

Empathy and Ethics: Bodily Emotion as Basis for Moral Admonition

Thomas Kazen

Stockholm School of Theology

(Forthcoming in R. Uro & I. Czachesz, eds., *Cognitive Science Approaches in Biblical Studies*)

Biblical Studies and Cognitive Sciences

Recent decades have seen a growing interest in various quarters in questions concerning the human mind. Today we can identify an array of disciplines which, due to their focus on cognition, can be subsumed under the heading “cognitive science(s).” These include, among others, evolutionary biology, neuroscience, social and developmental psychology, as well as linguistics and some sociological approaches. The questions concern issues such as the phylogeny and ontogeny of an inner world and a Theory of Mind. They also deal with the complicated interplay between biology and culture, as well as the role of language and emotions in a functioning rationality and the development of a moral capacity.

Within the larger context of the dialogue between science and religion, the cognitive sciences can have a particular potential to bear cross-disciplinary fruit in the garden of theology. As pointed out by Gregory Peterson, cognitive science “affects both metaphysical and soteriological accounts of human nature,” and thus has an influence on all types of theological activity, in as far as theology deals with questions of meaning and purpose within the context of a contemporary world-view (2003:10, 3–22). Theology’s interest in the cognitive sciences is of a fairly recent date, however, going back no more than a decade or two, but the field is growing.

So far, very few biblical scholars have been engaged. The field of Biblical Studies is well accustomed to a pluralism of methods, and tools from the social sciences have, together with comparative religion, long since been employed in textual interpretation and hermeneutics. It is only natural that when exegetes begin to interact with the cognitive sciences, they mostly do so from the perspective of a cognitive study of religion, with sociology and anthropology providing the main frames of reference, leading to a focus on questions of memory, identity and ritual.

My own interest lies rather in those aspects of the cognitive sciences that are associated with the evolution and development of mind, rationality and morality: primarily evolutionary biology and neuroscience, complemented by primatology and developmental psychology. These fields all contribute to the understanding of human cognition from various angles. My interest was born while working on issues of purity and impurity in the Hebrew Bible, trying to make sense of the numerous analogies between ritual purity matters and issues that, in contradistinction, moderns would usually define as moral (Kazen 2002). Wrestling with this, I found a cognitive approach meaningful, particularly for understanding the common role of basic emotions in ritual and moral regulations. In a recent article (Kazen 2008) I discuss a number of purity laws and moral rules in the book of Leviticus, using insights from the cognitive sciences to obtain a consistent interpretation. I claim that all three phenomena for which impurity language is used in Leviticus – dietary laws, contact-contagion and certain types of immorality – share common traits that can be related to the primary emotion of human disgust at objectionable substances, this being applied secondarily to all these phenomena alike. I thus use cognitive science as a heuristic tool to interpret these texts, tracing similarities between ritual and moral matters to a common emotional and evolutionary origin.

In the present study I wish to pursue this direction by examining the role of another bodily emotion – empathy – in the development of biblical moral rules. Does empathy primarily serve to mitigate legal issues with social concerns, or does it also play a constructive-creative role in the formation of biblical law? What signs do we find in legal texts for human experiences of pain, harm or injustice influencing the shape and content of these rules? My focus in this study is on three sets of law codes, which are related in various ways: the Covenant Code in Exodus (Exod 21–23), the Deuteronomic Code (Deut 12–26), and the so-called Holiness Code in Leviticus (Lev 17–26).

Morality and the Role of Emotions

In the modern West, morality has often been assumed to result from an objective evaluation of right and wrong, in a rational process mainly located in the head. Today, the Cartesian paradigm is under fire from a number of camps, in favor of a concept of an embodied mind (Lakoff and Johnson 1999: 16–44, 235–66).

In *Descartes' Error*, Antonio Damasio (1994: 248) reverses the *dictum* underlying such thinking, claiming: “We are, and then we think.” On the basis of neuroscientific research, Damasio argues for the importance of bodily sensations and emotions for a functioning rationality and his examples are frequently quoted in scholarly literature (Damasio 1999, 2003; Rottschaefer 1998: 162; Peterson 2003: 89–91; Gärdenfors 2005: 87–93). Patients with prefrontal brain damage display deficits in secondary emotions, while on the surface rational capacity and primary emotions seem to remain intact (see below for a discussion of primary and secondary emotions). Such patients are able to reason logically, but their reduced emotional capacity seriously impairs their ability actually to make rational decisions. They are able to figure out all the possible alternative outcomes of various actions, endlessly enumerating advantages and disadvantages, but without emotions they do not know what to choose in the end.¹ Bodily emotions seem to be intimately involved in human processes of reasoning and moral judgment (Damasio 1994: 245–52; cf. Kekes 1992: 444). Hence both identity and morality are “relative to our biological state” (Morrison and Severino 2003: 860)

Similar conclusions can be drawn from neuroimaging studies by Joshua Greene and colleagues. The experiments involved typical “trolley problems”² and show that responses to personal moral dilemmas involve the activation of the same brain regions as in emotional experiences, rather than the frontal cortical areas normally involved in reasoning. By contrast, impersonal and non-moral dilemmas cause increased activity in areas associated with working memory, while decisions in these cases require a longer processing time (Greene et al. 2001: 2105–08; Greene and Haidt 2002: 517–23). This fits with the arguments of Jonathan Haidt for a “social intuitionist model,” giving priority to emotional and intuitive responses over cognitive reasoning in moral judgment, thus acknowledging *both* the evolutionary basis and the crucial role of society and culture for the development of human morality (Haidt 2001: 814–34).

Seen from an evolutionary perspective, beings existed before mind, and consciousness and thinking developed gradually. Morality can be understood as originating in certain basic emotions, which developed to regulate and protect the more vulnerable life ascending from the sea to dry land – “a repertory of built-in survival strategies” (Hurlbut and Kalanithi 2001: 335). In the context of individual reproduction and genetic transmission Darwin may have considered morality an evolutionary by-product, but that did not prevent him from emphasizing the social aspects of human development, understanding morality as a result of love and sympathy, developing from primary emotions of pain and pleasure, ultimately leading to the golden rule. This development is *not* based on the principle of selfishness, but rather on social instincts reinforced or modified by community opinions (Darwin 1989 [1877]: 101–31 [97–127]).³ This line of reasoning was taken much further by Kropotkin

(1904), whose observations on the survival of species under extreme conditions highlighted the importance of cooperation rather than competition for biological evolution.

This raises the question of “selfish genes” contra “genuine altruism” and the problem of levels of selection, to which we will return below. It also raises difficult questions concerning the distinction and interplay between biology and culture in the formation of human morality.

Beginning with Lawrence Kohlberg’s stage theory of moral reasoning, scholars of developmental psychology have often regarded the development of morality in children as governed by cognitive reasoning rather than emotion. According to Kohlberg, a pre-conventional stage is followed by a conventional stage, finally leading to an idea of moral obligation (Kohlberg, Levine and Hewer 1983). The alternative social interactionist model, although allowing for the presence of a truly moral understanding in early childhood (distinct from cultural convention), likewise depends on rational causes for moral judgment (Turiel 1983: 33–49, 130–60). Other researchers, however, point to evidence for conventions and morality being culture-specific concepts. Children develop an idea of conventional obligations in Western cultures, where the social order is understood as a secondary formation, independent from the natural order. In many other parts of the world, however, society is not separated from nature, resulting in a number of conventional or cultural practices being regarded as part of the natural moral order (Shweder, Mahapatra and Miller 1987: 1–83). We have to admit that morality and convention are not fully separable, but subject to enculturation. Although cognitive reasoning plays a role, in most cultures moral convictions are associated with, and frequently express, emotional reactions.

At this point, the distinction between primary and secondary emotions will be useful. Primary emotions are usually defined as direct responses of pain, hunger, fear or anger to bodily and environmental stimuli, aimed at protecting the physical organism from damage and death. Secondary emotions, on the other hand, are defined as conceived reactions, involving anticipation, imagination and planning (Damasio 1994: 129–39).⁴ They are important for survival, too, but in the long perspective, making sense in a social context and involving a markedly cognitive component. This does not mean that secondary emotions are separate from primary emotions, as if the latter were innate while the former were culturally acquired. It is rather that *all* emotional “fields” or “areas” have both evolutionary (innate, ultimate) and cultural (acquired, proximate) bases – and these are not fully separable, since part of the final “wiring” of the human brain takes place through interaction with social and cultural experience during periods of plasticity in childhood and even adolescence (Preston and de Waal 2002: 1–72; Haidt 2004: 827).

Most of what we call morality has to do with social interaction and is thus based on the human capacity for secondary emotions, but this is all dependent on a primary emotional development based on bodily reactions to promising or threatening stimuli, such as pleasure or pain. Moral development is intimately linked with human relationships (Morrison and Severino 2003: 855–62).

Empathy

Of the emotions associated with morality (awe, elevation, fear, guilt, contempt, anger and disgust; Looy 2004: 223), disgust has aroused prominent interest as an emotional reaction against that which is experienced as revolting or objectionable (Darwin 1989 [1890]: 195; Kolnai 2004 [1929]; Angyal 1941; Miller 1997; Rozin, Haidt and McCauley 2000). It often becomes involved in moral evaluation, to the point that it is used to express that which is found morally inappropriate, even for issues or experiences that do not by themselves elicit the feeling (Rozin, Haidt and McCauley 2000: 643). Expressing a value judgment, disgust is easily utilized as a normative pointer, but for such purposes it is highly problematic (Nussbaum 2004: 13–15, 72–171). This is nevertheless how it has often functioned –

something that can be observed not only in contemporary legislation, but also in ancient legal material (Kazen 2008).

While disgust may play a prominent role as the basis for a prohibitive morality, other emotions must be considered when a broader perspective on human morality, involving compassionate and considerate behavior in a social context, is taken into account. We have already mentioned that Darwin associated the moral sense with the development of sympathy in social animals. In the process of natural selection, “those communities, which included the greatest number of the most sympathetic members, would flourish best, and rear the greatest number of offspring” (Darwin 1989 [1877]: 111 [106/7]).

The term “empathy” was not yet in use when Darwin wrote; it was coined in English by Titchener from Lipps’ German “Einfühlung” at the beginning of the 20th century (Wispé 1987: 18–24; Håkansson 2003: 1–2). Today, empathy is usually distinguished from sympathy as well as from personal distress. Personal distress may occur independently of empathic reactions, but it may also, like sympathy, result from empathizing. Sympathy is often understood as a feeling of sorrow or concern *for* another person, while personal distress is rather the opposite: the focus is on one’s own distress rather than the other, and there is no cognitive evaluation. Empathy is usually taken to refer to the emotional response in itself, experiencing the same or a similar feeling (Eisenberg and Strayer 1987: 5–8; Eisenberg 2000: 677–691; de Waal 2006: 26–27).⁵ A clear distinction between empathy and sympathy is not always upheld, however, even among scholars. Definitions of empathy vary considerably; there is no consensus among scholars. Martin Hoffman’s definition is, however, widely accepted in some form: “an affective response more appropriate to someone else’s situation than to one’s own” (1987: 48, cf. 2000: 30).⁶

Crucial questions in psychological discussions of empathy concern the role of cognition in empathy and the role of empathy in prosocial behavior, and thus its importance for moral development (Eisenberg and Strayer 1987: 8–11). Some sort of understanding is self-evident in empathy, but opinions differ as to what kind: experiential knowledge, cognitive knowledge, theoretical knowledge, or emotional knowledge? Opinions also differ regarding the object of understanding, as well as on the relationship between empathy and similarity of experience (Håkansson 2003: 17–18, 21–24). While certain psychologists, notably Lauren Wispé (1986: 314–321) and William Ickes (1993: 587–610, cf. 1997), have emphasized the cognitive, non-emotional character of empathy, the affective component is given much more prominence by some of the most productive scholars of empathy. In addition to Martin Hoffman, whose definition has just been cited, we may mention Nancy Eisenberg, who links empathy as an affective response to an understanding of another person’s emotional state (2000: 677), Daniel Batson, who regards empathy as a vicarious emotion (Batson and Moran 1999), and Mark Davis, whose inclusive approach “gives equal status to both cognition and emotion, process and outcome, disposition and situation” (1994: 221).⁷ All four acknowledge and discuss the importance of empathy for prosocial behavior, moral development or altruism.

Hoffman (2000: 5) discusses five modes of empathic arousal: motor mimicry, classical conditioning, direct association based on one’s own experience, mediated association based on one’s own experience and information from or about the victim, and finally, role- or perspective-taking. The first three modes are preverbal and the empathy aroused is an involuntary affective response. The fourth and fifth modes are cognitive and dependent on transmission of information. The result is that a close match between the empathizer’s and the victim’s affect is not necessary, although a certain degree of match, even across cultures, is assured.

From their cross-disciplinary perspective, Stephanie Preston and Frans de Waal (2002:2–4, Table 2) list five definitions of empathy that have partial affinities with Hoffman’s modes: emotional contagion, sympathy, empathy, cognitive empathy and prosocial behaviors.

These should be seen as interacting aspects in an empathic response that takes place within a “Perception-Action Model,” depending on both ultimate and proximate bases. The model embraces a full range of responses, from evolutionary based motor mimicry and the mother-infant bond, to cognitive adoption of the perspective of others and learned helping behaviors, with mirror neurons providing a possible explanation for shared representations of perceptions and actions.⁸ De Waal (1996, 2006: 69–73) provides evidence from primatological research for empathy in apes, including examples of perception-action requiring some cognitive capacities, which indicate at least a limited Theory of Mind, i.e. an ability to recognize the mental state of others. While apes may to a certain extent figure out what others think and thus have some sort of representation of the inner world of others, Peter Gärdenfors (2000: 83–135) suggests that a human being has an *inner* inner world from which his or her own inner world can be observed. A capacity for a developed cognitive empathy, including perspective taking and an ensuing moral responsibility would thus be reserved for humans.

Self-consciousness, an inner world, or a Theory of Mind is certainly dependent on advanced cognitive capacities and requires a development of the self-other distinction (Preston and de Waal 2002: 4, Table 2). Hoffman (2000: 63–92) discusses the reactive cry of a newborn infant, which need not represent the child’s own discomfort at all. After six months this is no longer an automatic response. Towards the end of their first year, children react to others’ distress by trying to reduce their own, i.e. seeking comfort for themselves. Early in their second year, they begin offering help to victims, although still not fully realizing that others’ inner states are different from their own. A typical example is the child that brings a crying friend to his own mother. Around the age of two, children begin to distinguish between their own inner state and that of others.⁹

This distinction and developing cognitive refinement, necessary for more focused and relevant action, nevertheless builds on early experience of the same or similar affects as those of the victim. Perspective-taking is dependent on acquiring a perspective in the first place, through emotional development, and the capacity to mirror others’ affects, including reactive crying and motor mimicry. De Waal’s Russian doll model is apt (2006: 37–42, Figure 4): empathy can be understood as multilayered, consisting of emotional contagion, cognitive empathy and attribution (perspective-taking), where the outer layers (or higher levels) build on and are dependent on the inner (or lower). Prosocial action might then be triggered on any level and would not even or always require the achievement of a particular stage of self-other distinction (Preston and de Waal 2002: 4, Table 2).

When the role of empathy in prosocial behavior is discussed, evidence from developmental psychology, primatology and neuroscience seem to coincide: altruism is rooted in nature. Morality has a biological, emotional basis through the development of empathy. Evolutionary biology of a certain brand does object, however. For sociobiologists like E. O. Wilson and Richard Dawkins, survival of the fittest means that humans are genetically “selfish” and that no truly altruistic behavior can be based in our biology, but must be enforced from without by personal, cultural or political constraints. This is what de Waal (2006: 7–12) calls “Veneer Theory,” tracing it back to Thomas Huxley, Darwin’s “bulldog,” who compared humanity to a gardener constantly keeping the weeds out. While Darwin understood morality within an evolutionary framework, Huxley deprived morality of its ultimate evolutionary base.

With the new genetic knowledge came the prerequisites for interpreting the principle of the “survival of the fittest” in “selfish” terms. With genes as the level of selection, the survival and multiplication of genetic material could be seen as the governing principle of evolution (Wilson 1975; Dawkins 1989 [1976]). In as much as seemingly altruistic behaviors developed, they could be interpreted as subordinate to the overarching aim: as disguised “selfishness,” kin selection or possibly reciprocal altruism, in which pay-off was still present,

although delayed. Consequently, both Wilson and Dawkins are, just like Huxley, forced to postulate a morality which goes against natural human propensities, which is “nicer than is good for our selfish genes” (Dawkins, quoted in de Waal 2006: 9), but perhaps necessary: “Let us try to *teach* generosity and altruism because we are born selfish” (Dawkins 1989 [1976]: 3).¹⁰

Holmes Rolston has criticized this discourse for utterly confusing metaphorical or analogical language, using “selfish” for non-intentional, biological processes on a genetic level and thereby creating all sorts of links and suggestions as to the nature and character of integrated beings (Rolston 1999: 54–107; cf. Rottschaefer 2000: 264–68). Even on a genetic level, any gene must co-operate with others to be functional and survive/replicate. Natural selection favors the best adapted organisms. Even at this level, however, “selfish” does not appropriately describe the “self-actualization” that each individual strives for. Individual survival is necessary for co-operation with kin, understood as “inclusive fitness,” but often extended to “reciprocal altruism.” Rolston objects to this self-actualizing being called “selfish” with moral implications. Rather than “hang[ing] on to the central model of ‘selfishness’ and see[ing] all these others as being exploited by the original self... it is just as plausible to see the self as being distributed further into the reciprocating system and to transpose to a communitarian paradigm” (235).

One particular difficulty with the selfish gene theory concerns the level of selection. Today a number of scholars suggest that we must take into account multiple levels of selection, including the previously rejected idea of group selection. Elliot Sober and David Sloan Wilson (1998, 2000) have argued extensively for a multilevel selection theory, and others support similar positions (Rottschaefer 1998, 2000; Brandon 1999). Such views may better explain how altruism evolved.

Human morality thus has a firm evolutionary base and is grounded in our neurobiological constitution. At the same time, it is thoroughly shaped and constrained by culture.¹¹ There is compelling evidence that empathy plays a crucial role in the development of prosocial behavior, and in “altruistic” tendencies in the human species. The “selfishness” at work in natural selection is not of a moral or intentional kind at odds with humanitarian culture and altruistic morality. Evolution has apparently favored the development of human empathy, which is the prerequisite for an expanding circle of altruistic behavior. At the core is the self, not in opposition to others, but as the obligatory point of departure for prosocial behavior and an expanding altruism, since it is necessary for mirroring others’ affects, experiencing similar emotions, taking others’ perspectives and thus acquiring a capacity for altruism. Such altruism is, as de Waal has pointed out (1996: 212–14, 2006: 161–65), not all-encompassing and complete, but necessarily a widening circle depending on resources. Any individual must attend to his/her own survival in order to act towards others at all; after this follow obligations to family and clan – a kin altruism close to egoism. The perceived availability of resources governs how far this circle can expand: to the larger group, tribe or nation, to all of humanity, or to all life forms.

While de Waal’s conclusion that “the idea of universal brotherhood is unrealistic” may be questioned – the lack of resources acting as a constraint on universal altruism is primarily a matter of power structures and distribution, as well as a mental attitude – the main point is well taken: human altruistic morality moves in a continuum with self at one end and everybody at the other. Biology and culture, emotion and cognition, experience and deduction work together.

Humanitarian laws in the Covenant Code

In the following, we will analyze the role of empathy in ancient legal texts from three Pentateuchal law codes: the Covenant Code, Deuteronomistic law and the Holiness Code.

While empathy may be conceived of as lying behind a number of mitigating rules and practices in Biblical law, such as more lenient provisions for menstruating women (Kazen 2007: 355–56) compared to pathological dischargers (Lev 15), less costly sacrifices for the poor (e.g. Lev 14:21–22), the waiving of holiness concerns to allow for widowed daughters of priests to be supported by their families (Lev 22:10–13), or excepting certain available locusts from prohibited foods (Lev 11:21–22), the role of empathy is nowhere explicit in these texts. We may similarly suggest social concerns behind a number of different strategies for the regulation and removal of objectionable things, states and behaviors associated with disgust, in order to avoid the strictest alternative, rejection (Kazen 2008). In all these cases, however, we would have to infer empathy, as an implicit factor giving room for mitigating adaptations within the social and legal system. To find explicit expressions of empathy behind legal provisions, we have to look at rules dealing with ingroup-outgroup relationships and the treatment of peripheral or exposed categories of people.

The problem of literary sources in the Pentateuch is intensely debated today, and former consensus views are no longer valid (Dozeman and Schmid 2006; Van Seters 1999, 2003; Kratz 2005). Nevertheless, the so-called Covenant Code in the book of Exodus (Exod 21–23) is still regarded by most scholars as a fairly independent block of ancient materials. Antony Campbell and Mark O’Brien (2005) reject the traditional sources and argue for two partly parallel narratives: an exodus narrative ending at the deliverance at the sea and a sanctuary narrative going all through the book of Exodus. They still regard the section 19:2–24:15 as “a well-structured capsule,” however, and stress “the priority of relationship with regard to law, and the narrative context or independence of the capsule” (83), suggesting that this was an independent block of tradition, much like the book of Leviticus (86). Within this capsule, we find the “Book of the Covenant,” i.e., 20:22–23:33 (152). Bernard Levinson argues for the Covenant Code as originally independent from the Sinai pericope, but integrated as a supplement to the Decalogue at a later stage. Following Otto Eissfeldt, Levinson (1997: 153, n. 17, 2004: 281–83) draws attention to the redaction-critical implications of the combination of “words” and “ordinances” in Exod 24:3a, thus integrating the Decalogue (20:1: “All these words...”) and the Covenant Code (21:1: “These are the ordinances...”).¹²

The individual laws forming the Covenant Code are probably rooted in customary law, i.e. they originate from popular oral and local legal tradition that was administered at family or village level, functioned in a “self-executing” manner, and gained its authority from being regarded as cultural convention. The Covenant Code can profitably be compared to other ancient Near Eastern law codes. Such law codes seem not to have been created as new legislation, but were literary works incorporating older materials (Jackson 2006: 29–35, 1989: 197–98; Viberg 1992, 15–17). Jackson hypothesizes “a customary origin for the content of the individual rules, and a scribal, court origin for the literary structure” (1989: 199). A significant degree of correspondence between the Covenant code and Hammurabi’s law code suggests direct dependence, as has convincingly been demonstrated by Wright (2003; cf. Levinson 2004: 288–97). Similarities in content and order are so overwhelming that direct dependence is required. Hypotheses of mediating Canaanite codes (e.g. Alt 1953: 278–332) lack any evidence whatsoever (Van Seters 2003: 8–46; Levinson 2004: 288–89).¹³ John Van Seters argues that this points to the Babylonian exile as the most plausible period for the origin of the Covenant code. Levinson has, however, pointed out the lack of hard evidence for such a position, agreeing with Wright on an eighth century dating. During the period of Neo-Assyrian hegemony, Hammurabi’s law attracted increased interest and by far the highest number of extant copies after the period of its composition come from this time (Wright 2003: 67–71; Levinson 2004: 293–97).

When the content and order in the Covenant Code is compared with Hammurabi’s law, we find a clear correspondence in the central casuistic laws (Exod 21:2–22:16, ET 17);

fourteen laws follow more or less the same order (Wright 2003: 14–32, 72–84). Both style and topics also suggest such influence in the mainly apodictic laws that follow (22:17 [ET 18]–23:19), which indicates that the Covenant code is basically a unified composition. Some material, however, is not attested in known cuneiform law, but rather, as Wright puts it, “identifiable as Israelite custom or ... at least consistent with it” (49, cf. 35–42, 47–50). Rules relating to Israelite cultic practices belong to this material, but also the humanitarian laws in 22: 20–26 (ET 21–27). This section treats what we today might call under-privileged groups. An immigrant (*ger*) must not be oppressed; widows and orphans may not be maltreated. Money may not be lent for interest to anyone belonging to the people (“‘*et-ammi* ‘*et-he’ani* ‘*immak*’”); a cloak taken as a pledge from a neighbor (*rea*‘) must be returned before sundown.

The contents are admittedly not unique; the widow as a standard *topos* is addressed by Hammurabi’s justice, too (Wright 2003: 37, 49–50), and the orphan (22:21; ET 22:22) might correspond to the homeless girl (*ekūtu*) in Hammurabi’s law. Protection of the poor in the context of debts (22:24; ET 22:25) may possibly be implied in LH E8 (47:59–78), but Hammurabi’s law does not include the details found in the Covenant Code and in contrast endorses interest, as is clear from LH 14:18–15:6 and diverse fragments on the merchant (Richardson 2004 [2000]: 64–5, 68–71). There are thus good reasons to regard the individual laws in this section of the Covenant Code as based primarily on ancient Israelite customary law.¹⁴

A closer examination of Exod 22:20–26 (ET 21–27) reveals an appeal to the empathic capacity of the recipients, or rather, if these rules are taken as reflections of customary law, an empathic explanation of and motivation for such practices. The prohibition against oppressing immigrants is motivated by the experience of having been foreigners in Egypt (v. 20, ET 21), further explicated in 23:9. In the *narrative* world of the text, an *emotional match*, based on one’s own first-hand *experience*, is envisioned. For the *intended* recipients of the Covenant Code, a *cognitive* type of empathy, based on human capacity for *perspective-taking*, seems more appropriate. The appeal to a shared inherited experience has the effect, however, of adding an *affective* component to the concern for resident foreigners. From a *historical* point of view, the complicated political situation and tribal demography of ancient Israel would have ensured that a number of people actually had first-hand experience of minority situations. The appeal to Egypt, while basically on a *cognitive* level, is structured as to trigger a *multilayered empathy*.

The subsequent command concerning widows and orphans is followed not by an appeal but by a divine threat: if you maltreat them, God will listen and out of anger kill you by the sword, making widows of your wives and orphans of your children (vv. 21–23, ET 22–24). Despite the harshness, the effect is an appeal to the recipients’ experience. *Historically*, war and loss of family was part of first-hand *experience*. The threat seeks an *affective response* to the imagined fate of one’s own family and, in extension, to the fate of those who are presently struck by such unfortunate circumstances. This is not an appeal to a cognitive understanding or cool reason alone.

The initial prohibition against usury seemingly lacks an appeal to empathy (v. 24, ET 25), but associates personal money-lending for interest with the category of usurers (*noše*). This prohibition is, however, intimately associated with the following one, which specifies a way of acquiring some security for a loan: keeping the debtor’s cloak (vv. 25–26, ET 26–27). It must not be kept overnight, according to the command, since this is the only covering a poor person might own. The appeal to a *basic form of affective empathy* is apparent here, although not clearly spelled out; the bodily experience of freezing is common to all human beings. In addition, there is an implicit threat: God will listen, because he is merciful (*ḥannūn*). God is thus portrayed as capable of an affective and/or cognitive understanding that challenges the recipients of the command.

Empathic consideration for other people is further reflected in the subsequent section. Apart from prohibitions against false testimony and bribes (23:1–3, 6–8), helpfulness is commanded even in the case of an enemy’s ox or donkey (23:4–5). The seventh year fallow period is motivated by the poor gaining access to the crops (23:10–11). The sabbath day rest is, in distinction to the Decalogue, motivated by concern for working animals, slaves and immigrants (23:12).

These instructions exemplify a number of the aspects of empathic understanding discussed above: empathy as rooted in an *immediate affective response*, based on self and the concern for those of close kin, but extending its sphere to “outsiders” to an increasing degree – to the underprivileged in-group, even to enemies in certain cases, and to the out-group, at least such as are partially incorporated in one’s own society. *Affective and cognitive elements interact* and appeals are made to a combination of both. The emotional component is never absent and *empathy is triggered on various levels*. We would expect constraints, however, and these will be more visible as we turn to other law codes.

Empathy in Deuteronomy

The core of Deuteronomy (Deut 12–26) is usually taken to be modeled on the Covenant Code, revising and updating it in conformity to current practice (Kratz 2005: 114–33; Levinson 1997, 2004).¹⁵ Van Seters’ attempt (2003) to reverse the order has not been greeted with any enthusiasm (Levinson 2004; Norin 2006), and must be considered as most unlikely. The context of Deuteronomy is that of cult centralization, something not presupposed in earlier legislation, and even explicitly contradicted by the altar law of Exod 20:24–26, a fact that is emphasized by Levinson in his criticism (2004: 297–315). This new historical context necessitates a revision and a re-writing of a number of laws. By retrojecting present concerns into the past, Deuteronomy transforms previous tradition (Levinson 1997: 150).¹⁶

Questions of the origin, composition and dating of Deuteronomistic law have received no consensus answers. Most scholars have assumed several strata and a long period of development. Reinhard Kratz suggests two possible dates for an Ur-Deuteronomy: after the downfall of Samaria, or after the downfall of Judah, considering the latter alternative to be more plausible. This would amount to an early exilic dating of an Ur-Deuteronomy, although Kratz seems to think that “not a great deal depends on this” (2005: 132). The traditional view, however, associates a Deuteronomistic core with social and religious changes during Hezekiah and Josiah, culminating in attempts at cult centralization under Josianic rule (Levinson 1997: 21–22, 49–50). Levinson admits that the questioning of 2 Kings 22–23 as a historical source is understandable; the connection between the discovery of the Torah scroll, covenant renewal and centralization is not based on an earlier source but the work of the Deuteronomist. He defends the traditional view, however, concluding that the gist of the narrative in 2 Kings 22–23 “is the work of a pre-exilic editor who sought to legitimate the introduction of a new set of laws and to sanction Josiah’s cultic and political initiatives” (1997: 10). Although these laws were further expanded and revised through the exile and into the Second Temple period, Levinson dates a Deuteronomistic core to the time of Josiah (1997: 9–10).

According to Kratz’s stratification most of the material relevant to the present discussion falls outside the core (2005: 133). Kratz partly depends on distinguishing second person singular from second person plural sections within the core (Deut 12–26; cf. his stratification with regard to the Covenant Code above). A similar stratification, but taking the whole of Deuteronomy into account, is made by Minette de Tillesse (2000: 156–63), who dates the *you* sg. sections to 711–701 BCE (the Northern kingdom) while the *you* pl. sections are associated with Judah after 538 BCE. The extent to which detailed stratification based on such shifts may be convincingly argued must, however, be questioned, in view of their haphazard appearance (Veijola 2000: 207). If the shifts between sg. and pl. are regarded as large enough

discrepancies to suggest different sources, one wonders why an editor would not have smoothed them out; if on the other hand a shift between sg. and pl. can be read as stylistic variation, a single hand could be responsible.¹⁷

While the search for a Deuteronomic core is usually focused on Deut 12–26, materials from the Covenant Code on widows, orphans and immigrants are first echoed in Deut 10:17–19, belonging to what Kratz calls a paraenetic framework around an Ur-Deuteronomy (Kratz 2005: 114–133). The section in question (10:12–11:30) elaborates on the *shema* (6:4–9), referring to divine love as the cause of election. In this context, God is characterized as the god of gods, a terrible hero and the guarantor of justice for the orphan and widow, loving the immigrant, giving him food and clothing. We may compare God’s role to the king Hammurabi, who set up his stela “to provide justice for the homeless girl and widow” (LH 47:61–62; Wright 2003: 37). At the same time God is portrayed as himself fulfilling the requirements of the covenant, giving further emphasis to the subsequent command: “and you shall love the immigrant, because you were immigrants in the land of Egypt” (10:19). While this part of the motivation has by now become a standard *topos*,¹⁸ the reference to God’s love appeals to empathy in the form of *perspective-taking*, since this love has just been proclaimed as the reason for the divine election of Israel, and thus, implicitly, for the redemption from Egypt (10:15). The same divine love is now directed towards the immigrant and the people are challenged likewise to love the immigrant, remembering that their own redemption and election depend on that type of love. There is thus a strong *emotional component* in the type of perspective-taking appealed to, effectively questioning an expected *group egoism*. An exilic *Sitz-im-Leben* for this text seems unlikely; it does not fit with a picture of a limited number of immigrants living among the Israelites. A pre- or post-exilic situation is more likely, in which nationalist sentiments, external pressure and the struggle for independence and survival might have acted as constraints, *limiting empathic response* to a narrow in-group.

The three categories, immigrants, orphans and widows, return several times in the main body of Deuteronomic law. In 14:29 they are added to the Levites, who as a result of cult centralization risked marginalization (Kratz 2005: 121). All four are included with family and slaves in the now centralized celebration of the Feast of Weeks (16:11–12) as well as the Feast of Booths (16:14) in Jerusalem. The three occur repeatedly together in ch. 24 (vv. 17, 19, 20, 21) and all four in 14:29 and 26:12 as objects of charity: they should be allowed the remains from fields, olive trees and vines and they are supposed to receive the third year tithe. Motivations do not abound, but references to the Egyptian experience recur; they are however differently phrased: “remember that you were a *slave* in the land of Egypt” (16:12; 24:18, 22). This motivation may seem strange in view of the fact that slaves and slavery are not in focus – in ch. 24 they are not even mentioned except in the motivations. The formula is, however, also found in 5:15 and 15:15, where it does refer to slavery. In the Deuteronomic Sabbath commandment it motivates the purpose of the Sabbath, which is rest for slaves as well as for masters (5:14). This purpose is not spelled out in the Exodus Decalogue, but found in the Covenant Code (Exod 23:12). In Deut 15 the formula is a comment on the release of Hebrew debt slaves. The explanation for the subsequent use of this motivation in Deuteronomy probably lies in the poverty, marginalization and hardships that are implied as shared experiences. Empathic behavior towards orphans, widows, and immigrants (and Levites) is motivated by an *appeal to the similar experience* of slavery. If we read these comments as pre-exilic they may primarily be understood as appeals to a *cognitive type of empathy*, but in a post-exilic context, Egypt would be rather a metonym for Babylon and these appeals would enlist a more *immediate experiential* understanding.

References to the immigrant, orphan and widow, echoing the Covenant Code, are especially frequent in Deut 24:17–22. This triad is frequently found in some of the prophets, when the people are being accused of faithlessness towards the covenant (Jer 7:6; 22:3; Ezek

22:7 [cf. 22:29]; Zech 7:10; Mal 3:5). Here, however, they amount to more than a repetition of standard *topoi*, as we find that the preceding section (24:6, 10–15) similarly develops Covenant Code instructions on usury and the taking of pledges. This elaboration contains prohibitions of certain items as pledges, specifying the manner in which pledges may be taken and exhibits a concern for the poor, repeating the importance of returning a poor man’s clothing before sundown. The prohibition against oppressing day-laborers and the poor also applies explicitly to brothers as well as to immigrants (24:14) and thus exemplifies a type of *altruism* that *extends empathic behavior* outside tribal or ethnic borders.

In Deuteronomy, however, such altruism is subject to severe *constraints*, something that can be seen both in the body of Deuteronomic law (Deut 12–30) and in the framework. Deut 7:1–3 contains strict rules for interaction with foreign peoples. Covenants, contracts or inter-marriage with them are strictly prohibited; the peoples should simply be annihilated.¹⁹ These instructions must, of course, be read as part of a narrative context, preparing the people for the conquest of the land, and are associated with the risk of apostasy and a fear of idolatry, something that should be abhorred since God abhors it (7:25–26). The composite war laws of chap. 20 bear signs of development; 20:10–14 allow the taking of spoils, including women and children, but this is complemented by 20:15–18, allowing nothing but total annihilation of neighboring peoples, with disgust at their idolatry and the risk of apostasy as motivation. There are interesting nuances, however. While Ammonites, Moabites and people of mixed heritage are never to be included in the congregation (23:3–4 [ET 2–3]), this does not apply to Edomites and Egyptians, whose descendants may be assimilated in the third generation (23:8–9 [ET 7–8]). The motivations for the two exceptions are very different, but still represent two types of empathy: Edomites are brothers; Israelites were once immigrants in Egypt. While leniency towards Edomites appeals to *closer kinship* than in the case of other peoples, nothing of that sort motivates leniency towards Egyptians. As the harsh judgment on Ammonites and Moabites is motivated by their enmity in the narrative of Bileam, we might have expected resentment towards the Egyptians as former masters. Instead, the text explicitly commands Israelites not to abhor them either, and we find the oft-repeated reference to the *shared experience* of being an ethnic minority, being immigrants in an exposed situation. Empathy may clearly be triggered at various levels.²⁰

Immigrants in the Holiness Code

The Holiness Code (Lev 17–26) has traditionally been considered the oldest core of Leviticus (Kratz 2005: 110–11; Levine 2003: 16–17), but today there is an increasing tendency to regard it as later than the preceding sacrificial and purity laws (Lev 1–16), and even to consider a Holiness school (H) as responsible for redacting much of the Pentateuch (Milgrom 1991: 3–63, 2000a: 1319–67, 2000b: 2440–46; Knohl 1995: 199–224).²¹

It is, indeed, reasonable to regard the Holiness Code as later than the Deuteronomic Code. The Holiness Code shows signs of awareness of both the Covenant Code and Deuteronomistic law. We should note the parallel endings: Lev 26 is in many ways similar to Exod 23 and Deut 28. According to Kratz (2005: 110), “the Holiness Code ... reformulates Deuteronomy in the spirit and style of the Priestly writing.” It presupposes Deuteronomic cult centralization and changes induced by this development (Lev 17; 23), suggesting a subsequent date. Both Kratz (2005: 110–11) and Baruch Levine (2003: 11, 18) thus believe that priestly writers redacted Deuteronomy.

Levine’s idea, however, that the Holiness Code stands at the beginning of the literary development of Leviticus must be questioned. This does not fit with the Holiness Code being later than the Deuteronomic Code. Deuteronomy definitely has access to, and elaborates on some of the P material present in the first half of Leviticus, such as the food laws. There are overwhelming arguments for Deut 14:3–19 summarizing and redacting Lev 11 rather than the

converse. The concise character and more homogeneous terminology of the Deuteronomic variant is evident (Kazen 2008; Meshel 2008). By dating the whole of Leviticus later than Deuteronomy, Levine is forced to regard Lev 11 as an elaboration on Deut 14, which is very implausible indeed.

The Holiness Code must be regarded as later than the rest of Leviticus. Jacob Milgrom's dating (1991: 34, 2000a: 1345–64) is, however, far too early, tracing P to the sanctuary in Shiloh and regarding H as pre-exilic (except for a few verses ascribed to a later redactor, H_R). While Israel Knohl (1995: 204–16) allows room for both sources, as overlapping and extended processes – H extending beyond the exile – he still implausibly dates the beginning of the Holiness Code too early and too precisely to the reign of Ahaz. With regard to the Holiness Code, it is more reasonable to follow Kratz (2005: 326), who dates Leviticus, including the Holiness Code, after 515 BCE, or Levine (2003: 15), who dates “the earliest strata of the *Priesterschrift*” (to which he considers H to belong) during the exile or after the waves of return that follow 538 BCE. Although the first half of Leviticus may have earlier roots, this would suggest a late pre-exilic or exilic date for the Holiness Code.

Developing Mary Douglas' idea of Leviticus as a ring composition (1993: 8–15, 1995: 247–55) Milgrom regards Lev 19 as the “central turning point” of Leviticus (2003: 28), focused on holiness. Here we find instructions concerning harvesting: it should not be carried out too thoroughly since leftovers must be reserved for the poor and the immigrant (Lev 19:9–10; repeated in 23:22). The elements, although not the particular conclusion, are present in the Covenant Code (Exod 22:10–11) and the explicit commandment in the Deuteronomic Code (Deut 24:19–22). In the Holiness Code it is followed by injunctions not to withhold the salary of a worker overnight (19:13), not to curse a deaf person or to trip a blind person (19:14; cf. Deut 27:18), to be fair in judgment and not to take revenge (19:15–18). These injunctions are part of a list, including rules on sacrifice, the mating of animals, certain sexual transgressions, first fruit laws, meat with blood, the cutting of hair and beard, prostitution, divination and fair weights and measures. Most rules are concluded by the statement: “I am the Lord.”

The immigrant returns towards the end of this section (19:33–34), together with the standard motivation: “You were immigrants in Egypt.” Just as in Deuteronomy, the command is to *love* the immigrant; unlike Deuteronomy the command is to love the immigrant “as yourself,” something that a little earlier was stated about the neighbor (19:18). The presupposition is that a resident foreigner should be treated just like a native (19:34). This emphasis on *equal treatment* is particular to the Holiness Code and goes together with a repeated claim that various holiness laws are valid for immigrants, and supposed to be followed by them to the same extent as by native Israelites. This claim is insistently frequent (Lev 17:8, 10, 12, 13, 15; 18:26; 20:2; 22:18; 24:16, 22), carried on in Numbers (Num 9:14; 15:14–16, 26, 29–30; 19:10; 35:15) and found in the Passover narrative in Exodus, too (Exod 12:19, 48–49). It is, however, conspicuously absent from Deuteronomy, because in Deuteronomic law, immigrants are not expected to conform to Israelite holiness (Deut 14:21).²²

Especially if placed in an early post-exilic setting, these injunctions breathe an *inclusive altruistic* spirit, based not only on a *cognitive* type of *role-taking*, but on an *experiential* type of empathy, with a strong *affective* component. Love of self, neighbor and immigrant is seen as part of holiness law to the same extent as ritual and sexual instructions. At the same time, this empathy seems to be restricted to an *integrated out-group*, adapting fully to social and religious norms, becoming increasingly assimilated. There is a sharp difference between a *ger* (immigrant) and *goyim* (the peoples), between those being integrated and the real out-group. Those who do not follow the holiness laws are killed or “cut out” (*karet*), whether natives or immigrants (Lev 17:10; 18:29; 20:2; 24:16; cf. Num 15:30). Behavior that goes against the Holiness Code is associated with the former inhabitants who were expelled from the land

because of their practices (Lev 18:24–30; 20:22–26; 26:14–39). As in Deuteronomy, empathy is *constrained* by feelings of fear and disgust towards that which is foreign enough to be experienced as threatening. Nevertheless it seems as if the Holiness Code has *further developed* an empathic attitude, not least towards immigrants, in comparison with earlier law codes and at the same time *integrated both the empathic and the restraining tendencies* found in the Deuteronomic framework into the law code itself.

Conclusion

Empathy is, beside other emotions such as fear and disgust, crucial in the manifestation of human prosocial behavior, i.e. what we would call human morality. Based in biology and shaped through culture, emotions form a foundation on which moral reasoning is often built. A “veneer theory” is hardly warranted. There is an evolutionary biological foundation for human morality, with emotional capacity providing a vital link.

The human capacity for moral emotions is both different and similar to that of other advanced animals and develops throughout life through cultural learning and social interaction. Empathy, like many other emotions, is associated with certain triggers, may be studied at various levels and can be divided into a number of stages, of which we have seen numerous traces in Pentateuchal legislation.

In these texts we have found frequent expressions of *affective types of empathy*, as well as more *cognitive forms of perspective-taking*. Signs of a *multi-layered* type of empathy, triggered at various levels, have been observed and *constraints* applying to *group egoism* and *altruism* have been touched upon. The role of *experience* varies considerably, not least depending on how, when and where traditions are contextualized: the dating and provenance of various law codes affects how we come to interpret their emotional content; conversely, analyses of emotional reflections and expressions in these texts may perhaps have a bearing on questions of provenance and dating.

Employing tools from some of the cognitive sciences, instructions from old Israelite law codes can be shown to reflect some of the deep roots of human morality. Further studies in ancient texts will continue to increase our understanding of the role of biology, emotion and cognition for the structuring of human behavior. Hopefully, they can contribute to present-day ethical discourse, too, not least within religious contexts.

Bibliography

- Alt, Albrecht. 1953. *Kleine Schriften zur Geschichte des Volkes Israels*. Band 1. Munich: C. H. Beck'sche Verlagsbuchhandlung.
- Angyal, Andras. 1941. Disgust and Related Aversions. *Journal of Abnormal Psychology* 36: 393–412.
- Batson, C. Daniel, and Laura L. Shaw. 1991. Evidence for Altruism: Toward a Pluralism of Prosocial Motives. *Psychological Inquiry* 2: 107–22.
- Batson, C. Daniel, and T. Moran. 1999. Empathy Induced Altruism in a Prisoner's Dilemma. *European Journal of Social Psychology* 29: 909–24.
- Brandon, Robert N. 1999. The Units of Selection Revisited: The Modules of Selection. *Biology and Philosophy* 14: 167–80.
- Campbell, Antony J., and Mark A. O'Brien. 2005. *Rethinking the Pentateuch: Prolegomena to the Theology of Ancient Israel*. Louisville, KY: Westminster John Knox.
- Carr, Laurie, Marco Iacoboni, Marie-Charlotte Dubeau, John D. Mazziotta, and Gian Luigi Lenzi. 2003. Neural Mechanisms of Empathy in Humans: A Relay from Neural Systems for Imitation to Limbic Areas. *Proceedings of the National Academy of Sciences of the United States of America* 100: 5497–502.
- Collins, John J. 2003. The Zeal of Phinehas: The Bible and the Legitimation of Violence. *Journal of Biblical Literature* 122: 3–21.
- Damasio, Antonio R. 1994. *Descartes' Error: Emotion, Reason and the Human Brain*. New York: Grosset/Putnam.
- Damasio, Antonio R. 1999. *The Feeling of What Happens: Body and Emotion in the Making of Consciousness*. New York: Harcourt Brace.
- Damasio, Antonio R. 2003. *Looking for Spinoza: Joy, Sorrow, and the Human Brain*. Orlando: Harcourt.
- Darwin, Charles. 1989 [1877, 1st edn 1874]. *The Descent of Man, and Selection in Relation to Sex*. Part 1. The Works of Charles Darwin, vol. 21. New York: University Press.
- Darwin, Charles. 1989 [1890, 1st edn 1872]. *The Expression of the Emotions in Man and Animals*. The Works of Charles Darwin, vol. 23. New York: University Press.
- Davis, Mark H. 1994. *Empathy: A Social Psychological Approach*. Social Psychology Series. Boulder, CO: Westview.
- Dawkins, Richard. 1989. *The Selfish Gene*. New edn. Oxford: University Press.
- Douglas, Mary. 1993. The Forbidden Animals in Leviticus. *Journal for the Study of the Old Testament* 59: 3–23.

- Douglas, Mary. 1995. Poetic Structure in Leviticus. In *Pomegranates and Golden Bells: Studies in Biblical, Jewish, and Near Eastern Ritual, Law, and Literature in Honor of Jacob Milgrom*, edited by David P. Wright, David Noel Freedman, and Avi Hurvitz, 239–56. Winona Lake, IN: Eisenbrauns.
- Dozeman, Thomas B, and Konrad Schmid. 2006. *A Farewell to the Yahwist? The Composition of the Pentateuch in Recent European Interpretation*. SBL Symposium Series, 34. Atlanta, GA: Society of Biblical Literature.
- Eisenberg, Nancy, and Janet Strayer. 1987. Critical Issues in the Study of Empathy. In *Empathy and Its Development*, edited by Nancy Eisenberg and Janet Strayer, 3–13. Cambridge Studies in Social and Emotional Development. Cambridge: University Press.
- Eisenberg, Nancy. 2000. Empathy and Sympathy. In *Handbook of Emotions*, edited by Michael Lewis and Jeanette M. Haviland-Jones, 677–91. 2nd edn. New York: Guildford.
- Gärdenfors, Peter. 2000. *Hur Homo blev Sapiens: Om tänkandets evolution*. Nora: Nya Doxa.
- Gärdenfors, Peter. 2005. *Tänkens vindlar: Om språk, minne och berättande*. Nora: Nya Doxa.
- Greene, J. D., R. B. Sommerville, L. E. Nystrom, J. M. Darley, and J. D. Cohen. 2001. An fMRI Investigation of Emotional Engagement in Moral Judgment. *Science* 293: 2105–08.
- Greene, Joshua D. and Jonathan Haidt. 2002. How (and Where) Does Moral Judgment Work? *Trends in Cognitive Sciences* 6: 517–23.
- Griffiths, Paul E. 1997. *What Emotions Really Are: The Problem of Psychological Categories*. Chicago and London: University of Chicago Press.
- Haidt, Jonathan. 2001. The Emotional Dog and Its Rational Tail: A Social Intuitionist Approach to Moral Judgment. *Psychological Review* 108: 814–34.
- Håkansson, Jakob. 2003. *Exploring the Phenomenon of Empathy*. Stockholm: Department of Psychology, Stockholm University.
- Hoffman, Martin L. 1987. The Contribution of Empathy to Justice and Moral Judgment. In *Empathy and Its Development*, edited by Nancy Eisenberg and Janet Strayer, 47–80. Cambridge Studies in Social and Emotional Development. Cambridge: University Press.
- Hoffman, Martin L. 2000. *Empathy and Moral Development: Implications for Caring and Justice*. Cambridge: University Press.
- Hurlbut, William and Paul Kalanithi. 2001. Evolutionary Theory and the Emergence of Moral Nature. *Journal of Psychology and Theology* 29: 330–39.

- Iacoboni, Marco and Mirella Dapretto. 2006. The Mirror Neuron System and the Consequences of Its Dysfunction. *Nature* 7: 942–50.
- Ickes, William. 1993. Empathic Accuracy. *Journal of Personality* 61: 587–610.
- Jackson, Bernard S. 1989. Ideas of Law and Legal Administration: A Semiotic Approach. In *The World of Ancient Israel: Sociological, Anthropological and Political Perspectives*, edited by R. E. Clements, 185–202. Cambridge: University Press.
- Jackson, Bernard S. 2006. *Wisdom-Laws: A Study of the Mishpatim of Exodus 21:1–22:16*. Oxford: University Press.
- Kazen, Thomas. 2002. *Jesus and Purity Halakhah: Was Jesus Indifferent to Impurity?* Coniectanea Biblica New Testament Series, 38; Stockholm: Almqvist & Wiksell International.
- Kazen, Thomas. 2007. Explaining discrepancies in the purity laws about discharges. *Revue Biblique* 114: 348–71.
- Kazen, Thomas. 2008 [forthcoming]. Dirt and Disgust: Body and Morality in Biblical Purity Laws. In *Perspectives on Purity and Purification in the Bible*, edited by Baruch Schwartz and David P. Wright, ??–??. London: T & T Clark.
- Kekes, John. 1992. Disgust and Moral Taboos. *Philosophy* 67: 431–46.
- Kerem, Efrat, Nurit Fishman, and Ruthellen Josselson. 2001. The Experience of Empathy in Everyday Relationships: Cognitive and Affective Elements. *Journal of Social and Personal Relationships* 18: 709–29.
- Knohl, Israel. 1995. *The Sanctuary of Silence: The Priestly Torah and the Holiness School*. Minneapolis, MN: Fortress.
- Kohlberg, Lawrence, Charles Levine, and Alexandra Hwer. 1983. *Moral stages: A Current Formulation and a Response to Critics*. Contributions to Moral Development, 10. Basel: Karger.
- Kolnai, Aurel. 2004 [1929]. *On Disgust*. Edited by Barry Smith and Carolyn Korsmeyer. Chicago and La Salle, IL: Open Court.
- Kratz, Reinhard G. 2005 [German 2000]. *The Composition of the Narrative Books of the Old Testament*. Translated by John Bowden. London and New York: T & T Clark.
- Kropotkin, Petr. 1904 [1902]. *Mutual Aid: A Factor of Evolution*. Revised and cheaper edn. London: William Heinemann.
- Lakoff, George and Mark Johnson. 1999. *Philosophy in the Flesh: The Embodied Mind and Its Challenge to Western Thought*. New York: Basic Books.

- Levine, Baruch A. 2003. Leviticus: Its Literary History and Location in Biblical Literature. In *The Book of Leviticus: Composition and Reception*, edited by Rolf Rendtorff and Robert A. Kugler, 11–23. *Vetus Testamentum Supplements*, 93. Leiden: Brill.
- Levinson, Bernard M. 1997. *Deuteronomy and the Hermeneutics of Legal Innovation*. New York and Oxford: Oxford University Press.
- Levinson, Bernard M. 2004. Is the Covenant Code an Exilic Composition? A Response to John Van Seters. In *In Search of Pre-Exilic Israel*, edited by John Day, 272–325. *Journal for the Study of the Old Testament: Supplement Series*, 406. London and New York: T & T Clark International.
- Meshel, Naphtali. 2008 [forthcoming]. Pure, Impure, Permitted, Prohibited: A Study of Classification Systems in P. In *Perspectives on Purity and Purification in the Bible*, edited by Baruch Schwartz and David P. Wright, ??–?? London: T & T Clark.
- Milgrom, Jacob. 1991. *Leviticus, 1–16: A New Translation with Introduction and Commentary*. Anchor Bible, 3. Garden City, NY: Doubleday.
- Milgrom, Jacob. 2000a. *Leviticus, 17–22: A New Translation with Introduction and Commentary*. Anchor Bible 3a. Garden City, NY: Doubleday.
- Milgrom, Jacob. 2000b. *Leviticus, 23–27: A New Translation with Introduction and Commentary*. Anchor Bible 3b. Garden City, NY: Doubleday.
- Milgrom, Jacob. 2003. H_R in Leviticus and Elsewhere in the Torah. In *The Book of Leviticus: Composition and Reception*, edited by Rolf Rendtorff and Robert A. Kugler, 24–40. *Vetus Testamentum Supplements*, 93. Leiden: Brill.
- Miller, William. 1997. *The Anatomy of Disgust*. Cambridge, MA: Harvard University Press.
- Minette de Tillesse, Gaëtan. 2000. TU & VOUS dans le Deutéronome. In *Liebe und Gebot: Studien zum Deuteronomium*, edited by Reinhard G. Kratz and Hermann Spieckermann, 156–63. FS Lothar Perlitt. Göttingen: Vandenhoeck & Ruprecht.
- Morrison, Nancy and Sally K. Severino. The Biology of Morality. *Zygon* 38: 855–69.
- Norin, Stig. 2006. John Van Seters, *A Law Book of [sic] the Diaspora: Revision in the Study of the Covenant Code*. *Svensk Exegetisk Årsbok* 71: 237–39.
- Nussbaum, Martha. 2004. *Hiding from Humanity: Disgust, Shame, and the Law*. Princeton: University Press.
- Peterson, Gregory R. 2003. *Minding God: Theology and the Cognitive Sciences*. Theology and the Sciences. Minneapolis, MN: Fortress.
- Preston, Stephanie D. and Frans B. M. de Waal. 2002. Empathy: Its Ultimate and Proximate Bases. *Behavioural and Brain Sciences* 25: 1–72.

- Richardson, M. E. J. 2004 [First published by Sheffield Academic Press 2000]. *Hammurabi's Laws: Text, Translation and Glossary*. London and New York: T & T Clark.
- Rizzolatti, Giacomo and Laila Craighero. 2005. Mirror Neuron: A Neurological Approach to Empathy. In *Neurobiology of Human Values*, edited by J.-P. Changeux, A. R. Damasio, W. Singer, and Y. Christen, 107–23. Research and Perspectives in Neuroscience. Berlin: Springer.
- Rolston III, Holmes. 1999. *Genes, Genesis and God: Values and their Origins in Natural and Human History*. The Gifford Lectures, University of Edinburgh, 1997–1998. Cambridge: University Press.
- Rottschaefter, William A. 1998. *The Biology and Psychology of Moral Agency*. Cambridge: University Press.
- Rottschaefter, William A. 2000. Naturalizing Ethics: The Biology and Psychology of Moral Agency. *Zygon* 35: 253–86.
- Rozin, Paul, Jonathan Haidt, and Clark McCauley. 2000. Disgust. In *Handbook of Emotions*, edited by Michael Lewis and Jeanette M. Haviland-Jones, 637–53. 2nd edn. New York: Guilford.
- Shweder, Richard A., Manamohan Mahapatra, and Joan G. Miller, 1987. Culture and Moral Development. In *The Emergence of Morality in Young Children*, edited by Jerome Kagan and Sharon Lamb, 1–83. Chicago and London: University of Chicago Press.
- Sober, Elliott and David Sloan Wilson. 1998. *Unto Others: The Evolution and Psychology of Unselfish Behaviour*. Cambridge, MA and London: Harvard University Press.
- Sober, Elliott and David Sloan Wilson. 2000. Summary of *Unto Others: The Evolution and Psychology of Unselfish Behavior*. In *Evolutionary Origins of Morality: Cross-Disciplinary Perspectives*, edited by Leonard D. Katz, 185–206. Thorverton, U.K. and Bowling Green, OH: Imprint Academics.
- Turiel, Elliot. 1983. *The Development of Social Knowledge: Morality and Convention*. Cambridge: University Press.
- Van Seters, John. 1999. *The Pentateuch: A Social-Science Commentary*. London and New York: T & T Clark.
- Van Seters, John. 2003. *A Law Book for the Diaspora: Revision in the Study of the Covenant Code*. Oxford: University Press.
- Veijola, Timo. 2000. Bundestheologie in Dtn 10,12–11,30. In *Liebe und Gebot: Studien zum Deuteronomium*, edited by Reinhard G. Kratz and Hermann Spieckermann, 206–21. FS Lothar Perlt. Göttingen: Vandenhoeck & Ruprecht.
- Viberg, Åke. 1992. *Symbols of Law: A Contextual Analysis of Legal Symbolic Acts in the Old Testament*. Coniectanea Biblica Old Testament Series, 34. Stockholm: Almqvist & Wiksell International.

de Waal, Frans B. M. 1996. *Good Natured: The Origins of Right and Wrong in Humans and Other Animals*. Cambridge, MA and London: Harvard University Press.

de Waal, Frans B. M. 2006. *Primates and Philosophers: How Morality Evolved*. The University Center for Human Values Series. Princeton and Oxford: Princeton University Press.

Wilson, Edward O. 1975. *Sociobiology: The New Synthesis*. Cambridge, MA and London: The Belknap Press of Harvard University Press.

Wispé, Lauren. 1986. The Distinction Between Sympathy and Empathy: To Call Forth a Concept, a Word Is Needed. *Journal of Personality and Social Psychology* 50: 314–21.

Wispé, Lauren. 1987. History of the Concept of Empathy. In *Empathy and Its Development*, edited by Nancy Eisenberg and Janet Strayer, 17–37. Cambridge Studies in Social and Emotional Development. Cambridge: University Press.

Wright, David P. 2003. The Laws of Hammurabi as a Source for the Covenant Collection (Exodus 20:23–23:19). *Maarav* 10: 11–87.

¹ Damasio's case studies include "Elliot" whose choices constantly led to detrimental results for his own person, in spite of his being able to reason logically and foresee the outcome of various decisions in theory (1994: 34–51). "The defect appeared to set in at the late stages of reasoning, close to or at the point at which choice making or response selection must occur. ... [T]he defect was accompanied by a reduction in emotional reactivity and feeling. ... Elliot's reasoning prevented him from assigning different values to different options, and made his decision-making landscape hopelessly flat" (50–51). Compare the patient whose lack of emotional capacity was shown to be of great help in driving on an icy road (no panic, just rational behavior), while it made it virtually impossible for him to decide between two alternative dates, weighing advantages and disadvantages endlessly (192–4).

² A trolley problem is an ethical thought experiment in which a trolley is running out of control and will kill a number of people, unless you move a switch that will lead the trolley onto another track, killing only one person.

³ Darwin is not clear as to what extent the later stages of the evolution of morality are genetically dependent – quite naturally, since genes were yet to be discovered when Darwin wrote.

⁴ Primary emotions are for example direct responses of fear or anger to immediate stimuli, while secondary emotions are conceived reactions to anticipated or imagined events. Cf. Damasio 1994: 129–39. The distinction between primary and secondary emotions has been questioned by Paul Griffiths (1997: 228–247), who regards the general category of "emotion" as a useless concept in a future psychology of emotion, arguing for a clear distinction between affect programs and higher cognitive emotions, and so eliminating the general concept of emotion altogether. I find something in Griffiths' criticism of Damasio's assumption that secondary emotions are acquired while primary emotions are innate, but I am not convinced by his claim that some higher cognitive emotions appear independently of the affect program phenomena (1997: 102–106). In any case, the general concept of "emotion" has not disappeared, although alternatives such as "affect" (cf. "affective sciences") are found, too.

⁵ Empathy does not necessarily imply sharing exactly the same emotion. See Kerem, Fishman and Josselson 2001: 712. Cf. Batson and Shaw 1991: 113–14.

⁶ A collection of definitions is found in Eisenberg and Strayer 1987: 3–4.

⁷ Cf. the study by Kerem, Fishman and Josselson (2001) of people's *experiences* of empathy, showing that cognitive as well as affective aspects played a significant role.

⁸ Mirror neurons were first found in monkeys and are active in performing as well as in observing an action. While they seem to be used for imitation, this capacity belongs to a late stage in evolution, not present in monkeys and only partially present in apes. Mirror neurons probably evolved not for imitation, but for understanding actions performed by others, as well as their emotional states. Studies of humans suggest that mirror mechanisms make the observer enact the actions of others inside him/herself and share their emotions,

thus transforming what others do and feel into the observer's own experience (Carr et al. 2003: 5497–502; Jacoboni and Dapretto 2006: 942–50; Rizzolatti and Craighero 2005: 107–23).

⁹ Hoffman illustrates this with a number of anecdotal observations of children from the age of two actually taking on the victim's role and reflecting on the victim's needs in the current context, thus displaying a cognitive understanding of self-other distinction.

¹⁰ Dawkin's emphasis.

¹¹ Even among apes and monkeys there is evidence for the "cultural" shaping of empathic or prosocial behavior. Cf. de Waal's discussion on peace-making and community concern, in particular his example of the long term acculturation of rhesus monkeys interacting with stump-tailed macaques in mixed groups, resulting in the more assertive rhesus monkeys learning to practice the peace-making skills of the stump-tails (1996: 163–208).

¹² Levinson dismisses Van Seters' recent attempt (2003) to re-establish a J source, including the Covenant Code, although dating it during the exile, thus regarding the Covenant Code as later than Deuteronomistic law (Levinson 1997, 2004). Kratz (2005: 138–39) argues similarly, stating: "in substance it is pre-Priestly and pre-Deuteronomistic, and subsequently pre-Deuteronomistic" (144). See further below.

¹³ Although a theory of literary dependence seems plausible (Levinson 1997: 7–8; Wright 2003), the context of a predominantly oral culture and the popularity and spread of Hammurabi's law code would actually make oral dependence based on memorization a possible alternative.

¹⁴ Kratz 2005: 140–44 talks of second person additions to the earliest mishpatim, to which the sections with a social emphasis (22:20–23:9 and 23:10–12) belong. A second-person-singular revision begins a theologizing of law that makes it come close to paraenesis. There are also further second-person-plural additions, which include some of the motivations: "you (pl.) were immigrants in Egypt;" "I will kill you (pl.) by the sword so that your (pl.) wives will become widows and your (pl.) sons will become orphans." I am hesitant, however, before such a detailed stratification of the text. It would suggest editors or revisers with very little ability indeed in adapting their style to the form of a given text when developing or emending it.

¹⁵ The theory of two sources behind Deuteronomistic law, the Covenant Code and a "Privilege Law" (e.g. Lohfink) is considered unnecessary by Levinson (1997: 8).

¹⁶ This observation concerns not only altar laws and questions of worship, but the consequences of administration of justice; only cases permitting secular justice may be tried locally, whereas cases requiring cultic justice are prohibited as a result of centralization. This also means that royal justice is not supreme (Levinson 1997: 98–143, especially 124).

¹⁷ Cf. the evaluation of Timo Veijola (2000: 207) that "der Gebrauch des Numerus in der Anrede Israels so unregelmäßig wechselt, daß er kein brauchbares Instrumentarium zur Wiederherstellung eines ursprünglichen Textes bietet."

¹⁸ The formula (כִּי־גֵיִם הֵי־יָתֶם בְּאֶרֶץ מִצְרַיִם) is identical in the Covenant Code (Exod 22:20; 23:9).

¹⁹ They should be "consecrated to destruction." The interpretation of the *cherem* or ban has been much discussed, see Collins 2003: 4–10, cf. 2004.

²⁰ These constraints and exceptions highlight a close interplay between empathy and disgust (cf. Kazen 2008), but also between empathy, fear and justice, that cannot be further exploited here. A similar interaction may be traced in the twelve curses in Deut 27:15–26. Disgust is explicitly said to lie behind the first curse on idolatry. Empathy should be understood (implicitly) behind the fourth curse on he who leads the blind astray, and (explicitly in the context of Deuteronomy) behind the fifth curse on he who thwarts justice for the immigrant, the widow and the poor. The curses on sexual issues are likely to stem from feelings of disgust. The prohibited acts have both moral and ritual aspects, and evoke feelings of justice, fear, empathy and disgust. For the relationship between empathy and justice, and the emotional aspects of (in)justice, see Hoffman 2000: 221–70, cf. de Waal 1996: 133–62.

²¹ Milgrom (1991: 61–63, 2000a: 1322–44, 2000b: 2054–56) assigns the following parts of Leviticus to H: 3:16b–17; 6:12–18aa; 7:22–29a, 38b(?); 9:17b; 11:43–45; 12:8; 14:34–53(?), 54–57(?); 15:31; 16:2bb, 29–34a; ch. 17–27. Knohl has minor variations, including a few verses in ch. 23 that are not assigned to H. Both sources are seen as processes, overlapping in time and extending through several centuries.

²² The exception in Deuteronomy is found in the farewell speech of Moses (Deut 31:12; possibly also in 29:11). The Holiness Code, on the other hand, does admit one difference: immigrants may become "eternal" slaves of Israelites, without the year of release applying (Lev 25:45).