

## **Law & The Sacred: Case Against Manifesto**

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If they [the Israelite prophets] had been asked whether they considered themselves primarily to be religious reformers or social reformers, they would probably have protested violently against the distinction. Epsztein (1986: 921)

Detailed cases are not nearly as dramatic as sweeping manifestos but case-laws often effect what clarion-calls can only proclaim. Indeed, sometimes the sheer radical beauty of the manifesto can so exhaust the human imagination that nothing else happens afterwards. Christian commentators, for example, will often exalt Gospel over Law, New Testament over Old Testament, and even Christianity over Judaism on exactly that comparison. They may cite the Pauline manifesto in Galatians 3: 28 asserting that, "there is no longer Jew or Greek, there is no longer slave or free, there is no longer male and female; for all of you are one in Christ Jesus". The basic human differences, hierarchies, and discriminations of race/religion, class, and gender are declared irrelevant, at least for Christians. What could be more ideal and magnificent? But what exactly are its external effects and social repercussions? Is it all just internal and spiritual; meaning that we are all the same inside, that our souls are unraced, unclassed, and ungendered in the sight of God? And, if that is all it means, is that enough?

In this article I begin with a set of careful case-laws from the Hebrew Scriptures, the Christian Old Testament, and I focus on them to see the legal principles, the juridical presuppositions, and especially the constitutive bases revealed by their insistent presence. I am particularly interested in how biblical case-laws reveal divine character and how the Law of God reveals the God of Law.

I deal primarily with three major legal collections. One is the Covenant Code in Exodus 20 (22-23: 19) which derived from the northern half of the Jewish homeland in the ninth century before the common era. Another is the Deuteronomic Code in Deuteronomy 12-16 which was brought southward after the destruction of the northern half at the end of the eighth century. It was then adapted for the surviving southern half of the Jewish homeland in the seventh century. A final text is the Holiness Code in Leviticus 17-26 which derives from priestly circles in the southern half in the same seventh-century period.

The case-laws in question concern debt but their logic presumes that indebtedness is not just an inevitable element requiring only regulation, but is rather an undesirable element requiring at least limitation and at best elimination. Either through laziness or incompetence, drought or famine, disaster or death, one family needs to borrow from another. The law codes try to control, if not eliminate, the inequality of growing indebtedness when one remedy after another has failed: by forbidding interest, by controlling collateral, by establishing remission, by liberating enslavement, and, finally, by reversing dispossession.

### **Forbidding Interest**

Interest is forbidden on loans to Jewish neighbours or resident aliens, but not to foreign merchants or investors. Since they took interest on their loans, interest could be taken from them in return. "When Israelites borrow from foreigners whose civil legal codes permit interest taking... the borrowers suffer 'damages' from the standpoint of Mosaic law" (Gordon 1982: 412). "It would be equitable and just, then, that equivalent compensation for those damages is taken when Israelites assume the role of lender" (Gordon 1982: 412). The injunction is stated succinctly in the Covenant Code and also in Deuteronomy but outside the Deuteronomic Code itself:

If you lend money to my people, to the poor among you, you shall not deal with them as a creditor; you shall not exact interest from them (Exodus 22: 25).

You shall not charge interest on loans to another Israelite, interest on money, interest on provisions, interest on anything that is lent (Deuteronomy 23: 19).

Those injunctions are greatly expanded in the Holiness Code. It also makes explicitly clear that the interest forbidden includes both pre-interest, due when the loan is given out, or post-interest, due when the loan is paid back.

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. Do not take interest in advance or otherwise make a profit from them, but fear your God; let them live with you. You shall not lend them your money at interest taken in advance, or provide them food at a profit (Leviticus 25: 35-37).

It was, of course, very easy, even in the absence of interest, to get more and more deeply in debt. Hence the next step was at least some control over creditors and what they could do with pledges given as collateral.

### **Controlling Collateral**

Collateral is controlled to avoid oppressive or vengeful actions. The Covenant Code is, as usual, quite succinct. Its formulation is expanded in Deuteronomy but not in the Deuteronomic Code itself.

If you take your neighbour's cloak in pawn, you shall restore it before the sun goes down; for it may be your neighbour's only clothing to use as cover; in what else shall that person sleep? And if your neighbour cries out to me, I will listen, for I am compassionate (Exodus 22: 26-27).

No one shall take a mill or an upper millstone in pledge, for that would be taking a life in pledge... When you make your neighbour a loan of any kind, you shall not go into the house to take the pledge. You shall wait outside, while the person to whom you are making the loan brings the pledge out to you. If the person is poor, you shall not sleep in the garment given you as the pledge. You shall give the pledge back by sunset, so that your neighbour may sleep in the cloak and bless you; and it will be to your credit before the Lord your God (Deuteronomy 24: 6, 10-11).

It is hard to over-emphasize the delicate humanity of those injunctions. Even when loans must be incurred, the process is not to be demeaning.

### **Establishing Remission**

What happened if, despite those preceding safeguards, families fell into debt in any case? The answer presumes some background about Sabbath Year, about Sabbath Day, and especially about Sabbath as the rest or stasis of symbolic equality. Christian tradition thinks now of Sabbath-Sunday as a day of worship associated with the church, but Jewish tradition though then of Sabbath-Saturday as a day of rest associated with justice.

The idea of sacred days set aside for divine worship, communal celebration, and special festival is utterly ordinary and completely common to both pagan and Jewish tradition. But the idea that every seventh day must be set aside for sacred rest is distinctively and uniquely Jewish. It derives from the rest of God as completion and climax of creation. It is not due to any human designation and is therefore beyond human control. But that rest places equality, egalitarianism, equity, and especially stasis as a divine and therefore human ideal. That ideal is not the activity that establishes oppression but the rest that establishes egalitarianism.

The Sabbath Day is mentioned in the Covenant Code and again in Deuteronomy but not within the Deuteronomic Code itself. Watch the results and thereby infer the reasons for that day of Sabbath rest.

Six days you shall do your work, but on the seventh day you shall rest, so that your ox and your donkey may have relief, and your homeborn slave and the resident alien may be refreshed (Exodus 23: 12).

Observe the sabbath day and keep it holy, as the Lord your God commanded you. Six days you

shall labor and do all your work. But the seventh day is a sabbath to the Lord your God; you shall not do any work - you, or your son or your daughter, or your male or female slave, or your ox or your donkey, or any of your livestock, or the resident alien in your towns, so that your male and female slave may rest as well as you. Remember that you were a slave in the land of Egypt, and the Lord your God brought you out from there with a mighty hand and an outstretched arm; therefore the Lord your God commanded you to keep the sabbath day (Deuteronomy 5: 12-15).

The Sabbath Day represents a temporary stay of inequality, a day of rest for everyone alike, for animals and humans, for slaves and owners, for children and adults. Why? Because that is how God sees the world.

The Sabbath Year is to years as the Sabbath Day is to days. Every seventh year is also special. It represents another stay against inequality. Notice, once again, how its reason is formulated in that earliest Covenant Code.

For six years you shall sow your land and gather in its yield; but the seventh year you shall let it rest and lie fallow, so that the poor of your people may eat; and what they leave the wild animals may eat. You shall do the same with your vineyard, and with your olive orchard (Exodus 23: 10-11).

Leaving land periodically fallow to have minerals replenished by animal pasturing and organic manuring is not particularly unusual. But what exactly is imagined in that law? Leon Epszstein suggests that the land

could not have been left fallow. It was cultivated, but once the harvest was reaped, it was not taken in; the corn was left spread on the ground to be there for those who needed it... it is improbable that this measure was applied to all Israel at the same time; it is more probable that each farmer adopted the measure at regular intervals in rotation (Epszstein 1986: 132).

Norman Habel claims, to the contrary, that "the land sabbath, unlike the fallow law, applies to all arable land during the sabbath year; every seven years all agriculture is to cease in the land" (Habel: 1995: 103). That seems a more correct reading of the law especially since Josephus records the following decree of Julius Caesar in 47 B.C. concerning taxes from the Jewish homeland:

Gaius Caesar, Imperator for the second time, has ruled that they shall pay a tax for the city of Jerusalem, Joppa excluded [included?], every year except in the seventh year, which they call the sabbatical year, because at that time they neither take fruit from the trees nor do they sow (Jewish Antiquities 14: 202).

In any case, I leave aside exactly how the Sabbath Year was done but emphasize the reason given for why it should be done. Cereal, olives, and grapes belonged, as it were, not just to their owners but to the indigent poor and even the wild beasts. The land belongs to God and therefore fundamentally to all residents alike.

The formulation of Sabbath Year rest in the Holiness Code is even more striking. It repeats what was said in the Covenant Code but adds and emphasizes something else in the first place. The land itself deserves a rest. This is not a question of human fallowing but of divine hallowing.

When you enter the land that I am giving you, the land shall observe a sabbath for the Lord. Six years you shall sow your field, and six years you shall prune your vineyard, and gather in their yield; but in the seventh year there shall be a sabbath of complete rest for the land, a sabbath for the Lord: you shall not sow your field or prune your vineyard. You shall not reap the aftergrowth of your harvest or gather the grapes of your unpruned vine: it shall be a year of complete rest for the land. You may eat what the land yields during its sabbath -- you, your male and female slaves, your hired and your bound labourers who live with you; for your livestock also, and for the wild animals in your land all its yield shall be for food (Leviticus 25: 2b-7).

Rest puts everything, even the land itself, back in a state of stasis, equity, equality. There is one interesting corollary to that emphasis. The poor have rights not just to alms or handouts but to the land and its produce. Here is another example from the book of Deuteronomy, outside the code section proper. It is also in the Holiness Code.

When you reap your harvest in your field and forget a sheaf in the field, you shall not go back to get it; it shall be left for the alien, the orphan, and the widow, so that the Lord your God may bless you in all your undertakings. When you beat your olive trees, do not strip what is left; it shall be for the alien, the orphan, and the widow. When you gather the grapes of your vineyard, do not glean what is left; it shall be for the alien, the orphan, and the widow (Deuteronomy 24: 19-21).

When you reap the harvest of your land, you shall not reap to the very edges of your field, or gather the gleanings of your harvest. You shall not strip your vineyard bare, or gather the fallen grapes of your vineyard; you shall leave them for the poor and the alien: I am the Lord your God (Leviticus 19: 9-10).

The untouched corner, the dropped produce, and the seventh year yield belong to the poor by right. In the words of Leon Epsztein, the Holiness Code offers the poor "a chance of sharing in the very act of production" (Epsztein 1986: 113), not just in the act of consumption. They get rights and share not just alms and handout.

With all of that as background, I return now to remission of debt as a mandated part of the Sabbath Year program and it is immediately clear why it was so associated. Debt creates inequality: it increases the haves over the have-nots; it helps the rich get richer and the poor get poorer. The Deuteronomic Code took the idea of the Seventh Year rest and, in a somewhat extraordinary move, applied it to debt. Remitting debt followed the same pattern as forbidding interest. It did not apply to the foreign merchant from whom, since he demanded interest of you, you could demand interest in return. It was not present in the Covenant Code but was invented by the Deuteronomic Code as part of the Sabbath Year liberation.

Every seventh year you shall grant a remission of debts. And this is the manner of the remission: every creditor shall remit the claim that is held against a neighbor, not exacting it of a neighbor who is a member of the community, because the Lord's remission has been proclaimed... If there is among you anyone in need, a member of your community in any of your towns within the land that the Lord your God is giving you, do not be hard-hearted or tight-fisted toward your needy neighbor. You should rather open your hand, willingly lending enough to meet the need, whatever it may be. Be careful that you do not entertain a mean thought, thinking, "The seventh year, the year of remission, is near", and therefore view your needy neighbor with hostility and give nothing; your neighbor might cry to the Lord against you, and you would incur guilt. Give liberally and be ungrudging when you do so, for on this account the Lord your God will bless you in all your work and in all that you undertake. Since there will never cease to be some in need on the earth, I therefore command you, "Open your hand to the poor and needy neighbor in your land" (Deuteronomy 15: 1-2, 7-11).

I leave aside, once again, how that was all arranged or even if it was ever applied in practice. Martin Goodman, however, has pointed to evidence that it was applied in the first century. He cites the institution of the *prosbol* which was connected to Hillel in that century. This was "a public declaration before a court by a man seeking a loan that he would accept his legal duty to repay the money even after the advent of the Sabbatical Year". There also seems to be reference to the Sabbatical Year "within one of the loan agreements of the early second century A.D. found in the Judaeen desert". In any case, once again, I emphasize the legal ideal whatever the actual practice.

### **Liberating Enslavement**

The subject is still debt in particular and not just slavery in general. Individuals or families could sell themselves into slavery or be enslaved by their creditors when debt became too desperate. We are, in other words, still talking about indebtedness but now at an extreme. Freedom of slaves was ordained for the Sabbath Year in the Covenant Code. A difference was made between male and female enslavement because the female as concubine required special protection.

When you buy a male Hebrew slave, he shall serve six years, but in the seventh he shall go out a free person, without debt... When a man sells his daughter as a slave, she shall not go out as the male slaves do. If she does not please her master, who designated her for himself, then he shall let her be redeemed; he shall have no right to sell her to a foreign people, since he has dealt

unfairly with her. If he designates her for his son, he shall deal with her as with a daughter. If he takes another wife to himself, he shall not diminish the food, clothing, or marital rights of the first wife. And if he does not do these three things for her, she shall go out without debt, without payment of money (Exodus 21: 2, 7-11).

No such distinction is made in the Deuteronomic Code which imagines release for slaves of either gender in the Sabbatical Year. But this code also ordains forms of severance payment for the released slave and warns against stinginess:

If a member of your community, whether a Hebrew man or a Hebrew woman, is sold to you and works for you six years, in the seventh year you shall set that person free. And when you send a male slave out from you a free person, you shall not send him out empty-handed. Provide liberally out of your flock, your threshing floor, and your wine press, thus giving to him some of the bounty with which the Lord your God has blessed you... Do not consider it a hardship when you send them out from you free persons, because for six years they have given you services worth the wages of hired laborers; and the Lord your God will bless you in all that you do (Deuteronomy 15: 12-15, 18).

That phrase "male slave" is simply "him" in Hebrew and should be taken inclusively to include male or female.

### **Reversing Dispossession**

We are still talking about indebtedness as it creates another desperate situation, not enslavement but dispossession: the loss of that land which was the ultimate guarantee for loans. The Holiness Code established something which is as special to it as the remission of debts is to the Deuteronomic Code. It ordains a Sabbath of Sabbath Years, a Super-Sabbath, a special Jubilee Year in the fiftieth year after seven sets of seven years.

You shall count off seven weeks of years, seven times seven years, so that the period of seven weeks of years gives forty-nine years. Then you shall have the trumpet sounded loud; on the tenth day of the seventh month -- on the day of atonement -- you shall have the trumpet sounded throughout all your land. And you shall hallow the fiftieth year and you shall proclaim liberty [*deror*] throughout the land to all its inhabitants. It shall be a jubilee for you: you shall return, every one of you, to your property and every one of you to your family. That fiftieth year shall be a jubilee for you: you shall not sow, or reap the aftergrowth, or harvest the unpruned vines. For it is a jubilee; it shall be holy to you: you shall eat only what the field itself produces. In this year of jubilee you shall return, every one of you, to your property... The land shall not be sold in perpetuity, for the land is mine; with me you are but aliens and tenants (Leviticus 25: 8-13, 23).

The idea of a proclaiming liberation is not at all unique to Israel. It fits into the Ancient Near Eastern background. As Moshe Weinfeld noted, the announcement of "liberation (*andura [mu] ru*) during the Neo-Assyrian period entailed the return of exiles to their homes, the restoration of towns and temples, the release of prisoners, etc. In Egypt, as well, 'release' was expressed in the liberation of convicts, rebels and various other guilty parties, and in particular in the return of exiles to their homes" (Weinfeld 1995:12). But, of course, there is as always a striking difference with Israel. In his recent study of the Jubilee Year, Jeffrey Fager comments that

kings often proclaimed a 'release' that included the manumission of slaves, the cancellation of debts and the return of lost land. How often or with what regularity such edicts were proclaimed is still unknown, and there is no evidence that they occurred with the automatic regularity called for by the biblical jubilee (Fager 1993: 25).

But what is especially important for the biblical ideology is that last sentence in Leviticus 25: 13, "The land shall not be sold in perpetuity, for the land is mine; with me you are but aliens and tenants". This sets Israel apart from the liberation practices of either Mesopotamia or Egypt. As always, these stand or fall together: God, Covenant, Law, People, Land, and a ceaseless pull towards equality resulting at least in a ceaseless pull against increasing inequality. There are, however, two major questions about that text.

First, what was the purpose of the Jubilee Year? And notice, by the way, that it started on the Day of Atonement. Here, at least, the answer is quite clear. From Leon Epsztein:

in order to restrict the creation of latifundia, [that is] to prevent the concentration of rural properties (Epsztein 1986: 133).

From Norman Habel:

the policy provided a mechanism for deterring in the short term and preventing in the long term land monopolies of latifundialization, the process of land accumulation in the hands of a few landowners to the detriment of peasant farmers (Habel 1995: 105).

From Jeffrey Fager:

it attempted to restrict the latifundism which was prevalent in the ancient Near East in order to keep the means of production evenly distributed among independent families (Fager 1993: 88).

Or, as Isaiah 5:8 said, it was intended to defeat "you who join house to house, who add field to field, until there is room for no one but you, and you are left to live alone in the midst of the land!" It wanted to stop the transformation of multiple peasant smallholdings into single large landownerships, to deter the eradication of the family farm and the creation and extension of latifundism or agribusiness. That, of course, put divine tradition on a collision course with rural commercialization.

Second, was the Jubilee Year ever implemented? This, however, is a more delicate and difficult question than the preceding one. One could answer in the negative and still miss the entire point. Leon Epsztein, for example, says that "It is not certain that the jubilee was ever applied in Israel" (Epsztein 1986: 134). Both Norman Habel and Jeffrey Fager agree but with much more nuanced responses. Norman Habel concludes that

There is no clear evidence that the jubilee program was ever implemented on a regular basis according to the agenda outlined in Leviticus 25. This lack of historical evidence, however, does not negate the significance of the jubilee as an ideological symbol of a radical land reform program promoting the rights of the peasant (Habel 1995: 107-8).

Fager makes a similar point and he emphasizes it repeatedly. He rejects the choice of either actual practice or utopian ideal and insists that the jubilee was described as something that could be done in this world even if it never was.

The jubilee can be seen not so much as a utopian concept of another world (even though its regulations may be economically impractical), but as a statement that proper distribution of land can be attained and maintained within the confines of this world... The priests did not spiritualize the law so much that it became a mere abstraction; land was to be distributed equally among the people and maintained in that way. However, the jubilee was seen as a catalyst to that process, not the process itself; it was a signal to the people, leading them towards a proper relationship with the land... The jubilee as we now have it occupies a 'middle ground' between practical regulation for everyday existence and idealistic vision of a world that does not exist (Fager 1993: 80-1, 111, 115).

If the priests who created that legislation wanted merely to set up a utopian ideal, they would hardly have made the jubilee occur only every fifty years. For utopia, why not every seven years? And neither would they have made this striking qualification:

If anyone sells a dwelling house in a walled city, it may be redeemed until a year has elapsed since its sale; the right of redemption shall be one year. If it is not redeemed before a full year has elapsed, a house that is in a walled city shall pass in perpetuity to the purchaser, throughout the generations; it shall not be released in the jubilee. But houses in villages that have no walls around them shall be classed as open country; they may be redeemed, and they shall be released in the jubilee (Leviticus 25: 29-31).

The point is clear. We are protecting peasant farms and rural villages. You may do as you please with the commercialized real estate of walled cities. The Jubilee Year may be utopian ideal but it is so formulated as to be actually possible. Josephus, in fact, records how to do it with three examples which have no biblical basis:

[When the Jubilee Year arrives,] the vendor and the purchaser of the site meet together and reckon up the products of the site and the outgoings expended upon it. Then if the proceeds are found to exceed the outgoings, the vendor recovers the estate; but if the expenditures preponderate, he must pay a sufficient sum to cover the deficit or forfeit the property; if, lastly, the figures for revenue and expenditure are equal, the legislator restores the land to its former possessors (Jewish Antiquities 3: 283-84).

That, too, may all be dreaming. But it is dreaming beyond the biblical text and it at least imagines how contracts might be handled at the Jubilee. It could be done. It should be done. So what happens when it is not done?

## Conclusion

In those preceding case-laws there were no sweeping manifestos against debt or even against slavery. But the logic is always very clear: the growth of inequality must be curtailed and reversed. What are the ideological or mythological bases for that logic? There are two constitutive or covenantal bases for all those injunctions and I mention them here in a necessarily summary conclusion.

First, the land belonged to a God who distributed it fairly and justly among the families, clans, and tribes of Israel after the Exodus from Egypt. In one instance above we saw that basis made explicit: "The land shall not be sold in perpetuity, for the land is mine; with me you are but aliens and tenants" (Leviticus 25: 23). One's ancestral inheritance from God was never to be permanently alienated. Deuteronomy, for example, warns against any change of ancient boundary lines or markers:

You must not move your neighbour's boundary marker, set up by former generations, on the property that will be allotted to you in the land that the Lord your God is giving you to possess (Deuteronomy 19: 14).

Cursed be anyone who moves a neighbour's boundary marker." All the people shall say, "Amen!" (Deuteronomy 27: 17).

One's land was not a commodity available for a fair exchange or a good price. That is emphasized in one of the best-known stories in that tradition, the tale of Naboth's vineyard:

[King] Ahab said to Naboth, "Give me your vineyard, so that I may have it for a vegetable garden, because it is near my house; I will give you a better vineyard for it; or, if it seems good to you, I will give you its value in money". But Naboth said to Ahab, "The Lord forbid that I should give you my ancestral inheritance" (1 Kings 21: 2-3).

Ahab's request seems perfectly reasonable and extremely courteous. He threatens neither eminent domain nor royal privilege. He simply requests an ordinary business deal. Naboth refuses even a fair and equal exchange lest it disturb the divine justice of the land's original distribution. Ahab's pagan wife, Jezebel, comes from a very different and more business-as-usual tradition. She accuses Naboth of cursing the king (an accurate indictment, from her point of view), he is executed, and his vineyard reverts to the monarchy. What clashes here is not an all-good Naboth and an all-bad Jezebel but two radically opposed visions of distributive justice, that of Yahweh, the Jewish God of Israel, and that of Baal, the pagan God of Canaan.

In a second instance, there is the serenely mythological scene in Psalm 82. Yahweh calls a divine council of all the gods in heaven and accuses them of malpractice in office. God has taken his place in the divine council; in the midst of the gods he holds judgment:

How long will you judge unjustly and show partiality to the wicked? Give justice to the weak and the orphan; maintain the right of the lowly and the destitute.

Rescue the weak and the needy; deliver them from the hand of the wicked.

The problem is not that such systemic injustice means a less kind, less gentle world. It means far, far more. It means that "all the foundations of the earth are shaken". Therefore, Yahweh decrees, the pagan gods are reduced to the rank of mortal princes and Yahweh, the God of justice, takes over control of "all the nations". And that leaves this final question. Is distributive justice only a decree or decision of Yahweh, something that might have been done differently but just was not? Or is distributive justice a necessary and inevitable revelation of the character, nature, or being of Yahweh?

The Law of God is not what God legislates but what God is, just as the Law of Gravity is not what gravity legislates but what gravity is.

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