

Morally Troubling “Primitive” Biblical Laws

Maimonides, Guide of the Perplexed 3:32

1. If you consider the Divine actions—I mean to say the natural actions—the deity’s wily graciousness and wisdom will become clear to you. . . . Similarly, the deity made a wily and gracious arrangement for each individual animal of the class of mammals. When such an animal is born it is extremely tender, and cannot be fed with dry food. Accordingly, breasts that yield milk were prepared for them, and the young can be fed with moist food which corresponds to the condition of the limbs of their bodies, until their limbs gradually and little by little become dry and hard.

2. Many things in our Law are the result of a similar course adopted by the same Supreme Being. For a sudden transition from one opposite to another is impossible. People, according to their nature, are not capable of abandoning suddenly everything to which they were accustomed. Now God sent Moses to make [the Israelites] a kingdom of priests and a holy nation (Exod. 29:6) by means of the knowledge of God, as it is written “Unto you it was shown that you should know that the Lord is God” (Deut. 4:35); “Know therefore this day and keep in mind that the Lord is God” (Deut. 4:39). We were commanded to devote ourselves to His service: “to serve him with all your heart” (Deut. 11:13); “and you shall serve the Lord your God” (Exod. 23:25); “and you shall serve Him” (Deut. 13:5). At that time, the way of life generally accepted and customary in the whole world and the general mode of worship in which the Israelites were brought up, consisted of sacrificing animals in those temples which contained certain images, to bow down to those images, and to burn incense before them. In those days, the pious ones and the ascetic persons were the persons who were devoted to the service in the temples erected to the stars, as I have explained.

3. God’s wisdom and his gracious ruse, as displayed in the whole Creation, was that He did not command us to give up and discontinue all these manners of service; for to obey such a commandment would have been contrary to the nature of people, who generally cleave to that to which they are used; it would in those days have made the same impression as a prophet would make at present if he called us to the service of God and told us, in God’s name, that we should not pray to Him, not fast, not seek His help in time of trouble; that our worship should consist solely of meditation without any works at all. For this reason God allowed these kinds of service to continue; He transferred to His service that which had formerly served as a worship of created beings, and of things imaginary and unreal, and commanded us to serve Him in the same manner: to build Him a temple, as it is written, “And they shall make me a sanctuary” (Exod. 25: 8); to have an altar erected to His name, as it is written, “An altar of earth you shall make for Me” (Exod. 20:21); to have the sacrifices offered to Him, as it is written, “If any person bring an offering unto the Lord” (Lev. 1:2), to bow down to Him and to burn incense before Him. He has forbidden us to do any of these things to any other being, as it is written, “Whoever sacrifices to a god other than the Lord alone shall be proscribed” (Exod. 22:19). . . .

4. Through this divine ruse it came about that the memory of idolatry was effaced, and the truly great principle of our faith—the existence and unity of God—was firmly established, while, at the same time, the souls had no feelings of repugnance and were not repelled by the abolition of the service to which they were accustomed and which alone was familiar to them.

5. I know that you will at first thought reject this idea and find it strange; you will ask me: How is it possible that none of the commandments, prohibitions, and important actions—which are very precisely explained and prescribed for specific times—should be intended for its own sake, but only for the sake of some other purpose, as if this were a ruse invented for our benefit by God in order to achieve His primary intention? What was there to prevent Him from giving us a law in accordance with His primary intention, while also giving us the capacity to obey it? Those precepts which in your opinion are only the means and not the object would then have been unnecessary.

5. Hear my answer, which will put an end to this sickness in your heart and will show you the truth of that which I have just pointed out to you. A passage appears in the Torah containing exactly the same idea; it is the following: “Now when Pharaoh let the people go, God did not lead them by way of the land of the Philistines, although it was nearer; for God said, ‘The people may have a change of heart when they see war, and return to Egypt.’ So God led the people roundabout, by way of the wilderness at the Sea of Reeds.” (Exod. 13:17). Here God led the people about, away from the direct road which He originally intended, because He feared they might meet on that way hardships that their bodies were naturally incapable of bearing . . . In the same manner, God refrained from prescribing what the people by their natural disposition would be incapable of obeying, and gave the above-mentioned commandments as a means of securing His primary goal: to spread knowledge of God and to cause them to reject idolatry.

6. For just as it is contrary to human nature that people, after having been brought up as slaves, working with mortar and bricks, should interrupt their work, clean their hands, and immediately fight against “the children of Anak,” so it is contrary to human nature that people suddenly abandon all the different kinds of divine service and the different customs in which they had been brought up, and which had been so widespread that they were considered as a matter of course. And just as God used a gracious ruse when he caused them to wander perplexedly in the desert until their souls became courageous and until, moreover, people were born who were not accustomed to humiliation and servitude . . . so did this group of laws derive from a divine grace, so that they should be left with the kind of practices to which they were accustomed and so that consequently the belief, which was God’s primary intention, should become validated in them.

7. As for your question: what was there to prevent God from giving us a Torah in accordance with His primary intention and from giving us the capacity to accept this? Similarly, you might say: what was there to prevent God from making them march “by way of the land of the Philistines” and giving them the capacity to engage in wars so that there should be no reason for this roundabout route? . . . Also, you lay yourself open to a third question: . . . Since God’s

primary intention and His will are that we should believe in this Torah and that we should perform the actions prescribed in it, why does He not provide us with the capacity always to accept this intention and to act in accordance with it? Why does He instead use a ruse regarding us declaring that he will give us benefits if we obey Him and punish us if we disobey? . . . For this too is a ruse used by Him when dealing with us, in order to achieve His primary intention. What was there to prevent Him from establishing in us a natural disposition that would cause an inclination to do the acts of obedience that He wishes and avoid the acts of disobedience that He abhors?

8. There is one and the same general answer to all three questions: though all miracles change the nature of some individual being, God does not change at all the nature of human beings by means of miracles. . . . Had it been His will that the nature of any human should change because of what He, may He be exalted, wills, sending prophets and giving us the Torah would have been useless.

Nahmanides, commentary on the Torah, Leviticus 1:9

9. Our verse says that the reason for sacrifices is that they are “an offering by fire of pleasing odor to the Lord.”

10. Rabbi Moses wrote in the Guide of the Perplexed that the reason for sacrifices is because the Egyptians and Chaldeans in whose lands the Israelites resided always worshiped cattle and sheep. . . . Accordingly God commanded Israel to sacrifice these three species [oxen, sheep and goats] to honor God’s Name, so that people would know that the very act that the idol-worshippers considered the worst sin [slaughtering their gods], that same act should be done as an offering to the Creator. These sacrifices atone for our sins as they cure people of their false beliefs, which are the diseases of the human soul. These are his [Maimonides’] words; he expounded them at great length.

11. His explanation is rubbish. He attempts to solve a serious difficulty casually by “making the table of God polluted” (Malachi 1:12), because [his explanation implies that sacrifices are] intended only to remove false beliefs from the hearts of the wicked and the fools of the world when Scripture says that that they are “an offering by fire of pleasing odor to the Lord.” . . .

9. והנה בכתוב הזה טעם הקרבנות שהם אשה ריח ניחוח ל"י.

10. ואמר הרב במורה הנבוכים (ג'מ"ו) כי טעם הקרבנות בעבור שהמצרים והכשדים אשר היו ישראל גרים ותושבים בארצם מעולם היו עובדים לבקר ולצאן, . . . בעבור כן צוה לשחוט אלה השלשה מינין לשם הנכבד, כדי שידע כי הדבר שהיו חושבים כי הם בתכלית העבירה הוא אשר יקריבו לבורא, ובו יתכפרו העונות, כי כן יתפאו האמונות הרעות שהם מדוי הנפש. כי כל מדוה וכל חולי לא יתרפא כי אם בהפכו. לה דבריו, ובהם האריך,

11. והנה הם דברי הבאי, ירפאו שבר גדול וקושיא רבה, על נקלה יעשו שולחן י"י מגואל, שאיננו רק להוציא מלבן של רשעים וטפשי עולם, והכתוב אמר כי הם לחם אשה לריח ניחוח. . . .

12. Consider that when Noah came out of the ark with his three sons—and there weren't any Egyptians of Chaldeans in the world then—he offered a sacrifice and God was pleased (Gen. 8:21). Abel also (Genesis 4:4) “brought the choicest of the firstlings of his flock. The Lord paid heed to Abel and his offering.” At that point there wasn't a trace of idolatry in the world.

13. The Torah refers to sacrifices as (Num. 28:2), “offerings of food due Me, offerings by fire of pleasing odor to Me.” Far be it that they should have no other purpose and intention except the elimination of idolatrous opinions from the minds of fools!

14. It is far more fitting to accept the reason that they offer for sacrifices: Since people's deeds are accomplished through thoughts, speech, and action, God commanded that when people sin, they should bring an offering and lay hands upon it to make up for the [evil] deed committed. . . . The goal is that sinners should realize that they sinned against God with their bodies and with their souls. It would be appropriate for their own blood to be spilled and for their own bodies to be burned, were it not for God's mercy, in that God accepts a substitute and gives atonement through a sacrifice, which is blood for blood, a soul for a soul. . . . The portions [of the sacrifice] that are given to the priests are to keep the teachers of Torah alive so that they will pray for the sinners. . . . These explanations appeal to the heart and deserve to be accepted as a midrashic explanation.

15. In truth, sacrifices have a hidden [mystical] reason. . . .

12. והנה נח בצאתו מן התיבה עם שלשת בניו, אין בעולם כשדי או מצרי, הקריב קרבן, וייטב בעיני יי", . . . והבל הביא גם הוא מבכורות צאנו ומחלביהן, וישע יי"י אל הבל ואל מנחתו (בראשית ד:ד'), ולא היה עדיין בעולם שמץ עבודה זרה כלל. . . .

13. ולשון הקרבנות: את קרבני לחמי לאשי ריח ניחוחי (במדבר כ"ח:ב'), וחלילה שלא יהא בהם שום תועלת ורצון רק שוללות עבודה זרה מדעת השוטים.

14. ויותר ראוי לשמוע הטעם שאומרים בהם: כי בעבור שמעשי בני אדם נגמרים במחשבה ובדבור ובמעשה, צוה השם כי כאשר יחטא יביא קרבן, יסמוך ידיו עליו כנגד המעשה, . . . כדי שיחשוב אדם בעשותו כל אלה כי חטא לאלהיו בגופו ובנפשו, וראוי לו שישפך דמו וישרף גופו לולא חסד הבורא שלקח ממנו תמורה וכפר הקרבן הזה, שיהא דמו תחת דמו נפש תחת נפש, . . . והמנות – להחיות בהן מורי התורה שיתפללו עליו, . . . ואלה דברים מתקבלים מושכים את הלב כדברי אגדה.

15. ועל דרך האמת: יש בקרבנות סוד נעלם. . . .

Samuel David Luzzatto (Shadal; 1800-1865), commentary to Genesis 8:21

16. “The Lord smelled the pleasing (הניחוח) odor”: ניחוח comes from the root נ-י-ח, as in the phrase (Ezek. 16:42), “When I have satisfied (והניחותי) My fury upon you and My rage has departed from you [then I will be tranquil; I will be angry no more].” In other words, a sacrifice that calms God’s anger. (Coccejus [a Dutch theologian, 1603-1669]). A phrase of this nature has to be understood according to the principle, “the Torah speaks in the language of human beings,” in other words according to the level of human understanding in the generation when the prophet lived.

17. Consider: Samuel the prophet said to Saul (I Sam. 15:22), “Does the Lord delight in burnt offerings and sacrifices as much as in obedience to the Lord’s command? Surely, obedience is better than sacrifice.” From that time onwards, we find that this understanding was widespread among the Israelites. For example, King David said (Ps. 51:18), “You do not want me to bring sacrifices; You [God] do not desire burnt offerings” and (Ps. 50:12), “Were I [God] hungry, I would not tell you” and (Ps. 40:7), “You do not ask for burnt offering and sin offering.” All the prophets in the days of the kings made this same point clearly.

18. Accordingly, it is as clear as day that the Pentateuch could not have been written in the days of the kings, or any time after the days of Samuel. For the Torah spoke in the idiom of people whose minds were at a much lower level than the minds of the Israelites in the days of the kings.

Shadal, commentary to Numbers 35:12

19. In the earliest generations, before nations were organized under kings, nobles, judges and constables, each family would take its vengeance from another family. The closest relative of the person who was killed was obligated to avenge his or her death.

16. הניחוח – משרש נוח מענין והניחותי חמתי בך וסרה קנאתי ממך (יחזקאל ט"ז:מ"ב) קרבן העשוי לשכך חמת האל (Coccejus). והנה המליצה הזאת הדבר ידוע שאינה אלא על דרך דברה תורה כלשון בני אדם לפי מצב בינת אנשי הדור שהנביא עומד בו;

17. וכאן ראוי להתבונן כי שמואל הנביא אמר לשאול {שמואל א ט"ו:כ"ב} החפץ לה' בעולות וזבחים כשמוע בקול ה' הנה שמוע מזבח טוב, ומשם ואילך מצאנו הידיעה הזאת מפורסמת בישראל, דוד אמר {תהלים נ"א:י"ח} כי לא תחפוץ זבח וגו' אם ארעב לא אמר לך {תהלים נ"י:ב}, עולה וחטאה לא שאלת {תהלים מ"ד:}, וכל הנביאים אשר בימי המלכים כלם הרחיבו פה על זה:

18. מעתה הנה הדבר ברור כשמש כי לא יתכן שיהיה ס' התורה נכתב בימי המלכים, או משמואל ולמטה, כי התורה דברה כלשון בני אדם אשר שכלם עומד במצב שפל מאוד ממצב ישראל בימי המלכים.

19. והנה בדורות הראשונים, בטרם יהיו העמים מסודרים תחת מלך ושרים, ושופטים ושוטרים, היתה כל משפחה נוקמת נקמתה ממשפחה אחרת, והקרוב יותר אל הנהרג היה חייב לנקום מיתתו;

20. The Torah said to appoint judges and constables, and thus took vengeance out of the hands of individuals and assigned it to the community.

21. Now if the murder was premeditated, the blood avengers' anger could be soothed. One could say to them: "Leave it to the judges. They will investigate and execute the murderer if that is appropriate."

22. But when the murders were accidental, one couldn't calm the blood avengers down, since they would have to continue seeing those who killed their brother or father [walking around freely and] unpunished. If that happened, it would seem to the blood avengers and to their friends and acquaintances that the blood avengers don't love their father or brother, since they were not seeking vengeance.

23. This approach could not be uprooted in one fell swoop. Divine wisdom understood that [even] if blood avengers were threatened with capital punishment for taking vengeance, all or most of the blood avengers would still avenge the death of their murdered relatives. The result would then be that even more people would be killed for no reason.

24. Furthermore (as my student Rabbi Eliezer Elia Eigel from Lvov commented to me) the sorrow of the one affected family would grow: after one of their members died tragically from an accidental homicide, yet another member of the family—the blood avenger—would be executed for taking [elicit] vengeance.

25. Furthermore, it's not hard to imagine that when a blood avenger was being taken out to be executed, the masses would rise up in arms against the judges, in a manner that would be very damaging for the nation.

26. So what did the Torah do? It left the [theoretical] right to avenge in the hands of the relatives of the deceased, but established sanctuary spaces where the perpetrator of the [accidental] homicide could flee, and where the avenger would not be allowed to enter and take vengeance.

20. והתורה העמידה שופטים ושוטרים, ונטלה הנקמה מיד היחידים, ומסרה אותה לכל העדה.

21. והנה כשהיתה הרציחה בזדון, יתכן להשקיט את הגואל, כי יאמרו לו: הנח להם לשופטים, הם יחקרו הדבר, ואם בן מות הוא ימיתוהו;

22. אבל כשהיתה ההריגה בשגגה, לא היה אפשר להשקיט את הגואל ולהכריחו לראות מי שהרג את אביו או את אחיו נשאר בלא עונש, כי היה נראה לו ולכל יודעיו ומכיריו כאילו אינו אוהב את אביו ואת אחיו, מאחר שאינו נוקם את נקמתם.

23. והדעת הזאת לא היה אפשר לעקור אותה בבת אחת, וראתה החכמה האלהית שאם יהיה גואל הדם נענש מיתה בנקמו את קרובו הנהרג בשגגה, עדיין לא ימנעו כל הגואלים ולא רובם מעשות נקמת קרוביהם, ועל ידי זה ירבו הנהרגים ללא תועלת,

24. וגם (כאשר העירני תלמידי ר' אליעזר אליה איגל מלבוב) יגדל הצער והנזק במשפחה אחת, כי אחר שקרה לה המקרה הרע שנהרג אחד מאנשיה בשגגה, עוד יהיה אחד מהם נענש מיתה על שנקם נקמת אחיו;

25. גם איננו רחוק שבשעה שיהיה הגואל יוצא ליהרג, יתקומם העם על השופטים וירבו קלקלות באומה,

26. לפיכך מה עשתה התורה? הניחה זכות לגואל לנקום מיתת קרובו, אבל קבעה מקום מקלט לנוס שמה הרוצח, ולא יוכל הגואל לבוא שם ולהרגו.

27. As is well known, in ancient societies the temples and altars were places of sanctuary for criminals. The Torah erased this custom, saying (Exod. 21:14), “[When a man schemes against another and kills him treacherously,] you shall take him from My very altar to be put to death.” . . . It left the concept of sanctuary only for those who killed without premeditation.

27. והנה ידוע כי אצל הגוים הקדמונים היו ההיכלות והמזבחות מקום מקלט לעוברי עבירה, והתורה בטלה המנהג הזה, ואמרה מעם מזבחי תקחנו למות {שמות כ"א:י"ד} . . . ורק השאירה מקלט לעושה בשגגה,

28. The place of sanctuary [for the ancient Israelites] couldn't be the Temple, since there was only one temple in the whole land of Israel, and it would be too difficult for every [accidental] murderer to flee all the way to the place chosen by God [for the Temple].

28. והנה לא היה אפשר שיהיה המקלט בבית המקדש, כי אחד היה בכל אדמת ישראל, ויקשה לרוצח לנוס מכל ערי ישראל עד המקום אשר יבחר ה',

Maimonides Guide of the Perplexed 3:40

29. The beneficial character of the law concerning “the breaking of the neck of a heifer” (Deut. xii. 1-8) is evident. For it is the city that is nearest to the slain person that brings the heifer, and in most cases the murderer comes from that place. . . . As a rule, the investigation, the procession of the elders, the measuring, and the taking of the heifer, make people talk about it, and by making the event public, the murderer may be discovered. Anyone who knows of him, or has heard of him, or has discovered him by any means, will now name the person that is the murderer, and as soon as a man, or even a woman or handmaid, rises up and names a certain person as having committed the murder, the heifer is not killed. . . .

30. When the murderer is discovered, the benefit of the law is apparent. If the court of justice cannot sentence him to death, the king, who has the power to sentence to death on circumstantial evidence, may find him guilty; and if the king does not put him to death, the avenger of blood may scheme and plan his death, and at last kill him.

31. Force is added to the law by the rule that the place in which the neck of the heifer is broken should never be cultivated or sown. The owner of the land will therefore use all means in his power to search and to find the murderer, in order that the heifer not be killed and his land not be made useless to him.

32. Nahmanides Commentary on Deut. 12

[quotes Maimonides]: According to this explanation, this ruse serves some purpose, but the action itself is not desired . . .

והנה לפי הטעם הזה יש בתחבולה הזו תועלת, אבל המעשה איננו נרצה בעצמו.

In my opinion, its explanation is like that of [other] sacrifices that are offered outside [of the Temple]: the goat that is released (Lev 16) and the red heifer (Num 19).

ולפי דעתי, יש בו טעם כענין הקרבנות הנעשים בחוץ שעיר המשתלח ופרה אדומה, ולפיכך מנו חכמים עגלה ערופה מכלל החוקים:

Nahmanides commentary to Exodus 6

33. “Elazar the son of Aaron married one of the daughters of Putiel”: If Putiel were simply a name, and not a springboard for a midrash, why would the Torah mention the name of a person whom we don’t know? That is why the rabbis said (bBava Kama 110a) that he was a descendant of Joseph who overcame (פטפט) his urges, and a descendant of Jethro The name, Putiel, was mentioned to praise them [Joseph and Jethro], that due to their righteousness they received the reward that their descendants became the priests for all generations.

34. On the peshat level, we can say that when kings are mentioned, their mothers’ names are mentioned, as in the verse (I Kings 15:2), “his [King Avian of Judah’s] mother’s name was Maacah the daughter of Avishalom” . . . and so all the other kings.

35. Or else we can say that Putiel was respected and well known in that generation and so he was mentioned to praise [him and his descendants].

33. [ואלעזר בן אהרן לקח לו מבנות פוטיאל לו לאשה] ואם היה זה שם פוטיאל שם איננו נדרש, מה טעם להזכיר שם אדם לא ידענו מי הוא, ולכן אמרו רבותינו (ב"ב קי א; סוטה מג א) שהוא מזרע יוסף שפטפט ביצרו ומזרע יתרו . . והוזכר לשבח שזכו בצדקתם לכהונת עולם.

34. ועל דרך הפשט נאמר שהכתובים מזכירים במלכים שמות אמותם, ושם אמו מעכה בת אבישלום (מ"א טו ב – י) . . וכן כולם.

35. או שהיה פוטיאל נכבד וידוע בדורו והזכירו לשבח.

Abarbanel Deuteronomy 5

36. “It was not with our fathers that the LORD made this covenant but with us, the living, every one of us who is here today.”

37. This means that the Torah was intended for all who would live in every generation; it was not intended for those who first received it.

38. Such a situation has already been compared to a person who builds a water wheel on a river. There is no doubt that he did not have in mind the specific water that was in the river at that given time. Rather, he was thinking about the water that would be flowing through that river at all times.

36. לא אֶת אֲבוֹתֵינוּ כָּרַת ה' אֶת הַבְּרִית הַזֹּאת כִּי אֲתָנוּ אֲנַחְנוּ אֵלֶּה פֶּה הַיּוֹם כְּלָנוּ חַיִּים:

37. רוצה לומר לא היתה התורה מכוונת אלא לכל אשר יהיו חיים בכל דור ודור לא לאותם אשר קבלוה.

38. וכבר המשילו זה לבונה גלגל הריחים על אמת המים. שאין ספק שלא כיון בבנינו אל אותם המים אשר עברו בזמן הבנין ... אבל יכוין אל המים מצד מה שהם עוברים תמיד.