

Returning to an Empty Land: Revisiting my Old Argument about the Jubilee

ESIAS E. MEYER (UNIVERSITY OF PRETORIA)

ABSTRACT

In this article the author engages with his own work on the Jubilee published in 2003. The focus is especially on Lev 25 and 26. In 2003 the author argued that Lev 25 was a text associated with the elite about to return from exile and who wanted their land back. This argument was supported by referring to the "myth of the empty land" in Lev 26, which views the land as lying empty during exile and waiting for the exiles to repopulate it again. On historical-critical grounds the first part of his argument about ch. 25 is rejected. The second part of the argument about the "myth of the empty land" is supported by current historical-critical debates about the portrayal of land in the Priestly text and the Holiness Code.

A INTRODUCTION

More than a decade ago I set out as a committed contextual theologian to present another liberating reading of the Jubilee laws of Lev 25.¹ The process started when the new millennium was imminent and pressure was mounting on the first world to write off the debt of the third world. I wanted to offer another reading in support of this endeavour. In his commentary Jacob Milgrom expresses something of the sentiments of this time when he describes his experience in Bossey, Switzerland in May 1996, when the "flag of the jubilee" was unfurled:²

I single out the Third World nations because, first, I was able to feel, even vicariously, their people's pain and suffering, and second, I was witness to a vivid demonstration that their hopes for remedial action are expressed by the biblical jubilee.

It is clear that this experience made a deep impression on Milgrom (as it should have) and Milgrom also believed that the jubilee laws could be used today *mutatis mutandis* to bridge the gap between the haves and the have-nots.³ Milgrom had no qualms about reading Lev 25 in support of the quest for a more just world.

¹ Esias E. Meyer, *The Jubilee in Leviticus 25: A Theological Ethical Interpretation from a South African Perspective* (Exuz 11; Münster: Lit Verlag, 2004), 38–58.

² Jacob Milgrom, *Leviticus 23–27: A New Translation with Introduction and Commentary* (AB 3A; New York: Doubleday, 2001; repr., New Haven: Yale University Press, 2010), 2270.

³ Milgrom, *Leviticus 23–27*, 2271.

I adopted a different perspective. I made use of the work of the late Robert Carroll and his *Ideologiekritik* approach.⁴ Carroll helped me to navigate between the two impulses of trying to be a contextual theologian, but being drawn into important historical–critical debates. Carroll’s version of ideological criticism provided me with a theoretical tool to navigate between these two extreme positions. Although Carroll used historical–critical tools to great effect, he was also highly conscious of, and articulate about, the role of the contemporary context in the interpretation process.⁵ Carroll was also highly conscious of empire and power – and especially of whose interests were being served by the text.⁶

I read Lev 25 in close conjunction with ch. 26.⁷ Other scholars have also argued that the last two chapters of the Holiness Code are much more closely related to each other than to some of the other chapters in Lev 17–26.⁸ Most of these arguments are based on literary or synchronic readings of these chapters, which we need not go into here. I will highlight two important features of my original argument.

B FIFTY YEARS

The first issue is the rather old question of why every 50 years?⁹ Why did the authors of H change the seven–year period found in Exod 21 and Deut 15 to 50 years?¹⁰ Already in 1969 Gerhard Wallis had put the question as follows:¹¹

⁴ Robert P. Carroll, "On Representation in the Bible: An *Ideologiekritik* Approach." *JNSL* 20/2 (1994): 1–16; Robert P. Carroll, "An Infinity of Traces: On Making an Inventory of Our Ideological Holdings: An Introduction to *Ideologiekritik* in Biblical Studies," *JNSL* 21/2 (1995): 25–44.

⁵ Carroll, "Infinity of Traces," 28–34.

⁶ See for instance, Robert P. Carroll, "Jeremiah, Intertextuality and *Ideologiekritik*," *JNSL* 22/1 (1996): 15–24.

⁷ Meyer, *Jubilee*, 161–181.

⁸ See especially Henry T. C. Sun, "An Investigation into the Compositional Integrity of the So–Called Holiness Code (Leviticus 17–26)," (Ph.D. diss., The Claremont Graduate School, 1990), 439–559. See also, more recently, Samuel E. Balentine, *Leviticus* (IBC; Louisville: Westminster John Knox Press, 2002), 193; or Jill Middlemas, *The Templeless Age: An Introduction to the History, Literature, and Theology of the "Exile"* (Louisville: Westminster John Knox Press, 2007), 128–129.

⁹ Meyer, *Jubilee*, 223–229.

¹⁰ This question already presupposes a particular understanding of the diachronic relationship between the Covenant Code, the Deuteronomistic Code and the Holiness Code. After the contributions of Karl Elliger, *Leviticus* (HAT I/4; Tübingen: J.C.B. Mohr, 1966) and Alfred Cholewinski, *Heiligkeitsgesetz und Deuteronomium: Eine vergleichende Studie* (AnBib 66; Rome: Biblical Institute Press, 1976) there has been a growing consensus that these texts should be read in the order mentioned here. See especially the research overviews by Hans–Winfried Jüngling, "Das Buch Levitikus

Warum sollte man Formen, die sich ursprünglich doch wohl mit dem Zyklus von sieben Jahren verbanden, jetzt auf ein halbes Jahrhundert umgestellt haben?

For Wallis it was clear that the 50-year period was related to the period of exile.¹² The Jubilee law of Lev 25 reflected something of the anxiety of the exiles about whether they would get their land back if they were to return after such a long time. The answer of the Jubilee law was "yes" they could, but Wallis never thought that this actually happened, simply because the initial return under Cyrus was too meagre for this to happen.¹³ Even the great Alfred Cholewinski thought that Wallis might have been right.¹⁴ Cholewinski describes Wallis's views as follows:¹⁵

Die Aussicht auf die Rückkehr ins Land der Väter war schon unter ihnen gross und die Frage, wie es möglich sein wird, in dem eigenen Sippenverband und auf eigenem Boden sich wieder zu finden, musste für sie von brennender Aktualität sein.

For Wallis and Cholewinski the purpose of Lev 25 was to build a legal foundation on the basis of which the returning exiles could get their original land back. Cholewinski adds to Wallis's point that the original authors wrote this law in the hope that it would become "ein dauerndes Gut" in Israel's legal practice, but this never happened, perhaps because later authors remembered that the original intention of the Jubilee law was the once-off objective of getting back the land of the exiles.¹⁶

More recently other scholars such as Frank Crüsemann,¹⁷ Walter Dietrich¹⁸ and Klaus Grünwaldt¹⁹ have presented similar arguments. Crüsemann

in der Forschung seit Karl Elligers Kommentar aus dem Jahre 1966," in *Levitikus als Buch* (ed. Heinz-Josef Fabry and Hans-Winfried Jüngling; BBB 119; Bonn: Philo, 1999), 23–36 and Eckart Otto, "Innerbiblische Exegese im Heiligkeitsgesetz Levitikus 17–26," in *Levitikus als Buch* (ed. Heinz-Josef Fabry and Hans-Winfried Jüngling; BBB 119; Bonn: Philo, 1999), 125–137.

¹¹ Gerhard Wallis, "Das Jubeljahr-Gesetz, eine Novelle zum Sabbathjahr-Gesetz," *Mitteilungen* 15 (1969): 341.

¹² Wallis, "Jubeljahr-Gesetz," 342–343.

¹³ Wallis, "Jubeljahr-Gesetz," 344.

¹⁴ By "great" I mean that a lot of what happens in modern-day research on the Holiness Code is still built on the foundations laid by Cholewinski. One of Cholewinski's important contributions was to show convincingly (to most people) that the Holiness Code was engaging with the Deuteronomic Code. See Jüngling, "Das Buch Levitikus," 23–36 and Otto, "Innerbiblische Exegese," 134–135.

¹⁵ Cholewinski, *Heiligkeitsgesetz*, 248.

¹⁶ Cholewinski, *Heiligkeitsgesetz*, 249.

¹⁷ Frank Crüsemann, *Die Tora: Theologie und Sozialgeschichte des alttestamentlichen Gesetzes* (2nd ed.; Gütersloh: Kaiser, 1997).

also refers to Wallis and agrees with him that Lev 25 is related to the end of exile.²⁰ Dietrich describes the possible tug-of-war for possession of the land between the returnees and the people who stayed behind. In agreement with Wallis, Dietrich argues "dann könnte sich hinter dieser Formulierung eine konkrete Hoffnung und ein handfester Anspruch der Exilierten verbergen."²¹ He thinks, for instance, that Lev 25:23 (פִּי-לֵי הָאָרֶץ) is an attempt to avoid siding with either of the two groups, but to relativise the claims of both.²² Grünwaldt builds further on these arguments and argues that the 50 years "sind nicht nur eine Potenzierung des Sabbatjahres, sondern entsprechen auch ziemlich genau der Zeit zwischen der zweiten Exilierungswelle und der Machtübernahme Kyros II. in Babylon."²³ Grünwaldt adds that the text of the Holiness Code provides a theological motivation for the return of land to the original owners.²⁴ The Jubilee starts on the day of Atonement and Lev 26:39–41 describe how the exiles humble themselves. In short, for Wallis, Cholewinski, Crüsemann, Dietrich and Grünwaldt, Lev 25 changes seven into 50 in order to support the claims of the returning exiles to get their land back. Ten years ago I also followed these arguments and found them quite convincing.

There are, of course, other clues in the text of Lev 25 which point to an exilic date. One does not need too much imagination to imagine that a text where the root שׁוּב occurs 11 times²⁵ would have resonated within the context of an audience in exile hoping to return one day to their אֶרֶץ.

C THE MYTH OF THE EMPTY LAND

Apart from using Carroll's ideological-criticism on a more theoretical level, I also made use of a debate started by Carroll in 1992, namely the "myth of the empty land."²⁶ Carroll's main argument was based on the different picture of the land painted by, on the one hand, texts such as 2 Chr 36:21 and Lev 26:34, 35, 53 which present the land during the exile as empty, and on the other hand,

¹⁸ Walter Dietrich, "Wem das Land gehört: Ein Beitrag zur Sozialgeschichte Israels im 6. Jahrhundert v. Chr.," in *"Ihr Völker alle, klatscht in die Hände!": Festschrift für Erhard S. Gerstenberger zum 65. Geburtstag* (ed. Rainer Kessler, Kerstin Ulrich, Milton Schwantes and Gary Stansell; Exuz 3; Münster: Lit Verlag, 1997), 350–376.

¹⁹ Klaus Grünwaldt, *Das Heiligkeitsgesetz Leviticus 17–26: Ursprüngliche Gestalt, Tradition und Theologie* (BZAW 271; Berlin: Walter de Gruyter, 1999).

²⁰ Crüsemann, *Tora*, 330–331.

²¹ Dietrich, "Wem das Land," 369.

²² Dietrich, "Wem das Land," 376.

²³ Grünwaldt, *Heiligkeitsgesetz*, 380.

²⁴ Grünwaldt, *Heiligkeitsgesetz*, 381.

²⁵ See vv. 10 (x2), 13, 27 (x2), 28 (x2), 41 (x2), 51 and 52.

²⁶ Robert P. Carroll, "The Myth of the Empty Land," *Semeia* 59 (1992): 79–93.

texts such as 2 Kgs 24:14; 25:12, Jeremiah 39:10; 52:15, which refer to the "poorest of the land" left behind. Carroll puts it as follows:²⁷

The image of the land paying for its sabbaths (Lev 26:34–35, 43) echoes the notion of a land cleared of all its occupants. For the root metaphor of sabbath is a cessation of activity, and only a land evacuated of people could be said to be keeping (*ršh*, "pay off") sabbath by having nobody working it in in the normal agriculturalist senses. *An empty land is therefore also an image of possibility for the future.* [my italics]

In this last sentence it becomes clear that Lev 26 in its presentation of the land as empty also represents something of the expectations of the deported elite to be returned to their land. Carroll started a debate which was also continued in the field of archaeology by scholars such as Hans Barstad,²⁸ Thomas Willi,²⁹ Rainer Albertz,³⁰ Joseph Blenkinsopp³¹ and Oded Lipschits³² who have all argued in their own fashion that the picture of an empty land presented by Lev 26 is not supported by archaeological evidence. In archaeology there is, of course, the other side arguing for a "Babylonian Gap"³³ and this debate is still on-going with someone like Oded Lipschits trying to argue for some kind of

²⁷ Carroll, "Myth," 83.

²⁸ Hans M. Barstad, *The Myth of the Empty Land: A Study in the History and Archaeology of Judah During the 'Exilic' Period* (SO 28; Oslo: Scandinavian University Press, 1996).

²⁹ Thomas Willi, *Juda – Jehud – Israel: Studien zum Selbstverständnis des Judentums in persischer Zeit* (FAT 12; Tübingen: Mohr Siebeck, 1995).

³⁰ Rainer Albertz, *Die Exilzeit: 6. Jahrhundert v. Chr.* (BE 7; Berlin: Kohlhammer, 2001).

³¹ Joseph Blenkinsopp, "The Bible, Archaeology and Politics; or The Empty Land Revisited," *JSOT* 27/2 (2002): 169–187.

³² Oded Lipschits, *The Fall and Rise of Jerusalem: Judah under Babylonian Rule* (Winona Lake: Eisenbrauns, 2005).

³³ A good example would be Ephraim Stern, "The Babylonian Gap: The Archaeological Reality," *JSOT* 28/3 (2004): 273–277. Or see Avraham Faust, "Deportation and Demography in Sixth-Century B.C.E. Judah," in *Interpreting Exile: Displacement and Deportation in Biblical and Modern Contexts* (ed. Brad E. Kelle, Frank R. Ames and Jacob L. Wright; Atlanta: SBL, 2011), 91–101, who is very critical of scholars such as Barstad. See also Avraham Faust, *Judah in the Neo-Babylonian Period: The Archaeology of Desolation* (SBLABS 18; Atlanta: SBL, 2012), for a much more thorough engagement with what Faust calls the "continuity school." Barstad and Lipschits are regarded as some of the foremost proponents of this school. Yet neither Lipschits nor Faust think that the land was totally empty. For Faust only about 15% of people survived. Faust, *Judah in the Neo-Babylonian Period*, 233. For Lipschits, *Fall and Rise*, 270, this figure should be closer to one third. For Faust the land had a "relative emptiness," but still it was not literally empty (see also pp. 147 and 173).

"middle path."³⁴ There also seems to be a fair amount of consensus about the area of Benjamin and that it was far less empty than other parts of Judah.³⁵ Yet eventually the debate about archaeology, although fascinating, is not that important for our debate.³⁶ Carroll, I believe, was right that in the *text* of Lev 26 the land is presented as empty and this means that there is a tension within the OT between Lev 26 and other texts (mentioned above), which present a different picture.³⁷ For the authors of Lev 26 the land lay empty during the exile and the same people who were visible to the authors of texts from the books of 2 Kings and Jeremiah³⁸ became invisible to the authors of Lev 26.

³⁴ Oded Lipschits, "Shedding New Light on the Dark Years of the 'Exilic Period': New Studies, Further Elucidation, and Some Questions Regarding the Archaeology of Judah as an 'Empty Land,'" in *Interpreting Exile: Displacement and Deportation in Biblical and Modern Contexts* (ed. Brad E. Kelle, Frank R. Ames and Jacob L. Wright; AIL 10; Atlanta: SBL, 2011), 85.

³⁵ Lipschits, "Shedding New Light," 81. But, see Faust, *Judah in the Neo-Babylonian Period*, 209–231, who wants to revisit this consensus in a chapter dedicated to the issue of the area of Benjamin. In short, Faust (p. 209) argues that the above mentioned consensus "needs reexamination and modification." Still, he often acknowledges in this chapter that this is probably the least convincing part of his book and should (p. 231) "not influence the overall arguments of the book."

³⁶ Referring to the debate between Faust and Lipschits, Hugh Williamson, "Welcome Home," in *The Historian and the Bible: Essay in Honour of Lester L. Grabbe* (ed. Philip R. Davies and Diana V. Edelman; LHBOTS 530; London: T. & T. Clark, 2010), 117, argues that this lively debate is "immaterial" since both sides "accept that there was such a population, be it smaller or larger." By "such a population" he refers to people left behind in the land after the exile.

³⁷ In his book, Faust, *Judah in the Neo-Babylonian Period*, 8, n. 15, acknowledges that Carroll does "not go beyond the interpretation of texts." Faust himself never refers to any of the texts mentioned by Carroll (i.e. Lev 26 and others). One could thus say that Faust does "not go beyond the interpretation of archaeology." I am sure that Faust would regard my remark as a compliment since he often mentions that one of the main problems of the continuity school is that they are driven by a "biblical agenda" (see pp. 187, 203, 228 and 247).

³⁸ Carroll, "Myth," 79–81, mostly focused on texts from the book of Jeremiah such as 39:10 and 52:15. These texts present the opposite view, of the land not being empty, but being farmed by the "poor of the land." Yet recently Hermann-Josef Stipp, "The Concept of the Empty Land in Jeremiah 37–43," in *The Concept of Exile in Ancient Israel and its Historical Contexts* (ed. Ehud Ben Zvi and Christoph Levin; BZAW 404; Berlin: De Gruyter, 2010), 103–154 has argued that one also finds the concept of empty land in Jer 37–43. These chapters tell the story of the remnant being taken to Egypt with nobody remaining behind. For Stipp, "Concept," 154, these chapters were written by "a deportee who wrote in an early phase of the exile." The deportee's objective was to change the attitude of his addressees towards their Babylonian captors.

The picture painted by the interpretation of Lev 25 and 26 is not a very liberating one. This interpretation means these texts were produced by the exiled elite, who wanted their land back from the poor of the land, who have been farming it during the exile. Leviticus 26 also offers a picture where the people who have been cultivating the land in the meantime are not presented. Thus Milgrom, in arguing against an exilic or post-exilic dating of Lev 25, refers to his correspondence with Norman Gottwald:³⁹

The holdings of Israelites at the fall of Jerusalem in 586 BCE were very unevenly distributed. Restoration of lands to their previous owners would incorporate gross inequities and ensure the vulnerability of small landowners to indebtedness.

Milgrom thus argues that the Jubilee laws must have been pre-exilic, since dating them to the exile would mean restoring something which was unjust in the first place. But then Milgrom is a member of a fairly small but very articulate group of scholars who argue for the pre-exilic origins of P and H, and for Milgrom the origins of H lie in the eighth century.⁴⁰ Yet Milgrom clearly sees that this kind of interpretation would seriously dent the liberating image of the text.

If indeed Lev 25 and 26 could be read as I proposed, and if one could associate the change to 50 years with the expectations of the exiled elites of getting their land back upon their return, and if the representation of the land as empty in Lev 26 means that for the elite in exile the land was lying empty waiting for them to populate it again, then the text does not have a very liberating image anymore. In modern-day terminology, the text is then about the previous "haves" taking from the current "have-nots."

Carroll also described the returning deportees as endowed with "great wealth" and that this must have "given rise to considerable opportunities for social oppression."⁴¹ One should also add that it is clear that the returnees came with the blessing of the Persian Empire.⁴² Few would dispute the fact that Per-

³⁹ Milgrom, *Leviticus 23–27*, 2242–2243.

⁴⁰ See the debate between Milgrom and Blenkinsopp: Joseph Blenkinsopp, "An Assessment of the Alleged Pre-Exilic Date of the Priestly Material in the Pentateuch," *ZAW* 108 (1996): 495–518. Jacob Milgrom, "The Antiquity of the Priestly Source: A Reply to Joseph Blenkinsopp," *ZAW* 111 (1999): 10–22. See also Esias E. Meyer, "Dating the Priestly Text in the Pre-Exilic Period: Some Remarks about Anachronistic Slips and other Obstacles," *VE* 31/1 (2010): 1–6, for an overview. For a similar dating see also Israel Knohl, *The Sanctuary of Silence: The Priestly Torah and the Holiness School* (Minneapolis: Fortress Press, 1995).

⁴¹ Carroll, "Myth," 81.

⁴² Carroll, "Myth," 88. Or see the overview provided by David M. Carr and Colleen M. Conway, *An Introduction to the Bible: Sacred Texts and Imperial Contexts* (Chichester: Wiley-Blackwell, 2010), 184–193.

sian money eventually built the temple (in 520 B.C.E. or thereabouts). One does not need to support the hypothesis of a "Persian imperial authorisation" behind the creation of the Pentateuch to argue that the people of the *Golah* had the support of the Empire.⁴³ One of the lingering issues in OT criticism is the positive portrayal of the Persian Empire in the OT. As David Carr puts it:⁴⁴

Every other pre-Hellenistic empire and nation in the world is criticized at least once and often more times across the Hebrew Bible. Only the Persians emerge free of judgment, portrayed as the enablers of the return, restorers of the temple, and sponsors of the republication of the Torah.

So far so good. What are the weaknesses in this argument?

D DATING

One of the main problems with this interpretation is simply dating. It does not seem all that convincing to date the origins of the Jubilee law to the first wave of returnees after the exile, which is implied by my reading. If one looks at the most important arguments for dating the Holiness Code by European scholars such as Christophe Nihan,⁴⁵ Eckart Otto⁴⁶ and Reinhard Achenbach,⁴⁷ one ends up with a much later date, at least a century later, if not more. Take Nihan as an

⁴³ For a critical discussion on this debate see Jean-Louis Ska, *Introduction to Reading the Pentateuch* (Winona Lake: Eisenbrauns, 1996), 217–226. Ska is not a supporter of the theory. For Ska the impetus to create the Torah came from the internal need to create identity.

⁴⁴ David M. Carr, *The Formation of the Hebrew Bible: A New Reconstruction* (Oxford: Oxford University Press, 2011), 206. Carr, *Formation*, 219, is also fairly critical of the "Persian imperial authorisation" idea and argues similarly to Ska that "the initiative likely lay more with the returnees themselves, who sought and claimed Persian authorization, even at the highest levels, for the Torah."

⁴⁵ Christophe Nihan, *From Priestly Torah to Pentateuch* (FAT II/25; Tübingen: Mohr Siebeck, 2007).

⁴⁶ See Eckart Otto, "The Holiness Code in Diachrony and Synchrony in the Legal Hermeneutics of the Pentateuch," in *The Strata of the Priestly Writings: Contemporary Debate and Future Directions* (ed. Sarah Shectman and Joel S. Baden; ATANT 95; Zürich: Theologischer Verlag Zürich, 2009), 149. Or, Eckart Otto, "The Pentateuch in Synchronical and Diachronical Perspectives: Protorabbinic Scribal Erudition Mediating Between Deuteronomy and the Priestly Code," in *Das Deuteronomium zwischen Pentateuch und Deuteronomistischem Geschichtswerk* (ed. Eckart Otto and Reinhard Achenbach; FRLANT 206; Göttingen: Vandenhoeck and Ruprecht, 2004), 30–32. Otto consistently dates the creation of the Holiness Code, which coincides with the creation of the Pentateuch, to the time of Ezra, which for him is at the end of the fifth and beginning of the fourth centuries.

⁴⁷ Reinhard Achenbach, "Das Heiligkeitsgesetz und die sakralen Ordnungen des Numeribuches im Horizont der Pentateuchredaktion," in *The Books of Leviticus and Numbers* (ed. Thomas Römer; BETL 205; Leuven: Uitgeverij Peeters, 2008), 155.

example. For him the holiness legislation was written in order to correct and revise the Priestly document which is regarded as its predecessor.⁴⁸ The authors of H are thus a later priestly generation who not only incorporate P, but also other earlier legal codes such as D and the Covenant Code. The implications of this for dating are summed up as follows by Nihan:⁴⁹

If so, and once the post-P and post-D origin of this collection is acknowledged, the historical and literary context for such a process of systematic reception and inner-biblical exegesis should be sought in a first edition of the Torah in the Persian period, as argued by Otto, probably in the second half of the fifth century BCE.

One should also take one step back and talk about dating P in the first place. P is usually seen as a product of the Persian period, which already means sometime after 539 B.C.E..⁵⁰ Nihan also thinks that P is already a post-exilic text. One of the foundations of his argument is the way in which the land is portrayed in P. In P "the Israelites are called to identify themselves with the Patriarchs and to dwell as *gerim*, 'resident aliens' in a land over which they no longer have political control."⁵¹ The argument is basically that P's account of Abraham,⁵² Isaac and Jacob in the Priestly part of Genesis presents the patriarchs as living in a land *with* other people. The patriarchs are forced to live peacefully with these people, but they are not allowed to marry them. For Nihan, these stories reflect something of the reality of the returnees who have to share "their" land with other people. The following comment by Nihan puts it well:⁵³

Under Persian rule, former exiles must learn to live inside the land as the non-exiles did during the Neo-Babylonian period, and to be willing to share it (or even negotiate it!, compare Abraham in Gen 23) with other ethnic groups, as the Patriarchs did before.

Similarly Joseph Blenkinsopp has argued that in P Abraham is regarded "for the Judeo-Babylonian immigrants as a model of how to relate to the indigenous people."⁵⁴ Blenkinsopp also discusses the land-buying incident in Gen

⁴⁸ Nihan, *Priestly Torah*, 546.

⁴⁹ Nihan, *Priestly Torah*, 548.

⁵⁰ See Konrad Schmid, *Literaturgeschichte des Alten Testaments: Eine Einführung* (Darmstadt: WBG, 2008), 146–150. Or, Christian Frevel, *Mit Blick auf das Land die Schöpfung erinnern: Zum Ende der Priestergrundschrift* (HBS 23; Freiburg: Herder), 382–383, who argues for a date between 530 and 520 B.C.E..

⁵¹ Nihan, *Priestly Torah*, 383.

⁵² See Nihan, *Priestly Torah*, 384, where he discusses Gen 23 and the fact that Abraham had to negotiate to get land with the "Sons of Het" in order to bury Sarah.

⁵³ Nihan, *Priestly Torah*, 378.

⁵⁴ Joseph Blenkinsopp, "Abraham as Paradigm in the Priestly History in Genesis," *JBL* 128/2 (2009): 235.

23 and comes to a similar conclusion as Nihan does.⁵⁵ Even more recently than Nihan and Blenkinsopp, Jakob Wöhrle has offered similar arguments.⁵⁶ Wöhrle makes a lot of Gen 11:27–32, which tells how Abraham moved from Ur of the Chaldeans to the land of Canaan.⁵⁷ Wöhrle describes the functioning of these stories in the post–exilic period as follows:⁵⁸

Hence, from the beginning of the priestly version of the ancestors' history it becomes apparent that the situation of the people after the exile is reflected in these texts. Through the character of Abraham the priestly passages depict the way of an emigrant, who comes from Babylonia to the land, and who meets a foreign population already living in the land.

Wöhrle titles his essay "The Un–Empty Land" which is obviously clearly aimed at Carroll's article, although Wöhrle never quotes Carroll, but instead refers to the later book by Barstad. Yet the point is that Nihan, Blenkinsopp and Wöhrle argue that the priestly text itself can already be dated to the early post–exilic period. This means that H, which includes Lev 25 and 26, is still later.⁵⁹ As mentioned above, we are looking for a date in the second half of the fifth century, which means more than a century after Cyrus came to power, and after the 50–year period argued for by myself and others. This means that the argument presented earlier that the change from seven to 50 years reflected something of the "burning" (as Cholewinski put it) questions of the exiles about whether they would get their land back becomes less probable.

⁵⁵ Blenkinsopp, "Abraham as Paradigm," 239–240. Blenkinsopp prefers a slightly earlier date than Nihan, though, namely the "later Neo–Babylonian or early Persian period."

⁵⁶ Jakob Wöhrle, "The Un–Empty Land: The Concept of Exile and Land in P," in *The Concept of Exile in Ancient Israel and its Historical Contexts* (ed. Ehud Ben Zvi and Christoph Levin; BZAW 404; Berlin: De Gruyter, 2010), 189–206.

⁵⁷ Wöhrle, "Un–Empty Land," 190–194, has a broader argument that "land of Canaan" often implies "land in foreign hands." In this regard he agrees with a proposal by Frevel, *Mit Blick*, 362–363.

⁵⁸ Wöhrle, "Un–Empty Land," 194.

⁵⁹ There are, of course, other scholars who would still argue for a date closer to the end of exile. Jill Middlemas, for instance, would argue for a date "before the reconstruction of the temple." Jill Middlemas, *The Templeless Age: An Introduction to the History, Literature, and Theology of the "Exile"* (Louisville: Westminster John Knox Press, 2007), 128. The main problem with Middlemas's view of H is that it is similar to the older view which saw H as one of the sources used by P. It thus becomes a pre–P document and this view is clearly contrary to the emerging consensus on H as later than P. David Carr also thinks that with regard to H "there is much to commend an exilic, sixth–century date for H expansions of P materials and little against it." Carr, *Formation*, 303. I would venture that the argument presented above goes against his dating.

Would this still have been an issue more than a century later? The argument no longer looks all that convincing.

The question remains why then 50 or 49 years instead of the previous seven. A far more simple answer might be that it was all about mathematics. Grünwaldt already suggested something about "eine Potenzierung des Sabbatjahres."⁶⁰ If you want to create a super-Sabbath year you simply multiply seven times seven to get to this super-Sabbath year, which then becomes the Jubilee. The fact that the period from 587 to 539 is also close to 50 might simply be coincidence and was not in the minds of the authors of H when they created the Jubilee. Why then was the Jubilee created, if not by the returning elite who wanted their land back? Scholars such as Nihan and Achenbach would all mention Nehemiah 5 in conjunction with the laws of the Jubilee.⁶¹ Nihan talks about the socio-economic situation in the Persian period and the problem of *latifundia*:⁶²

Domains too small to produce the required surplus were automatically bankrupted, and the vast majority of small farmers were taken in the mechanism of debt; in Judah as in the rest of the ANE, loan rates were quite high, and their non-reimbursement gave the right to the creditor to seize the property and the family of the debtor. The text of Nehemiah 5, where this situation is specifically addressed, makes it evident that by the middle of the fifth century BCE the economic crisis had become a major issue and presented a threat to the social order which could no longer be ignored by Judean authorities.

All of this means that behind the Jubilee laws might lay a genuine concern to do something about the growing gap between haves and have-nots in the Persian period.⁶³ We are talking about the second half of the fifth century, which is more than a century after Cyrus came to power in a period when other issues were to be addressed, a period in which the issues of the elite about to return from exile were no longer that relevant. The first half of my old argument does not sound that convincing anymore, but at least now I have restored

⁶⁰ Grünwaldt, *Heiligkeitsgesetz*, 380.

⁶¹ See Achenbach, "Heiligkeitsgesetz," 147 n. 9, who argues that Neh 5 shows that Deut 15 and Exod 23:10–12 were presupposed during the debates in Neh 5. He also thinks that there are some similarities between Neh 5 and Lev 25, but thinks that Neh 5 had some influence on Lev 25. Leviticus 25 is thus later than Neh 5.

⁶² Nihan, *Priestly Torah*, 557–558.

⁶³ There are, of course, other opinions as well. For Otto, for instance, Lev 25 has nothing to do with any historical reality whatsoever. Lev 25 as such and the Holiness Code in general is the result of creating a supplement law code to the Covenant Code and the Deuteronomic Code. It is simply a case of "innerbiblical exegesis" as the title of his essay says. The authors of H took older texts from the other two law codes and modified them to fit their own theology. This also coincided with the creation of the Pentateuch. See Otto, "Innerbiblische Exegese," 161–172.

the image of the Jubilee laws to something more liberating. But what about the second half of the argument, the part about the empty land?

E DISCUSSION

If scholars like Nihan, Blenkinsopp and Wöhrle are correct that P portrays the patriarchs as sharing the land with others, and if the audience of these stories were indeed the elite who have been returning from Babylon to share the land with other inhabitants, then it means that P had a much more realistic view of the return. The land was indeed un-empty, as Wöhrle points out. Other non-*Golah* people were living there and the returnees had to cope with this reality. Why did H, which was written later, present the land as empty, as Carroll has shown? Why is P more realistic and H more unrealistic? What happened between the creation of P and the creation of H, so that the later authors of H could simply ignore the inhabitants of the land during the exile?

This calls for some speculation. First, one could say that since H was written much later than P, the initial struggle for land between returnees and those who stayed behind was quite forgotten or no longer mattered 50 or 100 years later. Some kind of compromise was reached which was accepted by both sides. I very much doubt this. At the risk of being totally anachronistic, in the year 2013 in South Africa we are very conscious of the 1913 Land Act and the unjust consequences it had for land ownership in this country. Land struggles are not easily forgotten, not voluntarily in any case.

Second, could one say that Carroll probably took these verses too literally? The authors of H tend to exaggerate and use hyperbolic language, especially when it comes to land. Just think of the land vomiting out its inhabitants in the parenetic frame of the Holiness Code. It is such a vivid and dramatic image. It is also one of the few other texts in H (apart from ch. 26) where the land acts like a person and is the subject of verbs (קיא, רצה, or שבת).⁶⁴ The warning of vomiting or spitting out also leaves the impression of a clean slate. The previous inhabitants are vomited out and now the addressees can move in. Add to that the fact that most things in H are based on the sacred time of the Sabbath, Lev 23 and 25 and now also 26, where the exile is described in terms closely intertwined with the Sabbath.⁶⁵ You cannot really have the land enjoy-

⁶⁴ Leviticus 18:25, 26; 26:34.

⁶⁵ See Andreas Ruwe, "Heiligkeitsgesetz" und "Priesterschrift." *Literaturgeschichtliche und rechtssystematische Untersuchungen zu Leviticus 17,1–26,2* (FAT 26; Tübingen: Mohr Siebeck, 1999), 90–97. Ruwe's argument focuses more on chs. 23 and 25; the fact that he did not engage with ch. 26 (apart from the first two verses) could be regarded as one of the weaknesses of his book. Leviticus 26 clearly builds on the Sabbath with the noun occurring five times (vv. 2, 34 (x2), 35, and 43) and the verb four times (vv. 6, 34 and 35 (x2)). Still, for Ruwe the "Sabbatthematik" is the main theme of the second part of the Holiness Code.

ing its Sabbaths and then still have the "poor of the land" working it. Acknowledging the presence of people during the exile would simply spoil the theological argument of these chapters, an argument built on the Sabbath. It is thus a *literary* necessity to present the land as empty and this interpretation is something far more innocent than Carroll's portrayal of the empty land as a kind of political plot against the poor who stayed behind.

Ehud Ben Zvi has recently presented a similar argument.⁶⁶ In his paper he refers to the archaeological debate about the "myth of the empty land" and the fact that both sides (as explained above) agree that the area of "Benjamin was substantially less affected by the destruction" of 586 B.C.E..⁶⁷ He then asks how these people from Benjamin were persuaded to adopt texts which did not acknowledge their presence in the land. His answer to this question is similar to what I have just argued:⁶⁸

To begin with, the concept of "Empty Land" was deeply interwoven with a significant number of other central metaphors, and metanarratives associated with the concept of "Exile." A result of this high connectedness was that people could not easily reject the "Empty Land" motif without rejecting so many central motifs and ways of thinking about the past binding the community together; after all Yehudite Israel was a text- and memory-centered community.

Ben Zvi continues that the anger of YHWH on account of the sin of Israel is part of the greater theological construct which explains the exile, but this narrative needs "closure."⁶⁹ Leviticus 26 provides closure by means of the land going through a purification period and an empty land is a theological necessity for purification to take place. With this narrative dominating the theological landscape after the exile, the "memory of the community centered in Mizpah, of neo-Babylonian Judah/Benjamin, is thus less and less evoked. . ."⁷⁰ Ben Zvi is adamant that those living in Benjamin whose ancestors never left knew that the land was not empty, but since this was part of a greater theological "metanarrative" which gave hope for the future, they accepted this "counterfactual" presentation of the past.⁷¹ As that modern-day saying goes: Why spoil a good story with the facts? This argument means that when the P narrative was created, Ben Zvi's metanarrative was not that dominant yet, but when H was

⁶⁶ Ehud Ben Zvi, "Total Exile, Empty Land and the General Intellectual Discourse of Yehud," in *The Concept of Exile in Ancient Israel and its Historical Contexts* (BZAW 404; ed. Ehud Ben Zvi and Christoph Levin; Berlin: De Gruyter, 2010), 155–168.

⁶⁷ Ben Zvi, "Total Exile," 155. See also footnote 35 above.

⁶⁸ Ben Zvi, "Total Exile," 163.

⁶⁹ Ben Zvi, "Total Exile," 163–164.

⁷⁰ Ben Zvi, "Total Exile," 166.

⁷¹ Ben Zvi, "Total Exile," 167.

created later, it had already started to dominate the theological landscape. In this explanation there is thus no sinister political plot of returnees dominating those who never left, but it is a case of a theological narrative being so persuasive that it replaces other lesser (more factual) narratives. I cannot think that Carroll would have concurred with this explanation, simply because the end result is the fact that people are made invisible, people who were there and whose stories were now forgotten.

In the same volume as the essay by Ben Zvi, Juha Pakkala engages with the Ezra narrative (Ezra 7–10 and Neh 8) in which he distinguishes at least four layers.⁷² These are: the Ezra source, Ezra's prayer, what he calls the "*Golah* editors," and the "Priestly and Leviticus Editors."⁷³ In the oldest Ezra source the presence of a population in the land before the arrival of Ezra is acknowledged and the idea of an empty land is absent, although Babylon is portrayed as the "intellectual and religious center of Judaism."⁷⁴ In his third layer, *Golah* Editors, the "community of Jews that had remained in the land is ignored or its existence is implicitly denied."⁷⁵ In this layer the *Golah* community becomes the main actor.⁷⁶ The analysis by Pakkala sounds not as innocent as the one presented by Ben Zvi; it sounds more as if power shifted from one group to another and I think it provides us with another explanation. In the older stages the people who remained behind were still visible, only to be ignored later. It sounds also very similar to the difference between P and H.

This third explanation has more to do with power and political plots than with persuasive theologies. At the later time when H was written, the struggle for power in the province of Yehud had already been won by the descendants of the returned elite and the still returning elite. In the earlier period when P was written, the site of this power was still in the balance; that is why P presents the land as un-empty. By the time H is written, it no longer matters. The people who wrote H and probably created the Pentateuch were the ones who came back from exile and in their texts they could present the land in whatever way they liked – and they obviously preferred to present the land as empty during the exile. I think Carroll would have approved of this interpretation.

⁷² Juha Pakkala, "The Exile and the Exiles in the Ezra Tradition," in *The Concept of Exile in Ancient Israel and its Historical Contexts* (BZAW 404; ed. Ehud Ben Zvi and Christoph Levin; Berlin: De Gruyter, 2010), 91–101.

⁷³ Pakkala, "Exile," 93–98.

⁷⁴ Pakkala, "Exile," 93–94.

⁷⁵ Pakkala, "Exile," 96.

⁷⁶ Similarly, Williamson, "Welcome Home," 121, has recently argued that "there was no inner-community conflict in the days of the first return from Babylon." Conflict only came later in the fifth century. He argues this by means of engaging with Ezra 1–6 whereas Pakkala focuses more on Ezra 7–10 and Neh 8.

F CONCLUSION

In short, at this stage, I do not find my argument of ten years ago that the Jubilee was somehow related to the return of the elite and the fact that they wanted their land back all that convincing. The main problem is the dating. If dated towards the end of the fifth century, then it probably had more to do with some genuine attempt to do something about an unjust distribution of land.

Still, even if the Jubilee law was not written with this purpose in mind, I do think that there must have been some struggle for land between the returnees and those who never left. Reading Lev 26 as Carroll has taught us to do mean that the returnees probably won this struggle. It is often argued today that there is a close relationship between the authors of H and the editors of the Pentateuch. When they put these words into the mouth of Moses, which adds to the authority of Moses, they had the freedom and power to present the land as empty during the exile.

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- Esias E. Meyer, Department of Old Testament Studies, Private bag X20, Hatfield 0028, South Africa University of Pretoria. *Email*: Sias.Meyer@up.ac.za.