

Judaism and the Euthyphro Dilemma: Towards A New Approach

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Abstract: This article attempts to utilize representative talmudic source-material that bears on the Euthyphro dilemma, and more widely, that discusses the central role of human agency in the foundations of Jewish law, in order to sketch a modified version of divine command theory (DCT), under which both horns of the traditional dilemma are grasped. That is, the proposed modified DCT, based on talmudic sources, is one in which God is properly placed at the foundation of the moral law, while simultaneously providing a central role for human moral reasoning. The first main section presents and evaluates Michael Harris's pioneering analysis of the Euthyphro dilemma in classical Jewish sources, while the second main section attempts to sketch a new approach out of classical Jewish sources.

Keywords: Judaism, Euthyphro dilemma, morality, God

Plato's *Euthyphro* famously and provocatively challenges those who would praise 'piety' as slavish submission to the whims of a god. The dialogue provides a withering attack on the belief that what is praiseworthy is that which the gods command, independent of the goodness of those commands. While Plato himself directed his attack on misconceived notions of piety, the challenge was readily extended to the concept of the moral law.¹ What is the source and authority of the moral law? Is it God's will, or is there an independent standard of goodness or rightness? While Christian philosophers have directly and extensively addressed the dilemma, less attention has been paid to how Jewish sources would confront the *Euthyphro* dilemma.

This article attempts to utilize representative talmudic source-material that bears on the Euthyphro dilemma, and more widely, that discusses the central role of human agency in the foundations of Jewish law, in order to sketch a modified version of divine command theory (DCT), under which both horns of the traditional dilemma are

¹ The term 'moral law' as used in this essay should be loosely understood as those binding obligations which are generally to be considered part of morality, as opposed to civil law and ceremonial law. I don't wish to delineate the definition with much more precision here.

grasped. That is, the proposed modified DCT, based on talmudic sources, is one in which God is properly placed at the foundation of the moral law, while simultaneously providing a central role for human moral reasoning. And this moral reasoning is not confined to the discovery of an antecedent morality grounded in God's will, but is one that is actively involved in the determination and shaping of the moral law. Out of the sources of classical Judaism, this article attempts a sketch a new approach to the Euthyphro dilemma.

It is often said the Judaism has no dilemma because no strong version of divine command theory was ever espoused. The Bible and the classical rabbinic texts, such as the Talmud and the variety of non-talmudic narrative stories, are replete with instances of "natural law," and Jewish sources are clear that there is a moral structure to the world that human beings can grasp and understand. But on this account, it seems that we have abandoned any central role for God or His will to play in the formation of the moral law. That is, if we can entirely ascertain the moral law in the structure of the natural order, what is added by saying that such laws are 'God's will'? The desire to place God at the center of morality is a natural desire of theists. As Mark Murphy puts it:

"If theism is true, shouldn't the truth of theism penetrate to the core of the correct view of morality? And isn't that above all else the reason for the seemingly continual return by theists to divine command theory-that, despite its explanatory shortcomings, it at least places God at the place in a moral theory where theists should expect to find God?" (Murphy 2011, vi)

Divine command theory then, despite its shortcomings, is attractive to theists because it places God at the center of things when it comes to morality, where He seemingly belongs, and despite the plethora of Jewish sources that reject narrowly-conceived versions of divine command theory, it remains for us to sketch a plausible version of the relationship between God and morality which, on the one hand maintains the integrity of the moral universe, while on the other also recognizes the central goal that God must play in any account of morality for a theist.

I. Some Key Distinctions

One of the most comprehensive analyses to date of classical Jewish sources that bear on the Euthyphro dilemma is Michael Harris's *Divine Command Ethics: Jewish and Christian Perspectives* (Harris 2003). Harris examines a multitude of sources in order to tease out their implications regarding the relationship between God and morality. Harris's achievement is notable because he provides an analytic framework through which to interpret the disparate source-material. Harris utilizes various distinctions, but for our purposes two are the most significant. The first is the distinction between ontological

and epistemic dependence. This distinction is of central importance because divine command theorists generally speak of a relationship of dependence between God and morality, whereby morality is in some sense dependent on God.

So naturally, on this account, the question of what kind of dependence needs to be addressed. Harris points out, as others have before him, that theists can claim that either morality is “ontologically” dependent on God or “epistemically” dependent on God. Roughly speaking, for the fundamental propositions of morality to be ontologically dependent on God is for it to be the case their truths are made true by God’s will, or God’s nature, or God’s commands. Without God, there would be no moral truths. In contrast to this, a milder form of dependence may be affirmed by those who espouse that morality is only epistemically dependent on God, which here means that while the truths of morality are true independently of God’s commands, or His will or nature, *they can only be known to be true* by us as a result of God’s revelation through some means. On this view of dependence, God doesn’t determine what is morally true (for that would amount to ontological dependence), but only He can disclose to us what is true, or much of what is true. By analogy, experts in the sciences can disclose to us what is true of the physical world, but they themselves do not make those truths. God, in this account of epistemic dependence but ontological independence, is a master educator, and perhaps a necessary one, on account of our human limitations, but He does not make or establish the validity of moral truths (Harris 2003, 2-21).

And second, Harris distinguishes between God’s revealed commands and His unrevealed divine will, which as we shall see, constitutes perhaps the main innovation - and fault line - in Harris’s interpretive analytic framework.⁵ These two distinctions are used by Harris to show that the classical Jewish sources support either: 1) the first horn of the *Euthyphro* dilemma, which he calls the “Shared Moral Universe of God and Humanity” – (SMU) - which here means that morality is understood to be independent of God and, in its strongest version, even binding on God Himself; 2) the other horn of the dilemma, which are various versions of divine command theory, whereby morality is understood to be dependent on God in some fundamental way; or that, more prominently, 3) the sources are actually ambiguous as between the two. To see how Harris’s analytic framework functions, and the surprising results that emerge from his analysis, it is worth considering a few representative examples of the many Harris examines.

⁵ There is also a third category that is of revealed divine will which does not rise to the level of a command, such as when God is shown after the fact to have been pleased with an action. But this third category is not relevant here.

II. Representative Classical, Jewish Sources

1. Talmudic Narrative that Seemingly Supports SMU – *Eruvin 100b*

There are an abundant number of sources that seemingly support SMU – the view that morality is independent of God. One famous example is found in the Talmudic tractate *Eruvin*, which states that even without the Torah, we could have learned certain features of morality from various animals:

“Had the Torah not been given, we would have learned modesty from the cat, [the prohibition] of robbery from the ant, [strictures against] forbidden sexual relations from the dove, and [conjugal] manners from the cock.” (Talmud Bavli, *Eruvin 100b*; and discussion in Harris 2003, 81).

A more clear and concise statement of SMU in the Jewish tradition cannot be found. In the passage above, the Torah’s commands are unambiguously not needed to ascertain certain moral truths, which can be directly learned from animal behavior.

Harris points out that it only supports the epistemic independence of morality from God, not ontological independence (Harris, 2003, 81). In Harris’s reading, the passage clearly states that human beings *can learn or can come to know* about morality through means other than the Torah, but nowhere does the passage state or imply that those truths themselves are independent of God’s will or nature. In arguing for this conclusion, Harris relies on his other distinction, that between God’s revealed commands and God’s unrevealed will. It is true, Harris writes, that this passage rejects strong divine *command* theory by which God’s commands are necessary for the establishment of moral truths. After all, the Torah is this collection of divine commands, and the Rabbis in the passage above reject the need for Torah’s commands to know how to behave. Yet, Harris points out, perhaps the Rabbis still think that the moral truths learned by observation of animal behavior, or through the study of nature more generally, are made true only by God’s unrevealed will, and the study of nature is the means by which to learn what constitutes God’s unrevealed will. In this account, it may still be the case that the Rabbis affirm the ontological dependence of morality on God, that is, of its dependence on God’s will. Nature alone is not what grounds moral truths. Perhaps we can learn those truths from nature and from how animals behave (i.e., epistemic independence), but what we are actually trying to learn is God’s will as expressed through nature, and it is God’s will alone that establishes the truths of the moral laws that we discover.

So this passage, and many others like it, support only epistemic independence, and reject divine *command* theory, but do not support SMU, because the Rabbis may still be

assuming that the moral truths they discover are entirely dependent on God's will and are therefore not independent of His will, as SMU would seemingly require.

2. The Status of the Noahide Laws – *Sanhedrin 56b*

According to rabbinic tradition, the Jewish people were commanded by God to observe 613 biblical commandments, most of which are interpreted and expanded upon by the rabbis of the Mishnah and Talmud. While the Jews were the direct addressees of the biblical corpus, the rabbinic tradition also espouses the view that all non-Jews are also commanded by God in the basic principles of morality and religion. These seven commandments and prohibitions, such as the prohibition to murder, are known as the Noahide commandments, incumbent upon all peoples, not only Jews.

Should Cain have known that the killing of his brother Abel was wrong? The answer seems obvious in the biblical narrative, as Cain is decisively reprimanded and punished by God for the murder of his brother. But how could Cain have known that killing was wrong? After all, nowhere does the Bible state the prohibition to kill prior to his act. This fact would seem to make it obvious that divine command theory is rejected by the Bible. But that is not how the rabbis understood the original prohibition to kill, as Harris points out (Harris 2003, 171). In fact, in the Talmudic tractate *Sanhedrin 56b*, the rabbis assert that the Noahide laws were commanded by God prior to Cain's murder of Abel:

"From where do we know this? R. Yohanan said..." *And the Lord God commanded the man saying, of every tree of the garden you may freely eat.* " [Genesis 2:16] "*And [He] commanded*" refers to the social laws, so it is written, "*For I know him, that he will command his children and his household after him, and they shall keep the way of the Lord, to do justice and judgment.*" "*The Lord*" — is [a prohibition against] blasphemy... "*God*" — is [a prohibition against] idolatry... "*The man*" — refers to shedding blood [prohibition of murder], and so it is written, *Whoever sheds man's blood, by man shall his blood be shed.*" (Talmud Bavli, *Sanhedrin 56b*).

According to R. Yohanan then, the Noahide laws are binding because they were in fact revealed as divine commands in *Genesis 2:16*, and so it would seem that this talmudic passage, and the general approach it endorses with respect to the status of the Noahide laws, does indeed support divine command theory.

Yet a closer look may yield a different insight as to the more complicated position of R. Yohanan. It is clear that considerable hermeneutic effort is involved in trying to make sense of God's utterance in this verse. There is no hint in R. Yohanan's interpretation of *Genesis 2:16* that Cain or Adam understood those verses in the rabbinic fashion. R. Yohanan adduces support for his interpretation by citing subsequent verses in *Genesis* that help us interpret the meaning of the verse, and there is no reason to think that R.

Yohanan believed that Genesis 2:16 was understood in the manner he espouses it by Adam or Cain. Why then, did R. Yohanan find it necessary to ascribe the prohibition of murder, among other Noahide laws, to an original divine command? It would seem that for R. Yohanan, while human beings can in fact learn or come to know moral truths independent of revelation - that is why Cain can be punished for his murder, nevertheless the ultimate reason why killing is wrong is because it is prohibited by a divine command – in this case the cryptic commands embedded in *Genesis* 2:16 that needed to be parsed by the Rabbis. In this account, the talmudic understanding of the origin of the Noahide laws paradoxically affirms both the epistemic *independence* of morality from divine commands, and their ontological *dependence* on the revealed commands of God. If this is correct, then we can still be punished for violations of laws that were not heard as divine commands – because independent epistemic roads to those moral truths exist, even as the ultimate grounding for the truth of those laws lies in a divine command. Such seems to be the subtle position of R. Yohanan.¹⁰

3. The Law of the *Mamzer*

Jewish law is quite severe in its treatment of children born out of wedlock from certain, specified licentious unions. These children, while rare, are known as *mamzerim*, who are forbidden to marry into the congregation of Israel. The Rabbis were understandably troubled by this harsh treatment of the children of an illicit union, for why should the innocent children suffer for the violations of their parents? The Rabbis, as many have pointed out, tried in various ways to soften the blow of the severe prohibition, and are quite clear in their empathy for the innocent child, and sometimes even express their anger regarding what may be perceived as an unjust law. All of this, it has been argued, refutes any strong version of divine command theory because if the sole source for morality is God’s command, on what other basis should or could the Rabbis have been troubled by the law of the *mamzer*? Clearly, the Rabbis are working with an independent moral sensibility, a moral sensibility that is not derived from the Torah’s commands themselves, which is then brought to bear on their interpretation of the otherwise overly harsh divine commands (Sagi and Statman 1995).

But once again, Harris doesn’t think that those conclusions follow from the rabbinic empathy for the innocent child. Rather, as he tries to show, considerations which are wholly consistent with certain versions of divine command theory may be at play in the

¹⁰ This is my reconstruction of R. Yohanan’s position, not Harris’s. Epistemic independence helps to resolve one main objection to divine command theory, known as the vacuity objection, whereby it is argued that in order for the phrase “God is good” to mean something and not be vacuous, the substantive content of this goodness needs to be specified independently of God. But we can do this if goodness is epistemically independent of God. See the discussion of the vacuity objection to divine command theory and responses in Milliken (2009, 153-54), in Baggett and Walls (2011, 161-62).

rabbinic limiting of the applicability and softening of the laws of the *mamzer*. Harris adduces several considerations that militate against this standard approach to the law of the *mamzer*. *Midrashic* [narrative] accounts that cast doubt on the justice of the law of the *mamzer* and hope for their eventual repeal,

“[M]ight be read as saying that indeed the *mamzer* law is not compatible with the justice that is both usually taught by revelation and which owes its existence to revelation, and that therefore God will ultimately transform the standing of *mamzerim*. God might reveal a law that is incompatible with the morality enshrined in revelation as a whole, and which He will later need to repeal, because He considers the *mamzer* law necessary as a deterrent to adulterous and incestuous relations in a pre-eschatological era. Yet the law is, by the ethical standards of revelation itself, unjust, and therefore will ultimately be abolished....Such reluctance [on the part of the Sages to apply the law of *mamzerim* and punish an innocent child for the sins of their parents] could just as well stem from revealed morality, particularly since the Torah itself explicitly articulates the principle that children are not to be punished for the sins of their parents.” (Harris 2003, 80, 85)

So according to Harris, the rabbinic discussions of the laws of the *mamzer*, representative of many similar passages regarding problematic laws, do not lend unambiguous support to those who espouse SMU.

Harris is not only attempting to undermine support for SMU; rather, in general he is attempting to show how the classical Jewish sources are much more ambiguous than is generally supposed regarding support for either horn of the *Euthyphro* dilemma, and that we will recognize this once we apply some key distinctions borrowed from analytic philosophy. So just as many sources which are traditionally read as lending support to SMU do no such thing- as Harris argues, so too some prominent sources which are standardly read as lending support to narrowly-conceived divine command theory also are not as clear as we have been led to believe (Harris 2003, ch. 5)

III. The Ambiguity of “God’s Will”

Nevertheless, it is still the case that Harris’s original study largely pivots around his contention that the sources which seem to support SMU and reject divine command theory are actually ambiguous once we expand our understanding of divine command ethics to include the claim that for the divine command theorist, for morality to be dependent on God it can be dependent *either* on His commands or on His will. So even if, Harris argues, many classical Jewish sources reject divine *commands* as being the source and ground of ethics, almost no sources reject the claim that the divine will is necessary to ground ethical truths. Maybe it is true, Harris argues, that human beings

can come to know such truths through independent means, such as through the use of reason or through the study of nature, but all this amounts to, argues Harris, is the epistemic independence of knowledge of morality from divine commands, and in no way countenances the more radical independence of morality from God seemingly demanded by adherents of SMU. It is still the case, says Harris, that classical Jewish sources do not assert the independence of morality from the divine *will*. Nature and reason may be some of the tools to grasp this otherwise unrevealed divine will, but it is still God and His will that make morality valid.

Yet Harris's central insight is also the source of the most pointed shortcoming of his study. For there remains a significant ambiguity by just what he means by the phrase "God's will." Harris too easily slides "God's will" as the source of morality into the divine command camp, expanding divine commands to include divine nature (as William Alston has), and more problematically, unrevealed divine will. Harris believes that one can be an adherent of DCT if one maintains the ontological dependence of morality on God's will even while advocating for the epistemic independence of the moral law from God's will. But if the unrevealed divine will is epistemically ascertained by reason alone, and/or through the study of nature, why isn't this more closely aligned to SMU? If reason alone can discover God's will, what is really grounding the moral law, reason, or God's will? Put another way, if reason alone is what discovers the moral law, what is added by stating that this law is grounded in "God's will"? On some accounts, wouldn't this phrase be superfluous? And if so, then stating that God's unrevealed will is discoverable by reason and/or by the study of nature, is not much different than SMU, and is hardly a version of divine command theory.

One way then, to grasp both horns of the Euthyphro dilemma, alluded to but not explicitly argued for, in Harris, is to state, following a variety of Jewish sources, that while we may have independent epistemic access to moral truths, those same truths are nevertheless ontologically-dependent on God. But this approach is problematic, for to the degree that adherents of epistemic independence and ontological dependence continue to believe that they are adherents of divine command theory, they run the risk of positing an entirely arbitrary correlation between epistemology and ontology. As Statman and Sagi observe: "We thus face a surprising coincidence: human beings reach moral truth through a kind of reasoning that DCM considers irrelevant." (Sagi and Statman 1995, 93 and see also Quinn 1978, 43). In other words, the epistemic reasons which amount to our human moral knowledge seem to be arbitrarily and mysteriously correlated to the real ontological ground of why murder is wrong, since those reasons - our moral knowledge, play no role in the ontological grounding of morality, which is grounded only in "God's will."

But not only is the relationship between epistemology and ontology utterly mysterious in the case above, but on some accounts, the distinction between utterly collapses, despite Harris's assumption of its validity. For what might it mean for

someone to advocate complete epistemic independence while maintaining ontological dependence? If someone argues that we come to know that murder is wrong through a particular line of reasoning, then hasn't he or she in that very instance provided a reason - not just for *how* we access the moral law - but also for *why murder is wrong*, and then isn't that line of reasoning *the grounds* for why murder is wrong? In other words, the epistemic reason for *how* we come to know that murder is wrong would also become the ontological ground for *why* murder is wrong. When we say that we have moral knowledge, in that our reason provides us access to the moral law, we are in that instance, also providing the grounds for the wrongness of murder. So this keeping apart of epistemic independence and ontological dependence cannot be properly maintained all the way through.

To see the problem regarding the ambiguity of the phrase "God's will" from another angle, it is worth briefly discussing a distinction borrowed from the philosophy of science, that of causation v. grounding.¹⁶ Consider the equation $E=mc^2$. What makes this equation true? In one sense, for classical theists, God's will makes this equation true, either in the sense that God is the First Cause who is responsible for all of existence, including the laws of nature, and it is through His will that this law of nature was created and is sustained, or even more radically, that it is through God's continuous exercise of His will that the laws of nature are sustained at every moment and further, that at any moment, they, along with everything else, can be eradicated. But all this just amounts to the claim that God's will is *causally* related to the laws of nature. That is, He causes them to be. But in this account, the phrase "God's will" *plays no part in what makes $E=mc^2$ true*. What makes this law true is the structure of scientific reasoning and, to a realist, the structure of reality described by those laws, and not God's will. So while "God's will" may be said to *cause* the truth of scientific propositions according to theists, and while those laws can be said to be consistent with God's will, such a phrase plays no role in the ontological grounding of what makes the laws of nature true. $E=mc^2$ is true by virtue of its accurately describing the way the world is in scientific terms, and its truth is in no way accounted for by appeal to "God's will," an entirely superfluous phrase when attempting to describe what it is that makes the scientific laws true.

And by analogy, it may be the case that without God, there would be no world and no morality.¹⁷ And it may also be the case that God approves of our moral reasoning and conclusions. But the truths of morality would still be grounded in the structure of moral reasoning itself and not in God's will, in just the same way that the justification of

¹⁶ The proper distinction in the philosophy of science is that between the context of discovery and the context of justification. The distinction above is not quite the same.

¹⁷ There are several important dis-analogies between science and morality. For example, the principle of falsifiability is relevant to the sciences in a way that it is not for morality. This essay does not assume that there are no important differences between the two realms, only that those differences do not serve to undermine the proposed analogy.

scientific truths would not appeal to God's will, even if God's will can be said to be the cause of those truths. As Mark Murphy has written in a different context, in his discussion of natural law:

"Here is another way to approach the problem. Unless we say more than this about the role that God has in explaining the moral law, we have not said anything about God's role with respect to what about these properties is distinctively moral...The way in which we can give a theistic explanation of *this dog is black* is the same as that to be given for *it is a moral law that one refrain from lying*; neither of those could be true unless the properties in question exist, and God is responsible for the existence of those properties" (Murphy 2011, 89).

So God's will as the cause of all properties that exist, whether scientific or moral properties, cannot serve as the ontological ground for why the moral laws are true in any plausible account of DCT, for almost no theist would deny that causal link, even theistic adherents of SMU. It should be clear then, that a merely causal connection between God's will and morality, much like the causal connection between God's will and the existence of a cat or of scientific laws, is not the type of ontological ground that adherents of DCT would or should be satisfied with.

So in order to advance our understanding of the relationship between God's will and morality, we will need to be more precise in our use and understanding of the phrase "God's will" and how such a concept can be said to be the ground of morality. Understood in one way, merely as causal ground, God's will as the source of morality is not much different than SMU and can hardly be said to be a version of divine command theory. But perhaps understood in another, stronger and more justificatory manner, the phrase "God's will" might be more properly aligned with certain versions of divine command theory. Unfortunately, despite the overall clarity of Harris's study, and the significant achievement made by Harris in the application of analytic tools to interpret biblical and talmudic source-material, he fails to disambiguate the variety of meanings that can be attached to the phrase "God's will," and in doing so, all-too easily aligns those who think that "God's will" really does ground moral truths with adherents of divine command theory, when in some versions, the phrase "God's will" may not be doing any real work in the grounding of moral truths. Another way of saying this is that we need a better understanding of "God's will" such that it both plays a fundamental role in the grounding of morality and which also acknowledges the centrality of moral reasoning.

IV. Rabbinic Protest and the Making of Jewish Law

There are two prominent features in classical Jewish sources that can help point towards the construction of a new approach to the Euthyphro dilemma. These features never deny the central and foundational role that God plays in the formation and constitution of either morality or law, but rather they should be seen as a counterweight to that foundational role of God. The first is the literature known as rabbinic protest literature, while the second is the constitutive role played by rabbinic jurists - not just in the elaboration of Jewish law - but in the making and even grounding of Jewish law. Both of these features, when combined with and placed against the backdrop of God's central role in the grounding of morality, can help point us towards a subtler view of the relationship between God and morality found in classical Jewish sources.

Rabbinic Protest

We have already encountered an example of rabbinic protest in the previous discussion of the law of the *mamzer*, the child of an illicit union, and the rabbinic anger at such laws, which seem to unjustly punish an innocent child. In his *Pious Irreverence*, the scholar Dov Weiss has compiled over 100 instances of such rabbinic protest, ranging from mild frustration to more outright anger (Weiss 2016).

Of course, one need not rely only on talmudic or other *midrashic* [narrative] sources to find this protest literature, for the Bible itself contains its earliest expressions, such as Abraham's famous rebuke to God during the course of their argument regarding God's desire to destroy the evil city of Sodom, the innocent along with the guilty, to which Abraham famously responds: "Shall not the Judge of all the earth do justice?" (Genesis 18:25).

Harris, as we have seen, doesn't think that any of this protest literature unambiguously rejects divine command theory. Rather, Harris argues, the rabbis and biblical figures are attempting to hold God up to his own standards that He Himself has set and established, and has either revealed such standards in the remaining parts of a revealed corpus or has otherwise made His will known through nature and/or reason, and such will is incompatible with the desire to wipe out the innocent Sodomites or punish the innocent child. In other words, protest literature is no more and no less than an attempt to make God consistent with Himself, but God alone establishes the truths of morality.

One problem with this approach is that it seems to make God into an *akratic*, weak-willed and for some reason unable to live up to His own standards. But this is not the only way to understand the significance of this protest literature. Seen in conjunction with how the Rabbis understood the constitutive role that jurists play in the making of

Jewish law, we can extract an alternative understanding of the large literature of rabbinic protest.

The Making of Jewish Law

There are several well-known stories in the Talmud which together imply a quite striking picture of Jewish law, or at least a large aspect of Jewish law. I will sketch two of these stories here, which is sufficient to illustrate the way in which jurists conceived of the grounding of Jewish law. The first is the oven of *Aknai*, and the second centers around the dispute between Rabbi Gamliel and Rabbi Joshua on the calculation of the new year.

In the story of the oven of *Aknai*, R. Eliezer is arguing with the majority (led by R. Joshua) regarding the ritual purity of a particular oven. R. Eliezer declares it pure, while R. Joshua and the other sages declare it impure. R. Eliezer is so convinced of the truth of his own position that he calls out to the heavens and declares: "If R. Eliezer is correct, let the heavens declare the truth of my judgment." Whereupon a *bat kol*, a heavenly voice, responds that the truth is in fact in accordance with the opinion of R. Eliezer. But instead of conceding, R. Joshua takes the offensive and utters the famous phrase: "It is not in the heavens," for the judgment is in accord with the majority. In other words, in this striking phrase, R. Joshua asserts the judicial independence of the law, even from divine intervention and divine judgment. The Talmud continues the story, depicting God Himself approvingly uttering the words: "My children have defeated Me." (Talmud Bavli, *Bava Metzia* 59a-b).

In the second story, R. Gamliel - the head of the court - and R. Joshua are engaged in a dispute about when the new year begins, which is based on observations of the new moon in the fall. This dispute is significant because the determination of the new moon for the new year sets the framework for the dating of the Jewish holidays during that year, so if the start of the new year is dated incorrectly, the Jewish holidays during that first month of the year will also be dated incorrectly, and the Jewish people will perform prohibited labor on days which they think is not a holiday. In this story, while the Talmud implies that in fact R. Joshua may have had the better of the argument strictly based on evidence and calculations, other considerations take precedence in the formation of Jewish law. After noting the dispute, the Talmud relays that R. Gamliel, in order to make his point forcefully, required R. Joshua to appear in his court on what R. Joshua considered, based on his calculations, to be the day of Yom Kippur - the holiest day of the Jewish year, with his walking stick and money belt, in plain violation of various prohibitions of Yom Kippur if that day is indeed dated in accordance with R. Joshua's opinion. R. Joshua listened to R. Gamliel's demand, and appeared in court with his walking stick and money belt, whereupon R. Gamliel reiterated that the Jewish holidays are "sanctified by the nation of Israel." According to R. Gamliel and his court,

this day was not Yom Kippur, and it is *the court, acting on behalf of the nation of Israel, that determines and sanctifies the date.* (Mishnah, *Rosh Ha-Shanah* 2:9) In this view, the court doesn't discover a prior, ontologically-fixed date of the Jewish holidays, but determines and constitutes the proper dates.

What has happened in these stories? Have the Rabbis become so intoxicated with their power that they have forsaken the divine source of Jewish law? Hardly. What is taking place here is an acknowledgement of agency, of a recognition that while the ultimate source, core and framework of the laws are divine in origin, the detailed working out of the laws, even their determination, is left for human beings. God has carved out a large space for human beings, not just to discover an antecedent law, but to create and constitute it. Moshe Halbertal elaborates on this constitutive view of Jewish law:

“The authority of scholars in matters of Halakha [Jewish law] no longer derives from the proximity of their source...Now it is based on a privilege granted to the Sages by the Torah itself, permitting them to set norms. A challenge to the interpretive process by appeal to “true” meaning of the text is ruled out, since the court itself defines the meaning of the text...The Sages have in such a case a strong constitutive power to determine and shape the law out of many equal options.” (Halbertal 1997, 65).

And what is true for the law may also be true in the moral realm. Recall earlier that there is a large literature of rabbinic protest of some laws, mostly on moral grounds. Seen in light of the discussion above, we can now provide an alternative understanding of this protest literature. In this new approach, what is happening is that while God may have been the source and ground of the core of the moral law, and its basic features, the working out and the application of the moral law and the different weights assigned to different values are for humans, not just to discover, but to determine. So when the rabbis assign different weights to various values in their scale, and lodge their protest by arguing that God has undermined one value in order to raise another (say, justice over mercy), they are asserting that such a weighing is not in God's hands, that it should be in human hands, even if the basic values themselves are divine in origin and justification.²⁴

²⁴ Michael Harris points out that the oven of *Aknai* narrative is not applicable to rabbinic protest literature because rabbinic protest literature seems to assume that there is an ontological fact of the matter, and that God's decision is inconsistent with this ontological fact of the matter, while the oven of *Aknai* (“Not in Heaven”) narrative seems to assume that there is *no* ontological fact of the matter, and the rabbis are therefore free to choose and fix the fact of the matter. But in one plausible reading of the oven of *Aknai* narrative, the heavenly voice *is* the voice which is announcing the ontological fact of the matter - God's viewpoint, so to speak, and the rabbis are rejecting that fact and arguing that it is the rabbis who establish and determine the facts of the matter and they are not bound by the ontological fact of the matter as

This approach to the Euthyphro dilemma, out of Jewish sources, has the dual virtues of continuing to acknowledge God as the center and ground of morality, at least in its basic foundational form – hence acknowledging and preserving the insight of divine command theory, while also allowing for a concurrent central role for human agency, not just in the discovery of the moral law, but in its shaping, its determination and its full application. The basic moral values themselves may come from the heavens, but their weighing, their detailed working out, and how they are wielded here on earth, are not in the heavens. It is not only the Jewish holidays that are “sanctified by the nation of Israel,” but aspects of the moral law too can be said to be sanctified - and thereby constituted - by human beings.²⁵

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revealed by the heavenly voice. In this reading, the story is not so dissimilar to that of rabbinic protest literature. The story of R. Joshua’s money belt above may be read similarly.

²⁵ I wish to thank Michael Harris and *Theologica’s* anonymous reviewer for their extremely helpful comments.