Tsvi Blanchard

Law and Redemptive Narrative: Genesis as a Cultural Resource in the Twenty-First Century

Abstract: This paper addresses whether the book of Genesis can serve as a cultural resource informing law and politics in the twenty-first century, and if so, how? First, the book of Genesis is considered as a book of origins and then as a book of beginnings. With this distinction in mind, the paper then discusses and notes the limitations of three contemporary thinkers—Alan Dershowitz, Alain Supiot, and H. Patrick Glenn—who deal with how Genesis speaks to contemporary law, its principles and origins. An alternative approach is presented that focuses on the implications of Genesis as the beginning of an extended narrative that suggests a “redemptive imperative”—a transformative, ideal-seeking rule for the making and interpreting of law. The thesis developed in the paper is that Genesis is indeed a valuable resource, but only if approached as a model for human life that is found in a narrative driven by a search for an ideal, and perhaps even the ideal.

1. Introduction

The Western legal and political tradition has inherited the book of Genesis. Given that we do not intend to derive legislation from it, can Genesis still serve us in our thinking about law and politics?

In addressing this question, I will first distinguish the book of Genesis as being, on one hand, a book of origins, and on the other, a book of beginnings. I will then discuss three contemporary thinkers whose work deals with how Genesis speaks to contemporary law, its principles and

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1 I neither expect nor favor the elimination of the pluralist political and legal consciousness. Hence, the adoption of specific statutes found in the Hebrew Bible is not at issue here.
origins: Alan Dershowitz, Alain Supiot, and H. Patrick Glenn. After noting the limitations of the views of these thinkers, I will offer an alternative approach, focusing on the implications of Genesis as the beginning of an extended narrative that suggests a “redemptive imperative,” that is, a transformative, ideal-seeking rule for the making and interpreting of law.

2. Genesis, a Book of Origins and Beginnings

As its name suggests, Genesis is a book of origins. But “origins”—from which other things are derived—may be understood in different ways. One possibility is to view origins as archaic sources. From a “cosmological” perspective, then, Genesis provides an ontological source, that is, the ancient of all being; but Genesis may also be understood as the origins of a legal system, as a book with something to say about archaic law. “Origins” may be alternatively viewed as the first steps in a process, in which case Genesis may show us the first steps in the development of legal systems. Yet another possibility is for “origins” to refer to logical foundations, in which case Genesis would present a set of first principles for law. The first two possibilities imply an ontological derivation from origins; the second implies a logical derivation.

As its Hebrew name, Bereshit, suggests, Genesis could also be described as a book of beginnings. Of course, many classical commentators have taken Genesis, the biblical book of beginnings, to be the same as Genesis, the book of origins (of the world, of humanity, or of the Israelite people). It is worth recalling, however, that beginnings may be distinguished from origins. Narratives and mathematical series, for example, have beginnings that are not usually understood as origins. The opening of a novel need not be that from which the rest of the novel derives, logically or otherwise.


5 This “ideal-seeking” is conceived of primarily as ethical rather than scientific or historical. Of course, scientific theory is relevant to both the concrete articulation of the ideal and to the way the search actually plays out, as it must, in concrete, historical circumstances.

6 It is a commonplace worthy of citation that much of Greek thought and what followed did not make a sharp distinction between the logical and the ontological. For an important medieval and classical rabbinical commentary, see Nahmanides, commentary on Genesis 1:1, s.v. “In the beginning God created, etc.”
A beginning is that which opens a coherent series. Understood as such, Genesis opens a coherent story that unfolds throughout the books of Exodus, Leviticus, and Numbers. Sometimes, as in a mathematical series, a rule takes us from one step to the next. In contrast, the events of a coherent narrative are rarely ordered in this way. Many and indeed the majority of the most influential human stories are moved along by, and derive their coherence from, their end rather than their beginning. The Genesis narrative, then, may be the beginning of a much longer story whose development is regulated, but not ruthlessly dominated, by its ideal end—the people of Israel settled in its land, eliminating all idolatry and serving the God of Israel.

Beginnings may also be distinguished from origins in another important way, to which we shall return later. Considering origins means primarily looking backward, inquiring about what has been. To be sure, we may elect to allow what we know about our origins to influence our future actions, but in itself, the search for origins is past oriented. A focus on beginnings, in contrast, is future-oriented. If there is a beginning, then there is a middle and an end. Seeing Genesis as a book of origins asks, Where did we come from? Reading Genesis as a book of beginnings asks, Where is this going? The postmodern legal and political world of the twenty-first-century is less concerned with its past, or its origins, and more concerned with its future.

To be sure, Genesis knows of legal principles, but the story is not driven by them. In Genesis 20:4, for example, King Abimelech of Gerar says to God, “Will you slay even the innocent?” Abraham had made the same point earlier, in Genesis 18:24, asking, “Will you sweep away the innocent along with the guilty?” These questions reflect an understanding of there being no punishment without guilt. However, while this principle of law occurs within the narrative, it does not move the narrative along. What does, and makes it cohere, is the goal, the ideal end—the redemption from oppression of the fully formed Israelite people, which then, through revelation, realizes its covenant with God in inheriting and settling the land of Israel.

Dershowitz, Supiot, and Glenn have all done work on law that connects to a view of Genesis as a book of origins—ontological, developmental, and logical. Dershowitz and Supiot do so directly. I believe that we can also make use of Glenn’s work on chthonic law to advance

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7 We say much the same of drama. In writing a play—so the cliché goes—you don’t know the beginning until you know the end.

8 The otherwise important distinction between “guilt” and “criminal action” is not relevant here.
our discussion of Genesis. I will first review their work and then argue that Genesis will be more useful as a resource in the twenty-first century if we understand it as a book of beginnings.

3. **Alan Dershowitz: Genesis as Historically Valuable**

With respect to law, Dershowitz treats Genesis as a book of origins, that is, as a book from which we can learn about what has already been or been done. This does not mean that he ignores the book as the beginning of a narrative. He writes,

> The book of Genesis can be read as a metaphor reflecting the stages most legal systems experience on the rocky road from lawlessness to law-abidingness.⁹

For Dershowitz, the biblical story is about legal systems, and the book of Genesis has a place in that story: its value lies in its being a metaphor for a part of the origins of our present legal system. Now that law-abidingness has been obtained, however, the book of Genesis has fulfilled its role and is no longer as valuable as it was in biblical times.

Indeed, for Dershowitz, the biblical legal system differs fundamentally from our own. He ignores one standard view of biblical law, which views it as the command of a divine sovereign, and hence as “positive” law in at least one important sense. Instead, Dershowitz prefers a natural-law read of the lawlike material in Genesis. He writes:

> Genesis also reflects a world in which law is largely “natural” rather than “positive.” Actions and reactions derive from the nature of human beings and their Creator, not from formal codes of conduct.

The implication here seems to be that one important element in the origin of law-abidingness is a sense that law exists before—or outside of—specific, formally articulated social structures and institutions. Genesis, then, reminds us that part of what we take to be our positive, modern legal systems derives its power from a stage in which law was understood as grounded in the nature of persons, the world, and the Creator.

Given that for Dershowitz, at least, this understanding of Genesis and natural law is not likely to play a significant role in our twenty-first-century approach to law, where does he think the value of Genesis lies? He answers, “What we can derive from the stories of Genesis is the need for an agreed upon and enforceable code of conduct with procedural

safeguards against arbitrary enforcement and unfair application.”

Dershowitz sees the Bible as articulating behavioral rules aimed at meeting this need. Something foundational to our contemporary Western legal system—the demand for fairness—originates in Genesis. But as before, that demand no longer connects to its origin in any principled way.

Nonetheless, Dershowitz contributes to our understanding of Genesis as an important part of the story of the origins of law. First, he provides an interesting commentary on how law in Genesis compares with the American legal system. Second, he discusses the key role of “covenant” in the biblical legal material:

After a rough beginning—out of control crime, a flood, a promise not to do it again—God establishes a covenant with Abraham, thus changing the status of both: God becomes a constitutional monarch, binding himself to rules; and he bestows upon Abraham—and his progeny—a special status as partner in the covenant.

Dershowitz’s primary strategy, however, does not lie in an analysis of any direct, positive contributions made by the book of Genesis. Instead, he reviews its stories, looking for what is missing, which must later be developed. Genesis is instructive for what the stories show to be wrongs and injustices. The profound moral failures it describes become the foundation of a search to correct and guard against such errors in the future. In a passage that both recaps his strategy and also removes some of the sting for those used to a more affirmative read of Genesis, Dershowitz writes, “The common law of justice is always built on injustice. Just actions do not call for the same degree of response as unjust actions. Thus, the genesis of justice in the injustice of Genesis is not as ironic as it may appear at first blush.”

The body of the book is then meant to show how the stories in Genesis reveal injustice. Once—or since—we “moderns” have constructed legal systems that guard against these types of injustice, we have no further need of Genesis.

10 Ibid., p. 205.

11 Ibid., p. 210. Since contemporary secular systems do not acknowledge God as their source, covenant as a concept is interesting only insofar as it is seen as a covenant between persons. It is not at all clear how useful such a concept would be today, and in any case, the notion of a covenant treaty between persons originates in Mesopotamian sources outside of the Bible.

For Dershowitz, then, while there is much to admire in Genesis, it is not a resource for us in any significant sense. It supports no principles of which we need to be reminded: “It is the genius of Genesis that it mirrors so closely the history of civilization in the days before the development of formalized legal systems.”¹³ We appreciate Genesis, but we are not instructed or challenged by it. It is oriented to origins and the past, hence valuable for what has already been, not for what might be.

4. Alain Supiot: Necessary Theological Foundations

To consider a view that appears to grant more contemporary cogency to Genesis, I now discuss the approach of Alain Supiot, a modern French jurist. With respect to Genesis, Supiot primarily focuses on the concept of humanity as created in the divine image. For Western legal systems, according to Supiot, this is something Genesis got right.

Supiot begins with an anthropology of law:

Like all other societies, our own is founded on a certain conception of the human being that gives meaning to our lives. From a legal point of view, we consider humans to be endowed with reason, and subjects of inalienable and sacred rights.¹⁴

His approach is conceptual, asking in part, What are the foundational concepts of our legal system? He insists that Western legal systems are rooted in a particular concept of the human person. Our laws assume persons to be rational and hence accountable, capable of planning their futures and making and keeping commitments. This picture of humanity is derived from our inherited view, the view narrated in Genesis, that we are created in the image of God.

In Genesis we find the foundational concept that distinguishes persons from objects; human beings are not things.¹⁵ Supiot spells out exactly what he takes this to mean:

The conception we have inherited is that of the imago Dei, the human being conceived in the image of God and destined to achieve mastery over nature. Like God, the human being is one and indivisible, like God he or she is a sovereign subject endowed

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¹⁵ Of course, historically speaking, this idea finds its way most immediately into our legal systems through the Enlightenment—Kant’s third version of the categorical imperative: treat persons as ends, not means.
with the power of the Word and, like God again, the human being is a person, an incarnate spirit. Supiot develops this further by reminding us that the trope “in the image of God” is set in a wider context in Genesis, which has implications for the meaning of legal personhood:

But, while conceived in the image of God, humans are not God. Their particular dignity is not self-created but stems from their Creator, and it is a dignity that is shared with all other humans. That is why the three attributes of the human being—individuality, subjectivity and personality—each have a double value: as an individual, each one of us is unique, but also similar to all others; as a subject, each one of us is sovereign but also subjected to the law; as a person, each one of us is spirit but also matter.

Genesis shows us a being that still “exists” in Western legal systems. This being—for all his or her interconnectedness to others—stands before the law, both criminal and civil, as an individual. This being exercises free choice and acts according to his or her own will, but only within the obligations and limits of the legal system. This being has an inner life that must be educated and protected, but his or her bodily needs must also be met. As Supiot’s work makes clear, we will not fully understand ourselves in legal contexts unless we understand the “metaphor” of our being created in the image of God as it appears in Genesis.

Supiot goes so far as to suggest that this is true not merely of the past, but also of the present.

The secularization of Western institutions did not eradicate this anthropological configuration, and the three attributes emerge again, each with its double value, in declarations of human rights. The reference to God has disappeared from the law of persons, but what has not disappeared is that, logically, all human beings must

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16 Supiot, *Homo Juridicus*, pp. 12–13. As a Jew, I do not associate the notion of “incarnate spirit” with God. What is important for me here is the concept of personhood. Supiot may be correct, however, in that most Western jurists were Christian and included being an incarnate spirit in their notion of the human being. Jews would derive the “incarnate” requirement from both the creation story itself and, equally important, the idea that we are commanded by God to do things that require a body.


18 The rare cases in which this is not true—for example, certain corporate debts, or parents’ paying for their children’s actions, or spouses for each other’s—only highlight the ways in which legal individuality can be modified by contract or broadened by enlarging the notion of a legal person.
be referred to an authority that vouches for their identity and symbolizes that they are not to be treated like a thing.\textsuperscript{19}

As already noted, Genesis clearly indicates that other people are not to be treated as “things,” that is, as objects to be used as instruments of our will. Consider the story of Sodom and Gomorrah. It is described in legal terms, with a pleading and a judge. When Abraham asks God—on behalf of people he does not even know and who are not his kin—“Shall not the judge of all the earth do justice?”\textsuperscript{20} it is assumed that justice does not allow the punishment of the innocent, even if this is part of punishing the guilty. An undamaged drawer can be thrown away along with a useless or ugly dresser. Not so with persons. Legal persons, and indeed all such persons, should not be assimilated into the wholes of which they are parts and disposed of as means even to good ends. In this story, the implied legal principle is, There is no punishment without a crime. People are not things; they are in the image of God.\textsuperscript{21}

After an extended discussion of individuality and personality, Supiot seeks a logical basis for relating individuals to groups. He writes,

A collection of individuals only forms a whole if each refers to the same organizatory principle, a common law which transcends the existence of any individual. The anthropological structure of imago Dei refers each of us to a Supreme Being which guarantees our identity.\textsuperscript{22}

In Supiot’s view, then, the logic of the legal system treats all subjects as human beings because we are so grouped by a “regulative” principle that requires that we be treated together. We are to be treated equally because we are the same in some way that is crucial to the validity of this regulating principle.\textsuperscript{23} Our individual identity is founded on the objective,

\begin{itemize}
\item \textsuperscript{19} Supiot, Homo Juridicus, p. 13.
\item \textsuperscript{20} Genesis 18:25.
\item \textsuperscript{21} Of course, the full implications of this idea are not explicated in Genesis, or elsewhere in the Bible, for that matter. Those who still use this language are even today still working on its full implications.
\item \textsuperscript{22} Supiot, Homo Juridicus, p. 34.
\item \textsuperscript{23} The idea of a shared principle is put forth by Samson Raphael Hirsch in his commentary on Exodus. See Collected Writings of Rabbi Samson Raphael Hirsch (New York: Feldheim, 1985), vol. 1, p. 83. Yet there is a shared task and purposes that create a logically valid unity out of separate individuals. Similarly, Hermann Cohen’s notion of a regulative principle, especially as it eventually finds its way into his Religion of Reason out of the Sources of Judaism (Oxford: Oxford University Press, 1995), is rooted in humanity’s being created in the divine image. However, for the most part, both Hirsch and Cohen have a logical orientation that is “idealistic”; that is, group identity is an ideal, it must be “earned,” and the norm is future-oriented, saying what ought to be.
\end{itemize}
transcendent principle that we are creatures in the image of God. We are part of the same “legal” group—persons—because we share the same founding principle of our identity.

Supiot finds this idea to extend beyond formal logical relations to include the actual rationale behind our civilization. There are real consequences to having or losing this structure:

While the anthropological structure of the West, which has lost faith in a third party that guarantees identity, continues to unravel under our very eyes, wild theories flourish in its ruins. When the principles of equality and individual liberty are no longer rooted institutionally, anchored in a common law binding on all and independent of the whim of any, they can be used to justify the abolition of every difference and every limit.24

For Supiot, Genesis provided some of the fundamental logic that underlies Western law. He considers that the loss of God—the “third party that guarantees identity”—has proven devastating to the foundations of that law, allowing for positions he seems to find terrifying. Certainly one can understand Supiot’s position by considering totalitarian systems that have been associated with law devoid of all connection to God.

Some critics of contemporary Western jurisprudential theories find the legal systems of secular democratic states similarly disturbing. For them, Genesis is a resource for the twenty-first century, because we need to make a move that is at once profoundly conservative and profoundly radical: we need to return to an earlier, theologically based concept of humanity. While I sympathize with this move, I do not think it is likely to appeal beyond the circle of those who have made this move as part of a larger return to inherited religious structures.25 For most, then, Supiot’s approach remains about origins and a past-oriented articulation of the logical foundations found in Genesis; while Genesis may have once provided theological foundations, these can no longer be used as legal resources.

For Supiot, this ideal has already been accomplished and hence serves as a foundation for the humanity-group identity assumed in law.


25 For a sensitive treatment of this process of return, see Leo Strauss’ introduction to Strauss, Spinoza’s Critique of Religion (Chicago: University of Chicago Press, 1997).
5. **The Approach of H. Patrick Glenn**

In his masterful study of comparative law, Glenn offers us a treatment of what he terms “chthonic law,” which has much in common with law as found in the book of Genesis (though, as already noted, Genesis does not present us with a developed legal system). First I present the features common to Glenn’s chthonic law—that is, primitive early law—and what is found in Genesis. Then I note some important differences.

In Genesis, as in chthonic law, there is no formal point of origin for the law. To be sure, there are specific laws enunciated in Genesis, such as the law of circumcision, but most of the law found there is not explicitly commanded by God. Second, law in Genesis seems to be informal and oral, as is chthonic law. There seems to be no interest in, and perhaps even disinclination from, writing law down. Instead, transmission of the rules of daily conduct is practical and thus widely accessible. We see no clear examples of this transmission in Genesis, although given that everyone seems to know how “legal matters” are handled, we must assume at least mimetic transmission.

While there are no complex institutions, or a privileged legal class (for example, scribes), we do find a council of elders. There is mention of such a council—those who are at the gate—when Abraham buys a burial plot for Sarah; the council members serve as confirming witnesses to the sale. Most of Genesis is chthonic in its preference for informal conflict resolution, especially between the Abrahamic group and others. In both Genesis and chthonic law, crime is dealt with by kin, and as a result there is relatively little tort or contract law, although there is an informal, oral legal understanding of the acquisition and transfer of property ownership as well as marital and family law that forbids incest and adultery and seems to presume a primogeniture system.

To complete the picture of the features of chthonic law that appear in Genesis, we should add that while there is no formal, cultic organization, there is the mixing of law and morals that is found in early religions. Genesis also contains an interstitial quality of “national” identity that is characteristic of chthonic law. And, as might be expected, once Abraham appears on the scene, there is also a sort of traditionalism in which cus-

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26 There may also be oral transmission that is not in the narrative. In chthonic law, and later in Jewish law, there is an oral law that is forbidden to be written down. Genesis does not prohibit the recording of law but certainly doesn’t require it.

27 It is not clear that Abrahamic in-group disputes are actually resolved. Most often the parties to the conflict just go their separate ways.
toms and laws are for the most part simply added on to what came before, which is seen as of divine origin.

Finally, as Glenn notes, “You adhere to chthonic tradition and chthonic law because you believe that the world, which is your world, depends on it.” For chthonic law this is connected to the view that the structure of nature is preserved by conforming to the norms and laws of the chthonic system. Nature and tradition share a divine origin in a way that makes it very hard to distinguish between the divine will and the demands of the structure of nature.

This last point clearly is not true of the relationship between God, nature, and humanity in Genesis. Although God creates nature and its order, he also wills actions that do not derive directly from the order of nature, such as circumcision. Even what we would take to be moral rules may not be presented as inscribed in nature. For example, the story of Cain and Abel hardly implies that Cain did wrong because he violated the order of nature. Indeed, the explicit divine enunciation of the “law” against murder suggests that humans need to be more concerned with God’s will than with staying in tune with a natural order. With this, we begin to see that the law in Genesis, while similar to chthonic law, differs from it in important ways.

For our purposes, it is the difference between the world of Genesis and the chthonic world that is important. Insofar as the world of Genesis is one of chthonic law, it is limited to the past, to the primitive origins of our own legal systems. We do not share its traditionalism, its lack of differentiation among socio-legal categories, or its sense of the crucial importance of legal systems that conform to nature. Our world allows for choice and action against traditions; our ethics and law are constructed according to our intents and purposes, without regard for an ethics of a fixed order of nature.

There are major and minor differences between these worlds. Some examples of minor differences are that in chthonic cultures there is no special value placed on the gathering of wealth, and there is no right

28 Glenn, Legal Traditions, p. 70.

29 To be sure, because God creates the world, we can relate God’s will to natural order. Certainly, there are rabbinic traditions that in some way suggest that wrong action unravels the order of creation, as in the flood story, for example; see Babylonian Talmud, Sanhedrin 57a. However, Genesis presents the flood as a willed action of God, not a natural consequence of human conduct.

30 As with Supiot’s analysis of the importance of the concept of humanity created in the divine image, some conservatives suggest a return to the idea of good law as law in conformity with the structure of nature. Again, while this notion may appeal to those with traditional religious sensibilities, I doubt that it will serve as a serious twenty-first-century option or resource for most Western cultures.
of alienation. Neither of these is true of Genesis. A major difference is that in chthonic law there is no protection from the law and no escape from the role assigned to you.31 In Genesis, divine mercy is always possible—Cain does not die but is merely “banished.” Even more important, Genesis offers us a world that sometimes subverts traditional norms. During the founding generations, the eldest son does not inherit a privileged place or additional property. Despite the patriarchal structure, the “founding mothers” are able to exert decisive influence over the course of important events. In the world of Genesis, tradition is subverted as much as it is reinforced. Yet another major difference is that the narratives of Genesis, again from Abraham’s time onward, have few of the literary features of myth that characterize the narratives of chthonic cultures. Time is not an enveloping presence, as it is in myth and chthonic law; the world of Genesis has the feel of history. The world without law, the Garden of Eden, may be timeless, but the rest of Genesis, especially after the covenants made with Noah and Abraham, is not. Law in Genesis is far more rooted in the covenant with God than in the nature he created.

To what extent are the features that differentiate the world of Genesis from that of chthonic law helpful in considering Genesis as a cultural resource for law? The mere fact that the book reveals a primitive form of the contemporary historical consciousness is hardly enough. The intersection of covenant and history may offer us more. The covenant with Abraham and his descendants has a world-transforming quality. The people it establishes is meant to offer humanity an alternative to idolatry, bring it to God, and bestow universal blessing. This “transformation” takes place in history understood as an arena in which a transcendent God can work out his purposes. As Supiot pointed out, we have moved this concept of God into the sphere of humanity. As a result, history is an arena in which humanity is capable in principle of transcending the course of nature and working out its own intents and purposes. This conception moves us beyond origins. It moves us toward an end, toward the future. The world of Genesis, then, might point us not only back to our foundations but also forward toward the realization of our ideals.

31 Glenn, Legal Traditions, p. 67.
6. Genesis Alternatively Understood as Beginning: Law in Search of the Ideal

As I have already noted, Genesis knows of both legal principles and acts best understood in terms of the ends or goals that move the narrative toward a more ideal future. The Joseph story provides good examples of both. Pursued by his master Potiphar’s wife, Joseph refuses her advances in Genesis 39:8–9, saying, “All that he owns he [his master] has placed in my hands… he has withheld nothing from me except yourself, since you are his wife. How then could I do this most wicked thing and sin before God?” At this point in the biblical narrative, we cannot expect clear distinctions between law, morality, and religious obligations. Allowing for this, we might say that despite the adultery issue, the most important principles here are not returning evil for good and the obligation to discharge a fiduciary responsibility.

A very different picture emerges when we consider what transpires between Joseph and his brothers. At the outset, Joseph, the favored son of Jacob’s most loved wife, Rachel, imprudently tells his family of his dreams. The dreams clearly suggest his future greatness and his superior position to them. Given the fact that Genesis often presents dreams as prophetic, we assume that Joseph is indeed headed for greatness. Not surprisingly, his brothers resent him for this and see these dreams as a threat, and when they have the chance, they sell him into slavery. Joseph later becomes the vice regent in Egypt, and the brothers come to acquire food during a famine. Joseph, unrecognized by them, treats his brothers very harshly. The first time he does so, they acknowledge their guilt for the indifference they showed toward Joseph’s pleas. The second time, Judah seems to acknowledge it once again.

Joseph then reveals himself. Since his brothers expect him to seek retribution for their crime, he tries to calm them and seemingly absolves

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33 Given that ever since Isaac and Ishmael, only one male had led the family, and rival claimants were expelled, Joseph’s brothers may have had even more reason to see him as a danger to them.

34 Genesis 42:21.

35 Genesis 44:16.
them of responsibility—if not for their callousness, at least for the deed itself. In Genesis 45:5, he says, “be not distressed, nor reproach yourselves for having sold me here, for it was to be a provider that God sent me ahead of you.” He restates this even more explicitly in Genesis 45:8: “it was not you who sent me here but God.” Joseph repeats himself in Genesis 50:19 after Jacob’s death, when the brothers again fear his revenge: “Although you intended me harm, God intended it for good, in order to accomplish—it is clear as this day—that a vast people be kept alive.” Joseph's brothers are not the doers of the deed; it is God who has done this.

While Joseph’s understanding is limited, the reader can appreciate events that previously seemed unfortunate as part of a grand design, even though nowhere in our text does God communicate that such is his plan. The reader understands Joseph's juridical and political fate as contributing to what God has intended all along. Having read past Genesis, we know that all of this is set in a wider context—an idea is to be realized; in keeping with the promises made to Abraham and his vision at the covenant of the halves, the family must descend to Egypt, become a people, be oppressed, be redeemed from slavery in order to become God’s people, receive his Torah, and enter the promised land of Israel.36

My analysis is not, of course, itself part of Genesis. Unlike the character Joseph’s viewpoint, my understanding—and that of many twenty-first-century readers—is not based on the rereading of events in light of their outcome. We need not rely on a “theodicy” in which God intends all for the good and makes it happen thus. Instead, our approach is rooted in reading Genesis and understanding how such narratives work: they have a beginning, a middle, and an end. We understand the flow of the narrative—not the flow of events—as well as the actions of the characters in terms of the end.37

36 Later Judaism, biblical and rabbinic, will have to deal with the fact that this ideal is never actually realized.

37 We should not, however, naively assume that events and narratives can be so easily separated. After all, events have real consequences, especially for how we understand the world and how we tell our story. And narratives also influence the course of events. But that is for another paper. For present purposes, we need only note that this move from the flow of events to the flow of narrative allows us to leave behind a theory of how history is driven and move to a future-based theory of how the future ought to be. It privileges the normative-ethical/legal over the theoretical-empirical. Given that we are concerned with Genesis as a resource for the cultural realm of law, this move surely benefits us.
Joseph’s being left in jail for two years must be seen as negative because it stalls the story.\(^{38}\) We have to imagine his trying to figure out the purpose behind what happened to him and trying to act in furtherance of that purpose. In Genesis, the most important understanding of that purpose is as a redemptive one, moving toward the ideal. God’s purposes, which play out over the first four books of the Bible and then Deuteronomy-Joshua, are to liberate those who are wickedly and ignobly trapped and enslaved, then consecrate them to him in a covenant forever. When joined with the later biblical theme of exile and redemption, these purposes will be expressed in prophetic visions of an ideal human and, in many ways, universal redemption.

The book of Genesis is the beginning of this story. In Genesis we find the kernel of three ideas or themes that suggest why it might be put on the list of resources available to twenty-first-century legal-political culture. Genesis first—like the entire Hebrew Bible after it—tells the story of a world fraught with the stuff that law and politics are made of: conflict, conceit, competition for place and power, deceit, the seeking of superiority and domination. Consider the stories of Cain and Abel; Abraham, Sarah, and Hagar; Isaac and Ishmael; Isaac and Rebecca; Jacob and Esau; Jacob, Rachel, and Leah; Shechem and the rape of Dinah; and Joseph and his brothers. Whatever the legal and political issues of the twenty-first century, we can be sure that they will necessarily involve these all-too-human factors.

Further, there is more than a little mention of “the economic factor” in the history against which the rest of Genesis unfolds: Cain the farmer and Abel the shepherd; fighting over wells (Abraham and the Philistines, Isaac and Abimelech) and grazing areas (Lot’s and Abraham’s shepherds); the wealth of Abraham and Isaac; the politics of the centralization of land ownership in agricultural Egypt; the promise and ultimate ideal of Israel settled on its land as an agricultural society at peace.\(^{39}\) However the search for the ideal presents itself in the twenty-first century, the need to engage questions about the structure of productive forces, the availability of such resources, and the distribution of economic goods is obvious.

Finally, as I have been arguing, there is the theme of history as a covenantal project, ultimately made intelligible through the narrative search for a set of divinely promised (and demanded) ideals. To be sure,

\(^{38}\) Some traditional commentators attribute this sentence to Joseph’s having depended on the butler to help him instead of relying on God.

\(^{39}\) The ambivalence about pastoral versus agricultural culture/economy that characterizes much of the biblical narrative even until the time of David plays out against the background of an early covenant that offers a prosperous, settled, land-based people as the ultimate goal.
this ethical-teleological understanding of history is clearly (and perhaps necessarily) combined with a practical, empirical, if somewhat primitive anthropology, economics, and politics—all involving human nature and economic factors just mentioned. This “realism” is exactly why the “idealism” of Genesis is not merely a model of a utopian fiction or empty dream of redemption but, instead, the beginning of a concrete demand for redemptive action on the part of humanity. It is this reality-based call for redemptive action that supports putting Genesis on the list of political and legal recourses in the twenty-first century.

There is an important corollary to the significant role played by the “natural” flow of events in the Joseph story. While Genesis certainly contains stories of miracles and divine intervention, in the Joseph story the regulating end is not achieved in these ways. We can easily understand the flow of events naturalistically. No appeal to divine intervention is offered or needed. God's purposes are not achieved through miracles. It is through the order of events—perhaps even the “necessary” order of events—that Joseph understands God’s purpose. God’s actions may be understood as “hidden” in the acts of persons and their intentions.

Since Joseph can see at any moment only so much of the order as has actually occurred, his vision is limited. His understanding is always provisional, subject to correction by the flow of events, which may but need not include direct divine intervention and speech. If we rephrase this in terms of a normative, future-oriented approach, specific imperatives that derive from a regulating ideal are on one hand provisional, that is, subject to correction as events play out, modifying the description and implications of that ideal; and on the other hand independent of the miraculous, that is, they depend only on forces and possibilities seen as “natural.”

7. Conclusion: Genesis as a Cultural Resource

What kind of a cultural resource is the book of Genesis as I have presented it? As a cultural resource, Genesis can be used to accomplish something we associate with normative cultural construction, especially in law and politics. Based on my discussion of Genesis, I suggest three moves. Given

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40 For traditional Bible scholars, it remains a bit of a mystery why Joseph did not connect his story to Abraham’s prophetic vision at the covenant of the halves. Perhaps they were simply doing too well in Egypt for him to imagine that this was the foretold oppression. In terms of the narrative, the family members had to be ignorant of the coming negative events, or they would have returned to Canaan rather than remain in Egypt—as they had to in order to become enslaved.

41 “Natural” here means “what can be explained and/or justified by empirical science.”
the limitations of this paper, I cannot present a full argument for them here. Instead, I sketch them in a way that I hope makes clear their connection to Genesis and some of its themes as I have described them.

First, in the twenty-first century, we need to get past our aversion to the concept of “telos” in human history by moving this idea away from having explanatory or descriptive force, placing it instead in the realm of normative discourse. We need to begin re-conceptualizing human history in terms of ideals, that is, in terms of normative goals and purposes that both regulate human action within history and can reasonably and realistically be seen as reflecting a direction toward which human history has in some way been headed already.42

Our twenty-first-century conception of an “end goal” for a historical development—at least as it functions in politics and law—will most likely not include a personal God with intentions and interests. To show that our legal and political ideals are not mere abstractions, we will need only to demonstrate that observed historical processes repeatedly tend toward a particular state. For example, it need only be argued that empirical evidence shows a long-term tendency toward increasingly global, increasingly interconnected institutional structures that persist only if they can resolve or manage differences and disputes. Despite periods of “breakdown,” this might be taken to reveal an ideal “end state” where there is full, peaceful, institutionalized interconnected globalization in law and politics.

Within normative discourse, we may adapt the Genesis model by understanding regulating ideals as independent of theology. The twenty-first-century realm of law and politics—especially in developed countries—while hardly separate from religious ideas and passions, does not, it seems to me, need Genesis as another speaker for political theology. This would only exacerbate the problems we are likely to be facing in the twenty-first century.

What the twenty-first century should take from Genesis is the importance of regulating law and politics through reference to ideals. But it is the voice of our moral and ethical ideals, not the voice of God, to which we will need to listen.43 Such a reading of Genesis44 preserves what is valuable in the heritage of Enlightenment humanism. It also preserves the

42 See Allen W. Wood’s discussion of Kant’s essay on history in Wood, Kant’s Ethical Thought (New York: Cambridge University Press, 1999).


44 For a more openly Kantian treatment of this theme, especially as it relates to Marxism, see Bill Martin, Ethical Marxism: The Categorical Imperative of Liberation (Chicago and La Salle, Ill.: Open Court, 2008).
concept of covenant, understanding it as a covenant with the ideal, the ethical, and the good.

Finally, twenty-first-century law and politics need to adopt a “redemptive imperative,” that is, an imperative that demands that we act (adopt policies, legislate, interpret law, and so forth) so that, without relying on improbable events and divine interventions, the world advances toward a future in which the ideal is realized. This means that our actions, policies, laws, decisions, and the rest should in part “redeem” us from circumstances and other constraints that block us from living the ideal. We need, as President Obama said in his inaugural address, to “choose our better history.”

Genesis adds a cautionary note. In pursuit of the ideal, we need a healthy respect for entrenched psychological limitations as well as for the power and influence of existing socioeconomic institutions. The redemptive imperative does not demand instant, total transformation. It is not a radical immanentizing of the eschaton. Even when revolutionary, a redemptive imperative stays within a narrative, recognizing not only an end to the story but also a middle.

In introducing the idea of a redemptive imperative, I mean to offer a reading of Genesis that is more than the standard liberal progressive view. That is why I have emphasized that drawing on and being guided by ideals must always interact with the concrete material conditions—real institutions, histories, and economic factors, among others—in which we live. Ideals do not eliminate moral or legal messiness or ambiguity, but they do accomplish at least two very important aims in what promises to be the complex and diverse twenty-first century.

Ideals help set wider, usually longer-term priorities. If we have learned anything from recent economic events, it is that a focus on short-term goals can be disastrous. While approving mortgages for those who cannot repay them is calamitous in the long run, it may have seemed like a “redemptive move” in the short term. Discussion of the disastrous effects of this policy, and the reasons for it in the first place, reveals the true

45 Text of President Barak Obama’s inaugural address, New York Times, January 20, 2009, or http://www.cnn.com/2009/POLITICS/01/20/obama.politics/index.html. As noted, such a redemptive imperative does not eliminate the need for normative principles and arguments independent of both our ideals and how we imagine an ideal world.

46 For a discussion of the relationship of utopian (ideal) and political (real) elements in modern progressive social theory, see Yiftah Goldman, The Socialism Between Politics and Utopia (Or Yehuda: Dvir, 2008) [Hebrew].

ideal behind it: that everyone should have a place to live. This opens up the possibilities for more prudent short-term policies that can lead to the redemptive ideal.

A similar point might be made about drug laws. The adoption in New York of drug laws that eliminated judicial discretion in sentencing seemed a “redemptive move” to those who were fixed on one ideal—a drug-free society. In fact, it was not ideals that drove this legislation, but anxiety. If “redemptive ideals” had been in play, there would have been a moment of reflection on where our story was going, that is, on our imagined/reasoned ideal society. Once the vision of an ideal society is taken into account, legal procedures must balance competing ideals and consider long- and short-term effects. This is exactly what judicial discretion in sentencing is meant to do.

Viewing overarching ideals is additionally valuable for facilitating programmatic policies by opening the door to greater cooperation between otherwise opposed parties. For example, in litigation, one standard mediation technique involves locating shared goals that might motivate contending parties to get past their disagreements over specific policies. In addition, in promoting legislation, it is easier to obtain agreement from an opposing side if the legislation is clearly aimed at achieving a shared goal or ideal. It is to gain support from those who are skeptical about an economic stimulus when it is clear that the provisions of the stimulus package are about achieving the shared ideal of a functioning market system and not about what Americans characterize as “power and pork.”

The twenty-first century will be global and pluralist. In the ways noted above, managing the conflicts and disagreements of such a world will be aided in part by careful and regular attention to the kind of ideal world society we are seeking. As I have suggested, this is true only if, as Genesis makes clear, there is equal attention to the messy economic and political realities within which ideals must be achieved. But if today is to “begin” a story that ends with less violence and more mutuality, we must think

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48 I have in mind the Rockefeller drug laws. See http://www.Time.com/time/nation/article/0,8599,1888864,00.html.

49 Of course, it was only the use of specific “recreational” drugs that these idealists wanted to eliminate.

50 The increasing popularity of mediation may suggest that much of twenty-first-century legal practice will involve identifying the ideals of all parties, connecting these ideals to both actual circumstances and available options, and then helping the parties tell their stories in a way that ends with agreement. Victory over the other will not be an ideal. Such a mediation-driven legal process—which has characterized much of the Jewish legal system over the centuries—is itself a step toward an ideal.
about our legal systems—on all levels, from local to national and even international—as regulated by the ideals of reason, nonviolence, and solidarity. Further, we must specify those ideals by actually composing the concrete narratives that move our story in that direction. It is part of the value of Genesis, on my reading, that it points us toward this future-oriented, ideal-regulated narrative approach.\textsuperscript{51}

In this paper, I have reviewed three important discussions of Genesis that are related to law and politics. In all three—those of Alan Dershowitz, Alain Supiot, and H. Patrick Glenn—Genesis was a book of origins, indicating how Western law and legal systems began or the identifying concepts of humanity on which they were and sometimes still are logically based. But none of the three pointed us toward a twenty-first-century use for Genesis. To find that, we turned to Genesis as a book of beginnings, a narrative that was conscious of an ongoing flow from beginning to middle to end. Using the Joseph narrative, we considered human action as capable of being understood in terms of a telos, an end that regulates the development of the story. That regulating end may also be seen as an ideal. Such ideals often motivate human action even before the end of the story is fully known, and they have a role in determining the flow of the narrative. Genesis reminds us that human life may also be seen as a story, with all the limitations that this implies. Even law has its stories. Within the concrete situations that form our legal story, we play out our greatest ideals and possibilities and our most vital personal and social concerns.

Fordham University

\textsuperscript{51} I am not arguing that only Genesis can do this. Many other wisdom traditions offer us similar resources. But surely there is a synergy to be achieved here through the interaction of traditions. At the very least, if Genesis is one important voice in the twenty-first-century conversation, then other traditions will be stimulated to find these themes in their own cultural resources.