

# The Formation of the Pentateuch

Bridging the Academic Cultures of  
Europe, Israel, and North America

Edited by

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Dalit Rom-Shiloni, and Konrad Schmid

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# How Have We Changed?

## Older and Newer Arguments about the Relationship between Ezekiel and the Holiness Code<sup>1</sup>

*Michael A. Lyons*

### 1 Introduction

It is widely recognized that there are a remarkable number of locutions common to Lev 17–26 (the Holiness Code) and the book of Ezekiel. The quality, frequency, and distribution of these locutions are such that most agree they can be explained only by a model of literary dependence – either by one text borrowing from the other or by mutual dependence during a process of textual formation. There is, however, no consensus on the direction of literary dependence. This does not (to me, at least) constitute a crisis; readers will naturally construe these texts in different ways due to the complex nature of cognition and the complexities of the texts themselves. Yet the lack of consensus does suggest that we look closely at, and think critically about, the criteria we have traditionally used to determine textual relationships.

In this essay, I will review early arguments about the direction of literary dependence between the Holiness Code (in particular, Lev 26) and Ezekiel. I will then examine the extent to which we have (or have not) moved beyond the criteria used to support these arguments.<sup>2</sup> Finally, I will conclude with reflections about how we have changed. It is my hope that this will inspire greater methodological awareness when analyzing relationships between texts and that it will encourage greater dialogue between specialists in pentateuchal literature and those in prophetic literature.

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<sup>1</sup> I wish to thank Christophe Nihan for his helpful comments and suggestions. The opinions expressed in this paper (and any errors present) are my own.

<sup>2</sup> This study is necessarily limited to representative examples; I make no attempt here to offer a comprehensive survey of scholarship on H or Ezekiel.

## 2 The Initial Period: The Positions Are Developed

Up to – and even after the rise of – the era of critical approaches to biblical literature, readers naturally supposed (based on the narrative frame, e.g., Lev 26:46) that the contents of Lev 17–26 were preexilic. The presence of shared locutions in Leviticus and Ezekiel were explained as instances in which the prophet borrowed from Leviticus.<sup>3</sup> Thus commentators did not find it necessary to provide explicit arguments to support their statements about the direction of literary dependence. But the traditional approach to the relationship between Lev 17–26 and Ezekiel would undergo a radical challenge in the late 1800s. Within a span of twenty years (1876–1896), three models would be developed to explain the direction of the relationship between the Holiness Code and Ezekiel: either H was an exilic/early postexilic composition borrowing from Ezekiel (Wellhausen),<sup>4</sup> or Ezekiel was borrowing from a preexilic H (Klostermann, Driver, Paton),<sup>5</sup> or there was a complex process of mutual literary dependence as the Holiness Code underwent composition and growth (Baentsch).<sup>6</sup> All these models

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<sup>3</sup> See, e.g., Calvin's remark in his commentary on Ezekiel (published posthumously in 1565) regarding the locution "break the staff of bread" (Ezek 4:16): "And this clearly appears from Lev. xxvi. 26, whence our Prophet has adopted this expression"; J. CALVIN, *Commentaries on the First Twenty Chapters of the Book of the Prophet Ezekiel* (trans. T. Myers; Edinburgh: Calvin Translation Society, 1848), 187. See also W.M.L. DE WETTE, *Lehrbuch der historisch-kritischen Einleitung in die kanonischen und apokryphischen Bücher des Alten Testaments* (5th ed.; Berlin: Reimer, 1840), 317; F. HITZIG, *Der Prophet Ezechiel Erklärt* (Kurzgefasstes exegetisches Handbuch; Leipzig: Weidmann, 1847), 35 (on Ezek 4:16–17); C.F. KEIL, *Biblischer Commentar über den Propheten Ezechiel* (Leipzig: Dörffling und Franke, 1868), 59 (on Ezek 6:4–6).

<sup>4</sup> J. WELLHAUSEN, "Die Composition des Hexateuchs," *Jahrbücher für deutsche Theologie* 21 (1876), 392–450, 531–602; 22 (1877), 407–479; republished as *Die Composition des Hexateuchs und der historischen Bücher des Alten Testaments* (3rd ed.; Berlin: Reimer, 1899), esp. 150–68; IDEM, *Prolegomena zur Geschichte Israels* (2nd ed.; Berlin: Reimer, 1883), translated as *Prolegomena to the History of Ancient Israel* (trans. J.S. Black and A. Menzies; Edinburgh: A&C Black, 1885), esp. 376–385.

<sup>5</sup> A. KLOSTERMANN, "Beiträge zur Entstehungsgeschichte des Pentateuchs," *Zeitschrift für die gesammte lutherische Theologie und Kirche* 38 (1877), 401–445, republished as "Ezechiel und das Heiligkeitsgesetz," in *Der Pentateuch: Beiträge zu seinem Verständnis und seiner Entstehungsgeschichte* (Leipzig: G. Böhme, 1893), 368–418; S.R. DRIVER, *An Introduction to the Literature of the Old Testament* (New York: Scribner's Sons, 1891), 43–55, 138–144; L.B. PATON, "The Holiness-Code and Ezekiel," *Presbyterian and Reformed Review* 26 (1896), 98–115.

<sup>6</sup> B. BAENTSCH, *Das Heiligkeits-Gesetz Lev. XVII–XXVI: Eine historisch-kritische Untersuchung* (Erfurt: Hugo Güther, 1893). According to Baentsch, H's earliest layer (H1) consisted of Lev 18–20, 23–25, and this material was used in Ezekiel. A subsequent layer (H2), consisting of Lev 21–22, contained priestly and cultic matters; this layer was composed after Ezekiel. A final redactor combined the first two layers, prefaced them with a third (H3, consisting of Lev 17), and appended a sermon (Lev 26), which he expanded. Baentsch concluded

were in some part responses to K.H. Graf's theory that Ezekiel himself had written the Holiness Code.<sup>7</sup> But they should be viewed as substantive positions in their own right, attempts to explain the distinctiveness of the material in Lev 17–26 and account for its relationship with Ezekiel.

It is appropriate to begin this survey in 1876 with the arguments of Julius Wellhausen, who deserves recognition not only for his literary and historical acumen but also because his model would shape the course of subsequent scholarship. One might rightly claim that Wellhausen's contribution lay just as much in the fact that he made arguments as in the content of his arguments. What is so significant about his work is the recognition that one cannot simply *assume* the temporal priority of H over Ezekiel – which is what generations of earlier commentators had done.<sup>8</sup> From this point on, commentators would have to provide *arguments* for their assessment of the direction of literary dependence.

This is not to say that Wellhausen was first to espouse the position that the shared material in Lev 17–26 and Ezekiel could be explained as the literary dependence of the former on the latter. Such a position had already been advanced by both M.M. Kalisch and A. Kuenen.<sup>9</sup> However, at this time, neither Kalisch nor Kuenen treated Lev 17–26 as an originally independent unit in the same way that others would just a short while later. Furthermore, while Kalisch anticipated many of Wellhausen's arguments regarding the dating of P and H, he was not to enjoy the same influence.<sup>10</sup> As for Kuenen, he both influenced Wellhausen and was in turn influenced by him.<sup>11</sup>

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that the material in Lev 26 borrowed extensively from Ezekiel, and here he drew heavily on Wellhausen's arguments (69–71, 86, 114, 120–128).

<sup>7</sup> K.H. GRAF, *Die geschichtlichen Bücher des Alten Testaments: Zwei historisch-kritische Untersuchungen* (Leipzig: T.O. Weigel, 1866), 75–83.

<sup>8</sup> WELLHAUSEN, *Prolegomena* (see n. 4), 379: “To assume that Ezekiel, having the Pentateuch in all other respects as we have it, had a great liking for this piece of it, and made it his model in the foundation of his style of thought and expression – such an assumption does not free us from the necessity of seeking the historical order, and of assigning his natural place in that order to Ezekiel; we cannot argue on such a mere chance.”

<sup>9</sup> M.M. KALISCH, *A Historical and Critical Commentary on the Old Testament, with a New Translation: Leviticus, Part II* (London: Longmans, Green, 1872), 291–292, 313, 360–363; A. KUENEN, *De Godsdienst van Israel tot den ondergang van den joodschen staat* (2 vols.; Haarlem: A. C. Kruseman, 1869–1870); English translation, *idem*, *The Religion of Israel to the Fall of the Jewish* (3 vols.; trans. A.H. May; London: Williams & Norgate, 1874–1875), 2:150–153, 189–191.

<sup>10</sup> See J.W. ROGERSON, *Old Testament Criticism in the Nineteenth Century* (Philadelphia: Fortress, 1985), 242–244; B.J. SCHWARTZ, “The Pentateuch as Scripture and the Challenge of Biblical Criticism: Responses of Modern Thinkers and Scholars,” in *Jewish Concepts of Scripture: A Comparative Introduction* (ed. B.D. Sommer; New York: NYU Press, 2012), 203–229, here 213–214.

<sup>11</sup> See R. SMEND, “Kuenen and Wellhausen,” in *Abraham Kuenen (1828–1891): His Major Contributions to the Study of the Old Testament* (ed. P.B. Dirksen and A. van der Kooij;

### 3 How Earlier Arguments Have Been Received

#### 3.1 “Ezekiel reports the words of the exiles, so it is the source for H.”

Wellhausen’s interaction with the shared locutions themselves was limited to a single example. He argued that the locution “rot in iniquity” (מקק בעון) in Lev 26:39 was dependent on Ezek 33:10 because the latter depicts a similar locution as a quote spoken by the exiles.<sup>12</sup> This argument was quickly taken up by Smend and Kuenen.<sup>13</sup> Wellhausen’s claim that he is simply taking Ezekiel’s statement at face value<sup>14</sup> is somewhat ironic, since this is precisely what he is *not* doing with respect to Lev 26. The difficulty here is that it seems equally plausible to regard material in Ezekiel and in Lev 26 as a creative literary product. The attribution of speech in Ezek 33:10 cannot naively be taken as verbatim reporting any more than the attributions of speech in, for example, Ezek 8:12; 9:9 can. It is not impossible, then, that Ezekiel is borrowing a locution from H, modifying it (from “rot in iniquity” to “rot in transgressions and sins”), and putting it into the mouth of his contemporaries as part of his strategy to combat despair.<sup>15</sup> What is particularly problematic about Wellhausen’s treatment of this passage, however, is what he does *not* mention: namely, the fact that the locution “rot in iniquity” occurs earlier in Ezek 4:17, where it is not a quote “in the mouth of the people” but a statement of judgment employed by Ezekiel against the people.<sup>16</sup> This occurrence could easily be taken as evidence against his assertion that Ezekiel is simply reporting what he hears and must therefore be the source of the locution.

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Leiden: Brill, 1993), 113–127. Compare A. KUENEN, *Historisch-Kritisch Onderzoek naar het ontstaan en de verzameling van de Boeken des Ouden Verbonds* (Leiden: P. Engels, 1861), 104, 132, 134, 136, 148, with the significantly different second edition of 1885, translated as IDEM, *An Historico-Critical Inquiry into the Origin and Composition of the Hexateuch* (trans. P.H. Wicksteed; London: Macmillan, 1886), 275–287, and note how KUENEN, *Religion of Israel* (see n. 9), represents a transition between the two.

<sup>12</sup> WELLHAUSEN, *Die Composition* (see n. 4), 169, 172; cf. IDEM, *Prolegomena* (see n. 4), 384: “In the same way the phrase *pine away in their iniquity* is repeated by Ezekiel as he heard it in the mouth of the people. He is its originator in literature; in Lev. xxvi. it is borrowed.”

<sup>13</sup> See R. SMEND, *Der Prophet Ezechiel* (Kurzgefasstes exegetisches Handbuch; 2nd ed.; Leipzig: S. Hirzel, 1880), 268; KUENEN, *Historico-Critical Inquiry* (see n. 11), 287.

<sup>14</sup> WELLHAUSEN, *Prolegomena* (see n. 4), 384, n. 1: “Delitzsch [. . .] thinks it a piece of impertinence in me to read out of Ezek. xxxiii. what that passage says.”

<sup>15</sup> See W. ZIMMERLI, *Ezekiel 2: A Commentary on the Book of the Prophet Ezekiel Chapters 25–48* (trans. J. D. Martin; Hermeneia; Philadelphia: Fortress, 1983), 187: “Thus Israel’s despair finds expression in words of lamentation (stylized by the prophet himself).”

<sup>16</sup> The locution also appears as a negative statement in Ezek 24:23. This occurrence was noted by WELLHAUSEN, *Die Composition* (see n. 4), 169; IDEM, *Prolegomena* (see n. 4), 381, but he did not use it to argue for the direction of dependence.

It is telling that modern critics, regardless of their position on the direction of literary dependence, no longer use Wellhausen's argument. For example, Moshe Greenberg (who argues for the priority of H) takes Ezek 4:17 as the prophet's use of earlier stereotypical language and Ezek 33:10 as the people's acknowledgement of the prophet's earlier statements.<sup>17</sup> And Klaus Grünwaldt (who argues for the priority of Ezekiel) takes Lev 26:39 as a postexilic interpretation of the exile along Deuteronomistic lines, one that borrows an Ezekielian locution to make its point.<sup>18</sup>

### 3.2 "A prophet would not depend on earlier texts, so H is the borrowing text."

In the 1800s, there was a widespread belief that prophecy was characterized by great originality and that the prophets were radically independent figures who spoke solely out of their own personal genius.<sup>19</sup> This perspective led to a good deal of anxiety and disagreement about how to account for influence and dependence in prophetic literature. Thus we find Klostermann arguing against Graf that Ezekiel could borrow extensively from earlier texts and yet do so "freely."<sup>20</sup> Similarly, we find Paton arguing against Cornill's and Baentsch's claim that Ezekiel's "originality" rules out the possibility that he borrowed from H.<sup>21</sup> In an amusing twist, Paton simply denied Ezekiel's originality (at least with respect to the issue of literary dependence): "In reality Ezekiel is perhaps the least original of all the Old Testament writers."<sup>22</sup> Thankfully, these debates are a

<sup>17</sup> M. GREENBERG, *Ezekiel 1–20* (AB 22; New York: Doubleday, 1983), 108; IDEM, *Ezekiel 21–37* (AB 22A; New York: Doubleday, 1997), 673.

<sup>18</sup> K. GRÜN WALDT, *Das Heiligkeitsgesetz Leviticus 17–26: Ursprüngliche Gestalt, Tradition und Theologie* (BZAW 271; Berlin: de Gruyter, 1999), 361–362.

<sup>19</sup> See, e.g., G. H. A. EWALD, *Die Propheten des Alten Bundes* (2nd ed.; 2 vols.; Göttingen: Vandenhoeck & Ruprecht, 1867), 1:1–47, 67–69; also WELLHAUSEN, *Prolegomena* (see n. 4), 398–399.

<sup>20</sup> KLOSTERMANN, "Beiträge" (see n. 5), 417, 431, esp. 444: "Man wird also vielmehr schließen müssen, das auch in diesem Punkte das Heiligkeitsgesetz nicht ein Produkt des Propheten, sondern ein Muster gewesen ist, durch dessen Sprache er sich hat bestimmen lassen, ohne seine eigene dabei aufzugeben, d.i. eben in der Weise freier Reminiscenz." Cf. GRAF, *Die geschichtlichen Bücher* (see n. 7), 82.

<sup>21</sup> C. H. CORNILL, *Einleitung in das Alte Testament* (Freiburg: J. C. B. Mohr, 1891), 78: "Dann kann aber nur eines vom andern abhängig sein; entweder H von Ez oder Ez von H. Letztere Alternative ist schon a priori ausgeschlossen. Es ist so unwahrscheinlich wie möglich, dass ein Schriftsteller von der Originalität und dem Umfange Ezs seinen Styl gerade an Einem Capital des Pentateuchs gebildet haben sollte"; BAENTSCH, *Das Heiligkeits-Gesetz* (see n. 6), 124: "Wäre Lev. XXVI älter als Ezechiel, so hätte Ezechiel seine ganze Phraseologie und sehr wesentliche Vorstellungen aus diesem Stücke entlehnt. Es bliebe für ihn nicht allzuviel Originales mehr übrig. Es ist aber undenkbar, dass ein Prophet sich in solch sklavischer Abhängigkeit versetzt und seinen Sprach- und Ideenkreis aus einem einzigen Capital, einer einzigen Rede, geschöpft haben sollte."

<sup>22</sup> PATON, "Holiness-Code" (see n. 5), 109.

thing of the past.<sup>23</sup> Older assumptions about “prophetic originality” have given way to the appreciation of prophetic literature as the product of creative literary interaction with earlier texts.<sup>24</sup>

### 3.3 “If the author of *X* possessed *Y*, why wouldn’t he use it at all points?”

As originally used, this argument had to do with elements of Israelite religion reflected in H that were absent in Ezekiel. For example, a number of scholars took the absence of legislation about the high priest and jubilee year in Ezekiel as evidence that these notions were unknown in his time.<sup>25</sup> The assumption that if Ezekiel had possessed H he would have borrowed from it at all points fails to take into account the complexity of religion and the creative ways in which authors use earlier texts. This was the charge of L. B. Paton, who felt that the possibility of authorial innovation was being ruled out *a priori* and claimed that nothing about dating could be deduced from Ezekiel’s silences on certain laws.<sup>26</sup> Moreover, whereas Wellhausen presented the development of Israelite religion recoverable from Ezekiel, H, and P as a smooth, linear sequence,<sup>27</sup> others felt that the relationships between the laws contained in H and Ezek 40–48 were a good deal more complex.<sup>28</sup>

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<sup>23</sup> Though there are still debates about the degree to which Ezekiel the prophet was a *legal* innovator; see, e.g., M. HARAN, “The Law-Code of Ezekiel XL–XLVIII and Its Relation to the Priestly School,” *HUCA* 50 (1979), 45–71; IDEM, “Ezekiel, P, and the Priestly School,” *VT* 58 (2008), 211–218; R. LEVITT KOHN, *A New Heart and a New Soul: Ezekiel, the Exile and the Torah* (JSOTSup 358; Sheffield: Sheffield Academic, 2002), 110–118.

<sup>24</sup> See, e.g., C. LEVIN, *Die Verheißung des neuen Bundes: In ihrem theologiegeschichtlichen Zusammenhang ausgelegt* (FRLANT 137; Göttingen: Vandenhoeck & Ruprecht, 1985), 67: “Pointiert kann man sagen: Die prophetische Literatur, ja mit Einschränkung das ganze Alte Testament, ist in erster Linie weder Autoren- noch Redaktorenliteratur, sondern Auslegungsliteratur, ein großer, in Jahrhunderten gewachsener, schriftlicher Midrasch: ‘Sacra scriptura sui ipsius interpres.’”

<sup>25</sup> E.g., SMEND, *Der Prophet Ezechiel* (see n. 13), 315, 382–383; KUENEN, *Historico-Critical Inquiry* (see n. 11), 286; BAENTSCH, *Das Heiligkeits-Gesetz* (see n. 6), 113–114; CORNILL, *Einleitung* (see n. 21), 78. Note that the same kind of argumentation had already been used by Kuenen as early as 1869–1870; see KUENEN, *Religion of Israel* (see n. 9), 2:114–116; 3:55–56; see also KALISCH, *Leviticus* (see n. 9), 166, 291.

<sup>26</sup> PATON, “Holiness-Code” (see n. 5), 106–108.

<sup>27</sup> WELLHAUSEN, *Prolegomena* (see n. 4), 379: “Jehovist, Deuteronomy, Ezekiel, are a historical series; Ezekiel, Law of Holiness, Priestly Code, must also be taken as historical steps, and this in such a way as to explain at the same time the dependence of the Law of Holiness on the Jehovist and on Deuteronomy.”

<sup>28</sup> See KUENEN, *Historico-Critical Inquiry* (see n. 11), 286: “the priority seems to belong now to *Lev.* xxvii. sqq., and now to *Ezek.* xl. sqq.”; DRIVER, *Introduction* (see n. 5), 141, n. 6.

The assumption that an author would use his source at all points is less common today.<sup>29</sup> The question “Why wouldn’t text X use all available material in text Y?” is useful for investigating differences in ideology only once the direction of literary dependence is *already* known – not for determining the direction of dependence. Of course, this is not to say that modern scholars do not make arguments about the relationship of H and Ezekiel with reference to developments in Israelite religion. For example, both Christoph Levin and Christophe Nihan have (in different ways) argued that the representation of covenant in Lev 26 reflects a conceptual development that is later than the representations of covenant in Ezekiel.<sup>30</sup> And Jacob Milgrom – who held a different model of the relationship between H and Ezekiel – argued that H’s reference to a multiplicity of sanctuaries (Lev 26:31) reflects a preexilic date of composition.<sup>31</sup> That we can come to different conclusions based on our reconstructions of the evolution of religious concepts and practices in ancient Israel highlights the methodological difficulties inherent in such reconstructions. But the alternative would be a kind of historical agnosticism, which is obviously problematic as well.

### 3.4 “If the author of X possessed Y, why would he change it?”

This argument also arose from Wellhausen’s model of the development of Israelite religion and was expressed in the context of his claim that cultic praxis was not “codified” before the exile.<sup>32</sup> It seemed most likely to him that while the cult was functioning there was no need to codify its practice. Rather, he claimed, it was only after the loss of the cult that cultic praxis was codified, initially by Ezekiel and then by later Priestly authors. The exile itself was the motivation for its formal preservation. Given this reconstruction, Wellhausen claimed that it was impossible to explain the differences between pentateuchal legal material and Ezek 40–48 with the theory that Ezekiel had modified earlier codified legal material.<sup>33</sup> If he possessed it, why would he change it? And conversely, if codi-

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<sup>29</sup> Regarding the issue of the high priest, see R. KASHER, “Anthropomorphism, Holiness and Cult: A New Look at Ezek 40–48,” *ZAW* 110 (1998), 192–208, here 197.

<sup>30</sup> LEVIN, *Die Verheißung* (see n. 24), 222–227; C. NIHAN, “The Priestly Covenant, Its Reinterpretations, and the Composition of ‘P,’” in *The Strata of the Priestly Writings: Contemporary Debate and Future Directions* (ed. S. Shectman and J. S. Baden; Zürich: Theologischer Verlag, 2009), 87–134.

<sup>31</sup> J. MILGROM, *Leviticus 17–22: A New Translation with Introduction and Commentary* (AB 3B; New York: Doubleday, 2001), 1363.

<sup>32</sup> WELLHAUSEN, *Prolegomena* (see n. 4), 52–60. See already KUENEN, *Religion of Israel* (see n. 9), 2:153.

<sup>33</sup> WELLHAUSEN, *Prolegomena* (see n. 4), 60: “Ezekiel’s departure from the ritual of the Pentateuch cannot be explained as intentional alterations of the original; they are too casual and insignificant.”

fied legal material already existed, why would Ezekiel have needed to compose his own legislation?<sup>34</sup> These arguments were quickly taken up by other critics.<sup>35</sup>

The argument that the differences between H and Ezekiel cannot be explained as deliberate modifications of one by the other continues to be made. It has been voiced most recently by, for example, Georg Fohrer, Menahem Haran, and Steven Tuell.<sup>36</sup> Unlike earlier critics, these authors all argue that neither Ezekiel nor H depend directly on each other, nor is there mutual literary dependence; rather, the differences between the two can be accounted for only by a model in which both depend on an earlier shared source.

Though such a model is not in itself unlikely, some of the arguments used to support it seem dubious. For example, the inability to explain why an author would modify an earlier text probably reveals more about modern critics than ancient authors. The argument that “the author had no reason to change his source” is both overly optimistic (in its “all or nothing” approach to reconstructing motives behind differences) and overly pessimistic (about the possibility that other readers might discover something new). And the so-called problem of why Ezekiel would modify H (or vice versa) is not alleviated by positing a common source, but compounded: now we have *two* authors who have modified an earlier shared source, and we are no closer to explaining why these changes were made than when we were dealing with only *one* borrowing author. Moreover, the differences between H and Ezekiel (e.g., Lev 21:13–15 vs. Ezek 44:22) are not the kind that can be explained any better by a model in which both H and Ezekiel are modifying an earlier source. Finally, a number of recent works have plausibly explained at least some of the differences as deliberate modification.<sup>37</sup>

<sup>34</sup> WELLHAUSEN, *Prolegomena* (see n. 4), 60: “What need would there have been for it, if the realised picture, corresponding completely to his views, had actually existed, and, being already written in a book, wholly obviated any danger lest the cultus should become extinct through the mere fact of its temporary cessation?”

<sup>35</sup> BAENTSCH, *Das Heiligkeits-Gesetz* (see n. 6), 113–114; CORNILL, *Einleitung* (see n. 21), 78: “Wenn Ezechiel H kannte; wesshalb stellte er dann seine eigene Zukunftsthora auf?” See already KUENEN, *Religion of Israel* (see n. 9), 2:114–116.

<sup>36</sup> G. FOHRER, *Die Hauptprobleme des Buches Ezechiel* (BZAW 72; Berlin: Töpelmann, 1952), 147: “Beide haben eine verschiedene Reihenfolge der Gesetze (vgl. S. 145f.); die Ähnlichkeit beschränkt sich auf diese Gesetze, schließt aber die ermahnenen Zusätze nicht ein. Eine Reihe bedeutsamer Unterschiede sind schon früh erkannt worden; sie sind stilistischer und sachlicher Art und schließen die Möglichkeit literarischer Abhängigkeit Ezechiels von H aus. Auch diese Unterschiede erklären sich zwanglos aus der Annahme einer von Ezechiel und H benutzten älteren Vorlage”; IDEM, *Ezechiel* (HAT; Tübingen: Mohr Siebeck, 1955), xxiii; M. HARAN, “The Law-Code of Ezekiel XL–XLVIII and Its Relation to the Priestly School,” *HUCA* 50 (1979), 45–71, here 62; IDEM, “Ezekiel, P, and the Priestly School,” *VT* 58 (2008), 211–218, here 212; S. TUELL, *Ezekiel* (NIBCOT; Peabody, MA: Hendrickson, 2009), 3.

<sup>37</sup> See, e.g., K. R. STEVENSON, *The Vision of Transformation: The Territorial Rhetoric of Ezekiel 40–48* (Atlanta: Scholars Press, 1996); KASHER, “Anthropomorphism, Holiness and Cult” (see n. 29), 192–208.

### 3.5 “*X is a quoting text.*”

It has been suggested that the direction of literary dependence between two related texts can be determined on the basis of which author quotes other texts (though today we would speak more precisely of *allusion* rather than *quotation*). This claim was articulated by Paton in favor of Ezekiel as the borrowing author and was later repeated by Burrows.<sup>38</sup> But this claim has also been made more recently by Eckart Otto in favor of H as the borrowing text.<sup>39</sup> The ease with which this argument can be used by proponents of diametrically opposed models should make us cautious. In fact, when both texts are known to depend on multiple earlier sources, this argument seems to be of little value.

### 3.6 “*X scatters/gathers and therefore it is borrowing from Y.*”

Early critics made arguments about the direction of literary dependence using the distribution of locutions as a criterion. For example, Paton thought it more likely that Ezek 18, 20, and 22 had gathered what was scattered in H than that H had scattered what appeared together in Ezekiel.<sup>40</sup> Modern critics such as Baruch Levine have made the opposite argument in support of the priority of Ezekiel, arguing that Lev 26 is “replete with Ezekiel’s distinctive language” and that it “condenses or encapsulates diction that is virtually pervasive in Ezekiel.”<sup>41</sup> Similarly, Christophe Nihan thinks it unlikely that H’s locutions would be scattered throughout Ezekiel.<sup>42</sup> But both clustering and scattering are compositional techniques that can be utilized by borrowing authors and are therefore not rigorous criteria for determining the direction of dependence.<sup>43</sup>

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<sup>38</sup> PATON, “Holiness-Code” (see n. 5), 109; M. BURROWS, *The Literary Relations of Ezekiel* (New York: Jewish Publication Society of America, 1925), xi.

<sup>39</sup> E. OTTO, “Innerbiblische Exegese im Heiligkeitsgesetz Levitikus 17–26,” in *Leviticus als Buch* (ed. H.-J. Fabry and H.-W. Jüngling; BBB 119; Berlin: Philo, 1999), 125–196, esp. 180–182; see also C. NIHAN, *From Priestly Torah to Pentateuch: A Study in the Composition of the Book of Leviticus* (FAT 2/25; Tübingen: Mohr Siebeck, 2007), 543.

<sup>40</sup> PATON, “Holiness-Code” (see n. 5), 110, 113–114; cf. 113: “Ez. xx is full also of the phrases of Lev. xxvi, and in all of these cases it is easier to suppose that Ez. in his exhortation has brought together things which were disconnected in H., than that H. has divided up and scattered in different portions of his code sets of phrases which are regularly combined in Ez.”

<sup>41</sup> B. A. LEVINE, “The Epilogue to the Holiness Code: A Priestly Statement on the Destiny of Israel,” in *Judaic Perspectives on Ancient Israel* (ed. J. Neusner et al.; Philadelphia: Fortress, 1987), 9–34, here 29, 30.

<sup>42</sup> NIHAN, *Priestly Torah* (see n. 39), 543: “the literary relationship between Lev 26 and Ezekiel makes more sense if the author of H has the various oracles in Ezekiel before his eyes; the contrary assumption that the prophet (or his disciples) would have scattered their source throughout the book, as Milgrom, for instance, would have it, is difficult to admit.”

<sup>43</sup> We see the clustering of locutions used as a technique in 4Q176 (which borrows and pulls together material, largely from Isaiah, on the basis of a shared keyword). In earlier texts, we have the examples of Ezek 38–39 (which is practically a pastiche of borrowed locutions), for

### 3.7 “Ezekiel’s use of shared locutions presumes an existing body of legislation.”

Both Driver and Paton argued for the priority of H on the grounds that Ezekiel’s accusations and exhortations presumed existing legislation.<sup>44</sup> Baentsch claimed that this was true for what he reconstructed as the earliest layer of the Holiness Code (H1),<sup>45</sup> and even Kuenen admitted the force of this argument – though he claimed that Ezekiel was using material behind H rather than H itself.<sup>46</sup> Related to this argument is Paton’s claim that it is more likely for a prophet to borrow from legal material than for a law code to borrow from prophecy.<sup>47</sup> These arguments were subsequently repeated by Burrows, though they are rarely stated in this form today.<sup>48</sup> It seems more common for modern authors to first argue for the priority of H on other grounds, then describe *how* Ezekiel is basing his arguments on H once it is presumed that he *is* using H.<sup>49</sup>

The claim that it is more likely for prophets to use legal material than the converse is plausible, but it is not conclusive. To be sure, is difficult, if not impossible, to explain the origin of individual legal regulations as dependence on prophetic statements of accusation and judgment. However, the formation of collections of legal material that function as theological literature may very well have been indebted to prophetic pronouncements that were themselves based on older legal traditions.<sup>50</sup> With respect to Lev 26, one can imagine a setting in which the prophecies of Ezekiel have already been textualized and in which the resulting book is being read as Scripture. One can further imagine a redactor in this period who inserts a highly allusive editorial layer into the Pentateuch, referencing the book of Ezekiel (as well as Exodus, Deuteronomy, and Amos),

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which see W. A. TOOMAN, *Gog of Magog: Reuse of Scripture and Compositional Technique in Ezekiel 38–39* (FAT 2/52; Tübingen: Mohr Siebeck, 2011), or Num 18 (generally regarded as a late collection of laws about priestly prebends), for which see C. NIHAN, “The Priestly Laws of Numbers, the Holiness Legislation, and the Pentateuch,” in *Torah and the Book of Numbers* (ed. C. Frevel et al.; FAT 2/62; Tübingen: Mohr Siebeck, 2013), 109–137; R. ACHENBACH, *Die Vollendung der Tora: Studien zur Redaktionsgeschichte des Numeribuches im Kontext von Hexateuch und Pentateuch* (BZABR 3; Wiesbaden: Harrassowitz, 2003), 141–172. We see the scattering of locutions used as a technique in the book of Job, where material from a psalm collection that includes Pss 8; 39; 72–73; 107; 139 has been placed throughout the book. (Note how locutions from Ps 8:5 alone are employed in Job 7:17–18; 15:14; 25:6.) Similarly, the Apocalypse of John contains allusions to Ezekiel that have been scattered throughout the book.

<sup>44</sup> DRIVER, *Introduction* (see n. 5), 138–139, 141; PATON, “Holiness-Code” (see n. 5), 114.

<sup>45</sup> BAENTSCH, *Das Heiligkeits-Gesetz* (see n. 6), 69, 86.

<sup>46</sup> KUENEN, *Historico-Critical Inquiry* (see n. 11), 287.

<sup>47</sup> PATON, “Holiness-Code” (see n. 5), 114.

<sup>48</sup> BURROWS, *Literary Relations* (see n. 38), 35.

<sup>49</sup> See M. A. LYONS, *From Law to Prophecy: Ezekiel’s Use of the Holiness Code* (LHBOTS 507; New York: T&T Clark, 2009), 59–67, 76–145.

<sup>50</sup> See R. G. KRATZ, *The Composition of the Narrative Books of the Old Testament* (trans. J. Bowden; New York: T&T Clark, 2005), 140–143; K. SCHMID, *The Old Testament: A Literary History* (trans. L. Maloney; Minneapolis: Fortress, 2012), 96–99.

and all the while using the genre and language of earlier legal literature. Such an editorial layer would be not a functional law code but a kind of bold literary experiment in theological reflection and textual coordination. Something similar to this has been proposed by Eckart Otto.<sup>51</sup>

3.8 “Part (or all) of Lev 26 is exilic or later, and therefore it is the borrowing text.”

Wellhausen’s conclusion that H had borrowed from Ezekiel was based in part on his arguments that Lev 26 should be dated to the exilic or early postexilic period<sup>52</sup> and that the author of Lev 26 was the compiler of Lev 17–25.<sup>53</sup> For example, Wellhausen felt that the language of Lev 26:14–39 was so remarkably gloomy that no preexilic historical precedent could be found, and he concluded that this kind of language presumed the destruction and exile of 587.<sup>54</sup> He also argued that the language of vv. 40–45 would be incongruous in a preexilic setting: Why issue threats to prevent disobedience (vv. 14–39), then undercut them with a reassurance that restoration was possible (vv. 40–45)?<sup>55</sup> Was it not more likely that this restoration language presumed the imminent or recent end of the exile?<sup>56</sup>

Although a number of early critics shared Wellhausen’s presupposition that an exilic date for Lev 26 was incompatible with a model in which Ezekiel borrowed from H,<sup>57</sup> others accepted Wellhausen’s arguments about dating only for a handful of verses in Lev 26 that they felt to be exilic interpolations.

<sup>51</sup> See OTTO, “Innerbiblische Exegese” (see n. 39).

<sup>52</sup> WELLHAUSEN, *Prolegomena* (see n. 4), 382: “the exilic or post-exilic origin of this hortatory and denunciatory oration is too plain to be mistaken”; cf. IDEM, *Die Composition* (see n. 4), 170–171.

<sup>53</sup> WELLHAUSEN, *Prolegomena* (see n. 4), 380: “If Lev. xxvi. is incontestably intended to form the conclusion of chaps. xvii.–xxv., it would be natural to suppose that the author of that collection was also the author of the oration.”

<sup>54</sup> WELLHAUSEN, *Prolegomena* (see n. 4), 383–384: “These words cannot have been written before the Babylonian exile. [ . . . ] In Ezekiel’s day such thoughts, feelings, and expressions as we have here can be shown to have prevailed: but it would be difficult to show that the fall of Samaria gave rise to such depression at Jerusalem”; cf. KALISCH, *Leviticus* (see n. 9), 361–362.

<sup>55</sup> WELLHAUSEN, *Prolegomena* (see n. 4), 384: “In such prophets as Jeremiah and Ezekiel there is a meaning in such forecasting of the joyful future, but here it contradicts both the historical position and the object of the threats, and appears to be explained most naturally as the result of an accident, *i. e.*, of actuality.” This argument was repeated by BAENTSCH, *Das Heiligkeits-Gesetz* (see n. 6), 126–128.

<sup>56</sup> WELLHAUSEN, *Prolegomena* (see n. 4), 384: “I even think it certain that the writer lived either towards the end of the Babylonian exile or after it, since at the close of the oration he turns his eyes to the restoration.”

<sup>57</sup> WELLHAUSEN, *Prolegomena* (see n. 4), 383–384; cf. SMEND, *Der Prophet Ezechiel* (see n. 13), xvii: “Es kann für gewiss gelten, dass das letztere Corpus jünger ist als Ez, zumal Lev 26 offenbar im babylonischen Exil geschrieben ist”; KUENEN, *Historico-Critical Inquiry* (see n. 11), 287: “And again, the date inferred from Lev. xxvi. 3–45 confirms the priority

Thus, by stratifying Lev 26, August Dillmann was able to maintain that Ezekiel was borrowing from a largely preexilic Holiness Code.<sup>58</sup> Other commentators interpreted the data differently: whereas Wellhausen felt that the depressing language of Lev 26 was unprecedented, Dillmann simply asserted the opposite, and Driver attributed it to the “certainty of approaching exile.”<sup>59</sup> Even Wellhausen’s argument that the language of restoration in Lev 26:40–45 would undercut the rhetorical force of vv. 14–39 in a preexilic setting was not conclusive for all. It is at least conceivable that an author could genuinely wish to discourage apostasy or respond to a perceived problem of apostasy by describing horrific consequences (note that they are depicted in Lev 26 as remedial, designed to drive the offender back to YHWH) and yet for theological reasons be unwilling to imagine that YHWH would abandon his people. Such a view seems to lie behind the response of Driver.<sup>60</sup>

There are, then, two distinct issues: the question of which parts of H presume the exile and the question of the direction of literary dependence. These issues can be related in several different ways, and practically every possible position is attested in modern scholarship. For example, the argument that Lev 26 in its current form is exilic lies behind Fohrer’s model of a common earlier source shared by H and Ezekiel.<sup>61</sup> And the argument that parts of Lev 26 are later interpolations lies both behind models that view H as postexilic and behind models that view the bulk of H as preexilic (and the source for Ezekiel). Some of these models reconstruct a unidirectional relationship between H and Ezekiel,<sup>62</sup> whereas others specify a relationship of mutual literary dependence in which the interpolations are believed to have been motivated by the book of Ezekiel. Thus some take Lev 26:(39)40–45 to be an exilic insertion because they feel that the hopeful outlook of these verses would be incongruous in the preexilic period

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of Ezekiel; for the author of this discourse has a longer exile behind him than Ezekiel has”; BAENTSCH, *Das Heiligkeits-Gesetz* (see n. 6), 126–127.

<sup>58</sup> Though Dillmann agreed with Wellhausen that Lev 26:40–45 would be incongruous in a preexilic setting after the warnings in vv. 14–39, he took only Lev 26:34–35, 39, 40–45 to be exilic; see A. DILLMANN, *Die Bücher Exodus und Leviticus* (Kurzgefasstes exegetisches Handbuch; Leipzig: S. Hirzel, 1880), 620; IDEM, *Die Bücher Numeri, Deuteronomium und Josua* (Kurzgefasstes exegetisches Handbuch; 2nd ed.; Leipzig: S. Hirzel, 1886), 645–646. Wellhausen dismissed Dillmann’s model as a “mechanical style of criticism”; see WELLHAUSEN, *Prolegomena* (see n. 4), 380 n. 1.

<sup>59</sup> DILLMANN, *Numeri* (see n. 58), 645; DRIVER, *Introduction* (see n. 5), 143.

<sup>60</sup> DRIVER, *Introduction* (see n. 5), 143.

<sup>61</sup> See FOHRER, *Die Hauptprobleme* (see n. 36), 146–148; IDEM, *Introduction to the Old Testament* (trans. D.E. Green; Nashville: Abingdon, 1968), 141–142. A similar dating for Lev 26 can be seen in the slightly different model (mutual dependence) proposed by R. KILIAN, *Literarkritische und formgeschichtliche Untersuchung des Heiligkeitsgesetzes* (Bonn: Peter Hanstein, 1963).

<sup>62</sup> It should be noted that the verses that are thought to be interpolations in Lev 26 share far fewer locutions with Ezekiel than does the surrounding material.

after the threats of vv. 14–(38)39.<sup>63</sup> Others take Lev 26:40–45 to be an exilic insertion because their description of hope for a remnant seems to be at odds with vv. 13–39, which speak of a complete and total destruction for those who rebel.<sup>64</sup> Still others take Lev 26:33b–35, 43–44 as additions, arguing that v. 33b is a repetition of vv. 31–32, that vv. 34–35 interrupt the flow by introducing a new topic, and that the sudden change in verb form in v. 44 is evidence of a retrospective point of view from a postexilic standpoint.<sup>65</sup> Walther Zimmerli's commentary on Ezekiel reflects an even more complicated model of mutual literary dependence.<sup>66</sup> It is clear that there is considerable disagreement over how Lev 26 is to be stratified.<sup>67</sup>

<sup>63</sup> So H.L. GINSBERG, *The Israelian Heritage of Judaism* (New York: Jewish Theological Seminary of America, 1982), 80–81, 105. Ginsberg sees two layers of interpolated material, consisting of vv. 39–40a, 44–45 and vv. 33b–37, 40b–43; similarly LEVINE, “Epilogue to the Holiness Code” (see n. 41) 19. (Levine sees both the exilic base layer and the first additions to it as dependent on Ezekiel; see pp. 24–30). The argument about the incongruity of vv. 40–45 has also been made by R. MÜLLER, “A Prophetic View of the Exile in the Holiness Code: Literary Growth and Tradition History in Leviticus 26,” in *The Concept of Exile in Ancient Israel and Its Historical Contexts* (ed. E. Ben Zvi and C. Levin; BZAW 404; Berlin: de Gruyter, 2010), 207–228, here 208, 221; BAENTSCH, *Das Heiligkeits-Gesetz* (see n. 6), 126–127; DILLMANN, *Numeri* (see n. 58), 646; WELLHAUSEN, *Prolegomena* (see n. 4), 384 (though the models of these authors are hardly identical).

<sup>64</sup> See the chapter by Kopilovitz in this volume, pp. 1041–1054, and D. ROM-SHILONI, *Exclusive Inclusivity: Identity Conflicts between the Exiles and the People Who Remained (6th–5th Centuries BCE)* (LHBOTS 543; New York: Bloomsbury T&T Clark, 2013), 2, 173–178, esp. 178, n. 125. However, if the references to “scattering” and “perishing” in vv. 14–39 are derived from traditional treaty language, perhaps they should be taken as stereotypical rather than as absolute claims.

<sup>65</sup> J. MILGROM, *Leviticus 23–27: A New Translation with Introduction and Commentary* (AB 3B; New York: Doubleday, 2001), 2322–2323, 2337, 2364. Note the similarities to the arguments of DILLMANN, *Exodus und Leviticus* (see n. 58), 620.

<sup>66</sup> W. ZIMMERLI, *Ezekiel 1: A Commentary on the Book of the Prophet Ezekiel Chapters 1–24* (trans. R.E. Clements; Hermeneia; Philadelphia: Fortress, 1979), 52, argues that “it cannot be denied that Ezekiel has been influenced by detailed material built into H, or which already underlies it.” For example, he sees material in Lev 26 as the source for Ezek 34:25–30; cf. IDEM, *Ezekiel 2* (see n. 15), 220, 222. Yet he also claims that “it can be seen most clearly in parts of Leviticus 26 that the prophecy of Ezekiel has exercised a reciprocal influence on the development of H” (*Ezekiel 1*, 52); he suggests as an example the influence of prophetic preaching against the high places. He therefore wishes to “abandon the sharp alternatives” of the unidirectional dependence of Ezekiel on H or H on Ezekiel (as well as Fohrer's model of a common source behind both!), and he believes that Elliger's reconstruction of an autumn festival liturgy behind both H and Ezekiel “may be appropriate to explain a series of connections.” But it is far from clear why the similarities and differences Zimmerli lists (*Ezekiel 1*, 50–51) necessitate such a model and equally unclear what criteria he is using to determine the direction of dependence in any given place.

<sup>67</sup> See, e.g., NIHAN, *Priestly Torah* (see n. 39), 537 nn. 561–562; compare MÜLLER, “Prophetic View” (see n. 63), 207–228.

An exilic dating for part or even all of Lev 26 is not necessarily determinative for the question of the literary relationship between H and Ezekiel. After all, since the book of Ezekiel is a late exilic composition,<sup>68</sup> it could be either the source text or the borrowing text for exilic portions of Lev 26. Furthermore, since it is generally recognized that the book of Ezekiel has received editorial extensions (*Fortschreibungen*) – particularly in Ezek 34, where the shared locutions with H are especially numerous – it cannot be assumed that an exilic date for material in Lev 26 rules out borrowing by the redactors of the book of Ezekiel.<sup>69</sup>

Even attempts to locate the entirety of H as a composition in the pre- or postexilic period by reconstructing its setting based on social factors – something at which we are perhaps more sophisticated than the critics of the 1800s – do not yield objective criteria by which we may determine the direction of dependence in every instance.<sup>70</sup> Such reconstructions are of course necessary and demonstrate our commitment to the historical dimensions of the text under consideration. But the ease with which we can create plausible reconstructed settings in a variety of temporal periods should inspire caution.<sup>71</sup> Ultimately, the direction of literary dependence must be ascertained from an explanation of the shared locutions in their respective contexts.

### 3.9 “X expands/modifies Y.”

Klostermann, Driver, and Paton all agreed that expansion was one way in which the direction of literary dependence could be detected. For example, Klostermann claimed that Ezekiel had a technique of borrowing material, then adding to it or modifying it: the prophet borrowed the locution “break the staff of bread” (Lev 26:26), then added to it a statement about “eating and drinking in dismay” (Ezek 4:16); he borrowed “rot in iniquity” (Lev 26:39), then added to it a statement about “being appalled” (Ezek 4:17; cf. Ezek 33:10); he borrowed “scatter among the nations” (Lev 26:33), then changed it to “scatter to every wind” (Ezek

<sup>68</sup> On the dating of the earliest form of the book of Ezekiel, see R. ALBERTZ, *Israel in Exile: The History and Literature of the Sixth Century B.C.E.* (trans. D. Green; Atlanta: Society of Biblical Literature, 2003), 351–352.

<sup>69</sup> See A. KLEIN, *Schriftauslegung im Ezechielbuch: Redaktionsgeschichtliche Untersuchungen zu Ez 34–39* (BZAW 391; Berlin: de Gruyter, 2008), 185–189; M.A. LYONS, “Extension and Allusion: The Composition of Ezekiel 34,” in *Ezekiel: Current Debates and Future Directions* (ed. W.A. Tooman; Tübingen: Mohr Siebeck, forthcoming).

<sup>70</sup> For a preexilic setting, see J. JOOSTEN, *People and Land in the Holiness Code: An Exegetical Study of the Ideational Framework of the Law in Leviticus 17–26* (VTSup 67; Leiden: Brill, 1996); for a postexilic setting, see GRÜN WALDT, *Das Heiligkeitsgesetz* (see n. 18), esp. 379–381.

<sup>71</sup> See the comments of B. D. SOMMER, “Dating Pentateuchal Texts and the Perils of Pseudo-Historicism,” in *The Pentateuch: International Perspectives on Current Research* (ed. T.B. Dozeman et al.; FAT 78; Tübingen: Mohr Siebeck, 2011), 85–108.

5:10, 12; 12:14; 17:21). That the change in the latter example was introduced by Ezekiel was clear from the fact that it was motivated by the performance of his sign act, in which he is described as being told to scatter a third of his shaved hair to the wind (Ezek 5:2).<sup>72</sup> Likewise, Ezekiel borrowed “rule with harshness” (Lev 25:43), then glossed the rare word “harshness” (פרך) with the word “strength” (חזקה) in Ezek 34:4.<sup>73</sup> But this raises a question: though in some cases expansion can be plausibly explained as exegetical transformation, can we equate *longer* with *expanded* (and therefore with *borrowed*) in every case?

Driver agreed that the direction of dependence could be detected when Ezekiel expanded H’s material,<sup>74</sup> but he went further than Klostermann in two ways. First, Driver distinguished between shared locutions that were evidence of literary dependence and ones that were not, such as “technical expressions, borrowed (as seems clear) from priestly terminology, but not sufficient to prove Ez.’s acquaintance with the codified laws in the form in which we now have them,” and purely coincidental similarities (“expressions [. . . that] appear to arise out of the narrative in which they occur, and are not necessarily reminiscences”).<sup>75</sup> Second, Driver argued that the earlier of two related texts could be identified by greater originality and coherence: “Lev. 26,3 ff. is in style terse and forcible; Ez. is diffuse: Lev. also appears to have the advantage in originality of expression (contrast, e.g., ‘the pride of your power’ in Lev. 26,19 and in Ez. 7,24 (LXX). 24,21. 30,6. 18. 33,28), and in the connexion of thought (contrast Lev. 26,4–6. 13 with Ez. 34,25–29).”<sup>76</sup>

Recent studies continue to treat expansion as evidence for determining literary dependence and include other kinds of textual modification (e.g., conflation, reversal) as well. For example, Klaus Grünwaldt states that the borrowing text is the one in which an intent to revise can be detected.<sup>77</sup> In his study of the Holiness Code, Grünwaldt compares Lev 26 with Ezek 34 and finds significant differences that point to the likelihood of modification: the two texts contain the same elements, yet in Lev 26 they are conditional, whereas in Ezek 34 they are unconditional; the two texts display identical locutions in different order (e.g.,

<sup>72</sup> KLOSTERMANN, “Beiträge” (see n. 5), 417–418.

<sup>73</sup> KLOSTERMANN, “Beiträge” (see n. 5), 430: “aber dass Ezechiel hier alle Ausdrücke entlehnt, zeigt er deutlich durch Vorsetzung des erklärenden, nur ihm eigenen Ausdruckses בַּחֲזֶקָה.”

<sup>74</sup> DRIVER, *Introduction* (see n. 5), 141, 142, n. 2; so also PATON, “Holiness-Code” (see n. 5), 111–113.

<sup>75</sup> DRIVER, *Introduction* (see n. 5), 139, 139, n. 2. Note also his skepticism regarding Klostermann’s arguments about expansion of formulaic language; cf. KLOSTERMANN, “Beiträge” (see n. 5), 436–43; DRIVER, *Introduction* (see n. 5), 142, n. 2.

<sup>76</sup> DRIVER, *Introduction* (see n. 5), 142, n. 2.

<sup>77</sup> GRÜN WALDT, *Das Heiligkeitsgesetz* (see n. 18), 50: “Um einer Lösung näher zu kommen, müßte man nachweisen können, daß entweder Lev 26,4–6.13 oder Ez 34,25–30 sicher redaktionelle Tendenzen enthält, von woher sich eine Bearbeitungsintention aufzeigen ließe.”

Lev 26:4 vs. Ezek 34:27); the freedom from the yoke of slavery is presented as having occurred in the past in Lev 26:13 but as a promise for the future in Ezek 34:27. Grünwaldt then claims that Lev 26 has “combined” what is separate in Ezek 34, has “reversed” the order of elements in Ezek 34, and has “replaced” Ezekiel’s uncommon expression with a more familiar one; he finally states that Lev 26 is most likely borrowing from Ezek 34.<sup>78</sup> Reinhard Müller has made a similar claim: “The first section of promises (vv. 4–6) is modelled on a promise of Israel’s salvation after the exile in Ezek 34:25–28. What Yahweh promises there without any conditions is introduced in Lev 26 only as the outcome of Israel’s obedience to Yahweh’s statutes and commandments. This difference shows that Lev 26 quotes Ezek 34, not vice versa.”<sup>79</sup>

The problem is that even when textual differences suggest that modification has occurred, the mere fact of difference does not in itself indicate the *direction* of literary dependence. This problem is particularly acute in the case of Ezek 34, for here we find that other scholars, working under the very same principle articulated by Grünwaldt, have interpreted the textual data as an instance of Ezekiel borrowing from Lev 26. In their analyses, it is Ezekiel and his redactors who have expanded and reversed locutions and turned conditional blessings into unconditional promises.<sup>80</sup>

The definitions of *modification* and *expansion*, then, need further clarification for these to be considered useful criteria. A number of scholars have undertaken this task – ultimately, an attempt to define more precisely Driver’s terms *originality of expression* and *connexion of thought*. Millar Burrows was one of the first to methodically consider criteria for the direction of dependence, though his position on the dating of Ezekiel clearly influenced his results.<sup>81</sup> In her study of the relation of Ezekiel to Priestly and Deuteronomic texts, Risa Levitt Kohn aimed at isolating and describing the literary profile of Ezekiel’s text-handling

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<sup>78</sup> GRÜN WALDT, *Das Heiligkeitgesetz* (see n. 18), 350, 365–366; cf. 351: “Der knappe Vergleich zwischen Lev 26,4–6.13 mit der Parallele in Ez 34,25–30 hat ergeben, daß der Anhang zur Hirtenallegorie wahrscheinlich die Vorlage eines Teils der bedingten Segensverheißung ist.” For Grünwaldt’s analysis of the relationship between Lev 26 and Ezek 5–6, see *Das Heiligkeitgesetz*, 359–361.

<sup>79</sup> MÜLLER, “Prophetic View” (see n. 63), 209. See also C. NIHAN, “The Holiness Code between D and P: Some Comments on the Function and Significance of Leviticus 17–26 in the Composition of the Torah,” in *Das Deuteronomium zwischen Pentateuch und deuteronomistischem Geschichtswerk* (ed. E. Otto and R. Achenbach; FRLANT 206; Göttingen: Vandenhoeck & Ruprecht, 2004), 81–122, here 108–110; IDEM, *Priestly Torah* (see n. 39), 544–545.

<sup>80</sup> ZIMMERLI, *Ezekiel 2* (see n. 15), 220; MILGROM, *Leviticus 23–27* (see n. 65), 2348–2352; KLEIN, *Schriftauslegung* (see n. 69), 185–189, 346–347.

<sup>81</sup> BURROWS, *Literary Relations* (see n. 38), ix–15. Burrows’s maximalist position on the book’s literary sources was probably due to the influence of his *Doktorvater* C. C. Torrey’s dating of the book of Ezekiel to the Hellenistic period.

techniques.<sup>82</sup> And, in a 2009 monograph, I proposed criteria for identifying the direction of dependence that included ideologically based modification (where there is an identifiable motivation in one text but not the other), incongruity, conceptual dependence, and interpretive expansion.<sup>83</sup>

But even these criteria do not always yield unambiguous results. For example, Christophe Nihan has argued that the abstract use of the word *משכן* in Lev 26:11 creates a “tension” in context (since, according to P and to H’s narrative frame, the tabernacle has already been constructed).<sup>84</sup> On the one hand, it might be possible to explain this apparent incongruity by postulating that H is borrowing from and reacting to the depiction of covenant and presence in Ezek 37:26–27. On the other hand, Anja Klein has offered a different analysis, arguing that the use of the word *משכן* for YHWH’s habitation in Ezek 37:26–28 is incongruous since it is used elsewhere in Ezekiel only for human habitation. Furthermore, it is employed in immediate proximity to the word *מקדש*, Ezekiel’s usual term (used thirty-one times) for YHWH’s habitation. Klein concludes that Ezek 37 is borrowing the locution “I will put my dwelling in your midst” (*ונתתי בתוכם*) from Lev 26:11 and reworking it into two statements: “I will put my sanctuary in their midst forever” (*ונתתי את מקדשי בתוכם לעולם*) in Ezek 37:26 and “my dwelling will be with them” (*והיה משכני עליהם*) in Ezek 37:27. She also notes that this material is juxtaposed in v. 27 with a borrowing of the covenant formula from the same context (Lev 26:12).<sup>85</sup> So even the criterion of incongruity does not easily translate into evidence for the direction of literary dependence.

Another example: Reinhard Müller concludes from the “unparalleled use” of the term *פגרי גלוליתכם* in Lev 26:30 that H is borrowing this locution from Ezek 6:5 with the intention of “depicting the idols themselves as dead persons.”<sup>86</sup> But, again, the reverse can also be argued. The oracle in Ezek 6:2–7, addressed to the inanimate “mountains of Israel,” contains many locutions also present in Lev 26:25a, 30–31. Yet Ezekiel uses the expressions “your bones” (v. 5b) and “your

<sup>82</sup> LEVITT KOHN, *New Heart* (see n. 23), 75–85.

<sup>83</sup> LYONS, *From Law to Prophecy* (see n. 49), 59–67; for modification with polemical intent, see Lev 26:39 → Ezek 24:23 (cf. Ezek 18:2–3); incongruity, Lev 26:4 → Ezek 34:26 (note the shift in Ezekiel from singular to plural under the influence of Lev 26); conceptual dependence, Lev 25:25–28 → Ezek 7:12b–13a (what is being bought and sold?); interpretive expansion, Lev 25:43 → Ezek 34:4.

<sup>84</sup> See NIHAN, *Priestly Torah* (see n. 39), 538, n. 563; Nihan explains this as “part of a deliberate literary and rhetorical strategy emphasizing the *conditional* character of the covenant and of the divine presence.” It seems possible that this tension could also be accounted for as a lapse betraying the gap between the composer’s setting and the ostensible narrative setting (cf. the anachronistic slip in Lev 18:25, 27–28).

<sup>85</sup> KLEIN, *Schriftauslegung* (see n. 69), 186, 188.

<sup>86</sup> MÜLLER, “Prophetic View” (see n. 63), 217; see also the chapter by Kopilovitz in this volume, pp. 1041–1054.

dwelling places” (v. 6), expressions that presuppose the *human* addressees of Lev 26. The incongruity between the inanimate addressee of the oracle and the locutions borrowed from H was noted and addressed by the scribal insertion of an explicit human referent from Lev 26:30 into Ezek 6:5a (in MT), “and I will place the corpses of the sons of Israel before their idols.”<sup>87</sup>

The problem is not that our criteria are flawed. Rather, it is that the data we are working with are ambiguous: most of the shared locutions in H and Ezekiel simply do not provide sufficient evidence to conclusively determine the direction of dependence. As Nihan has noted, “the dependence of Lev 26 on Jeremiah and Ezekiel cannot be consistently demonstrated for each of these parallels taken individually.”<sup>88</sup> So although there are models (such as my own earlier work)<sup>89</sup> that begin by making a plausible argument about the direction of dependence from a few examples, then attempt to incorporate other passages under this rubric in order to produce a coherent reading of all the data, such models have inherent limitations. The possibility of mutual literary dependence cannot be ruled out.

#### 4 Concluding Reflections

In what ways does modern scholarship on H and Ezekiel represent an advance over earlier scholarship, and what new trends can be detected? First, we no longer make arguments about the direction of literary dependence based on older assumptions about the development of Israelite religion. This is clearly visible in the move away from the literary-religious trajectory laid out by Wellhausen, a shift described in Christophe Nihan’s insightful essay “The Holiness Code between D and P.” H is now widely viewed as a redactional adjustment of P rather than a pre-Priestly independent composition subsequently added to P – and this position is held by scholars on *both* sides of the debate about the direction of dependence between H and Ezekiel.<sup>90</sup>

Second, models of mutual literary dependence seem to be more common today than in the past.<sup>91</sup> This may be due to the fact that such models have re-

<sup>87</sup> LYONS, *From Law to Prophecy* (see n. 49), 62–63.

<sup>88</sup> NIHAN, *Priestly Torah* (see n. 39), 544.

<sup>89</sup> LYONS, *From Law to Prophecy* (see n. 49), 61–67; see also MILGROM, *Leviticus 23–27* (see n. 65), 2348–2363.

<sup>90</sup> NIHAN, “Holiness Code” (see n. 79), 81–122; also IDEM, *Priestly Torah* (see n. 39), 9–10. Cf. I. KNOHL, *The Sanctuary of Silence* (Minneapolis: Fortress, 1995), 11–23; J. MILGROM, “H<sub>r</sub> in Leviticus and elsewhere in the Torah,” in *The Book of Leviticus: Composition and Reception* (ed. R. Rendtorff and R. A. Kugler; VTSup 93; Leiden: Brill, 2003), 24–40.

<sup>91</sup> H. SUN, “Holiness Code,” *ABD* 3:254–257, here 256, takes this model as “the consensus of recent scholarship”; see also P.M. JOYCE, *Ezekiel: A Commentary* (LHBOTS 482; New York: T&T Clark, 2009), 36; R.E. CLEMENTS, “The Ezekiel Tradition: Prophecy in a Time of

ceived broad exposure (e.g., in Zimmerli's influential commentary on Ezekiel). But it is probably also due to the fact that we have become increasingly aware that the relationship between H and Ezekiel continued as these two texts were transmitted into the Second Temple period. The manuscript evidence shows that scribes were aware of the existing literary relationships between H and Ezekiel, a fact that motivated them to create further relationships in both directions.<sup>92</sup> This renders plausible the existence of complex, bidirectional textual interaction at the compositional and redactional stages.<sup>93</sup> Still, further methodologically rigorous work is needed to demonstrate the exact points at which this may be occurring.

Third, current studies reflect a greater appreciation for the mechanics and rhetorical function of literary allusion. We have developed more precise categories for analyzing text-handling techniques. Older assumptions about "prophetic originality" have been completely abandoned, and we are no longer reluctant to speak of prophets borrowing from earlier texts. In fact, literary allusion (often studied under the rubrics of innerbiblical interpretation or *Schriftauslegung*) is now seen as a sign of great creativity.<sup>94</sup> This new emphasis on the study of literary borrowing and transformation also represents a significant move beyond older form- and tradition-critical approaches.<sup>95</sup>

Finally, regardless of their position on the direction of literary dependence, recent scholars of H and Ezekiel have paid much more attention to the function of borrowed material in its new context. This stands in contrast to older studies, many of which were content to merely list parallels between the two texts. The result is that our view of Ezekiel and H has been significantly complicated, since both must now be seen as texts that interact with earlier (and to some extent the same) legal material in complex ways.<sup>96</sup> We are now in a position to investigate

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Crisis," in *Israel's Prophetic Tradition: Essays in Honour of Peter Ackroyd* (ed. R.J. Coggins et al.; Cambridge: Cambridge University Press, 1982), 119–136, here 130.

<sup>92</sup> Note the plusses in, e.g., MT Ezek 6:5a (← Lev 26:30); 36:11; 37:26 (← Lev 26:9); see also LXX Lev 19:26 (← Ezek 18:6; 22:9).

<sup>93</sup> See the chapter by Nihan in this volume, pp. 1015–1039, which on this point offers a welcome corrective to my earlier work.

<sup>94</sup> In many cases, this is due to the influence of the following groundbreaking works: M. FISHBANE, *Biblical Interpretation in Ancient Israel* (Oxford: Clarendon, 1985); B.M. LEVINSON, *Deuteronomy and the Hermeneutics of Legal Innovation* (New York: Oxford University Press, 1997); B.D. SOMMER, *A Prophet Reads Scripture: Allusion in Isaiah 40–66* (Stanford: Stanford University Press, 1998).

<sup>95</sup> See NIHAN, *Priestly Torah* (see n. 39), 6–7.

<sup>96</sup> See NIHAN, *Priestly Torah* (see n. 39), 616, who notes that H "was intended as a supplement to P, combining it with the systematic reception of other codes in the Pentateuch, the Decalogue, the 'Covenant Code' (CC), and the Deuteronomic code (D). These codes are not replaced, but rather harmonized, supplemented, and even revised in H. This means that H was actually conceived from the beginning in the prospect of a synoptic reading of the so-called 'legal' codes comprised within the Torah/Pentateuch." For yet another perspective on H's

the similarities and differences in the exegetical techniques employed by both Ezekiel and H.

Though the three models of literary dependence developed in the late 1800s are still in use today, and though some of the arguments used to support these models are also still being employed, recent scholarship on the relationship between H and Ezekiel has breathed new life into older positions. A careful consideration of past and present research shows how far we have progressed in explaining the nature of textual use in ancient Israel, as well as the social realities to which this textual use bears witness. But it is also instructive for examining the criteria we employ when creating models for explaining evident but ambiguous textual relationships, the implicit or explicit assumptions we bring to the study of texts, the varying ways in which we use notions of plausibility or likelihood, and our appeals to larger frameworks (and the extent to which they are helpful and/or necessary). Such consideration is obviously relevant not only for the study of the relationship between Ezekiel and H but also for explaining the formation, shape, and contents of other texts.

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revision of earlier legal material, see J. STACKERT, *Rewriting the Torah: Literary Revision in Deuteronomy and the Holiness Legislation* (FAT 52; Tübingen: Mohr Siebeck, 2007), esp. 209–225.