

THE SPIRIT OF BIBLICAL LAW

THE SPIRIT OF BIBLICAL LAW. By Calum M. Carmichael. Athens, GA: University of Georgia Press, 1996. Pp. 238.

*Reviewed by Richard Hiers**

In *The Spirit of Biblical Law*, Professor Carmichael** reiterates and further applies the distinctive thesis set out in two¹ of his earlier books: biblical law consists of critical and often cryptic commentary by two later “lawgivers” on the activities of the ancestors of humankind and Israel as recorded in narrative traditions, whether history, legend, or myth, beginning with *Genesis* and culminating in *2 Kings*.² These lawgivers placed themselves in the role of Moses in order to lend weight to their critiques.³ Carmichael insists that biblical laws were not drafted to address contemporary moral or legal issues in “real-life” society, but rather represent the lawgivers’ “literary exercise”⁴ that they undertook with a view to passing generally adverse judgment on the deeds of biblical figures of yore and/or the narratives regarding them. He believes that it is often possible to account for the apparently odd sequence of laws by referring to clusters or sequences of events described in earlier biblical narratives.⁵ Carmichael also identifies certain guiding principles or doctrines underlying the lawgivers’ program. Sometimes, though he does not say so explicitly, he implies that these principles or doctrines inspired the writing of various laws without reference to narrative traditions.

Professor Carmichael swims comfortably against the current of mainstream biblical interpretation, and he frequently chastises other scholars

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1. See CALUM M. CARMICHAEL, *LAW AND NARRATIVE IN THE BIBLE: THE EVIDENCE OF THE DEUTERONOMIC LAWS AND THE DECALOGUE* (1985); CALUM M. CARMICHAEL, *THE ORIGINS OF BIBLICAL LAW: THE DECALOGUES AND THE BOOK OF THE COVENANT* (1992). See also CALUM M. CARMICHAEL, *WOMEN, LAW, AND THE GENESIS TRADITIONS* (1979); CALUM M. CARMICHAEL, *LAW, LEGEND, AND INCEST IN THE BIBLE: LEVITICUS 18-20* (1997).

2. CALUM M. CARMICHAEL, *THE SPIRIT OF BIBLICAL LAW* 3 (1996).

3. *Id.* at 3, 5, 13, 17.

4. “The lawgiver is first and foremost engaged in a literary exercise whose mechanics structure the material in a way different from that imagined by [other] modern interpreters. The laws represent judgments on literary traditions.” *Id.* at 26-27. In addition, note where Carmichael refers to the biblical writers’ “literary and historical exercise.” *Id.* at 3.

5. See *id.* at 16, 34, 67, 93, 110.

for failing to understand matters as he does.⁶ He intimates his own critical stance by way of cursory statements scattered throughout the book. The lawgivers were two in number: the Deuteronomic and the Priestly.⁷ They were contemporaries: neither came before the other.⁸ Both, Carmichael suggests, did their work around the beginning of the exile, ca. 587 B.C.E.,⁹ but did so independently of each other. The Deuteronomic lawgiver composed what otherwise is known as the Covenant Code, found in *Exodus* 20-23.¹⁰ The Priestly lawgiver created what otherwise is known as H, the Holiness Code, or *Leviticus* 17-26.¹¹ Carmichael sets this understanding against what he calls the standard or “long-prevailing” theory that biblical law developed over a period of centuries through piecemeal accretions intended to address real-life contemporary moral or societal problems.¹² He contends that the standard theory is mistaken because it is impossible to reconstruct the historical-social contexts in which, according to that theory, such laws were composed.¹³ Moreover, he suspects that proponents of the standard theory are motivated by a desire “to render” the biblical texts “living” in order to show biblical norms relevant to issues in their own time.¹⁴

6. For instance, he criticizes W.F. Albright and Raymond Westbrook for utilizing ancient Near Eastern sources to explain problematic biblical texts when he would find adequate solutions within the four corners of the Bible itself, *id.* at 7-8; Johannes Hempel, Arie Noordtzi, Jacob Milgrom, and Baruch Levine for assuming that biblical laws such as those found in *Leviticus* 19 were developed in response to real-life, moral and social concerns, *id.* at 25-26; Martin Noth and Michael Fishbane for their “confusion” in reading “rules” such as *Leviticus* 19:19 “literally,” *id.* at 51; John van Seters for not being “alert” to various purported “links” (or parallels) “between Joseph and Moses,” *id.* at 219 n.2; and interpreters who mistakenly undertake to resolve historically the two different accounts of Saul’s demise (1 *Samuel* 31 and 2 *Samuel* 1) for failing to be “alert to the marvelous subtlety and sophistication of biblical literature,” *id.* at 145-46.

7. Carmichael does not indicate whether he considered these “lawgivers” to be individuals or schools of interpretation. “Was the work done by an individual, a school of scholars or antiquarians, or a scribal guild?” To such questions he states that he can give only “passing attention.” *Id.* at 9.

8. *Id.* at 50.

9. “I tend to think that all biblical law was produced around the time of the exile in 587 B.C.E.” *Id.* at 4. Carmichael seems to leave open the question of whether this production occurred in the period immediately preceding the final events of 587 B.C.E., or early in the period of the exile itself. He does not indicate whether he thought the lawgiver was situated among the exiles or among those who remained in the vicinity of Jerusalem and the former kingdom of Judah.

10. *Id.* at 182 n.7.

11. Carmichael once refers to “H – the designation commonly used for *Leviticus* 17-26 (the Holiness Code) or its redactor,” *id.* at 68, but then designates the author of the “rules” or “laws” set down there as the “Priestly lawgiver” or “Priestly writer,” *id.* at 68-69, 80.

12. *Id.* at 1.

13. *Id.* at 9, 32, 101.

14. *Id.* at 22. Carmichael implies that such motivation would not only be improper but would necessarily distort scholarly research. Cf. Krister Stendahl, *Biblical Theology*, in 1 THE INTERPRETER’S DICTIONARY OF THE BIBLE 418-32 (1962). Stendahl submits that the two questions, “What *did* it mean?” and “What *does* it mean?” are to be kept separate “long enough for the descriptive task to be considered in its own right.” *Id.* at 419. He concludes that “the history of the discipline [of biblical

Strangely, Carmichael neither distinguishes between the intentions or concerns of the Deuteronomic and the Priestly lawgivers,¹⁵ nor suggests that one corrected or revised the work of the other. Although he occasionally focuses upon the work of one or the other, he often seems to blend or meld them into a single entity, “the lawgiver.” Carmichael contends that the “lawgiver” or “lawgivers” had before them much of the biblical narrative material now found in *Genesis* through *2 Kings*,¹⁶ though in some instances, narrative tradition was devised by the lawgivers’ contemporaries—if not by the lawgivers themselves¹⁷—as another way of providing critical commentary on biblical ancestors.¹⁸ At one point, Carmichael seems to say that the lawgivers also had before them numerous laws, many of them dating to earlier times.¹⁹ However, his general position seems to be that the Deuteronomic and Priestly lawgivers created the vast majority (if not all) of biblical laws either before or shortly after the beginning of the exile.²⁰ He suggests a number of possible reasons for their doing so.

If the lawgivers were not addressing contemporary issues, what prompted their endeavors? Carmichael offers a number of related suggestions. They wrote the laws found in *Exodus*, *Leviticus*, and *Deuteronomy* “in order to suit their own . . . needs.”²¹ One of those needs, or perhaps more aptly, purposes was to try “to salvage in the form of invented traditions what was being lost because of the collapse, actual or imminent, of [Israelite] culture . . .”²²

scholarship] indicates that all types of biblical theology depend on the progress of this descriptive biblical theology.” *Id.* at 421.

15. “The Deuteronomic and Priestly writers compiled all the laws in the Pentateuch, and . . . they proceeded in identical fashion.” CARMICHAEL, *supra* note 2, at 27. Carmichael attributes the same intent and *modus operandi* to both lawgivers. *Id.* at 40.

16. *Id.* at 3, 27. Carmichael notes that much of “the historical record . . . from [David’s] adultery [with Bathsheba] to the account of Solomon’s birth, may well be accurate.” *Id.* at 150.

17. “Samuel’s order to slay the Amalekites [1 *Samuel* 15:3],” Carmichael states, “is based on a law that comes to expression in Deuteronomy 25:17-19.” *Id.* at 146. If so, it would appear that here the narrative presupposes prior law. However, in an endnote, Carmichael explains that “[t]his is an instance where the formulation of a law and the shaping of a narrative go hand in hand.” *Id.* at 216 n.6. See also where Carmichael suggests that the lawgivers and the redactors of the “narrative sources” from *Genesis* through *2 Kings* “overlap in their use of national records” and “proceed in tandem.” *Id.* at 175 n.5.

18. *Id.* at 142-47.

19. “I . . . agree with [Martin] Noth that most of the laws found in Deuteronomy would have had a prehistory, some going back to Moses and some preceding him.” *Id.* at 29.

20. “All the biblical rules have been filtered through the historical imagination of the Deuteronomic and Priestly lawgivers, who linked them to the history known to them.” *Id.* at 4. Though Carmichael here uses the expression “filtered through,” most of his discussion suggests that he intends to credit the lawgivers with producing or creating the laws in question themselves. See *supra* note 9 and accompanying text.

21. CARMICHAEL, *supra* note 2, at 3. Carmichael does not explain why he omits *Numbers*, nor does he explain here what he thinks the lawgiver’s *needs* may have been.

22. *Id.* at 4. In that case, the lawgiver’s program would have had real-world social relevance after

Carmichael insists that he “can give but passing attention” to such “difficult” and “important” questions as what “political environment made it desirable to produce rules” on the basis of narrative traditions, and “what use” the “legal materials” thereby produced might have served.²³ Nevertheless, one can find his continuing reflections upon such questions throughout the book.

While insisting that “the lawgivers” were not writing “in response to problems in their own time,” Carmichael states that “they took up problems that first presented themselves in the biblical narrative history and addressed comparable problems that recur in succeeding generations of that history.”²⁴ His use of the term “problem” implies some underlying moral understanding: there would be no “problem” unless someone felt that something was wrong with the picture presented in the narratives.²⁵ Carmichael evidently believes that the lawgivers were both committed to certain moral norms,²⁶ and concerned about such “problems” in their own time. At one point, he acknowledges as much: “When the lawgiver sets out a rule he . . . presumably expresses a contemporary concern, but like the narrators of biblical stories he traces it back to some development in the early history of his nation.”²⁷ “Alas,” Carmichael continues, “we have no evidence of what such contemporary concerns of each may have been.”²⁸

Nevertheless, Carmichael seems to recognize a number of contemporary concerns that may have prompted lawgivers to write. Under a subsection inappropriately captioned “Primogeniture,”²⁹ the author states that “[a] customary practice in ancient Israel was for the firstborn [son] to receive a double share of his father’s estate.”³⁰ However, he observes that it could happen “in a polygamous setup” where a husband might hate the wife who gave birth to his firstborn son. In this context, he writes that “the lawgiver is

all and would not have been merely a “literary exercise.” *Cf. supra* note 4 and accompanying text.

23. CARMICHAEL, *supra* note 2, at 9.

24. *Id.* at 27.

25. “My assumption is that the biblical lawgivers set out to tackle the ethical and legal problems they encountered in their reading of these tales.” *Id.* at 65 (regarding the Priestly lawgiver’s disapproval of traditions condoning incestuous relationships).

26. “[T]he lawgivers probably identified themselves with [earlier] prophetic guilds, not only adopting their method of constructing judgments but also, when judging Israel’s ancestors, taking the same religious, moral, and legal perspective.” *Id.* at 29. Carmichael suggests that the anonymous prophet who confronted Ahab (1 *Kings* 20:35-43) represents such “guilds.” *Id.* at 28-29.

27. *Id.* at 101.

28. *Id.* at 101. Carmichael offers, as an example, the runaway slave law of *Deuteronomy* 23:16-17, but neither traces this law to narrative tradition nor discusses the possibility that it was written in response to the “real life” question whether one should return runaway slaves to their owners. *See id.* at 202 n.25.

29. “Primogeniture” normally refers to a system of inheritance under which the oldest son receives all of his father’s property.

30. *Id.* at 137.

disturbed by such a possibility” and, therefore, seeking “to prevent the overthrow of a time-hallowed right” proceeded to draft the law now found at *Deuteronomy* 21:15-17.³¹

According to Carmichael, a number of other laws derive from “the primary concern of the lawgiver . . . that life and death do not in fact impinge on each other.”³² Carmichael urges that five of these laws relate to “topics” that came to the lawgiver’s “attention through his scrutiny of certain narrative traditions”³³; however, in these instances, it appears that Carmichael understood that the lawgiver’s concern to “keep life and death . . . apart”³⁴ was prior to his scrutinizing traditions. He notes two other contemporary concerns on the part of the lawgivers. First, they encouraged fellow Israelites to preserve their national identity³⁵ and “avoid Babylonian ways,”³⁶ which would have been a matter of consequence if the lawgivers were writing near the beginning of or early into the Babylonian exile. He notes a rather different concern toward the end of the book:

The biblical scribes may well have been acquainted with the Near Eastern legal tradition . . . On this assumption, in order to set out a distinctive body of Israelite rules, the biblical scribes scrutinized the problems and disputes that they found in their own national traditions about the patriarchs, about Moses, about the Judges, and about the kings.³⁷

Here, Carmichael seems to suggest that the lawgivers intended to create a body of Israelite law in order to distinguish Israel’s own laws from Near Eastern laws of which they presumably disapproved. Perhaps Carmichael at some point will provide a more coherent account as to what the biblical lawgivers intended to accomplish.

The present book includes an introduction and nine topical chapters, but no concluding chapter. The Introduction and first chapter, “Narrative Inspired Law,” summarize the author’s general approach and basic thesis challenging interpretations more commonly held among biblical scholars. To illustrate his thesis, the author urges that the law against mediums and wizards in *Leviticus* 20:6 was based on the story of Judah and Tamar in *Genesis* 38:

31. *Id.*

32. *Id.* at 140.

33. *Id.* at 131.

34. *Id.* at 130.

35. *Id.* at 61.

36. *Id.* at 82.

37. *Id.* at 173.

Tamar dresses as a sacred prostitute . . . Her secret aim is to act on behalf of her dead husband to obtain seed for him. The resultant rule speaks of an Israelite's prostituting himself in his involvement with those who have dealings with the dead.³⁸

This is the earliest narrative instance of the problem; the lawgiver then "targets a full-blown, concrete example of the problem at a later time," and consequently "the rule about mediums and wizards singles out" developments during the reign of Manasseh as found in 2 *Kings* 21:6.³⁹ Likewise, the slave laws in *Exodus* 21:2-11 and *Deuteronomy* 15:12-18 go back to the stories about Laban's cheating Jacob⁴⁰ as well as the later experience of Hebrew slaves in Egypt.⁴¹ The first chapter somewhat circuitously traces the divorce law of *Deuteronomy* 24:1-4 back to the account of Abraham's offering of his wife, Sarah, as his "sister" to Abimelech, king of Gerar.⁴² Abraham did so, Carmichael states, "so that she will be free to forge for each of them [both Abraham and Moses] a new family tie with a member of the Gerar community."⁴³ He summarizes the purpose of the divorce law as follows: "What is being condemned out of hand is the release of the woman from a marriage because, for whatever reason, the husband anticipates a favor by letting her go to another man."⁴⁴

Chapter Two focuses on "Laws of Leviticus 19." Carmichael begins with a bold statement: "No body of biblical laws is regarded as so representative of its spirit as the rules in Leviticus 19 . . ."⁴⁵ He then devotes several pages to discussing his assumptions and methods that contrast with the "standard" views of most other interpreters of biblical law.⁴⁶ In this context, he

38. *Id.* at 4.

39. *Id.*

40. *Genesis* 29, 31.

41. See *Exodus* 12; CARMICHAEL, *supra* note 2, at 5-6.

42. *Genesis* 20:1-18.

43. CARMICHAEL, *supra* note 2, at 16-17. But see where Carmichael states that Abraham so acted because of "the threat" to his life. *Id.* at 23. "The threat to Abraham, which prompts his plan to let Sarah be acquired by one of these [Gerar] males, is also the background for the rule about the newlyweds" in *Deuteronomy* 24:5. Evidently Carmichael was reading *Genesis* 20 in light of *Genesis* 12:11-13. He proposes to demonstrate that the law of *Deuteronomy* 24:5 follows that of *Deuteronomy* 24:1-4 because both were based on the *Genesis* 20 narrative. Carmichael finds the facts that Abraham and Sarah have not yet had a child, and that Abraham's life was threatened, parallel the concern he infers in *Deuteronomy* 24:5 that a newly married husband might die on the battlefield before the couple could have a child. *Id.* at 23-24.

44. *Id.* at 20. As authority, Carmichael cites late first century B.C.E. Roman law against pandering by husbands and concludes: "The biblical lawgiver views the husband as a panderer too, even though he uses the institution of divorce as a cover for his pandering." *Id.*

45. *Id.* at 25.

46. *Id.* at 25-34.

acknowledges that “[to] date, no other interpreter has seen what I claim to see in regard to the systematic nature of the links between the laws and the narratives.”⁴⁷ He then takes up, in sequence, those laws found respectively in *Leviticus* 19:3 (fearing⁴⁸ parents and keeping Sabbaths); 19:4 (idols and molten gods); 19:5-10 (peace offerings and gleaning rules); 19:11-12 (stealing, dealing falsely, lying, swearing falsely, profaning the name of the Lord); 19:13 (defrauding, robbing, or withholding wages); 19:14 (cursing the deaf and placing stumbling blocks before the blind); 19:15 (unjustly and preferentially judging either the weak or the mighty); 19:16 (talebearing, standing against a neighbor’s blood); 19:17 (hating one’s brother and not rebuking a neighbor); and 19:18 (avenging or bearing a grudge, loving one’s neighbor). These laws, Carmichael urges, all derive from stories about the patriarch Joseph⁴⁹ and/or other narratives or traditions that the lawgiver had “in focus.”⁵⁰

Carmichael could have titled the third chapter, “Laws as Miniature Narratives,” more aptly as “Laws about Forbidden Mixtures.” Here he analyzes “rules” against various mixtures found in *Deuteronomy* 22:9-11 and *Leviticus* 19:19. Carmichael contends that other interpreters err by reading these rules literally; so read, he states, such laws would have been unnecessary because “[p]ractical experience would largely take care of such matters.”⁵¹ Instead, he believes “that the rules about forbidden mixtures . . . represent clever cryptic judgments on specific aspects of patriarchal history.”⁵² For example, he writes:

P sets down his rule about mixed seed in response to this development in Joseph’s family life: among the seventy bodily descendants of Jacob are some of mixed seed . . . With Joseph’s contribution from

47. *Id.* at 32.

48. Carmichael states at the outset that he prefers to quote from the “King James Authorized Version of 1611,” making changes where “called for,” because this translation “is almost always a more literal reading of the Hebrew original than any other translation.” *Id.* at xiii.

49. *Genesis* 37, 39-45.

50. Namely, the creation stories and Aaron’s golden, molten calf, CARMICHAEL, *supra* note 2, at 36-37; ritual offenses by Aaron’s sons, *id.* at 37-38; Jacob’s theft of his father’s blessing, *id.* at 40-44; Rachel’s theft of her father’s household gods and Laban’s fraudulent dealings with Jacob, *id.* at 41-42; Esau’s marrying Canaanite women, *id.* at 44; and various proverbs, *id.* at 46-47. Carmichael also states that proverbs “are often condensed stories,” thereby perhaps intending to explain why the lawgiver purportedly drew on proverbs in such instances rather than on narratives in *Genesis* through *2 Kings*. *Id.* at 49.

51. *Id.* at 50.

52. *Id.* at 52.

[his Egyptian wife] Asenath, foreign seed is mixed in with the other seed.⁵³

Likewise, Carmichael maintains that “the next rule” (in *Leviticus* 19:19) about garments made of mixed fibers is based on the story of Joseph. Pharaoh gave Joseph a garment of linen; whereas Joseph’s coat of many colors “played a major role in the . . . loss of an elevated status within his family.”⁵⁴ Moreover, the Egyptians abhorred non-Egyptian nomadic shepherds—“the occupation of his brothers.”⁵⁵

It follows that the opposition in the Joseph story is between linen as an indicator of Egyptian societal status and wool as an indicator of Israelite societal status . . .

P’s alertness to such a conflict of identity is what underlies his injunction about a garment of two kinds . . . [H]e prohibits the mixing of foreign attire with native in order symbolically to maintain Israelite identity uncompromised.⁵⁶

In Chapter Four, “Incest in the Bible,” Carmichael grounds his interpretation of the incest laws of *Leviticus* 18 and 20 on “the patriarchs’ incestuous involvements.” Thus, *Leviticus* 18:6-7 (incest with one’s father or mother) is based on *Genesis* 9:20-27 where “Ham looks upon [his father’s] nakedness,”⁵⁷ and *Genesis* 19:30-38 where “Lot’s daughters uncover their father’s nakedness.”⁵⁸ Carmichael acknowledges here that the lawgivers do not so much condemn the patriarchal conduct, but rather “bring out analogous conduct”: “The relationship between the law and the narrative is not a slavish one-to-one correspondence.”⁵⁹ He then analyzes the incest laws found in *Leviticus* 18:8-18, linking them with narratives about Reuben’s incest with Jacob’s wife; Abraham’s marriage to his half-sister, Sarah; the episode of Lot and his daughters (again)⁶⁰; the story of Judah and Tamar; and

53. *Id.* at 56-57.

54. *Id.* at 58.

55. *Id.* at 58-59.

56. *Id.* at 59. The author does not explain how a law against wearing a garment made of two kinds of fiber would be understood to symbolize a garment made from one fiber as opposed to a different garment made from another fiber.

57. Carmichael considers *looking upon* as equivalent to *uncovering* Noah’s nakedness, thus constituting incest. Strangely, he adds that Noah subsequently “curses Ham to a life of enslavement to his brothers.” *Id.* at 68. The biblical text states that Noah cursed Canaan.

58. *Id.* at 68-69.

59. *Id.* at 70.

60. He proposes that this episode somehow is the basis for the prohibition against a man’s sexual relationship with his granddaughters. *See id.* at 74-75.

Jacob's marriage to the two sisters, Rachel and Leah.

Chapter Five traces the entire Decalogue to the story of the golden calf in *Exodus* 32 and the early traditions about Adam and Eve and Cain and Abel in *Genesis* 2-4. Carmichael believes that the sequence of commandments found in "the second tablet" can be explained thereby. For instance, the commandment about honoring parents follows the laws based on the golden calf episode because both involve procreation.⁶¹ The fact that a mark was put on Cain so that nobody would kill him prompted the law "Thou shalt not murder."⁶² In addition, Cain's marriage⁶³ prompted the lawgiver to write "Thou shalt not commit adultery" in order to protect "the institution of marriage" as well as "the order of creation," namely, "the original unity of man and woman."⁶⁴ The author notes that the *Exodus* and Deuteronomic versions of the Decalogue⁶⁵ are sometimes different,⁶⁶ but does not explain how or why the Priestly and Deuteronomic lawgivers, still presumably working independently, would have produced such similar sets of rules.⁶⁷

Chapter Six, entitled "An Eye for an Eye, and a Tooth for a Tooth: The History of a Formula," considers the meaning of the *lex talionis*. According to Carmichael, the "universally" held view is that the versions in *Exodus* 21:22-25 (injury to a pregnant woman) and *Deuteronomy* 19:16-21 (malicious, false, incriminating testimony) refer to "retaliation in kind depending on the offense . . ."⁶⁸ Carmichael proposes that "the formula means exactly what it says," namely, capital punishment "to be followed by the systematic mutilation of the offender's corpse."⁶⁹ The Deuteronomic version, as a matter of "fact," he writes, derives from the lawgiver's "focus"

61. "The lawgiver notes that only by producing children do humans approach the creative powers of God. That is why he turns to the topic of honoring parents . . ." *Id.* at 93. "Procreation plays a major role in the incident involving the golden calf." *Id.*

62. *Id.* at 95-96.

63. *Genesis* 4:17.

64. CARMICHAEL, *supra* note 2, at 96. Carmichael introduces this conclusion as follows: "At the mythical level, . . . when Cain marries he reaches into his own body, so to speak, to do so. Future interference with such a union—for example, when a man has sex with another man's wife—is an offense against the created order." *Id.* He continues, "[n]o adultery is committed in the Genesis narrative, but one must recall that there is no direct correspondence between narratives and the laws derived from them." *Id.*

65. *Exodus* 20:2-17; *Deuteronomy* 5:6-21.

66. CARMICHAEL, *supra* note 2, at 87-89, 95.

67. See where Carmichael refers to "[e]ach of the authors of the two versions of the Decalogue in *Exodus* and *Deuteronomy*..." *Id.* at 87. Oddly, however, Carmichael generally attributes the Decalogue to "the lawgiver," as if "he" had been a single person. *Id.* at 87, 92-94, 96-97, 99-101, 104. Elsewhere, he attributes it to a single "scribal school." *Id.* at 102.

68. *Id.* at 106.

69. *Id.* at 107.

on “the trial of Naboth in 1 Kings 21.”⁷⁰ On the other hand, the Priestly lawgiver “stands opposed to the intensified death penalty” and so, in *Leviticus* 24:19-20, separates the death penalty for homicide from various types of non-capital punishment-in-kind for mayhem.⁷¹

Chapter Seven, “Life/Death,” argues that many laws derive from the lawgiver’s conviction that life and death should be kept separate. This rather abstract principle explains various laws such as the “command to dedicate the first fruits and the prohibition against cooking a kid in its mother’s milk”⁷²; the laws against certain mourning practices and not eating “an animal that died a natural death”⁷³; the absolution ceremony to be observed when a man has been murdered by person or persons unknown⁷⁴; the “law of the captive woman”⁷⁵; the law protecting the first born son’s inheritance rights⁷⁶; and the “incorrigible son” and “hanging corpse” laws.⁷⁷

Carmichael entitles the two final chapters “Law in the Narratives,” with Chapter Eight subtitled “Retribution” and Chapter Nine subtitled “Dispute Resolution.” In both chapters, Carmichael contends that the biblical narrators, like the biblical lawgivers, pass judgment upon earlier figures in the biblical history, creating new episodes in accordance with their own predilections.

In Chapter Eight, the author reviews the accounts of Saul’s death in 1 *Samuel* 31 and 2 *Samuel* 1, and the story of David’s adultery with Bathsheba⁷⁸ and its aftermath: Uriah’s death, Nathan’s parable, and the course of events in the lives of David’s offspring, Amnon, Tamar, and Absalom. In both sets of narratives, Carmichael proposes that the offenses of the respective protagonists were met with appropriate, dire consequences because the narrator was committed to the proposition that “inscrutable providential governance requires that every wrongdoing receives its ultimate just desert.”⁷⁹ Thus, Carmichael claims that Saul’s suicide “mirrors” his

70. *Id.* at 109.

71. *Id.* at 120.

72. *Exodus* 23:19, 34:26; *Deuteronomy* 14:21.

73. *Deuteronomy* 14:1, 21.

74. *Deuteronomy* 21:1-9.

75. *Deuteronomy* 21:10-14.

76. *Deuteronomy* 21:15-17.

77. *Deuteronomy* 21:18-21, 22-23.

78. 2 *Samuel* 11.

79. CARMICHAEL, *supra* note 2, at 148. The doctrine that, in this life, individuals experience retribution for their misdeeds is rarely found in pre- or early exilic writings. As authority for this doctrine in the time of the present narrator, Carmichael cites 1 *Chronicles* 10:13-14, *id.* at 148, and *Deuteronomy* 28, *id.* at 150. 1 *Chronicles* and 2 *Chronicles*, however, are generally dated no earlier than the middle of the fifth century or as late as the fourth century B.C.E. *Deuteronomy* 28 rather clearly refers to the fate of Israel as a whole and not to that of individuals.

“interference in the realm of death,” namely, his consultation of the medium at Endor, which was “a misdeed deserving death.”⁸⁰ Carmichael states that the account of Saul’s death in 2 *Samuel* 1 relates back to Saul’s failure to massacre the Amalekite king Agag, as ordered by the prophet Samuel. “The report of Saul’s death in 2 *Samuel* 1 . . . concentrates on Saul’s disobedience to the law⁸¹ calling for the total extermination of the Amalekites.”⁸² Likewise, in the aftermath of David’s adultery with Bathsheba, Carmichael asserts that “[t]he inscrutable workings of providence visit a mirroring retribution on the offender, and [the] members of [David’s] family are but instruments in heaven’s hands to accomplish [this] retribution.”⁸³ While Carmichael credits the narratives about Saul’s and David’s offenses and subsequent instances of retribution for their “marvelously subtle mirroring character,”⁸⁴ he nevertheless disapproves of the narrator’s fictive theology of retribution:

Alas, in interpreting the events of this story, the ancient writer(s) presents a view of justice that is profoundly unsatisfactory . . . The [writer’s] craving for justice reveals right values, rises to the heights in suggesting a unified view of all human action but also depicts justice as cold, impersonal, and antihuman.⁸⁵

Carmichael, like the biblical lawgivers and narrators before him, evidently is prepared to review and pass moral (or aesthetic) judgment on the biblical history or story.

In Chapter Nine, the author recounts various “links” or parallels between the story of Joseph in *Genesis* and that of Moses in *Exodus*. Both undertake “to rescue their fellow Hebrews from hardship”; Moses “is saved from the river” by a foreigner while Joseph is saved from a pit “by a group of foreigners,” with each ending up as “a member” of an Egyptian household.⁸⁶ More significantly, the narrator, like the lawgiver, critiques the biblical ancestors. For instance, by presenting “the deity’s . . . open and honest” and “eminently fair” action in providing manna to “Israelite families at their time of need,”⁸⁷ the narrator implicitly condemns Joseph’s “underhandedness

80. *Id.* at 147.

81. *Deuteronomy* 25:17-19.

82. CARMICHAEL, *supra* note 2, at 146. There is no reference to this law in 2 *Samuel* 1.

83. *Id.* at 156. “The historical fact that David got away with his act of adultery and elimination of Uriah no doubt determined the narrator’s quest for other ways to suggest that wrongdoing meets with its just deserts.” *Id.* at 160.

84. *Id.* at 143.

85. *Id.* at 160.

86. *Id.* at 163.

87. *Id.* at 166. Carmichael also proposes that the law regarding false weights and measures (*Deuteronomy* 25:13-16) was inspired by the lawgiver’s observing the contrast between “Joseph’s

while providing his family with grain in their time of need.”⁸⁸ Likewise, the story of Moses’ establishment of a judicial system in *Exodus* 18 constitutes a judgement upon Joseph’s “sham resolution” of the dispute with his brothers⁸⁹: “[T]he biblical writer perceived a need to respond to the unsatisfactory way that justice had been dispensed among the first sons of Israel.”⁹⁰

Many years ago, in his presidential address at the Society of Biblical Literature, Professor Samuel Sandmel cautioned against what he called “parallelomania,” or looking for, and then discovering purportedly, parallel biblical passages on the basis of only slight or imagined similarities:

The key word in my essay is extravagance. I am not denying that literary parallels and literary influence, in the form of source and derivation, exist. I am not seeking to discourage the study of these parallels, but, especially in the case of the Qumran documents, to encourage them. However, I am speaking words of caution about exaggerations about the parallels and about source and derivation.⁹¹

Those who read *The Spirit of Biblical Law* certainly will judge for themselves whether or to what extent Professor Carmichael has demonstrated probable, or at least plausible, links or parallels between certain biblical narratives and biblical laws. In a number of instances, he undoubtedly has done so.

Several of Carmichael’s suggestions as to such connections are both imaginative and persuasive. For example, he proposes that in *Leviticus* 18:15, “[t]he lawgiver sets down his rule against a sexual relationship with a daughter-in-law in response to Judah’s dealings with Tamar” in *Genesis* 38.⁹² He suggests that the incident involving the golden calf “inspired the (first tablet of the) Decalogue” by drawing attention to the parallel between the apostate Israelites’ claim that their idol “brought [them] up out of the land of

deceptive transaction” and “the deity providing manna . . .” *Id.* at 172. Here, as often happens throughout the book, Carmichael cites to his writings “elsewhere” rather than to primary textual evidence.

88. *Exodus* 16.

89. CARMICHAEL, *supra* note 2, at 170.

90. *Id.* at 171.

91. Samuel Sandmel, *Parallelomania*, 81 J. OF BIBLICAL LITERATURE 1 (1962).

92. CARMICHAEL, *supra* note 2, at 77. Carmichael concedes that, at the time, Tamar “is not actually married to any of Judah’s sons,” but explains, somewhat less persuasively, that she is nevertheless “affianced to [the surviving third son] by the custom of levirate marriage.” *Cf. supra* text accompanying note 38 (proposing that the Judah-Tamar story inspired *Leviticus* 20:6, the law against mediums and wizards).

Egypt,⁹³ and the preamble to the Decalogue which [in the version in *Exodus* 20:2] affirms that it was Yahweh that “brought [them] out of the land of Egypt . . .”⁹⁴ In support of this theory that the *lex talionis* called for the mutilation of executed criminals’ corpses, Carmichael cites 2 *Samuel* 4:12, which reports David’s ordering not only the execution of Ishbosheth’s assassins, but also the subsequent amputation of their hands and feet.⁹⁵

On the other hand, many of the links or parallels that Carmichael discovers are far from obvious. He bases several upon his own characterization of a given narrative situation or its purported legal counterpart. Thus, he links the “rule about newlyweds” in *Deuteronomy* 24:5 to the story of Abraham, Sarah, and Abimelech in *Genesis* 20 through the term *threat* that appears in neither text.⁹⁶ He proposes that the Decalogue’s requirement of honoring parents was “a response to Cain’s act of *dishonoring* his parents by killing their son, Abel . . .”⁹⁷ He also claims that the law of *Leviticus* 19:14 against cursing the deaf derived from Jacob’s and Rebekah’s collaboration in connection with Jacob obtaining his brother Esau’s blessing: “Isaac is the victim of his wife’s eavesdropping”; moreover, “the lawgiver could find in Jacob’s lie an example of someone abusing another’s sense of *hearing*.”⁹⁸

In other instances, Carmichael asserts the existence of connections or links between law and narrative where there is no apparent textual basis for doing so. For instance, the gleaning law of *Deuteronomy* 24:19-22 “commemorates Joseph’s experience” in that he was elevated to power “only after he is forgotten in prison by the butler whose dreams he interprets”; thus “[h]e is like the forgotten sheaf in the Deuteronomic law: if the harvester remembers the sheaf, he gives it to the sojourner, the widow, and the orphan . . .”⁹⁹ In another instance, Carmichael asserts that the “law of the disobedient

93. *Exodus* 32:4.

94. CARMICHAEL, *supra* note 2, at 86.

95. *Id.* at 107. Carmichael does not cite any instances of “eye for eye” or “tooth for tooth.” If the *lex talionis* was intended to specify post-execution mutilation, it is odd that it should have called for “eye *for* eye, tooth *for* tooth, hand *for* hand, foot *for* foot” unless the offender had injured a victim’s eye, tooth, hand, or foot.

96. *See supra* note 43.

97. CARMICHAEL, *supra* note 2, at 35 (emphasis added).

98. *Id.* at 43 (emphasis added). There is nothing about *cursing* the deaf in the Jacob-Rebekah-Isaac story.

99. *Id.* at 39. It is doubtful whether this allegorical mode of interpretation can be properly ascribed to sixth century B.C.E. “lawgivers.” It may be significant that Carmichael occasionally cites Philo of Alexandria as authority. *See, e.g., id.* at 93, 181 n.22, 198 n.42, 199 n.1. Here Carmichael makes a connection on the basis of catchwords: the *forgotten sheaf* of *Deuteronomy* 25:19, Joseph’s *sheaves* dream of *Genesis* 37:5-7, and Pharaoh’s chief butler’s having temporarily *forgotten* Joseph after being released from prison (*Genesis* 40:23). The Deuteronomic law refers not only to sheaves of

son”¹⁰⁰ was based upon the lawgiver’s consideration of the wrongful hostility directed at Esau on account of Rebekah’s favoritism toward Jacob. “The lawgiver examines the situation to see if there might ever be grounds for treating someone like Esau as not worthy of the right of the firstborn son.”¹⁰¹ Or, again, his claim that the laws of *Leviticus* 24 were meant to apply equally to Israelites and foreigners because Jezebel was a foreigner.¹⁰² Many other links or parallels that the author points to are at best speculative or obscure.¹⁰³

Professor Carmichael acknowledges that the lawgivers’ procedure is often not only subtle and sophisticated, but also cryptic,¹⁰⁴ and that laws sometimes, if not typically, do not deal directly with the problems or issues perceived in the narratives.¹⁰⁵ Yet he often exaggerates the nature of the connections, links, or parallels he sees, using such expressions as “strikingly similar,”¹⁰⁶ “central in,”¹⁰⁷ “compelling evidence,”¹⁰⁸ a “striking” feature in common,¹⁰⁹ “a pronounced parallel,”¹¹⁰ or “a startling[ly]” “similar” “element,”¹¹¹ while lamenting other interpreters’ confusion or blindness as to

grain, but also to olives and grapes, all of which are to benefit sojourners, widows, and orphans. The story of Joseph’s dream about sheaves anticipates his future power over his brothers, and its tactless recitation accounts in part for their hostility toward him. There is nothing in the Joseph story about Joseph’s being given “to the sojourner, the widow, and the orphan.”

100. *Deuteronomy* 21:18-21.

101. CARMICHAEL, *supra* note 2, at 132. Nothing in the Esau-Rebekah-Jacob story suggests that Esau had been stubborn or rebellious, or that either of his parents ever contemplated putting him to death; and nothing in *Deuteronomy* 21:18-21 refers to a firstborn son or in any other way to “someone like Esau.”

102. *Id.* at 121-22. *Leviticus* 24:22 requiring “one law for the sojourner and for the native” is set in the context of the story about a man of mixed Israelite and Egyptian parentage who had “blasphemed the Name and cursed” (*Leviticus* 24:10-23). Blasphemy is not mentioned among Jezebel’s other offenses. Carmichael suggests that the “rule about homicide in *Leviticus* 24:17 . . . could have come from the legislator’s taking stock of Naboth’s demise for his alleged blasphemy.” *Id.* at 119. Laws requiring equal protection under the law for sojourners or resident aliens are to be found in several other contexts. See, e.g., *Exodus* 12:49, *Numbers* 9:14, *Numbers* 15:15, *Numbers* 16, *Numbers* 29. *Leviticus* 24:22 refers to sojourners or resident aliens.

103. For example, his claims that the slave laws of *Exodus* 21:2-11 and *Deuteronomy* 15:12-18 are based on the Jacob-Laban story, CARMICHAEL, *supra* note 2, at 4-6; that the law allowing eating a neighbor’s grapes or plucking his grain (*Deuteronomy* 23:24-25) was triggered by the lawgiver’s reflection upon the Edomites’ refusal (described in *Numbers* 20:14-21) to allow the Israelites to pass through their territory, during which time they might have wished to pick grapes or grain, *id.* at 13-16. Carmichael concedes that the *Numbers* narrative does not “bring up the possibility of [the Israelites’] eating and paying for Edomite grain or grapes.” *Id.* at 14. For other instances of highly speculative or obscure links or parallels, see *supra* notes 38, 42, 43-44, 56-64, 87 and accompanying text.

104. See *id.* at 9, 52. See also *id.* 143, 146 (regarding the narrators).

105. See *supra* note 64 and text accompanying note 59.

106. CARMICHAEL, *supra* note 2, at 29.

107. *Id.* at 47.

108. *Id.* at 109.

109. *Id.* at 132.

110. *Id.* at 136.

111. *Id.*

what he sees.¹¹²

Carmichael may well be correct in concluding that at least some biblical laws reflect their drafters' familiarity with and recollection of traditional narratives about earlier figures. However, he could strengthen his case if he both focused on texts where links or parallels between narrative and law are more visible and refrained from making extravagant or exaggerated assertions or claims where there is little or no supporting evidence. It may be that the biblical lawgivers were engaged in writing critical commentaries on the conduct of Israel's forebears. On the other hand, Carmichael's *a priori* hypothesis, which is that the biblical lawgivers were so detached from their times that they lacked interest in contemporary real life problems or concerns, seems highly implausible.

Carmichael concedes that at least some laws *may* have been prompted by interest in contemporary concerns.¹¹³ However, he professes, we can know nothing about the historical circumstances that give rise to such concerns.¹¹⁴ From this profession of ignorance, however, he proceeds to the odd conclusion that the lawgivers were not writing about contemporary concerns after all, but rather commenting on their ancestors as represented in the early narrative traditions.¹¹⁵ It would seem more plausible simply to conclude that biblical laws refer to the kinds of situations they address, whether or not one can reconstruct the particular historical setting in which they were set down. It would be extraordinary if Israel and Judah, unlike all other communities in the ancient and modern world, failed to develop a series of laws dealing with recurrent or anticipated moral and societal issues.

One final critical point: it is not at all clear why Carmichael entitled this book *The Spirit of Biblical Law*. The expression appears only twice in the entire book. Chapter Two begins with the statement: "No body of biblical laws is regarded as so representative of its spirit as the rules in Leviticus 19, one of which is the rule to love one's neighbor as oneself."¹¹⁶ However,

112. See *id.* at 50-51, 113. See also *supra* note 6.

113. See CARMICHAEL, *supra* note 2, at 101, quoted in *supra* text accompanying note 27. See also text accompanying notes 29-37.

114. "I do not believe that the biblical text provides sufficient evidence to support historical reconstructions." *Id.* at 32. See also *id.* at 9, 101.

115. See where, in regard to *Deuteronomy* 22:22 (a man found lying with another's wife), Carmichael writes: "We cannot tell from a reading of the law itself what is going on. We have to assume that the law was composed with the narrative about Abraham and Sarah specifically under review." *Id.* at 19. It seems more plausible to assume that this law had to do with the kind of situation where a man was found lying with another's wife. Likewise, the runaway slave law of *Deuteronomy* 23:16-17 arguably had to do with the question whether runaway slaves should be returned to their former owners. See *id.* at 101; *supra* note 28 and accompanying text.

116. *Id.* at 25.

scholars who hold this view, or who assume “that the material in Leviticus 19 reflects the living reality of ancient Israelite society,” misunderstand “the nature of the material they are interpreting.”¹¹⁷ Elsewhere, he states that “readers of the Bible have [long] regarded the Decalogue as enshrining the spirit of biblical law.”¹¹⁸ However, he then proceeds to urge that modern interpreters who think along such lines likewise are mistaken.¹¹⁹ Carmichael appears to imply that there is or was no “spirit of biblical law.” Perhaps he would have shed more light on this matter had he written a concluding chapter.

117. *Id.* at 25-26.

118. *Id.* at 83.

119. *Id.*