BYU Studies Quarterly

Volume 41 | Issue 4 Article 5

10-1-2002

The Genesis of Justice: Ten Stories of Biblical Injustice That Led to the Ten Commandments and Modern Law Alan M. Dershowitz

Steven C. Walker

Alan M. Dershowitz. *The Genesis of Justice: Ten Stories of Biblical Injustice That Led to the Ten Commandments and Modern Law.*

New York: Warner Books, 2000.

Reviewed by Steven C. Walker

The Genesis of Justice is a nearly nuclear reaction, the explosion from the confrontation of a modern legal mind with the ancient biblical text. The amazing thing is that both Genesis and the law come out the better for the collision. Alan Dershowitz, one of the most renowned criminal lawyers in the United States, brings a decidedly lawyerly perspective to his study of *Ten Stories of Biblical Injustice That Led to the Ten Commandments and Modern Law.* Dershowitz is persuaded that our entire modern system of morality grows out of Genesis injustice. *The Genesis of Justice* argues that the Bible "as contrasted with earlier legal codes . . . is a law book explicitly rooted in the narrative of experience" (6), that it is the very social injustices in Genesis that provoke its readers to recognize the need for justice.

Dershowitz's argument has particular appeal for Latter-day Saint readers, whose theology is likewise deeply rooted in experience. And he argues persuasively. It is hard to resist the wry personal tone of such statements as "This book was begat by a long line of patriarchs" (ix). Like the Bible itself, Dershowitz is disarmingly undisposed to stand on ceremony, from his grinning opening sentence: "Would you give a young person a book whose heroes cheat, lie, steal, murder—and get away with it? Chances are you have" (1). And the substance of his argument is as invitingly expansive as his voice: "I read Genesis as an invitation to question everything, even faith. It taught me that faith is a process rather than a static mind-set" (7).

Dershowitz admits he does not "bring to the project a lifetime of biblical study" (11). He hasn't read the rest of the Bible as intensely as he's read Genesis, and that makes him miss some things. He considers Genesis a scriptural anomaly, for example, though he could do an *Injustices in Judges* or even a *Case Studies in 2 Samuel* were he to read those volumes in the same way.[1] But such blind spots don't prevent him from reading Genesis energetically, from recognizing that "the critical reader is compelled to

struggle with the text, as Jacob struggled with God's messenger" (3). Dershowitz's saving grace as an accessible Genesis reader is his intensity, especially the intensity of his respect; as he quotes from his favorite rabbinic commentator, Ibn Ezra, "the Torah was not given to ignoramuses" (15).

Dershowitz's forty years of wandering through the sandstorms of law has polished unique lenses through which to view this protean text. He builds his injustice-leading-to-justice argument around ten compelling case studies from Genesis. His early chapter titles summarize the gist of the injustice he sees throughout the Genesis narrative: "God Threatens—and Backs Down"; "Cain Murders—and Walks"; "God Overreacts—and Floods the World"; "Abraham Defends the Guilty—and Loses"; "Lot's Daughters Rape Their Father—and Save the World"; "Abraham Commits Attempted Murder—and Is Praised"; "Jacob Deceives—and Gets Deceived"; "Dinah Is Raped—and Her Brothers Take Revenge"; "Tamar Becomes a Prostitute—and the Progenitor of David"; "Joseph Is Framed—and Then Frames His Brothers."

His Joseph case is typical. Joseph in Dershowitz's view gets sent up the river by the kangaroo court of his older brothers through a plague of injustices that include such unfairnesses as blatant false witness, the fabrication of evidence of the bloodied coat, and an irregular sale into slavery. From a legal standpoint, Joseph, framed by a woman scorned, gets jailed on the strength of her perjured testimony. Joseph himself, perhaps recalling the earlier use of manufactured evidence against him, plants his divining cup in his brother's pack so he can hold him on a trumped-up charge. Dershowitz sees the entire Joseph narrative revolving around a vicious cycle of vengeance, "symmetrical justice—payback" (186). Everywhere we look in the Joseph story, or indeed anywhere in Genesis through the lens of *The Genesis of Justice,* we see rampant injustice. The case shaped by Counselor Dershowitz's lively readings of Genesis narratives is that of a society "groping" toward legal order, "a world evolving toward a system of formal justice" (198). In this way, Genesis serves dramatically as a prologue to the Torah that will be revealed in the following four books of the Bible.

Even more remarkably, the legal system toward which the problem cases in Genesis stumble looks like our own, deep down: "There are parallels between the American system and the biblical system" (208). The major parallel is a traditional corpus of written rules, a corpus that requires the process of rabbinical interpretation (in the case of the Bible) and lawyerly interpretation (in cases of law) to make it come fully to life. The Bible, like United States law, is much more than a statement of legal fiats. Both systems are built around case studies, narratives about specific legal instances. "It is precisely because the Torah is a law book that it *should*

include stories that illustrate the need for laws" (218); "the life of the law has been experience, not logic" (219). Thus the Hebrew Bible sets the precedent for the cumulative experiential nature of western case law, for the expansive flexibility of democratic law, for our kind of law, law which cannot be merely imposed but must be explained.

That need for explanation is why Jewish law has always been "characterized by its argumentative quality," Adam and Eve arguing with God, Sarah arguing with the angel and Abraham debating with the Lord, almost everybody arguing with just about everybody else: "The midrash has people arguing with angels, angels arguing with God, and everybody arguing with each other" (221). That is why "virtually all of the substantive and procedural rules that are decreed in the subsequent law books of the Pentateuch flow from the stories of Genesis." "Each of the Ten Commandments," for instance, "can be traced to at least one of the earlier narratives" (247), as when the commandment "Thou shalt not bear false witness against thy neighbor" derives "directly from Potiphar's wife bearing false witness against Joseph and Joseph then bearing false witness . . . against his own brothers" (250). That is why "the genesis of justice is in the narratives of injustice found in the Book of Genesis" (257).[2]

Latter-day Saints are particularly likely to find this a valuable book. As much "people of the book" as our Protestant friends, we read the Bible differently, not as "inerrant," as Baptists or Lutherans read it, but as requiring individual application—we read scripture more like Jews read it. We take Genesis seriously as "the word of God" but read it critically, "as far as it is translated correctly" (A of F 8). At our inspired best we go so far as to read scripture directly into our personal experience, to "liken all scriptures unto us" (1 Ne. 19:23)—and in a similar vein Dershowitz insists with Rabbi Judah Low that "a foundation of religion cannot be something that is not discernible to experience" (239).

I am also interested in his anthropomorphic view of God, who figures for Dershowitz as He figures in the Bible, not as an aloof abstraction, but as a dynamic character. I'm interested in the openendedness of his theology, his conviction that there are, so to speak, "many great and important things" yet to be revealed (A of F 9). I'm interested in the practicality of his perspective, his reading of inspired biblical texts in terms of their guiding implications for life rather than for archaic or arcane philosophical subtleties. Undergirding and overarching his individual readings of the Bible, I'm interested in the way Dershowitz reads. He reads the way many Bible readers claim to read, but few of us do, taking the text seriously at face value rather than viewing it through blurring lenses like the creeds or dogmas or whatever other excuses we find for finding in its pages what we think we already know.

But it is his difference from my reading that is for me most arresting. Dershowitz finds it ironically "remarkable" that the Bible can use "stories of injustice to teach about the need for justice" (258). Truth often resides where we least expect it. The discovery of core legal significance in Genesis is a testament to Dershowitz's reading, to his large-hearted and far-sighted view of justice. *The Genesis of Justice* testifies even more clearly to the richness of the Hebrew Bible, a richness of such scope that it allows a lawyer like him to find the origins of law here as surely as a literature professor like me discovers the headwaters of literature. Dershowitz reads Genesis very differently than I do, and the breadth of our difference is a measure of how rich this text is. The legal reach of Dershowitz's reading of Genesis appeals to me very much and would clearly appeal to Ben Bag Bag, another astute talmudic reader of Torah: "Turn it this way, turn it that way, everything is in it."[3]

Steven C. Walker (steven_walker@byu.edu) is Professor of English at Brigham Young University in Provo, Utah. He received a B.S. and an M.A. at BYU and a Ph.D. at Harvard University.

1. See, for example, David Noel Freedman, Jeffrey C. Geoghegan, and Michael M. Homan, *The Nine Commandments: Uncovering the Hidden Pattern of Crime and Punishment in the Hebrew Bible* (New York: Doubleday, 2002), which finds in the first nine directives of the Decalogue the sequential backbone for the historical books of the Old Testament.

2. Dershowitz is not alone in seeking to tie legal texts to the narratives of Genesis. See, for example, Calum M. Carmichael, *Law and Narrative in the Bible: The Evidence of the Deuteronomic Laws and the Decalogue* (Ithaca: Cornell University Press, 1985); and *The Origins of Biblical Law: The Decalogues and the Book of the Covenant* (Ithaca: Cornell University Press, 1992), 74–203, dealing with the legal legacy of the Joseph cycle. On "narrative inspired law" and "laws as miniature narratives," see further Carmichael's *The Spirit of Biblical Law* (Athens, Georgia: University of Georgia Press, 1996), 10–24, 49–61.

3. Judah Goldin, *The Living Talmud* (New Haven, Conn.: Yale University Press, 1955), 223.