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A LAWYER LOOKS AT HEBREWS 9: 15-17

THE interest of the following article on the question whether "covenant" or "testament" is the proper technical term to use in the translation and exposition of Hebrews 9: 15-17 lies in its being contributed by a practising lawyer. Considerations of professional propriety dictate its anonymity.

IN these verses the word translated by "testament" in the Authorized Version and other versions is διαθήκη. Viewed as a matter of direct translation only it is perfectly sound to translate this word either by "testament" or "covenant". Translators must, of course, take account of normal rules of construction affecting context including the consideration whether a given word is used as a technical expression or term of art on the one hand, or as a non-technical expression to be understood as by the man in the street on the other hand. How is the word to be understood in the passage now under consideration?

Read by an Englishman having no acquaintance with the Greek, the passage as translated in the Authorized Version may appear to be perfectly satisfactory. The Englishman understands that a testament or will is only effective upon the death of the testator, and verse 17 seems to be a simple statement of what to most Englishmen is obvious. Moreover, the Englishman's approach to verse 17 may well be coloured by the phrase "the promise of eternal inheritance" which appears in verse 15. Having the idea of inheritance in mind, it is quite reasonable to refer to a will or testament in the same context.

The passage must, however, be considered not in isolation, but in reference to the immediate context, i.e., the surrounding verses of chapter 9, and in reference to the wider context of the whole epistle. The immediate context shows that the Lord Jesus Christ is spoken of as high priest (v. 11), and as the sacrificial victim (v. 12) whose blood secures eternal redemption (v. 12) and purges the conscience from "works of death" (v. 14). The Lord Jesus is then described as "mediator of the new διαθήκη" (v. 15) which brings the reader to the verses having our special attention in this article. These verses are then followed by a reference to the occasion, recorded in Exodus chapter 24, when Yahweh and the children of Israel entered into a covenant relationship ratified by the sprinkling of blood.

In some cases it could be inapt to illustrate a testament or will, which is a unilateral declaration, by referring to a covenant which is a bilateral transaction. The writer of Hebrews nevertheless refers to the covenant of Exodus 24 as "the first", implying that the διαθήκη of Hebrews 9: 15-17 is the second, although in verse 15 the adjective "new" is used. In the view of the present writer this would point strongly to the possibility that the writer of the Epistle intended to refer to a bilateral covenant rather than a unilateral testament or will.

Would the phrase "the promise of eternal inheritance" in verse 17 be apt for a bilateral covenant? In the view of the present writer it would. A promise implies two parties, the promisor who makes the promise, and the promisee who receives the promise. It is appreciated that there is a bilateral effect under a testament or will. Under a will, a legatee receives the inheritance bequeathed to him by the testator, even though the instrument itself is a unilateral declaration in the making of which the legatee has no part. An inheritance may be secured, however, not only by will, but by a deed of covenant or settlement. Accordingly, the use of the word "inheritance" should not restrict the mind of the reader to the idea of a will.

Looking at the wider context of the whole epistle, it is pertinent to observe that in chapter 8 translators have invariably preferred to translate διαθήκη by "covenant" rather than "testament". It is, moreover, important to observe how the writer of the epistle uses ideas which are rooted in the Old Testament Scriptures, and particularly the Hexateuch. Christ is the "express image" of God (ch. 1: 3) like the first man referred to in Genesis 1: 26, but greater inasmuch as the first man was created whereas Christ is the creator (Heb. 1: 2). Similarly, Christ in all His glory is greater than Moses (ch. 3), greater than Joshua (ch. 4), greater than Abraham (ch. 7) and greater than Aaron and the priests who succeeded him (ch. 9). The one offering of Christ likewise excels above the multiplicity of offerings under the old covenant (ch. 10), and Christ brings His people into a greater inheritance than that to which Moses and Joshua brought Israel, and into "a kingdom which cannot be moved" (ch. 12). The whole of the epistle is rooted in Old Testament history and concepts. In the view of the present writer, this points again to the possibility that in ch. 9: 15-17 a bilateral covenant is in view, rather than a unilateral testament or will, for it must be borne in mind that *the Mosaic code does not include any laws of testamentary succession*. In this connection, it is interesting to note that Sir Henry S. Maine in his

treatise on *Ancient Law* wrote: "the rudimentary Testament which (as I am informed) the Rabbinical Jewish law provides for, has been attributed to contact with the Romans". He further stated: "Again, the original institutions of the Jews having provided nowhere for the privileges of Testatorship, the later Rabbinical jurisprudence, which pretends to supply the *casus omissi* of the Mosaic law, allows the Power of Testation to attach when all the kindred entitled under the Mosaic system to succeed have failed or are undiscoverable". Even allowing the possibility that the minds of the Hebrew Christians to whom the Epistle was first addressed were coloured by concepts of Roman jurisprudence, they would be more likely to think in terms of Rabbinical legal ideas. In view of the fact that Rabbinical jurisprudence (if Maine is correct) provided only for testamentary succession where beneficiaries under the laws of inheritance prescribed in the Mosaic code could not be traced, it is most unlikely that the original readers of the Epistle would consider that such a will as was provided for under the Rabbinical system would aptly illustrate the διαθήκη of Hebrews 9! These Hebrew Christians are clearly addressed as persons steeped in Old Testament history. They are not regarded as nominated legatees displacing lawful but untraceable or extinct nearest of kin! They are regarded rather as the true "seed of Abraham" (ch. 2: 16) and "partakers of Christ" viewed "as a Son" (ch. 3: 6, 14). In this connection, is not Abraham himself capable of being considered, in this Epistle where the shadow gives way to the substance (ch. 10: 1), as a shadow of the "Great Father" who, in virtue of Christ's redemptive work, became "the Father of a multitude" so that "many sons" are embraced in the plan that translates men "to glory" (compare Genesis 17: 5-8 and Genesis 22 with Hebrews 2: 10; 11: 17-19 and John 3: 16)?

A standard work dealing with the principles of interpreting statutes—*Maxwell on the Interpretation of Statutes*, 11th edn. by Roy Wilson, Q.C., and Brian Galpin, M.A. (1962)—states: "It is said that the best exposition of a statute or any other document is that which it has received from contemporary authority. *Optima est legum interpres consuetudo. Contemporanea expositio est optima et fortissima in lege*". This principle, in so far as it may affect the understanding of Hebrews 9, involves a field of enquiry in which the present writer is not equipped to engage. Are there any expositions of Hebrews 9 which may be said to be contemporary with the epistle? The present writer thinks not. If not, are there any writings of the sub-apostolic era which throw light on

how the passage was then understood? As the present writer is not equipped to answer this question, he must leave others to supply the answer, in so far as it is to be obtained in writing outside the sacred canon. So far as the canonical writings are concerned, the writer would express the view that in all other passages of Scripture, διαθήκη refers to a bilateral or multi-party covenant, which suggests that in Hebrews 9: 15-17 the idea of a testament or will must only be introduced if there are strong indications that this was the intention of the writer, or of the One who inspired the writer.

It will be apparent to all who have read thus far, that the writer of this article would be disposed, if there were no other criteria to be considered, to exclude the idea of a testament or will from the verses under consideration. It would be premature at this stage of the article, however, to state a final conclusion without first considering whether there are any other words than διαθήκη in the verses which would indicate how the passage is to be read. One word of obvious importance is the word in verse 16, translated by "testator" in the Authorized Version. This word, διαθέμενος, is obviously etymologically akin to διαθήκη. It means in fact, an executant (not executor) of a διαθήκη, and if the διαθήκη happens to be a will the executant is clearly a testator, but if the διαθήκη happens to be a covenant the executant is then a covenanting-party. It is therefore necessary when translating διαθέμενος to consider the character of the διαθήκη envisaged by the original writer before deciding what is the apt rendering in English. "The equivocation or ambiguity of words and phrases, and especially such as are general, is said by Lord Bacon to be the great sophism of sophisms. They have frequently more than one equally obvious and popular meaning. Words used with reference to one subject-matter or set of circumstances may convey a meaning quite different from that which the same words used with reference to another set of circumstances and another subject-matter would convey" (Maxwell, op. cit.). Now διαθήκη could, as we have seen, have referred to a will or testament on the one hand, or a covenant on the other, in the minds of Greek-speaking persons of the apostolic era. It therefore remains for the meaning of διαθήκη to be determined by other considerations, and in view of the present writer the considerations of context and historical background already mentioned indicate that as the διαθήκη originally spoken of is a covenant, therefore the διαθέμενος is a covenanting-party, rather than a testator.

Thomas Newberry, in the margin of the *Newberry Bible*, trans-

lates διαθέμενος as covenant-victim. Robert Young, in his *Literal Translation*, uses the same expression, and translates verses 16-17 to read: "For where a covenant is, the death of the covenant-victim to come in is necessary, for a covenant over dead victims is stedfast, since it is no force at all when the covenant-victim liveth". The literal English translation by Dr. Alfred Marshall in *The Interlinear Greek-English New Testament* would read, when arranged to conform to English rules of syntax, as: "For where there is a covenant, there is necessity to be offered the death of the one making covenant; for a covenant over dead-bodies is firm, since never has it strength where the one making covenant lives". It is clear that literal translations are not elegant! The present writer would suggest the following translation: "Because where there is a covenant, the death of the covenanting party of necessity must be endured; for a covenant over dead-ones is established, inasmuch as it has no force while the covenanting-party lives". If this translation be accepted, there must also be accepted the implication that each covenanting-party must die! This may at first blush seem to be a startling proposition, but is it so startling when other Scriptures are taken into account? The apostle Paul could write "I am crucified with Christ" (Gal. 2: 20) and "our old man was crucified with him" (Rom. 6: 6). It has often been said that the laying on of hands by the priest upon the sacrificial victim spoke of the identity that was understood to exist between the offeror and the offering, as though the offeror were saying "I am worthy of death, and slay this beast as a representative of myself". It is of the essence of the Christian gospel that believers can not only say "Christ died for us" (Romans 5: 8) but also "we died with Christ" (Romans 6: 8).

The present writer would therefore suggest that in Hebrews 9: 15-17 the writer of the epistle was emphasizing the following points: (a) The Hebrew Christians had entered into a covenant relationship with God which, after the character of the covenant referred to in Exodus 24, involved God and His people as living parties entering into mutual solemn commitments. It was a covenant *inter partes*, and not in the nature of a deed poll or unilateral declaration such as a will. (b) The covenant, as in Exodus 24, involved the death of a sacrificial victim representative of each covenanting party. How apt it is that the One standing between God and His people is a Covenant-Victim who can fittingly represent both parties, for He combines in Himself unqualified deity and untarnished manhood. (c) Although this covenant *inter partes* involved the symbolic death of those parties by the death

of the covenant-victim, the parties must live to perform the terms of the covenant! Herein is a great truth. Christ could say "I am the Living One who became dead, and behold I am alive for evermore" (Rev. 1: 18). Equally the apostle Paul could write: "Ye are complete in him . . . buried with him in baptism, wherein also ye were raised together with him through the faith of the operation of God who hath raised him from the dead" (Col. 2: 10-12). The covenanting parties are resurrected from the dead in order that they may, in the power of resurrection life, fulfil the obligations of the covenant entered into.

It is for us, like the Israelites of old, to be prepared to say sincerely: "All that the Lord hath said will we do, and be obedient" (Exodus 24: 7-8; compare 1 Peter 1: 2).