

The Ethics of Biblical Law

I have composed this paper to explain to you, my colleagues, why I wrote what I did in an article in the Oxford Encyclopedia of Bible and Ethics on the subject of the ethics of biblical law. I had to make some decisions as to what the subject was and what one could accomplish in such a restricted scope. In this paper I will reflect on the decisions I made and provide examples of how I drew out the ethics embedded in Pentateuchal legal texts.

Let me phrase each decision as a question:

1. What is the law we are examining?
2. How does one draw out the ethical teaching embedded in legal texts?
3. What is the significance of the source-analysis of legal texts for the description of the ethics of Biblical law?
4. Are the ethical rules, principles and values embedded in these texts normative for the interpretive community?

Before I address these questions, though, let me indicate why biblical scholars who are specializing in law should learn to tease out the ethical rules, principles and values embedded in these legal texts. Let's admit it, the audience for the technical study of Pentateuch law and its relation to ancient Near Eastern law is restricted to this room—or to a finite number of rooms of this size. However, interest in the Bible's ethics is much greater. Religious Jews and Christians look to the Ten Commandments, and (to a lesser extent) the legal corpora, for ethical teaching. Scholars of biblical law should be able to render wise and recondite judgments as to the ethics embedded in these texts.

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Locating the Relevant Legal Texts

The subject would have quickly gotten out of hand if the scope of the law could not be restricted. I narrowed the subject to statements either commanding readers to act or refrain from action or authorizing communal authorities to pass judgment on problematic behavior. Thus, the law of the Bible was restricted to the codes of Exodus, Leviticus and Deuteronomy and the auxiliary provisions of Numbers. I find no further "legislation" within the Hebrew Bible or the Apocrypha.

These law codes are either formulated as divine discourse or as Moses' interpretation of divine law. Their authority does not depend solely on this address format, however; all our legal texts are embedded in the Pentateuch narrative which identifies the speaker and locates the law in the action of God and humans within time.

The law codes are addressed to Israel, the people chosen by YHWH and bound to him by covenant. In the negotiation of the covenant at Sinai/Horeb, the people swear to obey YHWH; the laws are what YHWH commands. This

means that the ethics embedded in the law is authoritative only for Israelites, and its successor community, the Jewish people. The good which these laws seek to promote is a *national* good, which is presumably distributive as well as collective. Also, when the eighth through sixth century prophets pronounce divine retributive judgment on the people of Israel and Judah, it is for their violation of *revealed* law (as well as international norms).

Definition of Ethics

We probably should spell out what we mean by “ethics.” We might start with a simple definition: what an individual or group should and should not do, and why. But of course the word “should” is used in non-moral as well as moral senses. The advice, one *should* fill one’s gas tank before a long trip, is purely practical. The statement, one *should* drive on the right side of the road (in America), is on the border of practical and moral. There is nothing intrinsically wrong with driving on the left side, but the agreed upon practice in America is the right. To drive on the left would endanger oneself and others, so now it becomes a wrong, immoral. To deliberately cause a crash in which the driver and others could be injured is immoral without qualification.

As for rationale, it is common to distinguish teleological ethics from deontological. Teleological ethics supports an action by the good it promotes and a prohibition by the evil it avoids. You can say, it is “goal” oriented.ⁱⁱ Deontological ethics does not look to any result, but designates an action intrinsically right or wrong. Often deontological rules depend upon the authority of the one who gives them; this would certainly apply to laws that are authoritative for a society.ⁱⁱⁱ

A third rationale, virtue ethics, promotes certain actions and prohibits others on the basis of their consistency with good, righteous, just character.^{iv} In the Bible, one would find this kind of appeal more often in Psalms and Proverbs than in legal texts.

Dictionaries often accentuate the *systematic* character of ethics; one would expect such a system in an ethics manual. A law code has a system or least an order and hierarchy of rulings, but it is dictated by legal or judicial logic, not ethics. We can only expect an implicit consistency in the ethics of legal documents and traditions. It is up to the interpreter to supply the connections and harmonize various statements of law and paranses.

One final point: The ethics embedded in a code of laws or collection of codes and rulings would have the good of society paramount. This distinguishes law from the advice the teacher gives students in a book like Proverbs. While one would expect a harmony between the good of society and of individual members, it would be more a matter of convergence than of one system.

Finding the Ethics Embedded in Pentateuchal Law

You may find my statement of what I am seeking rather odd. I am assuming that legal statements contain ethical rules, principles and values. This means that I am opposed to the legal positivism that separates law from ethics. Admittedly, legal rulings may deviate from ethical rules or principles.^v However, that does not mean that a legal rule has no ethical value or rule, only that there isn't a complete congruence.^{vi}

Now let me share with you a digest of two of the sections of my encyclopedia entry, one of the *mishpatim* of Exodus 21-22 and the other motive clauses of the addressed law in Exodus 22-23. With respect to the *mishpatim*, or judgments, we are examining texts one might regard as lacking ethical content. Motive clauses, on the other hand, are most often moral appeals.

I propose to begin with Exod. 22:6 (Heb. v. 5), a law that one might regard as lacking any ethical content, namely, the *mishpatim* of Exodus 21-22. Indeed I propose to start with the least "moral" provision one can imagine, the ruling on a fire burning all or part of a field of grain: "When fire breaks out ... so that... the field is consumed, he that kindled the fire shall make full restitution." Restitution is owed regardless of intent. The ethical element is that one should not have to suffer loss caused by another.

While the one who causes a loss pays no penalty beyond replacement, when someone deliberately confiscates another's property, a moral wrong has occurred and requires punishment. Paying double is typical (e.g., 22:7, 9).

Crimes against persons are quite different. While crimes against property are resolved by payment, crimes against persons never put a monetary value on a person. When one person kills another, malice aforethought distinguishes homicide, punished by death, from accidental killing (21:12-14). Judicial deliberation must determine whether the killing was deliberate.

In 21:18-19, there is a case of injury in a fight; the uninjured party must pay expenses. I would not call this a monetary punishment, but a personal obligation between the fighters. Whoever started the fight, the one capable of supporting the other should help him.

While slave owners have the right to force a slave to work, the slave has a right to life; hence, killing a slave entails punishment of the owner, though not the death penalty (21:20). The slave owner who does not respect slaves' right to bodily integrity, causing the loss of eye or tooth in a beating, loses ownership (21:26-27).

The judgment on the goring ox (21:28-32) has spawned a good deal of discussion because of the severity of the penalty. The principle is: human life cannot be given a monetary value; the only value the ox-owner has equal to the value of the dead person is his own life (21:29). The alternative of a ransom (v. 30) requires the owner to decide how much his own life is worth.

It is noteworthy that the case of an ox goring another ox is located later in the code (21:35-36). The dead ox is property, and property belongs to a different order than persons.

The Ethics of Motive Clauses

The personally addressed portions of the Covenant Code are saturated with appeal to moral sentiments. Exod. 22:21-27 contain general prohibitions against harming the vulnerable (verses 21-24) and a few examples (verses 25-27). Divine sanctions are threatened as a gracious answer to the cries of victims. The lawgiver also seeks to motivate the audience with the recollection of the exodus (22:21), a motivation also attached to protecting sojourners (23:9).

Biblical law requires assistance to the neighbor in need (23:4-5). The lawgiver expands the recipients to whom duties of assistance are owed to include “enemies.”

While religious rituals fall outside the ethical, Biblical law draws out ethical motives for performing them. In Exod. 23:10-19, rules for observance are supplemented with explanations and motive clauses that mention social goods.

We should be able to formulate a general principle covering the “welfare” laws that are so prominent in Pentateuchal codes. Justice entails that all members of the community share in the material good and social honor available to it. This doesn’t entail equal sharing, but it does require sufficiency for all. The law is especially concerned that the vulnerable—widows, orphans, non-citizens, the poor—be given their share, or God will subtract it from those who have enough.

This is the type of analysis that I practiced on provisions from all the legal codes of the Pentateuch.

The Relevance of Historical-Critical Analysis

Nothing that I have said so far depends on the identification and dating of sources and the cultural setting of the composition of our legal texts. My approach to the ethics embedded in Biblical law differs substantially from that of Eckart Otto.^{vii} Otto has an elaborate source critical scheme, and identifies particular ethical teachings with different strata in legal documents.

Why don’t I follow his example? Well, I decided against fragmenting our legal texts for both theoretical and practical reasons. Let’s begin with a highly theoretical reason: laws are intended to be timeless. That is, once a law or code of laws is introduced into a legal tradition, it is to be interpreted as an organic part of the whole tradition.^{viii} Within the Bible, all law purports to be revealed in the days of Moses. Though there are codes from different times and institutions, they are to be interpreted as one law.

The historical approach tends to isolate each code, in some cases individual provisions, as if the latest document supplanted others. Of course,

when Josiah adopted the Deuteronomic Law (or some portion of it), it may have supplanted previous law for a while. However, the previous law was preserved in the Pentateuchal text, forcing interpreters to synthesize and harmonize. The historical moment of introduction of the code is not the “context” for interpretation; at most it is background.

I do think that interpreters of Scripture must realize the laws are no longer provisions for Moses’ time, but for the post-exilic community, still dispersed among the nations. Why? Because the end of Deuteronomy addresses such a community and the Pentateuch as a whole is attached to the Former Prophets.^{ix}

There is also a practical reason for down-playing sources and dates: while the critical scholarly community agrees that virtually none of the laws of the Pentateuch derive from the time of Moses, there is no consensus on the identity of the sources and their dates. Each critical scholar must construct an argument for his or her reconstruction of the compositional history of the text.

The Authority of the Ethics of Biblical Law

What is the relevance of the ethics of biblical law for the 21st century reader? If we regard the laws of the Pentateuch as legal statements for various periods in ancient Israelite history, the laws have no authority for readers and their embedded ethics are only of historical interest. That appears to be the position of some of the most respected biblical legal scholars of our era.^x

However, I would give precedence to the literary context of Pentateuchal law over the reconstructed historical context. These legal texts belong to the historical narrative running from creation to the exile of Judah, which is the leading portion of the canon of Scripture that is read and applied to a living community—indeed, numerous communities. In other words, it was not formulated for any given period of history or particular past historical community, but to continue to perform an authoritative function in these ongoing religious communities. Any community which recognizes the biblical God as God indeed would perforce recognize the laws of the Pentateuch as authoritative.

The author of Deuteronomy was quite aware of the need for the legal traditions to be kept contemporary with the religious community. “The Lord our God made a covenant with us in Horeb. Not with our fathers did the Lord make this covenant, but with us, who are all of us alive this day” (Deut. 5:2-3). In the covenant ceremony at the end of the book, subsequent generations are included: “Nor is it with you only that I make this sworn covenant, but with (those) who (are) not here with us this day...” (Deut. 29:14-15).

This contemporizing of the covenant included the law. Deuteronomy revised the wording and sometimes the substance of the laws of the Book of the Covenant. God’s law is called upon to address new exigencies and conform to new ethical attitudes. Yet, at the end of the very chapter in which the

Deuteronomic Moses alters the altar law, he warns readers not to change anything: “Everything that I command you, you shall be careful to do; you shall not add to it or take from it” (12:32). By definition God’s law participates in the eternity of the lawgiver. Moses has been given authority to formulate it in first person, but what he says has the Lord’s approval and hence the Lord’s timelessness.

How are these compatible? The cynic may say that the unchangeableness of the law is a fiction to mask the constant changes of the so-called divine law. However, the authors of the Pentateuch preserved the older legal corpora so the reader can compare and assess the continuity; if they wanted to strengthen the impression of only one timeless law, the evidence would have been suppressed. The reader can see exactly how the later documents added to and took away from what was received. It becomes the responsibility of the faithful interpreter to recognize the continuity underlying the changes.

History has changed, if not solved, the hermeneutical challenges of biblical law. It ceased to be “positive law” governing Jewish life in the exile, or soon afterward, and became a subject for meditation and selective application. The Christian church rejected the legal authority of Mosaic law, and transposed the texts into ethical instruction.

ⁱ I do not want to imply that the legal texts are “privileged,” so to speak, in the quest for biblical ethics; Psalms, Proverbs, narratives, and prophecies all have ethics “embedded” in them. However, often the first text to be brought up for the discussion of a subject, say homosexuality, is legal.

ⁱⁱ Robin Lovin, *Ethics*, pp. 21-40.

ⁱⁱⁱ *ibid.*, pp. 41-60.

^{iv} *ibid.*, pp. 61-80.

^v I gave an example in *OTLaw*, pp. 5-6—English Common Law does not require “duties of assistance” while ethically we *should* assist persons in danger. The absence of law to enforce moral duty is probably based on the judgment that a law would cause more damage than good.

^{vi} We might even acknowledge the ethical shortcomings of law.

^{vii} Otto, Eckart. *Theologische Ethik des Alten Testament*. Kohlhammer Theologische Wissenschaft. Stuttgart, Berlin, Köln: Verlag W. Kohlhammer, 1994.

^{viii} Unless one had a procedure like the Hittites (see *ANET*, tran. Albrecht Goetze, pp. 188-191) for noting changes in the laws.

^{ix} Each of the law books by itself, however, addresses a period in pre-exilic history.

^x E. Otto, E. Gerstenberger.