

Punitive Expulsion in the Ancient Near East

G. Thomas Hobson (Morthland College, West Frankfort, IL)

A large number of offenses in the Torah call for the offender to be “cut off from his/her people” (known in Judaism as the *kareth* penalty).¹ Gerhard von Rad is the modern first scholar to argue that the penalty “cut off from one’s people” refers to “the excommunication of the offender” rather than a threat of divine extermination.² Von Rad’s theory has been followed by Westermann, Zimmerli, Pope, Elliger, and Grelot, among others.³ The chief opponents of von Rad’s theory in the modern era have been Wold and Milgrom, who argue that *kareth* is a divine extermination curse which parallels Near Eastern curses that call on a deity to “erase one’s name and seed from the land,” a curse that includes no afterlife and no descendants.⁴ Wold sees the witness of ancient Judaism as being unanimous in support of this position.

-
- 1 The *kareth* penalties include: failure to be circumcised (Gen 17:14), eating leavened bread during Passover (Ex 12:15, 19), unauthorized production of sacred incense (Ex 30:33) or sacred anointing oil (Ex 30:38), profaning the Sabbath (Exod 31:14), eating sacrificial meat while unclean (Lev 7:20–21), eating blood (Lev 7:27; 17:10; 17:14) or sacrificial fat (Lev 7:25), failing to slaughter meat as a sacrifice to YHWH (Lev 17:4, 9), eating leftover sacrificial meat (Lev 19:8), offering children to Molech (Lev 20:3–5), patronizing mediums and wizards (Lev 20:6), brother-sister incest (Lev 20:17), sex during menstruation (Lev 20:18), approaching sacred gifts while unclean (Lev 22:3), failure to afflict oneself during Yom Kippur (Lev 23:29), failure to keep the Passover without sufficient excuse (Num 9:13), sinning “with a high hand” (Num 15:30–31), and failure to cleanse oneself after contact with the dead (Num 19:13, 20).
 - 2 G. von Rad, *Old Testament Theology*, New York 1962, vol.1, 264, note 182: “In H as well as P we still find ancient ban formulae which quite certainly were formerly practiced in cultic life in a very concrete form. ‘Cutting off (כרת) from the midst of the people of Israel’ is particularly frequently mentioned... The fate of a sacrally expelled person was terrible (Gen. IV.13f.), for as the bearer of a curse it was impossible for him to find shelter in another community; he was refused admission to all other groups, and, because at that time no one could dispense with relationships to supernatural powers, he was forced into the arms of the unlawful cults of magic.”
 - 3 C. Westermann, *Genesis 12–36: A Commentary*, Minneapolis 1985, 266–67; W. Zimmerli, *Die Eigenart der prophetischen Rede des Ezechiel*, ZAW 66, 1954, 1–26; M. Pope, *Excommunication*, IDB vol. 2, 184; P. Grelot, *La Dernière Étape de la Rédaction Sacerdotale*, VT 6 (1956): 174–89; G. Hasel, כרת, TDOT vol. 7, 339–52; K. Elliger, *Leviticus*, HAT 4, Tübingen 1966, 101. The first full-fledged attempt to argue the theory that *kareth* is a form of punitive expulsion is the dissertation of G. T. Hobson, *Cut Off From (One’s) People: Punitive Expulsion in the Torah*, St. Louis 2010.
 - 4 D. Wold, *The Meaning of the Biblical Penalty “Kareth”*, Berkeley 1978; J. Milgrom, *Leviticus 1–16: A New Translation with Introduction and Commentary*, AncB 3, New York 1991, 457–60.

Lafont is possibly the only scholar to connect the possibility of banishment in Israel with evidence for banishment in the ancient Near East.⁵ She cites the Code of Hammurabi § 154, along with YOS 10 31, and the Hittite provision of banishment for the sin of *hurkel*.⁶ Lafont writes, “De fait, le sort du père incestueux à Babylone est peut-être à rapprocher de l’excommunication hébraïque, consistant à retrancher moralement, et sans doute aussi matériellement, le pécheur de la communauté religieuse et sociale.”⁷

The paucity of evidence for the criminal penalty of expulsion from the community would appear to be an argument against the idea that the *kareth* penalty is a form of punitive expulsion. CH § 154 is the only extant statute in any Near Eastern law code that explicitly calls for expulsion as a penalty. However, Westbrook cautions that Near Eastern law codes are not comprehensive legislation, and that we must therefore beware of “arguments from silence.”⁸ Furthermore, both Finkelstein⁹ and Loewenstamm¹⁰ point out that there is very little textual evidence that penalties in any of the Near Eastern law codes were carried out as stipulated. For example, virtually no executions for adultery or murder are recorded, other than the employment of the river ordeal in ARM 26 249–58, although there are numerous instances of blood money paid. Numerous cases of both offenses may have been dealt with outside the court system and consequently may not have been recorded. Furthermore, legal codes are practically never cited in the decisions recorded in ancient Near Eastern court documents, although royal decrees are sometimes cited.¹¹ Evidence for actual legal practice needs to be sought in texts outside the ancient law codes, such as royal decrees, court records, historical texts, and letters.¹²

This article will not aim to prove that *kareth* = punitive expulsion. It will seek to collect evidence for punitive expulsion performed for purposes that resemble the offenses for which offenders are “cut off from their people” in the Torah. The first

5 S. Lafont, *Femmes, Droit, et Justice dans l’Antiquité orientale*, OBO 165, Fribourg 1999, 184–185.

6 See the discussion of the Hittite concept of *hurkel* in H. Hoffner, *Incest, Sodomy, and Bestiality in the Ancient Near East*, in: H. Hoffner (ed.), *Orient and Occident: Essays Presented to Cyrus Gordon on the Occasion of His Sixty-Fifth Birthday*, AOAT 22, Kevelaer – Neukirchen-Vluyn 1973, 81–90. Hoffner describes *hurkel* as a serious sin or taboo. According to Hoffner, every extant example of *hurkel* is sexual in nature.

7 Lafont, *Femmes* (above, n. 5), 185.

8 R. Westbrook, *Studies in Biblical and Cuneiform Law*, Paris 1988, 5–7.

9 J. Finkelstein, *The Ox That Gored*, *Transactions of the American Philosophical Society* 71/2, Philadelphia 1981, 40.

10 S. Loewenstamm, *Comparative Studies in Biblical and Ancient Oriental Literatures*, AOAT 204, Kevelaer – Neukirchen-Vluyn 1980, 146–153.

11 R. Westbrook, *Cuneiform Law Codes and the Origins of Legislation*, *ZA* 79, 1989, (201–222), 214–215, cites the edicts of Uru’inimgina of Lagaš, Ammi-šaduqa of Babylon, Telepinus of Hatti, and Horemheb of Egypt as examples of royal legislation by decree that supersedes written law codes.

12 One is forced to resort to these sources in Egypt, where no written law codes have been discovered to date.

category to be presented will consist of texts where the connection with *kareth* appears to be the strongest. The second category will consist of texts whose resemblance to *kareth* is less strong, but which serve nevertheless as evidence for the practice of banishment in the ancient Near East.

Near Eastern punitive expulsion texts most closely resembling biblical *kareth*

A. Second millennium B.C.E. texts and earlier

1. CH § 154 – Hammurabi of Babylon, ca. 1750 B.C.E.

Akkadian text:

*šum-ma a-wi-lum dumu.munus-su₂ il-ta-ma-ad a-wi-lam šu-a-ti uru u₂-še-eš-
su₂-u₂-šu*

“If a man should carnally know his daughter, they shall banish that man from the city.”¹³

This is the only offense that Hammurabi penalizes with removal from the community, while other sexual crimes are punished with death. Given its similarity to the sex-crime of Enlil (see the “Myth of Enlil and Ninlil” below) and its perceived defiling character, this offense in CH § 154 probably carried a stigma of defilement that necessitated expulsion of the perpetrator. Indeed, among the Hittites, Hoffner cites a purification ritual employed specifically for cases of father-daughter incest.¹⁴

2. Myth of Enlil and Ninlil, lines 59–61 – Sumer, third millennium B.C.E.

Sumerian text:

^dEn-lil₂ u₂-zug₄-ge [iri-ta ba-ra-e₃]
^dNu-nam-nir u₂-zug₄-ge iri-ta ba-ra-e₃
^dEn-lil₂ nig₂-nam-še₃ nam mu-un-tar-ra-ke₄
^dNu-nam-nir nig₂-nam-še₃ nam mu-un-tar-ra-ke₄
^dEn-lil₂ i₃-ĝen....

“This sex-criminal Enlil will leave the town!
This sex-criminal Nunamnir will leave the town!
Enlil, in accordance with that which had been decided as destiny
Nunamnir, in accordance with that which had been decided as destiny

13 E. Bergmann, *Codex Hammurabi: Textus Primigenius*, Rome 1953, 19, R 10, lines 67–72. Translation cited here is from M. Roth, *COS*, vol.2, 345. Transcription in H.-D. Viel, *The Complete Code of Hammurabi*, Munich 2005, vol. 2, 566.

14 Hoffner, *Incest* (above, n. 6), 89.

Enlil (did) go (away)...¹⁵

In this myth, the divine council decrees banishment on the god Enlil for seducing and impregnating an underage female. Enlil's pregnant partner follows him on his journey to the underworld, and gives birth to the moon god Suen (= Sin).

Jacobsen explains his translation of the term *uzug₄*:

“The term translated ‘sex offender’ denotes a person who for reasons connected with sex is, or has become, taboo; temporarily, as for instance a menstruating woman, or permanently, as here. The use of this term, and the penalty of banishment imposed, shows that Enlil's offense was considered a crime, an act threatening society as a whole, probably because divine anger would bring retribution on the society unless the offender were removed from it.”¹⁶

The date of the myth is uncertain, but it probably echoes reality in Mesopotamia in the late third millennium B.C.E. It is striking that such an unflattering tale is told about the most prominent Sumerian deity, and that he is punished with a penalty that, while not unknown in early Mesopotamia, is so rarely attested in extant literature of the period.

The Akkadian cognate to *uzug₄* is used in the myth of Nergal and Ereškigal, where the queen of the underworld seduces Nergal, then uses blackmail to get the heavenly gods to send him back to her permanently. She says,

5' [That god, whom] you sent here, has had intercourse with me, let him lie with me.

6' Dispatch [that god] to me, that he may be my husband, that he may spend the night with me.

7' I am sexually defiled (*mu-suk-ka-ku-ma*), *I am not pure*, I cannot execute the judgments of the great gods. (These lines are repeated verbatim in lines 21'-23'.)¹⁷

Ereškigal claims that she is ritually impure, ostensibly because she has been seduced. The only difference between this case and the myth of Enlil and Ninlil is that here, both parties are consenting adults. Ereškigal declares that the remedy for her defilement is for her seducer to marry her. Also, because she is defiled, Ereškigal claims that she is unable to execute the judgments (*ul a-da-ni di-ni*) of the great

15 The text-critical edition of this myth is H. Behrens, *Enlil und Ninlil: Ein sumerischer Mythos aus Nippur*, *Studia Pohl: Series Maior*, Rome 1978. Translation cited here is from T. Jacobsen, *Sumerian Mythology: A Review*, *JNES* 5, 1946, 133.

16 T. Jacobsen, *The Harps That Once: Sumerian Poetry in Translation*, New Haven 1987, 174, note 18. For further evidence surrounding expulsion of an *uzug₄* from the community, see Hobson, *Cut Off*, Chapter Three.

17 O. Gurney, *The Sultantepe Tablets (Continued): VII. The Myth of Nergal and Ereshkigal*, *AnSt* 10, 1960, 122-23.

gods. While there is no banishment here (to where could one banish her?), Ereškigal's inability to perform in her divine office is tantamount to banishment.

The term *uzug*₄ and its loanword in Akkadian convey a meaning that ostensibly stands behind both the punitive expulsion in CH § 154 and the Torah's practice of *kareth*. It is sufficiently early and geographically close to both legal codes to be one logical influence behind both of these legal formulations.

3. ARM 26 206:17–22 (= A 3893) – Mari, reign of Zimri-Lim, ca. 1775–1760 B.C.E.
Akkadian text:

a-na <a>la-ne₂-e ru-gu-um-ma a-sa₃-ak-ka-am li-te-er-ru lu₂ ša ri-i-sa-am ip-pu-šu i-na a-lim^{ki} li-še-šu-u₂

“Give orders to the cities to return the taboo material. Whoever commits an act of violence shall be expelled from the city.”¹⁸

The above passage is a decree by an anonymous prophet of Dagan, according to Yaqqim-addu in a letter to King Zimri-Lim. It is the clearest punitive expulsion in the extant documents from Mari. The prophet requests a lamb to eat, and proceeds to devour it raw (literally “alive”). The prophet then assembles the elders in front of the city gate and declares, “A devouring (*ukultum*) will take place!” This declaration has been taken to mean a threat of either an epidemic among the cattle or an even greater catastrophe. At this point, the prophet makes his demand that the cities return the *asakku*, and calls for the expulsion of anyone who has committed *rīsu*.

The term *asakku* refers to taboo material, possibly belonging to a deity in this case rather than to royalty. But the act of *rīsu* prompting expulsion in this oracle is unclear, unless this term is meant to refer to the illicit appropriation of the *asakku*.

4. YOS 10 31 ii 52–54

The date of this text is uncertain, as is often true for omen texts, although Lafont places it in the Old Babylonian period.¹⁹

Akkadian text:

šum-ma mar-tum ap-pa-ša a-na KA₂ E₂.GAL-im ša-ki-in ta-ri-du-u₂-um ša kuššudu ana ālišu itâr

“If the tip of the gall bladder is located at the palace gate, the exile who has been hunted shall return to the city.”²⁰

18 Transcription in J.-M. Durand, *Archives Épistolaires de Mari I/1*, Archives Royales de Mari XXVI, Paris 1988, 434, lines 19–22. Translation cited here is from M. Nissinen, *Prophets and Prophecy in the Ancient Near East*, SBL Writings from the Ancient World 12, Atlanta 2003, 38.

19 Lafont, *Femmes* (above, n. 5), 184.

20 Albrecht Götze, *Old Babylonian Omen Texts*, Yale Oriental Series, Babylonian Texts 10, London – New Haven, 1947, cuneiform = plate 43, tablet 31, column ii, lines 52–54. Transcription and translation cited here is from CAD T: 61.

At least eighteen other examples of exiled figures (mostly political) are cited in similar texts in *CAD* 19:60–61, including:

šarru ʕar-du itibbēma māta ibēl
 “an exiled king will rise up and rule the land” (CT 39 11:48).

ʕar-du ana bīt abišu itār
 “the exile will return to the house of his father” (CT 30 50:12, also CT 51 158:11; CT 20 22 81–2–4, 279:8).

ʕar-du kussā iṣabbat
 “an exile will usurp the throne” (ZA 52 242:34).

ʕar-du pi-du-šu ta-nam-din
 “you (Marduk?) pay the ransom for the exile” (KAR 321, r.1).

It is unclear whether these are exiles who are being punished for political crimes, fugitives from justice, or escapees from a *coup d'état*. Because of the hypothetical nature of omen texts, the only context that can be spoken of is the real-life conditions in which the predictions would be heard. The texts speak of a fairly common phenomenon of political leaders being sent away to live in exile. No doubt, there were also fugitives who were avoiding capital punishment (the question of why the hypothetical figure in the *YOS* text is being “hunted” raises this possibility), but at least some of the hypothetical figures in these omen texts seem to have been punitively expelled (the term *ʕarīdum* strongly suggests one who has been sent away rather than an escapee). The resemblance to biblical *kareth* in these cases is superficial, but it appears that such expulsion was practiced commonly enough to be proverbial.

5. “From the Instructions of the Border Guards”, lines 11–16 – Hittite, ca. 1400 B.C.E.

Hittite text:

ka-ru-u₂-li-ja [ma]-aḫ-ḫa-an KUR.KUR-kan₂ an-da ḫu-ur-ki-la-aš
iš-ḫi-u₂-ul i-ja-an ku-e-da-ni-aš-kan₂ URU-ri ku-aš-ki-ir na-aš-kan₂
ku-wa-aš-kan₂-du ku-e-da-ni-ma-aš-kan₂ URU-ri ar-ḫa par₂-ḫi-iš-ki-ir
na-aš-kan₂ ar-ḫa par₂-ḫi-iš-kan₂-du nam-ma-za URU-aš EGIR-an-da
wa-ar-ap-du
nam-ma w(a-ta)r-na-aḫ-ḫa-an e-eš-du na-aš-ša-an EGIR-pa li-e
ku-iš-ki tar-na-i ku-i-ša-an-ša-an EGIR-pa tar-na-i na-an ša-ku-wa-an-za

In a city in which they are accustomed to execute, let them continue to execute. In a city, however, in which they are accustomed to exile, let them continue to exile. Furthermore, afterward (the people) of the city must bathe,

and further let it be announced: Let no one allow (the exile) back. Whoever does allow him back, they will keep him under observation (?).²¹

Hoffner discusses the use of banishment by the Hittites for the punishment of incest and bestiality. He writes,

“From the evidence of the Hittite laws (§§ 187–88, 199–200A) and the early 14th century instructions to the commanders of the border garrisons, it seems clear that persons found guilty of *hurkel*, i. e. having sexual relations of a forbidden (perhaps incestuous) type, were either executed or banished, while the town in which the offender lived was purified. During this early period it is unlikely that any known offender avoided either death or banishment. The phrase *huišnizi-an LUGAL-uš* “the king may spare his life” (§§ 187–88, 199) means he would be banished instead of executed.”²²

As time went on, Hoffner says, a ritual was developed where the animal involved in a sexual crime would be sent away, bearing the impurity of the crime away from the community. “In this way,” he says, “the offender could continue to live in the city without bringing the wrath of the gods upon it.”²³

Hoffner explains the difference between sexual crimes and the category of torts and personal offenses:

“*Hurkel* constitutes an offense against the culprit’s city. By committing such an act, he has brought impurity upon his fellow townsmen and made them liable to divine wrath. Thus the townsfolk must protect themselves by eradicating the cause of the divine wrath, i.e. either by executing the offender(s) or removing them permanently from the town.”²⁴

Hittite banishment for cases of *hurkel* involves concepts of defilement and divine wrath similar to those that call for the *kareth* penalty to be imposed in the Torah.

6. RS 16:249, lines 13–19, 22, 25–26 – Ugarit, reign of Niqmepa, ca. 1313–1260 B.C.E.

un-du ta-bi-ia-nu [] abdi-^{il}nergal mâr abdi-mi-ir u₃ [mu-n]a-^{hi}-mu ^{hi}-it-ta rabîta^M i-te-ep-š[u] ^{aban}kunukka me₂-^{he}₂-er ^{aban}kunuk šarri rabî i-te-ep-šu u₃ tup-pa-ti sa₃-ar-ru-ti i-na libbi^{bi} ^{al}u₂-ga-ri-it i-ša-aṭ-^{tu}₃-ru... u₃ šarru la id-du-uk-šu-nu-m[a(?)] ... a-na ekallim la e-ru-b[u] i-na eqli âli^{ki} ul i-r[u-bu]

21 Cuneiform text in KUB XIII 2 ii 26–iii 35. Transcription in E. von Schuler, *Hethitische Dienstanweisungen für höhere Hof- und Staatsbeamte*, AfO Beih 10, Osnabrück 1967, 47. Translation by G. McMahon, *COS*, vol. 1, 224.

22 Hoffner, *Incest* (above, n. 6), 89–90.

23 Hoffner, *Incest* (above, n. 6), 90.

24 Hoffner, *Incest* (above, n. 6), 85.

“Because Tabiyanu..., Abdinergal son of Abdimir, and Munahimu have committed a great crime, because they have made a copy of the great seal and have written false tablets...(but the king has not put them to death)...they shall never again enter the palace! They shall never again enter the territory of the city [of Ugarit]!”²⁵

This incident is known only from this text. Such forgery would appear to be a form of treason. Yet, for some reason (mercy being one possibility), this case of treason is not punished with death, but with expulsion from Ugarit. The resemblance is to Exodus 30:33 and 38, where *kareth* is the punishment for counterfeiting sacred oil or incense.

7. *Papyrus Deir el-Medina 27 – Egypt, reign of Rameses II, ca. 1250 B.C.E.*

*mtwe tidt mdit tanbt siwh šsriw fmss msdrw wiwf didi r p33ta K3š
rdd mtwi šwi mwi r p33nt tašri p33ywm ‘mw mrmim iwfdidi rk h33š mp33dw
šn 3bbwt.*

Lines 2–4: “Sollte ich mit der Frau reden, (dann) sollen (meine)..., (meine) Nase (und) Ohren (verstümmelt werden und) (ich) soll nach dem Lande Nubien verbannt werden.” Lines 8–10: “Sollte ich dorthin gehen, wo die Tochter des *P3-ywm* (ist), (dann) soll (ich) zum Steinbrechen am Berg von Elephantine eingesetzt werden.”²⁶

Here is a judicial case where an Egyptian adulterer must swear never again to speak to the woman involved, on threat of mutilation and exile. The first oath is almost identical to the roughly contemporary oaths sworn by perjurers in Egypt. The second oath lacks mutilation as a sanction and features a different destination for banishment, including hard labor. The adulterer breaks his first oath and impregnates the woman, whereupon his own father hauls him into court, and he is forced to take another oath. There is no indication that the adulterer is ever punished, perhaps because the offended husband never takes action against his wife. The location of this case is a workers’ village outside Thebes.

25 J. Nougayrol, *Le Palais Royal d’Ugarit, Mission de Ras Shamra Tome VI, Part 2*, Paris 1955, plate 74, lines 13–26. Transcription in Nougayrol, *PRU Tome VI, Part 3*, 97–98, lines 13–26. Translation by the present author.

26 S. Allam, *Hieratische Ostraka und Papyri: Transkriptionen aus dem Nachlass von J. Černý*, Tübingen 1973, 99, verso, lines 2–4, 8–10. Transcription by Karen Hobson. Translation in S. Allam, *Hieratische Ostraka und Papyri aus der Ramessidenzeit*, Tübingen, 1973, 301–302, no. 272.

B. Post-exilic texts

1. *Edict of Artaxerxes in Ezra 7:26 – ca. 445 B.C.E.*

“All who will not obey the law of your God and the law of the king, let judgment be strictly executed on them, whether for death or for banishment (Aramaic שרש, “uprooting”) or for confiscation of their goods or for imprisonment.”

The most comprehensive and convincing analysis of the term for banishment used here, in the opinion of this writer, is made by Williamson.²⁷

“It has been argued by Rundgren, *VT* 7 (1957) 400–404, Falk, *VT* 9 (1959) 88–89, and others that this should be translated “flogging,” or the like. Rundgren points to סרושיתא in *AD* 3:6, a Persian loan-word meaning punishment, which he then interprets as corporal punishment. He therefore prefers to see the first letter as ש, and thinks that MT arose later as an etymological speculation by the Massoretes (שרש, “to uproot”), giving rise to Vg’s *exilium*. However, it should be noted (i) that the step from “punishment” to “flogging” is speculative, and not, apparently, inherent in the meaning of the word; (ii) that *Ezra* 10:8 may be understood as an early testimony to the interpretation as “banishment”; and (iii) that the Vrs do not support the suggested meaning. LXX παιδεῖν “discipline” is nowhere near so specific as “Prügel, Bastonade” “thrashing” (Rundgren), and 1 *Ezra* 8:24 τιμωρίᾱ “punishment” is again general, like the Iranian word. Such generalized senses are inappropriate to the context, however. Driver may therefore be right in his suggestion (*AD*, 99) that “assimilation has taken place, and the Iran.-Aram. סרושי ‘punishment’ has been used in the sense suggested by the Heb. שרש ‘uprooted’.”

2. *Ezra 10:8*

If any did not come within three days to the assembly to deal with the intermarriage issue, “all their property should be forfeited, and they themselves banned (יברל) from the congregation of the exiles.” (Compare *Malachi* 2:12, where “May YHWH יכרה (hip‘il) from the tents of Jacob” is declared as the penalty that intermarriage deserves.)

3. *Josephus, Ant. 11.8.7 – first century C.E.*

“And whenever anyone was accused by the people of Jerusalem of eating unclean food or violating the Sabbath or committing any other such sin, he would flee to the Shechemites, saying that he had been unjustly expelled (ἐκβεβλήσθαι).”

²⁷ H. Williamson, *Ezra, Nehemiah*, Word Biblical Commentary 16, Waco 1995, 97.

Josephus is apparently describing Jewish practice in the second century B.C.E., although the time here is unclear. Note that punitive expulsion is evidently being practiced in Jerusalem for Sabbath-breaking (which carries both a death penalty and *kareth* in the Torah), and for eating unclean food. The issue does not appear to be kosher food as per Leviticus 11, but food that is ritually unclean for other reasons. If this is correct, this also would be a case explicitly calling for *kareth*, and would indicate that this is how the penalty was interpreted in Jerusalem at that time.

The writer of 1 Maccabees 13 describes what may also be punitive expulsion being practiced at approximately this same time by Simon the Maccabean high priest. According to verses 47–48, Simon “expelled” (ἐξέβαλεν) pagans from the city of Gazara, “cleansed” (ἐκαθάρισεν) the houses that contained idols, and expelled all impurity (πάσαν ἀκαθαρσίαν) from the city. Likewise, in verse 50, Simon expels (ἐξέβαλεν) enemy combatants from Jerusalem’s citadel, and cleanses (ἐκαθάρισεν) the citadel from contamination (τῶν μiasμάτων). While there is no direct connection with identifiable *kareth* offenses here, the concept of expulsion to remove contamination may be intended for the same purpose.

4. Josephus, *B. J.* 2.8.8 – first century C.E.

“Men convicted of major offenses are expelled (ἐκβαλλουσι) from the order, and the outcast often comes to a most miserable end; for bound as he is by oaths and customs he cannot share the diet of non-members, so is forced to eat grass till his starved body wastes away and he dies.”

Here Josephus is describing the Essenes, although the time is unspecified (first century C.E.?); he writes as if the Essenes were still in existence as a community. The Essenes may be the people who populated Qumran (below).

5. *Dead Sea Scrolls*²⁸

Qumran uses כרת as extermination in eschatological contexts. For example, 1QS II 16–17 reads, “May God set him apart for evil, that he may be cut off from (מתוך) and (ונכרת) all the Sons of Light because of his backsliding from God through his idols and the stumbling block of his iniquity. May he put his lot among those who are cursed forever.” But while Qumran almost always uses כרת only in an eschatological sense, Qumran regularly practices expulsion as a penalty for offenses (using שלח and בדל instead of כרת). 1QS V 18 declares, “all who are not accounted within his covenant (כול אשר לו נחשבו בבריתו)... must be excluded (להבדיל).” One of the most severe such penalties given is the penalty for pronouncing the sacred Name, either accidentally or on purpose, an act that merits the death penalty in the Torah:

²⁸ The translation of the Dead Sea Scrolls used throughout this article, unless otherwise indicated, is J. Charlesworth, *The Dead Sea Scrolls: Hebrew, Aramaic, and Greek texts with English translations*, Louisville 1993–.

1QS VII 1–2 – “If he blasphemed – either because of being terrified with affliction or because of any other reason, while he is reading the Book or saying benedictions – he shall be excluded (והבדיליהו) (2) and never again return to the Council of the Community.”

The closest parallel to biblical *kareth* is to be found in 1QS VIII 20–23, which parallels Numbers 15:30–31:

“And these (are) the precepts according to which the men of perfect holiness shall behave each with his fellow: (21) all who enter into the Council of Holiness of those who walk with the perfect of the Way as he commanded, (indeed) every man of them (22) who transgresses a word of the Torah of Moses deliberately or through negligence, shall be banished (ישלחהו) from the Council of the Community (23) and never come back again.”

A text that appears to contradict the verdict of 1QS VIII 20–23 on “sinning with a high hand” is 4Q159 2–4 4–6, “and anyone who rebels [...] (6) He will be put to death, one who transgresses intentionally (ימת אשר עשה ביד רמה).” The language is the same as Numbers 15:30–31, but the context appears to be rebellion against a court, as envisioned in Deuteronomy 17:12, where the prescribed penalty is death.

4Q159 2–4 9–10 – “But if by [...] he humbled her, he shall be fined two minas and be expelled (וישלה) all his life.”

The context is false accusation against the virginity of one’s bride. Deuteronomy 22:18 prescribes a monetary fine equal to the one prescribed here, plus it says the elders shall “chastise” (ויסרו) the man.²⁹ Here expulsion is provided as the punishment. It is unclear whether the woman is expelled *de facto* as well.

4Q269 7 I 13 – One who approaches to fornicate (לזנות) with his wife against the precept shall depart and return no more.

Commentators have puzzled over this unusual prohibition. Baumgarten has suggested that it refers to either sex during menstruation (a *kareth* offense) and/or sex during pregnancy, which was forbidden at Qumran (see Josephus, *B. J.* 2.8.13) and which also involved defilement that could lead to a *kareth* offense.³⁰

While Qumran’s requirements for Sabbath observance are stricter than the rest of the Jewish community, Qumran does not punish violation of the Sabbath with the death penalty, but with what appears to be either expulsion or probation. CD^a XII 3–6:

29 It is tempting to speculate whether Qumran read the *hip’il* ויסירו “they shall remove (= expel him)” in place of ויסרו in this passage.

30 J. Baumgarten, Qumran Cave 4 XIII: The Damascus Document (4Q 266–273), DJD 18, Oxford 1996, 164–65.

“But each man who errs and profanes the Sabbath or the holy days shall not be put to death, for he is to be guarded by the sons of man, and if he is healed of it, he shall be guarded for seven years; then he may enter the assembly.”

The one example of a *kareth* offense that appears to be treated as a capital offense at Qumran is in 4Q266 6 II 9–10, where the text says that a pregnant woman “shall not eat [any hallowed thing, nor come into the sanctuary,][for] it is a capital [of]fense (מרת [מ]שפט).” Here may be evidence of divergent opinion at Qumran, or of variation of opinion through time.

The controlling issue for the practice of expulsion at Qumran was the holiness of the community. To some extent, the *Sitz im Leben* of *kareth* in early Israel was also one of concern for the holiness of the community, to preserve the community from being a target of divine wrath. Qumran merely takes its standards of holiness to a much higher level than that of early Israel, which called for removal of anyone whose presence or behavior threatened that holiness.

It is true that *kareth* language is never explicitly applied to the practice of banishment at Qumran. Yet Qumran’s practice of banishment seems to be an echo of an earlier understanding of how the *kareth* penalty may have been implemented.

Additional Evidence of Punitive Expulsion

The following evidence consists of examples of punitive expulsion that do not parallel biblical *kareth* as closely as the above group of examples. In some cases, the reason for expulsion is not clear. In other cases, the offense does not resemble the kind of offense for which *kareth* was practiced. Nevertheless, these examples serve as added evidence that punitive expulsion was indeed practiced in biblical times.

A. Second millennium B.C.E. texts

1. *P BM 10052, 8, plate 31, 17–18 – Egypt, sixth year of Rameses XI, ca. 1100 B.C.E.*

Standard Egyptian penalty for perjury:

mtwi dd d3 iwf hšb.f didi tw Kšy

“If I speak falsehood, may <I> be mutilated and sent to Kush.”³¹

A total of nine examples are referenced in David Lorton, *Treatment of Criminals in Ancient Egypt*, *JESHO* 20, 1977, (2–64), 33–38. All nine are found in the same papyrus text, published in Peet, *The Great Tomb-Robberies of the Twentieth Egyptian Dynasty*.³² This tomb robbery text comes from the judicial court of

³¹ Transcription by Karen Hobson.

³² T. E. Peet, *The Great Tomb-Robberies of the Twentieth Egyptian Dynasty*, Oxford 1930, repr. Hildesheim/New York 1977, 146–53 and plates 27–32.

Thebes. The destination of the threatened banishment was therefore not a long distance, although hard labor is implied.

In addition, Lorton cites a judicial text published by Hayes³³ that says, “a ship’s captain who helped an escapee was deprived of his position and his name (*w3 n rn.f*) and banished (? *shr*), and his family assigned to a labor camp.”³⁴ The text dates to the thirty-first year of the reign of Amenemhet III (1812 B.C.E.), making it the earliest extant Egyptian banishment text. There is no indication of the destination to which the offender is banished. The text reads as follows:

“Handed over to the Office of the Provider-of-People is the fami[ly of] the one who was [ba]nished because of complicity (?) in his plot (?), the one removed from (the office of) Skipper of the Treasury and deprived of his name Deduamūn’s son, Montuhotpe.”³⁵

The same oath, “May my nose be cut off and may I be sent to Kush,” is also found in the Ramesside Inscription of Mes, lines N21, N27-8, and N30.³⁶ The legal actions described in this text take place at On and at Pi-Ramesses in Lower Egypt, both at least 500 miles north of Kush.

Aside from assignment to penal servitude in the granite quarries,³⁷ it would appear that Kush (= Nubia) was the destination of choice for such banishment as early as the reign of Rameses II. P DM 27, discussed above, is the only extant text where there is an oath that penalizes disobedience by sending the offender to Elephantine.

This oath formula appears to have been current from the reign of Rameses II into the Twentieth Dynasty. Unlike biblical *kareth*, the Egyptian penalty (if actually put into practice) involves transportation to a specific, distant inhospitable location, rather than an unspecified expulsion from the local community. However, expulsion to Kush is found here in texts from a time and place associated with the origin of the Hebrews.

2. *Decree of Horemheb, lines 16–17, 20–22 – Egypt, reign of Horemheb, ca. 1330 B.C.E.*

“(Now) if there i[s the man] who (wants to) deliver dues [for] the breweries (?) and abattoirs (?) of Pharaoh on behalf of the t[wo] deputies [of the army] – [*and there is anyone who interferes*] and he takes away the craft of any

33 W. C. Hayes, *A Papyrus of the Late Middle Kingdom*, Papyrus Brooklyn 35:1446, Brooklyn 1955, 53–54.

34 D. Lorton, *The Treatment of Criminals in the Ancient Near East*, Leiden 1977, 17.

35 Hayes, *Papyrus*, 53–54.

36 A. Gardiner, *The Inscription of Mes: A Contribution to the Study of Egyptian Judicial Procedure*, *Untersuchungen zur Geschichte und Altertumskunde Aegyptens* 4/3, Hildesheim 1964, 9–10.

37 Lorton, *Treatment of Criminals* (above, n. 34), 6–7. The location is not specified, but may be Elephantine.

military man (or) of any (other) [per]son in any part of the country, the law shall be applied to him by cutting off his nose, he being sent to Si[le]...[If there is anyone who interferes with those who] – and those who are supplying the harīm as well as the offerings of all (kinds of) gods in that they deliver dues on behalf of the two deputies of the army, a[nd he] – , the law [shall be applied] against him by cutting off his nose, he being sent to Sile likewise.”³⁸

The scope of the Horemheb decree is surprisingly narrow. This text decrees banishment to the Asiatic frontier to the border fortress of Sile (Tjaru) for government officials who plunder tax revenues brought by citizens. While only two offenses specify banishment as punishment, two additional statutes read “it shall also be done accordingly,” implying the same punishment, and several more provisions in the decree have penalties that are unclear or illegible.

3. *Banishment Stela of Menkheperre (= Maunier Stele, Louvre C256), lines 11, 15–16 – reign of Psusennes I (?), ca. 1020 B.C.E.*

“O my good lord, (it is) the matter of these servants, against whom thou art wroth, who are in the oasis, whither they are banished...Thou shalt hearken to my voice on this day, and thou shalt [relent] toward the servants whom thou banished to the oasis, and they shall be brought (back) to Egypt.”³⁹

The high priest of Amun at Thebes issues an oracle to convince Pharaoh that Amun wants banishment stopped. Von Beckerath interprets the phrase “not slaying the living” (which Kitchen interprets as forbidding the death penalty) as a figurative reference to exiling people, and that it is the practice of exile itself that is here being banned as a virtual death sentence.⁴⁰ Banishment here takes the place of a death penalty, but is apparently viewed as a virtual death sentence, if this interpretation is correct. Although the offenses that call for banishment in this text are not specified, political rebellion seems to be what is being punished.

4. *Apology of Hattusilis 10:17–30 – Hittite, ca. 1300 B.C.E.*

Hittite text:

(17–19) [(DI-*eš-šar* EG)]IR-*pa pi₂-e-ḫu-te-et nu-kan₂ A-NA* ^m[(*Ar-ma*-^DU *QA-DU* DAM-*ŠU* DUMU^{MES}-*ŠU*)] [(*al-ya-an-za-tar*)] *u₂-e-mi-i-e-er na-at-šī-ia-a*[(*t pi₂-ra-an kat-ta*)] [(*ti-i-ir nu UR*)]U-^{LUM} DINGIR-^{LIM}-*IA* ^{URU}*Ša-mu-ḫa-an* U[*H_x(-za šu-u)*]*n-na-aš* (25–29) [(*nu-mu* ^m*Ar-ma*-^DU-*aš*)] *k(u-it iš-ḫa-*

38 Stela in the Temple of Amun-Re at Karnak. Hieroglyphic text is published in K. Pflüger, The Edict of King Haremhab [sic], JNES 5, 1946, (260–76), 269–76. Translation is in Pflüger, Haremhab, 260–67.

39 Louvre C 256 (Maunier Stela). Hieroglyphic text is published in J. von Beckerath, Die ‘Stele der Verbannten’ im Museum des Louvre, RdE 20, 1968, (7–36), 11–12. Translation in J. Breasted, Ancient Records of Egypt, Chicago 1906–1907, repr. New York 1962, 4: 317–18.

40 Von Beckerath, Stele der Verbannten (above, n. 39), 26, note 23b; 34–35.

na-aš an-tu-uh-ša-aš e-eš-ta)] nam-ma-aš ^{LU₂ŠU}.GI-an-za [(*e-eš-ta*) *n(a-aš-mu-kan₂ u₂-u₂-i_a²-at-ta-at) n(a-a)]n ar-ḥa da-a-li-ia-nu-un [(^mŠi-ip-pa-LU₂-in-n)a DUMU(-ŠU ar-ḥa da-a-li-ia-nu-un n)]a-aš U₂-UL ku-it-ki [(DU₃-nu-un) A-Š(A-AT⁹ [^mAr-ma-^DIŠKUR-ma DUMU-ŠU-ia) I-N]A ^{URU}A-la-ši-ia [(*up-pa-aḥ-ḥu-un*)]*

“They found witchcraft on Armatarḥunta, with his wife (and) his sons, and they charged him with it. He had filled Šamuḥa, the city of my goddess, with witch[craf]t...[be]cause Armatarḥunta was a blood relative of mine, (and because) moreover, he was an old man, he provoked (feelings of) pity in me [a]nd I let him go. Šippaziti, to[o], his [son], I let go. I did not harm them in any way. Armatarḥunta’s [wi]fe and his (other) son, however, I sent [t]o Alašiya (in exile).”⁴¹

Witchcraft was a capital crime among the Hittites, but the “Instructions to the Border Guards” text indicates that banishment was a merciful alternative option. Here, Hattusilis commutes the sentence because of Armadattas’ age and illness by banishing the man and his son to Cyprus (Alašia). In the following sentence (not in the above text), Hattusilis says he also gave half of Armadattas’ estate back to him.

The crime here is not purely a political crime, since the community is put at risk of forces from the underworld and possible contamination. It is this particular form of contamination from the underworld that resembles one type of offense that would be punished by biblical *kareth*.

B. First millennium B.C.E. texts and later

1. 1 Kings 2:27

“So Solomon banished (ויגר) Abiathar from being priest to YHWH, thus fulfilling the word of YHWH that he had spoken concerning the house of Eli in Shiloh.” Note that in 1 Samuel 2:33, God promises, “The only one that I will not cut off (אכרית) from my altar shall be spared to weep out his eyes and grieve his heart.” Solomon’s motive is stated as mercy: “You deserve death, but I will not execute you at this time.” Abiathar has committed no death penalty offense to be found in the Torah; the issue is entirely political loyalty.

2. Jeremiah 36:5 – reign of Jehoiakim, December 605 B.C.E.

“I am restrained (אצור). I cannot enter the house of YHWH.”

This verse parallels the roughly contemporary Neo-Assyrian texts (above) where offenders are forbidden “to walk in temple or palace.” Here appears to be a similar

⁴¹ Catalogue de Textes Hittites 81. Transcription in H. Otten, Die Apologie Hattusilis III. Das Bild der Überlieferung, Studien zu den Boğazköy-Texten, Heft 24, Wiesbaden 1981, 18. Translation by T. van den Hout, COS 1: 202.

case of political expulsion. While Duhm believes that Jeremiah is excluded from the Temple for reasons of Levitical impurity,⁴² most other commentators' views are like that of John Bright: "The probable sense is that Jeremiah had (after the incident of xx 1–6?) been forbidden to enter the temple; or perhaps it was simply that the authorities had him under observation and would stop him if he tried to speak there."⁴³ Bright states that אָצַר "cannot denote physical arrest" here as it does in Jeremiah 33:1 and 39:15.⁴⁴

The ancient versions themselves show a variety of interpretations of אָצַר in this passage.⁴⁵ It is unlikely that Jeremiah is in prison, since in 36:19, Baruch and Jeremiah are told to "go and hide," which would also argue against a literal interpretation of φυλάσσομαι in the LXX. The most logical explanation of all the evidence is that Jeremiah is on an unwritten no-entrance list to keep him out of the Jerusalem sanctuary. 2 Chronicles 23:19 states that Temple gatekeepers were to prevent the unclean from entering the sanctuary; these may have also barred entrance to those who had been punitively expelled. This may give a picture of how *kareth* may have been practiced in the First Temple period, although it must be noted that not a single word of the *kareth* formula is found in this text.

3. Jerusalem and Babylonian Talmudim

There are several pages on excommunication in y. Mo'ed Qat 3:1.I–XI. The passage says that there are 24 offenses that merit excommunication, but nowhere in the text itself are these offenses listed. The complete list of these offenses is pieced together by Strack and Billerbeck, mainly with materials from the Babylonian Talmud.⁴⁶

At its earliest stage, rabbinic expulsion may have only been practiced within the circle of the Pharisees, who had an exclusive membership. Only with the passage of time does it become a generalized practice. The Gospel of John 9:22 (see also 12:42) claims that this form of expulsion was employed on followers of Jesus. Certainly by the time the Gospel of John was written, in the last decade of the first century C.E., this ban had become official for a large portion of the Jewish community.

Talmudic excommunication is never practiced for any of the *kareth* offenses specified in the Torah. If *kareth* should prove to be a form of punitive expulsion, however, then rabbinic practice may illuminate the way that such expulsion was handled in pre-exilic and early post-exilic Israel.

42 B. Duhm, *Das Buch Jeremia*, Tübingen 1901, 290.

43 J. Bright, *Jeremiah: A New Translation*, AncB 21, Garden City 1965, 179.

44 Ibid.

45 The LXX reads φυλάσσομαι, "I am being guarded." Aquila and Symmachus read συνέχομαι, "I am being restrained." Origen reads *conclusus sum*, "I am restricted/confined." The Vulgate reads *clausus sum*, "I am shut in." The Peshitta reads *kl'*, while the Targum reads *kly*, both implying physical restraint or incarceration.

46 H. Strack / P. Billerbeck, *Kommentar zum Neuen Testament aus Talmud und Midrasch*, Munich 1956, vol. 4/1, 309–13.

Conclusions

Three purposes of punitive expulsion reveal themselves in the Near Eastern evidence. The first purpose is political, to deprive a person who is a political threat of the ability to participate in society. The second purpose is mercy, where expulsion is practiced as a less drastic punishment than death. The third purpose is removal of contamination to avoid the wrath of deity upon the community, a purpose that is particularly evident in Hittite practice.

The Near Eastern evidence cited above verifies the hypothesis that, contrary to the impression created by its virtual absence in the formal Near Eastern legal codes, expulsion or banishment was, in practice, an accepted form of judicial punishment in Israel's broader Near Eastern context. The evidence establishes the plausibility of the expulsion penalty in Israel as a combination of mercy for a crime that deserves death, plus removal of contamination. The evidence demonstrates a clear precedent in the second millennium B.C.E. for such expulsion, and documents its use throughout the biblical period in the ancient Near East. The evidence also shows clearly that such expulsion was practiced by post-exilic Jews, even though that practice is not clearly connected to the language of the *kareth* penalty.

The question is, how strong are the parallels between any of these pieces of evidence and the biblical *kareth* penalty? In terms of time and geography, the early Mesopotamian, Hittite, and Egyptian evidence are closest to the early origins of Israel. Mesopotamian expulsion, and the rationale behind it, is likely to have been a component of the Hebrews' Middle Bronze Age heritage. Egyptian expulsion provides a contemporary context for Late Bronze Age Hebrews; expulsion was a well-attested legal option for them, at least in theory. Both Israel and the Hittites appear to have inherited culturally from the Hurrians, therefore Hittite banishment and its accompanying concept of impurity may also be a clue to Israelite practice. Two significant differences of Egyptian punitive expulsion from biblical *kareth* are the specification of a distant destination for the banished offender, and the almost complete confinement of this penalty in Egypt to its presence in oath formulas.

CH § 154 is the closest parallel to what is proposed to be biblical *kareth*: a provision in a legal code that punishes by geographic expulsion from one's city a perpetrator of a sex crime like the kinds described in Leviticus 18, a penalty more merciful than death, which also removes what was apparently viewed as a source of contamination. Hittite practice becomes the next closest parallel: expulsion clearly is practiced by local option as a merciful commutation of capital punishment in the standard legal code, with the motive to remove contamination clearly in evidence.

Royal decrees become the next closest parallels to *kareth*. The foremost of these is the case from Ugarit. The crime of counterfeiting royal restricted property parallels the sacred restricted items in Exodus 30:33 and 38, and a merciful alternative to death is provided for. The next closest parallel is the decree by the Mari prophet quoted by Yaqqim-addu, where the offense appears to be a cultic one,

but the punishment stops mercifully short of death. Protection of the community from divine wrath may also be in view.

The category of matter-of-fact references to expulsion bears the least resemblance to true biblical *kareth*. There is one monumental exception: the myth of Enlil and Ninlil, where a shocking sex crime is involved, and where expulsion rather than death is decreed by the gods. Historical evidence for expulsion among Jews in the post-exilic period cannot serve as proof of the meaning of *kareth*; it can only serve as evidence that not all Jews followed the point of view of the LXX, Josephus, and the later rabbis as to how *kareth* was to be put into practice.

If *kareth* is indeed expulsion in codified form, its presence and its frequency in the Torah becomes unique among Near Eastern sources. Only Qumran, at the very end of the period in view, offers codified punitive expulsion on any comparable scale. Nevertheless, without the additional evidence presented above, the argument that *kareth* was originally intended as punitive expulsion would be more difficult to maintain. But if *kareth* is a curse rather than a codified punishment, it becomes unusual among the curses of the Torah, which are not mixed together with statutes, but are grouped at the end of a body of legislation (Lev 26:14–39; Deut 28:15–68).

If *kareth* should prove to be punitive expulsion, it may be seen as an expression of relative mercy, which also removes a source of ongoing moral contamination from the community that puts the community at risk. To preserve the holiness of the community, one must remove the individual who has compromised that holiness, whether the issue is rebellion or ceremonial impurity. Leviticus 18:24–29 warns that if such offenders are not removed from the land, the land itself will eventually expel the community who allowed the moral contamination to remain in its midst.

The concept of defilement that requires removal from the community appears to originate in the Mesopotamian concept of the contaminated *uzug*.⁴ This Mesopotamian concept is paralleled by the Hittite concept of *lyurkel*. It is the conclusion of this writer that these Near Eastern concepts illuminate the *kareth* penalty found in the Torah, as do post-exilic Jewish texts that practice expulsion for identical or similar offenses.