

**THE HEART OF TORAH:
UNDERSTANDING LAW, JUSTICE, AND MERCY IN THE OLD
TESTAMENT**

A supervised Research Essay for MTh (Res.) in Christian Ethics

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After enduring long years of scorn in recent centuries, the laws of the Old Testament have found themselves back in fashion, as Christians from across the theological spectrum have praised their concern for social justice and sought to recommend them for application to today's problems.¹ These proposals, however, raise anew age-old questions about how to construe the ethical and political authority of the Torah, and without careful attention to such questions, such proposals risk foundering on the rocks of anachronism.

Since the initial scholastic distinction between moral, civil, and ceremonial law, we have been tempted to imagine sharp disjunctions between ethical, religious, and political categories, that would have been foreign to the ancient Israelites, a temptation that has grown in modern liberal societies. In this paper, I shall argue for a careful reappraisal of these distinctions and a recognition of the close relationship between "ethical" concerns for "mercy" and "legal" concerns for "justice" in the Torah, and shall consider briefly the concrete enforcement of justice in ancient Israel.

Contemporary Old Testament ethicist Christopher Wright claims to take into account such concrete enforcement in providing what he calls a "paradigmatic model" for using Old Testament ethics today.² This model attempts to reckon with the whole social context and function of an Old Testament law before applying it to our own circumstances, rather than simply trying to extract a kernel of ethical principle from the dispensable husk of

¹ See, for example, D.L. Baker, *Tight Fists or Open Hands? : Wealth and Poverty in Old Testament Law* (Grand Rapids: Eerdmans, 2009); Christopher J.H. Wright, *Old Testament Ethics for the People of God* (Leicester: InterVarsity Press, 2004); Walter J. Houston, *Contending for Justice: Ideologies and Theologies of Social Justice in the Old Testament* (Edinburgh: T&T Clark, 2006); Jeffries M. Hamilton, *Social Justice and Deuteronomy: The Case of Deuteronomy 15*, SBL Dissertation Series 136, edited by David L Petersen (Atlanta: Scholars Press, 1992), 139-58.

² Christopher J. H. Wright, *Deuteronomy*, New International Biblical Commentary 4, edited by Robert L Hubbard Jr. (Peabody, MA: Hendrickson Publishers, 1996), 13-14; Wright, *Old Testament Ethics*, 62-74 and *passim*; Christopher J.H. Wright, *God's People in God's Land: Family, Land and Property in the Old Testament* (Grand Rapids: Eerdmans, 1990), *passim*.

Israelite society. However, despite this noble intention, in his *Old Testament Ethics for the People of God*, Wright seems to attend more to modern dichotomies than to the Israelite social context, as in his designation of a category of Torah called “compassionate law.” This we cannot “regard strictly as law at all, in the legislative sense” since it was not enforceable, but served as “moral principles” to guide the people’s actions.³ Here the civil law has been whisked away entirely into the ethereal sphere of moral law. Under this heading he includes such “laws” as “Do not charge interest to your brother” (Ex. 22:25), “Do not withhold your servant’s wages” (Lev. 19:13), the law of the triennial tithe (Dt. 14:28-29), the laws of gleaning (Dt. 24:19-20), and many more.⁴ But why should these laws be “unenforceable”? This claim seems highly suspect, and appears to depend more on modern notions about what should be enforced and how than on careful attention to the world of the Old Testament.

An even more dramatic example of Wright’s transposition of OT laws into the key of morality can be found in Umberto Cassuto’s *Commentary on Exodus*. Ever the iconoclast, Cassuto sets forth the provocative thesis that the legal sections of the Pentateuch should be not be regarded as in any sense a code of laws. For Cassuto, the fact that civil laws in the ANE (Ancient Near East) were promulgated by “secular” authorities like the king,⁵ while the laws of the Torah are promulgated by Yahweh means that the laws of the Torah are *in no sense civil laws*. Rather, they should be considered “religious and ethical instruction in

³ *Old Testament Ethics* 300.

⁴ *Ibid.* n23.

⁵ Umberto Cassuto, *A Commentary on the Book of Exodus*, trans. Israel Abrahams (Jerusalem: Magnes Press, 1967), 260. I will revisit this claim of the secular origin of ANE law below.

judicial matters.”⁶ Cassuto’s theorizes that all genuine civil legislation in Israel would have derived from the same sources as it did in the rest of the ANE--from royal decrees, local customs, and other secular sources. Thus the “laws” of the Torah were not to be understood as divinely-authorized legislation, but as religious and ethical commentary and guidance on existing laws, limiting their scope where necessary, extending it in places, and advising the people in what sort of laws to promulgate and how to obey existing ones.

Noting the tendency of some of the laws to impose demands beyond those of mere legal justice, Cassuto argues that

The entire concern of the aforementioned [ANE] codes is to determine what is due to a person according to the letter of the law, according to an abstract justice, whereas the Torah seeks on many an occasion, to go beyond strictly legal requirements and to grant a man what is due to him from the ethical viewpoint and from the aspect of the love a man should bear his fellow.⁷

In other words, since the Torah laws command more than strict justice would or could require, they must be *morality*, rather than *law*. For Cassuto, unlike Wright, this is true then of the entire law code, not merely “compassionate laws.”

Both Cassuto and Wright are of course correct, to an extent--Torah does go beyond the bounds of what we might enforce today, and is deeply ethical in its aim, exceeding “abstract justice.” However, only on the assumptions of modern liberal jurisprudence should this be taken to imply that these requirements of Torah had nothing to do with “civil law,” or were incapable of being enforced. In what follows, my argument will proceed in three stages: first, I will briefly show how alien liberal assumptions regarding law and morality are to pre-modern understandings. Then I will examine a) the language

⁶ Ibid. 262

⁷ Ibid. 263

used to describe law in the Old Testament, b) the divine origin of OT law, and c) the divine enforcement of OT law, to show that, for Israel in particular, ethical demands were deeply embedded in their understanding of their civil law. Finally, I will show that the administration and purpose of justice in ancient Israel suggest that the enforcement of ethical demands of mercy was a practical reality (or, at least, was intended to be) in the life of ancient Israel.

First, then, let us cross-examine the presupposition that law and morality are fundamentally different phenomena, a claim that has served as a pillar of Western liberalism. Abandoning the goal of a public consensus regarding virtue, liberalism restricted the task of law to that of restraining vice, and thus protecting a vast sphere in which individuals or groups could pursue their private conceptions of morality. In liberal legal theory, law is now more or less *that which we are not allowed to do*; what we are then *supposed to do* is quite another matter, falling under the heading of “morality,” and is our own business. On this theory, law increasingly defines itself and maintains its authority only through its coercive character. Law extends only so far as the reach of the policeman’s baton, and beyond that lies the realm of purely voluntary morality. In such a conception, law is a broad fence encircling an amorphous space within which individuals may pursue the elusive goal of moral virtue.

Pre-modern civilizations, on the other hand, generally accepted both that “law” extended beyond the bounds of enforceability and mere restraint of particularly harmful vices, and that what we call “morality” could be imposed by more forceful tools than those of mere rational persuasion. While of course we can still make meaningful distinctions between “civil” commands and “religious” or “ethical” commands, the lines

are often quite blurry. Civil codes, charged with religious language, expressed principles of expected and normative virtuous behaviour that were not always comprehensively enforced, but which were not thereby ineffectual. Religious codes, overlapping with the decrees of civil authorities, were far from voluntary recommendations, but enforced obedience through cultic and ritual sanctions of inclusion and exclusion, obligations of penance and purification, and threats and promises of divine punishment and reward.

Although since the Reformation, there has been a strong anti-law strain in Christianity, contrasting it with the true virtue that arises out of faith and love, this was not the classical Christian viewpoint. Aquinas, for instance, used the notion of natural law to bridge the categories of law and morality, and thus to give law a central and exalted place, as a chief means of creating a virtuous society.⁸ Despite wide variations, we can reasonably characterize the classical Christian viewpoint on law as one in which law functions as the walls on either side of a road leading men to a virtuous goal. Law does not in itself reach or guarantee the moral goal, it is not in itself the pathway of virtue, but (in contrast to liberal theory) law recognizes that such a pathway exists, and it safeguards it, preventing those who wander from missing by too much the straight path, and guiding them towards its destination. Such a conception corresponds, by and large, to the notions of law shared by most ancient civilizations, and will thus give us a better starting point for approaching the ancient Israelite understanding of law.

⁸ See especially *ST I-II q. 90 a. 2*, in R.W. Dyson, ed. and trans., *Aquinas: Political Writings*, Cambridge Texts in the History of Political Thought (Cambridge: Cambridge University Press, 2007), 78-80.

In Israelite thought, indeed, we may wonder whether law remains the walls flanking the path of virtue, or if it narrows so much as to become itself that path, so that ethics is indistinguishable from law. Statements like “The law of the Lord is perfect, reviving the soul...the commandment of the Lord is pure, enlightening the eyes”⁹ (Ps. 19:7, 8), certainly attribute a high ethical and “spiritual” (as we would say) value to the law, and the longest psalm of all (Ps. 119) is devoted wholly to a praise of the law. Of course, this does not in itself solve our ambiguity, for we may well suppose that it is the *moral law*, as distinguished from the *civil law*, that is being so highly praised. The mere fact that the word “law” is very multivalent, encompassing duties that we would distinguish as civil, religious, ethical, and more, does not in itself tell us anything conclusive. We use the English word “duty” to refer to many different responsibilities, but we can still draw relevant distinctions between them.

Nevertheless, a look at some of the Old Testament usage of words referring to law and justice certainly suggests a close interdependence of legal and ethical, civil and religious concepts in Ancient Israel. For instance, considering the civil and religious dimensions contained in the word *torah*, the *Dictionary of OT Exegesis* warns us

that a rigid distinction between the two is difficult to maintain, since civil responsibilities in ancient Israel were as much under the aegis of God’s law as were cultic regulations....Cultic relationships pertained to the Israelites’ relationship to God, whereas civil regulations pertained to communal or social concerns. Nevertheless, the latter were still dictated by the standards of God’s rule over his people.¹⁰

⁹ All Scripture quotations are from the English Standard Version.

¹⁰ Peter Enns, “Law of God,” in *The New International Dictionary of Old Testament Theology and Exegesis* (5 vols.) ed. Willem A. VanGemeren (Carlisle: Paternoster Press, 1997), IV: 894-5.

Even the limited distinction drawn here (between “relationship to God” and “communal or social concerns”) may be too sharp, for we cannot forget that the cultic system (particularly in the public feasts) was a way of knitting together the community, and violations had community-wide ramifications, and on the other hand, sins against the community, such as murder, required a kind of ceremonial purification.¹¹

The crucial word *mishpat*, focusing more on the concrete act of establishing justice (but often eliding this with the enduring deposit of law), manifests a similar ambiguity, according to the *Dictionary*: “Since Israel’s standard of justice is based not on a human law code but on the character, actions, and demands of God, there are relatively few occurrences of *mishpat* that are not fundamentally theological in nature.”¹² Still more complex is the word *tsedeq*, usually translated “justice,” although it is “very difficult to render in modern categories.”¹³ This word is so rich in its meaning that one scholar claims it “signifies at the same time veneration, respect, legality, love, and charity. It symbolizes sacred virtue and secular honesty. It denotes equity and good law no less than strict law and severity. It embraces clemency and rigour. It represents above all sincerity, integrity, poverty, and innocence.”¹⁴ Clearly we are dealing with a tangle of interrelated concepts that, while many today have tried zealously to separate them in theory (though not so successfully in practice), were inseparable for ancient Israel.

¹¹ See for instance Anthony Philips, *Ancient Israel’s Criminal Law: A New Approach to the Decalogue* (Oxford: Blackwell, 1970), 12.

¹² Richard Schultz, “Justice,” in *The New International Dictionary of Old Testament Theology and Exegesis* IV: 839.

¹³ Léon Epsztein, *Social Justice in the Ancient Near East and the People of the Bible*, trans. John Bowden (London: SCM Press, 1986), 47.

¹⁴ A. et R. Neher, *Histoire biblique du peuple d’Israel*, 2 vols. (Paris: 1955), 10, quoted in Epsztein 48.

This union of ethical and legal categories in ancient Israel stems first of all from the divine origin of her law, which clearly differentiates it from our own legal paradigms, and rendered the Torah inescapably ethical. For us, it is easy to imagine that an action may be unlawful without being unethical, since laws may reach beyond their proper scope or may simply be misguided and unjust. When God Himself is lawmaker, however, whatever the law commands is always truly just, and to disobey it is not merely unlawful but immoral. As the *Anchor Dictionary of the Bible* puts it, “The linking of God to law added an important ethical dimension to the worldview of ancient Israel. Since God was the source of law, the failure to observe the law became an offense against the deity.”¹⁵

Although this concept clearly differs from our own, did it also stand in contrast to Israel’s ANE neighbors? It turns out that there is widespread disagreement on this point. Depending on whom you listen to, you will hear that, in the ANE “all laws were the gift of deity,”¹⁶ the source of all laws was the king’s will,¹⁷ or “the source of legislative power is of divine origin and it is for the king to exercise it.”¹⁸ It seems that this ambiguity arises largely from the fact that, in the ANE, the kings themselves were divine, as they emphatically were not in Israel. In the ANE, then, it was *both* true that the king was himself the source of law and did not need authority from the gods, and, at the same time, that the law was of divine origin. What is *not* true is Cassuto’s claim (apparently shared

¹⁵ E.P. Sanders, “Law,” in *The Anchor Bible Dictionary* (6 vols.), ed. David Noel Freedman (New York: Doubleday, 1992), IV: 245

¹⁶ John I. Durham, *Exodus*, Word Biblical Commentary 3, ed. John DW Watts (Waco, TX: Word Books, 1987), 251.

¹⁷ Cassuto 260; Hans Jochen Boecker, *Law and the Administration of Justice in the Old Testament and Ancient East*, trans. Jeremy Moiser (Minneapolis: Augsburg Pub. House, 1980), 41.

¹⁸ E. Szlechter, “Le Code d’Ur-Nammu,” in *Revue d’assyriologie et d’archéologie orientale* 49, 182, quoted in Epsztein 10.

by Boecker) that because ANE law derived from the king, it was “secular,” from which he deduces that Israel’s secular law derived from her kings, and the sacred Torah law was not really law. But of course he has got it quite backwards--since for Israel, unlike her ANE neighbors, the king was not divine, he was likewise not the origin of law; he was thoroughly subordinated to God, the lawgiver, and had only the responsibility to oversee the just administration of the law (Dt. 17:18-20). The Torah then shares in the sacral dimension that ANE jurisprudence gave to law, but intensifies it, by removing any ambiguity about the divine, not human, source of true law and justice.

The Torah also establishes that just as Yahweh took the place of the ancient Near Eastern king as Supreme Lawgiver, so he took the place of Supreme Law Enforcer. As Chris Wright says, “The Lord took entirely to himself the two major functions and duties of kings in the ancient world; namely, the conduct of war and the administration of law and justice.”¹⁹ He is the final judge, the only one who delivers perfect justice, to whom the victims of injustice can always appeal, who will vindicate the cause of the oppressed and punish all evildoers (e.g. Ex. 22:23-24). At the end of Deuteronomy, the blessings and curses of Yahweh are invoked upon the nation, depending on whether it keeps or violates the Law (Dt. 27-28). Jeffries Hamilton, in considering the motive clauses of Deuteronomy 15, concludes that the enforcement of this law has been put in the hands of God, rather than the king, “giving to YHWH the responsibility for instituting the ordinance and seeing that blessings fall from its being carried out and giving to the nation the responsibility for carrying it out.” This means that “the roots of social justice [are] no longer dependent on

¹⁹ *Old Testament Ethics* 228.

a benign ruler for their accomplishment,"²⁰ but on Yahweh himself. However, just because Yahweh promised to be the court of final appeal and the avenger of any injustice that escaped human scrutiny, this did not mean that He did not delegate part of his judicial authority to human law enforcement bodies, as the inclusion of civil penalties throughout the Torah makes clear.

A crucial part of the original question thus remains. We have shown that all Israelite law had an ethical dimension, and did not thereby cease to be law, but this does not guarantee that we cannot still distinguish between two layers of law, one of which has both legal *and* ethical force, and another which is purely ethical. Does not God delegate some of his judicial authority to human intermediaries, while reserving the discovery and punishment of some sins to himself alone? This seems to be what Chris Wright has in mind with "compassionate law"--on the one hand we have a layer of law that is public, civil, and enforced ("law" in our sense), and on the other, a layer which goes further, into private life, beyond the reach of proper enforcement (what we would call "morality"). Indeed, although Cassuto overstates his thesis, might he be right about some of the commands of the Torah? Perhaps we have wrongly lumped together laws and moral exhortations, rules that are binding on the society and rules that are binding on the individual.

Against this, however, stands the weighty objection that the Torah itself stubbornly refuses to make any such distinction; never does it clearly subdivide its commands into moral and civil categories, nor into those that are to be socially enforced and those that are not. In the Levitical "Holiness Code," for example, which comes closest of all the law-

²⁰ Hamilton 72.

sequences to dealing with what we might call “personal morality,” even the most private behaviours in question are understood to have public, corporate ramifications, and shortcomings must often be redressed in public ways. Indeed, it is instructive to note that all of those commands that Wright identifies as “compassionate laws” are sandwiched in and among laws that are clearly able to be and intended to be enforced by the appropriate authorities (see, for example, the four mentioned in the introduction: Ex. 22:25, Lev. 19:13, Dt. 14:28-29, and Dt. 24:19-20).

How then can we understand these as part and parcel of Israel’s public civil law, if, as Wright has objected, they seem unenforceable, and, as Cassuto has objected, they seem to go beyond the demands of “abstract justice” into the realm of mercy? To answer the first part of the question requires an extended excursion into understanding how the enforcement of justice operated in ancient Israel, after which point we shall be in a position to answer the second part as well.

Some key features of Israel’s justice system are outlined for us even before the Law is given, in Moses’s account to Jethro in Ex. 18:15-16: “The people come to me to inquire of God; when they have a dispute, they come to me and I decide between one person and another, and I make them know the statutes of God and his laws.” We see three crucial points here: first, this resolving of a dispute can be described as an inquiring of God, showing that he remains the supreme judge²¹; second, law is generally administered in the context of civil suits, not public prosecutions²²; third, the law has the form of case law,

²¹ For an excellent discussion, see Durham 249-51.

²² Similar, so far as we can tell, to other ANE societies.

declaring the will of God with reference to particular circumstances, rather than in abstract principles.²³

When it comes to the particular structures for enforcing justice, we are on more complicated terrain. Though it is certainly true, as Boecker says, that “in its basic message the OT is not interested in conveying a picture of the legal processes in Ancient Israel,”²⁴ we are given a number of hints of Israelite legal practice in the texts. Three main models emerge, however, which can be basically harmonized with one another: a local administration (e.g., Ruth 4), an aristocratic administration (e.g., Ex. 18, Dt. 16-17), and a royal administration (2 Sam. 15, 1 Kgs. 3, 2 Chr. 19). Let us look briefly at each of these in turn, and then consider the common elements.

Ruth 4:1-12 provides a sketch of the kind of “elders at the gate” legal system that is hinted at elsewhere in the Old Testament (e.g., Dt. 21:19, 22:15, 25:7; Josh. 20:4, 1 Kgs. 21:8-14, Prov. 31:23, Lam. 5:14) and which Boecker takes as paradigmatic for the administration of justice in early Israelite society. He suggests that this justice would have been a quite informal affair, in which any local heads of household functioned as elders who would sit down to hear any dispute that arose as they passed through the gates in the course of their daily business; neither the number of judges nor the times for trials were fixed. “The court was brought into being by the appeal. The appeal transformed at best interested onlookers into responsible participants in a court of law.”²⁵ Though the extreme informality of this portrait may be overstated, the basic implication is clear: justice was

²³ Again, similar to other ANE law codes.

²⁴ *Law and the Administration of Justice* 28.

²⁵ *Ibid.* 33-34.

not the result of a “state” enforcing an abstract code of laws, but of a community responding to particular appeals, and responsible for ensuring that justice was done within its bounds.

Ex. 18:21-27, offers the outlines of a somewhat more formal, aristocratic justice system. Here, Moses delegates the task of administering justice to “chiefs of thousands, of hundreds, of fifties, and of tens.” who were to judge disputes arising within their groups, and bring more difficult matters to Moses. The same basic pattern appears also in the judicial reforms recommended in Dt. 16-17. Aside from the facts that here the people, rather than Moses, select the local judges, and that the central court is comprised of a council, rather than a single judge (changes that one might expect in the absence of a single national leader like Moses), the essential structure is similar to that of Ex. 18: local judges in each community, with a priestly authority to advise on difficult matters.

Later on in the Old Testament, we find the monarch in various judicial roles--the people bring suits to David in 2 Sam. 15, and to Solomon in 1 Kgs. 3, and then in 2 Chr. 19, we find Jehoshaphat introducing a more centralized legal structure, again with priests at the center. The description we have of this structure is essentially the same as that of Dt. 16-17, except that now it is the king himself, rather than the people, who makes the appointments. Boecker argues that these judicial roles of the monarch were in fact quite limited, and did little to change the basic localist structure (pointing out, among other things, that Jehoshaphat’s appointments apply only to the fortified cities). Although he overstates his case in places, we can surmise from the scattered references to the “elders at the gate” throughout the OT that the more formal judiciary (in which the king gradually played a greater role) did coexist alongside the more informal recourse to elders at the

gate, among whom (in larger towns, at least) the formally-appointed judge served a kind of supreme advisory or appellate function.²⁶

Pervading all of these texts, we see a common emphasis on private initiative for judicial action, priority of local enforcement, and the inseparability of “civil” and “religious” concerns. Above all, it is worth noting the concrete and personal focus of Israelite justice. As Boecker summarizes, the purpose of Hebrew courts was not “to satisfy an abstract concept of justice” but

“to settle a dispute between members of the community so that prosperous coexistence was possible....The legal assembly ‘is the organization for reconciliation. It grows up out of a practical need. It does not go beyond this in its actions nor in its outlooks....its sole endeavor is to settle quarrels and to guard the well-being of the community. To judge means here to settle.’”²⁷

In light of this picture, it is hard to see why Wright regards the laws of gleaning, or the usury prohibition, for instance, as unenforceable. It seems that some of his “compassionate laws,” such as “You shall not mistreat any widow or fatherless child” (Ex. 22:22), are deemed “unenforceable” simply because they are too vague to be enforced in a modern law court, but shouldn’t we expect such underdetermination in a decentralized system of justice regulated largely by custom and theological concerns? Others that he lists, such as “The wages of a hired servant shall not remain with you all night until the morning” (Lev. 19:13), might not be enforceable by public prosecution, to be sure, but why should this trouble us, when the initiative for almost all OT prosecutions was private?

²⁶ Nowhere do we find a clear answer to the question of who enforced the sentences. Presumably, the responsibility would lie with the whole community, as it does with capital crimes (e.g. Dt. 21:21; 22:21, 24; Josh. 7:22-26), with more formally appointed officials gradually taking a larger role, particularly in larger towns and cities.

²⁷ Boecker 37-38.

Could not the unpaid servant appeal to the local judge for aid, and hope for concrete action by the judge and/or community to rectify the situation? But these explanations do not seem to get to the root of the matter. For example, Wright classifies such clear public ordinances as the usury prohibitions, the gleaning laws, and the triennial tithe as “unenforceable” laws. Why? Is it not because, on modern understandings of property rights, these are duties of charity, not justice, and hence not the business of the law? This certainly seems to be the real cause of Wright’s reticence about these laws, and is the same as Cassuto’s objection that the laws go beyond “abstract justice” and “grant a man what is due to him from the ethical viewpoint and from the aspect of the love a man should bear his fellow.”

But this ethical, merciful viewpoint was not alien to Torah, which aimed to establish a holy people who imitate the holiness of Yahweh. Its goal was “to create a new community of people who in their social life would embody those qualities of righteousness, peace, justice, and love that reflect God’s own character and were God’s original purpose for humanity.”²⁸ We see this particularly highlighted in the Levitical Holiness Code, with its refrain, “You shall be holy, for I the LORD your God am holy” (19:2). So although we may grant that the court’s “sole endeavor is to settle quarrels and to guard the well-being of the community,” this should not be taken to imply a minimalist liberal idea of law. For the “well-being of the community,” depended, for Israel, not simply on the preservation of relative peace and freedom to pursue prosperity, but on a settled determination to live out the kind of justice that God required of Israel, and modeled for them in his liberation of them from Egypt: “You shall remember that you

²⁸ Wright, *Old Testament Ethics*, 51.

were a slave in the land of Egypt, and the LORD your God redeemed you; therefore I command you this [freeing of slaves in the sabbath year] today." (Dt. 15:15). This "justice" was as much a matter of mercy and compassion as it was "justice" in our sense, and so it should come as no surprise, as it does for Cassuto, that the Torah shows a tendency "to go beyond strictly legal requirements and to grant a man what is due to him from the ethical viewpoint and from the aspect of the love a man should bear his fellow."²⁹

These ethical demands were so central to the law that we can imagine that in cases like that of the widow in 2 Kings 4, for example, whose sons were taken into debt-slavery, an upright judge and community would have taken action to protect her, even if the creditor had a strict legal right to take the sons.³⁰ Even when the demands of mercy could clearly not have been strictly *enforced*, this would not seem so significant for them as it does for us; the merciful action could certainly be seriously and practically encouraged, and the contrary action could be seriously and practically discouraged. Deuteronomy, for example, sees no need to separate the command of 15:3 to release debts in the seventh year (which, though a provision of mercy rather than justice, could be enforced by a court), and the command of 15:7 to lend freely before the seventh year (which presumably could not), since it recognizes that any community that is not practicing the latter command will soon find a way around practicing the former.

In conclusion, it should be clear then that Wright is wrong to try and sequester the "compassionate laws" off in a separate category, insulated from civil law, when they are

²⁹ Cassuto 263.

³⁰ Old Testament law "prioritizes human need over strict legal rights and claims" (Wright, *Old Testament Ethics* 312).

sprinkled throughout the civil law for a reason--to remind Israel that all her law is to be compassionate. Cassuto thinks that Torah can't really be law because it is less about "abstract justice" than it is about ethics, but for Israel, an ethically-driven law was precisely the point. Torah, particularly in its laws concerning economic and social justice, is not concerned to distinguish clearly on the one hand legal rights and obligations that can and must be enforced by the civil authorities, and on the other hand moral goals and responsibilities that the people are accountable before God to carry out. Rather, the people are accountable before God for the entirety of the task that the Torah lays upon them, and that task is to create communities characterized by liberating justice and mercy. In this they are guided by sample civil laws, displaying how that justice operated in specific situations, and by more general commands, displaying the object to which that justice was to be oriented, surrounded by promises, warnings, and reminders of the kind of people God required them to be. This task, as we have seen, was particularly well-suited to a people living in small communities, regulated by custom, tradition, and a detailed and pervasive system of religious practice, and governed by informal local elders and judicial bodies. Although the radical disjunction between that sort of our society and our own makes it very difficult to weave back together the now-separated strands of law, justice, mercy, and morality, we must begin that task if we are to successfully pursue economic and social justice in our own day.

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