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The Settlement of Disputes and Punishment of the Guilty in Hellenistic Judaism: An Examination of the Evidence from Greek Deuteronomy.

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1. Introduction

The formative influence of the book of Deuteronomy on early Judaism has been long recognized. In her 2013 volume, Sarah Pearce examined three sets of laws and their reception by later interpreters (including the Greek translation), highlighting the tension between the idealized character of these prescriptions and existing practices. Since these laws deal with the constitutional core of Deuteronomy (chapters 16-18), their inapplicability is perhaps understandable given the political context of many of these interpreters. To this we might add the tendency especially in the Diaspora to construe the laws of the Torah in terms of wisdom instead of positive law.¹ In this paper, I will consider another law in its Greek version, that of the measured punishment found at the beginning of chapter 25, and examine the role of the Septuagint in the development of this legal tradition.² First, the Greek translation will be compared to the Masoretic text and other textual witnesses to assess their differences. These will then be brought into dialogue with later Jewish interpreters and their understanding of this prescription. Finally, I will examine whether these differences might be related to existing judicial procedures in the Ptolemaic context of the translation.

¹ See John J. Collins, *The Invention of Judaism: Torah and Jewish Identity from Deuteronomy to Paul*, The Taubman Lectures in Jewish Studies 7 (Oakland, California: University of California Press, 2017), 149.

² When I refer to the Greek translation throughout this paper, I have in mind the initial translation of the Torah in Greek (the Old Greek) which is the aim of the major critical edition published by Wevers. All quotations from Greek Deuteronomy are taken from John William Wevers, *Deuteronomium, Septuaginta: Vetus Testamentum Graecum Auctoritate Academiae Scientiarum Gottingensis editum*, Göttingen, 1931- , 20 vol., 3.2 (Göttingen: Vandenhoeck & Ruprecht, 1977).

2. The Greek and Hebrew texts compared

Deuteronomy 25:1-3 describes how the guilty party is to be punished in the context of the settlement of disputes, setting out parameters for the carrying out of the sentence, including the severity of the flogging. Verse one is rather straightforward providing the background of the legal process, and the Greek translation adheres closely to the Hebrew text as we find it in MT:

כי יהיה ריב בין אנשים ונגשו אל המשפט ושפטום והצדיקו את הצדיק והרשיעו
את הרשע

25:1 If a dispute occurs between people and they enter into litigation, and they judge **them**, and they justify the righteous and condemn the guilty,³

Now if a dispute occurs between people and they enter into litigation and they judge and justify the righteous one and condemn the impious, (NETS)

Ἐὰν δὲ γένηται ἀντιλογία ἀνά μέσον ἀνθρώπων καὶ προσέλθωσιν εἰς κρίσιν καὶ κρίνωσιν καὶ δικαιώσωσιν τὸν δίκαιον καὶ καταγνώσιν τοῦ ἀσεβοῦς (Wevers)

There are two differences introduced in the translation of this verse: 1) The first is minor and has to do with the object of judgment. The translation omits the 3rd person plural object of the verb **שפט**, making the transition from those being judged to those judging more abrupt (“...and they enter into litigation and they judge...”). This seems of little consequence. 2) The second difference is semantic in nature, as we find *ἀσεβής* translating **רשע** (wicked/guilty). Words of the *ἀσεβής* family seem to be a favorite of this translator as they are introduced in unexpected place in the book. But this match is a rather typical one in the Pentateuch and investigating it further would takes us too far afield.⁴

³ My translation unless otherwise noted.

⁴ For more on this, see my 2016 paper on impiety in LXX Deuteronomy.

והיה אם בן הכות הרשע והפילו השפט והכהו לפניו כדי רשעתו במספר

Then it shall be if the wicked man deserves to be beaten, the judge shall then make him lie down and be beaten in his presence with the number of stripes according to his guilt.

(NASB)

25:2 Then it shall be, if the impious is worthy of lashes, that **you** shall make him sit down before **the judges**, and **they** shall beat him in **their** presence according to his impiety (NETS)

καὶ ἔσται ἐὰν ἄξιός ᾖ πληγῶν ὁ ἀσεβής, καὶ καθιεῖς αὐτὸν ἔναντι τῶν κριτῶν καὶ μαστιγώσουσιν αὐτὸν ἐναντίον αὐτῶν κατὰ τὴν ἀσέβειαν αὐτοῦ. (Wevers)

Verse two describes what is to happen if the guilty party is deemed worthy of flogging. The second part of the verse presents a number of differences:

- 1) In MT, the judge (singular) is to make the guilty one sit or lie down before him whereas in the translation, the command is addressed to “you” (singular), who is to make the guilty lie down before the judges (plural).
- 2) In MT, the guilty one is to be flogged in his (the judge’s) presence, whereas the translation continues with the plural (they will flog... in their presence).
- 3) In MT, the phrase **במספר** is part of verse two, linking the adverbial phrase to the preceding clause: in a number according to his guilt. The translation however separates the verses differently, tying **במספר** with the following phrase in verse 3: Forty in number/By the number forty.
- 4) At the beginning of verse 3, the jussive **יִכְּנֹוּ** which could represent simply a permission in this context (“they may flog”), is translated into Greek as a future. This suggests a more forceful understanding of the prescription (“they will flog”).⁵ Thus the combination of #3 and #4 produces a meaning that is different from MT: They shall beat him with the number forty.

⁵ If the verb is instead read as a plain *yiqtol* form, it may(!) also simply denote permission. See GKC §107r-s.

3. Analysis of the translation

The key differences in the translation of this prescription thus pertain to the number of judges, the possible distinction made between judge and executioner, and whether the number of blows is fixed. A closer look at the translation technique suggests several factors at play.

3.1 Judge and executioner

In the case of the judges and executioner, the apparent switch from a plurality of judges in v.1 to a single one in v.2 of MT could be explained by reading the verb **וַיִּשְׁפֹּטוּם** as expressing a vague (indeterminate) personal subject (one will judge...justify...condemn).⁶ Continuing into v.2, the prescriptive verbs are now in the singular, perhaps in agreement with **הַשֹּׁפֵט**. But most of these, especially those following **וְהַפִּילֹהוּ** can be understood as also implying a vague subject, especially since the judge himself beating the guilty before him (**לְפָנָיו**) seems redundant.⁷ If that is the case, we are dealing with a single judge, or perhaps, an unknown number of individuals presided by a single judge.

In the translation, we find the first verb of judging in v. 1 translated in the plural (*αρίωνωσι*) along with all verbs that follow. When reaching v. 2, the presence of the singular **הַשֹּׁפֵט** may have presented a problem, and it is rendered as an adverbial clause instead of the subject. The subject becomes “you”, the 2nd singular voice that was addressed at the end of chapter 24, and addressed again in the second half of verse 3. The verbs that immediately follow the singular “you shall make him sit down” switch back to the plural so that “they” will beat him (vv. 2b and 3a) before them (not “him”). This is all the more striking since these verbs are in the singular in Hebrew, but translated in the plural. Wevers suggests that these changes are motivated by a desire to differentiate between judges and executioners and to remove the ambiguities of the

⁶ See JM §155b-e.

⁷ This is what most English translations do: “...and be beaten...he may be beaten”. See also the justification for this in J. G. McConville, *Deuteronomy*, Apollos Old Testament Commentary 5 (Downers Grove: Apollos ; InterVarsity Press, 2002), 366.

Hebrew text.⁸ While the translation does remove ambiguity concerning the number of judges, it does not in fact differentiate clearly between both roles. In Greek, the judges also appear to be carrying out the punishment, unless we somehow conceive of another abrupt switch in subject, as in verse one.⁹ Since the translation is known to sometimes harmonize the grammatical number (including the *Numeruswechsel* common to Deuteronomy), a more economical explanation would be that having completed v. 1 with plural verbs when referring to judges, it was deemed more consistent to continue using plural verbs to the end of verse 3. Only one verb could not comply, because of the problematic singular *הַשֹּׁפֵט*, and the translator resorts to the generic addressee of the discourse: “you”, which usually stands for the community of Israel.¹⁰

Broadening our context a bit, this change could also be conceived of as an attempt at harmonization with other passages in Deuteronomy which speak of a plurality of judges. However, the testimony of Deuteronomy concerning the number and role of judges, especially in the local judiciaries, is ambiguous.¹¹ According to 16:18-20, judges are to be appointed locally and can be called upon even for religious offenses. But on matters which prove too difficult, officials at the central sanctuary are to be consulted in order to obtain a ruling (17:8-13). In this text, a local judge (presumably) is referred to in the singular (“you”), but this could also refer to a

⁸ “The reasoning underlying these changes probably involved the fact that, though the Hebrew presupposes one judge, a judgment of this sort should presuppose a consensus of legal opinion. Furthermore, the Hebrew seems to say that ‘the judge’ shall make him fall and flog him, but throughout the preceding verses the second singular has been used...the changes are both contextually and exegetically driven.” See John William Wevers, *Notes on the Greek Text of Deuteronomy* (Atlanta: Scholars Press, 1995), 389–90. This is also the explanation provided by Otto in Eckart Otto, *Deuteronomium 12-34: Zweiter Teilband: 23,16-34,12* (Freiburg: Herder, 2017), 1821.

⁹ In v. 1, “they” come to the judges, and “they” pass judgment. In any case, the outcome is that the judges and executioners are not clearly distinguished and are both several in number.

¹⁰ The translator would have had to change the number of both the judge and the accompanying verb. Alternatively, this selective change might be due to the influence of a reading tradition of the text, as we will discuss later.

¹¹ It may also be the product of a revisionary process, which would explain the mention at times of elders and at other of judges. See Sarah J. K Pearce, *Words of Moses: Studies in the Reception of Deuteronomy in the Second Temple Period*. (Tübingen: Mohr Siebeck, 2013), 2–3. In any case, we are interested in how the text would have been read by a translator, as a book.

delegation.¹² In contrast, the central court is clearly made up of a plurality of members: priests, Levites, and a judge.¹³ In the context of 19:15-21, the case of the false charge brought to the court, the description of the court mirrors most closely that of the central court, as the litigants appear before judges (plural) and priests. This decentralized but hierarchical judicial structure is perhaps linked to the narrative found in 1:16-17, where Moses instructs judges (plural) to refer the most difficult cases to him. Despite the singular address to a local judge in 17:8-13, it is not clear whether the local court was comprised of only one judge.¹⁴ Both 1:16-17 and 16:18-20 speak of local judges in the plural, although admittedly this does not imply that a plurality of them is to be found in every city.

The local court seems to most logical setting of the law in 25:1-3, given the rather generic nature of the scenario presented in verse one. As discussed above, it could be understood as referring to a single or indeterminate number of judges (or one presiding over many). If that is the case, the switch to the plural when referring to judges (and executioners) could manifest a desire to harmonize the reference to judges throughout the book where references to them are usually in the plural. At minimum, it does remove the ambiguity present in the prescription.¹⁵

¹² Pearce reviews the various options in Pearce, 51–52.

¹³ Levinson provides a history of scholarship on this text in Bernard M Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation* (Oxford: Oxford University Press, 1998), 124–30. Levinson also argues that those traveling to the central sanctuary are not the local judges but the litigants, as implied by Dt 19:17, where a parallel procedure clearly has the litigants appearing before the high court. However, it is difficult to not see in 17:12 an imperative addressed to the local judges, a representative of which might go up to the central court. On this interpretation, see for example S. R Driver, *A Critical and Exegetical Commentary on Deuteronomy*. (Edinburgh: T & T Clark, 1902), 208.

¹⁴ Rofé seems to think so, but the “you” (sg) of Dt 17:8-13 is simply the addressee of the discourse. See Alexander Rofé, “The Organization of the Judiciary in Deuteronomy (Deut. 16.18-20; 17.8-13; 19.15; 21.22-23; 24.16; 25.1-3),” in *The World of the Aramaeans*, ed. P. M. Michèle Daviau, John W. Wevers, and Michael Weigl (Sheffield: Sheffield Academic Press, 2001), 104–5.

¹⁵ Note that this switch to the plural could have been present in the translator’s *Vorlage*. Nevertheless, the Greek translation remains the primary and only source preserving this switch.

3.2 The number of blows

The problem of the number of blows is more complex as it touches the textual history of this text. First, let's consider the separation of verses 2 and 3 more closely:

25:2b-3a	<p style="text-align: right;">והכהו לפניו כדי רשעתו במספר³: ארבעים יכנו MT</p> <p>and be beaten in his presence with the number of stripes according to his guilt. ³He may beat him forty times... (NASB)</p> <p>...and they shall beat him in their presence according to his impiety. ³They shall beat him with the number forty; (NETS)</p> <p>καὶ μαστιγώσουσιν αὐτὸν ἐναντίον αὐτῶν κατὰ τὴν ἀσέβειαν αὐτοῦ. ³ἀριθμῶ ⁽³⁾τεσσαράκοντα μαστιγώσουσιν αὐτόν (Wevers)</p>
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The implications of these divergent readings for the understanding of this prescription pertain to the severity of the punishment. When ἀριθμῶ is separated from κατὰ τὴν ἀσέβειαν αὐτοῦ and read at the beginning of verse 3, the punishment is most naturally understood as being fixed to forty blows. However, if one follows MT's verse division, which is placed after **במספר**/ἀριθμῶ, the adverbial clause is then connected with the preceding, and stipulates that the punishment be done in proportion to the guilt. In the Greek translation, the emphasis is not on proportionality (although presumably, verse 2 still argues that the punishment should fit the crime), but underscores the number of blows being forty in number.

One could argue that the verse division in the Masoretic tradition is late. Ancient Hebrew manuscripts such as those found at Qumran did not have verse divisions.¹⁶ However these were read within an oral tradition which did divide between verses and smaller sense units.¹⁷

¹⁶ 4Q34Deuteronomy (g) preserves only partially the word **במספר** and the following text is missing. What is recognizable from this fragment matches MT.

¹⁷ Tov mentions that perhaps a few manuscripts might evidence an early system of verse division, but thinks the evidence is inconclusive. The Aramaic and Greek translations demonstrate however that these divisions were not unknown and for the most part closely resembled those found in the later Masoretic text. See Emanuel Tov, *Scribal Practices and Approaches Reflected in the Texts Found in the Judean Desert* (Leiden: Brill, 2004), 127–33.

The Samaritan Pentateuch agrees with the reading of MT, and we may assume that it is very old.

The Greek manuscript tradition is not unanimous on this point. Our oldest witness to the Greek text of Deuteronomy (and of the Septuagint as a whole) happens to include part of these verses. Rylands P. Gr. 458 (Rahlfs 957, 2nd century BCE) is very fragmentary but spaces can be clearly discerned between several groups of words, including between ἀριθμῶ and τεσσαράκοντα. Revell has argued that these occur where one would expect to find disjunctive accents, perhaps indicating awareness of the Hebrew accent system.¹⁸ As such, we cannot posit that this particular space represents the verse division, but it does seem to side with MT in linking במספר with the preceding phrase. However, it is important to note that this manuscript seems to contain two early revisions towards MT, as is apparent from the 3ms ending of the verb καθειῖς and the replacing of “ἐναντι τῶν κριτῶν” by “ἐν [... ...] οὔ”.¹⁹ Therefore, although this witness would separate ἀριθμῶ and τεσσαράκοντα, this could represent the influence of MT, of which the scribe appears to have been aware.²⁰ This is further confirmation that the reading preserved by MT is very old.

Codex A (Alexandrinus) shows a space before ἀριθμῶ τεσσαράκοντα, just as it does between verses 1 and 2. This is the verse division adopted by Wevers in his *editio major* (OG),

¹⁸ See E. J. Revell, “The Oldest Evidence for the Hebrew Accent System,” *Bulletin of the John Rylands Library* 54 (1971): 214–22.

¹⁹ This last substitution is not entirely in keeping with MT, which where **טשׁה** is the subject of the verb. However it is singular, and 957 comes one step closer to MT here in possibly having ἐναντι αὐτοῦ instead of ἐναντι τῶν κριτῶν. See Wevers’ comments, which suggests this possibility τοῦ κριτοῦ in John William Wevers, “Earliest Witness to the LXX Deuteronomy,” *The Catholic Biblical Quarterly* 39, no. 2 (1977): 241–42. See also further possible reconstructions in Colin Henderson Roberts, *Two Biblical Papyri in the John Rylands Library, Manchester* (Manchester: Manchester University Press, 1936), 41–44.

²⁰ Wevers, “Earliest Witness to the LXX Deuteronomy,” 242. Wevers suggests that these represent the same kind of occasional intrusion caused by a bilingual Hebrew scribe who knows the Hebrew text fluently, as seen in Rahlfs 848 one century later. Yet, these do not represent full scale revisions and do not support the later variants that match MT.

since it is also found in the Greek manuscripts and daughter versions (including the Old Latin) deemed unaffected by later revisionary activity.²¹

OG (Alexandrinus) ²²	Rylands 458 (Rahlfs 957)	Vaticanus
καὶ καθιεῖς αὐτὸν ἐναντι τῶν κριτῶν καὶ μαστιγώσουσιν αὐτὸν ἐναντίον αὐτῶν κατὰ τὴν ἀσέβειαν αὐτοῦ. ἀριθμῶ τεσσαράκοντα μαστιγώσουσιν αὐτόν	καὶ καθιεῖ αὐτὸν ἐν[αντίον ...] οὐ καὶ μαστιγώσιν [αὐτὸν ἐναντί ον αὐ]τῶν κατὰ τὴν ἀσέβ[ειαν αὐτοῦ]. ἀριθμῶ]ι τεσσαράκοντα [μαστιγώσου σιν αὐτό]ν	καθιεῖς αὐτὸν ἐναντίον αὐτῶν καὶ ἀριθμῶ τεσσαράκοντα μαστιγώσουσιν αὐτόν

The fact that MT does not represent the only reading tradition in terms of verse division is not surprising. Although these verse breaks are remarkably uniform between various manuscript traditions, there are sometimes differences, as appears to be the case here.²³ As the Greek translation is dated to the 3rd century BCE, it would appear that both readings have a long history.²⁴

In terms of translation technique, there is nothing exceptional in the rendering of **במספר** as ἀριθμῶ in the dative case even though this particular construction is unique to Deuteronomy.²⁵

²¹ Codex B (Vaticanus) is not very helpful here because of its numerous omissions in verses 1-3 and the general carelessness of the copying of the underlying manuscript. Furthermore, even though this scribe tended to separate verses by a period or a colon (for example between verse 1 and 2), there is no such sign anywhere between verses 2 and 3. Rahlfs based his minor critical edition on the three major uncials (A, B, S). Only A provided him with the full text here, yet it does not follow A's verse division. Rahlfs' edition follows instead the verse division of MT.

²² Alexandrinus has a few minor differences with the OG as reconstructed by Wevers in these verses but these are not semantically significant.

²³ Tov suggests that the agreement between Masoretic and non-Masoretic tradition is in the range of 80-90%, which points to a common source for verse divisions. This would imply that the Greek translators knew that source. See Tov, *Scribal Practices and Approaches Reflected in the Texts Found in the Judean Desert*, 132–33.

²⁴ The ancient translations are divided: The *Vetus Latina*, based on the Old Greek (OG), follows the verse division identified by Wevers, whereas the Vulgate, based mostly on MT, follows MT's verse division. The Peshitta however does not follow MT here but actually divides the verses in the same way as the Old Greek.

²⁵ By far, the largest occurrence of **במספר** in the Pentateuch occurs in the book of Numbers, where the phrase describing the numbering of tribes by the number of their names is repeated many times: **בְּמִסְפָּר שְׁמוֹת** is translated by *κατὰ ἀριθμὸν ὀνομάτων αὐτῶν*. Thus, all the tribes are to be numbered "according to the number of...". The same is true of their offerings, to be offered also in the same proportion. The meaning of the preposition

Ezekiel 5:3 presents a construction close to what is found in Dt 25:2 (MT), describing a quantity that is **מְעַט בְּמִסְפָּר** (“small with respect to number”) This is aptly translated as *ὀλίγους ἐν ἀριθμῷ*.²⁶ Our translator omits the preposition, but the meaning appears to be the same whether the quantity precedes or follows **בְּמִסְפָּר**. When we examine the translation of the jussive **יִכְנֹן** by a future tense, we find that of the 86 instances of the jussive inventoried by Evans in Deuteronomy, 22, or about 25% are translated into Greek by a future indicative.²⁷ The more frequent match is the 3rd person imperative, when a command is discerned, or an optative when a wish is in view. A subjunctive is also possible, as the 15 instances demonstrate. Conversely, the Greek future tense almost exclusively translates the Hebrew *yiqtol* and *weqatal*.²⁸ In the context of Deuteronomy’s legal section, the (prescriptive) future is most often employed to express commands.²⁹ That is to say: When the translator does recognize the jussive form, he has at his disposal a variety of options in the Greek language, depending if he wishes to emphasize the idea of wish/hope, command, or future statement.³⁰ We are then left with the sense that our translator either did not detect the presence of the jussive form in v. 3, or chose to render it by a command instead of a permission.³¹ In either case, this should probably be

כ here seems different than that found in Dt 25.2(3) as **בְּמִסְפָּר** is part of a construct chain with another noun (“the number of something”).

²⁶ See also 2 Sam 2:15 where the young men of David and Ish-boshet rise for combat **בְּמִסְפָּר**, that is, in (equal) number. This is translated using *ἐν ἀριθμῷ*. The verse continues by describing the number on each side (12).

²⁷ Evans, *Verbal Syntax in the Greek Pentateuch*, 294–96.

²⁸ The percentage of Greek future forms that translate the jussive is 2.47% the total. This could be due to a number of reasons, including not detecting the jussive form. See T. V. Evans, *Verbal Syntax in the Greek Pentateuch: Natural Greek Usage and Hebrew Interference* (Oxford: Oxford University Press, 2001), 114–18.

²⁹ See BDF§362 and Smyth §1917, the latter describing such uses as the jussive future, which is not to be confused with the Hebrew equivalent.

³⁰ “Some of the apparent variations on this match may be due to misinterpretation, arising from the frequent morphological identity between Hebrew imperfects and jussives and, the capacity of the jussive to express both wish and command (Gen. 34:11; 49:8; Exod. 15:16; Deut. 33:6). We are dealing with subtle semantic distinctions. The notions of wish/hope, command, and future statement—expressed with greater formal clarity in Greek by optative, subjunctive, imperative, and future indicative—are not semantically remote from one another. In certain contexts they are possible alternatives. In other cases formal ambiguity is not an issue (so Gen. 9:26; Exod. 18:19; Deut. 29:19; 33:27) and there seems to be deliberate variation on the Hebrew original.” See Evans, 186–87.

³¹ Muraoka’s *Grammar of the Septuagint* identifies several values of the future, including the prescriptive/injunctive, but also the permissive (“he may flog”) or potential future (“he might/could flog”),

attributed to a reading tradition of the Hebrew text, with which, we may assume, he was very familiar.³²

This conclusion is also strengthened by the issue of the divergent location of the division between verses. Deut. 25:2-3a can be read in (at least) two different ways, and our translator was part the tradition which understood the prescription more forcefully in terms of a fixed number of blows.

With respect to the judges and executioners, it is difficult to determine whether we are in presence of a change that developed dynamically as part of the translation process or a desire to harmonize and/or bring consistency to the text. The more obvious change in verse 2 from “the judge shall then make him lie down” (Hebrew) to “you shall make him sit down before the judges” (Greek) may suggest a level of intentionality, but the precise motivations for this change remain opaque.

4. Reception by early Jewish interpreters

Looking at the way this particular law was understood by early Jewish interpreters may shed additional light. In his paraphrase of the Pentateuch legal material, Josephus speaks of both the number of judges and the punishment. First in Jewish Antiquities 4.214 he writes:

although the latter usually occurs in interrogative contexts. See SSG §28gc-ge. Most of the examples cited under the permissive future are debatable, especially when they are not prohibitive in nature. Here we also run into the thorny issue of interference from the source language, since the translators predominantly employed the future tense with *yiqtol* verbs. This tendency lends different shades of meaning to the Greek future in translational literature, depending on the context in which they are found. In my estimation, the strongest argument in support of a injunctive use of the future in this context is that all of the other instances of the future tense in these verses are injunctive. When a *yiqtol* form is read as denoting probability or permission, it is translated by a subjunctive instead (Note the difference between these two forms in v.3, both translating a *yiqtol*: οὐ προσθήσουσιν· ἐὰν δὲ προσθῶσιν).

³² Evans comments on the overall tendencies of the translators: “This is not to suggest that these translators possessed a precisely formulated grammatical awareness of the Hebrew, but that they were supported by a strong reading tradition of the Torah— certainly plausible given its religious and cultural significance. Barr implies a remoteness from Hebrew linguistic structures which for the Pentateuch at least seems improbable.” See Evans, *Verbal Syntax in the Greek Pentateuch*, 141.

Let there be seven men to judge in every city, and these such as have been before most zealous in the exercise of virtue and righteousness. Let every judge have two officers, allotted him out of the tribe of Levi.³³

On the matter of punishment, Josephus states a little later:

But for him that acts contrary to this law, let him be beaten with forty stripes, save one, by the public executioner;³⁴

When Josephus speaks of acting contrary to “this law”, he apparently refers to the prescription which is found immediately before our text in Dt 24:19-22, the command to leave some of the harvest ungathered for the needy. Having just explained this law, he goes on to state that its transgression exposes one to the forty blows minus one.³⁵ Josephus also applies the forty stripes minus one to the husband falsely accusing his new wife of not being a virgin when he married her. In Dt 22:18-19, this husband is to be chastised (יִסָּר - the specifics of which are not laid out) and to pay a fine of 100 shekels. In contrast, Josephus presents the punishment as being forty stripes (minus one) and fifty shekels.³⁶

We also find references to this punishment, albeit indirectly, in the New Testament, when Paul mentions having endured the “forty minus one” five times (2 Cor 11:24). In context, he also mentions having been beaten with the rod on three occasions, but the reference to

³³ Josephus, *Ant.* 4.8.14 §§214 (trans. Whiston). In a situation where these judges are faced with a difficult case, they are to “...send the cause undetermined to the holy city, and there let the high priest, the prophet, and the Sanhedrin, determine as it shall seem good to them.” Josephus, *Ant.* 4.8.14 §§218 (trans. Whiston). In Josephus *J.W.* 2.10.5, he also describes his own efforts at instituting a government in Galilee, portraying himself as a Mosaic legislator by instituting 70 elders as rulers of Galilee, and 7 judges in every city.

³⁴ Josephus, *Ant.* 4.8.21 §§238 (trans. Whiston)

³⁵ Josephus goes on to say: “...for it is proper for you who have had the experience of the afflictions in Egypt, and of those in the wilderness, to make provision for those that are in the like circumstances; and while you have now obtained plenty yourselves, through the mercy and providence of God, to distribute of the same plenty, by the like sympathy, to such as stand in need of it.” Josephus, *Ant.* 4.8.21 §§239 (trans. Whiston).

³⁶ See Josephus, *Ant.* 4.8.23 §§248. As Prijs observes, the tendency to read the prescription of 40 blows into other laws was frequent in early Jewish interpretation. The reading of 22:18-19 as prescribing a beating is also attested in a number of other sources (but not always 40 blows). The same is also done to 21:18, where the rebellious son has not heeded his parent’s chastisement. Here also, many ancient sources translate using the vocabulary of physical punishment. *Sanh.* 71b *Sifre* states that the 40 blows are meant. See Leo Prijs, *Jüdische Tradition in der Septuaginta* (Leiden: Brill, 1948), 16.

“τεσσεράκοντα παρὰ μίαν ἔλαβον” does appear to refer to a conventional punishment known to his readers.

The Mishnah provides evidence in both areas. For example, m. Sanh. 1:1-2 states that cases not requiring the death penalty should be presided by three judges. In the case of lashing (מכות), the minimum is three but could go up to seven or even twenty-three depending on who's interpretation was followed.³⁷

A further testimony to the prevalence of reading Dt 25:3 as requiring forty blows is found in m. Makkot 3:10:

מתני' כמה מלקין אותו ארבעים חסר אחת שנא' (דברים כה, ב) במספר ארבעים מנין
שהוא סמוך לארבעים ר' יהודה אומר ארבעים שלימות הוא לוקה והיכן הוא לוקה את
היתירה בין כתפיו

Here the question relates to the number of lashes with which one flogs someone that has been sentenced to such a punishment. The answer is forty less one, quoting the Hebrew text of Dt 25:2-3: במספר ארבעים. It then proceeds to present various discussions on the way the punishment should be administered, and the possibility of reducing the number if the person is not able to receive that many. The sense is however that this number is fixed and applied to a number of offenses. Despite relying on a text that is most likely proto-MT, this interpretation of the law is dependent on joining the end of 25:2 and the beginning of 25:3, just as we found in the Greek translation.

While Josephus may have relied on a Greek text and a variety of sources, the Mishna provides evidence that even in the context of the Hebrew text, more than one reading tradition

³⁷ The number of judges is sometimes based on calendar concerns (intercalated year, etc.). Other more exceptional situations required 71 judges, which is the Sanhedrin. See m. Sanh. 1:5-6.

developed.³⁸ In the context of the Greek translation, Prijs has categorized this type of interpretation as “enjambement”, where the interpreter willfully ignores punctuation in the text to read it continuously.³⁹ Although there might not have been punctuation delimiting verses at that time we may nevertheless agree that this is the type of hermeneutics at work, choosing to delimit the verses a certain way to arrive at a particular understanding (or relying on a reading tradition that does so). The number of judges also appears to be consistently understood as a plurality.

5. The Ptolemaic context of the translation

When we examine the setting of the translation – that of Ptolemaic Egypt – for evidence of possible connections to the translation, the results are mixed. On the one hand, we do find evidence for a plurality of local judges in the Ptolemaic judicial system.⁴⁰ However, its configuration varied depending on the region and whether one was considered “Greek” or Egyptian. Bagnall and Derow state for example that standing courts (*dikasteria*) are attested from the early 3rd century BCE, serving the needs of Greek settlers. When not superseded by royal edicts, the Egyptians operated under their own law with native judges (*laokrita*). However as time went on, this was superseded by a configuration specific to the Ptolemaic judicial system, the *chrematistai*. This was a board of judges composed of (strangely!) three judges and

³⁸ Josephus’ source may or may not have been the Septuagint. The consensus opinion is that he had a Greek text among his sources, but freely adapted them to his needs. This renders the identification of a textual nature very difficult, although there are renderings such as proper names which clearly have their source in the Greek translation. See the discussion in Zuleika Rodgers, “Josephus’s Biblical Interpretation,” in *A Companion to Biblical Interpretation in Early Judaism*, ed. Matthias Henze (Grand Rapids: Eerdmans, 2012), 440–45.

³⁹ See Prijs, *Jüdische Tradition in der Septuaginta*, 100–101. Note that Prijs did not have the evidence of the Dead Sea Scrolls at his disposal.

⁴⁰ Bagnall warns that this should not be compared to our own judicial system which is an independent process. In Ptolemaic Egypt, bureaucrats decided many things that in our system require legal decisions, and this often blurred the lines between administrative and judicial activities. See Roger S. Bagnall and Peter Derow, eds., *The Hellenistic Period: Historical Sources in Translation*, New ed., Blackwell Sourcebooks in Ancient History 1 (Oxford: Blackwell, 2004), 288.

a clerk which was responsible for a particular administrative area. These were under the responsibility of a prominent official in Alexandria, the *archidikastes*.⁴¹ In the papyri, the judges are usually spoken of in the plural. For example, *P.Erasm.* I 1 is written on the behalf a petitioner complaining about a rental agreement to a higher authority:

Thus, they have forced me to flee to you. I ask that you send my petition to the *chrēmatistai* who judge private matters, whose *eisagōgeus* is Harmodios, so that they may receive it for trial.⁴²

Another instructive document is *P.Hib.* II 198, a set of royal prescriptions regulating, among other things, judicial procedures for the settlement of disputes (*ἀντιλογία* as in Dt 25:1):

But those who bring charges against..., or those against whom the latter bring charges are to obtain justice before the appointed court...in conformity with the ordinances before the courts which concern [them] in each district. Should any dispute (*ἀντιλογία*) arise about – as prescribed in the *diagramma* – the *strategos* in each [*nome*] will act as judge conjointly with the *nomarch* and... Year 5, Peritios.⁴³

We thus find here confirmation of both a local system and the need, when contestations arise, for a plurality of judges to settle the case. The penalties in such cases vary greatly, and floggings are mentioned, but rarely their number.⁴⁴ I have not found any instances of the number forty in such contexts.

Whether the Greek translation is dependent on these is another matter. There has been a resurgence of interest in this area since the publication of the papyri from Herakleopolis in 2001.⁴⁵ These contain petitions from Jews to their *archon* (note the plural again) in the 2nd century BCE and suggest the existence of an independent judicial process within the *politeuma*.

⁴¹ Bagnall and Derow, 288.

⁴² *P.Erasm.* I 1 [Oxyrhyncha, 148–147 BCE]. Translation by John Bauschatz, *Law and Enforcement in Ptolemaic Egypt* (Cambridge: Cambridge University Press, 2013), 172.

⁴³ *P.Hib.* II 198 [Arsinoites, 240 BCE]. Translation by Bagnall and Derow, *The Hellenistic Period*, n. 122.

⁴⁴ For example, in *P.Cair.Zen.* II 59202 [Krokodilopolis, 254 BCE], a corrupt treasurer is to be tried by the *chrematistes* (singular?) and whipped with his hands tied behind his back. See Bagnall and Derow, n. 135. In *P.Lille* 29 [Arsinoites, 3rd cent. BCE], there is a prohibition to flog slaves, which Bagnall and Derow surmise was only allowed with a court order. Bagnall and Derow, n. 142.

⁴⁵ James M. S. Cowey and Klaus Maresch, eds., *Urkunden des Politeuma der Juden von Herakleopolis (144/3-133/2 v. Chr.) (P. Polit. Iud.): Papyri aus den Sammlungen von Heidelberg, Köln, München und Wien, Abhandlungen der Nordrhein-Westfälischen Akademie der Wissenschaften 29* (Wiesbaden: Westdeutscher Verlag, 2001).

However, while there may be echoes to biblical language in a few cases, the situations and appeals described in these letters do not reflect biblical practices. For example, Kugler cites *P.Polit.lud.* 1, where the *politeuma* is asked to summon and judge someone who has dealt rudely with a fellow Jew, shaming him publicly. The language used in this appeal is that of an *ἀντιλογία*, which resulted in the *ἀσχημονέω* (shaming) of the defendant.⁴⁶ Kugler suggests that these words are chosen to echo the prescription of Deuteronomy 25:1-3, perhaps because the defendant was seeking the penalty of flogging for the offender.⁴⁷ This interpretation overlooks the fact that *ἀντιλογία* is very common in legal discourse, as we have seen, and that the shaming described in the letter is that which the victim suffered, and not that which is to be avoided when punishing the guilty. Thus examining these parallels more closely rarely reveals dependence or even allusion. That is not to say that the translators of the LXX did not employ in many cases the vocabulary of their Ptolemaic context when translating legal texts⁴⁸, but simply that we have no concrete evidence of the influence of the Greek translation on legal processes in Ptolemaic Egypt, despite the mention of a civil law of the Jews.⁴⁹ As John Collins summarizes in this recent survey of the situation, the evidence is scant and the counter-evidence too

⁴⁶ Robert A. Kugler, “Uncovering Echoes of LXX Legal Norms in Hellenistic Egyptian Documentary Papyri: The Case of the Second-Century Herakleopolite Nome,” in *XIV Congress of the IOSCS, Helsinki, 2010*, ed. Melvin K. H Peters (Atlanta: Society of Biblical Literature, 2013), 145.

⁴⁷ Kugler, 146.

⁴⁸ Lee has several examples in his J. A. L. Lee, *A Lexical Study of the Septuagint Version of the Pentateuch* (Chico: Society of Biblical Literature, 1983).

⁴⁹ *P.enteux 23 / CPJ 1 128* [Arsinoites, 218 BCE] states: *συγγραψα[μένου] γὰρ αὐτοῦ μοι ἐχ[---- κατὰ τὸν νόμον πολιτικὸν τῶν [Ιου-] δαίων ἔχειν με γυν[αῖκα -]* (for he agreed...to have me as his wife according to the civil law of the Jews). It is not clear however what this civil law might represent, whether it refers to the Torah, ancestral customs or something else. As Dorival points out, the presence of a reference to the law in this text is an editorial conjecture. See Gilles Dorival, “New Light about the Origin of the Septuagint?,” in *Die Septuaginta - Texte, Theologien, Einflüsse*, ed. Wolfgang Kraus and Martin Karrer (Tübingen: Mohr Siebeck, 2010), 42. For a positivistic account in line with Tcherikover and Wolff, see Joseph Méléze-Modrzejewski, “Tora et nomos: comment la Tora est devenue une ‘loi civique’ pour les Juifs d’Égypte,” in *Un peuple de philosophes: Aux origines de la condition juive* (Paris: Fayard, 2011), 193–216. However, there is also ample evidence that in some contexts Jews went before Greek court to settle their disputes.

important to posit for an autonomous *politeuma* for all Jews.⁵⁰ It is therefore doubtful that the Greek translation of Deuteronomy was produced or even employed in such a context, and consequently that the legal practice of Ptolemaic Egypt would have been an influence on the translation of Dt 25:1-3.

Conclusion

Having briefly surveyed the reception of this law among early Jewish interpreters and the legal context of the translation, we can return to the initial question as to the role Greek Deuteronomy might have played in giving rise or transmitting existing legal traditions. The plurality of judges emphasized by the translation is not unique to it, and rather appears to represent an effort at clarifying the meaning of the Hebrew text. There is perhaps some contextual exegesis at work in specifying a plurality of judges, but this is in keeping with other Jewish interpretations of this text. Whether this was done as part of the translation process, to smooth out apparent inconsistencies between v. 1 and 2-3, or that the text was simply read that way in the translator's environment is difficult to determine.

The case of the forty blows is clearer however and would point to a reading tradition which divided the sense units in a different way and understood the text as referring to a fixed number of blows. Since this reading becomes pervasive in Greco-Roman Judaism, both in Palestine and the Diaspora, it is difficult to posit that it was initiated by the translator.⁵¹ It seems more likely that in the context of this law, the Greek text of Deuteronomy is the oldest evidence

⁵⁰ "In all of this, the only clear appeal to Jewish law is in *P. Polit. Jud. 4*, in the matter of a writ of separation. (The use of the *patrios horkos* shows the persistence of a distinctively Jewish custom, but is not so directly based on Jewish law.) Like *CPJ I 128* adduced by Modrzejewski, this case shows that Jews could on occasion appeal to Jewish law, but the instances are strikingly rare." See the discussion in Collins, *The Invention of Judaism*, 142–50.

⁵¹ It is also unlikely that the translation was made to support or give rise to specific legal practices. It was simply a translation, which at times reflected divergent readings of the Hebrew text and in some cases perhaps, different practices. For one such example, see Jan Joosten, "Divergent Cultic Practices in the Septuagint: The 'Shoulder' (Brachion) of the Priest.," *Journal of Septuagint and Cognate Studies* 48 (2015): 27–38.

pointing to this particular reading tradition of the Hebrew text, and therefore an important witness to Jewish legal interpretation in the Second Temple period.