

A Case for Identity: The Book of Ezekiel, Juridical Diction and Judahite Identity

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A CASE FOR IDENTITY: THE BOOK OF EZEKIEL, JURIDICAL DICTION AND JUDAHITE IDENTITY

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ABSTRACT

The consistent presence of juridical diction, legal metaphors, and courtroom imagery reveals that Ezekiel 1-33 is set within a precise juridical framework. In this study, I argued that focusing upon these legal elements has two primary benefits for our understanding of the book. First, the juridical framework provides greater clarity and coherence to some passages within Ezekiel 1-33. Second, the book (especially Ezekiel 16) uses its legal elements to articulate a version of Judahite identity under Neo-Babylonian hegemony. To connect these legal elements to identity development, I used some insights from the works of Erik Erikson and Urie Bronfenbrenner (the “EB Model”). According to my analysis, Ezekiel 16 equates the *legal status* of the city with *Judahite identity* in order to prove that the experiences of Neo-Babylonian domination did not nullify or rescind the legal agreement (ברית) between the deity and Judahites. Rather, the punishment this chapter describes demonstrates the continuing validity of the contract and the version of Judahite identity that is rooted in it. Consequently, the Judahites’ acceptance of the legal appropriateness of Neo-Babylonian domination is the *sine qua non* for remaining in the legal relationship that defines Judahite identity.

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יברכך יהוה וישמרך
יאר יהוה פניו אליך ויחנך
ישא יהוה פניו אליך וישם לך שלום

Joel B. Kemp
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INTRODUCTION

The book of Ezekiel and its eponymous prophet have attracted renewed attention by biblical scholars in the past decades.¹ The fantastic visions, sexually graphic imagery, and enigmatic sign acts continue to intrigue and, in some cases, mystify scholars. Because the text identifies the prophet as a priest (Ezek 1:3) and the clear connections the book evidences between it and priestly material² in the Pentateuch, this book also plays a prominent role in the continuing debates regarding the composition and dating of that corpus.³ Within the past thirty years, the book of Ezekiel - along with other prophetic texts allegedly originating in the “exilic period”⁴ – has been identified as a valuable

¹ The list of commentaries (both critical and non-critical) on the book of Ezekiel is too voluminous to reproduce in its entirety here. Among the earliest commentaries on this prophetic anthology that still appear in some modern literature I reviewed are: John Calvin, *Commentaries on the First Twenty Chapters of the Book of the Prophet Ezekiel*, trans. Thomas Meyers (Grand Rapids: Christian Classics Ethereal Library, 2010); William Lowth, *A Commentary upon the Prophet Ezekiel* (London: W. Mears, 1723); Carl Friedrich Keil, *Biblical Commentary on the Prophecies of Ezekiel*, trans. James Martin (Edinburgh: T&T Clark, 1876); and Wilhelm Julius Schroeder, *The Book of the Prophet Ezekiel Theologically and Homiletically Expounded* (New York: Charles Scribner, 1876). In Chapter 1, I will discuss those Ezekielian critical scholars whose analysis of the book informs my understanding of its provenance and authorship.

² This term references those elements in Ezekiel that scholars identified as being similar to biblical texts belonging to P or H. Scholars’ most prevalent theories regarding the nature of the literary dependence and chronological priority among Ezekiel, P, and H will be investigated in Chapter 1. Although I will give some attention to this debate, my primary interest is the *fact* that Ezekiel shares similar juridical terminology with these sources not *how* these similarities appeared in each.

³ See Federico Guintoli and Konrad Schmid, *The Post-Priestly Pentateuch: New Perspectives on its Redactional Development and Theological Profiles* (Tübingen: Mohr Siebeck, 2015); Konrad Schmid, “Der Pentateuch und seine Theologiegeschichte,” *ZAW* 111:3 (2014), 239-270, esp. 259-266.

⁴ It is common among biblical scholars to refer to the period of Neo-Babylonian domination of Judah after its destruction as “the exile.” As scholars have noted, this term lacks precision within

source to understand “Judahite”⁵ life in the 6th century BCE, including in the diaspora. Many scholars recognize that the 6th century BCE was an important era that produced significant developments in Judahite conceptualizations of their identity. In particular, the Babylonian conquest of Jerusalem in the years between 597 – 586 BCE led to the loss of polity, multiple deportations of Judahites from Judah to Babylonia, and the destruction of the Temple. In light of these events, I concur with scholars who identify the 6th century BCE as a particularly fruitful era for observing how Judahite identity developed.⁶

Many scholars who study Judahite identity augment traditional methods of biblical criticism by appropriating models from the social sciences, including cultural

Israelite/Judahite history and fails to recognize Judah’s place within the larger ancient Near East. Consequently, several proposals have emerged that defines exile either by temporal parameters or national events. See, Peter R. Ackroyd, *Exile and Restoration: A Study of Hebrew Thought of the Sixth Century BC* (Philadelphia: Westminster Press, 1968); Daniel Smith-Christopher, *A Biblical Theology of Exile* (OBT; Minneapolis: Fortress, 2002); Rainer Albertz, *Israel in Exile: The History and Literature of the Sixth Century BCE* (Atlanta: SBL, 2003); Jill Middlemas, *The Templeless Age: An Introduction to the History, Literature, and Theology of the “Exile”* (Louisville: Westminster John Knox, 2007); idem, “The Future of the ‘Exile,’” in *By the Irrigation Canals of Babylon: Approaches to the Study of the Exile* (ed John J. Ahn and Jill Middlemas New York: T&T Clark, 2012), 63-81; and John J. Ahn, *Exile, Literature, and Theology: The Literature and Socio-Theological Impact of the Forced Migrations of the Southern Kingdom of Judah* BZAW 417 (Berlin: de Gruyter, 2011).

For purposes of this project, I will avoid referring to the “Exilic Period” or “the Exile” (unless an author I reference uses it). Instead, I will use certain chronological markers (e.g., 6th century BCE) or political designations (e.g, Neo-Babylonian) to refer to the tumultuous sixth century BCE and the indelible mark it left upon Judah, its inhabitants, and its forced migrants to Babylonia.

⁵ Debate persists about when the terms “Jewish” or “Judean” are applicable and about their meaning. For example, Shaye Cohen argues that “Jewishness” does not exist prior to the second or first century BCE. Rather, it is only appropriate to speak of “Judeanness” and this is “primarily a function of birth and geography” (*The Beginnings of Jewishness* [Los Angeles: University of California Press, 1999], 109). Joseph Blenkinsopp, however, advocates for a Persian era provenance for the emergence of “Jewishness” in “Judeans, Jews, Children of Abraham” in *Judah and the Judeans in the Achaemenid Period: Negotiating Identity in the International Context* (ed. Oded Lipschits, Gary N. Knoppers, and Manfred Oeming: Winona Lake: Eisenbrauns, 2011), 461-82. Like Cohen, Seth Schwartz contends that “Jewishness” did not emerge until Late Antiquity in *Imperialism and Jewish Society 200 BCE to 640 CE* (Princeton: Princeton University Press, 2004), 49-58. For purposes of this study, I will use the term “Judahite” to describe individuals in the sixth century BCE from Judah or their descendants.

⁶ See, Ackroyd, *Exile and Restoration*, 8; Albertz, *Israel in Exile*, 1-2; Martien A. Halvorson-Taylor, *Enduring Exile: The Metaphorization of Exile in the Hebrew Bible*. (Leiden: Brill, 2010), 194; and John Ahn, *Exile, Literature and Theology*, 2.

anthropology, ethnic and racial studies, and psychology.⁷ Additionally, the presence of juridical diction and legal imagery within prophetic material is recognized by several scholars.⁸ Despite biblical scholars' increased awareness of how developments in Judahite identity are preserved in the book of Ezekiel and the presence of legal material in it, few scholars have investigated how these legal materials affect the portrait of Judahite identity the book advocates. A primary purpose of this study is to address this lacuna in scholarship on Judahite identity in the 6th century BCE by examining how legal elements in Ezekiel 1 - 33 are used to articulate Judahite identity.⁹

In this study, I argue that the book of Ezekiel uses legal metaphors, juridical diction, and courtroom imagery in distinctive ways to advocate for what the book asserts is the appropriate conceptualization of Judahite identity in the wake of Babylonian domination. As a result, I argue that the legal elements in the book are central to its logic, articulation, and advocacy of Judahite identity. Without an adequate accounting for the

⁷ The interdisciplinary approach to studying Judahite identity in the sixth century BCE is reflective of a larger movement among biblical scholars to augment traditional methods of scholarship with other disciplines when studying the Babylonian exile. An overview of this growing trend in the study of the period is Brad E. Kelle, "An Interdisciplinary Approach to the Exile" in *Interpreting Exile: Displacement and Deportation in Biblical and Modern Texts*, ed. Brad E. Kelle, Frank Ritschel Ames, and Jacob L. Wright (Atlanta: Society of Biblical Literature, 2011), 5-40.

⁸ A fuller discussion of the legal elements in the book of Ezekiel occurs later in this study. Some of the more frequently referenced studies of legal material in the prophetic corpus are Herbert B. Huffmon, "The Covenant Lawsuit in the Prophets" *JBL* (1959): 285-295; K. Nielsen, *Yahweh as Prosecutor and Judge: An Investigation of the Prophetic Lawsuit (Rib-Pattern)* (Sheffield: JSOT, 1978); Michael DeRoche, "Yahweh's Rib Against Israel: A Reassessment of the so-called 'Prophetic Lawsuit' in the Pre-exilic Prophets," *JBL* 102/4 (1983): 563-574; Dwight Daniels, "Is There A Prophetic Lawsuit Genre?" *ZAW* 99:3 (1987): 339-360; and Claus Westermann, *Basic Forms of Prophetic Speech*, trans. Hugh White (Louisville: John Knox Press, 1991). Specific studies of legal material within the book of Ezekiel include: Meindert Dijkstra, "Legal Irrevocability (*lō' yāšūb*) in Ezekiel 7:13" *JSOT* 43 (1989): 109-116 and Meir Malul, "Adoption of Foundlings in the Bible and Mesopotamian Documents: A Study of Some Legal Metaphors in Ezekiel 16:1-7," *JSOT* 46 (1990), 97-126.

⁹ For this project, identity references how individuals or groups define themselves, including what values and practices are foundational to a group's *self-categorization*. As a result, my focus is upon the ways the book of Ezekiel reveals how a Judahite community sought to (re-)define itself in response to Neo-Babylonian hegemony. A fuller discussion of Judahite self-categorization in the book of Ezekiel will occur in Chapter 2 of this study.

prevalence and purpose of these legal elements in Ezekiel, the precision vision of Judahite identity the author(s) advocate cannot be appreciated fully. For this project, I assert that the book attempts to prove through technical, legal discourse that a newly configured covenantal relationship with YHWH is a sufficient foundation upon which Judahite identity can be built. To prove the validity of this position, the book argues that the Judahite exilic community (גולה) must first accept that their current hardships are the legally mandated and proportionally correct punishment for their criminal and cultic misconduct. Thus, Judahites' acceptance of their guilt and punishment is the *sine qua non* for the continuing legal relationship with the deity, which is the cornerstone of Judahite identity.

0.1 SCOPE OF STUDY

0.1.1 Ezekiel 1-33

Before summarizing the progression of chapters in this dissertation, a brief comment on the scope of this study and its operating assumptions is warranted. First, the primary texts within the book of Ezekiel I am investigating are found in chapters 1 - 33. My concentration on these chapters is not intended to deny or suggest that juridical terminology and legal imagery are only located there. Rather, the majority of these chapters purport to describe the prophet's messages prior to the physical destruction of Jerusalem – a fact that is reported to the Babylonian exilic community, גולה, in Ezek

33:21-22.¹⁰ As I will discuss in Chapter 3, the noticeable shift in tone that biblical scholars find after Ezekiel 33 reflects a change in the kind of legal argumentation the prophet employs – a change that is beyond the scope of this project. Consequently, my review of the history of scholarship on the book of Ezekiel will not address the complications Ezekiel 34– 48 (esp. 40-48) presents for determining the provenance and authorship of the book.

0.1.2 The Need for A Case: Rival Prophets and Obstinate Audiences

Second, I argue that the book of Ezekiel is using juridical terminology and imagery to make a case for Judahite identity.¹¹ The need to persuade an audience of the accuracy and appropriateness of the eponymous prophet’s conception of Judahite identity, i.e., “make a case” arises for at least two reasons. First, the book of Ezekiel, like many prophetic anthologies preserved in the Hebrew Bible, acknowledges the presence of other, dissenting voices whose messages oppose the prophet’s. In some prophetic books, such as Jeremiah, the rival prophets are named and their disputations

¹⁰ As will be discussed in Chapter 1, most scholars agree that the book of Ezekiel underwent redactional activity after the prophet’s life. My choice to limit my consideration to Ezekiel 1 – 33 does not mean I deny the evidence scholars have adduced to conclude that portions of those chapters were written after the destruction of Jerusalem.

¹¹ Adrian Graffy is one of several scholars who suggests that prophetic texts need to be understood within the context of the disputes, arguments, and “contested space” in which the prophet delivered his messages. See Adrian Graffy, *A Prophet Confronts His People: The Disputation Speech in the Prophets* (Rome: Biblical Institute, 1984), 55 – 57. Additionally, as Thomas Renz argues, prophetic audiences often have a quasi-adjudicatory function within the context of these disputations. As I will discuss later in this study, I concur with Renz’s assessment of the book’s audience as a “jury” who must determine whether (and to what extent) the prophet’s argument is accurate. For a fuller discussion, see Chapter 5.

with the prophet are recorded.¹² Similarly, Ezekiel 13 acknowledges the presence of rival prophets and describes why their message should not be trusted. As Hendrik Leene notes, although “the book of Jeremiah contains many warnings against misleading prophecy, the book of Ezekiel virtually confines itself in this respect to only one address against the prophets and prophetesses of Israel, chapter 13.”¹³ In Ezekiel 13, the false prophets are described as those: אשר הלכים אחר רוחם ולבלתי ראו (“who follow their spirit so they do not see” Ezek 13:3b). To corroborate this claim, the following accusation is levied against the rival prophets: חזו שוא וקסם כזב האמרים נאם־יהוה ויהוה לא שלחם ויחלו לקים (“They saw vanity and false divination saying YHWH declares but YHWH has not sent them and then they waited for the word to be confirmed. Have you not seen an empty vision and a false divination (when) you spoke saying YHWH declares but I have not spoken?” Ezek 13:6 - 7).¹⁴ As a result of these deceptive visions and false utterances, YHWH announces that he will judge them harshly (Ezek 13:7-9) and terminate all false prophets/prophecies concerning the land (Ezek 13:23).¹⁵ Although the book of Ezekiel does not provide

¹² Jeremiah 28 records a disputation between the prophets Jeremiah and Hananiah, including Hananiah’s interference with Jeremiah’s prophetic performance (Jer 28:10-11). The chapter ends with YHWH’s pronouncement of judgment upon Hananiah and his subsequent death (Jer 28:15-17). The similarities between Jeremiah and Ezekiel is well discussed, including extensive debates regarding the direction of influence between these prophetic books. For a good overview and summary of the relevant bibliography, see Zimmerli, *Ezekiel 1*, 44-46; Leene, “Blowing Shofar,” 175 fns. 1 and 2, Albertz, *Israel in Exile*, 346-348; Walther Eichrodt, *Ezekiel: A Commentary* (Louisville: John Knox Press, 2003), 14; and Michael Lyons, *An Introduction to the Study of Ezekiel* (London: Bloomsbury, 2015), 28-29.

¹³ Hendrik Leene, “Blowing Shofar,” 177.

¹⁴ This indictment of false prophets is similar to language that also appears in Jeremiah. See e.g., Jer 14:14 and 23:21

¹⁵ Although beyond the scope of this project, it is noteworthy that Ezek 13:17-23 ends with a specific indictment and pronouncement of judgment upon women who are also delivering false prophecies: ואתה בן־אדם שים פניך אל־בנות עמך המתנבאות מלבהן והנבא עליהן: (Ezek 13:17). While this inclusion of women may not be deemed particularly pejorative, the negative portrayal of women in the book of Ezekiel, especially in Ezekiel 16, will be discussed briefly in the overview of scholarship that follows in Chapter 1.

extensive details regarding the false prophets' messages, Ezek 13:10 provides the following characterization: יען וביען הטעו את־עמי לאמר שלום ואין שלום והוא בנה חיצ והגם טחים :אתו תפל: ("Since they seduced my people saying 'Peace' when there is no peace while one built a wall and behold others coated it with whitewash").¹⁶ The fact that such dissenting voices were present during the career of "Ezekiel"¹⁷ - as they were in the careers of the Bible's other featured prophets - in part explains why the prophet had to persuade his audience.

In addition to the erroneous messages of "false prophets," the book of Ezekiel repeatedly describes the incredulity and obstinacy of the prophet's purported audience. In the book, one reason for some Judahites' rejection of the prophet's message is the interval between the announced destruction of the community and its actual fulfillment. For example, Ezek 12:21-28 contains a lengthy discussion concerning whether the prophet's message is to be believed given the "delay" in its fulfillment. Greenberg concluded similarly that the central issue in these verses is that "as the moment when the prophecy was uttered recedes further and further into the past without the prophecy's taking effect, its power peters out and it sinks into oblivion – a dead letter no one need

¹⁶ Similar to the earlier accusations in Ezekiel 13, several parallels can be found in Jeremiah. For example, during YHWH's rebuke of prophets and priests, the deity accuses these individuals of saying (שלום שלום ואין שלום) ("peace, peace but there is no peace"). See Jer 6:14 and 8:11.

¹⁷ When I use the term "Ezekiel" in this dissertation, it refers to the prophet to whom the book is attributed, rather than the text of the biblical book itself. Although I agree with those scholars who conclude that an actual, historical figure lies behind the literary portrait of the prophet painted in the book of Ezekiel, it is unnecessary for this project to attempt to reconstruct either the *ipsissima verba* of "Ezekiel" or the prophet himself. For this project, it is sufficient to note that debates regarding the impact of Neo-Babylonian domination upon Judahite identity began during the lifetime of the eponymous prophet and were articulated (in part) with language borrowed from Judahite and Neo-Babylonian legal proceedings. Thus, the debates among scholars regarding the similarities between the historical prophet and the literary portrayal of him in the book of Ezekiel will not be discussed extensively in this dissertation. For a brief treatment of this issue, see my overview of scholarship in Chapter 1.

worry about.”¹⁸ This pericope begins with a proverb that is popular among some Judahites: יארכו הימים ואבד כל־חזון (“The days are prolonged and every vision has perished.” Ezek 12:22b). The deity responds to this initial proverb by declaring that it will no longer be uttered in Israel and that: לא תמשך עוד כי בימיכם בית המרי אדבר דבר ועשיתיו (”It will no longer be delayed but in your days, O Rebellious House, I will speak a word and fulfill it, announces the Lord GOD.” Ezek 12:24-25). This section (Ezek 12:21-28) concludes with the deity once again refuting the Judahites’ statement that delays in fulfillment render the prophecies irrelevant, if not false. In summation, YHWH responds: לא־ תמשך עוד כל־דברי אשר אדבר דבר ויעשה נאם אדני יהוה (”None of my words will be delayed; the word I declare will be performed, announces the Lord GOD.” Ezek 12:28).

As a result of this delay, YHWH repeatedly assures the prophet that the fulfillment of his proclamations will serve as vindication of both his prophetic office and message.¹⁹ Additionally, the book contains warnings from YHWH that detail the opposition the prophet will face. For example, YHWH tells the prophet: ובית ישראל לא יאבו לשמע אליך כי־אינם אבים לשמע אלי כי כל־בית ישראל חזקי־מצח וקשי־לב המה: (”Concerning the house of Israel: They do not desire to listen to you because none of them desire to listen to me. For the entire house of Israel has a hard forehead and stubborn heart.” Ezek 3:7). Moreover, YHWH warns the prophet that his fellow Judahite exiles will bind him and restrict his movements among them (Ezek 3:25).²⁰ Because of the audience’s

¹⁸ Greenberg, *Ezekiel 1-20*, 227.

¹⁹ See e.g., Ezek 2:5 and 33:33.

²⁰ This pronouncement precedes a declaration by the deity that the prophet will be rendered silent (Ezek 3:26). The legal significance of the prophet’s silence and its impact upon the rhetorical logic of Ezekiel 1-33 will be discussed in Chapter 3.

incredulity and obstinacy, the final destruction of Jerusalem becomes irrefutable evidence of the veracity of his case and silences the objections of his critics. Greenberg puts the matter thus: “[T]he imminent disaster would validate Ezekiel’s doom prophecy in the face of the enmity, or at best the skepticism, of his audience.”²¹ Thus, the need to persuade his audience is the result of rival messages delivered by other prophets and skepticism, stubbornness, or disbelief regarding the actual fulfillment of the prophet’s message.²² Additionally, this need for persuasion may help explain why legal elements were chosen to articulate and frame the book’s vision of Judahite identity.

0.1.3 Historicity of Babylonian Deportation

In this study, I will not engage in a lengthy discussion regarding the historicity of some Judahites deportation to Babylonia nor its impact upon Judah. While biblical scholars are more sanguine about the fact that the Judahites experienced a significant disruption in their lives in the sixth century BCE because of Neo-Babylonian domination, the nature and severity of that disruption remains a subject of debate.²³ As should become clear, this study argues that the book reflects circumstances and experiences

²¹ Moshe Greenberg, *Ezekiel 21-37*, 516.

²² Thomas Renz argues similarly that the rhetorical situation of the prophet and his audience must be considered in the analysis of the book of Ezekiel.

²³ Useful summaries of the biblical evidence and scholarly debates regarding the historicity and scope of exile include: Hans M. Barstad, *The Myth of the Empty Land: Study of the History and Archaeology of Judah During the Exile Period* (Oslo: Scandinavian University Press, 1996); Lester L. Grabbe, ed., *Leading Captivity Captive: ‘The Exile’ as History and Ideology* JSOT 278 (Sheffield: Sheffield Academic Press, 1998); Albertz, *Israel in Exile*, 74-111; Darr, *NIB*, 1079-1081; Oded Lipschitts, *The Fall and Rise of Jerusalem: Judah Under Babylonian Rule* (Winona Lake: Eisenbrauns, 2005); John J. Ahn and Jill Middlemas, eds., *By the Irrigation Canals of Babylon: Approaches to the Study of the Exile* (New York: T&T Clark, 2012); and Jonathan Stökl and Caroline Waezegggers, eds., *Exile and Return: The Babylonian Context* BZAW 478 (Berlin: de Gruyter, 2015).

consistent with a Babylonian provenance. Whether the portrait of Judahite life in Ezekiel 1-33 can be verified in every material respect does not bear upon my analysis of the book's use of legal elements to articulate Judahite identity. For this project, the fact that the 6th century BCE Neo-Babylonian conquest of Judah occurred and produced conditions that significantly affected Judahite identity will be investigated.

0.2 ORGANIZATION OF STUDY

To understand how legal elements in Ezekiel 1 – 33 are used to make a case for Judahite identity under Neo-Babylonian domination, I have divided the dissertation into five chapters. Chapter 1 provides an overview of the history of scholarship on the book of Ezekiel, with a particular emphasis upon the book's provenance, authorship, and its relationship to priestly materials in the Pentateuch. Additionally, some of the insights feminist scholars have provided on the book, particularly their analyses of Ezekiel 16, will occupy a portion of the opening chapter. While it is an overview of scholarship in general, I will highlight trends in the broader study of the book of Ezekiel that underscore why that book is an appropriate biblical text to investigate my basic question: how were legal elements used in the 6th century BCE to articulate a vision of Judahite identity in Babylonia.

Chapter 2 outlines the social-psychological model I am applying to Ezekiel to associate its legal elements, on the one hand, with identity development on the other. As mentioned, few biblical scholars studying identity formation incorporate into their analyses the legal language and imagery that permeates many prophetic texts like

Ezekiel. To account for the function of these legal elements within the context of identity development, it is necessary to create a methodological framework that connects them. The discipline of social psychology recognizes that, to account properly for identity development, the broader contexts - within which both law is embedded and in which a subject lives - must be studied. Two prominent researchers whose work is congruent with such an approach are Erik Erikson and Urie Bronfenbrenner.²⁴ Building upon their work, this chapter proposes a framework, the Erikson-Bronfenbrenner Model (“EB Model”), to examine how the book of Ezekiel uses juridical diction, courtroom imagery, and legal metaphors to make a case for Judahite identity.

In Chapters 3 – 5, I turn my attention to several passages in Ezekiel 1 – 33 that demonstrate both the legal framework the book employs and the specific arguments it makes regarding how Judahite identity should be constituted as a result of Neo-Babylonian domination.²⁵ Chapter 3 investigates how the book of Ezekiel describes the traditional (legal) roles of the principal parties and, strategically, subverts them within the context of a legal contest. To illustrate the

²⁴ The primary works of these researchers I will discuss in this dissertation are: Erik Erikson, *Identity: Youth and Crisis* (New York: Norton, 1968); idem, *Identity and the Life Cycle* (New York: Norton, 1980); Urie Bronfenbrenner, “Ecological Models of Human Development” in *Readings on the Development of Children*, eds. Mary Gauvin and Michael Cole (New York: Worth Publishers, 1993), 3-8; and idem, *Making Human Beings Human: Bioecological Perspectives on Human Development* (London: Sage, 2005).

²⁵ My thesis that the book of Ezekiel is making a legal argument as part of its articulation of Judahite identity does not mean that I understand every term, phrase, or image to carry a juridical significance. Rather, it is important to recognize that non-legal elements can (and often do) contribute to an overall legal argument, without burdening each term with a legal valence it cannot bear. A modern legal argument often includes terminology with specific, legal nuance and those which do not. In my previous experience as an attorney, I commonly included terminology that did not have a legal significance, but were important elements of the broader legal position I advocated. With respect to my analysis of the book of Ezekiel, I recognize that an analogous practice is operative in it as well. As a result, I will neither attempt to prove that every term I discuss has a legal significance nor is such proof necessary for the thesis of this project.

legal *milleu* in which the book was written and to gain a fuller picture of ancient Near Eastern legal praxis, I begin this chapter with an overview of Shalom Holtz's monograph, *Neo-Babylonian Court Procedure*. Building upon his reconstruction of adjudicatory proceedings connected to the Temple in the cuneiform records, I argue that the book of Ezekiel shares several elements with these temple disputes.²⁶ Consequently, I contend in Chapter 3 that the "judicial disposition" of the deity, the restrictions placed upon the prophet's role prior to the fall of Jerusalem (Ezekiel 33), and other elements are consistent with the first phase of a Neo-Babylonian temple dispute – i.e., the accusation of the defendant.

Chapter 4 continues to follow the basic outline of temple disputes Holtz reconstructs and focuses on the arguments the Judahites raise in their own defense. In this chapter, I will analyze three examples that represent the primary legal arguments the Judahites assert to attempt to demonstrate their innocence or which they use as counterclaims against the deity. Specifically, Chapter 4 investigates Judahites' (i) assertions of their innocence of the charges levied against them; (ii) counterclaims alleging divine dereliction of fiduciary duties; and (iii) counterclaims alleging the deity is not adhering to the sentencing guidelines for alleged crimes.

The final chapter is an analysis of Ezekiel 16, which serves as a case study to illustrate how the deity "proves" the case against the Judahites and provides a blueprint for how Judahites should conceive of their identity. In this final chapter, elements of the social-psychological model I outlined in Chapter 2 will be used to highlight certain

²⁶ As I will argue in Chapter 3, the similarities between Neo-Babylonian court proceedings and the book of Ezekiel do not necessitate the conclusion that a one-to-one correspondence between this document and Neo-Babylonian legal procedures must be reached. Rather, these similarities provide additional evidence of the legal genre (*Gattung*) I contend is critical to the analysis of the vision of Judahite identity articulated in this biblical book.

elements of Judahite identity this chapter advocates. The primary focus of this final chapter is to demonstrate how Ezekiel 16 argues that the hardships of the גולה community are neither the result of divine abandonment nor evidence of the nullification of the covenant between YHWH and his people. Rather, it responds to those who evidently argued that the hardships are evidence that the covenant was revoked with a review of Israel's "legal history" to demonstrate the continuing validity and enforceability of the covenant. This covenant was and, in the aftermath of Babylon's conquest of Judah, can be the mechanism by which Judahites could affirm an identity that was not a tenuous, fragile, and legally unprotected status on the margins of ancient Near Eastern society. Furthermore, it is the means by which Judahite identity can be secure, prosperous, and even exalted under YHWH's legal custodianship. Lastly, I assert that the legal elements of this chapter illumine from a different angle some of the troubling elements that have understandably disturbed many scholars. In particular, I argue that this legal framework provides a rationale for this chapter's insistence that "the punishment fits the crime" and casts personified Jerusalem's silence as the legal response to the veracity of the charges delineated in the indictment. This silence, in turn, becomes the requisite response for the Judahite community to affirm their identity as a people whose identity is proscribed by their legal relationship with (and obligations to) YHWH.

1.0 CHAPTER 1

Laying the Foundation: The Book of Ezekiel in Historical Perspective

The book of Ezekiel and its eponymous prophet remain the subjects of numerous scholarly investigations. For biblical scholars who are drawn to this text, its (occasionally) convoluted nature is surpassed only by the enigmatic prophetic persona who is described in its pages. Not surprisingly, the range of scholarly opinions regarding the composition of the book, its subject matter and the disposition of the prophet runs the gamut. Because many scholars of the book of Ezekiel have provided detailed summaries of the history of scholarship on this book, my overview will not necessarily cover new ground. Indeed, the overview that follows was influenced by the reviews of scholarship that Ellen Davis and John Kutsko provided in their respective monographs.²⁷ These two scholars were particularly helpful in my formulation of the impact of the authors' historical-cultural setting upon the final shape of the book and one of its rhetorical purposes – i.e., articulating a version of Judahite identity that could survive the economic, religious, social, and political upheaval that Neo-Babylonian domination imposed. Rather than just organizing the overview chronologically, the following chapter is

²⁷ For this overview of scholarship, my analysis focuses primarily upon Ezekiel 1-33. Since the legal analysis and its connection to Judahite identity draws principally from material in the book of Ezekiel leading up to the report of Jerusalem's destruction in Ezekiel 33, I have not included Ezekiel 34-48 in my overview. Accordingly, the conclusions I discuss and reach regarding the compositional unity, provenance, authorship, etc... of the book of Ezekiel focus on scholars' analysis of Ezekiel 1-33. Thus, the lengthy and protracted debates regarding the dating of Ezekiel 34-48, especially 40-48, and its impact upon conclusions regarding when the book reached its final form will not be addressed in this dissertation.

arranged first thematically and then chronologically within each major theme. When I depart from this structure, I have attempted to signal and explain the logic supporting my detour.

Accordingly, in this chapter, I will provide an overview of aspects of Ezekielian scholarship that are most critical to my project. In the opening section, I will summarize some of the scholarly debates concerning the provenance, unity, and authorship of the book. The second section will focus on the scholarly debates regarding the relationship between this prophetic anthology and priestly materials within the Hebrew Bible. In the third section, I will discuss some of the insights feminist scholars have provided on the book, particularly their analyses of Ezekiel 16, which is the focal text for my final chapter. Lastly, I will conclude with a summary of my position on the issues discussed above and how those conclusions inform the analysis that follows in the remainder of my study.

1.1 AUTHORSHIP, UNITY AND PROVENANCE

1.1.1 Authorship and Unity

The book of Ezekiel purports to be the first-person record of one man's approximately 20-year prophetic career in Babylonia.²⁸ According to the opening verses

²⁸ The date notices appear in the following passages: Ezek 1:1, 8:1, 20:1, 24:1, 26:1, 29:1, 29:17, 30:20, 31:1, 32:1, 32:17, 33:21 and 40:1. With the exception of Ezek 29:17, the date notices appear in chronological order. Additionally, the LXX and MT differ regarding the dates in Ezekiel 8 and 32. Freedy and Redford, for example, argue that the MT should stand in Ezekiel 8, while the LXX is preferred in Ezekiel 32. See, K. S. Freedy and D. B. Redford, "The Dates of Ezekiel in Relation to Biblical,

(Ezek 1:1-3), the prophet (יהוֹכָאֵל), who lends his name to the book, is identified as a priest (הכהן) that was among the first wave of Jehoiachin exiles (לגלות המלך יויכין) deported to Babylonia (בארץ כשדים על־נהר־כבר) as a result of the Neo-Babylonian conquest of Jerusalem. During the 19th and early 20th century, many biblical scholars accepted the accuracy of the biographical and geographical data contained in the book of Ezekiel and viewed it as a single composition that the prophet himself wrote.²⁹ Rudolf Smend, in *Der Prophet Ezechiel* (1880), is representative of this view. According to Smend,

Höchst wahrscheinlich ist das ganze Buch deshalb auch in einem Zuge niedergeschrieben und als seine ungefähre Abfassungszeit hat das Datum 40, 1 zu gelten, der zwei Jahre später fallende Nachtrag 29, 17ff. setzt bereits seine Publikation voraus. Ubrigens schrieb Ez. während der Belagerung von Tyrus (vgl. zu c. 26ff.).³⁰

Babylonian, and Egyptian Sources,” *JAOS* 90 (1970), 468. These dates suggest that the prophet was active from ca. 593 BCE until ca. 571 BCE. See e.g., Eichrodt, *Ezekiel*, 1; Moshe Greenberg *Ezekiel 1-20*, (New York: Doubleday & Company, 1983), 8-11; Carl S. Ehrlich, “Ezekiel: The Prophet, His Times, His Message,” *European Judaism* 32 (1999), 119.

The historical reliability of the dates, their connection to the prophet’s career, and the composition of the book were subjects of intense debate among biblical scholars. Similar to the trajectory of scholars’ assessment of the provenance and unity of authorship of the book, biblical scholars accept increasingly the historical accuracy of the date notices in it. As I will discuss later in this chapter, I join the growing consensus of scholars who acknowledge the historical reliability of these dates and its implications for the provenance of the book. A representative sample of the bibliography reflecting scholars’ engagement with this issue includes: Eichrodt, *Ezekiel*, 1-7; Walther Zimmerli, *Ezekiel 1: A Commentary on the Book of the Prophet Ezekiel, Chapters 1-24*, trans. Ronald E. Clements (Minneapolis: Fortress Press, 1979), 9-16; Greenberg, *Ezekiel 1-20*, 8-17; Ernst Kutsch, *Die chronologischen Daten des Ezechielbuches* (Göttingen: Vandenhoeck und Ruprecht, 1985), 33-69. See also Karl-Friedrich Pohlmann, *Ezechiel: Der Stand der Theologischen Diskussion* (Darmstadt: WBG, 2008), 20-21.

²⁹ Many scholars have identified this trend in early Ezekielian scholarship. See e. g., G. A. Cooke, *A Critical and Exegetical Commentary on the Book of Ezekiel* (Edinburgh: T&T Clark, 1936), xx; Zimmerli, *Ezekiel 1*, 3-8; Ellen F. Davis, *Swallowing the Scroll: Textuality and the Dynamics of Discourse in Ezekiel’s Prophecy* (Bible and Literature Series, 21; Sheffield: Sheffield Academic Press, 1989), 12; and John Kutsko *Between Heaven and Earth: Divine Presence and Absence in the Book of Ezekiel* (Biblical and Judaic Studies 7; Winona Lake: Eisenbrauns, 2000), 5-6.

³⁰ Rudolf Smend, *Der Prophet Ezechiel* (Leipzig: S. Hirzel, 1880), xxii.

Additionally, he concluded that the book of Ezekiel is a coherent whole that was arranged according to a systematic (or schematic) plan.³¹ Like Smend, Wellhausen argued that “the prophet [Ezekiel], moreover, has the rights of authorship as regards the end of his book as well as for the rest of it...”³² The question of Ezekiel’s authorship was so widely accepted among many biblical scholars that Driver (1913) could state that “no critical question arises in connexion with the authorship of the book, the whole from beginning to end bearing the stamp of a single mind.”³³

This majority opinion began to dissipate in the first quarter of the 20th century. The forerunners for this growing dissent in the twentieth century were present in the works of a few. Davis, for example, identified Alfred Bertholet and Richard Kraetzschmar as scholars who defended, albeit on different grounds, the traditional attribution of the majority of Ezekiel to the eponymous prophet.³⁴ They also acknowledged, however, that authors later inserted material into the current biblical text, which could account for some of the inconsistencies, doublets, and other stylistic incongruences. Kraetzschmar, for example, contended that the duplicates in the book

³¹ Smend, *Prophet*, xxi. Moshe Greenberg provided a similar assessment of the book of Ezekiel, and its implications for authorship, in his seminal 1983 commentary. See Moshe Greenberg, *Ezekiel 1-20*, 26-27.

³² Julius Wellhausen, *Prolegomena to the History of Ancient Israel*, trans. J. Sutherland Black and Allan Menzies (Charleston: Bibliobazaar, 2008), 83.

³³ S. R. Driver, *Introduction to the Literature of the Old Testament* (New York: Charles Scribner’s Sons, 1913), 279. Although I disagree with Driver’s conclusion that the coherence of the book requires “a single mind,” I do agree with his conclusion that there is a deliberate structure to the book as a whole. As I will discuss later in this chapter, I join the growing majority of scholars who recognize both the structural unity of the book and the presence of redactional activity, which is not necessarily attributable to the eponymous prophet.

³⁴ Davis identifies the following books as particularly influential: Alfred Bertholet, *Das Buch Hesekiel erklärt* (Göttingen: Vandenhoeck & Ruprecht, 1900) and Richard Kraetzschmar, *Das Buch Ezechiel* (Freiburg: Mohr, 1897).

were largely the result of parallel recensions, which he argued were connected to the shifts between 1st and 3rd person narrations in the text.³⁵ Both Zimmerli and Davis emphasize that Kraetzschmar's method was heavily influenced by the prevalence of source criticism in the Pentateuch.³⁶ Kraetzschmar's application of this method to Ezekiel was ultimately unpersuasive and, as Cooke notes, Kraetzschmar failed to account for the fact that many of his duplicates were not actually parallel.³⁷ Although Kraetzschmar's proposals were not accepted widely, Davis notes that his ideas advanced scholarship on Ezekiel because "it was significant as a systematic treatment of tensions in the book which suggest extensive reworking as well as the influence of multiple writers or editors."³⁸

This trend of treating systematically the "tensions in the book" (as Davis noted) provided the foundation for more radical challenges to the literary unity of Ezekiel and the prophet's role in its composition.³⁹ Among these challenges, Gustav Hölscher articulated what may be deemed the most radical.⁴⁰ According to Davis, Hölscher

³⁵ See Kraetzschmar, *Das Buch*.

³⁶ See Zimmerli, *Ezekiel*, 4 and Davis, *Swallowing*, 12.

³⁷ Cooke, *Exegetical Commentary*, xx.

³⁸ Davis, *Swallowing*, 12.

³⁹ One facet of Ezekielian scholarship that emerges in these debates, which is beyond the scope of this project, is whether the prophet's prophecies were originally delivered orally or in writing. Ellen Davis' 1989 monograph provides an often cited articulation of the position that Ezekiel communicated his prophecies in writing more so than his Israelite/Judahite predecessors. In Davis' words, "Ezekiel greatly exceeded his predecessors in the degree to which he exploited the potential in writing... Therefore it was through him that Israelite prophecy for the first time received its *primary* impress from the new conditions and opportunities for communication created by writing" (Davis, *Swallowing*, 39). Her claim regarding the literary activity of the prophet appears occasionally throughout the 19th and early 20th centuries. Similar to the biblical scholars I discussed above, most who argued for the literary nature of the book and the prophet's work asserted that Ezekiel was primarily, if not solely, responsible for the material in it. The scholar and work most regularly cited for first advancing a similar hypothesis is Heinrich Ewald, *Die Propheten des Alten Bundes erklärt* 2, 2nd ed. (Stuttgart: A. Krabbe, 1868).

“presented the first major challenge to the idea that the book as we have it derives essentially from the prophet himself.”⁴¹ Partially relying upon both literary and historic analyses, Hölscher contended that approximately 10% of the verses belonged to the prophet Ezekiel.⁴² Central to Hölscher’s analysis was his argument that original prophetic utterances were poetic and connected to ecstatic experiences.⁴³ Consequently, Hölscher concluded that the prose sections were secondary, likely indicating that the book underwent substantial rewriting in the Persian era.⁴⁴

Similar to Hölscher, C. C. Torrey argued that the provenance, dating, and unity of Ezekiel needed significant reassessment. Torrey concluded that the book is a pseudepigraph, which was written around 230 BCE.⁴⁵ In Torrey’s words, “here is a prophecy originally composed in Jerusalem, and from beginning to end addressed to the people of Jerusalem and Judea, which has been made over in a perfectly transparent manner into a product of the Chronicler’s ‘Babylonian Exile.’”⁴⁶ Torrey’s skepticism about the historicity of Babylonian exile and return contributed to his dating of the text

⁴⁰ Gustav Hölscher, *Hesekiel der Dichter und das Buch* (BZAW 39; Giessen: Topelmann, 1924).

⁴¹ Davis, *Swallowing*, 13.

⁴² Hölscher, *Hesekiel*, 5-6.

⁴³ Hölscher, *Hesekiel*, 5.

⁴⁴ See Gustav Hölscher, *Geschichte der israelitischen und jüdischen Religion* (Giessen: Topelmann, 1922), 114. According to Zimmerli, Hölscher’s argument was the foundation for his expanded argument in his watershed commentary on Ezekiel. (Zimmerli, *Ezekiel*, 5). Also, Hölscher concluded that the final form of Ezekiel was created prior to P. See, Hölscher, *Hesekiel*, 212. The relative dating and relationship among Ezekiel, P, and H will be discussed later in this chapter.

⁴⁵ See Charles Cutler Torrey, *Pseudo-Ezekiel and the Original Prophecy* (New Haven: Yale University Press, 1930).

⁴⁶ Torrey, *Pseudo-Ezekiel*, 5. Based partially upon his analysis of the referent for “thirtieth year” in Ezek 1:1, the content of the prophecy, and his rearrangement of the dates in Ezekiel, Torrey argued that the original prophecy had its genesis in Manasseh’s reign.

and denial of a Babylonian provenance.⁴⁷ According to Torrey, Ezekiel “never speaks to Jewish exiles” nor does the prophet “show any knowledge of such a community.”⁴⁸

The impact of Hölscher’s and Torrey’s theories was felt less in the number of adherents they attracted and more in the scholarly debate they (re-)ignited. According to Albertz, these proposals (particularly Hölscher’s) “came as a thunderbolt” to the consensus regarding the unity, provenance, and authorship of Ezekiel.⁴⁹ Zimmerli argued that even though such challenges “found few unreserved followers, [they] had a very stimulating effect on further study of the book of Ezekiel.”⁵⁰ Consequently, scholars’ responses to the theories Hölscher, Torrey, and Smith proffered laid the foundation for the modern consensus that acknowledges the Babylonian provenance of Ezekiel, an overarching plan or coherent structure to the book, and the evidence of redactional activity throughout its chapters.⁵¹

For the argument I am making in this study, one rebuttal to the “low ebb”⁵² that Hölscher’s and Torrey’s arguments represent warrant specific comment. Hölscher’s conclusion that a paucity of verses is attributable to “Ezekiel” is rooted in a particular

⁴⁷ George Berry argued that Torrey’s conclusions regarding the Chronicler’s role in the editing of Ezekiel and its date emerges logically (if not correctly) from his earlier articulation of the Chronicler’s role in the 3rd century BCE. See George R. Berry, “Was Ezekiel in Exile?” *JBL* 49 (1930), 88 - 89. According to Berry, Torrey articulated this position in *Ezra Studies* (Chicago: University of Chicago Press, 1910).

⁴⁸ Torrey, *Pseudo-Ezekiel*, 44. In the same year, James Smith also argued that the Babylonian setting was a later fiction that a redactor produced. See James Smith, *The Book of the Prophet Ezekiel: A New Interpretation* (Michigan: Society for Promoting Christian Knowledge, 1931), esp. 98.

⁴⁹ Albertz, *Israel*, 347.

⁵⁰ Zimmerli, *Ezekiel 1*, 5. See also Davis, *Swallowing*, 13; Renz, *Rhetorical*, 30; and Kutsko, *Between Heaven*, 6.

⁵¹ Cooke, *Exegetical Commentary*, xxvi.

⁵² The phrase, “low ebb,” is how Davis describes the trajectory of scholarship on Ezekiel in the immediate wake of the challenges Hölscher, Torrey, and Smith presented. See Davis, *Swallowing*, 14.

understanding of prophecy, its method of articulation and, by implication, the role of a prophet. As mentioned earlier, Hölscher argued that one criterion for determining original, prophetic utterances is that they are poetic and usually delivered in ecstatic states.⁵³ Although I agree with Hölscher that a scholar can distinguish between prose and poetry in the book, this fact is insufficient to sustain the position that only poetic utterances belong to the original prophet.⁵⁴ As Cooke correctly observed, the sharp stylistic distinction Hölscher made is inadequate (partially) because the messages are similar in both poetry and prose divisions.⁵⁵ Thus, substance, as well as form, must be considered in attempts to distinguish original from secondary material in Ezekiel. Ehrlich critiques Hölscher's form critical analysis and argues that it illustrates the subjective nature and untested assumptions that often plagues scholars. Specifically, Ehrlich identifies the following three erroneous assumptions that produce unreliable results in the search for the *ipsissima verba* of Ezekiel: "(1) that prophets only spoke in short poetic lines, (2) that a prophetic oracle can only express one simple thought, and (3) that the subject matter of a prophecy must adhere to rigid laws of internal logic."⁵⁶

Although I will not engage in Hölscher's type of form critical analysis to identify the *ipsissima verba* of Ezekiel, I will appeal to the juridical framework and legal locutions in the book as a foundation for my argument regarding how it reflects developments in Judahite identity. As I will discuss in Chapter 3, I join the growing number of scholars (e.g., Holtz and Abusch) who argue that prophetic texts, to the extent

⁵³ See Hölscher, *Hesekiel*, 5-8.

⁵⁴ Zimmerli makes a similar observation, see Zimmerli, *Ezekiel I*, 68-69.

⁵⁵ See Cooke, *Exegetical Commentary*, xxii.

⁵⁶ Ehrlich, "Ezekiel: The Prophet," 120.

they are a species of ancient Near Eastern mantic literature, use juridical diction, legal metaphors, and courtroom imagery to communicate the prophet's message.

Consequently, a prophet and his utterances need not be understood according to Hölscher's categories. Rather, the legal nature of prophetic communications illumine the portrayal of the prophet's role in Ezekiel, his function within the Judahite communities experiencing Neo-Babylonian domination, and the meaning(s) of the prophet's oracles.

In the latter part of the 1930s, several scholars returned to viewing the book as a literary unit that was produced largely by the historical prophet in Babylon. For example, G. A. Cooke (1936) argued that "the general plan of the book, and to some extent the arrangement of the prophecies, may go back to Ezekiel himself.... and everywhere, throughout the Book, successive editors have been at work."⁵⁷ Unlike the consensus that dominated the late 19th and early 20th century, Cooke accepted both the claims of the text regarding authorship (in the main), geographical and temporal setting, and argued that redactional activity is ubiquitous in the biblical text. Thus, Cooke attempted to find a middle ground between the radical challenges Torrey, Smith, and Hölscher presented and the traditional assessment of Ezekiel that scholars like Smend and Wellhausen articulated. Approximately two decades later (1955), Georg Fohrer continued this trend of balancing the book's claims and the evidence supporting redactional activity in it.⁵⁸ Without diminishing the foundation that Fohrer and Cooke provided, the modern

⁵⁷ Cooke, *Exegetical Commentary*, xxvi.

⁵⁸ See Georg Fohrer, *Ezekiel* (Tübingen: Mohr Siebeck, 1955). According to Zimmerli, Fohrer first articulated this idea that the claims of the book of Ezekiel must be taken seriously without returning to the previous (uncritical?) assessment that the entire book is attributable to the historic prophet in *Die Hauptprobleme des Buches Ezechiel* BZAW 72 (Berlin: Töpelmann, 1952).

trajectory of Ezekielian scholarship continues to be heavily influenced by the work of two commentators: Walther Zimmerli and Moshe Greenberg.⁵⁹

Walther Zimmerli investigated the claims of the book of Ezekiel as a text-critic and redaction-critic.⁶⁰ Accordingly, he (perhaps more so than earlier scholars) sifted through the manuscript evidence (including the LXX) to rediscover the basic text or “kernel element, which has been developed further in new additions at a somewhat later time.”⁶¹ He attributed the subsequent additions to a “‘school of the prophet,’ which edited the prophecies of Ezekiel, commented upon them, and gave them a fuller theological exposition.”⁶² Zimmerli’s statement implicitly affirms the book’s claims regarding the existence, occupation, and historical setting for the eponymous prophet.⁶³ In fact, he argued that “nothing opposes the acceptance of the book’s own claim that its language come from the sixth century B.C.”⁶⁴ Consistent with his redaction critical approach and assessment of the book’s temporal vista, Zimmerli concluded that “the thesis of the prophet as a scribe who composed the whole book (Smend and others) becomes

⁵⁹ See Jon Levenson, “Ezekiel in the Perspective of Two Commentaries,” *Interpretation* 38 (1984): 210-217, esp. 215-216.

⁶⁰ For scholars making a similar observation, see Levenson, “Perspective,” 217.

⁶¹ Zimmerli, *Ezekiel I*, 69.

⁶² Zimmerli, *Ezekiel I*, 70. Albartz adopts a similar redaction-critical position to explain the development of the book of Ezekiel. According to Albartz, the book was written between 545 – 515 BCE and “was probably written not by Ezekiel himself but by the first and second generations of his disciples.” (Albartz, *Israel in Exile*, 353). He also adopts the phrase “school of Ezekiel” in his explanation for the final authors and redactors of the book of Ezekiel e.g., Albartz, *Israel in Exile*, 363.

⁶³ “The correctness of the reference that Ezekiel, the son of an unknown man named Busi was a priest (1:3), or at least the son of a priest, need not be doubted” (Zimmerli, *Ezekiel I*, 16).

⁶⁴ Zimmerli, *Ezekiel I*, 21. An element of Zimmerli’s acceptance of the provenance and date of Ezekiel is his critical assessment of several scholars’ linguistic analysis. As will be discussed later in this dissertation, several biblical scholars have adduced linguistic evidence from Ezekiel that reflects both its Babylonian *milieu* and sixth century BCE origins. One text Zimmerli references is Georg Fohrer, *Die Hauptprobleme*, 127-134.

impossible from these considerations just as does the understanding of the book as a pseudepigraph of a later biased author.”⁶⁵ An appealing and persuasive element of Zimmerli’s approach is that it takes seriously the claims of the biblical text without uncritically assuming its claims are unassailable. Although some components of his methodology have come under increasing scrutiny, Zimmerli’s proposals regarding the historical accuracy of the book’s information and its compositional development continue to shape modern scholarship on Ezekiel.⁶⁶ According to Kutsko, Zimmerli’s commentary redefined the foci of Ezekiel studies in two critical ways: “(i) the editorial end of the redaction as a creative and unifying force in itself; and (ii) a greater appreciation of the definitive hand of the prophet himself in composing, writing, and organizing his oracles.”⁶⁷

In contrast to Zimmerli’s approach, Moshe Greenberg concluded that the book of Ezekiel should not be investigated as a riddle that the modern exegete must decipher either by referencing multiple textual traditions or assuming an elaborate compositional history that expanded upon the prophet’s reported career.⁶⁸ Rather, “the present Book of

⁶⁵ Zimmerli, *Ezekiel 1*, 74.

⁶⁶ Levenson, “Perspective,” 217.

⁶⁷ Kutsko, *Between Heaven*, 7.

⁶⁸ Moshe Greenberg strongly critiques scholars who sought to divide and rearrange the book of Ezekiel into multiple redactional strata, as well as those who questioned the reliability of the biographical, geographical, and temporal claims of Ezekiel. In Greenberg’s words:

“A temporal vista that progresses from present, to penultimate, to ultimate time is considered an artificial result of successive additions to a single-time original oracle. Doom oracles that end with a glimpse of a better future are declared composites on the ground of psychological improbability. Such prejudices are simply a priori, an array of unproved (and unprovable) modern assumptions and conventions that confirm themselves through the results obtained by forcing them on the text and altering, reducing, and reordering it accordingly” (Greenberg, *Ezekiel 1-20*, 20).

While Greenberg’s critique may overstate the logical fallacies and manipulation of evidence scholars like Zimmerli, Pohlmann, and others utilized to support their arguments of a lengthy and complicated

Ezekiel is the product of art and intelligent design.”⁶⁹ Moreover, Greenberg concluded that:

A consistent trend of thought expressed in a distinctive style has emerged, giving the impression of an individual mind of powerful and passionate proclivities. The chronology of the oracles and the historical circumstances reflected in them assign them to a narrow temporal range well within the span of a single life. The persuasion grows on one as piece after piece falls into the established patterns and ideas that coherent world of vision is emerging, contemporary with the sixth-century prophet and decisively shaped by him, if not the very words of Ezekiel himself.⁷⁰

Despite Greenberg’s confidence in the unity of the text and the reliability of its geographical and temporal claims, he does not reach these conclusions in an “uncritical way.”⁷¹ For example, Greenberg acknowledges that Ezekiel 8 – 11 (“Temple Vision”) is “complex, in some parts disjointed and not sequential...[and] enough tensions remain to render plausible the guess that not all the elements of this vision were from the first united.”⁷² Greenberg does not deny that Ezekiel or later redactors may have rearranged certain texts within Ezekiel. Instead, Greenberg operates on the “working assumption [that] our attempt to interpret the text without eliminating the tensions is that the present composition is in an intentional product.”⁷³ For Greenberg, the best explanation of the evidence within the book of Ezekiel, as well as linguistic and archaeological evidence

compositional history for Ezekiel, this statement provides additional context for how and why Greenberg approached the text holistically.

⁶⁹ Greenberg, *Ezekiel 1-20*, 26.

⁷⁰ Greenberg, *Ezekiel 1-20*, 26-27.

⁷¹ See Levenson, “Perspective,” 216; and Elizabeth Keck, “The Glory of Yahweh, Name Theology, and Ezekiel’s Understanding of Divine Presence” (PhD diss., Boston College, 2011), 22.

⁷² Greenberg, *Ezekiel 1-20*, 199.

⁷³ Greenberg, *Ezekiel 1-20*, 199.

from non-biblical sources, leads to the conclusion that the book's temporal and geographical claims are trustworthy and it is a coherent whole.⁷⁴

Among the many recent treatments of the book of Ezekiel,⁷⁵ Dalit Rom-Shiloni's 2013 monograph requires specific comment because of its impact upon this project.⁷⁶ Rom-Shiloni argues that the exclusionary and separatist language found in Persian-period biblical literature is the result of a century-long process of identity construction that began under Babylonian hegemony.⁷⁷ With respect to Ezekiel, she argues "the prophet of the Jehoiachin Exiles *laid the foundation* for exilic identity ideologies that operate throughout the Neo-Babylonian and Persian periods, in both Babylon and Yehud."⁷⁸ For the current overview of scholarship, Rom-Shiloni reflects the current majority in scholarship regarding the historicity and authorship of Ezekiel – namely, she accepts the

⁷⁴ See Greenberg, *Ezekiel 1-20*, 17 and 27.

⁷⁵ See Margaret S. Odell, *Ezekiel*, Smyth & Helwys Bible Commentary (Macon: Smyth & Helwys, 2005); Paul Joyce, *Ezekiel: A Commentary*, Library of Hebrew Bible/Old Testament Studies 482 (New York: T&T Clark, 2007); Steven S. Tuell, *Ezekiel*, New International Biblical Commentary (Peabody: Hendrickson, 2009); and Marvin A. Sweeney, *Reading Ezekiel: A Literary and Theological Commentary* (Macon: Smyth and Helwys, 2013).

⁷⁶ Dalit Rom-Shiloni, *Exclusive Inclusivity: Identity Conflicts Between the Exiles and the People Who Remained (6th – 5th Centuries BCE)*, (New York: Bloomsbury, 2013).

⁷⁷ Rom-Shiloni, *Exclusive*, 10. Three of her other works that are most relevant for this project are: "Ezekiel as the Voice of the Exiles and Constructor of Exilic Ideology," *HUCA* 76 (2005), 1-45; "Facing Destruction and Exile: Inner-Biblical Exegesis in Jeremiah and Ezekiel," *ZAW* 117 (2005), 189-205; and "From Ezekiel to Ezra-Nehemiah: Shift of Group Identities within Babylonian Exilic Ideology," in *Judah and the Judeans in the Achaemenid Period: Negotiating Identity in an International Context*, (ed. Oded Lipschits, Gary N. Knoppers, and Manfred Oeming: Winona Lake: Eisenbrauns, 2011), 127-51. Because our research interests overlap, i.e., identity development and the book of Ezekiel, she is one of my principal interlocutors.

⁷⁸ Rom-Shiloni, *Exclusive*, 13 (emphasis added). Rom-Shiloni acknowledges that a recent book by Joseph Blenkinsopp influences her argument regarding the connection between Ezekiel and Ezra-Nehemiah and their projects of identity construction. See Joseph Blenkinsopp *Judaism, The First Phase: The Place of Ezra-Nehemiah in the Origins of Judaism* (Grand Rapids: Eerdmans, 2009). As I will discuss later, I agree that the book reflects changes in Judahite identity. However, I depart from Rom-Shiloni's approach in several ways, including her characterization of the eponymous prophet's role and the limited engagement with the legal material and its role in Judahite identity development.

biographical, temporal, and geographical assertions within the biblical text⁷⁹ and acknowledges the presence of redactors that helped shape the current form of the book.⁸⁰ For example, Rom-Shiloni states: “clearly I agree that the book reached its final form within the sixth century.”⁸¹ As I will explain in the closing section of this chapter, I concur with Rom-Shiloni and the growing majority of scholars who understand the book of Ezekiel to be a coherent whole, whose final form reflects the presence of redactional activity.

1.1.2 The Historical Ezekiel?

Before turning to issues concerning the provenance of the book, a brief word on the historicity of “Ezekiel” is warranted.⁸² A secondary issue that has garnered attention in recent scholarly debates about the book of Ezekiel is whether “Ezekiel” is an historical figure or literary construct. In much of the scholarship surveyed thus far about authorship, the scholars either stated or assumed that “Ezekiel” was a real person. This presumption is strongest among those scholars who contend that the book of Ezekiel

⁷⁹ See, Rom-Shiloni, *Exclusive*, 139-141. It is also worth noting that her approach to the historical and redactional questions differs from Pohlmann, despite them sharing a certain understanding of the existence of a “golah-oriented” redactional layer and its function within Ezekiel. Karl Pohlmann argues that “die golaorientierte Redaktion” was an addition to the book that was inserted after the sixth century BCE. See e.g., Karl F. Pohlmann, *Ezechielstudien: Zur Redaktiongeschichte des Buches und zur Frage nach den ältesten Texten* (Berlin: de Gruyter, 1992), 120-131; idem, *Das Buch des Propheten Hesekiel: Kapitel 1-19* (Göttingen: Vandenhoeck & Ruprecht, 1996), 27-41. Additionally, Pohlmann places less confidence in the reliability of the book’s historical claims, especially as they relate to its description of the eponymous prophet. While he is not willing to go as far as Hölscher and Torrey, Pohlmann does contend that whoever the prophet was, he is not how the biblical text portrays him.

⁸⁰ See, Rom-Shiloni, *Exclusive*, 185-196.

⁸¹ Ibid., 186. As part of her discussion of the reliability of Ezekiel’s historical and geographical claims, she acknowledges her acceptance of Moshe Greenberg’s reading strategy I discussed above.

⁸² As mentioned, I use “Ezekiel” when I am discussing the prophet rather than the book that bears his name.

shows little, to no, evidence of later redaction.⁸³ In recent scholarship, however, several scholars challenge whether a person “Ezekiel” ever existed and, even if such a person was real, if the biblical text provides sufficient information to access him.⁸⁴

Lyons and Körting recently identified Pohlmann as an important scholar who questions the historicity of “Ezekiel” and scholars’ ability to recover his actual person from the book.⁸⁵ Lyons summarizes Pohlmann’s skepticism as being rooted in the multiple redactional layers that Pohlmann identifies in the book and that “the various stances attributed by the book to the prophet Ezekiel (visionary, watchman, pronouncer of doom oracles, etc.) are mutually exclusive.”⁸⁶ The varying roles Pohlmann discusses figures prominently in the analysis of those scholars who question the existence of an actual “Ezekiel.” Since the book of Ezekiel describes the prophet as a priest (Ezek 1:3),

⁸³ See Wellhausen, *Prolegomena*, 83; Driver, *Introduction*, 279; Greenberg, *Ezekiel 1-20*, 26-27; and Rom-Shiloni, *Exclusive*, 13.

⁸⁴ See Johannes C. de Moor, ed., *The Elusive Prophet: The Prophet as Historical Person, Literary Character and Anonymous Artist* (Leiden: Brill, 2001); Corinne L. Patton, “Priest, Prophet, and Exile: Ezekiel As A Literary Construct,” in *Ezekiel’s Hierarchical World: Wrestling with A Tiered Reality*, ed. Stephen L. Cook and Corinne L. Carvalho Symposium Series 31 (Atlanta: SBL, 2004), 73-75; Matthijs J. de Jong, “Ezekiel As A Literary Figure and the Quest for the Historical Prophet,” in *The Book of Ezekiel and Its Influence*, ed. H J de Jonge and Johannes Tromp (Aldershot: Ashgate, 2007); Lyons, *Introduction to Ezekiel*, 7-14; and Corinna Körting, “The Cultic Dimensions of Prophecy in the Book of Ezekiel,” in *The Prophets Speak on Forced Migration*, ed. Mark Boda, Frank Richtel Ames, John Ahn and Mark Leuchter (Atlanta: SBL Press, 2015), 121-122.

⁸⁵ See Lyons, *Introduction to Ezekiel*, 57 and Körting, “Cultic Dimension,” 121 who mention Pohlmann’s monograph, *Der Stand* as a leading text in this debate. Without disputing their claim to the importance of Pohlmann, it is worth noting that he is among those who express skepticism about scholars’ ability to recover anything about the historical “Ezekiel” from the paucity of data provided in the biblical text. This skepticism and paucity of material, however, does not mandate rejecting the conclusion that an historical “Ezekiel” existed. Additionally, Pohlmann’s distinction (along with others, such as Mein) between the literary portrait of “Ezekiel” and its likely distance from the purported historical figure need not undermine scholars’ confidence in the existence of an historical figure.

In contrast to this position, see David Halperin’s psychological analysis of the book of Ezekiel in which he contends that the book provides ample evidence to know the man behind the book. See Halperin, 4. Halperin’s psychoanalysis of “Ezekiel” will be discussed in the following chapter.

⁸⁶ Lyons, *Introduction to Ezekiel*, 57.

scholars have sought to understand how “Ezekiel” fulfilled that office in Babylonia.⁸⁷ For example, Andrew Mein questions whether “Ezekiel” can be considered as such because “he neither performs sacrifices nor makes atonement for the people.”⁸⁸ Instead, he argues that “Ezekiel is one who teaches ritual distinctions...”⁸⁹ Patton extends this line of reasoning and concludes that “nowhere does the character of Ezekiel do anything one would consider particularly priestly. He does not sacrifice, maintain a ritual calendar, nor make decisions of purity or cleanness for his community.”⁹⁰

Since “Ezekiel,” like the book, resists easy classification, scholars continue to debate whether “Ezekiel” should be understood as a priest, prophet, neither, or both. For example, Patton (in her discussion of the Ezek 1:1-3) argues that “one cannot simply remove the few references to priesthood in the text and have some sort of classical prophet.”⁹¹ The hybridity of the depiction of “Ezekiel” in the book is used to support the argument that he is as much a literary construct as an historical person.⁹² Although the dearth of typical priestly functions in the book of Ezekiel may support the contention that

⁸⁷ The secondary nature of Ezek 1:2-3 is often asserted in the literature on the book in part because of the shift between first and third person narration present in these verses.

⁸⁸ Mein, “Ezekiel as A Priest in Exile,” in *The Elusive Prophet: The Prophet as Historical Person, Literary Character and Anonymous Artist*, ed. Johannes C. de Moor (Leiden: Brill, 2001), 202. Mein also discusses what, if any, information the book of Ezekiel can provide scholars about the functioning of priests within the Babylonian גולה. See also Baruch Schwartz, “A Priest Out of Place: Reconsidering Ezekiel’s Role in the History of Israelite Priesthood,” in *Ezekiel’s Hierarchical World: Wrestling with a Tiered Reality*, ed. Stephen L. Cook and Corrine L. Carvalho Symposium Series 31 (Atlanta: Society of Biblical Literature, 2004), 61-71.

⁸⁹ Mein, “Ezekiel as Priest,” 205.

⁹⁰ Patton, “Priest, Prophet and Exile,” 87. Although she makes this statement (particularly in her discussion regarding Ezekiel 40 – 48), Patton recognizes that the roles of priest and prophet maybe more inter-related than previously thought and that “Ezekiel” has some functions that could be considered priestly. See Patton, 85.

⁹¹ Patton, “Priest, Prophet and Exile,” 84.

⁹² Patton, “Priest, Prophet and Exile,” 86-87.

there was not an historical priest named “Ezekiel,” scholars advocating this position must address the presence of priestly language and concerns throughout the book. For example, Ezek 1:1 contains an unusual formulation - ויהי בשלשים שנה - which is sometimes connected to “Ezekiel’s” age and its significance for priestly functions.⁹³ Additionally, scholars have long recognized “the obvious affinity with H and P” that the book of Ezekiel contains.⁹⁴ To disassociate this “obvious affinity” from the historical priest “Ezekiel,” scholars distinguish the priestly language in the book from the occupation of the book’s purported author. Patton’s formulation is one of the more extreme articulations of this approach, but is nonetheless illustrative: “These parallels [among H, P, and the book of Ezekiel] seem to attach more to the author and the ideology of the book as a whole than they do to Ezekiel; in fact, you could say that God sounds more like P than Ezekiel does.”⁹⁵

Some scholars’ willingness to accept this distinction between the author and the book is connected to greater focus upon the literary characterization/portrait of prophetic figures in biblical literature, including the narrative elements of the book of Ezekiel.⁹⁶ Because of this focus, scholars are more sanguine about distinguishing between the

⁹³ Several scholars have argued for the significance of this opening phrase for the priestly calling, function, and reality of “Ezekiel.” One of the more commonly cited articles in which this argument is made is James E. Miller, “The Thirtieth Year of Ezekiel 1:1,” *RB* 99 (1992): 499-503.

⁹⁴ Patton, “Priest, Prophet, and Exile,” 84. The connections among the book of Ezekiel, P, and H will be discussed in more depth later in this chapter.

⁹⁵ Patton, “Priest, Prophet and Exile,” 84. See also Mein, “Ezekiel As Priest,” 205-206.

⁹⁶ Patton identifies the following scholars as influential within this discipline and upon her work: Adele Berlin, *Poetics and Interpretation of Biblical Narrative*, Bible and Literature 9 (Sheffield: Almond, 1983); David M. Gunn, “Reading Right: Reliable and Omniscient Narrator, Omniscient God, and Foolproof Composition in the Hebrew Bible,” in *The Bible in Three Dimensions: Essays in Celebration of Forty Years of Biblical Studies in the University of Sheffield*, ed., D. J. A. Clines, S. E. Fowl, and S. E. Porter. JSOTSup 87 (Sheffield: Sheffield Academic Press, 1990), 53-64; and Pauline Vivano, “Characterizing Jeremiah,” *WW* 22 (2002): 361-368.

author, the implied author, and the audience's/reader's engagement with the biblical text.⁹⁷ Thus, scholars who question the historical realities behind the book's portrayal of "Ezekiel," contend that "Ezekiel" emerges as (i) an idealized figure who mediates readers' experience of the text and (ii) as a literary character who assists the authors in advocating for their positions.⁹⁸ According to Körting (2015), this approach to investigating prophetic literature generally and the book of Ezekiel specifically has resulted in a new consensus regarding the "person" of Ezekiel. In her assessment, "scholars no longer expect to find a real person behind Ezekiel, no priest and prophet in one person, but a literary construct that combines important elements of both."⁹⁹

While this school of thought is gaining greater traction, Körting overstates her case regarding scholars' expectation regarding the historical "Ezekiel." In the same year Körting's article was published, Michael Lyons argues that scholars apply "models that date the bulk of the material in the book to the exilic period and give the prophet a role in the writing and editing of his own oracles...and find evidence for subsequent redactional additions."¹⁰⁰ Lyons implies that he still accepts the existence of an actual, historical

⁹⁷ Since the disciplines of literary, narrative, and rhetorical criticism are beyond the scope of this project, I will not engage in a discussion of their developments. Rather, I reference these fields to recognize how they impact some scholars' formulation of "Ezekiel's" role and its connection to the historical figure. See also Renz, *Rhetorical*, 132-137 and Davis, *Swallowing*, 73-77 for discussions about "Ezekiel" and his role in the narrative.

⁹⁸ See Mein, "Ezekiel As Priest," 201 and Patton, "Priest, Prophet and Exile," 74.

⁹⁹ Körting, 122.

¹⁰⁰ Lyons, *Introduction to Ezekiel*, 59. As I will argue in the conclusion of this chapter, I concur with Lyons' assessment. More specifically, I contend that the book records the renegotiation and developments in Judahite identity that the tumultuous era of Neo-Babylonian domination imposed upon Judahites – whether living in Judah or Babylonia. These conversations began in the sixth century BCE and were continued for some period of time thereafter. For this dissertation, the fact that the book originated under Neo-Babylonian hegemony (regardless of when it reached its final form) is sufficient for my analysis of how its legal elements inform and shape the book's articulation of Judahite identity.

“Ezekiel” when he argues that “given the *content* of the material in the book, I think it most likely that Ezekiel the prophet addressed his contemporaries about the situation in which they found themselves. But given the *form* of the material in the book, I think it largely impossible to reconstruct the shape of what was proclaimed.”¹⁰¹ For this study, I concur with Lyons’ conclusion regarding the historicity of “Ezekiel.” I agree, however, with Pohlmann and others that the literary depiction of “Ezekiel” may not correspond directly to the historical realities of the prophet-priest who lived among the Jehoiachin exiles (Ezek 1:1-3). Unlike these scholars however, I do not think that acknowledging both the literary reshaping of the character “Ezekiel” and its distance from the historical “Ezekiel” means that scholars must abandon the notion of an actual, historical person who lies behind the character. The difficulty the biblical text presents in reconstructing the “real Ezekiel” does not necessitate a conclusion that there is no “Ezekiel.” Rather, in this dissertation, I will attempt to demonstrate how the book reflects the experiences of a community displaced and adversely impacted by Neo-Babylonian domination of the 6th century BCE. This conclusion regarding the presence of an historical “Ezekiel,” as Lyons and others have discussed, does not require ascribing the entirety of the book of Ezekiel to him nor assuming that everything said about the prophet-priest records his actual experience.¹⁰² Thus, the insights from both scholarly camps can be deployed in an analysis of the book of Ezekiel and the prophet-priest whose name is attached to it.

¹⁰¹ Lyons, *Introduction to Ezekiel*, 56 (emphasis in original).

¹⁰² A modern analogy may provide some clarity: Using modern movie parlance, the book of Ezekiel and its description of the prophet may be “based upon a true story.” When watching movies with the “based upon a true story” moniker, viewers neither assume that everything in the movie represents actual historical events in the person’s life nor that the entire story is fictional – including the person who is the main character in the movie. In a similar manner, I contend that “Ezekiel” and the book that bears his name should be understood as an ancient expression of this modern, movie phenomenon.

1.1.3 Provenance

The debates among biblical scholars regarding the provenance of Ezekiel followed a similar trajectory as those accompanying the authorship and unity of the book. As outlined in Section A, the basic trajectory of scholarly opinion began with an affirmation of the biblical text's claims about its provenance, moved away from relying upon the text's claims, and returned to an (modified) acceptance of the text's claims. A major challenge for biblical scholars reaching a consensus on the provenance of the book is that the text at times suggests both a Palestinian and Babylonian setting.¹⁰³ Within the history of scholarship, most scholars can be placed into one of the following camps: (i) the prophet was active only in Babylonia; (ii) the prophet was active only in Jerusalem or Palestine; or (iii) the prophet was active in both Judah and Babylonia.¹⁰⁴

1.1.3.1 Babylonia

Biblical scholars affirming the Babylonian provenance of the book of Ezekiel consistently appeal to the reliability of the claims within it. In Ezek 1:3, the prophet's geographical locale is identified as: בארץ כשדים על־נהר־כבר ("in the Chaldeans' land by the river Chebar").¹⁰⁵ Additionally, Ezek 3:15 places the prophet Ezekiel at Tel-Abib among a settlement of displaced Judahites: ואבוא אל־הגולה תל אביב הישבים אל־נהר־כבר. In addition

¹⁰³ Ezekiel 8-11, for example, suggests that the prophet witnessed events in Judah; while, Ezekiel 1 situates the prophet in Babylonia.

¹⁰⁴ Renz divides scholars theories regarding the locales of the prophet's ministry in to six subdivisions: prophet was active only in Babylonia; prophet was active in both Jerusalem and Babylonia; prophet only active in Babylonia; prophet was active only in Jerusalem; the prophet never existed; and prophet active mainly in Babylonia with a possible Jerusalem- based ministry prior to the exile. See Renz, *Rhetorical*, 28-31.

¹⁰⁵ Ezek 1:1 also situates the prophet among the Babylonian exiles: ואני בתוך־הגולה על־נהר־כבר.

to the claims of the biblical text, several scholars argue that the book coheres better logically and rhetorically if the Babylonian setting is authentic. Renz, as a relatively recent example, concludes that if the Babylonian origin is accurate “some continuity between the rhetorical situation the prophet faced and the rhetorical situation of the book can be expected.”¹⁰⁶ Thus, as he correctly argues, the burden of proof should rest upon those scholars who seek to disprove the book’s geographical claims. Prior to Renz, Greenberg argued similarly that those “advocates of this view [those seeking to remove some of Ezekiel to a Judean setting] must somehow nullify the passages in which the Babylonian locale is explicit or implicit, and these are not few...”¹⁰⁷

In addition to the geographical notices in the text, several scholars have appealed to extra-biblical material, especially cuneiform records, and archaeological evidence to bolster the argument in favor of the book of Ezekiel’s Babylonian provenance.¹⁰⁸ In

¹⁰⁶ Renz, *Rhetorical*, 38. This section begins with Renz because his argument about the rhetorical setting and quasi-adjudicatory function of the audience was influential in my conclusions regarding the Babylonian provenance of Ezekiel 1-33.

¹⁰⁷ Greenberg, *Ezekiel 1-20*, 15.

¹⁰⁸ The growing bibliography discussing the evidence of Judahites in Babylonia is too voluminous to present and discuss here. Among the more significant scholarly works are: E. F. Weidner “Jojachin, König von Juda, in babylonischen Keilschrifttexten” in *Mélanges Syriens offerts à M. René Dussaud* (Paris: Geuthner, 1939), 2.923-935; R. Zadok *The Jews in Babylonia During the Chaldean and Achaemenian Periods According to the Babylonian Sources* (Haifa: University of Haifa Press, 1979); F. Joannès and A. Lemaire “Trois tablettes cunéiformes à l’onomastique ouest-sémitique” *Transeuphratène* 17 (1999): 17-33; David Vanderhooft *The Neo-Babylonian Empire and Babylon in the Latter Prophets* (Atlanta: Scholars Press, 1999); Laurie E. Pearce “New Evidence for Judeans in Babylonia” in *Judah and Judeans in the Persian Period* (ed. Oded Lipschits and Manfred Oeming Winona Lake: Eisenbrauns, 2006), 399-411; W. G. Lambert “A Document from a Community of Exiles in Babylonia” in *New Seals and Inscriptions, Hebrew, Idumean, and Cuneiform* ed. (M. Lubetski Sheffield: Sheffield Phoenix, 2007), 201-205; Paul-Alain Beaulieu “Yahwistic Names in Light of Late Babylonian Onomastics” in *Judah and the Judeans in the Achaemenid Period: Negotiating Identity in an International Context* eds. Oded Lipschits, Gary N. Knoppers, and Manfred Oeming (Winona Lake, IN: Eisenbrauns, 2011), 245-266; Laurie E. Pearce, “Judean’: A Special Status in Neo-Babylonian and Achaemenid Babylonia?” in *Judah and the Judeans in the Achaemenid Period: Negotiating Identity in an International Context* (ed. Oded Lipschits, Gary N. Knoppers, and Manfred Oeming Winona Lake: Eisenbrauns, 2011), 267-278; and Laurie E. Pearce and Cornelia Wunsch, *Document of Judean Exiles and West Semites in Babylonia in the Collection of David Sofer* (CUSAS 28; Bethesda: CDL Press, 2014).

1935, Shalom Spiegel argued that multiple archaeological finds and “the long list of Akkadianisms in the book of Ezekiel” continued to demonstrate the Babylonian provenance of Ezekiel “seems more natural...than in the Hellenistic Pseudo-Ezekiel.”¹⁰⁹ This appeal to “Akkadianisms” in Ezekiel continues to play a prominent role in scholars’ defense of the Babylonian provenance today. David S. Vanderhooft¹¹⁰ and Meir Malul¹¹¹ both wrote articles that are particularly illustrative of this approach and are also relevant for this project. Vanderhooft highlights “how many of the Akkadian loan words in the book pertain to what we may broadly term mercantile, juridical, industrial, professional and architectural realms.”¹¹² Thus, within his overall argument regarding how the book of Ezekiel reflects the acculturation process of a Judahite in Babylonia, Vanderhooft concludes that the presence of these Akkadian terms in “the prophet’s lexicon” is further evidence of “the type of direct experience we may assume was normal for deportees and which receive indirect documentation in the new cuneiform tablets.”¹¹³ Although his

In light of the increased access to such data, I am interested in exploring in a later project how these documents can be analyzed in light of the Erikson-Bronfenbrenner Model (“EB Model”) that I employ in this study. Specifically, scholars’ understanding of the daily *realia* of Judahite life in Babylonia, along with those of other displaced groups, may permit an investigation of how Judahite identity is reflected in these documents. In the recent volume Pearce and Wunsch produced, the fact that many of the cuneiform documents reflect Judahites’ engagement with legal traditions, customs, and requirements of Babylonia may prove helpful in a comparative analysis of my claims regarding how those elements function within the book of Ezekiel.

¹⁰⁹ Spiegel, “Toward Certainty,” 149. Spiegel’s article is (in part) a response to the pseudepigraphal arguments of Torrey and other scholars who followed that branch of Ezekielian scholarship.

¹¹⁰ David S. Vanderhooft “Ezekiel in and on Babylon” in *Bible et Proche-Orient, Mélanges André Lemaire III* (ed. J. Elayi and J.M. Durand; Transeuphratène 46, 2014): 99-119.

¹¹¹ See, Meir Malul “Adoption of Foundlings in the Bible and Mesopotamian Documents: A Study of Some Legal Metaphors in Ezekiel 16:1-7,” *JSOT* 46 (1990): 97-126.

¹¹² Vanderhooft, “Ezekiel in and on Babylon,” 107.

¹¹³ Vanderhooft, “Ezekiel in and on Babylon,” 107. One Akkadian term Vanderhooft discusses in this context is *iškaru* and its Hebrew cognate אִשְׁכָּר.

acculturation model differs from the social-psychological model I will employ in this dissertation, the recognition that Ezekiel contains juridical terminology, such terminology reflects Judahites' daily experiences in Babylonia, and that such terms may connect to Judahite identity informs my analysis. Specifically, as stated in the introduction to the dissertation, I intend to investigate how the presence of juridical diction within the book of Ezekiel (especially Ezekiel 16) may illumine how the book advocated for a specific conceptualization of Judahite identity in response to, and shaped by, Neo-Babylonian hegemony.

A specific study that focuses on the juridical terminology in Ezekiel is Meir Malul's article on Ezek 16:1-7. Although he does not link expressly his insights regarding the legal locutions in this passage to Judahite identity (a project that this study undertakes), Malul's analysis of the similarities between Ezekiel 16 and adoption proceedings preserved in cuneiform records supports the Babylonian provenance of Ezekiel.¹¹⁴ For example, he argues that YHWH's statements in Ezek 16:6 בְּדָמֶיךָ חַיִּי ("in your blood, live") has a specific ANE legal meaning that is analogous to the Akkadian phrase *ina dāmēšu*. This Akkadian phrase was inserted into adoption contracts to "avoid cases of adoptive parents being deprived of their adopted children by future claims."¹¹⁵ Again, like Vanderhooft, the presence of specific Akkadian terminology in the book of Ezekiel provides additional support for its Babylonian provenance by demonstrating that

¹¹⁴ Some of the legal terms and phrases Malul identifies that connect to adoption procedures are as follows: המלח אל המלחת; ותשלכי אל-פני השדה (“Your navel was not cut; You were not even rubbed with salt; and then you were cast out into the open field”).

As I will discuss in Chapter 5, Malul's recognition that Ezekiel 16 begins with a concentration of juridical terminology and legal imagery informed my approach on the purpose and nature of these legal elements within Ezekiel 1-33.

¹¹⁵ Malul, “Adoption,” 109.

the individuals responsible for the text incorporated aspects of the Babylonian *milieu* into their writings – a phenomenon that is most parsimoniously explained by a Babylonian provenance.

1.1.3.2 Judah

In contrast to those advocating a Babylonian provenance, several biblical scholars contend that the prophet's "ministry" occurred in Jerusalem and/or Palestine.¹¹⁶ Similar to the previous scholars, evidence from the book of Ezekiel lends credence to this contention. For example, Ezek 8:3 describes the prophet's journey to Jerusalem to witness several abominable actions in and around the temple precincts. The larger pericope (Ezekiel 8-11) contains a purported eyewitness account of these various crimes, which serve as the proximate cause for YHWH's final departure from the city in anticipation of its destruction (Ezek 11:22-23).

First, biblical scholars often use this account to emphasize the prophet's concern for the fate of Jerusalem, which seems incongruous to many who contend that he was located in Babylonia. Connected to this argument is the contention that "the oracles of Ezekiel were not addressed to the exiles. They were addressed simply and solely to the people of Judah, especially Jerusalem."¹¹⁷ Additionally, several scholars have commented on the absence of any explicit threats to the Neo-Babylonian imperial regime and apparent disinterest in the details of exilic life as potential evidence supporting a

¹¹⁶ Several scholars who maintain the pseudepigraphical nature of Ezekiel often contend it was written in Jerusalem or Palestine. For a partial list, see Renz, *Rhetorical*, 29-30.

¹¹⁷ Berry, "Was Ezekiel," 86.

Jerusalem setting.¹¹⁸ For example, Hölscher emphasized that Babylon is never the object of any threats (*Drohung*) of divine judgment or rebuke.¹¹⁹ For scholars in this camp, the focus on Jerusalem's fate and silence regarding Babylon is best explained by a Jerusalem or Palestinian provenance.

Second, the specificity of the details in Ezekiel 8 – 11 suggests that the eponymous prophet was physically in Jerusalem.¹²⁰ In addition, several passages purport to record the statements or sentiments of the Judahites in Jerusalem.¹²¹ Similar to the prophet's reported firsthand visual observations, these direct quotations are considered further evidence of his presence in Jerusalem. Lastly, specific expressions used to identify the addressees of oracles (e.g., Ezek 14:7) suggests that the prophet is speaking to Jerusalem's citizens and inhabitants.

Although several scholars have effectively challenged the idea that the book of Ezekiel was composed in Jerusalem/Palestine, two rebuttals inform my analysis and require additional attention.¹²² First, it is neither unreasonable nor surprising that a recently exiled people should have a deep interest in their homeland. Consequently, a

¹¹⁸ See Zimmerli, *Ezekiel 1*, 304 for a brief discussion of this issue.

¹¹⁹ See Vanderhooft, "Ezekiel in and on Babylon," 104. This observation, according to Vanderhooft and others, is consistent with Hölscher's statement in one of his earlier discussions of the book of Ezekiel. In Hölscher's words, "gegen Babylonien hat er kein Wort der Drohung." (See Hölscher, *Hesekiel*, 8.)

¹²⁰ Because Ezekiel 8-11 describes the prophet's experiences in Jerusalem, scholars who assert that some (or all) of the book of Ezekiel was written in Jerusalem often appeal to these chapters as evidence. Two examples are: C. C. Torrey, *Pseudo-Ezekiel and the Original Prophecy* (New York: Ktav Pub. House, 1930) and James Smith, *The Book of the Prophet Ezekiel: A New Introduction* (New York: Macmillan, 1931).

¹²¹ See Ezek 11:15-16, 12:21-28, and 33:23-29. Both Ezekiel 11 and 33 involve legal claims to land, which I will discuss later in the dissertation.

¹²² For a brief summary of common rebuttals to the Palestinian school in Ezekielian scholarship, see Renz, *Rhetorical*, 33-38.

deportee's interest in their homeland is insufficient evidence to conclude that such interest requires a Jerusalem provenance. Greenberg goes even further to argue that the interests and concerns of the exiled Judahites and those in Jerusalem were indistinguishable. In Greenberg's words, "little contrast would be felt between the ostensible and the real audience, since the hearers of the prophet were, in fact, Jerusalemites who identified themselves with their fellow citizens in the homeland in every way."¹²³ As I will argue later in the dissertation, the enduring importance of Jerusalem and its centrality to the Judahites' identity in Babylonia may help account for the prophet's portrayal of the city in Ezekiel 16. Also, the presence of quotations and sentiments from Judahites in Jerusalem need not come from actual inhabitants in Jerusalem, but could be the words of "Jerusalem sympathizers" within the exilic communities. In contrast to some recent scholars' conclusions, I will suggest that the "Jerusalemites' sentiments" may also reflect the contested space within which the book of Ezekiel advocates for its conceptualization of Judahite identity – an identity that requires a reassessment of Jerusalem, its history, and citizenry.

Second, the prophet's knowledge of events in Jerusalem and address to a particular audience need not be the result of his physical presence at the time the oracle is delivered.¹²⁴ As most scholars would agree, the eponymous prophet spent some time in Jerusalem prior to his deportation with King Jehoiachin in ca. 597 BCE.¹²⁵ Thus, the prophet's alleged firsthand knowledge of Jerusalem and its inhabitants' sentiments may

¹²³ Greenberg, *Ezekiel 1-20*, 17.

¹²⁴ See e.g., Brownlee, "Son of Man," 83-84 and 108-110. Several scholars highlight that prophetic anthologies in the Bible regularly include oracles against nations, and scholars do not assume that the address of these nations requires a specific geographic locale. See Greenberg, *Ezekiel 1-20*, 16-17.

¹²⁵ See also, Ezek 1:1-3

be the result of previous engagement.¹²⁶ The prophet's knowledge of Jerusalem can also be explained through continuing communication with Jerusalem's citizens, either directly to the prophet or indirectly to other Judahites in exile with the prophet. Both Ezekiel 33 and Jeremiah 29 indicate that communication between Jerusalem and Babylonia occurred. While Ezekiel does not describe other instances of such mobility and communication (aside from the visionary experiences of the prophet), the presence of these journeys precludes concluding that all reports of activities in Jerusalem must be the result of the prophet's physical presence to witness them. Additionally, many of the eyewitness accounts are described as ecstatic, visionary experiences, which may mitigate against the need to find an actual, tangible corresponding reality. Rather, the description may be a vehicle to illustrate the case the prophet is making against Jerusalem – somewhat like a story a lawyer might tell in an opening statement to frame his/her case.¹²⁷ Lastly, it is not necessary to conclude that a prophet addressed individuals in his actual, physical presence, as Renz notes.¹²⁸ Thus, attempts to moor “Ezekiel” to a specific geographic locale based upon his addressees are dubious.

1.1.3.3 Babylonia and Judah

Given the mixed testimony the biblical text provides regarding the purported locale of the prophet's ministry, it is not surprising that several scholars attempted to resolve this problem by explaining that the prophet was active in both Jerusalem and

¹²⁶ See Renz, *Rhetorical*, 35 who makes a similar observation.

¹²⁷ See also Kutsko, *Between Heaven*, 17 who argues for “literary license” as a possible explanation for these geographical scenes.

¹²⁸ Renz, *Rhetorical*, 34.

Babylonia. The most common proposal among those in this camp is that “Ezekiel” began his career in Jerusalem and then, following the first deportation of Judahites in 597 BCE, continued it among the Babylonian גולה.¹²⁹ According to Renz, this position was “fairly popular during the 1930s to 1950s among those who wanted to accept the force of the arguments brought forward at that time for a Palestinian ministry of the prophet, but who were unwilling to abandon completely the tradition of the prophet’s Babylonian activity.”¹³⁰ A minority position within this camp involves him taking multiple trips between Jerusalem and Babylonia. For example, Robert Pfeiffer suggested that the prophet began his prophetic career in Babylon, continued it in Jerusalem and then concluded his career among the exiles.¹³¹ According to both Renz and Kutsko, the scholarly movement to assert a Palestinian origin for Ezekiel was largely ended by several monographs in the 1950s, most notably the book C. G. Howie published in 1950.¹³²

The reemergence of the scholarly consensus regarding the Babylonian provenance of the book of Ezekiel is aided by scholars’ increased confidence in the validity of the text’s claims. As outlined in Section A, biblical scholars accept, with some caveats, the basic assertions of the book, including the claims the text contains about its purported origins. The increased archaeological evidence confirming Judahites’ presence in Babylonia bolsters scholars’ confidence in the Babylonian provenance of the book of

¹²⁹ Renz and Davis identify Bertholet’s *Hesekiel* (1936) as the most widely received articulation of this position. See Davis, *Swallowing*, 14 and Renz, *Rhetorical*, 29.

¹³⁰ Renz, *Rhetorical*, 28-29.

¹³¹ See, Robert H. Pfeiffer, *Introduction to the Old Testament* (New York: Harper, 1941), 537-540.

¹³² See, C. G. Howie, *The Date and Composition of Ezekiel* (JBL Monograph Series 4; Philadelphia: SBL, 1950).

Ezekiel. Moreover, additional linguistic studies of the book have revealed the presence of material in it that reflects both Babylonian and Mesopotamian influences. Thus biblical scholars, like Darr, can join the growing consensus that the majority of the prophet's "ministry" occurred in Babylonia.¹³³ According to Renz, "no convincing arguments have been brought forward to shed doubt on the book's presentation of a prophet who was exclusively active as a prophet in Babylonia." While I cannot aver Renz's assertion that there is no "doubt" about the book's Babylonian provenance, I do concur that the preponderance of evidence suggests that the Babylonian setting of the book rests on solid ground.

1.2 PRIESTLY SOURCE, HOLINESS CODE, AND EZEKIEL

The identification of the prophet as a priest (Ezek 1:3) provided a reasonable foundation for scholars to investigate what, if any, connections exist between this book and "priestly material"¹³⁴ throughout the Hebrew Bible. This investigation has led to a recognition that the book of Ezekiel shares specific locutions, theological constructs, and legal formulations with biblical materials classified as either P or H.¹³⁵ The consensus

¹³³ Darr, *NIB*, 1087. See also, Kutsko, *Between Heaven*, 5.

¹³⁴ I use this term to reference information that scholars attribute to both the Priestly Source ("P") and Holiness Source ("H") throughout the Pentateuch.

¹³⁵ Some scholars making this observation include: Wellhausen, *Prolegomena*, 82 and 158; Avi Hurvitz, *A Linguistic Study of the Relationship between the Priestly Source and the Book of Ezekiel* (Paris: J. Gabalda, 1982), 9-10; idem, "Dating the Priestly Source in Light of the Historical Study of Biblical Hebrew: A Century after Wellhausen," *ZAW* 100/3 (1988): 88-100, 92; Risa Levitt Kohn, *A New Heart and A New Soul: Ezekiel, the Exile, and the Torah* (London: Sheffield Academic Press, 2002), 84-85; Menahem Haran, "Ezekiel, P, and the Priestly School," *VT* 58/2 (2008): 211-218, 211-212; Lyons, *Holiness Code*, 114-116.

regarding these shared elements has not, however, resolved the debates concerning the direction of influence among Ezekiel, P and H. While it is beyond the scope of this dissertation to provide an answer to these issues, it is necessary to (briefly) summarize aspects of the debate regarding the dating of P, H, and their potential relationship to the book that impact my analysis of it in this study. Since this relationship impacts directly aspects of pentateuchal scholarship, it is appropriate to begin with one of the pioneers in the modern, critical study of the Pentateuch – Julius Wellhausen.

Julius Wellhausen's theory concerning the date of P and its relationship to the book was widely accepted among scholars at the beginning of the twentieth century.¹³⁶ He contended that P was the last of the four Pentateuchal sources and belonged to "the post-exilic period of the history of the cultus."¹³⁷ A critical component of this chronological argument was that P knew D and presumed cultic centralization – an innovation he argued defined the Josianic reformation and the D source produced in the same era. In Wellhausen's words, "In that book [Deuteronomy] the unity of the cultus is *commanded*; in the Priestly Code it is *presupposed*. Everywhere it is tacitly assumed as a fundamental postulate, but nowhere does it find actual expression; it is nothing new, but quite a thing of course. What follows from this for the question before us? To my thinking, this: - that the Priestly Code rests upon the result which is only the aim of

¹³⁶ Although Wellhausen's formulation of the pentateuchal sources and their chronology remains foundational, most scholars recognize that De Wette was one of the first to conclude that P belongs to the post-exilic era because of the similarities he saw between P and the Chronicler.

¹³⁷ Wellhausen, *Prolegomena*, 55.

Deuteronomy.”¹³⁸ Lastly, Wellhausen concluded that the Holiness Code should be placed into the chronological framework of the pentateuchal sources as follows: “Jehovist, Deuteronomy, Ezekiel are a historical series; Ezekiel, Law of Holiness, Priestly Code must also be taken as historical steps, and this in such a way as to explain at the same time the dependence of the Law of Holiness on the Jehovist and on Deuteronomy.”¹³⁹

Wellhausen also found linguistic evidence that supported his claims regarding the late dating of P. According to him, “it is undoubtedly the case that he [the author of the Priestly Code] makes use of a whole series of characteristic expressions which are not found before the exile, but gradually emerge and come after it.”¹⁴⁰ Wellhausen recognized that if the P source dated to the period after the Babylonian exile he needed to account for the presence of linguistic elements that predate the sixth century BCE. Accordingly, he contended that P reflects the archaizing tendencies of its authors. In his words, P “tried hard to imitate the costume of the Mosaic period and, with whatever success, to disguise its own.”¹⁴¹ Because Wellhausen concluded that the Priestly Code’s origins were so demonstrably post-exilic, he argued that it conceived of Israel “not [as] a people, but a church...Here, we are face to face with the church of the second temple, the Jewish hierarchy, in a form possible only under foreign domination.”¹⁴² In light of

¹³⁸ Wellhausen, *Prolegomena*, 52. As I will argue later in this section, thematic distinctions alone are insufficient evidence to conclude that a biblical text belongs to a specific chronological era. For a version of this argument, see Keck, “The Glory,” 83-85.

¹³⁹ Wellhausen, *Prolegomena*, 451.

¹⁴⁰ Wellhausen, *Prolegomena*, 460. Wellhausen also compares the presence of similar locutions in biblical texts such as 2nd Isaiah as additional evidence for his arguments regarding the historical dates and provenance of P (Wellhausen, *Prolegomena*, 464).

¹⁴¹ Wellhausen, *Prolegomena*, 23.

¹⁴² Wellhausen, *Prolegomena*, 183. The anachronistic and theologically laden analogy of Israel as “the church of the second temple” illustrates an area where Wellhausen has attracted significant criticism.

Wellhausen's conclusion regarding the post-exilic date of P, how did he conceive of the relationship between Ezekiel and P?

As mentioned in the opening section of this chapter, Wellhausen accepted the book of Ezekiel's claims regarding its authorship, historical setting, and provenance. Thus, the book was composed entirely during the Babylonian exile. The similarities and differences Wellhausen observed between Ezekiel and priestly materials in the Pentateuch led him to conclude that the priestly material borrowed from Ezekiel. During Wellhausen's discussion of the *Heiligkeitgesetz*, he concluded (specifically regarding Leviticus 26) Ezekiel is "its originator in literature; in Lev xxvi it is borrowed."¹⁴³ To bolster his claim that Ezekiel predates both P and H, Wellhausen identified certain elements of P that are presumed to be parts of 'Jewish' tradition, while those same elements are innovations in Ezekiel's context. For example, "the distinction between priest and Levite which Ezekiel introduces and justifies as an innovation, according to the Priestly Code has already existed."¹⁴⁴ He argued further that this distinction between priest and Levite is deemed a "statute forever," which indicated to Wellhausen that the Priestly Code must date to a later era in which this distinction had become settled in Judahite religious practice.¹⁴⁵ The different descriptions of this distinction between priest and Levite buttressed Wellhausen's conclusion that the prophet's ignorance of "a priestly

Specifically, he has been accused of deploying a devolutionary model in his analysis of the Hebrew Bible and Judaism, which some biblical scholars I will discuss have connected to his conclusions as a scholar.

¹⁴³ Wellhausen, *Prolegomena*, 457. As will be discussed later, scholars like Lyons will attempt to demonstrate that the similarities and differences between H and Ezekiel are the result of the prophetic book's appropriation and transformation of earlier priestly materials.

¹⁴⁴ Wellhausen, *Prolegomena*, 158.

¹⁴⁵ See, Wellhausen, *Prolegomena*, 181.

law with whose tendencies he is in thorough sympathy admits of only one explanation – that it did not then exist. His own ordinances are only to be understood as preparatory step towards its own enactment.”¹⁴⁶

Biblical scholars began to critique Wellhausen’s conclusions on multiple fronts, including the relative dating of P and D, the absolute chronology of P, and its relationship to Ezekiel.¹⁴⁷ Perhaps Yehezkel Kaufmann proposed the most thorough, or at least the most contrasting, critique of Wellhausen’s conclusions regarding P and Ezekiel.

Kaufmann rejected Wellhausen’s arguments regarding the chronological relationship between P and D. According to Kaufmann, the priestly source not only “fails formally to prohibit the cult at the high places; none of the concepts that are peculiar to Deuteronomy are present in P.”¹⁴⁸ Thus, P’s silence about cultic centralization, which Wellhausen

¹⁴⁶ Wellhausen, *Prolegomena*, 158. Although Wellhausen is correct to highlight the different appropriations, I disagree with his conclusion that the “only explanation” is that P did not exist when the book of Ezekiel was completed. Even within Wellhausen’s argument regarding the archaizing linguistic tendencies of P, another possibility presents itself -- namely, P cloaked its innovations not just in Mosaic language but also set its cultic origins in the Mosaic or monarchic era. Another more popular opinion among scholars I will discuss later in this section is the possibility that Ezekiel embodies a deviant from an older Priestly tradition.

¹⁴⁷ For purposes of this dissertation, I am neither questioning nor investigating whether P is a source. Although the majority of scholars accept that P is a pentateuchal source, several scholars have challenged this contention. Frank Cross articulated, in *CMHE*, a classic and often cited challenge to the conclusion that P is a source. See Frank M. Cross, *Canaanite Myth and Hebrew Epic* (Cambridge: Harvard University Press, 1973), 301-318.

Erhard Blum articulated a more recent challenge to the classification of P as a source when he argued that P is neither a source nor a redactional layer. See Erhard Blum, *Studien zur Komposition des Pentateuch* (Berlin: de Gruyter, 1990), 229. Thus, he proposes a third option that differs from the traditional source as Wellhausen articulated, and Baden later defended, as well as Cross’ argument that P is a redactional layer lacking key elements and narrative coherence that characterizes a source.

One of the leading neo-documentarians responded to arguments proffered by scholars like Blum and Cross is Baden. Although Baden defends the independence, coherence, and completeness of P as a source, Baden remains somewhat agnostic about the absolute date of P. See Joel S. Baden, *The Composition of the Pentateuch: Renewing the Documentary Hypothesis*, Anchor Yale Bible (New Haven: Yale University Press, 2012), 247-248.

¹⁴⁸ Kaufmann, *Religion*, 176.

argued was evidence of P's reliance upon D, becomes, for Kaufmann, evidence that P reflects "a pre-Deuteronomic viewpoint."¹⁴⁹

Since Kaufmann situates the priestly source in a pre-exilic context, he rejects several of Wellhausen's arguments justifying an exilic or post-exilic provenance. First, Kaufmann contends that Wellhausen's arguments about P's archaizing tendencies – both thematically and linguistically – are "groundless." For example, Kaufmann argued that "the idea that the tent is a reflex of the Second Temple is a baseless contention of modern criticism."¹⁵⁰ Specifically, Kaufmann rejects the theory that "P symbolizes the idea of centralization by the Mosaic tent of meeting, as if to represent Second Temple conditions as Mosaic institutions."¹⁵¹ Second, he critiques Wellhausens' devolutionary theory of Israelite religion as a sufficient basis to date the creation of the priestly source. According to Kaufmann, the priestly source's absence of "natural spontaneity," alleged idealism, and disconnection from history are insufficient phenomena to indicate post-exilic contact.¹⁵² Moreover, "P's camp is not a church, but an armed camp of the host of Israel."¹⁵³

The pre-Deuteronomic dating of P serves as a foundation for Kaufmann's argument that Ezekiel is clearly "the borrower" of P rather than its originator, as Wellhausen contended.¹⁵⁴ Like Wellhausen, Kaufmann recognized that there were

¹⁴⁹ See Kaufmann, *Religion*, 178.

¹⁵⁰ Kaufmann, *Religion*, 183.

¹⁵¹ Kaufmann, *Religion*, 180.

¹⁵² See e.g., Kaufmann, *Religion*, 178 and 185.

¹⁵³ Kaufmann, *Religion*, 185.

several differences between Ezekiel and priestly legislation. These differences became evidence of the book's dependency upon P and the potential compositional history of priestly material in the Pentateuch. According to him, Ezekiel's status as the borrower is clear because "the matter in common has a natural context and fits into a larger framework in P, while in Ezekiel's context it is artificial or fragmentary, obviously adopted for a new purpose."¹⁵⁵ Additionally, the differences between the priestly source and the book of Ezekiel led Kaufmann to postulate that "P was probably also extant in several versions, one of which was the basis of the laws of Ezekiel."¹⁵⁶ Moreover, Ezekiel "incorporated in his book an ancient priestly code which differs in detail from the Torah's P; this alone can account for the similarities and differences."¹⁵⁷

The conclusions of these two scholars have framed much of the conversation regarding the priestly materials and their connection to the Pentateuch and the book of Ezekiel for biblical scholars in the 20th and 21st centuries.¹⁵⁸ Additionally, an analytical pattern Wellhausen and Kaufmann reflected for dating priestly materials continues to affect biblical scholars whose arguments regarding the date of priestly materials (and their relationship to the book of Ezekiel) appeal consistently to two primary, evidentiary categories to make the case – i.e., (i) thematic concerns or (ii) philological

¹⁵⁴ See Kaufmann, *Religion*, 433. Kaufmann also concluded that Ezekiel's role as the founder or father of "the theocratic polity of later Judaism is absurd." (Kaufmann, *Religion*, 443). According to Menahem Haran, the description of Ezekiel as the father of Judaism is often attributed to Smend and Duhm. See Haran, "Ezekiel," 212 fn. 1.

¹⁵⁵ Kaufmann, *Religion*, 433. Hurvitz and Lyons revisit aspects of this argument in their conclusions regarding the literary relationship between Ezekiel and P, which I will discuss below.

¹⁵⁶ Kaufmann, *Religion*, 211.

¹⁵⁷ Kaufmann, *Religion*, 434-435.

¹⁵⁸ For scholars making a similar observation, see Friedman, *Exile and Narrative*, 44.

developments.¹⁵⁹ The remainder of this section will focus (briefly) on the various trends in the dating of priestly material in the Pentateuch and the implications for the composition of the book of Ezekiel. In the overview that follows, I have divided the analysis into two subsections – (i) scholars arguing for an exilic or post-exilic P and (ii) scholars advocating a pre-exilic P.¹⁶⁰

1.2.1 Exilic or Post-exilic P

Wellhausen's conclusions regarding the dating of the final composition of P continues to garner the support of a majority of biblical scholars, particularly in Europe.¹⁶¹ Avi Hurvitz, for example, reflected a similar assessment when he commented that "the widely prevailing opinion among biblical scholars ascribes the very composition - or final formulation – of P to the exilic and/or post-exilic period."¹⁶² For many scholars in this camp, the post-exilic dating of P is connected to their conclusions regarding the final redaction of the Pentateuch. Rainer Albertz concluded that both P and the final recension of the Pentateuch should be dated later than the exilic era. In Albertz's words:

¹⁵⁹ Joseph Blenkinsopp makes a similar observation in "An Assessment of the Alleged Pre-Exilic Date of the Priestly Material in the Pentateuch," *ZAW* 108/4 (1996): 495-518

¹⁶⁰ The purpose of this summary is to provide a representative sample of the arguments, evidence and issues scholars debate regarding P's provenance and the implications of such conclusions for the composition of the book of Ezekiel.

¹⁶¹ To the extent scholars following Wellhausen's basic articulation of the final composition of P can be sorted geographically, Meyer argues that European scholars are more likely to support a post-exilic date of P than a pre-exilic one. See Meyer, "Leviticus 17," 350. See also Keck, "The Glory," 77 for a similar conclusion regarding the prevalence of the exilic or post-exilic date among European scholars.

¹⁶² Hurvitz, *A Linguistic Study*, 7. As will be discussed below, Hurvitz ultimately disagrees with this prevailing opinion about the composition of P.

Contrary to the opinion of some scholars, I assume that the first coherent edition of the Pentateuch as a whole is not a product of the exilic period but dates from the postexilic period (fifth century). This means that the Priestly Document of the Priestly recension of the Pentateuch (P) should be dated in the fifth century, not as early as the sixth century. At best the beginnings of the Priestly tradition (Sabbath, circumcision) go back to the late exilic period, which was not clearly differentiated from the tradition of the book of Ezekiel until the early postexilic period. It follows that the Priestly legislation, especially the so-called Holiness Code (Lev 17-26), likewise dates from the Persian era.¹⁶³

Albertz's articulation of P's provenance seems to preclude the possibility that the compilers of P knew or incorporated pre-exilic traditions – a conclusion I cannot accept. As will be discussed in Section B, several scholars following Kaufmann's precedent, including Haran, Hurvitz, and Vanderhooft, have argued persuasively that the priestly source incorporated material that precedes exile and may have originated as early as the monarchic era. Whether the presence of pre-exilic material *requires* a conclusion that P was composed prior to the sixth century BCE as several scholars argued is, for me, less certain.

Similar to Wellhausen, several scholars appeal to linguistic evidence as a primary basis for the late date of P. For example, both Cross and Mettinger analyze specific language relating to YHWH's enthronement and earthly presence as a way to justify an exilic or post-exilic date for P.¹⁶⁴ Cross, like Wellhausen and others, explained the presence of older, archaic terms in P as evidence of "the Priestly penchant for refurbishing an archaic term and using it with a narrowed, technical meaning."¹⁶⁵

¹⁶³ Albertz, *Israel in Exile*, 204. For a similar argument regarding the exilic dating of P and its relationship to the book of Ezekiel, see, Mettinger, *Dethronement*, 113.

¹⁶⁴ See Mettinger, *Sabaoth*, 115 (arguing that the idea of YHWH's enthronement, because it was closely connected to Mt. Zion, became defunct in light of the destruction of Jerusalem and its Temple in 586 BCE) and Cross, *CMHE*, 322-323.

¹⁶⁵ Cross, *CMHE*, 322.

Although Joseph Blenkinsopp agrees with a post-exilic date for P,¹⁶⁶ he is less confident that the kinds of linguistic analyses scholars performed on P and Ezekiel are sufficient to prove the case for P's date.¹⁶⁷ In addition to linguistic data, Cross appealed to thematic evidence to justify that P (and Ezekiel) "stemmed from the crisis of Exile."¹⁶⁸ He further narrowed the range for the date of P as follows: "Priestly strata and hence the Priestly Tetrateuch as a completed work must be roughly coeval with Ezekiel's vision of chapters Ezekiel 40-48, and slightly earlier, perhaps, than Second Isaiah and proto-Zechariah. Hence it must have been completed in the sixth century, late in the exile."¹⁶⁹

1.2.2 Pre-Exilic P

In contrast to those scholars who adhere to Wellhausen's formulation of an exilic or post-exilic date for P, several scholars follow Kaufmann's proposal for an earlier P. Although they often appeal to similar evidence – i.e., linguistic and thematic, these scholars conclude that the evidence points away from the Babylonian exile and towards a monarchic provenance. Like Kaufmann, many challengers to Wellhausen's dating of P question the devolutionary perspective of his view of Judaism as well as his conclusions regarding the primary themes of the priestly source. Friedman, for example, questions Wellhausen's claim that since P does not focus on temple centralization, then it must be

¹⁶⁶ See Blenkinsopp, "A Response," 517.

¹⁶⁷ Blenkinsopp, "A Response," 515-517. Although Blenkinsopp focuses his critiques on the works of Haran, Hurvitz and Kaufmann, some of his objections regarding method and sufficiency of data would apply to Cross as well.

¹⁶⁸ Cross, *CMHE*, 307.

¹⁶⁹ Cross, *CMHE*, 325

written post-D, which accomplished centralization of worship in ancient Israel. Instead, Friedman argues that P's continual focus on the Tabernacle evidences that "the Priestly writer(s) seem to be fighting for the same objective as that of the Deuteronomists."¹⁷⁰ To the extent P and D are engaged in the same fight, Friedman concludes that P cannot be later than D. Moreover, he suggests that certain cultic or sacred objects that P discusses (e.g., Ark of Covenant, Urim and Thummin) provide additional evidence of an early P. Since these objects are largely "lost" by exilic times, P's focus on these objects "fortifies the notion that a large portion of P is a product of the First Temple era."¹⁷¹

Menahem Haran similarly argues that P's First Temple provenance is reflected in its focus on certain cultic objects connected with the Solomonic temple.¹⁷² Additionally, he argues that the single court in the Tabernacle suggests that the priestly writer(s) are describing the Temple prior to Manasseh in the 7th century BCE.¹⁷³ Haran narrows further the timeframe of P and argues that it is the basis for, or at least connected closely to, Hezekiah's reform.¹⁷⁴ As several scholars, such as Blenkinsopp, highlight, Haran does not address adequately the relative absence of priestly material in the Deuteronomist's description of Hezekiah's reform. In Blenkinsopp's words, "it is in Deuteronomy and not in P that we find the prescriptions following which the religious reforms attributed to Hezekiah....would most naturally have been carried out."¹⁷⁵ Haran (partially) addresses

¹⁷⁰ Friedman, *Exile*, 65.

¹⁷¹ Friedman, *Exile*, 61.

¹⁷² Haran, *Temples and Temple Service*, 8.

¹⁷³ Haran, *Temples and Temple Service*, 191.

¹⁷⁴ See Haran, *Temples and Temple Service*, 140-147.

¹⁷⁵ Blenkinsopp, "A Response," 505.

this objection by arguing that the composition and promulgation of P are distinct phenomena and date to different eras.¹⁷⁶ According to his formulation, P existed “within the closed priestly circle without casting its shadow on the tangible historical reality, which by the nature of things cannot be consistent with [its] idealistic demands. This is what I call an existence behind the scenes of history...”¹⁷⁷ Haran exploits this conclusion to explain why D “even though I am sure that chronologically it followed P, gives no answer at all to P’s peculiar views.”¹⁷⁸ By theorizing a pre-D version of P that remained confined to an esoteric priestly circle until Ezra promulgated the Torah in the Persian era, Haran provides a framework that explains the priestly source’s antiquity, relative impotence in affecting Israelite life pre-exile, and its pervasive impact upon post-exilic Yehud.¹⁷⁹

Given Haran’s analysis of the chronological development of the priestly source, his analysis of the relationship to the book of Ezekiel follows logically. Because P is pre-exilic, Haran concludes that P is the “source” for the book of Ezekiel and “first in historical order.”¹⁸⁰ He finds corroborating evidence for the book’s relatively late dating in its description of the Temple. During Haran’s analysis of the description of the Tabernacle in P, he contrasts the number of courts (2) in the Temple in Ezekiel’s portrait

¹⁷⁶ The distinction between the historical settings associated with P’s composition and subsequent promulgation is the subject of his article: “Behind the Scenes of History: Determining the Date of the Priestly Source” *JBL* 100/3 (1981): 321-333.

¹⁷⁷ Haran, “Behind the Scenes,” 328.

¹⁷⁸ Haran, “Behind the Scenes,” 329.

¹⁷⁹ Haran’s proposal has not gained much currency among biblical scholars. It does, nonetheless, provide a novel approach to addressing the problem.

¹⁸⁰ Haran, “Ezekiel, P and the Priestly School,” 212.

as evidence of the later chronological setting the book reflects.¹⁸¹ In addition to asserting the priority of P over the book of Ezekiel (which is logically necessitated among scholars who date the priestly source to the pre-exilic era), Haran makes a provocative, if not persuasive, claim regarding the nature of the relationship between P and Ezekiel. In Haran's words, P and the book of Ezekiel are "independent manifestations of the same school, of which P is the authentic expression whereas Ezekiel is its lost extension."¹⁸² While Haran's explanation did not garner the support of many scholars, it is his attempt to explain both the striking similarities between P and Ezekiel, as well as the stark differences.¹⁸³

Complementing the historical and thematic analyses of scholars like Haran, several scholars (e.g., Hurvitz, Polzin, and Vanderhoof) have investigated specific linguistic phenomena in the priestly source to argue for its pre-exilic outlook. Avi Hurvitz's linguistic study begins with an acknowledgment that several of the previous studies used defective methodologies that produced misleading results. In particular, he contends it is methodologically imprecise to conclude that because a term appears in P and later literature (e.g., Chronicles) then that term must be late.¹⁸⁴ Rather, he proposes that several factors, including a term's morphology, contextual usage, and syntax must

¹⁸¹ See Haran, *Temples and Temple Service*, 191.

¹⁸² Haran, "Ezekiel, P, and the Priestly School," 212.

¹⁸³ See Haran, "Behind the Scenes," 327. As mentioned earlier in this dissertation, it is not my intention to solve the problems associated with the relative and absolute chronologies of priestly materials and Ezekiel, nor the direction of influence. Rather, I am providing context for my analysis of the fact they share certain legal formulations and juridical terminology and how that informs my argument regarding the book of Ezekiel's advocacy for specific developments in Judahite identity.

¹⁸⁴ Hurvitz, "Dating the Priestly Source," 94.

contribute to scholars' conclusions about the temporal setting of a term.¹⁸⁵ Within his specific analysis of the relationship between P and Ezekiel, Hurvitz proposed a three-fold method to determine the origins of specific terms: (i) found in P with no parallel in Ezekiel; (ii) found in Ezekiel with no parallel in P; and (iii) found in one of the two, for which there are alternative terms in the other.

On the basis of these criteria, Hurvitz concluded that “the Priestly Source (in both its legal and narrative portions) falls within the compass of the classical corpora of the Bible.”¹⁸⁶ He reviews several examples (e.g., רחץ / חדיח) to demonstrate that “P is as yet unacquainted with the distinctive terminology characteristic of the description of Priestly matters in the late sources – biblical as well as non-biblical, Hebrew and Aramaic alike.”¹⁸⁷ The absence of commonly attested terminology that belongs to LBH and the presence of earlier widely used terms leads Hurvitz to conclude P is earlier rather than later. In his words, “P is ‘immune’ so to speak to the later terminology and phraseology which did not succeed in penetrating it or influencing its classical essence.”¹⁸⁸ This so-called “immunity” contributes to his conclusions regarding the relative chronology of P and Ezekiel. First, like most scholars, Hurvitz recognizes that P and Ezekiel share similar terminology but attributes that fact to their emergence from similar “socio-historical

¹⁸⁵ Hurvitz, “Dating the Priestly Source,” 97.

¹⁸⁶ Hurvitz, *A Linguistic Study*, 7. Polzin reaches a similar conclusion and argues that P should be dated earlier than LBH. Several scholars, such as Rendsberg, argue that the distinctions between LBH and EBH that Polzin and Hurvitz rely upon are not as precisely or sharply delineated as they maintain. Accordingly, their sharp bifurcation of linguistic phenomena must be reconsidered and nuanced to reflect the more gradual development and heterogeneous nature of biblical Hebrew. In 2014, Hurvitz published an updated analysis of late biblical Hebrew. See Avi Hurvitz, Aaron D. Hornkohl, Leeor Gottlieb and Emmanuel Mastéy *A Concise Lexicon of Late Biblical Hebrew: Linguistic Innovations in the Writings of the Second Temple Period*. Vetus Testamentum Supplements 160 (Leiden: Brill, 2014).

¹⁸⁷ Hurvitz, “Dating the Priestly Source,” 99.

¹⁸⁸ Hurvitz, “Dating the Priestly Source,” 99.

backgrounds.”¹⁸⁹ Second, he concluded: “The *presence* in Ezekiel of late linguistic elements betrays the late background of this Book, while the *absence* of such late elements from P reflects the early background of the Priestly source.”¹⁹⁰

David S. Vanderhooft also engages in a linguistic analysis of P’s terminology to argue for its familiarity with, if not origin in, the Israelite monarchy – specifically the term, משפחה. According to his analysis, the changing valences of משפחה reveal that P used the term in a manner consistent with monarchical texts and differently than “demonstrably postexilic texts.”¹⁹¹ An important contribution of this study is its use of archaeological evidence to demonstrate that P uses this term in a way “that conforms neatly with organizational realities of the Iron II era.”¹⁹² Although Vanderhooft does not assign a specific date to the priestly source in this study, he does demonstrate that the common argument that P is late and “a falsifier, archaizer, or ideologue, even if it can be supported on other grounds” does not eliminate the fact that P “successfully structured early Israel’s kinship organization according to concrete realities of the monarchic era.”¹⁹³ As I will argue in the conclusion to this chapter, some of the early linguistic elements scholars have identified in P, along with the purported historical accuracy of some priestly descriptions of the monarchic era, can be explained by positing a lengthy development of P – a development whose origins may date to the Israelite monarchy.

¹⁸⁹ Hurvitz, “Dating the Priestly Source,” 92.

¹⁹⁰ Hurvitz, *A Linguistic Study*, 150.

¹⁹¹ Vanderhooft, “Israelite משפחה,” 491.

¹⁹² Vanderhooft, “Israelite משפחה,” 493.

¹⁹³ Vanderhooft, “Israelite משפחה,” 493.

1.2.3 Overview of H and Ezekiel

Two primary conclusions dominated the early scholarship on H: (i) H was an older, independent legal codex that P incorporated and (ii) H is confined to Leviticus 17 – 26 (*Heiligkeitgesetz*).¹⁹⁴ The concentration and restriction of distinctive locutions to the “Holiness Code,” along with unique ideological commitments present in this passage, provided scholars with sufficient evidence to support this perspective on H. Additionally, scholars’ assessment that Leviticus 17-26 is well integrated into the context of Leviticus offers further corroboration of H’s anteriority to P.¹⁹⁵ According to Meyer, few modern scholars adhere to this older view,¹⁹⁶ which began to lose support after the publication of works by two scholars: Karl Elliger¹⁹⁷ and Alfred Cholewinski.¹⁹⁸ Elliger, for example, contended that rather than holding that H preceded P, scholars should understand the relationship between the two sources in the exact opposite way – namely, H is subsequent to P.¹⁹⁹ His challenge to the chronological relationship between P and H also opened the door for scholars to question whether H material exists outside of Leviticus 17-26.

¹⁹⁴ Several scholars note this assessment of the state of research on the priority of H. Concise summaries of the priority of H can be found in: Israel Knohl, “The Priestly Torah versus the Holiness School: Sabbath and the Festivals” *HUCA* 58 (1987): 65-114; Christopher Nihan, *From Priestly Torah to Pentateuch: A Study in the Composition of the Book of Leviticus* (Tübingen: Mohr Siebeck, 2007), 4 and Jeffrey Stackert, “Compositional Strata in the Priestly Sabbath: Exodus 31:12-17 and 35:1-3” *Journal of Hebrew Scriptures* 11 (2011): 2-21.

¹⁹⁵ One scholar Meyer references in this capacity is Frank Crüsemann, *Die Tora: Theologie und Sozialgeschichte des alttestamentlichen Gesetzes*, 2nd ed. (Gütersloh: Kaiser, 1997).

¹⁹⁶ See Meyer, “Leviticus 17,” 349-350.

¹⁹⁷ The primary work the author discusses is Karl Elliger, *Leviticus*, *HAT 4* (Tübingen: JCB Mohr, 1966).

¹⁹⁸ Alfred Cholewinski *Heiligkeitgesetz und Deuteronomium: Eine vergleichende Studie* (Rome: Biblical Institute Press, 1976).

According to Saul Olyan, the works of Jacob Milgrom and Israel Knohl played a significant role in changing the parameters of the scholarly discourse regarding P and H.²⁰⁰ Specifically, these scholars rejected both conclusions of the older school and asserted that not only is H later than P, but also that material assigned to H can be detected throughout the Pentateuch.²⁰¹ Israel Knohl, for example, concluded: “the stratum called H is really to be dated later than the stratum designated P. Additionally, whole sections located outside the recognized base of H in Lev 17-26, which until now were assumed to be part of P, are in reality the product of the school identified as H.”²⁰² Knohl justifies the expansion of his identification of H material by noting several biblical texts in which H locutions, concepts, and rhetoric appear outside of the “Holiness Code.”²⁰³ An influential aspect of Knohl’s articulation of his thesis is the proposal of a “Holiness School (HS)” which “was indeed responsible for the recension and final edition of the P stratum, which I prefer to call the ‘Priestly Torah’ (PT).”²⁰⁴ This nomenclature – PT and HS – received some acceptance among scholars, even if the precise parameters Knohl proposed have remained the subject of debate. To support his contention that HS was responsible for the final edition of the Pentateuch, Knohl looks at the redactional and compositional history of specific “priestly” pericopes to demonstrate

¹⁹⁹ Stackert argues that Elliger first made this argument in “Heiligkeitgesetz,” *RGG* 3:175-176 and idem, *Leviticus*, 14-20.

²⁰⁰ Olyan, “Sabbath,” 201-202.

²⁰¹ See Knohl, *Sanctuary of Silence*, 111-164 and Milgrom, “Antiquity,” 10-22.

²⁰² Knohl, “Priestly Torah,” 66.

²⁰³ See Knohl, “Priestly Torah,” 68 and 75. See also, Olyan, “Sabbath,” 201 acknowledging that other scholars prior to Knohl and Milgrom had similar observations, but those observations were not presented in as systematic or persuasive manner.

²⁰⁴ Knohl, “Priestly Torah,” 66. See also, idem, *Sanctuary of Silence*, 6.

that HS was the final stratum. According to Knohl, assuming that HS is later and “that PT was the earlier school, the course of events may be explained without difficulty.”²⁰⁵ Jeffrey Stackert reaches a similar conclusion regarding the relationship between P and H: “In my view, H is composed as a supplement, revision, and expansion of P, and H’s boundaries are not limited to Lev 17-26, the ‘Holiness Code’ (*Heiligkeitsetz*). Moreover, neither P nor H should be identified as a pentateuchal redactor.”²⁰⁶ Instead, Stackert argues that H should be classified as a “learned text” that borrows and revises “material from the Decalogue, the Covenant Code, P and D.”²⁰⁷ Thus, like Knohl, Stackert concludes that H is the final stratum (if not redactor) of the Pentateuch.²⁰⁸

Similar to the scholarly debates regarding the date of P, biblical scholars are divided on whether H originated in exilic/post-exilic or pre-exilic epochs in Israelite history. One scholarly camp, represented by scholars like Christophe Nihan and Eckart Otto, contend that H is later than P and P is an exilic/post-exilic creation. As discussed previously in the overview of P, linguistic data and theological or sociological concerns within H are used to justify its exilic provenance. Scholars accepting an exilic or later provenance for H tend to follow Wellhausen’s dating of P, if not averring each of

²⁰⁵ Knohl, “Priestly Torah,” 69.

²⁰⁶ Stackert, “Compositional Strata,” 4.

²⁰⁷ Stackert, “Compositional Strata,” 6. He articulates a similar position in a more recent work *Rewriting the Torah: Literary Revision in Deuteronomy and the Holiness Legislation*. FAT 52 (Tübingen: Mohr Siebeck, 2007), 32-33.

²⁰⁸ Saul Olyan contends that Knohl’s conclusion that a later priestly hand belonging to HS edited certain portions of the Pentateuch needs modification. For example, Olyan contends that Exod 31:12-17 provides evidence of some subsequent P redactional activity that may not be attributable to HS. Thus, “it would appear that a later P circle might have functioned as the final redactor, an argument that can be posited on the basis of the P material following the H section of Exod 31:12-17” (Olyan, “Sabbath,” 207). This example leads Olyan to conclude that scholars “cannot simply accept Knohl’s and Milgrom’s view that Holiness editors were responsible for the final shape of P and the Pentateuch” (Olyan, “Sabbath,” 207).

Wellhausen's conclusions or methods.²⁰⁹ Conversely, scholars asserting a pre-exilic date for H tend to follow Kaufmann's conclusions regarding the sequence and date of pentateuchal sources, particularly P. For example, Milgrom argues that both H and P are pre-exilic and, in fact, predate D.²¹⁰ Similar to the positions scholars take in connection with P's provenance, the extent to which H knows, presumes or advocates for cult centralization and conduct in multiple sanctuaries plays a prominent role in scholars' adjudication of the biblical data.²¹¹ Knohl, like Milgrom, advocates for a pre-exilic date for P and H. In addition, Knohl proffers a lengthy period of composition and redaction for HS that begins in the late 8th century BCE (specifically during Hezekiah's reign) and continues until the return from Babylonian exile in the Persian period.²¹²

Lastly, similar to the discussion of P, scholars noting the similarities and differences between H and Ezekiel often use that to determine the relative chronology of the two texts. As outlined in the opening section of this chapter, biblical scholars increasingly accept the Babylonian provenance of Ezekiel. Thus, to the extent H and/or P material appears in Ezekiel, it provides additional temporal moorings to anchor scholars' arguments regarding the literary relationship and provenance of these pentateuchal corpora.²¹³ Knohl, who envisions a developmental trajectory of HS that would place part

²⁰⁹ See e.g., Meyer, "Leviticus 17," 350-351.

²¹⁰ Milgrom, *Leviticus 17-22*, 1453-1454.

²¹¹ See e.g., Milgrom, *Leviticus 17-22*, 1504-1510.

²¹² See Knohl, *Sanctuary of Silence*, 111-164 and 209-221. Knohl's proposal is reminiscent of Haran's argument about P's existence from the monarchial days until the time of Ezra. See *infra*, pp. 52-54.

²¹³ Two primary theories exist regarding the relationship between H (HS) and Ezekiel: (i) H predates Ezekiel and (ii) Ezekiel predates or is coterminous with H. The latter of these two schools has fewer modern adherents than position (i). Scholars (e.g., Wellhausen and Smend) who associate Ezekiel with the founding of Judaism and the construction of P also contend that H was created, or redacted, within

of its composition during the time of “Ezekiel’s” prophetic career, is among several scholars who commented upon the linguistic and thematic affinities between these texts.²¹⁴ Risa Kohn builds upon Knohl’s reconstruction of HS and PT to argue for a direct connection between them and Ezekiel. According to Kohn, “[T]he affinity between Ezekiel and Knohl’s HS is identical to that between Ezekiel and the whole of the PT. Ezekiel quotes, reverses, allegorizes and ignores HS language in the same manner he does PT language. There is similarly no evidence to suggest that Ezekiel influenced the author of HS.”²¹⁵ Michael Lyons concurs with Kohn’s assessment regarding the priority of H over the book of Ezekiel and argues that it appropriates the Holiness Code’s locutions in distinctive ways, particularly in the book’s oracles of judgment.²¹⁶ Since he recognizes the clear differences between formulations in H and Ezekiel, Lyons offers four criteria for determining direction of influence and concludes that the modifications in Ezekiel of H are more consonant with the book’s overall rhetorical style and purpose, thereby refuting proposals that H modified Ezekiel.²¹⁷ As I will discuss later in this dissertation, the presence of P and H material in the book of Ezekiel provides additional warrant for the legal analysis I contend the book requires. Since many of the shared locutions among P, H, and Ezekiel contain juridical valences or are found in legally significant contexts within H (e.g., punishments for covenantal violation), I will argue the

similar circles in which Ezekiel was written. See e.g., Eissfeldt, *Introduction*, 238 and Hurvitz, *Linguistic Study*, 9-12 for a summary of the reasons for this position.

²¹⁴ See Knohl, *Sanctuary of Silence*, 103-106

²¹⁵ Kohn, *A New Heart*, 85.

²¹⁶ See Lyons, *Ezekiel’s Use of Holiness Code*, 114-116. The observation about the Ezekiel’s use of the Holiness Code (especially Leviticus 26) is common to Ezekielian scholarship. See e.g., Kaufmann, *Religion*, 436 and Zimmerli, *Ezekiel I*, 240.

²¹⁷ See Lyons, *Ezekiel’s Use of Holiness Code*, 67-75.

author(s) of Ezekiel did so to signal to readers the precise juridical framework within which the book should be read.

1.3 FEMINIST SCHOLARSHIP OVERVIEW

Because Ezekiel 16 is the focal text of the final chapter of my dissertation, it is necessary and appropriate to discuss several contributions of feminist scholarship to its analysis.²¹⁸ The critiques and insights scholars highlight in Ezekiel 16 are consistent with the kinds of concerns scholars raise regarding the problematic portrayal of women throughout the Hebrew Bible, particularly certain prophetic literature. Within this branch of biblical scholarship, several common themes have arisen and are often applied to Ezekiel 16. Among the most common themes are: the silence of women; the androcentric (male) perspective of biblical texts; the fear of and violence towards women; the absence of female agency; and how these (and other) themes perpetuate, if not justify, male domination and female subjugation and abuse within subsequent societies. Another important element of feminist analyses of biblical texts is the argument that the sexist attitudes these texts preserve are inextricably linked to the linguistic descriptions and social-cultural norms these texts assume.²¹⁹ Thus, several scholars (who will be

²¹⁸ Although I use the label “feminist scholarship,” it is not intended to suggest that all feminist scholarship and feminist scholars should be treated as an undifferentiated, homogeneous movement. Rather, this label, like my use of the word “Ezekiel” to describe the author of the prophetic book, is for ease of reference.

²¹⁹ Within much feminist scholarship, the label “patriarchy” is assigned to describe those social-cultural norms that portray men as dominant and women as subservient. In 2014, Carol L. Meyers argued that the description of Israelite/Judahite society as a “patriarchy” may be inappropriate because that label “is an inadequate and misleading designation of the social reality of ancient Israel.” See “Was Ancient Israel A Patriarchal Society? *JBL* 133/1 (2014): 8-27, 27. Her rejection of this term did not produce the

discussed below) argue that an effective analysis or critique of such biblical material requires careful attention to the language these texts employ.²²⁰

For this overview of feminist scholarship, I will focus my attention on those contributions that most affected my analysis of Ezekiel 16. First, feminist scholars have nuanced the understanding of how metaphorical language in this chapter functions. As I will discuss, Ezekiel 16 is an example of one of the more problematic and yet standard prophetic metaphors in the Hebrew Bible – i.e., Jerusalem as YHWH’s adulterous wife.²²¹ Second, and often connected to analyses of metaphorical language, is an emphasis upon the contextual nature of biblical texts. This focus on the contextual nature illumines not only the social-cultural norms that informed the biblical text’s creation but also the narrative logic and its affect upon readers. Third, this branch of biblical scholarship has illumined the pervasive nature of the sexist, misogynistic, and “(porno)-prophetic” nature of this chapter.²²² In particular, several scholars (whom I will discuss

conclusion that ancient Israel was an egalitarian society without a hierarchy. Rather, Meyers’ asserted that patriarchy obscures those places where women had autonomy, agency, and authority in that society.

²²⁰ Some of the important scholars and texts discussing these issues I will discuss are: Kathryn P. Darr “Ezekiel’s Justifications of God: Teaching Troubling Texts” *JSOT* 55 (1992), 92-117; Julie Galambush *Jerusalem in the Book of Ezekiel: The City as Yahweh’s Wife* (Atlanta: Scholar’s Press, 1992); Renita Weems, *Battered Love: Marriage, Sex, and Violence in the Hebrew Prophets* Overtures to Biblical Theology (Minneapolis: Fortress Press, 1995); Mary E. Shields “Multiple Exposures: Body Rhetoric and Gender Characterization in Ezekiel 16” *Journal of Feminist Studies in Religion* 14.1 (1998), 5-18; Linda Day “Rhetoric and Domestic Violence in Ezekiel 16” *Biblical Interpretation* 8.3 (2000), 205-230; Peggy Day “The Bitch Had It Coming To Her: Rhetoric and Interpretation in Ezekiel 16” *Biblical Interpretation* 8.3 (2000), 231-254; Carol J. Dempsey, “The ‘Whore’ of Ezekiel: The Impact and Ramifications of Gender-Specific Metaphors in Light of Biblical Law and Divine Judgment,” in *Gender and Law in the Hebrew Bible and the Ancient Near East*, eds. Tikva S. Frymer-Kensky, Bernard M. Levinson, and Victor H. Matthews (New York: T&T Clark, 2004), 57-78; and Sharon Moughtin-Mumby *Sexual and Marital Metaphors in Hosea, Jeremiah, Isaiah, and Ezekiel* (Oxford: Oxford University Press, 2008).

²²¹ The passages most often cited as containing similar problems as Ezekiel 16 are: Hos 2:1-13, Jer 2:1-3, 13:20-27; and Ezekiel 23.

²²² The term “porno-prophetic” often appears in literature discussing Ezekiel 16 and similar texts. A source that is often cited for pioneering this analytical category is T. Drorah Setel “Prophets and Pornography: Female Sexual Imagery in Hosea” in *Feminist Interpretation of the Bible*, ed. Lefty M.

below) have correctly identified that one purpose of Ezekiel 16 is to “justify” violence against the city. These three contributions helped formulate two questions that shaped my investigation: 1) Why did so many scholars use the term “justify” in their description of the purpose of Ezekiel 16, if not the whole book? and 2.) Does the book contain specific locutions and images that support this conclusion? As I will argue, the presence of juridical terminology, legal metaphors, and courtroom imagery contributes to scholars’ conclusions that the book is attempting to justify the punishment against Jerusalem. Moreover, these elements illustrate the nature of the legal relationship between the Judahites and the deity. This legal relationship, in turn, defines the substance of Judahite identity in the aftermath of Neo-Babylonian domination.

Before discussing these three contributions, a brief note regarding the contemporary application of Ezekiel 16 (and other similar texts) is warranted. Feminist scholars have highlighted how this text perpetuates (or has been used to perpetuate) the abuse and neglect of women. Renita Weems, for example, critiques the metaphorical language contained in passages like Ezekiel 16 and asks: ““What does it do to those who have been actually raped and battered, or who live daily with the threat of being raped and battered, to read sacred texts that justify rape and luxuriate obscenely in every detail of a woman’s humiliation and battery?”²²³ Shields formulates a similar concern on a

Russell (Philadelphia: Westminster Press, 1985), 86-95. Contra, see Sloane, “Aberrant Textuality,” 69 who argues that authorial intent should play a role in the classification of literature as pornographic. According to Sloane, since scholars have not demonstrated such intent, this label is inappropriate. Moreover, Sloane argues that Ezekiel 16 should not be deemed pornographic because the images and language are not intended to “titillate a male audience with a voyeuristic display of female nudity and sexual activity.” (Sloane, 71). I think Sloane’s critique provides useful parameters for classifying prophetic literature as pornographic. However, the absence of titillation does not eliminate the other elements of the pornographic category that Setel and others discuss.

²²³ Weems, *Battered Love*, 8.

more generic level: “Both the structure of this piece and its identification of Yahweh as the husband conspire to keep the reader from questioning male privilege, male dominance, even male rape and abuse.”²²⁴

Although these concerns are an important (if not essential) element of feminist readings, I will not address them in this project. Since the nature of this project is primarily historical, the enduring impact upon modern readers is outside the scope of this dissertation. Thus, my bracketing of this issue is neither the result of ignorance of these issues nor disregard for their importance. Consequently, my relative silence is not intended to be a tacit endorsement of the abuse mentioned nor should such a negative inference in that regard be drawn.²²⁵ As should be clear throughout the analysis that follows, I concur with the general consensus among feminist scholars that Ezekiel 16 is a “troubling text,”²²⁶ if not a “text of terror.”²²⁷ Consequently, my argument that the legal language, juridical imagery, and courtroom metaphors that appear in Ezekiel 16 serve a constructive purpose in the development of Judahite identity should not be read as a challenge to scholars’ concerns over the problematic gender and domestic relations this chapter endorses (or has been used to endorse). Moreover, I have no interest in

²²⁴ Shields, “Multiple Exposures,” 16. See also, Moughtin-Mumby, *Sexual Metaphors*, 179 and Day, “Rhetoric,” 214-215. Day argues that the stages in the relationship between the deity and Judah in Ezekiel 16 mirrors those modern scholars identified as constituent elements of domestic abuse.

²²⁵ See Carol J. Dempsey who concluded that: “Furthermore, those who, for whatever reason – be it conscious or unconscious – chose not to comment on the offensive use of female imagery and patriarchal attitudes that underlie Ezekiel 16 are, in their own way, also accepting and endorsing patriarchal attitudes.” (Dempsey, 60). While I concur with her (modern) assessment of the language and attitudes recorded in Ezekiel 16, it is a bit overbroad and sweeping to conclude that the failure to comment on such language and imagery is tantamount to an endorsement.

²²⁶ This phrase comes from the title of Kathryn P. Darr’s article: “Ezekiel’s Justifications of God: Teaching Troubling Texts” *JSOT* 55 (1992), 92-117.

²²⁷ For the origin of this phrase, see Phyllis Trible’s often cited book: *Texts of Terror: Literary-Feminist Readings of Biblical Narratives* (Philadelphia: Fortress Press, 1984).

defending the eponymous prophet or his text against such critiques in this project. Rather, the legal reading of Ezekiel 16 I seek to recover in this study offers another perspective on how the chapter functions within the book and, in particular, its role in the case the book makes for the proper evolution of Judahite identity under Neo-Babylonian hegemony.

1.3.1 Prophetic Metaphors

An important methodological innovation feminist scholarship brought to the analysis of Ezekiel 16 that helped shape this dissertation is a more nuanced and focused appreciation for the inner-workings of metaphorical language. Ezekiel 16 is one of several passages in the prophetic corpus of the Hebrew Bible that uses familial relationships to describe the legal bond between YHWH and Israel/Judah.²²⁸ In these prophetic texts, YHWH is often described as the male benefactor (usually husband) who must endure and punish the lascivious misdeeds of a wayward, ungrateful, and promiscuous wife. Galambush argues that this prophetic metaphor in biblical literature antedates the Bible and originates in the writings of Israel's ancient Near Eastern neighbors.²²⁹

Many scholars who apply a feminist reading to Ezekiel 16 (and other prophetic texts) often begin their analyses with a discussion of how metaphorical language

²²⁸ See fn. 221 for a list of the most discussed passages in the prophetic corpus of the Hebrew Bible.

²²⁹ See Galambush, *Jerusalem*, 91-106 and 124-125. Moughtin-Mumby challenges whether a prophetic metaphor exists and concludes that no single, central marital metaphor exists within the prophetic corpus of the Hebrew Bible. For Moughtin-Mumby, a more careful study of the context and content of each prophetic text necessitates a reconsideration of "the prophetic trope." See Moughtin-Mumby, *Sexual Metaphors*, 34 and 269.

works.²³⁰ For Moughtin-Mumby, the primary motivation for such analyses is “to demonstrate the significance of literary context for an understanding of prophetic sexual and marital metaphorical language.”²³¹ These methodological concerns focus on the difference between the *vehicle* and *tenor* of Ezekiel 16.²³² Because feminist readings are particularly concerned about the applications of biblical texts to contemporary issues and dismantling societal structures deemed oppressive, many scholars are more interested in the vehicle rather than tenor of prophetic material.²³³ For several scholars, the misunderstanding of the differences between vehicle and tenor leads to misinterpretations of Ezekiel 16 in its biblical context and misappropriation of it in modern context(s). Peggy Day articulates this two-prong concern as follows: “And if the crime is metaphorical murder and adultery, i.e., breach of covenant by apostasy and improper foreign relations, it is at the very least questionable whether the metaphor would draw on penalties for literal adultery, as opposed to penalties for breach of covenant, in its depiction of punishment for the crime.”²³⁴ For Day, (male) scholars’ erroneous pursuit of legal punishments corresponding to literal adultery is “persuasive evidence that they have indeed taken up the subject position of Yahweh as aggrieved and enraged husband.”²³⁵ A

²³⁰ See Moughtin-Mumby, *Sexual Metaphors*, 5-34; Weems, *Battered Love*, 33; and Day, “Adulterous Jerusalem,” 294-295 and 308.

²³¹ Moughtin-Mumby, *Sexual Metaphors*, 46.

²³² The vehicle, at its most basic, is the term for the metaphorical description used to depict the actual crime or malfeasance the author is referencing. The tenor, then, is the actual crime the author uses the metaphorical language to portray. For Ezekiel 16, the vehicle is the metaphor of the adulterous and murderous wife; the tenor is breach of covenant by unsanctioned foreign alliances and cultic violations (i.e., apostasy).

²³³ See Moughtin-Mumby, *Sexual Metaphors*, 14-18.

²³⁴ Day, “Adulterous Jerusalem,” 295.

common textual appeal scholars make to justify the inappropriateness of reading the text as describing literal adultery are the presence of multiple lovers who execute Jerusalem's punishment. If the literal crime of adultery were intended, then the presence of multiple lovers executing the punishment does not cohere with ancient Near Eastern legal punishments for adultery. The trend among scholars to find these legal sanctions speaks to their confusion about how metaphor works and "coheres with the passage's rhetorical strategy of creating a unified, male subject position that uses sexual difference to focus the reader's fury solely on the woman."²³⁶ Rather, if the tenor (i.e., breach of covenant) is at the forefront of scholars' analysis of Ezekiel 16, then "'the lovers,' that is, foreign nations, participate in the punishment because conquest by foreign nations was a standard covenant curse."²³⁷ Thus, according to Day and others, the coherence of Ezekiel 16 is enhanced by a more careful and nuanced understanding of the metaphorical tenor of this chapter.²³⁸

Within the vehicle of this metaphor, several scholars highlight how Ezekiel 16 portrays the deity and city. As mentioned above, YHWH is depicted as the (male) husband and Judah as the (female) wife of the deity. This use of gendered language in the vehicle of the metaphor reveals and perpetuates dangerous aspects of male-female

²³⁵ Ibid., 308. See also, Day, "Bitch," 248, 253; Shields, "Multiple Exposure," 12; Exum, *Plotted*, 103; Weems, *Battered Love*, 25 and Dijk-Hemmes, "Metaphorization," 168-169 for similar analyses.

²³⁶ Day, "Bitch," 246.

²³⁷ Day, "Bitch," 253. See also Galambush, *Jerusalem*, 124-125 reaching a similar conclusion.

²³⁸ See e.g., Bibb, "No Sex," 339. Bibb also acknowledges that this coherence does not eliminate or justify the problematic elements of such texts, which have been used to "directly and indirectly support damaging ideas about women, especially the objectification of the female body, the image of women as sex-crazed and in need of strong masculine control, and the justification of domestic violence as 'discipline.'" (Bibb, 340). The argument for the greater coherence is similar to my argument regarding the importance and purpose of recovering the legal elements in this chapter and Ezekiel 1-33.

relationships.²³⁹ With respect to the male deity, Weems comments that God is portrayed “not as an impartial judge, or as a disappointed parent, but as a deeply passionate, rightly offended husband who responded as he did because he had been betrayed.”²⁴⁰ She extends this argument even further to assert that the deity is not only an offended husband, but also his actions are volatile and erratic.²⁴¹ Dempsey agrees with Weems regarding the capricious and violent nature of the deity’s actions and questions: “as a model of covenant and marital love, should not Jerusalem ask Yhwh to apologize for his abusiveness?”²⁴² Day uses this idea of the deity’s abusiveness to emphasize the similarities between modern understandings of the three-stage process of domestic abuse/woman battering and Ezekiel 16. Ultimately, she concludes that “Ezekiel 16 clearly follows this three stage process.”²⁴³

Although I agree with much of the analysis mentioned above, I contend that recovering the legal elements within Ezekiel 16 results in a portrait of the deity’s actions that are neither erratic nor irrational. As I will argue more fully in this study, the book of Ezekiel depicts the deity’s actions as the judicially appropriate, proportional response to Judah’s serious violations of the covenant. Galambush and Darr are among those scholars who recognize that the literary structure of Ezekiel 16 suggests that Jerusalem systematically undid each gift the deity gave her and, as a result, committed serious

²³⁹ See e.g., Dempsey, “Whore of Ezekiel,” 63

²⁴⁰ Weems, *Battered Love*, 28-29. See also, Dempsey, “Whore of Ezekiel,” 71.

²⁴¹ See Weems, *Battered Love*, 71 and 75.

²⁴² Dempsey, “Whore of Ezekiel,” 74.

²⁴³ Day, “Rhetoric and Domestic Violence,” 214-215.

crimes warranting severe punishment.²⁴⁴ As I will argue, Ezekiel 16 seeks to demonstrate that the deity's punishment is indeed proportional based upon Judah's alleged criminal misconduct. Thus, I would modify Weem's statement that Ezekiel 16 (and perhaps other prophetic texts) portray God as the aggrieved husband and not an impartial judge. Instead, I contend in this dissertation that Ezekiel 16 portrays God as both an aggrieved husband and a judge. As I will demonstrate in Chapter 3, the juridical diction and legal valences within the book of Ezekiel provide a precise legal framework within which the prophet's oracles should be set, including Ezekiel 16. Throughout my analysis, I argue Ezekiel 16 uses specific legal formulations to demonstrate that the violence is legally proportional, rather than capricious or erratic as Weems and others outlined above assert.

1.3.2 Contextual Nature of Ezekiel 16

Feminist biblical scholars continue to clarify dimensions of the contextual nature of Ezekiel 16, especially the patriarchal norms, values, and expectations it contains, if not advances. In particular, these biblical scholars have highlighted the dangerous ways the marriage and familial metaphors in prophetic texts communicate YHWH's judgment upon Jerusalem. Renita Weems summarizes a perspective on the power, danger, and utility of this metaphor in prophetic literature as follows: "After all, marriage and family norms were central to maintaining and perpetuating Israel's patriarchal culture, and dismantling the marriage relationship, as surely a wife's adultery threatened to do, posed

²⁴⁴ I will discuss this component of their analysis in Chapter 5.

a threat to every patriarchal household.”²⁴⁵ Moughtin-Mumby also argues that feminist readers insist that “sexual and martial metaphorical language reinforces negative stereotypes of women and female sexuality and male physical violence...”²⁴⁶ For Moughtin-Mumby, an important contribution of feminist readings of prophetic literature is that they:

have vividly illustrated the disconcerting consequences of reading sexual and marital metaphorical language in our current climate with little reference to such a setting. My belief is that recognizing this broad socio-cultural and historical context goes some way into helping us respond to such problems, by providing an insight into why the prophetic books might use such offensive language.²⁴⁷

Additionally, feminist readings emphasize the inherent inequality in the *legal* relationship between men and women in the Bible, especially in the prophetic depiction of YHWH as the husband of Israel/Judah.²⁴⁸ For example, Weems describes the relationship between YHWH and Israel as “not an egalitarian [one], but was one of hierarchy and authority.”²⁴⁹ This inequality is often described in terms of power dynamics and the ways in which men dominate women in the biblical and modern world. A common focal point in this analysis is the insistence that men feared a woman’s autonomy and therefore sought to limit her independence and agency. For many scholars, this fear is most often expressed via the male desire to control a woman’s sexuality and her relationships with other women.²⁵⁰ For example, Amy Kalmanofsky

²⁴⁵ Weems, *Battered Love*, 14.

²⁴⁶ Moughtin-Mumby, *Sexual Metaphors*, 1.

²⁴⁷ Ibid., 41. For scholars making similar observations, see Dijk-Hemmes, “Metaphorization,” 163 and Dempsey, “Whore of Ezekiel,” 74-77.

²⁴⁸ See Bird, 7 (arguing marriage is the primary determinant of a woman’s legal status).

²⁴⁹ Weems, *Battered Love*, 17.

argues that “fears of female agency and desire are integral to the representation of Israel and Judah as the sexually promiscuous sisters introduced by the prophets Jeremiah and Ezekiel.”²⁵¹ A related argument is the inability of women in prophetic texts to be seen independently as persons due respect. Dempsey articulates this position forcefully when she states: “This covenant-marital model is troublesome insofar as the intrinsic dignity and beauty of a woman are not respected, acknowledged, or affirmed.”²⁵² Rather, according to her, “the woman is seen to be someone without an identity independent of what Yhwh has turned her into...”²⁵³ A common expression of the woman’s lack of independence and agency that feminist scholars highlight in their analysis of biblical passages (e.g., Ezekiel 16) is the silence of female characters. As I will argue in the final chapter of this dissertation, while I concur that this silence may be indicative of certain misogynistic preconceptions that modern scholars (rightly) question, the silence may also function legally and contribute to a specific conception of Judahite identity.

1.3.3 Justification of Misogyny?

Perhaps the most disturbing aspect of Ezekiel 16 that several scholars highlight is how this passage justifies Jerusalem’s punishment and its implications for the city as an

²⁵⁰ See, Gail Corrington Streete, *The Strange Woman: Power and Sex in the Bible* (Louisville: Westminster John Knox Press, 1997), 91; and Frymer-Kensky, *In the Wake of the Goddess*, 151.

A related insight some feminist scholars discuss is the ways women (and their sexual behavior) is a direct reflection of male honor, rather than female honor or virtue. Streete articulates the insight as follows: “Women are not really keepers of their own honor but emblems of male honor, an honor that is concentrated in the exclusive sexual rights of a man to ‘his’ women” (Streete, 78).

²⁵¹ Kalmanofsky, “Dangerous Sisters,” 304. See also Weems, *Battered Love*, 30.

²⁵² Dempsey, “Whore of Ezekiel,” 66.

²⁵³ *Ibid.*, 66.

embodiment of all women. As mentioned, many scholars agree that a major purpose of this chapter is “to justify the violence and punishment the subordinate endures and to exonerate the dominant partner from any appearance of being unjust.”²⁵⁴ Swanepoel, consistent with my legal analysis of this passage, recognizes that Ezekiel 16 seeks to demonstrate that “the punishment fits the revolting deeds of the unfaithful wife.”²⁵⁵ This attempt to justify Jerusalem’s punishment is problematic for many scholars because it tends to contribute to “blaming the victim” in domestic assault situations.²⁵⁶

In addition to “blaming the victim,” scholars are understandably concerned about the absence of agency Jerusalem appears to have in this passage. As discussed, scholars contend that the relative lack of independence or autonomy contributes to the misogynistic portrait of female characters. Within the context of Ezekiel 16, several scholars point to the silence of Jerusalem in this text as a reflection of the underlying sexist attitudes that pervade it. For example, Shields finds it strange that “she never speaks in the text.”²⁵⁷ Dempsey comments on Ezekiel 16 and concludes that “the silent voice of Jerusalem throughout the story is deafening.”²⁵⁸ In particular, Dempsey is struck that Jerusalem says nothing in response to the various accusations “hurled at her.”²⁵⁹ Moughtin-Mumby further asserts that Jerusalem’s silence in this chapter makes it

²⁵⁴ Weems, *Battered Love*, 19.

²⁵⁵ Swanepoel, “Ezekiel 16,” 90. Swanepoel also recognizes the legal valences within Ezekiel 16 that draws direct connection between sins and divine punishment. See also, Michael Fishbane, “Sin and Judgment in the Prophecies of Ezekiel,” *Interpretation* 38/2 (1984): 131-150.

²⁵⁶ See Moughtin-Mumby, *Sexual Metaphors*, 179 and Shields, “Multiple Exposures,” 15-16.

²⁵⁷ Shields, “Multiple Exposures,” 12.

²⁵⁸ Dempsey, “Whore of Ezekiel,” 61.

²⁵⁹ Dempsey, “Whore of Ezekiel,” 71.

difficult to recover her agency or construct an alternative narrative: “Jerusalem may take initiative to free herself, but she – and the resistant reader – face forceful opposition as the ‘empty places’ of the text constrict, leaving no space into which to speak her alternative story of the events.”²⁶⁰ An important consequence of Ezekiel 16 is that “the text places women completely outside the boundaries of society; no longer representing society’s limits, they now seem to be excluded completely.”²⁶¹ As I will discuss, I concur with Shield’s assessment that this text places Jerusalem outside the boundaries of society. For this project, the legal formulations that depict this outsider status (Ezek 16:4-5) is particularly important for understanding Ezekiel and its description of Judahite identity. In my analysis, Ezekiel 16 argues that Judahite identity is tenuous, fragile, and legally questionable when it is not grounded in a faithful adherence to the requirements of YHWH’s covenant.

1.4 FRAMEWORK FOR PRESENT STUDY

The discussion of the book of Ezekiel that follows in the dissertation builds upon several of the conclusions outlined earlier. First, I join the growing consensus who contend that the basic claims regarding authorship, provenance and unity of the book of Ezekiel, especially Ezekiel 1-33, need not be doubted. As scholars like Greenberg, Kutsko, and Vanderhooft have demonstrated, the book has a coherent character and

²⁶⁰ Moughtin-Mumby, *Sexual Metaphors*, 183.

²⁶¹ Shields, “Multiple Exposures,” 13. See also, Dempsey, “Whore of Ezekiel,” 62 who makes a similar observation about the quintessential outsider status of Jerusalem in this chapter.

structure. This coherent character, which may have originated with the original author, need not preclude the presence of later redactors. Consequently, I concur with the prevailing conclusion among biblical scholars that the book evidences redactional activity.

Second, I accept the growing consensus that the Babylonian provenance indicated in the book of Ezekiel rests on solid ground. As outlined, biblical scholars recognize in the book several linguistic phenomena that are best explained by a Babylonian setting – a setting the biblical text also proffers. In particular, the book of Ezekiel evidences the authors' knowledge of specific elements of daily life that a deported Judahite in Babylonia would be expected to know. In particular, juridical and mercantile terminology within the text suggests that its author(s) is familiar with Babylonian practices. As I stated earlier, the presence of this legal terminology is an important element to my argument that such terms are deployed in Ezekiel 16 to advocate for how deported Judahites should understand their identity. As scholars continue to review contemporaneous cuneiform records, a clearer picture of Judahite life in Babylonia emerges.²⁶² This additional data provides corroborating evidence to support the book's claims regarding its geographical origins. Consequently, as other scholars such as Rom-Shiloni have concluded, I agree that the book of Ezekiel is an appropriate biblical text to examine how Neo-Babylonian hegemony affected Judahite identity.

Third, I agree with the commonly held conclusion that the book of Ezekiel has strong connections to P and H material in other parts of the Hebrew Bible. For this

²⁶² Wunsch and Pearce (2014) provides most complete picture scholars have Judahite life in Babylonia during Neo-Babylonian and Persian hegemony, with a specific focus on naming practices and legal/contractual transactions.

dissertation, I need not determine the nature of the relationship nor the direction of literary influence. Rather, I am interested in the *fact* that they share specific locutions and ideologies not the *process* by which these shared elements entered the biblical text. More precisely, the fact that the book contains juridical diction and legal imagery that is concentrated in legal sections within P and H informs my proposal that the book of Ezekiel is set within a precise legal framework. This legal framework, as I will argue, becomes one of the bases the book of Ezekiel uses to articulate a conception of Judahite identity. Although I am largely agnostic on the absolute chronology about the final recension of P and H, the following propositions affect my characterization of the shared material among P, H, and Ezekiel.

As argued earlier, the language of P suggests that it likely underwent a lengthy development period. As several scholars demonstrated, the terminology and morphological developments in P evince a familiarity with Israelite and Judahite realities that antedate the Babylonian conquest of Jerusalem. While Haran's proposal that P remained confined to a closed priestly circle for centuries is unlikely, the impulse that may have motivated his theory is appealing. Specifically, Haran's proposal takes into consideration both the ancient elements in P, as well as the relative "absence" of its impact upon Iron II Israel/Judah. The archaizing tendencies some scholars attach to P (while plausible) seems less likely than concluding that P's use of terminology reflects its actual compositional era – similar to how scholars now accept the temporal setting of the book of Ezekiel. Thus, for purposes of this dissertation, I adopt a modified position articulated by scholars like Kohn and Lyons who concluded that the authors of the book of Ezekiel were familiar with some version of P and H. While I am less certain that

“Ezekiel” was actually copying and modifying a hard copy version of P and H, the linguistic parallels signal a clear, direct relationship between these corpora. One factor that tempers my conclusions regarding the direct, genetic relationship among these texts is that several of the similarities exist in legal and cultic materials – two “genres” that often use standardized language.

Finally, I dedicated a portion of this chapter to the insights feminist readings of Ezekiel 16, and prophetic literature more broadly, have brought to the forefront of biblical scholarship. Because the focus of this project is historical, I will not focus upon the contemporary applications and implications of Ezekiel 16 on male-female dynamics, sexist ideologies, and other related matters delineated earlier. As mentioned, my bracketing of these issues is a function primarily of focus and not dissent. As argued earlier, feminist scholars pay significant attention to the nature and power of the metaphorical language in Ezekiel 16 to shape readers’ responses to the text. A common concern among feminist scholars is that the chapter (and the book of Ezekiel as a whole) goes to painstaking lengths to justify YHWH’s judgment and to condemn Jerusalem’s actions. The fact that so many scholars (rightly) condemned the appropriation of this text to “justify” violence against women raised two questions I listed earlier. The second question - does the book of Ezekiel contain specific language and imagery, particularly within the vehicle of the metaphor, which leads to this conclusion that Ezekiel is trying to “justify” the deity’s actions – most heavily impacted my approach in this project.

My answer to this second question became one of the driving forces for this dissertation. In particular, since the idea of justifying punishment by equating it with the nature and severity of the crime committed is foundational to the legal disposition of

cases, I began investigating the presence of juridical diction and legal imagery within Ezekiel 16, and the book as a whole.²⁶³ As I will demonstrate more fully in Chapter 3, the book of Ezekiel contains several legal elements. The purpose and function of these elements within the book, particularly within the context of the increased interest among biblical scholars about Judahite identity development, has not been fully investigated. I contend that one purpose of these legal elements in the book is to explain the legal foundation and rationale for (i.e., “justify”) the violent and severe punishment the Judahites received. Moreover, the author(s) use juridical terminology to argue that the legal relationship between Judahites and YHWH must undergo a specific set of modifications to remain the viable foundation for Judahite identity. To properly associate the legal elements I contend are operative within the book of Ezekiel with developments in Judahite identity, I wanted to find an appropriate methodological framework that connects these two elements. The methodological framework I will use in this study is the subject of the next chapter.

²⁶³ As a licensed attorney in Massachusetts, much of my previous work in the legal profession involved associating (or disassociating, depending upon which party I represented) particular alleged legal violations with the appropriate legal sanctions. These legal sanctions can include both the execution of a sentence and a prescription for rehabilitation – a pattern that is operative in Ezekiel 16. Despite these similarities between ancient and modern legal modes of thought, I do not assert in this study that Ezekiel 16 should be understood as a modern, legal proceeding. Rather, my legal training and prior experience provides a framework within which I can recognize and articulate the legal logic that informs the book.

2.0 CHAPTER 2

Entering the Courtroom:

Ezekiel, Identity Development, and Psychological Studies

In the preceding chapter, I argued for the Babylonian provenance of the book of Ezekiel, particularly Ezekiel 1-33. Because its origins can be dated to the sixth century BCE, it is an appropriate test case to see how its juridical elements articulate developments in Judahite identity that Babylonian hegemony precipitated. Furthermore, to associate properly the book's juridical elements with identity development, I have chosen to use aspects of Erik Erikson's and Urie Bronfenbrenner's theories of identity development. Accordingly, the purpose of this chapter is to situate my appropriation of these researchers' frameworks within biblical scholars' use of psychological analyses of the book of Ezekiel and the growing interest in examining prophetic texts for evidence of identity development. As the subsequent analysis should make clear, I join those scholars who have concluded that modern psychological tools should not be conscripted to diagnose or analyze the purported authors of biblical texts. Rather, psychological methods are best deployed in combination with traditional modes of historical-critical investigation to elucidate them.

The initial section of this chapter summarizes how psychological methodologies have been used in analyses of the book of Ezekiel. The second section investigates some

of the methodologies scholars use to adduce evidence of identity development within the Hebrew Bible. Specifically, I will argue in this section that the common reliance upon F. Barth's formulation of identity development is a reason that the legal material in prophetic books has not been exploited fully in discussions of Judahite identity. The third, and final, section of this chapter outlines the Erikson-Bronfenbrenner Model ("EB Model") I will use to investigate the function of legal elements in the book of Ezekiel in redefining Judahite identity under Babylonian hegemony.

2.1 THE BIBLE, EZEKIEL, AND PSYCHOLOGY

Before focusing on several important psychological analyses of Ezekiel and his book, it is necessary to situate (briefly) psychological scholarship on Ezekiel within the larger field of psychological biblical scholarship. Although several scholars provide overviews of the history of the relationship between psychology and biblical scholarship, I found the analyses of Kille and Rollins particularly helpful for my investigation of Ezekiel. Each scholar articulates a framework within which the branches of Ezekielian scholarship can be situated and, most importantly, describes the methods that I appropriated for this dissertation. In particular, these two theorists helped me conceptualize how and why biblical scholars are more inclined to appropriate psychological tools for analysis of the Bible rather than the authors and persons behind the biblical text.

D. Andrew Kille, in *Psychological Biblical Criticism*, describes psychological biblical criticism as involving "the intersection of three fields: psychology, the Bible, and

the tradition of rigorous, critical reading of the biblical text.”²⁶⁴ According to Rollins, the relationship among these three fields reflected three periods of development within psychology – i.e., pre-systematic psychology, systematic but prescientific psychology (aka “philosophical psychology”), and scientific psychology.²⁶⁵ Within this progression, Wayne Rollins identifies four major objectives that have defined biblical psychology: descriptive, analytic, diagnostic and prescriptive.²⁶⁶ The analytic approach to Ezekiel and his book reflected a larger trend that was once prevalent in biblical scholarship. According to Rollins, analytic approaches attempt “to identify psychodynamic factors at work in biblical personalities, in biblical religious phenomena, and in biblical effects.”²⁶⁷ Kille also notes that “early psychological interpreters of Scripture attempted almost gleefully to describe biblical figures like the prophets, Paul and Jesus in pathological terms.”²⁶⁸ Both Rollins and Kille express caution, if not skepticism, regarding the application of psychological categories to understand biblical characters.²⁶⁹

²⁶⁴ Kille, *Psychological*, 3.

²⁶⁵ Wayne Rollins, *Soul and Psyche: The Bible in Psychological Perspective* (Minneapolis: Fortress Press, 1999), 7-9. Rollins acknowledges that this subdivision of psychology’s development is similar to the progression outlined in R. S. Peters and C. A. Mace, “Psychology,” *Encyclopedia of Philosophy* 7:1-27.

²⁶⁶ Rollins, *Soul and Psyche*, 32.

²⁶⁷ *Ibid.*, 32.

²⁶⁸ Kille, *Psychological*, 6. Rollins makes a similar observation regarding the prevalence of this phenomena in the first half of the twentieth century and concludes that this trend “became the leading cause of estrangement between psychology and biblical studies.” (Rollins, *Soul and Psyche*, 85).

²⁶⁹ The specific objections scholars raise to this practice will be discussed in the critiques to Edwin Broome’s analysis of Ezekiel’s psychological condition. Despite the growing apprehension regarding the practice of psychoanalyzing biblical characters, the application of psychological methods more broadly as a reading strategy for understanding biblical texts remains popular.

Despite this skepticism, Kille (and others) contends that the value of psychological methods is in their ability to illumine “unique dimensions of a text” that historical-critical methods of exegesis cannot.²⁷⁰ These methods enable scholars to study “the way texts reflect established psychological models of the development, expression, and interrelationships of human cognition and behavior.”²⁷¹ To ensure that biblical scholars appropriate responsibly psychological models, Kille correctly acknowledges the need to keep psychological modes of exegesis in “conversation” with other modes of exegesis to avoid “mere psychologizing.”²⁷² Consistent with this caution, my appropriation of Erikson and Bronfenbrenner rests on two pillars. First, I am using the most widely accepted forms of their respective theories in my analysis of Ezekiel 16. Second, I am making modest claims regarding how they illumine the text, while relying upon philological and critical readings of the biblical text as a control to limit unsubstantiated speculation. The goal is to ensure that the conclusions I reach in this dissertation rest upon the insights gained from a close, careful reading of the biblical text and a responsibly cautious appropriation of psychological models.

²⁷⁰ Kille, *Psychological*, 135. This assertion is common to justify (or explain) why biblical scholars can use psychological methods. See also, Collicutt, “Academic Discipline,” 4-8 and Rollins, *Soul and Psyche*, 78.

In the final section of this chapter, I follow a similar line of reasoning to explain my conscription of the theories of Erik Erikson and Urie Bronfenbrenner to associate the book of Ezekiel’s juridical elements with Judahite identity development. Specifically, my use of their models illumines the significance to the legal elements I argue are present in Ezekiel 16. As stated in my introduction, two important contributions of this dissertation are: (i) to more fully demonstrate the prevalence of legally significant terminology throughout the book of Ezekiel and how that should factor into scholars’ analysis of the book; and (ii) to illustrate, through use of the EB Model, how these legal elements contribute to the book’s arguments for the proper reformulation of Judahite identity under Neo-Babylonian hegemony.

²⁷¹ Kille, *Psychological*, 14.

²⁷² Kille, *Psychological*, 135.

David Garber argues that “the book of Ezekiel confronts its readers with a *strangeness* surpassed by few other biblical texts.”²⁷³ Because of this “*strangeness*,” scholars appealed to many disciplines, including psychology, to explain the origins and functions of the book’s unusual elements.²⁷⁴ Scholars most often cite Edwin Broome’s 1946 article as the first, sustained treatment of the prophet’s psychological condition.²⁷⁵ His psychological diagnosis of Ezekiel seeks to better explain the bizarre actions and vivid visions present within the book than those offered by the traditional tools of historical-critical scholarship.²⁷⁶ For example, Broome concludes that the “strange” visions of Ezekiel 1 and the “influencing machines” are consistent with individuals suffering from particular mental disorders. In Broome’s words, “to any one at all familiar with these ‘machines,’ which paranoiacs construct in their imagination, Ezekiel’s opening vision stands out at once as a typical of them.”²⁷⁷ Additionally, he contended that a psychological reading provides greater coherence to the biblical text preserved in the MT, without resorting to multiple emendations to provide clarity.²⁷⁸

²⁷³ David G. Garber, Jr. “Traumatizing Ezekiel: Psychoanalytic Approaches to the Biblical Prophet,” in *Psychology and the Bible: A New Way to Read the Scriptures*, ed., J. Harold Ellens and Wayne G. Rollins (Westport: Praeger, 2004), 215.

²⁷⁴ See e.g., John J. Schmitt, “Psychoanalyzing Ezekiel,” 188

²⁷⁵ See e.g., Halperin, *Seeking*, 8 and Garber, “Traumatizing Ezekiel,” 217. Broome, however, argues that Klostermann was the first scholar to “diagnose” the prophet Ezekiel. See August Klostermann, “Ein Beitrag zu besserer Würdigung seiner Person und seiner Schrift,” *Theologische Studien Kritiken* 50 (1877): 391-439.

²⁷⁶ See Broome, “Abnormal Personality,” 285-286.

²⁷⁷ Broome, “Abnormal Personality,” 286.

²⁷⁸ See Broome, “Abnormal Personality,” 287-289 discussing the call narrative and initial oracles in Ezekiel 2-4.

Broome also outlines both his method for constructing a psychological profile of the prophet and his diagnosis of the prophet's psychological state.²⁷⁹ An important element of his methodology, which Halperin correctly argued is not often acknowledged by Broome's critics, is the cumulative effect of the data in Ezekiel as the foundation for a psychological evaluation.²⁸⁰ According to Broome, "evidence for any mental abnormality is often cumulative, and this is true of Ezekiel. No single experience or 'symptom' is by itself significant."²⁸¹ Based upon his analysis, Broome concluded that "Ezekiel exhibits behavioristic abnormalities consistent with paranoid schizophrenia. There can be no doubt that we are dealing with a true psychotic (unrecognized in his day and looked upon then as an ecstatic) capable of great religious insight."²⁸² His classification of Ezekiel as a paranoid schizophrenic was based upon five elements present in the book that Broome thought were consistent with such a diagnosis. Because of their impact upon later scholarship and this study, two elements of Broome's criteria require brief comment –

²⁷⁹ Halperin acknowledges that he is continuing and modifying Broome's approach, albeit not uncritically. Halperin, for example, calls Broome's diagnosis "useless." (Halperin, *Seeking*, 37).

²⁸⁰ See Halperin, *Seeking*, 19-21.

²⁸¹ Broome, "Abnormal Personality," 278-279. As mentioned above, many respondents to Broome demonstrate that any individual passage he uses to adduce evidence of mental abnormality can have another, nonpsychotic interpretation. While this may be true, this critique misses (or devalues) Broome's contention that it is the totality of the passages, not any one individual passage, which justifies a specific diagnosis.

²⁸² Broome, "Abnormal Personality," 291. Broome's conclusion that Ezekiel's psychological condition went undiagnosed and was deemed "normative" for spiritual/ecstatic leaders is an illustration of Kille's assessment that early psychological descriptions of biblical characters often described them "in pathological terms." See Kille, *Psychological*, 6. The "normalcy" of Ezekiel's alleged experiences influenced Garfinkel's critique of Broome. Specifically, Garfinkel examined other ancient Near Eastern literature (especially Akkadian incantation texts) to advocate for a literary and not "psychotic" explanation for the presence of certain phenomena in the book of Ezekiel. For Garfinkel, if certain elements in the book of Ezekiel that scholars argue support a psychological diagnosis were also present in Akkadian texts, then the literary similarities mitigates (if they do not eliminate?) the need for appealing to psychological categories to explain the phenomena. See Stephen Garfinkel, "Another Model for Ezekiel's Abnormalities," *JANES* 19 (1989): 39-50.

namely, “(i) periods of catatonia and (ii) narcissistic-masochistic conflict, with attendant phantasies of castration and unconscious sexual regression.”²⁸³

Broome identifies catatonia as “a fundamental psychic disturbance and is a form of schizophrenia, which is a true psychosis.”²⁸⁴ Also, Broome argues that many of the prophet’s visions are a type of a hallucination common to certain forms of psychosis.²⁸⁵ In addition, he contends that Ezekiel 3 and 4 (which describe the prophet’s “dumbness” and house confinement) reflect another element of the prophet’s mental ailments. Specifically, Broome argues that this “mutism, immobility, and feeling that bands were placed upon him (either by Jahweh or by the people) is a characteristic [of] a psychotic experience is hardly questionable.”²⁸⁶

By appealing to Freudian categories of psychodynamic analysis, Broome argues that biblical scholars continue to miss the sexual imagery involved in Ezekiel’s consumption of the scroll (Ezek 2:9 - 3:3). The consistent argument that eating the scroll represents the absorption of the divine message misses that the scroll “is, however, a crass sexual symbol. Ezekiel is regressing to what Freud calls the oral stage – but

²⁸³ Broome, “Abnormal Personality,” 291-292. The three other criteria he discusses are the “influencing machine;” schizophrenic withdrawal; and delusions of persecution and grandeur.

²⁸⁴ Broome, “Abnormal Personality,” 279.

²⁸⁵ See Broome, “Abnormal Personality,” 280-282.

²⁸⁶ Broome, “Abnormal Personality,” 280. I will argue in the next chapter that the prophet’s silence in Ezekiel 3 is an important element in the overall *legal* framework of the book. In particular, I will claim that the prophet’s silence is the result of YHWH’s judicial disposition towards the Judahites. Also, his silence reflects a limitation on his (expected?) legal role as an intercessor and advocate for the conquered and deported Judahites. Although I do not address specifically Broome’s explanation for the prophet’s silence in the next chapter, the meaning and function of Ezekiel’s silence within the context of the book of Ezekiel continues to attract scholars’ attention. Broome’s psychological diagnosis is one of several scholarly proposals to explain the “strangeness” of this command in the opening chapters of Ezekiel, especially in light of the prophet’s distinct lack of silence after receiving this commandment from the deity.

perverted.”²⁸⁷ He extends this sexual interpretation further and concludes that “the feminist masochism of the prophet is coming to the fore, but his narcissistic pride cannot accept it without conflict.”²⁸⁸ According to Broome, this “feminist masochism” increases throughout the text of Ezekiel and is crystallized in Ezekiel 8-11. Specifically, images of “the digging, the little door, and the small room are symbolic of the act of coitus, but the experience is abominable to Ezekiel now that his ‘feeling that he is a woman’ makes it so.”²⁸⁹

Psychologists and biblical scholars were highly critical of Broome’s purported diagnosis of the prophet Ezekiel and his methodologies. Halperin, commenting upon a similar observation, accurately summarizes the objections from these two groups as follows: “by and large, Bible scholars have blamed Broome for doing too much with the data and doing it badly, whereas psychoanalytic writers appear to have blamed him for not having done enough.”²⁹⁰ A complete refutation of each aspect of Broome’s diagnosis is unnecessary here, but I will briefly summarize the major critiques that inform this project.

²⁸⁷ Broome, “Abnormal Personality,” 288.

²⁸⁸ Broome, “Abnormal Personality,” 288.

²⁸⁹ Ibid., 289. The Freudian interpretation of Ezekiel 8-11, including the prophet’s purported loathing and dread of female sexuality, provides the foundation for David Halperin’s psychological reading of Ezekiel, which I will discuss below. Notably, many feminist scholars (as discussed in the previous chapter) agree with Broome’s assessment of the sexual and misogynistic character of many passages in the book, even if most do not engage in the type of psychoanalytical discourse that characterizes Broome’s work.

²⁹⁰ Halperin, *Seeking*, 7.

Howie's monograph represents the "first full-dress refutation of Broome," including challenging whether one could psychoanalyze a dead person.²⁹¹ Since psychoanalysis often incorporates interviews with the subject, testing, and recording family histories, these elements' absence in formulating a diagnosis (may) undermine the validity of said findings.²⁹² Stephen Garfinkel articulates this objection more sharply when he concludes that the absence of these accepted tools for modern psychoanalysis in Ezekiel's case renders modern attempts "questionable" or "foolhardy" methodologically.²⁹³ To the extent common ground exists between Garfinkel and Howie, their objections coalesce around questions of access to the historic subject – namely, the eponymous prophet Ezekiel.

One of the more enduring and prevalent challenges to Broome's presumed access to the *person* relates to the *text* of the book of Ezekiel. As early as 1973, psychologist Ned Cassem challenged whether Broome's analysis provided sufficient attention to the connection (or lack thereof) between the biblical text and the person behind the text.²⁹⁴ Later scholars, such as Jobling and Tuell, continue this rejection of psychological analyses. For these scholars, the complex process of textual development that the book

²⁹¹ See Howie, *Date and Composition*, 69-79.

²⁹² Some scholars critique Broome, Halperin, and other scholars because of their skepticism concerning the validity of Freudian categories.

²⁹³ See Garfinkel, "Another Model," 39-43. Halperin, in his historical overview of psychological analyses of Ezekiel, also references Garfinkel and uses the same quotation. See Halperin, 26.

Another methodological challenge relates to the applicability of psychological categories across time. Here, the assumption that sufficient continuity exists within the human psyche over thousands of years is challenged or at least identified. Given restrictions on data, the ability to defend or refute conclusively this proposition remains open in the literature.

²⁹⁴ See Ned H. Cassem, "Ezekiel's Psychotic Personality: Reservations on the Use of the Couch for Biblical Personalities," in *The Word in the World: Essays in Honor of Frederick L. Moriarty, S. J.*, ed. Richard J. Clifford and George W. McRae (Cambridge: Weston College Press, 1973), 59-70.

of Ezekiel evidences, as well as the minimal biographical information the book provides, renders any reconstruction of the prophet himself speculative, if not impossible.²⁹⁵

Bernhard Lang most pointedly articulated the cumulative effect of these challenges to Broome's analysis: "Broome's work requires no further refutation. It is to be noted more as curiosity than as a serious contribution to the understanding of the prophet."²⁹⁶

In spite of the overwhelming rejection of psychoanalyzing the prophet via the book that bears his name, David Halperin has attempted to revitalize it, at least in part. He describes his project as "a reexamination of one of Broome's suggestions: that the act of digging through a wall, described in Ezekiel 8:7-12, is a symbolic representation of sexual intercourse. I believe that this interpretation is correct and that it can and should be developed considerably further than Broome does."²⁹⁷ Though Halperin accepts the validity of this insight and the method of analysis, he is careful to distinguish (where appropriate) his project from Broome. The sharpest delineation focuses upon the utility of Broome's psychological diagnosis. For Halperin's study, the purpose "is not to

²⁹⁵ See Stephen S. Tuell, "Should Ezekiel Go To Rehab? The Method to Ezekiel's 'Madness'" *Perspectives in Religious Studies* 3 (2009): 289-302, 301 and Darr, *NIB*, 1086. An interesting common objection that Cassem and Garfinkel discuss is Broome's failure to address the ancient Near Eastern context of Ezekiel to determine the behavioral norms, literary conventions, and historical realities that likely informed the descriptions of the prophet in the book of Ezekiel. This inattentiveness to wider ancient Near Eastern phenomena is analogous to my contention that previous methods for investigating developments in Judahite identity have not explored fully the impact of legal locutions.

²⁹⁶ Bernhard Lang, *Ezechiel: Der Prophet und das Buch* Erträge der Forschung 133 (Darmstadt: Wissenschaftliche Buchgesellschaft, 1981), 7-12, quoted in Halperin, *Seeking*, 2. In Halperin's review of scholars' discussions of Broome and related investigations of the prophet Ezekiel, he concludes that "there would be no point in surveying every reference to Broome in the scholarly literature of the past forty-five years. Most writers who mention him simply repeat the verdicts of Howie and Cassem" (Halperin, *Seeking*, 32). Whether this contention is sustainable in its entirety is beyond the scope of this project. For my purpose, it is sufficient to note that the nature of the objections discussed above is representative of the objections to psychological analyses of the prophet, including the analysis Halperin provides.

²⁹⁷ Halperin, *Seeking*, 2-3.

categorize Ezekiel but to understand him.”²⁹⁸ Thus, Halperin acknowledges that his project rests upon the assumption that a scholar can recover “the man from behind Ezekiel the book and, indeed, to know that man rather intimately.”²⁹⁹ This recovery enables scholars to better understand the individual mind behind the text, as well as the meaning of the book itself.³⁰⁰ Thus, his psychological reading of the sexual nature of Ezekiel 8-11 is guided by the following premise: “...some combination of Freudian approaches will best explain the phenomenon as a whole, and will be our most useful tool in elucidating the Book of Ezekiel.”³⁰¹

As mentioned, Halperin focuses his analysis on Ezekiel 8-11 as an example of the prophet’s psychopathology regarding sex, especially female sexuality. In Halperin’s words, the Temple Vision “points clearly to Ezekiel as a man possessed by fear and loathing women and their sexuality, and by rage and envy that other men might partake of that sexuality.”³⁰² To prove his case, Halperin begins with an analysis of several key Hebrew locutions (e.g., חָתַר) to demonstrate their connection to sexual intercourse or

²⁹⁸ Halperin, *Seeking*, 37.

²⁹⁹ Halperin, *Seeking*, 4. He correctly concedes that this assumption is both foundational to his argument and will be difficult for many scholars to accept. Similar to Cassem’s critique of Broome’s argument, the degree and nature of the connection one accepts between the book of Ezekiel and the historic Ezekiel the book purports to describe correlates to one’s willingness to consider that the book provides meaningful biographical data and insight into the mind of the prophet.

³⁰⁰ Halperin, *Seeking*, 177 and 221. He recognizes that the nature of psychoanalysis requires/necessitates a focus on the individual mind. This focus on the individual mind is similar to Moshe Greenberg’s contention regarding the authorship of Ezekiel and the evidence he adduced for concluding that the book reflects a clear, intentional design that originated with the historic Ezekiel. See Greenberg, *Ezekiel 1-20*, 26.

³⁰¹ Halperin, *Seeking*, 90.

³⁰² Halperin, *Seeking*, 141. As discussed in Chapter 1, this loathing of female sexuality (and its implications for female agency, autonomy, and equality) is a theme that several feminist scholars have highlighted, particularly in relation to Ezekiel 16 and 23.

female genitals in the Hebrew Bible.³⁰³ Notably, and unlike his predecessor, he expands his analysis to examine how other ancient Near Eastern cultures described female genitals or sexuality. Halperin finds evidence throughout other ANE cultures, particularly in Akkadian poems, that “biblical and extrabiblical writings [possess] an irrational dread of female sexuality – sometimes expressed in images similar to those we have already examined, as revulsion against the female genitals.”³⁰⁴ The persistent presence of these “loathsome” images in Ezekiel leads him to make two assessments of the prophet and his community. First,

Ezekiel’s “abominations” are his own aversions, fears, and desires. All are, at bottom, sexual. Some may reflect events of his early life. They are our guides to the psychopathology of an extraordinary and influential man, and, indirectly, to the psychopathology of a society that bore him and that ultimately canonized him.³⁰⁵

Second, building upon his observation that some of the imagery in the book of Ezekiel may reflect early childhood experiences, Halperin argues that the hallucinatory abominations suggest that “Ezekiel has at some point been sexually victimized by an adult male.”³⁰⁶ Moreover, the disturbing and violent imagery of Ezekiel 16 and 23

³⁰³ See Halperin, *Seeking*, 85-89.

³⁰⁴ Halperin, *Seeking*, 94. Halperin also notes the presence of corroborating evidence for similar fearful attitudes relating to “strange women.” See Halperin, *Seeking*, 97-134.

³⁰⁵ Halperin, *Seeking*, 140. While I cannot affirm his diagnosis of Ezekiel’s psychopathology, nor the potential pathology of the community, the logic that allows Halperin to make that connection between Ezekiel and the community is operative within my appropriation of Erikson’s and Bronfenbrenner’s theories. Specifically, the fact that this text and the prophet who lends his name to the book survived and were “canonized,” suggests that the communities who received this text found sufficient points of contact to preserve and revise it – as evident by the redactional processes most scholars contend the book demonstrates. The preservation, revision, and reflection upon the book of Ezekiel, especially Ezekiel 16, means that it was a resource several within the community (or communities) that preserved the text drew upon in their articulation of Judahite identity. As I will argue later, narratives and other cultural productions become important evidence for what resources people used to (re-) define their identity in specific historical moments. (See Smith-Christopher, *A Biblical Theology of Exile*, 105-107).

³⁰⁶ Halperin, *Seeking*, 164.

“depicts, with far greater clarity, Ezekiel’s image of the woman who had dominated his early years.”³⁰⁷

While Halperin’s conclusions regarding the psychological condition of the prophet, his childhood experiences, and motivations for describing certain abominations may remain unpersuasive to many (including myself), there are aspects of his methodology that are similar to the analysis I use in this study. Like Halperin, my first priority is to understand the internal logic of the book of Ezekiel through a careful philological examination of specific texts within chapters 1-33. This textual analysis also attempts to consider the wider ancient Near Eastern traditions that seemed to influence the final form(s) of the book. Building upon this foundation, I attempt to recover the (legal) logic that unites the book of Ezekiel and helps it achieve its rhetorical purposes. Lastly, I use psychological frameworks – specifically the theories of Erik Erikson and Urie Bronfenbrenner – to associate the legal logic my analysis revealed with one purpose of Ezekiel 1-33, i.e., articulating Judahite identity in light of the reality of Neo-Babylonian domination in the sixth century BCE. By using psychological tools to analyze the *text*, I depart from those scholars who have tried to develop a psychological profile of the *person* behind the text. Instead, I argue that the text provides a glimpse into

³⁰⁷ Halperin, *Seeking*, 167. In discussing the lurid language of Ezekiel 16 and 23, Halperin also suggests that the descriptions reflect the prophet’s childhood trauma and that the Babylonian exile triggered flashbacks to those events. See Halperin, 167. His insistence upon the prophet’s childhood trauma and its impact upon the prophetic text has reappeared in a modified form. Daniel Smith-Christopher, for example, is one of the prominent scholars advocating for reading the Hebrew Bible, specifically the book of Ezekiel and other “exilic literature,” through the lens of trauma and PTSD. For Smith-Christopher, exile “is a form of disaster and trauma that is inseparably connected to human actions related to power, dominance, and brutality” (Smith-Christopher, *Biblical Theology of Exile*, 21). Thus, he critiques scholars who read the book apart from the “exile as a real event where human beings deeply suffered...” (89). As a result of this trauma hermeneutic, Smith-Christopher is critical of Halperin’s psychological assessment of the sexual nature of Ezekiel’s Temple Vision. For example, Smith-Christopher rejects the assignment of some sexual pathology based upon the digging a hole through the wall in Ezekiel 8. (Smith-Christopher, *Biblical Theology of Exile*, 87).

the world in which the text was produced and what issues may have precipitated its creation.³⁰⁸ More precisely, I contend that the application of the theories of Erikson and Bronfenbrenner to the juridical diction and other legal elements illumines how the book of Ezekiel seeks to advocate for a specific conceptualization of corporate Judahite identity.

In summation, unlike many early studies, my appropriation of psychology joins a growing trend among some biblical scholars who attempt to use psychological paradigms to study the *text* of Ezekiel rather than the *person* to whom the text is ascribed. As discussed earlier, the debates over the provenance of the book, its unity of authorship, and its connection to the historic prophet makes it difficult, if not impossible, to reconstruct accurately the *ipsissima verba* of the prophet. Accordingly, I concur with those scholars who warn against “trying to formulate a medical past of the exilic prophet.”³⁰⁹ Since “a great deal of history and, even more importantly, a great deal of *textuality* lies between us and ‘Ezekiel,’” Jobling correctly concludes that scholars should focus their analyses on what lies before us – a text.³¹⁰ Thus, my analysis of Ezekiel 1 – 33 with the EB Model in the following chapters avoids making judgments regarding the psychological wellbeing or motivations of the eponymous prophet.

³⁰⁸ As discussed, I agree that “Ezekiel’s” writing of the text and the text’s preservation can provide information regarding the issues the community faced, including what resources the community has to address those issues.

³⁰⁹ Garber, “Traumatizing Ezekiel,” 216.

³¹⁰ David Jobling, “An Adequate Psychological Approach to the Book of Ezekiel,” in *Psychology and the Bible: A New Way to Read the Scriptures*, ed., J. Harold Ellens and Wayne G. Rollins (Westport: Praeger, 2004), 204.

2.2 JUDAHITE IDENTITY AND PSYCHOLOGICAL METHODOLOGIES: A BRIEF OVERVIEW

As the preceding discussion of “Ezekiel” and his book may indicate, the Hebrew Bible (and the prophetic corpus specifically) attracts a wide range of scholarly approaches to decipher the texts’ meaning and function. One approach that has emerged within the past thirty years is to investigate how the Bible preserves arguments about the proper configuration of Judahite identity.³¹¹ To investigate issues concerning identity, scholars tend to focus their analyses upon biblical texts that originated in the Neo-Babylonian, Persian, or Hellenistic eras.³¹² The dominant social scientific category used to study Judean identity in antiquity is ethnicity. Despite the prevalence of this term in biblical scholarship, there is no consensus regarding its proper definition or the most appropriate measures to account for its emergence. As Goodblatt rightly points out, the abundance of definitions and usages of the term ethnicity (and related concepts such as nation and race) has led to a great deal of confusion and imprecision among biblical scholars.³¹³ This situation within biblical scholarship reflects aspects of the current

³¹¹ See Appendix A, which contains two ngrams that graphically illustrate the increased attention scholars are paying to issues of identity development.

³¹² Some of the more regularly cited studies among biblical scholars on Judahite identity include: M.G. Brett, ed., *Ethnicity and the Bible* (London: Brill, 1996); Kenton Sparks *Ethnicity and Identity in Ancient Israel: Prolegomena to the Study of Ethnic Sentiments and their Expressions in the Hebrew Bible* (Indiana: Eisenbrauns, 1998); Shaye Cohen, *The Beginnings of Jewishness* (Berkeley: University of California Press, 1999); John Collins *Jewish Cult and Hellenistic Culture: Essays on the Jewish Encounter with Hellenism and Roman Rule* (London: Brill, 2005); Gary N. Knoppers and Kenneth Ristau, eds., *Community Identity in Judean Historiography* (Indiana: Eisenbrauns, 2009); and Oded Lipschitts, Gary N. Knoppers, and Manfred Oeming, eds., *Judah and the Judeans in the Achaemenid Period: Negotiating Identity in the International Context* (Indiana: Eisenbrauns, 2011).

³¹³ See Goodblatt, 5-6. Although this observation is true, it is worth noting that Goodblatt makes this claim in the context of his defense of using the terminology “nationalism” – a word that many have criticized for being an inappropriate label to apply to ancient contexts. Goodblatt concludes that

landscape of ethnic or racial studies and identity formation within social psychology itself.

Within social psychological research on identity formation, researchers are attempting to clarify “the considerable confusion about racial and ethnic identity constructs and the tools available to assess them.”³¹⁴ Of the recent developments in the field, perhaps two are most significant for my study. The first is the increasing realization that ethnic identity is a multidimensional construct. The second is that any measurement model that intends to account for this multidimensional construct needs to consider the impact of a multi-cultural environment upon ethnic constructs.³¹⁵

Although the term “ethnicity” remains problematic, classifying Judeans as an ethnicity provides the platform for a variety of methods and social scientific tools used by biblical scholars. Perhaps the most common theorist that scholars reference in their analyses of Judahite identity is the anthropologist Fredrik Barth. A pattern among some scholars studying identity is to search for the emergence of certain conceptualizations of Judahite (or “Jewish”) identity.³¹⁶ By searching for a “when,” these scholars often look

nationalism is just as appropriate a label as ethnicity and is largely synonymous. For fuller version of his argument, see Goodblatt’s opening chapter “Theoretical Considerations: Nationalism and Ethnicity in Antiquity,” 1-27.

³¹⁴ Trimble, 247. See also Timothy Smith and Lynda Silva “Ethnic Identity and Personal Well-Being of People of Color: A Meta Analysis” *Journal of Counseling Psychology* (2011): 42-60 discussing the variety of conceptions regarding ethnic identity and the need to account for the various processes that inform and shape ethnic consciousness.

³¹⁵ See e.g., Janet E. Helms, “Some Better Practices for Measuring Racial and Ethnic Identity Constructs” *Journal of Counseling Psychology* 54/3 (2007): 235-246; Janet E. Helms, et. al., “The Meaning of Race in Psychology and How to Change It: A Methodological Perspective” *American Psychologist* January 2005: 27-36; Kanchan Chandra “What is Ethnic Identity and Does it Matter?” *Annual Review of Political Science* 9 (2006): 397-424.

³¹⁶ See Joseph Blenkinsopp *Judaism, The First Phase: The Place of Ezra-Nehemiah in the Origins of Judaism* (Grand Rapids: Eerdmans, 2009). Other examples of scholars engaging in this type of analysis include, Rom-Shiloni, “Ezekiel to Ezra-Nehemiah,” 147 and Cohen, 70.

to the prophetic corpus, including the book of Ezekiel, to find the earliest traces of Judahite identity that are operative within later periods.³¹⁷

Barth contends that the “naïve assumption” and “simplistic view that geographical and social isolation have been the critical factors in sustaining cultural diversity” is no longer sustainable.³¹⁸ Rather, he concludes that “ethnic distinctions do not depend on an absence of social interaction and acceptance, but are quite to the contrary often the very foundations on which embracing social systems are built.”³¹⁹ Moreover, and perhaps most importantly for biblical scholars’ appropriation of Barthian ideals, F. Barth asserts that ethnic identity entails “social processes of exclusion and incorporation whereby discrete categories are maintained *despite* changing participation and membership in the course of individual life histories.”³²⁰ Building upon this theoretical foundation, Barth argues that ethnicity is defined by three primary boundaries: (i) genealogical characteristics; (ii) cultural traits such as language, religion, customs, shared history; and (iii) inherited phenotypical characteristics.³²¹ Biblical scholars’ analyses appropriate this Barthian model by focusing upon distinctive cultural/religious identifiers (e.g.,

³¹⁷ Recent monographs by Dalit Rom-Shiloni and Joseph Blenkinsopp are examples of this phenomenon. For example, Dalit Rom-Shiloni argues that “the prophet of the Jehoiachin Exiles [Ezekiel] *laid the foundation* for exilic identity ideologies that operate throughout the Neo-Babylonian and Persian periods, in both Babylon and Yehud.” (*Exclusive*, 13 [emphasis added]).

³¹⁸ Barth, *Ethnic Groups*, 9.

³¹⁹ Barth, *Ethnic Groups*, 10.

³²⁰ Ibid., 10 (emphasis in original). See also, Sparks, *Ethnicity and Identity*, 19 fn. 58 making a similar observation regarding the centrality of this Barthian proposition to biblical scholars’ analysis of identity. As I will discuss, Dalit Rom-Shiloni’s monograph on identity and the book of Ezekiel continues this Barthian pattern of focusing on processes of exclusion and inclusion. Although she uses other theorists, Barth is cited and the processes of exclusion/inclusion are key components in her analysis – a fact that the title of the monograph reveals: *Exclusive Inclusivity*.

³²¹ Barth, *Ethnic Groups*, 1-39.

circumcision), material culture artifacts, and assertions of Judahite/Jewish identity over and against rival groups – whether those rivals are external to the nation or internal to it. While several examples exist, a brief overview of two that are representative will illustrate how Barthian concepts are prevalent in biblical scholars’ treatment of Judahite identity.

2.2.1 Shaye Cohen

The publication of Shaye Cohen’s study, *The Beginning of Jewishness*, is one of the watershed moments in biblical scholars’ investigation of Jewish identity. Cohen’s primary project is to understand the Jewish division of the world between “Us” and “Them” by examining “the creation of this boundary during the formative period of Judaism, the second century B.C.E. to the fifth century C.E.”³²² He is among a group of scholars who focus on the Jewish experience in the Hellenistic and Roman eras, which have drawn significant attention because “the issue presents itself in a much more clear-cut manner.”³²³

Cohen’s study begins with an acknowledgement that “Jewish identity in antiquity was elusive and uncertain.”³²⁴ He identifies the lack of a simple definition of “Jewishness” and the permeability of the boundaries between “Jew” and “Other” as the

³²² Cohen, *Beginning*, 341.

³²³ Joachim Schaper “Torah and Identity in the Persian Period,” 29 in *Judah and the Judeans in the Achaemenid Period*. See also, Collins, *Jewish Cult*, 42. Despite Cohen’s focus on a later period of Jewish identity, his analysis and appropriation of certain social scientific tools has influenced how many scholars conceive of and address the question of Jewish identity throughout antiquity.

³²⁴ Cohen, *Beginning*, 3.

primary root of this ambiguity.³²⁵ Cohen argues the terms *Yehudi* and *Ioudaios* (the Greek equivalent of the Hebrew term *Yehudi*) originally meant “a member of the tribe of Judah.”³²⁶ Later, they came to carry three distinct, but inter-related, meanings during the period of his study: “(i) a Judean (a function of birth and/or geography); (ii) a Jew (a function of religion or culture); and (iii) a citizen or ally of the Judean state (a function of politics).”³²⁷ He provides a relevant insight for my interest in the Babylonian and early Persian period:

Before the second or first century B.C.E. we can not speak of “Jewishness” but of “Judeanness.” “Judeanness” was a function of birth and geography; *Ioudaioi* belonged to the *ethnos* of Judeans in Judea [emphasis added].... Ethnic (or ethnic-geographic) identity is immutable; non-Judeans cannot become Judeans any more than non-Egyptians can become Egyptians or non-Syrians can become Syrians.³²⁸

This conclusion furthers Cohen’s overall project of demonstrating the changing valence of the term *Ioudaios*, which moves from a primarily ethnic-geographic marker to a religious and political one. Primarily as a result of this shift, he argues does “Jewishness” proper emerge and the prospect of non-Judeans becoming Jews (i.e., conversion) enters Jewish reality – a reality that requires a redefinition of the boundaries inscribing the Jewish community.³²⁹

From the perspective of social scientific theory and methodology, Cohen’s work continues the trend of including (and often relying upon) Barth’s definition of and method for studying an ethnicity. When scholars explicitly state their methodology,

³²⁵ Cohen, *Beginning*, 4.

³²⁶ Cohen, *Beginning*, 70. Cohen also cites Josephus’ explanation as support of this contention.

³²⁷ Cohen, *Beginning*, 70.

³²⁸ Cohen, *Beginning*, 109 (emphasis added).

³²⁹ See Cohen, *Beginning*, 132-139, especially 137-139.

many continue to appeal to Barth's tri-partite definition.³³⁰ Two aspects of Barth's formulation continue to exert a tremendous influence upon biblical scholars' investigation of Judahite identity. First, scholars continue to describe Judahite identity development within the framework that ethnicity is formed (or concretized) within the context of an encounter with others.³³¹ Put another way, the construct of identity is formed by erecting boundaries that distinguish "us" from "them."³³² Cohen, for example, agrees with Barth who concluded that "boundaries are essential to ethnicity."³³³ He diverges from the Barthian model, however, as it pertains to the importance of the boundary and the "material" inside the borders. For Barth, the emphasis should be placed on the boundaries that separate one group from another. The culture, i.e., the 'material' inside the boundaries, is of secondary importance. In contrast, Cohen argues, "a study of identity needs to focus not just on boundaries but also on the territory that it encircles."³³⁴ Consequently, his categorization of Jews as an *ethnos* asserts that the "boundary that separates Jews from non-Jews...is an expression of Jewish identity, not synonymous with it."³³⁵ Thus, Cohen's principal critique is not that accounting for such boundaries should be ignored within studies of identity development, but rather that Barth mishandled the

³³⁰ See Rom-Shiloni, *Exclusive*, 23

³³¹ See e.g, Sparks, *Ethnicity*, 9 fn. 58.

³³² As I will discuss later, Dalit Rom-Shiloni's discussion of identity formation in the book of Ezekiel is a recent example of this aspect of the Barthian model.

³³³ Cohen, *Beginning*, 5-6.

³³⁴ Cohen, *Beginning*, 6.

³³⁵ *Ibid.*, 6.

nature of the boundaries between ethnic groups and the boundaries' relationship to culture.

Second, the types of evidence scholars adduce from biblical texts regarding Judahite identity development tend to focus upon Barthian boundaries and have, consequently, tended to focus on how biblical texts use common ancestral claims (e.g., genealogies), founding mythologies (e.g., Exodus narrative), and distinctive cultural/religious elements (e.g., dietary restrictions and worship of YHWH). For example, Kanchan Chandra's definition of ethnic identity includes a subset of categories called "descent-based attributes."³³⁶ These attributes include "those acquired genetically (e.g., skin color, gender, hair type, eye color, height, and physical features), through cultural and historical inheritance (e.g., name, language, place of birth, and origin of one's parents and ancestors), or in the course of one's lifetime as markers of such an inheritance (e.g., last name or tribal markings)."³³⁷ Similarly, Trimble identifies a common ethnic homeland as a necessary element of ethnic identity constructs.³³⁸ As further proof of the prevalence of ancestral homeland in defining ethnic identity, Trimble cites the U.S. Census Bureau's definition of ethnic identity and ancestry, which defines ancestry as "a person's ethnic origin, heritage, descent, or 'roots,' which may reflect their place of birth, place of birth of parents or ancestors, and ethnic identities that evolved within the United States."³³⁹

³³⁶ Chandra, "Ethnic Identity," 400.

³³⁷ *Ibid.*, 400.

³³⁸ Trimble, "Prolegomena," 249. See also Chavez, "Identity Development," 40; and Chandra, "Ethnic Identity," 398.

Among biblical scholars studying identity during the era of Babylonian domination, the centrality of land to Judahite identity, and some later expressions of Jewish identity, is widely accepted. From a theoretical standpoint, most biblical scholars agree that geographical location and connection to a specific territory are fundamental markers of ethnic identity constructs. For example, Gary Knoppers concludes, “founding myths, ancestral claims to a shared territory, and related lineage structures function as corporate markers to authenticate collective membership and to lend internal cohesiveness to the group.”³⁴⁰ Because of the centrality of land, several scholars argue that a central component of the experiences of Babylonian conquest relates to the compulsory dispossession of Judean territory.³⁴¹ Martien A. Halvorson-Taylor, for example, argues that the biblical record defines the exile as the experience of landlessness and “geographical displacement.”³⁴² The consequence, according to some biblical

³³⁹ Trimble, “Prolegomena,” 251 (quoting U.S. Census Bureau, 2004, 1). The Census Bureau also acknowledges individuals will define ethnicity and ethnic origins differently, which further complicates the investigation of ethnicity – a point that social psychologists have repeatedly emphasized.

³⁴⁰ Knoppers, *Community Identity*, 2. See also Anita Norich, “Jewish Literatures and Culture: Context and Intertext” in *Jewish Literatures and Cultures: Context and Intertext*, 2 (arguing that land is an element central to Jewish culture). Scholars making similar claims throughout the history of Judean or Jewish identity, see e.g., Joachim Schaper, “Torah and Identity in the Persian Period” in *Judah and Judeans in the Achaemenid Period*, 28; Katherine Scott, “A Comparative Study of the Exilic Gap in Ancient Israelite, Messenian and Zionist Collective Memory” in *Community Identity in Judean Historiography: Biblical and Comparative Perspectives*, 55; and Doron Mendels, *The Rise and Fall of Jewish Nationalism: Jewish and Christian Ethnicity in Ancient Palestine*, 3 (discussing Josephus’ observation concerning Jewish concerns for a Palestinian national state)

³⁴¹ The idea of compulsory dispossession is the foundational premise of John Ahn’s work in which he analyzes the Babylonian exile (and select texts produced during this epoch) through the lens of forced migrations. Although Ahn’s monograph is not the first to discuss geographic dislocation as a critical aspect of the era of Babylonian domination, it is cited in some literature regarding the importance of land and the impact of the compulsory abandonment of that land. See John Ahn *Exile, Literature and Theology*, 25-29.

³⁴² See Halvorson-Taylor, *Enduring*, 8. Additionally, Smith-Christopher’s *Religion of the Landless* and Jill Middlemas’ *The Templeless Age: An Introduction to the History, Literature, and Theology of the "Exile"*. (Louisville, KY: Westminster John Knox Press, 2007) who argue that the central element of the exilic crisis involves disconnection from the land and, in the case of Middlemas, from its most important landmark – the Temple. For each of these scholars, the disconnection from the homeland and its symbol required a reconstitution of religious and ethnic identity.

scholars, is that the centrality of land and its changing import in the later Persian and Hellenistic eras is one of the lines of demarcation separating early from late constructs of Jewish identity. Specifically, later conceptualizations of Judean or Jewish identity begin to emerge that lessens the connection between Judean identity and the land of Judea.

Cohen argues that *Ioudaios* is an “ethnic-geographic term parallel to terms like Egyptian, Cappadocian, Thracian, Phrygian, and so forth, which are both ethnic and geographic.”³⁴³

But, as a result of Judeans living in the Diaspora, Cohen concludes that the geographic meaning of *Ioudaios* “became attenuated [and] the ethnic meaning came to the fore.”³⁴⁴

This “shift” permits and reflects a reinterpretation of both the nature of exile and Judean identity. In Halvorson-Taylor’s words, Jewish identity in later periods conceive of exile “primarily as estrangement from YHWH, rather than alienation from the land or the temple.... and thus it is possible for people to return to YHWH without returning to *Yehud*.”³⁴⁵ With respect to Judean identity, the experience of the Babylonian exile and subsequent Persian Empire produced “a transformation in the nature of the Judean people from a people that is restricted to a certain land in the southern Levant to one that operates in different lands.”³⁴⁶ Following this idea of a transformation in Judean identity,

³⁴³ Cohen, *Beginning*, 72.

³⁴⁴ Cohen, *Beginning*, 74.

³⁴⁵ Halvorson-Taylor, *Enduring*, 194.

³⁴⁶ Knoppers, “Ethnicity,” 168. He reaches this conclusion in the context of his discussion of Ezra’s nomenclature regarding the בני הגולה as co-terminus with ישראל. See Ibid., 167-171. Although Knoppers discusses the “dynamic and complex view of identity formation” in Ezra, he continues the common (and, in my opinion, inaccurate) practice of dividing Judean identity formation into discrete eras that can be traced linearly through time. As will be discussed in more detail later, the language of “shifts from ‘x’ to ‘y’” permeates biblical scholars’ discussion of identity and often obscures the “dynamic and complex” nature of identity formation. Particularly in light of social-psychology perspectives on identity formation, I will propose alternative language that allows for a more accurate description of this phenomenon.

Cohen argues that he can trace the changing valence of *Ioudaios* from a primarily ethnic marker to a religious and political one. The most important consequence of this shift for his project is that “religious and political identities are mutable,” while ethnic identity markers are fixed.³⁴⁷ Therefore, “with the emergence of these new definitions in the second century B.C.E., the metaphoric boundary separating Judeans from non-Judeans became more and more permeable. Outsiders could become insiders.”³⁴⁸ For Cohen and others, the permeability of this religious-political identity becomes the basis for gentile conversion and less geographically rooted understanding of Judean identity.³⁴⁹ While all of these analyses provide valuable insights, they are rooted in Barthian categories such as land and geography – a foundation that makes it difficult to incorporate legal material into such investigations.

The second significant aspect of Cohen’s methodology is his appropriation of Benedict Anderson’s 1991 work entitled, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. In this book, Anderson argues for understanding “the formation of ethnic and other cultural groups is based on an *idea*, an act of the imagination.” Consequently, commonalities (such as language, race, or religion) do not by themselves constitute a national or group identity, but are rather the elements the collective act of imagination incorporated to define the particular identity. Anderson’s

³⁴⁷ Cohen, *Beginning*, 110.

³⁴⁸ Cohen, *Beginning*, 110.

³⁴⁹ See Cohen, *Beginning*, 136-139 (discussing the incorporation of non-Judeans into “Jewish” identity, via political and religious means, as a significant innovation of Jewish identity under Hellenistic domination). See also, Ehud b. Zvi, “The Conceptual Gap between DtrH and Chronicles” in *Community Identity*, 76-77 (arguing that Israelite-Judean historiography reflects a shift from geographical boundaries to a “corporate, trans-temporal identity [in which]... the only permanent and central character in the histories, besides Israel, is YHWH the God of Israel.”)

thesis regarding imagination becomes a foundational aspect of Cohen’s examination of Jewishness. Cohen introduces his study of Jewishness by stating, “Jewishness, like most – perhaps all – other identities is imagined...”³⁵⁰ An implication of this “imagined” identity, according to Cohen, results in accepting that Jewishness “has no empirical, objective, verifiable reality to which we can point and over which we can exclaim, ‘This is it!’ Jewishness is in the mind.”³⁵¹ While ethnic identity might be imagined, neither Cohen nor Anderson ignores the cultural productions of these groups or the ways in which this imagined community expresses (or how others discuss) its distinctive identity.³⁵² Cohen’s appropriation of Anderson’s method is consistent with the growing trend in social psychology and ethnic studies that argues that all identity is constructed. As I will argue in this study, the ways the book of Ezekiel deploys juridical diction, legal imagery, and courtroom metaphors in “constructing identity” provides another, fuller perspective on how the Judahite community conceived of its identity.

³⁵⁰ Cohen, *Beginning*, 5.

³⁵¹ Cohen, *Beginning*, 5.

³⁵² Social scientists and psychologists have long accepted that stories and narratives play a significant role in the definition and articulation of identity, including: Anthony Smith, *The Ethnic Origins of Nations* (Oxford: Basil Blackwell, 1986), 3; Craig Calhoun, “Nationalism and Civil Society,” *International Journal of Sociology* 8/4 (1993): 387-411; Thomas Scheff, “Emotions and Identity: A Theory of Ethnic Nationalism,” in *Social Theory and the Politics of Identity*, ed. Craig Calhoun (Oxford: Blackwell Publishers, 1994), 277-303, esp. 280; and Gloria D. Gibson and Margaret R. Somers, “Reclaiming the Epistemological ‘Other’: Narrative and the Constitution” in *Social Theory and the Politics of Identity*, ed. Craig Calhoun (Oxford: Blackwell Publishers, 1994), 37-99, esp 39, 65.

2.2.2 Dalit Rom-Shiloni

Dalit Rom-Shiloni is a prominent scholar who discusses the ways the book of Ezekiel illustrates the developments in Judahite identity that the Neo-Babylonian conquest of Judah triggered.³⁵³ In her 2005 article, “Ezekiel as the Voice of the Exiles and Constructor of Exilic Ideology,” she argues that “Ezekiel’s sympathy with his brethren audience leads him to build a separatist ideology by which he *constructs the Jehoiachin Exiles’ exclusiveness over the community of Those Who Remained* in the homeland prior to the destruction of Jerusalem and its aftermath”³⁵⁴ Rom-Shiloni concludes this article by stating, “Ezekiel as an advocate of the Exiles formulates a concept of exile that enables continuity of Judahite existence outside the Land of Israel...”³⁵⁵ Rom-Shiloni’s arguments in this article informs her conclusions in her most recent monograph, *Exclusive Inclusivity: Identity Conflicts Between the Exiles and the People Who Remained (6th-5th Centuries BCE)*. Here, she analyzes how several biblical texts from the Persian and Neo-Babylonian periods contain evidence of internal disputes over membership in the Judahite community.³⁵⁶ Specifically, she argues that the exclusionary and separatist language found in Persian-period biblical literature is the

³⁵³ In addition to her recent monograph (which will be discussed), three of her other works that are most relevant for this project are: “Ezekiel as the Voice of the Exiles and Constructor of Exilic Ideology,” *HUCA* 76 (2005), 1-45; “Facing Destruction and Exile: Inner-Biblical Exegesis in Jeremiah and Ezekiel,” *ZAW* 117 (2005), 189-205; and “From Ezekiel to Ezra-Nehemiah: Shift of Group Identities within Babylonian Exilic Ideology,” in *Judah and the Judeans in the Achaemenid Period: Negotiating Identity in an International Context*, (ed. Oded Lipschits, Gary N. Knoppers and Manfred Oeming: Winona Lake: Eisenbrauns, 2011), 127-51.

³⁵⁴ Rom-Shiloni, “Voice,” 1 (emphasis added).

³⁵⁵ Rom-Shiloni, “Voice,” 20.

³⁵⁶ Rom-Shiloni, *Exclusive*, 19-30.

result of a century-long process of identity construction that began under Babylonian hegemony.³⁵⁷ With respect to Ezekiel, Rom-Shiloni asserts that “the prophet of the Jehoiachin Exiles [Ezekiel] *laid the foundation* for exilic identity ideologies that operate throughout the Neo-Babylonian and Persian periods, in both Babylon and Yehud.”³⁵⁸

To investigate these texts, she uses a social psychological framework to illumine how “each community constructed and reconstructed group beliefs in the process of self-definition, and developed counter-definitions to delegitimize the other(s).”³⁵⁹ Although she relies on theorists in addition to Fredrik Barth, Rom-Shiloni continues the Barthian pattern of focusing upon how group identities are formed in conflict with other groups.³⁶⁰ For example, the fact that she focuses on processes of “delegitimizing the other(s)” continues to apply Barth’s idea on how group identities are formed. Additionally, and perhaps more importantly, this focus on the (de)-legitimization of others tends to produce an emphasis upon the matters in dispute – matters that are most easily conceived of as phenotypical, cultural, geographical, and similar traits. Consequently, attention to the

³⁵⁷ Rom-Shiloni, *Exclusive*, 10.

³⁵⁸ Rom-Shiloni, *Exclusive*, 13 (emphasis added). She acknowledges that a book by Joseph Blenkinsopp influences her argument regarding the connection between Ezekiel and Ezra-Nehemiah and their projects of identity construction. See Joseph Blenkinsopp *Judaism, The First Phase: The Place of Ezra-Nehemiah in the Origins of Judaism* (Grand Rapids: Eerdmans, 2009).

³⁵⁹ Rom-Shiloni, *Exclusive*, 23.

³⁶⁰ In addition to the common citation of Fredrik Barth (see pg 23, fn. 76), Rom-Shiloni appropriates the models of three theorists: Daniel Bar-Tal; Henry Tajfel and John C. Turner. The works she references most are Daniel Bar-Tal, *Group Beliefs: A Conception for Analyzing Group Structure, Processes, and Behavior* (New York: Springer, 1990); idem, *Shared Beliefs in A Society: Social Psychological Analysis* (Thousand Oaks: Sage, 2000); and Henri Tajfel and John C. Turner, “The Social Identity Theory of Intergroup Behavior” in *Psychology of Intergroup Relations*, ed. S. Worchel and W. G. Austin (Chicago: Nelson-Hall, 1986), 7-24.

kind of juridical/legal language used and its significance for defining Judahite identity is often overlooked.

For example, Rom-Shiloni's focus on the traditional loci of Barthian categories and methods of analyzing identity formation seems to prevent a discussion of how the legal language affects the construction of Judahite identity, even though she acknowledges that legal claims appear in the book of Ezekiel. Rom-Shiloni correctly notes that both Ezekiel 11 and 33 involve disputes over who has proper title to the land of Israel/Judah.³⁶¹ Although she acknowledges this legal dispute, she concludes that "the Jerusalemites claim to hold a divine 'contract' for the land..." becomes fodder for "a theological argument of divine legitimization for their continuing existence as a community within the land."³⁶² While this conclusion is consistent with her analysis of selected biblical texts, the linking of this property dispute to "a theological argument of divine legitimization" fails to appreciate fully the consistent presence of legal elements throughout the book of Ezekiel and how these legal elements themselves are fundamental to the book's advocacy for a certain vision of Judahite identity.

Moreover, the fact that the author places the term "contract" in quotation marks may suggest an uneasiness or uncertainty regarding the appropriateness of this legal designation. What I contend is that the legal connotation is something that the author(s) of Ezekiel not only do not want readers to avoid but also intend for readers to embrace. As I will argue throughout this project, the juridical elements are neither incidental to nor on the periphery of Ezekiel 1-33's arguments regarding Judahite identity. Instead, the very nature of Judahite identity is inexorably linked to the juridical valences and legal

³⁶¹ See Rom-Shiloni, *Exclusive*, 145-150.

³⁶² Rom-Shiloni, *Exclusive*, 147.

formulations that run throughout Ezekiel 1-33. Put another way, without an adequate accounting for the prevalence and purpose of these legal elements in Ezekiel 1-33, the precise vision of Judahite identity the author(s) advocate cannot be appreciated fully.

During her explanation of Ezekiel's exclusivist agenda, Rom-Shiloni correctly acknowledges the presence of redactional layers within the book of Ezekiel that post-date the prophet's oracles (e.g, Ezek 16:44-63 and 34-37) and that these layers reflect different ideological stances.³⁶³ She argues that one can trace a movement from the extreme exclusivity of Ezekiel himself to a more moderate exclusivity, one that "broadens the in-group circle to include all Exiles, regardless of their time of deportation...but maintains his in-group/out-group split between the exilic and Yehud-based Judean groups."³⁶⁴

While this conclusion and approach to the redactional strata in Ezekiel is necessary for her argument, it continues the Barthian method of defining ethnic/group identity within the context of specific characteristics, in this case geographical origins and connections, which obscures the impact of legal elements upon articulations of Judahite identity.

Also, the focus on the "in-group/out-group" continues to emphasize what elements distinguish one group from another rather than how those distinctions are formulated and the legal elements that are connected to such distinctions. As I will argue in the final chapter of this dissertation, Ezekiel 16 concludes with specific legal locutions that define the nature of the continuing covenantal relationship between YHWH and the Judahites, including how that covenantal relationship describes the essence of Judahite identity.

³⁶³ See, Rom-Shiloni, *Exclusive*, 186-192. Here, she analyzes Ezekiel 16:59-63 to demonstrate both its lateness and how it reflects a different attitude towards the larger Babylonian community of exiles.

³⁶⁴ Rom-Shiloni, *Exclusive*, 196-197.

Rom Shiloni also references Kenton Sparks' study on ethnicity as an important part of the history of biblical scholars' investigation of Judahite identity.³⁶⁵ Sparks focuses his investigation upon identity formation in the period of Israelite history before the Persian period.³⁶⁶ Pointing to Judges 5, Sparks argues that the link between a specific territory and Judean/Israelite identity can be found already in the early part of the first millennium BCE.³⁶⁷ This tradition in the Song of Deborah, he maintains, reflects the presence of an "Israelite ethnicity" consisting of a "common devotion to the god Yahweh, and this religious distinctiveness, joined with other sociological, political, and geographical distinctives, served to divide the Israelites from the nearby peoples – in this case from the Canaanites."³⁶⁸ Sparks, like Cohen and Rom-Shiloni, continues to rely upon Barthian categories and approaches.³⁶⁹ Most relevant for this project is Sparks' continued reliance upon a framework for ethnic identity that reflects Barth's influence – namely, (i) ethnicity as genetic perception; (ii) phenotypical characteristics; and (iii) ethnic sentiments arise in contrast to other social groups.³⁷⁰ Sparks defines the component of ethnicity relating to genetic perception as "the *idea* that the group in some way shares

³⁶⁵ See Rom-Shiloni, *Exclusive*, 19.

³⁶⁶ See Sparks, *Ethnicity*, 1.

³⁶⁷ Sparks, *Ethnicity*, 113. Because my project does not require defending Sparks' date of Deborah's Song, I have not summarized his argument here. The purpose of including Sparks is simply to demonstrate the consensus among biblical scholars that land or a shared territory has a long history in Israelite conceptions of their corporate identity. For his argument regarding the dating of Deborah's song, see Sparks 109-113.

³⁶⁸ Sparks, *Ethnicity*, 123.

³⁶⁹ Sparks, *Ethnicity*, 19.

³⁷⁰ See Sparks, *Ethnicity*, 18-21. His overall "eclectic paradigm" has five elements. The two not enumerated above are: (i) ethnic identities are highly fluid and (ii) ethnicity as one of many behaviors only perceptible in certain contexts.

a common ancestry.”³⁷¹ By emphasizing the idea, Sparks echoes the sentiments expressed by Cohen, Anderson and others who speak of identity as constructed and thus *ahistorical*. In Sparks’ words, the genetic perception “is quite apart from the question of whether the individuals in the group are *actually* related.”³⁷² He further describes this aspect of his paradigm in terms of ethnicity being an extension of kinship, which requires understanding that “other factors, such as language, culture, religion, and history contribute to but are not, alone, indicators of ethnic sentiment.”³⁷³ As Sparks develops this element of his model, he argues that land, kingship, divinity, and the relationship between these three institutions were core elements of certain ANE conceptions of ethnicity.³⁷⁴ According to Sparks, these core pieces influenced early Israelite conceptions of themselves and came to embody the primary distinctive elements between Israelites and “others,” particularly the Canaanites in the ninth century B.C.E.³⁷⁵

Another aspect of Sparks’ model that reflects Barth’s influence – ethnic sentiments arise in contrast to other social groups – is regularly discussed in the literature concerning alterity and otherness. Within biblical scholarship, ethnic studies, and social psychology, the encounter with “the other” has been viewed as the point at which ethnic sentiments are created and/or intensified.³⁷⁶ The “other” has been the one aspect of

³⁷¹ Ibid., 18 (emphasis added).

³⁷² Sparks, *Ethnicity*, 18-19 (emphasis added).

³⁷³ Sparks, *Ethnicity*, 19. Here, Sparks is relying in part upon Clifford Geertz’s article, “The Integrative Revolution: Primordial Sentiments and Civil Politics in the New States” in *The Interpretation of Cultures*, New York: Basic Books, 1973, 255-310 and Harold Isacc’s article “Basic Group Identity”

³⁷⁴ See Sparks’ second chapter, “Ethnicity and Identity in Israel’s Ancient Context,” 23-93.

³⁷⁵ See Sparks, *Ethnicity*, 122-124.

Barth's theory that, until recently, I have not seen questioned or challenged. There is great intuitive appeal to the concept that a particular group's identity will be defined in contrast to or over and against someone else's and it has been employed as a powerful heuristic in many fields of study. However, several social psychologists and scholars have begun challenging this assumption that identity is formed in competition with others. These scholars and researchers are suggesting that identity formation (particularly in the context of group or ethnic identity) should not be construed as an epic battle between "us" and "them." Rather, the reformulation of identity requires acceptance, appropriation and, in some cases, rejection of the "other" that a particular group has encountered.³⁷⁷

While these approaches have produced many insights into Judahite and Israelite identity development, the nature of the inquiry does not account for how these distinctions are articulated using specific juridical terminology nor does it recognize how the law can be one of these factors that defines a group. Similar to Rom-Shiloni and Cohen, Sparks' analysis does not incorporate fully legal elements into how certain biblical texts describe Judahite identity. As a result of this focus, the legal nature of how these distinctions were articulated in antiquity received little attention. Additionally, the presence of legal elements within the prophets, especially the book of Ezekiel, and their connection to the project of identity development received little attention. A tentative

³⁷⁶ Sparks, *Ethnicity*, 19. See also Sparks 19, fn. 57 and 58 for some sociological and anthropological literature that reach this conclusion. This conclusion was so widely held that Sparks begins footnote 58 with the words "all scholars."

³⁷⁷ See e.g., Louis Jonker, "Textual Identities in the Books of Chronicles" in *Community Identity in Judean Historiography: Biblical and Comparative Perspectives*, 204-205.

move in the direction of this dissertation is suggested in an article by David S. Vanderhooft entitled, “Ezekiel in and on Babylon.”

In this article, Vanderhooft focuses on processes of acculturation that the book of Ezekiel evidences and he argues that “the book of Ezekiel exemplifies the phenomenon of acculturation in a number of ways.”³⁷⁸ The most important part of his analysis for my project is his conclusion that the book of Ezekiel borrows Akkadian terminology from mercantile and legal spheres of daily life in Babylonia.³⁷⁹ For example, Vanderhooft notes that Ezekiel 16 (the focal text of the final chapter in this dissertation) contains legal locutions borrowed from Akkadian formulations of Neo-Babylonian marriage law.³⁸⁰ As mentioned in Chapter 1, though his acculturation model differs from the social-psychological model I will employ in this dissertation, Vanderhooft’s recognition that Ezekiel contains juridical terminology and that such terms may connect to Judahite identity informs my analysis. A contribution of my project is to illustrate how the consistent presence of legal elements throughout Ezekiel 1 – 33 shapes the logic and articulation of the book’s case for what it means to be a Judahite.

³⁷⁸ Vanderhooft, “Ezekiel,” 9.

³⁷⁹ See Vanderhooft, “Ezekiel,” 12. As discussed in Chapter 1, scholars are more sanguine regarding the actual presence of Judahites in Babylonia and their participation in (if not integration into) the daily business, legal, and economic realities of Babylonian life of the 6th – 5th c BCE.

³⁸⁰ See Vanderhooft, “Ezekiel,” 16-18. The term he focuses upon is נדנך – a term which appears in Ezek 16:33 and is connected to the Akkadian word describing a wife’s marital property (*nudunnum*). See also Yoram Cohen, “The Wages of A Prostitute: Two Instructions from the Wisdom Composition ‘Hear the Advice’ and An Excursus on Ezekiel 16, 33,” *Semetica* 57 (2015): 43-55.

2.3 ERIKSON-BRONFENBRENNER MODEL AND LEGAL ELEMENTS

As discussed in Section A, earlier appropriations of psychological paradigms focused on attempting to diagnose the historical Ezekiel, as a means of explaining the “strangeness” of the book. This approach is no longer as prevalent, but psychological categories and methods are still employed to explain the nature of the traumatic experiences shared by Ezekiel and his community.³⁸¹ In this dissertation, however, psychological tools are conscripted for a slightly different purpose. Biblical scholars, as discussed, are increasingly inter-disciplinary in their approaches to investigating biblical texts, particularly as it relates to identity development and formation and the field of psychology has contributed much to modern this understanding. These contributions, particularly as Erik Erikson and Urie Bronfenbrenner framed them, helped focus my attention on the ways law reflects larger societal values and priorities, as well as how law both affects and articulates identity development. The remainder of this chapter will outline briefly the constituent elements of what I labeled the “EB Model” and how it will be applied to my analysis of Ezekiel 16.

Erik Erikson’s theories regarding identity formation remain foundational for scholars studying identity in both individual and group contexts.³⁸² According to

³⁸¹ See Smith-Christopher, *Biblical Theology of Exile*, 21 and Dereck Daschke, “Desolate Among Them: Loss, Fantasy, and Recovery in the Book of Ezekiel,” *American Imago* 56 (1999): 105-132.

³⁸² Alicia Fedelina Chavez and Florence Guido-DiBrito, “Racial and Ethnic Identity Development,” *New Directions for Adult and Continuing Education* 84 (1999): 39-47. Additional researchers who assert that Erikson’s formulation is central to ethnic identity models include: Jean S. Phinney “Ethnic Identity in Adolescents and Adults: Review of Research” *Psychological Bulletin* 108/3 (1990): 499-514; Janet E. Helms, “Some Better Practices for Measuring Racial and Ethnic Identity Constructs” *Journal of Counseling Psychology* 54/3 (2007): 235-246, 236; Trimble, “Prolegomena,” 252;

Phinney, researchers often argue that Erikson's process of ego identity formation is analogous to the process of ethnic identity formation. In Phinney's words, "the formation of ethnic identity may be thought of as a process similar to ego formation that takes place over time, as people explore and make decisions about the role of ethnicity in their lives."³⁸³ Two specific aspects of Erikson's model are most relevant for this project. First, Erikson emphasizes the interplay between the individual's ego formation and the community's group identity. Specifically, he describes ego identity formation as a "process 'located' *in the core of the individual* and yet also *in the core of his communal culture*, a process which establishes, in fact, the identity of those two identities."³⁸⁴ For this project, the reality that "Ezekiel's" articulation of Judahite identity was preserved and modified (i.e., redacted and later codified) among Judahite communities starting in the 6th century BCE suggests that the text resonated with enough individuals to warrant such treatment. Consequently, the text of Ezekiel can serve not only as a glimpse into the eponymous prophet's "inner-life," but also (and most importantly for this project) a reflection of the issues, concerns, and potential solutions the communities who received this text experienced. I believe scholars who suggested that the texts' preservation

and Sarai S. Baylor, "A Survey of Key Ethnic and Racial Identity Issues with Implications for Christian Formation in Protestant Christian African American Women" (PhD diss., Biola University, 2012), 12.

Although Erikson's formulations are widely used, Joseph Trimble cautions against identifying one individual as the founder or originator of the theoretical model to understand ethnic or racial identity. In Trimble's words, anyone searching for the origins of such a model needs to understand "that there is no authoritative voice that captures the core of the constructs' connotation and utilization" ("Prolegomena", 247). Despite this caution, Trimble acknowledges the centrality of Erikson's formulation of ego identity formation and its impact upon ethnic/racial identity models. Erikson's most regularly cited works for his ego identity formation framework are: (i) Erik Erikson, *Identity: Youth and Crisis* (New York: W. W. Norton & Company, 1968) and (ii) idem, *Identity and the Life Cycle* (New York: Norton, 1980).

³⁸³ Phinney, "Ethnic Identity," 502.

³⁸⁴ Erikson, *Youth*, 22 (emphasis in original). See also Erikson, *Life*, 21 concluding that an individual's identity is "a successful variant of a group identity and is in accord with its space-time and life plan."

demonstrates that the community suffered from similar pathologies as “Ezekiel” correctly intuited, but inappropriately applied, a version of Erikson’s insight regarding the connection between individual and communal identities.³⁸⁵ Thus, this study will focus on what the text may tell us about what some members within the community of Judahites came to understand about their identity while living under Neo-Babylonian domination.

Second, Erikson emphasizes how an individual’s historical setting provides the repertoire of materials from which that individual constructs identity: “the historical era in which he lives offers only a limited number of socially meaningful models for workable combinations of identification fragments.”³⁸⁶ Moreover, according to Erikson, “the whole interplay between the psychological and the social, the developmental and the historical, for which identity formation is of prototypical significance, could be conceptualized only as a kind of *psychosocial relativity*.”³⁸⁷ The changing historical moments provide different “raw materials” that can be integrated, or rejected, in the process of identity formation. Thus, an examination of an entity’s identity formation must account for the particular, historical realities in which the subject lives.³⁸⁸ For this project, the legal locutions and juridical frameworks from Judahite and Babylonian

³⁸⁵ See Halperin, *Seeking*, 140.

³⁸⁶ Erikson, *Life*, 25.

³⁸⁷ Erikson, *Youth*, 23.

³⁸⁸ See also, Erikson, *Life*, 45. The highly contextualized nature of identity formation and development is a prominent unifying theme between the models Erikson and Bronfenbrenner proposed. Accordingly, the argument that laws (and the technical terminology that characterizes legal disquisitions) can be considered in evaluating a group’s articulation of their identity emerges from the claim that identity development must be understood within a variety of historical and social contexts.

traditions with which the authors of Ezekiel were acquainted are the primary historical realities I will investigate in analyzing the books portrait of Judahite identity.

Closely linked to these elements of Erikson's model, particularly the importance and relevance of the historical realities in which the subject *lives*, is the framework Urie Bronfenbrenner proposed. In the 1970s, Bronfenbrenner began developing a methodology to study the entire developmental process from childhood to adulthood in the subject's actual environments.³⁸⁹ As his methodology expanded to the entire developmental process, he proposed a "nested context approach" that spans the contexts most proximal to the developing individual to those that are most distal.³⁹⁰ The "nested context" model consists of five sub-systems within which an individual or group should be studied: (i) microsystem³⁹¹; (ii) mesosystem³⁹²; (iii) exosystem³⁹³; (iv) macrosystem;

³⁸⁹ Bronfenbrenner critiqued the standard practices of developmental psychologists who studied children's development in brief, artificial encounters within psychologist's office. For Bronfenbrenner, developing children should be studied in "settings representative of their actual world...one should study them in their homes, schools, and playgrounds" (*Making Human Beings Human: Bioecological Perspectives on Human Development* [London: Sage, 2005], x). His original formulation (although discussed in this 2005 work) first appeared in the following two works: (i) Urie Bronfenbrenner, "Toward An Experimental Ecology of Human Development," *American Psychologist* 32 (1977): 513-531; and (ii) Urie Bronfenbrenner, *The Ecology of Human Development: Experiments in Nature and Design* (Cambridge: Harvard University Press, 1979).

³⁹⁰ This phrase is often used to describe Bronfenbrenner's framework. In describing his own work, Bronfenbrenner used the metaphor of Russian nesting dolls to illustrate his approach to studying human development.

³⁹¹ Bronfenbrenner defined the microsystem as "the complex of relations between the developing person and environment in an immediate setting containing that person" ("Experimental," 514).

³⁹² This system describes the connections and links between microsystems.

³⁹³ See Bronfenbrenner, "Experimental," 515. He described this system as one that does not directly contain the subject but influences the settings where the subject is located and what occurs there. One of the examples Bronfenbrenner provided to illustrate this system was the work environment of a child's parent. Although most children do not regularly attend work with their parents, he argued that the parent's job and work environment nevertheless has an impact upon the child in his/her location.

and (v) chronosystem.³⁹⁴ For this study, the most relevant aspect of his theory regards the nature and function of the macrosystem. According to Bronfenbrenner, the macrosystem is the fourth context of his model and contains:

the overarching pattern of micro-, meso-, and exosystems characteristic of a given culture, subculture, or other extended social structure with particular reference to the developmentally instigative belief systems, resources, hazards, lifestyles, opportunity structures, life course options and patterns of social interchange that are embedded in such overarching systems.³⁹⁵

As I will argue, legal scholars have long recognized that the law functions in a society as a means of defining its core values and regulating social interactions among its members, including who can be a member of that society. This is subsumed within Bronfenbrenner's macrosystem. Thus, under the rubric of Bronfenbrenner's macrosystem, the book of Ezekiel's appeal to and usage of specific juridical terminology and legal imagery can be investigated to determine what bearing these legal locutions have on the development of Judahite identity.

Although Bronfenbrenner revised many aspects of these earlier formulations, his basic "theory was always (and explicitly) ecological, stressing person-context interrelatedness."³⁹⁶ As he expanded and clarified aspects of his theory, he defined more of the contextual factors and processes he deemed essential for understanding a subject's development. According to Tudge, a useful rubric to summarize Bronfenbrenner's final

³⁹⁴ See, Bronfenbrenner, *Making Human Beings Human: Bioecological Perspectives on Human Development* (London: Sage, 2005), 45-47. The purpose of this system is to capture development over time. In particular, Bronfenbrenner was interested in describing how one developmental phase/period affects latter phases and various socio-historical patterns that may impact the developing individual.

³⁹⁵ Urie Bronfenbrenner, *Making Human* 149-150.

³⁹⁶ Jonathan Tudge, Irina Mokrova, Bridget E. Hatfield, and Rachana B. Karnik, "Uses and Misuses of Bronfenbrenner's Bioecological Theory of Human Development," *Journal of Family Theory and Review* 1 (December 2009), 198-210, 199.

formulation of his theories is with the acronym PPCT.³⁹⁷ Heeding Tudge's caution concerning the need to explicitly state the aspect(s) and version(s) of Bronfenbrenner's theory a scholar appropriates,³⁹⁸ my work here focuses on his final articulation of the macrosystem, as well as the impact Bronfenbrenner argued historical context has on the subject's development. Similar to Erikson, Bronfenbrenner argued that the historical era in which a subject lives profoundly shapes both the form and nature of his or her identity. Specifically, Bronfenbrenner argued that "the form, power, content and direction of the proximal processes effecting development" vary according to several factors, including "the social continuities and changes occurring over *time* through the life course and the historical period during which the person has lived."³⁹⁹

The collective insights of Erik Erikson and Urie Bronfenbrenner shaped my approach to analyzing the book of Ezekiel in several important ways. First, Erikson and Bronfenbrenner emphasized the importance of understanding the historical era in which a subject lives. For both theorists, it exerts a powerful influence upon the development and articulation of identity, including the raw materials accessible to the subject as its identity forms. Consequently, attention to wider historical, cultural, and social phenomena is necessary to understand how identity develops, including how such developments are articulated. This focus on wider contextual factors is often lost in the Barthian analyses that, as I outlined above, have dominated biblical scholars' approaches to Judahite (or

³⁹⁷ Tudge, 200. PPCT represents: Process, Person, Context, and Time.

³⁹⁸ Tudge, 199.

³⁹⁹ Bronfenbrenner and Morris, "Ecology of Developmental Processes," 996 (emphasis in original). Bronfenbrenner also recognizes that spatial and temporal contexts will vary over time, even within the same subject's life. Thus, an effective model to trace such development must account for those changing contexts in any assessment of a subject's development.

Jewish) identity formation. In particular, focusing on phenotypical characteristics and distinctive “tribal” markers does not lend itself to consideration of broader historical influences upon identity development, such as the law. Thus, the studies surveyed earlier (Sparks, Cohen, and Rom-Shiloni) often do not consider how juridical terminology and legal metaphors may reflect and affect the articulation of identity development. One example mentioned earlier is Rom-Shiloni’s discussion of Ezekiel 8 – 11. Although she recognizes the presence of legal claims and that a ‘contract dispute’ is operative in these chapters, she situates the dispute within a “theological argument” rather than investigating the legal import of this property dispute and its affect upon Judahite identity.⁴⁰⁰

Second, building upon Bronfenbrenner and Erikson, this study proposes to use their framework (which I labeled the “EB Model”) to examine identity development in relation to the law. Law is considered an aspect of ancient Near Eastern society that can be conceptualized as part of the macrosystem influencing identity development. In particular, laws, and related imagery, reflect “belief systems” and regulate “patterns of social interchange” that are classifiable as constituent elements of Bronfenbrenner’s macrosystem. Similarly, scholars of both ancient and modern legal systems/cultures recognize that laws represent what Erikson called a “socially meaningful model” to which subjects can appeal to articulate their developing identity. As contemporary legal scholar Meir Dan-Cohen argues that the law, specifically criminal law, “is (in part) an embodiment of the community’s morality. One of the functions of criminal laws is to reinforce that morality by encouraging behaviors in accordance with specific moral

⁴⁰⁰ See *infra*, pp. 106-107.

precepts.”⁴⁰¹ The communal function and prevalence of law and its locutions suggests that it can be deemed among those “socially meaningful” resources or models Erikson and Bronfenbrenner referenced. Judahite deportees were involved in activities that allowed them to become familiar with Neo-Babylonian legal proceedings and terminology, as Roth, Vanderhooft, Malul and others have demonstrated. Consequently, it is not surprising that the book of Ezekiel – a book whose genesis, if not final form, can be located in a sixth century Babylonian environment – contains such juridical terminology, legal images, and courtroom metaphors that were present at that time. The EB Model provides a heuristic framework within which these legal elements in the book of Ezekiel can be analyzed to determine what impact they have upon the definition of Judahite identity.

2.4 CONCLUSIONS

In summation, the study of Judahite identity among biblical scholars has been primarily a Barthian project. The preceding analysis has outlined the Barthian nature of this project in several ways. First, the vast majority who articulate a specific

⁴⁰¹ Meir Dan-Cohen, “Decision Rules on Acoustic Separation in Criminal Law,” *Harvard Law Review* 97, (1984), 649. For a similar argument, see also David Richards, “Rights, Utility, and Crime,” *Crime and Justice* 3 (1994), 221. Within the ancient Near Eastern context, Raymond Westbrook and Martha Roth are two of the leading scholars who suggest that a wider ancient Near Eastern legal tradition is operative in Mesopotamia and Judah/Israel. This ANE legal tradition seems to function in a manner similar to what Cohen, Richards, and others who study modern American jurisprudence advocate. See e.g., Raymond Westbrook, “The Character of Ancient Near Eastern Law” in *A History of Ancient Near Eastern Law* vol. 1 (ed. Raymond Westbrook Hd) 72 Leiden: Brill, 2003), 1-90 and Martha Roth, “Ancient Rights and Wrongs: Mesopotamian Legal Traditions and the Laws of Hammurabi” *Chicago Kent Law Review* 70 (1995): 13-39.

As I will argue in subsequent chapters, the book of Ezekiel uses juridical diction, legal imagery, and courtroom metaphors for the precise purpose Cohen identifies – namely, as a means of articulating and justifying specific conduct that is intended to govern and define the Judahite communities in Babylonia.

methodology in their analysis of biblical texts explicitly cite Frederick Barth's formulation. Second, they focus on various characteristics, such as geographical, linguistic, and cultural as the principal material to investigate for evidence of identity development – elements of Barth's model – within their actual analyses. Third, the insistence that these identity claims are asserted in conflict/contradistinction from other groups is common. Consequently, the focus of scholars' investigation of Judahite identity is narrowed and does not include wider cultural phenomena. Law is one of these phenomena that simply is not (and perhaps *cannot* be) analyzed within the defined structure of a Barthian model.

On the other hand, the EB Model, with its focus on how wider contextual factors influence a subject, provides a framework within which legal material in the book of Ezekiel can be considered in relation to identity development. As discussed, several scholars have noted the *fact* that legal elements are present in the book of Ezekiel but they have not examined them to see how they define and describe Judahite identity. The overarching legal nature of Ezekiel 1 – 33, its strategic deployment of juridical terminology, imagery, and metaphors throughout the text, and how this connects to the book's image(s) of Judahite identity will be the focus of the remainder of this dissertation.

3.0 CHAPTER 3

The Accuser's Indictment: YHWH's Judicial Disposition and Rhetorical Function of the Parties' Silence

In this dissertation, I am arguing that the book of Ezekiel uses legal metaphors, courtroom imagery, and juridical diction in distinctive ways to advocate for what the book asserts is the appropriate conceptualization of Judahite identity in the wake of Babylonian domination. Specifically, the book attempts to prove through a juridical framework informed by criminal legal proceedings that a covenantal relationship with YHWH is a sufficient foundation for Judahite identity. To prove the validity of this position, the book argues that the Judahite exilic community (גולה) must first accept that their current hardships are the legally mandated and proportionally correct punishment for their criminal and cultic misconduct. Thus, Judahites' acceptance of their guilt and punishment within a technically conceived juridical framework is the *sine qua non* for their continued existence and is the cornerstone of Judahite identity.

In the previous chapter, I argued that despite the significant attention biblical scholars have given to the ways prophetic texts include discussions of Judahite identity development in the sixth century BCE, few biblical scholars have analyzed how the juridical diction and legal images within these texts contribute to the development of Judahite identity. A primary reason I identified for scholars' limited engagement with the

legal material in the book of Ezekiel is the consistent reliance upon the Barthian notions of identity formation. As argued in the previous chapter, this model has not provided a sufficient methodological framework to incorporate legal elements into the analysis of identity development. To account for the legal elements in the book of Ezekiel and their relationship to identity development, I outlined the Erikson-Bronfenbrenner Model (the “EB Model”) and argued that it provides the necessary tools to relate juridical diction and legal imagery, on the one hand, with identity development on the other -- especially through Bronfenbrenner’s “macrosystem.”⁴⁰²

In this chapter, I will examine how the legal tenor of the book of Ezekiel provides a hermeneutical framework to understand its argument regarding identity formation. Specifically, this chapter explores how this text describes the traditional (legal) roles of the principal parties and, strategically, subverts them within the context of a legal contest. In the initial section of this chapter, I will provide an overview of Judahite legal procedures that informs the book of Ezekiel’s construction. As the foundation for this reconstruction, I will examine Holtz’s outline of Neo-Babylonian temple legal procedures and the similarities between Ezekiel and those procedures. In the second section, I will discuss the current consensus that the book of Ezekiel employs legal elements – i.e., juridical diction, legal metaphors and courtroom imagery. Building upon this current consensus, I will argue in the final section that these legal elements are used to articulate

⁴⁰² As discussed in the second chapter, Erikson’s insistence upon the impact of historical contexts on identity formation is consistent with Urie Bronfenbrenner’s idea of a macrosystem. According to Bronfenbrenner, a macrosystem is “the overarching pattern of micro-, meso-, and exosystems characteristic of a given culture, subculture, or other extended social structure with particular reference to the developmentally instigative belief systems, resources, hazards, lifestyles, opportunity structures, life course options and patterns of social interchange that are embedded in such overarching systems.” (*Making Human Beings Human: Bioecological Perspectives on Human Development* [London: Sage, 2005], 149-150).

and justify YHWH's "judicial disposition."⁴⁰³ To demonstrate how the book accomplishes this last task, the following will be considered: (i) the description of the defendant; (ii) prohibition of prophetic advocacy; (iii) the defendant's silence; (iv) the repeal of prophetic restrictions; (v) absence of innocence; and (vi) the nature of oracular inquiries of YHWH.

3.1 JUDAHITE & NEO-BABYLONIAN LEGAL PROCEDURES

Before discussing Ezekiel's appropriation of legal roles and juridical terminology, it is necessary to outline the Israelite/Judahite legal precedents that inform the book's structure. The reconstruction of Israelite and Judahite legal proceedings is a difficult task for biblical scholars. First and foremost, we lack sufficient court records to reconstruct it. In addition to the paucity of court records, the surviving records are preserved within biblical narratives. Lastly, because they are preserved within narratives, it is difficult (if not impossible) to know if the biblical texts accurately reflect the legal system.⁴⁰⁴ Thus,

⁴⁰³ This term, "judicial disposition," will be defined later in this chapter.

⁴⁰⁴ Several scholars have identified these challenges in describing Judahite legal system(s). Among the scholars discussing these issues are: Bernard Levinson, *Theory and Method in Biblical and Cuneiform Law: Revision, Interpretation, and Development*. (Sheffield: Sheffield Academic Press, 1994); Pietro Bovati, *Re-Establishing Justice: Legal Terms, Concepts, and Procedures in the Hebrew Bible*. (trans. Michael Smith Sheffield: JSOT Press, 1994); F. Rachel Magdalene, *On the Scales of Righteousness: Neo-Babylonian Trial Law and the Book of Job*. (Brown Judaica Studies 248 Providence: Brown University Press, 2007); and Raymond Westbrook and Bruce Wells, *Everyday Law in Biblical Israel: An Introduction* (Louisville: John Knox Press, 2009).

scholars are cautious in concluding that these biblical texts reflect actual Israelite/Judahite legal praxis and whether a text should be interpreted legally.⁴⁰⁵

To supplement the lack of Judahite legal records, scholars examine Neo-Babylonian legal texts to gain a fuller picture of ancient Near Eastern legal praxis. Although scholars do not argue that Judahite legal practice was identical to its Neo-Babylonian counterpart, the Babylonian provenance of the book of Ezekiel makes these cuneiform legal records particularly valuable resources for understanding the legal *milieu* in which it was produced.⁴⁰⁶

3.1.1 Overview of *Neo-Babylonian Court Procedure*

Holtz's monograph, *Neo-Babylonian Court Procedure*, focuses on litigation records that "attest to the adjudication of legal cases for the most part by Neo-Babylonian authorities."⁴⁰⁷ Holtz wrote this book because despite "the abundance of studies of legal procedure in earlier periods of Mesopotamian history, no comprehensive study of the Neo-Babylonian material has ever been undertaken."⁴⁰⁸ To address this lacuna, he identifies two primary sources for legal texts that represent the principal categories of

⁴⁰⁵ For example, Westbrook and Wells conclude, "caution had to be exercised in this regard [i.e., reading a text using legal categories and methods of analysis], since a genre such as narrative will sometimes distort the law it uses for dramatic purposes." (Westbrook and Wells, *Everyday Law*, 129). See also Magdalene, *Scales*, 11.

⁴⁰⁶ As discussed in Chapter 1 of this dissertation, a consensus exists among biblical scholars that the book of Ezekiel was written (or at least started to be written) in Babylonia during the Neo-Babylonian domination of Judah in the 6th century BCE. Among the scholars who concur with this conclusion are: Zimmerli, *Ezekiel I*, 16; Greenberg, *Ezekiel 1-20*, 15-17; Renz, *Rhetorical*, 38; Block, *Ezekiel*, 5-6; and Vanderhooft, "Transeuphratène," 100 fn. 4.

⁴⁰⁷ Shalom E. Holtz, *Neo-Babylonian Court Procedure* (Cuneiform Monographs 28: Leiden: Brill, 2009), 3.

⁴⁰⁸ Holtz, *Neo-Babylonian*, 10.

legal disputes – private and temple. According to Holtz, “private records can best be described as the records of the adjudication of civil cases; they reflect the attempts of individuals to find redress for wrongdoings against them by other individuals. Temple records, on the other hand, reflect the temple’s own prosecution of mishandling of its property. This difference gives the proceedings in the temple a different character...”⁴⁰⁹

In order to describe these two adjudicatory processes, Holtz discusses in the first section of his monograph the “tablet trail” for each of the principal legal categories mentioned above. According to Holtz, the reconstruction of this “tablet trail” involves creating a “text typology [that] will illustrate the different functions for which the adjudicating authorities might have composed the different texts that make up the ‘tablet trail.’”⁴¹⁰

After reviewing several of the text types that provide the basis for his reconstruction of Neo-Babylonian legal procedures, Holtz outlines in the second half of his book the adjudicatory process for private and temple disputes.⁴¹¹ Although private and temple disputes have similarities, Holtz argues that the two processes need to be discussed separately.⁴¹² In light of Ezekiel’s identification as a priest (Ezek 1:3) and the consensus among biblical scholars that there are clear connections between the book of Ezekiel and Priestly/Holiness material in the Pentateuch⁴¹³, I will focus on Holtz’s review

⁴⁰⁹ Holtz, *Neo-Babylonian*, 221.

⁴¹⁰ Holtz, *Neo-Babylonian*, 18.

⁴¹¹ Holtz acknowledges that legal disputes were settled formally, i.e., in the presence of an adjudicatory body and informally, i.e., just between the parties. For the latter category, Holtz discusses the minimal extant evidence reflecting this method of dispute resolution (See Holtz, *Neo-Babylonian*, 78-84). As a result of the paucity of evidence, Holtz dedicates the majority of this section of the book to “formal adjudicatory settings.” (*Neo-Babylonian*, 223).

⁴¹² See Holtz, *Neo-Babylonian*, 267-268.

⁴¹³ In Chapter 1, I summarized the major scholarly opinions regarding the connections and direction of influence between P, H, and Ezekiel. Consequently, I will not repeat that discussion here. A

of temple adjudicatory procedures and their connection to the legal framework that Ezekiel appropriates.

In contrast to private disputes, “the main reason for adjudicatory proceedings in the temples is the protection of the temples’ interests.”⁴¹⁴ Consequently, “temple functionaries identify these suspects, but the cases that follow are not between the functionaries themselves and the suspects. Rather, the functionaries act on behalf of the temples as institutions.”⁴¹⁵ According to Holtz, temple proceedings begin with an accusation made by, or on behalf of, the temple authorities. In texts reflecting this initial stage of the litigation, “[the texts] record only the speakers’ accusation that other individuals have committed some wrongdoing.”⁴¹⁶ The second and third stages of temple proceedings are the pre-trial investigation and summoning the defendant.⁴¹⁷ The most relevant portion of these two stages for my investigation of Ezekiel is the role of the judges. Holtz notes that the judges in temple proceedings take a more active role than in private disputes, particularly in the collection of evidence. This more active role is “to ensure that their case against an accused criminal is as strong as possible.”⁴¹⁸ In addition,

representative summary of these issues can be found in: (i) Avi Hurvitz, *A Linguistic Study of the Relationship between the Priestly Source and the Book of Ezekiel* (Cahiers de la Revue biblique 20; Paris: Gabalda, 1982); (ii) Zimmerli, *Ezekiel I*, 46-52; (iii) Greenberg, *Ezekiel 1-20*, 344-345; (iv) Kutsko, *Between Heaven*, 10-14; and (v) Lyons, *Ezekiel’s Use of the Holiness Code*, 15-46.

⁴¹⁴ Holtz, *Neo-Babylonian*, 267.

⁴¹⁵ Holtz, *Neo-Babylonian*, 267. Holtz also argues that these temple proceedings are more similar to “modern day criminal proceedings” where the accused are “prosecuted [for] crimes against the temple.”

⁴¹⁶ Holtz, *Neo-Babylonian*, 270. The fact that these Neo-Babylonian texts only record the speakers’ accusations may provide another explanation for the silence of the accused (i.e., defendant) in chapters such as Ezekiel 16 and 23.

⁴¹⁷ For a fuller discussion of this stage, see Holtz, *Neo-Babylonian*, 270-278.

⁴¹⁸ Holtz, *Neo-Babylonian*, 275.

Holtz points to several Neo-Babylonian texts that describe the judges “sending a messenger to the accused.”⁴¹⁹

Once the accused has been summoned, the accused answers the accusation either with a counter-accusation to clear their name or confesses to the allegations in the accusation.⁴²⁰ If an accused asserts a counter-accusation, the accused “must substantiate their counter-accusations by ‘establishing the case’ (*kunnu*).”⁴²¹ Assuming the accused does not confess, the original accuser (who is representing the temple’s interests) must establish the case against the accused before the Eanna authorities can impose a penalty.⁴²² To establish (*kunnu*) the case, the judges will listen to various forms of evidence, including oral testimony from the accused and other witnesses, written evidence, and oaths.⁴²³ The legal proceeding concludes when the judge and/or witnesses deliberate and issue a decision based upon their review of the evidence.⁴²⁴

⁴¹⁹ Holtz, *Neo-Babylonian*, 278. Although the purpose of these messengers is often unstated in the court records, Holtz argues there is sufficient evidence to conclude that these messengers were sent to summon/bring (*abālu/rēša našū*) the accused before the authorities.

⁴²⁰ Ibid., 278-282.

⁴²¹ Holtz, *Neo-Babylonian*, 281.

⁴²² Holtz, *Neo-Babylonian*, 282.

⁴²³ See Holtz, *Neo-Babylonian*, 282-290. Holtz agrees with the conclusion reached by other scholars, such as Joannès, that “witnesses’ testimony and other evidence outweighs the evidence of an oath.” (Holtz, *Neo-Babylonian*, 293).

Holtz’s conclusions regarding the increased reliance upon testimony and other “forensic” evidence rather than the earlier privileging of oaths is a trend other scholars have identified. For example, Bruce Wells argues that a shift in legal thought and adjudicatory processes in Mesopotamia and Judah occurred during the first millennium B.C.E. A consequence of this shift Wells identifies is that “the nature of the oath and how it is used at trial also appear to change during this same time period, as the oath begins to play a less crucial role in the judicial process.” (Wells, “The Cultic Versus the Forensic: Judahite and Mesopotamian Judicial Procedures in the First Millennium B.C.E.” *JAOS* 128/2 (2008), 206).

⁴²⁴ See Holtz, *Neo-Babylonian*, 295-299. As mentioned in the introduction to the dissertation, Holtz’s three-part schema informs the framework I am using to analyze the way Ezekiel uses juridical diction as part of its case for Judahite identity. This chapter of the dissertation outlines YHWH’s basic claims against Judahites (and Jerusalemites), as well as the resulting restrictions upon the prophet’s and

Holtz's reconstruction of the Eanna procedures is similar to those scholars such as Wells, Westbrook, Bovati, and Magdalene offer for the biblical description of Judahite legal processes. Broadly defined, legal disputes progress through three stages: (i) formation of a relationship that includes legally recognizable and enforceable obligations; (ii) initiation of a legal dispute because of an (alleged) breach of the legal duties; and (iii) resolution of the dispute. Before two or more parties can enter into a legal dispute, scholars agree that the parties must be in a legal relationship.⁴²⁵ This relationship will include certain legally recognizable rights and enforceable duties to which the parties consent – whether such consent is express or implied.⁴²⁶ According to Bovati, the initial, formative stage of this legal relationship is a time where the parties to the agreement enjoy “a situation of peaceable understanding.”⁴²⁷

“judge’s” traditional functioning. In Chapter 4, I will examine some of the defendants’ counter-claims they assert against YHWH as representative of their (attempted) refutation of the deity’s charges. In the final chapter (Chapter 5), I will examine one “case study” in which YHWH states his case, the defendant remains silent and how such silence represents an acknowledgment of guilt – an acknowledgment that ends the judicial proceeding and provides the foundation for Judahite identity.

⁴²⁵ Within the biblical material, the covenantal relationship between YHWH and Israel/Judah is most often described as either domestic (e.g., husband-wife or parent-child) or political (e.g., suzerain treaty). Ezekiel uses juridical diction and legal metaphors from both spheres to delineate the “rights and obligations” of the nation and YHWH. As will be argued later in the dissertation, these two legal relationships and the “spheres” they represent become a mechanism the book of Ezekiel uses to advocate for its conceptualization of Judahite identity.

⁴²⁶ In modern, American jurisprudence, consent can be given in two forms: express and implied. Implied consent, which can be the more problematic of these two forms, is “consent inferred from one’s conduct rather than from one’s direct expression.” (*Black’s Law Dictionary: Pocket Edition* [St. Paul: West Publishing, 1996], 126). These two mechanisms for consent are particularly important for the analysis of Ezekiel 16 in Chapter 5 of the dissertation. In that chapter, I will argue that these forms of consent are important for understanding how YHWH and Judah entered into a legal relationship and the defendant’s response to the imposed sanctions in Ezekiel 16.

⁴²⁷ Bovati, *Re-Establishing Justice*, 31. As will be discussed later in this dissertation, Ezekiel contends that the relationship between YHWH and Judah never had this period of “peaceable understanding.” In contrast to many of Ezekiel’s prophetic precedents (e.g., Hosea), there is no “honeymoon period.” The nation’s persistent non-compliance (מרד) with covenantal obligations is a critical component of Ezekiel’s argument justifying the legal sanctions Jerusalem and her citizens – whether displaced or not - receive.

Following the formation of a legal relationship and (in some cases) a “period of peaceable understanding,” one party feels that their rights have been infringed upon by a breach of the terms of the legal relationship. The “aggrieved party”⁴²⁸ submits a grievance detailing the nature of the alleged breach either to the “breaching party”⁴²⁹ or to a third-party who serves an adjudicatory function (e.g., a judge, elders or jury).⁴³⁰ After the plaintiff submits the accusation, the defendant can respond in one of three ways: (i) deny the veracity of the plaintiff’s or prosecutor’s claims; (ii) deny the veracity of the plaintiff’s or prosecutor’s claims AND assert counterclaims alleging that the plaintiff has breached the terms of the legal relationship; or (iii) accept culpability.⁴³¹

If the defendant chooses either option (i) or (ii) above, then the case proceeds to what could be considered the trial phase. In this stage of the proceedings, each party presents its case, typically without the assistance of a “professional advocate.”⁴³² Once the legal dispute advances to this stage, it can be resolved in one of three ways. First, the plaintiff drops his/her case in response to the defendant’s case. Second, if the case is argued before an adjudicatory body, that body rules in favor of the party that has proven

⁴²⁸ The aggrieved party who initiates a legal proceeding in modern American legal parlance is either the “plaintiff” or “prosecution,” which is analogous to Holtz’s “accuser” in the Eanna process described above.

⁴²⁹ The breaching party is similar to Holtz’s “accused” and the modern American legal category of “defendant.”

⁴³⁰ See Westbrook and Wells, *Everyday*, 39; Wells and Magdalene, *Tigris*, 306-308.

⁴³¹ According to several scholars (including Bovati and Magdalene), a party’s silence in response to the “moving party’s” case often reflects acceptance of culpability. See, Bovati, *Re-Establishing Justice*, 340.

⁴³² Westbrook and Wells acknowledge that on some occasions “a powerful relative or patron would speak on behalf of a litigant.” (Westbrook and Wells, *Everyday*, 40). The authors reference 2 Sam 12:1-6; Isa. 3:13-15 and Isa. 50:7-8 as examples of this phenomenon.

(קום) the case. Lastly, the parties can reach a settlement during the course of the trial that resolves the dispute.

3.2 FORENSIC CHARACTER OF EZEKIEL

3.2.1 Legal Precedents

Based upon the overview of both Neo-Babylonian and Judahite legal procedures, the book of Ezekiel appropriates aspects of these adjudicatory procedures in its structure and presentation of YHWH's message to Judahites in both Jerusalem and Babylonia.⁴³³ As will be developed throughout the remainder of this dissertation, the stages of a legal dispute and the juridical terminology detailing the crimes (and resulting punishments) Judahites committed against YHWH and his temple frame the book of Ezekiel. Specifically, this dissertation contends that the book of Ezekiel (esp. Ezekiel 1-33) contains elements that a legal case brought by YHWH against the Judahites would have entailed. During the course of this legal disputation, the book of Ezekiel also argues that it is the very nature of the legal claims and the underlying legal relationship they presume that provides the framework for Judahite identity in light of Neo-Babylonian domination.

Similar to Judahite legal proceedings, the book of Ezekiel assumes from the very beginning that a legal relationship exists between the deity and his people. Later in

⁴³³ The similarities between the Neo-Babylonian material and the book of Ezekiel are not intended to imply a direct, genetic connection. Rather, the review of Neo-Babylonian evidence illumines some of the cultural parallels and general background that influenced the structure of the book. As noted in Chapter 2, these juridical procedures, precedents, and patterns are part of the macrosystem that informs my legal analysis in this study.

Ezekiel (e.g., Ezekiel 16), the book describes the process by which the legal relationship (ברית) was formed between YHWH and Judah. As a result of this relationship, Ezek 2:3-8 begins with YHWH (as the accuser/judge) listing his grievances against Judah. Similar to Holtz's reconstruction of Neo-Babylonian temple adjudicatory procedures, only the accuser's words are recorded in the opening chapters – which are the primary focus of this chapter in the dissertation. Additionally, Ezekiel's role in the opening chapters is analogous to the role of one sent by the temple authorities in Neo-Babylonian trials. As discussed earlier, the prosecutor/accuser does not represent his interests or alleged misconduct against him. Rather, the accuser in these cases “act on behalf of the temples as institutions”⁴³⁴ and, as a result, are not officially parties to the legal action. As will be seen throughout the analysis of the book of Ezekiel, YHWH is presented as both the aggrieved party (accuser/prosecutor) who announces Judah's malfeasance and the judge who is rendering his findings that justifies enacting a severe penalty. The book's insistence upon perpetual non-compliance and hyperbolic descriptions of endless cultic violations (e.g., Ezekiel 8-11) are critical elements in the book's attempts to establish the case (*kunnu*) against Judah and justify its punishment. Moreover, as will be argued in this chapter, YHWH's “unusual” behavior as judge (e.g., self-imposed restrictions on the scope of judicial review) and the lack of the prophet's role as defense counsel or party to the indictment underscores the deity's legal conclusions that sufficient evidence exists to not only convict but also punish Judah for the crimes contained in the accusation/indictment. Before discussing how the book of Ezekiel uses these legal

⁴³⁴ Holtz, *Neo-Babylonian*, 267.

categories, it is necessary to (briefly) review the presence of juridical diction and legal metaphors within this prophetic book.

3.2.2 Juridical Content

Biblical scholars have long recognized the presence of juridical diction and legal metaphors within the book of Ezekiel.⁴³⁵ The forensic character of some chapters (e.g., Ezekiel 14, 16, and 20) has produced legal analyses of specific verses and phrases.⁴³⁶ Although scholars recognize these legal elements, their impact upon the nature of *the book's* rhetorical logic requires additional examination. The forensic elements in this book are not incidental or merely confined to specific chapters. Rather, the consistent presence of these legal elements throughout warrants examining the entire text within a legal framework.⁴³⁷ Moshe Greenberg points in this direction when he concludes that,

⁴³⁵ See e.g., Greenberg, *Ezekiel 1-20*, 124; Zimmerli, *Ezekiel 1*, 336; Block, *Ezekiel 1-24*, 460; Renz, *Rhetoric*, 141-143 and Rom-Shiloni, *Exclusive*, 144. Some specific studies of the legal material in the book of Ezekiel include: Meindert Dijkstra "Legal Irrevocability (*lō' yāšûb*) in Ezekiel 7:13" *JSOT* 43 (1989): 109-116 and Meir Malul, "Adoption of Foundlings in the Bible and Mesopotamian Documents: A Study of Some Legal Metaphors in Ezekiel 16:1-7," *JSOT* 46 (1990), 97-126.

These Ezekiel specific studies are part of a larger trend that has identified juridical locutions and imagery within the prophetic corpus of the Hebrew Bible. Three important works discussing these legal elements are: Claus Westermann *Basic Forms of Prophetic Speech*. (trans. by Hugh White. Louisville: John Knox Press, 1991); Yochannan Muffs, *Love & Joy: Law, Language and Religion in Ancient Israel* (New York: The Jewish Theological Seminary of America, 1992); and Pietro Bovati *Re-Establishing Justice*.

⁴³⁶ See Block, *Ezekiel 1-24*, 15 and Renz, *Rhetorical*, 180 (discussing the legal tenor of Ezekiel 14, 18 and 22).

⁴³⁷ Further justification for reading the book of Ezekiel as a legal text is found in literary theories regarding narrative sequence and their application to biblical texts. Scholars such as Menakhem Perry, H. Porter Abbott, and John Darr emphasize the cumulative impact a narrative's sequence has upon the meaning(s) a reader constructs. Menakhem Perry asserts that "literary texts may effectively utilize the fact that their material is grasped successively; this is at times a central factor in determining their meanings." ("How the Order of a Text Creates Its Meanings" *Poetics Today* 1, 1979: 35). Thus, Perry concludes that the meaning of a text is "influenced by its mere location in the order of information given in the text." (Perry, "Order," 43). Similarly, H. Porter Abbott argues that: "at the level of expectations we recognize, by numerous signals, the kind of action or sequence of events that we are reading (revenge, falling in love,

“clothing the content of prophetic oracles in the form of case law is an invention of Ezekiel designed as a vehicle for stating principles of God’s dealing with men, or, in other words, theological doctrines.”⁴³⁸

The identification of juridical diction and legal imagery within other prophetic texts contributed to several scholars proposing the existence of a prophetic lawsuit genre – i.e., a רִיב.⁴³⁹ Although biblical scholars such as Dwight Daniels and Michael DeRoche have challenged the appropriateness of this genre marker⁴⁴⁰, the prevalence of legal elements within prophetic texts remains a consensus among scholars.⁴⁴¹ As a result, scholars, including Yochannan Muffs, Kirsten Nielsen and Robert Wilson, have sought to

escape, murder, a bad dream). Once actions start in a certain way, we expect what follows to be consistent with the overall code.” (*The Cambridge Introduction to Narrative*, [Cambridge: Cambridge University Press, 2002], 54). See also, John A Darr *On Character Building: The Reader and the Rhetoric of Characterization in Luke-Acts* (Louisville: John Knox Press, 1992), 42-43. Consequently, the foregrounding of juridical terminology, courtroom imagery, and legal metaphors in the opening accusation/indictment provides further justification for reading the book of Ezekiel through a legal hermeneutic.

⁴³⁸ Greenberg, *Ezekiel 1-20*, 94. See also, Andrew Mein who concludes, “Ezekiel picks up legal forms to a degree unprecedented in prophecy, and redirects their focus towards the theological interpretation of experience.” (*Ezekiel and the Ethics of Exile* [Oxford: Oxford University Press, 2001], 180).

⁴³⁹ See, Herbert B. Huffmon, “The Covenant Lawsuit in the Prophets” *JBL* (1959): 285-295; J. Harvey “Le ‘*riḇ*-Pattern’: Requisitoire Prophetique sur la Rupture de L’Alliance” *Biblica* 43 (1962): 172-196; J. Linburg “The Root *riḇ* and the Prophetic Lawsuit Speeches” *JBL* 88 (1969): 291-304; Moshe Weinfeld, “Ancient Near Eastern Patterns in Prophetic Literature,” *VT* 27 (1977): 178-195; and J. Carl Laney, “The Role of the Prophets in God’s Case Against Israel,” *Bibliotheca Sacra* (1981): 313-325.

Weinfeld contends, “prophetic admonition dressed in the form of a lawsuit has been recognized since the 1930s.” (Moshe Weinfeld, “Ancient Near Eastern Patterns in Prophetic Literature” *VT* 27, 1977: 187). The two sources he references are: (i) Curt Kuhl “Neue Dokumente zum Verständniss von Hosea 2, 4-15,” *ZAW* 52 (1934), 102-109 and (ii) Cyrus H. Gordon “Hosea 2:4-5 in the Light of New Semitic Inscriptions,” *ZAW* 54 (1936), 277-280.

⁴⁴⁰ Michael DeRoche, “Yahweh’s *Riḇ* Against Israel: A Reassessment of the so-called ‘Prophetic Lawsuit’ in the Pre-exilic Prophets.” *JBL* 102/4 (1983): 563-574 and Dwight Daniels, “Is There a Prophetic Lawsuit Genre?” *ZAW* 99:3 (1987): 339-360.

⁴⁴¹ See, Weinfeld, “Patterns,” 187 and Holtz “Summoner,” 19. As Holtz correctly points out, despite DeRoche’s and Daniels’ objections to the “very existence of this genre of prophecy (i.e., the *Riḇ*), [they] accept the fact that biblical prophecies incorporate legal imagery.” (Holtz, “The Prophet As Summoner” in *Studies on Mesopotamia and the Biblical World in Honor of Barry L. Eichler* [ed. Grant Frame; Bethesda: CDL Press, 2011], 19).

understand the functions of YHWH, Israel/Judah, and the prophets by appealing to legal categories.⁴⁴² Although modern legal categories are often applied to biblical texts, scholars (rightly) highlight that modern understandings of the separation of roles and responsibilities between prosecutor/plaintiff, defendant, and judge should not be applied too strictly. For example, Michael Dick concludes that “we should be quite cautious in sharply delineating the roles of plaintiff and defendant ... and too rigid imposition of this modern distinction might be anachronistic.”⁴⁴³ Thus, my use of modern, legal categories in this chapter is for ease of reference and not intended to imply a one to one correlation between modern jurisprudence and ancient Israelite legal praxis.

When these categories have been applied to the book of Ezekiel, Robert Wilson and others recognize that the prophet’s role appears to be limited in an important, legally significant manner. Specifically, Wilson argues that God’s command to “Ezekiel”⁴⁴⁴ to be silent (אלם) and not to be an איש מוכיה in Ezek 3:26 departs from the prophet’s typical role as an advocate on behalf of Israel/Judah.⁴⁴⁵ Concurring with Wilson’s assessment of

⁴⁴² Robert Wilson, “An Interpretation of Ezekiel’s Dumbness,” *Vetus Testamentum* 22 (1972): 91-104; Kirsten Nielsen, *Yahweh as Prosecutor and Judge: An Investigation of the Prophetic Lawsuit (Rib-Pattern)* (Sheffield: JSOT, 1978); and Yochannan Muffs, *Love & Joy*.

⁴⁴³ Michael Dick, “The Legal Metaphor in Job 31” *CBQ* 41 (1979): 38. This caution is particularly important because in many prophetic lawsuits, “God is not only the plaintiff but also *judex in causa mea*.” (Dick, “Legal Metaphor,” 49). For scholars reaching a similar conclusion regarding the dual role of YHWH in prophetic lawsuits, see also Holtz, “Summoner,” 30.

⁴⁴⁴ My use of the name “Ezekiel” does not mean that I believe the entire book was written by the eponymous prophet nor that I am discounting the evidence that many scholars have adduced regarding the book’s continued editing and augmentation through the Persian period. Rather, the sporadic use of the name “Ezekiel” is for ease of reference, as mentioned in Chapter 1.

⁴⁴⁵ In addition to Wilson, the following scholars reach similar conclusions regarding the legal nature of this prophetic restriction. See, Greenberg, *Ezekiel 1-20*, 102; Zimmerli, *Ezekiel 2*, 190; Tuell, “Rehab,” 296; and Istvan Haag, Stephen Llewelyn and Jack Tsonis, “Ezekiel 16 and Its Use of Allegory and the Disclosure-of-Abomination Formula,” *VT* 62 (2012): 198-210. This restriction of the prophetic role and its connection to the larger description of YHWH’s judicial disposition will be discussed in greater detail later in this chapter.

the juridical significance of Ezek 3:24-26, I further argue in this chapter that this limitation reflects a legal rhetorical strategy that runs throughout Ezekiel 1-33. In particular, the restrictions imposed upon the prophet are one piece of evidence reflecting YHWH's "judicial disposition"⁴⁴⁶ towards Jerusalem – a disposition that prohibits any testimony, evidence or appeal by *any* party that could challenge YHWH's determination to punish Jerusalem severely because of "her"⁴⁴⁷ cultic and criminal malfeasance.⁴⁴⁸ Moreover, YHWH makes the case for his judicial disposition by describing Israel/Judah as the epitome of a guilty, non-compliant defendant who must be persuaded that its actions and attitudes warrant punishment.

⁴⁴⁶ The phrases "judicial disposition" and "judicial posture" are used interchangeably within this chapter to describe how the deity is inclined to conduct the trial and rule against the defendant in his capacity as judge. As will be argued in this chapter, the limitation of the prophetic role, YHWH's unwillingness to be available for inquiry, the silence of Jerusalem in Ezekiel 16 and 23, and other examples from the text are evidence of YHWH's judicial disposition to simply convict and punish rather than preside over a legal process to determine whether punishment is warranted. As a result of this inclination, YHWH exhibits the expected judicial unwillingness to prolong needlessly the trial by entertaining pleas on behalf of the guilty defendant. For this judge (as is true in my previous experiences with modern judges), once conviction and punishment are a *fait accompli*, there is little patience or tolerance for any objections, appeals, arguments for mitigation or exoneration by the defendant or her counsel.

⁴⁴⁷ The 3fs pronoun is introduced here to designate Jerusalem – a common practice in the book of Ezekiel, especially in chapters 16 and 23. As will be discussed in more detail later, the problematic nature of Ezekiel's portrayal of Jerusalem as female and the actions inflicted upon her has occupied the attention of several biblical scholars.

⁴⁴⁸ YHWH's judicial disposition in the book of Ezekiel is similar to what might explain his commandment to the prophet Jeremiah in Jer 7:16. Although Ezekiel develops this theme far beyond those of his prophetic predecessors (a common trait of the book's use of earlier prophetic materials), the idea of YHWH refusing to hear appeals/advocacy on behalf of a defendant is not without precedent.

3.3 YHWH'S JUDICIAL DISPOSITION

3.3.1 Accusation of Defendant

YHWH signals his judicial posture towards Jerusalem and its inhabitants in the first description of them in Ezek 2:3. Following the prophet's initial encounter with YHWH (Ezek 1:1-2:2), he tells the prophet: בן־אדם שולח אני אותך אל־בני ישראל אל־גוים (‘‘Mortal, I am sending you to the children of Israel –a rebellious nation – who rebel against me. They and their ancestors have revolted against me even until this day.’’ Ezek 2:3).⁴⁴⁹ In YHWH's initial accusation, he announces several themes that form the basis of his judicial disposition and the essence of his case against Jerusalem and its inhabitants (the ‘‘defendant’’).⁴⁵⁰ First, the deity accuses the defendant of engaging in a pattern of rebellion (מרד) and revolt (פשע) against him (Ezek 2:3).⁴⁵¹ Throughout the opening statement (Ezek 2:3-8), YHWH uses either מרד or מרי no less than seven times.⁴⁵² YHWH reinforces this accusation of

⁴⁴⁹ Unless otherwise indicated, all translations are mine.

⁴⁵⁰ As mentioned earlier, this modern, legal label is primarily for ease of reference and is not intended to imply a one to one correspondence between ancient Israelite and modern American legal praxis.

⁴⁵¹ As Greenberg observes, מרד and פשע connote the violation of a vassal's legal/covenantal obligations to a suzerain. Thus, the locutions present in the opening statement accuse the defendant of crimes by borrowing legal terminology, further signaling the juridical character of Ezek 2:3-8. See Greenberg, *Ezekiel 1-20*, 63.

⁴⁵² These words occur in the following verses of the opening statement: מרד in Ezek 2:3 (twice) and מרי in Ezek 2:5; 2:6; 2:7 and 2:8 (twice). Throughout the book of Ezekiel, these words occur 20 times and all but one instance is prior to the report of Jerusalem's demise in Ezek 33:21. The one exception (מרי) is in Ezek 44:6 where the prophet is again instructing the people about the need to end their various abominable practices. An implication of the prevalence of this rebellious terminology prior to the execution of the judicial sentence is that once it is executed, YHWH's judicial posture changes – as evidenced by the change in tone of the prophetic message post-destruction that scholars widely recognize. See, Glazov,

rebellion by repeatedly using the phrase, *כי בית מרי המה* (“because they are a rebellious house”), to describe the defendant – a refrain unique to the book of Ezekiel.⁴⁵³ This “rebellious house” classification is clustered at the beginning of the narrative, contributing to an understanding of YHWH’s judicial posture and establishing the tone of this prophetic book.⁴⁵⁴ Specifically, YHWH informs the prophet that his audience will receive neither him nor his message of judgment.⁴⁵⁵ As a result, YHWH (in his judicial capacity) is justified in convicting the defendant and, in Ezek 3:25-27, instructing the prophet that he is not to plead on her behalf.

Moreover, the defendant is described in Ezek 2:4a as being *קשי פנים וחזקי-לב*, terminology similar to the description of Pharaoh in the Exodus narrative.⁴⁵⁶ Without reaching a conclusion regarding the literary relationship between these two texts, both share similar legal terminology. Thus, this “hardened heart” becomes further justification for YHWH’s disposition. Just as YHWH destroyed Pharaoh and his army because of repeated violations (Exod 14:27-28), YHWH suggests that the defendant in this present controversy should prepare for a similar legal process, verdict and punishment.

Bridling, 222; *Greenberg, Ezekiel 21-37*, 681-682; *Block, Chebar*, 97-98; and *Zimmerli, Ezekiel 2*, 193-194.

⁴⁵³ This phrase appears seven times in the book of Ezekiel: Ezek 2:5; 2:6; 3:9; 3:26; 3:27; 12:2; and 12:3.

⁴⁵⁴ Five of the seven occurrences of this phrase occur during the commissioning of the prophet and prior to any of his communications with the Judahites in Babylonia. YHWH’s emphasis upon the rebellious nature of this audience prepares the prophet for the daunting task that lies before him and, equally important, provides another reason for YHWH’s refusal to consider exoneration or mitigation.

⁴⁵⁵ See e.g., Ezek 2:5; 3:27; and 12:2-3.

⁴⁵⁶ Some variant of the phrase, *חזק לב* (“hard heart”), appears outside of Ezekiel most commonly in Exodus during the plague narratives and in reference to Pharaoh. Within Exodus, the text oscillates between describing Pharaoh’s heart being hardened, seemingly of his own volition (e.g., Exod 7:22, 8:15) and YHWH hardening his heart (e.g., Exod 9:12, 10:20). Regardless of the reason for the status of Pharaoh’s heart, this fact remains the proximate cause for YHWH’s judgment and, by implication, the judgment that current Judahites will face because they have the same *mens rea* (i.e., “heart”).

Second, YHWH's opening statement accuses the defendant of being part of a continuous history of non-compliant and defiant behavior. According to Ezek 2:3, the present generation and their ancestors have habitually revolted against YHWH.⁴⁵⁷ The accusation of a continuous history of revolt is explored most fully in three chapters – Ezekiel 16, 20, and 23. In each of these chapters, YHWH recasts the history of the covenantal relationship between him and the defendant in an unrelentingly negative light.⁴⁵⁸ Unlike the “honeymoon period” described in earlier prophetic literature, the book of Ezekiel accuses and seeks to prove that covenantal compliance was absent from the beginning.⁴⁵⁹ Consequently, the severity of the judgment and YHWH's unwillingness to consider mitigating factors or exonerating evidence is the appropriate legal response to persistent malfeasance.

In addition to this revolt and rebellion, YHWH provides another glimpse into his judicial posture in Ezek 2:10. In this verse, the prophet is given a scroll summarizing the contents of his message: קנים והגה והי.⁴⁶⁰ The severity and one-sided nature establishes the

⁴⁵⁷ The argument for habitual/persistent rebellion relates to the semantic range of the Qal suffix conjugation used in this verse and the phrase: עד עצם היום הזה (“even until this day”). According to Waltke and O'Connor, the suffix conjugation can “represent a single situation that started in the past but continues (persists) into the present” (*An Introduction to Biblical Hebrew Syntax* [Winona Lake: Eisenbrauns, 1990], 487). See also, GKC §106(g).

⁴⁵⁸ See, Block, *Ezekiel 1-24*, 51; Eichrodt, *Ezekiel*, 212-215; and Haag, “Disclosure,” 260.

⁴⁵⁹ Fokkelen van Dijk-Hemmes articulates this observation as follows: “[In contrast to] the common prophetic view on Israel's history, Israel is indeed presented as apostate from the very beginning of its history” (“The Metaphorization of Woman in Prophetic Speech: An Analysis of Ezekiel XXIII,” *VT* 43, 1993: 166). See also, Darr, “Justifications,” 101; Swanepoel, “Abandoned Child,” 101; and Eichrodt, *Ezekiel*, 212.

⁴⁶⁰ Two resources discussing the uniqueness of woe oracles and related lamentations to prophetic literature are: (i) E Gerstenberger “The Woe-Oracles of the Prophet” *JBL* 81 (1962): 249-263 and (ii) Waldemar Janzen *Mourning Cry and Woe Oracle*. Berlin: ZAW, 1972.

tone for the book of Ezekiel and the prophet's mission.⁴⁶¹ According to Darr, the prophet's message "leaves no space open through which hope can enter."⁴⁶² YHWH insists upon the prophet's strict adherence to the message in at least three important ways in these opening verses. First, the prophet is twice commanded to eat (אכול) what YHWH gives to him (Ezek 2:8 and 3:1). Second, YHWH instructs the prophet not to behave in the same rebellious manner that characterizes the nation and justifies his judicial posture towards them (Ezek 2:8). Third, the prophet is admonished repeatedly to declare what YHWH tells him.⁴⁶³ Additionally, YHWH tells the prophet that despite the defendant's hostility and intractability, he is neither to fear them nor compromise the message (Ezek 2:6, 3:9).⁴⁶⁴ The prophet can remain resolute and faithful in his assignment because YHWH has made the prophet stronger and more resilient than the people are stubborn and obstinate (Ezek 3:8-9). This fortification of the prophet and subsequent commandment to adhere strictly to the message is a result of both the nature of the message and the defendant's expected response. YHWH goes so far as to say that if the prophet does not discharge his duties faithfully, he will suffer the same consequences as the rebellious house to which he is sent (Ezek 3:18).

Resuming the description of the defendant's rebelliousness and recalcitrance, YHWH informs the prophet that his audience has no desire to listen: **וּבֵית יִשְׂרָאֵל לֹא יִאֲבֹ**

⁴⁶¹ Block, *Ezekiel 1-24*, 125 and Darr, "Ezekiel's Justification," 97. As will be discussed in this chapter, the one-sided tone dominates Ezekiel 1-33 and seems to change only after news of Jerusalem's destruction reaches the prophet (Ezek 33:21-22).

⁴⁶² Darr, "Ezekiel's Justification," 100.

⁴⁶³ Examples of this commandment include: Ezek 2:4, 2:7, 3:4, and 3:11.

⁴⁶⁴ In each of these verses, YHWH states the refrain of the opening statement: **כִּי בֵית מְרִי הֵמָּה** ("because they are a rebellious house").

לשמע אליך כִּי־אִינָם אֲבִים לִשְׁמֹעַ אֵלַי (‘‘Now concerning the house of Israel, they do not want to listen to you because there is no one who desires to listen to me.’’ Ezek 3:7a). Because of this unwillingness to listen, YHWH concludes that the entirety of Israel (כל בית ישראל) is חֲזָקִי מִצָּח וקָשִׁי לֵב (‘‘strong-headed and hard-hearted’’ Ezek 3:7b). Similar to the earlier reference to Pharaoh, the combination of the defendant’s unwillingness to listen and her stubbornness/obstinacy is part of the justification for YHWH’s posture towards them.⁴⁶⁵ Just as the defendant has demonstrated an unwillingness to listen to YHWH, YHWH will also refuse to listen to the defendant and her counsel.⁴⁶⁶ If the previous description did not justify YHWH’s judicial posture, he later informs the prophet that not only will they not listen, but also the people will attack him. Ezek 3:25 states: וְאַתָּה בֶן־אָדָם הִנֵּה נֹתְנוּ עָלֶיךָ (‘‘Now as for you, Mortal, they will place ropes upon you and they shall bind you with them so you will not go out among them.’’) This hostility to the prophet (and presumably, his pronouncement of divine judgment in Ezek 2:10) further underscores the reasons for the judgment and the judge’s disposition. To the extent the people’s treatment of Ezekiel is tantamount to their treatment of YHWH,⁴⁶⁷ the

⁴⁶⁵ The parallels between the Exodus narrative and the opening statement continue in the usage of the ‘‘recognition formula’’ and the announcement that the people to whom the prophet is sent will not listen (e.g., Exod 7:3-5). For a fuller discussion of the parallels between Ezekiel and the Exodus narrative, see Zimmerli, *Ezekiel 1*, 344 and Galambush, *Jerusalem*, 83. For a specific case study of potential parallels, see Jason Gile, ‘‘Ezekiel 16 and the Song of Moses: A Prophetic Transformation?’’ *JBL* (2011): 87-108.

⁴⁶⁶ In Ezek 20:3, the deity announces his refusal to be inquired of on behalf of the defendant. In a later section of this chapter entitled, ‘‘The Absence of Innocence,’’ I will discuss the significance of this verse in more detail.

⁴⁶⁷ The equivalency between the treatment of the prophet and YHWH is stated in Ezek 3:7a, quoted above. In the book of Ezekiel (like other prophetic texts), the authorization and commissioning of the prophet as an agent of the deity is a major purpose of the call narratives. Ezekiel 1-3 is considered the call narrative of the prophet Ezekiel and contains several images ‘‘deputizing’’ the prophet as an agent of YHWH.

This similarity gains further support from the quasi-‘‘recognition formula’’ (וידעו כי נביא היה בתוכם) that is applied to the prophet Ezekiel. Several scholars highlight the theocentric nature of this text and point to the use of the recognition formula as evidence of its theocentric character. See e.g., Block, *Chebar*, 50. A similar formula is used in relation to the eponymous prophet in Ezek 2:5 and 33:33. In both of these

flagrant show of contempt warranted a similar punitive attitude from the judge whose declarations they disregard.

3.3.2 Prophetic Sign Acts

The initial sign acts of the eponymous prophet (Ezekiel 4-6) continue to emphasize that Jerusalem and its inhabitants will be punished without further recourse, appeal or intervention by YHWH. In Ezek 5:5-11, YHWH explains the reasons for his judicial disposition via reference to Jerusalem's unique position. According to Ezek 5:5, the irrevocability of the punishment and YHWH's unwillingness to turn from this course of punishment is rooted in the fact that: בתוך הגוים שמתיה וסביבותיה ארצות (Ezek 5:5). This geographic description connotes that Jerusalem "had enjoyed 'most favored status' with YHWH. He assigned her a place at the center of the international universe."⁴⁶⁸ According to the deity, rather than this privileged position producing greater allegiance, Ezek 5:6 states: ותמר את־משפטי לרשעה מן־הגוים ואת־חקותי מן־הארצות אשר סביבותיה כי במשפטי כי במשפטי (Ezek 5:6) ("She rebelled against my ordinances to act more wickedly than the nations and [rebelled] against my statutes more than the lands surrounding her; rejecting my ordinances and not following my statutes.")⁴⁶⁹ Because of the defendant's

verses, the prophet is assured that his status as a prophet among the people will be confirmed/vindicated, even if the Judahites do not listen to or believe him. For YHWH and the prophet, an important (if not, primary) consequence of the judgment is validation of their respective roles and messages. Also, as Muffs argues, meting out punishment without prior warning and verification of guilt is unacceptable. Muffs' conclusion finds additional support in Holtz's reconstruction of temple proceedings in the Neo-Babylonian legal context as discussed earlier.

⁴⁶⁸ Block, *Ezekiel 1-24*, 197. This idea of Jerusalem's "privileged" position is echoed in Ezek 16:3-14.

⁴⁶⁹ The accusation concerning Jerusalem's excessive criminality permeates the book of Ezekiel. Other examples include Ezekiel 16, 20, and 23. Hyperbolic language is used to describe the favored status

unprecedented criminal behavior (Ezek 5:6-7), YHWH announces his intention to punish the defendant with a similarly unparalleled level of judicial intensity (Ezek 5:8-11). This intensity can be regarded as “judicial” because it is consistently connected to the extreme nature of the accused criminality (Ezek 5:9 and 5:11).⁴⁷⁰ Also, YHWH announces that he is an objective fact-finder who has already concluded that the defendant is criminally culpable. Consequently, neither he nor the prophet can passionately advocate for the people. Instead, he declares, “I, myself, am against you and I will execute judgments among you in the presence of the nations” (Ezek 5:8).⁴⁷¹ Lastly, YHWH further expresses his judicial posture by declaring: *ולא־תחוס עיני וגם־אני לא אחמול* (“my eye will not spare neither will I show any leniency.”) This declaration expressly precluding judicial mercy or leniency on the deity’s part and his posture as adversarial towards the defendant recurs

(YHWH’s intended relationship with Jerusalem) and her malfeasance that demands severe punishment (YHWH’s judicial disposition) throughout Ezekiel 1-33, including disparaging comparisons to surrounding nations and nations infamous for their conduct (e.g., Ezek 16:47-52). Ezekiel’s use of poignant and hyperbolic language is a strategy the book uses to impress upon the deported Judahites the severity of the offenses that produced the Babylonian exile. Vanderhooft reaches a similar conclusion when he states that Ezekiel’s use of terminology foreign to Judean discourse “is calculated to cut more deeply because of its use of a deliberately deployed loanword. Here we go beyond passive assimilation to intentional manipulation of Babylonian terminology to criticize Judean practices, the very practices that Ezekiel judges to have resulted in deportation” (Vanderhooft, “Ezekiel in and on Babylon,” 19).

The graphic descriptions of the defendant’s punishment in Ezek 16:35-43 is an example of this connection. Also, the symmetrical nature of the narrative description of the gifts and punishments contributes to the book’s argument regarding legal proportionality. Some scholars who discuss this narrative symmetry and its relationship to the proportionality of punishment, see Rom-Shiloni, *Exclusive*, 173; Galambush, *Jerusalem*, 96; Greenberg, *Ezekiel 1-20*, 293; Moughtin-Mumby, *Metaphors*, 170; and Zimmerli, *Ezekiel*, 344.

⁴⁷⁰ The connection of the severe punishment to the grievous crime is a theme throughout the book of Ezekiel (e.g., Ezek 16:35-43). As will be discussed, the dual casting of this punishment in both legal and domestic relations terms has frequently produced objections to the idea that there is any sense of proportionality or “justice” to the description of the defendant’s punishment.

⁴⁷¹ This verse begins with the phrase: *הנני עליך גם אני*. According to the textual apparatus of the MT, this phrase is lacking in the Greek and Syriac witnesses. Its inclusion in the MT reinforces the image of YHWH as standing in opposition to his people – an opposition that results in the deity’s active role in the execution of a judicial sentence. The emphasis upon YHWH’s active role in the execution of the sentence leaves little doubt that the defendant’s punishment is the direct result of divine action, which was warranted because of repeated, intentional, and excessive legal violations.

throughout Ezekiel 1-33 and reflects his unwavering resolve to convict and punish the defendant.⁴⁷² Additionally, the repetition of the phrase הַנִּי עֲלִיךָ גַם אֲנִי in Ezek 5:8 and 5:11 underscores the active participation of YHWH in executing Israel's punishment. As Muffs notes in his discussion of the book of Ezekiel, "[T]he enemy is not the army of the gentiles that is placing a siege around Jerusalem. The Lord Himself is the enemy, the warrior who is setting His face against Jerusalem to destroy it."⁴⁷³ The adversarial disposition of YHWH reaches its apex in Ezekiel 6, where he declares that everyone will suffer the consequences of the sentence. Even those YHWH spares from total destruction "will be scattered among the nations" and "be loathsome in their own sight for the evils that they have committed, for all their abominations" (Ezek 3:9).⁴⁷⁴

YHWH's adversarial judicial disposition and the juridical tone are amplified in the Targum of Ezekiel.⁴⁷⁵ In Ezek 5:8, the Targum substitutes the phrase פֹּרְעָנִית דִּינִין

⁴⁷² A similar discussion of YHWH's unwillingness to show leniency/pity upon the defendant because of her continual malfeasance and rejection of YHWH can be found in Jer 15:5-6. Greenberg argues that this "double repudiation of pity" is a clear indication of God's anger and determination to punish. See Greenberg, *Ezekiel 1-20*, 127.

This subversion of the expected behavior of the parties to this judicial proceeding may provide the basis for interpreting the significance of Ezekiel being forbidden to mourn the death of his wife in Ezek 24:15ff. Just as YHWH imposed a restriction upon himself and the prophet that contravenes the anticipated behavior in a legal dispute, the prohibition on mourning the death of his wife (as a symbol for Jerusalem's demise) extends that restriction into the "personal life" of the eponymous prophet. To the extent public mourning could signal an objection or challenge to YHWH's judicial sentencing, the prophet could not be seen offering such objections, particularly since a primary goal of Ezekiel 1-33 is to convince the Judahites that they must accept both the verdict and punishment without appeal, complaint or objection.

⁴⁷³ Muffs, *Love and Joy*, 31.

⁴⁷⁴ Translation is from NRSV. The connection between the judgment ("loathsome in their own sight") and the punishment ("evils they have committed/all their abominations") is a central theme throughout Ezekiel 1-33. As will be discussed later, I concur with those scholars who understand that the book of Ezekiel argues that the punishment is proportional to the crime. In Darr's words, "since the anticipated punishment was exorbitant, the sin must be grievous indeed" (Darr "Justifications," 111).

⁴⁷⁵ All Aramaic citations are from Alexander Sperber, *The Bible in Aramaic: The Latter Prophets according to Targum Jonathan* (New York: Brill, 1992).

(“punishment of laws”) for the MT משפטים.⁴⁷⁶ Levey translates the Aramaic phrase as “just punishment,” partially to emphasize “the judgments which Yahweh will impose upon Israel for its sins.”⁴⁷⁷ This substitution draws attention to the legal proportionality/basis of the punishment – a common element throughout Ezekiel 1-33. Most importantly, the Targum underscores the adversarial tone of Ezek 5:8 in two ways. First, YHWH does not come against Judah himself (as in the MT), but rather: האנא שלח רגזי עלך (“Behold, I am sending my anger against you”). Second, Ezek 5:11b in the Targum reads, דלא יחוס מימרי ואף אנא לא ארחים. According to Levey, the insertion of מימרי⁴⁷⁸ is consistent with “one of the obvious exegetical features of the *Tg* in this chapter [which] is the theological thrust making the Memra the agent of God for the evil decrees against Israel, instead of the Lord himself, which the Hebrew maintains.”⁴⁷⁹ For the Targum’s editors, Levey argues that the insertion of the Memra “mitigates the brutality somewhat” by placing the primary blame upon an agent of YHWH, rather than YHWH himself.⁴⁸⁰ In both the Targum and MT, then, the criminality of the nation has produced an intense display of divine wrath.

⁴⁷⁶ Sperber, *Aramaic*, 273.

⁴⁷⁷ Samson H. Levey, *The Targum of Ezekiel* (ArBib 13: Wilmington: Glazier, 1987), 29 n.2.

⁴⁷⁸ The MT reads: עני. It should be noted that this substitution is consistent with the Targum’s tendency to avoid anthropomorphisms.

⁴⁷⁹ Levey, *Targum Ezekiel*, 29 n.4. Levey’s analysis regarding the MT’s insistence that YHWH is responsible for the action is consistent with my conclusion stated earlier in the discussion of Ezek 5:8.

⁴⁸⁰ *Ibid.*, 29 n.4.

3.3.3 Prohibition of Prophetic Advocacy

In between the opening statement and inaugural prophetic sign actions, YHWH gives instructions in Ezek 3:24-27 that have puzzled many commentators but which I argue demonstrates his judicial disposition towards the defendant. In these verses, YHWH first commands the prophet: *בא הסגר בתוך ביתך* (“Go, Shut yourself in your home.” Ezek 3:24b). Additionally, and most importantly for this chapter, the prophet is told: *ונאלמת ולא־תהיה להם לאיש מוכיח כי בית מרי המה* (“You will be silent and you shall not become an advocate for them because they are a rebellious house.” Ezek 3:26). These commandments and his subsequent symbolic actions in Ezekiel 4-6 have produced various explanations ranging from compositional theories regarding the history of these verses to psychological explorations of the prophet’s alleged psychoses.⁴⁸¹ The central challenge these commentators are wrestling with is the seeming contradiction between YHWH’s commandment for the prophet to warn the people in his office as a *צֶפֶה* (Ezek 3:16-22) and the subsequent house confinement and silence (Ezek 3:24-27). Also, the fact that the prophet’s “silence” did not seem to preclude him delivering several oracles before the “silence” is repealed in Ezek 33:22 has led to scholarly investigation regarding the placement of these verses in its current narrative context and the meaning of silence.

Robert Wilson outlines a solution for the narrative function and meaning of the prophet’s silence that has proved convincing to numerous scholars.⁴⁸² Rather than seeking a solution solely by appealing to redaction criticism or psychological analyses of

⁴⁸¹ Although the compositional history of this passage and its connection to Ezekiel 33 are intensely debated, my interest is more on the narrative logic that may explain the meaning and function of this passage. For an overview of some of the debate on the compositional history, see Zimmerli, *Ezekiel 1*, 161 and Darr, *NIB*, 1132.

⁴⁸² Darr, *NIB*, 1139; Davis, *Swallowing*, 56; and Vogt, “Die Lahmung,” 96.

the prophet, Wilson looks to the legal imagery and language of the prophetic corpus. Specifically, he attempts to understand the connection between Ezekiel's role as a watchman (צפה), the silence (אלם), and the statement limiting the prophetic role (ולא־תהיה) (להם לאיש מוכיה).⁴⁸³

According to Wilson, צפה usually is used in a military context to warn citizens of impending military danger.⁴⁸⁴ In the book of Ezekiel, however, this image acquires a legal connotation in which the prophet becomes "the messenger of the Divine Judge."⁴⁸⁵ This juridical function leads Wilson to seek a legal connection between the silence/dumbness and the prohibition of being an איש מוכיה. His analysis of the root יכח, specifically its usage in the C-stem, reveals that this term has an additional legal meaning beyond its usage in Hebrew sapiential literature.⁴⁸⁶ Legally, it references either "a person who participates in a trial" or "one who conducts or presides over a trial."⁴⁸⁷ According to Wilson, when the *Hiphil* participle of יכח is used, "it seems to refer to a legal official whose task was to assure a fair hearing for both the accuser and the accused."⁴⁸⁸ Building

⁴⁸³ The term, צפה, and the discussion of this within Ezekiel are located in Ezek 3:16b-21. The final two terms are both found in Ezek 3:26.

⁴⁸⁴ Wilson, "Dumbness," 96.

⁴⁸⁵ Wilson, "Dumbness," 96. Wilson acknowledges that this association of the prophetic watchman with the messenger of the Divine Judge is similar to the prophetic *rib*, although he recognizes that "it would be unwise to press the parallel, however, for none of the formal elements of the *rib* are present in Ezek iii 16b-19." ("An Interpretation of Ezekiel's Dumbness" *VT* 22, 1972: 97).

⁴⁸⁶ See Bovati, *Re-Establishing Justice*, 44-45.

⁴⁸⁷ Wilson, "Dumbness," 99.

⁴⁸⁸ *Ibid.*, 99. Wilson also references two earlier works that provide summaries of previous investigations of the C-stem יכח: (i) H. J. Boecker, *Redeformen des Rechtslebens im Alten Testament* (WMANT 14 Neukirchen, 1964) and (ii) L. L. Seeligmann "Zur Terminologie für das Gerichtsverfahren im Wortschatz des biblischen Hebraische" in *Hebraische Wortforschung* (VT Supp 16: Leiden, 1967), 251-278.

upon this analysis, Wilson determines that Ezek 3:26 means “the prophet is forbidden by *Yahweh* to be a legal mediator for the people.”⁴⁸⁹ Wilson concludes his analysis of the relationship between Ezek 3:16b-19 and 3:26 by stating: “Together, the two passages express a narrow concept of the prophetic office. The prophet is *only* to deliver the sentence of the Divine Judge.”⁴⁹⁰

This restriction on the prophet’s role is rooted in a long scholarly tradition that has sought to understand the prophet’s function in light of the juridical elements present in biblical texts. As mentioned earlier, scholars agree, “Israelite prophets, in formulating their messages, employ terminology that originates in the realm of lawsuits and courts of law.”⁴⁹¹ This observation about Israelite/Judahite prophets reflects a growing consensus among scholars that prophetic literature throughout the ancient Near East contains juridical diction and legal imagery. Holtz summarizes this consensus concerning legal elements as follows:

As Abusch and others have observed, in ancient Near Eastern religious writings, legal imagery is characteristic of the communication between humans and the divine realm. Courtroom metaphors are the *common stock-in-trade of prayer, prophecy, and even theodicy*, both in the Hebrew Bible and in Mesopotamian literature. In effect, courtroom imagery in dialogues between humans and deities extends the ancient Near Eastern adjudicatory system from earth to heaven.⁴⁹²

⁴⁸⁹ Wilson, “Dumbness,” 101 (emphasis added).

⁴⁹⁰ Ibid., 102.

⁴⁹¹ Holtz, “Summoner,” 19.

⁴⁹² Holtz, “Praying,” 259 (emphasis added). For others making a similar claim regarding the legal nature of prophetic activity (and language) within an ancient Near Eastern context, see I. T. Abusch “*Alaku* and *Halakhah*: Oracular Decision, Divine Revelation.” *HTR* 80 (1987), 15-42, 26; Magdalene, *Scales*, 13-25; and J. Y. Jindo, *Biblical Metaphor Reconsidered: A Cognitive Approach to Poetic Prophecy in Jeremiah 1-24* (HSM 64; Winona Lake, Ind., 2010), 75-100.

Although the book of Ezekiel fits this wider ancient Near Eastern pattern found in prophetic literature, this book appropriates juridical language, legal metaphors, and imagery in a unique manner among the prophetic corpus in the Hebrew Bible. As mentioned in Greenberg’s quotation earlier in this chapter and the book’s similarities to P and H legal materials (which I discussed in Chapter 1), the extent to

Consequently, biblical scholars seek to situate prophetic activity within Israelite and ANE legal praxis.⁴⁹³

Because of this line of inquiry, scholars largely agree that prophets fulfill two primary functions within the ancient Near East and, by implication, Israel/Judah. First, according to Nissinen and others, prophets were commonly understood in the ancient Near East to be messengers sent by a god.⁴⁹⁴ In this capacity, a prophet was “a person who speaks for God and interprets the divine will.”⁴⁹⁵ Laney builds on this basic definition and adds that a prophet “is a speaker, mouthpiece or spokesman for God.”⁴⁹⁶ In the biblical lawsuit genre, Laney argues “the prophets brought a lawsuit (רִיב) against the people, calling for repentance and proclaiming judgment for continued

which Ezekiel appropriates this “legal genre” makes it an excellent candidate to investigate how legal language in prophetic books may function in identity development.

⁴⁹³ See e.g., Moshe Weinfeld, “Ancient Near Eastern Patterns in Prophetic Literature,” *VT* 27 (1977): 178-195. Another aspect of the contextualization of biblical prophecy within the wider ancient Near Eastern context is prophecy’s relationship to divination. According to Kitz, “as our understanding of biblical prophecy has increased, there is a growing sense that the custom is linked to the broader religious phenomenon of divination.” (“Prophecy as Divination” *CBQ* 65, 2003: 22). See also, Nissinen, “Two Sides,” 342.

⁴⁹⁴ Marti Nissinen, “What is Prophecy?: An Ancient Near Eastern Perspective” in *Inspired Speech: Prophecy in the Ancient Near East: Essays in Honor of Herbert B. Huffmon* (London: T & T Clark, 2004), 22-23. See also, Nissinen, “Two Sides,” 341; Weinfeld, “Patterns,” 179 and Lester L. Grabbe “Ancient Near Eastern Prophecy from an Anthropological Perspective” in *Prophecy in its Ancient Near Eastern Context: Mesopotamian, Biblical and Arabian Perspectives* (ed. Martti Nissinen SBL Symposium Series 13 Atlanta: SBL, 2000), 18.

In addition to these sources, Nissinen acknowledges that he relies upon Manfred Weippert’s definition of prophecy in “Prophetic im Alten Orient” *Neus Bibel-Lexikon* 3: 196-200, 197.

⁴⁹⁵ Nissinen, “What is Prophecy?” 19.

⁴⁹⁶ Laney, “Prophet,” 314. Glazov uses a similar definition: “A prophet, being a messenger and spokesperson, is a commissioned intermediary who (1) delivers a spoken message, the word; (2) on behalf of someone; (3) to someone else.” (*The Bridling of the Tongue and the Opening of the Mouth in Biblical Prophecy* [Sheffield: Sheffield Academic Press, 2001], 29). See also, Nissinen, “Prophecy and Omen Divination,” 346.

disobedience.”⁴⁹⁷ As such, they were “official representatives of Yahweh in the administration of His covenant with Israel.”⁴⁹⁸

Since this first function seems unimpaired within Ezekiel, Wilson’s argument must apply to a restriction of the prophet’s second role – i.e., an intercessor. According to Balentine, there is a “prevailing scholarly understanding that Israel’s prophets were in fact intercessors.”⁴⁹⁹ Wilson further argues that this intercessory role is an important part of the earliest biblical accounts of prophetic figures, including Abraham and Moses.⁵⁰⁰ Stephen Tuell combines the two functions (messenger and intercessor) in his definition of a prophet as an “intermediary.” For Tuell, the prophet as intermediary means he is “one who carried divine word to the people, and who interceded on the people’s behalf before God.”⁵⁰¹ Here, Tuell is building upon one of the most incisive analyses of the dual prophetic role – namely that of Yochannan Muffs.

Muffs defines the prophet as “first the messenger of the divine court to the defendant, but his mission boomerangs to the sender. Now, he is no longer the messenger of the court; he becomes the agent of the defendant, attempting to *mitigate* the severity of the decree.”⁵⁰² The plea for mitigation on the defendant’s behalf occurs primarily through

⁴⁹⁷ Laney, “Prophet,” 321.

⁴⁹⁸ Ibid., 319.

⁴⁹⁹ Balentine, “Intercessor,” 162. See also Muffs, *Love & Joy*, 9-48 and Reuven Kimelman, “Prophecy as Arguing with God and the Ideal of Justice” *Interpretation* 68/1 (2014): 17-27.

⁵⁰⁰ Wilson, “Early Prophecy,” 12. See also, Jeffrey Stackert who similarly observes that: “in biblical literature, prophets are also portrayed as interceding and advocating on behalf of humans in the face of divine anger or other distress, both when solicited by other humans to do so and on their own initiative.” (*A Prophet Like Moses: Prophecy, Law and Israelite Religion* [Oxford: Oxford University Press, 2014], 40). Among the biblical examples Stackert invokes are Amos, Isaiah, Abraham and Moses.

⁵⁰¹ Tuell, “Rehab,” 295.

⁵⁰² Muffs, *Love and Joy*, 9 (emphasis added).

prayer and intercession.⁵⁰³ Biblical exemplars, such as Moses and Samuel, are “known for their efficacious prayer” and plead on behalf of the people to get God to control “[His] anger and wrath.”⁵⁰⁴

Similarly, Muffs observes that Ezekiel “who defines the role of intercessor so clearly, seemingly does not himself pray, but is rather the classical example of one who is the mouthpiece of divine anger alone.”⁵⁰⁵ Second, the book of Ezekiel identifies false prophets as those “who do not stand in the breach to push away the divine enemy by means of the power of prayer in his mouth.”⁵⁰⁶ Since the book of Ezekiel demonstrates knowledge of the intercessory responsibility of the prophetic office and the prophet does not fulfill this office, how are these two elements reconciled? Wilson’s analysis of the juridical significance of Ezek 3:26 points in the direction of the thesis I am advancing in this chapter as an answer to this question. Since the prophet knows what his duties entail and is warned expressly of the consequences of his dereliction of those duties (Ezek 3:17-21), the prophet’s “failure” to “stand in the breach” must be the result of divine instruction – an instruction Wilson identifies in Ezek 3:26. Thus, the singular focus of the prophet’s message in Ezekiel 1-33 is the direct result of a divine pronouncement – a pronouncement rooted in a judicial disposition that does not want to weigh any potentially mitigating or exonerating evidence offered on the defendant’s behalf.

⁵⁰³ Ibid., 11.

⁵⁰⁴ Ibid., 21. See also, David L Petersen “Defining Prophecy and Prophetic Literature” in *Prophecy in its Ancient Near Eastern Context: Mesopotamian, Biblical and Arabian Perspectives* ed. Martti Nissinen SBL Symposium Series 13 (Atlanta: SBL, 2000), 37-38.

⁵⁰⁵ Muffs, *Love and Joy*, 32. See also Darr who concludes, “Moses was traditionally depicted as a successful intercessor with Yahweh on Israel’s behalf when divine anger threatened to destroy the people” (Darr, “Justifications,” 100-101).

⁵⁰⁶ Muffs, *Love and Joy*, 35.

3.3.4 The Defendant's Silence⁵⁰⁷

The prophet's inability to speak on behalf of the defendant as an indication of YHWH's judicial disposition is reinforced by the (actual) narrative silence of the defendant in Ezekiel 16, 20, and 23. As mentioned earlier, several scholars recognize the "forensic character" of Ezekiel 16, 20 and 23.⁵⁰⁸ Similar to the opening statement in Ezek 2:3-8, the defendant in these three chapters is accused of engaging in an uninterrupted pattern of illegal and illicit activities. Each of the chapters describes the specific crimes (תועבות) the defendant stands accused of committing. In Ezekiel 16 and 23, the defendant is addressed as a woman and her crimes are described in legal and figurative language borrowed from the "domestic sphere."⁵⁰⁹ As a result of this figurative language, biblical scholars have commented extensively on its problematic nature when understood in light of gender roles, sexual abuse, and domestic violence. One of the problematic elements is the fact that the texts of Ezekiel 16 and 23 take the

⁵⁰⁷ Although I argue about the importance of the defendant's silence in this chapter as an expression of YHWH's judicial disposition and the desired legal outcome, it is important to note that the defendant is not silent throughout the book of Ezekiel. In the next chapter, which represents the second stage of Holtz's reconstruction of Neo-Babylonian legal procedures that informs Ezekiel – i.e., the defendant's response to the accusation/indictment, I will discuss some of the arguments the defendant makes in her defense and the counterclaims challenging the justice and "righteousness" of God. According to my reading of Ezekiel, the book argues that these counterclaims and defenses lack merit and, as a result, they should be abandoned and silenced if a covenantal relationship between YHWH and the people is to endure.

⁵⁰⁸ Greenberg, *Ezekiel 1-20*, 273 who discusses forensic nature of the verb ידע that begins Ezek 16:2. Additional scholars discussing the legal or forensic nature of this verb and its impact upon the legal tenor of Ezek 16 include: Zimmerli, *Ezekiel 1*, 336; Bovati *Re-Establishing Justice*, 75; Block, *Ezekiel 1-24*, 471; and Istvan Haag, Stephen Llewelyn and Jack Tsonis, "Ezekiel 16 and Its Use of Allegory and the Disclosure-of-Abomination Formula," *VT* 62 (2012): 198-210.

⁵⁰⁹ This phrase, "domestic sphere," refers to those legal relationships that are most commonly governed by family law. The three most common legal relationships in this context are parent-child, husband-wife, and sibling-sibling. In these chapters, all three relationships are invoked as part of these chapters' figurative descriptions of the legal guilt and punishment Jerusalem has (or will) experience.

perspective of the male accuser and the female defendant is silent.⁵¹⁰ Consequently, the final form of these chapters convicts Jerusalem of all of the allegations without hearing her side of the story. In Day's words, "disbelief in Jerusalem's side of the story is extreme: her perspective is not given. An external listener does not even have the opportunity to believe her."⁵¹¹ Most concerning for many scholars is a dangerous consequence that the "victim is entirely at fault and has caused this rage and violence. The battery itself satisfies the abuser's rage and is followed by a calm which lasts until the next episode."⁵¹² Because of this silence and seeming "justification" of horrific violence against the female defendant(s), these passages have been described as "prophetic pornography" and, as a result, are considered some of the most dangerous texts in the Hebrew Bible.⁵¹³

Despite the graphic nature of this figurative language taken from the realm of domestic relations, scholars like Renita Weems, Julie Galambush, and Dalit Rom-Shiloni recognize that these texts also operate on another level – a legal one.⁵¹⁴ In Weems' discussion of the purposeful nature of the explicit language, she concludes that "at the basis of their repeated representations of Israel's social and political behavior as promiscuous, lewd, and shameless was the prophets' view that Israel had betrayed the *terms of the covenant* that her ancestors had entered into with God centuries earlier in the

⁵¹⁰ See Moughtin-Mimby, *Metaphors*, 272 and Day, "Bitch," 235.

⁵¹¹ Day, "Rhetoric and Domestic Violence," 214. See also, Shields, "Multiple Exposures," 11-13.

⁵¹² Moughtin-Mimby, *Sexual Metaphors*, 179. See also, M. E. Shields, "Multiple Exposures: Body Rhetoric and Gender in Ezekiel 16" *Journal of Feminist Studies in Religion* 14.1 (1998), 5-18

⁵¹³ See Moughtin-Mumby, *Sexual Metaphors*, 1; Day, "Adulterous Jerusalem's," 285; and Dijk-Hemmes, "Metaphorization," 163.

⁵¹⁴ See Weems, *Battered*, 26; Rom-Shiloni, *Exclusive*, 165; Day, "Adulterous Jerusalem's," 308; and Galambush, *Jerusalem*, 92.

wilderness.”⁵¹⁵ Weinfeld also recognizes this legal level and goes so far as to say, “the love of God for Israel be it depicted as the love of a husband for his wife or of a father for his son is full of emotions and personal sentiments. We are dealing then with *legal conventions* which were turned into metaphors.”⁵¹⁶

The presence of legal language within the vehicle of the metaphor, although recognized, has not been fully explored, particularly as it relates to the logic of these chapters. While I wholeheartedly agree with the insights some scholars brought to the forefront of Ezekiel studies concerning modern appropriations and applications of these troubling texts, by examining the legal language permeating these chapters I am seeking to do what Weems described as “first hearing the [prophet’s] argument out.”⁵¹⁷ My project intends to take this recognition of juridical diction and legal imagery and attempt to understand how these legal elements may illumine another meaning and purpose of these chapters.

While the language of “justification” and “defending” violence is extremely problematic in “domestic relations,” it is quite appropriate (if not necessary) within the context of a legal indictment and the punishment resulting from conviction. Just as the prophet was prohibited from interceding on behalf of the defendant (in contravention of the typical prophetic role discussed earlier), the defendant is similarly barred from offering a defense on her own behalf. Thus, silence on a legal level reflects the same judicial disposition contained in the commandment given to the prophet in Ezek 3:26.

⁵¹⁵ Weems, *Battered*, 13 (emphasis added).

⁵¹⁶ Weinfeld, “Patterns,” 189 (emphasis added).

⁵¹⁷ Weems, *Battered*, 35. Weems further adds that hearing the prophet out does not restrict a reader from disagreeing with or ultimately rejecting the prophet’s argument – the (an) appropriate response to the heinous misapplications of these chapters in modern domestic relationships.

Since YHWH does not want any intervention from the defendant's "attorney," it is consistent that a judge who is so disposed would not want to hear anything from the defendant. On this legal level of analysis, Jerusalem's silence in Ezekiel 16 and 23 reflects the same judicial disposition of YHWH that was present in the opening statement and the restriction of the prophetic role.⁵¹⁸

3.3.5 Repeal of Prophetic Restrictions

Additional confirmation of this understanding of the judicial function of silence is the lifting of the prophet's silence in Ezek 33:22. This verse indicates a repeal of this prophetic restriction, when it states: ויפתח פי ולא נאלמתי עוד ("My mouth was opened and I was no longer muted"). Thus, YHWH authorizes the prophet to resume a more traditional (and balanced) prophetic function – i.e., the prophet can convey messages of hope and destruction, as well as be an advocate for the people. Vogt reaches a similar conclusion regarding the nature of the prophet's role post-destruction of Jerusalem: "Sie kann nur bedeuten, dass Ezechiel wieder als Prophet reden wird, nicht mehr als Kündler des kommenden Gerichtes (3, 26), sondern als Sprecher zum Aufbau eines neuen Gottesvolkes."⁵¹⁹

⁵¹⁸ In a subsequent chapter, I will argue that Jerusalem's silence has another function within the development of Judahite identity. Agreeing with Renz's observation that the "imagined audience" has a quasi-jury function, I contend that the silence in Ezekiel 16 is also intended to reflect the defendant's agreement with YHWH's charges and the legal proportionality of the punishment. This agreement becomes the necessary precondition for the enduring validity and renewal of the covenant between YHWH and the exiled Judahites, enabling the covenantal relationship to remain an appropriate foundation for Judahite identity.

⁵¹⁹ E. Vogt, "Die Lahmung und Stummheit des Propheten Ezechiel" in *Wort, Gebot, Glaube: Beiträge zur Theologie des Alten Testaments. W. Eichrodt zum 80. Geburtstag* (ed. E. Jenni, J.J. Stamm and H. J. Stoebe Zürich: Zwingli-Verlag, 1970), 87-100; reprinted in *Untersuchungen zum Buch Ezechiel* (AnBib, 95; Rome: Biblical Institute Press, 1981), 92-106, 96.

I further add that this change in the prophetic message and function is a direct consequence of the change in judicial disposition. Since Jerusalem and the Temple are destroyed, there is no longer a need for pronouncements explaining and justifying the punishment.⁵²⁰ To the extent justice is served by the execution of the sentence, the rehabilitative aspect of judicial sentencing can begin. In modern parlance, once an individual has “paid his debt to society,” a judge is able to prescribe and enact methods of reintegrating that individual into society.⁵²¹ This restorative aspect of a judge’s legal function explains the significant change in tone that scholars identify after Ezekiel 33. Greenberg hints at this connection between the prophetic function and judicial disposition when he states: “The restoration of the prophet to normal intercourse with his neighbors reflected and expressed the *great turn of God* toward his people, now that they were broken by the punishment; for concurrent with Ezekiel’s release from ‘dumbness’ is the second period of his prophecy – the predictions of Israel’s restoration.”⁵²²

⁵²⁰ Darr, among others, highlights the troubling idea that domestic abuse against women can lead to a positive end, thus (implicitly) justifying the abuse. In Darr’s words, biblical imagery that “displays women being battered and murdered, and that suggests such violence is a means towards *healing* a broken relationship, can have serious repercussions.” (Darr “Justifications,” 115).

Within a legal context, the imagery of the vehicle can be viewed in another light. As mentioned earlier in this chapter, the legal language in the figurative image(s) of domestic relations allows for a discussion of ‘proportionality’ without seeking to ‘justify’ the attitudes, actions, etc.. in the vehicle of the metaphor. Put another way, severe, intentional criminal behavior necessitates grievous and merciless punishment.

⁵²¹ The rehabilitative goal of incarceration is axiomatic among most American legal theorists. See Bovati, *Re-Establishing Justice*, 387 discussing this concept within ancient Israel’s context.

⁵²² Greenberg, *Ezekiel 1-20*, 121 (emphasis added). See also, Block, *River Chebar*, 97.

3.3.6 The Absence of Innocence

Further corroboration for YHWH's judicial disposition occurs in his statement that no individual's "innocence" or "righteousness" (צדקה) could save this defendant.⁵²³ In Ezek 14:14, YHWH proclaims: והיו שלשת האנשים האלה בתוכה נח דנאל ואיוב המה בצדקתם ("Even if these three men were alive – Noah, Dan'el, and Job – on account of their innocence they would only save their own lives, declares the Lord GOD").⁵²⁴ The references to Noah, Dan'el and Job invoke names of people who are renowned for their righteousness and the efficacy of that righteousness to "save" others. As is well known, Noah is described as איש צדיק תמים היה בדורתיו ("He was a righteous man, upright among his generation") (Gen 6:9).⁵²⁵ Noah's exemplary status gains greater

⁵²³ For an overview of the legal meaning and connotations of צדקה, see Bovati, *Re-Establishing Justice*, 171-216. For purposes of this dissertation, צדקה has both a "negative" and "affirmative" legal meaning. The "negative" valence refers to an individual's lack of legal culpability; its "affirmative" meaning indicates that an individual has complied faithfully with all requisite legal obligations. Within American law, the designation "not guilty" carried both understandings – absence of legal culpability and the presence of legal compliance. Some legal scholars and practitioners have sought to modify the meaning of not guilty/liable to designate simply that the prosecutor/plaintiff did not satisfy the legally mandated burden of proof. In those cases, however, where an individual is deemed "innocent," i.e., the fact-finder does not believe there is sufficient evidence to warrant a conviction, another term designating this "affirmative" status at law should be used.

⁵²⁴ This trope is also present in Jer 15:1, although the book uses the biblical characters Moses and Samuel. Scholars, including Greenberg and Zimmerli, assert that this reference to Dan'el intends to draw the audiences' attention to a non-Israelite figure who is renowned for his righteousness. See Greenberg, *Ezekiel 1-20*, 257 and Zimmerli, *Ezekiel 1*, 315.

Additionally, the MT marginalia indicates a *ketiv/qere* with the term דנאל, suggesting that it should be read as דניאל – the spelling of the name of the canonical book and its main character in the MT. This recommended change is likely connected to the Babylonian narrative setting of Daniel, which places him as a contemporary of Ezekiel (Dan 1:1). Most scholars, however, have concluded that the book of Daniel (despite its narrative setting) was written several centuries after the Babylonian exile and reflects 2nd century BCE concerns. For an overview of the debate regarding the 2nd century provenance of the book of Daniel and its potential relationship to the book of Ezekiel, see John Collins, *Daniel: A Commentary on the Book of Daniel* (Minneapolis: Fortress Press, 1993), 20-25.

⁵²⁵ Gen 6:9 is often attributed to the Priestly source in the Flood Narrative. The similarity between the Priestly description and Ezekiel reflects that they share a common evaluation of Noah. This evaluation differs from the Yahwist source in Gen 6:8, where Noah is said to have found grace/favor (חן) in the LORD's eyes.

significance because the rest of humanity is described as the ultimate embodiment of evil (Gen 6:5, 6:11). Although only Noah receives divine commendation, this “righteous” designation extends to Noah’s entire household – who escape death when they are brought onto the ark with Noah (Gen 7:1). In this verse, Noah is once again described as a uniquely righteous man among those living at that time.⁵²⁶ Because of Noah’s distinctive status, YHWH is willing to spare others (e.g., Noah’s family) as a result of his צדקה – a willingness conspicuously absent in Ezekiel 14. Also, although each of these men (individually) were able to save others, Ezek 14:14 makes the case that the sum of their righteousness would be insufficient for this defendant.⁵²⁷ Consequently, Ezek 14:14 continues to argue that this defendant has engaged in an unsurpassed level of criminal behavior that renders any efforts at mitigation or exoneration futile.

Another implication of these three men (Noah, Dan’el and Job) for YHWH’s judicial disposition is the deity’s unwillingness to hear a “defense attorney’s” plea on behalf of the defendant. As mentioned above with Muffs, prophets have the ability to intercede on another’s behalf for clemency. For example, in Gen 18:22-33 Abraham negotiates with God to spare Sodom from imminent destruction. Abraham’s repeated line of appeal involves the calculus and judicial restraint of sparing (many) wicked for a (few) righteous. In Ezek 14:14, however, no such negotiation is possible for at least two reasons. First, the prophet Ezekiel is prohibited from engaging in Abrahamic style

⁵²⁶ For a fuller discussion of the distinctive status of the other figures, see Greenberg, *Ezekiel 1-20*, 257-258.

⁵²⁷ The hyperbolic rhetoric of the book of Ezekiel will be examined in more depth within this dissertation. It is worth noting here that piling up of these three righteous men may be another example of hyperbole within this prophetic text. Also, the repetition (not verbatim however) of Ezek 14:14 in Ezek 14:20 underscores the dire condition of the nation.

negotiations on behalf of his fellow exiles.⁵²⁸ Second, the consistent argument of the book of Ezekiel is that all Judahites are guilty of continual criminal and cultic malfeasance. Thus, there are no righteous individuals (nor could there be) who could tip the scales in favor of judicial clemency. The purpose of referencing these three men is to make it clear that no human being could intercede or intervene. Put another way, judgment is inevitable because of the severe wickedness of the Judahites, the absence of any authorized intercessors, and a judge who has decided to announce and execute judgment.

3.3.7 Inquiring of YHWH

The final pieces of evidence relating to YHWH's judicial disposition to be discussed in this chapter are the deity's: (i) unwillingness to be available for judicial inquiry (שִׁדָּר) and (ii) response to inquiries from the elders. As mentioned earlier, Shalom Holtz (among others) recognizes that "in ancient Near Eastern religious writings, legal imagery is characteristic of the communication between humans and the divine realm."⁵²⁹ One term that is common to juridical settings in Israel/Judah, Mesopotamian courts and Persian contexts is the term שִׁדָּר, and its linguistic parallels.⁵³⁰ According to Wells, this term acquired two primary meanings referring to either a "judicial investigation" or "oracular inquiry."⁵³¹ Samuel Balentine argues that the semantic range may need to

⁵²⁸ See earlier discussion of Ezek 3:26.

⁵²⁹ Holtz, "Plaintiff," 259.

⁵³⁰ Wells, "Cultic," 223.

include the concept of “intercessory prayer.”⁵³² During his discussion of this term’s meaning in Jeremiah and Ezekiel, Balentine states this term “seems to involve a request, mediated by the prophet, for a (oracular) word from God.”⁵³³

In the book of Ezekiel, the elders come to the prophet Ezekiel on three occasions (presumably) seeking “a word from God.”⁵³⁴ Although only Ezek 20:3 uses דרש, the other two appearances of the elders before the prophet result in either visionary revelation (Ezek 8:2) or an (oracular) word from the LORD (Ezek 14:2). The prophet’s encounter with the elders in Ezekiel 20 provides the most explicit evidence of the adversarial nature of YHWH’s judicial disposition. Before YHWH provides another pejorative recitation of the nation’s continuous pattern of covenantal infidelity, he limits expressly the nature of his judicial functioning. Specifically, YHWH announces: “הלדרש אתי אתם באים חי־אני אם־אדרש לכם נאם אדני יהוה” (“Why are you [elders] coming to inquire of me? As I live, I will not be inquired on your behalf, declares the Lord GOD.”). In this verse, YHWH limits his role as he did with the prophet in Ezek 3:26. By the conclusion of Ezek 20:3, both the judge and the “defense attorney” are no longer available as sources of advocacy or consultation on the defendant’s behalf. Moreover, both individuals are not just absentee advocates/arbiters, but are also aggressive prosecutors who relentlessly detail every criminal and cultic violation.

⁵³¹ Ibid., 223-224. Wells further argues that there are an additional six sub-categories of meanings for the term דרש.

⁵³² Balentine, “Intercessor,” 162.

⁵³³ Ibid., 168.

⁵³⁴ The three instances are: Ezek 8:1; 14:1; and 20:1.

This persistent delineation of criminal and cultic misconduct occurs after each of the three times the elders come to the prophet Ezekiel. In Ezek 8:1a, the זקני יהודה יושבים לפני (“elders of Judah were sitting before me”) to gain an audience at the prophet’s house.⁵³⁵ Shortly (if not immediately) after these elders arrive, the prophet has a visionary experience (Ezek 8:2-4) reminiscent of the inaugural vision in Ezek 1:26-27. This visionary experience transports the prophet to see “great abominations” (תועבות גדולות) throughout YHWH’s sanctuary and the city. The culmination of this litany of abominations and punishments is the departure of the כבוד יהוה from Jerusalem (Ezek 11:22-23). As discussed earlier in the context of YHWH’s opening statement, the audience with the prophet did not produce oracles of comfort or consolation. Instead, the prophet was shown and required to deliver oracles of “lamentation and mourning and woe.” (Ezek 11:24-25)

The second appearance of the elders at the prophet’s house occurs in Ezek 14:1. Like the previous encounter, their appearance results in a revelatory experience between YHWH and the prophet (Ezek 14:2). As discussed earlier in this chapter, Ezekiel 14 includes the indictment that Israel’s sins were so deplorable that not even the presence of Noah, Dan’el and Job could save them (Ezek 14:14, 14:20). Similar to the message conveyed in Ezekiel 8, the elders leave this prophetic audience knowing that their current status is beyond judicial intervention.

In some ways, the two responses to the elders in Ezekiel 8 and 14 build up to YHWH’s reaction to their third appearance in Ezek 20:3. The descriptions and nature of the crimes seem to escalate throughout the three meetings. The first meeting (Ezekiel 8-

⁵³⁵ Several scholars recognize the oracular/legal significance of the three instances in Ezekiel where the elders sit before the prophet. See e.g., Zimmerli, *Ezekiel 1*, 235-236 (highlights the similarities between these occurrences in Ezekiel and Deuteronomic History).

11) involves mainly the offenses in and around the Temple and Jerusalem. The second meeting (Ezekiel 14) results in the framing of Judahite misconduct within the context of “global” illegality. As Zimmerli observes, the inclusion of the three names (Noah, Dan’el, and Job) “clearly moves consciously from the sphere of the covenant people into one of worldwide range.”⁵³⁶ The third (and final) appearance of the elders results in the historical retrospective detailing the nation’s perpetual state of covenantal noncompliance (Ezek 20:4-49). In addition to this indictment of the nation’s history, YHWH questions why the people keep inquiring of him and announces he will no longer be inquired on their behalf (Ezek 20:4). A possible reason for this “hardening” of the judicial disposition relates to the ineffectiveness of the previous two prophetic audiences. Since the two previous “inquiries” did not produce a change, there is no point to continuing this exercise – i.e., it is a waste of the court’s time and resources.⁵³⁷

3.4 CONCLUSION

In this chapter, I have argued that YHWH’s judicial disposition, as a reflection of his legal conclusions, is a proximate cause for the restrictions imposed upon the prophet, YHWH as judge, and the silence of the defendant. One purpose of the book of Ezekiel (especially chapters 1-33) is to make the case that such judicially mandated restrictions

⁵³⁶ Zimmerli, *Ezekiel 1*, 314.

⁵³⁷ It is noteworthy that according to the book’s date notices approximately one year elapses between the first audience in Ezek 8:1 and the third in Ezek 20:1. Ezek 8:1 begins with a date notice indicating this first audience took place “in the sixth year, in the sixth month on the fifth day of the month.” Ezek 20:1 indicates that this last audience occurred “in the seventh year, in the fifth month, on the tenth day of the month.” Given the progression in the nature of the indictment and the judicial response, it would appear that the condition of the people worsened rather than improved.

are justified because of the defendant's continual misconduct. The restrictions YHWH imposes are designed to signal to the defendant that she has neither a basis to plead her innocence nor to assert that there are mitigating factors to ameliorate the severe punishment. In addition, the book structures its case against the defendant in a manner that is reminiscent of both Neo-Babylonian and Judahite legal procedures. In the following chapters, I will build upon the nature of these restrictions to demonstrate that Judahites' acceptance of these restrictions, and the guilt that they imply, is a necessary precondition for the book of Ezekiel's advocacy for how Judahite identity should be constituted in the wake of Neo-Babylonian domination.

4.0 CHAPTER 4

יהוה v. יהודה: The Accused's Counterclaims & Challenges to the Accuser

In the previous chapter, I outlined the core elements of YHWH's case against the Judahites. Using Holtz's reconstruction, these elements were placed within the framework of Neo-Babylonian Temple disputations – a contemporaneous, legal procedure that shares elements with the book of Ezekiel. As a result of the indictment (which is also presented as judicial findings), I argued that the deity and prophet restricted their expected legal functions between the opening statement and the execution of the sentence in Ezek 33:21-22. In particular, the “silence” of the prophet and defendant were analyzed within the context of YHWH's “judicial disposition.” While the purpose of the judge's judicial posture and the resulting prophetic silence were intended to produce the defendant's silence, the book of Ezekiel makes it clear that the defendant was not silent. As I will argue in my analysis of Ezekiel 16 in the final chapter, the deity will refute the defendant's counterclaims and objections in an attempt to persuade the Judahites of their legal culpability. According to my analysis, Judahites' acceptance of the legal sanctions becomes the sufficient foundation for affirming their continuing identity as a people in covenant with YHWH. Before addressing how YHWH disproves the Judahites' claims in Ezekiel 16 and its implications for their identity formation, the

purpose of this chapter is to examine briefly some of the Judahites' legal challenges to the charges levied against them.

The Judahites' legal challenges and counterclaims often appear in the book of Ezekiel within the context of disputation oracles.⁵³⁸ Recently, Dalit Rom-Shiloni argued that the following passages should be classified as disputation oracles: Ezek 11:1-13 and 14-21; 12:21-28; 18:1-20; 20:1-38; 33:10-20 and 23-29; and 37:1-14.⁵³⁹ In addition to these passages, Rom-Shiloni recognizes that Ezekiel 8 – 11 contains “sinful quotations pronounced in Jerusalem (8:12 and 9:9), but they are not cast in the disputation pattern.”⁵⁴⁰ Rather than engaging in a debate over which texts belong to this form critical category, I will focus on the following legal objections and counterclaims the Judahites raise: (i) negligent supervision/oversight and divine abandonment (Ezek 8:12 and 9:9); (ii) erroneously assigned guilt and disproportionate punishment (Ezekiel 18); and (iii) the deity's judicial misconduct.

⁵³⁸ It is beyond the scope of this project to discuss the history of this form critical category and the appropriateness of its application to the passages in the book of Ezekiel I am investigating for this chapter. Like many form critical categories, scholars often credit Hermann Gunkel as the first scholar to identify this category of prophetic speech. Gaffy identifies three works by Gunkel as the first articulation of this category: (i) H. Gunkel, “Einleitungen” in H. Schmidt's *Die grossen Propheten*. Schriften des Alten Testaments in Auswahl, 2 (Göttingen: Vandenhoeck & Ruprecht, 1915), xi-lxxii; (ii) H. Gunkel, “Propheten: II. Seit Amos,” *RCG IV* (1913), 1866-1886; and (iii) H. Gunkel, “Propheten: IIB. Propheten Israels seit Amos,” *RCG IV* (1930), 1538-1554. For an overview of the history of scholarship on disputation oracles, see Adrian Graffy, *A Prophet Confronts His People: The Disputation Speech in the Prophets* (Rome: Biblical Institute Press, 1984), 2-23 and D. F. Murray, “The Rhetoric of Disputation: A Re-examination of a Prophetic Genre,” *JSOT* 38 (1987), 95-121.

For this project, I am not interested in proving that several disputation oracles exist within Ezekiel 1-33. Rather, the fact that many disputations between the prophet and his audience(s), regardless of their classification, include legal counterclaims and challenges the Judahites asserted against the deity is my primary interest in this chapter.

⁵³⁹ Rom-Shiloni, *Exclusive*, 142. Consistent with her analysis, she divides the disputation oracles into two categories: Jerusalemite assertions and refutations of Exiles' pronouncements.

Gaffy has a similar list of the disputation oracles in Ezekiel in his book: Ezek 11:2-12, 14-17; 12:21-28; 18:1-20; 20:32-44; 33:10-20, 33:23-29; and 37:11b-13. For this chapter, I will investigate passages from Ezekiel 11, 18, and 33 to see how the disputations use or discuss legal matters that defined the relationship between YHWH and Judahites.

⁵⁴⁰ Rom-Shiloni, *Exclusive*, 142 fn. 9.

4.1 RENUNCIATION, NEGLIGENT SUPERVISION, AND ADVERSE POSSESSION

The problem of divine abandonment and its impact upon a deity's nation or city is well attested in extra-biblical literature from the ancient Near East.⁵⁴¹ This theme is also prevalent in biblical literature, including the book of Ezekiel.⁵⁴² John Kutsko, for example, contends that the departure and return of the כבוד יהוה ("glory of the LORD") is the central, organizing theme of the book of Ezekiel. Accordingly, he argues that the book has a chiastic structure in which the movement of God's glory serves as the bookends for the biblical book.⁵⁴³ For my purposes, I am not interested in discussing the mechanics or centrality of this theme to the book of Ezekiel. Rather, I argue in this section that two articulations of divine abandonment (Ezek 8:12 and 9:9) should be understood as a precise, legal formulation in which the Judahites accuse YHWH of a dereliction of his fiduciary duties under the covenant. Specifically, Ezek 8:12 and 9:9

⁵⁴¹ Among biblical scholars of prophetic literature (generally) and Ezekiel in particular include, see Greenberg *Ezekiel 1-20*, 200-201; Daniel Bodi, *The Book of Ezekiel and the Poem of Erra* (OBO 104; Freiburg: Universitätsverlag; Göttingen: Vandenhoeck & Ruprecht, 1991), 183-218; Daniel I. Block, *Ezekiel 1-24*, 275; idem, "Divine Abandonment: Ezekiel's Adaptation of an Ancient Near Eastern Motif" in *The Book of Ezekiel: Theological and Anthropological Perspectives* (ed. M.S. Odell and J. T. Strong; SBLSymS 9; Atlanta: Society of Biblical Literature, 2000), 15-42; John Kutsko *Between Heaven*, 25-77 and 150-156; Julie Galambush, "Necessary Enemies: Nebuchadnezzar, YHWH, and Gog in Ezekiel 38-39" in *Israel's Prophets and Israel's Past: Essays on the Relationship of Prophetic Texts and Israelite History in Honor of John H. Hayes* (ed. Brad E. Kelle and Megan Bishop Moore; New York: T&T Clark, 2006), 256; and William A. Tooman, "Ezekiel's Radical Challenge to Inviolability," *ZAW* 121 (2009), 498-514.

This theme of divine abandonment appears already in Sumerian texts and persists through Akkadian literature dating to the Neo-Assyrian and Neo-Babylonian eras. One of the first texts regularly cited for containing this theme is: "The Lamentation over the Destruction of Sumer and Ur." See Piotr Michalowski, *The Lamentation over the Destruction of Sumer and Ur Mesopotamian Civilizations 1* (Winona Lake, Ind.: Eisenbrauns, 1989), 36-69.

⁵⁴² Tooman argues that biblical texts inherit this ancient Near Eastern tradition and emphasize that "the city [Jerusalem] is impervious to destruction so long as Yhwh is in residence there" ("Radical Challenge," 498). Some of the biblical texts Tooman discusses are Isaiah 36-39, Psalms 46, 48, and 76.

⁵⁴³ See John Kutsko, *Between Heaven and Earth*, 1-5 and 78.

articulate the Judahites' counterclaim that YHWH has renounced (עָזַב)⁵⁴⁴ his legal claim to the land/people and has failed to faithfully fulfill his supervisory obligations and duty of care (רָאָה).⁵⁴⁵

Ezekiel 8 – 11 describes the prophet's visionary journey from Babylonia to Jerusalem.⁵⁴⁶ During this journey, the prophet witnesses a series of four abominations (תועבות) the inhabitants of Jerusalem committed.⁵⁴⁷ Additionally, these chapters record the gradual withdrawal and eventual departure of the כבוד יהוה from the land of Judah (Ezek 11:22-23). In the midst of this visionary experience, the prophet twice records (Ezek 8:12 and 9:9) the Judahites' accusation against YHWH. In these verses, the inhabitants of Jerusalem make the following claim:

⁵⁴⁴ When I use "renunciation" as a translation of עָזַב, it is to describe a disclaimer of vested interest in or power over property – whether such property is a person, real, or personal. This disclaimer limits (or eliminates) the disclaimant's rights to access, enjoy or control the property, including her rights to title to and interest in the disclaimed property. In some instances, this renunciation involves a refusal to assert a legally valid claim to property that would, absent such a disclaimer or renunciation, belong to the disclaimant. This definition is consistent with how modern disclaimers or renunciations in matters of property law function. See e.g., Massachusetts General Laws ("MGL") Chapter 190B, Article II §2-801 and Uniform Disclaimer of Property Interests Acts (2010), §5.

⁵⁴⁵ As I will discuss in the concluding chapter of this dissertation, YHWH disputes the Judahites' claims in Ezek 8:12 and 9:9. The deity argues in Ezekiel 16 that he never renounced (nor intends to renounce) his covenantal obligations to the Judahites. To the extent they experienced abandonment, the Judahites are accusing the wrong defendant (Ezek 16:4-5), which is an argument the Judahites make against YHWH in Ezekiel 18 – i.e., the right crime is associated with the wrong perpetrator. In almost hyperbolic language, YHWH delineates his faithful fulfillment of his duty of care and the extreme largess he exercised in lavishing Jerusalem with gifts (Ezek 16:10-14).

⁵⁴⁶ Scholars have argued for the literary unity of these chapters, although they may have undergone some redactional activity: "the diverse materials of chs. 8-11 is organized into a single visionary experience whose complexity indicates a considerable literary effort." (Greenberg, *Ezekiel 1-20*, 192). See also, Block, *Ezekiel 1-24*, 272; Y. Kaufmann, *The Religion of Israel*, 431; Zimmerli, *Ezekiel*, 223; Eichrodt, *Ezekiel*, 112; and Darr, *NIB*, 1172.

Despite these scholars' willingness to accept the literary unity of Ezekiel 8-11, Darr notes that "most scholars contend that this vision account is not, in its final form, simply the prophet's product." (Darr, *NIB*, 1172). Two classic summaries of the evidence supporting the presence of multiple writers and/or redactors are Zimmerli, *Ezekiel*, 223-233 and Eichrodt, *Ezekiel*, 112-119 and 133-142. See also, Susan Ackerman, "A Marzeah in Ezekiel 8:7-13?" *HTR* 82 (1989), 267-281; and Karl-Friedrich Pohlmann, *Ezechiel: Der Stand der Theologischen Diskussion* (Darmstadt: WBG, 2008), 144 – 148.

⁵⁴⁷ The series of four abominations the prophet witnesses can be divided as follows: (i) Ezek 8:5-6; (ii) Ezek 8:7-13; (iii) Ezek 8:14-15; and (iv) Ezek 8:16-18.

Ezek 8:12 כי אמרים אין יהוה ראה אתנו עזב יהוה את־הארץ

Ezek 9:9⁵⁴⁸ כי אמרו עזב יהוה את־הארץ ואין יהוה ראה

Evidence for the juridical valence of עזב and ראה, as well as the legal function of these two verses within Ezekiel 8 – 11 (“Temple Vision”)⁵⁴⁹, can be adduced from a lexical analysis of these two terms. Since Hebrew lacks a specialized legal vocabulary that appears only in legal contexts or formal adjudicatory proceedings, a quotidian term can have a juridical significance that becomes clearer upon an examination of the narrative context in which the word is found. Additionally, an investigation of Aramaic and Akkadian cognates often provide useful evidence to corroborate whether a term has a technical, juridical meaning.

⁵⁴⁸ The direct object marker in Ezek 8:12 (אתנו) is lacking in the LXX. Given this absence in the LXX of Ezek 8:12 and from both the MT and LXX of Ezek 9:9, it is likely that אתנו is a later addition to the MT of 8:12. Emanuel Tov reaches a similar conclusion in “Recensional Differences between the MT and LXX of Ezekiel,” *Ephemerides Theologicae Lovanienses* 62 (1986), 96.

Although both verses attribute the same actions to YHWH – i.e., עזב and ראה, they do so in different orders. Ezek 8:12 begins with the accusation that YHWH does not ראה; Ezek 9:9 begins with the claim that YHWH has עזב the land. It is possible that the different order of verbs contributed to the insertion of אתנו in Ezek 8:12.

While there may be insufficient evidence to demonstrate whether Ezek 8:12 or 9:9 is the original formulation, when the question is addressed in the secondary literature it is often assumed that Ezek 8:12 is the original articulation; thus, Greenberg: “The reversal of the elements of the saying of 8:12 indicates a purposeful reference to it.” (*Ezekiel, 1-20*, 178).

⁵⁴⁹ Although it is beyond the scope of this chapter, scholars have debated the function and meaning of Ezek 8:12 and 9:9 within the Temple Vision. Because the final, physical departure of the deity’s glory occurs in Ezek 11:22-23, three common theories are proposed to explain their function: (i) a foretelling of the disaster which has not yet occurred; (ii) an argument that since God is inattentive the elders are trying to justify their behavior; and (iii) the statement is false. See e.g., Block, *Ezekiel 1-24*, 294 and Kathryn Pfisterer Darr, “The God Ezekiel Envisions,” in *The God Ezekiel Creates*, ed. Paul M. Joyce and Dalit Rom-Shiloni (London: Bloomsbury, 2015), 1-23.

As a result of my legal rendering of Ezek 8:12 and 9:9, these legal formulae are not erroneous statements, predictive or otherwise out of place. Instead, the fact that the movement of the כבוד always follows these statements indicates that the movement is additional, physical evidence affirming the validity of the Judahites’ statements. Rather than predicting what will come, what comes ratifies (through action) the legal claims the formula asserts. In this sense, the legal formula is not predictive, but performative.

עֶזֶב is among a class of words that can have both a legal and spatial meaning⁵⁵⁰ in the Hebrew Bible. Scholars such as Cross, Botta, and Malul have identified several terms that carry a dual legal and spatial meaning.⁵⁵¹ In Malul's analysis of Ezek 16:1-7, he concludes that it borrows language from Neo-Babylonian adoption proceedings to frame the history of Jerusalem's relationship with YHWH.⁵⁵² Malul begins his analysis by reviewing Cogan's conclusion that "the verb השליך [has] a legal-technical meaning of exposure of children in some contexts..."⁵⁵³ Building upon Cogan's analysis, Malul argues that there are three nuances to השליך and its "technical meaning of exposure to the ownerless domain."⁵⁵⁴ These are: (i) exposure of children; (ii) banishment; and (iii) to abandon something and remove it from one's legal domain.⁵⁵⁵ The basic idea that unites these three nuances is that "the person responsible for casting renounces any right or obligation towards the object cast."⁵⁵⁶ In Malul's discussion of Hebrew locutions that function similarly to השליך, he briefly acknowledges but does not discuss fully the

⁵⁵⁰ For this chapter, "spatial meaning" refers to a word's ability to convey proximity to and, by implication, relationship with a particular person, place or object.

⁵⁵¹ See Frank M. Cross, "A Papyrus Recording a Divine Legal Decision and the Root רחק in Biblical and Near Eastern Legal Usage," in *Texts, Temples, and Traditions: A Tribute to Menahem Haran*, ed. Michael Fox et al. (Winona Lake: Eisenbrauns, 1996), 311-320; and Alejandro F. Botta "רחק in the Bible, a Re-evaluation" *Biblica* 87/3 (2006): 418-420.

Malul's discussion of the forensic meaning of this terminology is found in his article "Adoption of Foundlings in the Bible and Mesopotamian Documents: A Study of Some Legal Metaphors in Ezekiel 16:1-7" *JSOT* 46 (1990): 97-126.

⁵⁵² Malul, "Adoption," 98.

⁵⁵³ Malul, "Adoption," 100 and M. Cogan, "A Technical Term for Exposure," *JNES* 27 (1968): 133-135.

⁵⁵⁴ Malul, "Adoption," 100.

⁵⁵⁵ Malul, "Adoption," 100.

⁵⁵⁶ Malul, "Adoption," 101. This is consistent with Cross' and Botta's findings regarding רחק and its usage in Aramaic legal texts.

technical, legal valence of עֵזֶב and its function within biblical texts that demand a legal interpretation.⁵⁵⁷

The case for the legal rendering of עֶזַב in Ezek 8:12 and 9:9 is bolstered by other biblical texts in which עֶזַב may possess an additional legal meaning. The root עֶזַב appears some 216 times in the Hebrew Bible. Most often, this word should be translated spatially and refers to the physical removal, departure, or abandonment of some object.⁵⁵⁸ Consequently, the most common English translations of עֶזַב are “abandon,” “leave,” or “forsake.” However, as the lexica and Malul argue, this spatial meaning is not exhaustive. For this project, a review of a few, representative examples should suffice to show how Ezek 8:12 and 9:9 accuse the deity of renouncing his legal claims to the land.

The Psalter provides several examples for the juridical meaning of עֶזְבָּ. Holtz (among others) has demonstrated that petitionary language in the Psalter borrows heavily from the language of ancient Near Eastern legal disputations.⁵⁵⁹ For example, Ps 27:10 states: יְהוָה יִסְּכֵנִי וַיִּזְבֹּנִי וַיַּהֲרֵג וַיִּסְּכֵנִי (‘‘Though my father and my mother forsook me, YHWH will take me’’). Here, similar to the argument Malul makes concerning Ezekiel 16, the Psalmist asserts that his parents have renounced their custodial claims to and legal interests in him. Thus, the Psalmist is without a legally functioning guardian or custodian. Into this legal vacuum, the deity intervenes and stakes his legal claim to the Psalmist – in a manner akin to Ezek 16:6-8.⁵⁶⁰ The presence of other legal terminology in Psalm 27

⁵⁵⁷ See Malul, “Adoption,” 102.

⁵⁵⁸ BDB, 736-737 and HALOT, 806-807. Most English translations of Ezek 8:12 and 9:9 render עָזַב as “abandon” or “forsake,” consistent with the common, non-juridical understanding of this term.

⁵⁵⁹ See Holtz, “Plaintiff,” 274.

⁵⁶⁰ This insight builds on a similar observation by Malul, see Malul, “Adoption,” 117, fn. 27.

gives additional warrant for understanding עזב in a legal capacity, particularly Ps 27:7-9.

Within these verses, scholars have identified the following locutions that in other texts have a legal meaning: שמע, קרא, חנן, ענה, בקש, and ישע.⁵⁶¹ This “clustering” of legally significant terminology often signals to the reader that the legal valences of specific words should (or minimally could) be intended.⁵⁶²

In Psalm 22, the Psalmist appeals to a relationship with YHWH in which the deity has assumed these fiduciary obligations (Ps 22:2, 10-11).⁵⁶³ According to the Psalmist, the deity’s fiduciary duties are not only personal to him, but also rooted in a historical relationship with Israel (Ps 22:5-6). The Psalmist recounts the historical relationship to remind YHWH of his duties and obligation to fulfill those duties now, as he did in the past (Ps 22:20-24). Also, the Psalmist recounts that YHWH has a historical relationship with the Psalmist in which the deity performed faithfully his obligations (Ps 22:10-11). The author of this Psalm places himself in this legal relationship in Ps 22:2 and asserts the expected obligations the deity assumes: אלי אלי למה עזבתני רחוק מישועתי דברי שאגתי (“My God, My God, why have you renounced me; (why) are you removed from my help, (from the) words of my complaint”).⁵⁶⁴ His assertion of these claims is framed within the

⁵⁶¹ See Bovati, *Re-Establishing*, 315-317.

⁵⁶² Holtz, “Common,” 2-3. Holtz uses “clustering” to describe the collocation of several terms that carries a juridical valence.

⁵⁶³ A prerequisite for the legal valences of עזב is a legally valid and recognizable relationship between the parties. In particular, a relationship must exist where one party can place legal demands upon the other party. The Psalmist indicates that the legal relationship is a basis for appeal through his use of the first person pronominal suffix in addresses of the deity and to identify his legal claims. For example: אלי, מישועתי (Ps 22:2); שאגתי (Ps 22:3). See e.g., Davida Charney arguing that Psalm 22, as an example of a lament, operates on the assumption “that God responds to innocent Israelites because they are bound together by covenant” (“Maintaining Innocence Before A Divine Healer: Deliberative Rhetoric in Psalm 22, Psalm 17, and Psalm 7,” *Biblical Interpretation* 21/1 (2013): 33-63, 47).

⁵⁶⁴ The classification of Psalm 22 as an individual lament (and the attendant sentiments of abandonment) is well attested in the secondary literature. A commonly cited study on the characteristics of

context of the deity's apparent dereliction of the requisite fiduciary duties. The Psalmist emphasizes this (apparent) dereliction of duty when he complains in Ps 22:3: אלהי אקרא ("My God, I petition you by day but you do not answer; even at night and am not silent").

Within this relationship that is described in legal terminology,⁵⁶⁵ Psa 22:2 collocates עזב and רחק in a manner that underscores the Psalmist's sense of abandonment and distance from God.⁵⁶⁶ Although the spatial meaning of these terms is appropriate, the context suggests that a legal nuance is also intended. As mentioned earlier, scholars agree that רחק is another term that carries this dual legal and spatial meaning. Based upon available Aramaic papyri, it is well established that this root means renunciation or relinquishment of a proprietary claim to an object.⁵⁶⁷ This Psalm's frequent usage of עזב and רחק contributes to the underlying legal concern animating this petition – i.e., do not renounce your custodial claim and remove the attendant oversight that accompanies the legal relationship. Ps 22:8-12 provides an example of how the Psalmist articulates this relationship and its legal elements. After rehearsing the mocking accusations of divine ineffectiveness and the futility of appealing to the deity for care (Ps 22:8-9), the Psalmist addresses the deity as follows (vv. 10-12):

individual laments in the Psalms is Claus Westermann, *Praise and Lament in the Psalms* (Atlanta: John Knox Press, 1981), 64-71.

⁵⁶⁵ Similar to Psalm 27, Psalm 22 contains several terms that scholars have identified as having a legal significance, such as: קרא, שמע, ענה, ישע.

⁵⁶⁶ Additionally, the pairing of these two terms (עזב and רחק) appears in other Psalms, including Ps 38:22. In some of these Psalms (e.g., Ps 38:22), the collocation of these terms provides additional warrant for examining their potential juridical significance or meaning.

⁵⁶⁷ See earlier references to Cross' and Botta's articles on רחק. Additionally, see Keck, "Glory of Yahweh," 119-121.

For you pulled me from womb, you made me rely upon my mother's breast.	כי־אתה גחי מבטן מבטיחי על־שדי אמי
I was cast upon you from the womb, since my mother's womb you are my God.	עליך השלכתי מרחם מבטן אמי אלי אתה
Do not renounce me because trouble is near, there is nobody to help.	אל־תרחק ממני כי־צרה קרובה כי־אין עוזר

Similar to the adoption language discussed earlier, the Psalmist asserts that he has a (legal) relationship with the deity that originated in the Psalmist's infancy, if not *in utero*.⁵⁶⁸ In light of Malul's analysis of השליך, the Psalmist argues that it was God who asserted a legal claim upon him from the beginning and fulfilled the expected fiduciary duties of care and protection.⁵⁶⁹ Thus, the Psalmist petitions in Ps 22:12: אל־תרחק ממני. Based upon the framing of Ps 22:12 in custodial language of a young child, the plea is not only about distance, but also concerns the fact that the deity's inaction could imply the renunciation of his legal interests in the Psalmist.⁵⁷⁰

An additional example for the juridical meaning of עזב is found in the Holiness Code.⁵⁷¹ In Lev 19:9-10, Moses instructs the people concerning the proper harvesting

⁵⁶⁸ This "personal history" builds upon and parallels the "national history" discussed in Ps 22:4-6. In these verses, the Psalmist testifies to the consistent pattern of divine provision and protection provided to ancestors.

⁵⁶⁹ JPS recognizes this legal nuance and translates Ps 22:11: "I became Your charge at birth; from my mother's womb You have been my God," which signals clearly the custodial relationship that exists between the psalmist and the deity.

⁵⁷⁰ A similar pattern is present in Ps 22:17-20, which concludes in Ps 22:20 with the Psalmist's plea that the deity not renounce his legal claim to him: ואתה יהיה אל־תרחק. Also, as discussed earlier, the appeal to the personal, legal relationship between the Psalmist and deity is emphasized by the use of the first person pronominal suffix when addressing the deity.

⁵⁷¹ As discussed in Chapter 1, it has long been recognized that P, H and the book of Ezekiel share many, specific locutions. Thus, the common legal valence of this term across H and the book of Ezekiel is not surprising.

procedures for their property. In Lev 19:10, the following instruction appears: וְכִרְמֶךָ לֹא תְעוּלֶל וּפִרְט כִּרְמֶךָ לֹא תִלְקֹט לְעֹנִי וְלִגֵּר תַּעֲזֹב אֹתָם אֲנִי יְהוָה אֱלֹהֵיכֶם (“Concerning your vineyard: You shall not glean [it] nor shall you gather the fallen grapes of your vineyard. You shall disclaim them for the sake of the poor and foreigner – I am YHWH your God”).⁵⁷² In this verse, the physical action of “leaving behind” certain produce is clearly intended.

However, this action also has a legal significance that is part of the semantic range of the word עֲזַב. In this verse, the commandment לְעֹנִי וְלִגֵּר תַּעֲזֹב אֹתָם implies that the people are required to not assert a legal claim or interest to their property. Since the verse begins with an acknowledgement of personal ownership, i.e., “concerning your vineyard (וְכִרְמֶךָ),” it concedes that the persons receiving the command own the vineyard and have a (legal) right to dispose of their property in a certain manner. Lev 19:10, however, instructs the owner to disclaim or renounce a proprietary interest in a portion of their property. As argued earlier, this renunciation of or refusal to assert a valid, legal claim is precisely the juridical nuance that עֲזַב bears. Consequently, the use of עֲזַב has a dual meaning, i.e., (a) an instruction regarding what the vineyard owner is to do physically with his produce and (b) an acknowledgement of the legal significance of the action.

Additionally, the legal abandonment of the owner’s property permits a new owner, e.g.,

⁵⁷² A similar instruction appears in Lev 23:22, which reads: וּבְקִצְרֹכֶם אֶת־קִצִּיר אֲרָצְכֶם לֹא־תִכְלֶה פֶּאֶת שֶׂדֶךְ בְּקִצְרֹךְ וּלְקַט קִצִּירֶךָ לֹא תִלְקֹט לְעֹנִי וְלִגֵּר תַּעֲזֹב אֹתָם אֲנִי יְהוָה אֱלֹהֵיכֶם: Because of the similarities between these verses, I would argue that the forensic use of עֲזַב in Lev 19:10 is applicable in this verse as well. The instruction in Lev 19:10 is often discussed in connection with Israelite’s obligations to the poor and foreign among the population. See e.g., Joel S. Kaminsky “Loving One’s (Israelite) Neighbor: Election and Commandment in Leviticus 19” *Interpretation* 62/2 (2008): 123-132, 125; Jacob Milgrom, *Leviticus 17-22: A New Translation with Introduction and Commentary*. Anchor Yale Bible Commentary Series (New Haven: Yale University Press, 2000), 1626; and Mary Douglas “Justice as the Cornerstone: An Interpretation of Leviticus 18-20” *Interpretation* 53/4 (1999): 341-350, 348-349.

לעני ולגר, to take possession of the property without any disputes concerning the transfer of title.⁵⁷³

Further evidence of the juridical valence of עזב I contend is operative in Ezek 8:12 and 9:9 can be found in other passages within the book of Ezekiel. For example, Ezek 20:8a reads: וימרר-בי ולא אבו לשמע אלי איש את-שקוצי עיניהם לא השליכו ואת-גלולי מצרים לא עזבו (“They rebelled against me and would not listen to me. Nobody cast away the detestable things before them nor did they renounce the idols of Egypt”). As discussed, Malul recognizes the legal valence השליכו conveys, especially within contexts of abandonment or renunciation. The parallel usage of השליכו with עזבו in this verse suggests that the juridical meanings of each term should be considered.⁵⁷⁴ The verse is not simply lamenting the lack of physical distance between the Judahites and their abominations. Rather, as Ezek 20:5-7 indicate, the Judahites’ continuing attachment to these abominable practices and idols violated the legal relationship the deity established with the nation and placed the nation in danger of punishment for its malfeasance. Additionally, in Ezek 23:29, עזב appears in a description of the judgment Oholibah must face because of her (alleged) misconduct. In this verse, Oholibah is told that she will be mistreated, have her property taken, and she will be “left naked and bare.” As Malul and Galambush have

⁵⁷³ The identification of לעני ולגר as recipients of the ownership transfer may further underscore the juridical nature and legal significance of עזב, if we understand these two categories of persons to be “protected classes.” In the Pentateuch, גר’ designates a particular, identifiable class of individuals who receive special protection under the law. See, for example, Exod 22:20, 23:9 and Lev 19:33-34.

Within contemporary American jurisprudence, laws concerning protected classes (e.g., age, gender, and race) are tailored to ensure that groups that are (or have been) marginalized receive specifically enumerated legal protections. In the Hebrew Bible, these “protected classes” seem to garner additional legal guarantees because they lack the resources (if not judicial standing) to assert claims on their behalf. For my current argument, the fact that they receive special legal consideration in an analogous manner to contemporary American categories of “protected classes” is sufficient.

⁵⁷⁴ For a discussion of the pairing of verbs relating to abandonment in biblical texts, see Malul, *Knowledge*, 204.

observed, the exposure or casting of an object is a legally significant action that often signals the termination of a legal relationship.⁵⁷⁵ In Ezek 23:29, this leaving (עזבו) is described as one of the appropriate punishments for Oholibah's violations of the relationship with the deity. In both of these examples from Ezekiel, the nation's judgment is because they have failed to relinquish or renounce (עזב) their affiliation with certain items that violate the requirements of the legal relationship with the deity.⁵⁷⁶

Additional evidence supporting a legal meaning of עזב emerges from an analysis of its Akkadian cognate – *ezēbum*. This term, *ezēbum*, can mean to “entrust” or “bequeath” an object to another, as well as to leave some object or person behind.⁵⁷⁷ Moreover, and most importantly for my argument, *ezēbum* conveys the idea of renunciation of a legal interest in or claim to an individual – especially in matters of family law. Within the Laws of Hammurabi (LH), the root *ezēbum* appears in laws discussing the dissolution of a marriage. For example, LH 138 reads:

*Šumma awīlum ḫīrtašu ša mārī la uldušum izzib kaspam mala terḫatiša
inaddiššim u šeriktam ša ištu bīt abiša ublam ušallamšimma izzibši.*

If a man intends to divorce (*izzib*) his first-ranking wife who did not bear him children, he shall give her silver as much as was her bridewealth and restore to her the dowry that she brought from her father's house, and he shall divorce her (*izzibši*).⁵⁷⁸

⁵⁷⁵ See, Malul, “Adoption,” 101 and Julie Galambush, *Jerusalem*, 92. See also, Malul, *Knowledge*, 203 and Gabriella Spada, “Two Old Babylonian Model Contracts,” *CDLIJ* 24 (2014), 4.

⁵⁷⁶ Within Ezekiel, Ezek 23:8 and 24:21 may also use עזב in the forensic context outlined above. Although the term עזב does not appear in Ezek 20:1-3, a similar sense of abandonment or dereliction of divine duties is implicated when YHWH announces his unavailability for oracular inquiry. As mentioned in Chapter 3 of the dissertation, the availability of the deity to respond to supplicants' petitions is assumed in several biblical texts. Thus, the admission of the deity in Ezek 20:3 that he is unavailable for such inquiries is tantamount to an admission of guilt – a quasi-declaration against interest. Put another way, the deity's confession that he is unavailable would hinder any effort to defend or justify his actions in a legal dispute.

⁵⁷⁷ See CAD, 85 and AHw, 267-268.

⁵⁷⁸ Roth, *Law Collections*, 107

Roth's translation of the G-stem (durative) of *ezēbum* as divorce in LH 138 reflects the termination of a legal relationship and the attendant obligations.⁵⁷⁹ As with my analysis of עִזְבָּ in Ps 27:11, the presence of *ezēbum* in this law regarding domestic relations supports a translation with a legal nuance.

The case for the legal meaning of רָאָה begins with scholars' recognition that words connected to humans' five senses can have legal import. In particular, several scholars have identified Hebrew locutions related to hearing (e.g., שָׁמַע and אָזַן) that have a juridical nuance in certain contexts.⁵⁸⁰ Similarly, locutions of seeing (e.g., נָבַט and רָאָה) appear in contexts in which the deity acts (or is requested to act) on behalf of those with whom he has a legal relationship. Also, several biblical texts collocate words of hearing and seeing in passages that seem to support a legal understanding.⁵⁸¹

One example in which words of hearing and seeing are configured in a legally significant manner is Exod 3:7-8:

And YHWH said: I have carefully observed the hardships of my people who are in Egypt and I heard their complaints concerning their oppressors, for I know their pain.	וַיֹּאמֶר יְהוָה רָאָה רָאִיתִי אֶת־עֲנֵי עַמִּי אֲשֶׁר בְּמִצְרַיִם וְאֶת־צַעֲקָתָם שָׁמַעְתִּי מִפְּנֵי נַגְשָׁיו כִּי יָדַעְתִּי אֶת־מַכְאֲבֵיו
And I have descended to deliver him from the power of the Egyptians and to bring them from that land to a good and large land – into a land flowing with milk and honey	וְאֵרַד לְהַצִּילוֹ מִיַּד מִצְרַיִם וּלְהַעֲלֹתוֹ מִן־הָאָרֶץ הַהִוא אֶל־אָרֶץ טוֹבָה וְרוֹחֶבָה אֶל־אָרֶץ זֶבֶת חֶלֶב וְדִבְשׁ

⁵⁷⁹ Roth, *Law Collections*, 107. See also, LH 137, 141, and 148 for Roth's translation of *ezēbum* as "divorce." See also LH 172 for distraint.

⁵⁸⁰ See Holtz, "Common," 11-13 and Malul, *Knowledge*, 194.

⁵⁸¹ See Malul, *Knowledge*, 193 and David Daube, *Studies in Biblical Law* (Cambridge: Cambridge University Press, 1947), 33-37.

Judahite territory.⁵⁸⁴ The most relevant aspect of the articulation of this pattern in 2 Kgs 13 is its usage of the root ראה. 2 Kgs 13:4 states that: ויחל יהואחז את־פני יהוה וישמע אליו יהוה (‘‘And Jehohaz plead before YHWH and YHWH heard him because he saw the oppression of Israel, because the King of Aram oppressed them’’). In this verse, YHWH ‘‘hears’’ Jehoahaz’s petition and ‘‘sees’’ the oppression that Israel is enduring. In response to these observations, YHWH provides a מושיע to liberate Israel – YHWH’s covenant people - from subjugation to the king of Aram (2 Kgs 13:5). Just as YHWH gave (ויתנם) Israel to these foreign kings (2 Kgs 13:3), he subsequently gave (ויתן) the nation a מושיע to reverse the political consequences of the deity’s actions. Similar to the Exodus passage, YHWH’s hearing (שמע) and seeing (ראה) are the impetus for divine intervention on behalf of people connected to the deity legally.

An additional example concerning ראה and its possible legal meaning of attendant action is 2 Kgs 19:16. In this chapter, King Hezekiah petitions YHWH for deliverance from the imminent threat Sennacherib poses to the nation of Judah. After Hezekiah receives a letter from messengers of the Assyrian king detailing Assyria’s recent conquests and announcing that Hezekiah should not rely upon his deity for deliverance (2 Kgs 19:8-13), Hezekiah presents the letter before YHWH and offers a prayer for relief (2 Kgs 19:14-20).⁵⁸⁵ The most relevant portion for this current analysis is 2 Kgs 19:16: הטה יהוה אזנך ושמע פקח יהוה עיניך וראה ושמע את דברי סנחריב אשר שלחו לחרף אלהים חיים: (‘‘Incline your ear, O YHWH, and hear; Open your eyes, O YHWH, and see. Listen to the words of

⁵⁸⁴ This pattern is particularly evident in the book of Judges, as Judg 2:11-21 articulates programmatically.

⁵⁸⁵ The same story is told in Isa 37:1-38. Since similar locutions appear in both contexts, the forensic interpretation I propose for 2 Kings 19 would also apply to Isaiah 37.

Sennacherib that he sent to taunt (defy) the living God”). Additionally, in 2 Kgs 19:14, Hezekiah opens (פרש) the document before YHWH in a manner that indicates the deity can read the document. The deity was expected to inspect visually the document, and this letter is presented as written evidence of the petitioner’s claim. In response to this petition, YHWH acknowledges that he has heard (שמע) the request, promises to provide assistance, and eliminates the Assyrian threat against Judah (2 Kgs 19:20-37).

In the prayer of Hezekiah, each of the three elements outlined in the examination of Exodus 3 appears again. First, Hezekiah invokes the deity’s fiduciary duties by emphasizing the legal relationship that exists between YHWH and Israel, as well as God’s position as the sovereign creator/ruler: יהוה אלהי ישראל יושב הכרובים אתה־הוא האלהים (“O YHWH, God of Israel, the one enthroned upon the cherubim, you are god alone, over all the rulers of the land. You made the heavens and the earth”). Second, the king uses several terms relating to human senses that are common to legal petitions of the king or deity. In particular, 2 Kgs 19:16 begins with a series of these sensorial terms that underscores the urgency of the plea and the need for immediate intervention: הטה יהוה | אזנך ושמע פקה יהוה עיניך וראה (“Incline your ear, O YHWH, and listen; open your eyes and see”). Third, the deity recognizes the validity of the petition and responds to the petitioner by granting his request. Thus, the request to “incline your ear and hear; open your eyes and see” is understood to be both YHWH’s expected duty and the basis for his subsequent intervention.⁵⁸⁶ Consequently,

⁵⁸⁶ Hezekiah engages in a similar pattern to receive a reprieve from his imminent death in 2 Kgs 20:1-10, which has a parallel, but not identical, account in Isaiah 38. In both accounts of this story, YHWH acts on Hezekiah’s behalf after hearing and seeing the elements of his plea. Once again, the deity (and his petitioners) recognize that “sight” carries with it an expectation of action on behalf of the petitioner. Scholars making a similar point, even if not emphasizing the legal elements within this episode, include Amitai Baruchi-Unna, “The Story of Hezekiah’s Prayer (2 Kings 19) and Jeremiah’s Polemic Concerning

Hezekiah's request that YHWH both see and hear implies that the petitioner expected to present oral and written evidence for YHWH to consider in his adjudication of the matter.⁵⁸⁷

In light of the preceding analysis of עזב and ראה, Ezek 8:12 and 9:9 are specific legal formulations of an accusation of divine malfeasance – namely, renunciation of a legal claim to ownership and negligent supervision. As a result of the deity's (alleged) failures to exercise the fiduciary duties of loyalty and care that attach to the covenantal relationship between YHWH and the Judahites, the denizens of Jerusalem assert that the deity is in the wrong. This theme of divine dereliction appears throughout the book of Ezekiel, as the brief discussion of YHWH's oracular activity in Ezekiel 20 typifies.⁵⁸⁸

An important, legal consequence of these claims of divine abandonment relates to who holds proper title to the land of Israel/Jerusalem.⁵⁸⁹ In Ezek 11:15, the "inhabitants

the Inviolability of Jerusalem" *JSOT* 39 (2015): 281-297, 295-297; Danna Nolan Fewell, "Sennacherib's Defeat: Words at War in 2 Kings 18.13-19.37" *JSOT* 34 (1986): 79-90, 83-85

⁵⁸⁷ Similar to the analysis of עזב, the Psalter has several examples in which ראה conveys the legal meaning of supervision/oversight and the attendant actions. One example is Ps 119:153-155, which reads: ראה-עניי וחלצני כי-תורתך לא שכחתי: ריבה ריבי וגאלני לא-מרתך חני: רחוק מרשעים ישועה כי-חקך לא דרשו: ("Take note of my affliction and deliver me because I do not forget your law; Plead my case and vindicate me, give me life according to your word; Remove salvation from the wicked because they do not seek your statutes"). The juridical context for this Psalm is established by the appearance and clustering of several terms with juridical significance – e.g., עני, תורה, ריב, רחק, ישע, and חק. Additionally, two of the three verses connect the petitioner's plea for divine intervention to his relationship with aspects of the deity's law (Ps 119:153, 155). Also, the structure of Ps 119:153 and 154 contributes to the legal understanding of ראה I am proposing. In each of these verses, the petitioner asks the deity to perform two actions. The first action (ראה and ריבה) involves the deity's recognition of the petitioner's situation; the second demands that the deity acts in the best interest of the petitioner (גאל and חלץ). Through its structure, Ps 119:153 and 154 suggests that the first action leads to (or should produce) the second action the Psalmist requests. This connection between ראה and the actions the Psalmist requests (and expects?) is similar to what I argue is present in the earlier examples from the Deuteronomistic History. Thus, ראה goes beyond simple observation and requires specific actions in light of what was observed.

⁵⁸⁸ See *infra*, pp. 158-161.

⁵⁸⁹ Brownlee makes a similar observation and further argues that in each of these chapters is "the underlying assumption that exile meant expulsion from the presence of Yahweh." (Brownlee, "Aftermath," 394). While Brownlee is accurate, I would add that the description of this "expulsion" includes and implicates specific changes in the legal relationship among the three parties – namely, YHWH, the

of Jerusalem” (ישבי ירושלם) assert: רחקו מעל יהוה לנו היא נתנה הארץ למורשה (“They are far from YHWH; it is ours; the land is given as a possession”). The logic of their claim rests, in part, upon the meanings of רחק. Most commonly, רחק describes the physical distance between two objects.⁵⁹⁰ To the extent there is physical distance between YHWH and Jerusalem, on one hand, and the deportees on the other, the inhabitants of Jerusalem assert that such distance produced the relinquishment of their legal claim to the land. To cite a common, modern legal colloquialism: “possession is 9/10ths of the law.” Since the גולה are too far from the land to occupy it and the inhabitants of Jerusalem are possessing and working the land, their presence in Jerusalem is *prima facie* evidence (at least in their argument) for the validity of their claim to the land.⁵⁹¹ Additionally, רחק can also have a technical, legal meaning relating to the conveyance of property.⁵⁹² This legal meaning, if applicable here, reinforces the inhabitants’ claims regarding the absence of a valid, legal claim the deported Judahites may assert to the land.

YHWH responds to this legal claim in two ways. First, the deity asserts that the physical distance of the deported Judahites from Jerusalem is a function of divine agency not (only) human action. YHWH concedes that the deportees are removed from the land by using the same verbal root the inhabitants use – i.e., רחק. However, the deity asserts that he removed the deported Jerusalemites by using the *C-stem* of רחק to describe the

Judahites in Jerusalem, and the Judahites in Babylonia. Consequently, the various land disputes are a direct result of the legal consequences of what expulsion means.

⁵⁹⁰ See Botta and Cross articles listed in fn 551. Some scholars also comment that this accusation of distance may carry “a moral sense.” See e.g., Graffy, *Prophet Confronts*, 50.

⁵⁹¹ Brownlee describes the ownership claim with the phrase “squatters’ rights,” which is analogous to my earlier legal colloquialism and an implication of adverse possession. See Brownlee, “Aftermath,” 395.

⁵⁹² Although Cross and Botta both agree that רחק has a clear forensic meaning, they disagree on whether that meaning applies to this verse. See Botta, “Re-evaluation,” 419-420.

process by which they are no longer occupying Jerusalem/Judah. Thus, the ultimate severing of the legal relationship that physical distance from YHWH and his land *can* imply is not necessarily operative in this case. To underscore this point, the deity argues that their distance from the land does not mean that the deity has abandoned them or is inaccessible to them cultically (Ezek 11:16).⁵⁹³ As a result, physical distance alone is insufficient evidence to conclude that the legal relationship between the parties, and the attendant property interests, is irreparably or inevitably changed.⁵⁹⁴ Ezek 11:17 further argues that just as their removal from the land was the result of divine actions, there return will be as well: *לכן אמר כה־אמר אדני יהוה וקבצתי אתכם מן־העמים ואספתי אתכם מן־הארצות* (“Therefore say, Thus says my lord YHWH: I will scatter you from the people and gather you from the lands in which you were dispersed”). The continuing access and control over the fate of the deported Judahites may also suggest that the legal relationship between the parties remains enforceable.

Second, as it relates to ownership of the land, the deity argues that the land still belongs to him. As a result, YHWH retains the right to dispose of the property in any matter he deems appropriate: *ונתתי לכם את־אדמת ישראל* (“I will give you the land of Israel”).

⁵⁹³ Biblical scholars continue to debate the precise meaning of the phrase *למקדש מעט*. In particular, scholars are divided as to whether the phrase should be understood temporally (“a sanctuary for a little while”) or spatially (“a small sanctuary”). See Greenberg, *Ezekiel 1-20*, 189-190.

For my purposes, the precise meaning of this phrase is not critical to the analysis that follows. In either instance, the phrase conveys the sense of YHWH’s continued accessibility and presence among the *גולה*. Thus, the implication that physical distance is itself a disqualifying factor both of divine presence and inheritable, enforceable claims to the land is refuted, or at least challenged.

⁵⁹⁴ The mobility of the deity’s presence and its implications for life in Babylonia is well rehearsed in the literature on Ezekiel, especially in discussions of the opening visions in Ezekiel 1. As I will argue more fully in the final chapter, Ezekiel 16 is an example of how the book contends that physical distance between the “homeland” and the Judahites in Babylonia does not necessitate the termination of the contractual relationship between Judah and YHWH. Rather, the terms of the contract remain in “full force and effect” and the experiences of Neo-Babylonian domination are themselves evidence of the continuing validity of the covenantal/contractual relationship.

(Ezek 11:17b). YHWH's continued title to the land and his choice to grant it to the Judahite deportees counters the claim that those inhabiting the land now possess it. A similar dispute regarding proper title to the land of Israel/Jerusalem reappears in Ezek 33:23-29. In Ezek 33:24, the Judahites living in Jerusalem make the following claim to the land: בן־אדם ישבי החרבות האלה על־אדמת ישראל אמרים לאמר אחד היה אברהם ויירש את־הארץ (Mortal, the inhabitants of these ruins in the land of Israel speak saying: Abraham was one and he inherited the land but we are many the land was given to us as an inheritance"). During this claim to the land, the earlier statement in Ezekiel 11 seems to inform the assumption that their continued presence in the land is evidence of possession and ownership. To bolster their claim, the Judahites in Jerusalem argue that their numbers are evidence of a valid claim. The logic (in part) assumes that if Abraham's title to the land is enforceable against other rival claims, surely the claims of multiple individuals to the land is at least as valid as Abraham's. Another element that may be operative in this claim is the notion of the transferability of ownership interests across generations. To the extent the denizens of Jerusalem are Abraham's heirs, then their continuing occupation of the same land is *prima facie* evidence of the validity of their ownership. YHWH's response (Ezek 33:25-26) does not focus on their claims of occupation and inheritability of title. Rather, the deity argues that the inhabitants' conduct renders them ineligible to possess the land. Thus, their continued presence is irrelevant to an assessment of their property claim because their illegal conduct prohibits the assertion of any valid claim to the land.

As I will discuss in the analysis of Ezekiel 16, YHWH argued that not only did he not fail to perform his fiduciary duties, but also he "outperformed" his contractual

obligations.⁵⁹⁵ Moreover, the deity's fidelity stands in stark contrast to the nation's perpetual breaches of contract. These persistent and uncured breaches of contract demand severe punishment, in part because they reflect the intent of the Judahites not to comply with covenantal requirements.

4.2 ERRONEOUS PUNISHMENT AND JUDICIAL MISCONDUCT

In addition to questioning the deity's compliance with his obligations under the covenant, some Judahites accused YHWH of inequitably administering justice. This claim often takes two forms within the book of Ezekiel. First, the Judahites contend that they are being punished for crimes and derelictions their ancestors committed (Ezek 18:2b). Consequently, the hardships caused by the Neo-Babylonian imperial regime are not justified. Second, even if a legal violation was committed, the current punishment does not match the severity of the crime. In fact, the Judahites will go so far as to accuse the deity of being unfair in his application of judicial requirements (Ezek 18:25, 29; 33:17, 20). As I will argue in the final chapter of the dissertation, Ezekiel 16 (like other chapters)⁵⁹⁶ responds to these claims by asserting that the current Judahites are rebellious and part of a continual, unbroken succession of legal infidelity that (largely) defines

⁵⁹⁵ In Chapter 5, I argue that the many gifts and exalted, royal status Jerusalem attains under YHWH's legal custodianship becomes evidence not only of his fidelity to the legal requirements, but also his "outperformance" of the contractual mandates. Additionally, the use of hyperbole – in the description of the actions of YHWH and Jerusalem – underscores the intent of each party and the severity of their conduct.

⁵⁹⁶ In addition to Ezekiel 16, Ezekiel 20 and 23 describe the *Unheilsgeschichte* of the nation of Israel/Judah. Although beyond the scope of this project, each of these chapters recount the history of the nation. An apparent purpose of these retellings is to demonstrate the nation's continual malfeasance and the severity of its crimes, which can justify the intensity and harshness of the punishment.

Judah/Israel. Moreover, the severity of the crimes and the punishments outlined in the legal statutes in the Pentateuch are appropriately applied to the people's violations. Consequently, the Judahites' acceptance of the validity and suitability of YHWH's judicial sentence is essential for the continuing covenantal identity that is foundational for Judahite identity in the aftermath of Neo-Babylonian domination. Although the topic of divine misappropriation or perversion of justice appears throughout the book of Ezekiel, Ezekiel 18 contains one of the more sustained treatments of these issues. Accordingly, the focus of the remainder of this chapter is Ezekiel 18 and its arguments as representative of the discourse regarding the legal suitability of the Judahites' punishment.

Ezekiel 18 contains the transcript of a sustained dispute regarding whether YHWH's punishment is appropriate and warranted.⁵⁹⁷ The dispute begins in Ezek 18:2 with an accusatory proverb *מה-לכם אתם משלים את-המשל הזה על-אדמת ישראל לאמר אבות יאכלו* ("What do you mean quoting this proverb concerning the land of Israel saying, fathers ate sour grapes but the children's teeth are on edge").⁵⁹⁸ The

⁵⁹⁷ The legal nature of Ezekiel 18 is accepted widely among biblical scholars. For an overview of the legal nature of Ezekiel 18, see Greenberg, *Ezekiel 1-20*, 33; Zimmerli, *Ezekiel 1*, 375; and Joyce, *Divine Initiative*, 42-60. Graffy further argues that this chapter, esp. Ezek 18:14-17, contains several legal elements common to legal texts in the priestly stratum of the Bible, including terminological and formulaic elements consistent with casuistic laws in the Pentateuch. See Graffy, *Prophet Confronts*, 62-63.

⁵⁹⁸ Scholars debate the meaning of the phrase *על-אדמת*, particularly whether it should be "upon the land" or "concerning the land." See e.g., Joyce, *Divine Initiative*, 43 arguing that the phrase should be translated "concerning the land" because he assumes the prophet is addressing the exiles in Babylonia. For my analysis of the legal significance of these accusations, a resolution of this debate is not central.

Also, the meaning of the verb *קה* is debated within the literature. The root *קה* appears some four times in Hebrew Bible (Jer 31:29, 30; Ezek 18:2; and Qoh 10:10) and is sometimes translated to become blunt or disgusted. Although the precise meaning is unclear, the term conveys the sense that the children are experiencing an adverse consequence as a result of their ancestors' actions.

In addition, scholars recognize the commonalities between this proverb in Ezek 18:2b and a similar version of this proverb that appears in Jer 31:29: *בימים ההם לא-יאמרו עוד אבות אכלו בסר ושני בנים תקהינה*. see e.g., Hutton, "Sour Grapes," 276-277. The differing narrative contexts is another factor that highlights the legal significance and framework of Ezekiel 18. Jeremiah 31 quotes this proverb and pivots towards a lengthy discussion of the benefits and purpose of a new covenant with the Israelites (Jer 31:30-

judicial challenge implicit in this proverb is that the sons (who are innocent) are erroneously suffering for the misdeeds of their guilty ancestors. Despite the Judahites' challenge to this verdict and sentence, no explicit objection is raised regarding the judicial principle that guilty individuals should be punished. Instead, the Judahites argue that the deity who punishes innocent defendants must have his verdicts and judicial qualifications challenged.⁵⁹⁹ Greenberg reaches a similar conclusion regarding the nature of the Judahites claim when he states, "Their complaint is that the wrong people get punished."⁶⁰⁰ As a result of the wrong people receiving punishment, "the exiles characterize God's way as inequitable and arbitrary."⁶⁰¹ Joyce summarizes the challenge of this proverb even more pointedly: "The 'sour grapes' proverb is more than simply an expression of despair; it is also, as we have we [*sic*] seen, a complaint that Yahweh's system of justice is unfair."⁶⁰² What follows in the remainder of this chapter, then, is the deity's justification of his judicial process and the sentencing guidelines to which he adhered in assigning the current punishments to the Judahite communities. In Darr's words, the purpose of Ezekiel 18 is to demonstrate that "He [YHWH] is just and honest in his legal affairs."⁶⁰³

34). In contrast, Ezekiel 18 uses this proverb to introduce a lengthy discussion regarding the legal standards to determine innocence and guilt, which includes casuistic formulations to illustrate the main points in contention.

⁵⁹⁹ See Zimmerli, *Ezekiel 1*, 375 and 378 who argues that the real challenge is to God's "righteousness." See also Joyce, *Divine Initiative*, 44.

⁶⁰⁰ Greenberg, *Ezekiel 1-20*, 328. For others making similar observation, see Eichrodt, *Ezekiel*, 236

⁶⁰¹ Darr, *NIB*, 1264. See also, Clements, *Ezekiel*, 79

⁶⁰² Joyce, *Divine Initiative*, 45.

⁶⁰³ Darr, *NIB*, 1259. See also, Eichrodt, *Ezekiel*, 244-245

YHWH's explanation of his verdict begins with an assertion of the appropriateness of his jurisdiction over the two classes of individuals mentioned in the proverb – namely, fathers (אבות) and sons (בנים) (Ezek 18:3-4). By claiming ownership of all human persons (הן כל־הנפשות לי הנה כנפש האב וכנפש הבן ל־יהנה), YHWH asserts not only his exclusive, ownership claim, but also his right to decide legal matters pertaining to his possessions.⁶⁰⁴ The oath formula introducing the divine rebuttal also announces that the proverb (Ezek 18:2b) will no longer be recited because his explanation of the sentencing will render the proverb's claims moot (Ezek 18:3).⁶⁰⁵ The quasi-opening statement ends in Ezek 18:4b where YHWH articulates the foundational premise that underlies his determination that the Judahites are the offending party who should be punished: הנפש החטאת היא תמות ("The person who sins, (only) he will die").⁶⁰⁶ To provide additional, corroborating evidence of this judicial principle, YHWH describes his (legal) reasoning process by exploring several hypothetical fact patterns and how the judicial determination applies to these hypotheticals.⁶⁰⁷

⁶⁰⁴ See Joyce, *Divine Initiative*, 45. Although Joyce connects this statement to the "radical theocentricity of the book of Ezekiel," he recognizes that this statement indicates YHWH's possession of and right to judge those under his charge. This custodial claim is similar to the argument earlier in this chapter about the legal significance of the Judahites' charge that the deity has renounced ownership interest in them.

⁶⁰⁵ As discussed earlier, I contend that the silence of the parties to this dispute has a specific legal significance. In this case (like Ezek 16:63), the cessation of speech reflects the Judahites' recognition and acceptance of the sustainability and appropriateness of the legal verdict, including the resulting punishment.

⁶⁰⁶ This claim in Ezek 18:4b has often been discussed within the context of corporate punishment and "trans-generational retribution." Although many scholars have examined Ezekiel 18 within the wider ancient Near Eastern and biblical phenomena of individual accountability vs. corporate responsibility, I am not interested in that line of inquiry. Rather, I am focusing on how Ezekiel 18 functions within the book of Ezekiel's arguments for the legal appropriateness of the verdict and sanctions imposed upon the Judahites. Thus, the wider biblical and ancient Near Eastern phenomenon of trans-generational punishment will not be discussed in this chapter. For an overview of scholarly treatments of this issue, see Darr, *NIB*, 1257 and Michael Fishbane, "Sin and Judgment in the Prophecies of Ezekiel," *Interpretation* 38 (1984), 131-150.

⁶⁰⁷ The casuistic formulation of these hypotheticals and presence of Hebrew terminology with juridical valences is well rehearsed in the secondary literature on Ezekiel. Consequently, I will not repeat

The first hypothetical (Ezek 18:5-9) involves the disposition of a case involving “an innocent man” (וַאִישׁ כִּי־יִהְיֶה צָדִיק). To explain, if not justify, the verdict, Ezek 18:5b-8 delineates the criteria YHWH uses to assess the legal culpability of an individual. The first requirement for an innocent verdict relates to the individual’s conduct and its conformity to the appropriate legal standards.⁶⁰⁸ A second requirement for a finding of innocence is described as follows: אֱלֹהֵהֶרִים לֹא אָכַל (“He does not eat upon the mountains”).⁶⁰⁹ Although the meaning remains obscured to modern readers, its legal import is clear – engaging in this conduct is a disqualifying offense for those seeking to be innocent. The meaning of the next three disqualifying offenses in Ezek 18:6 is clearer to scholars: וְעֵינָיו לֹא נִשְׂא אֶל־גִּלּוּלֵי בֵּית יִשְׂרָאֵל וְאֶת־אִשֶּׁת רֵעֵהוּ לֹא טָמָא וְאֶל־אִשָּׁה נְדָה לֹא יִקְרַב (“He does not lift his eyes to the idols of the house of Israel; he does not defile his neighbor’s wife nor does he approach a menstruating woman”). In this verse, several prohibitions that also appear in biblical legal codices in the Pentateuch are invoked. Here, issues of idolatry, sexually transgressive behavior, and ritual impurity are delineated as offenses that would cost an individual his claim to innocence.⁶¹⁰

those discussions here. One representative example is Joyce who describes Ezekiel 18 as “an elaborate argument based on the adaptation of case law.” (Joyce, *Divine Initiative*, 52).

In modern, American legal studies, the use of hypothetical fact patterns to illustrate the validity and applicability of a judicial decision remains a common phenomenon.

⁶⁰⁸ The terms (מִשְׁפָּט) and (צִדְקָה) appear regularly in legal materials throughout the Pentateuch and describe conduct that is consistent with divine commandments codified in biblical legal codices.

⁶⁰⁹ Text critical notes suggest substituting על for אֶל in the phrase. The LXX renders this phrase ἐπὶ τῶν ὀρέων. Scholars struggle to understand the precise nature of the legal violation that is described by this phrase. Many suggest this prohibition of eating on the mountains is connected to an idolatrous practice that the author seeks to criminalize. See Greenberg, *Ezekiel 1-20*, 329 and Zimmerli, *Ezekiel 1*, 380.

⁶¹⁰ Galambush is illustrative of a tradition among scholars of the book of Ezekiel who recognize that these three categories of sins are common to the book, especially in its allegorical descriptions of Jerusalem’s sinful conduct in Ezekiel 16 and 23. See Galambush, *Jerusalem*, 124-125.

This hypothetical fact pattern concludes with a statement of the legally mandated behavior that warrants a finding of innocence. According to the deity's reasoning, a finding of innocence (צדיק) requires not only the avoidance of certain behaviors (18:6), but also the fulfillment of specific obligations (18:7-9a). Ezek 18:7-8a describes just economic practices between lenders and debtors, as well as charitable acts to the hungry (רעב) and naked (עירם). Thus, a finding of innocence requires more than not being "guilty" of certain crimes. Instead, as Ezek 18:7b enumerates, an innocent man (צדיק) must do good for individuals who are need. The requirements for a verdict of righteous is summarized in Ezek 18:9a: בחקותי יהלך ומשפטי שמר לעשות אמת ("he follows my statutes and observes carefully my ordinances"). According to this case study, if a person fulfills the legal requirements outlined above, then he receives a favorable verdict צדיק הוא חיה (That man is righteous; he will surely live declares my lord YHWH). A major purpose of this lengthy discussion of the factors that YHWH weighs in delivering his sentence is to counter the Judahites' assertions regarding the capricious and unsustainable nature of his judicial decrees. While this hypothetical does not directly counter the Judahites' accusation in Ezek 18:2, it provides a clear articulation of the judicial standard YHWH utilizes to adjudicate the guilt or innocence of defendants.

The second hypothetical (Ezek 18:10-13) describes a son of the innocent man, who was described in Ezek 18:5-9. Legally, this son is the antithesis of his father. Whereas the father did not engage in any cultic, social or criminal infractions, the son engages in them all, including murder (18:10) and unjust economic practices (18:12-13a). In contrast to the father, the son is sentenced to death in language reminiscent of Priestly and Holiness material from the Pentateuch: מות יומת דמיו בו יהיה ("He shall surely die; his

blood will be upon him”) (Ezek 18:13).⁶¹¹ Like the first case study, the judicial finding does not address directly the accusations in Ezek 18:2. In this second hypothetical, a guilty son is punished, despite the innocence/righteousness (צדיק) of the father. This fact pattern does, however, add an important element in YHWH’s defense of his verdict – namely, legal innocence (and presumably guilt) is neither transferable nor inheritable. Implicit in the proverbial accusation is that the guilt of the previous generation has been transferred (unfairly) to the current generation. The second hypothetical reminds the Judahite accusers that each person has the opportunity to have his/her case adjudicated on its own merits.⁶¹² Therefore, any verdict a person receives is only the result of his/her ability to comport themselves in accordance with the standards of legal conduct outlined in the two previous hypotheticals. Taken together, the first two hypotheticals establish the following elements in YHWH’s defense: (i) a clear articulation of the legal standard against which each person is judged and (ii) a pronouncement that an individual’s legal status (i.e., innocent or guilty) is non-transferable to another generation.

Building upon these two elements, the third hypothetical (Ezek 18:14-20) outlines the fact pattern of another son who is righteous, although his father is guilty of various forms of malfeasance.⁶¹³ Ezek 18:14 begins with an acknowledgment of the father’s

⁶¹¹ The term, צדיק, may be rendered as צדק, a reading based upon the Targum. A similar debate over the proper vocalization of this term appears in Lev 20:9 – the MT keeps צדיק, while the Samaritan Pentateuch has צדק.

⁶¹² As I will discuss later in this chapter, Ezekiel 14 reiterates this point about the non-transferability of a legal verdict between people. Unlike the present example that involves the inheritability of legal innocence/guilt, Ezekiel 14 focuses on limitations of its disposition to fellow, living citizens.

⁶¹³ A common pattern in the book of Ezekiel is describing legal relationships and crimes through family metaphors (see Ezekiel 16 and 23). The authors’ choice to use familial metaphors throughout the book of Ezekiel and their utility for expressing concepts of legal culpability and innocence requires a more robust analysis than is appropriate for my current dissertation. Later in this chapter, I will explore one familial metaphor (Ezekiel 24) to see how it might bolster the case the deity is making here in Ezekiel 18

guilty condition and that the son “has not imitated him” (ולא יעשה כהן).⁶¹⁴ For the deity, the son’s response to a guilty father is endorsed as the appropriate one to avoid sharing in the father’s legal fate. After describing the legally appropriate conduct in now familiar terms (Ezek 18:15-17), the son’s legal sentence is compared directly to the father: לא ימות בעון אביו חיה יהיה (“he shall not die on account of his father’s guilt; he shall surely live.”) To emphasize the independent legal assessment and punishment of each family member, YHWH reiterates the legal culpability of the father (Ezek 18:18) and juxtaposes the son’s innocence. To address directly the accusations in Ezek 18:2, the deity anticipates a potential objection of the people: ואמרתם מדע לא־נשא הבן בעון האב (“You say, ‘Why does the son not share in the father’s guilt?’”) (Ezek 18:19a). The people’s statement seems to be an endorsement of vicarious punishment and, as a result, a challenge to the argument that each person is judged on the merits of his/her case. Joyce, among others, argues that the Judahites’ endorsement of this position is to reinforce their self-perception as the righteous sufferers. Otherwise, the Judahites would “have to admit that they are to blame for the current situation. They complain about the injustice of events, but would prefer to go on believing in their own explanation for the disaster rather than admit responsibility.”⁶¹⁵ The deity’s response reiterates the just (משפט) and righteous (צדקה) conduct of the son as the legal basis for the preservation of his life (Ezek 18:19b). This

regarding the justness of his decision and the proper response to such a verdict. In subsequent projects, I anticipate returning to this idea to develop it further.

⁶¹⁴ JPS translates this phrase the same way.

⁶¹⁵ Joyce, *Divine Initiative*, 47-48. A central argument of my dissertation is that the use of legal elements in the book of Ezekiel are intended to overcome the position Joyce articulated. Specifically, the juridical diction, legal metaphors, and courtroom imagery are deployed strategically to demonstrate the culpability of the Judahites. Moreover, the acceptance of their legally determined culpability (i.e., their guilt) is the prerequisite for the covenantal relationship between YHWH and the Judahites to continue as the basis for Judahites identity.

final scenario concludes (Ezek 18:20) with a statement of the legal principles and supporting evidence that govern YHWH's adjudicatory process: הנפש החטאת היא תמות בן ("The person who sins is the one who will die. A son will not suffer for the father's violation nor the father for the son's violation. The righteousness of the righteous will be upon him and the wickedness of the wicked will be upon him").

Unlike the previous hypotheticals, this one answers directly the accusations contained in Ezek 18:2. The principle stated in Ezek 18:20 is that each person's legal verdict belongs only to that person. In contrast to the Judahites' claim, the punishment they are experiencing is for their crimes, rather than the crimes of preceding generations.⁶¹⁶ As mentioned earlier, Ezekiel 18 emphasizes that an individual's legal status (i.e., innocent or guilty) is non-transferable. Although Ezekiel 18 is the most extended discussion of this legal principle in the book of Ezekiel, it is not the only one. For example, Ezekiel 14 discusses the lack of impact that the legal status of three figures – Noah, Dan'el, and Job – would have on the condition of the Judahites (Ezek 14:14, 20). In each of these verses, the deity announces that: ונה דניאל ואיוב בתוכה חי-אני נאם אדני יהוה ("(If) Noah, Dan'el and Job were in it, as I live declares my lord YHWH, they could not save their son or daughter, their righteousness would save (only) their lives"). In Chapter 3 of the dissertation, I argued that Ezekiel 14 was another expression of YHWH's judicial disposition and findings regarding Judahite culpability.⁶¹⁷ Additionally, Ezek 14:14 and 14:20 articulate the limitations on the

⁶¹⁶ Several scholars also note that this judicial principle appears in Deut 24:16. See e.g., Fishbane, "Sin and Judgment," 140 and Joyce, *Divine Initiative*, 49.

⁶¹⁷ See *infra* pp. 158-161.

transfer of legal status. Similar to Ezek 18:20, the deity concludes that the innocence (or guilt) of an individual, and the resulting legal sentence, belongs solely to the person whose conduct is being judged. Joyce correctly summarizes the purpose of these verses: “Ezekiel 18, on the other hand, by rejecting the notion that the disaster is a punishment for the sins of previous generations, seeks to demonstrate that Yahweh’s activity in history is *every bit as just as the demands of legal practice: the present generation suffers for its own sins.*”⁶¹⁸

The final set of hypotheticals (Ezek 18:21-24) departs from the familial examples discussed earlier. Instead, these focus on specific examples of how innocent (צדיק) and guilty (רשע) individuals will have their cases adjudicated at the time a decision is required. The first case study (Ezek 18:21-22) describes how YHWH will judge a guilty person (הרשע) who turns from his wickedness and complies with legal conventions of appropriate behavior. According to the deity, the current pattern of compliant behavior results in an innocent verdict and no death penalty as a sentence (חיה יחיה לא ימות). Moreover, YHWH announces that the previous, unlawful conduct will be forgotten and not held against him in the current judicial proceeding (כל-פשעיו אשר עשה לא יזכרו לו).⁶¹⁹ Because of his newly adjudicated innocence, he receives a commutation of his death sentence (Ezek 18:22b). The initial case study closes with the deity commenting that he

⁶¹⁸ Joyce, *Divine Initiative*, 50 (emphasis added).

⁶¹⁹ This judicial principle is analogous to a modern convention of American jurisprudence governing the admission of “prior bad acts.” When determining the innocence or guilt of a criminal defendant, courts have discretion to determine whether, and to what extent, an individual’s prior criminal activity may be admitted into evidence. A concern that underlies this discretion and the prohibition on prior bad acts is that court’s want to protect defendants from the (erroneous) logic that: “Since he/she is a bad person, they should be convicted of this crime, even if he/she may not have done it.” In legal parlance, the admission of such prior bad acts may be excluded because it is “more prejudicial than probative.” In both scenarios described in Ezek 18:21-24, the deity precludes incorporating prior conduct, whether good or bad, into his judicial determinations.

gains no delight (חפץ) in the death of the wicked; rather, he desires that the wicked/guilty do what is necessary to be judged innocent and live (Ezek 18:23).⁶²⁰

The second case study (Ezek 18:24) is the antithesis of the first case described in Ezek 18:21-23. Ezek 18:24 describes an individual who is initially adjudicated as innocent. Subsequent to this initial verdict, the individual turns from his righteous deeds (ובשוב צדיק מצדקתו) and commits several legal violations. Consistent with the principle outlined above, YHWH announces that his previous legal status does not affect the current assessment of his conduct and the resulting verdict. As was true with the guilty person who becomes righteous, the deity states that he will not consider prior actions in a prejudicial manner – i.e., he will forget the previous conduct (לא תזכרנה). Therefore, this once innocent person is now deemed guilty and will face the legal consequences of his criminal malfeasance (ובהטאתו אשר־הטא בם ימות).

In addition to the claims discussed, the Judahites' accusations against YHWH culminate in Ezek 18:25: ואמרתם לא יתכן דרך אדני ("You say: 'The Lord's conduct is unjust").⁶²¹ This accusation is met with an immediate rebuttal and counter-claim: שמעו־נא ("Listen, House of Israel: Is my conduct unjust? Is it not your conduct (that) is unjust?"). Setting aside the quasi-middle school nature of the exchange, the accusations challenge the deity's judicial qualifications and the trustworthiness of his verdict. First, the accusation the deity is somehow abrogating or unfaithfully fulfilling his judicial role provides adequate (legal) foundation to question the verdict. The Judahites' accusation that the deity's ways are תכן, suggests that his

⁶²⁰ This question of the deity's delight (חפץ) in punishing the wicked becomes relevant for the defense of YHWH's judicial temperament that occurs later in Ezekiel 18.

⁶²¹ A similar accusation reappears in Ezek 18:29.

judicial analysis is flawed. The root תכן appears approximately 15 times in the Hebrew Bible and relates to the correct regulation, organization, or order of some object.⁶²² In Ezekiel 18, the Judahites' statement impugns the integrity and accuracy of YHWH's judicial conclusions.

This accusation is similar to objections Judahites raise in other prophetic anthologies. For example, Habakkuk 1 begins with the prophet filing a complaint against the deity regarding his infidelity to certain covenantal obligations – not dissimilar to what is present in Ezekiel. In Hab 1:2, the prophet accuses the deity of the following: עַד־אָנֶה יהוה שׁוֹעֵתִי וְלֹא תִשְׁמָע אֶזְעָק אֵלַיִךְ חֲמָס וְלֹא תוֹשִׁיעַ (“How long, Lord, I have petitioned you but you did not hear. I cried to you violence but you did not intervene”). Several scholars recognize that this petitionary language is common to literature of the Hebrew Bible, particularly the Psalter.⁶²³ As a result, this (legal) argument that the deity's failure to respond to a plea is evidence of divine dereliction is not uncommon to biblical literature. Within Habakkuk, the accusation of judicial misconduct reaches a crescendo in Hab 1:4: עַל־כֵּן תִּפּוֹג תּוֹרָה וְלֹא־יֵצֵא לִנְצָח מִשְׁפָּט כִּי רָשָׁע מִכְתִּיר אֶת־הַצְדִּיק עַל־כֵּן יֵצֵא מִשְׁפָּט מֵעַקֵּל (“Therefore, law fails and justice never proceeds. For the wicked surround the righteous therefore judgment comes out perverted”). Here, like the accusations of Ezek 18:25, the prophet accuses the deity of engaging in illicit conduct that undermines the idea that the law and justice are stable principles which prescribes the relationship between the deity and the petitioners who appear before his bench. While I am not suggesting that a genetic connection exists between these texts, the topic of YHWH's ineffectual administration of

⁶²² See BDB, 1067-1068; HALOT, 1733-1734.

⁶²³ See Bovati, *Re-Establishing Justice*, 315-317 and Francis I. Anderson, *Habakkuk: A New Translation with Introduction and Commentary*. Anchor Bible (New York: Doubleday, 2001), 98-106.

justice was discussed in the context of Neo-Babylonian incursions into Judahite territory. Thus, the Judahites' objections to the deity's judicial competence in Ezek 18:25 are not without precedent.⁶²⁴

Second, a judicial import of the deity's response is that it defends him from accusations of bias and prejudice – charges that, if proved, could render the verdict invalid. The impartiality of YHWH as judge is a theme that appears in several biblical passages. For example, Deut 10:17-18 states: *כי יהוה אלהיכם הוא אלהי האלהים ואדני האדנים האל הגדל הגבר והנורא אשר לא־ישא פנים ולא יקח שחד עשה משפט יתום ואלמנה ואהב גר לתת לו לחם* (‘‘For the Lord your God is God of Gods and Lord of Lords, the great, mighty and awesome God who is not prejudiced and does not take bribes who acts justly (towards) orphan and widow and loves the foreigner giving food and clothing to him’’). In these verses, his judicial impartiality also accompanies a heightened attention to the claims of protected classes⁶²⁵ in ancient Israelite society – namely, the orphan (יתום), widow (אלמנה), and stranger (גר). Moreover, his judicial impartiality also motivates the provision of basic necessities – a largess that his judicial role does not mandate. The expectation

⁶²⁴ Michael Fishbane argues that the critiques of divine justice seem out of place within the context of Ezekiel 18. According to Fishbane, ‘‘the symmetry of this section [Ezek 18:21-26] is disturbed by the rhetorical critique found at verse 25, where the people say that such divine justice (where a righteous person who backslides is punished) is unfair, since it disregards the merits of a righteous person after he sins. No such parallel critique occurs in verses 21-23 concerning the sinner who repents...’’ (Fishbane, ‘‘Sin and Judgment,’’ 141). While Fishbane’s observation about the narrative symmetry is correct, the legal reading I propose provides certain coherence to the interjection in Ezek 18:25 and 18:29. If a primary purpose of Ezekiel 18 is to question YHWH’s judicial methods and principles, then vv. 25 and 29 are succinct formulations of the legal challenge to YHWH. Rather than addressing broader themes of sin, vicarious punishment, and repentance (as Fishbane does), the more narrow focus on the legal logic and function of these verses in Ezekiel 18 leads to greater coherence.

⁶²⁵ A protected class is a construct in American law that identifies specific people groups (e.g., ethnic/racial minorities or women) who have experienced (or are vulnerable to experience) legal discrimination or disenfranchisement. Accordingly, legislative enactments and judicial holdings that affect members of a protected class are subjected to a higher level of judicial review to ensure the law adequately protects such individuals. See earlier discussion in fn. 573 for listing of these terms in pertinent legal passages in the Pentateuch.

that YHWH is an impartial judge is extended to human officers and judges who are to be appointed in accordance with Deut 16:18-20. Like their divine counterpart, these human magistrates are required to avoid taking bribes (שחד) and perverting justice. Thus, the impartiality and objectivity of judges is an expectation that the Judahites are appealing to in their accusations in Ezekiel 18.

YHWH advocates for the impartiality and nonbiased nature of his verdicts in Ezekiel 18 by emphasizing two elements. In Ezek 18:25-27, the deity illustrates how his judicial determinations are the direct result of the evidence presented to him at the moment a verdict is required. In each of the three fact patterns, YHWH argues that he does not judge any defendant on the basis of past conduct – whether that conduct is good or bad. Instead, each individual receives a fair, impartial hearing and is judged solely on the basis of their present legal status. The (implicit) argument these scenarios refute is the idea that YHWH has prejudged a case based upon the individual's prior conduct. For example, Ezek 18:27 states that: וְבָשׁוּב רָשָׁע מִרְשָׁעָתוֹ אֲשֶׁר עָשָׂה וַיַּעַשׂ מִשְׁפָּט וְצִדְקָה הוּא אֶת־נַפְשׁוֹ יִחְיֶה (“When a wicked person turns from the wickedness he committed and does what is just and right he will preserve his life”). If the deity rendered his verdict in a prejudicial manner, then the deity should have concluded that the wicked person, on account of the totality of his illicit activities, remains subject to legal sanctioning. Rather, YHWH argues that his past conduct does not determine his legal culpability; the only determinative factor is how the defendant is comporting himself right now. Similar to the earlier arguments raised in Ezek 18:2, the deity refutes the notion that the current punishment is the result of past crimes. Thus, if the Judahites are experiencing judicial sanctions and punishment, it is not the result of imputed guilt or judicial impropriety.

Instead, it is the result of the Judahites' guilt (Ezek 18:30). The defense of YHWH's judicial process is something that Clements also recognizes is operative in Ezekiel 18. According to him, a purpose of this chapter is "to show that God is fair and will treat each person on his or her own merits."⁶²⁶

YHWH, in a final attempt to demonstrate his impartiality in adjudicatory matters, argues that he has the appropriate judicial temperament to rule on the basis of the facts presented to him. A defense of YHWH's judicial temperament began in Ezek 18:21-24, where the deity explains that he is not prejudiced by a person's previous conduct. While this defense may persuade some that the deity's decision is rooted in the facts of the case, it does not assuage the concerns of a judge who is "out to get me." Put another way, because some facts *could* support a guilty verdict does not mean they *should*, if the judge is not predisposed to rule against the accused.

To counter this notion that the deity is predisposed to find someone culpable and sentence them to death, YHWH states in Ezek 18:32 that: כִּי לֹא אֲחַפֵּץ בְּמוֹת הַמֵּת נָא אֲדַנִּי יְהוָה ("For I do not delight in the death of the one dying, declares my lord YHWH. Repent and live"). This declaration builds upon the earlier hypotheticals (especially Ezek 18:21-23) that demonstrate that the deity is willing and able to preserve life, if the facts warrant such a judicial determination. Consequently, when YHWH sentences someone to death, it has nothing to do with prejudice, impartiality or temperamental predispositions. Rather, YHWH, as articulated in Deut 10:17-18, is acting impartially in his role as a judge. Moreover, according to Ezekiel 18, his desire (חַפֵּץ) to preserve all life

⁶²⁶ Clements, *Ezekiel*, 80.

and the fact that a wicked person can have their guilty verdict reversed if they repent (והשיבו) is further evidence of the appropriateness of YHWH's judicial approach.⁶²⁷

4.3 A LEGAL PROPOSAL: THE DEATH OF THE PROPHET'S WIFE

In light of the preceding analysis, might the legal rationale explored here shed light on other texts within the book of Ezekiel? Questions of God's fairness being barred (or unsustainable) may further explain why the prophet is prohibited from interceding (as discussed in Ch. 3 of the dissertation) and the lack of mourning for the prophet's wife (Ezek 24:15-27). In light of the argument made regarding Ezekiel 18, this concluding section will explore how the issues and logic operative in that chapter may shed light on Ezek 24:15-27.

Ezekiel 24 is often divided into two sections – Ezek 24:1-4 and Ezek 24:15-27.⁶²⁸ This chapter is the final in the common tri-partite division of the book of Ezekiel and concludes the prophet's oracles of doom.⁶²⁹ The first section outlines a parable about a pot that is describing a "rebellious house." (Ezek 24:3).⁶³⁰ The second section, which is the focus of my analysis, describes YHWH's commandments to the prophet about the

⁶²⁷ The ability of a wicked person to repent and no longer be subject to a death sentence appears several places in Ezekiel 18, including Ezek 18:27 and 18:32. As discussed, a reason to repeat the possibility that a person can change their conduct and receive a new verdict emphasizes the impartiality and trustworthiness of the judge and his sentences. Moreover, the deity's willingness to forego sentencing on the basis of the accused's repentance suggests that he is not only fair but also lenient with respect to the strict application of judicially sustainable sanctions.

⁶²⁸ See Greenberg, *Ezekiel 21-37*, 495-516.

⁶²⁹ See discussion in Chapter 1 regarding the three common divisions of the book: (i) Ezekiel 1 – 24; (ii) Ezekiel 25 – 32; and (iii) Ezekiel 33 – 48.

⁶³⁰ The significance and prevalence of this phrase was discussed in Ch. 3 of the dissertation. See pp. 136-138.

impending death of his wife and the subsequent limitations on his observance of mourning rituals. As I will discuss below, the wife's death and the prophet's response to it are intended to serve as examples for the people's response to the destruction of Jerusalem (Ezek 24:24). Thus, scholars often argue that the wife is a metonym for Jerusalem and this episode becomes another example of the prophet's public sign acts.⁶³¹

First, a thematic connection exists between the appropriate allocation of punishment Ezekiel 18 outlines and the deity's ban on mourning in Ezekiel 24. In Ezek 24:14, the deity reiterates that the impending punishment is the direct result of the people's misconduct: *אני יהוה דברתי באה ועשיתי ולא־אפרע ולא־אחוס ולא אנהם כדרכיך וכעלילותיך* ("I YHWH have spoken. It will come and I will do it. I will not relent, I will not show mercy and I will not repent. According to your ways and deed they will judge you declares YHWH"). The correlation between crime and punishment in Ezek 24:14 sets the stage for one of several strange commandments in the book of Ezekiel – i.e., a divine injunction prohibiting "Ezekiel's" mourning of his soon to be deceased wife.

The ban on the prophet's mourning is introduced with a common prophetic formula that precedes oracles in the book of Ezekiel (Ezek 24:15).⁶³² Following this formula, YHWH announces: *בן־אדם הנני לקח ממך את־מחמד עיניך במגפה ולא תספד ולא תבכה ולא* :*תבוא דמעתיך* ("Mortal, I will take from you the delight of your eyes with a plague. And you shall neither mourn nor cry and your tears shall not come"). In Ezek 24:17, the deity further delineates what conduct is permissible in response to the death of the prophet's wife. According to some commentators, the actions mentioned in this verse (e.g., not

⁶³¹ See Zimmerli, *Ezekiel 1*, 505-506 and Darr, *NIB*, 1341-1342.

⁶³² This phrase (*ויהי דבר־יהוה אלי לאמר*) appears on multiple occasions in the book of Ezekiel to introduce prophetic utterances. For scholars making a similar observation, see Darr, *NIB*, 1339 and Zimmerli, *Ezekiel*, 504.

covering the mustache) are well known from biblical and ancient Near Eastern mourning rituals.⁶³³ According to Ezek 24:18-24, the prophet's non-response to his wife's death becomes a subject of the people's inquiry and a model for the people's response.⁶³⁴ The writer(s) of this passage connect the prophet's wife to Jerusalem in several ways, including describing them both with the phrase *מחמד עיניך* ("your eye's delight").⁶³⁵ To deepen the connection, the author also places similar prohibitions on the types of mourning activities that are acceptable for both the prophet and the Judahites.⁶³⁶ Thus, many scholars understand the wife's death as a metonym for the destruction of Jerusalem. Moreover, the prophet's response to his wife's death is the prototype for the Judahites' response.⁶³⁷

When scholars discuss the prohibition on mourning in Ezekiel 24, it is often framed within the context of other "strange" Ezekielian commands, especially those

⁶³³ See e.g., Greenberg, *Ezekiel 21-37*, 508-510; Darr, *NIB*, 1342 – 1343.

⁶³⁴ Although beyond the scope of my present analysis, scholars debate the redactional and compositional history of Ezek 24:18-19, in particular the timing of the prophet's actions. One of the primary issues is whether all of the prophet's activity surrounding his wife's death occurred over several days and, if it occurred on one day, what is the proper sequence. Because I approach this text synchronically to understand how the legal framework may account for the prohibition on the prophet's actions, the diachronic development of Ezekiel 24 will not be addressed in this section. For a brief summary of these issues and scholars' preferred models for reconstructing these events, see Darr, *NIB*, 1342; Eichrodt, *Ezekiel*, 341-348; and Zimmerli, *Ezekiel*, 504.

⁶³⁵ This phrase occurs in Ezek 24:16, 21, and 25.

Many scholars analyzing this passage also identify the parallelism between the description of the prophet's wife and Jerusalem. This observation, along with the explicit statements in Ezek 24:19 and 24:27, supports the conclusion that the circumstances surrounding the wife's death are intended to be a model for the people's proper response to the judgment Jerusalem will soon experience.

⁶³⁶ See Ezek 24:17 and 24:22-23.

⁶³⁷ Additionally, some argue that the "tender" description is reminiscent of the description of Isaac in Genesis 22. The purpose in both instances is to emphasize the connection between the individuals and the difficulty of the threatened loss.

relating to women.⁶³⁸ In addition to feminist and womanist critiques, the prohibition on mourning is considered a window into the psychological state of the prophet and, by implication, his exilic audiences.⁶³⁹ As I argued in Chapter 2, I agree with the growing number of scholars who find psychological analyses of the eponymous prophet dubious. Lipton shares a similar assessment and argues that it is necessary to move “beyond feminist and psychological interpretations, not to mention the semantic and text-critical approaches that so often dominate discussions of the death of Ezekiel’s wife...”⁶⁴⁰ While I agree with her suggestion to move beyond these dominant forms of analysis, I disagree with Lipton’s proposed solution regarding the meaning and function of the prophet’s lack of mourning.⁶⁴¹ For my argument, I am interested in how justifying the deity’s verdict and judicial temperament may explain the instructions regarding mourning.

Lipton (among others) acknowledges that mourning rituals and their significance for the dead in ancient Near Eastern cultures varies significantly from modern conventions.⁶⁴² An insight Lipton mentions, but ultimately rejects, warrants additional consideration in light of my legal analysis: “[I]nappropriate mourning rites could confer

⁶³⁸ See Diana Lipton, “Early Mourning? Petitionary Versus Posthumous Ritual in Ezekiel XXIV,” *VT* LVI, 2, 2006, 185. Lipton, however, questions whether it is appropriate “to read chapter xxiv in continuity with chapters xvi and xxiii....Ezekiel’s wife does not belong, narratively, psychologically, linguistically, or theologically, with the child bride and Oholah and Oholibah.” (Lipton, 185).

⁶³⁹ Darr notes that this passage, along with sign acts in general, is regarded either as a parable “or as evidence of some psychological and/or physical ailment.” (Darr, *NIB*, 1341)

⁶⁴⁰ Lipton, “Early Mourning,” 185.

⁶⁴¹ Her proposed solution to the meaning of the mourning prohibition is to conceive of it as a ban on *petitionary* mourning, rather than *posthumous*. See Lipton, “Early Mourning,” 192-199.

⁶⁴² See Lipton, “Early Mourning,” 189. This observation is common within literature on mourning in the ancient Near Eastern. A text that scholars often reference in discussions of ancient Near Eastern mourning rituals is Saul Olyan *Biblical Mourning: Ritual and Social Dimensions* (Oxford: Oxford University Press, 2004).

undeserved status. Where death was understood as *a punishment, for instance, mourning might call into question its validity.*”⁶⁴³ Particularly as it relates to the destruction of Jerusalem, the book of Ezekiel consistently emphasizes the guilt of the city and its inhabitants – a guilt that requires immediate and severe punishment. Building upon my earlier analysis of Ezekiel 18, it is precisely the deity’s desire to eliminate any challenges to the validity of the verdict that may inform this prohibition on mourning the wife’s death and Jerusalem’s destruction.⁶⁴⁴ How, then, might the prophet’s mourning challenge the deity’s verdict?

First, it is important to remember how these prohibitions on mourning are introduced. Ezek 24:14 reiterates one of the central, judicial issues that is challenged throughout the book of Ezekiel – namely, does the punishment fit the crime? According to this verse, YHWH only judges in an impartial, proportional, and legally sustainable manner. Thus, the context of the mourning ban suggests that a legal determination animates the bar on mourning.

Second, mourning was not a private, internal matter as it often occurs in modern, Western society. The public spectacle associated with mourning rituals is part of why Lipton noted that displays of mourning may undermine the justness of a death, if that death is deemed a punishment.⁶⁴⁵ In Ezek 24:18-19, the prophet declares to the people

⁶⁴³ Lipton, “Early Mourning,” 189 (emphasis added). Lipton’s rejection of the claim that posthumous mourning cannot be intended by Ezekiel 24 results (in part) from a lack of attention to the legal framework I contend is operative throughout the book of Ezekiel.

⁶⁴⁴ The precise crime the wife committed, if any, remains obscured in the biblical text. A similar ambiguity, however, does not exist for the crimes committed by Judahites – whether still inhabiting the city or deported to Babylonia. See e.g., Ezekiel 8-11 and 16 for a delineation of some of the crimes that justifies the punishment of Neo-Babylonian domination.

⁶⁴⁵ Lipton, “Early Mourning,” 185. See also Olyan, *Mourning*, 97-110.

what YHWH instructed him, as well as performs the aberrant mourning rituals in the people's view. The text suggests the public nature of the mourning rituals because the people ask "Ezekiel" to explain the meaning of his conduct (Ezek 24:19).⁶⁴⁶ If the performance of ritual were done in solitude, no propaedeutic moment could arise to instruct the people on their proper conduct.

According to the legal framework I contend is operative in the book of Ezekiel, a reason the deity prohibits the prophet from mourning is to prevent the Judahites from having any evidence to (erroneously) challenge the legal sustainability of YHWH's determination.⁶⁴⁷ Since the prophet cannot intercede or advocate on behalf of the people, his conduct should not undermine the "silence" of his advocacy.⁶⁴⁸ Thus, if the prophet must accept the death of his wife without voicing what might be misconstrued as an objection (i.e., public mourning), how much more so should the people accept the conquest of Jerusalem. To the extent a death sentence is levied against someone without a delineation of their crimes is non-objectionable, how much more so should the verdict and sentence against Jerusalem (whose crimes are delineated throughout the book of Ezekiel) be accepted as just. YHWH's use of the prophet's lack of mourning ritual observance becomes another means to prevent (or rebut) counterclaims that the deity is

⁶⁴⁶ "Ezekiel" references the character/historical person described in the book of Ezekiel.

⁶⁴⁷ Ezekiel 24 is silent on what, if any crime, the prophet's wife committed to deserve a death sentence. As scholars have noted, this silence in the text is troubling because of the potential theological questions it raises. Although no crime is assigned to the wife, the specific terminology Ezekiel 24 uses is reminiscent of priestly legal diction. For example, Zimmerli argues that the word describing the wife's death in Ezek 24:16 (במגפה) is "in the priestly language, the fatal blow of divine judgement" (Zimmerli, *Ezekiel I*, 505). For a similar observation, see Greenberg, *Ezekiel 21-37*, 507.

⁶⁴⁸ See my argument in Chapter 3 regarding the meaning and function of silence in the book of Ezekiel. Lipton also recognizes that the silence of the prophet may also be connected to Ezekiel 24. See Lipton, "Early Mourning," 186. As indicated, I contend the silence of the parties is directly connected to the legal verdict and sentence YHWH issued against Jerusalem.

too harsh, inaccurate, or otherwise at fault in the verdicts reached and punishment assigned.

4.4 CONCLUSION

In summation, this chapter examined representative examples of how the Judahites question whether YHWH has discharged faithfully his covenantal duties as both overseer and judge. In the Temple Vision (Ezekiel 8 – 11), the Judahites contend that the deity has renounced (עָזַב) his ownership claims and no longer exercises the requisite duty of care in his supervisory role (רָאָה). For those Judahites advancing these claims, the deity's actions allow the Judahites in Jerusalem to assert a legal claim to the land of Israel. In addition to specific actions of divine dereliction, the Judahites also challenge the judicial competence and temperament of YHWH. These challenges call into question the validity of his verdict and the proportionality of the resulting sentence. As discussed, Ezekiel 18 is an extended exploration of YHWH's judicial actions and methods. According to my analysis, the deity delineates clearly the legal procedures and principles that govern his rulings. The articulation of these procedures and principles are intended to answer the counterclaims the Judahites raised. Building upon these refutations, the deity (in Ezekiel 16) presents a fuller rationale for his verdict and the resulting punishment. The legal nature of Ezekiel 16, how it justifies the punishment the city received, and the verdict's implications for Judahite identity will be the focus of the final chapter of this dissertation.

5.0 CHAPTER 5

Establishing the Case:

Ezekiel 16 as Case Study for Legal Culpability and Identity Formation

In Chapter 3, I sketched the framework of YHWH's verdict/opening accusation regarding Judahite non-compliance. At its essence, YHWH's legal findings focused upon the defendant's continual, consistent, and perennial rebellion against and disloyalty towards the deity and his covenant with them. As Holtz's summary of Neo-Babylonian legal procedures suggests, stating the case does not constitute proving (or establishing) it. Therefore, YHWH must prove the legal sustainability and validity of the violations alleged in Ezekiel's opening verses. Although the deity provides evidence to prove his claim throughout the book, several chapters (e.g., Ezekiel 16, 20, and 23) delineate more explicitly the "factual" basis and legal rationale for YHWH's case against the defendant.

Accordingly, in this chapter I will investigate Ezekiel 16 as a test case to illustrate how YHWH establishes the defendant's guilt and, therefore, justifies the penalty of Babylonian domination. In addition, I will apply the EB Model outlined in Chapter 2 to Ezekiel 16 to demonstrate how the legal elements provide a foundation for Judahite identity. Specifically, I contend that Ezekiel 16 argues that the hardships of the גולה community are neither the result of divine abandonment nor evidence of the nullification of the covenant between YHWH and his people. Rather, it responds to those Judahites

who may have argued that the severe punishment is evidence that the covenant was revoked. Ezekiel 16 does so by reviewing Israel's "legal history" to demonstrate the continuing validity and enforceability of the covenant. This covenant was and, in the aftermath of Babylonian domination, can be the mechanism by which Judahites could affirm an identity that was not a tenuous, fragile, and legally unprotected status on the margins of ancient Near Eastern society. Furthermore, this covenant is the means by which Judahite identity can be secure, prosperous, and even exalted under YHWH's legal custodianship. Ultimately, Ezekiel 16 argues that Jerusalem's *legal status* parallels *Judahite identity*. Lastly, I assert that the legal framework of Ezekiel 16 illumines from a different angle some of that chapter's features that many scholars have found disturbing.⁶⁴⁹ In particular, I argue that this legal framework provides a rationale for this chapter's insistence that "the punishment fits the crime" and casts Jerusalem's silence as the *legal* response to the veracity of the charges delineated in the indictment. In turn, this legal silence becomes an affirmation of the continuing validity of the contract (ברית) between YHWH and Judah and its function as the foundation for Judahite identity.

The first section of this chapter will examine the presence of juridical diction and other legal elements throughout Ezekiel 16. Similar to the preceding analysis of the book, my intention is to demonstrate that the consistent presence of legal elements in Ezekiel 16 justifies (if not requires) analyzing the text from a legal perspective. In the

⁶⁴⁹ As discussed in Chapter 1, feminist scholarship has highlighted not only the sexually graphic nature of this chapter, but also the dangerous implications of this text for modern readers, especially the disturbing language describing the city's punishment in Ezek 16:35-43. An element of some feminist critiques of this passage is that the silence of Jerusalem throughout this chapter, especially during the enactment of the punishment resulting from her alleged crimes, contributes to the sexist and misogynistic tenor of the biblical book. Although I have no interest in defending "Ezekiel" or answering the charges of sexism that have been levied against him, I do want to offer the possibility that Jerusalem's silence in these verses has an additional, juridical function that is part of a larger argument regarding Judahite identity.

responsible for casting (שלך)⁶⁵² renounces any right or obligation toward the object cast.”⁶⁵³ Galambush reaches a similar conclusion regarding the significance of this phrase when she states,

the infant’s physical expulsion simultaneously represents her legal abandonment. Ezekiel’s claim that she has been thrown out while still in her birth blood not only places upon her the stigma of blood pollution, but [also] signifies that her parents have rejected her “from birth,” consigning her to “the ownerless domain.”⁶⁵⁴

The consignment to the ownerless domain means that no human custodian or guardian has asserted a legal claim, exclusive or otherwise, to Jerusalem. Malul understands these actions as preparation for a new adopter to claim the foundling without any rival custodial claims.⁶⁵⁵

⁶⁵² Malul, “Adoption,” 100. He also discusses other synonyms that have a similar juridical meaning in adoption and/or contexts in which a person seeks to revoke all vested property interests in a particular object. Among the terms he identifies are געל, מאם, עזב, נטש/נתש.

As will be discussed later in the chapter, the absence of this terminology during the sentencing stage of the proceeding in Ezekiel 16 suggests that YHWH is not renouncing his claims to Jerusalem. Consequently, the similarities between Jerusalem’s *physical condition* at the start and conclusion of this chapter should not be considered a return to her previous *legal status*.

⁶⁵³ Malul, “Adoption,” 101. See also, Spada, 4. Another usage of this relegation “to the open field” in Ezekiel that may carry a legal valence is Ezek 39:5. As Kohn argues, “In Ezekiel, Jerusalem, Pharaoh and Gog, king of Magog, are symbolically thrown ‘over the open field’ to fend for themselves in the face of Yahweh’s wrath and abandonment” (Kohn, 83).

⁶⁵⁴ Galambush, *Jerusalem*, 92. The combination of cultic impurity and legally significant descriptions that Galambush highlights here is common to the book of Ezekiel. As will be discussed later in this chapter, the cultic violations and juridical imagery accompanying this description of Jerusalem’s birth are important elements in the case Ezekiel 16 makes for the nature of Judahite identity. Specifically, the city’s legal/cultic status as both abandoned and unclean combines to create a portrait of Jerusalem as the quintessential legal outsider, whose fate is reversed by entering into legal relationships with YHWH – relationships he initiated (seemingly) without any request from Jerusalem or consideration on her part to effectuate the legal relationships.

⁶⁵⁵ Malul, “Adoption,” 109. There are linguistic and substantive parallels between this legal scenario and Laws of Hammurabi 185 (Roth), a parallel that Malul also recognizes. Malul (see fn. 94) argues that this language protected the adopter against any third party claim.

As will be discussed later, the absence of competing ownership claims and exclusive fidelity to YHWH are concerns animating both YHWH’s marriage to Jerusalem and the nature of the charges contained in the indictment.

In contrast to her Amorite and Hittite “biological” parents (Ezek 16:3),⁶⁵⁶ YHWH performs all the legally mandated actions (e.g., שטף, רחץ) to legitimate and effectuate adoption of the foundling (Ezek 16:9). Malul argues that YHWH’s statements in Ezek 16:6 בְּדַמֶּיךָ חַיִּי (“in your blood, live”) has a specific ANE legal meaning that is analogous to the Akkadian phrase *ina dāmēšu*.⁶⁵⁷ This phrase was inserted into adoption contracts to “explicitly establish the adopter’s full and incontestable right to the adopted child.”⁶⁵⁸

YHWH’s “full and incontestable right” to Jerusalem is ratified⁶⁵⁹ by his choice to marry Jerusalem in Ezek 16:8-14. Greenberg, Eichrodt, and Zimmerli recognize that these verses’ description of marriage contains specific locutions and images that contribute to their legal tenor.⁶⁶⁰ For example, in Ezek 16:7, YHWH recognizes that Jerusalem has grown into a young woman whose physical attributes testify to her readiness for marriage and reproduction.⁶⁶¹ As a result of these observations, YHWH

⁶⁵⁶ The identification of the foundling’s parents as Amorite and Hittite has a pejorative meaning. In the Pentateuch (e.g., Exod 33:2, 34:11, and Deut 7:1), these nations are the wicked inhabitants of the Promised Land whom YHWH will remove in preparation for the Israelites’ habitation. It is noteworthy that some of the same crimes Jerusalem is accused and convicted of committing in Ezekiel 16 are the same ones associated with these two nations. Also, Deuteronomy 7 and Exod 34:11 use juridical diction and images that Ezekiel 16 uses during its indictment of Jerusalem. These similarities will be discussed in more detail later in this chapter.

⁶⁵⁷ Although the Hebrew phrase includes the verb חיה, Malul does not provide an equivalent Akkadian verb.

⁶⁵⁸ Malul, “Adoption,” 109. See also Malul, “Adoption,” 111-112 discussing the legal significance for adoptions of other specific words in these verses (e.g., רבבה). This Akkadian phrase was also inserted into adoption contracts to “avoid cases of adoptive parents being deprived of their adopted children by future claims.” (Malul, “Adoption,” 109).

⁶⁵⁹ Within a modern American legal context, the concepts of renewal and ratification relate to procedures by which legal agreements between two parties are extended, confirmed or otherwise deemed to be continually enforceable, regardless of whether the initial action that created the legal relationship was sufficient to create the binding arrangement. (Bryan A. Garner, Becky R. McDaniel, and David W. Schultz, eds., *Black’s Law Dictionary: Pocket Edition* [St. Paul: West Publishing, 1996], 521 and 538).

⁶⁶⁰ See e.g., Zimmerli, *Ezekiel 1*, 340.

⁶⁶¹ Malul, “Adoption,” 111. See also Galambush, *Jerusalem*, 99 and Rom-Shiloni, *Exclusive*, 162 who each reach a similar conclusion regarding YHWH entering into relationship in two stages.

pledges himself to her and declares his formal, proprietary claim to Jerusalem through marriage: ואשבֹע לך ואבוא בברית אתך נאם אדני יהוה ותהיי לי (“I swore to you and entered into a covenant with you – declares my Lord YHWH –and you became my wife”).⁶⁶²

This ratification of YHWH’s exclusive right to Jerusalem is intensified by the “lavish” presents he grants Jerusalem in Ezek 16:10-13, which Greenberg and Galambush argue are similar to the Tabernacle.⁶⁶³ According to Galambush, YHWH’s wife is “adorned with the same materials that adorn Yahweh’s holy place, and is fed *sl* (סלת) and *šmn* [שמן](v. 13), offerings prescribed for the tabernacle (e.g., Lev 2:7; Num 6:15; 7:13, 19; 8:8).”⁶⁶⁴ Jerusalem as wife thus has attributes that are cultic and royal. The end result of these opening verses is that YHWH, through words and deeds, has created a valid, exclusive, and enforceable legal relationship.⁶⁶⁵

5.1.2 Indictment, Punishment, and Ratification (16:15-63)

The next section, Ezek 16:15-34, is the substantive core of the indictment against Jerusalem, as Eichrodt and Galambush have noted.⁶⁶⁶ At its legal essence, Jerusalem’s

⁶⁶² See Eichrodt, *Ezekiel*, 205 discussing the legal effect of the vow and actions. Zimmerli argues these verses describe “the election of the bride [taking] place under the protection of legal customs, as can also be seen elsewhere” (Zimmerli, *Ezekiel* 1, 340).

⁶⁶³ See Galambush, *Jerusalem*, 95 and Greenberg, *Ezekiel* 1-20, 278.

⁶⁶⁴ Galambush, *Jerusalem*, 95. See also Galambush, *Jerusalem*, 95 n. 17 where she quotes the Targum on Ezekiel in which the connection between Jerusalem and the temple is made explicit (citing S. Levey, ed., *The Targum of Ezekiel* [The Aramaic Bible 13; Wilmington, DE: Michael Glazier, 1987], 63 (page # should be 51, 52); see also, Alexander Sperber, *The Bible in Aramaic: The Latter Prophets According to Targum Jonathan* [New York: Brill, 1992], 293-294).

⁶⁶⁵ Haag, “Disclosure-of-Abomination,” 204-206 and Jackson, “Marriage,” 246.

⁶⁶⁶ Eichrodt, *Ezekiel*, 207 and Galambush, *Jerusalem*, 62.

alleged crimes involve various breaches of her fiduciary duties,⁶⁶⁷ including the misappropriation of YHWH's property,⁶⁶⁸ which are described in figurative and legal language detailing her cultic, political, and criminal malfeasance.⁶⁶⁹

The details of the indictment serve several important functions. First, the nature and extent of Jerusalem's alleged misconduct provides the rationale for her subsequent punishment in the narrative.⁶⁷⁰ Rom-Shiloni summarizes the relationship between Jerusalem's alleged crimes and punishment in the following manner: "The conception of Jerusalem's guilt helps Ezekiel conceptualize the Destruction as justifiable *talio* punishment."⁶⁷¹ This notion of proportional punishment gains further support from the structural relationship between YHWH's gifts in Ezek 16:10-13 and Jerusalem's crimes.

⁶⁶⁷ Modern law imposes two common fiduciary duties upon contractually bound parties: duty of loyalty and duty of care. In modern American jurisprudence, breaches of these duties are usually civil crimes but they can result in criminal sanctions, which is how Ezekiel 16 conceives of these violations. It is also important to note that modern divisions of "civil" vs. "criminal" should not be applied rigidly to Judahite legal procedures.

⁶⁶⁸ Ezek 16:17-20 makes it clear that a major component of Jerusalem's alleged crimes is her misappropriation and abuse of YHWH's property. Throughout these verses, YHWH asserts his ownership over the property and goods that Jerusalem spoils in her "whoring" – e.g., *my* gold, *my* silver (Ezek 16:17); *my* oil and *my* incense (Ezek 16:18); and *my* bread (Ezek 16:19). See also Linda Day, "Rhetoric and Domestic Violence," 209, making a similar observation and expanding it to include the importance of YHWH's continuing ownership of Jerusalem.

Implicitly, YHWH assumes that Jerusalem has a legal obligation to use these materials, which ultimately belong to YHWH, according to his intentions. His enduring ownership of the items enumerated in Ezek 16:17-20 provides the legal basis for his claim of criminal malfeasance. Additionally, the duty of care YHWH demonstrated in giving the gifts to Jerusalem in Ezek 16:9-13 serves as a precedent governing Jerusalem's reciprocal obligation to care for YHWH's property, if not YHWH himself. Put another way, YHWH was a faithful custodian of Jerusalem by giving her the property. Now, Jerusalem must be a faithful custodian of YHWH's property by managing and using it in accord with his expectations.

⁶⁶⁹ See Rom-Shiloni, *Exclusive*, 163-165.

⁶⁷⁰ See Block, *Ezekiel 1-24*, 515-516; Eichrodt, *Ezekiel*, 215; and Rom-Shiloni, *Exclusive*, 165.

⁶⁷¹ Rom-Shiloni, *Exclusive*, 173.

Many biblical scholars noted that Jerusalem's crimes are a systematic misappropriation of YHWH's gifts, as illustrated in the following chart.⁶⁷²

ITEM	GRANT	MISAPPROPRIATION
Clothing	16:10	16:16, 18a
Jewelry/Finery	16:11-13a	16:17, 18b
Food	16:13b	16:19
Children ⁶⁷³	16:20	16:20-21

Second, I would add that the descriptions of the city's crimes are connected to this chapter's attempts to show intent. In addition to the punishment being proportional, it is legally appropriate because Jerusalem "knowingly and willfully"⁶⁷⁴ engaged in such conduct and these verses detail (in hyperbolic language) the criminality of her actions.⁶⁷⁵ From a legal perspective, the *mens rea* (intentionality) of the city's actions may be inferred from the flagrant and excessive alleged violations of the contract.⁶⁷⁶

⁶⁷² Galambush, *Jerusalem*, 96; Greenberg, *Ezekiel 1-20*, 293; Moughtin-Mumby, *Sexual*, 170; and Zimmerli, *Ezekiel*, 344. Block, *Ezekiel 1-24*, 472 has a similar analysis. He adds the "squirming in your blood" (מתבוססת בדמיו) as an additional example of the narrative symmetry/structure in Ezek 16:6 and 16:22.

⁶⁷³ Ezekiel 16 does not mention Jerusalem bearing children prior to this verse.

⁶⁷⁴ This language is typical of modern American language for intentionality, which impacts the severity of punishment.

⁶⁷⁵ One example of this hyperbolic rhetoric is Ezek 16:33-34, where Jerusalem is accused of being such a stupid whore that rather than receiving money for sex, she pays others to have sex with her.

⁶⁷⁶ Intentionality (measured either by intent/plot or disregard for legally pertinent information) plays a role in punishment according to certain provisions of the Covenant Code. For example, the laws of the goring ox in Exod 21:28-29 provide different penalties to the owner of an ox who is known to have gored repeatedly in the past (מתמל שלשם).

Within current American jurisprudence, there are clear distinctions in penal codes and sentencing guidelines for those crimes that require intent for conviction and those which do not. For example, the penalty for voluntary manslaughter is consistently more severe than the punishment for involuntary manslaughter. One way that a lawyer can try to establish intent, i.e., having the requisite state of mind to

This desire to prove intent may also provide insight into how this section uses the term עובר to underscore the severity of Jerusalem's alleged malfeasance. During the indictment, Jerusalem is accused (16:15, 16:25) of indiscriminately entering into sexual relationships with כל עובר ("every passerby"). In Ezek 16:15-25, the phrase appears twice, the same number that ואעבר ("I passed by") occurs in Ezek 16:6-8,⁶⁷⁷ in which only YHWH is the subject; and his actions result in the exaltation of the city's legal status and the reception of covenantal benefits. In contrast, after YHWH has established his exclusive claim to Jerusalem, the indictment accuses the city of giving these goods away to everyone who passes by, which ultimately leads to her punishment and forfeiture of the benefits. Consequently, the flagrancy and extravagance of the city's actions, particularly as it relates to her indiscriminate relations with multiple, unidentified partners, leads to one conclusion – her actions were intentional.⁶⁷⁸

Ezek 16:35-43 announces the punishment that guilty Jerusalem will receive for the crimes enumerated earlier. It is noteworthy that the lengthy delineation of the punishments is introduced in Ezek 16:38 with the phrase, ושפטתיך משפטי נאפות ושפכת דם,

commit an unlawful act, is to demonstrate that the action (or inaction) is of such a nature that the "acts leading to the result could have reasonably been expected to cause that result" (*Black's Law Dictionary*, 328 defining constructive intent). This modern notion of constructive intent is a concept that may help explain the legal significance of the hyperbolic descriptions of Jerusalem's transgressions. Put in non-legal terms, nobody could commit the type and number of crimes Jerusalem is accused of in Ezekiel 16 without *intending* to do so.

⁶⁷⁷ See also Rom-Shiloni, who argues somewhat differently, that the two occurrences of this verb (עבר) in Ezek 16:6 and 16:8 represent the two stages by which YHWH entered into a relationship with Jerusalem.

⁶⁷⁸ Establishing Jerusalem's intent becomes a necessary element to justify the severe punishment that appears in Ezekiel 16. As I will argue, the severe punishment and abrogation of the covenantal benefits that this chapter describes does not result in a termination of the contract between YHWH and Jerusalem.

(“I will judge you according to the judgments of adulteresses and blood-spillers”).⁶⁷⁹ The juridical implications of this pronouncement are intensified by the choice of diction.

Although the more common word for sexual misconduct in Ezekiel 16 is זנה,⁶⁸⁰ the author uses נאף to describe criminal sexual behavior – a word that is common to both versions of the Decalogue in the Pentateuch⁶⁸¹ as well as Leviticus 20:10.⁶⁸² This specific change in terminology contributes to the juridical tone of this passage by connecting the city’s offenses to Pentateuchal (and perhaps, specifically P or H) legal collections.⁶⁸³

Ezek 16:44-58 contains the final pieces of evidence YHWH uses to establish the validity of his judicial findings. The familial association of Ezek 16:3 reappears and is expanded upon in this subsection of Ezekiel 16. In her natal condition, Jerusalem was linked to legal outsiders through her parental lineage – a link that appears again in Ezek 16:44.⁶⁸⁴ The city is then compared unfavorably with two condemned and destroyed polities that are depicted as her sisters – i.e., Sodom and Samaria (Ezek 16:46-52). The convictions and conduct of this family crime syndicate provide an opportunity to argue

⁶⁷⁹ According to Rom-Shiloni, both of these crimes are capital offenses and “the juxtaposition of the two crimes, adultery and sacrificial murder, alludes to Lev 20” (Rom-Shiloni, *Exclusive*, 165).

⁶⁸⁰ For a discussion of the prevalence of the term זנה and its related roots in Ezekiel 16 and 23, see Rom-Shiloni, *Exclusive*, 164 n. 8. See also Greenberg, *Ezekiel 1-20*, 296 and Block, *Ezekiel 1-24*, 487 (referencing that זנה is used over 20 times in Ezekiel 16).

⁶⁸¹ Exod 20:14 and Deut 5:18.

⁶⁸² Lev 20:10 states: ואיש אשר ינאף את אשת איש אשר ינאף את אשת רעהו מות יומת הנאף והנאפת (“Now a man who commits adultery with [another] man’s woman, who commits adultery with his neighbor’s woman, will certainly be killed – both the adulterer and adulteress”). See also, Block, *Ezekiel 1-24*, 502 making a similar observation.

⁶⁸³ As discussed in Chapter 1, biblical scholars do not agree on the direction of influence between P, H, and Ezekiel. For the purpose of this chapter, the fact that Ezekiel and P/H legal collections share specific juridical diction is sufficient to demonstrate the legal tenor of Ezekiel 16.

⁶⁸⁴ The reappearance of the city’s association with Amorite and Canaanite ancestry has contributed to some scholars’ conclusion that this section (Ezek 16:44-58) is a secondary expansion. Contra, Greenberg, *Ezekiel 1-20*.

that Jerusalem is in a worse state than even her siblings.⁶⁸⁵ The delineation of Sodom's violations appears to depart from those traditionally associated with Sodom in Genesis 19. This departure allows the author(s) of Ezekiel 16 to connect more clearly the malfeasance of Jerusalem to Sodom. For example, Ezek 16:49 asserts that Sodom's judgment was justified partially because of her misappropriation of divine provision (i.e., bread): הנה־זוהי היה עון סדם אחותך גאון שבעת־לחם ושלות השקט היה לה ולבנותיה ויד־עני ואביון לא: (Behold, this was the iniquity of Sodom your sister: pride, fullness of bread, and abundant ease was in her and her daughters. But she did not strengthen the hand of the poor and needy"). Similarly, one allegation levied against Jerusalem in Ezek 16:19 involves the misuse of divine provision: ולחמי אשר־נתתי לך סלת ושמן ודבש האכלתיך ונתתי־הו: (But my food which I gave you, fine flour, oil and honey I fed you. Then you presented it before them as a sweet aroma and thus it was announces my Lord YHWH"). A second connection the author(s) makes involves Sodom's pride: ותגבהינה ותעשינה תועבה לפני ואסיר אתהן כאשר ראיתי: (Ezek 16:50).⁶⁸⁶ Although pride (גאון) does not appear in the enumeration of Jerusalem's violations in Ezek 16:15-43, the specific term is found in Ezek 16:56, where the deity connects the legal fates of Sodom and Jerusalem: ולוא היתה סדם אחותך לשמועה בפוך ביום גאוניך: (Ezek 16:56).⁶⁸⁷

⁶⁸⁵ Scholars recognize the unexpected invocation of Sodom as a sister of Jerusalem. The invocation of Sodom seems to highlight the deplorable and illicit nature of Jerusalem's conduct. The metaphor of Samaria or Israel as a sister is not without precedent in biblical prophetic tradition. See e.g., Jer 3:8.

⁶⁸⁶ Ezek 16:49 also contains a reference to pride (גאון) as it relates to the misappropriation of certain material provisions.

⁶⁸⁷ One way in which this theme of pride (גאון) or arrogance (גבה) might be operative within the earlier indictment against Jerusalem is Ezek 16:14-15, in which the deity concludes that the city was so enamored with her royal reputation and beauty that she misappropriated those items and violated the contractual relationship with the deity that was the proximate cause for these elements.

expand Jerusalem's association to include unfavorable comparisons with two nations that were legally sanctioned. A cumulative effect of Ezek 16:44 – 58 is to demonstrate that Jerusalem's biography begins as a legal outsider and "ends" with its judgment being meted out according to standards of divine justice previously operative in the cases of Sodom and Samaria.

The closing verses of this chapter (Ezek 16:59-63) are as densely packed with juridical diction as the opening verses including: ברית, ברית עולם, אלה, הקימותי, and פתחון.⁶⁹¹ From beginning to end, Ezekiel 16 contains juridical diction and legally significant imagery, which are used to establish and describe stages in the covenantal relationship between YHWH and Jerusalem. In light of the prevalence of these legal elements, the next section of this chapter will examine how some of these elements function within the Ezekiel 16's case for identity.

5.2 JUDAHITE IDENTITY

As discussed in Chapter 2, scholars' inquiries into how prophetic texts articulate Judahite identity in the sixth century BCE have not fully exploited the juridical diction, legal imagery, and courtroom metaphors in them. A significant factor I identified for the relative lack of attention to legal elements is that biblical scholars continue to rely upon Barthian modes of analysis. This analytical mode focuses upon phenotypical, cultural, and genealogical characteristics. As a result, the legal elements I identified in the

⁶⁹¹ In the discussion that follows, the significance of these terms for Judahite identity will be analyzed.

previous section are not easily incorporated into Barthian categories and approaches. For example, how does the description of the *legal procedures* for adoption and renunciation in Ezek 16:3-8 fit into phenotypical or genealogical categories? Also, how might the legal logic and juridical locutions throughout Ezekiel 16 fit Barthian modes of analyses? Since they do not fit easily into his categories, the relationship between the legal elements in Ezekiel 16 and developments in Judahite identity remain under investigated.

In contrast, the EB Model I proposed in Chapter 2, particularly the macrosystem, provides a framework to analyze how Ezekiel 16 articulates Judahite identity through specific legal formulations. As discussed, laws and legal procedures are elements that fit into the wider contextual factors that both Erikson and Bronfenbrenner agree affect a subject's development and description of its identity. Thus, the legal elements I outlined earlier are central to Ezekiel 16's argument about the proper understanding of Judahite identity. Unlike other studies that identify but do not analyze the impact of these legal elements on Judahite identity, the EB Model illumines how the chapter's description of the *legal status* of the city parallels *Judahite identity*.⁶⁹² Accordingly, the remainder of this project will focus upon aspects of Judahite identity these legal elements describe. Additionally, I will give some attention to how they prove the appropriateness of YHWH's judgment and why such proof reinforces the continuing validity of a covenantal relationship between the deity and the Judahites.

⁶⁹² See Rom-Shiloni, *Exclusive*, 145-150 where she recognizes the legal dispute and claims in Ezekiel 11 but argues that they are part of a theological project, rather than a legal project connected to identity formation.

5.2.1 Abandonment and Identity

Ezek 16:3-5 contains the first pieces of evidence the author(s) assembles to build a case for Judahite identity. According to these verses, the city's legal status prior to YHWH's covenant was outside his custodianship and, as a result, perilous. The three primary pieces of evidence Ezekiel 16 uses to establish this element are: (i) the foreign gentilics of Jerusalem's parents; (ii) the legal abandonment of Jerusalem as an infant; and (iii) her impurity. Ezek 16:3 associates the city's origins with three gentilics – i.e., Canaanites, Amorites, and Hittites.⁶⁹³ According to Deuteronomy 7, Israel was prohibited from entering into legal relationships (e.g., covenant or marriage) with these groups when occupying the Promised Land.⁶⁹⁴ Moreover, in Deut 20:16-17, Israel is instructed to destroy anything that breathes in their land and to annihilate completely (החרם תחרימם) these people. Thus, the association of Jerusalem's origins with these people in Ezek 16:3 demonstrates that the city lies not only outside of YHWH's custodial care and protection, but also squarely within his crosshairs. Ezek 16:3 combines these aspects of Jerusalem's origins to imply that her ethnic heritage would, theoretically, disqualify her from a covenant relationship with YHWH and would taint the city's later efforts to fulfill its obligations to YHWH.

As Malul demonstrates, Ezek 16:4-5 describes Jerusalem's abandonment with common juridical diction that signifies legal renunciation of vested property interests. By

⁶⁹³ The use of the gentilic, הכנעני, for Canaanites is unusual and appears to be there to draw attention to the ethnic, rather than geographic, aspect of Jerusalem's origins. See Greenberg, *Ezekiel 1-20*, 274 and Zimmerli, *Ezekiel 1*, 338.

⁶⁹⁴ Deut 7:2-3 prohibits Israel from entering into covenant or marriage with these nationalities – a prohibition that extends to Israelite progeny. This concern over the corrupting influence of these groups is repeated in Deut 20:18.

- לא כרת שרך; המלה לא המלחת; ותשלכי אל-פני השדה - connecting three acts of renunciation in the description of Jerusalem's abandonment, Ezekiel 16 makes it clear that she has no legal relationship with her biological parents. To the extent any one of the aforementioned actions is sufficient to effectuate legal renunciation, the fact that all three are mentioned underscores the intent of the parents and the dire situation of the foundling.⁶⁹⁵ Also, her parent's complete rejection is reinforced by the lack of care and attention from others. According to Ezek 16:5: לא-חסה עליך עין חסה. לעשות לך אחת מאלה לחמלה עליך. The fact that nobody showed this infant any חסה emphasizes Jerusalem's lack of social/legal standing and the perilous circumstances surrounding her early years. Thus, Jerusalem's "consignment to the 'ownerless domain'" means she has no legal guardians, lacks judicial standing, and legal protection. The final element Ezek 16:3-5 uses to establish the legal status of Jerusalem prior to the covenantal relationship with YHWH relates to her impurity. As discussed in the first section of this chapter, Galambush argues that the infant's expulsion in her birth blood "places upon her the stigma of blood pollution..."⁶⁹⁶ This cultic impurity allows the author(s) of Ezekiel 16 to describe the city as a violator of both sacral and "civil" law. Just as Jerusalem will eventually acquire elements that are royal and cultic as a result of the legal relationship with YHWH, these verses assert that she lacks both elements prior to the covenant with the deity.

⁶⁹⁵ This joining of three legally sufficient actions to emphasize a party's intent and the resulting impact upon legal status reoccurs in Ezek 16:8. In this verse, YHWH marries Jerusalem and performs three actions to demonstrate his intent to enter into a new legal relationship with Jerusalem.

⁶⁹⁶ Galambush, *Jerusalem*, 92.

Ezek 16:3-5 paints a portrait of Jerusalem as the quintessential legal outsider. First, the city's ethnic origins place her among those people who are excluded from YHWH's protection and targeted for his judgment. Second, she is legally rejected by her biological parents and cast into an open field to die. Third, the lack of post-birth care has left the foundling ritually unclean. Ezek 16:3-5 summarizes this element of the legal argument by concluding that: בגעל נפשך ביום הולדת אתך ("your life was despised on the day you were born"). Galambush correctly concludes that Ezekiel 16 emphasizes, "Jerusalem begins life excluded, 'other' in terms of her family membership, her national identity, her community status, and her ritual purity."⁶⁹⁷ Indeed, as several feminist scholars have highlighted, the feminine gender of the foundling contributes to her legal status as an outsider.⁶⁹⁸ Thus, the opening verses of Ezekiel 16 depict Jerusalem's identity as having no real foundation or recognizable status at law. Ostensibly, Jerusalem has no legally definable identity prior to her entrance into a contractual (i.e., covenantal) relationship with YHWH – the subject of the next section of Ezekiel 16.⁶⁹⁹

These opening verses describe the city's status, and its implications for Judahite identity, in distinct legal stages. Since the EB Model permits greater attention to legal elements and their connection to identity development, Ezekiel 16 provides several insights into how Judahite identity was understood, articulated, and reformulated in the

⁶⁹⁷ Galambush, *Jerusalem*, 91.

⁶⁹⁸ See discussion in Chapter 1.

⁶⁹⁹ The description of Jerusalem's abandonment in Ezek 16:4-5 also answers the legal claims of abandonment the Judahites – whether in Judah or Babylonia – assert throughout the book of Ezekiel. Here, the deity affirms the reality of their abandonment with specific legal formulations I discussed above. However, YHWH contends that the abandonment is not the result of his malfeasance or dereliction of duties. Instead, the abandonment was the result of other's actions – actions which predate the initiation of a covenantal relationship between YHWH and the Judahites. Moreover, the remainder of Ezekiel 16 will demonstrate that whatever adverse experiences the Judahites have endured is the result of their misconduct, not divine abandonment, neglect, or illegalities.

aftermath of Neo-Babylonian conquest of Jerusalem. As discussed, the specific juridical terminology and legal imagery in Ezek 16:1-5 depicts Jerusalem as the quintessential legal outsider as it relates to YHWH's covenant. The legal outsider status is based upon: (i) the ethnicities associated with her origins (i.e., Amorite and Hittite); (ii) the declarations and actions of abandonment undertaken by her Amorite and Hittite parents; (iii) her cultic impurity; and (iv) her gender. Each of these actions contributes to the reality that Judahite identity is legally tenuous, if not non-existent, prior to a covenant with YHWH. Without anyone claiming title to this abandoned (female) child, the Judahites are effectively marginalized (if not ostracized) from society – the quintessential legal outsider. This marginalization, absence of legal custodianship, and its implications for identity is part of what Galambush's "ownerless domain" signals. Specifically, I contend that attention to these legal elements clarifies the tenuous nature of Judahite identity prior to YHWH's covenant. Thus, Judahites' natal experiences were filled with abandonment and threats of impending violence, as represented by the Amorite and Hittite origins.⁷⁰⁰ For the writers of Ezekiel 16, the only viable foundation for Judahite identity is the *legal relationship* between the deity and the nation – a foundation that is lacking in Ezek 16:1-5.

5.2.2 Adoption, Marriage, and Identity

Set against this backdrop of abandonment, exclusion, and impurity, Ezekiel 16 transitions into the next phase of the case for Judahite identity – namely, the nature and

⁷⁰⁰ An additional aspect of this Amorite-Hittite parental linkage may reflect concerns over inter-ethnic/-national marriages. One future avenue of study is to investigate more fully the implications of these two ethnic terms, beyond those discussed in this dissertation.

benefits of a covenantal relationship with YHWH. To establish this element, Ezek 16:6-14 must first demonstrate that YHWH and Jerusalem entered into a legally binding and enforceable relationship. These verses (Ezek 16:6-14) argue for this by describing how YHWH intervenes and stakes his legal claim to Jerusalem in two, sequential ways – adoption and marriage.⁷⁰¹ As his daughter, the parental stigma and YHWH's latent judgment of Jerusalem's biological parents are nullified. Consequently, Judahite identity moves from that of a targeted outsider or legal non-entity to a member of YHWH's household.

This transformation in legal status evolves into the marital version of the covenant, which becomes the focal point of this case and the dominant legal metaphor defining Judahite identity.⁷⁰² Because the validity of this marital covenant is so important, Ezek 16:8b describes YHWH's commitment with the following legally significant actions: (i) he spreads his garment over Jerusalem; (ii) pledges himself to the city; (iii) enters into a covenant with her; and (iv) declares that she has become his betrothed. Individually, any of the aforementioned actions is sufficient to create a legally binding relationship between two parties. Together, these actions underscore YHWH's intent to enter into a legally exclusive relationship and the enforceability of the covenant.⁷⁰³ Also, the joining of these actions helps to counter the chapter's earlier description of

⁷⁰¹ Rom-Shiloni, *Exclusive*, 162 discussing the two-stage entry into the legal relationship in Ezek 16:6 and 16:8.

⁷⁰² See, Greenberg, *Ezekiel 1-20*, 294-296 regarding the paucity of references to the adoption metaphor in the remainder of Ezekiel 16.

⁷⁰³ This "piling on" of legally significant terminology and imagery demonstrating YHWH's intention to enter the covenant parallels the hyperbolic language describing Jerusalem's violation of the covenant in subsequent verses. In both cases, the hyperbole underscores the seriousness of the conduct and the intentions of the parties.

Jerusalem's outsider status. Just as the text vividly describes her as the ultimate outsider, it (must) also describe the city's entrance into a covenantal relationship and how that covenant reverses her previous status with similarly hyperbolic language.

Ezek 16:9-14 describes the effects of this marital covenant between Jerusalem and YHWH. The city is cleansed from her blood impurity (Ezek 16:9) and is provided with the highest quality food, clothing, and jewelry (Ezek 16:10-13).⁷⁰⁴ To further accentuate the impact of this legal relationship upon Jerusalem's status, Ezek 16:13 ends with a description of the city as a royal figure (ותצלחי למלוכה). As a result of YHWH's covenant, the once abandoned foundling flailing in her blood is now a queen, internationally renowned for her beauty (Ezek 16:14). Thus, the legal institution is the performative element that establishes Judahite identity through a transformation of its (legal) status

The EB Model clarifies how this second section describes the initiation of the legal relationship between YHWH and Jerusalem, including the impact of this upon Judahite identity/legal status. As mentioned, YHWH's adoption and subsequent marriage provides two legal bases for the contractual relationship between the deity and the city. Because of these two entrances into a legal relationship, Ezek 16:8-14 makes the case that the legal relationship is an intentional act of both parties and, perhaps most importantly, becomes irrevocable. These verses also delineate the transformation in her legal status and its implications for Judahite identity. In short, Judahite identity parallels its legal status. In absence of a covenant with YHWH, they are legally non-existent and must live a tenuous life on the margins of society (Ezek 16:1-7). In contrast, once a covenant with YHWH was initiated, the Judahites become legal members of a royal household and experience the benefits of such membership (Ezek 16:8-14). Based upon

⁷⁰⁴ See earlier reference regarding the cultic significance of some of these items.

the subsequent verses, the legal relationship remains unchanged although the experience of the benefits depends upon the Judahites' fidelity to the contract's provisions. The enduring nature of the contractual relationship between the parties is reiterated in Ezek 16:59-63.

5.2.3 Punishment and Identity

Ezek 16:15-52 narrates Jerusalem's (intentional) violation of the covenant and mismanagement of the gifts resulting from it. While I concur with scholars who argue for the proportionality and grievous nature of the punishment, it is critical to note that there is no juridical diction or legal imagery expressly declaring YHWH's intent to rescind the covenant, nor, as a result, the implications of that covenant for Judahite identity. The absence of legal language and imagery of renunciation also supports the conclusion that Ezekiel 16 does not intend to describe the dissolution of the covenantal relationship. Unlike the earlier terminology in Ezek 16:1-8, such language of abandonment is absent once the recitation of criminal conduct begins. These verses argue that the grievous punishment reflects the severe criminality of the city's actions in the context of the ongoing validity of the covenant. Consequently, the abrogation of certain contractual benefits and Jerusalem being subjected to harsh punishment does not require the abolishment of the covenant. In fact, as I will discuss in relationship to Ezek 16:59-63, the text presumes that there is no need for a new covenant. Rather, the covenantal relationship must be extended with a new commitment on behalf of Jerusalem to fulfill faithfully her contractual obligations.

In order to prove that the severe punishment does not invalidate or rescind the covenantal relationship, Ezekiel 16 describes the punishment in ways reminiscent of Pentateuchal legal codes. Rom-Shiloni is among those scholars who have highlighted the similarities between the punishments outlined in Ezek 16:38-43 and the legal collections in the Pentateuch.⁷⁰⁵ These similarities confirm that Jerusalem's conduct is being judged and punished according to Judahite community standards of criminality (Leviticus 20).⁷⁰⁶ If Jerusalem's criminal conduct *invalidated* the covenant or if YHWH *revoked* it, Jerusalem could have been destroyed like the foreign nations associated with her origins (Deut 20:17). Therefore, the punishment reflects the covenant's validity (despite Jerusalem breaching its duties and obligations of the covenant) not YHWH's rejection of the city or a decision to return her to her natal outsider status. Thus, I would conclude that Jerusalem's criminal behaviors cost her the *benefits* of the covenant not the *validity* of the covenant.

For example, the removal of her clothing, while superficially identical to her natal condition, actually demonstrates the abrogation of the benefits of the covenant. It does not, however, prove its nullification or revocation. I would therefore disagree with scholars such as Galambush who argue that her nudity represents a return to the "ownerless domain" of a pre-covenantal relationship.⁷⁰⁷ Rather, the absence of her clothing (along with the other similarities to her native condition) demonstrates only the

⁷⁰⁵ See e.g., Block, *Ezekiel*, 502.

⁷⁰⁶ Block, *Ezekiel*, 515-516. Block argues here that Jerusalem is being punished according to covenant curses, an observation with which I concur. See also Block, *River Chebar*, 32 where he makes a similar argument.

⁷⁰⁷ Galambush, *Jerusalem*, 90.

forfeiture of some benefits of the covenant and not its nullification. Thus, the current situation (despite its similarities to the pre-covenant time) is not the result of being outside YHWH's custodianship. Instead, the current hardships are the appropriate penalty that the covenant prescribes. Therefore, the fact that YHWH never relinquishes his legal claim to Jerusalem enables the covenantal relationship to remain the conceptual basis for Judahite identity.⁷⁰⁸

This logic may have informed the presumably later insertion of Ezek 16:59-63, which makes explicit this point about the enduring nature of the covenant.⁷⁰⁹ In this promise of restoration, YHWH declares that Jerusalem's punishment will be proportional to the city's violations because she disregarded her legal obligations (Ezek 16:59). Since the punishment is directly linked to the covenant and because YHWH's remembrance of it sparks the extension of its term (Ezek 16:60), the covenant's continuing validity is affirmed. Also, this extension of the term in perpetuity (ברית עולם) need not suggest that YHWH is entering into a new covenant (ברית חדשה) with Jerusalem. Rather, Ezek 16:60-63 may respond to those Judahites who considered the covenant nullified in light of the severe punishment outlined earlier in this chapter.

The third section I analyzed describes the reasons for the severe punishment facing Jerusalem. As discussed, these verses do not suggest that the covenant with the deity was nullified or terminated. In fact, the very nature of the punishments imposed

⁷⁰⁸ Other biblical scholars have argued that a major transformation the exilic period produced was that Judahite/Jewish identity became disassociated from the land of Judah and more focused on the relationship with YHWH. See, Halvorson-Taylor *Enduring Exile*, 194 and Gary N. Knoppers "Ethnicity, Genealogy, Geography, and Change: The Judean Communities of Babylon and Jerusalem in the Story of Ezra" in *Community Identity in Judean Historiography: Biblical and Comparative Perspectives* (ed. Gary N. Knoppers and Kenneth A. Ristau Winona Lake: Eisenbrauns, 2009), 168.

⁷⁰⁹ A growing consensus exists among scholars that Ezek 16:59-63 are secondary additions. See e.g., Eichrodt, *Ezekiel*, 216; Rom-Shiloni, *Exclusive*, 188-192, and Darr, *NIB*, 1221. Contra Greenberg, *Ezekiel 1-20*, 304-305.

upon the city confirms the enduring validity of the covenant as a conceptual basis for Judahite identity. These verses attempt to demonstrate that the punishment is warranted, proportional to the crimes, and not the final stage of the legal relationship. Rather than rejecting the Judahites because of their violations and returning them to the “ownerless domain,” Ezekiel 16 suggests that the severe punishment is the necessary first step for the continuing relationship with the deity (Ezek 16:52-58).⁷¹⁰ Additionally, Ezek 16:44-58 revisits and expands upon the pejorative legal connections that first appeared in Ezek 16:3. The reappearance in this section provides additional evidence for the continuing legal enforceability and viability of the covenant. In Ezek 16:3, the discussion of Amorite and Hittite ancestry introduced a description of Jerusalem’s outsider status. In contrast, Ezek 16:45 provides the foundation for a legal link between Jerusalem and two infamous criminals – Sodom and Samaria. The logic of these verses does not focus upon Jerusalem’s lack of judicial standing or reciprocal legal obligations between her and YHWH. Rather, these verses outline the legal rationale for the deity’s punishment of three cities that fall under his jurisdiction – Sodom, Samaria, and Jerusalem. In each case, the divine prerogative to judge (and therefore restore) is presented as a simple fact. Consequently, the invocation of Amorite and Hittite ancestry serves to illustrate how far the legal relationship between the deity and Jerusalem has evolved. To some extent, the

⁷¹⁰ As mentioned, the problematic description of a male deity “satiating his anger” (Ezek 16:42) as a necessary precondition for the continuing relationship is one that several scholars have highlighted. Although I agree wholeheartedly with such critics, the relevant fact for this analysis is that the anger is depicted as judicially proportional to the crimes and, like all non-capital punishments, is intended to provide for the reintegration of the convicted criminal into society. One further avenue of study that I did not explore in this dissertation is the role of shame in the reformulation of Judahite identity post-586 BCE. At some level, Ezekiel 16 suggests that the experiences of Neo-Babylonian domination must remain an integral part of Judahite’s self-conceptualization. This shame seems to serve as a reason that will prohibit (or limit) the Judahite’s willingness to intentionally violate covenantal provisions and accuse the deity of malfeasance.

deity has disregarded (or overcome?) the legal impediments to the formation of a valid relationship that Jerusalem's ethnic origins posed. As a result of this legal relationship, the deity can judge (and restore) Jerusalem because of the contractual agreement.⁷¹¹

What remains, then, is for Jerusalem to comport herself in a manner befitting the new and exalted legal status a covenant with YHWH creates.

5.2.4 Defendant's Silence and Judahite Identity

The final point I will address is the issue of Jerusalem's silence throughout this chapter. As mentioned earlier, some scholars, who are understandably disturbed by the graphic nature of its imagery and the perspective on husband-wife relations it seems to describe, argue that the city's silence is another expression of the chapter's sexist and misogynistic tone. Although I have no interest in defending "Ezekiel" against allegations of sexism any more than I do in psychoanalyzing "him," I nonetheless contend that the recovery of the legal logic in the book that I have demonstrated thus far suggests another, legal explanation for Jerusalem's silence.

Thomas Renz's discussion of the quasi-adjudicatory role of the exilic community informs my argument regarding a legal meaning of the defendant's silence. Although he does not want to call the exilic community a jury, Renz recognizes that the book of Ezekiel (and this chapter, in particular) requires the Judahite community to have a quasi-judicial function. He observes that "while the exilic community is not in a position to *deliver* a verdict, it is admonished to *accept* one, namely YHWH's verdict over Jerusalem

⁷¹¹ As discussed earlier in this chapter, the punishments Jerusalem experiences are articulated in language found in Pentateuchal legal texts and no express language of renunciation, abandonment, or nullification appears in Ezekiel 16.

and the surrounding nations.”⁷¹² Put another way, they are required to accept the legal sustainability and appropriateness of YHWH’s verdict regarding them. His argument concerning the need for the exilic community to accept a judicial finding raises the question: how could a party express acceptance?

According to Bovati and others, a party in ancient Israelite/Judahite legal proceedings could accept the legal sustainability of the claims asserted against it in two ways. First, one party can withdraw its legal (counter)-claim against another and not file charges against the other party. Relatedly, a party may recognize that it lacks sufficient evidence to assert a sustainable claim and not file it. Greenberg argues that a similar concept may be operative in Ezek 16:63 when it states: ולא יהיה-לך עוד פתחון פה מפני כלמתך; the phrase פתחון פה has a legal connotation that continues into Mishnaic Hebrew and means “an occasion for complaint, a pretext for accusation.”⁷¹³ Margaret Odell recognizes the juridical significance of Ezek 16:63 and concludes that the verse references a specific form of legal complaint to God in which “the people call God to account for their experience of humiliation and failure.”⁷¹⁴ The prohibition this verse imposes on presenting such a legal petition is the result of the chapter’s refutation of “the premises of the complaint.”⁷¹⁵ Thus, the city’s silence at the end of Ezekiel 16 reflects the defendant’s realization that it lacks sufficient basis to bring a claim against God.⁷¹⁶

⁷¹² Renz, *Rhetorical*, 131.

⁷¹³ Greenberg, *Ezekiel 1-20*, 121.

⁷¹⁴ Margaret S. Odell, “The Inversion of Shame and Forgiveness in Ezekiel 16:59-63” *JSOT* 56 (1992), 107.

⁷¹⁵ Odell, “Shame,” 107.

⁷¹⁶ *Ibid.*, “Shame,” 108.

The second way a party to a lawsuit could accept the legal validity of a claim or judicial determination is through silence. As Bovati and others discuss, a defendant's silence in an ancient juridical confrontation was tantamount to consent to the merits of the accusing party's case.⁷¹⁷ Thus, Jerusalem's silence may represent the persuasive power of YHWH's case and the city's acceptance of legal culpability. By not responding with an argument of innocence or with mitigating factors that could lessen culpability and the resulting punishment, Jerusalem accepted the consequences of violating the covenant. Additionally, the silence may represent a willingness to enter into the "perpetual covenant" – which can be understood as a type of legal settlement⁷¹⁸ -- that concludes this chapter. By framing the defendant's silence within the context of legal disputations rather than in the horrors of domestic violence, the city's muted response to the indictment is a legally appropriate, if not expected, response for a guilty defendant.⁷¹⁹

The final section, Ezek 16:59-63, reiterates the on-going validity of the covenant between YHWH and Jerusalem as the conceptual basis for Judahite identity. Unlike prophets like Jeremiah who suggest a new covenant is required, Ezek 16:59-63 articulates

⁷¹⁷ See Bovati *Re-Establishing*, 340.

⁷¹⁸ Bovati, *Re-Establishing*, 32-33. In this section of his work, Bovati outlines the common ways legal disputes were resolved. Where the accused party does not present evidence in their defense (as is the case in Ezekiel 16), the terms ending the lawsuit and "re-establishing justice" are those proposed by the moving party (i.e., the party presenting the evidence of criminal or civil violations).

⁷¹⁹ Modern American law has an analogous concept called "implied consent." This legal doctrine permits an adjudicatory body to determine the presence of a legally binding arrangement between parties even where there is no (or insufficient) evidence that a party gave its explicit consent. In certain situations, the "grantee's" acceptance of benefits that could belong to her *only* as a result of the legal arrangement can be deemed sufficient evidence to infer consent. Moreover, if the "grantee" does not record an objection to any of the proposed terms, this party's silence (when coupled with the acceptance of the aforementioned benefits) is tantamount to consent. This pattern of silence and receipt of the consequences of the covenant - e.g., Ezek 16:2-7 [adoption]; Ezek 16:8-14 [marriage]; and Ezek 16:15-43 [criminal culpability] – is one that can be discerned throughout this chapter and may reflect another legal reason for the pattern of Jerusalem's silence in Ezekiel 16.

that both the punishment and restoration are covered sufficiently under the terms of the existing contract.⁷²⁰ According to these verses, the deity and Judahites should remember (זכר) the original covenant described in Ezek 16:8-14 and comport themselves accordingly. Since the Judahites' punishment is covered by the terms of the contract (Ezek 16:59), the restoration of the benefits of the covenantal relationship does not necessitate a renegotiation of the original terms. Instead, the Judahites must accept the appropriateness of the punishment by withdrawing any objections to divine actions under its terms. As discussed, this requirement is articulated in Ezek 16:63 with the phrase: ולא יהיה לך עוד פתחון פה מפני כלמתך. Through "silence," the Judahites affirm the legal proportionality of the punishment and ratify the terms of the existing contract. Such a ratification permits the extension of the contract's term in perpetuity (ברית עולם) and assures the legal status of the Judahites as a covenant people with YHWH. Consequently, the experience of Neo-Babylonian domination did not change or nullify the conceptual basis of Judahite identity. From YHWH's initial encounter with the Judahites in Ezek 16:8 until the time Ezek 16:59-63 was written, Ezekiel 16 makes the case that Judahite identity was, is, and can rest on only one sure foundation – a perpetual covenant with YHWH.

In summation, Ezekiel 16 uses juridical diction and legal imagery to describe the various stages of Jerusalem's relationship with YHWH. This relationship is described as an irrevocable covenant YHWH initiated in Jerusalem's infancy, ratified through marriage, and renewed after Jerusalem's punishment for her alleged breaches of the covenant's provisions. Ezekiel 16 contends that this covenantal relationship is the

⁷²⁰ See Jer 31:31-34.

appropriate mechanism by which Judahite identity may be affirmed, but not as a tenuous, fragile, and legally unprotected status on the fringes of ancient Near Eastern society. Instead, the covenantal relationship provides the legal foundation for an argument that Judahite identity is secure, prosperous, and even exalted under YHWH's legal custodianship. Lastly, this chapter suggests that the juridical elements in Ezekiel 16 reveal a rhetorical logic that provides another perspective on Jerusalem's silence. Specifically, Jerusalem's silence is an expression of legal consent to the veracity of YHWH's criminal indictment and the legal proportionality of the resulting punishment. According to Ezekiel 16, Judahites' acceptance of their guilt and punishment is the *sine qua non* for the continuing covenantal relationship, which is the cornerstone of Judahite identity.

CONCLUSION

In this study, I have argued that recovering the juridical framework for Ezekiel 1-33 is critical for its understanding, especially how the book articulates Judahite identity development under Neo-Babylonian hegemony. By attending to the juridical diction, legal images, and courtroom metaphors that constitute the book's juridical framework, I sought to contribute at least two things to scholarship on Ezekiel. First, the focus on the juridical framework clarifies several "strange" passages in the book and provides greater clarity for the narrative logic that runs throughout it. For example, I argued that the divine prohibition on the prophet's speech (Ezek 3:25-27) should be understood in light of the deity's "judicial disposition." From this perspective, the deity's conduct and the prophet's silence relate to limitations in their expected functions in a legal dispute. Thus, the shift in the prophet's tone and message following Jerusalem's destruction (Ezekiel 33) is consistent with the type of legal analysis proposed in this study. Furthermore, as expressed in Chapter 4, the narrative logic for the departure of the כבוד יהוה and the meaning of the Judahites' statements in Ezek 8:12 and 9:9 becomes clearer when understood within the book's juridical framework.

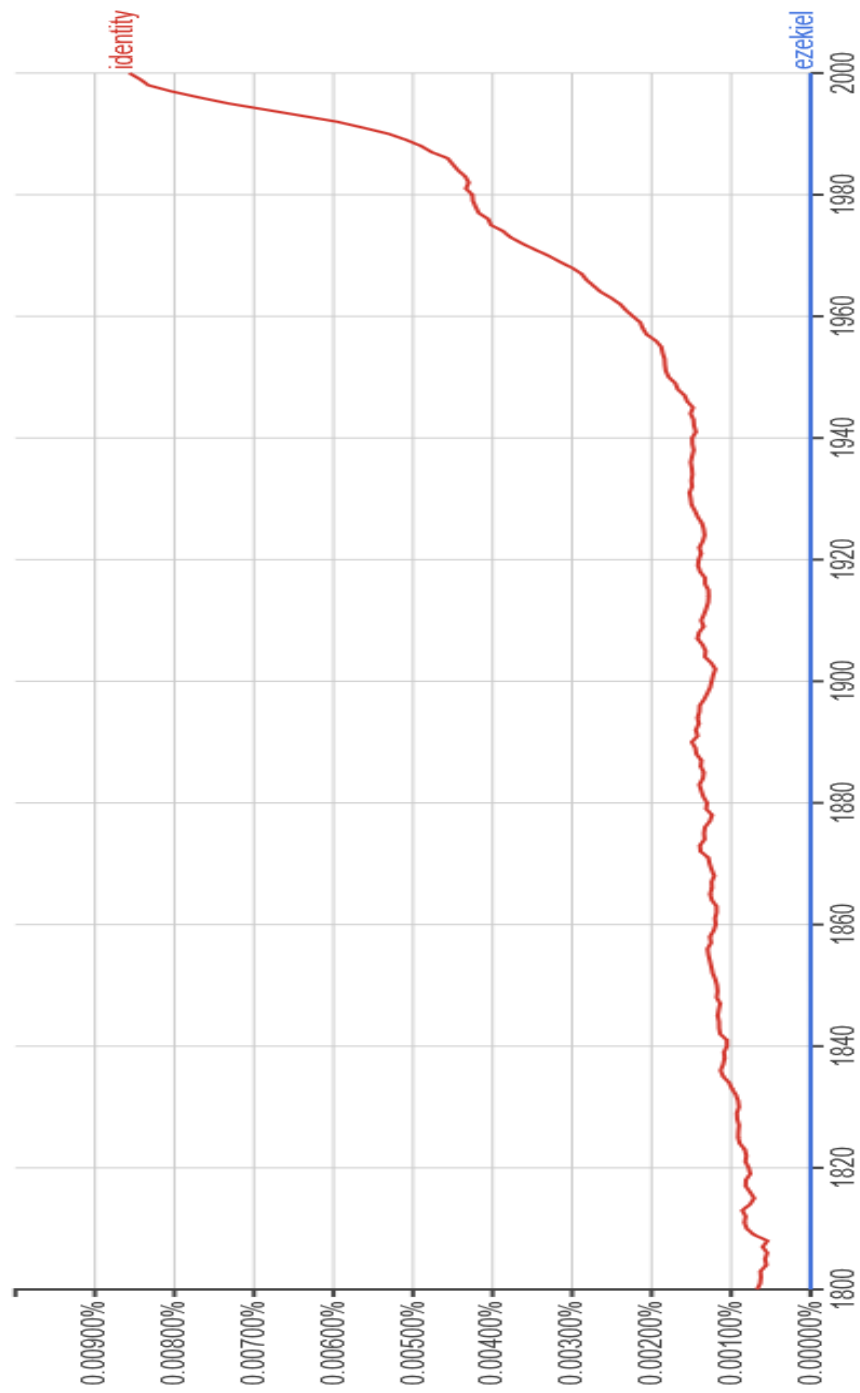
Second, and perhaps most importantly for this project, Ezekiel 16 provided a useful case study to demonstrate how the juridical framework may be utilized to understand Judahite identity. The very nature of Judahite identity is inexorably linked to

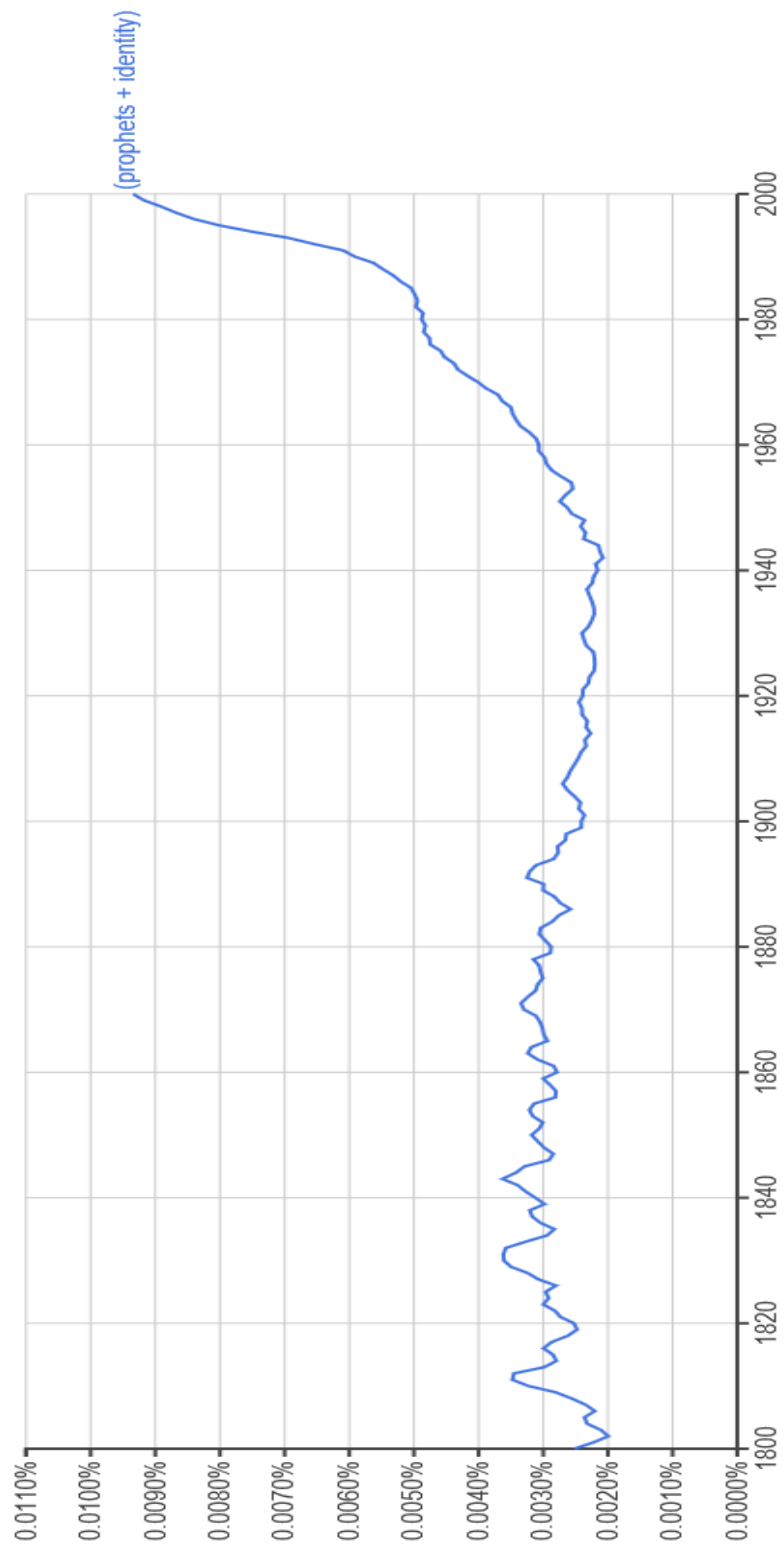
the juridical valences and legal formulations that run throughout the book. Thus, without an adequate accounting for the prevalence and purpose of these legal elements in Ezekiel 1-33, the precise vision of Judahite identity the book advocates cannot be appreciated fully. Applying the EB Model, my final chapter demonstrated that Ezekiel 16 connects the city's *legal status* with *Judahite identity* through a contractual relationship with YHWH. This conception and articulation of Judahite identity was sufficient to endure the hardships Neo-Babylonian domination presented. Moreover, Ezekiel 16 argues that the difficulties did not abolish or nullify the legal relationship between the deity and Judahites. Instead, this chapter contended that the hardships are the legally proportional punishments that the covenant between the parties required. Consequently, the "exile" is neither a threat to the legal relationship nor a challenge to the conceptualization of Judahite identity that rests upon it.

Although the focus of this project is historical, a brief note about a contemporary concern that informed this project is warranted. Within current African-American and Black theological discourse(s), some scholars are paying increased attention to phenomena typically described as "exilic" or "diasporic." For some of these scholars, the biblical texts that define Judahites' experiences in Babylonia are valuable resources for investigating current realities confronting African-Americans and others of the so-called African diaspora. This analysis of Ezekiel 1-33 was, in part, motivated by a desire to learn the "data" of Neo-Babylonian domination and how a biblical text described its impact upon a people's identity. Thus, one future expansion of this study is to consider how the experiences of Judahites in Babylonia that Ezekiel described may compare to African-Americans' experiences in the past century. In particular, I am interested in

examining how the strategies and approaches Ezekiel used may inform current analyses of African-American identity and, in some cases, how current strategies within the African-American communities can illumine the methods and goals the book of Ezekiel sought to accomplish.

APPENDIX





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