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Chapter 4

THE ROLE OF EXCLUSION IN MONOTHEISTIC LAW

The highly idealized biblical conflation of cult, power, and restoration has been embraced by scholars bent on finding a theocracy in Yehud. (*No evidence needed!* Or, so it seems for many.) But a theocracy was (and still is, for many biblical scholars) the ideological product of desire (*a theocracy embodies the standards we want to shape the conditions of our experiences and interactions—our relations to the real world—within the social-political context of Yehud*¹); it was not, however, the material reality of historical circumstance. That reality, despite the beguilingly oft-cited Joel Weinberg's passionate argument, was not a unique example of Persian beneficence.² The Persian imperial government probably cared very little for a backwater location beyond its continued obedience. And the temple in Jerusalem, so beloved by biblical authors as the symbol of political independence, likely served in reality an imperial function,³ which better explains why the imperial government *might* have bankrolled its construction, if the imperial letter in Ezra is even partly authentic (see Ezra 7:11–26; see also 1 Esd 8:8–24).⁴ Without historical or political basis,

1. I find L. Althusser's definition of "ideology" helpful in its emphasis upon relation for the point I am making about what theocracy, as a social-political institution, meant to the biblical author. To note, "Now I can return to a thesis which I have already advanced: it is not their real conditions of existence, their real world, that 'men' 'represent to themselves' in ideology, but above all it is their relation to those conditions of existence which is represented to them there" (*Lenin and Philosophy, and Other Essays* [London]: New Left Books, 1971), 164. Online: <http://www.marx2mao.com/Other/LPOE70ii.html#s5>).

2. Weinberg and Smith-Christopher, *Citizen-Temple Community*, 106.

3. J. Schaper, for example, suggests the temple served as a type of regional, imperial bank (cf. "The Jerusalem Temple," 528–29).

4. D. Janzen, for example, suggests that the letter was not authentic but that it might have provided a type of midrash on the rest of the Ezra narrative (see "The 'Mission' of Ezra and the Persian-Period Temple Community," *JBL* 119 [2000]: 643). A midrash is a bit of a stretch. It is more likely an added element not to provide

the motivation for a theocracy must be found elsewhere, not in historical, material reality but in the desire *for* change—a desire found at the intersection of reality and the community’s marginal position within it (a type of perspective space), resulting in social and political anxiety-driven insecurities.

Yi-Fu Tuan’s description of anxiety may provide parameters for a clearer understanding of the connection between utopian desire and anxiety as a result of insecurity in one’s place: “Anxiety...is a diffuse sense of dread and presupposes an ability to anticipate. It commonly occurs when an [organism] is in a strange and disorienting milieu, *separated from the supportive objects and figures of its home ground*. Anxiety is a presentiment of danger when nothing in the immediate surroundings can be pinpointed as dangerous.”⁵ For the immigrating Judeans, the so-called “remnant,” Yehud was “home ground” only in an ideal sense through utopian (re)constructions. After a period of about 70 years (cf. Jer 25:11–12; or if one uses the range of 597–531 BCE, then 66 years, to be exact), Babylonia would have provided a more stable location for such a “home ground.” Emboldened by religious belief and fervor for reclaiming the land, members of the returning community embraced in theocracy a symbolic representation of their *desired* conditions of existence. But the fulfillment of that desire was uncertain. Law (*here’s our blueprint for reaching our desired reality*) and restoration (*our desired reality, which has been shaped by the conditions of relation defined in the law*) were responses to those insecurities. Burdened by the increasing anxieties of those insecurities in an act of self-preservation, the returning community focused inwardly and ritualized acts of exclusion and dissociation.

The turn to exclusion was not an accidental one. By defining areas of differentiation and incompatibility, exclusion highlights boundaries of identity, for all involved parties (insider *and* outsider, this last from the perspective of the insider) within a dominant culture normative. Exclusion itself is not the fundamental core, as Pierre Bourdieu has argued convincingly; it is an act based on a more axiomatic division, a differentiated reality between those forces that affirm the stability of a group and those that threaten it.⁶ *I will not accept you if doing so requires that my sense*

commentary but an attempt to justify the community’s claim to the land. The general themes of the letter are the construction of the Jerusalem temple for the community’s sake and Ezra’s establishing of Mosaic law as the normative law in Yehud.

5. Yi-fu Tuan, *Landscapes of Fear* (New York: Pantheon, 2013), 5, emphasis mine.

6. Bourdieu, “Genesis and Structure,” 3.

of a stable identity be too greatly redefined, to include the extent of your differences, thus putting my group's stability at risk. Because a culture derives its symbolic systems from that fundamental division, those systems are already predisposed to serve functions of "inclusion and exclusion, of association and dissociation, of integration and distinction."⁷ These structural functions, Bourdieu reminds us, "always tend to be transformed into political functions."⁸ This transformation happens in all societies; note, for example, the racial profiling that occurred within legal and security systems and structures for "middle eastern" individuals within the decade following 2001 in the United States. The intent was to protect society but the fallout has been an increased marginalization of anyone who appears "middle eastern," a rather abstract concept, or who wears a head covering, even if not Islamic—a hastiness which may reveal an eagerness to express prejudice. Our point is that the exclusivist tendencies of the *golah* community naturally reveal social-political aspirations: social-political agents categorize between insider and outsider to preserve a stabilized social-political order. Within the constant flux of the social world, this order can only be inferred from incomplete and temporary representations of stability that one encounters through experiences and relationships in and with the social world. This constant flux in pursuit of stability is why a stabilized (and not *stabilizing*) world based on a collective's position vis-à-vis the fundamental principle of distinction is itself utopian. This is also why postexilic "Israel" is itself a utopian idea, and why its law must serve the constructive function of mapping out areas of inclusion and exclusion. "*So let us now make a covenant with our God to send away all these wives and their children, according to the counsel of my lord and of those who tremble at the commandment of our God; and let it become according to the law*" (Ezra 10:3).

Transformed into a political function, exclusion (and inclusion, distinction, association, etc.) conveys a culture's dominant legal and moral values. *On that day they read from the book of Moses in the hearing of the people; and in it was found written that no Ammonite or Moabite should ever enter the assembly of God... (Neh 13:1).* Once someone has been identified as "not sharing the group's beliefs and values" one may see in that person evidence of moral inferiority, providing grounds for identifying them as an object worthy of discrimination or prejudice. Those acts can be justified because the amount of justice one might need to extend to the "objectified other," and remain consistent with the dominant

7. Ibid.

8. Ibid.

order, diminishes.⁹ The exercise of (symbolic) power in this case is found in the institution's ability to demonstrate to those excluded the very legitimacy of their exclusion.¹⁰ One can see a poignant example of this in the yellow Star of David inscribed with *Juden* that Jews were required to wear in early twentieth-century Germany. Under the machinery of the Nazi German symbolic system, the complexity of Jewish identity was reduced to the simplified, homogenous meaning of the yellow star. In the case of the returning or immigrating Judeans, symbolic power would have been seen in the community's ability to redefine the term *'am* as one that denotes exclusion rather than its more pre-exilic sense of belonging.¹¹ That means that to define the social-political context of Yehud by enforcing a distinction between the *golah* community and the *am ha'aretz*—the latter which would have included Judeans that did not leave Yehud/Judah, Moabites, Ammonites, et al.—would have signified real power if it could ever have been implemented. And that is the type of power, the creation of a new ordered reality based on its interpretation of the principle division, that monotheism has hunted doggedly since its emergence.

What then to make of biblical prohibitions of intermarriage that list particular groups, such as in Josh 23:6–13?¹² The social body often legitimates prejudice toward certain groups or individuals deemed a threat to the social order. Such targets are often intentional, in that there is some basis beyond arbitrary selection for identifying them. Regarding Josh 23, Christine Hayes says, “the very fact that certain groups are pinned out for exclusion...implies that other groups are permitted.”¹³ Maybe.

9. Crandall and Eshleman make this point in “A Justification-Suppression Model,” 429.

10. See also Bourdieu, “Genesis and Structure,” 25.

11. See also Liverani (*Israel's History and the History of Israel*, 257, who states that *'am* was usually opposed to *goyim* (the foreign nations).

12. We accept here the argument that the Deuteronomistic History was redacted and supplemented in the Neo-Babylonian and Persian periods. See, for example, C. Newsom's discussion, in which she identifies three different strands of deuteronomistic tradition (Dtn, Dtr 1, and Dtr 2), that last of which she offers the possibility may be from the exilic period (cf. “Joshua, Book of,” *ABD* 3:1013). Joshua was shaped by the hand of Dtr 2. More tellingly, “Joshua's farewell address unmistakably anticipates the exile” (*ibid.*, 1014). And M. Noth concluded that Dtr. wrote entirely after the middle of the sixth century BCE (*The Deuteronomistic History*, JSOTSup 15 [Sheffield: JSOT, 1981], 19). “Dtr. was not a redactor trying to make corrections, but a compiler of historical traditions and a narrator of the history of his people” (84).

13. Christine Hayes, *Gentile Impurities and Jewish Identities: Intermarriage and Conversion from the Bible to the Talmud* (New York: Oxford University Press, 2002), 26.

One may also put it this way: utopian aspirations *for* power provide the basis for prohibition as a prerequisite in biblical restoration. They are inscribed upon the nonmember as an inverted symbol of the member, shaped by the perverse core of monotheistic identity: *I recognize you not so much for who you are but as the very opposite of who I believe I am*. In short, we argue here that monotheistic ideologies of restoration are never far removed from aspirations for power—aspirations for which patterns of exclusion are powerful tools. The blueprint for restoration, law, codifies such patterns of exclusion.

Let's Dispense With Theocracy

There has been a significant and unfortunate tendency in biblical scholarship to categorize Yehud as a theocracy under the authority of a Yahwistic cult.¹⁴ But a theocracy, when properly defined, is a highly comprehensive *political* organization.¹⁵ A theocracy is not, as some scholars have suggested, simply any social-political organization (such as a monarchy) that includes religious experts, or priests, in dominant positions of social and political power, positions that grant them facets of ideological influence.¹⁶ Under such a liberal definition, anything in which a cult has *influence* could be qualified as a theocracy. But replace the priest with a secular politician and you've lost your theocracy! More importantly, it is a gross mistake to assume that all forms of government (tyranny, monarchy, democracy, etc.) are essentially *secular* in stark contrast to a theocracy. The "neat," modern distinction between the secular and the religious did not exist in ancient Near Eastern cultures. The presence of a cultic official in government or an expression of religious loyalties or sensitivities simply does not automatically transform the nature of government.

14. For example, Weinberg and Smith-Christopher, *Citizen-Temple Community*, 115–26; Wellhausen, *Prolegomena*, 411–25; Jonathan E. Dyck, *The Theocratic Ideology of the Chronicler*, BibInt 33 (Leiden: Brill, 1998), 1–4; Paul Hanson, *The Dawn of Apocalyptic: The Historical and Sociological Roots of Jewish Apocalyptic Eschatology* (Philadelphia: Fortress, 1979), 210–20; Mary J. W. Leith, "Israel Among the Nations: The Persian Period," in *The Oxford History of the Biblical World*, ed. Michael D Coogan (Oxford: Oxford University Press, 1998), 367–419.

15. Cf. Cataldo, *Theocratic Yehud*, 164–69.

16. Cf. Terpstra's discussion of the "four positions" in the term theocracy, in "God's Case on Earth: Notes on Theocracy and the Political Theology of Vladimir Solov'ëv," in *Vladimir Solov'ëv: Reconiler and Polemicist: Selected Papers of the International Vladimir Solov'ëv Conference Held at the University of Nijmegen, the Netherlands, in September 1998*, ed. William Peter Van Den Bercken, Manon De Courten, and Evert Van Der Zweerde (Leuven: Peeters, 2000), 412–13.

In his anthropological study, Daniel Webster observes that the term “theocracy,”

[H]as been applied to various stages of virtually all pristine states. It has been used to designate a *type* of sociological organization found among complex societies. It has denoted a *stage* of sociopolitical evolution preceding “secular” states. It has been applied to societies on various evolutionary levels, including chiefdoms, states, and intermediate transformational forms. It has carried a wide range of connotations concerning the hierarchical structures of complex societies, and their relationship to other cultural process or institutions.¹⁷

The inconsistency in academic (and popular!) applications of the term betrays a fundamental uncertainty: *It seems to me that a theocracy is like X*. After enough conversations, one will have heard descriptions of a theocratic democracy, a theocratic monarchy, a theocratic republic, and so on.¹⁸ Such categories assume that “theocracy” is an affecting ideological influence (like “happy” is to “beer”) rather than something substantively *sui generis* (“happy” does not equal “beer”). But using theocracy to describe any type of sociopolitical organization is an easy excuse for scholars to ignore the essential qualities of an organizational form and focus instead upon possible phenomenological qualities manifest through any religious value-driven engagement of that form. (*Perspective takes the place of essence!*) That, to give a popular example, is why former U.S. President George W. Bush was frequently accused in popular media and by people waiting in Starbucks’ lines for their half-caff, caramel macchiatos of ushering in a theocracy. (In reality, it would take, in Žižek’s terminology, a “radical revolution” to establish a theocracy in the United States.) Similar is the tendency in biblical scholarship to posit a dominant comprehensive analysis of a society based on a limited number of *influences*, such as religious law, within the sociopolitical organization. *Ezra brought religious law. That’s our proof of a theocracy! Pass the happy!*

17. David L. Webster, “On Theocracies,” *American Anthropologist* 78 (1976): 812.

18. The *LBD*, for one example, describes “theocracy” as “a form of government [that] depends upon God’s direct revelation. It was thus that He directed the patriarchs, and whenever the writers of the Old Testament mention the relationship between God and His people, they are speaking of a kind of theocracy (see Judg 8:23; 1 Sam 8; compare 1 Sam 12:12; 2 Chr 13:8; 2 Sam 7:1-17; Ps 89:27; Deut 17:14-20). No other literature, ancient or modern, so sharply portrays a people or nation ruled directly by God.”

Despite his historical proximity to Yehud, Josephus' definition of theocracy (θεοκρατία), the first "academic" use of which we are aware, is unhelpful. Even he admits to that deficiency when he defined the Jewish community as theocratic because it governed itself according to religious values and ethics (preserved within a divine law) although it was still subject to a different political power (cf. *C. Ap.* 2.164–66). When he spoke of a theocracy he spoke more of a religious phenomenon than a political structure or organization.¹⁹ His emphasis upon the internal motivation of the law, however, established a pattern that later academics followed. Josephus acknowledged that the early Jewish communities were under the political authority of foreign leaders. What for him was the mark of a theocracy was that while the Jewish community lived under the laws of Greek and Roman empires, it maintained as the basis of religious identity an internal observance to the Mosaic law (*C. Ap.* 2.151–56). But we can see that his definition does not apply to political behaviors regulated within a State but to behaviors that express and define a religious-cultural identity. That should hardly be surprising. At one point, he argues that religious law existed to teach religious piety (cf. *C. Ap.* 2.291). At another he argues that a theocracy was a social order governed religiously and politically by the laws of God (cf. *C. Ap.* 2.164–66). The apparent contradiction in Josephus' own usage demonstrates even he had trouble with his own definition and concept, which he alludes to when he describes the term as a "strained expression" (see again *C. Ap.* 2.164–66).

An additional influence on scholarly understanding of theocracy as related to Israel has been that of Julius Wellhausen:

The cultus of Israel is essentially distinguished from all others by its *form*, the distinctive and constitutive mark of the holy community. With it the theocracy begins, and it with the theocracy; the latter is nothing more than the institution for the purpose of carrying on the cultus after the manner ordained by God. For this reason also, the ritual, which appears to concern the priests only, finds its place in a law-book intended for the whole community; in order to participate in the life of the theocracy, all must, of course, have clear knowledge of its essential nature...²⁰

19. His possible reference to a structure is quite limited to its general feasibility within the religious ideology of a community under the political authority of an empire. "And where shall we find a better or more righteous constitution than ours, while this makes us esteem God to be the governor of the universe, and permits the priests in general to be the administrators of principle affairs, and withal intrusts the government over the other priests to the chief high priest himself" (*C. Ap.* 2.184–87).

20. Wellhausen, *Prolegomena*, 53.

Wellhausen, however, admits that his definition of theocracy was not intended to be a political term.²¹ In fact, it denoted an “un-political” organization whose counterpart was often foreign rule.²² Like Josephus, Wellhausen cannot do much better than define a theocracy as a quality of religious-cultural behavior, regulated by a religious law, that defines not a State but a religious community—as though a theocracy equaled a religious community. When Wellhausen refers to the “cultus of Israel” he refers to the “distinctive holy community” that existed in Yehud during the Persian and later periods (such as described by Ezra–Nehemiah).²³

With that said, let us return to the original point: the expectations that we have for our discussion of the compatibility between law and restoration must be able either to address the existence or possibility of a theocracy or to put it to rest finally. The biblical texts, such as Ezra–Nehemiah, leave us with the impression that Yehud was theocratically organized. Of course, that type of organization assumes two things, since there was already in place a type of social-political organization (*the Babylonian and Persian governments appointed governors!*): (1) that the land was empty during the exile, waiting eagerly for the return en masse of the Judeans from Babylonia (and a few from other areas such as Egypt); and (2) that a theocracy necessitates only that priests or individuals loyal to the cult be in positions of power and that religious law be the dominant law. As I have defined elsewhere, a theocracy is an institutional governing order exercising social, economic, political, and religious authority. It is a product of a dominant (or dominating) religion, an institution it uses in part to legitimate its authority. Its dominant social-political order is based on the plausibility structure of the religious institution and its corresponding meaningful order. Consequently, in a theocracy the religious institution has authority over regulating the processes that shape the infrastructure—the overall organization of production and its related distribution of authority and power—of society. Its stability rests upon the strengths of the systems and institutions underlying it—such as those that define cultural norms, that regulate behaviors, that permit and restrict expressions of prejudice, and so on—that necessitate the theocratic organization. It is a system of government, and for this reason, the authority of a theocracy possesses the socially legitimated knowledge that contains individual or group resistances within tolerable limits and enforces political obedience.²⁴

21. Cf. *ibid.*, 190.

22. *Ibid.*, 422.

23. *Ibid.*, 53, 82.

24. This definition of “theocracy” is taken with some modification from Cataldo, *Theocratic Yehud*, 168.

If Yehud was *not* a theocracy then what role did the religious law play in the formation of collective identity? If texts such as Ezra–Nehemiah were not descriptive in their portrayals of historical context but were rather prescriptive in highlighting areas of necessary change then what function did the religious law hold? Our position is that when uncritical presumptions about a theocracy in Yehud are put to rest, what is left, and what fits better within the utopian desires of the text for restoration, is that on a sociopolitical level the religious law of the community was constructivist. What modern scholars identify as “theocracy” was the artifact of a utopian desire that contoured the biblical texts toward a pattern of intersubjective relations intended to signal a new, “restored” context.

Exclusion Is the Dark Side of Monotheistic Law

Exclusion and monotheistic law, as sociological concepts, should be better explained in light of this discussion. *Recall the ambitious claim of this chapter’s title!* One must establish the connection between them as it occurred within the context of Yehud. One must also identify the contours of the biblical attitude regarding law and its conception of restoration. Doing this is important not only for a historical understanding of the social-political context but also because these biblical concepts continue to play a critical role in modern forms of monotheistic thinking. Understanding what monotheists think demands that we reevaluate core concepts of monotheistic biblical belief.

Ezra–Nehemiah provides an example—and one that provides a good starting point for discussion—of an assumed connection between exclusion and monotheistic law. According to the so-called decree from Artaxerxes,

And you, Ezra, according to the God-given wisdom you possess, appoint magistrates and judges who may judge all the people in the province Beyond the River who know the laws of your God; and you shall teach those who do not know them. All who will not obey the law of your God and the law of the king, let judgment be strictly executed on them, whether for death or for banishment or for confiscation of their goods or for imprisonment. (Ezra 7:25–26)

Guilt and a fear of exclusion (whether physical or eternal) is a common mechanism within divine laws in their attempts to encourage behavior that is the desired characteristic of the ideal social-political body.²⁵ This is as

25. R. Leys provides a good working definition of guilt, and a possible connection to the concept of exclusion: “Guilt is thus a question of the survivor’s ‘unconscious

true of the past as it is of the present. Even the accomplished theologian Richard Niebuhr observed that "In guilt, whether it be guilt before a provincial or universal other, the self fears exclusion from a society."²⁶ Roger Smith, who shows that guilt is linked to debt in conceptual terms, writes, "Beyond the economy of guilt lies the idea of reparation, the political version of the metaphor of healing. The central question is no longer how to collect debts of transgression, but how to mend the disturbed or broken relationships within the community."²⁷ And Robert Lifton, who made his mark in studies of survivor guilt, wrote,

The extreme experience...demonstrates that guilt is immediately stimulated by participation in the breakdown of the general human order and by separation from it. This is true whether we employ the Western cultural idiom sin and retribution or the East Asian one of humiliation and abandonment. Death, especially when inappropriate and premature, is the essence of breakdown and separation."²⁸

The role of guilt, and exclusion as a response strategy, is glaringly clear in Ezra not only with the ritualization of the return but also in the dramatic denunciation of foreign marriages, during which the foreign wives *and* children were rejected (both represented the blurring of community boundaries by extending community membership outside of the prescribed parameters within the law).

sense of an organic balance' which makes him feel that his survival has been 'purchased' at the cost of another's..." (*From Guilt to Shame: Auschwitz and After*, Digital [Princeton, NJ: Princeton University Press, 2007], 50). The "survivor" is left, vis-à-vis the community, in a position of debt for his own survival, and that is the strategy that divine laws, particularly those of monotheistic traditions, employ to insure obedience. The basic premise becomes misrecognized. No longer does one see that the survival of the law depends upon the community's acceptance of it but that the survival of the community, and the individuals within it, is dependent upon their acceptance of the law. Despite the fact that the law was created by the community, it is transformed into a symbolic representation of a big "Other," namely God, and in fact operates in place of this "Other."

26. H. Richard Niebuhr, "The Ego-Alter Dialectic and the Conscience," *Journal of Philosophy* 42, no. 13 (1945): 356.

27. Roger W. Smith, "The Economy of Guilt," *Political Theory* 3, no. 2 (1975): 208.

28. Robert Jay Lifton, *Death in Life: Survivors of Hiroshima* (Chapel Hill: University of North Carolina Press, 1991), 497.

The people of Israel, the priests, and the Levites have not separated themselves from the peoples of the lands with their abominations, from the Canaanites, the Hittites, and Perizzites, the Jebusites, and Ammonites, the Moabites, the Egyptians, and the Amorites. For they have taken some of their daughters as wives for themselves and for their sons. Thus the holy seed has mixed itself with the peoples of the lands, and in this faithlessness the officials and leaders have led the way. (Ezra 9:1–2)

Ezra–Nehemiah describes the ritualization of guilt, the reality of exclusion, and a corresponding response of separation. Ezra’s protest assumes a connection with the “ancestors” who sinned and were consequently exiled—a strategy not only of identity but also of territorial claim to the land. Separation from the peoples of the lands, and here we may find a cause for prejudice, was necessary lest the individuals or community suffer rejection by Yahweh. Moreover, Ezra’s identification of different groups using sometimes anachronistic ethnic categories exposes an underlying prejudice in support of the distinction between the *golah* community and those outside it.

Chris Crandall and Amy Eshleman, whose work has opened new grounds in prejudice studies, argue that genuine prejudices²⁹ are restrained by beliefs, values, and legitimated norms. In that sense, if we talk about prejudice in biblical texts such as Ezra–Nehemiah, we refer not to genuine prejudices, but those permitted or filtered through the dominant beliefs, values, and norms that are expressions of a desire for group coherence.³⁰ Prejudices support strategies of exclusion when those strategies are directed toward the preservation of the group or the stability of its normative order. Those, rather than any prejudice in pure form, contribute to shaping the contours of collective identity. And it is those upon which the law itself focuses.

What this means for our discussion here is that exclusion is a productive force in defining intersubjective relationships; it is, therefore, an expression of the categorical boundaries that constitute the contours of “citizenship” within the community or social-political body. The parameters of exclusion, we will show, are institutionalized within the religious law of the *golah* community, as Ezra–Nehemiah demonstrates.³¹ Exclusion is a defining

29. See their discussion of the concept in “A Justification-Suppression Model,” 416–17.

30. *Ibid.*, 414–17.

31. Using the model of the family, P. Donati provides further sociological support for the current discussion: “The point is that to grasp social change in the family, it is necessary to regard it as a social relation and to maintain the connections between

act of citizenship but in the negative, which traces out the boundaries of social relations between individuals within a political community.³² There is a productive element, then, in exclusion. The often-cited passage from Nehemiah is but a most excellent example of this:

On that day they read from the book of Moses in the hearing of the people; and in it was found written that no Ammonite or Moabite should ever enter the assembly of God, because they did not meet the Israelites with bread and water, but hired Balaam against them to curse them—yet our God turned the curse into a blessing. When the people heard the law, they separated from Israel all of those of foreign descent. (Neh 13:1–3)

Nehemiah clearly links Ammonite and Moabite with all foreigners, who are those who have been excluded from the assembly of “Israel.” We have already noted that Ezra–Nehemiah redefines the meaning of the term “Israel” to designate a restored polity constituted from the “remnant,” those who had been exiled and who had subsequently returned to Yehud. We’ve also noted that the law to which Nehemiah refers is not the law of any social-political polity. It held legitimate claim to no socially dominating institutions of discipline or other forms of behavioral regulation.

Is not this absence one of the very points of Neh 8:9–12, which describes the ritualized celebration of the people who understood the words of the law? The word for understood is *יָדָע*, which also means “become separated, distinct,” “perceive,” “given discernment.” The very process of understanding mirrors the process of defining the community. *יָדָע* requires more than a mere cognitive recognition; it demands a response. For instance, I know that those are pants laying on my bed. I recognize them because I have learned the semantic qualities of what constitute “pants.” I *understand* that those are pants after I have worn them and am able to associate the object with the function. When the community understood the law, it separated itself from the “foreign,” an act that is meaningful both as an internal expression of collective identity and an external one: *you are not one of us because we have drawn the line between those things that define us and those things that define you*. Or should we simply appeal to Nehemiah again, “Now on the twenty-fourth day of this month the people of Israel were assembled with fasting and in sackcloth, and with earth on

the family as an intersubjective relation (defined by *Lebenswelt* characteristics) and as an institutional relation (defined by the expression of other sub-systems or social institutions)” (*Relational Sociology*, 187, emphasis in original).

32. Cf. *ibid.*, 188.

their heads. Then those of Israelite descent separated themselves from all foreigners, and stood and confessed their sins and the iniquities of their ancestors” (9:1–2)? The ritualized act of mourning reinforces the distinction between member and nonmember. One should hear the implied warning behind this act: *if you do not observe the law and maintain the distinction between the member and nonmember, you will lose the very qualities that distinguish you and the possibility of restoration.* Consequently, exclusion and law function cooperatively to facilitate the social and ideological organization of individuals into the form (or set of distributed relations) of the desired body: the “restored Israel.”

Biblical Law in the Discourse of Power

With the direct connection between monotheistic law and exclusion, can we see naught but that monotheistic law uniformly regulates individual and group behavior toward a dominating, singular ideal? As I stated elsewhere, “In a general sense, law is a functional, regulative pattern of engagement that defines acceptable and sometimes productive relations between social agents. It is ‘repressive’ in that it articulates the limits of the socius, defining the ‘territoriality’ of the social body. But it fills this role only because the law itself is a production of the social body.”³³ That description will provide a starting point for our discussion of Foucault.

Foucault connects the ideological abstract nature of law to its real application in the experiential formulation of power in the following manner:

[W]e can surely accept the general proposition that, in our societies, the systems of punishment are to be situated in a certain “political economy” of the body: even if they do not make use of violent or bloody punishment, even when they use “lenient” methods involving confinement or correction, it is always the body that is at issue—the body and its forces, their utility and docility, their distribution and their submission.³⁴

According to him, law is a discourse of power. It is not itself power but a mechanism for its expression. Where various extractions of power might be denaturalized, disparate, and multiple, law imposes a certain “regularity” upon those expressions.³⁵ What this means is that there is

33. Cataldo, *Breaking Monotheism*, 114–15.

34. Foucault, *Discipline and Punish*, 25.

35. Note also S. Bignall’s summary of Foucault’s theory on power: “Power must be understood *in the first instance* as the multiplicity of force relations ‘immanent in the spheres in which they operate and which constitute their own organization,’

always intentionality in the articulation of law. In the case of Yehud, this intent, best summarized as “restoration,” and best understood as being constructivist or utopian in nature, is the manifest desire of an immigrating minority community. “*When the LORD (re)turns to the restoration of Zion, we will be as in a state of dreaming*” (Ps 126:1, translation mine).

Law amounts to the regulation of the body enforced through disciplinary means. Or as political scientist Claude Ake put it, “[T]he effect of obedience to the law is to uphold the authority of those who make decisions about what the law should be, and how it is to be enforced. To uphold this authority is to win in maintaining aspects of the distribution of power to make decisions for society.”³⁶ Obedience to the law legitimates the claim to positions of power and authority that those in power have. *When you obey the law as I have interpreted it, you support my authority.*

Foucault reminds us that the real effects of the law are neither entirely neutral nor positive. They are “written” upon the political body. And as Žižek describes it, the law is “other” to the individual and her corresponding political body. For him, the law, which regulates habitual obedience to a sovereign, whether idea or person, is a product of that sovereign.³⁷ But what “sovereign” truly reflects is the dominating desire that shapes the intent of the law and the corresponding restriction it places upon social-political behaviors—this may take the form of the despotic individual or the utopian, monotheistic ideal.

In the context of Yehud, this “sovereign” was one of two things, or perhaps a combination of both: Yahweh, who was only knowable externally through physical symbols such as the Jerusalem temple and the remnant

as processes, and as strategies, which crystallize into strata (Foucault 1990: 92–93). *Subsequently*, macropolitical structures or Power in ‘the sovereignty of the State, the form of the Law, or the overall unity of a domination...are only the terminal forms power takes’ (Foucault 1990: 92)” (*Postcolonial Agency: Critique and Constructivism* [Edinburgh: Edinburgh University Press, 2010], 136).

36. Ake, “A Definition of Political Stability,” 271.

37. Note further H. L. A. Hart, who writes, “The doctrine [of sovereignty] asserts that in every human society, where there is law, there is ultimately to be found latent beneath the variety of political forms, in a democracy as much as in an absolute monarchy, this simple relationship between subjects rendering habitual obedience and a sovereign who renders habitual obedience to no one” (*The Concept of Law*, 2nd ed. [Oxford: Clarendon; New York: Oxford University Press, 1994], 50). Note also Foucault: “[S]overeignty is absolutely not eliminated by the emergence of a new art of government that has crossed the threshold of a political science. The problem of sovereignty is not eliminated; on the contrary, it is made more acute than ever.” And the law remains “part of the social game in a society like ours” (*Security, Territory, Population*, 107).

community, or the idea of a restored reality in which the productive flows of desire, toward which religious law was focused, were stabilized. Desire production in the Neo-Babylonian and Persian-period biblical texts amounts to a political body whose actions, institutions, and ideologies, systems, rituals—all those things that make a social-political body an animate body—which were stabilized against antinomy, legitimated the authority of Yahweh as sovereign. But while biblical readers may be too happy to accept the sovereignty of Yahweh as an objective “Other,” to do so is to be caught up in the spectacle of ritualization and miss entirely the more “revolutionary” move by the biblical authors: the community’s self-perception is the basis upon which is built its perception of the divine “Other.” *“So that you will know that I, Yahweh your God, am dwelling in Zion, my holy mountain, Jerusalem will be holy and strangers will not cross through her again” (Joel 4:17, translation mine).* The assumption seems to be that the restored world and its normative order are based around the dominant order of the community. That explains in part why Ezra–Nehemiah rejects the foreign. The temple as a symbolic object of the community’s identity is centralized, for further example, in Haggai.³⁸ And political authority is subordinated to the cult under Joshua in Zechariah. That is why, in part, the community can reject the people already in the land as not having a stake in Jerusalem despite their seeking (דרש) Yahweh (cf. Ezra 4:2). Does not דרש imply behavioral modification? To “seek” in the sense of that term is not merely to find an object, but to approach the reality of it through a realigning of one’s attitude and behaviors (in a pragmatic fashion). That, after all, is the sense of it in Deut 4:29; Hos 10:12; Amos 5:4, 6; Isa 9:12, and so on: anomy, resulting in the loss of any collective identity other than “other,” as a consequence of not seeking God, or the collective ideal. Yet in Ezra, the activity of seeking, the behavior of it, is not itself the problem; the object of what is being sought is wrong. Those individuals making the request, those rejected, approached Yehud as a shared object to which devotion may be directed. The text of Ezra, by contrast, identifies Yahweh as the shared idea or object of the community alone—a projected ideal symbolizing the internal organization of the community. *“Sing and rejoice, O Daughter Zion, for I have come and settled in your midst, says Yahweh” (Zech 2:14; translation mine).* In other words, Ezra’s image of the divine reflects the desire of the community for a reality fashioned around its own authority, which can be expressed through association with the Divine. We need go no further than the community

38. For further discussion on the temple as a central object, see Cataldo, “Yahweh’s Breast.”

itself to explain the space between proper worship (seeking) and improper worship. If we reject any notion of an absolute law (the existence of which is a fundamental pillar in later monotheism) then law is relative to the political body and its legitimated sovereign. We are not making the overly simplistic association of law as the command of the sovereign backed by sanctions, a criticism that Hurt and Wickham level against Foucault.³⁹ “Legitimated sovereign” refers to the authority that symbolically and often physically summarizes the distributed relations that have been legitimated by the social-political body. In other words, the people already in the land, who were not members of the immigrating community, could not worship the same god or observe the same laws because *they were not members of the same community*. They were guilty by their very exclusion, by the very prejudice that shaped the distinction between them and the immigrating community.⁴⁰

I wrote previously,

Divine law exists not because it is the ideal form, toward which, subsequently, natural law would aspire. *Divine* law, rather, expresses an alternative; it demands a pattern of behavior that supports an authority alternative to that which has already been institutionalized. In other words, divine law is an interruption to the productive flows that form natural law and its corresponding authority; it is an alternative whose ontological core is characterized by reaction and whose ultimate aim is to facilitate a new reality.⁴¹

Outside a theocracy, the intent of divine, or religious, law, as we also discussed in the previous section, is to introduce an alternative to prevailing systems of law and the authorities they legitimate. The subversive quality of monotheism in particular is precisely its negation of prevailing social-political authorities against which the authority of God is cast. Žižek’s description of what he identifies as the carnivalesque quality of Christianity, for example, makes the same point when he exposes the importance of ritualizing the “sinner” for the positive self-image of the community.⁴² The

39. Hunt and Wickham, *Foucault and Law*, 59.

40. The description of the community in Ezra 4:3 as being identified by Cyrus is probably fantastical on the part of the author. The implication is, of course, that Cyrus put social-religious authority of an entire province into the hands of an immigrant community. That sentiment fits within the restoration ideology of the community but it cannot avoid a number of insurmountable problems, as I have described throughout *Theocratic Yehud*.

41. Cataldo, *Breaking Monotheism*, 114.

42. He makes this point throughout *The Puppet and the Dwarf: The Perverse Core of Christianity* (Cambridge, MA: MIT, 2003), cf. 86–91.

Beatitudes, for example, which emphasize reconstruction of the social-political structure—the powerless shall become powerful—make this point baldly: true power will be yours when restoration has been fulfilled.

When I used the term “natural law” (in the previous quote)—and I am aware of the possible criticisms that could be leveled against my initial use of the term—I meant the law that was a product of natural, internal forces and relationships and not externally imposed; it was meant to describe the product of a social-political body. As ritualized and projected ideals, religious laws, in contrast, are no longer seen as products of any internal force, production, or evolution. They are seen as wholly Other. *“Pay attention to the law that they teach you and to the commandments they tell you to do. Do not turn aside from what they tell you, to the right or the left” (Deut 17:11).* This is why in modernity they are attributed with an objective autonomy and assumed accessible to different cultures. In this sense, religious laws reflect the change in religion with modernity that Žižek observes: “One possible definition of modernity is: the social order in which religion is no longer fully integrated into and identified with a particular cultural life-form, but acquires autonomy, so that it can survive as the same religion in different cultures.”⁴³ A religious law presupposes an institutionalized religion engaged in an ongoing discourse with a larger social-political body, the fate of which in monotheism is a (symbolic) and profane, sinful “other” against whom the identity of the “righteous” community is measured. The implication of this is there in the Deuteronomist’s admonition that the (Deuteronomic, Mosaic) law be read every seven years, during the festival of booths, in the hearing of “all Israel” (31:9–13). When the law is read it should be “heard and understood” as long as the people are living in the land “they are about to possess.” The law that should be observed is not that which governed the political body already in the land. “Possession” of the land expected a takeover or conquest, a Manifest Destiny of sorts. But perhaps more importantly, the law presupposes restoration.

The Role of the Social Body in the Law: Ritualization and Exclusion

According to Foucault, “[T]he body becomes a useful force only if it is both a productive body and a subjected body.”⁴⁴ It is the body that both produces the relations, and nature, of power and legitimates power by

43. Ibid., 3.

44. Foucault, *Discipline and Punish*, 26.

remaining subject to it.⁴⁵ That point, we might remember, was the same one that Marx was pillaring in his argument that change could only come through revolution: an overturning of prevailing institutions of production and power by refusing to legitimate them. And according to Žižek, that is the perverted truth: that the moral sense the law purportedly provides is a sterilized or neutered sense of symbolic value or desire.⁴⁶ Recall the command in Deuteronomy to observe the law while in the land, the object of collective desire, as a requisite for maintaining possession of it. Recall also that the law, for the Deuteronomist, in the transgression of it becomes the exact reason the people were “vomited” out of the land. The very thing that the people produced as an expression of their own identity, the law, became the measure against which they were judged and found guilty.

The Deuteronomist interpreted the exiles as corrective punishment for disobedience of the law. To understand this better, Foucault is helpful when he writes that what one is trying to restore in corrective punishment is not the entirety of what is meant by the juridical subject but the obedient one. The first is one “who is caught up in the fundamental interests of the social pact.” The latter is one who is “subjected to habits, rules, orders, an authority that is exercised continually around him and upon him, and which he must allow to function automatically in him.”⁴⁷ The possible difficulty here, of course, is that the law to which the Deuteronomist refers is a religious law and not a political one. The Deuteronomist’s ideal for a restored political body is something perhaps more reminiscent of a theocracy than a monarchy; kings as sovereigns were a necessary evil to maintain social-political stability.⁴⁸ What the Deuteronomist envisioned as the ideal social-political organization was in fact not far removed from what was implied in texts focusing on the reconstitution of “Israel,” such as Ezra–Nehemiah and Haggai–Zechariah.

45. Note further, “The success of disciplinary power derives no doubt from the use of simple instruments; hierarchical observation, normalizing judgement and their combination in a procedure that is specific to it, the examination. The exercise of discipline presupposes a mechanism that coerces by means of observation; an apparatus in which the techniques that make it possible to see induce effects of power, and in which, conversely, the means of coercion make those on whom they are applied clearly visible” (ibid., 170–71).

46. Cf. Žižek, *Violence*, 109.

47. Foucault, *Discipline and Punish*, 128–29.

48. Cf. von Rad’s “redemptive history” in *The Problem of the Hexateuch and Other Essays* (London: SCM, 1966), 205–21.

The biblical concept of restoration assumes that with restoration the law would eventually cease to be a part of the discourse of power. When all allegiances are directed without question to Yahweh, when the social-political order has been stabilized, its necessity as a tool of the sovereign will cease. Is that not, after all, the sense of Jeremiah?

The days are surely coming, says the LORD, when I will make a new covenant with the house of Israel and the house of Judah. It will not be like the covenant that I made with their ancestors when I took them by the hand to bring them out of the land of Egypt—a covenant that they broke, though I was their husband, says the LORD. But this is the covenant that I will make with the house of Israel after those days, says the LORD: I will put my law within them, and I will write it upon their hearts; and I will be their God, and they will be my people. No longer shall they teach one another, or say to each other, “Know the LORD,” for they shall all know me, from the least of them to the greatest, says the LORD: for I will forgive their iniquity, and remember their sin no more. (Jer 31:31–34)

Jeremiah’s description of the law written upon the heart states that what the law was meant to facilitate, the patterns and expectations of a new order (*nomos*), would become an innate quality of the community. In this sense, the expectations of the law are the same that constitute the shared desire, upon which collective identity is based, of the community: the function (marking out boundaries, determining appropriate intra-group behavioral patterns) of community and the legitimation of processes that confer the group or community with identity—or, as Gunther Teubner describes this last in more general analyses of law, the agreed-upon production of law that transforms human agents from producers into semantic artifacts in relation to the law.⁴⁹ It functions, to appeal to the terminology of Melanie Klein, as idealization: “While idealization is thus the corollary of persecutory fear, it also springs from the power of the instinctual desires which aim at unlimited gratification and therefore create the picture of an inexhaustible and always bountiful breast—an ideal breast.”⁵⁰ Where the symbolism of the breast may be substituted for the powerful symbolism of Yahweh, the law as idealization speaks no longer to the letter of the law but to the internal motivations of the collective “ego” pursuing a desired outcome. Jeremiah’s point is this: divine/religious law represented the communicative process through which “foreign” was identified and excluded while facilitating restoration—a point that Julius Wellhausen advocated:

49. Teubner, “How the Law Thinks,” 730.

50. Klein, *Envy and Gratitude*, 7.

[I]n the Mosaic theocracy the cultus become a pedagogic instrument of discipline. It is estranged from the heart; its revival was due to an old custom, it would never have blossomed again of itself. It no longer has its roots in child-like impulse, it is a dead work, in spite of all the importance attached to it, nay, just because of the anxious conscientiousness with which it was gone about. At the restoration of Judaism the old usages were patched together in a new system, which, however, only served as the form to preserve something that was nobler in its nature, but could not have been saved otherwise than in a narrow shell that stoutly resisted all foreign influences. That heathenism in Israel against which the prophets vainly protested was inwardly overcome by the law on its own ground; and the cultus, after nature had been killed in it, became the shield of supernaturalistic monotheism.⁵¹

It was through the law and its exclusionary function that “heathenism” was overcome within the community. Well, perhaps it was never fully overcome: Is that not one of the main reasons why the community’s ideological descendants in Judaism and Christianity today are still in an *active* resistance against the surrounding social-political body? But where it was not overcome, the law provided what the community believed was the blueprint for successfully overcoming it. It is in restoration that this overcoming, which is a radical exclusion, is finally realized. The radical nature of this exclusion is perhaps most colorfully portrayed in Christianity: restoration for the saved necessitates the repeated, eternal torture and deconstruction of nonmember individual and collective social bodies. *The sinner must burn*. And the path toward restoration is ritualized obedience as the process of transforming human agents into members of a new social-political body.

Ritualized obedience provides comfort by resisting disruptions to one’s normative order. Or as Catherine Bell described “ritual,”

The body acts within an environment that appears to require it to respond in certain ways, but this environment is actually created and organized precisely by means of how people move around it. The complex reciprocal interaction of the body and its environment is harder to see in those classic examples of ritual where the emphasis on tradition and the enactment of codified or standardized actions lead us to take so much for granted about the way people actually do things when they are acting ritually.⁵²

51. Wellhausen, *Prolegomena*, 425.

52. Bell, *Ritual*, 139.

As an act of agency, obedience provides a mechanism through which a group expresses internally and externally, as a mark of distinction, the contours of its collective identity. The rather marked emphasis within the biblical texts upon obedience to religious law confirms this assertion. Ritualized identity preserved through obedience is a collective response to other competing, cultural identities; it is a promise of stability. The *golah* community demonstrates its ritualized identity through obedience to the law, including, for example, observance of the Passover festival, which connects the community with the Hebrews of the Exodus tradition (cf. Ezra 6:19–21).

Recall Wellhausen's description of the Mosaic theocracy rooted in childlike impulse—the true desire of the ego, in Kleinian terms. He refers here to an innate natural inclination for the authority of Yahweh, which in its ideal form—which means also its restored form—no longer necessitates institutional or legal means of discipline or control. Foucault offered a similar observation: “The art of punishing...must rest on a whole technology of representation. The undertaking can succeed only if it forms part of a natural mechanics. Like the graviton of bodies, a secret force compels us ever towards our well-being. This impulsion is affected only by the obstacles that laws oppose to it.”⁵³ Foucault's assertion that law is an instrument whose eventual demise would be realized when all forms of discourse have been brought into balance mirrors what is also expected in monotheistic restoration.⁵⁴ Ideally, the law has served its purpose when restoration has occurred. But the gross inverse of disciplinary power is the perpetual instability of constructed defenses against anomy; order is always under threat on account of social-political circumstances forever in the process of changing. That is, the productive effect of discipline is found only in the threat of chaotic dissolution. *I know that heaven is the antithesis of hell*. Or as Žižek observed of Christianity, “Salvation consists not in our reversing the distinction of the Fall, but in recognizing Salvation in the Fall itself.”⁵⁵ According to Foucault, law is an instrument of disciplinary power in that as part of other discourses of power it provides the blueprint for integrating those discourses into a larger network of control. But this can come about only through the absolutization of exclusion, what Žižek describes as the “crushing” of the marginal position.⁵⁶ “And I contended [ריב] (contend, shout, quarrel,

53. Foucault, *Discipline and Punish*, 104.

54. Again, see Golder and Fitzpatrick, *Foucault's Law*, 2.

55. Žižek, *Puppet*, 87.

56. Cf. Žižek, “The Ongoing ‘Soft Revolution.’”

clamour)] with them and cursed [קלל (despise, make small, curse)] them and beat some of them and pulled out their hair [מרט (make smooth, bare, bald, scour, polish)]...” (Neh 13:25).

Nehemiah’s dramatic response to group members was meant, in Foucault’s terms, to “mark out on the body of the criminal” the (necessary) boundaries that preserve the internal cohesion and structure of the community. Criminals are distinct from enemies in that the former tend to be insiders who “get it wrong” (or in some cases an outsider looking to establish his or her place in society).⁵⁷ The death or destruction of the latter serves no internally constructive purpose apart from consolidating the group around a shared concern for self-preservation. The effectiveness of exclusion, and its violent enforcement, is found in the perpetuated fear that the member herself may be cast out, excluded, from the community and become little more than an “other,” or even possibly “enemy.” In this way, the body is productive—it orients itself (and for Nehemiah this occurs in part through violent action) around clearly marked boundaries between member and nonmember and it imposes upon its members expectations of behavior that maintain those boundaries. Foucault’s theory on power permits us to see how Ezra–Nehemiah’s emphasis upon identity may simultaneously be an emphasis upon redefining the distributed relations of power.

Law as a Negative, Repressive Power?

If articulating identity in Ezra–Nehemiah entails redefining the networks of relations of power, how can we clarify the role that law holds in relation to power? Foucault identified law as a premodern negative, repressive power that is progressively overtaken by disciplinary power. Bodies in relation create systems and sub-systems of (self-)regulation. Yet scholarly assumption regarding the law has been less as a product of relations and more as an objective force imposing the parameters of a theocracy in Yehud. Those parameters, as we will show in this section, typically take the form of values manifest in exclusion, isolationism, or particularism.

Foucault is certainly correct that disciplinary measures against the threatening “other” (he uses the example of the leper, one with which the Bible is familiar) call for disciplinary projects, “multiple separations,

57. And isn’t this true even for our modern use of the term to categorize those guilty of war crimes? It is an attempt broadly to define a global civilization that can be uniformly governed and regulated. Thus, the assumption that there exists some “objective” ethics by which “criminals” can be tried and found guilty is itself an imperialist act.

individualizing distributions, an organization in depth of surveillance and control, an intensification and a ramification of power,” rather than a “massive, binary division between one set of people and another.”⁵⁸ What certain biblical texts portray, however, is in fact a massive, binary division—such as between Ezra–Nehemiah’s *golah* community and *am ha’aretz*. There are, of course, two ways to interpret this emphasis: as a product either of intent or of ignorance on the part of the biblical author(s). The irony is that intent on the part of the author seemingly *intends* to cultivate ignorance on the part of his audience. It is very much like politicians who argue that the only logical solution to a problem, after being reduced to two possible outcomes, is the one with which they agree. When the public engages the subject on the terms presented by the politician, he has successfully dumbed the issue down not to the structural components or fundamental issues of the problem but often on an emotional desire for stability. One might see the same thing as occurring in Ezra–Nehemiah, who argues that the solution to the problem faced by the *golah* community—the community itself was not central in the distribution of authority—was “radical” (to use Žižek’s term) exclusion.⁵⁹ Authorial intention in that work seems almost entirely to be focused on reshaping the social-political context in support of the *golah* community and its relationship to Yahweh. We can accept that the author was clearly aware of the complexities of his social-political environment and that his gross reduction of them into a massive, binary opposition was for ideological purposes (such as to provide a plan for a “restored” society). Otherwise, we must assume that the author was ignorant of what went on in a society. How much so if we accept the reality that the division of

58. Foucault, *Discipline and Punish*, 198.

59. R. Gnuse, who is not alone in this, argues that the strategy of radical exclusion legitimated by law was developed en masse in exile: “Jews in exile were still a peripheral people in the middle of a great river valley civilization, for they refused to become part of the social fabric of Mesopotamia and chose instead to separate themselves by observation of the Priestly laws. Basically, they rejected the values of that great culture when they chose to do so, and they could reshape and rearticulate great ideas according to their own worldview” (*No Other Gods*, 213). Certainly Gnuse refers to the cultural literary borrowing, such as the story of the flood, the heroic legends of ancestral kings, and more. He is wrong, however, in his overly reductive reduction of “Jewish” identity. Recent archaeological finds—namely, finds from Babylonian al-Yahudu—have brought to light evidence of Judeans assimilating quite well into the larger social fabric of Babylonian society (cf. Joannès and Lemaire, “Trois tablettes cuneiforms,” 17–33; Pearce, “New Evidence,” 399–411). In short, there was undoubtedly a spectrum, running the gamut from conservative to assimilationist, of reaction to a new normative social-political order.

Yehud between member and nonmember, *golah* and *am ha'aretz*, was not an actual state of affairs but the ideological product of desire, as observed in Ezra–Nehemiah—a fabrication done in order to rewrite the complex network of structures and distributions of relations of authority into something centralized around *golah* authority.⁶⁰

In this case, the mechanism of religious law facilitates the author's binary division by requiring obedience to a social-political division it itself is playing a part in creating. Is not the law, which Ezra is described as bringing, part of the authorial process of the division between remnant and other. And is not the divine law set in contrast with what we can safely assume to be the prevailing law of the land—the “illegal” violence to which Žižek refers?⁶¹ How much more so if one accepts that the law introduced by the immigrants was set in competition with an already established law of the land?⁶² It represses behaviors permissible within the land but does not reinforce the boundaries that unfairly make up the controls of the community's collective identity. Take the opening salvo from Zechariah, for example:

In the eighth month, in the second year of Darius, the word of the Lord came to the prophet Zechariah son of Berechiah son of Iddo, saying: The Lord was very angry with your ancestors. Therefore say to them, Thus says the Lord of hosts: Return to me, says the Lord of hosts, and I will return to you, says the Lord of hosts. Do not be like your ancestors, to whom the former prophets proclaimed, “Thus says the Lord of hosts, Return from your evil

60. J. Berquist writes, “The politicians also introduced, on Persia's behalf, a new law under the reign of Darius. This law may well be strongly connected to the laws of the Pentateuch in their current form. These laws served to limit Yehud's activities and to define the society in accord with an ethic of not questioning the Persian Empire. The laws produced a sense of status quo in which allegiance to this Persian-sponsored law would be likely” (*Judaism in Persia's Shadow*, 144).

61. Žižek, *In Defense of Lost Causes*, 150.

62. But one should not go so far as Finkelstein and Silberman: “[The returnees] were mainly individuals of high social and economic status, families who had resisted assimilation and who were most probably close to the Deuteronomic ideas. Though the returnees were a minority in Yehud, their religious, socioeconomic, and political status, and their concentration in and around Jerusalem, gave them power far beyond their number. They were probably also supported by the local people who were sympathetic to the Deuteronomic law code promulgated a century before. With the help of a rich collection of literature—historical compositions and prophetic works—and with the popularity of the Temple, which they controlled, the returnees were able to establish their authority over the population of the province of Yehud” (*The Bible Unearthed*, 308–9).

ways and from your evil deeds.” But they did not hear or heed me, says the Lord. Your ancestors, where are they? And the prophets, do they live forever? But my words and my statutes, which I commanded my servants the prophets, did they not overtake your ancestors? So they repented and said, “The Lord of hosts has dealt with us according to our ways and deeds, just as he planned to do.” (Zech 1:1–6)

*Legal Taboos or Categorical Restrictions:
Further Discussion on Legalized Strategies of Exclusion*

In many ways, the law operates under taboos. That is, in part, why Morgenstern can claim that the taboos on, for an example best linked with the Babylonian context, clean and unclean foods in the biblical text were intended to decrease interaction with outsiders.⁶³ And as we have seen already, the prohibition against foreigners was clearly integrated within the law as it was described in the Neo-Babylonian and Persian-period biblical texts. Yet there is always a point when taboos are outpaced by the social-political demands of desire production, which is ever-evolving in a network of discourses.⁶⁴ Institutions such as prisons, schools, and asylums, for a more modern example, enculturate political subjects within a new economy of power through repetition of behavioral norms, resulting in internalization of these norms, and inserting them into modes of production. Consequently, laws often codify an expanded set of taboos. Jeremiah 31:31–34, for example, makes permissible an expansion of taboos to focus on the body of the individual and not the collective.

Taboos are social prohibitions or restrictions sanctioned by innate, or better, internally legitimated, social means. Taboos may be enforced in a variety of ways including guilt, shame, or other actions bestowed with the force of prohibition. In that sense, taboos can be a cultural expectation codified as an extension of the intent of the law: preserving the basic social order. Yet there is an important distinction: “Taboo differs from abstract,

63. Julian Morgenstern, “Jerusalem—485 BC (Concluded),” *HUCA* 31 (1960): 24.

64. Note also, “[T]he point is that here (and elsewhere) Foucault does not seem to want to circumscribe the role of *law* (a particular form of power) as being pre-eminently negative and as functioning within a very restricted juridico-discursive economy. Law is conceived of as ‘a law which says no’ and as ‘the law of prohibition.’ It is ‘essentially,’ indeed ‘excessively,’ repressive in its mode of operation. Moreover, and importantly for Foucault, this ‘somber law that always says no’ is not just a negative power but ultimately an abidingly limited one as well (which helps explain, on this reading, its historical eclipse in modernity by more insidious, efficient and expansive forms of power)” (Golder and Fitzpatrick, *Foucault’s Law*, 16).

codified law in the degree to which the prohibited object or act is specified and developed into a symbol, or even a fetish, of the prohibition itself. Taboo is not so much a system of regulations as it is a scheme of negative differentiation, in which the fact of prohibition and the prohibited act or object itself obscure the reasons for a prohibition.⁶⁵ But this emphasis upon negative differentiation is consistent with the intent of the law. Our point is not to equate taboo and law but to argue for their mutual compatibility, especially in the context of Persian period and later Yehud, and, by extension, to law-obsessed monotheism.

Foucault's understanding of the repressive quality of law, the rationale for which also provides a plausibility basis for taboos, may be best demonstrated in his articulation of the relationship between law and sexuality (which he sees at the root of relations of law):

[T]hou shalt not go near, thou shalt not touch, thou shalt not consume, thou shalt not experience pleasure, thou shalt not speak, thou shalt not show thyself; ultimately thou shalt not exist, except in darkness and secrecy. To deal with sex, power employs nothing more than a law of prohibition. Its objective: that sex renounce itself. Its instrument: the threat of punishment that is nothing other than the suppression of sex.⁶⁶

What is plainly caught here is desire under the net of suppression. Individual desire must be restrained within the parameters of collective identity as it is understood by the law. *Not everything that I want is permissible, especially when what I want runs contrary to the good of the group.* Moreover, Foucault was tracing out the development of power, from blood (genealogy) to sexuality, or the power over sexuality:

The new procedures of power that were devised during the classical age and employed in the nineteenth century were what caused our societies to go from *a symbolics of blood* to *an analytics of sexuality*. Clearly, nothing was more on the side of the law, death, transgression, the symbolic, and sovereignty than blood; just as sexuality was on the side of the norm, knowledge, life, meaning, the disciplines, and regulations.⁶⁷

What Foucault emphasizes here is the transition from the more physical nature of power relations to the more abstract. Do we not see

65. Taken from "Taboo," in the *Encyclopedia of Religion*. Online: http://go.galegroup.com/ps/i.do?id=GALE%7CCX3424503025&v=2.1&u=lom_gvalleysu&it=r&p=GVRL&sw=w&asid=41e021860191ff9a3d7b4008838ba7a5.

66. Foucault, *The History of Sexuality, Volume I*, 84.

67. Ibid., 147 (emphasis in original).

a similar emphasis in the biblical texts, which emphasize, first, blood as the qualification of membership within the community and then more importantly as the basis for dynastic succession and, second, a reinterpretation of bloodline for more ideological purposes, as occurred in Ezra–Nehemiah?

It was not always so but as concepts of shame and taboo became linked within a legal system, expressions of individual desire became subject to suppression. Deleuze's sense of "overcoding" entailed precisely that process of suppression, or interruption of the pursuit of desire. Through that process, individual identities are "re-coded" to reflect the identifiable characteristics of the "state."⁶⁸ Or to put it differently, the intent of the law is to restrict the actions of the individual so that they are consistent with the stability of the state—what Foucault calls its repressive nature⁶⁹—a stability that must also incorporate the struggles and compromises characteristic of individuals and collectives in relationship—the very constitution of the social field.⁷⁰ Restricting the "permissible" actions of the individual through general, collective expression keeps the impact of group struggles and compromises within tolerable limits. *We are better equipped to respond to external threats when we have a greater sense of internal cohesion.* That is precisely what H. L. A. Hart meant when he wrote, "In any large group general rules, standards, and principles must be the main instrument of social control, and not particular directions given to each individual separately."⁷¹

Taboos focus similarly upon the individual; perhaps that is one reason why taboos began with issues of sex and procreation.⁷² Foucault's argument follows the idea that sex drive (sexuality, libido, desire) lies at the heart of human motivation, identity, and emotion—components that must be controlled for the stability of the "State" (social-political collective).⁷³ With

68. Deleuze and Guattari, *Anti-Oedipus*, 212–13.

69. Cf. Foucault, *History of Sexuality, Volume I*, location 1899.

70. Cf. Deleuze and Guattari, *Anti-Oedipus*, 269.

71. Hart, *The Concept of Law*, 124. Note also C. Ake, who wrote similarly, "[T]he network of political expectations, or the political structure, constitutes a system of channels or obstacles that control the flow of political exchanges (that is, the transactions and communications) between political actors, preventing political exchanges from fluctuating beyond certain limits and giving them a general regularity without making them perfectly predictable. Political structures may thus be called the 'pattern of the flow of political exchanges'" ("A Definition of Political Stability," 273).

72. According to C. Bell, that is precisely the point that Freud began with in his analysis of taboos (*Ritual*, 13–14).

73. As argued by Eve Kosofsky Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity (Series Q)* (Durham, NC: Duke University Press, 2003), 17.

this distinction between sacredness and taboo, which are the prevalent types within the biblical literature, we find the ritualistic distinction, *at its most fundamental level*, a category separating those things that preserve the *nomos* of social order from those that disrupt it. Even those taboos that are seemingly removed from direct influence upon the normative social order are still connected back to it. While Marvin Harris, for example, links ancient Judaism's taboo on pork to health concerns, the primary concern is not for the individual. Judean culture during the time in which the law was written was a collectivist one.⁷⁴ Because the collective functioned as the sum of its individual parts, preservation of the individual was driven by an overriding concern for the community. For this reason, Julian Morgenstern's argument that the taboos on clean and unclean foods were a way of decreasing interaction with strangers or outside groups is also correct.⁷⁵ The related emphasis upon ancestral lineage preserves the stability of the group: *this is who we are, who we have been, and we've preserved ourselves by following these cultural expectations, bodies of knowledge, and laws*. Taboos facilitate and expand upon obedience to the law by reinforcing negative differentiation. As Erhard Gerstenberger wrote, "Ethical and legal norms are responsible only in part for ethical behavior. In antiquity, but also in modernity, religions and magic taboos are added, which elude rational interpretation to a large extent."⁷⁶ And further, "The emerging Yahweh community, perhaps analogously to Persian religiosity (taboo of corpses!), became particularly sensitive against many forms of cultic pollution."⁷⁷ The heightened concern over taboo and its enforcement was a consequence of religious law's insecure position.

The Intent of Monotheistic Law Was to Create a New Normative Order

To find the suitable punishment for a crime is to find the disadvantage whose idea is such that it robs forever the idea of a crime of any attraction.⁷⁸

We need to be clear that punishments themselves do not define an operative law. Punishments are consequences of the law. So if we accept that the law Ezra is purported to have brought to Yehud (whether the entire Pentateuch or not) was a product of social-political desire, we need

74. Cf. H. Wheeler Robinson, *Corporate Personality in Ancient Israel* (Philadelphia: Fortress, 1964).

75. Morgenstern, "Jerusalem—485 BC (Concluded)," 24.

76. Gerstenberger and Schatzmann, *Israel in the Persian Period*, 502.

77. *Ibid.*, 505.

78. Foucault, *Discipline and Punish*, 104.

not dismiss that law as a *possible* functional law but merely maintain that it was a constructive one. Punishments reflect changing bodies of knowledge that develop in response to new technologies of power needed to meet the changing expectations and needs of the social-political body.⁷⁹ But the true intent of punishment is to reinforce appropriate behaviors within the normative order. *This is what happens when you don't follow the law.* In many ways, and as prisons in the United States and the high rates of recidivism have shown, it is too late for the criminal who is seen as someone outside and disruptive of the normative order of society. The law is written on the body of the criminal for the sake of the full, free citizen of the social-political body. And as Golder and Fitzpatrick put it, “[The law] is constitutively attached to a whole range of different entities, bodies of knowledge, or modalities of power.”⁸⁰

Disciplinary power, including the law, is, Golder and Fitzpatrick summarize, “constitutively linked to the knowledge of the individual and society and the way in which the ‘reversal of the procedures of individualization’ rendered necessary the giving of every person...a distinct individuality, a discrete place in the great social continuum of abnormal to normal.”⁸¹ Disciplinary power, in simpler terms, sustains the normative order. While Foucault thought that the law would diminish in the discourses of the technology of power, to be superseded by “biopower,” it still functions in establishing the paradigm upon which other, new and evolving discourses are based. It provides, in other words, a “reference point” if even in the negative. “Disciplinary power lies outside sovereignty and this does not depend on the centralized power of the state. It is in this sense that Foucault describes the disciplines as being “counter law” which “operates on the outside of the law.”⁸² Take note, for instance, of Foucault’s point here:

79. Golder and Fitzpatrick summarize Foucault’s argument helpfully: “Foucault... does not argue that the human sciences simply arose out of the exigencies of the disciplinary project. Rather, his contention is that the emergence of the human sciences as a form of knowledge of ‘man’ is intricately linked to the emergence of the new ‘technology of power,’ or the ‘new political anatomy of the body,’ that was taking shape at the turn of the eighteenth century. And indeed the prison (as well as the asylum, the workhouse, the school, and so forth) was a crucial site for the generation of disciplinary knowledge, a knowledge which thenceforth came to be generalized throughout the social body” (*Foucault’s Law*, 62).

80. *Ibid.*, 60.

81. *Ibid.*, 63.

82. Hunt and Wickham, *Foucault and Law*, 65; citation from Foucault, *Discipline and Punish*, 223. Note also, “In appearance, the disciplines constitute nothing more

But the supervision of normality was firmly encased in a medicine or a psychiatry that provided it with a sort of “scientificity”; *it was supported by a judicial apparatus which, directly or indirectly, gave it legal justification*. Thus, in the shelter of these two considerable protectors, and, indeed, acting as a link between them, or a place of exchange, a carefully worked out technique for the supervision of norms has continued to develop right up to the present day.⁸³

For Foucault, the law not only regulates proper behaviors, it also places restraints on power. “[W]e might say,” offer Golder and Fitzpatrick writing on Foucault’s theoretical position, “that it is through the law’s ‘framing’ of disciplinary power that the relationship between the two begins to emerge more clearly.”⁸⁴ But even more importantly,

[B]y purporting to exercise its supervisory jurisdiction only over the more egregious aberrations, abuses and excesses of disciplinary power, law confirms the basic claim at the heart of disciplinary power to adjudicate on questions of normality and social cohesion... Thus, in confining its legal supervision to the contested *periphery*, the instability at the very *core* of disciplinary power (the lack of epistemological certitude and authority for its normalizing project) is left unquestioned and hence reinforced. It is solely those instances of disciplinary power’s application which, in the margins, appear somewhat excessive that receive the legal treatment—everything else is plausibly rendered, in the language of disciplinary power itself, normal, as the norm.⁸⁵

In the case of early monotheism, the strict form of which was found in Persian-period Yehud and later, one problem rendered with Foucault’s theory is that the immigrating community of Judeans from Babylonia did not control the institutional and individual relationships that together gave force to disciplinary power. Ezra–Nehemiah’s engagement of the law, to note, was as a reference point, that much is true. Yet it was not a reference point that could take immediate effect within social-political relationships, going to work immediately shaping and guiding the process of normalization. Thus, the law could render nothing as plausible except the utopian aspiration of community.

than an infra-law. They seem to extend the general forms defined by law to the infinitesimal level of individual lives; or they appear as methods of training that enable individuals to become integrated into these greater demands” (ibid.).

83. Ibid., 296, emphasis mine.

84. Golder and Fitzpatrick, *Foucault’s Law*, 64.

85. Ibid.

The Reactionary Nature of Law?

What Foucault has shown us is that there is a reactionary nature within social-political bodies who suffer under the weight of law and its purpose of defining or restricting the process of normalization. Ideologies react to the influence of the law. In contrast, religious law works in reverse; it is generally prescriptive in that it seeks to *define* a normative order that is consistent with the dominant monotheistic ideology: restoration as an absolutized, stable normative order. The law shaped this commitment to restoration ideology. This order, however, necessitates the permanent categorization of the “other” as profane.

Golder and Fitzpatrick summarize Foucault’s previous point: “One of the ways in which the law achieves the aim of constituting the authority of disciplinary power is—paradoxically, it might seem—to act, and to be seen to act, as a restraint upon it.”⁸⁶ Law is authoritative through restraint, which is the power to keep anomy producing actions at bay. But how does this restraint work with—or *does it work against?*—the *constructive* nature of religious law? Perhaps the nature of the well-known Decalogue—a portion of a legal code written or redacted during the Neo-Babylonian and Persian periods—will help:

Then God spoke all these words: I am the LORD your God, who brought you out of the land of Egypt, out of the house of slavery; you shall have no other gods before me. You shall not make for yourself an idol, whether in the form of anything that is in heaven above, or that is on the earth beneath, or that is in the water under the earth. You shall not bow down to them or worship them; for I the LORD your God am a jealous God, punishing children for the iniquity of parents, to the third and fourth generation of those who reject me, but showing steadfast love to the thousandth generation of those who love me and keep my commandments. (Exod 20:1–6)

And the prohibitions go on: two more emphasize allegiance to Yahweh, by honoring the name of Yahweh and by observing the Sabbath; the remainder focus on what may be described as proper moral behavior that preserves cohesiveness of the social-political body and the distributed relationships upon which its power hierarchies are based. The important point to note is the immediate restrictions set out by what many consider to be the prologue to a larger Covenant Code. The authoritative “Other”—and here we are invoking Žižek’s definition—who stands on the opposite side of the law, asserts his positionality before the social-political body:

86. Ibid.

I am your god, which could also read easily as *I am your sovereign*.⁸⁷ Yahweh's introduction of sovereignty is immediately followed by—and one might notice an insecurity here—restraints on the permitted behaviors within the social-political body. These restraints seem to be focused on the possibility of power in the hands of social-political agents that might delegitimize the power of Yahweh. Paranoia over that possibility can be seen in the initial blessing and curse, a model that would be adopted later by the Deuteronomist: “punishing children for the iniquity of their parents, to the third and fourth generation of those who reject me” and “showing steadfast love to the thousandth generation of those who love me and keep my commandments” (Deut 5:9–10). Of course, what happens when the child of one who “loves” Yahweh rejects him? These positive and negative responses demonstrate an elementary understanding of psychological behavior. *If my immediate needs are met by legitimating through my actions the behavior of Yahweh, why would I risk losing it all?* One could even see it in reverse: the law, or the Other, internalizes those individuals and actions that are “pleasing,” that support the authority of this Other, and rejects those that don't support the social-political body and the qualities it defines as “member.” This is a consequence produced through engagement of the law because the law projects an idealized version of the collective self.⁸⁸ The adage “you are what you eat” is certainly correct, in a metaphoric sense, here. Consumption of an ideal—Berger describes this as “internalization”—will eventually produce something that appears to be the desired result.

But let us also not forget that the event that introduced the law was a reactionary one. The metaphor of the flight out of Egypt, which Ezra–Nehemiah also employs eagerly, speaks more generally to fleeing an oppressive situation under a “foreign” law and a corresponding low position in the social-political hierarchy. Yet the liberating quality of the law is found in its imposed restraints: there is an implied *quid pro quo* in its very articulation—you will receive the material benefits of a higher status and full citizenship *if* you validate me as your sovereign. Isn't that

87. And this is precisely the point that J. Wellhausen and others have made in light of the larger context in which the law was given. According to Exodus, Moses was on Mt. Sinai, having ascended what Eliade describes as the *axis mundi*, in face-to-face contact with the Other, to receive the law. Thus, the delivery of the law presupposed the institutional structures upon which most laws, even those of an ancient context, depend. The Deuteronomist would pick up on this “theocratic” style of governance in his typically negative assessment of the different kings of Israel and Judah.

88. Cf. Ake, “A Definition of Political Stability”, 271; Hart, *The Concept of Law*, 113–14.

the way of it with any new “other” as sovereign? A response to insecurity by imposing even more oppressive restraints? Thus, Ezra must reject the foreigner as the true oppressor in order to validate his vision of a new social-political order. And isn’t this also true of monotheism even in the modern world? This fetishistic obsession with the law precisely because it preserves the existence of the other as a foil against which the identity of the member is cast? And is this not one reason why it is possible within Judaism to be agnostic or even atheistic and still be Jewish? Or that within Christianity, the institution of the Catholic Church, wherein the authoritative interpretation of the legal requirements before God, offers a stand-in for the divine Other? Even in the Protestant variation, following a deemphasis upon tradition and structure—yet isn’t it ironic that the most successful Protestant denominations have reemphasized structure?—as one might excitedly see in Martin Luthers’ claim “*sola fide!*” there is still an emphasis upon proper behavior and obedience. It is now up to the individual to “get it right.” The flight out of the oppressive nature of the law, as Paul describes it (cf. Rom 8:20), demands that the community play an increasingly active role in enculturating individual members to the ethical patterns that clearly mark the individual as a member of the community: the so-called Fruits of the Spirit (cf. Gal 5:22; Rom 8:23). This seems to be Foucault before Foucault. Disciplinary power depending upon networks and subnetworks of relations. Collective identity no longer centered on law but upon the community in motion.

Why the obsessive reaction of the law in Ezra–Nehemiah, or even its later counterparts in Judaism and Christianity? The law did not govern a political body—academic longings for a theocracy in Yehud are mostly a product of romantic scholarly visions of monotheism as an intellectual, philosophic, and of course religious achievement.⁸⁹ In addition, restoration is still a future event for monotheism. The unspoken fear of monotheism, which we see take root in the context of Yehud, is that there is no object, no shared collective symbol, no God that can adequately support the monotheistic identity. That restoration will never happen, that it has all been a façade, that there will never be any reward for repression of our own individual desires. That is why monotheism needs a mysterious God that both liberates and oppresses. It too is subject to the same cultural forces that define and restrict. Of those, in a more general sense, Colebrook writes,

89. I presented a sustained argument against proposals that Yehud was a theocracy in the Persian period in Cataldo, *Theocratic Yehud*.

Insofar as I speak, I must submit myself to a law of language and I will necessarily desire what lies beyond that law; I will also require some symptom or object that seems to compensate for, or stand in the way of, my full enjoyment. Without the fantasy of one who is standing in the way of my desire I would have to accept that my desire is essentially unattainable, precisely because it is the negation of all thought and system.⁹⁰

While Colebrook describes Lacan's theory on the law of language, she refers to the source of the law as something capable of expression.⁹¹ If we apply that strategy here, the excluded other, the profane, the sinner, is necessary for monotheism absent any tangible presence of the divine sovereign. The excluded body of the other confirms by virtue of its exclusion the credibility of the law.⁹² That is the meaning behind Ezra–Nehemiah's portrayal of the Ammonites and Moabites, who must always exist and must always be rejected by the law for the sake of the community itself (cf. Neh 13:1). They are the symbolic rejected body. They are not productive in themselves but only for the member as a preservation of the negative.

A Final Word on Law as a Framework for Restoration

We have made the case that divine law provides a blueprint for restoration. Because restoration requires a restructuring of the social-political world, the force of the law must maintain the separation between insider

90. Colebrook, *Understanding Deleuze*, 13–17. She notes further that, for Žižek, “this explains the necessity of the cultural ‘symptom.’”

91. Žižek puts it this way, “[T]his opposition is, of course, the opposition between Symbolic Law (the ego ideal) and the obscene superego: at the level of the public symbolic Law, nothing happens, the text is clean, while, at another level, it bombards the spectator with the superego injunction ‘Enjoy!’, that is, give way to your dirty imagination... And this double reading is not simply a compromise on the part of the Law, in the sense that the symbolic Law is interested only in keeping up appearances and leaves you free to exercise your fantasies, insofar as they do not encroach upon the public domain, namely insofar as they save the appearances: the Law itself needs its obscene supplement, it is sustained by it, so it generates it” (*In Defense of Lost Causes*, 242–43).

92. This point is supported by Foucault's assertion that “the systems of punishment are to be situated in a certain ‘political economy’ of the body: even if they do not make use of violent or bloody punishment, even when they use ‘lenient’ methods involving confinement or correction, it is always the body that is at issue—the body and its forces, their utility and docility, their distribution and their submission” (*Discipline and Punish*, 25).

and outsider, or member and nonmember. It must, in other words, become the mechanism through which authority is re-institutionalized, and the network of intersubjective relations redefined according to the composition of the community.

The Deuteronomist identified this radical purpose of the law when he wrote, "When the LORD your God brings you into the land you are about to enter and occupy, and he clears away many nations before you...and when the LORD your God gives them over to you and you defeat them, then you must utterly destroy them. Make no covenant with them and show no mercy" (Deut 7:1–2). Was the law descriptive or constructive in nature? To appreciate it as descriptive of reality either requires that the religious law of an immigrating community created and sustained the framework of dominant social-political behavior in the province, which would necessitate legitimation by the whole of society, or it requires that its regulations were intended for the religious community alone. It is in this direction that we turn next.

The exaggerated emphasis upon exclusion betrays the remnant community's attempt at remapping the distributed relations of power. Thus, the rituals and confessions that occupy the community deal with actions and ideologies that focus directly upon creating and enforcing boundaries. Those boundaries are directed at a (desired) reorganization of the larger social-political body. This occurs through strategies of exclusion, through taboo, or categorical restrictions, developing strategies for redefining the normative, and using the law as a mechanism of repression⁹³ and as a symbolic ideal of restoration. Restoration is the ideal that provides the purpose and mission for redefining the organization of the social-political body. Law and exclusion are mechanisms toward that end. And ultimately, those are the nascent steps of monotheism.

93. The Jewish or Christian martyr is the carnivalesque response at the extreme of this. *I subject myself so much to the repressive will of the Other that I sacrifice my own desire to live all for the glory of the Other.*