev 19:17, "you shall not hate your brother in your heart"—the very verse which the rules for resolving conflict are based upon in 18:15.

¹ Translation from Kee 1983: 827.

² Kee 1983: 827.

Therefore, just as 18:15-20 was based around the commandment not to hate one's brother in one's heart from Lev 19:17, so 18:21-35 is also centered in this Levitical text. The echoes to Cain and Lamech by Peter and Jesus likewise point to the traditions surrounding the figure of Cain in which the laws for just judging of Lev 19 are violated (see Chapter three). And again, 18:21-35 concerns conflict between two brothers.

Finally, it should be pointed out that the Matt 18 conflict passage is framed in such a way as to emphasize reconciliation and restoration, mercy and forgiveness. The teaching upon conflict is preceded by the parable of the lost sheep in which the "little ones" are "those members of the congregation who are in danger of staying and perishing (18:10 and 14)"¹ and the goal of the shepherd is to restore his sheep (18:12-13). In fact, the restoration of such "little ones" is so crucial that those who cause these "little ones" to stumble is in dire danger of having a millstone hung around his neck and being flung into the sea (18:6), an image indicating severe judgement.² Following this is the procedure regarding brotherly conflict in which the hopeful goal is to have "won over your brother" (18:15). The three-tiered process is meant to elicit confession of one's sins as noted by the phrases, "if he hears you" (18:15), "if he does not hear you" (18:16), and "if he refuses to listen to them" (18:17). Such confession harkens back to the confession of sins at baptism (3:6) which signifies one's reconciliation to God. Likewise, the goal of such confession here in Matt 18:15-17 is reconciliation to one's brother.

Rather than escalation to formal litigation, Jesus advocates reconciliation between potential litigants *prior* to any formal legal proceedings (18:15). Only after the offender remains unrepentant does Jesus advocate in 18:16 the involvement of witnesses according to Deut 19:15. Finally, if the offender refuses to make amends, he is brought to the ultimate legal council—the church/assembly. In the very process itself of resolving the conflict, offenders are given multiple opportunities for confession and restoration. Only after they remain recalcitrant throughout these three steps are they treated as "a pagan or a tax collector" (18:17).³ Finally, these steps to resolve brotherly conflict are followed by Jesus' statement that forgiveness should be extended limitlessly (18:22) and his parable of the unmerciful servant in which judgement comes upon the unmerciful

¹ Bornkam 1995: 106.

² On the millstone as an image of judgement, cf. Evans 2001: 70.

³ On excommunication as a legal punishment in Talmudic Babylonia, cf. Neusner 1987: 288, 292.

(18:23-34). This is then punctuated at the end by Jesus' statement that his followers, "forgive your brother from your heart" (18:35). The entirety of 18:15-35 is permeated by reconciliation and restoration, mercy and forgiveness.¹

3.4.2. Matthew 5:21-26

In Jesus' teaching on anger, murder, and reconciliation in 5:21-26, the word "brother" occurs four times in the span of three verses (5:22-24), indicating that it too concerns brotherly conflict between fellow covenanters. Furthermore, since the thrust of both 5:23-24 and 5:25-26 is reconciliation, it is reasonable to assume that the "brother" to whom one is to be reconciled in 5:22-24 is equivalent to the judicial "adversary" to whom one is to be reconciled in 5:25 so that the entirety of 5:21-26 has internal conflict in view—strife between fellow Israelite covenanters.

In line with the discussion of Matt 18:15-35 above which drew parallels between the discussion of Jesus and Peter over brotherly conflict based upon tradition regarding Cain, Dale Allison has recently (2005: 65-78) argued that the Cain and Abel tradition is the inspiration for Matt 5:21-26. Allison persuasively argues that for good reasons early church fathers such as Cyprian made a connection between Matt 5:21-26 and the Cain and Abel story from Gen 4:1-16. First, that anger leads to murder is presumed in both the story of Cain and Abel as well as in Matt 5:21-26. Second, the presence of "brother" language occurs in both. And third, the presence of a sacrifice or altar appears in both accounts.² Allison's argument makes good sense of the oddities of this difficult passage. It has already been demonstrated how the Cain and Abel traditions evidence an overlap with the laws for just judging from Lev 19 (especially in the Targums and Josephus; cf. Chapter three), that documents such as Sirach and 1QS speak of anger being antithetical to the process of reproof, and how *T. Benj.* 7:3-5 cited above connects the Cain and Lamech story with forgiveness on par with Jesus' teaching upon brotherly conflict in Matt 18:21-22. But the specific pairing of the legal adjudication of brotherly conflict with the story of Cain's anger and murder of Abel in Matt 5:21-26 seems to be relatively

¹ So Dowd 2008: 147-150.

² Allison 2005: 69-70.

unique to the Matthean Jesus. Undoubtedly, Matthew's readers (or Jesus' hearers) would have caught the allusion to Cain and Abel here, and they may have even heard similar teaching elsewhere regarding anger and/or murder and/or judicial conflict, but they probably had not heard such teaching in quite the same way as the Matthean Jesus puts it in Matt 5:21-26. In other words, the Matthean Jesus seems to be teaching on a common topic in a unique way, in keeping with how wisdom teachers developed the Torah's teaching.¹

One would be hard-pressed to find in Matt 5:21-26 any *direct* allusions to the laws for just legal judging in Lev 19. But the informed readers/hearers of Matthew's gospel would certainly pick up the nuances in this midrashic conversation. The fact that Matt 5:21-25 alludes so strongly to the Cain and Abel traditions (traditions which assume the laws for just judging from Lev 19), combined with the fact that Matt 5:21-22, 25-26 do in fact speak of legal judging, as well as the observation that Matt 5:21-26 has affinities with 7:1-5 and 18:15-20 (both of which also presume the laws for just judging from Lev 19), such a connection between the laws for just legal judging in Lev 19 and Matt 5:21-26 would not be difficult to make. After all, it is highly likely that later writers made a connection between the Cain and Abel story and the laws for just judging from Lev 19 precisely because the former involves *hatred* between two *brothers* while the latter prohibits the *hating* of one's *brother* in one's heart in Lev 19:17. Considering, furthermore, that the brotherly conflict which Jesus teaches upon in Matt 18:15-35 is also rooted in Lev 19:17, and if the Cain and Abel story has indeed inspired Matt 5:21-26 as Allison has argued, it is also likely therefore that Matt 5:21-26 not only assumes the laws for just judging from Lev 19, but more specifically is a kind of midrash upon Lev 19:17. Along with Matt 18:21-35, then, 5:21-26 concerns conflict between two potential litigants rooted in Lev 19:17.

Many view 5:21-26 as forming a unity, arguing that Jesus' explanation of the commandment against murder and his teaching against anger (5:21-22) is the principle section, illustrated by two subsequent examples of reconciliation: leaving a gift at the

¹ On this point, see further Chapter five and Bauckham's theory of how wisdom teachers developed the Torah.

altar to make peace (5:23-24) and settling out of court (5:25-26).¹ Such a view of the unity of the passage seems reasonable not only in view of Allison's argument above, but also in light of the fact that the mention of "judgement" (τῇ κρίσει) at the beginning of the passage in 5:21-22 finds a parallel in the mention of "the judge" (ὁ κριτής) before whom one could be dragged toward the end of the passage (5:25b). Furthermore, as observed above, Frey has argued convincingly against an allegorical reading of Jesus' words in Matt 5:25-26 so that this passage refers concretely to litigation between people upon earth and is not a metaphor for God's judgement. God's judgement is spoken of quite literally in 5:22c, and Jesus' teaching in 5:23-24 implies God's judgement upon the impenitent one who offers sacrifices (cf. 6:14-15). This makes sense, too, in the larger context of the Sermon as Jesus elsewhere speaks concretely about reconciliation and litigation without any apparent metaphorical bent, such as his teaching to turn the other cheek when slapped (5:39; an offense which one could sue for according to *m. B. Qam.* 8:6; *b. B. Qam.* 84b) and the teaching to give one's cloak when sued in court for one's tunic (5:40). Therefore, there is little need for 5:25-26 to be understood as metaphorical of God's judgement. Rather, 5:25-26 should be understood literally to be about human litigation. Such a reading makes 5:25-26 similar to the litigation on a human level spoken of in 5:21, 22b.² Thus 5:21-26 can very reasonably be viewed as a unity.

Thus the theme of judgement in 5:21-22 and 5:25b-26 can be seen to form a bracket around the main point in the middle: reconciliation in 5:23-25a. The danger of being angry with one's brother in 5:21-22 or of having one's brother angry toward oneself in 5:25b-26 is contrasted with the bracketed commands to "be reconciled to your brother" (5:24) and "make friends quickly" with the adversary dragging you into court (5:25a). That reconciliation is the main thrust here is also emphasized by the fact that one is to take the drastic actions of leaving one's gift at the altar to go be reconciled (5:23-24) as well as to settle matters "quickly" before escalation to court occurs (5:25a). Such reconciliation implies that the offender confess his wrongdoing as a crucial step in reconciling (5:23-24). The point of the passage as a whole, then, is that God's

¹ So Luz 1989: 280, 283; Blomberg 1992: 106-108; Hagner 1993: 115; and esp. Frey 2005: 7-11.

² Frey 2005: 11-39.

commandment against murder is best fulfilled when reconciliation replaces anger thus avoiding altogether any potential judicial action which might follow such anger.

Matthew 18:15-35 and 5:21-26 can rightly be viewed as statements regarding legal judging in Matthew's gospel. Both of them enter the midrashic conversation upon the laws for just judging from Lev 19 via the traditions surrounding Cain. More importantly, they are centered upon Lev 19:17 not to hate one's brother in the heart but to engage in proper rebuke. Therefore, these texts concern litigation between two people based upon Lev 19:17. The issue drawn from the legislation of Lev 19:15-18, 35-36 by these texts is that of suing and being sued, rather than judging. This is, I suggest, why Lev 19:17 is utilized throughout these texts since this text concerns precisely this—litigation between two parties.

3.4.3. Reading Matt 7:1-5 Alongside 5:21-26 and 18:15-35

Some comparisons between Matt 7:1-5 and the two above related passages—5:21-26 and 18:15-35—can now be made in order to determine whether Matt 7:1 should be read according to our first interpretive option as “do not sue” or according to our third as “do not judge.”

First, “brother” occurs three times in 7:3-5 as in 5:21-26 and 18:15-35. Based on this, it would be easy to understand 7:1-5 too as concerning conflict between two litigants, two “brothers,” thus affirming our second interpretive option that 7:1-5 regards litigation between two equal parties. Yet, while the contexts of 5:21-26 and 18:15-20 both clearly demonstrate that these passages are concerned with conflict between two “brothers” involved in litigation with one another, in Matt 7:1-5 this is less than clear. The presence of “brother” language alone denotes, as already noted above, merely that a fellow Israelite is indicated. Thus, the statement, “Why do you look at the speck in the eye of your *brother*” in 7:3 and reference to casting “the speck out of the eye of your *brother*” in 7:5 simply indicate by the term “brother” that a fellow ethnic Israelite is in view. The “brothers” in 7:3-5, therefore, could just as easily be understood as the “judge” and the “litigant” (since both are Israelite “brothers”), thus affirming the third interpretive option that Matt 7:1-5 is a prophetic critique against legal judges.

What about the statements using the speck/log proverb themselves? Do the self-introspective sayings such as, “why do you look at the speck in the eye of your brother, but the log in your own eye you do not notice?” and “how can you say to your brother, ‘Let me cast the speck out of your eye,’ even while there is a log in your own eye?” imply litigation between two parties? The speck/log trope is proverbial in nature and can be applied to a number of situations—litigious or otherwise. In fact, the rabbinic texts discussed above in this chapter which use the speck/log proverb in their discussion of the judiciary (based as they are on Lev 19:17) apply the proverb slightly differently—*b.*

‘Arak. 16b using the proverb to demonstrate how unwilling people are to receive rebuke and *b. B. Bat.* 15b clearly applying it to the corrupt judge. Therefore, the mere presence of the speck/log proverb in Matt 7:3-5 does not necessarily imply that the speck-hunter, by looking for a speck in his brother’s eye, is out to *sue* him. In order to decide whether to read 7:1 as either “do not sue” or “do not judge,” one needs contextual clues other than merely the presence of “brother” language and the speck/log proverb. This flags up one of the real difficulties of interpreting Matt 7:1-5: that is, the aphoristic nature of these verses and the paucity of clues in the immediate literary context to persuade one as to the exact meaning.

It has already been demonstrated above that Matt 7:1-5 is a halakhic midrash upon Lev 19:15-18, 35-36. Therefore it makes sense that the two other passages which speak of brotherly, judicial conflict—5:21-26 and 18:15-35—would also have some connection to these laws from Lev 19. But 5:21-26 and 18:15-35 also enter into the midrashic conversation concerning the laws for just judging by means of the Cain and Abel traditions (which are a part of this midrashic conversation upon Lev 19). Can the traditions surrounding Cain and Abel be detected in Matt 7:1-5 and so provide clues as to how to understand it? In the next chapter on James, it will be observed that the Cain and Abel traditions are alluded to in Jas 2:1-13 by virtue of the oppressive actions of “the rich” who drag others to court in 2:6 and commit *murder* in 2:11 in violation of the laws for just judging from Lev 19. This is significant, since the main argument of this next chapter on James is that Jas 2:1-13 parallels Matt 7:1-5. Therefore, while Matt 7:1-5 does not seem to directly reference the Cain and Abel traditions, since Jas 2:1-13 alludes to the latter and stands in parallel with the former (so the argument of Chapter five goes), it is

very likely that Matt 7:1-5 also has the Cain and Abel traditions in its purview. Furthermore, since the Cain and Abel traditions assume the laws for just judging from Lev 19, and Matt 7:1-5 is a midrash upon these laws, it is reasonable to assume that in teaching upon just judging in Matt 7:1-5 the Matthean Jesus is aware that the Cain and Abel traditions are associated with these laws from Lev 19. After all, if Matt 5:21-26 and 18:21-22 play upon traditions about Cain in their teaching about brotherly conflict and litigation, it is natural to assume that the Cain and Abel traditions might not be entirely out of the purview of Matt 7:1-5.

The language in 7:3-5 of detecting and removing “specks” in the eye of a “brother” points to the act of rebuke which, if Qumran is any indication, was part and parcel of the judicial process. But the necessity for rebuke also indicates conflict between two brothers and so readily lends itself to a connection to the famous brothers of conflict, Cain and Abel. Furthermore, the idea of the “rebuke” directed toward a “brother” in 7:3-5 indicates that the commandment regarding rebuking a brother from Lev 19:17 is likely in view in Matt 7:3-5. And as was observed in our survey of 5:21-26 and 18:15-35, not only do these passages make reference to the traditions of Cain but they also take Lev 19:17 as a central commandment regarding resolving such brotherly conflict. Such is also likely the case in Matt 7:3-5.

The Cain and Abel traditions are most likely within the purview of Matt 7:1-5 and, as just observed, Lev 19:17 is often connected to these famous brothers of conflict. But connecting Cain and Abel and Lev 19:17 to Matt 7:1-5 does not necessarily solve our interpretive dilemma of how to read the latter. For while the command regarding the rebuking of a brother in Lev 19:17 features in many of the midrashic conversations which utilize the Cain and Abel traditions (cf. Matt 5:21-26; 18:15, 35; *Did.* 15:3; *Sifra* on Lev 19:17 [*Parashat Qedoshim Pereq* §4]; *T. Benj.* 7:5; 8:1-2), Lev 19:17 is not the only verse within Lev 19:15-18, 35-36 to be connected to the Cain and Abel traditions. It will be remembered from Chapter three that in *Tg. Ps.-J.* on Gen 4:8, Cain makes a clear reference to Lev 19:15 when he declares that there is “favoritism of persons in judgement” (*Tg. Ps.-J.*). Furthermore, while the idea of rebuke derived from Lev 19:17 *can* be applied to two brothers in conflict (and often is), it can also be applied to the rebuke of a corrupt legal judge as, just noted, is the case in *b. B. Bat.* 15b.

It seems then that in Matt 7:1-5 the “brother” language, the speck/log proverb, the connection to the Cain and Abel traditions, as well as the connection to the commandment regarding the rebuking of a brother in Lev 19:17 do very little in indicating the exact application and connection to the laws for just judging in Matt 7:1-5. There are two minor factors, however, which do provide some context for interpreting Matt 7:1-5.

First, it is interesting to observe the voice of the verb κρίνω in the prohibition against “judging” in 7:1. While a middle/passive use of the verb κρίνω occurs in 5:40, which is addressed to the one faced with an opponent who wishes “to sue” him, in 7:1 the verb κρίνω occurs in the second person plural *active* voice. If Matt 7:1 was intended to be read “do not sue,” one wonders why the middle/passive form of the verb was not used.¹ In addition, there is a distinct contrast between the active “judge” (κρίνετε) and the passive “be judged” (κριθήτε) in 7:1 as well as between the active “you judge” (κρίνετε) and the passive “you will be judged” (κριθήσεσθε) in 7:2. Therefore, while the middle/passive indicates the act of suing another (as in 5:40), here in 7:1-2 there is a distinct contrast between the passive action of being judged by God and the active deed of human judging. This act of “judging,” therefore cannot be construed as “suing,” since this would require a passive form of the verb with a middle definition. In this way, the active command μὴ κρίνετε in 7:1 would seem to address those involved in the act of judging or adjudicating, rather than suing, and so should be translated as “do not judge.” While there certainly may be pliability here in the grammar and lexical definition of κρίνω, the prohibition not to judge in 7:1-5 could well be understood as fundamentally different from the sapiential advice to give even more when sued in 5:40.² While the latter is addressed to the *litigant* embroiled in a legal battle as in 5:21-26 and 18:15-35, the former should probably be read as directed to the *judge* who rules on such cases.

Second, there is no indication that the Matthean Jesus has reconciliation in view in Matt 7:1-5 as is the case in 5:21-26 and 18:15-35. This would be inexplicable in light of the fact that both 5:21-26 and 18:15-35 (which involve disputes between two brothers) advocate reconciliation, unless of course Matt 7:1-5 is not about a litigious dispute

¹ I owe this point to Professor Richard Bauckham.

² Contra Luz 1989: 417.

between two people embroiled in a litigious conflict. However, if Matt 7:1-5 involves a discrepancy between a litigant and a judge's ruling it is justice, rather than reconciliation, which is the logically needed corrective. The main thrust in Matt 7:1-5 is God's judgement for the one who judges unjustly, not reconciliation between two conflicting brothers. Therefore, the absence of any impetus towards reconciliation combined with the presence of the threat of judgement by God is a powerful indicator that our third interpretive option for understanding Matt 7:1-5 is viable—a prophetic critique of unjust legal judges.

These two factors—the active voice in the command not to judge in 7:1-2 and the lack of any impetus towards reconciliation being replaced with an emphasis upon God's judgement for injustice—combined with the fact that the epithet “hypocrite” in 7:5 is normally used with regard to the scribes and Pharisees in Matthew rather than the disciples, cause one to lean towards the third interpretive option for understanding Matt 7:1-5 that this is the Matthean Jesus' critique of unjust legal judges. Corruption among the judiciary was a common complaint in the Jewish literature of the time, so such a reading would not be extraordinary.¹ And while one must not be too emphatic about this reading, especially in light of 5:21-26 and 18:15-35 which clearly regard litigation between two people, this seems to be a very plausible explanation of Matt 7:1-5.

If this third view be accepted at least provisionally, it is worth exploring in what manner the scribes and Pharisees might be considered legal judges.

3.5. Scribes and Pharisees as Unjust Legal Judges?

3.5.1. In Matthean Perspective

If Matt 7:1-5 concerns the unjust activity of a legal judge, and the epithet “hypocrite” refers to the scribes and Pharisees in Matthew's gospel, can this title and its possessors be linked in any way to unjust legal judging elsewhere in Matthew's gospel? In 5:17-20, the Matthean Jesus speaks of the importance of “the law” (τὸν νόμον), while at the same time declaring deficient the “righteousness” of the scribes and Pharisees. If

¹ Cf. especially Schiffman 1998.

“hypocrisy” is the quintessential characteristic of the scribes and Pharisees, then such duplicity can be considered opposite to genuine “righteousness” in Matthew.¹ If “hypocrite” in 7:5 is read as being directed at scribes and Pharisees who are engaged in unjust legal judging so that *just* legal judging can be considered *lawful* and *righteous*, this would fit the caricature of the scribes and Pharisees in 23:28 as not only hypocritical but also “lawless” (ὑποκρίσεως καὶ ἀνομίας).² In fact, as already noted, Matthew characterizes the scribes and Pharisees as evil, a trait which manifests itself in their being bad interpreters of Scripture and thus being in error, being false teachers, and being lawless and hypocritical in their praxis.³ Such a description also fits their description in 23:29-35 as erring in their legal judgments when they wrongly execute prophets and wise men thus shedding “righteous” blood, as well as their description in 12:1-14 as those who condemn the innocent (12:7) and thus plot to kill the righteous/innocent Jesus (12:14).⁴

Therefore, it would seem to be the case, at least *literarily*, not only that “hypocrite” in Matt 7:5 likely refers to the scribe or Pharisee but that such hypocrisy on their part can at times manifest itself by means of lawlessness and unjust judicial activity. But should one posit an easy historical transference from post-70 Pharisaic dominance to the life of Jesus or even to the time Matthew writes?

3.5.2. In Historical Perspective

Throughout the 1960’s, 70’s, and 80’s, historians commonly assumed that by the time of Jesus, administrative and religious power had all but shifted from the hands of the priestly aristocracy comprised mostly of Sadducees (whose name probably derives from the priestly line of “Zadok”) to lay scribes composed mostly of Pharisees.⁵ This view was popularized by Joachim Jeremias in his 1958 piece, *Jerusalem zur Zeit Jesu*.⁶ Jeremias writes that during “the first century AD until the destruction of the Temple, the struggle for supremacy between the ancient ruling class and the new [upper, scribal class] reached

¹ Cf. Garland 1979: 104 and references there.

² Cf. van Tilborg 1972: 20-24; Garland 1979: 102; Kingsbury 1995: 183.

³ Cf. Kingsbury 1995: 182-184.

⁴ Cf. van Tilborg 1972: 22.

⁵ Cf. Schürer 1979: 405-407; Sanders 1992: 25.

⁶ Jeremias 1958; ET 1969.

its peak, and the balance began to be tipped by degrees in favour of the new class.”¹ He attributes their dominance not to their expertise in the law, but to the supposed fact that they were guardians of a secret, esoteric knowledge.² Scholars subsequent to Jeremias have adopted and defended similar views.³

In 1992, however, E. P. Sanders rightly critiqued Jeremias for his claim that, “the important posts in Jewish public life [including judges] had, by the first century, passed out of the hands of the priestly aristocracy and into the hands of lay scribes, most of whom he [Jeremias] identified as Pharisees.”⁴ Sanders surmises that this view probably derives from the undue influence of the phrase “scribes and Pharisees” used throughout Matthew 23.⁵ Sanders further explains: “Most modern scholars, ... think that in the Judaism of Josephus’ day the priests had *surrendered* their traditional role as biblical experts and magistrates (judging cases on the basis of biblical law), and that the Pharisees or lay scribes had taken over these roles.”⁶ He offers the alternative view that priests

¹ Jeremias 1969: 233.

² Jeremias 1969: 237-241. Jeremias (1969: 241) even claims that before being written down (in the form of the Mishnah) in the second century to counter the NT canon, halakic oral tradition, although taught publicly in synagogues, was tantamount to a set of esoteric teachings because, it “could only be transmitted orally from teacher to pupil.”

³ Such as Maccoby, Rajak, and Hengel; cf. Sanders 1992: 175-177.

⁴ Sanders 1992: 174. A similar critique of this view was made four years earlier by Steve N. Mason (1988). In my view Sanders is correct to critique Jeremias, but he is wrong to lump Emil Schürer in with Jeremias in his critique, assuming Jeremias received this view from Schürer (cf. Sanders 1992: 177; 516, f.n. 22). Schürer’s three volume, *A History of the Jewish People in the Age of Jesus Christ (175 B.C.-A.D. 135)*, published between 1885 and 1891, is a careful historical work which has been massively influential. And while Schürer held that, “increasingly ... lay Israelites took over the study of the Torah [from priests] ...” and during Hellenistic times, “it was no longer the priests but the scribes who were the zealous guardians of the Torah,” he did not hold a position akin to Jeremias’ on the issue of who was in judicial power (Schürer 1979: 323; see further 322-336).

Although Schürer held *generally* that scribes gradually overtook the role of priests as scholars of the Torah and therefore as judges, (1979: 324, 334-335) elsewhere he plainly acknowledges: 1) that priests served as judges in Josephus’ day, (*Ant.* 4.8.14 § 214; something Schürer 1979: 187 declares is not without OT precedent; cf. Deut 21:5; 1 Chr 23:4; 26:29; Deut 16:18) 2) that, “the decisive authority in [the] supreme court [of the Sanhedrin] lay without doubt in the hands of the priests,” (1979: 202) and 3) that, even “the Mishnah [in] certain special cases demanded the inclusion of the priests on the panel of judges” (1979: 202; cf. *m. Sanh.* 1:3; *m. Ketub.* 1:5; *t. Sanh.* 4:7; *Sifre Deut* § 153)—a document which, as Sanders points out, treats priests “as if they had never mattered” (Sanders 1992: 178). In fact, Schürer reckons that the depiction of a Pharisee as president of the Sanhedrin in the Mishnah is historically inaccurate since Josephus and the New Testament always depict the High Priest as president of the Sanhedrin (1979: 215).

⁵ Sanders 1992: 175.

⁶ Sanders 1992: 172-173.

retained such responsibilities although, “they did not have a monopoly of them.”¹ Sanders summarizes:

In general, Josephus regarded the priests as the nation’s rulers and judges: God assigned administration to “the whole body of priests”, who exercised “general supervision” and also tried cases and punished malefactors (*Apion* 2.165, a “theocracy”; 2.184-187). Later he states that the high priest governed “with his colleagues” (*Apion* 2.194), and on another occasion he attributes to the nation the view that it was “the custom of the country” to be ruled by priests (*Ant.* 14.41).²

Not only does Josephus inform readers that priests were the administrators of the government and therefore judges, but that the high priest was chief among such administrators and judges.³ From the trial of James (“the brother of Jesus”), for instance, we observe the high priest assembling the Sanhedrin and acting as supreme judge.⁴

Sanders, however, seems to play down Pharisaic influence in the first century a bit too much.⁵ For although the priests remained in control in the first century, the evidence from documents such as 4QMMT, the Gospels, and Josephus seems to confirm that Mishnaic claims to Pharisaic influence from the Maccabean revolt through Hasmonean times and even up to the revolt of A.D. 66 are not wishful historical revisions, but are more accurate than previously thought.⁶ Despite the claim by Morton Smith and Jacob Neusner that Pharisees were a relatively un-influential sect before 70, Steve N. Mason has convincingly argued that Josephus, although a critic of the Pharisees, acknowledges their dominant influence before 70. Arguing from the reliable evidence of

¹ Sanders 1992: 172-173. Steve N. Mason (1988) argues similarly that the priests largely maintained administrative control through the first century C.E.

² Sanders 1992: 171.

³ Cf. *Ant.* 10.10.1 § 251; *C. Ap.* 2.22 § 185-187; Schürer 1979: 215.

⁴ *Ant.* 20.9.1 § 199.

⁵ Cf. Sanders 1992: 388ff.

⁶ On the Pharisees influence according to the Gospels and Josephus, cf. Mason 1990; on the Pharisees in 4QMMT, cf. Schiffman 1992; 2003: 19-20. Although thought-provoking, I am not yet convinced of Sigal’s thesis that “Pharisees” designates an amalgamation of “separatists” who disassociated themselves from the establishment and who find little sympathy from the pre-70 proto-rabbis, the latter of which Sigal views as more akin to Jesus’ thinking and teaching ([1986] 2007, esp. 59-60).

Josephus, therefore, Mason locates the debates between Jesus and the Pharisees in such important passages as Matt 23:2-3 (the *Sitz im Leben* of which is normally sought among the post-70 conflict between the church and the Pharisee-dominated synagogues) within the life of Jesus.¹

The Pharisees, furthermore, seem to play an increasing role *among the Sanhedrin*—the supreme court of Israel and the Jewish Diasporas.² This occurs first under Salome Alexandra (76-67 B.C.) and then even more so under Herod the Great (73 B.C.–A.D. 4), until they gain dominance post-70.³ This is in fact the picture one gets in the Gospels in which the Pharisaic scribes are never far removed from, yet seem subservient to, the chief priests.⁴ Furthermore, one cannot ignore the influence of the Pharisees among the common people in the first century A.D., an aspect which is highlighted (but only to be lamented) by both Josephus and Luke.⁵ We may agree with Schürer, therefore, when he concludes that,

From the unanimous testimony of Josephus and the New Testament, it is quite clear that the high-priestly aristocracy, supported by distinguished laymen, stood at the head of the Sanhedrin until the end. ... Thus the Sanhedrin of the Roman period consisted in a mixture of aristocratic—priestly and lay—Sadducees and learned Pharisees.⁶

Such a scenario in which priests stand at the head of a judicial committee comprised of scribal experts such as lay-Pharisees and elders is not unlike what we find at Qumran.⁷ Therefore, in the highest court of the land, the Sanhedrin, priests played the major role, although Pharisees exerted enormous influence. So Sanders is right to conclude regarding the role of the scholar and judge during the time of Jesus that, “priests

¹ Mason 1990.

² Cf. Schürer 1979: 206 and NT references there and Saldarini 1992: 975.

³ Schürer 1979: 210.

⁴ Cf. Matt 21:15; Mark 11:18, 27; 14:1, 53; Luke 19:47; 20:1, 19; 22:2; 23:10. In these ten instances of the phrase “the chief priests and scribes” in the New Testament, “the scribes” are always listed second, with the exception of some manuscripts at Luke 20:19 in which occurs the reverse order.

⁵ Mason 1995: 177.

⁶ Schürer 1979: 210.

⁷ 1QS VI 3-4, 8b-10a; 4QOrd 2-4, 4-6. Cf. Schiffman 1975: 68; 1983: 31.

had not vacated the field.”¹ But it should also be stressed that Pharisees did not play *no* role, but were a significant part of this legal administration too, undoubtedly serving as judges in some instances. In fact, Josephus notes how the Pharisees were gentler in court than the Sadducees.²

It may be that while the priests dominated the judiciary in Jerusalem among the Sanhedrin that the scribal Pharisees exerted more influence among Diaspora towns. During Josephus’ stint as a general in Galilee, for instance, the well known Pharisee Simon ben Gamaliel travels from Jerusalem to Galilee in an attempt to have Josephus removed from his post by means of an unfair legal trial. When at first he does not succeed, he resorts to bribing the high priest Ananus, after which he is able to have Josephus deposed.³ Matthew’s gospel similarly indicates a situation in which Pharisees are highly influential in Diaspora towns. For, as Kingsbury notes, Matthew provides incidental comments which associate the chief priests and elders more closely with the Jerusalem Temple while the scribes and Pharisees are connected more often than not with the synagogues of the Diaspora (6:2, 5; 12:2, 9, 14; 23:6, 34).⁴ In Matthew’s gospel, therefore, it is likely that the scribes and Pharisees are the culprits of the dragging of Jesus’ disciples into “their synagogues” for trial and punishment (10:17). However, even if the scene in Matt 10 in which Jesus’ disciples are dragged into court applies especially to a time after Jesus is absent and the persecution of Christians is rife, one need not discount the judicial power of the Pharisees before 70, as Mason’s argument demonstrates. Therefore, it may be that while the priests remained the judicial authority in the Temple in Jerusalem and thus (to a great extent) throughout Israel and the Diaspora, the Pharisees—who were also influential in the Sanhedrin before 70—were likely a dominant judicial force, especially among Diaspora synagogues as both legal experts (lawyers) and judges.

The Pharisees could be said to have a long track record of unjust legal judging. In Chapter three, we observed how the parallel texts of CD-A I, 18b-II, 1 and CD-A VI, 14b-VII, 4a speak of those who seek “easy interpretations” or “smooth things” and

¹ Sanders 1992: 177.

² *Ant.* 13.10.6 § 293-296; 20.9.1 § 199. Cf. Stemberger 1995: 16-17, 87-88.

³ *Life* 189-198. Cf. Mason 1990: 370.

⁴ Cf. Kingsbury 1995: 180-181.

“scrutinized loopholes”—references probably to the Pharisees in power in the Temple at the time. It was also observed that these texts speak about how these Pharisees took advantage of orphans and widows by engaging in judicial corruption and, according to CD-A VI, 14b-VII, 4a, violated the stipulations against unjust judging from Lev 19:16-18, therefore earning for themselves the title “sons of the pit” or “sons of injustice.”

The phrase “seekers of smooth things” has been translated as “hypocrite” by some, and David Garland has noted a plausible connection between this phrase from Qumran and the designation “hypocrite” as it is used in Matthew. Garland posits that the issue of “seeking smooth things” or “easy interpretations,” as well as that of hypocrisy in Matthew, is one regarding Scriptural interpretation.¹ Both titles, Garland argues, are designations which point to Pharisees (albeit at different historical periods).² According to Garland, this may provide a clue as to why Matthew presents Jesus as the interpreter and teacher *par excellence* and why the interpretation and teaching of the Pharisees (and scribes) is denigrated in his gospel.³ However, judges were also professional interpreters of the law.⁴ Furthermore, Matthew’s gospel depicts Jesus as the eschatological judge, and in one such eschatological pronouncement Jesus declares that at the last judgment he will cast aside “those working lawlessness/wickedness (ἀνομίαν)” (7:23).⁵ Similarly, in 23:28 the Matthean Jesus links hypocrisy and lawlessness/wickedness (ὑποκρίσεως καὶ ἀνομίας) in an indictment of the scribes and Pharisees.⁶ Therefore, one might push Garland’s thesis a step further and argue that Matthew contrasts the righteous judgement of Jesus with the lawless, hypocritical, and ultimately unrighteous judgement of the Pharisees. This would match the image of the earlier picture of judicially corrupt Pharisees in CD-A I, 18b-II, 1 and CD-A VI, 14b-VII, 4a. Moreover, the title given to the Pharisees to describe their unjust legal dealings in CD-A VI, 14b-VII, 4a is “sons of the pit” or “sons of injustice.” This may help explain why Luke inserts into this block of teaching upon judging the parable about the blind leading the blind into a *pit* (6:39).

¹ Garland 1979: 104-112, esp. 111-112.

² Garland 1979: 111.

³ Garland 1979: 112.

⁴ Mason 1988; Sanders 1992: 171-172; cf. *Life* 196-198.

⁵ Cf. Wilson 2004.

⁶ Cf. van Tilborg 1972: 20-24; Garland 1979: 102; Kingsbury 1995: 183.

Therefore, reading Matt 7:1-5 as directed at scribes and Pharisees engaged in unjust legal judging is wholly plausible not only within Matthew's gospel, but also within the life of Jesus.

3.6. Summary

Therefore, since Jesus' words in Matt 7:1-5 cannot be read as ruling out legal judging altogether (the first interpretive option), one must decide between whether Jesus is prohibiting the wrongful use of the judiciary among his disciples (the second interpretive option) or whether Jesus is giving a prophetic warning to Israel's judges for the unjust judging of legal cases (the third interpretation). While the paucity of contextual indicators makes deciding between the two a delicate undertaking, the third option has been provisionally chosen as the most plausible option. While the Sermon is addressed to Jesus' disciples, the crowds are addressed too. Therefore, in view of the label "hypocrite" in 7:5 which normally describes the scribes and Pharisees in Matthew, as well as the active voice of the verb κρίνω in contrast to the passive act of being judged by God in 7:1-2, Jesus' words seem best understood to mean "do not judge" rather than "do not sue." Such a reading fits the overall milieu of judicial corruption during Jesus' time as well as the particular indictment of such judicial abuse among the Pharisees.

4. Conclusion: Seeing Matt 7:1-5 Again for the First Time

In Chapter one, four aspects to the consensus interpretation were delineated: 1) "judging" means being judgmental or intolerant, 2) judging is prohibited because we, being evil, are blind to our own faults, 3) the absoluteness of this interpretation and its qualifications, and 4) love and forgiveness are the opposite of "judging." Here, four parallel aspects are given, according to the new reading, to counter each point.

4.1. "Judging" refers to Legal Judging

Rather than understand Jesus in Matt 7:1-2 as teaching nonjudgementalism or tolerance, this chapter has argued that these verse are Jesus' concern to promote just and fair legal judging based upon the Torah's stipulations. "Judging," therefore, refers to legal judging. This is in keeping with a judicial definition of κρίνω, especially as it is used throughout Matthew and is contextualized in 7:1-5. More importantly, such a reading of Matt 7:1-5 fits the exegetical conversations being had by Jewish teachers of the period over Lev 19:15-18, 35-36.

But reading Matt 7:1-5 as referring to legal judging does not mean that Matthew's Jesus or the New Testament *promote* judgementalism or intolerance. On the contrary, the very fact that judges—according to Lev 19:15—are not to show favoritism but are to be as objective and as fair as possible means that part of their qualification as judges means they are not to be "judgemental." "Judges have to focus on the question of whether the accused person in fact committed the alleged offences, not whether the accused is 'a bad person' and a 'person not like me'."¹ Judgementalism impedes the fair and just process of the judiciary. Furthermore, although tolerance certainly has its limits within the Judeo-Christian faith, texts such as Acts 15:1-35—wherein the official inclusion of Gentiles by the mother church in Jerusalem is recorded—remind readers of the New Testament of the obligation not to be unnecessarily exclusive based upon arbitrary factors such as ethnicity, but to practice inclusivity within the bounds of our common Christian faith.

4.2. Unjust Judging is Prohibited because Corrupt Judges, being Blind to their own Injustices, are Unfit to Judge

Rather than read Matt 7:3-5 to mean that humans are so evil that we are blind to any and all of our own faults, this chapter has argued that the speck/log imagery Jesus uses applies specifically to the hypocrisy of a legal judge. It is toward such hypocritical and corrupt judges, it was argued, that the Matthean Jesus directs his comments. Therefore, unjust judging is prohibited because such corrupt judges, being blind to their own injustices, are unfit to judge legal cases. Whether priestly or Pharisaic judges,

¹ Cf. Wierzbicka 2001: 186.

whether in Jesus' day or Matthew's, judges who pervert the legal system are not to judge lest they are judged by God for their injustice.

Some may lament at the loss of being able to admonish others by saying, "take the log out of your own eye," since Jesus uses this proverbial imagery in the specific context of the judiciary. But the principle of self-introspection is an ancient one which will undoubtedly continue to be used, and the homiletical use of "take the log out of your own eye" to promote self-introspection is in my view acceptable as long as its judicial application by the Matthean Jesus is acknowledged as primary when discussing Matt 7:1-5.

4.3. Unjust Judging is Prohibited Absolutely and Needs no Qualification

Chapter one demonstrated how few interpreters choose to read the prohibition of Matt 7:1-2 as absolute, since although Jesus' words seem to require that no judging take place, it is impossible *not* to "judge" in the sense of making value judgments. There has been a tension here, however, since the words "do not judge"—plainly understood—have a resolute quality to them. It was suggested in Chapter one, therefore, that the text is quite clear that what Jesus prohibits is *hypocritical* judging, rather than any and all judging whatsoever. Therefore, the present chapter has fleshed out the nature of such hypocrisy, arguing that what Matthew's Jesus is ultimately prohibiting—this hypocritical judging—is *unjust legal judging*. It is this—unfair legal adjudication—which Jesus (and the Torah) prohibits absolutely and which therefore needs no qualification.

A few texts (which have been dealt with already in Chapter three) state this more explicitly than the somewhat aphoristic way Jesus puts it in Matt 7:1-2. Philo, for instance, says that the legal judge must act "as if he were at the same time judging and being judged himself."¹ Paul likewise assumes that Timothy's legal adjudication will be judged by God, hence the need for Timothy to avoid partiality and favoritism (1 Tim 5:19-25). *Pseudo-Phocylides* 11 provides perhaps our closest parallel to Matt 7:1 and likewise speaks of legal judging based upon Lev 19:15-18, 35-36 and related laws: "If you judge evilly, subsequently God will judge you." In the new reading being proposed

¹ *Spec. Laws* 4.9 § 57.

for Jesus' "do not judge" teaching, Matt 7:1 means, "Do not judge in such a way that you might be judged by God," or, "do not judge evilly/unjustly since you will be judged by God." Therefore, it is not judging *per se* which is prohibited absolutely; it is in fact presumed in 7:5 that proper judging should take place. What is prohibited absolutely by 7:1 is *unjust* legal judging, which is of course hypocritical.

4.4. Loving your Neighbor means Judging him Justly

Finally, it was observed in Chapter one that many regard "judging" as opposite to love and forgiveness. Obviously, if "judging" refers to legal judging in Matt 7:1-2 as this chapter has argued, and if what Jesus is prohibiting is unjust legal judging, then it would be unfitting to contrast justice within the legal system with "love." Indeed, the original place of the love maxim in Lev 19:18b, coming as it does after the laws for just legal judging in Lev 19:15-18b, presume that loving one's neighbor means judging him justly. As John Nolland writes in his comments upon Matt 7:4-5, "reproving one's neighbour is an aspect of love in Lev. 19:17-18."¹ Furthermore, the emphasis in Matt 5:21-26 and 18:15-35—two passages related to Matt 7:1-5 and which also equally deal with the judiciary—is upon reconciliation, restoration and forgiveness. Therefore, rather than contrast love and forgiveness with "judging," in light of Matthew's judicial texts (which are based upon Lev 19) it is more apropos to speak 1) of reconciliation and forgiveness as an antidote to escalation to the courts, 2) of love as the doing of justice to one's neighbor, and 3) of mercy amidst such judicial reckonings.

Whereas Chapter three presented a trajectory of how the laws for just judging from Lev 19 have been interpreted from ben Sira to *Sifra*, and the present chapter has attempted to show how Jesus in Matt 7:1-5 fits within this on-going exegetical discussion, from this point on in the thesis a slightly different trajectory will be tracked. For Chapter five will observe not only how the epistle of James engages these laws from Lev 19, but how it does so *in light of Jesus' "do not judge" teaching*. Likewise, while

¹ Nolland 2005: 320, f.n. 444. Although, Nolland does not make a distinct connection between Matt 7:1-5 and the laws for just judging from Lev 19; his inference here is more general in nature.

Chapter six traces how early Christian texts interpreted Matt 7:1-5, this is not without acknowledging that there is an acute awareness among these documents that Matt 7:1-5 is related to the laws for just judging from Lev 19. Consequently, Chapters four and five are not directly focused upon how early Christian writers understood the laws of the judiciary from Lev 19 *per se*, but rather they are focused primarily upon how the early Christians understood this teaching *from Jesus*, often with a clear acknowledgement that Jesus' "do not judge" teaching is based upon the Torah's laws for just judging from Lev 19. Stated another way, the *Christian* tradition of Lev 19:15-18, 35-36 stands in relative hermeneutical continuity with other (Jewish, Jewish-Hellenistic) interpreters of these laws, although the authority behind such laws shifts from the Torah to Jesus.

Chapter Five

Turning a Blind Eye . . . Around: The Teachings of James (Jas 2:1-13)

“The whole of this epistle [of James] breathes the same spirit [as the Sermon on the Mount].”

—Leo Tolstoy

1. Introduction

It has taken three substantial chapters to get to this point, but the argument has now been made. Matthew 7:1-5 does not warn against judgementalism but against unjust legal judging. This, it has been argued, is based upon the laws for just legal judging in Lev 19:15-18, 35-36 and Jesus’ “do not judge” teaching stands squarely within the Jewish exegetical tradition surrounding these verses. The Matthean Jesus exhorts judges to refrain from unjustly judging a Jewish brother/neighbor, lest these judges bring down God’s judgement upon themselves. The veracity of such a reading has thus far been authenticated by observing parallel Jewish exegetical traditions engaged with Lev 19:15-18, 35-36 and comparing these to Matt 7:1-5. We now shift the focus from comparing sources largely independent of the Jesus tradition prohibiting unjust judging, to sources which are heavily dependent upon this Jesus tradition.¹ The most important of these sources, Jas 2:1-13, is the topic of this chapter. The next chapter will take up sources which are by-and-large later and which hold positions of less central importance than the epistle of James in the formation of early Christianity.

It has also long been noted that the epistle of James makes great use of Jesus traditions, and it has therefore often been compared with Matthew’s gospel, especially the Sermon on the Mount. However, although many parallels between James and the Sermon have been recognized, it has gone relatively unnoticed that Jas 2:1-13 can be fruitfully compared with Matt 7:1-5. Furthermore, it has also been acknowledged that Jas 2 makes use of Lev 19:15-18. Therefore, in this chapter I would like to bring these disparate parts together and argue that Jas 2:1-13 takes up the Jesus tradition found in Matt 7:1-5—a phenomenon which not only explains James’ interaction with Lev 19 (since in Matt 7:1-5

¹ On the possible interaction of the rabbinic material with the “do not judge” tradition of Jesus, see Chapter three.

Jesus is engaging with Lev 19:15-18, 35-36), but which also provides some crucial hermeneutical continuity needed for understanding Jas 2:1-13. This will lead to a theory championed by R. B. Ward and Dale Allison which suggests that Jas 2:2-3 depicts a judicial court scene, rather than a worship service as some understand it. If Jas 2:1-13 does take up the Jesus tradition found in Matt 7:1-5, and Matt 7:1-5 is best understood as Jesus' warning against unjust legal judging based upon the laws for just judging from Lev 19, then a significant contribution will have been made towards advancing the position of Ward and Allison.

2. James' Use of Jesus Traditions: Matt 7:1-5 and Jas 2:1-13 as a Parallel

Numerous scholars over the last two centuries have drawn parallels between the teaching of James in his epistle and the teaching of Jesus in the Synoptics, especially the Sermon on the Mount.¹ The most thorough analysis has been Dean Deppe's 1989 doctoral dissertation, *The Sayings of Jesus in the Epistle of James*, which outlines in detail the parallels made by scholars between the Synoptic gospels and James. Deppe notes, however, a palpable "lack of consensus" over which passages parallel which.² Although Deppe records 180 parallels between James and the sayings of Jesus made by sixty scholars, he himself chooses to comment only upon, "the twenty parallels most often enumerated by the commentators of the 19th and 20th centuries."³ Therefore, while he comments upon the frequently cited parallel between the material in Jas 4:11-12 and Matt 7:1-2a/Luke 6:37, Deppe reflects the overwhelming majority opinion that there are no substantial parallels in wording or content between Jas 2:1-13 and Matt 7:1-5/Luke 6:37-42.⁴ This is exceedingly odd in light of the fact that some have pointed out a

¹ Cf. Kittel 1942; Shepherd 1956; Gryglewicz 1961; Davies 1964: 402-403; Eleder 1964; Davids 1978; 1982: 47-48; 1985; Hartin 1989; 1991; Johnson 1995: 55-57; Wacob and Johnson 1999; Kloppenborg 2004; 2005; 2007.

² Deppe 1989: 15 comments, "three-fourths of the exegetes agree on only three parallels, two-thirds on only six."

³ Deppe 1989: 59.

⁴ Deppe 1989: 117-119. Commentators have continued to connect Jas 4:11-12 to Matt 7:1-2a/Luke 6:37 without acknowledging Jas 2:1-13 as a similar parallel; see for example Hagner 1993: 169; Allison 1999: 152; Turner 2008: 206.

plausible parallel in James itself between 2:1ff and 4:11-12, a point to which we shall return below.

In this comprehensive survey, however, Deppe does note some who make this connection. Deppe finds only three scholars out of sixty in the last two centuries who recognize any kind of parallel between Jas 2:1-13 and the material in Matt 7:1-5/Luke 6:37-42. The saying in James 2:13 (“for judgment without mercy will be to the one who has not done mercy; mercy triumphs over judgment”) was compared to Matt 7:1-2 by both Hermann von Soden and Samuel Davidson well over a century ago.¹ Roughly a decade later, Joseph Mayor noted a parallel between this same saying in Jas 2:13 and Luke 6:37, the passage parallel to Matt 7:1-2.² In works published subsequent to Deppe’s thorough and careful piece in 1989, I have found only three authors who mention any connection between these two traditions. Like the trio of scholars just mentioned, F. J. A. Hort notes in passing a connection between James 2:13 and Matt 7:1-2,³ John Nolland compares the measure-for-measure thought in Matt 7:2 with that of Jas 2:13,⁴ and Richard Bauckham see a significant parallel between Jas 2:13 and Matt 7:1-2. In Bauckham’s thought, this parallel is substantial since he sees Jas 2:13 functioning to summarize the previous material in Jas 2:1-12.⁵ Unfortunately, Bauckham does not elaborate on the meaning of this parallel. Although this parallel is frequently and widely left unacknowledged, it is a significant parallel which deserves close attention.

Studies such as those noted above which compare the sayings of Jesus with those in James in order to find parallels are useful but ultimately limited, since the method in such studies has been to woodenly seek quotes, allusions, or even similarities in vocabulary, a method which produces mixed results.⁶ This method often carries with it certain assumptions about the traditions of Jesus (such as some kind of literary dependency upon the hypothetical document Q) and the early Christians (such as the

¹ Cf. von Soden 1884: 169; Davidson 1894: 295. Cf. Deppe 1989: 231, 234.

² Cf. Mayor 1892: lxxxii-lxxxiv; Mayor 1978 [reprint of the 1897 edition]: lxxxiv-lxxxvi; cf. Deppe 1989: 231, 235.

³ Hort 1909: 56. Gundry (1982: 121) references Jas 2:12-13 in explaining the nature of divine retribution spoken of in Matt 7:1-5, but he seems to make the connection incidentally rather than substantively.

⁴ Nolland 2005: 319.

⁵ Bauckham 1999: 65, 87. In addition to these parallels, he lists Matt 5:7; 1 Clem. 13:2; Polycarp, *Phil.* 2:3.

⁶ Note Bauckham’s critique of such a method (1999: 82) and his earlier call for scholars to examine further how the Jesus tradition functioned in the early church and her writings (1985: 378).

view that early Christian communities were either often in conflict and/or seldom in contact with one another) which cannot be tackled here.¹ A more dynamic model, however, has been put forth by Richard Bauckham for understanding how the traditions of Jesus were appropriated by James. Drawing upon the way in which Ben Sira reformulates and creatively re-expresses the teaching of the Scriptures and other wisdom traditions, Bauckham suggests that James, like Ben Sira, similarly re-expresses and reformulates the wisdom teaching of his master Jesus. Therefore, according to this model, James need neither quote nor even use the same vocabulary as Jesus in order to express or develop Jesus' teachings. This is because James is developing and appropriating the Torah-wisdom of Jesus in his own unique way as a sage teacher himself.² This model of finding parallels in thought, rather than in precise wording, provides more flexibility and perhaps even more precision in finding parallels since the former are parallels in *meaning* rather than merely *form*.³

One could argue on this basis alone that Matt 7:1-5 finds a parallel in Jas 2:1-13 since they are both generally about "judging." Moreover, one could further simply argue that Jas 2:1-13 not only expresses and develops in its own way Jesus' teaching as found in Matt 7:1-5, but it in fact does so *with* similar content and vocabulary. One need only observe the frequent occurrence of the word "judge" or "judges" in Jas 2:1-13 in order to suspect a connection to the central topic of "judging" in Matt 7:1-5. Matthew 7:1-2 says: "Do not judge (μὴ κρίνετε), so that you might not be judged (ἵνα μὴ κριθῆτε). For with the judgement you judge you will be judged (ἐν ᾧ γὰρ κρίματι κρίνετε κριθήσεσθε)." Likewise, Jas 2:1-13 bears out this "judging" theme using κρίνω and its cognates throughout. In 2:4 mention of evil "judges (κριταὶ)" is made. The rich are dragging James' readers into "court (κριτήρια)" in 2:6. James 2:12 exhorts readers to speak and act as those who "are to be judged (κρίνεσθαι)" by the law of freedom. And 2:13 twice speaks of how mercy is superior to "judgement (κρίσις/κρίσεως)." Furthermore, while

¹ Critiques of Q have been listed in chapter three. For a critique of the conflict/seldom in contact model of early Christian communities, cf. Bauckham 1998b: 9-48 and in the same volume Thompson 1998: 49-70 and Alexander 1998: 99-105.

² Bauckham 1999: 36, 75-86; 2001: 109-131; 2004. Bauckham is followed by Kloppenborg 2004: 113-115; 2005: 8-10; 2007: 126-128.

³ Cf. the recurrence of the phrase "thought-content" and similar phrases in Hartin 1989: 448, 450, 454, 455.

Jesus threatens in Matt 7:1-2 that the judges will themselves be judged, so Jas 2:12 promises judgement for its judges (cf. 2:4).

The linguistic parallels between Matt 7:1-5 and Jas 2:1-13 are enough evidence to see this teaching on judging in the epistle as inspired by Jesus' teaching on judging which is later recorded the Sermon. But this fact alone does not necessarily prove that Jas 2:1-13 should be understood to be about the courts (unless of course one understands Matt 7:1-5 to concern the courts). Therefore, setting aside the thesis that Matt 7:1-5 is Jesus' statement about legal judging, and suspending the above observation of the linguistic and conceptual parallels between Matt 7:1-5 and Jas 2:1-13, there is another compelling reason why Jas 2:1-13 should be read as being about the courts *and* is a creative re-expression of Jesus' teaching on unjust legal judging in Matt 7:1-5: namely, Jas 2:1-13 makes profuse use of the laws for just judging from Lev 19.

3. James 2:1-13 and Lev 19

Chapter four demonstrated that Jesus in Matt 7:1-5 stands squarely within the tradition of exegetical and halakhic engagement with Lev 19:15-18, 35-36, a tradition which was sketched in Chapter three. If indeed, as suggested above, Matt 7:1-5 and Jas 2:1-13 can be considered parallels so that James is developing and appropriating Jesus' teaching upon just legal judging, one would expect James not only to be engaged with the words of Jesus on the surface, but likewise to be engaged with Lev 19:15-18, 35-36 upon which the teaching in Matt 7:1-5 is based. In other words, James not only develops the wisdom of Jesus, he also appropriates the halakhic tradition based upon Torah which Jesus engages. Moreover, such halakhic tradition, being of a legal nature and connected to a specific text from Torah, is more precise and stable than wisdom traditions tend to be. So while James *does* develop Jesus' halakhic teaching, the tradition James engages is characterized by a definite continuity and exactitude. The teaching of Jesus and James, therefore, stands within a tradition which evidences more concrete hermeneutical continuity than Bauckham's model implies. Jesus and James are not only reformulating wisdom from the Scriptures and wisdom traditions they receive (although they are, no doubt, doing this), they are also engaging with and reformulating the *halakhic* tradition.

This tradition, connected to the legal parts of the Torah, furthermore, is more precise and has a more controlled history of reception than the morphing wisdom traditions do.

It is well established that James makes use of Lev 19 in chapter two of his epistle.¹ In particular the legislation of Lev 19:15-18 is clearly important to James. Not only is Lev 19:18b cited in 2:8, but the entire discussion of “partiality” in 2:1-13 is predicated upon the law from Lev 19:15—alluded to in 2:1—which prescribes that judges show no partiality when judging legal cases and which heads up the unit of Lev 19:15-18. These twin factors have caused commentators of James to acknowledge that James likely cites Lev 19:18b with the original context of the surrounding verses of Lev 19 in mind.² It seems highly likely that this is the case, since when James argues in 2:8-9 that showing partiality (Lev 19:15) stands in diametric opposition to loving one’s neighbor (Lev 19:18b), he likely sees the laws for just judging from Lev 19:15-18 as a unit and is referring to them as such here—a concept argued for in Chapter three. This facet of Jas 2:2-13 will be discussed further below, but here it is sufficient to note that just as Jesus in Matt 7:1-5 is engaged in a halakhic discussion concerning the laws for just judging from Lev 19:15-18, 35-36, so in a parallel passage to Matt 7:1-5 James in 2:1-13 can be said likewise to be engaged at least with Lev 19:15-18, if not also verses 35-36.

It is interesting to note in this regard, that James has been compared with many other second Temple and early Christian documents such as 1QS, CD, Ps.-Phoc., Philo, *T. 12 Patr.*, *’Abot*, *Did.* and *Herm.*, etc. in order to assess what, if any, literary relationship there might be between these documents and the epistle of James.³ But one common element in many if not most of the documents compared with the epistle of James, as Chapter three has already demonstrated, is their profuse employment of the laws for just judging from Lev 19. Therefore, in an assessment of the literary relationship between such documents and James, scholars would do well to take into consideration the rich exegetical tradition of Lev 19 in which James, as well as these other documents, obviously stand. This may well guide scholars away from discussions of James’ “literary dependency” or even literary comparison, to a more nuanced and precise discussions of

¹ Cf. especially Johnson 1982; Johnson 1995: 31.

² See literature cited in Johnson 1982: 391, f.n. 1.

³ Cf. especially Dibelius and Greeven 1976: 23ff; Johnson 1995: 34-46.

James within the “history of interpretation” of Lev 19 (including, of course, the Christian tradition), and related parts of the Torah such as the Decalogue.

Furthermore, as further evidence of James’ appropriation of and halakhic engagement with Lev 19, we may briefly consider the halakhic decision reportedly made by James in Acts 15:13-21 as a literary and historical corollary to the epistle which bears his name. Richard Bauckham has convincingly argued that James’ decision to require Gentiles to keep the four laws outlined in Acts 15:20, 29 is based upon a detailed exegesis of Lev 17-18 which stands in line with contemporary Jewish exegetical practice as seen among the pesharim of Qumran. Bauckham has simultaneously added significant weight to the view that the speech of James and the subsequent Apostolic Decree (Acts 15:23b-29) both have a high probability of historicity.¹ At least two literary and historical factors follow from these conclusions and bear upon our understanding of the epistle of James.

First, if James engages in detailed and highly skilled exegesis of Lev 17-18 in order to come to a halakhic decision regarding the Gentile mission in light of Jesus’ lordship as reported in Acts 15:13-21, 23b-29, and Lev 19 is significantly referred to in the epistle which bears his name, it naturally follows that just as James’ decision in Acts 15 based upon Lev 17-18 can be considered halakhic, so elements of his epistle based upon Lev 19 can likewise be considered halakhic.

Second, if the apostolic decree, to quote Richard Bauckham, “communicates a major halakhic decision of the Jerusalem Christian leadership, assumed to have universal authority on such a matter, to (in this case) Gentile members of churches in the Diaspora,”² and the epistle of James is an encyclical sent to Jewish churches in the Diaspora with the same Jamesian authority behind it, it is reasonable to assume that the epistle is—like the apostolic decree—meant to be a similar authoritative halakhic expounding of the law from James for Jewish Christians in the Diaspora. In the case of the decree, a halakhic *decision* is made; in the case of the epistle, halakhic *argumentation*

¹ Cf. Bauckham 1996: 154-184. For this argument placed within the wider discussion of James’ centrality in the Jerusalem church with respect to the gentile mission, particularly Paul, see Bauckham 1995: 415-480.

² Bauckham 1995: 425.

and *exhortation* is made. And while James makes use of Lev 17-18 in the decree, so his epistle makes use of Lev 19.

So Matt 7:1-5 and Jas 2:1-13 can be considered parallels, and both are engaged with the laws for just legal judging from Lev 19, with the latter obviously doing so in light of the former. Yet, there is one final reason why Jas 2:1-13 can be considered to be about the courts: a theory which understands Jas 2:2-3 to depict a judicial scene.

4. Reconsidering the Ward/Allison Thesis

When interpreters of the epistle of James come to the teaching on partiality in 2:1-13, illustrated by the seating of the rich and the poor in verses 2-3, they are faced with two interpretive options.

The situation involves a rich man who “enters into your synagogue” followed by a poor man. A long-standing consensus views this scene—based upon parallel passages in later so-called “church orders”—as that of two visitors to a Christian worship service in which favoritism *in seating* is being shown to the rich over against the poor as they are being seated for worship.¹ This position had been held for some time (at least since Mayor’s commentary in 1892) without substantial alternative options.²

But in his 1966 dissertation, and in a subsequent article in 1969, R. B. Ward put forth a viable alternative reading, arguing that the situation depicted in Jas 2:2-4 is that of two members of a synagogue coming before the assembly for a legal ruling.³ Ward’s interpretation has been adopted by some but is rejected by others.⁴

The origin of this alternative interpretation is commonly thought to be Ward’s 1966 dissertation. But Dale Allison, in an article published in 2000 with the quirky title,

¹ On the difficulties of characterizing as “church orders” the family of documents commonly called by this title, cf. Mueller 2007.

² Cf. Mayor 1892: 77; Ropes 1916: 190-191; Dibelius and Greeven [1921] 1976: 135.

³ Ward 1966: 78-107; Ward 1969: 87-97.

⁴ Those who follow Ward include Davids 1982: 109; Maynard-Reid 1987: 55-59; Townsend 1994: 35-36; Johnson 1995: 227-228. Those who reject Ward’s thesis include Mitton 1966: 83-84; Laws 1980: 99-100; Motyer 1985: 81-82; Kistemaker 1986: 73-75; Moo 2000: 102-104; Witherington 2007: 454-455. Martin 1988: 57-75 seems to waver back and forth between these two interpretive options and in the end (73) states, “there is uncertainty as to the setting.” Adamson, who uncritically assumes the visitor interpretation (1989: 106-107), completely misrepresents Ward’s argument, citing Ward (107) as one who thinks that the visitors are strangers!

“Exegetical Amnesia in James,” has demonstrated that Ward’s position is far from new.¹ Allison cites twenty-one commentators from the 17th-19th centuries in which an interpretation of Jas 2:1-7 similar to Ward’s is known and/or defended.² Allison further points out that,

the popularity of the [judicial] reading was encouraged ... because application to a Jewish or Christian judicatory allowed commentators to live with the circumstance that many churches had preferred seating. An application of Jas 2, 1-7 to the worship service would raise embarrassing questions about that practice.³

The question regarding how to interpret these verses in James, therefore, is a long-standing one, going back at least to the 1600’s. The problem seems to be that sometime in the late 19th or early 20th century the judicial interpretative option began to drop off the scholarly radar screen and the view that the two characters in this scene are visitors to a worship service gradually took over as the consensus before Ward unknowingly resurrected it in 1966. And even after Ward’s thesis revived this debate after three-quarters of a century or more of being off the hermeneutical map, it seems there is still no consensus today.

It is interesting to note here, that just as Chapter one observed a major shift in the interpretive history of Matt 7:1-5 during this same time period of the Enlightenment (17th-19th centuries)—a slow but sure slide from legal (“public”) judging being a viable interpretive option to judgementalism (“private judging”) as the only option—so too the consensus understanding of Jas 2:1ff has undergone a significant change during the Enlightenment from a legal setting being one legitimate way of reading Jas 2:1ff to a consensus which began valuing more and more only one interpretive option: the worship service reading. Undoubtedly, the practice more and more of reading NT documents in

¹ Allison 2000a: 162-166. Cf. Allison 2008b: 242-244.

² Allison 2000a: 162-164. Allison notes (2000a: 164-165; 2008b: 244) that the 17th-19th century commentaries, like Ward, rely upon the rabbinic sources as the closest parallel to Jas 2:2ff.

³ Allison 2000a: 164 (cf. 2008a: 244). Thus Mitton 1966: 84 can look back with distain at the older practice in the churches of paying of “pew-rents” by the rich as an illustration of how, in his view, this text from James has been violated.

isolation from one another during the heyday of a historical criticism brought on by the Enlightenment has surely contributed to the suppression of these other readings. Perhaps reading appropriate passages (such as Matt 7:1-5 and Jas 2:1-13) in light of one another can help reverse such narrowing and constrictive hermeneutical trends.

It is worth providing a brief summary of Ward's original argument, because his 1966 dissertation was never published and, although it is frequently cited, I reckon that fewer actually have access to it.¹

Ward acknowledges that there are warnings in later Christian documents such as the *Didascalia Apostolorum* (c. A.D. 200-250) and the *Apostolic Constitutions* (c. A.D. 250-380) against showing partiality to visitors who come to a Christian worship service.² But these documents, he argues, do not evidence partiality being shown between *sitting or standing* as in James, but between seating which is *good or bad*.³ Ward also points out that these texts make it clear that the visitor is at a loss as to where to sit in a crowded room whereas this is not the case in James.⁴ Ward also has difficulty understanding the two figures in verses 2-3 as "visitors." He argues that the phrase "discriminate amongst yourselves" of 2:4 indicates some kind of strife between already existing members and makes less sense if the two characters are visitors.⁵ The *Apostolic Constitutions* is in fact ambiguous at this point, since the one being seated may be known or a stranger (*Apost. Const. II*).

In addition, I would add that these later church manuals—peppered throughout as they are with prooftexts from the New Testament—do not cite any verses from Jas 2:2ff, although they may of course be applying the teaching of James here to their own situation (to seating visitors in worship) without actually quoting it. However, while the *Didascalia* does apply the "no respecter of persons" principle to seating within a worship service (*Didasc. XII*), more often than not this principle is applied to bishops who judge legal cases within the church—as in *Didasc. XI* in which this principle is applied to the judiciary, litigants are to "stand" reminiscent of the scene in Jas 2:2-4, and a paraphrase of Matt 7:1-2 is given. Moreover, the scene in the *Apostolic Constitutions* which depicts a

¹ My sincere appreciation goes to R. B. Ward and to Miami University for providing me with a copy.

² Ward 1966: 79-81. See Ropes 1916: 190-191 who also cites the Ethiopic *Statutes of the Apostles*.

³ Ward 1966: 87.

⁴ Ward 1966: 97, f.n. 66.

⁵ Ward 1966: 83-84. Ward here draws upon Mussner 1964: 119.

worship service does not feature a poor person but rather one of “good fashion and character in the world” (*Apost. Const.* II). We shall return to the *Didascalia Apostolorum* again in Chapter six where it shall be discovered that Matt 7:1-5 is applied to Bishops judging legal cases within the church.

In addition to the theory that Jas 2:2-4 depict a Christian worship service, Ward tests the idea of whether James, like the *Rule of the Community*, is speaking about seating in terms of rank. Ward promptly dismisses this possibility because understanding, rather than wealth, seems to be the basis for rank at Qumran.¹ He further points out that rank at Qumran does not seem to correspond to sitting or standing.²

Therefore, Ward introduces a third reading for understanding this scene in James, namely that this text depicts two litigants who come before a panel of judges amidst a legal assembly. Citing a cluster rabbinic texts which *do* speak of partiality being shown to the rich or poor in terms of standing or sitting—texts which each also depict a court scene—Ward suggests that *these* texts, rather than the church manuals, are the closest parallels to the situation depicted in Jas 2:2ff.³ The rabbinic texts Ward refers to are worth citing, in the probable order of earlier to later:

t. Sanh. 6:2 says,

[The judges] may not show kindness to one party and impatience with another party,
Nor allow one to stand and the other to sit,
As it is said, *In righteousness you shall judge your neighbor* (Lev. 19:15).
Said R. Judah, “I have a tradition that if they wanted to seat both of them equally, they seat them, and there is no objection to such a procedure.
“What is prohibited? That one of them should sit while the other one is standing.”

¹ Ward 1966: 84-85, citing 1QS II, 19-25; V, 20-24; VI, 4, 8-9; 1QSa I, 18.

² Ward 1966: 84-87.

³ Ward 1966: 88-90.

In the name of R. Ishmael they said, “They said to [one who is richly dressed], ‘Dress the way he is dressed, or dress him the way you are clothed.’”¹

Sifra on Lev 19:15 (*Parashat Qedoshim Pereq* §4) says,

“... but in righteousness shall you judge your neighbor”:

This means that one party may not be permitted to speak as long as he needs, while to the other you say, “Cut it short.”

One should not stand while the other sits down.

Said R. Judah, “I have heard a tradition that if they wanted to let both of them sit down, they let them sit down. What is prohibited is only that one of them should sit while the other is standing.”²

b. Sheb. 30a says,

Our Rabbis taught: *In righteousness shalt thou judge thy neighbour*: that one should not sit, and the other stand; one speak all that he wishes, and the other bidden to be brief.³

’Avot R. Nat. A 22a [10 § 1-2] says,

R. Meier used to say: What does Scripture intend by the words, *Ye shall hear the small and the great alike?* [Deut 1:17] It means that one suitor should not sit and the other stand; one should not speak all that he wishes and the other be told to be brief. R. Judah said: I have heard that if [the judges] desire both suitors to sit they may do so, and there is no objection to it. What is prohibited is for one to sit and the other to stand.”⁴

¹ Translation from Neusner 1981: 214.

² Translation from Neusner 1988: 107.

³ Translation from Epstein 1935: 167.

⁴ Translation from Goldin 1955: 59.

Deut. Rab. Shofetim 5:6 on Deut 16:19 says,

R. Judah b. Illai said: I have heard that if the judge wishes the litigants to be seated, he may have them seated; but what is not permissible? For the one to be seated and the other to remain standing. For R. Ishmael said: If before a judge two men appear for judgment, one rich and another poor, the judge should say [to the rich man], “Either dress in the same manner as he is dressed, or clothe him as you are clothed.”¹

It is clear that all of these texts are concerned with the judicial procedure of showing impartiality between litigants in terms of standing or sitting. What is more, the three earlier texts (*t. Sanh.* 6:2; *Sifra* on Lev 19:15 [*Parashat Qedoshim Pereq* §4]; *b. Sheb.* 30a) specifically quote Lev 19:15. If the issue is one of seating, and James wants to draw upon the laws from Lev 19, he could easily allude to a precept such as Lev 19:32, “before the elderly, arise; and show honor before the old. Fear your God. I am the LORD,” and apply it in his argument of not showing “partiality” in seating arrangements. The situation of showing deference to the elderly is, in fact, one of the scenarios depicted in the later church documents which are supposedly parallel to Jas 2:1-7. The *Didascalia Apostolorum* XII and the *Apostolic Constitutions* II, in their discussions of seating for the elderly, probably allude to Lev 19:32, as we would expect, not Lev 19:15 or even 19:18. James, on the other hand, when he uses the illustration of standing or sitting, utilizes imagery commonly associated with partiality *in judging legal cases*—an illustration commonly employed when teaching upon Lev 19:15. Therefore, of these rabbinic passages Ward can write:

These texts belong to the rabbinic tradition concerning judicial proceedings—a tradition which is expressly connected with the OT instruction for judging in Lev 19:15-18; Ex 23:1-3, 6-9; and Deut 16:18-20. It is an early tradition, reflecting judicial procedure in at least early

¹ Translation from Freedman 1939: 107.

Tannaitic times [50 B.C.–A.D. 200]. It indicates a concern lest the difference in apparel should lead to partiality, and thus unjust judging; and it condemns the practice of having one litigant stand and the other sit as unjust judgment and partiality.¹

Ward therefore explains the similarity: “In EpJas 2:3 the man in fine apparel is told to sit, while the poor man is told to stand. In the rabbinic texts to allow one to sit and to make the other stand is understood as unjust judgment and partiality.”² He continues, “In rabbinic judicial procedure the normal practice was for the litigants to stand [citing *b. Sheb.* 30a] and for judges to sit. To allow one of the litigants to sit would be an obvious sign of partiality.”³ Ward can thus conclude, “Rather than describing strangers to a meeting for worship, the example describes two men who come before the assembly for judgment. The natural assumption would be that both men are members of the community.”⁴ This explanation, Ward argues, makes for the best plausible interpretation of this passage in James and does not press the text the way understanding verses 2-3 to depict visitors to a worship service does.

Although his scholarship is now becoming dated, Ward’s general argument is convincing to me. The overall strength of Ward’s argument lies in its ability to explain the text without having to press its details. As already noted, the phrase “made distinctions *amongst yourselves*” in 2:4 is more easily understood if the two characters in 2:2 are already members of the congregation.⁵ Furthermore, the profusion of legal language in 2:1-13 is allowed to have concrete expression, rather than being treated as merely metaphorical in nature.⁶

Its strength also lies in the proximity of the rabbinic traditions, in both time and culture, to the probable context of James. The later church manuals are at least 200-300

¹ Ward 1966: 90-91.

² Ward 1966: 91.

³ Ward 1966: 91-92.

⁴ Ward 1966: 96.

⁵ Cf. Ward 1966: 83-84.

⁶ Adamson 1989: 108 understands the legal language as metaphorical when he writes, “Content and usage suggest a juridical tone for both the verb and noun [of 2:4]. Their ‘facing both ways’ [indicated by the verb διεκρίθητε] makes each one of them *like* a divided jury or a divided court, and the distinctions they make between rich and poor are (by contrast) reminders of the valid distinctions a righteous judge has to make” (emphasis added).

years later than the epistle of James, assuming James was written sometime around the middle of the first century. On the other hand, the tannaitic traditions Ward suggests, such as that of R. Ishmael (c. 120), stem from the early second century—within 60-70 years or less from when the epistle was written.¹ Furthermore, the context of the church manuals seems to come from a time and culture in which the church is in fuller bloom with crowded worship services, a picture strikingly different than that depicted in the epistle of James which evidences numerous trials along with difficult financial times.² The rabbinic examples Ward provides also seem to cohere well with the epistle's "Jewishness." But the most convincing aspects of Ward's thesis are 1) that the rabbinic texts cited have more precise parallels to James' illustration than the later church manuals, and 2) they make use of Lev 19:15 or related texts from the Torah.

Admittedly, while the rabbinic examples all speak of partiality being shown in terms of sitting or standing, James is slightly different in that he provides *two* examples (although with similar imagery) by which partiality in seating might be shown: standing verses sitting; or sitting verses sitting on the floor by one's feet (2:3). But if each of the rabbinic examples Ward cites were to be compared with one another, other slight variations on this one theme are also found. For example, *t. Sanh.* 6:2 and *'Avot R. Nat.* A 22a [10 § 1-2] mention that it is fair to allow *both* litigants to sit equally while the other texts do not. *Sifra* on Lev 19:15 (*Parashat Qedoshim Pereq* §4), *b. Sheb.* 30a, and *'Avot R. Nat.* A 22a [10 § 1-2] each mention providing an equal amount of time for each litigant to speak while the other texts do not. Of these texts, furthermore, only *Deut. Rab. Shofetim* 5:6 on Deut 16:19 mentions partiality based upon dress (as does Jas 2:2-3). But the point in each of these rabbinic texts is to provide halakhic answers on how to be impartial in judging a case between two litigants and thus fulfill the law found in Lev 19:15 (or other related texts). James, therefore, seems to be drawing upon a stylized example which was common in Jewish halakhic discussions regarding unjust legal judging based upon Lev 19:15—a text which we know James interacts with and to which

¹ Although I date James sometime between A.D. 40-50, even if one dates James in the second century as Nienhuis 2007: 99-161 does, this would not significantly alter my argument, since a parallel with rabbinic texts reflecting legal practices in Tannaitic times would have a *terminus ad quem* of roughly A.D. 200, thus placing James (if dated in the second century) as roughly contemporary with these texts but still earlier than the church manuals.

² Cf. Davids 1982: 28-34.

we shall return below.¹ The fact that James provides a version of this stylized example which is slightly different from the rabbinic texts speaks to its authenticity and originality, if not its antiquity. Moreover, although Ward's thesis makes less of this than my own thesis does, three of the rabbinic examples Ward provides specifically quote Lev 19:15. And as has already been noted, James refers to Lev 19:15 in 2:1.

What has been argued for in this chapter thus far, therefore, comports well with the "Ward/Allison" thesis that Jas 2:2-4 depicts an ancient litigious scene. If Matt 7:1-5 and Jas 2:1-13 are parallels and the exegetical underpinnings of both of these passages reveal a halakhic, midrashic engagement with the laws for just legal judging from Lev 19, then reading Jas 2:2-4 as a scene of litigation obviously contributes to this, just as the overall argument being undertaken here contributes to the Ward/Allison thesis.

5. Reading Jas 2:1-13 in light of Matt 7:1-5, Lev 19:15-18, 35-36, and the Ward/Allison Thesis

It should now seem clear that Jas 2:1-13 and Matt 7:1-5 are indeed parallels and that they both engage with the laws for just judging from Lev 19. It should be remembered that in their engagement with these laws from Lev 19, both Matt 7:1-5 and Jas 2:1-13 employ stylized examples found in rabbinic literature. Chapter four demonstrated how the log/speck imagery in Matt 7:3-5 can be compared to this same imagery used in *b. 'Arak.* 16b and *b. Bat.* 15b—imagery used in these texts amidst discussions of corrupt legal judging, discussions based upon the laws for just judging in Lev 19. This chapter has shown how the closest parallels to Jas 2:2-4 are the rabbinic texts Ward suggests—which guard against legal partiality in terms of allowing one litigant to sit while making the other stand—based upon Lev 19:15. Therefore, not only can Matt 7:1-5 and Jas 2:1-13 be understood to be engaging with the laws for just judging from Lev 19, but the imagery they employ is found in rabbinic texts in discussions of impartiality in judging legal cases based upon these same laws for just judging from Lev 19.

¹ Dibelius and Greeven 1976: 129 remark: "Our Jas shows absolutely nothing of the character of correspondence. ... And this is all the more true with respect to examples which he uses."

At this point, it is helpful to provide an exegetical sketch of certain parts of Jas 2:1-13, not discussing every possible detail but only those pertinent to the main thrust of James' argument concerning just legal judging. Also to be touched upon are the parallel passages 4:11-12 and 5:1-9 which, like 2:6-7, further discuss "the rich" in terms of unjust legal judging.

5.1. An Exegetical Sketch of Jas 2:1-13 and Related Texts

5.1.1. James 2:1

It is often pointed out that the word προσωπολημψίας, "acts of favoritism" in 2:1 is a compound word derived from the Septuagintal phrase λήμψη πρόσωπον, a literal translation of the Hebrew פָּנִים אֲשֶׁר ("to lift up the face"), from Lev 19:15.¹ The Hebrew idiom referred originally to, "an Oriental ruler's favour in 'lifting the face' of the prostrate suppliant," but eventually came to refer to showing partiality in judging legal cases as it does in Lev 19:15.²

The phrase λήμψη πρόσωπον is used in Lev 19:15 of showing deference for the poor over rich, but the same verse reveals a synonymous facial idiom (θαυμάσεις πρόσωπον) used for esteeming rich over poor.³ In sage advice to an aspiring judge, Sir 7:6 likewise applies the former facial metaphor used in Lev 19:15 to speak of poor over rich, to rich over poor.⁴ The point of the legislation in Lev 19:15, then, seems to be that deference be shown to *neither* rich nor poor. Therefore James can readily allude to the phrase λήμψη πρόσωπον from Lev 19:15 as a general way of speaking about partiality and apply it to the deference for rich over poor. From the beginning of his argument in 2:1, then, James' discussion is centered around the Levitical legislation regarding just legal judgments.

¹ Cf. Mayor 1892: 72; Dibelius and Greeven [1921] 1976: 126; Ropes 1916: 185; Laws 1980: 94; Davids 1982: 105-106; Martin 1988: 59; Johnson 1995: 221; Moo 2000: 101-102.

² Cf. Hort 1909: 46; Ropes 1916: 186 comments, "the early uses [are] related chiefly to partiality on the part of a judge"; Mussner 1964: 115.

³ Compare Jude 16 (θαυμάζοντες πρόσωπα); Job 13:10 (ἐλέγξει ὑμᾶς εἰ ... πρόσωπα θαυμάσετε).

⁴ μήποτε εὐλαβηθῆς ἀπὸ προσώπου δυνάστου, a clear allusion to Lev 19:15 where εὐλαβηθῆς, being substituted for θαυμάσεις, is a compound of εὐ and λαμβάνω.

The uncompounded Greek phrase is certainly older than the compound, but it is used even up through the apostolic fathers.¹ More often than not, the uncompounded phrase is used with reference to a human judge executing judgement on a legal case.² Furthermore, two of the three early Christian documents which use the uncompounded form are simultaneously drawing upon the OT form of this phrase from Lev 19:15, such as in *Barn.* 19:4 (compare Lev 19:15, 17) and *Did.* 4:3 (compare Lev 19:15). *The Sentences of Pseudo Phocylides* 10—which, we observed in Chapter three, is based upon Lev 19:15ff and is related to Ps.-Phoc. 19 to not “afflict” the poor—blends the facial metaphor from Lev 19:15 with the verb κρίνω: “do not judge partially (μὴ κρίνε πρόσωπον).”³ The only recorded instances of the compound προσωποληψία or its verbal form are all from Christian sources, making this a uniquely Christian word.⁴ And while the majority of the occurrences of this compound are used metaphorically to speak about God, the metaphor is precisely of God as an impartial *legal judge*.⁵ In James 2:1, 9, however, the word is neither metaphorical, nor is the subject God. James uses this word to speak concretely about the judgement of human judges (κριτὰι, 2:4). A similar case can be found in Polycarp’s letter to the Philippians in which “partiality” (προσωποληψίας) is listed just before “unjust judgement” (κρίσεως ἀδίκου) in a catalogue of precepts for presbyters.⁶ With this facial metaphor from Lev 19:15, James too speaks against judges showing partiality in the judiciary.

From the beginning of his argument proper in 2:1, then, James’ discussion is centered upon the Levitical legislation regarding just legal judgments.

¹ Cf. Lev 19:15; 2 Kgs 3:14; Ps 82:2 [LXX 81:2]; 1 Esd 4:39; Sir 4:22, 27; 35:16 [LXX 32/35:13]; 42:1; Mal 2:9 (cf. 1:8-9); Luke 20:21; *Barn.* 19:4; *Did.* 4:3.

² Cf. Lev 19:15; Ps 82:2 [LXX 81:2]; Sir 4:22, 27; 7:6 (with clear allusions in each verse to Lev 19:15); 42:1; Mal 2:9 (cf. 1:8-9); *Barn.* 19:4; *Did.* 4:3. 1 Esd 4:39 is used metaphorically; truth is like an impartial judge. Sir 32/35:12-13, is likewise used metaphorically of God as an impartial judge.

³ van der Horst 1978: 118 says verse 10 means, “you must not favour a rich man above a poor one.” Cf. also *Ps.-Phoc.* 87, 137.

⁴ Rom 2:11, Eph 6:9; Col 3:25; Acts 10:34; Jas 2:1, 9; 1 Pet 1:17; Pol. *Phil.* 6.1; *1 Clem.* 1:3; *Barn.* 4:12; *T.Job* 4:7-8; 43:13. An exception to this rule may be the occurrence of this word in *T. Job*, but this too could be a Christian document. Cf. Ward 1966: 26; Dibelius and Greeven [1921] 1976: 126, f.n. 11. Mayor 1892: 72; Adamson 1989: 104 says the word is, “among the earliest definitely Christian words.” Johnson 1995: 221 calls it a “Christian neologism.” Similarly, Moo 2000: 102 says it is “invented by NT writers.” Lietzmann believes this word was coined by Paul (cf. Dibelius and Greeven [1921] 1976: 126). But Hort (1909: 46) assesses these compound terms as “doubtless words of Palestinian Greek.”

⁵ Rom 2:11, Eph 6:9; Col 3:25; Acts 10:34; 1 Pet 1:17; *Barn.* 4:12; *T.Job* 4:7-8; 43:13. Cf. Betz 1995: 491.

⁶ Pol. *Phil.* 6.1. *1 Clem.* 1:3 can probably also be understood concretely of the impartial legally binding actions of the leaders in Corinth. On these and other texts, see further Chapter five.

5.1.2. James 2:2-4

The position of Ward which argues that 2:2-4 depicts a scene of judicial partiality has already been articulated above and does not need repeating here. We can now adopt Ward's interpretation, providing some additional points to his argument.

In 2:2, two men enter into the "synagogue." One of the main functions of Diaspora synagogues was legal adjudication—a privilege and right established by current practice and formally bestowed upon Jews Empire-wide by Caesar Augustus.¹ As Erich Gruen comments, "adjudication was no small part of Jewish activity in the institutions of the diaspora."² We may also safely assume that this right was certainly in play in Jerusalem since we observe that leaders in Jerusalem often went to Rome requesting such privileges for Jews in places like Asia Minor.³

Although the word "assemble/assembly (συνάγω/συναγωγή)" can refer to many kinds of gatherings, it is not infrequently used in an almost technical sense for a legal assembly. Susanna is a pertinent example, for her story comes out of a Diaspora setting. Susanna depicts a morning in which, after the people had "assembled" (συνήλθεν), two wicked elders try to falsely accuse Susanna of adultery and put her to death (Sus 1:28). This appears to be an assembly in which it is wholly appropriate for one party to bring legal charges against another. The people initially trust the false testimony of the two elders: "And the assembly (ἡ συναγωγή) believed them because they were elders of the people and judges (κριταῖς); so they condemned (κατέκριναν) her to death" (Sus 1:41). But Daniel comes to the rescue in this tale, proving that the testimony of the wicked elders is false: "the whole assembly (ἡ συναγωγή) cried out with a loud voice and they blessed the God who saves those hoping in him. And they rose against the two elders, because Daniel demonstrated to them the false testimony from their own

¹ *Ant.* 14.7.2 § 117; 14.10.17 § 235; 14.10.24 § 260; 16.6.2 § 162-165; 16.6.4-7 § 167-173. Cf. Trebilco 1991: 10-11.

² Gruen 2002: 118.

³ Cf. *Ant.* 14.10.20 § 241-242.

mouths ...” (Sus 1:60-61). This story, from the Eastern Diaspora, is surely meant to emphasize “the need for careful and just legal process[es]”¹ amidst Diaspora synagogues. The endurance of Susanna as a document must in part be due to a milieu in the Diaspora in which legal abuses such as the one Susanna depicts were likely to happen, if not commonplace.

Another remarkable example of συνάγω being used to refer to a legal gathering occurs in Acts 15:6. When Paul and Barnabas go to Jerusalem to see the apostles and elders on the question of which laws Gentile converts should abide by, opposed as they are by law-pushing believers who advocate circumcision and obedience to the (whole) law of Moses, the aforementioned “Jerusalem Council” is held in which, not inconsequentially, James plays a central role. Acts 15:6 says, “The apostles and elders assembled (συνήχθησαν) to see about this matter.” The halakhic decision made by James regarding Gentiles is made in such a legal “assembly.”

Besides establishing that legal renderings could take place in a “synagogue,” it is also important to recognize the nature of the hypothetical voices James depicts. It is often unacknowledged that James uses plural and imperative verbs in 2:3. For James says, “if *you* (plural) might look with favor upon” the rich man, and “if *you* (plural) say” to the rich man “here is a good seat for you” and “if *you* (plural) say” to the poor man. Since these verbs are in the plural, there is more than one person James is addressing in this hypothetical situation. It is unlikely, but not impossible, that a synagogue would have multiple ushers. However, the minimum number of judges needed to rule on certain cases (such as property cases) was indeed three,² and Schürer argues convincingly that the smallest local courts consisted of no less than seven magistrates.³ Furthermore, the imperative verbs “sit (κάθου),” “stand (στῆθι),” and “sit (κάθου) by my footstool” in 2:3 indicate that these voices have authority behind them; an authority more fit for κριταὶ, “judges” (2:4), than for ushers welcoming visitors to worship.

Therefore, following Ward’s thesis, it seems verses 2-4 likely address Jewish-Christian judges in Diaspora assemblies in which legal rulings took place, illustrated by a

¹ Nickelsburg 2005: 23.

² Cf. *m. Sanh.* 1:1-3, 3:1, 8:4; *m. Roš Hoš* 2:9, 3:1. *M. Avot.* 4:8 explains the principle of at least three judges by stating that only God is sufficient to judge by himself.

³ *Ant.* 4.8.14 § 214; cf. *Ant.* 4.8.38 § 287; *J.W.* 2.20.5 § 571. Cf. Schürer 1979: 186-188 and further references there.

common halakhic illustration to teach that, based upon Lev 19:15ff, it was unfair to provide one litigant with a nice seat while the other stood or sat on the floor.

5.1.3. James 2:6

The main focus in verses 6-7 is not upon the poor, but upon the rich. In 2:6-7, three actions characterize the rich: oppressing, dragging others into court, and blaspheming.¹ Only the first two of these will be dealt with below.

The characteristic of the rich that they “oppress” (καταδυναστεύουσιν) those James addresses can be seen to be associated with unjust legal judging, not only because it is used in tandem with the act of dragging others to court but also because “oppress” (καταδυναστεύω) is often used with reference to the judiciary. Hos 5:11 says, “Ephraim the opponent is oppressed (κατεδυνάστευσεν), trampled *in court* (κρίμα) ...” and in Hab 1:4 “the godless oppress (καταδυναστεύει) the righteous” as a result of the law being paralyzed and “*judgement*” (κρίμα) being crooked. Relatedly, 1 Samuel 12:3 places “oppression” (κατεδυνάστευσα) alongside bribery in a passage which clearly alludes to judicial procedures. Likewise, the mighty and powerful rulers (οἱ δυνάσται) who imbibe themselves on wine in Isa 5:22 are the same judges who, “acquit the godless for a bribe and take justice from the righteous” in 5:23. In Mal 3:5 the LORD uses judicial language when he says, “I will draw near to you for *judgement* (κρίσει) and swiftly will I be a *witness* against sorcerers and against adulterers and against those who swear false oaths in my name, and against those who defraud the laborer of his wages and those who *oppress* (καταδυναστεύοντες) the widow and mistreat orphans and turn aside justice (κρίσιν) to the foreigner and do not fear me.” The verbal form καταδυναστεύω found in Jas 2:6 amidst his argument concerning just judges, therefore, expresses the act of judicial oppression enacted by the powerful upon the helpless poor.

Even more poignantly, many passages which speak of such judicial “oppression” probably derive from, or in some way allude to, Lev 19:15. As Sophie Laws points out with regard to Jas 2:6, the wealthy/powerful person in Lev 19:15 is a δυνάστου, a

¹ Cf. Dibelius and Greeven 1976: 138-139.

powerful “ruler” to whom partiality might potentially be shown in court.¹ Ezekiel 18:7-8, for instance, alludes to Lev 19:15 when it says the righteous person, “does not oppress (καταδυναστεύσῃ) anyone ... and makes just judgement (κρίμα δίκαιον) between a man and his neighbor (τοῦ πλησίον)” (cf. 18:12, 16). Zechariah 7:9-10 says, “do not oppress (καταδυναστεύετε) the widow, the orphan, the foreigner, or the poor ...,” and to redress this problem Zech 8:16-17a goes on to counsel, “speak the truth each one to his neighbour (τὸν πλησίον αὐτοῦ/יְהִי עֲמָךְ אֱמֶת) and render true and peaceful judgement (יִשְׁפֹּט בְּיֵשׁוּעַ וּבְשָׁלוֹם/κρίμα εἰρηνικὸν κρίνατε) at your gates”—a command which is surely judicial in nature as mention of the city “gates” indicates, and which clearly has Lev 19:15ff in view when it speaks of “judgement” and one’s “neighbor.” Ben Sira twice alludes to Lev 19:15 in this way when he says, “do not ... show partiality (λάβῃς πρόσωπον) towards the powerful (δυνάστου)” (4:27) and “do not seek to become a judge, lest you are unable to drive out injustice, lest you show partiality to (εὐλαβηθῇς ἀπὸ προσώπου) the powerful (δυνάστου) and place a stumbling block in your path to justice” (7:6). It is from such powerful people that oppression was apt to come and James depicts “the rich” as the wealthy powerful who use the judiciary to oppress others in court, thus violating Lev 19:15ff.

Since such oppression alludes to Lev 19:15, it is interesting to remember here the point made in Chapter three that postbiblical writers often connect Lev 19:15ff to the commandment for just weights, scales, and measures in Lev 19:35-36. Scriptures which allude to both Lev 19:15 and 19:35-36 and which speak of “oppression” are as follows: Hos 12:7 (LXX 12:8) says, “the merchant in whose hands are unjust scales (ζυγὸς ἀδικίας) loves to oppress (καταδυναστεύειν).” Amos 8:4-5 speaks of those who, “oppress (καταδυναστεύοντες) the poor of the land” and who “make small the measure (μέτρον) and enlarge the weights (στάθμια) and make unjust scales (ζυγὸν ἄδικον).” Ezekiel 45:9-10 pits oppression (καταδυναστείαν) opposite to just scales and just measures (ζυγὸς δίκαιος καὶ μέτρον δίκαιον). Since we have seen how Lev 19:15-18 to 19:35-36 was connected in the thought of so many biblical and postbiblical writers, including not insignificantly

¹ Laws 1980: 104-105. Sirach alludes to this feature of Lev 19:15 in Sir 4:27, 7:6.

Jesus in Matt 7:1-5, it is likely that James recognized this connection as well, a point which shall be developed below in our discussion of 2:12-13.

Since Lev 19:15 depicts “the powerful” (δυνάστου) as a potential oppressor in court, and James plays upon the laws for just judging from Lev 19:15-18 throughout Jas 2:1-13, it is understandable that James would characterize “the rich” who are dragging them into court as those who “oppress” (καταδυναστεύουσιν) them. In James’ context, this implies taking advantage of other sin court, perhaps by impressing the judge with the power and wealth displayed by their clothes (2:2) or by bribery.

The second characteristic of “the rich” is that they are “dragging” (ἐλκουσιν) James’ readers into court (κριτήρια). That this expression is clearly judicial in nature is not disputed by commentators.¹ In fact, the word ἐλκω (“to drag”) used here in Jas 2:6 is the same word used to warn the judge not to “drag out (ἐλκεῖν) judgment” for a bribe in Ps.-Phoc. 9—a line which, together with line 10, is based upon Lev 19:15ff.² Here—if our thesis can be accepted thus far—James chides his readers for practicing the same judicial injustices which Matthew’s Jesus had criticized the scribes and Pharisees for. James’ readers should know better, for they have experienced firsthand this litigious oppression at the hands of “the rich.”

5.1.4. James 2:8-11

In our exegetical treatment of Jas 2 so far, we have attempted to demonstrate that James writes with a judicial scenario in mind and that he assumes the laws for just judging from Lev 19 are normative for such judicial settings within the synagogues to which he writes. In verses 8-11, the judicial features of his argument based upon Lev 19 become more explicit as James quotes Lev 19:18b in 2:8. James continues the theme of favoritism derived from Lev 19:15, which he introduced in 2:1, by referring to it again in 2:9 (thus linking 2:1-7 to 2:8-11).³

¹ Cf. Davids 1982: 113; Martin 1988: 66; Johnson 1995: 226.

² Cf. Acts 16:19. For examples of this word in classical Greco-Roman sources used of prolonging justice, cf. Wilson 2005: 90, f.n. 23 and references there.

³ Mitton 1966: 89; Dibelius and Greeven 1976: 124 says Jas 2:1-13 “displays a certain consistency”; Motyer 1985: 80; Johnson 1995: 219; 1998:192.

In 2:8 James quotes Lev 19:18b and declares that if his readers keep the commandment to “love your neighbor as yourself,” this is good. However, James argues in 2:9—in another allusion to Lev 19:15 on par with that of 2:1—that if they show favoritism they “sin and are convicted by the law as transgressors.” A number of points can be made here. First, few note that the word “convicted” or “rebuked” (ἐλεγχόμενοι) in 2:9 is the same verb as in the LXX of Lev 19:17 (ἐλέγξεις). The act of “rebuking” others was a crucial part of judicial procedure as evidenced at Qumran, and Chapter three highlighted how Lev 19:17 often features as a main focus in exegetical discussions of the laws for just judging in Lev 19.¹ Second, the quotations in 2:8-9 of Lev 19:15 and 19:18, along with the allusion to 19:17 indicate that James, like his contemporary Jewish exegetes, probably understood Lev 19:15-18 as a unit to be understood together. Loving one’s neighbor from Lev 19:18b is set in direct opposition to showing favoritism from Lev 19:15, indicating that James understands these laws to exist in direct relation to one another, rather than in isolation. Third, those he addresses in 2:8-9 are, again, legal judges. If James speaks of a judicial scene in 2:2-4 (a halakhic debate, it should be remembered, based upon the laws for just judging in Lev 19 over whether litigants should be allowed to stand or sit), and if in 2:1-9 he midrashes upon the laws for just judging from Lev 19 (which contemporary exegetes understood to be about laws which governed judges and their legal pronouncements), and if James calls those he addresses in 2:1-4 both “brothers” (2:1) and “judges” (2:4) and again directs his teaching in 2:5ff to his “brothers,” then it is reasonable to assume that James continues to address these same legal judges in 2:8ff.

Verses 9-11 continue James’ argument: loving one’s neighbor fulfills Lev 19:18b, but showing favoritism violates Lev 19:15 (2:9). James’ argument in 2:10 that to break one law is to break the whole law has been compared to certain statements by Jesus (Matt 5:18), Paul (Gal. 3:10 citing Deut 27:26) and later rabbis with the understanding that to break one law is to break *the entire Torah*.² However, this may not be what James means; his argument here may be more nuanced than that. If James viewed Lev 19:15-18 as a

¹ CD-A VII, 2-3; IX, 2-8; IX, 2-8 [cf. 5Q12 1, 1-5]. The word “rebuke” (יכח), used within the context of the laws of reproof, should be understood as a legal, technical term and according to Schiffman (1983: 90), “provides the key to the understanding of numerous passages in Qumran literature.”

² Cf. Hort 1909: 55; Schechter 1909: 226-227.

coherent unit just as, it has been argued, his contemporaries did, then a violation of Lev 19:15 would also necessarily be a violation of Lev 19:18b which is part and parcel of the laws against just judging which begin in Lev 19:15 and are summarized by 19:18b.¹

Therefore, when James says in 2:10, “whoever keeps *the whole law* and yet stumbles *at just one point* is guilty of breaking all of it,” he may not have in mind the entire Torah but the “entire law” concerning just judging from Lev 19:15-18, including the summary of these verses to love one’s neighbor as oneself in 19:18b so that to violate Lev 19:15 is to violate 19:18b.

5.1.5. James 2:12-13

Thus far the current chapter has highlighted how Matt 7:1-5 finds a parallel in Jas 2:1-13 and how both are midrashic, halakhic statements upon the laws for just judging in Lev 19. It has also been demonstrated that the laws for just judging in Lev 19:15-18 are often related by biblical and postbiblical writers to the laws for the just judgement of scales, weights, and measures in Lev 19:35-36 (see Chapter three). Furthermore, Jesus’ mention of “judging” in Matt 7:1-2a and “measuring” in Matt 7:2b can be seen to refer to the act of a legal judge in “judging” and “measuring” in Lev 19:15 and 19:35 respectively, thus demonstrating how Jesus makes this connection between these two sections of levitical law similarly to the way contemporary exegetes of these laws did (Chapter three). It was also noted in Chapter three that measure-for-measure sayings quite often occur in the context of legal texts which discuss a crime and a suitable punishment, and that Jesus’ use of such a saying in Matt 7:2b indicates an eschatological reciprocity for the legal judges Jesus addresses, a judgement which will be doled out on the basis the two “measures” of a scale—two measures by which God will judge the world. In the following discussion of 2:12-13, all of the above mentioned elements need to be borne in mind.²

¹ Cf. Dibelius and Greeven 1976: 142.

² In my view, 2:12-13 should be read together, against the view of Dibelius who states, “there is no material connection between v 13 and what precedes,” arguing that this verse is attached to verse 12 by means of the catchword “judge” (Dibelius and Greeven 1976: 125). Merely because James uses a proverb in 2:13 does not mean it should be understood apart from the context in which James places it. Proverbs, in fact, cannot be understood apart from the context in which they are used.

5.1.5.1. James 4:11-12

As noted toward the beginning of this chapter, while many have understood Jas 4:11-12 as a parallel to Matt 7:1-2a/Luke 6:37 it is odd that there has been a failure to see Jas 2:1-13 as a parallel to Matt 7:1ff in light of the fact that some have pointed out a plausible parallel in James itself between 2:1ff and 4:11-12.¹ This latter parallel is significant since mention of “brothers,” “judge/judgement” and “neighbor” in 4:11-12 are clear references to Lev 19:15-18, with mention of “slander” in 4:11 probably specifically echoing Lev 19:16.² It is natural, therefore, to see 4:11-12 as paralleling Jas 2:1-13, since both have Lev 19:15-18 in view, as does Matt 7:1-5.³ Reading Jas 2:1-13 and 4:11-12, which are obviously related, in light of one another helps us interpret them. Jas 4:11-12 is particularly helpful in understanding 2:12-13.

The same law which “convicted” (λεγχόμενοι) lawbreakers in 2:9—a notion based upon Lev 19:17—is the same law by which these judges “are going to be judged” (κρίνεσθαι) in 2:12. In these passages, while the law may be the standard by which people are judged, the law (being inanimate) does not actually do the judging. The “law” in these passages is a metonym for God, who is in 4:12 “the one *lawgiver* and *judge*.”

In 2:13, therefore, the two measures by which God will judge the world are described—“unmerciful judgement” (sometimes referred to as “justice”) and “merciful judgement” (sometimes simply called “mercy”).⁴ Similarly in 4:12, God is “the one

¹ Davids 1982: 104; 1984: 170; Martin 1988: 164; Crotty 1992: 51-54; Johnson 1995: 293.

² Cf. Martin 1988: 163-164; Johnson 1995: 293. Although the LXX of Lev 19:16 has οὐ πορεύση δόλω and Jas 4:11 reads μὴ καταλαλεῖτε, based upon the other allusions to Lev 19:15-18 in Jas 4:11-12, this parallel seems justified.

³ This is in contrast to Deppe 1989: 118-119 who sees no parallels in the Sermon with Jas 4:11-12, and specifically not with Matt 7:1-2a/Luke 6:37 (228).

⁴ The genitive κρίσεως should not be taken as a direct object to the verb as the NRSV and NIV have it (“mercy triumphs over judgement”), but rather should be seen as an objective genitive modifying ἔλεος. In my view, ἔλεος κρίσεως should be translated as “mercy in judgement” or “merciful judgement.” This leaves κατακαυχᾶται as intransitive, rendering the latter phrase, “merciful judgement triumphs.” This reading creates a balanced opposite to God’s “unmerciful judgement” in the first half of the verse. In fact, the entire verse can be understood as a perfectly balanced chiasm:

- A. ἡ κρίσις
 - 1. ἀνέλεος
 - a) [κατακαυχᾶται] τῷ μὴ ποιήσαντι ἔλεος

lawgiver and judge who is able *to save* and *to destroy*”—actions which likewise indicate the two measures in God’s balancing scale.¹ Therefore, we should understand this statement of reciprocity in 2:13 thus: while unmerciful human judgement gains one unmerciful judgement from God, merciful human judgement gains one merciful judgement from God. In other words, whichever of these two “measures” human judges use in “measuring” (or “judging”) others will be applied to them at the eschaton. Therefore, 2:12-13 describes God’s judgement of the legal judges who have been addressed throughout 2:1-13. In this way, James in 2:12-13 echoes Jesus in Matt 7:1-2, both of whom warn of a measure-for-measure eschatological judgement for wicked judges. Furthermore, 2:13 is also a measure-for-measure saying the way Matt 7:2b is, both of which communicate that the punishment fits the crime.²

James has thus far twice alluded to Lev 19:15 (2:1, 9), once alluded to Lev 19:17 (2:9), and quoted Lev 19:18b (2:8). It has only been suggested in our discussion of 2:6 that James *may* have associated Lev 19:15-18 with Lev 19:35-36. In 2:12-13, however, this association seems to become more explicit as James, much like Jesus in Matt 7:2b, speaks of God’s measures of justice and mercy in his judgement of legal judges. Furthermore, James’ discussion of God’s “measures” in 2:13 (and 4:12) raises the possibility that James in 2:13 may be midrashing upon the laws of just weights and measures from Lev 19:35-36, thus connecting his comments in 2:1-9 on Lev 19:15-18 to his comments in 2:13 on Lev 19:35-36 in a similar manner to many other contemporary exegetes of these laws did (see Chapter three).

5.1.5.2. James 5:1-6 and the Cain and Abel Traditions

Yet there is one more argument which may point to James’ interactions with Lev 19:35-36 in 2:1-13. Much like 4:11-12 touched on above, Jas 5:1-6 is meant to “fill out

b) κατακαυχᾶται [τῷ ποιῆσαι τι ἔλεος]

2. ἔλεος

B. κρίσεως

¹ Cf. Deppe 1989: 97-98.

² So Dibelius and Greeven 1976: 148; Mitton 1966: 97-98.

statements made earlier” in 2:1-13.¹ “The rich” who are in 2:6 criticized by James for their judicial oppression in dragging others into court, are in 5:1 warned of the impending misery coming upon them for their oppression of others and their unjust acquisition of wealth. Furthermore, just as “the rich” “have murdered the righteous” in 5:6, so the judges James identifies as siding with the rich in 2:2-7 are guilty of murder in 2:11 (cf. 4:2).

John Byron (2006) has recently argued that behind Jas 5:1-6 stands the tradition of Cain and Abel from Gen 4:1-16. As noted in Chapter three, the skeleton story of Cain and Abel was filled out by later writers who always cast Abel as righteous and Cain as a wicked oppressor. Byron reasonably argues that James echoes this tradition in his discussion of the oppressive rich. In 5:4 they have failed to pay their laborers resulting in the harvesters of the field crying out for justice to the LORD in the same manner Abel’s blood cries out from the ground to the LORD for justice, and in 5:6 they kill the righteous in the same way Abel the righteous was killed.² In fact, just as Allison has argued that Jesus’ teaching about anger leading to murder in Matt 5:21-26 has the Cain and Abel traditions in view (Chapter three), so also the references to anger in Jas 1:19-20 and to murder in 2:11, 4:2 and 5:6 should probably likewise be understood in this light. The statement in 1:20 that “man’s *anger* does not bring about God’s *righteousness*,” the comment about quarrelling and murder in 4:2, as well as the accusation in 5:6 that “you have *murdered* the *righteous*,” can all be understood to reference the story of Cain’s anger and his murder of Abel after their quarrel.

However, it was stressed in Chapter three that the Cain and Abel traditions depict Cain’s oppressive acts specifically as murdering his brother and cheating people with false weights and measures—crimes which allude precisely to the laws of just judging from Lev 19:15-18 and of the just judging of measures from 19:35-36, and therefore demonstrate how Cain ignores these laws. Moreover, the traditions about Cain and Abel explain that the plural “bloods” is used to describe that which cries out from the ground in Gen 4:10 because Cain’s killing of Abel encompasses not only Abel’s life but all of his

¹ Byron 2006: 261.

² Cf. Byron 2006: 272-273.

descendants as well, especially the righteous ones.¹ Therefore, it could be said that “the rich” in James are, conversely, identified with the murderous and rapacious descendants of Cain. Therefore, since the oppression by “the rich” in Jas 5:1-6 alludes to the Cain and Abel traditions in its filling out of 2:1-13, it is entirely probable that “the rich” in 2:6 can likewise be identified with the wicked descendants of Cain who, following the traditions about him, oppress others by ignoring the legislation of just legal judging from Lev 19:15-18 and Lev 19:35-36, thus engaging in murder and robbery.

Therefore, since James identifies the legal judges he addresses throughout 2:1-13 with “the rich” who in Cain-like behavior oppress others by dragging them into court in 2:6 and who murder the righteous in 5:6, James may well be warning these Jewish Christian judges that they are in danger of following in the footsteps of Cain. James 2:1-13, therefore, not only has the laws for just judging from Lev 19 in view, but also the traditions about Cain and Abel which identify Cain as one who ignores God’s laws for judicial fairness from Lev 19 and thus engages in murder and the unjust acquisition of wealth.

Therefore, we can conclude this section with a number of observations: 1) Jas 5:1-6 echoes the Cain and Abel traditions which connect Lev 19:15 and 19:35-36; 2) Jas 5:1-6 “fills out” the statements made in 2:1-13; 3) James midrashes upon Lev 19:15-18 in 2:1-9 and speaks of God’s two “measures” in 2:13 and 4:12 thus quite possibly echoing Lev 19:35-36; 4) therefore, James likely knew of the connection between Lev 19:15-18 and 19:35-36 if he didn’t in fact make it himself in 2:1-13; 5) and therefore the Cain and Abel traditions are likewise in view in 2:1-13.

6. Conclusion

Clearly, Matt 7:1-5 and Jas 2:1-13—as well as their rabbinic counterparts—can be located within the exegetical and halakhic tradition surrounding Lev 19:15-18, 35-36 which, as argued in Chapter three, understand this legislation from Leviticus to concern legal judging. Both Matt 7:1-5 and Jas 2:1-13 employ stylized examples found in rabbinic

¹ *M. Sanh.* 4:5; *Tg. Onq.* on Gen 4:1; *Gen. Rab.* on Gen 4:10. Cf. Kugel 1990: 179-181; Ruzer 2001: 263-264.

literature (the log/speck imagery in Matt 7:3-5 and the standing/sitting debate in Jas 2:2-4) amidst passages discussing legal judging—examples which were part and parcel of Jewish halakhic discussions of Lev 19:15-18, 35-36 (or particular verses therein). Therefore, Matt 7:1-5 is not to be understood merely as Jesus' exhortation to nonjudgmentalism and Jas 2:1-13 merely as James' insistence on social impartiality. Rather, Jesus exhorts Israel's judges against unjust legal judging according to the Torah's prescription in Lev 19:15-18, 35-36 for just and fair legal trials for all people, rich and poor alike, while James as a sage and Torah expert in his own right applies this Torah-teaching of Jesus to Jewish-Christian synagogues, exhorting synagogue leaders—as those who “hold the faith of our Lord Jesus Christ”—not to fall into this same trap.

Chapter Six

The “Do not Judge” Tradition through the Eyes of Early Christian Writers

And do you ... dare to give sentence upon one who is not guilty? We counsel you therefore that you make inquiry with diligence and much caution. For the word of sentence which you decree ascends straightway to God; and if you have justly judged, you shall receive of God the reward of justice, both now and hereafter; but if you have judged unjustly, again you shall receive of God a recompense accordingly.¹

—*Didascalia Apostolorum* XI

1. Introduction

The argument of this thesis, for all intents and purposes, has been made. The consensus view of understanding Matt 7:1-5 as an injunction toward tolerance and nonjudgementalism is, for a number of reasons, untenable. Matthew 7:1-5, it has been argued, is instead Jesus’ midrashic, halakhic statement upon the laws for just judging from Lev 19:15-18, 35-36, as is Jas 2:1-13 which parallels Matt 7:1-5, and the teaching of both Jesus and James in these passages fit with near precision into the contemporary midrashic, halakhic discussions of Lev 19:15-18, 35-36.

If it is indeed the case that Matt 7:1-5 should be understood in this way, we would expect to find some evidence of such a reading among other early Christian writings. And while it might be fruitful to examine how, for instance, Luke develops and illustrates *Jesus’* teaching on unjust legal judging throughout his gospel in passages such as the parable of the widow and the unjust judge (18:1-8), or how Paul in 1 Cor 6:1-8 applies to the situation in Corinth the principle of just legal judging which may in some way be related back to Jesus’ teaching on the subject, neither of these approaches necessarily provides much insight into how the teaching contained in *Matt 7:1-5* was understood.

However, some early Christian writings beyond the canon which actually quote or strongly allude to Matt 7:1-5 (and/or Luke 6:37-42) provide some clues as to how Jesus’ “do not judge” teaching was received early on. The purpose of this final chapter, then, is to demonstrate that some of the effective history of Matt 7:1-5 has left a hermeneutical

¹ Translation by Connolly 1929: 115.

footprint among early interpreters which bears traces of the interpretation outlined in this thesis. This chapter should demonstrate that some of the earliest interpreters of Matt 7:1-5 understood it to be about the judiciary and that some even recognized that the laws of just judging from Lev 19 were related to Matt 7:1-5. Of course, each text cannot be dealt with in-depth within such a limited space, and each text undoubtedly interprets Matt 7:1-5 (or verses therein) with slight variations and emphases depending upon the purpose to which it is employed. However, it is hoped that enough discussion of each text will be provided to demonstrate not only that Matt 7:1-5 was understood to be about legal judging, but that reading Matt 7:1-5 in this way makes better sense of the early texts which quote or allude to it.

2. Polycarp's Letter to the Philippians

In his letter to the Philippians (c. 110), Polycarp (c. 65-155) the Bishop of Smyrna shows evidence of his knowledge not only of Matthew and Luke, but also of *1 Clement*.¹ Only chapters two and six of his letter concern us, as 2:3 quotes Matt 7:1-2 and 6:1 speaks of the responsibility of presbyters to judge cases properly and fairly in the church.

Having recently hosted Ignatius on the way to his death and martyrdom before receiving this letter from Polycarp (cf. 1:1; 9:1), the Philippians are in need of reassurance.² In 2:2, therefore, Polycarp reassures the Philippians that God will raise them from the dead too, provided they, “do his will and follow his commandments and love the things he loved”—in short, provided they put into practice the thematic “righteousness” described throughout Polycarp’s letter (2:3; 3:1, 4; 4:1; 5:2; 8:1; 9:1-2).³ But such righteousness also includes avoiding unrighteousness, which Polycarp explains in 2:2 as, “greed, love of money, slander, false testimony, ‘not repaying evil for evil or insult for insult’ or blow for blow or curse for curse.” Such behaviour could easily be related to the abuse of the judicial system within the church. “Slander” (καταλαλιᾶς) here in 2:2 could refer to the prohibition against slander in Lev 19:16. For, although the LXX of Lev 19:16 does not contain this Greek word for slander, other texts which make use of

¹ On Polycarp’s use of *1 Clement* in his epistle to the Philippians generally, cf. Bakke 2001: 10.

² Cf. Bakke 2001: 10.

³ Cf. Berding 2002: 26; Hartog 2002: 86-87, 138-139.

Lev 19 to speak of legal judging *do* use this word, such as Jas 4:11 which was discussed in Chapter five. “False testimony” (ψευδομαρτυρία) echoes the commandment from Exod 20:16—out of which grew the laws for just judging in Lev 19:15-18, 35-36 (see Chapter three). If slander and false testimony are violations of the courts, it is easy to see how “greed” and “the love of money” mentioned just prior to “slander” and “false testimony” could also be related to the abuse of the judicial system, since greed and the love of money would be real temptations among legal judges who had the authority to decide over matters involving money. The exhortations not to repay evil for evil, blow for blow, etc. are general maxims against revenge. Since Lev 19:18a specifically prohibits revenge and many of the texts which make use of the laws for just legal judging note how such legislation mitigates against the using of the judicial system for revenge (see CD-A IX, 2-8; Kugel 1994: 235), it is possible to see here too an exhortation against using the courts for revenge.

Instead of these, Polycarp counsels his readers are to

remember that which the Lord said, teaching, “Do not judge, in order that you might not be judged; forgive and you will be forgiven; be merciful in order that you might be shown mercy; with the measure you measure, it will be measured back to you;” and that, “blessed are the poor and those persecuted on account of righteousness, because theirs is the kingdom of God.” (2:3)

Since Polycarp is very familiar with *1 Clement* (which will be discussed below), it is likely that his citation of Jesus’ “do not judge” teaching here is influenced by (although probably not directly dependent upon) Clement’s quotation of it in *1 Clem.* 13:2.¹ The quotation is a loose admixture of Matthew and Luke’s versions. “Do not judge, in order

¹ Cf. Hagner 1973: 141-142; Massaux 1990b: 29-30; Berding 2002: 54-56. Berding writes, “It is highly probable that Polycarp is aware of Clement’s list when he makes his own” (55), and “It seems more likely that Polycarp is aware of *1 Clement* and perhaps encouraged by Clement to include such a list in his own letter but corrects the *form* of the text toward the written gospels” (56). Berding (2002: 56 f.n. 77) also quotes Perrin to this effect, “But Polycarp ... substitutes again and again for Clement’s loose wording the exact terms now of Matthew, now of Luke, and now a combination of the two, adding at the same time matter contained in them for which Clement offers no equivalent, and omitting matter contained in Clement for which neither Gospel has any equivalent.”

that you might not be judged” is slightly closer to Matthew 7:1 than Luke 6:37 and is closer to the gospel texts than to the quotation in *1 Clem.* 13:2.¹ But Polycarp’s ἀφίετε καὶ ἀφεθήσεται ὑμῖν is probably a synonymous rendering of Luke’s ἀπολύετε, καὶ ἀπολυθήσεσθε (6:37), neither of which is in Matthew.² “Be merciful in order that you might be shown mercy” is probably a loose quotation of the beatitude in Matt 5:7.³ And both Luke’s Jesus (6:36), Matthew’s Jesus (18:33), as well as James (2:13) call for merciful legal judgement. “With the measure you measure, it will be measured back to you” is closer to Luke’s version.⁴ Whereas Matt 7:2 uses μετρηθήσεται, both Pol. *Phil.* 2.3 and Luke 6:38 have ἀντιμετρηθήσεται.⁵ “Blessed are the poor and those persecuted on account of righteousness, because theirs is the kingdom of God” is a mixture of two other beatitudes. The shorter “blessed are the poor” matches Luke 6:20 rather than Matt 5:3, although the Latin text adds *spiritu*, and Matthew’s “in spirit” was undoubtedly known even if dropped. The second half, “[blessed are] those persecuted on account of righteousness, because theirs is the kingdom of God” occurs only in Matt 5:10, although Matthew reads “kingdom of heaven” rather than Polycarp’s “kingdom of God.”⁶

Whether Polycarp quotes from Matthew, Luke, or from memory is less significant than the context in which he quotes it. For, as noted above, mention of “greed” and “love of money” and especially of “slander” and “false testimony” along with his exhortation against revenge, directly before the quotation of Matt 7:1-2/Luke 6:37-38, indicate that Polycarp relates Jesus’ “do not judge” teaching to the judicial system. If indeed Matt 7:1-5 is Jesus’ midrash upon Lev 19:15-18, 35-36, and Polycarp’s denouncement of “slander” refers to Lev 19:16 and “false testimony” relates to Exod 20:16 (upon which Lev 19:15-18, 35-36 is based), and Polycarp’s exhortation against revenge can be seen to relate to Lev 19:18a, then his juxtaposition of these unrighteous behaviors related to the judicial system over against Jesus’ teaching against the abuse of legal judging is understandable.

¹ Berding 2002: 56. Cf. Hagner 1973: 141.

² As in *1 Clem.* 13:2, the wording could also be influenced by Matt 6:14; cf. Berding 2002: 56.

³ So Berding 2002: 57.

⁴ Berding 2002: 57 sees here a correction of *1 Clem.* 13:2 to conform closer to Luke 6:38, although Hagner 1973: 142 f.n. 3 doubts such corrections happen in Polycarp.

⁵ So Hagner 1973: 141; Berding 2002: 57.

⁶ Cf. Hagner 1973: 141; Berding 2002: 58-59.

If Pol. *Phil.* 2:2 describes unrighteous judicial behaviour, 2:3 recounts Jesus' prophetic warning against unjust judicial behaviour.

Chapter six of Polycarp's epistle would seem to confirm Polycarp's use of Jesus' "do not judge" teaching in 2:3 as Jesus' teaching about the judiciary. Verses 2:3 and 6:1 are in fact related by virtue of the fact that they both discuss "judging." In 6:1 Polycarp counsels that presbyters should act righteously in their capacity as overseers and legal judges. He writes,

And presbyters should be compassionate, being merciful to all, turning back those who have gone astray, looking after all the sick, not neglecting the widow, the orphan, or the poor, but "always considering what is good before God and men," avoiding all anger, partiality, unjust judgement, staying far away from all love of money, not quick to believe [accusations] against someone, not severe in judgement, knowing that we are all in debt on account of our sins.

If Polycarp contrasts the unrighteous judicial aberrations of greed, the love of money, slander, false testimony and revenge in 2:2 with Jesus' "do not judge" teaching in 2:3, here in 6:1 he contrasts the love of money, being quick to believe accusations against someone, and being severe in judgement with being merciful, turning back those who have strayed, not neglecting the widow, orphan, or the poor, the avoidance of anger, partiality, and unjust judgement. That the latter attributes of 6:1—especially "the avoidance of anger, partiality, and unjust judgement"—are to be read as being connected to *legal* judgement can be deduced from a number of factors.

Polycarp's admonition of being "not quick to believe [accusations] against someone" is likely a reference to 1 Tim 5:19 in which Paul—using the law of two or three witnesses—counsel Timothy not to be quick to entertain a legal accusation against elders.¹ Such a quotation indicates that Polycarp likely has similar legal accusations in mind as he alludes to Paul's words. But Polycarp's

¹ Berding 2002:83. For the use of the law of two or three witnesses in 1 Tim 5:19-25, cf. Fuller 1983: 262.

admonition to avoid anger, partiality, and unjust judgement provide perhaps the most important indications that Polycarp is speaking here of judicial activity. Each of these three attributes shall be briefly reviewed in reverse order.

Before his allusion to 1 Tim 5:19 regarding bringing legal charges against elders, Polycarp writes that presbyters should “avoid all anger, partiality, [and] unjust judgement.” The last attribute of “unjust judgement” (κρίσεως ἀδίκου) recalls the LXX of Lev 19:15, οὐ ποιήσετε ἄδικον ἐν κρίσει. Leviticus 19:15 is plainly understood to prohibit unjust *legal judgement* and—unlike Lev 19:17—is rarely if ever understood by later interpreters as a purely moral injunction. Furthermore, since Lev 19:15 is referred to just before an allusion to 1 Tim 5:19 regarding the bringing of legal charges against elders, it is very likely that Polycarp’s reference to Lev 19:15 by the phrase “unjust judgement” should be understood to refer to judicial activity.

The second attribute in 6:1 is “partiality” (προσωποληψίας) which, like “unjust judgement,” also alludes to Lev 19:15 in its prohibition against showing partiality in *legal judging*. The compounded form as we have it here in Pol. *Phil.* 6:1 is also found in Jas 2:1 in his midrash upon Lev 19:15 which he employs in his own argument against unjust legal judging inspired by Jesus’ “do not judge” teaching (see further Chapter five). The combination of “unjust judgement” and “partiality” juxtaposed with one another—both in allusion to Lev 19:15—strengthen the probability that Polycarp has legal judging in view.

The first attribute in 6:1 is that presbyters should “avoid all anger.” We observed in Chapters two, three, and four how “anger” (ὀργῆς) can refer to the traditions about Cain and Abel in which Cain ignores the laws for just judging from Lev 19 and, due to his anger, murders his brother Cain. Jesus in Matt 5:21-26 relates that such Cain-like anger leads to murder and therefore to being judged by the Sanhedrin and by God, and in Matt 18:21-22 Jesus and Peter discuss brotherly rebuke and forgiveness based upon the laws for just judging from Lev 19 and the Cain and Abel narrative just after the rules regarding brotherly rebuke within the church in 18:15-17 (see Chapter four). James likewise engages in heavy interaction with both the laws for just judging from Lev 19 as well as the

Cain and Abel narratives in his discussion of unjust legal judging, partiality, and anger within the synagogues/churches over which he has charge. If Polycarp's list of exhortations are strung together randomly, then an exhortation to avoid anger would be just that—an order to avoid anger. But considering the exhortations with which it is juxtaposed and therefore associated with, this may no mere moral injunction. For, if the exhortations against “unjust judging” and “partiality” are indeed based upon Lev 19:15 and are to be understood as exhortations against favoritism and unfairness within their judicial dealings as is being argued for, then the exhortation against anger can be seen to be intimately related to these and likewise should be understood to be related to judicial activity. Therefore, considering the Cain and Abel traditions in which Cain in anger violates the laws for just judging from Lev 19, and Matthew's interaction with such traditions and Polycarp's familiarity with Matthew, it is plausible that Polycarp either has a similar tradition in view or at least received such tradition from Matthew (and/or James!) in which anger is related to the laws for just legal judging from Lev 19.

If, therefore, “avoiding all anger, partiality, [and] unjust judgement” in 6:1 refers to legal judging by its allusion to Lev 19:15 and the Cain and Abel traditions, then it is reasonable to understand Polycarp's quotation of Matt 7:1-2 in 2:3 along similar lines. In 2:3, therefore, Polycarp quotes Matt 7:1-2 in a discussion about avoiding improper judicial procedures and in 6:1 picks up on the topic again with a reference to Lev 19:15. In this way, Polycarp understands Jesus' teaching in Matt 7:1-2 to be about the avoidance of unjust legal judging and recognizes its connectedness to Lev 19:15.

A number of other features in *Polycarp's letter to the Philippians* strengthen this reading. That love of money is contrasted with avoiding unjust legal judging in 6:1 is significant, for in 2:2 the love of money is contrasted with Jesus' teaching against unjust judging in 2:3. The love of money, therefore, may have been considered one temptation among those judging legal cases. That presbyters, acting in the capacity of legal judges, should look after the widow, the orphan, and the poor coheres with the vulnerability in court of this triad in the ancient world generally (cf. Exod 23:6).

Finally, presbyters are to act in a manner consistent with the teaching upon reproof and legal judgement in Matt 18. They are, according to Polycarp, to “be compassionate, being merciful to all, turning back those who have gone astray” and are to be “not severe in judgement, knowing that we are all in debt on account of our sins.” The emphasis upon turning back those who have strayed is found in both Matt 18:10-14, just before the section upon brotherly reproof in 18:15-20, as well as in Jas 5:19-20 which sums up the letter. Moreover, just as the metaphor used to describe a straying disciple in Matt 18:10-14 is that of sheep, so Polycarp likely uses the same metaphor in his admonition for his readers to be “turning back those who have gone astray.” Kenneth Berding comments, “The neuter object in Pol. *Phil.* 5.1 [*sic*: read, “6.1”] seems to imply that the metaphor in Polycarp’s mind is that of sheep.”¹ Moreover, the emphasis upon presbyters being “compassionate,” “merciful,” and “not severe in judgement” is consistent with the way Matthew presents Jesus’ teaching upon reproof, which has as its goal reconciliation and restoration rather than punishment and ostracism, and which is illustrated by the parable of the merciful king and the unmerciful servant in Matt 18:21-35 (see Chapter four). The phrase, “knowing that we are all in debt on account of our sins” in Pol. *Phil.* 6:1 is in fact reminiscent of the parable of the unmerciful servant in Matthew, and the following verse in Pol. *Phil.* 6:2 similarly stresses that if these presbyters expect God’s forgiveness they must likewise exercise forgiveness, knowing that they will be judged by Christ (cf. Matt 6:14-15).² The emphasis throughout Polycarp’s letter that presbyters avoid avarice and do justice in judging legal cases as well as use their positions as presbyters to restore straying brothers may shed light upon the issue of Valens who, although once a presbyter, failed in his office as a presbyter due to greed (11:1-4).³

Polycarp’s letter to the Philippians provides an early important reading of Matt 7:1-2. For he cites Jesus’ “do not judge” teaching in an attempt to encourage

¹ Berding 2002: 81 citing Lightfoot in support. Berding is also probably correct in his assessment that references to the “turning back” of “sheep” which have gone astray are likely ultimately references to Ezek 34, especially verse 4. For the parable of the sheep and the goats in Matt 25:31-46 also comes from Ezek 34.

² Berding 2002: 83-84.

³ Cf. Hartog 2002: 86-87, 138-139.

his readers to avoid the abuse of legal judging, and he also relates this to the Torah's teaching upon avoiding unjust legal judging in Lev 19:15. Polycarp's interpretation of Matt 7:1-2 is, as we have seen in previous chapters, consistent with how this thesis has argued Matt 7:1ff is to be understood: a midrashic, halakhic statement about the avoidance of unjust legal judging based upon Lev 19:15-18, 35-36. Polycarp is likely familiar with the tradition regarding how Cain-like anger can lead to unnecessary judicial infringements in violation of the laws for just judging from Lev 19 and may have even picked this up from Matthew's gospel itself. Furthermore, with his use of the compound word "partiality" (προσωποληψίας), it is likely that Polycarp was also familiar with James' teaching upon unjust judging which was also based upon the laws for just judging from Lev 19 as well as Jesus' teaching upon this subject (see Chapter five).

In short, Polycarp indicates that he understands anger, partiality and unjust judgment in 6:1 to be judicial in nature, that the judging spoken of in 6:1 is related to the judging spoken of in 2:2-3, and therefore that his citation of Matt 7:1-2 in 2:3 should likewise be understood to be judicial in nature.

3. First Clement

First Clement is one of the earliest writings outside of the New Testament (c. 90-110 A.D.) and is preserved in some New Testament canons as a part of Scripture.¹ Like the *Didascalia Apostolorum* and the *Apostolic Constitutions*, Clement employs Jewish forms of exegesis in his letter.² As already noted, Polycarp is familiar with *1 Clement* and was most likely influenced by Clement's quotation of Jesus' "do not judge" teaching in *1 Clem.* 13:2. We have already argued that Polycarp's exhortation against partiality and unjust judgement in 6:1 is based upon Lev 19:15 and the related exhortation against anger likely echoes the Cain and Abel tradition, and that this entire discussion of "judging" in 6:1 can

¹ On the date of *1 Clement* cf. Bakke 2001: 8-11; Welborn 2004: 200-211.

² Mueller 2007: 371.

help readers of 2:2-3 understand Polycarp's citation there of Matt 7:1-2 likewise to be judicial in nature. And since Polycarp is influenced by Clement's citation of Jesus' "do not judge" teaching in 13:2, one can plausibly assume that Clement's reading of Matt 7:1-2 would have been very similar to that of Polycarp's.

After a warning against double-mindedness in 11:2, chapter 13 cites Jesus' "do not judge" teaching. Following an exhortation against "forms of anger (*ὀργαίς*)," 13:1-2 says,

Most of all, let us remember the words of the Lord Jesus, which he spoke teaching gentleness and patience. For he said, "be merciful in order that you might be shown mercy, forgive in order that you might be forgiven; as you do, thus it shall be done to you; as you give, thus shall it be given to you; as you judge, thus shall you be judged; as you show kindness, thus shall kindness be shown to you; the measure with which you measure, it shall be measured to you.

The quotation is not exact but appears to be a loose admixture of both Matthew and Luke's version. Furthermore, each of these maxims are cast in a measure-for-measure form. "Be merciful in order that you might be shown mercy," as in Pol. *Phil.* 2:3, is probably a loose quotation of the beatitude in Matt 5:7. As we have seen, however, the notion of mercy is intimately connected with that of judgement since mercy was one of the measures by which God judged. Merciful legal judgement, furthermore, is what Luke's Jesus (6:36 just before 6:37-42), Matthew's Jesus (18:33) as well as James (2:13) call for.¹ Clement's ἀφίετε, ἵνα ἀφεθῇ ὑμῖν, as in Pol. *Phil.* 2:3, is probably a synonymous rendering of Luke's ἀπολύετε, καὶ ἀπολυθήσεσθε (Luke 6:37) neither of which is in Matthew.² Forgiveness, however, is by no means unconnected to the legal/reproof process in Matthew's gospel as our reading of Matt 18:15-35 in Chapter four

¹ Cf. Hagner 1973: 138.

² Although the wording here could also be influenced by Matt 6:14, Ἐὰν ... ἀφῇτε ... ἀφήσει καὶ ὑμῖν; cf. Berding 2002: 56.

demonstrates.¹ “As you do, thus it shall be done to you” seems to be a paraphrase of the Golden Rule which is found in relatively close proximity to Jesus’ “do not judge” teaching in the gospels (Matt 7:12; Luke 6:31) and which is often used interchangeably with Lev 19:18b.² The phrase, “as you give, thus shall it be given to you” is likely inspired by Luke since the injunction to give among Jesus’ “do not judge” teaching is found uniquely in Luke 6:38.

Thus far, most of the injunctions in *1 Clem.* 13:2 seem to come from Luke rather than Matthew. Furthermore, the form of the entire passage in which each aphorism is cast as a positive injunction rather than a negative prohibition matches the form of Luke’s version of Jesus’ “do not judge” teaching in 6:37-38, 41-42. However, the phrases, “as you judge, thus shall you be judged” and “the measure with which you measure, it shall be measured to you” are closer to Matt 7:1-2 than Luke 6:37-38, since Luke’s version does not promise judgement but rather promises deliverance.³

The fact that *1 Clement* quotes Jesus’ “do not judge” teaching merely indicates his familiarity with it. But are there any clues as to how he might have *understood* this teaching? It has already been stated Clement’s reading of Matt 7:1-2 is likely to be similar to Polycarp’s in which these verses are understood as judicial in nature. But are there additional indications in *1 Clement* that his citation of these verses are to be understood as referring to legal judging and/or legal reproof?

The entire letter is written from Rome to Corinth because the leadership in Corinth has been unjustly deposed (44:1-6, esp. v. 3; 47:6). Apparently there was a group in Corinth who were causing strife and dissention among the congregation. Such strife is spoken of throughout the letter in a number of places (14:1-2; 21:1; 35:5; 43:2; 46:5), and a main impetus of the letter is to bring concord and peace.⁴ As we observed in our discussion of Matt 7:1-5 and the

¹ Luz (1989: 414) sees this connection of the prohibition of judging with the idea of forgiveness in *1 Clem.* 13:2 as an indication that love and forgiveness are the opposite of judging. This connection however, as indicated above, comes from Luke and is not original with Clement.

² Cf. Alexander 1997.

³ Massaux 1990a: 10.

⁴ Cf. Bakke 2001: 11-13, *passim*.

related reproof passages in 5:21-26 and 18:15-35, legal adjudication was intended to restore peace between brothers embroiled in such conflict. A passage in *1 Clement* denouncing the strife among the Corinthians (46:1-9) uses the images of the millstone (46:8) to warn against such strife. Although Clement has altered the citation somewhat, this may have been influenced from Matthew's Jesus who quotes the saying about the millstone in 18:6 before his teaching upon brotherly conflict in 18:15-20.¹ In 56:1-57:5, Clement urges those who have transgressed to accept reproof and urges intercession be made for those who have transgressed (56:1). So although *1 Clement* only quotes Jesus' "do not judge" teaching rather than the texts on reproof from Matthew, it is likely that the author of *1 Clement* was familiar with the Matthean reproof traditions and understood the goal of such legal adjudication and reproof to be peace and the quelling of such strife and dissention.

Clement warns against boasting and arrogance in 13:1 just before his quotation of Jesus' "do not judge teaching," and exhorts them towards humility in 13:3 just after the quotation. This is significant since arrogance was linked with divisiveness in antiquity whereas humility is linked with peace in 13:1-3.² Along these same lines, just after 13:1-3 in which Jesus' "do not judge" teaching is quoted (13:2), strife and dissention is condemned in 14:1-2. If, as seems to be the case, Clement was familiar with the Matthean reproof traditions in which peace was the goal, and he understood Matt 7:1-2 to stand within the Matthean reproof tradition as Jesus' call to just legal judging, then it is understandable why Clement would couch this teaching between exhortations towards peace and concord. As noted in Chapter four, however, a major difference between Matt 7:1-5 and the reproof passages of Matt 5:21-26 and 18:15-35 is that in the latter two those in conflict are common brothers whereas in 7:1-5 the conflict is between a brother and a legal judge. If, therefore, the author of *1 Clement* understood Jesus' "do not judge" teaching to be about legal adjudication aimed at quelling strife involving legal judges, and some were setting themselves up as the leaders (and by default,

¹ Cf. Hagner 1973: 154.

² Bakke 2001: 158, 242.

judges) at Corinth, Jesus' "do not judge" teaching may have been quoted early on in the letter to warn these would-be leaders that their judgement in deposing the leaders at Corinth and setting themselves up as the leaders/judges of the church at Corinth is not righteous and therefore will be judged by God.

This reading of *1 Clem.* 13:1-2 coheres well with Brunner's (1972) thesis that this conflict described in *1 Clement* concerned (partly) the juridical nature of the church.¹ Note Clement's affirmation in 1:3 of the leaders in Corinth that, "you (formerly) did all things impartially," in which "impartially" (ἀπροσωπολήπτως) is probably a reference to the activity of legal judging based upon Lev 19:15 and may even, with Pol. *Phil.* 6:1, echo Jas 2:1ff. Countryman has argued that the instigators of the strife in Corinth were wealthy recent converts while Garrison believes the neglected poor to have been the instigators of the leadership coup.² Therefore it is quite likely that the author of *1 Clement* understood Jesus' "do not judge" teaching to be related to legal adjudication and reproof and used it to this effect in his effort to make peace among the Corinthians and to warn those who were setting themselves up as legal judges.

4. The *Didascalia Apostolorum* (200-250)

The *Didascalia Apostolorum* (or simply, "*Didascalia*") claims an apostolic authority going back to the Apostles during the Jerusalem Council (Acts 15:1-29), but was most likely composed in Syria in the first half of the third century.³ The *Didascalia* quotes (among other things) the gospels, especially Matthew, and is also inspired by well-known works of the early Fathers such as the *Didache* and *1 Clement*. Although use of the *Didascalia* was limited, it was subsequently incorporated almost entirely into the later and more widely used *Apostolic Constitutions*.

¹ Cf. Brunner 1972. Although I cannot agree with Brunner's perspective that the church was morphing from disorganization to organization—the latter of which involved the judiciary. Paul's letter to Corinth indicates a high degree of judicial activity (1 Cor 6:1-8) and (if our thesis is correct) the epistle of James and Matthew's gospel evidence similar (early) judicial activity.

² Countryman 1980: 154, 156; Garrison 1993: 84. For a recent survey of theories as to the origin of the strife in Corinth *1 Clement* addresses, cf. Bakke 2001: 283-292.

³ Cf. Connolly 1923: 156; Fonrobert 2001: 487-491; Mueller 2007: 339.

Recent studies on the family of documents purporting to be written by the twelve apostles such as the *Didascalia Apostolorum* and the *Apostolic Constitutions* have argued that the redactors of these works saw themselves as interpreters of the Old Testament, especially the law of Moses, that they claimed an Apostolic origin for their way of reading the Scriptures, and therefore share close affinities with Jewish exegetical technique and tradition common in the first century.¹ Moreover, despite the noted differences between such Christian documents and their Jewish counterparts such as the Mishnah or Talmuds, many of the exegetical conclusions on particular matters of doctrine are similar *even between competing documents*.² Furthermore, such exegetical engagement can be conceived of as the attempt to apply the Torah—through the matrix of an authoritative Apostolic hermeneutic—to the current situation of the writer.³ This is on par with the notion of midrashic halakah discussed in Chapter three in which scholars of the biblical text sought to apply Scriptural laws to one's current situation. As Mueller writes with regard to the *Apostolic Tradition*,

... the authors of the patristic church orders wanted, in the tradition of biblical-rabbinical legal development, to represent under the aspect of continuity their adaptations of the biblical heritage to current church needs.⁴

Part of the *Didascalia's* exegetical tradition is demonstrated in its ardent concern with the actions of bishops, especially with regard to their role as legal judges in the church (cf. particularly chapters V-VI, IX-XI). These chapters concerned with the duties of bishops are therefore riddled throughout with citations from Matt 18 used to support these exhortations. As part and parcel of this, the *Didascalia* also often cites or clearly

¹ Cf. Mueller 2007: 349-356 citing Synek 1997 (who sees the *Apostolic Constitutions* as a kind of Christian Talmud), Fonrobert 2001 (who argues that the *Didascalia Apostolorum* is a Christian Mishnah), and his own piece, Mueller 2005, in which he argues that the *Apostolic Constitutions* is presented as a deuterocanonical work of the New Testament by including it among the canon of Scripture toward the end of the document.

² Cf. Synek 1997: 41-42. Muller (2007: 355) even compares the *Didascalia's* typological treatment of the Sabbath to the way pesher is employed at Qumran.

³ Mueller 2007: 350 referring to Synek's work.

⁴ Mueller 2007: 343.

alludes to portions of Matt 7:1-5 (often directly alongside Matt 18) in chapters VI, IX-X, and in chapter XI not only are parts of Matt 18 and 7:1-5 employed but so is Matt 5:21-26.

4.1. *Didascalia VI*

After a discussion of what the character of a Bishop should be in chapter IV and the Bishop's duty to judge and rebuke in chapter V (in which Matt 18:18 is cited), chapter VI speaks of the proper way in which the Bishop is to judge. First, his motivation is to be the restoration of a brother, based upon Ezek 33:10-11. Bishops are not to allow the judiciary to be used as a tool for revenge:

It behoves you not therefore to hearken to those who desire (to put to) death, and hate their brethren and love accusations, and are ready to slay on any pretext: (for one shall not die for another). But do you help them that are sore sick and exposed to danger and are sinning, that you may deliver them from death.¹

Chapter VI then goes on to speak specifically about when *the bishop* is the one causing offense:

But if the bishop be in himself a (cause of) offence, how can he stand up and make inquisition of any man's misdeeds, or rebuke him and give sentence upon him? For by reason of partiality, or of the presents which they receive -- either he or the deacons, whose conscience is not pure -- they (the deacons) cannot exert themselves to help the bishop; for they are afraid lest they should hear (from the sinner), as from an insolent man, that word which is written in the Gospel: *Why seest thou the mote that is in thy brother's eye, and perceivest not the beam that is in thine own eye? Thou*

¹ Translation by Connolly 1929: 44. This and subsequent quotations are from Connolly's 1929 translation. Cf. CD-A IX, 2-8.

hypocrite, cast out first the beam from thine eye; and then shalt thou perceive to cast the mote out of thy brother's eye. The reason, then, that the bishop, with his deacons, is afraid, (is) lest they should hear from the sinner, as from an insolent man, that word of the Lord.¹

The significance of the above passage for our purposes, of course, is that Matt 7:3-5 is cited. The context in which our passage is quoted is crucial for determining how the *Didascalia* understands it. The emphasis in the passage is upon the hypocrisy of the bishop who, although having the duty of inquiring into the offenses of others, administering rebuke, and pronouncing legal sentences thereupon, nonetheless causes offense himself. Such hypocrisy is highlighted by the fear a hypocritical Bishop-judge might have from having the words of Jesus in Matt 7:3-5 quoted to him. In other words, such a Bishop points out the small legal offenses of others while ignoring the larger juridical offense he himself commits. As noted in chapter three, the log and the speck imagery as found in Matt 7:3-5 was used in the Talmud to highlight the hypocrisy of legal judges (*b. 'Arak. 16b; b. B. Bat. 15b*). It is not unexpected, then, to find the *Didascalia* use Matt 7:3-5, which contains the speck and log imagery, in the very same way to describe the hypocrisy of a bishop who presides over legal cases in the church.

Two potential violations of the Bishop-judge listed are “partiality” and “the presents which they receive.” The first of these must be based—either self-consciously and intentionally or by mere virtue of the tradition being passed on—upon the prohibition against partiality in judging legal cases in Lev 19:15. Moreover, because Matt 7:3-5 is quoted here in a judicial context, and in light of the arguments in Chapter five regarding Jas 2:1-13 being inspired by Jesus’ “do not judge” teaching, the potential influence of Jas 2:1ff upon the *Didascalia*’s mention here of “partiality” must be taken seriously. In other words, the *Didascalia* cites Matt 7:3-5 to combat unjust legal judging and, much like Pol. Phil. 6:1 and 1 Clem. 13:2, may well be influenced by Jas 2:1ff as “partiality” is mentioned as one such unjust offense committed within the judiciary. The violation of receiving presents in *Didasc. VI* is probably a reference to bribery. The passage continues on with a discussion about how sin within the church community can spread if left

¹ Connolly 1929: 53-54.

unchecked and that the Bishop who ignores rebuking sinners contributes to such a situation. Matthew 18:6 is also cited, demonstrating once again that the interpretive tradition saw Matt 7:1-5 as related to the injunctions of Matt 18.

The discussion of Bishops in their roles as legal adjudicators and administrators within the church continues in chapters IX-XI, each chapter quoting a portion of Matt 7:1-5 and a verse or two from Matt 18.

4.2. *Didascalia* IX

Chapter IX contains a discussion of the Bishop's role of managing the wealth brought into the church and distributing it to the needy and strangers. How the Bishop distributes this wealth is not to be judged, the *Didascalia* argues, because (besides the Bishop ultimately answering to God) judging is reserved for Bishops and not laymen. This argument is proven with a quotation of Matt 7:1. The passage reads:

And in so doing thou shalt not judge thy bishop nor thy fellow layman; for to you laymen it is said: *Judge not, that ye be not judged*. For if thou judge thy brother and condemn him, thou hast reckoned thy brother guilty: that is, thou hast condemned thyself; for thou shalt be judged with them that are guilty. For it is lawful for the bishops to judge, because to them it is said: *Be ye approved money-changers*: so that it behoves the bishop, as one who proves money, to separate the bad from the good, and to reject and cast away those that are altogether bad, and to leave in the melting-pot those that are hard, and for whatever reason faulty, like faulty (coins). But to the layman it is not permitted to judge his neighbour, nor to lay upon himself a burden that is not his. For the weight of this burden is not for laymen, but for the bishop. Wherefore, being a layman, thou shalt not lay snares for thyself; but leave judgement in the hand of those who will have to render an account, and do thou study to work peace with all men; and

love thy members, thy fellow laymen, for the Lord saith: *Love thy neighbour as thyself*.¹

The significance of this passage is that Matt 7:1 is cited amidst a declaration that laymen should not bring charges against a bishop, a notion reminiscent of Paul's advice to Timothy not to entertain legal accusations against elders in 1 Tim 5:19. This latter passage from Paul, it was argued above, is alluded to in Polycarp's exhortation that Presbyters judge cases justly (Poly. *Phil.* 6:1)—a section of Polycarp's letter which, as noted above, provides verification that Polycarp saw Matt 7:1-5 as referring to the judiciary. It is therefore likely that the *Didascalia* is here transmitting a similar tradition as that found in Polycarp's epistle. A second significant aspect to the passage of the *Didascalia* cited above is that in the very same judicial context in which Matt 7:1 is cited, Lev 19:18b is also quoted. As argued in Chapters three and four, underlying Jesus' "do not judge" teaching in Matt 7:1-5 is Lev 18:15-18, 35-36. The *Didascalia* likely alludes to the legislation in Lev 19 regarding the judiciary when it says, "the layman is not permitted to judge his *neighbour*" (emphasis mine). The *Didascalia*, then, would seem to preserve the tradition which relates the laws for just judging in Lev 19 to Matt 7:1ff by quoting Lev 19:18b. Thirdly, the exhortation to "work peace with all men" matches well the emphasis upon peace between people found in Matt 5:21-26 and 18:15-35—passages concerning brotherly conflict which are related to Matt 7:1-5 (see Chapter four). It is clear that the *Didascalia* has this tradition of judicial conflict between brothers in its purview here, since Matt 18:18 is cited just before the passage quoted above.

4.3. *Didascalia* X

Chapter X is an exhortation against the bringing of false accusations against others. The three-stage formula for rebuke from Matt 18:15-17 with its reference to two or three witnesses is prescribed by the *Didascalia* for dealing with those who bring such false accusations. A lengthy discussion ensues in which Bishops are directed to rid the congregation of such false accusers and their sin before it corrupts the rest of the

¹ Connolly 1929: 100-101.

congregation. But this discussion ends with a warning for Bishops not to accept such false accusations as true. As in chapter VI of the *Didascalia*, the issue of a Bishop showing partiality or being persuaded by bribes is highlighted as a potential problem. A litany of passages is cited, including many which warn against false legal judgement (and many of which have been encountered in this thesis already)—Deut 1:17; Exod 23:8; Deut 16:19; Zech 8:16; Isa 1:17; Isa 5:20, 23. Alongside these verses Luke 6:37—the counterpart to Matt 7:1-2—is cited:

But beware that you condemn not a man wrongfully, nor abet them that are evil; for when you judge others, you judge your own selves, as the Lord said: *With the judgement that ye judge, ye shall be judged; and as ye condemn, ye shall be condemned.* Wherefore, remember and have ready by you this saying: *Forgive, and it shall be forgiven you; and condemn not, that ye may not be condemned.*¹

Further warnings against partiality in judging are given, followed by a citation of the measure-for-measure principle of Genesis 9:6 (see further Chapter three) and additional warnings against partiality and bribery. The quotation of Matt 7:1-2/Luke 6:37 as part of a string of biblical verses regarding unjust legal judging is indicative that the author of the *Didascalia* understands Jesus' "do not judge" teaching also to be about unjust legal judging. The fact that the *Didascalia* again relates Jesus' teaching from Matt 7:1ff with the precepts for dealing with conflict between two brothers from Matt 18:15-17 is again indicative that Jesus' "do not judge" teaching in Matt 7:1-5 was seen in its early interpretive history as highly related to the legal prescriptions of Matt 18.

4.4. *Didascalia* XI

Finally, chapter XI culminates the discussion of the Bishop's role in judging cases with a host of scripture verses pertaining to legal judging. First, clear reference to Paul's exhortation about judicial matters in 1 Cor 6:1-8 is made, with an emphasis upon

¹ Connolly 1929: 106.

suffering a loss and making peace rather than resorting to the taking of one's case before secular courts outside of the Church. The discussion continues with advice to the Bishop who deals with two brothers in conflict. Rebuke is to be administered to the brother who instigates the conflict. Such reproof, it is argued, minimizes lawsuits.

Amidst the *Didascalía*'s discussion of judicial conflict between brothers, the three passages regarding judicial, brotherly conflict in Matthew (5:21-26; 7:1-5; 18:15-35)—which Chapter four argued are all related in Matthew's gospel—are all employed in chapter XI of the *Didascalía*. Matt 18:21 and 18:22 are cited to promote forgiveness and peace, characteristics which are to replace anger. And anger, it should be remembered, is the archtypical characteristic of Cain who violated the laws for just judging from Lev 19 and which both Matthew's Jesus (especially Matt 5:21-26) and James employ in their discussions of anger in legal adjudication. It should be noted here that Matt 18:21ff is understood in the *Didascalía* to be related specifically to *judicial* conflict. It is next argued that, "the Lord desires, that they who are His in truth should never have anything at all against any man, and should not be angry with any man: how much less does He desire that men should have lawsuits one with another?"¹ The argument against lawsuits which makes use of the Lord's desire not even to be angry is most likely a reference to Jesus' teaching in Matt 5:21-26, portions of which are in fact cited later on in chapter XI (see quote below). That mention here of anger and lawsuits is indeed a reference to Matt 5:21-26 is further supported by the fact that the *Didascalía* next prescribes that judgement is to be done early in the week so that reconciliation may take place before Sunday worship. The emphasis upon reconciliation before worship matches the emphasis upon reconciliation before sacrifice in Matt 5:23-24. After the citation of Matt 18:21-22 to promote forgiveness, and the allusion to anger and lawsuits in Matt 5:21-26, Matt 7:2 is then employed as the Bishop is counselled regarding his legal judgement:

And so judge as you also are surely to be judged, even as you have Christ for partner and assessor and counsellor and spectator with you in the same cause. But if there be any who are accused by some one, it being charged against them that they conduct themselves not well in the way of the Lord:

¹ Connolly 1929: 111.

again, hearing both parties, make diligent inquiry, as being to give sentence in a matter of everlasting life or cruel and bitter death. For if a man is truly convicted, and he be condemned and go forth from the Church, he has been cast out from life and glory everlasting, and is become reprobate among men and guilty before God. Judge therefore, according to the magnitude of the charge, whatever it be, with much mercy; and incline rather to save alive without respect of persons than to destroy, by condemning, those who are judged. But if there be one who is innocent, and he be condemned by the judges through respect of persons, the judgement of unjust judges shall do him no hurt with God, but shall rather profit him; for but for a little while is he unjustly judged by men, but afterwards, in the day of judgement, because he has been unjustly condemned, he shall be the judge of (his) unjust judges. For you have been the arbiters of an unjust judgement, and therefore shall be requited by God accordingly, and cast out of the Catholic Church of God. And that shall be fulfilled in your case: *With what judgement ye judge, ye shall be judged.*¹

The first line of this passage alludes to Matt 7:2 and the last line of it directly quotes Matt 7:2. The rest of the passage speaks in terms of accusations and charges. It addresses the issue of those who are “convicted” and “condemned” and ultimately excommunicated. According to this passage, the Bishop is to hear both parties in a case, make “a diligent inquiry” and give a “sentence”—all of which can readily be understood as legal functions. And judgement is to be done with “mercy,” a characteristic established in Chapter four as being one of God’s measures of judgement and therefore fundamental to human legal judgement. The passage warns of partiality or “respect of persons” so that those who pronounce such judgements are “unjust judges.” Granted, the Church and therefore the Bishop may have been under the authority of the larger Roman government at the time the *Didascalia* is written, and would therefore be constrained by the laws of Rome. But the situation in which Jesus and James lived and taught was a similar one.

¹ Connolly 1929: 111-112.

The entire discussion of how Bishops are to judge legal cases, therefore, is sandwiched between Jesus' words in Matt 7:2 that the human judge will be judged by God according to how that judge has handled the cases brought before him. The point of citing the above passage from the *Didascalia*, therefore, is that the *Didascalia* here again understands Jesus' injunction regarding judging in Matt 7:2 in legal terms—whatever the Bishop's legal authority in the wider society of the time. Reading this passage in this manner also matches the injunction directly before it (in which Matt 7:2 is quoted) that judgement is to be done without partiality or respect for persons. Just as in *Didasc. VI*, mention here of “respect of persons” likely has Lev 19:15 in view and the influence of Jas 2:1ff upon the *Didascalia's* mention of partiality here amidst a quotation of Matt 7:2 must be taken seriously. Furthermore, the command to “incline rather to save alive without respect of persons than to destroy, by condemning, those who are judged” likewise matches the emphasis in the tradition regarding brotherly conflict that the goal is to restore, rather than destroy, a fellow brother (cf. Matt 18:10-14; Jas 5:19-20; Pol. *Phil.* 6:1).

After Matt 7:2 is employed, the negative example of the wicked elders who bore false witness against Susanna is given, before chapter XI returns to Matt 5:21-26 and 18:21ff:

Have a care therefore, O bishops, that you be not in haste to sit in judgement forthwith, lest you be constrained to condemn a man; but before they come and stand in the judgement, admonish them and make peace between them. And admonish those who have the suit and quarrel one with another, and teach them in the first place that it is not right for any man to be angry, because the Lord has said: *Every one that is angry with his brother is liable to the judgement*; ... And our Lord and Saviour also said: *If thou offer thy gift upon the altar, and there remember that thy brother keepeth any malice against thee, leave thy gift before the altar, and go, first be reconciled with thy brother: and then come, offer thy gift*. Now the gift of God is our prayer and our Eucharist. If then thou keep any malice against thy brother, or he against thee, thy prayer is not heard

and thy Eucharist is not accepted; and thou shalt be found void (both) of prayer and Eucharist by reason of the anger which thou keepest. ... For upon thee has our Saviour laid this power, that thou shouldst forgive thy brother who has offended against thee *unto seventyfold seven time*, that is, four hundred and ninety. How many times then hast thou forgiven thy brother, that thou wilt no more forgive him, but keepest malice and maintainest enmity, and desirest to go to law? Therefore is thy prayer hindered. But even if thou hast forgiven the full four hundred and ninety times, add still more for thine own sake, and of thy bounty, without anger, forgive thy brother. And if thou do it not for thy brother's sake, bethink thee and do it at least for thine own; and forgive thy neighbour, that thou mayest be heard when thou prayest, and mayest offer an acceptable oblation to the Lord.¹

This passage, even more clearly than the earlier one cited from chapter XI, connects Jesus' teaching from Matt 5:21-26 upon anger, going to court with a brother, and being reconciled before offering a sacrifice, to the teaching in Matt 18:21ff regarding forgiving a brother seventy times seven. Therefore, it seems reasonable that earlier in the same chapter, when the *Didascalia* speaks together of anger in lawsuits alongside Matt 18:21ff, that the former reference is also to Matt 5:21-26. Furthermore, just as chapter VI cited Lev 19:18b and spoke of judging in terms of judging one's *neighbor*—all with reference to Matt 7:1—so here in chapter XI, the laws for just judging from Lev 19 may well be in view as the three passages from Matthew which speak of brotherly, judicial conflict (which, it has been argued, are either directly based upon or at least assume the laws for just judging from Lev 19) are used in a judicial context in the *Didascalia* and are followed by the exhortation to “forgive thy *neighbour*” (emphasis mine).

4.5. Conclusion to the *Didascalia Apostolorum*

¹ Connolly 1929: 115-117.

The *Didascalia Apostolorum* preserves a tradition in which portions of Matt 7:1-5 are employed alongside passages from Matt 18 and (in chapter XI) Matt 5:21-26, indicating that the *Didascalia* saw each of these passages as related in some way. Each of these passages from Matthew, furthermore, occurs in a lengthy discussion of the Bishop's role as legal adjudicator within the church, demonstrating that these Matthean verses—including, of course, verses from Matt 7:1-5—were understood to apply to the judiciary. Furthermore, the way in which the *Didascalia* employs verses from Matt 7:1-5 shows that these verses applied to the *Bishop judging cases* and therefore coheres with the supposition of Chapter four that while Matt 7:1-5 is about legal judging and is therefore related to Matt 5:21-26 and 18:15-35, the main difference is that while the former two deal specifically with matters of *brotherly* conflict, Matt 7:1-5 is directed at *the judge* of such conflicts.

5. Conclusion

From these early Christian texts which take up Matt 7:1-5, a number of observations can be made. First, Matt 7:1-5 seems most often to be understood to refer to legal judging. These documents often also evidence awareness that Matt 7:1-5 is related to the other texts concerning brotherly conflict in Matthew—5:21-26 and 18:15-35. To be well noted is the fact that in their interpretation of Matt 7:1-5, these documents often allude to the laws for just judging from Lev 19, further indicating that either these documents understand the former to be a midrashic statement upon the latter or at the very least the tradition which these documents preserve understood Matt 7:1-5 in this way. There is also in these texts at times allusion to the Cain and Abel traditions by mention of anger, as in Matt 5:21-26. Finally, these texts often speak explicitly about the turning back of a brother to the Christian faith, a theme which began in Matthew and James as part and parcel of the tradition regarding brotherly conflict.

Conclusion

This thesis on one of the most popular phases of Jesus in Western culture today has been primarily a hermeneutical study. It has been argued that the consensus understanding of Matt 7:1-5 to prohibit a judgemental attitude is insufficient. It was concluded that “do not judge” cannot be absolute in the sense of ruling out any and all judging (for this would be impossible), but that *hypocritical* judging is what is at issue in Matt 7:1-5. This set the stage for the rest of the thesis in which “do not judge” would be placed in a judicial context. Although a judicial reading of Matt 7:1-5 has been put forth at various times throughout the history of the church (Anabaptists, Tolstoy), this interpretive option seemed to disappearing off of the hermeneutical map by the late 1800’s. It was not until van Tilborg’s 1986 piece upon the Sermon on the Mount that a vigorous argument was made for understanding Matt 7:1-5 to be Jesus’ critique upon the unjust legal judges of his day (and subsequent to van Tilborg, it seems that still nobody is listening). Yet it is hoped that this thesis has added substantial weight and indeed significant additional evidence and argumentation to van Tilborg’s supposition. Indeed, although I agree with van Tilborg’s basic premise, he takes little stock of the significance of the laws for just legal judging in Lev 19 as laying behind Matt 7:1-5 to prove his supposition, and he makes no mention of James or any other early Christian documents which take up the teaching of Jesus from Matt 7:1-5. van Tilborg’s thesis therefore—being still unheeded and in need of substantiation—has here been built upon and hopefully transformed.

Perhaps one of the most significant ways in which van Tilborg’s thesis has been modified and deepened is the development of the theory put forth by Doeve and Derrett that implicit behind Jesus’ words in Matt 7:1-5 is Lev 19:15-18, 35-36. Chapter three sought to understand how interpreters from Qumran to *Sifra* understood and employed the laws for just judging from Lev 19 in order to provide a context in which Matthew’s Jesus might have similarly used them. In dialogue with the work of James Kugel, it was observed that these second Temple interpreters more often than not understood them to be about legal judging amidst the courts (although moral issues of the heart were never far away). It was also discovered that many interpreters treated Lev 19:15-18 as a unit,

while many others linked these verses about just judging in the courts quite naturally to the legislation in Lev 19:35-36 regarding the just judging of weights and measures.

Turning properly to the main argument of this monograph in Chapter four, it was argued that Jesus too was engaged midrashically and halakhically with the laws for just judging from Lev 19. The lexical observations that “judge” and “measure” from Matt 7:1-2 also occurred in Lev 19:15 and 19:35 confirmed that it is natural to see Matthew’s Jesus as midrashing upon these laws of the judiciary from Leviticus. These sayings are not to be understood metaphorically, but are concretely legal in nature. Moreover, it was argued, sayings about the measure and the measure-for-measure principle are often used in judicial contexts to speak of (divine) reciprocity. It was observed, furthermore, that Matt 7:1-2 displays a correspondence pattern of speech characteristic of prophetic speech, so that both the sin (judging) and its punishment (judgement) are both named in these verses themselves.

A comparison of the speck/log imagery of Matt 7:3-5 with two rabbinic texts which employed these illustrations within the context of judicial hypocrisy and based upon the laws for just judging from Lev 19 confirmed that not only was Jesus midrashing upon these verses from Lev 19 but that he too understood them to be about legal judging just as contemporary rabbis did—even if Jesus was using them prophetically to warn Israel.

Chapter four also asked to whom Matt 7:1-5 was addressed, giving special attention to the epithet “hypocrite” in 7:5. Rather than see 7:5 as the single instance in which the disciples are dubbed hypocrites in Matthew’s gospel, it was argued that this term refers to the scribes and Pharisees, who served as legal judges and had enormous influence before 70. Such a picture of the Pharisees fits not only Matthew’s era, but the life of Jesus as well, and from the evidence of Qumran it seems that the Pharisees indeed had a long track record of judicial abuses.

The judicial reading of Matt 7:1-5, furthermore, is in keeping with two other brotherly conflict passages involving the judiciary—Matt 5:21-26 and 18:15-35. Matt 18:15-35 indicated a relationship to the laws for just judging from Lev 19 (Matt 18:21-22), and both 5:21-26 and 18:15-35 demonstrate a close affinity with the Cain and Abel traditions which, it was argued in Chapter three, are also related to the Lev 19 laws for just judging.

In this way, Matt 7:1-5 fits very comfortably within Matthew's gospel as a midrash upon the laws for just judging from Lev 19. Again, as Chapter one argued, it was concluded in Chapter four that the issue at hand in Matt 7:1-5 was *hypocritical* legal judging, and not merely judging itself. In fact, texts relatively contemporary with Matt 7:1-5 which are also based upon the laws for just judging in Lev 19 make similar statements, such as *Spec. Laws* 4.9 § 57 which says the legal judge must act "as if he were at the same time judging and being judged himself," or Ps.-Phoc. 11 which says to the legal judge, "If you judge evilly, subsequently God will judge you," or even 1 Tim 5:19-25 in which Paul assumes Timothy's legal adjudication will be judged by God.

The epistle of James turned out to be another significant piece to the puzzle. Clearly aware of the Jesus tradition in the Sermon on the Mount and engaging with the laws for just judging from Lev 19, the epistle of James seems to clearly affirm that Matt 7:1-5 is indeed about legal judging. James 2:1-13 seems a clear parallel to the teaching contained in Matt 7:1-5 so that both are engaged with the laws of the judiciary from Lev 19 and both have as their topic legal adjudication, even if James somewhat creatively re-expresses Jesus' original halakhah upon it.

The early Christian texts which cite Matt 7:1-5 only strengthened the thesis that these verses are to be understood juridically. Many connected Matt 7:1-5 to the laws for just judging from Lev 19 and/or the related texts of Matt 5:21-26 and 18:15-35.

The Cain and Abel traditions turned out to be a surprising thread running throughout this thesis. This tradition picks up upon the laws for just judging from Lev 19, casting the wicked Cain as a murderer and oppressive cheat who violated these laws by disregarding just judgement and just retribution as well as just weights and measures thus connecting Lev 19:15-18 and 19:35-36. This tradition regarding Cain's anger and subsequent murder of Abel is picked up in one of Matthew's texts about the judiciary—Matt 5:21-26—so that Matthew's Jesus too is aware of both the Cain and Abel traditions themselves but also their juridical nature and their link to the laws for just judging in Lev 19. Tradition about Cain resurfaced in Matt 18:21ff in Peter's question about forgiveness. James too depicts the oppressive rich as descendants of Cain who violate the laws of just legal judging from Lev 19. Likewise, early Christian texts which quote Matt 7:1-5 and

related texts also seem to recognize and/or carry on this tradition regarding Cain's anger and his disregard for justice within the judicial system.

This thesis has sought not to understand Jesus' words "do not judge" in light of the Western values of pluralism and tolerance, but it has sought to ask alternative questions of Matt 7:1-5—questions which ancient scribes, sages, and rabbis seemed to have been concerned with but which do not readily spring to our (post)modern minds. Principally, we have asked the question, "How would a person living in second Temple Palestine understand Jesus' words in Matt 7:1-5?" Secondarily, we have asked how exegetes from this same period engaged with the laws for just judging from Lev 19. We then placed Jesus, James, and the early Christian followers within such a context and listened for resonance and coherence. It would undoubtedly be asking too much to think that this study might stem the tide of radical pluralism. But perhaps it is reasonable to expect that this thesis might cause the reader of Matt 7:1-5 to place as secondary discussions of tolerance or pluralism as it pertains to these verses and instead focus upon Jesus' call to judicial fairness and justice.

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