

Law and Crisis

Dr Elizabeth Boase

Let me begin by thanking Professor Lombard for his paper, and for the invitation to participate in this panel. The question of the relationship between law and crisis is something I have been thinking about recently, and tonight has given me an opportunity to begin go a little deeper into this question.

How is it that we make sense of the world in times of crisis and catastrophe? Most scholars of the Hebrew Bible would argue that this is one of the driving impulses that led to the formation of the OT as we know it today. In our own context where war, violence, terrorism, religious fundamentalism and a spate of so-called natural disasters have shaped our recent consciousness, this same question is arguably a dominant one facing us both as individuals and societies.

As a biblical scholar I will focus primarily on matters biblical, hopefully making some helpful connections for our contemporary discussion. In my response I want to outline what I see as the context of the God/law/society framework in the Hebrew Bible. I'll consider the role of lament and law in the ancient context before considering the question of law and society today.

It is a widely, though not universally, accepted understanding that the Hebrew Bible as we know it today owes its current shape and theological emphasis to the events of the 8th to 6th centuries BCE. During this time Israel as a state fell to the Assyrian empire and Judah/Jerusalem to the Babylonian empire. In the cases of both Israel and Judah, foreign conquest meant the collapse of the state. Despite this collapse, national identity continued and, as was the case after the fall of Jerusalem, took on a heightened and distinctive form. In the face of crisis and trauma, a new nationalistic identity was forged.

The impetus for the forging of this heightened national identity lay, I would argue, in two impulses, which can be seen as competing impulses, but are perhaps better understood as complementary and necessary mechanisms of survival in the face of community collapse and suffering.

The first impulse, expressed in the book of Lamentations and in many of the lament psalms, is the impulse to name the suffering and to protest and complain to the God understood to be the one who is active in history. The lament tradition in the Hebrew Bible gives voice to the realities of pain and suffering, bearing witness to that suffering, bringing the loss into the presence of the divine. At a communal level, the language of lament functions to give voice to the collapse of meaning that accompanied the collapse of the known world, a world in which the all the familiar constructs of religion and state had been dismantled by the enemy. The temple was gone, the city was decimated, and the 500 year rule of a monarchical system had been brought to an end. The lament traditions name the collapse of life as it was known, and provides a space in which the bigger existential questions could be raised. Why did this happen? How could this have happened? Where is/was God in the midst of this? Is this the end of the relationship between us and the God we thought was on our side?

A few quotes highlight these questions: Lamentations both blames God for the catastrophe (The Lord has rejected all my warriors in the midst of me to crush my young men; the Lord has trodden as in a wine press the virgin daughter Judah) and blames human sinfulness (The Lord is in the right because I have rebelled against his word). The poems express shock and disbelief (Look, O Lord, and consider! To whom have you done this?; Is this the city that was called the perfection of beauty the joy of all the earth) and raise the spectre that this indeed spells the end of God and God's chosen

people (Restore us to yourself, O Lord, that we may be restored; renew our days of old - unless you have utterly rejected us, and are angry with us beyond measure).

So one impulse is to name the suffering and express the confusion and loss through searing poems of lament, a naming which helps to bring a renewed sense of community through shared prayers of loss. This naming is a first step towards a new understanding, towards healing.

Turning now to a more specific focus on law. A second, perhaps even parallel, impulse in the biblical literature was to look to the future through a retelling of the past. As Christo has already indicated, the legal tradition in Israel took on a new shape in the 7th and 6th centuries following the fall of Israel, and comes to its final shape, in the 5th century. Brought together in the sweep of Israel's narrative from creation to the loss of the land to the Babylonians, Israel's story is told from the vantage point of the collapse of the state, framing that loss as being due to a failure to live according to divine law. While the legal traditions may well have a longer history, in the final form of Genesis-Kings, obedience to the law is framed in such a way as to be seen as the condition by which possession of the land, and a successful rule of state, is possible. The history of Israel and the laws of Israel are told in such a way as to both account for the present catastrophe and as a means of directing the future. It is by obedience to divine law that future repossession of the land and even statehood might again be possible.

I want to stress here that the law as it is now presented in the Hebrew Scriptures is a response to the collapse of the state. In its final form, the law explains history - the collapse of the states of Israel and Judah - and provides hope for the future. In attributing loss to human disobedience, human failure, God remains a powerful God, the law, and the enemies, become the instrument of divine judgment, but, and importantly, a sense of agency and control is reasserted for the people. By following the law, in this case divine law, future catastrophe might well be averted.

The national story, retold from the perspective of a collapse of the state, also becomes a means of shaping national identity - a national identity that can be lived out in the absence of the state itself. In being obedient to divine law - whether dietary laws, laws of religious practice, laws relating to marriage or laws relating to the care of others, communal life outside the land, in the absence of monarchy, and even living under exile and empire, all become possible. As a means of rebuilding national identity, the framing of law and obedience to law restores a sense of communal identity and communal agency in the wake of crisis and catastrophe.

In their introduction to a volume on the Jurisprudence of Catastrophe, Douglas, Sarat and Umphrey suggest two different relationships between law and catastrophe.¹ In the biblical world, catastrophe is seen to issue from law. That is, law is seen as an instrument of divine sanction, and catastrophe as the result of divine judgment for failure to adhere to the law. We see this in the backwards telling of Israel's story as I have suggested above. In the modern liberal state, Douglas and co argue that law functions to avert catastrophe - that is seeks to avert or respond to catastrophe. Laws are formulated in order to avoid the consequences of catastrophe. Different mechanisms are in place in both cases - undergirded by different worldviews.

In the ancient world of the biblical text, recourse to the divine and divine causality was as natural as breathing. In a world understood to be controlled by God, or the gods, crisis, law and spirituality are intimately bound together. If God is the reason behind all that happens, then it is inevitable that the

1 Austin Sarat, Lawrence Douglas and Martha Merrill Umphrey (ed.s), *Law and Catastrophe*. Stanford: Stanford University Press, 2007.

divine would be sought in order to make sense of traumatic and life changing events. In ancient Israel and Judah this response took the form of lament and the pouring out of grief and anger towards God. It also took the form of framing history and defeat as the result of failure to obey divine law. This response does lead to the wellbeing of society as it becomes a means of agency to divert future disaster.

We live now in a very different world. God/the gods are no longer seen as the ultimate cause of all that happens, at least not in westernised liberal states, although few of us would deny that human behaviour is often at the root of crisis and catastrophe. As we have seen in recent history, nations and states continue to have recourse to law to protect citizens but these laws are no longer framed with divine causality at their core. Modern laws exist in the lived reality of nation states, where the state itself is seen as the agent for insuring the protection of its citizens.

As Professor Lombard has highlighted, in both cases the common good is at the heart of the law, expressed either in religious or secular language. At least two factors need to be taken into account in the discussion. First, the worldview of the ancient and contemporary systems differ in significant ways, and the relationship between law, state and religion is necessarily expressed in different ways because of this. Secondly, I do think that it is of fundamental importance that Israel's expression of divine law is as much about accounting for defeat and finding ways of living in the absence of state, making the historical circumstances in the formulation of law essentially different tasks.

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