

## THE NEW TESTAMENT, MOSAIC LAW AND ECCLESIASTICAL LAW TODAY

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*This article explores the New Testament's critique of Old Testament law, a genus of positive law. It looks at the applicability of that critique to modern ecclesiastical law. The article identifies three common misconceptions about the view of the New Testament concerning Old Testament law, and then sets out what the New Testament does say about Old Testament law, principally from the writings of St Paul. The principles underlying the New Testament's critique are established. The critique is made not on natural law grounds but on pragmatic and utilitarian grounds. The grounds of the critique are (i) the efficacy of the law to achieve its true intent; and (ii) the extent to which human beings exaggerate the usefulness of Old Testament law. Some inconsistencies in St Paul's thought are identified. The article concludes by applying the principles of the New Testament's critique to modern ecclesiastical law, identifying what the author regards as the proper remit and ambit of ecclesiastical law.<sup>1</sup>*

### INTRODUCTION

One relatively unexplored question is the relationship between the New Testament's critique of the Mosaic law and the applicability of that critique to modern law, and to ecclesiastical law in particular. Are there points of contact, and is what the New Testament has to say about the Mosaic law relevant to a critical understanding of law (and ecclesiastical law) in the modern era?

Rather than explore questions such as these, academic lawyers have tended to be concerned with questions to do with why people obey law, how one recognises that something is law and whether—and to what extent—law promotes or embodies justice. In the field of natural law, they have been concerned with whether positive law conforms to or is in conflict with the moral principles (however they may be understood or derived) that are believed by some to underlie the created order.

This essay concerns none of these questions. Instead, it looks at the critique of one *genus* of positive law (the Mosaic law) that some of the New Testament writers made. The task involves a critical engagement with positive law, but not from a natural law perspective. The essay concludes by

<sup>1</sup> This is an edited and adapted version of a paper given at a conference on 23 February 2004 at the University of Hull to celebrate the golden jubilee of the teaching of theology at the University.

exploring to what extent the critique applies to another *genus* of positive law, namely ecclesiastical law.

### THE SUPPOSED CRITIQUE OF THE MOSAIC LAW IN THE OLD TESTAMENT

First it would be as well to clear away some common misapprehensions about the Mosaic law and the supposed critique of the Mosaic law that the New Testament makes.

The first common misapprehension is that people in Old Testament times were required to live by obedience to Mosaic law, but that after Jesus, people are to live by grace and faith. John 1 : 17 is quoted out of context in support of this view: ‘... the law was given through Moses; grace and truth came through Jesus Christ’.

If the so-called ‘new perspective on Paul’ has taught us anything, it is that grace is as much a feature of Old Testament life and thought as it is of New Testament life and thought. E P Sanders has convincingly argued that for the Jew, what he terms ‘getting in’ to the covenant was by grace, and the way a person demonstrated that they were within the benefit of the covenant—and so part of the community—was to keep the law.<sup>2</sup> Thus law-keeping was the response to grace—not the vehicle to receive it. There always was grace when it came to law.

The second common misapprehension is that Jesus replaced the law with one command—to love God and to love one another. Thus Jesus swept away the Old Testament laws and gave in their place ‘the law of love’. John 13 : 34 is quoted in support of this: ‘A new commandment I give you that you love one another, even as I have loved you’. Some understand ‘new’ as meaning ‘a replacement of the old’, and that love therefore supersedes the law.

But is this command so very new? Jesus is in fact paraphrasing Leviticus 19:18, and almost certainly what he is offering here is a statement of the ethic underlying the Mosaic law. In similar vein, in Matthew 22 : 37-40 in response to a question from a lawyer, Jesus quotes the greatest commandment of the law as being to love God with all one’s heart, soul and mind (Deuteronomy 6 : 5), and then the second commandment—the one that follows the greatest—to love one’s neighbour as oneself (Leviticus 19 : 18).

Jesus offers these two commandments as organising principles of the Mosaic law, not as replacements for it. He says in Matthew 5 : 40 that ‘on

<sup>2</sup> E P Sanders, *Paul and Palestinian Judaism* (SCM Press, London, 1977) and *Paul, the Law and the Jewish People* (SCM Press, London, 1983). Sanders’ views have been further developed and refined by, among others, most notably J D G Dunn and N T Wright, now the Bishop of Durham.

these two commandments hang all the law and prophets'. If it were any other way, how could he have said in the Sermon on the Mount: 'Do not think that I have come to abolish the law and the prophets; I have come not to abolish them but to fulfil them. I tell you for a certainty that neither heaven nor earth will pass away, not the smallest letter or dot, will pass away from the law until all is accomplished' (Matthew 5 : 18)?

The third common misapprehension is that the Jews tried to earn their salvation by keeping the law. Again, Sanders has demonstrated that this is simply not the case. Salvation—that is, sharing in the benefit of the promised blessings of the covenant with Abraham and being part of the community of faith—was a gift of God's grace, to be received by faith. The 'good works' that people apparently carried out in order to earn their salvation were in fact no more and no less than an expression of their response to God's grace.

For the Jew, law brought freedom, for putting the law into practice marked a response to God's grace and maintained a person's place in the covenant and community. By keeping it, a person would not fall into the sins that characterised the surrounding nations: rather, the people would be marked out as distinctive and as God's own.

Having identified some common misapprehensions about the Mosaic law, it should perhaps also be added that Jesus did not uncritically uphold the law. In particular he warned that it was possible excessively to attend to the detail of the law while missing the point of what it was truly saying. Because of one's very diligence, one could be diverted from the law's true purpose. So, for example, Jesus condemned the scribes and Pharisees for their extraordinary diligence to tithe—and said they 'neglected the weightier matters of the law: justice, mercy and faithfulness' (Matthew 23 : 23).

### ST PAUL'S CRITIQUE OF THE MOSAIC LAW

We turn next to the critique of the Mosaic law that St Paul makes, principally in his letter to the Romans.<sup>3</sup>

Perhaps surprisingly for many who have been brought up in a Protestant tradition Paul says that the law is good in itself. 'The commandment is holy', says Paul, 'and the commandment is holy and righteous and good' (7 : 12). Furthermore, Paul said he *delighted* in the law (7 : 22) and sought to be its servant, that is, to live under its authority (7 : 25).

Paul identifies an important task of the law. It defines, he says, what constitutes wrongdoing: without the law, wrongdoing is not defined as wrongdoing according to the law. So conduct may be (to use some modern idioms) 'socially undesirable', 'inappropriate' or 'contrary to social values'—but it takes the law to state that the conduct is sin. This is what

<sup>3</sup> References are to St Paul's Letter to the Romans unless stated otherwise.

Paul means in Romans 7 : 7: 'I would not have known what it is to covet if the law had not said, "You shall not covet"'.

An important consequence follows. It is that the law delineates people to be lawbreakers, and so wrongdoers. To continue with Paul's example about covetousness, the law states that covetousness is sin, and because people covet, they are therefore sinners and in breach of the law. To put it another way round, if there were no law, people would not be sinners and law-breakers. This is what Paul means by the phrase, 'Apart from the law, sin lies dead' (7 : 8—and see also 4 : 15, 5 : 13) and that 'law came in to increase the trespass' (5 : 20).

This is Paul's first criticism of the law. It delineates men and women as lawbreakers and so condemns them as wrongdoers. But it is a criticism that states the obvious, and Paul clearly approves the fact that the law has the function of defining and identifying what is wrong and sinful. The Mosaic law is *one* of God's mechanisms for helping human beings to understand that they have 'sinned and fall short of the glory of God' (3 : 23). It remains the case, however, that even without the law, those who 'do not obey the truth but obey unrighteousness' (2 : 8) remain guilty of wrongdoing, whether Jew or Gentile.

Paul makes two further observations about the law. The first is that the law cannot make people good (7 : 23)—and the corollary of this is that the law cannot stop people from being bad. Indeed there are times when people *cannot* obey the law (7 : 7-13). The law appears to promise so much—a way to live that pleases God—but in fact it confronts human beings with their persistent failure to adhere to it—and therefore their persistent failure to live in a way that pleases God. 'The very commandment that promised life proved to be death to me', says Paul in Romans 7 : 10. The law shows people to be hypocrites, as they do the very things the law prohibits (2 : 17-24). None escapes its strictures; all are condemned by them; and all humanity is thereby held 'imprisoned' (Galatians 3 : 23) to them.

Paul identifies another drawback to the law. The law seems, he says, to provoke the very thing that it is trying to prevent. It 'arouses' (Romans 7 : 5) something in people that makes them wilfully disregard the law. To go back to Paul's example of covetousness, he says that the commandment not to covet 'produced in me all kinds of covetousness' (7 : 8), meaning that the law fomented what it sought to proscribe.

Why does the law foment what it seeks to proscribe? It is, says Paul, because the 'sinful passions' and innate 'sin' within human beings are 'aroused' by the law (7 : 5, 13-20), and human beings end up worse off with the command than without it. Knowing what covetousness is and knowing it to be contrary to the law, people actually become more covetous, not less. There is a drive within men and women that makes them do not what they want but what they hate—and sometimes they do not seem to have the capacity to resist (7 : 15-20).

At this point, Paul makes an important observation about the human condition. Using language from the pre-psychological era, Paul refers to the drives that people have within them that make them do what they know is wrong and what they do not want to do. These drives he refers to as ‘the sinful passions’ (7 : 5), ‘sin’ (7 : 8-11), ‘the law of sin that dwells in my members’ (7 : 23), ‘evil [that] lies close at hand’ (7 : 21) and ‘the flesh’ (8 : 5). The law, he says, does not neutralise or control those drives: rather, it stimulates them and people end up captive to them. There is constant conflict between what from a cognitive point of view people want to do and what in fact people actually do (7 : 22f).

Here perhaps Paul gets into some difficulties. On the one hand, he says that the law arouses our ‘sinful passions’ (7 : 5)—and one could reasonably infer from that that the law is the *cause* of that arousal. The result of the arousal—an arousal caused by the law—is ‘death’ (7 : 6), which means yet more sin and sinning and the dreadful consequences that follow. On the other hand, Paul also insists that the cause of the death is *not* the law! In 7 : 13, he asks: ‘Did that which is good [that is, the law], then, bring death to me?’ and his response is: ‘By no means’. Rather, he says, it was the sinful inner drives that led to death, not the law. But is it not the case that there is a chain of causation—the law leads to arousal to sin that leads to the law being disregarded that leads to death? It is not a case of ‘either/or’ but ‘both/and’. It is as if Paul, who so treasured the law, could not bring himself to acknowledge that the law actually was the *cause* of sin.

So, in summary, for Paul, was having the Mosaic law undesirable and unwelcome? After all, the law labels people as lawbreakers, it cannot make them good, it cannot stop them being bad, it provokes what it seeks to prevent and it stimulates the human innate predisposition to lawlessness. No wonder Paul describes himself as a ‘wretched man’ as a human being who knows the law.

Paul clearly states that the law is *not* undesirable and unwelcome (7 : 7). Despite the law’s unintentional negative consequences, the law is good, spiritual and a source of delight. Though it stimulates wrongdoing, it was not the cause of the dreadful consequences of wrongdoing. Its purpose is to stop people from foolishly thinking that they are without sin (3 : 20) or that they are innately righteous before God (3 : 9, 19).

None of these offers a particularly vigorous critique of the Mosaic law or, by analogy, of other forms of law. But elsewhere in Romans there is such a critique. In chapter 2, Paul begins to refer to those who have the law but who misuse its purpose. It is important to unravel two distinct ideas that are here in Paul’s mind. The first has to do with what *having* the law might do and the second with what *keeping* the law might do. In both cases, it seems that some thought that either having the law or keeping the law made a person ‘righteous’ or ‘justified’ before God (2 : 13). In other words, and according to Paul’s way of thought, such people arrogated to the law a purpose for which it was not intended and they imported into

the law an efficacy it did not have. In Paul's own words, 'by works of the law no human being will be justified in God's sight' (3 : 20). So neither simply *possessing* the law nor also *practising* the law makes a person right before God: rather, they should confront people with the fact that they are wrongdoers, often unable to do what God wants. In Galatians 3, Paul goes further and says that no-one is able to keep the law in its entirety and so all receive the penalty—God's curse and condemnation—for breaching the law (Galatians 3 : 10-13).

This takes us to the central problem of law—all law, whether the Mosaic law or civil law. In some respects, we exaggerate its usefulness. Merely having it does not stop us from being lawbreakers; practising it does not mean we are without sin. In both cases, it does not make us better—or better off—than we would have been without it. And, as said earlier, law cannot make us good, it does not stop us being bad—and it foments what it proscribes. And in the context of the issues that Paul is particularly addressing in Romans, the law cannot 'justify' (make right) people before God.

It is not easy to find a word in the English language that describes a person who misunderstands, misuses and even perverts the good purposes of the Mosaic law in the ways that have been set out. 'Nomover't expresses what is meant but the writer doubts that this neologism will make the dictionaries!<sup>4</sup> The word 'legalist' usually describes a person who pays inappropriate attention to the detail of law and exaggerates its significance and usefulness: perhaps at this point the word 'legalist' could be adapted also to include a person who mistakenly believes law can change people for the better and make them what they ought to be.

As Paul so powerfully states in Romans and Galatians, human beings are 'justified', not by having or practising the law, but by faith in Jesus Christ (Romans 3 : 28 and Galatians 3 : 11-14). What makes them right is Christ's atoning death. Paul says that God has broken the power of 'the flesh'—those innate drives that make people do the very things they would rather not—and by giving the Holy Spirit enables people to carry out 'the righteous requirement' of the law, which, as said earlier, Jesus summarised as being to love God and one's neighbour. The Mosaic law remains useful: in the period of the new covenant, it is not 'overthrown' but 'upheld' (Romans 3 : 31). If people practise the law, they should not fall into the trap of thinking that either knowing or obeying the law makes them right before God.

#### APPLICABILITY TO ECCLESIASTICAL LAW

The applicability of these observations to ecclesiastical law is obvious. Ecclesiastical law does not make those to whom it applies good, and

<sup>4</sup> Here I offer my apologies to those who do not like a neologism derived from discrete Greek and Latin roots: 'nomostreph' or 'legover't may satisfy the purist but they lack elegance and impact.

possessing ecclesiastical law does not make people any better: it prescribes what they may do and proscribes what they may not do—and no more. It may even provoke them to do what ecclesiastical law forbids. Having and adhering to ecclesiastical law certainly does not make people better Christians or better ministers.

Christianity is not a law-less religion. What the New Testament rejects is legalism—the foolish view that law keeping is more important than (or even a replacement for) the law's true end, namely, love, justice and mercy. Neither Jesus' nor Paul's criticisms are of the Mosaic law *qua* law, but of a misapplication and misinterpretation of it, and they insisted that the Mosaic law should not become an end in itself, eclipsing the very things to which it was intended to point.

Law and law keeping are finely balanced: used properly, they bring freedom and express faith and a person's response to grace. Misused, they become an end in themselves, apparently bringing acceptability to God and so denying the need for grace and mercy. The Mosaic law is condemned only when misused so as to divert from grace and faith.

Today's ecclesiastical law shares the same limitations: it does not make us good, it does not stop us being bad and sometimes it provokes what it seeks to prevent. Used properly it satisfactorily regulates the life of the Church but cannot make people comply with its injunctions. Merely having law—and even obeying it—does not address a central human dilemma of how a person can become acceptable to God, able to live out an ethically unblemished life. The Christian gospel poses the issues and presents an answer: it is the death and resurrection of Christ, and the death and resurrection of Christ alone.