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ARTICLES

THE POWER OF MERCY IN BIBLICAL LAW

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ABSTRACT

Biblical law is a complex concept that contains several distinct legal currents. In an effort to explore the interplay of these currents, this article first focuses on the overlap between the biblical law of God and the strictly legal regulations of the Old Testament. It then unpacks the principles and inner rationalities of what is termed "archaic law" and shows that this law is connected with regulations that could be termed "mercy laws" and with cultic regulations. By extrapolating the normative dynamics between these three codes of the law, the article exposes the enormous moral, religious, and legal influence of biblical law in general and of the mercy code in particular. In this way, the article reveals a backbone of our occidental culture. The interdependence of justice and mercy drives societies and cultures to search for (humane) justice in a deep and truth-bound way and, further, to routinize social care and welfare beyond the boundaries of families and tribal relations. The article finally illuminates both commonalities and differences between mercy and a deep and encompassing understanding of love.

KEYWORDS: biblical law, love, mercy, morality, social welfare

The first part of this article deals with the complex nature of what is called "biblical law." It attempts to access the vast normative realm of biblical law by first focusing on its clear intersection with juridical law. It concentrates on the connection between law and religion, as it was paradigmatically shaped almost three thousand years ago. The second part of the article concerns the relationship between the juridical and the mercy codes of law and seeks to clarify what biblical law codes mean by "mercy." The third part addresses the normative shaping power of mercy with regard both to biblical law and to any legal and moral concept of justice. The fourth part considers the relationship between mercy and love. By examining their similarities and differences, the article establishes a subtle and nuanced understanding of love that moves beyond the familiar notions of *eros*, *agape*, and *philia*. Thus the article develops a systematic-theological and interdisciplinary perspective on biblical law traditions.

WHAT IS "BIBLICAL LAW"?

Speaking of "law" in the context of biblical studies is no less complicated than using the term in legal studies or in the natural sciences. A multiyear, international, and interdisciplinary cooperative project, *Concepts of Law in Science, Legal Studies, and Theology*, has taught us that we must explore different, complex landscapes if we want to grasp commonalities and differences among

perspectives on the law across these domains. We should not look for a simple integrating concept.[1] To be sure, biblical law can shed much light on legal, moral, and theological thinking. But it does not do so by illuminating any simple idea or singular clue. Rather, it requires that we first respect its complexity—and, as scholars, fear its fogginess—in order to mine its insights.

In some Christian communities, the entirety of the Old Testament is termed "the Law." Some theologians reduce the complex normativity of biblical law to the idea of a divine demand or imperative. In some strains of Jewish thought, the five books of the Torah—the five books of Moses in the Hebrew Bible—are called "the Law." It is here, within the Torah, that we find three substantial legal corpora: (1) the book of the covenant,[2] (2) the law in Deuteronomy,[3] and (3) the Priestly law.[4] Moreover, in the Torah, we find two versions of the Ten Commandments.[5] In systematic and practical theology, as well as in many catechisms and in Christian piety, the Ten Commandments have often been regarded, collectively, as the law. Finally, the Psalms and the Wisdom traditions contain texts that have also been associated with the law. So what, then, is the biblical law? A whole canonical book that developed over a millennium? Selected texts from the five books of Moses or, perhaps, from the Hebrew Bible? Or the so-called Ten Words, the Ten Commandments, which can be regarded as a great tutorial in basic religious and communal ethics?[6]

The Swiss Old Testament scholar Konrad Schmid has rightly observed that, on all these levels, the Hebrew Bible defines the term "law" (Torah) as "the one and complete, normative, literally codified will of God . . . the one and only way to a successful life and an adequate relationship to God."[7] But what exactly is it that God wills? And how can we identify a reliable way of leading a successful life and establishing a right relationship to God through the law? How can we avoid the problem of "the law" and "God's will" becoming great ciphers that bear different connotations for different people in different contexts—but leave us, finally, without any clear and common legal, moral, religious, and scholarly understanding?

To address these issues, it is helpful to concentrate on the biblical law code that undoubtedly overlaps, in part, with those secular law codes treating regular criminal law and tort law. The book of the covenant in Exodus 20–23, which many scholars date to the time of 800 or 900 BCE,[8] contains a clear search for legal justice that is connected to broader normative and religious concerns. This law code offers brilliant insights into the interconnection of religious, legal, and moral normativity and thinking, insights that inspire and guide a humanitarian ethos in many parts of the world to this day.

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1 Cf. Michael Welker and Gregor Etzelmüller, eds., *Concepts of Law in Science, Legal Studies, and Theology* (Tübingen: Mohr Siebeck, 2013).

2 Exodus 20:22–23:33.

3 Deuteronomy 4–26, 29–30.

4 Exodus 25–31; Leviticus 1–7, 11–26; Numbers 1–3.

5 Exodus 20:2–17; Deuteronomy 5:6–21.

6 The interconnections among the Ten Commandments and the other biblical law codes are brilliantly explored in Patrick D. Miller, *The Ten Commandments: Resources for the Use of Scripture in the Church* (Louisville: Westminster John Knox, 2009).

7 Konrad Schmid, "The Genesis of Normativity in Biblical Law," in Welker and Etzelmüller, *Concepts of Law*, 119–36.

8 In July 2008, an ostracon was discovered at Khirbet Qeiyafa in an excavation conducted by Yosef Garfinkel from Hebrew University. The ostracon, which clearly dates from around 900, seems to offer insights that are very similar to those of the book of the covenant. Cf. Reinhard Achenbach, "The Protection of *Personae Miserae* in Ancient Israelite Law and Wisdom and in the Ostracon from Khirbet Qeiyafa," *Semitica* 54 (2012): 93–125. I am grateful to Andreas Schüle for information from this frontier of research.

At its core, the book of the covenant presents a collection of juridical regulations that can be termed "archaic law."[9] These regulations serve the administration of justice and clearly assume and protect a community of equals. In the face of a conflict that violates this equality, the law seeks to regulate the restoration of equality via the public administration of justice "in the gate." The statutes themselves are composed of two parts: an opening clause with an often-detailed description of the *actus reus*, or the specific offense, and a concluding clause that identifies the appropriate legal consequence for the offense. These clauses are linked in a conditional "if . . . then" formulation, as demonstrated in the following examples:

> Exodus 21:33: "*If* anyone uncovers a pit or digs one and fails to cover it and an ox or a donkey falls into it, *then* the one who opened the pit must pay . . . "
>
> Exodus 21:35: "*If* anyone's bull injures someone else's bull and it dies, the two parties are to sell the live one and divide both the money and the dead animal equally." (emphasis added)

Many scholars agree that this so-called "casuistic law[10] . . . originally [presented] the story of a legal conflict and its settlement."[11] This would mean that through a process of abstraction, a repeatedly tested experience of restitution that has stood the test of time, the conflict and its settlement had been elevated to the level of a legal, juridical statute. Yet in addition to results of processes of endorsement, in these early laws we also find a societal and legal interest in the appropriate calibration of the various laws and their consistency and coherence in relation to other regulations. Thus, for example, in cases dealing with the theft of cattle, a distinction is made between cases in which the cattle are found in the thief's possession—"he shall pay double"[12]—and those in which the cattle have already been disposed of, either through sale to third parties or through consumption of the animal—"the thief shall pay five oxen for an ox, four sheep for a sheep."[13] A distinction is also made between murder and manslaughter, with each crime carrying distinct penalties.[14]

Several important legal ideas or principles can be identified in this so-called archaic legal system.[15] These principles become particularly clear when we look at what is known as the *lex talionis*. In cases involving particular injuries sustained in physical conflict, the legal adjudicator is advised: "If any harm follows, then you shall give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, stripe for stripe."[16] The often-quoted phrase "an eye for an eye, a tooth for a tooth," has regularly been misunderstood as an expression of a law of retribution, fed by a subjective sense of injustice, whose demands for retribution can never be satisfied and whose formulation condones and promotes revenge and retaliation.

9 Exodus 21:12–22:19.

10 For discussion of the term "casuistic law," see Albrecht Alt, "Die Ursprünge des israelitischen Rechts," in *Zur Geschichte des Volkes Israel. Eine Auswahl aus den "Kleinen Schriften,"* ed. Siegfried Herrmann (München: Beck, 1979), 203–57; Ralf Rothenbusch, *Die kasuistische Rechtssammlung im 'Bundesbuch' (Ex 21,2–22.18–22,16) und ihr literarischer Kontext im Licht altorientalischer Parallelen* (Münster: Ugarit, 2000), 408–73.

11 Hans Jochen Boecker, *Recht und Gesetz im Alten Testament und im Alten Orient*, 2nd ed. (Neukirchen-Vluyn: Neukirchener, 1984), 132–33.

12 Exodus 22:3.

13 Exodus 22:1.

14 Exodus 21:12–14.

15 I am borrowing the expression "legal ideas or principles" from Josef Esser, *Grundsatz und Norm in der richterlichen Fortbildung des Privatrechts*, 2nd ed. (Tübingen: Mohr Siebeck, 1964).

16 Exodus 21:23–25.

Understood in this way, it promotes the escalation of feuds and permanent states of warfare. In contrast, the *lex talionis* aims precisely at *limiting* the dynamics and escalation of revenge and retaliation. Thus, one might rephrase the expression as follows: "Only *one* life for a life, only *one* eye for an eye, only *one* tooth for a tooth."[17] In this way, the phrase serves as an important step toward the establishment of humane solutions such as compensatory payments.[18]

Strategies for the limitation of conflict, however, have not yet been formalized as legal statute. Often, brutal processes of intimidation that compel parties to resign themselves to a given state of injustice effectively limit conflict, and we cannot simply assume from an appearance of public calm that legal regulations have been successful. Without precise criteria, it is impossible to determine whether a state of calm is the result of low levels of agitation or of resignation to oppression. Finally, even some form of active public participation in the regulation of conflict is far from being a sufficient criterion for law. A public that settles cases of conflict on the basis of remembered, analogous precedents, or in accordance with long-held customs, has yet to formulate and execute a distinct law. The abstracting power of a remembered or customary regulation may well give the impression that it has attained the status of law, but it still remains at the level of a *convention*, a custom.[19]

The status of law is only reached when the (abstractly) thematized conflict and its consequences are formulated in such a way as to yield criteria that are applicable to other, parallel conflicts and consequences.[20] Thus, to cite our earlier example, such criteria could apply to not only the theft of cattle in its various forms, but also the theft of grain or even human beings. Further, such criteria could be used to consider cases of bodily injury and to regulate them according to the principles of limiting conflict, preventing escalation, restitution, or, if restitution is not possible, equal damage. At this second level of abstraction, coherence is maintained across a variety of contexts through principles that connect a defined *actus reus* with a specific legal consequence. These regulative legal ideas or principles can be applied to the definition and understanding of a given legal case and to the formulation of a measured, limiting penalty.

17 Boecker, *Recht und Gesetz*, 152–53.

18 Cf. Konrad Schmid, "The Monetarization and Demonetarization of the Human Body: The Case of Compensatory Payments for Bodily Injuries and Homicide in Ancient Near Eastern and Ancient Israelite Law Books," in *Money as God? The Monetization of the Market and the Impact on Religion, Politics, Law and Ethics*, eds. Jürgen von Hagen and Michael Welker (Cambridge: Cambridge University Press, forthcoming June 2014); Eckart Otto, "Zur Geschichte des Talions im Alten Orient und Israel," in *Ernten, was man sät. Festschrift Kurt Koch*, eds. Dwight Roger Daniels, Uwe Glessmer, and Martin Rösel (Neukirchen-Vluyn: Neukirchener, 1991), 101–30; ibid., *Körperverletzungen in den Keilschriftrechten und im Alten Testament: Studien zum Rechtstransfer im Alten Orient* (Kevelaer: Butzon & Bercker, 1991).

19 The relevance of these issues today (from a systematic perspective) can be seen in the discussion between Armin von Bogdandy and Robert Post on the significant (or problematic) role of academic jurisprudence in the co-formulation of the law in the legal system over and against an ideal dominated by case-law "conversations between the (Supreme) Court and the people and their representatives." Cf. Armin von Bogdandy, "The Past and Promise of Doctrinal Constructivism: A Strategy for Responding to the Challenges Facing Constitutional Scholarship in Europe," *International Journal of Constitutional Law* 7, no. 3 (2009): 364–400; Robert C. Post, "Constitutional Scholarship in the United States," *International Journal of Constitutional Law* 7, no. 3 (2009): 416–23.

20 This systematic step and what follows are not only formative for archaic law; they are also the principal steps in the generation of any law. For an example, see Matthias Jestaedt's subtle reconstruction of the processes of "decontextualization, generating consistency, [and] (re)concretization," in his article, "Wissenschaftliches Recht—Rechtsdogmatik als gemeinsames Kommunikationsformat von Rechtswissenschaft und Rechtspraxis," in *Was weiß Dogmatik? Was leistet und wie steuert die Dogmatik des Öffentlichen Rechts?*, eds. Gregor Kirchhof, Stefan Magen, and Karsten Schneider (Tübingen: Mohr Siebeck, 2012): 117–37, 125–26.

In the cases just examined, the process of equalizing restitution or application of equal damage (as understood through the casuistic law and the *lex talionis*) functions as a constraint. Cases are presented through a need for restitution or balance; they are closed once that equalizing restitution or application of equal harm has been accomplished. The entire case is understood, defined, and limited in light of this process of restitution or balancing harm. Trying to seek compensation for the awarded restitution or the experienced harm is out of the question. A case, once closed through an act of restitution or punishment, cannot be further pursued. The early stages of the law, as presented in the Old Testament, respond to individual intrusions that endanger another party's expectation of security in the normal course of life. The intention of the law is to remedy conflicts thus defined by restoring a pre-conflict state of affairs or, when this is impossible, by limiting the conflict through an equalizing restitution or, in the worst cases, through an application of equal damage to the offending side.

Here, we stand before one of the most impressive achievements of early legal thought and, in fact, of legal thought in general: A legal standardization of concrete conflicts that makes their connections and consequences largely foreseeable. Due to the abstraction and objectification of the law, cases can (in principle) be treated in the same way as previous conflicts. When conflicts are understood legally, they can be identified on the basis of a preceding problem whose resolution is not only well known but also thoroughly established; conflicts are therefore resolvable through comprehensibility and diagnosis. A given conflict is not a matter of incomparable individuality or of incomprehensible intricacy; rather, it is an event that can be identified as something known in the past and reproducible in the present, an event whose previous existence makes its present continuation and future conclusion foreseeable. The law and its execution thus generate a "security of expectation."[21] Cases and problems standardized at the level of the law thus become resolvable problems precisely because of this legal process of comprehension. With these problems, we are dealing with processes of experience and of discovery, the results of which cannot simply be attributed to the "determinations of authority or habit." Rather, without some process aimed at the "discovery of the nature of things,"[22] the development of the law would be a process of normative delusion and confusion in which long-term progression and retrogression, development and degeneration would become indistinguishable. Yet in the process of discovery, the power of mercy plays a crucial role.

JUSTICE AND MERCY IN BIBLICAL LAW

The legal statutes at the core of the book of the covenant are preceded by the so-called "slave laws."[23] The primary expression of this law reads: "If you buy a Hebrew servant, he is to serve you for six years. But in the seventh year, he shall go free, without paying anything."[24] Although this law presupposes a process of restitution, it differs from the casuistic laws of the

21 Cf. Michael Welker, "Security of Expectations. Reformulating the Theology of Law and Gospel," *Journal of Religion* 66 (1986): 237–60; Niklas Luhmann, *Law as a Social System* (Oxford: Oxford University Press, 2004).

22 This was a crucial object of discussion in the multiyear, international, and interdisciplinary research project "Concepts of Law in Science, Legal Studies, and Theology." See esp. John Polkinghorne, Michael Welker, and John Witte Jr., introductions to *Concepts of Law*, eds. Welker and Etzelmüller, 7–10, 115–18, 227–38.

23 Exodus 21:1–11.

24 Exodus 21:2.

book of the covenant in that the latter open with the description of a pressing conflict and close with the pronouncement of a corresponding legal compensation and punishment.[25]

Since the book of the covenant is framed at the beginning and end by cultic regulations—that is, with laws concerning the worship of God—one wonders whether the slave laws might constitute a second bracketing frame around the core set of juridical regulations examined previously. If so, then toward the end of the book of the covenant, but before the closing set of cultic laws, we would expect to find an equivalent collection of laws that are similarly distinct from both the standard juridical statutes and the cultic directives. This is precisely the case in Exodus 22:20–23:12, where a latter set of laws deals with the protection of foreigners,[26] widows and orphans,[27] the poor,[28] and those who are ostracized, vulnerable, and powerless.[29] This collection of laws even regulates behavior toward opponents and enemies.[30]

On the one hand, these laws, which constitute what I have termed the "mercy code" of the law and are often formulated as "apodictic statements,"[31] are clearly distinguishable from the juridical and cultic codes; yet at times, they are presented in a mixed form, connected and interwoven with the two other legal codes. For example, cultic regulations regarding the Sabbath day and Sabbath year also expressly detail benefits for slaves and foreigners. Fundamental to the mercy code is the demand that the strong defer to the acutely or chronically weak, or that they actively engage with them for the latter's benefit. Although the laws often have the character of a moral appeal, they do not simply envision the random performance of compassion by the strong. By making the protection of the weak a focus of the law, the mercy code ensures that the practice of mercy is not dependent on the arbitrary or capricious inclinations of the stronger individual. The mercy code makes the act of compassion more than a moral virtue and elevates it above the level of a moral duty. Here, too, there should be security of expectation with regard to practiced mercy. The pressures of expectation are applied to one's behavior toward the acutely and chronically weak, and these pressures have as their goal the equalization of legal relationships.

These laws of compassion are accompanied by the discovery of new, formative opportunities in the evolution of the law. This is already clear in the primary version of the slave laws just examined: "If you buy a Hebrew servant, he is to serve you for six years. But in the seventh year, he shall go free, without paying anything."[32] Here, the law formally elevates slavery (a fact of life in Ancient Near Eastern societies and an integral part of their economic and social order)[33] to the status of a conflict in need of resolution. Thus, the law does not simply focus on overcoming acute and short-term legal conflicts, but instead focuses on long-term processes of transformation that reshape unequal relationships into equal relationships. For Hebrew slaves, this bears enormous consequences. It means that they are to be treated as potentially free persons, an ultimate status dependent not on the caprice of their owners but on the authority of the law. The consequences of this move can be found in a number of statutes. For example, Exodus 21:20 notes: "When a slave owner strikes a male or female slave with a rod so that the slave dies as a direct result, that slave's

25 Cf. Boecker, *Recht und Gesetz*, 135ff.
26 Exodus 22:21, 23:9.
27 Exodus 22:22ff.
28 Exodus 22:25ff, 23:6ff, 10off.
29 Exodus 23:1ff.
30 Exodus 23:4–5.
31 Alt, *Die Ursprünge des israelitischen Rechts*; Boecker, *Recht und Gesetz*, 166ff; Moshe Weinfeld, "The Origin of the Apodictic Law: An Overlooked Source," *Vetus Testamentum* 23 (1973): 63–75.
32 Exodus 21:2.
33 Cf. Catherine Hezser, *Jewish Slavery in Antiquity* (Oxford: Oxford University Press, 2005).

death must be avenged." By no means are slaves to be seen as exploitable "speaking tools" to be treated according to their owner's whim.[34]

THE NORMATIVE SHAPING POWER OF MERCY IN THE BIBLICAL LAW AND BEYOND

Mercy—is this not a surplus, a luxury in well-ordered and well-functioning societies? Should this term not be reserved for those rare cases known as "appeals for mercy," "pleas for clemency," or "clemency petitions"? We should be alert to the fact that the biblical and theological pairing of "justice and mercy" cannot always be easily introduced into secular contexts. As a rule, we appreciate ideas of love and compassion in person-to-person relations, but ideas of mercy seem to be outdated for many people, at least for many people in Europe today. "Mercy" belongs to a group of religious words that sound increasingly strange to many in contemporary society. This is certainly the case with respect to the language of "sin, sacrifice, [and] atonement,"[35] but even such notions as "covenant" and "mercy" are increasingly regarded as "strange talk." However, a new familiarity with the biblical law and its formative insights might help people in our time to overcome this loss of normative sensitivity and thinking.

What do the laws of mercy expect from human beings? They limit the duration of slavery and the potential of slave-owners to make use of the working power of the slave, not only after six years but also on the Sabbath. They normatively expect a voluntary renouncement of these powers once each week and after six years. The Deuteronomic law even expects the owner to "contribute generous provisions for the former servant's new life of freedom,"[36] though the law does not specify those provisions. It clearly prohibits the exploitation of slaves, widows, orphans, the poor, and strangers; however, it leaves the details of support and potential generosity open. The mercy code thus aims at what I have called "free and creative self-withdrawal in favor of others."[37] It guards against neglect or exploitation of the poor and the needy. And it encourages creative moral and practical benevolence, even in the determination of tithing amounts and social taxes. Free and creative self-withdrawal in favor of others leaves open a space for moral imagination and practical activity. But how can this activity find a place beside and in conjunction with juridical law, which aims at securing expectations in cases of legal conflict? In responding to this question, three answers reveal the power of mercy in biblical law.

First, the mercy code can draw from familiar experiences in family life. Each human being is—invariably in childhood, but also in facing illness, sadness, and the end of one's life—in need of the creative self-withdrawal of others in his or her favor. In these cases, we speak of a rule of family love. Thus, the behaviors and the experiences that the mercy code activates are by no means unfamiliar to human beings.

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34 Marcus Terentius Varro, *De Re Rustica* 1.17.

35 Cf. Sigrid Brandt and Marjorie Suchocki, *Sünde. Ein unverständlich gewordenes Thema*, 2nd ed. (Neukirchen-Vluyn: Neukirchener, 2005).

36 Deuteronomy 15:13–14; Richard Heirs, *Justice and Compassion in Biblical Law* (New York: Continuum, 2009), 208.

37 Michael Welker, *God the Spirit* (Minneapolis: Fortress Press, 1994), 18–23, 116–20. It is important to stress the creative move in favor of others, not just a withdrawal that leaves them alone. The mercy laws cultivate the expectation that those who are privileged will withdraw their own claims—even to the point of sacrificing their legal rights—for the benefit of those who are weak and in distress, and that they will turn this into creative action. The proactive dimension should not be overlooked.

Second, the biblical law moves these experiences and behaviors beyond the family realm and into the broad social realm. The social realm emerges in the third group of laws that surround the judicial laws and the mercy laws, namely the cultic laws. These laws regulate persons' worship of and right communal encounter with God. Family experiences, on the one hand, and religious experience, memory, and imagination, on the other, are connected in order to foster an ethos by which justice and mercy can flourish.

We know relatively little about the early cultic constitution of the public sphere. And yet the clues offered by the legal traditions help us to see that the cultic public ascribed to itself the status of a people and a nation that had been freed from slavery in Egypt by God's "mighty hand and outstretched arm."[38] The so-called motive clause of the law says, "[F]or you yourselves were once foreigners in Egypt." This clause and its expanded form, "[Y]ou yourselves know how it feels to be foreigners,"[39] can be found, with variations, not only in the book of the covenant, but also throughout the Old Testament's legal corpora.[40]

The behavior and self-understanding of this community "before God" is also defined by God's own historical interventions in the life of the community. These interventions give rise to historical experiences that mold the self-understanding of the community and their view of reality. God's interventions in the human sphere of life become the primary events of cultic communication. Yet at the same time, these experiences of God extend beyond the (possible) concrete experiences of the cultic public sphere. Even those who were never personally in Egypt allow themselves to be addressed in the manner of slaves who had been freed by God's hand. They allow themselves to be embedded in a network of public collective experience that transcends the realm of personally attainable experience. In this way, the paradigmatic public sphere of cultic communication transcends epochs.

But why was this double identity ("You were foreigners, yet now you are free") not simply discarded or abandoned? Why were these legal and moral impositions of the mercy code not rejected? Why did Israel not begrudge the attribution of such a wide-ranging historical identity and a life spread across broad horizons of time but, instead, joyfully accept it? How did "the law" come to serve as the bearer of paradigmatic memory?

Here, too, we are dealing with a "discovery" of great religious relevance and explanatory power. At each discrete point in time, people may be seen as incredibly unequal. Yet this perspective changes when we picture ourselves on an extended timeline and see both young and old, sick and weak, as not only with us, but also *in* us. The new perspective can foster a sensitivity to the fragility of *all* human life, which in turn promotes the co-evolution of the religious, legal, and compassionate moral codes that we encounter in the biblical law. With the motive clause, Israel expands this foundational experience of natural life to an historical dimension and transposes the sensibilities of familial solidarity into a historical, sociopolitical dimension.

Third, a set of no fewer than seven observations can summarize and fully unfold our appreciation of the power of mercy in biblical law, which reflects, above all, the mutual normative strengthening of the mercy code and the juridical code not only in the biblical context, but also in many cultures more generally:

1. With the slave law, the biblical mercy law institutes forms that are also important for the judicial sides of the law. The law is not only an instrument of short-term conflict resolution, but also a

38 Exodus 6:1–9.

39 Exodus 20:2, 22:21, 23:9.

40 Deuteronomy 4:34, 5:6, 15, 7:19, 11:7, 26:8; Leviticus 19:34, 26:13.

means of long-term social transformation and "legal steering." It awakens and binds individual and public attention in long-term memory and imagination.

2. The mercy law sustains values of social welfare, freedom, and equality. It serves an important political function and enables the juridical law to become "a moral teacher." This continues today, as Cathleen Kaveny has argued in her recent book, *Law's Virtues*.[41]
3. The mercy law not only shapes moral and political moods in formative ways, but it also draws from and recursively strengthens the family ethos. In biblical times, this ethos was clearly connected to patriarchal structures. The "merciful father" was at the center of attention in family life, political life, and religious communication. Even perspectives critical of the role of patriarchy in the shaping of normative expectations should appreciate that it replaces the king as the sole executor of mercy and of clemency appeals.
4. The mercy law also connects the religious orientation with clear legal and moral attempts to strive for justice and to care for the weak. With the religious perspectives, it opens broad historical horizons that extend memories and expectations beyond the six years of slavery. The just and righteous God will deal with human beings in time spans that reach far beyond the imaginations of human courts or of individual and communal moral memory.
5. The mercy law also has an enormous impact on individual personal identities. Human beings who are able to experience and exercise a free and creative self-withdrawal in favor of others move beyond the perspectives of self-sustenance and self-preservation. They move beyond what biblical traditions call a merely "fleshly existence." In the perspective of the biblical law, the slaves are potentially free persons, and all Israelites can see themselves in the wide spectrum of persons who had been slaves in Egypt and are now free. All Israelites can regard themselves as people of a great salvific history. They possess differentiated identities and can put themselves in the shoes or sandals of the poor and on the thrones of the rich and famous.
6. Directly impacting the juridical law, the mercy law strengthens and challenges the former's competence. On the one hand, no case can fall outside the purview of the law; no person, however weak, poor, and miserable, can fall beyond the reach of the law. On the other hand, the systematic orientation of the law toward compassion demands the continual refinement of the legal culture and its progression toward universalization.
7. Finally, the mercy code of the law helps us in dealing with a painful paradox that plagues all legal and moral evolution. We want to improve our juridical law, and we want to develop and cultivate our human morality. How can we take on this difficult yet necessary task of transforming and improving normative capacities without destroying their binding force in the process?[42] Juridical law and human morals need normative stability if they are to provide "security of expectations." Here, the mercy code has a balancing function: dynamism and stability are enabled when justice and mercy, law and compassion, are put into a relationship of creative tension and cooperation.

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41 Cathleen Kaveny, *Law's Virtues: Fostering Autonomy and Solidarity in American Society* (Washington, DC: Georgetown University Press, 2012). For a global perspective on religious human rights and human rights in general, see John Witte Jr. and Johan D. van der Vyver, eds., *Religious Human Rights in Global Perspective*, 2 vols. (The Hague: Martinus Nijhoff, 1996); John Witte Jr., introduction to *Christianity and Human Rights: An Introduction*, eds. John Witte Jr. and Frank S. Alexander (Cambridge: Cambridge University Press, 2010).

42 On the "function of religion," see Jan Assmann, Bernd Janowski, and Michael Welker, "Richten und Retten. Zur Aktualität der altorientalischen und biblischen Gerechtigkeitskonzeption," in *Gerechtigkeit. Richten und Retten in der abendländischen Tradition und ihren altorientalischen Ursprüngen* (München: Fink, 1998), 9–36.

MERCY AND LOVE

Mercy and love are neighboring terms, but they are not synonymous. Whereas mercy is the "free creative self-withdrawal in favor of the other or of others," love is the "joyful free creative self-withdrawal in favor of the other or of others." At first glance, with regard to love, this definition of self-withdrawal appears to be counterintuitive. Does a loving being not want to be as close as possible to the beloved person? Is it not the case that notions of unity, deep connectedness, and self-giving much more adequately define love than does the strange talk about self-withdrawal? But we must be subtle in our consideration of the matter. In love, we are not focusing on just any type of self-withdrawal. Loving self-withdrawal is joyful, free, and creative, and it is in favor of the beloved. But why do we talk of self-withdrawal at all? Here an especially important element of love comes into view, one that is often overlooked. This element is freedom in love. Love seeks a free union with and a free response from the beloved.

In a loving relationship, we not only respect the depths and potential richness of the other's personal identity; we also rejoice in sharing and discovering new dimensions of the beloved. Further, we rejoice in disclosing our life in its fullness in order to share it with the beloved to the maximum degree. With respect to the pain and suffering of the beloved, we passionately feel the other's disadvantages and lack of opportunities and strive for compensation and healing. The mathematician and philosopher Alfred North Whitehead captured this in his brilliant insight that love might be understood—on the basis of parent to child or between spouses—as a "self-devotion where the potentialities of the loved (object) are felt passionately as a claim that it finds itself in a friendly Universe. Such love is really an intense feeling as to how the harmony of the world should be realised in particular (persons and) objects."[43]

With this deep understanding of love, we see why romantic love can be regarded as the ideal of love, and why it can absorb all perspectives on love. Love wants to elicit free response. The ultimate joy of love is indeed a mutual igniting that is imagined and experienced in spiritual and erotic exchange and union. But this by no means covers the full spectrum of love. True love—and here one has to sing the praise of "covenantal love" over erotic love—true love endures "through thick and thin." It wants to elicit response and mutually igniting power, but it also survives through perseverance, faith, and hope in periods of no direct response.[44] This is the reason love is as "strong as death," as the Song of Songs (8:6) says.

This understanding of the power of love invites us to seek a deep sense of joy, clearly differentiated from mere excitement, fun, or pleasure. It gives a sense of the richness and depth of love. In Christian theology and faith, love is ultimately a gift of the Holy Spirit, which pours it into human hearts. But this gift of the Spirit not only fills the heart, it also fills the flesh and body, mind and soul, reason and spirit. Given this richness, Paul rightly emphasizes the multitude of perseverant powers of love in 1 Corinthians 13, where he speaks of the joy given by the Holy Spirit even in "much affliction."[45]

There are, of course, boundaries beyond which human beings, in suffering kenotic or self-sacrificial love, simply cannot imagine joy. There are boundaries beyond which we are simply not able to follow the command to love our enemies with a joyful heart and may even think such a command to be absurd. On the one hand, at these boundaries we should honor those

43 Alfred North Whitehead, *Adventures of Ideas* (New York: The Free Press, 1967), 289.

44 Michael Welker, "Romantic Love, Covenantal Love, Kenotic Love," in *The Work of Love: Creation as Kenosis*, ed. John Polkinghorne (Grand Rapids: Eerdmans and London: SPCK, 2001), 127–36.

45 1 Thessalonians 1:6.

who practice love with only little or even no response from the beloved person. Sometimes these individuals are called saints. And indeed, there are multitudes of at least temporary saints in family life, social and therapeutic work, and offices. On the other hand, at these boundaries we find the dignity of mercy, the free creative self-withdrawal in favor of others—without the blessings of joy that love will give.

CONCLUSION

The power of mercy strengthens and discloses other dimensions of the law such as justice and worship. This article can only begin to account for all the rich dimensions of worship and cult—the liturgical encounter with God's justice and mercy, and the deep joy in the glorification of the merciful God and the many forms of doxology.[46] Nonetheless, an understanding of mercy opens our eyes to the deeper secrets of love, and love is indeed the "sum" and the "fulfillment of the law."[47]

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46 Cf. Michael Welker, *God the Revealed: Christology* (Grand Rapids: Eerdmans, 2014), pts. 5.3, 5.4.

47 Matthew 22:40; Romans 13:8.