

**‘Parents shall not be put to death for their children,
nor children for parents’ –
Deuteronomy 24:16 and the Ideas of Individual
Responsibility and Vicarious Punishment
in Philo and Josephus***

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Abstract:

The aim of this article is to study the legal provision of Deuteronomy 24:16 and its interpretation by Philo and Josephus. Dt 24:16 is a legal provision that underlines the idea of individual responsibility. Children should not be put to death for the guilt of their parents and, conversely, parents not for the guilt of their children. The first part of the article focuses on the context of the provision in the Hebrew Bible, namely Dt 5:9; 2 Kgs 14:5-6; Ez 18:1-3. The second part is devoted to the *relectures* of the legal provision in Philo, *De specialibus legibus* 3.153, 168, and Josephus, *Antiquitates iudaicae* 4.289.

Keywords:

Deuteronomy 24:16; vicarious punishment; individual responsibility; Philo, *De specialibus legibus* 3.153, 168; Josephus, *Antiquitates iudaicae* 4.289

Introduction

Deuteronomy 24:16 is a legal provision that underlines the idea of individual responsibility. Children should not be put to death for the guilt of their parents and, conversely, parents not for the guilt of their children. The present article will focus on the thrust of this biblical legal provision that has no direct parallel in the Hebrew Bible. In the first step, it is necessary to take into consideration, albeit very briefly, its context in the Hebrew Bible. In the second step, however, I will present the *relectures* of the legal provision in Philo, *De specialibus legibus* 3.153, 168, and Josephus, *Antiquitates iudaicae* 4.289. But before we turn to these authors, let us first take a look at the Hebrew and Greek texts of the biblical law.¹

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¹ A first draft of this paper was presented at the University of South Bohemia, České Budějovice Czech Republic, on 27th February 2024, during the conference ‘The Bible, the Language and the Context – Recontextualisation of the Hebrew Bible in Antiquity’ that was organised as part of the research project on ‘Capital Offences in the Deuteronomic

The Legal Provision of Deuteronomy 24:16 and Its Biblical Context

The Masoretic Text of Deuteronomy 24:16 reads as follows: לֹא יוּמָתוּ אָבוֹת עַל-בְּנֵים וּבְנֵים לֹא יוּמָתוּ עַל-אָבוֹת, 'Parents shall not be put to death for their children, nor shall children be put to death for their parents; only for their own crimes may persons be put to death' (NRSV). The Septuagint translates the verse word by word, except for the verb, a *hoph'al*, i.e., a passive form in the Masoretic text rendered as if it were a *qal* מוֹתוּ, 'they will die'. Furthermore, the Septuagint takes into consideration the impersonal and distributive use of אִישׁ, literally 'man', 'human', with the meaning 'each one / every one'.² Accordingly, the word is rendered with ἕκαστος³ to emphasise individual responsibility. Finally, by translating the preposition עַל with ὑπέρ, the Septuagint stresses the idea of a vicarious punishment. Strictly speaking, it is possible to understand עַל as causal, i.e., 'because of their children', 'because of their parents'. Thus, the Septuagint translation reads as follows: οὐκ ἀποθανοῦνται πατέρες ὑπὲρ τέκνων καὶ υἱοὶ οὐκ ἀποθανοῦνται ὑπὲρ πατέρων, ἕκαστος τῇ ἑαυτοῦ ἁμαρτίᾳ ἀποθανεῖται, 'Fathers shall not die for [their] children, and sons shall not die for [their] fathers; each one shall die because of his own sin.'

In biblical exegesis, this legal provision has been associated with several other texts. In fact, the Dt 24:16 is quoted literally in 2 Kgs 14:5-6 where King Amaziah of Juda is said to have killed the murderers of his father Joash, but to have spared their sons, כַּכְתוּב בְּסֵפֶר תּוֹרַת-מֹשֶׁה אֲשֶׁר-צִוָּה יְהוָה, 'according to what is written in the book of the law of Moses, where the LORD commanded', i.e., in order to fulfil the provision of Dt 24:16. Yet, from a historical point of view, we cannot take for granted that Amaziah knew the Deuteronomic law or at least a draft of it. This is more than questionable. On the contrary, it is probable that the quotation of Dt 24:16 is part of one of the so-called Deuteronomistic layers of the Second Book of Kings⁴ that consisted in explaining elements of the history of pre-exilic Israel in the light of the theology of the book of Deuteronomy. Whether this explanation is satisfactory or not, it should be noted that 2 Kgs 14:5-6 is part of a narrative. That means that the text is not concerned with a sort of real trial where the possibility of a vicarious punishment would be at issue.

There are two further texts quoted by scholars in order to shed some more light on Dt 24:16. On the one hand, in the context of the so-called second commandment of the Decalogue, Dt 5:9, God is said to punish children for the sin of their parents, i.e., those who had committed idolatry, to the third and fourth generation: פֶּקֶד עוֹן אָבוֹת עַל-בְּנֵים וְעַל-שְׁלֹשִׁים וְעַל-רִבְעִים לְשָׁנָאִי.⁵ Hence, the members of later generations would be punished together with their guilty ancestors. On the other hand, Ezekiel 18:1-3 seems to share some similarities with Dt 24:16. Within the limits of the

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² Paul Joüon and Takamitsu Muraoka, *A Grammar of Biblical Hebrew. Third Reprint of the Second Edition, with Corrections* (Rome: Gregorian and Biblical Press, 2011), § 147d.

³ For this translation, see also Dt 1:41; 3:20; 12:8; 16:17.

⁴ See, for example, Eckart Otto, *Deuteronomium 12-34. Zweiter Teilband: 23,16-34,12. Übersetzt und ausgelegt* (Herders Theologischer Kommentar zum Alten Testament), Freiburg: Herder, 2017, 1829; for a different interpretation of the dependence of 2 Kgs 14:5-6 on Dt 24:16, see G. Braulik, 'Ezechiel und Deuteronomium. Die "Sippenhaftung" in Ezechiel 18,20 und Deuteronomium 24,16 unter Berücksichtigung von Jeremia 31,29-30 und 2 Kön 14,6', in idem, *Studien zum Deuteronomium und seiner Nachgeschichte* (Stuttgarter Biblische Aufsatzbände. Altes Testament 33), Stuttgart: Verlag Katholisches Bibelwerk, 2001, 171-201, on 198-199.

⁵ See, for example, Dominik Markl, *Der Dekalog als Verfassung des Gottesvolkes. Die Brennpunkte einer Rechtshermeneutik des Pentateuch in Ex 19-24 und Dtn 5* (Herders Biblische Studien 49), Freiburg: Herder, 2007, 213-214.

present article, only one element should be highlighted. In this prophetic text, God urges Ezekiel to stop using the following proverb (Ez 18:2): אָבוֹת יֹאכְלוּ בֶסֶר וְשֵׁנֵי הַבָּנִים תִּקְהֶינָה, 'The parents have eaten sour grapes, and the children's teeth are set on edge'.⁶ In fact, as God argues in the following verse (Ez 18:4), הַנֶּפֶשׁ הַחַטָּאת הִיא תָמוּת, 'it is only the person who sins that shall die' (see also Ez 18:20 for the same formulation).

As usual in historical-critical biblical studies, scholars have attempted to place these texts in chronological order and hypothesise which text seeks to correct or modify which other prior text. Concretely, does Ez 18:1-3 depend upon Dt 24:16⁷ or vice versa⁸? As can be expected, in such issues dealing with literary dependence it is difficult to reach a consensus.⁹

Be that as it may, on close inspection, there is no doubt that the four texts quoted are set in very different contexts and situations. Perhaps, in this respect the traditional expression 'Sitz im Leben' is helpful to better explain the differences. As we have seen, in 2 Kgs 14:5-6 the context does not deal with any specific trial. Moreover, the differences are even more striking when we have a closer look at the two remaining texts. Without any doubt, Dt 24:16 is nothing else than a legal provision aimed at prohibiting the punishment of parents in place of their children or vice versa. It is not stated for what guilt a punishment is to be inflicted to an innocent member of the family. Obviously, it is an interpersonal conflict that leads to a lawsuit. Therefore, it should be emphasised that God does not play any role in this verse and in its immediate context.¹⁰

By contrast, Dt 5:9 expresses the idea of divine retribution: God is said to punish the Israelites' apostasy to other gods. Bearing in mind that such a sin is never committed by an individual but by a sort of household including several generations, it goes without saying that the punishment is directed against all generations involved in this specific sin.¹¹ Strictly speaking, Dt 24:16 does not contradict Dt 5:9.¹² Finally, in Ez 18, the scenario is different. The proverb reflects the situation of the Babylonian exile, namely that of the generation deported from Judah in 597 or in 587 or even born and raised in exile.¹³ In their opinion, they have to bear the bitter consequences of the guilt of their ancestors. In this respect, the statement is part of a debate between the exiles who lament their fate and their compatriot, the prophet Ezekiel, who was also in exile. However, the prophet refers to a divine order to stop using this proverb. In fact, as God claims, not only every generation but each person is responsible for his or her actions and is therefore either guilty or innocent.¹⁴ Although this statement relieves the generation of the exiles of responsibility for their

⁶ The same proverb and the response concerning individual responsibility are quoted in Jer 31:29-30, probably an addition to the original prophecy; for further details, see the commentaries, for example, Robert P. Carroll, *Jeremiah. Volume 2*, Sheffield: Phoenix Press, 2006, 608–609.

⁷ For this hypothesis, see, for example, Moshe Greenberg, *Ezekiel 1-20. A New Translation with Introduction and Commentary* (The Anchor Bible 22) (New York: Doubleday, 1983), 332–333.

⁸ For this hypothesis, see, for example, Georg Braulik, *Die deuteronomischen Gesetze und der Dekalog. Studien zum Aufbau von Deuteronomium 12–26* (SBS 145) (Stuttgart: Verlag Katholisches Bibelwerk, 1991), 104–105; idem, 'Ezechiel und Deuteronomium', 185–196.

⁹ See, for example, E. Otto, *Deuteronomium 12-34. Zweiter Teilband: 23,16 – 34,12*, 1829–1830.

¹⁰ See also Simone Paganini, *Deuteronomio. Nuova versione, introduzione e commento* (I libri biblici. Primo Testamento 5) (Milan: Paoline, 2011), 352: 'La legge [...] ha validità solo per i tribunali umani. JHWH si pone fuori da questo principio.'

¹¹ Werner H. Schmidt, *Die Zehn Gebote im Rahmen alttestamentlicher Ethik* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1993), 68; Franz Sedlmeier, *Das Buch Ezechiel. Kapitel 1-24* (Stuttgart: Verlag Katholisches Bibelwerk, 2002), 242.

¹² Thus E. Otto, *Deuteronomium 12-34. Zweiter Teilband: 23,16 – 34,12*, 1844.

¹³ For chronological issues, see the commentaries, for example, Leslie C. Allen, *Ezekiel 1-19* (Word Biblical Commentary 28) (Dallas, Texas: Word Books, 1994), 269.

¹⁴ For further details, see G. Braulik, 'Ezechiel und Deuteronomium', 186–187.

fate, it hardly alleviates their misery. Nevertheless, it encourages them not to take the wickedness of their fathers as an example but to act according the principles of justice and righteousness, טָרַף וְשָׁרָה (Ez 18:5).¹⁵

To conclude, except for the quotation of the legal provision in 2 Kgs 14:5-6, Dt 24:16 has some points in common with Ez 18, but the differences are undeniable insofar as the latter is part of a debate between the prophet Ezekiel and his audience while the former is a legal text. As a result, Dt 24:16 contains a provision that has no real parallel in the Hebrew Bible.

Philo's Interpretation of Deuteronomy 24:16 in *De legibus specialibus* 3.153-168

The first literary witness in Antiquity that refers to the Septuagint text of Dt 24:16 is Philo's treatise *De legibus specialibus* 3.153-168. The Jewish philosopher comments upon this text in detail, not without an apologetic interest, explaining the *raison d'être* of this specific legal provision.¹⁶ In doing so, he emphasises the advantages of Jewish law, namely its intrinsic philosophical and moral values, and denounces at the same time the inadequacies and deficiencies of non-Jewish laws or practices. Needless to say Philo emphasises the need to understand the text of the law literally and to strictly observe the relevant regulations.¹⁷

In the context of this article, two aspects deserve our attention, firstly the nature of punishment and, secondly, the two causes of vicarious punishment. It is above all the rationale for a vicarious acceptance of the punishment to which Philo pays particular attention.

To begin with, in the last paragraph of his explanation of Dt 24:16, in *Spec. leg.* 3.168, Philo summarises the meaning of the commandment as follows: διόπερ ἄντικρυς ἀπέϊπεν υἱοὺς ἀντὶ γονέων ἢ γονεῖς ἀντὶ υἱῶν ἀναιρεῖσθαι, δικαιώσας ὧν τὰ ἁμαρτήματα τούτων εἶναι καὶ τὰς τιμωρίας, 'therefore, he [i.e. Moses as the lawgiver]¹⁸ has explicitly forbidden sons to be put to death instead of their parents, or parents instead of their sons, thinking it right that the persons having committed the crimes should also bear the punishment'. Though being aware of the fact that the biblical text mentions only the death penalty explicitly,¹⁹ Philo argues with a kind of conclusion *a maiore ad minus*²⁰ that the biblical legal provision includes various other categories of punishment that are not explicitly mentioned or left unspoken, in Greek τὰ ἡσυχασθέντα in *Spec. leg.* 3.168:²¹ εἴτε ζημίας χρημάτων εἴτε καὶ πληγὰς καὶ βιαιοτέρας ὕβρεις εἴτε τραύματα καὶ πηρώσεις καὶ ἀτιμίας καὶ φυγὰς καὶ ὅσα ἄλλα τῶν ἐπὶ δίκαις, 'a pecuniary fine, or stripes, and more severe personal chastisement, or even wounds and mutilation, and dishonor, and exile, or

¹⁵ For this latter idea, see Adrian Schenker, 'Saure Trauben ohne stumpfe Zähne. Bedeutung und Tragweite von Ez 18 und 33.10-20 oder ein Kapitel alttestamentlicher Moraltheologie', in: idem, *Text und Sinn. Textgeschichtliche und bibeltheologische Studien* (Orbis Biblicus et Orientalis 103) (Freiburg Schweiz, Göttingen: Universitäts-verlag, and Vandenhoeck & Ruprecht, 1991), 97–118, on 110–112.

¹⁶ Maren R. Niehoff, *Philon von Alexandria. Eine intellektuelle Biographie* (Tübingen: Mohr Siebeck, 2018), 175–177, seeks to demonstrate that Philo, explaining Jewish law, has in mind Roman erudite readers who are generally well-disposed towards Judaism and want to learn more about its religion and laws.

¹⁷ See, for example, Roger Arnaldez, 'La Bible de Philon d'Alexandrie', in: Claude Mondésert (ed.), *Le monde grec ancien et la Bible* (Paris: Beauchesne, 1984), 37–54, on 41.

¹⁸ For Moses as lawgiver, see M.R. Niehoff, *Philon von Alexandria*, 131.

¹⁹ For Philo's awareness of philological details, see for example, Folker Siegert, 'Early Jewish Interpretation in a Hellenistic Style', in: Magne Sæbø (ed.), *Hebrew Bible / Old Testament. The History of Its Interpretation, Vol. I: From the Beginnings to the Middle Ages (Until 1300)* (Göttingen: Vandenhoeck und Ruprecht, 1996), 130–198, on 182: 'As a literalist, Philo may respect the meanest detail.'

²⁰ For this sort of conclusion in rhetoric, namely in legal contexts, see, for example, Heinrich Lausberg, *Handbuch der literarischen Rhetorik. Eine Grundlegung der Literaturwissenschaft* (Stuttgart: Franz Steiner Verlag, 1990), § 396.

²¹ For a similar use of the verb ἡσυχάζω, with the meaning 'to pass over in silence', see *De posteritate Caini*, 150.

any other judicial sentence'. Thus, the death penalty as such is no longer in the foreground of Philo's explanation of Dt 24:16. Moreover, under the assumption that the biblical legal provision includes not only harsh penalties, but also penalties that are less invasive to life and limb like monetary penalties, it is more easily understandable that other persons accept to serve the sentence instead of the guilty party.

However, one question remains open: Why would it be forbidden to suffer, as an innocent person, in place of a guilty relative? For Philo, there might be two specific reasons: either the innocent person voluntarily accepts the punishment or the innocent person is forced to do so, namely by the guilty or by investigating authorities like judges or civil servants. Philo takes into consideration both cases (*Spec. leg.* 3.153): διὰ τοὺς ἢ βίαν τοῦ δικαίου προτιμῶντας ἢ πάνυ φιλοστόργους, 'because of those who set violence above justice, and also for the sake of those who are full of affection'.

As for the second reason, Philo is aware that family ties might prompt people to take on harsh punishments in order to spare their children or their parents. Basically, they fear more drastic consequences for their lives if they refrain from taking the punishment for the guilty party. Even more, their further life would be unbearable and even worse than death (*Spec. leg.* 3.154: ὥς ἀβίωτον καὶ παντὸς ἀργαλεώτερον θανάτου τὸν αὐτοῖς χρόνον βιωσόμενοι). This obviously means that the social contempt that falls on the innocent when the guilty person takes the punishment is worse to bear than when the innocent suffers the punishment himself or herself. However, Philo replies that this is a kind of misunderstood love. Indeed, these people must be told that their benevolence is out of season (*Spec. leg.* 3.155): πρὸς οὓς λεκτέον· ἡ εὐνοια ὑμῶν οὐκ ἔχει καιρόν'. In fact, as Philo argues, no wicked person can be really a friend to another (*ibid.*): πονηρὸς δ' οὐδεὶς πρὸς ἀλήθειαν φίλος. In other words, solidarity within the family is not a higher value than respect for law and justice however close the ties may be. Thus, Philo's claim aims at relativising the principle of solidarity towards members of the same family. Accordingly, he goes as far as to argue that agreement as to justice and virtue creates a tie that is closer than relationship by blood (*Spec. leg.* 3.155): συγγένεια γὰρ οἰκειότερα τῆς πρὸς αἵματος ἢ πρὸς δικαιοσύνην καὶ πᾶσαν ἀρετὴν ὁμολογία.

Until now, we have dealt with the idea that an innocent person would voluntarily agree to serve the sentence instead of the guilty person, namely for reasons of solidarity within the family. However, Philo is also aware of the opposite scenario, i.e., that the innocent person is forced by a person with power to suffer the punishment instead of the guilty person. In particular, Philo is thinking of people who impose punishments, including torture (*Spec. leg.* 3.159, 161)²² on the innocent instead of the guilty, in particular on the grounds of any relationship with the latter, be it family, friendship or something else (*Spec. leg.* 3.158): οἱ ἢ λάθρα τεχνάζουσιν ἢ ἐπιθαρροῦσι φανερώς ἑτέροις ἀνθ' ἑτέρων τὰς μεγίστας ἐπανατείνεσθαι συμφοράς, φιλίαν ἢ συγγένειαν ἢ κοινωνίαν ἢ τι ὁμοιότροπον ἐπ' ὀλέθρῳ τῶν οὐδὲν ἡδικοκτότων προφασιζόμενοι, 'those who, contriving secretly or acting out of courage publicly, inflict the greatest disasters on one person instead of another, using as a pretext friendship, relationship, fellowship, or something of that kind, with the aim of the ruin of those who have not committed injustice.'

²² Isaak Heinemann, *Philons griechische und jüdische Bildung. Kulturvergleichende Untersuchungen zu Philons Darstellung der jüdischen Gesetze* (Hildesheim/New York: Georg Olms Verlag, 1973) (reprint of the first edition Breslau: Marcus, 1932), 212, explains that the use of torture to obtain information or to exact debts as reported in *Spec. leg.* 3.159 was completely contrary to Jewish law.

To illustrate this second possibility, Philo cites the example of a tax collector²³ who, in his excessiveness, never misses an opportunity to impose draconian punishments on the innocent, even punishing distant relatives and neighbours because obviously impoverished people were unable to pay their taxes and had therefore taken flight (*Spec. leg.* 3.159-162). This example may well be a scandalous individual case of an abusive practice. But Philo is not content with this. To substantiate his argument, he cites a law concerning the punishment of tyrannicide that requires that the next five members of the perpetrator's family be put to death (*Spec. leg.* 3.164).²⁴ Once again, Philo objects that these family members should be punished only in the case of complicity or a benefit arising from the tyrannicide (*Spec. leg.* 3.165). Philo concludes by pointing out the absurdity of such a procedure (*Spec. leg.* 3.165): τίνας χάριν ἀναιρεθήσονται ἢ δι' ἐν τοῦτο μόνον, ὅτι συγγενεῖς εἰσι; γένους γὰρ ἢ παρανομημάτων αἱ τιμωρίαι; 'why are they to be put to death? Is it only for the reason that they are their relations? So are the penalties imposed on the basis of family affiliation or on the basis of lawless behaviour?'

To conclude, as we have seen no circumstances are mentioned in Dt 24:16 that might prompt judges to demand vicarious punishment, namely the death penalty. Nor is there any mention of the other possibility that family members would have agreed to take on a vicarious punishment. Philo, however, not only takes into consideration various other kinds of sentences. He also turns out to be an excellent observer of different kinds of abuses, both of exaggeration of family solidarity and of injustice on the part of those in power. The latter did not shy away from the worst practices of hostage-taking while the former felt bound by the principle of kinship liability. But this is not all. In *Spec. leg.* 3.167, Philo argues that the Jewish lawgiver, Moses, aware of such abuses in other societies and considering them pernicious even for the best political system (ὡς φθοροποιὰ τῆς ἀρίστης πολιτείας), has simply forbidden them. What is legal in other societies is therefore not necessarily legal in Israel because the lawgiver did not proceed without reflection. It goes without saying that such a conclusion fits perfectly into Philo's overall strategy aimed at proving the superiority of Jewish law.

Josephus' Interpretation of Deuteronomy 24:16 in *Antiquitates iudaicae*, 4.289

Around two generations after Philo, at the end of the 1st century C.E.,²⁵ the Jewish historiographer Josephus finishes the twenty volumes of his *Antiquitates iudaicae*. Writing primarily for a Greek speaking Roman audience (see *Ant.* 1.5: τοῖς Ἑλλήσιν) not familiar with Judean history and culture,²⁶ the historiographer takes up a debate that goes back to Herodotus (*Hist.* 3.80-82) and concerns the best of all forms of government.²⁷ However, Josephus does not write from a neutral

²³Peder Borgen, *Philo of Alexandria. An Exegete for His Time* (Supplement to Novum Testamentum 86) (Leiden: Brill, 1997), 173–174, surmises on 173 that this is an example of 'ill-treatment of Jews'.

²⁴The law is quoted by Cicero, *De inventione* 2.144: *tyranno occiso quinque eius proximos cognatione magistratus necato*. See also I. Heinemann, *Philons griechische und jüdische Bildung*, 212, note 1.

²⁵The *Antiquitates* were finished in the thirteenth year of the emperor Domitian's principate, i.e., in the year 93; cf. *Ant.* 20.267.

²⁶See Gregory E. Sterling, *Historiography and Self-Definition. Josephos, Luke-Acts, and Apologetic Historiography* (Supplements to Novum Testamentum 64) (Leiden: Brill, 1992), 298: 'The text of *AJ* supports this address. Josephos presupposes a Hellenistic audience which does not know the Hebrew language, months, system of measures, or customs and structure of Jewish life. Although some of these could be true of a Hellenized Jew, some are so basic that the imagined readership can not have had any significant Jewish training or knowledge.' See also Louis H. Feldman, *Judean Antiquities 1-4. Translation and Commentary* (Leiden: Brill, 2000), xix and 398.

²⁷See L. H. Feldman, *Judean Antiquities 1-4*, xxiv.

point of view.²⁸ On the contrary, as emerges from his treatise *Contra Apionem* written after the *Antiquitates* (*Ap.* 1.1), he is convinced that the Jewish law is the best, as it enables, among other values, εὐσέβεια, φιλάνθρωπία and δικαιοσύνη (*Ap.* 2.146 = 2.14.2).²⁹ These are obviously values Josephus shares with this non-Jewish audience. In fact, the author is keen to demonstrate that, on the one hand, the Jewish law is inextricably linked to the history of the people of Israel insofar as Moses is the lawgiver (e.g., *Ant.* 1.15, 23; *Ap.* 2.156 = 2.15.4), but on the other hand, it is not so specific that it cannot be communicated to other peoples. Therefore, the systematic description of the πολιτεία, the ‘constitution’ of the Jewish people in *Ant.* 4.196-301, should be understood against this background.

Returning to Dt 24:16, Josephus comments upon this specific element of Jewish law in *Ant.* 4.289, in his presentation of the Jewish πολιτεία. In comparison with Philo’s lengthy explanation of Dt 24:16, Josephus’ remarks are very short. They comprise only a few lines. Unlike Philo, Josephus does not speak of specific circumstances that might lead innocent relatives to suffer punishment for obviously guilty members of the family. Even more, he does not mention cases in which such vicarious punishment is practised, demanded, or even imposed. Likewise, examples taken from other legal systems are lacking. Nor does Josephus cite examples from his own experience or from hearsay. After all, he does not devote a single word to the legal principle that every individual is responsible for their actions and suffers sanctions accordingly.³⁰ Nevertheless, Josephus has one point in common with Philo insofar as he is not talking explicitly about the death penalty, but about punishments in general. However, the punishments of fathers are not mentioned.³¹

One of the specific features of Josephus’ explanation of Dt 24:16 is that he advocates in favour of avoiding legal measures meant to strike the innocent. As for children who run the risk of being punished for their wicked parents, Josephus argues that they deserve pity (οἶκτος) rather than hatred (μῖσος). Thus, their own virtue should be taken into consideration while they are stemming from wicked parents (ἀλλὰ διὰ τὴν ἐκείνων αὐτῶν ἀρετὴν οἴκτου μᾶλλον ἀξιοῦν ὅτι μοχθηρῶν ἐγένοντο πατέρων ἢ μίσους φύντας ἐκ φαύλων). In other words, the fact that these children had no positive role model in their parents is punishment enough. Therefore, there is no need for a vicarious punishment for the parents’ misconduct. Conversely, Josephus claims that the failure of their children should not be ascribed to their fathers (οὐδὲ πατράσιν υἱῶν ἁμαρτίαν λογιστέον). Once again, our author pleads in favour of limiting solidarity within the family. On the one hand, he invokes mitigating circumstances, when he underlines that young people are inclined to allow themselves to commit acts out of pride. On the other, he absolves to a certain extent the parents of guilt when he emphasises that the children did not act in accordance with the upbringing they received (τῶν νέων πολλὰ παρὰ τὴν ἡμετέραν διδασκαλίαν αὐτοῖς ἐπιτρεπόντων ὑπερηφανία τοῦ διδάσκεσθαι). Be that as it may, the question arises of who would be punished for his or her misdeeds. Josephus does not give an explicit answer. One can only infer that he is in favour of

²⁸ Concerning the purpose of the *Antiquitates*, G. E. Sterling, *Historiography and Self-Definition*, 297, recognises two basic lines: ‘an apology to Hellenism through the glorification of the Jewish past and the Hellenization of Israel’s traditions’.

²⁹ For a description of Josephus’ idea of the Jewish law in his *Contra Apionem*, see Eberhard Bons, ‘Das Gesetz als Maßstab für Israel und seine Bedeutung für die Völker bei Flavius Josephus, *Contra Apionem*’, in *Die Identität Israels. Entwicklungen und Kontroversen in der Frage nach dem Selbstverständnis Israels in alttestamentlicher Zeit* (Herders Biblische Studien 56), ed. H. Irsigler (Freiburg: Herder, 2009), 157–170.

³⁰ According to L.H. Feldman, *Judean Antiquities* 1-4, 458, note 983, ‘Josephus is perhaps thinking of the mythical Alcestis, who offers to die in place of her husband Admetus.’ See the tragedy by Euripides.

³¹ For this detail see also L.H. Feldman, *Judean Antiquities* 1-4, *ibidem*.

individual responsibility. Consequently, everyone must bear the eventual sanctions for their actions.

Speaking of at least two scenarios that could prompt family members to take responsibility for the guilt of other family members, Josephus demonstrates concrete knowledge of conflicts between generations and the ensuing problems for the entire family or household. However, one striking point is a certain indulgence towards the transgressions of young people. What the misconduct is supposed to consist of is not stated. Anyway, the idea is reminiscent of another explanation of the Jewish law, namely the problem dealt with in Dt 21:18-21. This text addresses the issue of the rebellious son's punishment, which culminates in his public execution, namely stoning. Even in this case of open disagreement between parents and children,³² Josephus recommends an attitude of mediation aiming at peaceful conflict resolution rather than the use of violence (*Ant.* 4.260-264).³³

In conclusion, Josephus' explanation of Dt 24:16 is part of his strategy to mitigate some seemingly drastic biblical legal provisions and to explain their rationale to his Greek speaking Roman audience. He speaks neither of the death penalty nor of the possibility that it might threaten innocent family members who are supposed to atone for the guilty. On the contrary, he takes sides with the virtuous children of bad parents who deserve nothing else than pity (οἶκτος). On the other hand, he recognises that young people, in their arrogance (ὕπερηφανία), tend to contravene their parents' teaching (διδασκαλία).

Concluding Remarks

At the end of this short article, it is necessary to make the following four remarks.

1° The legal provision Dt 24:16 is without any parallel in the Hebrew Bible. Two further texts supposed to shed some more light on Dt 24:16, namely the debate of the prophet Ezekiel with his fellow Israelites in Babylonian exile as well as the so-called second commandment of the Decalogue, reveal more differences than similarities. The question of whether Ez 18 depends on Dt 24:16 or vice versa is to be understood against the background of modern historical-critical exegesis that seeks to reconstruct the chronological order of the texts of the Hebrew Bible. It is questionable whether a consensus can be reached regarding this specific issue of the literary relationships between Dt 24:16 and Ez 18.

2° The first literary witness of the ancient interpretation of the Hebrew text of Dt 24:16 is the Septuagint. Except from some minor divergences between the Hebrew and the Greek text of the verse in question, the Greek text underlines the prohibition of vicarious punishment as well as the idea of individual responsibility. The Greek text is the textual basis of the two later interpretations dealt with in this article.

3° Both Philo and Josephus quote Dt 24:16 in the context of their respective explanations of the Jewish law, their Greek speaking audience being interested in the history and the customs of the Jewish people. Both authors were concerned with demonstrating the rationale of the said legal provision. As an element of the entire Torah, the Jewish law, Dt 24:16 was supposed to go back to Moses, the lawgiver of the Jewish people. To make understandable the Greek text of Dt 24:16,

³² It is questionable whether in *Ant.* 4.289 Josephus does not show solidarity with the parents; thus Étienne Nodet, in Flavius Josèphe, *Les Antiquités juives. Livres IV et V. Introduction et texte. Traduction et notes* (Paris: Éditions du Cerf, 1995), 100*, note 4. In fact, Josephus underlines the fact that in this case children do not act according to the διδασκαλία they have received.

³³ For further details, see Eberhard Bons, 'L'educazione dei figli secondo Flavio Giuseppe', in A.M.G. Capomacchia and E. Zocca (eds.), *Antiche infanzie. Percezioni e gestione sacrale del bambino nelle culture del Mediterraneo e del Vicino Oriente, Quaderni di Studi e Materiali della Storia delle Religioni* 25, 2020, 114–122, on 120–122.

both authors contextualise the problem at issue, quoting examples of an actual or possible application of vicarious punishment deemed unacceptable. Albeit with different arguments in detail, both Philo and Josephus seek to demonstrate the absurdity of punishing one person for the misconduct of another, namely a member of the same family.

4° The discussion about Dt 24:16 in antiquity does not end with these two Jewish authors. Admittedly, the cultural background of more recent writings is different. Suffice it to quote one example taken from early Christian literature. In Origen, *Contra Celsum* 8.40, the question at issue is when and how long the gods (in the plural!) punish humans for their transgressions and if divine punishment is directed only against the guilty or against later generations as well. Origen quotes the Greek proverb that the mills of the gods grind slowly (Sextus Empiricus, *Gramm.* 287). This means that even later generations have to bear the consequences of the transgressions of their ancestors. To reject these ideas, Origen quotes both Dt 24:16 and Ez 18:2 with the aim of demonstrating that the punishment that spans generations is alien to the Bible. As for the proverb of the fathers who had eaten sour grapes Origen argues briefly: this is a parable, παραβολή, nothing else. Thus, in other circumstances and against a different background from that of Philo and Josephus, the biblical quotation Dt 24:16 serves as argument. In this case, the point is not to demonstrate the superiority of Jewish law. Rather it is the Greek biblical text that is used to contradict a statement made by Celsus, Origen's philosophical opponent.

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