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# God's Curse in the Hanged Man

*Crux interpretum* in Deut 21:23

*Angela Maria Lupo*

The Jewish people have had a lively awareness of having been chosen by God to live the special Covenant relationship with Him expressed in the imperative, “You shall be holy, for I the Lord your God am holy” (Lev 19:2). Holiness, indicating a state of total belonging to God, is a requirement of the whole community and must manifest itself in all areas of life; it is associated with impurity, because both contain a mysterious and terrifying force that acts by contact and puts the person in a state of interdiction<sup>1</sup>. Contact with unclean does not kill but weakens man, thus, “purity according to the book of Deuteronomy is not the prerequisite of holiness, but rather an obligation which holiness imposes upon the Israelite”<sup>2</sup>.

The legislation in Deut 21:22-23 reveals intense meaning of covenant and obedience – in accord with 11:26: “See, I am setting before you today blessing and curse” – confessing that solely Yahweh is God and that only in Him is life, while outside of Him there is only death and curse. The condition for blessing in the land is obedience to “all these commandments” (v. 22), and indeed the curse is presented primarily in terms of the desolation of the land and death. Our investigation will focus primarily on 21:23, the real *crux interpretum* in this text, as we try to clarify its meaning. It will be seen that any act of the curse, which is a total separation from God, is connected with disobedience, inasmuch as the gift of the covenant hangs upon free human response. Therefore, I will point out that the central question in v. 23 is that the cadaver is God's curse not because it is hung on a tree, but that its being hung shows to all its state of being determinedly cursed from its transgression of the Law.

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<sup>1</sup> SACCHI, *Sacro*, 60: “Come riprova dell'affinità esistente tra sacro e impuro si può osservare che l'impuro è una forza ostile all'uomo, analogamente al sacro. Ciò che lo distingue dal sacro è solo la sua minore pericolosità; l'impuro è, per così dire, un sacro diluito.”

<sup>2</sup> WEINFELD, *Deuteronomy*, 228.

## 1 The Death Sentence

Deut 21:22-23 is located in the central part of the book of Deuteronomy, the so-called Deuteronomomic Law Code (chs. 12–26)<sup>3</sup>, which contains a number of agreements given by God to Moses for the people so that putting them into practice, they could live in peace in the land which they were about to enter. In these chapters, the following literary sequences may be highlighted<sup>4</sup>:

- Rules of worship (12:12–16:17);
- The appointment of public officials (16:18–18:22);
- Laws of life and death (19:1–21:23);
- Boundaries of the community (21:1–26:19).

The third sequence (Deut 19:1–21:23) deals with some issues that affect the purity of the land and the people, the unsolved murder, the rebellious children and the exposing of corpses. These chapters emphasize that life presents itself as an indefinite variety of cases and the law seeks to adapt to people's ever-changing lives, wanting to assert its ties with God, where there shall be a blessed and happy future<sup>5</sup>.

The main concern of ch. 21, where we find our text, is purity. It is a duty that flows from having been called by God to holiness: "Purity is not, in the first place, a question of spiritual attitude, but a quality of life bound to the fact that these people were set apart as God's people and are under His authority."<sup>6</sup> In this chapter, we can see the following literary unit:

- The unidentified murderer (vv. 1-9);
- Marriage with woman captured in war (vv. 10-14);
- Social justice: right of firstborn in polygamous marriage (vv. 15-17);
- Family law: the rebellious son (vv. 18-21);
- Humanism: treatment of executed criminal's body (vv. 22-23).

Israel's community, called to live a special relationship with the Lord, should manifest in all spheres of its daily life such unique relationship that implied the elimination of anything that could constitute an obstacle. In fact, purity encompasses all moral life and implies the maintenance of order in the world given by God.

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<sup>3</sup> For a survey of works on Deuteronomy, see MAIES, *Deuteronomy*, 108-109; MILLER, *Deuteronomio*, 141ff.; ROFÉ, *Deuteronomy*, 55-77; WRIGHT, *Deuteronomio*, 24-25.

<sup>4</sup> Cf. CLEMENTS, *Deuteronomy*, 55-117.

<sup>5</sup> JACKSON, *Biblical Laws*, 86-101.

<sup>6</sup> MILLER, *Deuteronomio*, 171.

In the last passage of ch. 21, we find a norm relating to the corpse of a man condemned to death. The text opens with a formulated norm in generic way, *וְכִי־יְהִי בְאִישׁ חַטָּא מִשְׁפַּט־מָוֶת*, “and if a man has committed a sin worthy of death”; the protasis includes the condemnation of a covenant’s transgressor and the verb in the third person singular introduces the case of a man guilty of a crime that deserves death<sup>7</sup>. The employed construction, *מִשְׁפַּט־מָוֶת*, refers to a type of death sentence; in fact, the word *מִשְׁפַּט* is a formed name with the prefix *מ-* and the root *שפט*, translated as “justice, judgment, law”. It points out a “deliberation, decision” of death in close connection with justice and law, “right as a normative principle also appears as a decision reached in a concrete situation”<sup>8</sup>.

The construction *מִשְׁפַּט־מָוֶת* is employed only 4-times in all OT; aside from Deut 21:22, it also appears in 19:6. It is preceded by the negation particle to point out that “not deserving of death”, *אִין מִשְׁפַּט־מָוֶת*, the one who unintentionally kills his companion in the woods, because the axe used for cutting the tree slipped from his hands. Since the killing is not motivated by hate, the avenger of blood should not pursue and catch the killer who took refuge in a city to save his life (cf. 29:5-6).

The other two recurrences are in Jer 26:11.16. In the first text, after the prophet Jeremiah finishes to report how much the Lord had communicated to him, i.e., that the temple would be reduced like Silo and the city of Jerusalem destroyed and be without inhabitants, “then the priests and the prophets spoke to the officials and to all the people, saying, «A death sentence for this man! (*מִשְׁפַּט־הַזֶּה לְאִישׁ הַזֶּה*), for he has prophesied against this city as you have heard in your hearing»” (v. 11). The text of Jer continues with a defense by the prophet that affirms he was sent by God and not to have prophesied of his own initiative: “The officials and all the people said to the priests and to the prophets, «No death sentence for this man! (*אִין־לְאִישׁ הַזֶּה מִשְׁפַּט־מָוֶת*), For he has spoken to us in the name of the Lord our God»” (v. 16).

The sentence of the chief priests and the assembly towards Jeremiah was an acquittal, since they recognized that he spoke in the name of the Lord<sup>9</sup>. In all these texts, the term *מִשְׁפַּט* is employed in a technical sense for pointing out the

<sup>7</sup> CHRISTENSEN, *Deuteronomy*, 487: “The boundaries of the law on the hanging corpse (21:22-23) are marked with *šetimā*’ layout markers at the beginning and the end, and the *Numeruswechsel* in v 23 as restored from LXX and Tg. Ps.-J.”

<sup>8</sup> JOHNSON, *מִשְׁפַּט*, 93.

<sup>9</sup> Cf. WEISER, *Geremia*, 436.

death sentence, without specifying the type of judgment. Considering the legal texts contained in the Pentateuch, it emerges that the death penalty was foreseen for the following crimes<sup>10</sup>:

- voluntary homicide<sup>11</sup>;
- a man's abduction to reduce it in slavery<sup>12</sup>;
- serious lacks against God: idolatry<sup>13</sup>, blasphemy<sup>14</sup>, profanation of the Sabbath<sup>15</sup>, prostitution of the daughter of a priest<sup>16</sup>, witchcraft<sup>17</sup>;
- severe faults against parents<sup>18</sup>;
- sexual abuse: adultery, incest, sodomy, bestiality<sup>19</sup>.

Israel's legislation limited the death penalty to the attacks against the purity of worship and against the holiness of life and its sources<sup>20</sup>. Generally, the religious motive was explicit in the laws. The normative word intervened not only to impede the perversion of the covenant's gift, but also to keep open the possibility of its connectedness right in the moment when, paradoxically, it fails or comes short.

The death penalty of stoning was imposed upon the people who committed the crimes mentioned above. The condemned was led out of the city and the prosecution witnesses threw the first stones, followed by others until death came<sup>21</sup>. This punishment could be aggravated, exposing the death bodies of the condemned, as mark of infamy to warn others<sup>22</sup>. However, the law did not

<sup>10</sup> Cf. DE VAUX, *Le istituzioni*, 165-166.

<sup>11</sup> Cf. Exod 21:12; Lev 24:17; Num 35:16-21; Deut 19:11-12.

<sup>12</sup> Cf. Exod 21:16; Deut 24:7.

<sup>13</sup> Cf. Exod 22:19; Lev 20:1-5; Deut 13:2-19; 17:2-7.

<sup>14</sup> Cf. Lev 24:15-16.

<sup>15</sup> Cf. Exod 31:14-15.

<sup>16</sup> Cf. Lev 21:9.

<sup>17</sup> Cf. Exod 22:17; Lev 20:27; 1 Sam 28:3.9.

<sup>18</sup> Cf. Exod 21:15.17; Lev 20:8; Deut 21:18-21.

<sup>19</sup> Cf. Lev 20:10-17; Deut 22:22.

<sup>20</sup> DE VAUX, *Le istituzioni*, 165.

<sup>21</sup> Cf. Deut 13:10-11; 17:5-7; 21:21; 22:21.24; Lev 24:14.23; Num 15:35-36.

<sup>22</sup> MULDER, הַלְקָה/שָׁלַח, 669-670: "It is unlikely that hanging by itself ever served as a form of capital punishment in Israel. The relevant text appears to suggest instead that those who were condemned, above all blasphemers, were first killed and then hung up, so that hanging was more an additional punishment. [...] Hanging is a public exhibition of the condemned criminal, which only aggravates his punishment and disgrace"; MAYES, *Deuteronomy*, 305: "The purpose of such exposure is not certain. [...] There may also be present the idea of an unburied body as additional punishment for the executed criminal." WILLSON, "Cursed", 220-201: "The legislation of Deut 21:22-23 permits the public shaming of the condemned

specify cases where the condemned were supposed to be exposed in this way, thereby undergoing a double punishment.

## 2 Treatment of the Body of An Executed Criminal in OT

In Deut 21:22b, reference to the public exposition of the cadaver does not indicate the execution of the condemned by impalement or crucifixion. Instead, it gives reference to the exposition of one who already has been sentenced, “and you hang him on a tree” וַתִּלְיֵת אֹתוֹ עַל-עֵץ. After a person deserving of punishment had been executed, as an admonition to others and to further humiliate the condemned, they proceeded to expose his body on a עץ which may indicate a “tree” or a “timber” pole<sup>23</sup>. Some Scriptural references that implement this rule actually confirm such procedures.

In Gen 40:19, Joseph, locked in jail, explains to the chief baker the dream that he had, “within three more days Pharaoh will lift up your head from you and will hang you on a tree (וַתִּלְיֵת אֹתְךָ עַל-עֵץ); and the birds will eat your flesh off you”. In fact, the chief baker sentenced to death, was first killed and then his body was suspended from a pole<sup>24</sup>:

“But the chief baker he impaled,  
just as Joseph had predicted.” (Gen 40:22)

וְאֵת שָׂר הָאֲפִים תִּלְיֵה  
כַּאֲשֶׁר פָּתַר לָהֶם יוֹסֵף

In Gen 41:13, the text that recalls the interpretation of Joseph's dream, one may infer that the act of “being hung” follows decapitation:

“And it came about  
that just as he interpreted for us, so it happened;  
he restored me in my office, but he hanged him.”

וַיְהִי  
כַּאֲשֶׁר פָּתַר-לָנוּ בֶן הַיָּה  
אֶתִּי הִשְׁיֵב עַל-בְּנֵי וְאֹתוֹ תִּלְיֵה

The biblical narrator uses תלה for “hang” in the following contexts: Joshua's execution of the king of Ai (Josh 8:29):

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criminal by suspending his corpse to manifest his covenantal status as cursed, presumably to deter other from similar covenant transgression; this is penal suspension.”

<sup>23</sup> CHRISTENSEN, *Deuteronomy*, 489: “The phrase «hang him up on a gibbet» refers to exposing the body of the executed for public display.”

<sup>24</sup> WENHAM, *Genesis*, 384: “The baker will not simply be executed, but his corpse will be impaled and exposed. This treatment was designed to prevent his spirit from resting in the afterlife.”

And he hanged the king of Ai on a tree (תָּלָה עַל־הָעֵץ) until evening; and at the going down of the sun Joshua commanded, and they took his body down from the tree, and cast it at the entrance of the city gate, and raised over it a great heap of stones that stands to this day.

A recurring motive in victory accounts was the exemplary execution of the sovereign; these, captured alive (Josh 8:23), after killing all the inhabitants of Ai, were killed and as a mark of infamy they were “suspended from the tree”<sup>25</sup>; however, according to the law in Deut 21:22-23, the body was removed before nighttime<sup>26</sup>.

The destiny reserved for the King of Ai is similar to that of the five Kings reported in Josh 10. It deals with the punishment inflicted on the Amorite Kings, Adoni-Zedek, Oam, Piream, Iafia and Debir, who had attacked Gabaon, not accepting that its inhabitants had covenanted with the sons of Israel. Informed of this, Joshua fell upon them, inflicting severe defeat, and after having captured the five kings who had hidden in a cave near Makkeda, he ordered them to be killed and their bodies exposed as an extreme act of outrage:

<sup>26</sup> So afterward Joshua struck them and put them to death, and he hanged them on five trees (וַיִּתְּלֵם עַל חֲמִשָּׁה עֵצִים); and they hung upon the trees (וַיִּהְיוּ תְּלוּיִם עַל־הָעֵצִים) until the evening.<sup>27</sup> And it came about at sunset that Joshua commanded, and they took them down from the trees and threw them into the cave where they had hidden themselves, and put large stones over the mouth of the cave, to this very day.

This text also refers to the public exposure of the bodies, after the execution had been performed to provoke terror in others<sup>27</sup>. On the other hand, while ch. 11 narrates the slaughters of the Canaanite kings, in v. 10b we read that Joshua, after having taken Cazor, “struck its king with the sword”; in v. 17b: “And he captured all their kings and struck them down and put them to death”, but nothing was added with regards to suspension on wood<sup>28</sup>.

2 Sam 4:12a describes what David inflicted upon those who killed Is-Baal: “Then David commanded his young men, and they killed them, and cut off their hands and feet, and hanged (וַיִּתְּלוּ) them beside the pool at Hebron.” In such

<sup>25</sup> BALDI, *Giosuè*, 66: “Generalmente la sospensione al legno seguiva all’uccisione.”

<sup>26</sup> Cf. SOGGIN, *Josué*, 83; NELSON, *Deuteronomy*, 262: “Joshua scrupulously obeys this law.”

<sup>27</sup> BUTLER, *Joshua*, 118: “The land God is giving his people must not be defiled by a body hanging overnight (Deut 21:23). Joshua obediently takes the bodies down and buries them fittingly in the hole they tried to use for refuge. Now they have eternal refuge from life’s worries.”

<sup>28</sup> BOLING, *Joshua*, 286.

reference the formal verb יָתְלוּ points out not so much the suspension of the cut limbs but of the corpses.

Usually these accounts employ the *qal* of תלה and they indicate a “high degree of purpose” in action and “no resistance on the part of what is hung”. In Num 25:4 and in 2 Sam 21:6.9a, the form *hifil* of the verb יקע, “to hang”, it refers to the exposure of the corpse of one guilty of serious crime. In the first text, due to the idolatry of the Israelites who, after having been established in Sittim, abandoned God upon the enticement of the daughters of Moab and adhered to worshipping Baal-Peor, God commanded Moses (Num 25:4):

“Take all the leaders of the people	קח אֶת־כָּל־רֹאשֵׁי הָעָם
and hang them up before the Lord	וְהוֹקַע אוֹתָם לַיהוָה
in broad daylight,	בְּגֵד הַשֶּׁמֶשׁ
then the burning anger of the Lord will turn	וַיֵּשֶׁב חֲרוֹן אַף־יְהוָה מִשָּׂרָאֵל
away from Israel.”	

In 2 Sam 21 is narrated the killing of Saul’s descendants who are delivered to the Gibeonites to finish the curse that they had launched against Israel. The Gibeonites said to king David (v. 6a):

“Let seven men from his sons be given to us,	יִתְּנוּ־לָנוּ שִׁבְעָה אַנְשִׁים מִבְּנָיו
and we will hang them before the Lord	וְהוֹקַעְנוּם לַיהוָה
in Gibeah of Saul, the chosen of the Lord.”	בְּגִבְעַת שָׂאוּל בְּחִיר יְהוָה

David accepts the request of the Gibeonites deciding to save the lives of Merib-Baal (2 Sam 21:9a):

“Then he gave them into the hands of the Gibeonites,	וַיִּתֵּןם בְּיַד הַגִּבְעוֹנִים
and they hanged them in the mountain	וַיִּקְיַעם בְּהָר
before the Lord,	לִפְנֵי יְהוָה
so they fell seven together.”	וַיִּפְּלוּ שִׁבְעָתָם

In Num 25 and 2 Sam 21, the hanged persons function representatively to some extent. The convicts were killed and then were hung from a pole or a tree, so that it would be an additional penalty that could serve as a sign of intimidation for spectators and also to taunt the person who had been killed<sup>29</sup>. The Mosaic Law does not absolutely take into consideration the torture of the cross. In Deut 21:22, there is no mention of the suspension of a living man on wood in order to

<sup>29</sup> PAGANINI, *Deuteronomio*, 327: “L’essere appeso non è quindi una forma di esecuzione paragonabile alla crocifissione, ma un atto dissuasivo e deterrente.”

kill him, but that of a dead body<sup>30</sup>. The legislation limits the practice demanding a timely burial. The use of the form hophal of the verb מוּת, “he has been killed”, confirms that the offender’s death already preceded the suspension on wood and that the cause of death was not the suspension, as is crucial in crucifixion<sup>31</sup>.

The Babylonian Talmud in reference to Deut 21:22 declares that every mention of the cross is completely extraneous from this passage:

Our Rabbis taught: Had it been written, “If he has sinned, then thou shalt hang him”, I should have said that he is hanged and then put to death, as the State does. Therefore Scripture says, *And he be put to death, then thou shalt hang him* – his first put to death and afterwards hanged. And how is this done? – It [verdict] is delayed until just before sunset. Then they pronounce judgment and put him [immediately] to death, after which they hang him; one ties him up and another unties [him], in order to fulfil the precept of hanging.<sup>32</sup>

From this text we deduce that the rabbis understood very clearly that the suspension of the body differs completely from the Roman crucifixion.

*Midraš Sifre* on Deut 21:22 briefly expresses the same opinion, “Can you think they would suspend him alive?”. The answer follows, “Therefore it has been said: He will be killed and you will suspend him to the wood”<sup>33</sup>. The *Midraš* excludes any biblical base to the practice of the crucifixion, described more appropriately as a Roman practice<sup>34</sup>.

The exception is the presence of the verb הָלַךְ in the book of Esther<sup>35</sup> which can dually mean, “to impale” and “to crucify”. These meanings are confirmed by the LXX which usually translates the verb הָלַךְ with the verbs κρεμάζειν, κρεμάω, κρεμάννωνα, while only in Esth 7:9 and 8:12 was it translated as σταυροῦν<sup>36</sup>, referring to the punishment to which Aman was condemned. It is possible that

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<sup>30</sup> TIGAY, *Deuteronomy*, 383: “The text does not mean that the criminal is executed by hanging, a method unknown in biblical and ancient Near Eastern Law.”

<sup>31</sup> WILLSON, “Cursed”, 222: “The suspension of a corpse along the lines of Deut 21:22-23 signifies YHWH’s judgment against covenant violators, whether he judges Israelites who break the covenant or enemy kings who set themselves against his covenant people.”

<sup>32</sup> *Sanhedrin* 46b, see DEL VALLE, *La Misná*, 735. (emphasis original)

<sup>33</sup> FINKELSTEIN, *Deuteronomy*, 175.

<sup>34</sup> Cf. WIEDER, *New Documents*, 71-76.

<sup>35</sup> The verb הָלַךְ appears 9 times in the Book of Esther.

<sup>36</sup> SCHNEIDER, *σταυρόω*, 573.

these verses allude to the crucifixion since the story is set in Persia and probably influenced by the Mesopotamian culture that practiced this death penalty<sup>37</sup>.

After the discovery of the Temple Scroll at Qumran, which postulates a different reading from that assumed by MT<sup>38</sup>, a first study by Y. Yadin has tried to show that during the Hasmonean period of the Hellenistic epoch, crucifixion was the death penalty that ratified the crime of high treason. It assumed a religious character on the basis of Deut 21:23<sup>39</sup>. The verb תלה is employed in 4QpNah 3-4 I, 7-8 (2-times): line 7 refers to hanging “living men”, תלה אנשים, and line 8 mentions those hung as living, לתלוי חי, thus “hanging on a tree” is transformed into a reference to crucifixion, while retaining the overall religio-political sense of Deut 21:22-23<sup>40</sup>.

According to Yadin, even in 11QT<sup>a</sup> 64,7-13<sup>41</sup> the verb תלה is used to indicate the procedure of crucifixion, while death was conceived as a consequence of being hung<sup>42</sup>; in fact, the phrase “hanging on a tree” is referenced three times (lines 8,9,10), emphasizing the hanging as *ante mortem*: the offender is hung on a tree and then dies, ותליתממה אותו העץ וימת, instead of

<sup>37</sup> The study of Hengel examines in great detail that the crucifixion was a form of “barbaric” execution of the utmost brutality, of Persian provenance, inflicted above all on high-ranking officials, military leaders and riot fomenters. Cf. HENGEL, *Crucifixione*, 5.

<sup>38</sup> ROSSO, Deuteronomio, 236: “Il *Rotolo del Tempio* LXIV, 9-11 fornisce la prova dell’antichità della variante contenuta in vari manoscritti; mentre l’esistenza di tale variante conforme alla lettura *qumranica* di Deut 21,22 prospetta altresì l’ipotesi di una rielaborazione del testo da parte dei settari, a sostegno della loro dottrina, di cui si sarebbe conservata traccia in margine alla tradizione manoscritta greca ed etiopica.”

<sup>39</sup> Cf. YADIN, *Pesher Nahum*, 1-12.

<sup>40</sup> REARDON, ‘Hanging on a Tree’, 413: “The allusion to Deut 21:22-23 in 4QpNahum colors the reader’s perception of the action. The knowledgeable reader draws connections between the two texts, appropriating emphases of the alluded text and reinforcing elements of the *Pesher Nahum*. Crucifixion entails a communal, shameful, cursed, religio-political punishment that invokes God’s wrath against fellow Jews who act as enemies of the people – here, the Pharisees who appeal to Demetrius to conquer Jerusalem.”

<sup>41</sup> This text is palaeographically datable at the end of the first century; it is the longest among those found in the caves of Qumran and measures almost 8 meters. It is a legal corpus inserted in the narrative framework of the stipulation of the Sinaitic pact, based essentially on Deuteronomy.

<sup>42</sup> This opinion is shared by FITZMYER, *Crucifixion*, 505: “4QpNah with its allusion to Deut 21:22-23 and its use of תלה meaning «crucify» makes it plausible that 11QTemple, which also alludes to Deut 21:22-23, understand תלה in the same sense, even without the mention of living person.”

MT והוֹמָת וְתָלִיתָ אֹתוֹ עַל-עֵץ. The fragment of *the Temple Scroll* may be considered as a real paraphrase of Deut 21:22b because replaces the MT use of the hophal והוֹמָת, “and he is put to death”, with the qal וימת, “and he dies”, which, when following the description of hanging, involves hanging as the means of death<sup>43</sup>; it indicates that the sect understood that a man should be hanged alive<sup>44</sup>.

Considering such references, according to the hypothesis of Yadin, the sect would approve the behavior of “Lion Furious”, identified with Alexander Jannaeus (103–76 BC)<sup>45</sup>, who had executed his adversaries “by hanging them alive”, as compliant to the dictates of law, according to sectarian exegesis<sup>46</sup>.

Yadin’s reading was disproved the following year by Baumgarten, according to which 4QpNah I, 7-8 and 11QT<sup>a</sup> 64,7-13 would allude to different punishments, that is, to crucifixion or death by hanging respectively<sup>47</sup>. In his interpretation of the text of Nahum, the author narrowly condemns Alexander Jannaeus, applying the enigmatic words of the biblical text to crimes committed by him and his followers: “... [no such thing ever] was [happened] first in Israel, because he (the Furious Lion) thought that «hung» (Deut 21:23) meant «alive in a wood»”<sup>48</sup>. The affirmation יתלה אנשים חיים, “to hang men alive”, would give reference to crucifixion and would justify the nickname “Furious Lion” given by the community to him who wrought such, inasmuch as that cruel action was not acceptable based on the exegesis of the text in Deut 21:22-23<sup>49</sup>. On the other

<sup>43</sup> EVANS, Hanging, 491: “Whereas Deuteronomy 21:22-23 speaks of one put to death and then hanged, 11QTemple speaks of one hanged until dead.”

<sup>44</sup> PUECH, Quelques exemples, 561: “Il apparaît que la crucifixion n’était pas seulement une peine exclusivement romaine ou hellénistique, comme on l’écrit généralement, mais aussi une peine juive à l’encontre de juifs appliquée par les autorités juive.”

<sup>45</sup> Of the same opinion is GARCIA MARTINEZ, 4QpNah, 232: “La alusión a la crucifixión precisa el cuadro histórico en el que se sitúa el pesher y delinea en transparencia la figura de Alejandro Janeo bajo el apelativo «León Furioso», así como sus luchas con el partido fariseo a quien nuestro pesher (col. i, 2) hace responsable de la invasión de Demetrio III y receptor de la venganza posterior de Alejandro, que no sólo crucificó a unos 800 de sus enemigos, sino que descuartizó a sus familias ante sus ojos”. According to some other author, the “Furious Lion” would be Antiochus Epiphanes. See ROWLEY, 4QpNahum, 183-193.

<sup>46</sup> Cf. YADIN, Peshar Nahum, 11-12.

<sup>47</sup> BAUMGARTEN, Crucifixion?, 481.

<sup>48</sup> BAUMGARTEN, Crucifixion?, 481.

<sup>49</sup> It is known from Josephus that Alexander Jannaeus was the first Jewish ruler to condemn his opponents to the death penalty of crucifixion and therefore in the abovementioned text “to hang men alive” may entail the penalty of crucifixion (cf. *Bell. I, 97; Ant. 13,380*).

hand, it is more probable that the condemnation was based on crimes committed and not on exegetical questions.

The very need for such explication demonstrates that *tlh* by itself did not signify impalement on a cross, but a form of execution resulting in immediate death. [...] The object of the midrash is to exclude any possible exegetical basis for crucifixion which is unmistakably identified as a Roman practice.<sup>50</sup>

Also in 11QT<sup>a</sup> 64,6-13, the hanging is a death penalty. It deals with the hanging of men who delivered its people to a foreign nation or who committed a crime by cursing his own people in a foreign land: "They are to be hanged on a tree until they are dead. The corpses must not be left on the tree but must be buried on the same day"<sup>51</sup>; it follows the reference to Dt 21:22<sup>52</sup>.

In a significant study, L. Díez Merino considers that in the writings recovered at Qumran, when the verb תלה appears, the specification "alive men" is not necessary to clarify its meaning. This word would unequivocally indicate the crucifixion *ante mortem*. The reference shows that the Qumran community followed the traditional interpretation which excluded the crucifixion as a form of capital punishment; for this reason, "Furious Lion" is condemned, for he had committed such an abomination<sup>53</sup>.

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<sup>50</sup> BAUMGARTEN, *Crucifixion?*, 478; HALPERIN, *Crucifixion*, 43: "If certain Jews did indeed see in the Deuteronomic passage a prescription of crucifixion, the general language of its opening – «a sin deserving of death» – could easily imply explicitly specified by the Torah. The Roman use of crucifixion for a multitude of offences would have encouraged such an interpretation. We have here, I propose, the origin of the principle – repeated as a tradition long after its grounds had been forgotten – that any death penalty prescribed by the Torah without specification is necessarily strangulation."

<sup>51</sup> MULDER, תלה/אלה, 671.

<sup>52</sup> BAUMGARTEN, *Crucifixion?*, 481: "We consider Yadin's conclusion that the sect held the Seekers-after-Smooth-Things worthy of death for treason as quite plausible. His further inference, however, that crucifixion was in their eyes a form of execution in accordance with the Law of Moses is unsubstantiated. [...] Crucifixion was viewed with horror by the Qumran sectarians as totally alien to Jewish tradition."

<sup>53</sup> DÍEZ MERINO, *La crucifixión*, 14: "La posición de Qumrán se pudiera explicar de distinto modo: o bien porque polémicamente se oponían a la interpretación farisaica de Dt 21,22-23 (crucifixión *post mortem*), o bien era una interpretación exegetica normal en el Judaísmo de aquel tiempo; o la inversa: la posición farisea fue una reacción contra la interpretación qumránica, o una proposición aceptada por algún grupo dentro del Judaísmo polifacético, del Judaísmo que precedió al año 70 d.C."

### 3 The Hanged Man, A Curse of God?

We get to the central segment of v. 23, בִּי־קִלְלַת אֱלֹהִים תָּלִי, which explains why the body of someone who had been hanging was to be buried on the same day, “for a curse of God is one who is hanged”. In this construct, the locution אֱלֹהִים קִלְלַת is a real *crux interpretum*, since there are two syntactic readings, from the moment that the adjective קִלְלַת is found in construct state and the second noun can function as subjective genitive, “from God”, i.e. “accursed by God”, or as objective genitive, “a curse toward God”, i.e. “an affront to God”<sup>54</sup>. The MT construction supports both an objective and a subjective reading of אֱלֹהִים קִלְלַת<sup>55</sup>. In either case, the criminal’s suspension upon a tree expresses the curse and does not affect it. In fact, the corpse was hung because of the committed crime, “manifested the condition of the cursed person as that of a criminal”<sup>56</sup>, and in this case it is a subjective genitive.

The Septuagint renders אֱלֹהִים קִלְלַת as a subjective genitive translating *κεκατηραμένος ὑπὸ θεοῦ πᾶς κρεμάμενος ἐπὶ ξύλου*, “cursed from God is anyone who is hanging on a tree”; in the passive construction the abstract word *κατάρα* is not present, which frequently translates קִלְלַת, but it employs the perfect passive participle *κεκατηραμένος* to declare a lasting state of curse and to denounce that the one who hangs is cursed<sup>57</sup>, a public example of the law’s severity, in the sense that he is subject to the curse that the law commits against his transgressors. Second, the genitive “of God” in MT is replaced by the formula “from God”, and the adjective has been added, *πᾶς*, “anyone”, making the universal assertion<sup>58</sup>; in that manner, hanging on a tree is a demonstration of curse accrued through committing a capital crime.

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<sup>54</sup> The noun “curse” occurs eleven times in Deuteronomy: 11:26.28.29; 21:23; 23:6; 27:13; 28:15.45; 29:26; 30:1.19.

<sup>55</sup> PAPOLA, *Deuteronomio*, 243: “Secondo alcuni autori «di Dio» potrebbe anche essere interpretato come una forma di superlativo e indicare perciò il carattere tremendo della maledizione.”

<sup>56</sup> WRIGHT, *Deuteronomio*, 343.

<sup>57</sup> Cf. BERNSTEIN, Deut. 21:23, 24: “This exegesis of the text implies that since the hanged body is cursed, it should be taken down quickly to prevent the surrounding land from becoming tainted. The biblical syntax accepts such a reading smoothly, and if we accept the fact that the Greek is but a disambiguating transformation of MT, the exegesis of the clause is clear.”

<sup>58</sup> Cf. HOLZMEISTER, *De Christi crucifixione*, 19.

A normative Jewish source, the Targum Neofiti, maintains the subjective genitive in the reading of the construct and translates, לִיט קִדָּם ה' כָּל דְּצִלָּב, “is cursed before God whoever’s hanging”, it agrees with the LXX, transforming the noun קָלָת in a passive participle and adding כָּל, “anyone”, before the word “hung”. Although the phrase לִיט קִדָּם ה' is not literally equivalent to the form ὑπὸ θεοῦ that is present in the LXX, it is understood as the same concept because, according to the interpretation of this source, the curse is the result of being hung<sup>59</sup>.

Pešitta' instead interprets liberally the construct בִּי־קָלָלֶת אֱלֹהִים תְּלוֹי as if it were an objective genitive, מִטַּל דְּמִן דְּמַצְחָא לֵאלֹהֵא נִזְדַּקָּף, “that whoever blasphemes God must be hanged”<sup>60</sup>; in the same way *Targum Onqelos* (אֲרִי עַל) and Symmachus (ὅτι διὰ βλασφημίαν θεοῦ ἐκρεμάσθη) teaches that the blasphemer is to be hanged. These texts identify God as the object of the curse as the reason for hanging; we may translate: “You must bury him since he was hanged for blasphemy” and he should not therefore remain exposed. The Samaritan Pentateuch reads (v. 23):

לֹא תִלּוֹן נִבְלָתוֹ עַל הָעֵץ כִּי קִבֵּר תִּקְבְּרֵנוּ בַיּוֹם הַהוּא כִּי קָלָלֶת אֱלֹהִים תִּלְאִי  
 לֹא תִטְמֵא אֶת אֲדָמְתְּךָ אֲשֶׁר יְהוָה אֱלֹהֶיךָ נָתַן לְךָ נַחֲלָה

His carcass is not put on the tree, but on that day, he will be buried in a sepulcher, because God's curse will be lifted up. And you will not defile the land that the Lord your God has given you as an inheritance.

Certainly, as it was hanged, the corpse was a source of contamination and therefore its exposure was “a curse to God”. This second reading of the genitive focuses on the great desecration inflicted on the victim by highlighting that the way of proceeding towards the executed person was a real offense, an outrage and an insult in the eyes of God, since the victim was exposed naked in a well visible place, a square, a high ground or the same scene of the crime. The offense was not the exposure of the corpse, because otherwise such action would be prohibited, but by the prolonged exposure of the body. That is why there is a limit to this approach, “his corpse shall not hang all night on the tree (לֹא־תִלְוֶן נְבִלָתוֹ) (עַל־הָעֵץ), but you shall surely bury him on the same day” (v. 23a), since this is

<sup>59</sup> BERNSTEIN, Deut. 21:23, 25.

<sup>60</sup> Cf. BERNSTEIN, Deut. 21:23, 31: “According to Rashi, we perceive two analyses of תְּלוֹי אֱלֹהִים בִּי־קָלָלֶת – «blasphemy» and «an affront toward God»”.

the only case in which, as a result of a normal procedure, a corpse was deliberately exposed<sup>61</sup>.

Verse 23 proves that the curse is a consequence of the sin committed and renders the offender defiled; paradoxically, it also becomes evident that the sinner becomes a curse because he is condemned by the same law that could have been a blessing if it was well observed. Because of this curse, the offender has to be hanged in order to show everyone the danger that it constitutes<sup>62</sup>. In fact, the actions of one have repercussions that affect other people (cf. Deut 11:26-28). Assurance of God's blessing and its existence on earth is achieved by solely removing the curse. This curse is not a "detachable" force but calls into play forces that transcend man's development of his evil effects, "the curse calls forth the dreaded power of evil and sin, the inexorable logic which leads from evil to misfortune"<sup>63</sup>. We can say the curse is reversed as the echo of the blessing which is the creative word of God; while the blessing is a mystery of election, the curse is a mystery of rejection (1 Sam 15:23; 2 Kgs 17:17-23; 21:10-15)<sup>64</sup>. In Deut 21:23, the corpse is not God's curse because it is hanging from a tree, but it is hanging on a tree because it is cursed by God; in fact, death by execution was a formal separation and termination from the community of God's people, and suspension on a tree showed to all the state of separation that the convicted person finds himself in<sup>65</sup>.

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<sup>61</sup> BRICHTO, "Curse", 194; WILLSON, "Cursed", 221: "Deut 21:22-23 enables the community to denounce such covenant transgressor. In this sense, the community reaffirms the covenant by ritually enacting the covenant curse, even as they honor the prescribed limits of this ritual enactment. To be hanged upon wood in accordance with Deut 21: 22-23 constitutes the epitome of shame within OT law."

<sup>62</sup> WISDOM, *Blessing*, 194: "The curse falls on the one who has abandoned covenant loyalty and has turned to other gods. To be under the curse means to be placed outside the realm of covenant blessing. It means to be expelled outside the covenant."

<sup>63</sup> CORBON – GUILLET, *Curse*, 106.

<sup>64</sup> CORBON – GUILLET, *Curse*, 107.

<sup>65</sup> Cf. CHRISTENSEN, *Deuteronomy*, 489; CHERTOK, *Like a Tree*, 81: "The purpose of hanging the corpse on the tree is to impress an image on minds of all who see." REARDON, 'Hanging on a Tree', 409-410: "The purpose of *post mortem* suspension visibly demonstrates to the community the guilt and humiliation of the executed one."

#### 4 The Prohibition On Contaminating the Land

The issue of land and its ritual purity is relevant to Deuteronomy (cf. 19:2; 22:1). The land of inheritance is a gift from God, and to live in it implies a certain type of behavior; it would make the land unclean, because it is the dwelling place of the Lord (Num 35:34) and “to defile the land means to profane the holy God”<sup>66</sup>. In the event that the body of a person executed was exposed, it would make unclean the land, in violation of a rule:

So you shall not pollute the land in which you are ( וְלֹא־תִחַנְּפוּ אֶת־הָאָרֶץ ) (אֲשֶׁר אֶתְּמַם בָּהּ) for blood pollutes the land and no expiation can be made for the land for the blood that is shed on it, except by the blood of him who shed it. (v. 33)

Another norm in the Holiness Code warns the people not to contaminate with various abominations the country that God was about to give:

<sup>27</sup> For the men of the land who have been before you have done all these abominations, and the land has become defiled (וַתִּטְמָא); <sup>28</sup> so that the land may not spew you out, should you defile it (בְּטִמְאַתְּמָהּ), as it has spewed out the nation which has been before you. (Lev 18:27-28)

The possession of the land is conditioned by the observance of the commands given by the Lord, “And you shall do what is right and good in the sight of the Lord, that it may be well with you and that you may go in and possess the good land which the Lord swore to *give* your fathers” (Deut 6:18; cf. 8:1; 11:8; 15:4-6); we read, “If you are not careful to observe all the words of this law which are written in this book [...]. Moreover, the Lord will scatter you among all peoples, from one end of the earth to the other end of the earth” (28:58a.64a). These texts manifest a certain tension between generosity and requirement and have commands like norms for Israel’s life on earth to live. They are also set as a condition for them to be able to continue dwelling in it<sup>67</sup>. For this reason, 21:23c explains why the corpse of the executed was to be buried on the same day:

“So shall you not defile the land	וְלֹא תִטְמָא אֶת־אֲדָמָתְךָ
which the Lord your God	אֲשֶׁר יְהוָה אֱלֹהֶיךָ
is giving to you as an inheritance.”	נָתַן לְךָ נַחֲלָה

<sup>66</sup> ANDRÉ, אֲמָר, 339.

<sup>67</sup> Cf. VANHOOMISSEN, *Cominciando da Mosè*, 229.

The body of a dead man was a source of contamination in terms of ritual impurity and allowing the body to decompose or be dismembered by birds and beasts would spread the impurity<sup>68</sup>.

In *De specialibus legibus* (III, 205), Philo resuming the legislation of Moses regarding the impurity of the corpse, treats it as a moment of reflection on the due respect owed to life: whoever is alive feels guilty in some way, becoming impure and learning to respect life<sup>69</sup>. In line with this motive, even someone who simply enters a house where there is a dead person has to go through purification. The basis of this principle is the idea that “impurity is a *res* produced by the withdrawal of the soul, the divine image, from the body. The loss of the divine produces impurity”<sup>70</sup>, while purity was closely linked to holiness, understood as integrity and completeness. The earth being holy, it follows that the inhabitants were to be found pure. The land could be desecrated by impurities of various types that however hardly seemed to be: some pets, cultic order the woman after childbirth, skin diseases, mildew in the house, etc.<sup>71</sup> It follows that the dominant categories leading to holiness are purity and impurity<sup>72</sup>, and the latter becomes something that prevents contact with the sacred, that is with God, and it is charged with negative values as a consequence of the transgression.

## Conclusion

Deut 21:22-23 describes the epitome of the covenant curse against transgressors and in this text v. 23 plays one part in the whole OT matrix of preparing God’s people for the full revelation in Christ (cf. Gal 3:13; 1 Pt 2:24; Acts 5:30; 10:39; 13:28-29)<sup>73</sup>; the text showed that the contained norm in it does

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<sup>68</sup> CLEMENTS, *Deuteronomy*, 99: “Just as unatoned killing would pollute the land, so also even the corpse of a justly executed murderer required proper burial. The conflict of principle between the value of a deterrent display as a public warning and the need to avoid polluting the land was resolved by setting limits to the former action.”

<sup>69</sup> Cf. PHILON D’ALEXANDRIE, *De specialibus legibus*, 187-189.

<sup>70</sup> SACCHI, *Sacro*, 201.

<sup>71</sup> CAIRNS, *Word and Presence*, 193: “Yahweh is the living God; it is unbecoming, then, that signs of death should be flaunted on the face of the land which is Yahweh’s inheritance.”

<sup>72</sup> SACCHI, *Sacro*, 32-33: “La categoria più caratteristica del pensiero ebraico, quella con cui gli ebrei interpretavano e classificavano il reale, è quella del «sacro/profano – impuro/puro». Fare la storia dell’evoluzione dei contenuti di questa categoria e del rapporto stesso dei termini di cui è composta, è un po’ fare la storia del pensiero ebraico.”

<sup>73</sup> Cf. WILSON, “Upon a Tree”, 47ff., examines the redundancy of the allusion to Deut 21:32 in Acts 5:30; 10:39; 13:28-29 to outline four common functions of redundancy in

not have the purpose to condemn a particular kind of sin, but without specifying the type of crime in which a man had to die, imposed that his body be exposed. We have considered that the finding of the Dead Sea Scrolls constitutes a great richness in biblical text studies and for Judaism of that period (4QpNah 3-4 I, 7-8; 11QT<sup>a</sup> 64,7-13). However, it cannot be assumed that the verses refer to the punishment of crucifixion, because it was not the way of execution according to Jewish penal law. Biblical text speaks only of the cadaver's exposition. Such norm has for its aim the recognition of the dominion of God in the life of every man and contributes to our better understanding of the mysterious face of the God of the covenant. In fact, the purpose of every single law was to give to the people a concrete means to serve God in all areas of life and the power to remain in freedom. The law cannot be interpreted "outside of the sphere of Yahweh's chosen people, away from the spirit, and away from covenantal communion"<sup>74</sup>.

A person who is guilty of a capital crime must be exposed, it is a "curse of God", it attests to the whole and total separation from God. The hanged man is a sign of the absolute estrangement of God from any complicity with evil, and the culprit needs to be publicly hanged in order to denounce the sin that breaks the covenant with God. The severity of the punishment clearly shows the seriousness of the sin. It very deeply attacks the root of the covenant, transforming the land given as an inheritance into impurity if the dead body is not buried before the end of the day.

Paradoxically, the one who hangs on the wood shows to everyone that he is accursed by God, and reminds others to faithfully live the covenant, remaining in its blessings. The death of the guilty serves to memorialize God's gifts where His people discover Him from whom Moses has defined these norms. In reality, He does not want death, but life.

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narrative literature: redundancy for emphasis, redundancy for anticipation or retrospection, redundancy for coherence, redundancy for characterization.

<sup>74</sup> AUZOU, *De la servitude*, 280.

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### *Summary*

The analysis of Deut 21:22-23 demonstrates that the Mosaic Law relating to the public exposition of the corpse of a condemned man does not refer to the torture of crucifixion, but texts found at Qumran highlight that it was adopted from the Hellenistic epoch (4QpNah 3-4 I, 7-8; 11QT<sup>a</sup> 64,6-13). Reference to intertestamental literature is fundamental in reading and understanding the complex syntagma that constitute the *crux interpretum* of the whole concept of “the curse of God in the person hanged”. Being hanged on the wood of a tree shows everyone that the person killed was God’s curse because the crime committed had rendered him such. It separated him from God. He is a sign of God’s absolute estrangement from whatever connivance there may be with evil and this is why he had to be hanged. It is necessary to publicly denounce the sin that breaks the covenant with God.

*Key words:* curse, hanging on a tree, purity, transgression.

### *Zhrnutie*

Analýza Dt 21,22-23 ukazuje, že Mojžišov zákon týkajúci sa vystavenia tela odsúdeného nehovorí o umučení ukrižovaním, ale že bol prevzatý z helenistického obdobia, ako prezrádzajú texty nájdené v Kumráne (4QpNah 3-4 I, 7-8; 11QT<sup>a</sup> 64,6-13). Odkaz na intertestamentálnu literatúru je dôležitý pre čítanie a porozumenie komplexnosti syntagmy, ktorá je *crux interpretum* celého konceptu “prekliatia od Boha pre osobu odvisnutú [na dreve]”. Fakt, že nejaký človek bol zavesený na dreve stromu, dáva každému najavo, že tento mŕtvy bol priekliatym od Boha, nakoľko ho takým urobil čin, ktorého sa daný človek dopustil. Svojím konaním sa odlúčil od Boha a stal sa znamením úplného Božieho odcudzenia sa od všetkého, čo mlčky súhlasí so zlom. Preto musel byť taký človek zavesený na drevo. Bolo teda nevyhnutné, aby hriech, ktorým sa narušila zmluva s Bohom, bol verejne odsúdený.

*Kľúčové slová:* prekliatie, visieť na strome, čistota, prehrešok.

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