The Quasi-Alien in Leviticus 25

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Introduction

In 1966, Hubert H. Humphrey, the vice president of the United States at the time, published an article in the journal *Law and Contemporary Problems*. The title of his article was “The War on Poverty.” Humphrey’s article distinguished between two different approaches to the problem of poverty in American society. The first approach, he said, could be characterized by the statement in Prov 6:6 (Humphrey quoted the King James Version): “Go to the ant, thou sluggard; consider her ways and be wise.” Humphrey associated the second approach with the text from the Holiness Code that forms the chief focus of this paper, namely, Lev 25:35: “And if thy brother be waxen poor and fallen in decay with thee, then thou shalt relieve him.” Throughout his article, Humphrey tended to disparage the first approach and to endorse the second, though he ultimately wished to find a reasonable balance between the two. Other writers have also examined Lev 25:35, along with the larger provision that it introduces, and, like Humphrey, have found in it sentiments to suit their own notions of economic justice.

It is true that the provisions within chapter 25 of the book of Leviticus appear, at least, to be interested in finding ways to help those who have fallen on hard times – specifically those in v. 25–55. But one of the key questions about the provisions in these verses is whether they really are designed to benefit the debtors described in the text or whether they might subtly be intended to benefit the creditors instead. The rhetoric in the chapter certainly favors the former and speaks of the need for largesse on the part of creditors. Amidst these ostensible demands for generosity, however, the provision in Lev 25:35–37 stands out due to an unexpected analogy that it employs, and this raises questions about the altruistic character of this provision. Moreover, if this provision is not intended to help the poor debtor, what does that imply for the surrounding provisions?

2 See, e.g., Sutherland, “Ethics,” 921–926. A number of biblical scholars take a similarly sanguine view of the provisions in Lev 25:25–55; see, e.g., Wright, “Jubilee.”
3 The scholarly literature on Lev 25:25–55 is voluminous. It is not my intention to interact with all of it. For recent discussions with references to scholarly works, see Lefebvre, *Jubilé*, 173–298, and Nihan, *Torah*, 520–535.
The analogy in Lev 25:35–37 compares an Israelite – literally, “your brother” – with an alien (טַפְלָה) and a sojourner (עַדָּשֶׁה). As much previous scholarship has done, this paper will consider the combination of “alien” and “sojourner” as a hendiadys and translate it as “resident alien.” At first glance, the rationale for analogizing an Israelite citizen and a resident alien, turning the former into a kind of quasi-alien, is not at all clear. The full provision, according to the New Revised Standard Version, reads as follows:

Lev 25:35 If any of your kin fall into difficulty and become dependent on you, you shall support them; they shall live with you as though resident aliens.
36 Do not take interest in advance or otherwise make a profit from them, but fear your God; let them live with you.
37 You shall not lend them your money at interest taken in advance, or provide them food at a profit.
38 I am the LORD your God, who brought you out of the land of Egypt, to give you the land of Canaan, to be your God.

In the course of its analysis, this paper will seek to identify the specific economic situation that this text describes. In so doing, it will also address the issue of the aforementioned analogy, as well as the question concerning who benefits from this provision. The paper’s conclusion will be that the text of Lev 25:35–38 very likely describes an instance of antichretic pledge – a situation that allows for the exploitation of another’s labor – and, therefore, that this text constitutes a provision that would not have been as beneficial to impoverished debtors as previously thought.

1. The Context

It is necessary, at the outset, to consider the context of this particular provision. Within the larger pericope of Lev 25:25–55, one finds essentially four paragraphs, each introduced by a casuistically formulated statement. The first three are thematically and lexically related by their identical opening line: כִּי בֵית נְדָרָךְ אַחֲרֵי יָמִים וְלֹא יְהֵפִי “if your brother becomes poor” (v. 25, 35, and 39).

The fourth paragraph begins somewhat differently: כִּי יִשְׂרָאֵל יְהוָה נְדָרָךְ נְתוֹנָה “and if a resident alien has become successful among you.” Its very next statement, though, is nearly identical to the opening

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4 See Milgrom, *Leviticus*, 2187–2188, and Lefebvre, *Jubilé*, 237. For a discussion of the terms טַפְלָה and עַדָּשֶׁה, the connotation of which may be somewhat different here in the Holiness Code than in earlier texts such as the Covenant Code and the Deuteronomic Code, see Achenbach, 29–52, in this volume; cf. van Houten, *Alien*, 121–131. As for who the טַפְלָה עַדָּשֶׁה in the Holiness Code actually are, although one cannot be entirely certain, Albertz, 59, in this volume, claims that they “are all those foreigners, who inhabited – shoulder by shoulder with the Judeans – the Persian province of Jehud in the first part of the 5th century, whose multi-ethnic character is known from other sources.” I see no immediate reason to contradict him.

2. Sale under Duress (Lev 25:25–34)

The first situation is that of a householder who, because of financial difficulties, is forced to sell a piece of real estate – presumably, in light of the הָבֵא-prefix on בָּאשָׁם, only a portion of the real estate that he owns. Let us call this situation “sale under duress.” The text goes on to speak of redemption of the sold land, and it was typical throughout the ancient Near East to allow for redemption only in these sorts of situations. A variety of factors could lead to sale under duress. J. Milgrom assumes only one scenario: that the owner “presumably took out a loan for the purchase of seed” but then could not pay his debt due to crop failure. But other factors – e.g., unanticipated expenses, the death of family-owned livestock, the effects of war – could also lie behind a situation such as this. Regardless, whether it was the need to repay a loan or the onset of other adverse circumstances, the family has become desperate for money and is thus forced to sell land for a price lower than what they might otherwise have obtained. In Milgrom’s scenario, the price of the so-called sale would be equal to that of the debt. In other situations, the family would be in a poor negotiating position, and any potential buyers would seize the opportunity to drive a hard bargain and buy the land at a reduced price. The ordinary rules of redemption, however, as known from other ancient Near Eastern legal systems, allowed the seller or a relative of the seller to redeem – i.e., buy back – the land at the same reduced price for which it was sold.

The text in Lev 25:25–28 appears to establish a different rule in terms of price. It envisons the possibility that the land will be redeemed, either by a relative of the seller (v. 25) or by the seller himself (v. 26–27). Nothing is said about what the sale price should be, indicating, in all likelihood, that the system for calculating sale

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6 In the opening clauses of the first three paragraphs, the form of the verb הָבֵא is a yiqtol form, while it is a wḍqāṭal form (perfect with waw-consecutive) in v. 47. The reason for this is simple. Typically, in conditional statements in legal texts, the opening ki-clause contains a yiqtol form, and the remainder of the protasis is continued by wḍqāṭal forms. The conditional statements here in Lev 25 follow this pattern.

7 See, e.g., Schenker, “Legislation,” and Ruwe, Heiligkeitsgesetz, 343–344. Milgrom combines the last two stages and generally refers only to “three stages of destitution” (Leviticus, 2191, although he refers to four stages on p. 2206). Nihan (Torah, 520–21) and Lefebvre (Jubilé, 261) follow Milgrom in this regard.

8 See the comments of Lefebvre, Jubilé, 260–261.

9 Westbrook, Property, 100–102.

10 Leviticus, 2193.

prices set forth in v. 15–16 is assumed. Moreover, nothing is said about a redemption price, should a relative act as the redeemer, but it seems reasonable to suppose that figuring the redemption price with a relative as the redeemer would work the same as when one figures it in the event that the seller himself redeems (v. 28). 12 In light of these factors, then, the system laid out in Leviticus 25 requires that all sales under duress be based on the number of crops or harvests that the land is expected to yield between the sale date and the next jubilee year; in other words, the sale is based on the number of years yet to come before the jubilee. 13 Likewise, all prices for redemption are based on the expected number of crops between the date of redemption and the jubilee year. This means, however, that sales under duress, according to this system, cannot take place below the land’s market value, because this system’s general rule for calculating sale prices— for sales not made under duress—is exactly the same. It is based on the number of crops / years leading up to the next jubilee year. That this rule keeps the sale price at market value would seem to benefit the impoverished seller: he receives more money than he would have, if forced to sell at a reduced price. Moreover, the redemption price is not equal to but lower than the sale price, and this, too, appears to be beneficial to the seller, although the ease of acquiring an amount equal to the redemption price in this type of situation is hard to know.

One might argue that the redemption price is really the same as the sale price because the seller has forfeited to the buyer the crops for each year that the land is in the buyer’s possession— i.e., the crops that are harvested between the sale date and the redemption date. The seller then simply compensates the buyer for the crops that the latter would have received had he retained possession of the land up until the next jubilee year. Thus, the buyer receives back, partly in the form of crops and partly in the form of shekels, presumably, exactly what he paid for the land. When one contrasts this, however, with the conventional ancient Near Eastern system of redemption, one finds that the system in Leviticus 25 remains favorable to the seller. In other ancient Near Eastern societies, not only does the buyer receive back, at the time of redemption, the money that he paid for the land, but he has also had the usufruct of the land in the meantime. The usufruct is not taken into consideration

12 Milgrom states: “The redemption price [in v. 25] is not mentioned, but it is assumed to be that of v. 27, 50–52, and therefore calculated on the basis of the sale price.” (Leviticus, 2195) If this is correct, then it fits well with the general system of calculating sale prices in v. 15–16.

13 Scholars debate the timing of the jubilee year. There are three options: First, the seventh sabbatical year (the 49th year) was followed by the jubilee year (the 50th year), which was then followed by the first year (the 51st year) of the next seven-year cycle (see Kawashima, “Jubilee”). Second, the seventh sabbatical year was observed concurrently with the jubilee year; they both occurred in the 49th year, after which came the first year (the 50th year) of the next seven-year cycle (see Lefebvre, Jubilé, 154–166). Third, the seventh sabbatical year (the 49th year) was followed by the jubilee year (the 50th year), but this jubilee year also counted as the first year of the next seven-year cycle (see Bergsma, “Jubilee”). For the purposes of this discussion, it is not necessary to hold to a particular position in this debate.
when determining the redemption price. But, in the system of Leviticus 25, the value of the usufruct is subtracted from the sale price, resulting in a lower redemption price.


The third and fourth situations both describe the impoverished debtor as reaching the point where he “sells himself” (רֵ(mp)נ): in the first instance to another Israelite, in the second to a non-Israelite. This appears to be a case of debt-slavery. J. Milgrom argues that the verb (רֵ(mp)נ) must be understood as passive (“is sold”) and not as reflexive (“sells himself”). He states: “All eighteen occurrences of מַקּר Nip’al have a passive meaning. If a reflexive meaning had been intended, the Hitpael would have been used, as is attested in Deut 28:68.” Milgrom goes on to say that, because of the passive sense here of רֵ(mp)נ, those being sold have no choice in the matter: they have no choice about being sold and no choice about to whom they are sold. He also believes that redemption was not an option when the debtor was sold to an Israelite (more on this below). According to Milgrom, therefore, if ancient Israelites could have chosen their masters, they would surely have chosen to be sold to a non-Israelite, “who would be obligated to release him when ‘repurchased’ by his relative” – and the situation described in the third paragraph would never have arisen.

This line of reasoning is problematic. To begin with, several of the uses of רֵ(mp)נ that Milgrom assumes have a passive sense are just as ambiguous as the occurrence of the Niphal form in Lev 25:39 (e.g., Lev 25:47, 48, 50; Deut 15:12; Jer 34:14). This particular argument, then, is not decisive. In addition, Milgrom is not clear about who is selling the person into debt-slavery. Perhaps the most obvious candidate, from his point of view, would be the creditor, the one to whom the person cannot repay his debt. Selling the person might help the creditor to recoup some or even all of his money, and he would be willing to sell him to an Israelite or a non-Israelite. This idea does not, however, fit the text. The creditor (the one to whom the debt is owed) is identified by the second-person masculine suffix on קְמ in the first clause of v. 39, and the buyer (the one to whom the person is sold) is then identified by the second-person masculine suffix on קְל in the second clause. This means that the creditor and the buyer are the very same person. Debt-slavery occurs when a

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14 Much has been written on this section of Leviticus 25, in part because of its similarity to laws in Exodus and Deuteronomy. See, e.g., Chirichigno, Debt-Slavery, 328–341, and the literature cited therein. G. Chirichigno assumes a marked benevolence on the part of the biblical laws and a general coherence among the pentateuchal legal collections (ibid., 342–357). Other scholars take the potential differences between the collections more seriously. According to J. Stackert, for instance, although the authors of this portion of Leviticus 25 are particularly reliant on what he sees as their source texts in Exod 21:2–6 and Deut 15:12–18, they have attempted to revise these texts according to their own ideology (Torah, 141–158).

15 Milgrom, Leviticus, 2219–2220 (quote on 2219). In this regard, he follows Schenker, “Legislation,” 31–32.

16 Milgrom, Leviticus, 2220.
debt cannot pay a creditor by a designated date and then transfers himself (or, occasionally, herself) or a member of his household (a slave or a family member) into the possession of the creditor as compensation for failing to pay the debt. The person so transferred is now the debt-slave of the creditor. The so-called “purchase price” of the debt-slave is the amount of the debt, which changed hands when the loan was first made. A debtor, therefore, “sells himself,” should he decide that he be the one transferred into the possession of the creditor. The predetermined master of the debt-slave, then, is by default the creditor, the one to whom money (or some commodity) is owed.

Moreover, while the debtor essentially had no choice but to enter (or have a household member enter) debt-slavery, this is an action that, in the eyes of the law, is carried out of his own free will. That the action is voluntary is a type of legal fiction. At Emar, for example, debt-slaves are consistently said to have been sold into slavery of their own free will, even when, in reality, it would have been impossible for them to exercise any sort of free will. In Emar 83, a father sells his infant daughter, who has not yet been weaned, “of her own free will.” In Emar 205, two boys are sold into debt-slavery “of their own free will,” when it is clearly their uncles who have made the decision to do this. Thus, it is not at all counter to ancient Near Eastern conventions to say that the impoverished debtor in Lev 25:39–55 “sells himself” to whichever creditor he happens to owe – whether an Israelite (v. 39) or a non-Israelite creditor (v. 47). And this can be considered a voluntary act, at least in the eyes of the law, even if to outside observers – and especially to the mind of the debtor – it is not.

Under ordinary circumstances, then, the situation in which the debtor now finds himself would be considered debt-slavery. The text dealing with the third situation (v. 39–46), however, stipulates that the debtor should not be treated by other Israelites, i.e., creditors, as an actual debt-slave (“you shall not make him serve as a slave” [v. 39]). Rather, they are to treat the debtor as a “resident day laborer” (“like a resident day laborer he shall be under your authority” [v. 40]). It is hard to know exactly what this implies. Day laborers earned next to nothing and were barely one step above slavery themselves (e.g., Deut 24:14–15). Presumably, though, a resident day laborer would receive somewhat better treatment in general than a debt slave, and this would make the provision

18 Lefebvre also follows Schenker’s view – that the Niphal of ראמ in v. 39 is passive – and claims that understanding the sale as voluntary must be removed as an interpretive option (Jubilé, 271–272). He asks: “Dans quel mesure un esclavage pour dettes peut-il être volontaire? La question ne semble pas avoir affleuré dans le débat. En fait, ce caractère volontaire unanime admis ne provient que de l’acception traditionnelle du nifal de ראמ dans un sens réfléxif, une acception qui est loin de reposer sur des bases solides.” (Ibid., 271) Using the concept of a legal fiction to understand how the verb can be reflexive and convey a sense of free will, however, would seem to solve this problem.
19 For discussion, see Lefebvre, Jubilé, 268–269.
slightly favorable to the impoverished Israelite. On the other hand, though, the arrangement here appears to be a kind of debt-slavery in all but name. The debtor has been sold to the creditor (v. 39), is under the authority of the creditor (כִּי מֵעָלֶהָ in v. 39 and 40), and is forced to work for the creditor (כִּי בָּרָאָה כִּ֤יּוֹ שָלַּלֶהָ֨ “he shall serve / work under your authority” [v. 40]).

Milgrom suggests one possible factor that might further distinguish this arrangement from that of actual debt-slavery. He says that to arrange the situation according to that of a day laborer would not only require the creditor to give up a right – the right of alienation – but would also demand that the debtor forego a right he would otherwise have retained: the right to redemption. As Milgrom puts it, “Stage 3 is startlingly conspicuous by the absence of the provision for redemption.” This claim is difficult to assess and, ultimately, seems rather speculative. It is not at all clear that payment of the debt (e.g., by a family member) in this instance would not allow the debtor to leave the service of the creditor. To be sure, the text is silent on the issue, but that does not necessarily signal a prohibition on redemption. Moreover, if redemption is allowed in the case of a non-Israelite master (v. 47–55), why would the text wish to make serving an Israelite master so much more problematic by disallowing redemption? If Milgrom is correct, though, this arrangement is not in the debtor’s favor. Any possible gain due to having the status of a day laborer would seem to fade as soon as redemption is eliminated as an option for terminating the servitude.

In the fourth situation, if the debtor is sold to a non-Israelite, the expectation is that this master will not recognize the authority of the previous provision and will indeed treat the debtor as a debt-slave. Perhaps for that reason, the debt-slave’s right to redemption is explicitly mentioned, although the price of redemption varies based on how close in time to the next jubilee year the redemption takes place. This situation is essentially equivalent to an ordinary debt-slavery arrangement and thus appears to be neutral in terms of its benefit or detriment to the debtor. The one possible benefit is that the jubilee year has an effect on the details of the arrangement: its arrival can eliminate the debt and set the debt-slave free; and its nearness can, depending on the amount of the original debt (the “purchase price”), require a lower redemption price than might otherwise have been the case. In this way, the provision can be viewed as somewhat beneficial to the debtor.

The pericope thus ends with this fourth and, according to the progression in the text, most financially problematic situation. We have moved from sale under duress in the first situation to a limited type of debt-slavery in the third to full-fledged debt-slavery to a non-Israelite in the fourth. What sort of economic situation might fall

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20 For this rendering of the phrase as “under one’s authority,” see Milgrom, *Leviticus*, 2205. Among other evidence, Milgrom points to the clause כִּי מֵעָלֶהָ in Lev 25:41, which has to be rendered along the lines of “and he will go out from under your authority.”

between that of sale under duress and the type of servitude described in the third paragraph? It is to this second situation, described in v. 35–38, that we now turn.

4. **Antichretic Pledge (Lev 25:35–38)**

The text of Lev 25:35–38 presents a person whose situation is considerably worse than that of the one who was forced into a sale under duress. This person has, apparently, sold off all family property. If any land had still remained under his ownership, he would surely have sold that first before resigning himself to the conditions that this particular text describes. In fact, the text assumes that the situation has deteriorated to the extent that the person now comes “under your authority” (מְלַאכָּה) in v. 35). Moreover, because the person is “under your authority,” “you” have the right to “hold him as a resident alien” (מִשְׁמַר הַשָּׁלוֹם) in v. 35). Milgrom argues that this clause is part of the provision’s protasis and translates: “and you (would) hold him (as though he were) a resident alien.” The point, says Milgrom, is not to treat the person as a resident alien, even though “you” might very well wish to do just that. But the more natural reading, as I see it, is to take this clause as the beginning of the apodosis. In each of the other three provisions within Lev 25:25–55, the apodosis comes directly after two clauses in the protasis that have the impoverished Israelite “brother” as their subject. In v. 35, the subject of the first clause is “your brother” (חָרֵד), and the subject of the second is “his hand” (דָּמָא), a metonym for the debtor himself. Both of these clearly belong to the protasis. Based on the pattern in the other three provisions, then, the clause that comes next – “you shall hold him as a resident alien” – should begin the apodosis.

In this situation, therefore, the Israelite “brother” is under the authority of another and can be held by the latter as if he were a resident alien. While the plight of the “brother” goes beyond that of the first situation, sale under duress, it is not clear exactly what type of situation the provision in v. 35–38 presents. We can begin by identifying what this particular situation is not. Even though the one citizen is now under the authority of another, this is certainly not chattel-slavery – what we moderns think of as ordinary slavery. If it were, there would be no need to take up, as the text soon does, matters of lending and interest between the two parties involved. Such issues have no place in a slave-master relationship. Nor is this situation that of debt-slavery. Lev 25, as we have seen, addresses this issue in later paragraphs. The situation in v. 35–38 is, as C. Nihan puts it, an “intermediate case” between that of sale under duress and the limited debt slavery in v. 39–46. Thus, if the text does not entail any sort of slavery, what type of situation does it envision? The answer, I propose, is antichretic pledge (Nutzungspfand). The chief difference between an antichretic pledge and a debt-slave is alienability. The latter can be alienated – that

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22 On this phrase, see note 20 above.
is, sold to yet another owner – but the former cannot.24 The idea that the text is describing such a situation has been discussed previously but not at length, and the details have never been fully fleshed out.25 In what follows, I will seek to substantiate this proposal. In order to do this, I will first lay out the features of antichretic pledge as it was practiced in the ancient Near East and then discuss the elements within Lev 25:35–38 that can be correlated with those features.

5. Antichresis in General
The term “antichresis” itself comes from the world of Greek and Roman law. As in the Greek and Roman systems, there are in most legal systems essentially two types of pledges that debtors can set aside as collateral when they take out loans: hypothecary pledges and possessory pledges.26 The former remain in the possession of the debtor and are transferred to the creditor only at the time of default. Possessory pledges, on the other hand, are transferred immediately to the creditor and remain in the latter’s possession for the term of the loan. Should the debtor default, not only does the pledge stay with the creditor, but the creditor now becomes the legal owner of the pledge. An antichretic pledge is a particular kind of possessory pledge. It, too, becomes the possession of the creditor at the time when the loan is made, but, unlike other loans secured with possessory pledges, loans based on antichretic pledges have no interest attached to them. Instead, the usufruct of the pledge (e.g., rental income, crops) takes the place of interest and could, in many instances, bring the creditor a larger profit than ordinary interest payments, even at extremely high rates.27

The concept of antichresis has grown over the centuries and is still in use today, mainly though not exclusively in civil-law societies. In contrast to its ancient counterpart, however, modern antichresis allows income from the pledged item to pay off not only interest but also part or even all of the principal loan as well.28 Scholars of the ancient Near East use the term “antichretic pledge” to refer only to the classical situation where income from the pledge substituted for interest, and numerous such arrangements have been identified from a wide range of regions and time periods.

24 See Westbrook, “‘mazza da / kēšātum,” 458. Westbrook explains this with respect to mazzazānātum, the Old Babylonian term for the practice of antichretic pledge.
26 See the comments in Westbrook, “Period,” 63, and in Westbrook and Wells, Law, 113–116.
27 See, for example, P. Steinkeller’s calculations for loans of the Ur III period. With one loan, he finds that an antichretic arrangement yielded nearly seven times the profit that charging interest would have; another arrangement was 15 times more profitable (“Ur III Period,” 53). This leads him to believe that the creditor’s goal in many cases was to obtain permanent possession of the pledge (usually land): “As long as he was able to keep the debtor’s land in his possession, the income he gained from it was much higher than what he would otherwise have obtained as the accrued interest on loans.” (Ibid., 55)
28 See, e.g., Navarro and Turnbull, “Leases.”
During the Old Babylonian Period, loan contracts collateralized via antichretic pledges and formulated in Sumerian usually stated plainly that there was no interest on the loan, while such contracts formulated in Akkadian typically did not, though the antichretic nature of the pledge can often be inferred. This is especially true for the Akkadian contracts that utilize the term *mazzazānum* or *mazzazānūnum*. These terms represent an antichretic pledge and the practice of antichresis, respectively, and the contracts in which they occur provide evidence of both property and persons as antichretic pledges during this period.

In most Old Babylonian instances of antichretic pledge, the contracts give no deadline by when the loan must be repaid. This feature seems to favor the creditor: "the longer the creditor held the pledge, the more profitable the arrangement would be for him." The text of ARM 8 71 appears to give the creditor an additional benefit: the right to sell the pledge.

Rīmši-il ... assumed suretyship for Yantin-erāḥ, for six and one half shekels of silver. Aḥāssunu, wife of Yantin-erāḥ, has been committed to Rīmši-il, as a *mazzazānu*-pledge. Should he not pay back the silver in two months, Aḥāssunu, wife of Yantin-erāḥ, may be sold. The creditor is not actually mentioned in the contract. Apparently, the guarantor (Rīmši-il) paid the creditor 6 1/2 shekels and now expected the debtor (Yantin-erāḥ) to repay him. The debtor’s initial debt had thus been paid – perhaps relieving him of unpleasant consequences that would have ensued had he defaulted on that debt – but now he owes a new debt to his guarantor. The latter gave the debtor two months to pay this and was going to keep his wife as an antichretic pledge in the meantime. Even though the contract allows the “creditor” – in this case, the guarantor – to sell the pledge, it is important to note that he cannot sell the pledge during the term of the loan. Only after default can he sell her – that is, only after she is no longer a pledge but a debt-slave.

The practice of antichretic pledge continued into the Late Bronze Age, though there was not always a specific term for such pledges in every region from which we have documentation of the practice. In Middle Assyrian contracts, for instance, the...
term šapartu appears to function for all types of pledges, though antichretic arrangements typically are marked by no-interest clauses and by clauses allowing debtors to retrieve their pledges (whether property or persons) upon repayment of the loan.\textsuperscript{35} These contracts also show how dangerous it could be to pledge persons on an antichretic basis: it was not always a simple matter to pay off the debt and get them back, and sometimes they never were brought home.\textsuperscript{36} Other Late Bronze evidence for antichresis, at Emar for example, is less clear but highly suggestive. It is the term amêlîtu that appears to be used in the Emar documentation to designate antichretic pledges.\textsuperscript{37}

The most extensive evidence, from any period, for persons functioning as antichretic pledges comes from the Late Bronze Age site of Nuzi, where more than 50 documents recording such arrangements have come to light.\textsuperscript{38} In nearly half of these documents, it is the debtor himself or herself who enters the possession of the creditor as an antichretic pledge.\textsuperscript{39} The pledge is consistently referred to by the term tiđennu, the abstract form being tidennîtu. According to B.L. Eichler, “about half of the tidennîtu contracts contain a definite duration clause, specifying the time during which the arrangement is to remain operative;” while the other documents “contain an indefinite duration clause stating that the arrangements terminate whenever the debtor returns the borrowed capital to the creditor.”\textsuperscript{40} Furthermore, only two texts from Nuzi state explicitly that the pledge is antichretic – that is, only these two contain a clause to the effect that “the silver / principal does not bear interest.” That tidennîtu is an antichretic arrangement is clear from other elements in the contracts.\textsuperscript{41}

\begin{itemize}
\item \textsuperscript{35} Abraham, “Period,” 180–181 and 213–214.
\item \textsuperscript{36} “The archives show how once wealthy land-owning families gradually became impoverished, even to the point that family members had to be given in pledge but could not be redeemed.” (Abraham, “Period,” xxx) In at least one instance, this sort of unfortunate situation repeated itself over four generations of one particular family (see ibid., 192 note 139).
\item \textsuperscript{37} Skaist, “Emar,” 247–248.
\item \textsuperscript{38} See the still important study on these texts of Eichler, Indenture. Cf. Zaccagnini, “Nuzi.”
\item \textsuperscript{39} According to B.L. Eichler, in 25 of the 52 documents that he studied, the indebted party is the pledge. In 18 texts, the debtor gives his son; in two texts, his slave. A few of the remaining texts indicate that other family members (e.g., brother, sister, daughter) could also be given (Eichler, Indenture, 18).
\item \textsuperscript{40} Eichler, Indenture, 20–21 and 84 (quote on 84). The various lengths of time attested at Nuzi antichretic arrangements include two, three, four, five, six, eight, ten, twenty, and even fifty years. The 50–year term is attested by JEN 3 299, where the debtor pledges his son to the creditor for a debt of three talents of copper (see ibid., 21 and 125–126).
\item \textsuperscript{41} “Analysis of all the personal tidennîtu transactions indicates that the institution of tidennîtu is identical to antichresis. Party C is the creditor who provides Party D, the debtor, with capital, and the tidennu given by Party D provides Party C with antichretic service, corresponding to the interest on the capital. That the services of the tidennu are only in lieu of interest and are not applicable to the amortization of the loan follows from the fact that Party D must always return the entire value of the commodities in order to free the tidennu.” (Eichler, Indenture, 43)
\end{itemize}
Finally, from the first millennium, we have evidence for antichresis in both Neo-Assyrian and Neo-Babylonian texts. Even though the Neo-Assyrian contracts use the term šapartu, which, as in older periods, stands for all types of pledges, there are at least eleven contracts specifying that the pledge is kūm rabbē (“instead of interest”), six of which specify persons as the pledge in question. In addition to these eleven, there are a number of other loan arrangements that may also be antichretic in nature. K. Radner suggests that, with respect to those where a possessory pledge (a person or property) is offered but no mention of interest is made, “wir können wohl davon ausgehen, daß das Pfand auch in jenen Urkunden ein antichretisches Pfand ist.”

The Neo-Babylonian evidence for the use of persons in antichresis is much more limited. In fact, during the time frame from which most of our documentation comes (the 6th and early 5th centuries), there are no texts that attest to free individuals or debtors themselves as antichretic pledges. Typical Neo-Babylonian antichretic arrangements involve possessory pledges where ša kaspi ḫubullišu iamu (“there is no interest on the silver”), but the objects being pledged are usually pieces of real estate (e.g., houses, fields, orchards) and, on occasion, slaves and prebends. The few examples of debtors entering the possession of their creditors as antichretic pledges come from earlier or later periods – i.e., not from the time of the Neo-Babylonian empire or that of the early Persian empire. One of the most interesting cases comes from a late text, OEET 9 2, where, as J. Oelsner describes it, “a person and his family will work for 50 years in the household of their creditor.”

Given the foregoing evidence, it seems quite evident that antichretic pledge of both property and persons – including debtors themselves – was a longstanding economic institution throughout much of the ancient Near East. When one considers the evidence as a whole, five principal characteristics of an instance of antichresis can be identified. First, there must be a relationship of indebtedness between the two principal parties. In other words, the land or person in question is not being rented or hired or sold. Second, there is to be no interest charged on the debt. As we have seen, a number of the relevant documents from Mesopotamia contain an explicit statement to this effect. In other instances, the documents simply omit any mention of interest, in contrast to ordinary non-antichretic loan agreements. Third, the labor of the pledged person or the income of the pledged land takes the place of any interest that might otherwise be charged. This, too, is sometimes stated explicitly and sometimes merely implied. Fourth, the creditor assumes immediate possession of the pledge. Moreover, the possession of the pledge could be indefinite, since many of

42 See Radner, Privatrechtsurkunden, 370–371.
43 Radner, Privatrechtsurkunden, 371.
44 Wunsch, “Debt,” 238. See also Petschow, Pfandrecht, 66.
46 See the list in Petschow, Pfandrecht, 164.
47 Oelsner, “Period,” 301 note 45. This is similar to the Nuzi text, JEN 3 299, mentioned above (see note 40).
the contracts specify that the pledge cannot be retrieved until the debt is fully paid.\textsuperscript{48} Finally, a fifth but optional element is the mention of a specific period of time. In some instances, the documents spell out the minimum amount of time that the pledge must remain in the possession of the creditor – even up to 50 years.\textsuperscript{49} In others, there is a deadline by which the debtor must repay the entire loan. Failure to do so allows the creditor to acquire actual ownership of the pledge. In sum, then, an antichretic pledge agreement typically entails (1) a debt, (2) no interest, (3) labor / income in lieu of interest, (4) possession of the pledge by the creditor, and (5) a defined period of time.

6. Antichresis and Lev 25:35–38

When one compares the five elements identified above with the text of Lev 25:35–38, at least three of the five appear to be fairly evident. First, that a debt exists between the two persons is clearly implied right at the outset. The impoverished one is without any means of support and must turn to another Israelite with greater resources just to survive. The text, in v. 37, seems to assume that the wealthier Israelite will give both money (גֶּבֶל) and food (לֶחֶם) to the poorer one. It is these items – and, perhaps, any other items (e.g., clothing) that are given – that would constitute the loan and thus create a debt on the part of the recipient. If the text did not view the giving of these items as a loan, it would have no need to say anything about the possibility of charging interest. But the charging of interest clearly enters the discussion in v. 36–37. Thus, even if one should disagree with the contention that the situation described in the text is one of antichretic pledge, it is hard to escape the conclusion that a loan is at issue and, therefore, that the items given are supposed to be paid back by the borrower at some point in the future. Already, the text does not expect pure altruism.

Second, the absence of interest on the loan shows up in v. 36 and 37 in very explicit terms.\textsuperscript{50} To be sure, the statements in these verses are couched as commands – “you shall not take interest from him” (v. 36); “you shall not give your silver to him at interest” (v. 37) – and, at first glance, this restriction would seem to favor the debtor by forbidding not only exorbitantly high interest rates but any interest rate at all. It must be kept in mind, however, that the statements in Mesopotamian antichretic-pledge contracts stipulating the absence of interest on a loan might also appear to benefit the debtor, even though it could well be the case that many of the lenders in these contracts opted for an antichretic arrangement because it was more profitable than charging interest. There was no guarantee in these situations that a zero-percent

\textsuperscript{49} For example, a number of contracts from Nuzi set a minimum number of years; see Eichler, \textit{Indenture}, 21. The two documents that specify 50 years are JEN 3 299 (from Nuzi) and OECT 9 2 (Neo-Babylonian); see notes 40 and 47 above.
\textsuperscript{50} There is little to no agreement as to the exact types of interest that the Hebrew terms קֵדֶם and קִנּוֹת (קִנּוֹת) represent. For discussion, see Milgrom, \textit{Leviticus}, 2209–2210.
interest rate would favor the debtor. In light of this, it is by no means a foregone conclusion that the prohibition on charging interest in the biblical text is of benefit to the impoverished Israelite debtor.

Third, the lender does, in a very real sense, take possession of the other person. As mentioned above, for the text to say that the person is now "your" authority just as the debt-slave (albeit one to be treated as a day laborer when bound to a fellow Israelite) is under the creditor’s authority in the third and fourth paragraphs. It is important to note that the text does not specify exactly where the debtor is to live. Even though the text twice states that the debtor will “live with you” (Km( in v. 35 and 36), this does not necessarily mean that the debtor will “dwell with you.” The point is that he will be sustained – provided for, kept alive – “under your authority.”

Some scholars believe that the text envisions the debtor living on his own property, even though it has passed into the possession of a creditor. Nihan, for example, claims that “the former landowner [the impoverished Israelite] now exploits his own estate for his creditor,” and, since he has “mortgaged” all his land, “he must be lent further money without interest (v. 36–37), so that he may continue to live on his land without having to be sold to his creditor (v. 39–43).” It is not clear to me, however, how the debtor can remain on his own land. This second situation (v. 35–38) seems to imply fairly strongly that the impoverished Israelite has no more land at the time he becomes indebted to the creditor (the “you”) referred to in this text. The first situation (v. 25–34) is about an impoverished Israelite who still has land to sell. By the time the second paragraph opens, the Israelite has, in all probability, no more land to sell. It has already been sold to others, and he is now in need of help from yet another citizen who can provide for his sustenance. It should not be assumed that the person(s) who bought the land in the first paragraph is / are the same person(s) who will loan him food and money in the second paragraph. In fact, it seems quite unlikely that “you” bought any of the land mentioned in the first paragraph, since the text avoids making any statement to this effect. It thus stands to reason that the debtor’s land is now in the possession of individuals other than the “you” of the second paragraph and that these other individuals would not be kindly disposed to the debtor’s taking up residence on his old property.

If this is correct, then the impoverished Israelite has nowhere else to dwell other than in the household of his new creditor (“you”). In the second paragraph thus far, then, we have a debtor-creditor relationship between the impoverished Israelite and the “you” of the text, the omission of interest on the loan that initially established the debtor-creditor relationship, and a situation where the debtor is forced to enter the creditor’s household and where he is under the creditor’s authority (Km(22). All of these elements fit precisely with the practice of antichretic pledge.

51 Muffi, Studies, 4:5–7. See also Stackert, Torah, 85–87.
52 Nihan, Torah, 532.
I am quite sure that Milgrom would want to object at this point. He believes that this provision “constitutes a total reversal of the antichretic arrangement practiced in Mesopotamia.” As he sees it, the debtor does not function as an antichretic pledge but as a tenant farmer whose earnings would help to amortize the debt. This is unconvincing, not only for the inability on the part of the debtor to return to his former domicile (see directly above), but also for another important reason. Arrangements for tenant farming, especially in the ancient Near East during the first millennium, were typically established by contract and never, to my knowledge, due to default on a debt. It is true that “a widespread form of payment of rent was for it to be fixed before the harvest by a special commission (mostly for date orchards, but also for arable land). A debt note was then issued for the amount of estimated yield (imittu).” But the debt in these instances simply represented the necessary rent payment and no indebtedness that existed prior to the establishment of these agreements was relevant.

Two elements remain: an indication that the debtor’s labor takes the place of interest and a defined period of time. As mentioned, defining a period of time appears to be an optional element. When a specific period is not defined, the presumption is that the pledge remains with and works for the creditor until the full repayment of the loan. It is reasonable to infer that our text presumes the same or that the debtor will go free in the jubilee year, should that year precede final repayment. The most difficult but perhaps the most important element to find within our text is a reference to labor counting as interest. It is at this point that the analogy mentioned at the outset of the paper becomes important.

For a creditor to have a person as an antichretic pledge was essentially for the former to exploit the labor of the latter. Creditors in this position sought to maintain a balance between keeping their pledges reasonably fit for work and spending as little as possible on them. Since there was no limit on the labor that creditors could exact from pledges, the incentive to make use of a pledge to the fullest extent was very real. Given our text’s pretense of liberality and munificence, one can hardly expect it openly to countenance such exploitation. It is able to incorporate the notion of exploited labor, however, by means of the reference to the resident alien. Ob-

55 See, in general, Ries, *Bodenpachtformulare*.
57 Some might wish to say that I should not assume that what took place in other regions of the ancient Near East represents how legal matters were handled in ancient Israel and Judah. The problem, though, is that we have virtually no evidence outside of the Hebrew Bible regarding Israelite and Judahite legal practice. In situations where biblical texts leave gaps in our knowledge, it seems more sensible to assume that practices in Israel and Judah were generally similar to those in other ancient Near Eastern societies than to assume the existence of practices for which there is no evidence in either biblical or non-biblical texts.
viously, the needy Israelite is not a resident alien in reality, but the rhetoric of the text has reduced him to the status of such; hence my term, quasi-alien.

The key statement in this regard, of course, comes at the beginning of v. 35b: “and you shall hold him (as) a resident alien.” The collocation of the verb יְזַחַק with the preposition ב is common in Biblical Hebrew and usually carries the connotation of grabbing hold (e.g., Exod 4:4; Deut 25:11) or of holding someone or something in one’s control (e.g., Exod 9:2; Deut 22:25). While the expression בַּרְצָה can be taken as an adverbial accusative (“like a resident alien”), it must be observed that the preposition ב (“like, as”) is missing from the expression, whereas it is present in v. 40 “like a resident day laborer”). This distinction should not be overlooked. If one identifies בַּרְצָה as an adverbial accusative, then there is no essential difference between the expression in v. 35 and that in v. 40. If, however, the phrase בַּרְצָה is interpreted as an affected object that is part of a double-object construction, in which the third-person masculine suffix on ב functions as the affected object, a somewhat different interpretation is at hand. Rather than holding the debtor as a resident alien, one is to take him in to be a resident alien. In other words, the debtor is taken “under the authority” of another Israelite and is thereby placed into resident alien status.

But what does this mean – for a fellow Israelite to become a resident alien?

As far as I know, Y. Muffs is the first (and perhaps the only) scholar to suggest that, just as other regions and time periods in the ancient Near East had a particular term for an antichretic pledge (e.g., מזאצא in Old Babylonian texts, tidennu at Nuzi, amēlītû at Emar), ancient Israel and Judah did as well. This assertion, though should be qualified by saying that it was the post-exilic authors of the Holiness Code, at least, who believed in such a term. In Lev 25:35–38, according to Muffs,
the impoverished Israelite “is now seized by his creditor, not as a slave, but as a 
ditennu \ manzazānu = Hebrew gēr wetōšāb; he enters the household of the creditor 
where his service pays off the interest on the loan.”\textsuperscript{62} Thus, following Muffs, the 
reason, I argue, that the preposition \textit{ה} does not occur in v. 35 but does in v. 40 is that 
the rhetoric in v. 35 is not focused on analogy or comparison, as it is in v. 40, but on 
identity. In the eyes of the law, the Israelite has been turned into a resident alien.\textsuperscript{63} 

One possibility is that looking at the situation in this way may have been neces-
sary to allow for the exploitation of the labor of a fellow Israelite who was not yet in 
jeopardy of becoming a debt-slave. V. 44 allows the Israelites to possess chattel-
slaves “from the nations around you,” and verse 45 extends this to resident aliens 
who, it says, “may become your property.” Some scholars wish to bracket these 
verses as a later insertion into Leviticus 25.\textsuperscript{64} But recent arguments countering those 
claims have made a compelling case for retaining them as original to the second half 
of the chapter.\textsuperscript{65} Thus, according to the logic of the text, the resident alien can indeed 
be held as a chattel-slave. If, then, a resident alien can be held as a chattel-slave, it is 
not so drastic a measure to exploit the labor of a fellow Israelite – as long as he has 
been placed into the status of a resident alien. In this way, one can infer that the 
labor of the debtor redounds to the profit of the creditor and must, therefore, be what 
takes the place of interest and incentivizes the creditor to provide the loan.

By reducing the needy Israelite to the status of a quasi-alien, the text allows for 
holding an Israelite who has not yet defaulted on a loan right at the edge of slavery. 
This is the very situation in which antichretic pledges found themselves. As R. 
Westbrook puts it, “The resulting conditions were analogous to those of slavery: the 
pledge lost his personal freedom and was required to serve the pledgee, who ex-
loited the pledge’s labor.”\textsuperscript{66} The provision in Lev 25:35–38 thus includes reference 
to the labor of the debtor by means of its equation of the poor Israelite with the resi-
dent alien. This final element completes the picture of antichresis. No other econo-
ic relationship suits the provision nearly as well. As one moves from the situation 
of sale under duress described in the first paragraph to the status of a debt-slave de-
scribed in the third and fourth paragraphs, the most viable alternative to fall between 
the two on a scale of increasingly difficult financial problems is that of antichretic 
pledge.

\textsuperscript{62} Muffs, \textit{Studies}, 4:5.
\textsuperscript{63} I see this as similar to legal fictions that occur in other parts of the ancient Near East. Perhaps 
the best example comes from Late Bronze Age documents in which fathers transform their 
daughters into sons and their wives into fathers. The goal was to allow a daughter to inherit and 
the mother to manage the estate following the father’s death. See Westbrook, “Justice,” 36–40.
\textsuperscript{64} E.g., Elliger, \textit{Leviticus}, 341.
\textsuperscript{65} See, especially, Levinson, “Birth,” 634–637. See also Schenker, “Legislation.”
\textsuperscript{66} Westbrook, “Slave,” 1636.
Conclusion

If one accepts the argument that the situation described in Lev 25:35–38 is essentially one of antichretic pledge, it is fairly easy to see how this provision is not as helpful for Israelite debtors as many have previously assumed it to be. On the other hand, the predicament of a personal antichretic pledge falls nicely between that of one who has been forced into a sale under duress and one who has been forced into debt-slavery. Perhaps the real question, then, is whether the provision makes this predicament better or somewhat more tolerable than it would ordinarily have been. In at least one way, the answer could well be an affirmative one. The text implies that, for those who have sold all of their property and are still in need of a loan, the only permissible arrangement is antichresis and that other arrangements involving interest rates are disallowed. This has the advantage of preventing the imposition by creditors of obscenely high interest rates, although it remains difficult to say whether creditors might have preferred antichresis over high interest rates.

In sum, the four paragraphs in Lev 25:25–55 and the four provisions that they contain can be described as follows.

- *sale under duress* (v. 25–34) – potentially beneficial to the debtor by making the redemption price less than the sale price
- *antichretic pledge* (v. 35–38) – potentially beneficial to the debtor by disallowing interest-bearing loans
- *debt-slavery to an Israelite* (v. 39–46) – potentially beneficial to the debtor by requiring treatment of the debtor that is tantamount to that of a day laborer
- *debt-slavery to a non-Israelite* (v. 47–55) – potentially beneficial by requiring the jubilee year to influence the redemption price

Despite these apparent benefits for the impoverished Israelite, it does not seem to me that the benefits rise to the level of the text’s rhetoric. That is, the rhetoric of generosity that permeates the text leads the reader to expect remarkable concessions for the sake of the debtor. Such concessions are missing, and this is especially the case for the provision in v. 35–38.

Scholars and lay persons alike have frequently cited this provision as evidence of a general ban on interest-bearing loans in pentateuchal law.\(^\text{67}\) The evidence and analysis presented in this paper challenges that claim.\(^\text{68}\) As we have seen, there is indeed a ban on interest in our passage, but it occurs within the context of a very special set of circumstances – namely, the circumstances of an antichretic pledge.

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\(^{67}\) See, e.g., Frymer-Kensky, “Israel,” 1021: “Loans to Israelites were never to be made at interest (Exod. 22:24). This included loans of silver or food (Lev. 25:35–38), interest taken in silver or anything else, and interest deducted in advance (*nešek*) or collected at repayment (*tarbit*) (Deut. 23:20). Deuteronomy does allow *nešek* to be collected from a foreigner (*nokri*: Deut. 23:21).” See also Buchholz, “Laws,” 412–414.

\(^{68}\) In general, I agree with Schenker: “The prohibition in Lev. 25.35–38 of taking interest … is, therefore, not a general prohibition of interest and usury.” (“Legislation,” 30)
arrangement. Moreover, since formal interest in such a situation would never have been charged to begin with, the explicit denial of interest in our text contributes nothing extraordinary or unusual to the arrangement. It seems rather to form part of the facade of generosity that pervades Lev 25.

Others might wish to point to provisions in the Covenant Code or Deuteronomy in an effort to identify a pentateuchal ban on interest. The best candidate from the Covenant Code is Exod 22:24, but it forbids interest only on loans “to the poor among you,” and its tone is much more exhortative than legal. Deuteronomy, on the other hand, contains a more strongly worded stipulation in Deut 23:20: “You shall not charge interest to your brother.” The Deuteronomic author here forbids interest on loans to Israelites but not on all loans in general, for the following verse explicitly allows interest on loans to “a foreigner” (Deut 23:21). Still, some have suggested that even this stipulation in Deuteronomy targets primarily loans to the poor.69 As others have pointed out, our text in Leviticus may well be playing with the Deuteronomic provision.70 At the very least, the sentiment in Deuteronomy – that economic exploitation of a non-Israelite is unproblematic – seems to play a role in our text. The provision in Lev 25:35–38 takes advantage of this sentiment, and, by rhetorically reducing the status of the needy Israelite to that of a resident alien, it provides the necessary legitimacy for others to take advantage of the one in need – to the degree that personal antichretic pledges could be taken advantage of.71 In this way, the text stamps its imprimatur on a very ordinary form of exploitation, despite its attempt to present the economic reality in the guise of religiously motivated altruism. This seems to me the most useful way of understanding our text, though whether Hubert Humphrey would have been happy with this interpretation will have to remain an open question.

References
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69 E.g., Glaeser and Scheinkman, “Borrower,” 1–36.
70 See Stackert, Torah, as cited in note 14 above.
71 The rhetorical strategy may be similar to what J.W. Watts has described concerning other parts of Leviticus. He argues, for example, that certain passages “united text and ritual in a performative discourse in which priests and Torah reinforced each other’s authority” (Ritual, 96). I would suggest that our text brings together legal text and reality in order to reinforce the former’s authority. That is, the legal text (our text) endorses a practice (antichretic pledge) that was already occurring in reality but gives it a new source for its authority and a new rhetoric for its description.


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