
LEVITICUS 11, DEUTERONOMY 14 AND DIRECTIONALITY

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ABSTRACT

The article engages with the old debate about the diachronic relationship between Leviticus 11 and Deuteronomy 14. It starts with outlining certain criteria which might help us determine directionality. It then provides a synchronic overview of the two chapters, focusing on commonalities and differences, before moving on to the diachronic debate. As part of the diachronic debate the views of Christophe Nihan and Reinhard Achenbach are contrasted and critiqued. The article then attempts to draw some conclusions from this debate.

INTRODUCTION

Leviticus 11 and Deuteronomy 14 are two chapters in the Pentateuch which have a lot in common, much more than any other two chapters in the legal corpora. As Christophe Nihan (2011:401) puts it, this is “the most remarkable instance of legislation shared by Priestly and non-Priestly legal traditions within the Torah”. The exact diachronic relationship between the two chapters has been debated in Pentateuch scholarship for the last two hundred years (more or less). There are basically three options.

First, Leviticus 11 is younger than Deuteronomy 14 and is thus some kind of expansion of its source, Deuteronomy 14. Scholars such as Julius Wellhausen and Abraham Kuenen supported this view and were responsible for the classic documentary hypothesis which has dominated Pentateuch scholarship for most of the twentieth century (Nihan 2011:401; Milgrom 1991:698).¹

¹ A more recent example of the opinion would be Veijola (2004:296-297), who argues

The second option is to turn the diachronic relationship around. This option has been used by the followers of Hezekiel Kaufmann, who in broad terms argue that the Priestly text (P) is older than the book of Deuteronomy, which means Leviticus is older than Deuteronomy as well.² A very important recent exponent of this approach was the late Jacob Milgrom, who wrote a majestic commentary on the book of Leviticus.³ Milgrom (1991:698-704) offers a fairly detailed argument in favour of his view that Deuteronomy 14 was abbreviating Leviticus, a view to which we will return. Yet there are also some European scholars who follow Milgrom in this regard. They do not share Milgrom's view that P and Leviticus are earlier than Deuteronomy, but they seem to think that a very late hand added Deuteronomy 14 to that book after most of Leviticus had already been finished.⁴ We will engage with one of these scholars later as well.

A third option is to argue that both texts used a common *Vorlage* which we no longer have, an argument which dominated most of the twentieth century (Nihan 2011:401-402).⁵ This argument would be similar to the one used for the New Testament with regard to Matthew, Luke and Q.

The problem that this article will address is summed up well in the words of Nihan (2011:402), who asks why we have these parallel lists in both books and, furthermore, why the scribes who compiled Deuteronomy supplemented that book “with a piece of ritual legislation that seems to be more at home, at first sight, in the purity legislation of Lev 11-15”. In other words, why is chapter 14 part of the book of Deuteronomy? Many scholars agree that Deuteronomy 14 was not part of the *Urdeuteronomium*.⁶

against the common *Vorlage* and understands Leviticus 11 as an “erweiternde” and at the same time “systematisierende Fassung” of Deuteronomy 14. For Veijola (2004:295) Deuteronomy 14 is already an exilic text added to the legal code of Deuteronomy.

² For an overview of this debate see Meyer (2010:1-6). See especially the debate between Joseph Blenkinsopp (1996) and Milgrom (1999).

³ See Milgrom (1991, 2000, 2001).

⁴ See especially Reinhard Achenbach (2009, 2011), Eckart Otto (2009:120-122) and Thomas Römer (2007:78 n. 20). In an earlier publication Otto (1999:145) held a different view, though.

⁵ Nielsen (1995:155) is a more recent scholar who considers this possibility, although he seems very careful and is only saying that Leviticus 11:13-19 and Deuteronomy 14:12-18 go back to the same *Vorlage*. See also Carr (2011:294).

⁶ Mayes (1994:181), Nielsen (1995:155), Veijola (2004:295), Römer (2007:171), Otto (2012:850) etc. Scholars discussed below, such as Achenbach and Nihan, also agree. For the opposite view see Nelson (2002:176).

Why was it added later? And what is the relationship with Leviticus 11? The article will address this problem in four broad strokes. First we will take a look at criteria which could be used to argue for direction of dependence; second, a more synchronic overview of the two chapters will be offered; third, we will address the problem of the diachronic relationship between Leviticus 11 and Deuteronomy 14; and fourth, we will return to the questions posed above.

This article is not interested in questions about where these eating regulations came from or what the rationale behind them might have been. Many have engaged with these issues and they are not relevant to this article.⁷

DIRECTION OF DEPENDENCE

An often quoted work in the debate about directionality is the essay by David Carr (2001:107-140).⁸ Carr (2001:109-126) provides an overview of criteria used in the past and then – in the light of comparisons between the Masoretic Pentateuch and “Proto-Samaritan” Pentateuchal texts, the Samaritan Pentateuch, 4Q “Reworked Pentateuch” and the Temple Scroll – he proposes a revised set of six criteria which may help us to evaluate whether a text is younger. These are (Carr 2010:126):

- 1) Verbally parallels that text and yet includes substantial pluses vis-à-vis that text.
- 2) Appears to enrich its parallel (fairly fully preserves it) with fragments from various locations in the Bible (less completely preserved).
- 3) Includes a plus that fills what could have been perceived as an apparent gap in its parallel.
- 4) Includes expansive material in character speeches, particularly theophanic speech.
- 5) Has an element which appears to be an adaptation of an element in the other text to shifting circumstances/ideas.
- 6) Combines linguistic phenomena from disparate strata of the Pentateuch.

Many of these criteria include some element of expansion, where the younger text added things to the older text. Criteria 1, 2 and 3 make use of verbs such as “includes”, “enrich” and “fills”. When one looks at another recent attempt to engage with the issue

⁷ The best and most thorough book on the subject is probably Houston (1993). But see also Houston (2003) and other contributions by Firmage (1990), Moskala (2001) and Meyer (2011). MacDonald (2008:17-46) also offers an excellent overview of the debate, which includes the contributions by Milgrom and the anthropologist Mary Douglas.

⁸ See, for instance, Zahn (2004), Lyons (2009) and Tooman (2011).

of directionality, then this element of growing or adding to it is also present. Thus Lyons (2009:65-66) refers to “interpretative expansion”, which is an old criterion that “implies that the shorter of two genetically related or parallel texts is the original”.⁹ Yet Lyons (2009:65) also warns that the “borrowing text may also abbreviate the borrowed material”. As an antidote to this latter possibility, Lyons (2009:65) argues that if the longer text “can be shown to be interpreting the parallel material, the shorter text is more likely to be the source”. The rest of the article will try to evaluate whether the criteria provided by Carr and Lyons might be of any use in the debate about the relationship between Leviticus 11 and Deuteronomy 14. If things were as simple as Carr’s first three criteria might imply, then at first glance there would not be any doubt that Deuteronomy 14 was earlier than Leviticus 11, but as we shall see, things are not always that simple.

A SYNCHRONIC PERSPECTIVE

Good comparisons between these two texts already exist and we do not need to reinvent the wheel.¹⁰ In this section I will, on the one hand, accentuate the most important features the two chapters have in common and, on the other hand, also provide an overview of the most important pluses on both sides. These pluses will become especially important in the next section. Although this section is supposed to be only synchronic, we will at times mention some diachronic issues.

Broadly speaking, both chapters are about right eating and both link such practices to the holiness of the addressees. In Deuteronomy 14 we find the motivation introduced by means of a יָי twice (vv. 2 and 21) stating that the addressees are an עַם שְׁקֵדוּשׁ with YHWH. The statements about holiness thus form an *inclusio* around the part about right eating in Deuteronomy (Christensen 2001:288). In Leviticus 11 one also finds a statement about the holiness of the addressees in verses 44-45, thus at the end of the chapter. There is very little doubt that these verses were added to chapter 11 later and belong to H.¹¹ Be that as it may, this also introduces us to one important

⁹ See also the overview by Carr (2001:109-111) of older models. In many of these the assumption is that shorter text is usually the older text and the one which elaborates the younger.

¹⁰ See especially Milgrom (1991:698-704) and Nihan (2011:405-406).

¹¹ “H” is often used to refer to the Holiness Code (Leviticus 17-26). When I use the abbreviation “H” I refer to a broader “layer” in the Pentateuch which includes the Holiness

difference between the two chapters, namely their descriptions of holiness differ. Milgrom (1991:703) already puts it well:

P aspires but D asseverates. For D the holiness of Israel is a fact, not a desideratum. Israel inherently, by dint of its election, is an *'am qādōš* 'a holy people'.

Others, like Regev (2001:252-253) and Nelson (2002:175), have also argued that for the Priestly schools (both P and H) acquiring holiness is a continual process, whereas in Deuteronomy it is a given and the result of election and covenant.¹² In P and H there is no link between holiness and covenant (Rüterswörden 2013:423). It is also fascinating that, as Rüterswörden (2013:419) puts it, "in Deuteronomy the category of 'holy' is only applied to the people and not to Yahweh, not even his sanctuary".¹³ In short, in D the people are holy and in H (and Leviticus 11) they are becoming holy, or they are being made holy.¹⁴ In the rest of his article Regev (2001:253-258) offers a "typology of holiness" in which he further describes priestly holiness as dynamic and Deuteronomic holiness as static.

Another conceptual difference between the two chapters has to do with the very laws about right eating. Meshel (2008:203-229) has recently offered an extensive analysis of what he calls the "systems of categorization" in Leviticus 11. In his analysis he uses the theory of the sociologist Lévi-Strauss to construct what he calls a "tetralemma" in which one finds four categories of food in Leviticus 11 (Meshel 2008:215):

pure and permitted for consumption, pure and prohibited, impure and permitted, impure and prohibited.

Code. In Leviticus, 11:43-45 and 16:29-34a are usually regarded as belonging to H. See discussions by Milgrom (2000:1332-1344), Nihan (2007:564-572) and Israel Knohl (1995:104-106). Leviticus 11:43-45 has a lot in common with the parenetic frame of the Holiness Code, especially the exhortation to become holy (Otto 1999:172-176). When I refer to the Holiness Code I mean Leviticus 17-26.

¹² See also Nathan MacDonald (2003:153-159) for a discussion on Deuteronomy 7:1-8 and the connection between holiness, election and covenant.

¹³ Rüterswörden (2013:419) is making use of the insight of Houston (1993:225).

¹⁴ In Deuteronomy we find a nominal sentence (עם קדוש אלה) addressing the Israelites by means of the second personal singular pronoun. In Leviticus 11:44 we have the *hithpa'el* of the verb קדש (והתקדשתם) followed by the *weqatal* of the verb היה in another kind of nominal sentence (והייתם קדשים).

This is a fairly new system of categorisation, but what is important for our discussion is how he engages with Deuteronomy 14.¹⁵ The main difference between the lists in Deuteronomy 14 and Leviticus 11 is that Deuteronomy presents a much simpler system of classification, which does not necessarily imply an interest in ritual impurity. Meshel (2008:211) argues that for D “pure” and “impure” are mere labels indicating what can be eaten and what not. He also thinks that D adopted the terms from a *Vorlage* while “deliberately or unintentionally ignoring the ritual implications of these labels”. D does not deny the existence of ritual impurity, but is somehow not really interested in it.¹⁶ Thus the system of classification in Deuteronomy was much simpler than in the Priestly texts. In short, both chapters are linking right eating and holiness, but they differ on what constitutes holiness (dynamic vs. static), and the systems used to classify food as clean or unclean also differ (elaborate vs. simple).

A further conceptual difference closely related to what has already been said is Deuteronomy’s use of the term תועבה in 14:3.¹⁷ This concept is never found in Leviticus 11, and in Leviticus occurs only in the Holiness Code,¹⁸ where it is usually applied to some kind of sexual transgression. It is always a negative term and is clearly a plus on the side of Deuteronomy 14. Regev (2001:249) provides an overview of the use of תועבה in Deuteronomy and then concludes:

Hence, the definition of abomination in Deuteronomy is wide, and includes worship of idols, ‘non-kosher’ food, unworthy sacrifices, deception and also certain sexual behavior. However, the consequences of such acts are not detailed, and their reason is not explained. It is interesting that Deuteronomy seems to equate deception or idolatry with eating non-kosher food.¹⁹

¹⁵ Meshel (2008:209) does mention that a lot has been said about the diachronic relation between the two chapters and then settles on the idea that Deuteronomy 14 and Leviticus 11 had some common *Vorlage*.

¹⁶ This seems to be true, since texts such as Deuteronomy 12:15, 22 and 15:22 state that both people who are pure and impure may eat of the discussed food. It thus implies a ritual impurity and purity, and one needs a more detailed system of classification to understand these terms.

¹⁷ In the rest of Deuteronomy this concept is found in 7:25, 26; 12:31; 13:15; 14:3; 17:1, 4; 18:9, 12 (x2); 20:18; 22:5; 23:19; 24:4; 25:16; 27:15 and 32:16.

¹⁸ See Leviticus 18:22, 26, 27, 29, 30 and 20:13. Both of these chapters (18 and 20) are about sexual taboos.

¹⁹ See also Tigay (1996:138) for a similar comment, or Milgrom (1991:699), who thinks that

Regev (2001:250) continues that when one looks at how the term is used in the Holiness Code, its meaning differs, since now it is a “powerful defiling and damaging force”, which pollutes the land.²⁰

A further important observation is the fact that Leviticus 11 uses the term *שָׂקָץ* and this is never used in Deuteronomy.²¹ It is used in Leviticus 11:10-12 with regards to water animals that may not be eaten, that is, animals (fish) which do not have both fins and scales. In verse 13 it is applied to birds that may not be eaten. Then in verses 20 and 23 it is applied to winged insects which may not be eaten; these are insects which “walk on all fours”. In verses 41 and 42 it is again applied to swarming and crawling animals which are not to be eaten. There is no doubt about the fact that *שָׂקָץ* has a very negative meaning.²² Deuteronomy 14 either eliminated this concept from its source, or it was not in its source. An important contrast between the two chapters is the use of *שָׂקָץ* in Leviticus 11:20 compared to Deuteronomy 14:19:

Leviticus 11:20

בְּלִשְׂרָץ הָעוֹף הַהֹלֵךְ עַל-אַרְבַּע שָׂקָץ הוּא לָכֶם: ט

Deuteronomy 14:19

וְכֹל שְׂרָץ הָעוֹף טָמֵא הוּא לָכֶם לֹא יֵאָכְלוּ:

The two verses have a lot in common; Leviticus 11:20 is slightly longer, but more importantly, Deuteronomy 14:19 uses *טָמֵא* instead of *שָׂקָץ* to describe flying insects which may not be eaten. In short, Leviticus 11 reserves *טָמֵא* for large quadrupeds which may not be eaten (verses 2-8), large quadrupeds that may not be touched when dead (verses 24-28), and land swarmers which are not to be touched when dead (verses 29-38), whereas Deuteronomy 14 uses *טָמֵא* for all creatures which may not be eaten. Milgrom (1991:656-658) has already pointed out that *טָמֵא* is reserved for land animals which may not be eaten or touched, whereas *שָׂקָץ* is applied to sea and flying animals which may not be eaten, but where touching of dead animals is not forbidden.²³ This observation in itself should support Meshel’s basic argument that the

idolatry covers most of the laws associated with *תועבה* but not all of them.

²⁰ In line with Regev, Nathan MacDonald (2008:87) has also argued that in Deuteronomy *תועבה* is often associated with the “practices of the Canaanites”.

²¹ In Leviticus 11 it is found in verses 10, 11, 12, 13, 20, 23, 41 and 42. In the rest of the OT it is found only in Leviticus 7:21, Isaiah 66:17 and Ezekiel 8:10.

²² Attempts by Mary Douglas (1999:152-175) to explain it otherwise have not been successful. See discussion in Meyer (2011:149-152).

²³ Milgrom (1991:568) uses later rabbinic literature to explain why Israelites were not forbidden to touch the bodies of *שָׂקָץ* animals. In the Priestly creation narrative (Gn 1:20) both fish and birds are brought forth from the water and because they are linked to the water they cannot defile by touch. According to Milgrom (1991:658), an old Mishnaic

system of classification in Deuteronomy is simpler than that in Leviticus.²⁴ Deuteronomy uses only טָמֵא, and Leviticus uses טָמֵא and שָׁקֵץ.

If one looks for further differences, then it is clear that most of the pluses are found with Leviticus 11, where all of verses 21-47 are basically unaccounted for in Deuteronomy 14, apart from the references to holiness in verses 44-45. Leviticus 11:21-41 are concerned with the touching of the carcasses of unclean animals. Touching does not really feature in Deuteronomy 14 apart from verse 8.

Another important plus in Deuteronomy is the two positive commands in verses 11 (בְּלִ-עֹוֹף טְהוֹר תֵּאֱכָלוּ) and 20 (בְּלִ-צְפוֹר טְהוֹר תֵּאֱכָלוּ). As we will see later, Achenbach uses them in his argument. One also finds important differences between Deuteronomy 14:4-5 and Leviticus 11:2-3. Deuteronomy 14:4-5 provides a list of ten mammals that may be eaten before it indicates the criteria. Leviticus starts with the criteria and does not provide a list. Thus Leviticus is shorter. A further difference is found in Deuteronomy 14:7, which condenses the list of animals found in Leviticus 11:4-7 into one shorter list. Now Deuteronomy is shorter.

If one were to argue that the simpler and shorter chapter is the oldest, then there should not be any doubt that Deuteronomy 14 is older. The system of categorisation is simpler, as Meshel pointed out, and the chapter is shorter. This, however, does not really explain the pluses in Deuteronomy such as the use of תוֹעֵבָה or the positive commands just mentioned, or the list in verses 4-5. The different ideas of holiness do not seem to have any implications for dating the two texts, but are simply part of the different theologies one finds in the two books.

In the light of this broad overview we can turn to diachronic issues.

A DIACHRONIC PERSPECTIVE

I will present two recent views, one arguing for a common *Vorlage* and the other arguing (like Milgrom) that Deuteronomy 14 is an abbreviation of Leviticus 11. I will try to point out the strengths and weaknesses of both arguments, but hopefully also why I find it difficult to choose between the two.

ruling goes: “all (utensils made from the skin of creatures) that are in the sea are pure”.

²⁴ See also Nelson (2002:179).

Nihan

In his published dissertation Nihan (2007:288) agreed with the view that both texts had a common *Vorlage* to which each added its own touch, or what Nihan calls their particular “pluses”, and he adds “that *many of the pluses betray the typical language and theology of the Priestly and Deuteronomic schools respectively*” (emphasis in original). In a later essay Nihan (2011:401-432) presents a further engagement with the topic and offers more arguments why he thinks that both texts used the same *Vorlage*. At the heart of his argument is still the pluses found on both sides. Take, for instance, the second half of Leviticus 11, which is about touching (verses 24-40) and is not found in Deuteronomy 12. Combining this with the concept פָּקַדְשׁ , which is found only in Leviticus 11, allows Nihan (2011:406-414) to argue that Deuteronomy 14 cannot be understood as an abbreviation of Leviticus 11.

The argument amounts to the following (Nihan 2011:406-416). If Deuteronomy 14 were abbreviating Leviticus 11, the scribe who did so chose to ignore verses 24-40 about touch, which begs the question of why touch (נגַּח) is mentioned in Deuteronomy 14:8 as in Leviticus 11:8. If the author of Deuteronomy was abbreviating Leviticus 11, why not simply leave out the issue of touch? Milgrom (1991:700), actually uses this single occurrence of touch in Deuteronomy 14:8 as motivation to argue that “the author of D copied it from his source, Lev 11:8a”. In Leviticus 11 one finds the verb (נגַּח) in verses 8, 24, 26, 27, 31, 36 and 39. It should be clear that, apart from verse 8, all the other occurrences are in a part of Leviticus 11 which is a plus and thus not found in Deuteronomy.

Nihan (2011:407-410) then argues that verses 24-28 of Leviticus 11 are a reformulation of what we already have in Deuteronomy 14:8 and Leviticus 11:9. He also refers to the fact (mentioned above) that Leviticus 11 uses סָמָךְ and פָּקַדְשׁ whereas Deuteronomy 14 only uses the former. This means that anyone (like Milgrom) putting forward the view that Deuteronomy 14 was abbreviating Leviticus 11 is “forced to argue that the author of Deut 14 blurred the fine distinction” (Nihan 2011:411). Nihan continues that the distinction between the two terms was added by the same scribe who added the second half of the chapter.²⁵ He (Nihan 2011:412-413) then argues that when comparing Deuteronomy 14:9-10 with Leviticus 11:9-12, it is clear that in 11:10 the concept of פָּקַדְשׁ is introduced followed by verses 11 and 12 which define “the

²⁵ See Nihan (2007:307-323) for a discussion of why the second half of Leviticus 11 was added and how it is related to chapters 12-15.

implications” of שֶׁקֶץ. Verse 12 also offers a clear example of *Wiederaufnahme* when כָּל אֲשֶׁר אֵינָלוּ סִנְפִיר וְקִשְׁקֶשֶׁת בְּמַיִם is repeated from verse 10. All of this clearly points to the scribe in Leviticus 11 adding to the text he had before him. Nihan (2011:413) concludes that “the distinction between טמא and שֶׁקֶץ is *not* original to the legislation about edible and nonedible animals but is obviously a *later* development introduced by the author of Lev 11” (emphasis in original). A point of criticism against Nihan might be in order at this moment.

Nihan (2011:411) argues that the distinction between טמא and שֶׁקֶץ has no equivalent in Deuteronomy 14, but that is not exactly true. If טמא refers to animals which are not be eaten nor touched when dead, and שֶׁקֶץ to animals which may not be eaten but touching when dead is permissible, then Deuteronomy is basically in agreement with Leviticus, but simply uses its terminology differently. Deuteronomy uses טמא to refer to all animals which may not be eaten, but it also knows that certain animals are not to be touched when dead. Yet instead of inventing a different term for this, Deuteronomy simply adds that some of these טמא animals may not be touched when dead. And that is what Deuteronomy 14:8 does. It adds the stipulation that certain טמא animals may not be touched. The following table might help:

Leviticus 11			Deuteronomy 14		
Key: <u>Not eat nor touch (when dead) - underlined</u> / <i>Not eat - italics</i>					
Animals	Verses	Terminology	Animals	Verses	Terminology
<u>Quadrupeds</u>	4-8	טמא	<u>Quadrupeds</u>	6-8	טמא qualified
<i>Marine creatures</i>	9-12	שֶׁקֶץ	<i>Marine creatures</i>	9-10	טמא
<i>Birds</i>	13-19	שֶׁקֶץ	<i>Birds</i>	11-18	לֹא-תֹאכְלוּ
<i>Flying insects</i>	20-23	שֶׁקֶץ	<i>Flying insects</i>	19	טמא
<u>Quadrupeds</u>	24-28	טמא			
<u>Land Swarmers</u>	29-38	טמא			
(Clean animals found dead)	39-40	n.a.			
<i>Land swarmers</i>	41-42	שֶׁקֶץ			

Thus both chapters know that certain animals may not be eaten. Leviticus uses שֶׁקֶץ for these animals. Deuteronomy uses טמא. Then there are animals which may not be eaten and may not be touched when dead. For these Deuteronomy also uses טמא, but

qualifies it in verse 8 (and you may not touch). Leviticus uses אָמַט only for these. Yet the end result is pretty much the same. I do agree with Nihan's argument that the different categories in Leviticus 11 of אָמַט and קָשׁוּם may not have been part of the original source. It makes sense that a later text would add another category to clear things up,²⁶ but I do think that at times Nihan is overstating his case. This argument also goes against Milgrom (1991:700), who thinks that D is not concerned with touch and that the author "copied it from its source, Lev 11:8a". The fact that touch is only mentioned once does not mean that Deuteronomy is not really interested in that. This is the only place (verses 6-8) where it could have been used, since these are the only animals (of the animals Dt refers to) which may not be eaten nor touched when dead.

Nihan (2011:414-416) then focuses on Deuteronomy 14 and argues that the pluses in this text also make it clear that there must have been a third text and that Leviticus 11 was not extending Deuteronomy 14 either (as the dominant scholarly view of the twentieth century would have it). Examples now include the use of תּוֹעֵבָה in verse 3, the list of ten clean quadrupeds in verses 4b-5 and the framing of the list of unclean birds in verses 11 and 20 by means of the positive commandments. If Leviticus 11 was expanding Deuteronomy 14, it would not make sense to leave out these texts (contra Veijola). Nihan does not mention that the authors of Deuteronomy could have added these pluses after they abbreviated Leviticus 11.

Next Nihan (2011:418-425) focuses on how Deuteronomy 14:1-21 fits into the rest of the book. He reads this pericope as a unified composition and on the same level as Deuteronomy 7:1-6. The latter text is about how the Israelites are to deal with the nations surrounding them. They may not make covenants with them, intermarry with them etc., but instead must break down their altars and holy places etc. Texts such as Deuteronomy 7:1-6 and 14:1-21 thus want to create some kind of "household holiness" which links holiness and right eating and Nihan dates these texts to the early Persian period shortly after the temple was rebuilt.

Later Nihan (2011:424) returns to Leviticus 11 and argues that this chapter was extended and was linked to the Priestly narrative in Genesis 1-9. Genesis 1:29 forbids consumption of meat and 9:3a-4 allows it as long as no blood is eaten. In this later phase in the Persian period right eating has already become an "ethnic marker".

What is fascinating (Nihan 2011:428-429) is the fact that the Holiness redactor came later and added verses 43-45. The link between right eating and holiness was

²⁶ Which takes us to Carr's third criterion.

thus made in Leviticus 11 at a much later stage than in Deuteronomy 14. It is also noteworthy that a text like Leviticus 20:22-26 also makes a link between right eating, holiness and separation from other people and the same elements are found when one reads Deuteronomy 7:1-6 on the same level as Deuteronomy 14:1-21, as Nihan had just done.

Thus Nihan not only compares the two texts with each other, but also offers explanations for how these chapters fit into their current contexts. Deuteronomy 14 is read with chapter 7 and Leviticus 11 is read within the context of the broader Priestly text. But let us turn to a different view.

Achenbach

In an earlier article Achenbach (2009:353) engages with the dating of Deuteronomy 14 and he uses the 1923 commentary of Steuernagel to argue that the frame presupposes Deuteronomy 7:1-6* and that the authors of Deuteronomy 14:2 and 21 take the election promises (*Erwählungszusage*) and add them to the list of pure and impure animals. For Achenbach (2009:353-354) Deuteronomy 14:1²⁷ is similar to Leviticus 19:27-28²⁸ from the Holiness Code, which also means for him that Deuteronomy 14 “ist also schon durch eine redaktionelle Perspektive geleitet, welche die dtr. Gesetze im Lichte der priesterlichen *Torot* interpretiert und bearbeitet”. Thus Deuteronomy 14 is already familiar with the priestly *torot*, Leviticus 11 included, and is a reworking of the latter chapter. The purpose of this reworking of Leviticus 11 in Deuteronomy 14 was to take the purity laws anchored to the centre of the Sinai pericope and to add them to Deuteronomy in order to popularise the laws so that people could understand and obey these laws. The text is concluded in verse 21 by means of a motivation that is not interested in what is clean and unclean, but rather in “die Heiligung des Volkes” according to Deuteronomy 7:6.

In a later article Achenbach (2011:161-209) offers a much more thorough and systematic study of the relationship between Leviticus 11 and Deuteronomy 14. Achenbach (2011:166) starts by arguing that in terms of the rest of Leviticus, chapter

²⁷ You are children of the LORD your God. You must not lacerate yourselves or shave your forelocks for the dead. (NRSV)

²⁸ You shall not round off the hair on your temples or mar the edges of your beard. You shall not make any gashes in your flesh for the dead or tattoo any marks upon you: I am the LORD. (NRSV)

11 is later than the Holiness Code. The fact that verses 44-45 refer to holiness means, for Achenbach (2011:167-168), that this text was created after P (Lev 1-16*) and the Holiness Code had already been combined. Achenbach argues that we do not know what role the eating stipulations in Leviticus 11 played before this integration, or what previous life they had on their own. We cannot know this anymore, but what we can know is the following (Achenbach 2011:173):

Die Unterschiede zwischen Lev 11 und Dtn 14 erklären sich aus dieser divergenten Funktion der beiden Texte. Dtn 14 bietet eine vereinfachte Grundform der Speisetora, während Lev 11 eine ausführliche Version für die priesterliche Toraerteilung darstellt.

The first sentence refers to the fact that each chapter is embedded within its own larger text and has a particular meaning and function in that text, similar to what Nihan has argued. The second part of the quote does not really say much about the chronological relationship between the two chapters, but supports what most synchronic readings have already agreed upon: Deuteronomy 14 is simpler than Leviticus 11. The quote from Achenbach could just as well be used to support Nihan's argument, but as we have seen above Achenbach is aiming in another direction. For Achenbach Deuteronomy 14 is a *Fortschreibung* of Leviticus 11. We should also note that there is already one major difference between Achenbach and Nihan. For Nihan the link between holiness and right eating was first made in Deuteronomy 14 and then later in Leviticus 11 and the Holiness Code. For Achenbach it is the other way around.

Achenbach (2011:176-178) also makes a lot of the occurrence of תועבה in Deuteronomy 14:3. He points out that nowhere in Deuteronomy or the Holiness Code is this word ever used with regard to food. By means of this term the authors of Deuteronomy indicate to their audience that what follow is different from the Priestly *torah* and presents something which is “unkomplizierter”. In the light of this, in verses 4-5 of Deuteronomy 14 one also finds the list of ten mammals that may be eaten.²⁹ The text does not start with the two criteria as in Leviticus 11, but simply names the animals that may be eaten. This is part of a strategy to simplify the matter for a lay audience, assuming that a list is simpler to grasp than an explanation of criteria. The pluses here in Deuteronomy 14 are thus part of a strategy of simplification.

Achenbach (2011:181-182) also uses the fact that Deuteronomy 14:7 condenses

²⁹ See Milgrom (1991:699-700) for a similar argument.

the list of animals found in Leviticus 11:4-7 into one short list to argue that Deuteronomy 14 is later and abbreviating. Furthermore, Achenbach does not do much with the fact that the taboo on touching the bodies of unclean animals is only mentioned once in Deuteronomy 14:8, whereas it dominates the second half of Leviticus 11 (and verse 8). He thinks that Leviticus 11:8 and the regulations against touching are later than texts such as Leviticus 17:15, which is part of the Holiness Code. Achenbach thinks that the food instructions “volziehen also auch in dieser Hinsicht die radikalen Vorgaben des Heiligkeitsgesetzes” and are therefore post-H. The issue of touching dead bodies became more important in the late Persian period.³⁰ Much later in the article Achenbach (2011:207) discusses the second half of Leviticus 11 and argues that the text departed from the “Genre der Speisegebote” and contends that this is also the reason why Deuteronomy 14 left the second half of Leviticus 11 out. But then why did the authors of Deuteronomy 14 not leave it out in verse 8? The table added above in response to Nihan might also provide an answer to this question. Deuteronomy also knew about the ban against touching the corpses of unclean animals and also applied it to quadrupeds.

In the rest of the article Achenbach (2011:187-209) provides a thorough discussion of the different animals. He does not make much of the term שֶׁקֶץ, but mentions that it is typical of P (2011:190). He (2011:191-193) does use the two positive commands in Deuteronomy 14:11 (בְּלִ-צִפּוֹר טְהוֹר תֹּאכְלוּ) and 20 (בְּלִ-עוֹף טְהוֹר תֹּאכְלוּ) which are absent in Leviticus to argue that they presuppose the qualification in Leviticus 11:20: “walk upon all fours” (הֵהָלֵךְ עַל-אַרְבַּע). According to Achenbach, the positive command in Deuteronomy would not make sense without Leviticus 11:20. What he fails to mention is that Leviticus 11:20 talks about what we would call flying insects (שָׂרְיָן הָעוֹף) and not about normal birds (עוֹף and צִפּוֹר) as in most of Deuteronomy 14:11-20. Verse 19 is the only verse which mentions flying insects (again שָׂרְיָן הָעוֹף) in Deuteronomy 14 and they are all to be regarded as unclean and the criterion in Leviticus 11:20 is not mentioned. The reason why we do not have positive commands about the eating of birds in Leviticus 11 has to do, according to Achenbach (2011:193-194), with the fact that the Priestly authors were reluctant to allow the consumption of any bird. According to Ezekiel 39:17-20, birds “eat flesh and drink blood”. Deuteronomy 14 loosened “priesterliche Kontrolle über den Vogelverzehr” (Achenbach 2011:195), but then, as we will see in a moment, Deuteronomy was much

³⁰ See the far more extensive discussion in Achenbach (2009:364-366).

stricter about insects than Leviticus 11.

Later Achenbach (2011:202-203) does return to the flying insects of Deuteronomy 14:19 and argues again that the criterion of Leviticus 11:20 is presupposed, but this makes it difficult to explain why Deuteronomy 14 then bans all flying insects. If Deuteronomy were later, it was not only presupposing any knowledge of this criterion, but was ignoring or negating it. Deuteronomy is thus much stricter than the Priestly regulations of Leviticus 11, since the latter at least allows the consumption of different kinds of locusts (verses 21-22). Achenbach (2011:203) later argues that Deuteronomy 14:20 (You may eat any clean winged creature) leaves open the possibility of eating locusts, since one could regard them as a subgroup of the “winged creature”. The problem here is that both Leviticus 11 and Deuteronomy 14 consistently refer to the עוף and the שׂרץ הָעוֹף as two different categories altogether. This part of Achenbach’s argument is clearly not that convincing.³¹

Thus Achenbach tries to argue that the authors of Deuteronomy 14 were simplifying Leviticus 11 for a lay audience. Both Achenbach and Nihan agree that the two chapters are well anchored in their respective contexts, but they disagree on the diachronic relationship. They also disagree on which book combined right eating and holiness first. How do we choose between the two options? I have shown above where both arguments became a bit fuzzy at times, but this does not seem to be enough. Both Nihan and Achenbach offer pretty solid arguments. Could the criteria presented by Carr and Lyons offer any assistance?

DISCUSSION

If we return to Carr’s first criterion, the question is how one understands “substantial” pluses. Obviously Leviticus 11 has much more in terms of pluses, since it is twice as long as Deuteronomy 14. Yet if “substantial” is not only about quantity, but could also be understood as referring to whatever makes an important contribution to that text within its context, then both texts have these kinds of pluses. Deuteronomy 14 has the reference to תּוֹעֵבָה, it has the list of ten animals, and the two positive commandments

³¹ The same criticism can also be directed at Milgrom (1991:698-699), who argues that Deuteronomy 14 changes צִפּוֹר in verse 11 to עוף in verse 20, since “it is describing a different species of flying creatures”, which Milgrom thinks is the שׂרץ הָעוֹף of Leviticus 11:2-23. Then why did the previous verse (Dt 14:19) specifically refer to שׂרץ הָעוֹף and forbade all (וכל) of them?

about clean birds. Leviticus 11 introduces שקץ and uses טמא differently. The fact that both sides have pluses does sway things towards Nihan's view. If one were to follow Nihan's broad argument that both texts have important pluses, then there must be some kind of *Vorlage* behind these texts.³² Yet there are some weaknesses in Nihan's argument (as pointed out above) and other elements in the arguments by Achenbach and Milgrom which are very persuasive. If one wanted to present a simpler version of the eating regulations to a lay audience, then it would not be far-fetched to do it in this way. You discuss only three kinds of animals, you add a list here, positive commands there, use a simpler classification system – and your lay audience might find the stipulations more digestible. But why is Deuteronomy stricter on the consumption of insects than Leviticus? Were the authors of Deuteronomy trying to outplay the Priestly authors of Leviticus at their own game? This might be a plausible answer if we accept Achenbach's view that Deuteronomy 14 came after Leviticus 11. Or, are we once again talking of a kind of simplification?

If one looks at Carr's second criterion, it does not help much either. Both Leviticus 11 and Deuteronomy 14 add pluses which help these texts fit into their particular contexts. Deuteronomy 14 is linked to other texts in Deuteronomy. Leviticus 11 is linked with the broader book of Leviticus, but also with the larger Priestly narrative in the book of Genesis. This might mean that they had a common text to which they added, as Nihan would have it, but it might also be a case of Deuteronomy 14 cutting away parts of Leviticus 11 and then adding a few more pluses to fit better into Deuteronomy.

Examples of criterion 3 could also go both ways. The second half of Leviticus 11 could be seen as extending something which was very limited in the source text. But then the list of ten animals added in Deuteronomy or the positive commandments could also have been seen as filling up gaps in Leviticus 11. The same could be said about Lyons's criterion of "interpretive expansion". Is the list in Deuteronomy 14:4-5 an interpretation of the criteria of Leviticus 11:3? This would mean Achenbach is correct. Or is Leviticus 11:24-28 an interpretation of Leviticus 11:8 and Deuteronomy 14:8, which means that both were in the *Vorlage*, as Nihan would have it?

I find it extremely difficult to choose between the two positions. Are we perhaps at "the limits of diachronic interpretation"? (if I may slightly modify Ska's (2011:109-

³² One should also note that in a later work Carr (2011:294 n. 87) supports the arguments offered by Nihan.

122) question.) Are there perhaps other options than the three spelled out in the introduction? Could it be possible to argue for some kind of position between Nihan and Achenbach/Milgrom? Something along the lines that “the authors of Leviticus 11 and Deuteronomy 14 had their eyes on some kind of *Vorlage*, but they also had their eyes on each other”? Both chapters were making use of a common *Vorlage*, but the authors of Deuteronomy 14 were highly conscious of what Leviticus 11 did with it and wanted to present a simpler version for lay people. Could we argue for some kind of reciprocal relationship between the two chapters? This might help us to find some middle ground between the two positions presented above, but it would still be closer to Nihan’s presentation, since both texts developed from the same source, but then kept on developing parallel to each other. Yet it would also help to explain all the valid insights presented by Achenbach and Milgrom. The authors of Deuteronomy still wanted to present a simpler version than Leviticus, a version more suited for their audience.

CONCLUSION

At the start of this article I referred to Nihan (2011:402), who wanted to know why the authors of Deuteronomy wanted to supplement “that book with a piece of ritual legislation”. One of the best answers that I can think of was provided by Nihan’s *Doktorvater*, Thomas Römer (2007:171), when he discusses the Priestly concerns of Deuteronomy 14:

This is perhaps an indication that the Persian revision of the Deuteronomistic History already paid some attention to Priestly interest, preparing in a way the compromise that gave birth to the Torah.

In other words, one could describe the addition of Chapter 14 as a kind of balancing act by the authors of Deuteronomy in bringing the concerns of Deuteronomy into line with the concerns of the descendants of Judah living in the Persian Empire. Leviticus 11, when read with texts from H such as Leviticus 20:24-26, makes a link between right eating, holiness and being separated from others, which clearly indicates that the eating regulations have become some kind of ethnic marker. These same elements of right eating, holiness and staying away from other nations are found in Deuteronomy 14:1-21 and 7:1-6. It seems that the Priestly authors of Leviticus and the authors of

Deuteronomy (whoever they might have been) seemed to agree on this ideology and this might point to some kind of compromise, as Römer put it, a kind of balancing and synchronising of priorities. Both groups agreed that right eating will become part of maintaining identity in the empire, an ethnic marker which will keep them apart from other groups. In the final paragraph of his essay Nihan (2011:432) refers to a “process of gradual alignment” between the Priestly and non-Priestly traditions in the Persian period. I would think that the very presence of Deuteronomy 14 and Leviticus 11 in the same corpus might be considered a good example of this kind of “alignment”.

BIBLIOGRAPHY

- Achenbach, R 2009. Verunreinigung durch die Berührung Toter: Zum Ursprung einer altisrealistischen Vorstellung, in Berlejung and Janowski 2009: 347-369.
- _____. 2011. Zur Systematik der Speisegebote in Leviticus 11 und in Deuteronomium 14. *ZAR* 17/9:161-209.
- Berlejung, A and Janowski, B (eds.) 2009. *Tod und Jenseits im alten Israel und in seiner Umwelt*. Tübingen: Mohr Siebeck.
- Blenkinsopp, J 1996. An assessment of the alleged pre-exilic date of the Priestly material in the Pentateuch. *ZAW* 108:495-518.
- Carr, D 2001. Method in determination of direction of dependence: an empirical test of criteria applied to Exodus 34,11-126 and its parallels, in Köckert and Blum 2001:107-140.
- Carr, D 2011. *The formation of the Hebrew Bible: A new reconstruction*. Oxford: OUP.
- Christensen, D L 2001. *Deuteronomy 1:1-21:9, revised*. Nashville: Thomas Nelson Publishers.
- Douglas, M 1999. *Leviticus as literature*. Oxford: Oxford University Press.
- Dozeman, T B, Schmid, K and Schwartz, B J (eds.) 2011. *The Pentateuch: International perspectives on current research*. Tübingen: Mohr Siebeck.
- Fabry, H-J and Jüngling H-W (eds.) 1999. *Levitikus als Buch*. Bonn: Philo.
- Frevel, C and Nihan, C (eds.) 2013. *Purity and the forming of religious traditions in the ancient Mediterranean world and ancient Judaism*. Leiden: Brill.
- Houston, W 1993. *Purity and monotheism: clean and unclean animals in biblical law*. Sheffield: Sheffield Academic Press. (JSOTS 140)
- Houston, W 2003. Towards an integrated reading of the dietary laws of Leviticus, in Rendtorff and Kugler 2003:142-161.
- Knohl, I 1995. *The sanctuary of silence*. Minneapolis: Fortress Press.
- Köckert, M and Blum, E (eds.) 2001. *Gottes Volk am Sinai: Untersuchungen zu Ex 32-34 und Dt 9-10*. Gütersloh: Chr. Kaiser Gütersloher Verlaghaus.
- Lyons, M A 2009. *From law to prophecy: Ezekiel's use of the Holiness Code*. London: T & T Clark.
- MacDonald, N 2003. *Deuteronomy and the meaning of 'monotheism'*. Tübingen: Mohr Siebeck.
- MacDonald, N 2008. *Not bread alone: The uses of food in the Old Testament*. Oxford: OUP.
- Martínez, F G, Hilhorst, A, Van Ruiten, J T A G M and Van der Woude, A S (eds.) 2003. *Studies in Deuteronomy: In honour of C.J. Labuschagne on the occasion of his 65th birthday*. Leiden: Brill.

- Mayes, A D H 1994. Deuteronomy 14 and the Deuteronomic world view, in Martínez, Hilhorst, van Ruiten and van der Woude 1994:165-181.
- Meshel, N S 2008. Food for thought: systems of categorization in Leviticus 11, *Harvard Theological Review* 101/2:203-229.
- Meyer, E E 2010. Dating the Priestly text in the pre-exilic period: Some remarks about anachronistic slips and other obstacle, *Verbum et Ecclesia* 31/1:1-6.
- _____ 2011. Respect for animal life in the Book of Leviticus. How *green* were the Priestly authors? *OTE* 24/1:142-158.
- Milgrom, J 1991. *Leviticus 1-16. A new translation with introduction and commentary*. New York: Doubleday.
- _____ 1999. The antiquity of the Priestly source: a reply to Joseph Blenkinsopp, *ZAW* 111:10-22.
- _____ 2000. *Leviticus 17-22. A new translation with introduction and commentary*. New York: Doubleday.
- _____ 2001. *Leviticus 23-27. A new translation with introduction and commentary*. New York: Doubleday.
- Moran, W L 1969. The literary connection between Lv 11,13-19 and Dt 14,12-18, *CBQ* 28:271-277.
- Moskala, J 2001. Categorization and evaluation of different kinds of interpretation of the laws of clean and unclean animals in Leviticus 11, *Biblical Research* 46:5-41.
- Nelson, R D 2002. *Deuteronomy: A commentary*. London: Westminster John Knox Press.
- Nihan, C 2007. *From Priestly Torah to Pentateuch*. Tübingen: Mohr Siebeck.
- _____ 2011. The laws about clean and unclean animals in Leviticus and Deuteronomy and their place in the formation of the Pentateuch, in Dozeman, Schmid and Schwartz 2011: 401-432.
- Otto, E 1999. Innerbiblische Exegese im Heiligkeitsgesetz Levitikus 17-26, in Fabry and Jüngling 1999:125-196.
- _____ 2009. *Die Tora Studien zum Pentateuch: Gesammelte Aufsätze*. Wiesbaden: Harrassowitz Verlag.
- _____ 2012. *Deuteronomium 4,44-11,32*. Freiburg: Herder.
- Otto, E and Achenbach, R (eds.) 2004. *Das Deuteronomium zwischen Pentateuch and Deuteronomistischen Geschichtswerk*. Göttingen: Vandenhoeck & Ruprecht.
- Regev, E 2001. Priestly dynamic holiness and Deuteronomic static holiness, *Vetus Testamentum* 51/2:243-261.
- Rendtorff, R and Kugler, R A (eds.) 2003. *The Book of Leviticus: composition & reception*. Leiden: Brill.
- Römer, T 2007. *The so-called Deuteronomistic History: a sociological, historical and literary introduction*. London: T & T Clark.
- Rüterswörden, U 2013. Purity conceptions in Deuteronomy, in Frevel and Nihan 2013:413-428.
- Ska, J-L 2011. The limits of interpretation, in Dozeman, Schmid and Schwartz 2011:109-122.
- Tigay, J H 1996. *Deuteronomy*. Philadelphia: The Jewish Publication Society.
- Tooman, W A 2011. *Gog of Magog: reuse of scripture and compositional technique in Ezekiel 38-39*. Tübingen: Mohr Siebeck.
- Veijola, T 2004. *Das fünfte Buch Mose Deuteronomium: Kapitel 1,1-16,17*. Göttingen: Vandenhoeck & Ruprecht.
- Zahn, M 2004. Reexamining empirical models: The Case of Exodus 13, in Otto and Achenbach 2004:36-55.