

# The Quotations and References of the Pentateuchal Laws in Ezra-Nehemiah

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## 1. Introduction

The Torah plays a larger role in Ezra-Nehemiah than perhaps in any other book of the Hebrew Bible outside the Pentateuch itself. Many authors of the composition refer to it as the basis and guiding principle of the community's life. Relative to the size of the composition there are many quotations, allusions and other references to the Torah or to the Book of Law, which makes the composition a fruitful source for investigating the Lawbooks or Pentateuchs the authors may have used.

Particularly important is the source value of Ezra-Nehemiah for the use and form of the Pentateuch during the time that Ezra-Nehemiah was written and edited in the fifth to third centuries BCE. There are not many possibilities for obtaining information about the Pentateuch of these centuries, and Ezra-Nehemiah may be one of the most fruitful exceptions.<sup>1</sup> Most other books of the Hebrew Bible provide only scat-

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1 The next substantial evidence for the pentateuchal texts is the Dead Sea Scrolls, which contain texts that quote the Pentateuch (for example, the Community Rule, see Sarianna Metso, "Biblical Quotations in the Community Rule," in *The Bible as Book. The Hebrew Bible and the Judaean Desert Discoveries* (ed. Edward D. Herbert and Emmanuel Tov; London: British Library, 2002), 81–92 and variant editions of the Pentateuch (the so called Reworked Pentateuch texts, see Sidnie White Crawford, "Reworked Pentateuch," in *The Encyclopedia of the Dead Sea Scrolls* (ed. Lawrence H. Schiffman and James C. VanderKam; 2 vols.; Oxford: Oxford University Press, 2000), 775–77. The quotations, allusions and other references to the Torah in the Chronicles may be another important exception. This material has to be left for a further study. However, Judson R. Shaver, *Torah and the Chronicler's history work: an inquiry into the Chronicler's references to laws, festivals, and cultic institutions in relationship to Pentateuchal legislation* (Brown Judaic Studies 196; Atlanta: Scholars Press, 1989), has concluded that the Chronicler's Torah was more extensive than the presently known Pentateuch. This would be in line with the observations made here. It has to be noted, however, that Shaver assumes the Chronicles and Ezra-Nehemiah to have formed a single work. For other problems and criticism of Shaver's work, see Ehud Ben-Zvi, review of Judson R. Shaver, *Torah and the Chronicler's history work: an inquiry*

tered quotations, whereas Ezra-Nehemiah contains several passages that claim to quote the Torah or are otherwise related. Clearly, we only have glimpses of the Pentateuch's early development in Ezra-Nehemiah, but some of them may be very illuminating and are in any case significant because the Pentateuch of these centuries is otherwise very poorly known.

In this study I will discuss the quotations and other renderings of the pentateuchal laws in Ezra-Nehemiah. I will only deal with the laws, whereas the references, allusions and other uses of the narrative sections of the Pentateuch will have to be left out. For example, the use of the pentateuchal narratives in Neh 9 would necessitate a separate study, and cannot be discussed here.<sup>2</sup> I will include passages that seem to quote or otherwise render a part of a law of the Pentateuch, whereas general allusions or other dependence, with some exceptions, will not be discussed. Cases where the author explicitly refers to what is written in the Torah (בכתוב) will be considered even if there does not seem to be a direct quotation. Many of such cases were written with a particular law in mind and may therefore provide significant information about the authors' Lawbooks and how they related to them. For example, even if the law in question is not presented as a quotation, its phraseology may be integrated into the passage in Ezra-Nehemiah.

The main intent of this work is to discuss how the quoted or otherwise rendered laws differ from their pentateuchal version preserved in the Masoretic text and other known witnesses, and to discuss what the reasons for the possible differences are. Were the pentateuchal laws changed in the quotations and other renderings in Ezra-Nehemiah or did the laws the authors referred to differ from the pentateuchal texts known to us?<sup>3</sup> The analysis may thus provide information about the text of the Pentateuch used by the authors<sup>4</sup> of Ezra-Nehemiah.<sup>5</sup>

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*into the Chronicler's references to laws, festivals, and cultic institutions in relationship to Pentateuchal legislation, JBL 110/4 (1991): 718–20.*

- 2 The confession of Neh 9 has been extensively discussed by, for example, Hans-Peter Mathys, *Dichter und Beter. Theologen aus spätalttestamentlicher Zeit* (OBO 132; Freiburg, Sw.: Universitätsverlag, 1999), 4–21 and Mark J. Boda, *Praying the Tradition* (BZAW 277; Berlin: de Gruyter, 1999).
- 3 For the purposes of this paper, the differences between the known witnesses are minor and have limited influence on the main conclusions.
- 4 In this work I will mainly refer to the authors of Ezra-Nehemiah without distinguishing between the different editors. The editorial development of the composition is very complicated and will not be discussed here in any detail. For a theory on the editorial development, see Juha Pakkala, *Ezra the Scribe. The Development of Ezra 7–10 and Neh 8*. (BZAW 347; Berlin: de Gruyter, 2004), 225–77. For the exegesis and related literature on passages discussed here, see the related chapter in that volume.

## 2. Quotations of the Pentateuch in Ezra-Nehemiah

### 2.1. Ezra 9:11–12 and Deuteronomy

Ezra 9:11–12 is given as a quotation (אשר צוית ... לאמר) and it is also formally presented to be one (Yahweh is speaking to the Israelites in the second person as in most laws of the Pentateuch). That we are dealing with a quotation is corroborated by the comparison between these verses and Deuteronomy. Ezra 9:11–12 and several parts of Deuteronomy witness to many parallel sentences. I have discussed the relationship of this passage and Deuteronomy in a previous publication, and the arguments for their close relationships need not be repeated here.<sup>6</sup> The main results and their implications for understanding the use of the pentateuchal text will only be summarized. An alternative explanation for the differences is also offered.

When we compare the Masoretic text<sup>7</sup> of Deuteronomy with Ezra 9:11–12, it would appear that the author of Ezra 9:11–12 used at least Deut 7:3; 11:8–10 and 23:7 and possibly also 18:9–14. Although Ezra 9:11–12 is given as a single quotation, the author seems to have freely combined words and sentences from different parts of Deuteronomy into one quotation. This was done in a very skillful way because without the source text it would be difficult to recognize that these verses are a patchwork of different passages. Ezra 9:11–12 forms a logical and consistent unit<sup>8</sup> and the reader also receives the impression that it is one passage from the Torah. The text of Deuteronomy, at least when compared with the known witnesses, was also changed, although most of the changes are minor. Moreover, the author of Ezra 9:11–12 has added new material which does not find any counterpart in the Pentateuch or elsewhere in the Hebrew Bible. Some of the new material has a thematic background in Deuteronomy, although there is no direct

5 Note that this paper will not discuss the hotly debated issue of which books of the Pentateuch Ezra or the authors of Ezra-Nehemiah used. For a discussion, see Ulrich Kellermann, "Erwägungen zum Esragesetz," *ZAW* 80 (1968): 373–85 or Pakkala, *Ezra the Scribe*, 284–90.

6 Pakkala, *Ezra the Scribe*, 110–22.

7 The other main witnesses have also been taken into consideration in this investigation, but the differences between them and the Masoretic text are minor in comparison with their differences with the quotations in Ezra-Nehemiah.

8 The land was impure. The impurity was caused by the people who live there. The Israelites should not intermarry with the impure people of the land. This will ensure that the Israelites stay strong, enjoy the produce of the good land and inherit it forever.

phraseological link with any specific passage therein.<sup>9</sup> The methods of the author in forming the quotation are illustrated in the following chart:<sup>10</sup>

Ezra 9:11–12	Deut
11 אשר צוית ביד עבדיך הנביאים לאמר <u>הארץ אשר אתם באים לרשתה</u> ארץ נדה היא בנדת עמי הארצות	7.1 כי יביאך יהוה אלהיך <u>אל־הארץ אשר־אתה בא־שמה לרשתה</u> 7.3 ולא תתחתן במ <u>בתך לא־תתן לבנו ובתו לא־תקח לבנך</u>
<u>בתועבתיהם אשר מלאוה מפה אל־פה</u> בטמאתם 12 ועתה בנותיכם אל־תתנו <u>לבניהם ובנותיהם אל־תשא לבניכם</u>	11.8 ושמרתם את־כל־המצוה אשר אנכי מצויד היום למען תחזקו 18.9 כי אתה בא אל־הארץ אשר־יהוה אלהיך נתן לך לא־תלמד לעשות בתועבת הגוים ההם 23.7 לא־תדרש שלמם וטבתם כלי־מיד לעולם
<u>ולא־תדרשו שלמם וטבתם עד־עולם</u> <u>למען תחזקו ואכלתם את־טוב הארץ</u> והורשתם לבניכם עד־עולם	

The assumption that Ezra 9:11–12 is a rendering of phrases and ideas from different parts of Deuteronomy is not the only possibility to explain the differences. Houtman has argued that the Pentateuch of the author was an entirely different edition of the book.<sup>11</sup> This would imply that when Ezra 9:11–12 was written, the pentateuchal text was much more fluid than what is commonly accepted in modern research. One would have to assume that later editors may have rewritten, relocated and combined texts they were editing. Although most scholars have rejected such views in the past, in view of the Temple Scroll, 4QReworked Pentateuch<sup>12</sup> and other rewritten texts of the Dead Sea Scrolls this possibility should not be excluded, especially since very little is known about the Pentateuch of the fifth and fourth centuries BCE when Ezra 9:11–12 was probably written. Nevertheless, one passage is not enough to shake a consensus and therefore a position on this

<sup>9</sup> For example the idea that the Israelites may eat the good of the land is met in Deut 6:11 and 11:14–15. The reference to the prophets through which Yahweh gave his commandments may have its background in Deut 18:15.

<sup>10</sup> Underlined sections are close parallels, although in most cases these sections also contain differences in grammatical forms and word order.

<sup>11</sup> Cornelis Houtman, "Ezra and the Law. Observations on the Supposed Relation between Ezra and the Pentateuch," *OTS* 21 (1981): 91–115. Most scholars have been skeptical about Houtman's theory, e.g., Hugh G. M. Williamson, "History," in *It is Written: Scripture Citing Scripture* (ed. D. A. Carson and Hugh G. M. Williamson; FS B. Lindars; Cambridge: Cambridge University Press, 1988), 25–38 (26).

<sup>12</sup> Especially 4QReworked Pentateuch is significant in this respect. See the contribution of Sidnie White Crawford in this volume.

question may only be taken after evaluating the whole evidence in Ezra-Nehemiah.

## 2.2. Neh 1:8–9 – “If You Are Unfaithful, I will Disperse You”

Neh 1:8–9 is presented as a quotation of Yahweh’s commandment to Moses (את־הַדְּבָר אֲשֶׁר צִוִּית אֶת־מֹשֶׁה עַבְדְּךָ לֵאמֹר), but the passage as such is not found in the available versions of the Pentateuch. One should also note that the form of vv. 8–9 as a direct speech of Yahweh to the Israelites (... אַתֶּם) implies that we are dealing with a quotation or at least with an intended quotation from the Torah. The idea of v. 8 that if the Israelites are unfaithful, Yahweh will disperse them among the nations is met only in Deut 4:27, 28:64 and 30:3:<sup>13</sup>

Neh 1:8	אֲנִי אֶפִּיץ אֶתְכֶם בְּעַמִּים	אַתֶּם תִּמְעַלּוּ
Deut 4:27	וְהִפִּיץ יְהוָה אֶתְכֶם בְּעַמִּים	
Deut 28:64	וְהִפִּיץ יְהוָה בְּכָל־הָעַמִּים מִקְצֵה הָאָרֶץ	
Deut 30:3	וְקִבַּצְךָ מִכָּל־הָעַמִּים אֲשֶׁר הִפִּיץ יְהוָה אֱלֹהֶיךָ שָׁמָּה	

Unlike in Neh 1:8, however, in Deut 4:27 the scattering of the Israelites is not presented as a conditional, but as a fact that will happen because they have (or will have) worshipped other gods. The verb מעל is also not used in this connection.<sup>14</sup>

Deut 28:64 is part of a larger conditional passage that lists the consequences if the Israelites do not follow the commandments of the Torah (v. 58: אִם־לֹא תִשְׁמֹר לַעֲשׂוֹת אֶת־כָּל־דְּבָרֵי הַתּוֹרָה הַזֹּאת). Although מעל could be seen as a general equivalent to disobeying the commandments, it is evident that Neh 1:8 would not be a faithful rendering of this passage either.

Of the three passages in Deuteronomy, Deut 30:3 seems to contain the most distant phraseological connection with Neh 1:8, but the probable connection between Neh 1:9 and Deut 30:1–4 suggests that Neh 1:8 may have been written in view of Deut 30:3.

13 Outside the Pentateuch the idea is met in other texts as well, especially in Jeremiah and Ezekiel (e.g., Jer 9:15 and Ezek 11:16; 12:15; 20:23; 22:15), but they are probably influenced by Deuteronomy and the phraseological link with Neh 1:9 is even weaker than with the passages in Deuteronomy.

14 The verb is used only once in Deuteronomy (in 32:51). It is a relatively rare word in the Pentateuch, appearing seven times, six of which are in the priestly texts of Leviticus and Numbers. It is most often met in Chronicles.

## Neh 1:9

## Deut 30:1–4

	1 והיה כִּי־יבאו עליך כל־הדברים האלה הברכה והקללה אשר נתתי לפנך והשבת אל־לבבך בכל־הגוים אשר הדיחך יהוה אלהיך שמה
וּשְׁבַתְּם אֱלֹהֵי וְשִׁמְרַתֶּם מִצְוֹתַי וְעִשִׂיתֶם אֹתָם	2 וּשְׁבַתְּ עַד־יְהוָה אֱלֹהֶיךָ וּשְׁמַעַתְּ בְּקוֹלִי כְּכֹל אֲשֶׁר־אֲנֹכִי מְצַוְךָ הַיּוֹם אַתָּה וּבִנְיֶיךָ בְּכָל־לִבְבְּךָ וּבְכָל־נַפְשְׁךָ
	3 וּשְׁבַתְּ יְהוָה אֱלֹהֶיךָ אֶת־שְׁבוּתְךָ וּרְחַמְךָ וּשְׁבַתְּ וּקְבַצְךָ מִכָּל־הָעַמִּים אֲשֶׁר הִפִּיצְךָ יְהוָה אֱלֹהֶיךָ שָׁמָּה
אֲסִי־יְהוָה נִדְחֶכֶם בְּקִצְהַ הַשָּׁמַיִם מִשָּׁם אֲקַבְּצֶם	4 אֲסִי־יְהוָה נִדְחֶךָ בְּקִצְהַ הַשָּׁמַיִם מִשָּׁם יִקְבַּצְךָ יְהוָה אֱלֹהֶיךָ וּמִשָּׁם יִקְחֶךָ
וְהִבִּיאֶנִּי יְהוָה אֱלֹהֶיךָ אֶל־הָאָרֶץ אֲשֶׁר־יִרְשׁוּ אֲבֹתֶיךָ לְשֹׁכְנֵי אֶת־שְׁמִי שָׁם	5 וְהִבִּיאֶנִּי יְהוָה אֱלֹהֶיךָ אֶל־הָאָרֶץ אֲשֶׁר־יִרְשׁוּ אֲבֹתֶיךָ וְהִיטַבְךָ וְהִרְבֶּךָ מֵאֲבֹתֶיךָ

Deut 30:1–4 and Neh 1:9 share the same idea that Yahweh will eventually gather the Israelites back to their own land, but the only clear phraseological link is between Neh 1:9 and Deut 30:4. Otherwise the author of Neh 1:9 renders the possible source text very freely. The idea of a place wherein Yahweh has set his name to live is not met in Deut 30 and may have been taken from elsewhere in Deuteronomy, the closest parallels being in Deut 12:11; 14:23; 16:2, 6, 11 and 26:2. The author of Neh 1:8–9 may have had Deut 30:5 in mind but replaced the land with a phrase common in many parts of Deuteronomy (> אֶל־הָאָרֶץ) (אל־הַמְּקוֹם). This would mean that parts of the quoted text could be replaced by what the author of the quotation regarded as being equivalent. If the author of Neh 1:8–9 used a version of Deuteronomy similar to the Masoretic text, his attitude towards the source text has to be characterized as very free.

Nonetheless, the purported quotation would be a reasonably faithful rendering of the *ideas* of Deuteronomy, which repeatedly, especially in Deut 4–11 and 28–30, warns the Israelites that if they are unfaithful by disobeying Yahweh or breaking the commandments, they will be punished. There are also references to the coming restoration, but they are less common (Deut 4:25–31; 30:1–10). Unless we assume that the author of Neh 1:8–9 used an entirely different version of Deuteronomy, one has to conclude that he believed that even a general rendering of the ideas could be presented as a quotation. Since the author did not deviate from the message of Deuteronomy, there is no reason to assume that he intentionally wanted to change its text. It would be more probable that he did not regard the exact wording to be so important. More important was the general message of the Lawbook. It should further be noted that to give a text as a quotation would have given credibility and authority to the message he was conveying to the read-

ers. This could be a reason why the author, despite manifest differences, wanted to present his message as a quotation, as if Yahweh was speaking now again to the Israelites.

On the other hand, one has to keep open the possibility that the author of Neh 1:8–9 used a completely different version of Deuteronomy. This passage could certainly be used to argue that the pentateuchal text was much more fluid and unstable than what is commonly assumed in biblical scholarship. One would have to assume substantial rewriting and changes to have taken place before the pentateuchal text came to be fixed and unchangeable. Neh 1:8–9 could also be used to suggest that the author used a law that was later lost.

### 2.3. Neh 13:1–2 and Deut 23:4–6

Neh 13:1–2 claims to provide a text that the Israelites read in the Book of Moses (נקרא משה בספר) and what they found written in it (ונמצא כתוב בו). It is reasonable to assume that the ensuing text renders the text that the author found in his Lawbook, especially since Neh 13:1–2 contains the closest parallel between a pentateuchal text and Ezra-Nehemiah. Nevertheless, a comparison between the passages reveals several differences.

#### Neh 13:1–2

1 ביום ההוא נקרא בספר משה באזני העם  
ונמצא כתוב בו אשר  
לא יבוא עמוני ומאבי בקהל האלהים  
עד-עולם  
2 כי לא קדמו את-בני ישראל בלחם ובמים  
וישכר עליו את-בלעם  
לקללו  
ויהפך אלהינו תקללה לברכה

#### Deut 23:4–6

4 לא יבא עמוני ומואבי בקהל יהוה גם דור עשירי  
לא יבא להם בקהל יהוה עד-עולם  
5 על-דבר אשר לא קדמו אתכם בלחם ובמים בדרך  
בצאתכם ממצרים ואשר שכר עלך את-בלעם  
בדבעור מפתור ארם נהרים לקללך 6 ולא יאבה יהוה  
אלהיך לשמע אל-בלעם ויהפך יהוה אלהיך לך  
את-תקללה לברכה כי אהבך יהוה אלהיך

The quotation in Neh 13:1–2 is generally shorter than Deut 23:4–6. Neh 13:1 is missing the sentence יהוה גם דור עשירי לא יבא להם בקהל יהוה of Deut 23:4, but this is very probably a late addition in Deuteronomy. It specifies the law further by excluding even the tenth generation descendants from entering the community of the Israelites. Moreover, the sentence begins with גם, which is often used to begin an expansion. One can also find יהוה גם דור עשירי לא יבא להם בקהל יהוה at the end of the sentence, which repeats the words where the expansion began. It is a typical editorial technique to return

to the older text by repeating part of the final words where the expansion began in order to lead the reader back to the old text. It seems possible or even probable that Neh 13:1 preserves an earlier form of Deut 23:4.<sup>15</sup>

The next content-related difference is the lack of reference to the journey from Egypt. This is clearly not necessary for understanding the law, and because the reader is bound to connect the Balaam episode with the journey from Egypt anyway, it could be an intentional omission. On the other hand, one cannot rule out the possibility that the sentence is a later clarifying addition to Deut 23:5 and that Neh 13:2 may preserve the older form. Often the same clarifying additions are similar to elements that could also be removed if one needed to shorten a passage.

Balaam's father Beor and his hometown Pethor are not mentioned in Neh 13:2. Again, this could be an intentional omission and shortening in Neh 13, but the possibility that it is an addition in Deut 23:5 and that Neh 13 preserves the older text cannot be excluded. The addition of family origins is very typical in many texts of the Hebrew Bible.<sup>16</sup> In most cases, however, it is difficult to determine whether such details were added later to the source text or omitted as unnecessary by the author who quoted them.

The idea that Yahweh did not want to listen to Balaam in Deut 23:6 is also lacking in Neh 13. It is not imperative for understanding the passage and only presages the idea that Yahweh changed the planned curse into a blessing. Like the previous two differences, this can be an omission and shortening in Neh 13 or a later addition in Deut 23. In any case the idea that Yahweh did not want to listen to Balaam is misleading. In Num 22–23 Balaam in fact follows Yahweh's orders and does not curse Israel. However, the first author of Deut 23 could already be behind the misunderstanding and therefore it is a weak argument to assume an addition.

There are also some minor differences between the passages such as rendering of *על־דבר אשר* with the shorter but equivalent *כי* and the change of number from second person speech to the third person (for

15 An intentional shortening should not be completely excluded, but then one would have to assume that the same sentence that was probably added to Deut 23:4 was later removed. This is possible but less likely than to assume that Neh 13:1–2 preserves an earlier form of the law.

16 For example, Ezra's genealogy in Ezra 7:1–5 was very probably added later. For arguments, see Pakkala, *Ezra the Scribe*, 23–26. Titles, names of fathers, places of origin and other similar details seem to have been common additions in the Hebrew Bible.



example אתכם is changed to את בני ישראל). Moreover, God is referred to as האלהים in Neh 13 whereas Deut 23 refers to him as יהוה. The change of יהוה to אלהים may have been an intentional change to avoid mentioning Yahweh's name. These changes show that the author of Neh 13:1–2 could at least make small changes to the quoted text and still refer to it as what was found written in the Law of Moses.

There is not enough material to make far-reaching conclusions about the differences between Neh 13:1–2 and Deut 23:4–6, but some observations can be made. The available evidence allows only some possibilities. Neh 13:1–2 may preserve an older stage of the law than the known versions of Deut 23:4–6. This is suggested especially by the probability that גם דור עשירי לא יבא להם בקהל יהוה is a later addition to Deut 23:4, while Neh 13 omits it. The other plusses in Deut 23 may also be later additions, but there is not much room for conclusive argumentation. They could be additions in Deut 23 but also shortenings in Neh 13.<sup>17</sup> That the author of Neh 13:1–2 probably used an early form of Deut 23:4 slightly increases the probability that the same may be the case in other verses as well.

On the other hand, it is possible that the author of Neh 13:1–2 had a free and flexible attitude towards the pentateuchal text and therefore could render it in a shortened form that only contained the essential parts. The minor changes could support this interpretation, because they show that the author of Neh 13:1–2 did not relate to the pentateuchal text with strict adherence to each word. The minor changes, especially the change of the second person to the third person, were probably made by the author of Neh 13:1–2 because the second person direct speech very much depends on the broader context of the Pentateuch where the laws are presented as Yahweh's speech to Moses. However, some of the other quotations of the Torah in Ezra-Nehemiah have preserved the second person (Ezra 9:11–12 and Neh 1:8–9), as we have noted. Because Neh 13:1–2 is presented as a quotation, this conclusion would suggest that the author did not have a rigorous attitude to preserve each word of the quoted text. The main message of the text would have been more central. In any case, Neh 13:1–2 is much more faithful to the pentateuchal text than any other passages in Ezra-Nehemiah that quote the Pentateuch.

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17 In some cases it is possible to assume that the same sentence that was added to Deut 23 was later omitted in Neh 13:1–2, but it would be quite rare that it would not leave traces because it would mean that exactly the same words that were added in Deut 23 were omitted in Neh 13.

Consequently, the comparison between Neh 13:1–2 and Deut 23:4–6 suggest that the author of Neh 13:1–2 may have used an earlier form of Deut 23:4–6 than the Masoretic and other main versions, which probably contain at least one further addition, but possibly more. On the other hand, the author of Neh 13:1–2 was not bound by the exact wording of the pentateuchal text but could not only make at least minor changes but possibly also shorten the text that he gave as a quotation. In other words, Deut 23:4–6 was edited after the author of Neh 13:1–2 used it in his quotation, but also the quotation is not a fully faithful rendering of the exact wording of the quoted law.

### 3. “As It Was Written” – Pentateuchal Laws as the Legal Basis of Conduct

#### 3.1. The Sukkoth in Neh 8:13–18 and Lev 23:33–43

Neh 8:13–18 describes how the Israelites, after having investigated the reintroduced Law in more detail, noticed that it commanded (בכתוב) them to dwell in booths (בסכות) in the seventh month.<sup>18</sup> Most scholars acknowledge that Neh 8:13–18 is dependent on Lev 23:33–43, although the exact relationship is debated. The issue is complicated by the existence of two Sukkoth laws in Lev 23, one in vv. 33–36 and another in 39–43. The contradictions and independence of these laws suggests that they were written by different authors, 39–43 being a later addition.<sup>19</sup> Nevertheless, vv. 39–43 may preserve traces of an older stage of the Sukkoth law than the one in vv. 33–36. The idea that the time of the feast was dependent on the harvest is still present in v. 39–43, although a later editor has secondarily tried to fix the feast to a specific date in this law as well. Verses 33–36 (especially v. 34), however, fix the exact date without any reference to the harvest.<sup>20</sup> Heavy editing in vv. 39–43

18 Although the אשר of v. 14 could be interpreted as introducing a quotation, the ensuing text is not formulated as such.

19 Thus for example, Karl Elliger, *Leviticus* (HAT 4; Tübingen: J. C. B. Mohr [Paul Siebeck], 1966), 305 and Erhard S. Gerstenberger, *Das 3. Buch Mose. Leviticus* (ATD 6; Göttingen: Vandenhoeck & Ruprecht 1993), 318. Some scholars assume that the laws derive from the same author, e.g., August Dillmann, *Die Bücher Exodus und Leviticus* (Leipzig: Verlag von S. Hirzel, 1880), 576. For further discussion on Lev 23:33–43, see Pakkala, *Ezra the Scribe*, 158–64.

20 There is an evident contradiction between באספכם את־תבואת הארץ and בחמשה עשר יום לחידוש השביעי in v. 39. Both try to regulate when the feast should be held. At an earlier stage the feast was to be held after the produce of the land had been collected, but a

is suggested, among other considerations, by the disturbing repetition of how long the feast should last (it is mentioned four times: vv. 39, 40, 41 and 42).

Despite many attempts, it has proven difficult to reconstruct the oldest text of Lev 23:39–43, and it seems probable that only vestiges of the oldest core of the law are preserved. Later editors may have rewritten parts of the older text to the extent that it is no longer possible to reconstruct it. This is also implied by the many loose ends in the law. For example, the Israelites are ordered to collect fruits and branches for the feast, but no reason is given for why this is done nor is any explanation of what they should do with them provided. Suggestions by some scholars that they may have been for processions, booths or decoration are possibilities,<sup>21</sup> which only show that something must be missing in the presently available versions of the law. Rewriting or omission is also implied by v. 41, where the object marker *אתו* in v. 41a and the reference to seven days hang in the air.

Lev 23:39–43 is important for the present analysis because Neh 8:13–18 contains more connections with Lev 23:39–43 than with any other Sukkoth law in the Pentateuch. Lev 23:39–43 is the only law according to which the Israelites should live in booths (Lev 23:42 and Neh 8:14). Only in Lev 23:40 and Neh 8:15 are the Israelites ordered to collect foliage for the feast. Furthermore, only Lev 23:39–43 and Neh 8:13–18 imply that there was a middle stage in the development of the law according to which the feast should be celebrated in the seventh month without the exact day being fixed.<sup>22</sup> The exact dates are younger (in Lev 23:33–36, Num 29:12) and the purely agricultural connection based on the harvest is older (in Deut 16:13–16).<sup>23</sup> The close connection between Neh 8:13–18 and Lev 23:39–43 is corroborated by the extensively shared vocabulary:

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later editor added a fixed date (the 15th of the seventh month). Verse 41 also implies that the date was not originally fixed, only the month.

- 21 For example, Elliger, *Leviticus*, 322; Shaver, *Torah and the Chronicler's History Work*, 97, and Andreas Ruwe, "Heiligkeitsgesetz" und "Priesterschrift". *Literaturgeschichtliche und rechtssystematische Untersuchungen zu Leviticus 17,1–26,2* (FAT 26; Tübingen: J. C. B. Mohr [Paul Siebeck] 1999), 318. According to Dillmann, *Exodus und Leviticus*, 594, the branches were used to make the booths, whereas the fruits would have been used as decoration.
- 22 Lev 23:39–43 contains traces of the earlier stage where not even the month was fixed and from a later stage where the exact day was also fixed (v. 39).
- 23 Deut 16:13–16 is still unaware of the idea that the feast should be celebrated in the seventh month.

Neh 8:13–18		Lev 23:39–43	
v. 14	ישבו בסכות	בסכת תשבו	v. 42
v. 17	וישבו בסכות	ישבו בסכת	
vv. 14, 17	בני־ישראל	בני־ישראל	v. 43
v. 14	בחדש השביעי	בחדש השביעי	v. 41
v. 15	תמרים	תמרים	v. 40
v. 15	עץ עבת	עץ עבת	v. 40
v. 18	שבעת ימים	שבעת ימים	vv. 39–42

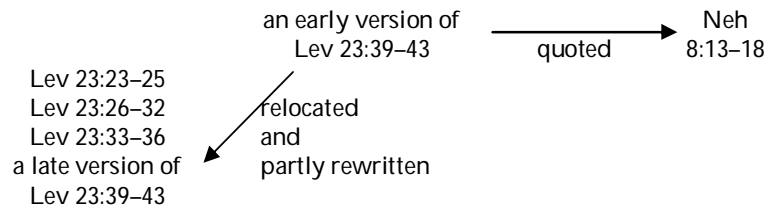
The combination of thematic and phraseological similarities suggests that Neh 8:13–18 is closely related to Lev 23:39–43. If Neh 8 was written in view of any Sukkoth law that is preserved in the present version of the Pentateuch, it has to be Lev 23:39–43. The similarities with other laws are much more distant.

However, it seems improbable that Neh 8:13–18 could be dependent on or influenced by the present Masoretic or other known version of Lev 23:39–43. The differences are too extensive – for example: The names of the feast differ (חג יהוה vs. החג or החג השביעי or החג בחדש השביעי), Neh 8:13–18 refers to the month of the feast only, whereas Lev 23:39a contains a later addition that specifies the exact days. According to Lev 23:39, one should observe the Sabbath twice during the feast, while Neh 8:13–18 is unaware of such an additional aspect of the feast. The trees of the foliage of which the Israelites should collect are also different, and different vocabulary is used to refer to the foliage. Unlike 23:40, Neh 8:15 does not refer to any fruit. Neh 8:13–18 does not connect the feast with the Exodus tradition, while Lev 23:43 does. Lev 23:39–43 does not say why the foliage was collected, while according to Neh 8:15 it was explicitly written (in the Torah) that the Israelites should collect the foliage in order to live in the booths (לעשת סכת ככתוב). It seems fair to assume that if the author of Neh 8:13–18 used 23:39–43, he used an early or middle form of the law that was later heavily edited so that parts of the law Neh 8:13–18 refers to are no longer present in the current versions of the Pentateuch.

That the author of Neh 8:13–18 was using a fundamentally different version of the entire chapter Lev 23 (and perhaps of the whole Pentateuch) is suggested by the striking lack of reference to the Day of the Atonement, which is regulated in Lev 23:26–32 and takes place in the seventh month, during the time when the events of Neh 8 are said to have taken place. One has to ask whether it would be possible that the author had Lev 23 in front of him or was aware of the Day of the Atonement during this month and could still ignore it. Lev 23:26–33 implies that in the author's context it had already become one of the

most important feasts. Furthermore, Neh 8:13–18 seems to be unaware of the Feast of blowing of Trumpets, which, according to Lev 23:23–25, should also be kept during the first day of the seventh month.

In view of the differences between Neh 8:13–18 and Lev 23:39–43 and the apparent lack of reference to Lev 23:33–38 as well, it is more probable that the author of Neh 8:13–18 used an entirely different version of Lev 23 that did not contain the law regulating the Day of the Atonement or the Feast of blowing of Trumpets. Consequently, it seems probable that the version of Lev 23:39–43 the author of Neh 8:13–18 used may not have been located with the laws in Lev 23:23–36 at all. This would then imply that he used an entirely different version of the whole book or another Lawbook because Lev 23:39–43 is probably a late addition to its present context. It should further be noted that the Feasts in Lev 23:23–32 are missing from the older law collections of the Covenant Code and Deuteronomy. They are usually assumed to be additions of the Holiness Code.<sup>24</sup> The following chart illustrates the development that now seems most probable:



It is improbable that the differences between Lev 23:39–43 and Neh 8:13–18 could be the result of legal exegesis<sup>25</sup> or of a free and flexible attitude towards the source text.<sup>26</sup> These may be possibilities in some of the other passages investigated here, but the above-presented differ-

24 See Christoph 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 Deuteronomistischen Geschichtswerk* (ed. Eckart Otto and Reinhard Achenbach; Göttingen: Vandenhoeck & Ruprecht, 2004), 81–122 (88–89).

25 See Michael Fishbane, *Biblical Interpretation in Ancient Israel* (Oxford: Clarendon, 1985), 109–12.

26 Many scholars assume that the differences may be explained as a result of exegetical techniques common in the Second Temple period and that there would not be any contradiction. Thus for example, Williamson, "History," 29–31. This is a possibility in some of the quotations in Ezra-Nehemiah, but in Neh 8:13–18 this would be improbable because it does not take into consideration the high probability that Lev 23:39–43 was heavily edited, partly inconsistent and that parts of the original law may be missing.

ences exclude this possibility in Neh 8:13–18. For example, the idea that the people should collect foliage in order to live in the booths is explicitly said to have been written in the Law. Combined with the fact that the current version of Lev 23:39–43 orders the foliage to be collected but gives no reason why this is done, the most probable explanation would be to assume that an older version of Lev 23:39–43 used by the author of Neh 8:13–18 referred to the purpose of the foliage, but a later editor rewrote or corrupted the text so that the purpose is no longer explained. Consequently, Neh 8:13–18 gives evidence of an earlier form of Leviticus that was later edited to the extent that parts of it were relocated, rewritten and omitted. Since concrete evidence for the earlier, developing forms of the Pentateuch is very rare, this conclusion should be significant for understanding the extent of the editorial processes taking place in the Pentateuch. Traditionally it is assumed that the later editors did not omit, relocate and rewrite older material, especially in the Pentateuch, but this does not seem to be the case in Lev 23. Moreover, this conclusion implies that the Lawbooks of the fifth and fourth centuries BCE, when Neh 8:13–18 was written, may have been very different from the one that is known to us as the Pentateuch. For example, the author of Neh 8:13–18 seems to be unaware of the Holiness Code, at least when it comes to Lev 23.<sup>27</sup>

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### 3.2. Ezra 9:1–2

Ezra 9 is generally dependent on the pentateuchal prohibition of intermarrying with the people of the land. Deut 7:3 is the only law in the Pentateuch that explicitly prohibits mixed marriages, although some other passages in the Pentateuch also imply that that it was prohibited (especially Exod 34:16<sup>28</sup>). It is probable that the authors of Ezra 9 were referring to Deut 7 but were strongly influenced by other parts of Deuteronomy as well. Verses 11–12 are, as we have seen, probably quoting Deut 7, while Ezra 9:1–2, which does not contain a direct quotation, is otherwise directly dependent on Deuteronomy.

<sup>27</sup> This conclusion would seem to corroborate the increasingly probable assumption that the Holiness Code is the youngest of the four main law collections of the Pentateuch.

<sup>28</sup> Exod 34:16 subordinates a reference to mixed marriages to the prohibition of making a covenant with the people of the land, which would lead to the worship of other gods. The leading idea of Exod 34:11–17 is the worship of other gods.

## Ezra 9:1–2

1 ... לא־גבדלו העם ישראל והכהנים והלויים  
מעמי הארצות כתועבתיהם  
לכנעני החתי הפרזי היבוסי העמני המאבי המצרי  
והאדמי<sup>29</sup>  
2 כי־נשאו מבנותיהם להם ולבניהם והתערבו זרע  
הקדש בעמי הארצות ...

## Deut 7:1–3

1 כי יביאך יהוה אלהיך אל־הארץ אשר־אתה  
בא־שמה לרשתה ונשל גוים־רבים מפניך  
החתי והגרגשי והאמרי והכנעני והפרזי והחוי  
והיבוסי שבעה גוים רבים ועצומים ממך ...  
3 ולא תתחתן בם בתך לא־תתן לבנו ובתו  
לא־תקח לבנד

The list of nations in Ezra 9:1 contains eight nations, whereas Deut 7:1 contains seven and Exod 34:11 only six. Only four of the nations are shared with the pentateuchal lists, but the use of the word תועבה and the changes in relation to the source text (see below) imply that the author of the list<sup>30</sup> had Deuteronomy rather than Exodus in mind. In addition to the four nations taken from Deut 7:1, Ezra 9:1 adds the Ammonites, Moabites, Egyptians and Edomites (emended from Amorites). Here the author was probably influenced by Deut 23:4–9 where these four additional nations are mentioned in the same passage. According to this passage, the Ammonites and Moabites may never enter into the congregation of the Jews, whereas the third generation Egyptians and Edomites may. There is an evident shift in attitude from Deut 23 to Ezra 9:1 towards the Egyptians and Edomites, because in Ezra 9:1 these nations are put on the same level with the Ammonites and Moabites. After Ezra 9:1 a situation where a third generation could be accepted cannot take place because Deut 23:4–9 can only refer to the descendants of mixed marriages. That the law deals with mixed marriages is implied by the preceding law in Deut 23:3, which prohibits descendants from illicit marriages from being accepted into the congregation of the Jews. Verses 4–9 should be read in view of v. 3.

The author of the list of nations in Ezra 9:1 was apparently free to change some of the nations in accordance with his own conceptions about who should be accepted into the community of the Jews and who posed the most serious threat to Israel's integrity and purity. Although the author may even have had Deuteronomy in front of him, he was not bound by it and could contradict it if it was against his own conceptions. In other words, the author is dependent on Deuteronomy and

29 The MT has והאמרי, but most scholars, e.g., Alfred Bertholet, *Die Bücher Esra und Nehemia. Kurzer Hand-Commentar zum AT* (Tübingen: J. C. B. Mohr [Paul Siebeck], 1902), 39 and Joseph Blenkinsopp, *Ezra-Nehemiah: a Commentary* (OTL; London: SCM Press, 1989), 174, emend the Amorites to Edomites with First Esdras.

30 Note that the list of nations in Ezra 9:1 is probably a later addition written by a different author than the author of the quotation in vv. 11–12 or the rest of vv. 1–2.

implies that the Israelites must abide by its rules, but simultaneously he himself takes the freedom to change its meaning or contradict it.

Although the law is not explicitly quoted in Ezra 9:1–2, the idea that intermarriage would lead to the contamination of the holy seed (זרע הקדש) is probably influenced by Deut 7:6, according to which Israel is a holy nation (עם קדוש) and may therefore not mix with other nations. Both expressions are rare in the Hebrew Bible, which, in view of the general connection with Deut 7, corroborates that the author of Ezra 9:1–2 had Deut 7 in mind. The change of עם to זרע may indicate a development of the pentateuchal law so that the physical aspect of the purity receives a more prominent position.

### 3.3. Ezra 3:2

According to Ezra 3:2, the returning exiles built the altar in order to offer sacrifices on it, as it was written in the Law of Moses (בכתוב בתורת משה). It is not immediately evident whether the Law of Moses refers to the building of the altar or to the sacrifices, but since the verse finds a close parallel in one pentateuchal law where both are commanded, namely in Deut 27:5–6, both may have been meant in Ezra 3:2 as well.

#### Ezra 3:2

ויקם ישוע בני־יוצדק ואחיו הכהנים וזרבל  
בן־שאלתיאל ואחיו  
ויבנו את־מזבח אלהי ישראל להעלות עליו עלות  
ככתוב בתורת משה איש־האלהים

#### Deut 27:5–6

5 ובנית שם מזבח ליהוה אלהיך מזבח אבנים  
לא־תניף עליהם ברזל  
6 אבנים שלמות תבנה את־מזבח יהוה אלהיך  
והעלית עליו עולת ליהוה אלהיך

Although Deut 27:5–6 refers to the building of the altar on Mt. Ebal and not Jerusalem as in Ezra 3:2, the setting is similar. In both cases, it is the first altar that the Israelites built after they had entered the land.<sup>31</sup>

It is evident that Ezra 3:2 does not provide an exact quotation of Deut 27:5–7, and, despite the reference to what was written, this was most probably not even intended by the author. The second person speech of Deut 27:5–6 is changed to the third person. Nevertheless, the parallels are so close that the author of Ezra 3:2 probably had this law in mind or in front of him. In comparison, other laws that order the

31 Following Deut 27:5–6, Joshua later builds the altar on Mt. Ebal (Josh 8:30–31).



Israelites to build an altar and sacrifice on it use different vocabulary, for example, Exod 20:24.<sup>32</sup> Instead of בנה and עלה, the author of Exod 20:24 used the verbs עשה and זבח. Deut 27:5–6 is used rather faithfully, even if the passage is not quoted word for word, and there is no reason to assume that the author used a different version of the Pentateuch than the known versions.

### 3.4. Ezra 3:4 – The Daily Sacrifices and the Sukkoth

According to Ezra 3:4, the Israelites made daily sacrifices and held the feast of the Sukkoth, as it was written (ככתוב) and according to the law (כמשפט). Although the verse does not claim to provide a quotation of the law(s) in question, the author may have had particular laws in mind. When searching for the exact phrase, the closest parallel to Ezra 3:4 seems to be Deut 16:13:

Deut 16:13      חג הסכת תעשה לך      Ezra 3:4      ויעשו את־חג הסכות ככתוב

However, Ezra 3:4 assumes that daily sacrifices took place during the week that the Sukkoth was celebrated, whereas Deut 16:13–16 is not familiar with any sacrifices during the feast.<sup>33</sup> In comparison, Lev 23:33–36 and Num 29:12–38, like Ezra 3:4, order daily sacrifices to be offered. Ezra 3:4 further refers to several sacrifices every day of the feast (ועלת יום ביום במספר כמשפט דבר־יום ביומו), which would correspond to the detailed descriptions of the sacrifices in Num 29:12–38. It is probable that the Sukkoth was originally celebrated without sacrifices, but gradually, especially with priestly influence, sacrifices took a more central role. Num 29:12–38 would represent the youngest stage in this development, Lev 23:33–36 the middle stage, while Lev 29:39–43 and Deut 16:13–16 probably preserve the oldest forms of the law.<sup>34</sup> Although the author of Ezra 3:4 may have had Deut 16:13 in mind when formulating the verse, he may be dependent on Num 29:12–38 as well or, in any case, he represents a late context where several daily sacrifices during the Sukkoth had become the rule. Ezra 3:5, which is part of the same late addition to the chapter as v. 4 also implies a late context.

32 מזבח אדמה תעשה־לי וזבתת עליו את־עלת־ך ואת־שלמ־ך.

33 Similarly, Lev 29:39–43 is not familiar with sacrifices during the feast.

34 For further discussion on Lev 29, see the analysis of Neh 8:13–18 above. It should be noted that Lev 23:39–43, despite preserving traces of the oldest stage, was later edited.

Verses 4–5 provide a list of the main occasions when one should sacrifice.<sup>35</sup>

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### 3.5. Ezra 6:18

Ezra 6:18 contains a very general reference to the setting up of the divisions and classes of the priests and Levites regulated in the Book of Moses. Although Ezra 6:18 refers to what is written in the Law of Moses (or “according to the writing of the book of Moses” – ככתב ספר משה), the verse does not contain a quotation or even an allusion that would provide any clearer details to show what exactly was set up. It may have been meant as a general reference to the Torah in order to convey that the priestly classes and division were now implemented according to the laws of the Torah. Nevertheless, the verse implies that the author was familiar with some of the laws in the Pentateuch that regulate the priestly divisions. If the author’s Pentateuch was similar to the known versions of the Pentateuch, then he may be referring to Num 1:47–4:49; 8:5–26 and 18. According to Houtman, “The Pentateuch does not know such a classification. It comes from David; see I Chron. xxiiiiff.”<sup>36</sup> It is true that the 1 Chr 22:2–26:32 corresponds much better with Ezra 6:18 than any part of the Pentateuch, which leaves some space for assuming a variant edition of the Pentateuch. However, the main problem is the brevity and vagueness of the reference in Ezra 6:18. It is difficult to make definite conclusions on the basis of this passage alone.<sup>37</sup>

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### 3.6. Ezra 10

Ezra 10 is generally dependent on the prohibition against intermarrying with the people of the land, but no passage is quoted or explicitly referred to. Nevertheless, it is probable that the author of the basic text of this chapter was familiar with Deut 7:1–6, which is the only law that specifically prohibits mixed marriages, and Ezra 10:3 and 10:11 are comprehensible only if there was a law in the background that prohibits such marriages. According to the author of these verses, it was

35 On Ezra 3:4–5, see Pakkala, *Ezra the Scribe*, 140–44.

36 Houtman, “Ezra and the Law,” 104.

37 Ulrich Kellermann, “Anmerkungen zum Verständnis der Tora in den chronistischen Schriften,” *Biblische Notizen* 42 (1988): 49–92 (91), has suggested that Ezra 6:18 witnesses to the “Mosaisierung” of ancient Israelite regulations.

Yahweh's will and commandment that the Israelites separate themselves from the foreign wives.<sup>38</sup> Especially verse 3, according to which the foreign wives and their children should be dismissed according to the Law (כתורה יעשה), does not find an instruction in the Pentateuch.<sup>39</sup> The Pentateuch does not provide any clear solution to mixed marriages that have already taken place, although the author of Ezra 10:3 implies that it does. There is no law that regulates the *cancellation* of mixed marriages. On the other hand, it is probable that the author was referring to the general prohibition to marry and that he assumed it to necessitate the cancellation of such marriages if they had already taken place. Their cancellation is a logical consequence from the prohibition, although not the only solution. Especially the question what to do with the children of these marriages would not be immediately clear for a modern reader, but the author assumes that they should be expelled from the community as well. In other words, the author of Ezra 10:3 has certain conceptions of what one should do with the mixed marriages that have already taken place and he justifies them by appealing to the Torah, although in fact the Torah (or at least the Pentateuch of the main witnesses) does not provide any unambiguous solution or instruction.<sup>40</sup>

### 3.7. Neh 5:1–13

Although Neh 5:1–13 does not contain a quotation or even a reference to a pentateuchal law, the connection of this passage with the Penta-

38 Ezra 10:3: במצות אלהינו וכתורה יעשה

Ezra 10:11: ועשו רצונו והבדילו מעמי הארץ ומן הנשים הנבריות

39 Observed by many scholars, for example, Joseph Blenkinsopp, "Was the Pentateuch the Civic and Religious Constitution of the Jewish Ethnos in the Persian Period?," in *Persia and Torah: The Theory of Imperial Authorization of the Pentateuch* (ed. James W. Watts; SBL SymS 17; Atlanta: Society of Biblical Literature, 2001), 41–62, (58). It should be added that יעשה כתורה is probably an isolated later addition.

40 Some scholars, Thomas Willi, *Juda – Jehud – Israel. Studien zum Selbstverständnis des Judentums in persischer Zeit* (FAT 12; Tübingen: J. C. B. Mohr [Paul Siebeck], 1995), 86–87, and following him Sebastian Grätz, "The Second Temple and the Legal Status of the Torah," in *The Pentateuch as Torah* (ed. Gary N. Knoppers and Bernard M. Levinson; Winona Lake: Eisenbrauns, 2007), 273–87 (274), assume that the reference of כתורה is not to any particular verse or passage, but to the whole Scripture. This may be true in this case but does not remove the problem that the present version of the Pentateuch does not provide any clear instruction on how to cancel the mixed marriages.

teuch has received scholarly attention,<sup>41</sup> and will therefore be discussed here briefly. The passage deals with the forgiveness of loans and interest. The people complained that they were unable to pay their debts, taxes and buy food, and therefore had to sell their property (vv. 1–5). Nehemiah became angry and accused the leaders of the community of demanding interest on the loans they had given to the people and sold those people who could not pay as slaves to other nations (vv. 6–8). Consequently, Nehemiah demands that the debt be forgiven, the property that was lent not be demanded back and the interest not be extracted from the people.

The prohibition against extracting interest on debt is met in some laws of the Pentateuch (Exod 22:24; Lev 25:36 and Deut 23:20), but there is no evidence for assuming that Neh 5 was influenced by any one of them. There is no phraseological connection, and even the word used for the interest is different (דָּשָׁן in the Pentateuch, מִשָּׂא in Neh 5:7).<sup>42</sup> This is peculiar because the accusation Nehemiah makes in Neh 5:7 could have been justified by appealing to one of these laws. On the other hand, the ensuing handling of the debt does not correspond to any pentateuchal law. A law requiring a general remission of debt is found in Lev 25:8–17 (Year of the Jubilee) and Deut 15:1–11 (שְׁמִטָּה), but there is no evidence that the author(s) of Neh 5:1–13 wanted to regulate the remission of debt according to these laws. The remission seems to be a spontaneous event caused by the complaints of the people. It should further be noted that the people did not complain about the interest, but about the expenses (such as taxes and food), which caused them to mortgage their property for loans. Although an appeal to the pentateuchal laws could have given a partial justification for Nehemiah's measures, the author did not seem to be aware of such laws or may not have wanted to make the connection, because a spontaneous and unregulated remission of debt, as implied by Neh 5:1–11, would not have been found in the Pentateuch.

41 For example, Loring W. Batten, *A Critical and Exegetical Commentary on the Books of Ezra and Nehemiah* (repr. 1961; ICC: Edinburgh: T & T Clark, 1913), 240–44.

42 Deut 15:2 uses the word מִשָּׂא, related to מִשָּׂא of Neh 5:7, but the meaning is different. Whereas מִשָּׂא refers to debt itself, דָּשָׁן can refer to both interest and debt. In Neh 5:7 it unequivocally refers to interest.

## 4. The Creation of New Stipulations

### 4.1 Neh 10:30–40

Neh 10:31–40 contains a list of stipulations that the Israelites swore to keep in addition to the Torah of God (תּוֹרַת הָאֱלֹהִים).<sup>43</sup> Although some parts of the Pentateuch (for example Num 18 in vv. 36–39) were evidently used as the basis of Neh 10:31–40,<sup>44</sup> the stipulations intentionally go beyond the laws of the Pentateuch.<sup>45</sup> In the background may be a situation where the Pentateuch had already become so established that one could not make large new additions. When new laws or stipulations were needed, they were inserted into new contexts, Neh 10 being one of the best examples in the Hebrew Bible. Neh 10 will not be discussed here in detail,<sup>46</sup> because the intentional and conscious expansion of the laws or the conscious invention of new stipulations makes comparison difficult for the purposes of the current study. It was not the primary intention of the authors of Neh 10 to render the pentateuchal laws as quotations but to provide a list of new stipulations that was lacking or not clearly presented in the Pentateuch. The stipulations were created by using pentateuchal laws but most of them have an added aspect or try to clarify the existing laws.<sup>47</sup> Despite the fact that the pentateuchal laws were developed further, the author is still far from the Midrashic Halakha because the exact reading of the laws or their faithful rendering does not seem to have been central.

43 It is noteworthy that the author seems to place the new laws in vv. 31–40 on the same level with the Torah. The Israelites take an oath to follow the Law and the stipulations in vv. 31–40.

44 See Fishbane, *Biblical Interpretation*, 214–16.

45 Houtman, “Ezra and the Law,” 105, has drawn attention to differences between the pentateuchal laws and Neh 10, but he fails to notice that Neh 10 intentionally changes and adds to the pentateuchal regulations. The chapter was not meant to be a quotation of any passage in the Pentateuch, which Houtman seems to imply. For example, he points out that the wording of Neh 10:31 differs from Exod 34:16 and Deut 7:3, and uses this as an argument for assuming a variant edition of the Pentateuch.

46 For a detailed discussion of Neh 10:30–40, see Pakkala, *Ezra the Scribe*, 185–211. See also David Clines, “Nehemiah 10 as an Example of Early Jewish Biblical Exegesis,” *JOT* 21 (1981): 111–17.

47 In some cases, it is difficult to determine which law was used as the basis for the stipulation, which could give some leeway to assume a variant version of the Pentateuch. However, since the stipulations were not intended as quotations or reproductions of already existing laws, any comparison would remain speculative as to whether the author used an unknown law or created the stipulation for his own context.”

## 5. Conclusions

The quotations of the Torah in Ezra-Nehemiah have proven to be very fruitful for the investigation of the Pentateuch of the fifth to third centuries BCE when Ezra-Nehemiah was written, but the other uses of the Torah in Ezra-Nehemiah have also provided significant information.

Because Ezra-Nehemiah is the product of a long development and many authors, it does not contain one consistent view on how the text of the Pentateuch was used and what kind of Pentateuch it was (if their Lawbook can even be called Pentateuch already). It should be noted, however, that in no single case does the quotation or purported quotation correspond exactly to a known pentateuchal text. Only in one case is it unequivocally clear which passage of the Pentateuch was used: Neh 13:1–2 is quoting Deut 23:4–6. Even in this case, the text in Neh 13:1–2 differs from the known versions of Deut 23:4–6. In other cases, uncertainties about the source text are considerable, although it is possible to find pentateuchal texts that may have been used or that seem to be closely related to the quotations in Ezra-Nehemiah.

The uncertainties are due to the considerable differences between the quotations and the texts we find in the Pentateuch. If we assume that behind each quotation is a text close or similar to the text in the known versions of the Pentateuch, it is necessary to conclude that the authors in Ezra-Nehemiah had an exceptionally free and flexible attitude in quoting the pentateuchal text. Although they considered the source text to be authoritative, as suggested by the fact that they are quoting it, it does not seem to have been problematical to make even radical changes to it in the quotation. The comparison has shown that parts of the source text could be omitted, rewritten and rearranged. New sentences without any basis in any known law could also be added to the purported quotation. It is noteworthy that the authors of Ezra-Nehemiah were able to make such substantial changes to texts that they assumed to possess the highest authority to regulate the life of the Jewish community.<sup>48</sup> They were apparently convinced that changes would

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48 Many late Second Temple Jewish texts, such as the Temple Scroll and Jubilees, similarly regarded as authoritative the texts they used as sources but could make substantial changes to them when they were adopted into the new composition. Furthermore, the authors of these new compositions often regarded their own texts to be authoritative as well. Sidnie White Crawford, *Rewriting Scripture in Second Temple Times* (Grand Rapids: Eerdmans, 2008), 102, 146. As she notes on the Temple Scroll: “it extensively reworks that base text through various exegetical techniques, including conflation, harmonization ... omits blocks ... adds new blocks ...”

not compromise the authority and message of the pentateuchal text.<sup>49</sup> Michael Fishbane has shown how biblical authors may be bound by the authoritative laws or traditions and appeal to them but can at the same time be very innovative in shaping their interpretation after their own conceptions.<sup>50</sup> In Ezra-Nehemiah the authors of the quotations do not distinguish between the original quotation and their own interpretation, but seem to be free to include their own view as part of the quotation.

The nearest “empirical” evidence for quotations comes from Qumran, but the evidence is not conclusive. Many Qumranic texts follow the quoted text more closely than Ezra-Nehemiah and the quotation is often clearly marked.<sup>51</sup> For example, in the Pesharim the quoted text is distinguished from the interpretation.<sup>52</sup> Perhaps more analogous to Ezra-Nehemiah is the comparison with the Community Rule, which quotes the Pentateuch. As noted by Sarianna Metso, “The biblical quotations included in 1QS seem to follow fairly closely the forms of the biblical text that we now know through the Masoretic text and the Septuagint.”<sup>53</sup> There seems to be a difference between Ezra-Nehemiah, composed in the fifth to third centuries BCE, and the Community Rule, written in the second or late second century BCE.<sup>54</sup> This would suggest that a change in attitude towards pentateuchal text in quotations took place in these centuries. On the other hand, Hanne von Weissenberg has pointed out that 4QMMT, which is also clearly later than Ezra-

49 Grätz, “Second Temple,” 276, assumes that at least in Ezra 9–10 the authors may not have intended to quote or interpret the law “in a literal sense but in a theological way.” This may apply to some of the passages in question, but when part of the law is rendered as an explicit quotation, for example in Ezra 9:11–12; Neh 1:8–9; Neh 13:1–2, it is difficult not to push the evidence further and note the evident use of certain passages and note the differences between the quotation and the source text.

50 For an extensive discussion on inner-biblical legal exegesis, see Fishbane, *Biblical Interpretation*, 91–277.

51 As noted by Hanne von Weissenberg, *4QMMT: Reevaluating the Text, the Function, and the Meaning of the Epilogue* (STDJ 82; Leiden: Brill, 2009), 170: “In many of the texts found at Qumran, specific formulae are used to set apart explicit scriptural citations ...”, but she also adds that “in other cases, scriptural citations are introduced without a quotation formula.”

52 As noted by many scholars, the Peshar literature is a separate genre, which uses certain techniques and usually also employs the word פֶּשֶׁר. See Shani L. Berrin, “Pesharim” in *The Encyclopedia of the Dead Sea Scrolls*, 644–47. See also Timothy Lim, *Pesharim* (London: Sheffield Academic Press, 2002), 44–63.

53 Metso, “Biblical Quotations,” 90.

54 For the dating of the Community Rule, see Michael A. Knibb, “Rule of the Community,” in *The Encyclopedia of the Dead Sea Scrolls*, 793–97 (here p. 796).

Nehemiah,<sup>55</sup> has a rather flexible attitude towards scriptural quotations. They have been modified and intertwined with the interpretation.<sup>56</sup> Other texts, such as 4Q252, may provide an even more mixed picture. The older text may be marked clearly, but it may also be changed and mixed with the interpretation.<sup>57</sup> It is evident that further research is needed to explore the differences and similarities between the quotations in Ezra-Nehemiah and various Qumranic texts.

Some of the other uses of the Pentateuch have also been significant for the present investigation. In addition to Neh 8:13–18, which suggests that the author used an early form of Lev 23:39–43, the list of nations in Ezra 9:1–2 contradicts Deut 23:4–9, although the author evidently regarded Deuteronomy to be an authoritative text. The contradiction is probably an intentional attempt to change what had become a too tolerant attitude towards the Edomites and Egyptians, although one should not completely rule out the possibility that the change had already taken place in the version of Deut 23:4–9, used by the author of Ezra 9:1–2.

The other references to the Torah (in Ezra 3:2, 4; 6:18; 10:3, 11) may be too vague to provide any detailed information about the forms of the authors' Pentateuchs or their attitude towards the text itself. The author of Ezra 10:3 instructs that the mixed marriages be cancelled according to the Torah, although the Torah does not provide any unequivocal instructions on their cancellation. The author probably implies that the law that prohibits the marriages can be applied to the cancellation of the marriages as well. Here as elsewhere, the authors of Ezra-Nehemiah often went beyond the laws that they appealed to as the basis for the community's life. In other words, the Torah was used as the legal basis, but this did not hinder the authors of Ezra-Nehemiah from being very innovative in interpreting it. Neh 10:30–40 is an example of a passage where the author openly went beyond the Torah. The

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55 According to Lawrence H. Schiffmann, "Miqtsat Ma'asei Ha-Torah," in *The Encyclopedia of the Dead Sea Scrolls*, 558–60, it derives from the "earliest days of the Qumran group" (p. 558).

56 Hanne von Weissenberg, *4QMMT*, 169–225. She notes (p. 218): "In the epilogue of 4QMMT, Scripture is used in a variety of ways. The text contains both allusions and intentionally modified, explicit quotations, in which the citation of the scriptural source text and its interpretation are intertwined."

57 For example, 4Q252 seems to contain a very interesting mixture of different attitudes towards the scriptural text that was used. For details see, Juhana Saukkonen, *The Story Behind the Text: Scriptural Interpretation in 4Q252* (Ph.D. diss., The University of Helsinki, 2005).



Israelites are said to have taken an oath to keep the Torah *and* the stipulations in v. 31–40, which are most probably creations of the author.

We have seen that the discrepancy between the pentateuchal texts and their rendering in Ezra-Nehemiah may have reasons other than the creative mind of the authors of Ezra-Nehemiah. It is possible that at least some of them used an entirely different version of the Pentateuch. Although not a direct quotation, Neh 8:13–18 in particular strongly suggests that this was the case. It would be difficult to provide any other explanation for the differences between Neh 8:13–18 and Lev 23:39–43 than to assume that the author of Neh 8:13–18 used a version of Lev 23 very different from the one in the known witnesses. The lack of reference to laws in Lev 23:23–25 and 25–32, usually attributed to the Holiness Code, suggests that the author of Neh 8:13–18 may have used a version of the Torah that did not include these laws.

The conclusion that some authors of Ezra-Nehemiah may have used a different version of the Pentateuch puts some of the other quotations and uses of the Torah into a new light. At least Ezra 9:11–12; Neh 1:8–9 and Neh 13:1–2 are potential candidates that may preserve a quotation from an unknown (Ezra 9:11–12 and Neh 1:8–9) or early version (Neh 13:1–2) of a pentateuchal law. Ezra 6:18 could also be seen as referring to an unknown version of the Pentateuch. In this case, one would have to assume that the editorial processes of the Pentateuch were much more radical and substantial than what is traditionally assumed.<sup>58</sup> Moreover, it would mean that the Pentateuch was still far from being a stable and fixed text in the fifth to third centuries BCE,<sup>59</sup> and that there were several fundamentally different versions during these centuries.<sup>60</sup> In comparison with the Pentateuchal quotations in Ezra-Nehemiah, the MT, LXX, Samaritan Pentateuch and most other

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58 The rewritten texts from Qumran and elsewhere (for example, 4QReworked Pentateuch, Genesis Apocryphon, Jubilees, First Esdras, the A-text of Esther) may be more representative of the earlier editorial processes of the Pentateuch and other books of the Hebrew Bible than traditionally assumed. They have been regarded as (an) exceptional genre(s), but this may be changing. One has to take into consideration that some texts of the Hebrew Scripture, even the Pentateuch, may have been substantially changed or rewritten at some point in their transmission.

59 Cf. Reinhard G. Kratz, "The Legal Status of the Pentateuch between Elephantine and Qumran," in *The Pentateuch as Torah* (ed. Gary N. Knoppers and Bernard M. Levinson; Winona Lake: Eisenbrauns, 2007), 77–103 (93), who assumes that the editorial processes of the Torah must have been finished by the end of the fourth century BCE.

60 As suggested by Houtman, "Ezra and the Law," 91–115.

known versions would then be a relatively harmonious group of witnesses that only represent a later stage and/or one line of tradition.<sup>61</sup>

In either case, one would have to assume that the scribes of the fifth to third centuries BCE, whether those behind the Pentateuch or those in Ezra-Nehemiah quoting the Pentateuch, were not very concerned about the exact wording of the pentateuchal texts, or at least they did not transmit them very faithfully. In both cases one would have to assume that substantial changes, relocation of material, rewriting, omissions and additions took place in the transmission of the texts that were regarded to be authoritative. As noted by Michael Segal, "the genre of Rewritten Bible ... can be identified in earlier stages of biblical literature."<sup>62</sup> Behind the known texts of the Hebrew Bible may be editorial stages where they were rewritten or otherwise substantially modified in a very late stage when the texts were already assumed to be authoritative.<sup>63</sup> That a text was regarded as authoritative, even Yahweh's word, apparently did not mean that an editor could not change it, at least not in the quotation, but probably not even in the actual transmission of the text. The attitude towards the preservation of the exact text may have become more conservative only from the second century BCE onwards, although texts such as 4QReworked Pentateuch imply that editions of the Pentateuch that contained considerable variants were still in circulation in the second century BCE.<sup>64</sup>

The changes probably took place in the quotations in Ezra-Nehemiah and in the later transmission of the Pentateuch. At least some of the authors had a different Pentateuch from what are presently

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61 Recent discussion in Qumran scholarship seems to develop into this direction as well. See the contributions of Eugene Ulrich, George Brooke and Sidnie White Crawford in this volume.

62 Michael Segal, "Between Bible and Rewritten Bible." in *Biblical Interpretation at Qumran* (ed. Matthias Henze; Grand Rapids: Eerdmans, 2005), 10–28 (11).

63 Most scholars assume that the Rewritten Bible texts form a separate genre that should be distinguished from the "real" authoritative texts. For the definition of such a genre and discussion, see Philip S. Alexander, "Retelling the Old Testament," in *It is Written: Scripture Citing Scripture*, (ed. D. A. Carson and Hugh G. M. Williamson; FS B. Lindars; Cambridge: Cambridge University Press, 1988), 99–121. However, it is difficult to see how in the entire transmission of biblical texts, such as the Pentateuch, all the editors over centuries regarded their text to belong to a certain genre and did not apply rewriting, a technique prevalent in the Second Temple period, and other substantial changes to their text. The possibility seems to be high that at least some of the editors of the Pentateuch did rewrite parts of the older text, and the comparison between the quotations in Ezra-Nehemiah and the Pentateuch has increased this probability.

64 See the contribution by Crawford in this volume or Sidnie White Crawford, *Rewriting Scripture in Second Temple Times*, 39–59.

known (Neh 8:13–18 and Neh 13:1–2), while others may have had a text similar to the known version and the differences were made in the quotation. Possibly some authors in Ezra-Nehemiah even had a different version of the Pentateuch than the late versions *and* made changes when quoting. This makes the comparison difficult, but in any case it has become very difficult to maintain that the Pentateuchs of all authors of Ezra-Nehemiah were similar to the ones we possess, and it is also improbable that the pentateuchal texts were quoted word for word. The different uses of the Torah in Ezra-Nehemiah indicate that the scribes dealing with pentateuchal texts in the fifth to third centuries BCE were much less concerned about the exact or actual text of the Pentateuch than what has been traditionally assumed in scholarship. Able to change words, sentences and ideas of the authoritative texts, their own theological conceptions had a greater impact on the textual transmission than those working after the second century BCE when the texts became increasingly unchangeable.

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