

## ESSAY ROUNDTABLE

# MOSAIC COMMANDS FOR LEGAL THEOLOGY

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*When your son asks you in time to come, “What is the meaning of the testimonies and the statutes and the ordinances which the LORD our God has commanded you?” then you shall say to your son, “We were Pharaoh’s slaves in Egypt; and the LORD brought us out of Egypt with a mighty hand.”*

—Deuteronomy 6:20–21(RSV<sup>1</sup>)

Here is a model for “legal theology,” a way of learning and teaching about God that arises in and responds to the desire to understand the significance of law: a son is moved to ask “what is the meaning” of the law followed by his father, and the father is commanded to explain by teaching about God’s deliverance. There are three similar commands in Exodus (Exodus 12:26, 13:8, 13:14), linked in tradition, where sons wonder and fathers are commanded to explain how a particular law signifies God’s redemption. These four commands in Exodus and Deuteronomy indicate a method for legal theology.<sup>2</sup>

As learners, legal theologians would inquire about the legal practices of their fathers in faith. If interested in modern state law, Christian legal theologians would inquire of rulers “who through faith . . . administered justice” (Hebrews 11:33), or those obeying laws who are “subject for the Lord’s sake to every human institution” (1 Peter 2:13), or those resisting laws who “suffer for what is right [in order to] set apart Christ as Lord” (1 Peter 3:14–15). They would ask how these faithful legal responses respond to Jesus as the Christ, as the prophesized Redeemer, and

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1 All references to and quotes from the Bible are from the Revised Standard Version.

2 Or, four methods. In the rabbinical tradition, for example, in the Haggadah and in Rashi’s commentary on Exodus 13:14, the four different commands are interpreted to show four different ways of teaching the relation between God and law. The differences in the interpretations of the four commandments are based on subtle differences among the son’s questions and the father’s answers. Depending on whether the son’s question is silent (Exodus 13:8), simple (“What does this mean?” Exodus 13:14), or wise, recognizing God (Deuteronomy 6:20), the father’s answer is to vary in complexity and inclusion of the son. For the silent and simple questions, the answer stresses God’s past redemption in an undivided way. For the wise, the answer divides God’s redemption, distinguishing God’s ongoing providence, redemption and the final goal of settled righteousness before God. In the final case (Exodus 12:26), the father’s answer is not to be addressed to the son because he excludes himself by the manner of his question from those following God; in response to such a cynical question, the father speaks only for himself and of his own response to God’s redemption without including the son. Following this traditional reading, these four commandments suggest four models for legal theology depending on the faith of the audience and whether distinctions are to be made among God’s various graces of present providence, historical redemption, and future fulfillment.

as the new Moses (Deuteronomy 18:15–19; Acts 3:22–26). As teachers, explaining why they obey or disobey the law “for the Lord’s sake,” Christian legal theologians would provide the kind of account of law that God commanded, specifying how law relates to the fact that Jesus Christ saved man. Law, approached in this way, is a field for learning and teaching about God. The articulation of the meaning of law in Moses’s sense is “legal theology,” an account of God’s relation to law through the salvation of man.

But could subjects of concern to practical lawyers—matters like employment, procedural, contract, or property law—be explained in the way that Moses commands? As a model legal theologian, Moses offers many illustrations of how the full range of civil laws can be shown to signify God’s deliverance. In Deuteronomy, for example, Moses teaches how impartial legal procedures and particular limitations on creditors’ security interests signify God’s redemption:

You shall not pervert the justice due to the sojourner or to the fatherless, or take a widow’s garment in pledge; but you shall remember that you were a slave in Egypt and the LORD your God redeemed you from there; therefore I command you to do this. (Deuteronomy 24:17–18)

What does this command mean? To understand, Moses teaches the redeemed to “remember . . . your God redeemed you.” God’s redemption of “you” is “your” reason to reenact a similar redemption for others. This law causes some social goods: fairness for foreigners and protection for the poor. But the law *means* bringing man into order with God. Divine deliverance can be analogously repeated in human justice. Inwardly, the legal theologian learns that law means relating to his own Redeemer; he realizes God’s past redemption can be reenacted by him now for others in these ordinary circumstances of his life. Objectively, by the practice of impartiality or liberality, man indicates that God is his model, and man’s imitation shows man is God’s image. God’s redemption itself is the law’s *logos* (as the *Logos* is the fulfillment of the law), referring the law to God’s redemption and signifying by its practice a responsive imitation of God.

Both particular and general laws are analyzed in terms of redemption. With respect to particular legal limits on the use of productive property and implied easements for the poor, God tells Moses: “When you beat your olive trees, you shall not go over the boughs again; it shall be for the sojourner, the fatherless, and the widow . . . You shall remember that you were a slave in the land of Egypt; therefore I command you to do this” (Deuteronomy 24:20–22). By limiting property rights in favor of the landless, we remember and imitate God’s concern for the landless whom he redeemed in Egypt. Equally, the broader precepts of the Decalogue, which is itself a summary of the whole covenantal law, is explained in relation to God’s redemption: “I am the LORD your God, who brought you out of the land of Egypt, out of the house of bondage” (Deuteronomy 5:6).

Does this mean that legal theology exhausts legal analysis? Importantly, Mosaic legal theology does not exclude overlapping legal analysis based on pragmatic considerations.<sup>3</sup> In many passages, Moses analyzes laws with reference both to God’s redemption and “secular” considerations offered in the manner of contemporary legal justifications.<sup>4</sup> For example, the command to release Israelites purchased as slaves after six years is explained both because of economic consequences and God’s

3 For example, the continuation of the opening passage, Deuteronomy 6:24 “the LORD commanded us to observe all these statutes . . . for our good always and for our survival.”

4 Or it might be better to say, in keeping with the Thomistic natural-law tradition, that in addition to imitating God’s grace in redemption, man also imitates God’s providence in creation by prudential caring for others’ physical and social well-being. Responding to God’s saving grace certainly permits concern with man’s immediate flourishing, but orders basic goods to a higher good.

redemption. The pragmatic justification exists “because his service to you these six years has been worth twice as much as that of a hired hand” (Deuteronomy 15:18), but the ultimate meaning of the law remains God’s redemption: “Give to him as the LORD your God has blessed you. Remember that you were slaves in Egypt and the LORD your God redeemed you. That is why I give you this command today” (Deuteronomy 15:15).

Moses shows how law signifies redemption, and he also analyzes law’s social effects. Pragmatic analysis (or formal analysis, which also occurs when Moses derives one commandment from another, for example, Deuteronomy 24:6, Numbers 36:6–7) is not excluded but elevated by relation to God’s redemption. The quantitatively small accomplishments of law in providing ordinary and basic goods are revealed to have a qualitatively large, actually divine, signification. Good laws providing social goods are ways of remembering and reenacting God’s redemption for others. But the divine significance of law does not arise only if a heavenly city is fully made on earth but in earthly similarities with matters always ready to be accomplished, in basic laws pertaining to fair process, property, and employment. The divine significance of law does not require ignoring social consequences but understanding them. Remembering redemption awakens the legal theologian to the potentialities for law to imitate God readily in commonplace matters. The legal theologian learns to see our ultimate concern with God as essential to ordinary law, not just eschatological utopias, immanent in the justice of any legal system rather than outside it.

Thus, the idea of “legal theology” that we take from these commands is not of something outside ordinary jurisprudence. If law is itself about God’s redemption, then an understanding of God is a proper part of understanding law. Theology develops naturally, integrally, and necessarily within jurisprudence’s own reflection on law. Knowing God is essential to jurisprudence, not imported data from an alien discipline. This view has a long, though not uncontroversial pedigree. For example, in the thirteenth century, the glossator Accursius, the author of what was for centuries the classic commentary on the *Corpus Iuris Civilis*, argued that knowledge of God is contained in knowledge of law. Commenting on the apt introductory passage from the *Digest* 1.1.10, “jurisprudence is the knowledge of God and man,”<sup>5</sup> Accursius explained,

Does it not follow from this that whoever wants to be a legal scholar or attorney should read theology?  
I answer: No, all these things can be found in the body of law.<sup>6</sup>

The law faculty is not forced to borrow from the theology faculty. The lawyer pursuing his own concerns finds God in the law, particularly as he learns to discern the justice and equity of law. Accursius worked in a legal tradition that saw law, very agreeably to the idea of Mosaic legal theology, as an outworking of the knowledge of God.

In the earliest sustained Christian critique of Roman law, Lactantius set up an early monument of this view in the fourth century: “it is plain that he is ignorant of justice who does not possess the knowledge of God. For how can he know justice itself, who is ignorant of the source from which it arises?”<sup>7</sup> Augustine worked this out in further philosophical detail, positing God as “the law of all

5 Justinian, *Digest*, 1.1.10 (translation by author).

6 Accursius, *Glossa ordinaria ad Digesta*, 1.1.10, s.v. “notitia” (“Sed numquid secundum hoc oportet quod quicumque vult iurisprudens vel iurisconsultus esse, debeat theologiam legere? Respondeo, non; nam omnia in corpora iuris inveniuntur.”) (translation by author).

7 Lactantius, *Divine Institutes*, 5.15, trans. William Fletcher, in Alexander Roberts and James Donaldson, eds. *Ante-Nicene Fathers*, vol. 7, *Lactantius, Venantius, Asterius, Victorinus, Dionysius, Apostolic Teaching and Constitutions, Homily, Liturgies* (1886; repr. Peabody: Hendrickson, 1994), 150.

the arts” in the fifth century.<sup>8</sup> Succinct statements of this tradition are also found in the legal treatises, contained in the Prague Fragment, from slightly before Accursius:

Equity is that fair arrangement of all things [and] God is called equity for the reason that he so wills; for equity is nothing else but God. This temper when considered as permanently residing in man’s will is called justice, and this will, when made mandatory, either by written precept or custom, is called law. . . . Justice . . . indeed in God is full and perfect, but in us justice is said to be in fact through participation [in God’s justice].<sup>9</sup>

Similarly, Accursius argued that the *Digest’s* definition of justice, “the constant and unfailing will to give to each his right,” must refer first to God, whose will and wisdom alone is constant and unfailing in measuring right, and only secondarily to man’s will, which shares these features only in imputed intent.<sup>10</sup> Man’s justice is only called justice in the same way that marriage is called a “holy inseparable joining,” that is, not by what people do but by what they intend.<sup>11</sup> Similarly, human justice, despite its failings, is called justice because it intends an imitation of God. As Moses might have put it, to study law is a way to study God because the justice we seek in law is intended to refer to God. Thus, Accursius concluded that, in this sense, the law is holy and that those serving it are, after a kind, deservedly called “priests,” intermediaries to God.<sup>12</sup>

Of course, not everyone accepted this. Over the next centuries, theologians disputed with lawyers, especially canonists, over whether jurisprudence was itself away of studying God or rather was dependent on theology as a lower to a higher science.<sup>13</sup> In 1667, Leibniz took the issue up strongly on the side of the lawyers in the second part of his *Nova Methodus Discendae and Docendaeque Jurisprudentiae*:

8 “We must not have any doubt that the unchangeable substance which is above the rational mind, is God. The primal life and primal essence is where the primal wisdom is. This is unchangeable truth which is the law of all the arts and the art of the omnipotent artificer. In perceiving that it cannot judge by itself . . . the soul ought at the same time to realize that its nature excels the nature of what it judges, but also that it is excelled by the nature according to which it judges and concerning which it cannot judge.” Augustine, *Of True Religion*, 31.57, in *Augustine: Earlier Writings*, ed. and trans. J. H. S. Burleigh (Louisville: Westminster John Knox Press, 1953), 254. “And your law is the truth, and the truth you” (“Et lex tua veritas, et veritas tu”). Augustine, *Confessions*, 4.9.14, in *The Writings of Saint Augustine*, vol. 5, trans. Vernon J. Bourke, The Fathers of the Church 21 (Washington, DC: The Catholic University of America Press, 1953), 85.

9 R. W. Carlyle and A. J. Carlyle, *The Political Theory of the Roman Lawyers and Canonists from the Tenth Century to the Thirteenth Century*, vol. 2, *A History of Medieval Political Theory in the West* (London: W. Blackwood and Sons, 1950), 8n1, citing Fragmentum Pragense 4.2 (“nihil aliud est aequitas quam Deus”) and 3.9 (“Iustitia . . . quae quidem in Deo plena est et perfecta, in nobis vero per participationem iustitia esse dicitur.”) (translation by author).

10 Accursius, *Glossa ordinaria ad Digesta*, 1.1.10, v. *Iustitia*.

11 Accursius’s contemporary, Henry de Bracton, undertakes a very similar analysis. Henry de Bracton, “What Justice Is,” in *Bracton on the Laws and Customs of England*, ed. George E. Woodbine, trans. Samuel E. Thorne (Cambridge, MA: The Belknap Press of Harvard University Press, 1968), 2:22–23. Bracton and Accursius both draw from the common source of Azo.

12 Accursius, *Glossa ordinaria ad Digesta*, 1.1.1, v. *Cuius* (“meruit enim ius appellari sacrum et ideo iura reddentes sacerdotes vocantur.”). Also, in his definition of natural law, Bracton explains “Natural law is that which nature, that is, God himself, taught all living things.” Bracton, “What Natural Law Is,” in *Bracton on the Laws and Customs of England*, 2:26.

13 See, for example, Takashi Shogimen, “The Relationship between Theology and Canon Law: Another Context of Political Thought in the Early Fourteenth Century,” *Journal of the History of Ideas* 60, no. 3 (1999): 417–431, at 418–21 (discussing the theological opposition).

§1. *Jurisprudence* is the science of right in relation to some case or action. ...

§2. That which pertains to [teaching jurisprudence] can be divided exactly as in theology [into Didactic, Positive, Historical, Exegetical, and Polemical Jurisprudence].

...

§4. Deservedly we have made our partition of theology and jurisprudence because both faculties share a remarkable similarity. ...

§5. It is no wonder that [the structure of jurisprudential instruction] has come to be used in theology *because theology is a certain species of jurisprudence* [*theologia species quaedam est Jurisprudentiae*] [emphasis added], universally taken; it concerns namely right and the maintaining of laws in the state, or better, the reign of God over humans.<sup>14</sup> ... In brief, almost all theology depends for the great part on jurisprudence. How often does St. Paul speak of *testament, inheritance, servitude, and adoption*?<sup>15</sup>

Here, Leibniz implies the reverse of Accursius' question: "Does it not follow from this that whoever wants to be a theologian should read law?" Leibniz's statement that "almost all theology depends on jurisprudence" makes some concession to the independence of theology but only subject to recognition that theology depends in part on jurisprudence. Both are validly approaching a common subject, God, in different aspects with overlapping results. Minimally, for Leibniz, and perhaps Moses, we should say that the account of God contained in jurisprudence is jurisprudence *simpliciter*. To speak of it as "legal theology" might be confusingly nugatory, like talk of "plant-related botany." For Leibniz, as Justinian also taught,<sup>16</sup> jurisprudence requires knowledge of God. Even if law borrows some from theology, we might as well speak of theology's knowledge of God as "theological jurisprudence" because theology also depends on knowledge of law. More irenically, Leibniz might be read to say that theology does not arise only from independent speculative inquiry into God as an ontological ultimate. It also comes about with the distinctive way the practical mind concerned with right and law necessarily relies on and discovers something about God, whether consciously or not, as a transcendental ground of legal practice.

But whether we speak of "legal theology," "theological jurisprudence," or consider jurisprudence and theology to have some perichoretic relation, the idea that jurisprudence necessarily involves theology has a long history after Moses, and not just among jurists. Even among theologians and philosophers, many besides Leibniz and Accursius have argued that God is so closely connected to law that it is even appropriate to call God "law" or the very paradigm of law or to call law an imitation of God. Some illustrations: Calvin cited Plato<sup>17</sup> for the proposition that "God is not only free of all fault but is the highest rule of perfection, and even the law of all laws."<sup>18</sup> Calvin was probably summarizing the hortatory speech proposed by the Athenian

<sup>14</sup> Leibniz goes on to detail the derivation of many theological concepts from jurisprudential concepts.

<sup>15</sup> Translation from Christopher Johns, appendix to *The Science of Right in Leibniz's Moral and Political Philosophy* (London: Bloomsbury, 2013), 149–50 (emphasis in original, unless otherwise indicated). Patrick Riley notes that Leibniz continued to hold that theology is a species of jurisprudence into his maturity, and criticized Pascal's theology for lacking jurisprudential foundation. Patrick Riley, *Leibniz' Universal Jurisprudence: Justice as the Charity of the Wise* (Cambridge, MA: Harvard University Press, 1996), 12.

<sup>16</sup> Justinian, *Digest*, I.1.10.

<sup>17</sup> With respect to Plato, he held arguments for the existence, providence, and justice of God to be a necessary part of the explanatory prologues of laws (*Nomoi*, IV.716; X.885); Plato was imitating Zaleucus's theonomic preface to his Locrian law. See Diodorus Siculus, *The Library of History*, 12.20.1–3. Plato considered "inspiration" by the knowledge of God a necessary condition for public office (*Nomoi*, XII.966). It is hard to read some of Plato's explanatory prologues without taking seriously the patristic arguments that he was inspired by reading Moses.

<sup>18</sup> John Calvin, *Institutes of the Christian Religion*, III.xxiii.2; see also *Commentary on Exodus* 33:19 (God is the "reason of all reasons, the law of laws, and the rule of rules.").

Stranger to explain his model laws: “Now God ought to be to us the measure of all things . . . and he who would be dear to God must, as far as is possible, be like Him and such as He is.”<sup>19</sup>

Philo had earlier followed Plato: “But God is the archetype on which laws are modeled: He is the sun of the sun, in the realm of mind what that is in the realm of sense, and from invisible fountains He supplies the visible beams to the sun which our eyes behold.”<sup>20</sup> Plutarch argued that God “is himself Justice and Right, and the original and perfection of all laws.”<sup>21</sup> Similarly, Pseudo-Dionysius taught that the Mosaic law involved imitation of God because the law is a “hierarchy,”<sup>22</sup> and a hierarchy is an approximating imitation of God proportionate to the powers of each member.<sup>23</sup> Vaulting forward to 1233, John of La Rochelle holds simply that knowledge of God is knowledge of law.<sup>24</sup> Even more simply, in the first prologue to the *Sachsenspiegel*, or *Saxon Mirror* (1235), Eike von Repgow urges judges to be mindful of God because “God is law itself; therefore justice is dear to him.”<sup>25</sup> In 1594, Richard Hooker, following Aquinas<sup>26</sup> and Calvin, argues to the same conclusion: “God therefore is a law both to himselfe, and to all other things besides.”<sup>27</sup>

In this historical context, we can conclude with a better understanding of the four Mosaic commands with which we began and some thoughts about Christian legal theology. Moses does not stand out because he teaches “legal theology.” Although the idea of “legal theology” found in the Mosaic commands may be unfamiliar today, many have taught that law involves a relation to or imitation of God. What distinguishes Moses from Plato et al. is the truth about the God whom we should imitate. What makes Moses’s legal theology different from Plato’s is the specific theology of redemption that he teaches.

For Moses, what makes God worthy of imitation is not just His abstract, ontological ultimacy but the particular, personal way God redeemed slaves in Egypt. What, in turn, should distinguish Christian legal theology from Plato’s natural legal theology? Or, more subtly, what distinguishes it

19 Plato, *Nomoi*, IV.716.

20 Philo, *On the Special Laws*, 280.

21 “[F]or justice is the end of the law, the law is the prince’s work, and the prince is the image of God, that disposeth all things . . . by the practice of virtue the prince makes himself most like the divine nature . . . For as God hath placed the sun and moon in heaven, as manifest tokens of his power and glory, so the majesty of a prince is resplendent on earth, as he is his representative and vice regent. . . and [God] hath not Justice for an assessor or counselor, but [God] is himself Justice and Right, and the original and perfection of all laws.” Plutarch, *Ad Principem Ineruditum*, Section 3.781–84.

22 Pseudo-Dionysius, *Ecclesiastical Hierarchy*, V.ii, 501C.

23 Hierarchy is “a sacred order, a state of understanding and an activity approximating as closely as possible to the divine. It is uplifted to the imitation of God . . . The goal of a hierarchy is to enable beings to be as like as possible to God and to be at one with him . . . A hierarchy causes its members to be images of God in all respects, to be clear and spotless mirrors reflecting . . . God himself . . . For every member of the hierarchy, perfection consists in this, that it is uplifted to imitate God as far as possible and, more wonderful still, that it becomes what scripture calls a ‘fellow workman for God’ and a reflection of the workings of God.” Pseudo-Dionysius, *Celestial Hierarchy*, III.i, 164D–165B.

24 “As Augustine says in Questions on the New and Old Testament: ‘The first law did not have to be given in formatted characters because inserted in nature in a certain manner is the very knowledge of the Creator.’” John of La Rochelle, *Summa Halensis*, book 3.2.3.q.1.1.3.

25 Eike von Repgow, First Prologue, *The Saxon Mirror: A “Sachsenspiegel” of the Fourteenth Century*, trans. Maria Dobozy (Philadelphia: University of Pennsylvania Press, 1999), 67.

26 Thomas Aquinas, *Summa contra Gentiles*, III.64.

27 “All things do worke after a sort according to lawe, whereof some superiour, unto whome they are subject, is author . . . only the workes and operations of God have him both for their worker, and for the lawe whereby they are wrought. The being of God is a kinde of lawe to his working . . . God therefore is a law both to himselfe, and to all other things besides.” Richard Hooker, *Of the Laws of Ecclesiastical Polity*, 1.2.2, 1:59.12–5; 1.2.3, 1:60.16–18.

from Moses's legal theology since Christians also understand law to be related to personal redemption?<sup>28</sup> Not a new way of relating God to law, but the news of redemption in Jesus Christ: grace that God once showed to Israel by freeing them from Egypt, He has now shown more fully to all nations by redeeming them from sin and death in Christ's cross and resurrection; the truth about God's vast love once hidden from other nations is now displayed to all of them by Jesus on the cross.<sup>29</sup> Once God's redemption was a ground only for the laws of Israel, but now all nations have been shown the truth of God and have grounds to imitate Christ's grace in their lives and laws.<sup>30</sup> The new law of love commanded by Christ is grounded upon the same redemptive legal theology as the commands given to Moses: "A new command I give you: Love one another. As I have loved you, so you must love one another" (John 13:34). If the great but local redemption of Israel can be expressed in laws, even laws like our own of property, procedure, contract, tort, and the like, how much more the greater redemption of all mankind in Jesus and the new grounds to imitate God that Christ provides.

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28 As Moses taught, Christians also believe that the theological meaning of the law, the "second use" of the law in reformed theology, is to indicate our redemption, to lead us to God's righteousness. Jesus our redeemer is, therefore, the goal of the law (Romans 10:4). The law is our pedagogue, bringing us to Christ (Galatians 3:24).

29 "For the law was given through Moses; grace and truth came through Jesus Christ. No one has ever seen God; the only Son, who is in the bosom of the Father, he has made him known" (John 1:17-18).

30 "Many peoples will come and say, 'Come, let us go up to the mountain of the LORD, to the house of the God of Jacob. He will teach us his ways, so that we may walk in his paths.' The law will go out from Zion, the word of the LORD from Jerusalem" (Isaiah 2:3; Micah 4:2). The association of these passages with Christ is picked up in the Shepherd of Hermas: "'Listen,' he said, 'this big tree that shades plains, mountains, and the whole earth is the law of God given to the whole world. But this law is the Son of God preached to the ends of the earth. The people under its shade are those who have heard the proclamation and have come to believe in it.'" *Shepherd of Hermas*, commentary by Carolyn Osiek, ed. Helmut Koester (Minneapolis: Augsburg Fortress, 1999), 8.3.2.