

Responsibility for Guild in the Family: The Reform of Deut 24:16 and Its Theological Significance

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Introduction

The practice of punishing an entire family for the guilt of one member of the family is a phenomenon very much diffused in the Old Testament. The text of Deut 24:16 legislates a modification of this ancient practice. This change of law is already reflected in some other parts of the biblical text, especially in some of the historical books and prophetic literature. The biblical text shows much openness to the reform of its own laws and proclamations. In many circumstances, one finds what appears to be a sacrosanct practice or custom in one text modified in another text or context. This is very prominently seen in biblical laws on marriage and family life. A careful study of the Old Testament reveals that most of the stories and laws are strictly tied to the issues of marriage and family.¹ The survival of any group or society depends on marriage and family, and this explains why the laws on these two institutions are usually at the service of human needs and survival. The present essay examines the meaning of the text of Deut 24:16 in its abolition of death penalty for members of a family in the case of the guilt of a single member. The essay goes further to reflect on the theological import of the text and its abiding lessons for contemporary approaches to biblical laws and family life. Contemporary family life is often menaced by either a rigid application of biblical laws or by a liberal application of such laws. The challenge is often to rediscover the basic principles underlying the biblical approach to laws, especially, when they have to do with human persons and the family.

1. *History of the Text of Deut 24:16*

The text of Deut 24:16 belongs to the block of texts, namely Deut 12-26, regarded as the Deuteronomistic Code. Most scholars agree that the Deuteronomistic Code forms the core of the book of Deuteronomy and its origin is connected with the reforms of Josiah in the later days of the kingdom of Judah.² This means that the book of Deuteronomy, as it is today, originated in the later part of the history of the Old Testament. The contents of the Deuteronomistic Code did not, however, originate at the same time. Some were later additions to the corpus, but all of them were part and parcel of the reforming agenda of the Deuteronomistic reformers who undertook to reform and update the laws undergirding Israel's religion and life. The law of Deut 24:16 is included as part of this reform agenda but it appears to have been included in a much later period. This would explain why it appears to contradict a number of texts within the larger corpus of the Deuteronomistic History (Deuteronomy through 2 Kings). The new law was most probably included as a corrective to the existing penal code.

¹ The consciousness of the centrality of the family in the early biblical traditions has inclined a number of scholars to give greater attention to the issue of family religion in the Israelite context. The argument is that early Israelite religion was family religion. As Rainer Albertz (*A History of Israelite Religion in the Old Testament Period, Volume 1: from the Beginnings to the End of the Monarchy* [Original in German, Göttingen 1992; London: SCM Press Ltd., 1994] 29) puts it, "The patriarchal stories in Gen. 12-50 relate the beginnings of the people of Israel from the aspect of family history, so here we have an accumulation of that religious pattern of experience and interpretative schemes which were customary and native to the family. Thus 'patriarchal religion' can largely be understood as a form of personal piety, as a typical family piety of the kind that can also be demonstrated from other texts."

² See discussion in A. D. H. Mayes, *Deuteronomy* (NCB; London: Oliphants, 1979); E. Nielsen, *Deuteronomium* (HAT 1/6; Tübingen: Mohr, 1995); A. F. Campbell – M. A. O'Brien, *Unfolding the Deuteronomistic History. Origins, Upgrades, Present Text* (Minneapolis, 2000) 39-41.

Specifically, the law, most probably, developed as a response to a protest against the prevailing Deuteronomistic theology of history which avowed that the exilic generation was suffering for the sins of the ancestors who transgressed the covenant. As some scholars have pointed out, the situation was such that the people back home who did not go into exile were accusing those of the exilic generation in Babylon that they were suffering for the sins of their fathers who had brought the exilic catastrophe on the nation because of their bad leadership.³ The exilic party initiated a gradual protest against this social and psychological stigma. The Prophetic vanguard of this protest seems to be the Prophet Ezekiel, and his views are well represented in Ezekiel 18 which brings a new oracle that only the individual sinner would be punished. Rainer Albertz articulates the issue thus:

According to Ezek.11.15; 33.24 the exiles had to accept passively that they, who had once been members of the upper class or had descended from it, were denied title to their property and thus also any claim to leadership by those who had remained at home. We can see from Ezek. 33.10 how much, having learned in their worship to acknowledge their mistakes, they suffered under the excessive burden of their guilt and were utterly paralysed by it. And it seems that, as sons and grandsons of those primarily responsible for the national catastrophe, they had their particular guilt pointed out in detail by the descendants of their former political opponents [Jer. 36; 37ff], and it was deliberately made difficult for them to escape the guilt of their fathers [Ezek. 18.2,19].⁴

The stigma of being an accursed generation made it difficult for the exiles to reclaim their property back home and the psychological stress was great.⁵ This necessitated a theological rethinking as found in Ezekiel 18 and related texts. The idea is also represented in Jer 31:29-30, and this is within the section where Jeremiah promises a new era of restoration and more personalized and interior relationship with YHWH (Jer 31:23-38). The relationship between Deut 24:16 and the prophetic texts of Jer 31:29-30 and Ezekiel 18 is very evident.⁶ Ezekiel, particularly, argues that God is now about to begin a new era of restoration and conversion for his people, and highlights the link between justice and life. God is a God of justice but he is above all a God of life. He takes no pleasure in the death of his people, as the prophet proclaims: “Why will you die O house of Israel? For I have no pleasure in the death of anyone, says the Lord YHWH. Repent, then, and live” (Ezek 18:31-32).

The new theological consciousness regarding the immensity of God’s mercy and the prerogative of life over death brought with it a rethinking of ancient laws and customs. This was the climate that brought about the reformed text of Deut 24:16 and related legislations.

2. Structure of Deut 24:16

The text of Deut 24:16 has a chiasmic structure, which can be represented as follows:

lō yûm^êtû ābôt‘al-bānîm

³ See R. Albertz, *A History of Israelite Religion in the Old Testament Period, Volume 2: from the Exile to the Maccabees* (Original in German, Göttingen 1992; London: SCM Press Ltd., 1994) 412-414.

⁴ Albertz, *A History of Israelite Religion*, 413.

⁵ Albertz, *A History of Israelite Religion*, 413.

⁶ See Georg Braulik, “Ezekiel and Deuteronomy—‘clan liability’ in Ezekiel 18:20 and Deuteronomy 24:16 in consideration of Jeremiah 31:29-30 and 2 Kings 14:6,” *NGTT* 40 (1999) 270-92.

ûbānîm lô-yûm^êtû ‘al- ābôt
îš b^êḥeṭô yûmātû

Fathers shall not be put to death for **children**,
And **children** shall not be put to death for fathers;
Everyone shall be put to death for his own sin.

There are three important statements in the text: v. 16a: no capital punishment for fathers for the sins of their children; v. 16b: no capital punishment for children for the sins of their fathers; v. 16c: capital punishment for only the individual sinner. One significant feature of a chiasmic structure is that the central element is usually in the middle position. The same is the case in the present text as the most important element of the new law is the middle element which stipulates that children shall not be put to death for the sins of their fathers. This appears to be the main point of the reformed law.

3. Analysis of the Text

v. 16a: *“Fathers shall not be put to death for children”*

The word *’ābôt* stands for “fathers” and not “parents”, as some versions render it. Some of the diverse translations are represented in the list below.

NAB 24:16 "Fathers shall not be put to death for their children, nor children for their fathers; only for his own guilt shall a man be put to death."

NIV 24:16 "Fathers shall not be put to death for their children, nor children put to death for their fathers; each is to die for his own sin."

NJB 24:16 "Parents may not be put to death for their children, nor children for parents, but each must be put to death for his own crime."

NKJ 24:16 "Fathers shall not be put to death for *their* children, nor shall the children be put to death for *their* fathers; a person shall be put to death for his own sin."

NRS 24:16 "Parents shall not be put to death for their children, nor shall children be put to death for their parents; only for their own crimes may persons be put to death."

The Hebrew *’ābôt* always refers to fathers or ancestral houses, and there is hardly any instance where its reference includes mothers. On the other hand, the word *bānîm* is better rendered as “children” rather than “sons”. Although the form *bānîm* is the plural for the Hebrew *bēn* (“son”), it is also used as a common plural for “children” including sons and daughters. Moreover, in the actual practice of the death penalty, both the male and female children are included in the events of summary execution (see Josh 7:24; Dan 6:24).

One does not, however, find clear instances in the Hebrew Bible where fathers are actually put to death for the sins of their children. The case of Eli the priest of Shiloh in 1 Samuel 2-4 seems to be an instance of a father dying for the sins of his children (1 Sam 4:16-18). This is, however, a problematic case, as some guilt was imputed to him directly. Eli was condemned by the oracle because he did not rebuke his children: “though he knew his sons were blaspheming God, he did not reprove them” (1 Sam 3:13; cf. 2:27-36). Come what may, this particular case is part of the practice that the Deuteronomic law intends to repeal. The wording of the law in Deut 24:16 presupposes that such was practiced in the ancient society. The death penalty is usually expressed in the hophal form of the verb *môt* (“to die), mainly in the form *yûmāt* (masculine

singular: “he shall be put to death”) and *yûm^etû* (masculine plural: “they shall be put to death”). This plural form is used in Deut 24:16 but as a negative command (“shall not be put to death”). The form is used mainly in legal contexts (as in Exod 31:14,15; Lev 24:16,17; 27:29; Num 15:35), and the standard formula is *môt yûmât* (“he shall be put to death”).⁷ The hophal form is a passive of the hiphil which involves a causative action. The sense actually is that of being killed through direct legal action and not the idea of dying by natural means. The present rule in Deut 24:16 is made as a penal code to guide the judges in the adjudication of cases.

v. 16b: “*And children shall not be put to death for fathers*”:

The biblical text contains a number of instances where children are put to death because of the sins of their fathers. A number of instances may suffice. In Josh 7:16-24, Achan was killed together with his sons and daughters and all his livestock because of the guilt he incurred by pilfering with the booty that was regarded as *herem*, that is, “under the ban” (Josh 7:1). In 2 Sam 21:1-9, David authorized the killing of seven sons of Saul because of the crime Saul was alleged to have committed against the Gibeonites. In Dan 6:24, which is set within the Babylonian context, the men who accused Daniel were put to death together with their wives and children. The way these death penalties are prescribed in the text and the normal ways in which they are usually carried out all indicate that such form of punishment was a common practice within the context. From this perspective, the present law in Deut 24:16 comes as a novelty. This Deuteronomic law is quoted verbatim in 2 Kgs 14:6 to support why Amaziah the new King of Judah did not kill the children of the officials who had assassinated his father, Joash (cf. 2 Kgs 12:20-21).

The question of interest here is: Why were children put to death for the sins of their fathers? This has to do with the ancient Hebrew understanding of the family. The family is regarded as the *bêt ‘ab* which literally means the house of the father, and actually reflecting the understanding that the family is the physical extension of the individual male parent. In anthropological terms, this is regarded as a corporative understanding of the family. The father incorporates or embodies the whole family. Thus, the sin of the father is believed to contaminate the whole family. Later Israelite thought sought to abolish the practical consequences of this anthropology. This is most reflected in the prophetic books of Jeremiah and Ezekiel. Jeremiah states it as a new ordinance for the restored Israel: “In those days they will not say again, ‘The fathers have eaten sour grapes, and the children's teeth are set on edge.’ But everyone will die for his own iniquity; each man who eats the sour grapes, his teeth will be set on edge” (Jer 31:29-30). The same words reappear in the prophecy of Ezekiel with further elaboration:

What do you mean by using this proverb concerning the land of Israel, saying, ‘The fathers eat the sour grapes, but the children's teeth are set on edge’? ‘As I live,’ declares the Lord God, ‘you are surely not going to use this proverb in Israel anymore. Behold, all souls are Mine; the soul of the father as well as the soul of the son is Mine. The soul who sins will die’ (Ezek 18:2-4).

The two prophetic texts authoritatively abolish the ancient belief of transferring guilt from one generation to another. By putting the abolition within a solemn oracular context (“As I live’, declares the Lord”), the prophet, with divine authority, repeals the old custom definitively.

⁷ See K. -J., Illman, “*mût, māwet,*” *TDOT* 8, 200-201.

Historically, this modification of the ancient law was meant to address the situation of the people in exile who felt that they were suffering unjustly for the sins of their ancestors.

v. 16c: “Everyone shall be put to death for his own sin”:

The term “everyone” here is used to render the Hebrew word *’ish* which can mean “man” as an individual male or any individual person, male or female, from the point of view of being a member of the group or society. As Alison M. Grant points out, the word has a sense of “eachness”, that is, “each one of a group”.⁸ The word *’ish* is often used together with *nephesh* (person, being) in legal contexts to refer to any subject of the law (Lev 4:2,27; 5:2,4,15; 15:2; 17:10, 11,12,14,15; 22:4,5,6; 26:16; Num 6:6; 15:27; 19:11; etc.).

As a matter of fact, the Mosaic law stipulates capital punishment for some categories of sin, as represented in some sections of the Pentateuch (e.g., Exod 21:14-17; Lev 20:10-16; 24:10-17; Deut 21:18-21). The present regulation in Deut 24:16c does not abolish such existing laws but stresses the point that for all categories of such offences only the individual sinner shall incur the death penalty. The text of v.16c uses specifically the Hebrew verb *hāṭā’* to express the act of sinning but does not specify the species of sin for which the death penalty is prescribed. The verb *hāṭā’* is often used for the commission of any type of sin and it expresses an action that is against the expected standards.

In the Old Testament, sin is represented by many diverse concepts, but the four most prominent are *haṭā’* (“failure or error”); *pasha’* (“rebellion” or transgression); *’āwôn* (iniquity, guilt); and *ra’* (evil, wickedness). The most frequently used of these terms is *haṭā’*, and it has the basic sense of either “missing the mark” (that is, missing the goal of one’s action) or simply “doing wrongly”.⁹ In relation to God, it has the sense of failing to do God’s will, going against God’s word or command. This explains its popularity as a general term for the act of sinning, which is acting in a way contrary to or not in resonance with the expectations of God’s will. Various sins attract the capital punishment, but according to the new law of Deut 24:16, it is only the individual sinner that is liable to punishment in such cases.

4. Theological Function of the Text

The text of Deut 24:16 is a very theologically significant text, and its functions can be argued on different levels either within the biblical text or within the wider theological sphere.

The text raises many interesting posers within the book of Deuteronomy itself, as it appears to contradict this divinely pronounced form of punishment in the Decalogue regarding the worship of other gods: “You shall not worship them or serve them; for I, the Lord your God, am a jealous God, visiting the iniquity of the fathers on the children, and on the third and the fourth generations of those who hate Me” (Deut 5:9). Some scholars try to explain the problem by arguing that the law of Deut 24:16 is meant for the human executors while God himself is above any law. One may also argue that the text of Deut 5:9 does not speak of death penalty while Deut 24:16 speaks specifically of death penalty. This argument is, however, contradicted by the prophetic texts of Jer 31:29-30 and Ezek 18:2 which authoritatively abolish the old proverb of the fathers’ eating of sour grapes while the children’s teeth are set on edge. The matter is even

⁸ A. M. Grant, “Adam and *Ish*. Man in the OT,” *AusBR* 25 (1977) 9.

⁹ James Barr (“Scope and Problems in Semantics of Classical Hebrew,” *Zeitschrift für Althebraistik* 6 [1, 1993] 8) prefers this last sense, that is, “do wrongly”, arguing that the sense of “missing the target” is, most probably, an extension of that meaning.

more clearly stated in these words of Ezek 18:20: “The son will not bear the punishment for the father's iniquity, nor will the father bear the punishment for the son's iniquity; the righteousness of the righteous will be upon himself, and the wickedness of the wicked will be upon himself.” The literary relationship among the three texts of Jeremiah 31:29-30, Ezekiel 18 and Deut 24:16 (including vv. 10-18) has been argued by some scholars.¹⁰ These texts all show that Deut 24:16 functions as a corrective text to the older traditional law and practice in Israel.

The text of Deut 24:16 shows both the inner development of the biblical laws and also the diversity of views within texts that are presumed to be normative. The present form of the texts is the product of progressive interpretations, modifications and reinterpretations of earlier texts. This is called inner-biblical exegesis. It is called for in every age for the appropriation and contextualization of the divine message. Writing recently on this theme, Bernard M. Levinson explains the workings of inner-biblical exegesis and articulates his findings in four main points: “(1) exegesis provides a strategy for religious renewal; (2) renewal and innovation are almost always covert rather than explicit in ancient Israel; (3) in many cases exegesis involves not the passive explication but the radical subversion of prior authoritative texts; and (4) these phenomena are found in the literature of ancient Israel before the closure of the canon.”¹¹

The implications of the text of Deut 24:16 should challenge a new theological thinking on the traditional understanding of sin as something that can be inherited. A typical example is the conventional idea of original sin as inherited sin. What Deut 24:16 is saying clearly together with the texts of Jeremiah and Ezekiel is that guilt cannot be transmitted from the father to the children in the family or from one generation to the other. However, it is a fact that the consequences of an evil act can remain from one generation to the other, and many innocent members of the family or clan can suffer the unending stigma from such act. No law can change that state of affairs. But what the new law stipulates is that the guilt for such evil act cannot be transferred to the family members and only the individual sinner is liable to punishment.

In the contemporary setting, many families are erroneously made to understand that certain deaths and experiences of misfortune within the family are caused by the sins of their ancestors. While the consequences of sin, including ancestral ones, can affect families in diverse ways, the lesson of Deut 24:16 is that there is no hidden divine punishment being transmitted from generation to generation. The belief continued through the New Testament times that later generations can suffer not just the consequences of the sins of their ancestors but also the guilt for such sins. One recalls the story of the cure of the blind man by Jesus in John 9 where the disciples pose the question to Jesus: “Rabbi, who sinned, this man or his parents, that he was born blind?” (John 9:2). Jesus dismisses their insinuations, saying that neither the man nor his parents sinned (9:3). This dialogue reveals the deep-rooted popular belief in this form of inherited guilt and transferred retribution. This belief has acquired an alarming dimension in the contemporary times, especially in the African setting where people are often subjected to cleansing and deliverance from perceived ancestral guilt or curses. The question still troubles many people today whether certain forms of death and misfortune in a family can be as a result of the sin of a family member.

¹⁰ See Braulik, “Ezekiel and Deuteronomy,” 270-92.

¹¹ Bernard M. Levinson, *Legal Revision and Religious Renewal in Ancient Israel* (Cambridge: Cambridge University Press, 2008) 20-21; information taken from Bernard S. Jackson, Review of *Legal Revision and Religious Renewal in Ancient Israel*, by Bernard M. Levinson, in *Journal of Hebrew Scriptures* 10 (2010); see also B.S. Jackson, *Studies in the Semiotics of Biblical Law* (Sheffield: Sheffield Academic Press, 2000) 159-61

The text of Deut 24:16 is a powerful theological text as it protects the dignity and right to life of the individual members of a family who are innocent of the crime of a member of the family. More importantly, the text teaches that laws that have to do with human life are subject to change as long as they become inimical to genuine human living. This recent statement of the African theologian, Laurenti Magesa, is very instructive:

But the purpose of the Church is not the Church as such; the main goal of the Church lies in the salvation of souls, towards which everything should be geared. However, with regard to many traditional answers to pastoral issues of marriage and family, this order might inadvertently have been reversed and human salvation placed in a secondary position. The emphasis on rigorous faithfulness to dogma may have ignored the message of the Gospel as fundamentally one of mercy, not rules.¹²

The Catholic Church has always avowed the principle of *salus animarum* as the supreme law (*suprema lex*). The Latin expression *salus animarum* literally means “salvation of souls”, and sometimes people tend to understand it in the narrow sense of the salvation of the soul after death rather than its original sense of total well-being of the human person. The principle of *salus animarum* inclines the Church to make the wellbeing of the human person as the supreme consideration in its approach to laws.

As the Church today searches for light from the Scriptures to be able to tackle pressing family problems, the text of Deut 24:16 teaches a bunch. The new legislation underscores the fact that revisions of laws and conventions are present in the biblical text itself, making clear the point that some laws that were presumed to be sacrosanct in a certain age can also be changed in another age.

Conclusion

This essay has sought to raise a number of pertinent points that make the text of Deut 24:16 a fertile ground for theological discourse on significant family issues. Very interesting is the fact that it is a reform text that even dares to tamper with the divine words in the Decalogue in the light of new understanding. By repealing the ancient law and custom on death penalty, the reformers responsible for the legal code in Deuteronomy intended to update Israel’s legal system with the prevailing understanding of justice.

¹² Laurenti Magesa, “The Synod on the Family Humanizing Dogma,” *New People* 154 (January-February, 2015) 21.