

PAUL AND THE LAW:  
MARK NANOS, BRIAN ROSNER AND THE COMMON-LAW TRADITION

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*Introduction: The Problem of Paul and the Law*

The issue of ‘Paul and the law’ is a problem that Mark Nanos approaches in a novel way. This novel approach results in some important insights that traditional views cannot account for. To establish the state of the debate, Nanos will be contrasted with another recent attempt at solving the issue—Brian Rosner’s *Paul and the Law* (2013). ‘No serious examination of Paul’s relationship to the Law of Moses’, warns Rosner, ‘can afford to underestimate the complexity of the subject, which is after all a subset of one of the biggest questions in the study of early Christianity, namely the parting of the ways between the nascent movement and the mother faith.’<sup>1</sup> The issues at stake are the free gift of salvation to both Jews and Gentiles, and ‘the call for holy living’; moreover, ‘misunderstanding Paul and the law leads to distortions of one or both.’<sup>2</sup> The reason this issue is so thorny and complicated to tackle is that Paul appears inconsistent on this topic. ‘The crux of the problem’, explains Rosner, ‘is the fact that [Paul’s] letters present both negative critique and positive approval of the law.’<sup>3</sup> Rosner highlights the following example in Ephesians: Paul speaks of the abolition of the law as expressed in the commandments in Eph. 2.15, but then in Eph. 6.1-2 commends to children the obedience to

1. Brian S. Rosner, *Paul and the Law: Keeping the Commandments of God* (New Studies in Biblical Theology, 31; Downers Grove, IL: InterVarsity Press, 2013), pp. 20-21.

2. Rosner, *Paul and the Law*, p. 21.

3. Rosner, *Paul and the Law*, p. 24.

parents enjoined by the Decalogue.<sup>4</sup> Not surprisingly, ‘some doubt whether Paul himself knew what he was talking about’.<sup>5</sup>

The ongoing scholarly discussion, however, suggests that we should not dismiss Paul as incoherent.<sup>6</sup> This problem requires a solution, and represents one of the ongoing debates in Pauline studies.<sup>7</sup> This article will argue that a common-law view of Pauline instructions provides a way forward in the debate about Paul and the law, making it possible to integrate insights from different perspectives that would otherwise mutually exclude each other. While there are many facets to the debate, I will first examine the recent input by both Mark Nanos and Brian Rosner on the issue of Paul and the law. Secondly, I will highlight what I believe to be two crucial, but apparently incommensurable, insights from each of the two positions. Thirdly, I will sketch a way forward in this debate by offering an insight from contemporary legal theory that makes it possible to bring together the best insights of Rosner and Nanos on this issue in a way that positively impacts the study of New Testament law and Christian ethics.

### *Two Views on Paul and the Law*

#### *Brian Rosner: The Critique of Legalism*

Rosner’s solution to Paul and the law is carefully nuanced, but maintains a key traditional claim—that faith in Jesus necessitates a rejection or qualification of the law in some sense. In this view, there is something wrong, or at least incomplete, with Judaism due to what Jesus did—that is, Judaism became inadequate in some, usually soteriological, sense. In Rosner’s view, Paul makes three interpretive

4. Rosner, *Paul and the Law*, pp. 24-25.

5. Rosner, *Paul and the Law*, p. 20.

6. A. Andrew Das, ‘Paul and the Law: Pressure Points in the Debate’, in Mark D. Given (ed.), *Paul Unbound: Other Perspectives on the Apostle* (Peabody, MA: Hendrickson, 2010), pp. 99-116 (114), says, ‘the advances in recent research no longer justify Räisänen’s conclusion that Paul is utterly contradictory on this topic’.

7. Das (in ‘Paul and the Law’) describes seven pressure points in the debate, including the following questions about Paul’s position: (1) Was E.P. Sanders right that for Paul grace envelops Law and obedience? (2) Does Paul critique Jewish legalism? (3) Does ‘works of the Law’ refer to boundary marking aspects of the Law? (4) When Paul critiques the Law, does he have primarily ethnic concerns in mind? (5) Is perfect obedience a factor or concern for Paul? (6) What is the meaning of νόμος (‘law’)? (7) Is the Law the norm for Christian life?

moves: (1) he totally rejects the law as a legal system or law-covenant, but re-appropriates it as a source of (2) prophecy and (3) ethics. Rosner seeks to synthesize the best of three streams of scholarship: Lutheranism, the Reformed view and the New Perspective on Paul. ‘There is something to learn from each of these perspectives’, claims Rosner.<sup>8</sup> He continues, ‘in my view the challenge is to hold on to their valid insights in a manner that does justice to the full range of evidence and, with important qualifications, does not deny the validity of other perspectives’.<sup>9</sup>

Rosner seeks to distil the best from the three main streams of scholarship on this topic without losing sight of any of the evidence available or the necessary nuance that must be maintained. His account is a useful basis from which to compare Mark Nanos’s solution, because Rosner maintains, as mentioned above, a key traditional claim—that faith in Jesus necessitates a rejection or qualification of the law in some sense, and perhaps, implicitly, Judaism as well.<sup>10</sup>

In the traditional view, Paul rejects the law in some sense, whether as a law-covenant that secures a relationship with God,<sup>11</sup> or else as a source of condemnation as in the Lutheran tradition. Rosner describes the Lutheran position on the law in this way:

Broadly speaking, *Lutheranism* holds that Paul believed that Christ abolished the law and that the law is the counterpoint to the gospel. The primary role of the law is to lead us to despair of any hope of obedience leading to God’s acceptance and to drive us to seek God’s mercy in Christ.<sup>12</sup>

In this traditional view, generally speaking, Paul rejects the idea that Jews might be fundamentally closer to God than non-Jews with respect

8. Rosner, *Paul and the Law*, p. 21.

9. Rosner, *Paul and the Law*, p. 21. This article is a similar attempt at eclecticism on this highly debated topic. However, I am seeking to incorporate and learn from an important non-traditional voice, Mark Nanos.

10. ‘Clearly, Paul’s rejection of the law has to do with the arrival of a new economy, dispensation or stage of salvation history, one that replaces the Mosaic law and covenant’ (Rosner, *Paul and the Law*, p. 69).

11. A. Andrew Das, *Paul, the Law, and the Covenant* (Peabody, MA: Hendrickson, 2001), p. 160, says, ‘Paul’s problem with the law, on the other hand, is that it is fundamentally unable to bring about a right relationship with God’.

12. Rosner, *Paul and the Law*, p. 21.

to salvation.<sup>13</sup> For Rosner, Paul's rejection of the law is a critique of the law as 'a failed path to righteousness'.<sup>14</sup> While Rosner seems to avoid the term legalism, his critique of the law basically represents the concept of legalism I have in mind, and so I have chosen to use the term in this article. For my understanding of legalism, I rely on Jackson, who describes legalism as essentially a way to misuse the law.<sup>15</sup> However, not all who take a traditional position would draw the same conclusion: Andrew Das claims, 'the concept of legalism is completely absent from Paul's reasoning', and 'What is at issue has nothing to do with legalism but rather whether the law is God's means of blessing for the Gentiles'.<sup>16</sup> Das's understanding, however, may rely too heavily on mirror reading into the opponents' supposed teaching. I will also point out that legalism is a tricky term; Jackson's definition is by no means the only one, but I adopt it specifically because it dovetails with the common-law perspective outlined below. Although this may not satisfy all readers, Dunn notes the term legalism specifically as one that can cause discussions to 'run aground because there are what might be called hidden reefs within our different traditions'.<sup>17</sup>

Paul, on the traditional view, did not need to follow the Torah (although he was free to). The New Perspective on Paul admits that Paul remained Jewish. However, he was not a 'good' Jew, in the sense that he did not take Torah-observance as seriously as his contemporaries did. David Rudolph summarizes this position (represented by E.P. Sanders) succinctly, saying, 'Sanders proposes that the only

13. Mark D. Nanos, *The Mystery of Romans: The Jewish Context of Paul's Letter* (Minneapolis: Fortress Press, 1996), p. 176. The context of Nanos's comment is evaluation of Räisänen's theory, which would correspond to the Lutheranism identified as a major stream of thought in Rosner's *Paul and the Law*.

14. Rosner, *Paul and the Law*, p. 72.

15. Bernard S. Jackson, 'Legalism and Spirituality: Historical, Philosophical, and Semiotic Notes on Legislators, Adjudicators, and Subjects', in Edwin B. Firmage, Bernard G. Weiss and John W. Welch (eds.), *Religion and Law: Biblical-Judaic and Islamic Perspectives* (Winona Lake, IN: Eisenbrauns, 1990), pp. 243-61 (259).

16. Das, *Paul*, pp. 162-63.

17. James D.G. Dunn, 'In Search of Common Ground', in James D.G. Dunn (ed.), *Paul and the Mosaic Law: The Third Durham-Tübingen Research Symposium on Earliest Christianity and Judaism* (Tübingen: Mohr Siebeck, 1996), pp. 309-34 (310).

time Paul lived as a Jew was when he was in Jerusalem surrounded by Jews'.<sup>18</sup>

While Christian obedience, on Rosner's reading of Paul, involves the ongoing influence and importance of the Torah, the law also has to be rejected as the legalistic means for establishing or maintaining a relationship with God. The critical insight Rosner brings to the table is this: Paul's negative assessment of the law is related to legalism.

*Mark Nanos: The Positive Assessment of Torah-Observance*

Nanos also seeks to draw from the valid insights and achievements of past and current research, but he aims to do so without assuming their foundational presupposition: the assumption that the Paul who wrote Romans and Galatians was no longer a Torah-observant Jew as a matter of conscience, which is something that Nanos finds historically implausible.<sup>19</sup>

Despite the fact that he agrees with many of the insights of the New Perspective on Paul, Nanos promotes a radically different reading of Paul. His reading is radically different because he rejects a root claim of most Pauline scholarship that claims Paul broke with Pharisaic Judaism and Torah-observance *as a matter of conscience*. That is, Nanos does not accept the view that claims Paul may have followed the law at times, not as a matter of conscience, but as a matter of evangelistic expedience. Nanos's solution, contrary to Rosner's, assumes that neither Paul nor God rejects the law as covenant.

Nanos's novel approach to Paul and the law is evident in that he denies the problem altogether; whereas most scholars find tension because Paul seems ambivalent about the law, Nanos reconstructs Paul as a Jew who has merely attained a new conviction about Jesus that is

18. David J. Rudolph, *A Jew to the Jews: Jewish Contours of Pauline Flexibility in 1 Corinthians 9:19-23* (WUNT, 2.304; Tübingen: Mohr Siebeck, 2011), p. 3. Mark D. Nanos, 'Paul's Relationship to Torah in Light of his Strategy "to Become Everything to Everyone" (1 Corinthians 9.19-23)', in Reimund Bieringer and Didier Pollefeyt (ed.), *Paul and Judaism: Crosscurrents in Pauline Exegesis and the Study of Jewish-Christian Relations* (LNTS, 463; London: T. & T. Clark, 2012), pp. 106-40 (117-18).

19. Nanos's key monographs are Nanos, *Mystery*; and Nanos, *The Irony of Galatians: Paul's Letter in First-Century Context* (Minneapolis: Fortress Press, 2002). Cf. Mark D. Nanos and Magnus Zetterholm (eds.), *Paul within Judaism: Restoring the First-Century Context to the Apostle* (Minneapolis: Fortress Press, 2015); and Nanos, 'Paul's Relationship to Torah', p. 140.

not necessarily shared by his fellow Jews. Paul's conviction is that Jesus is the Messiah of God who has inaugurated the new age. He would have understood this conviction to be consistent with both Judaism and Torah-observance: it was 'a change of viewpoint within Judaism'.<sup>20</sup>

Nanos believes that Paul was a 'good' Jew, and being a 'good' Jew, according to Nanos, involved practicing Torah as a matter of conviction or covenant fidelity.<sup>21</sup> That means that Paul would have had scruples, or a sense of moral hesitancy, if he were to disobey the law. Nanos claims that Paul has been 'seen as disregarding the Law and customs of his Jewish past', because his teachings 'have not been considered from Paul's Pharisaic frame of reference' as one who kept the law scrupulously. Having this Pharisaic frame of reference, as Nanos rightly claims, nevertheless meant that Paul sought to '[creatively apply] existing Judaic notions to the new historical circumstances he faced among the early community(s) of believers in Jesus Christ'.<sup>22</sup> Paul, he argues, did not stop following the law as a matter of conscience. Instead, he tried to re-contextualize the law based on the new circumstances. Nanos thinks it is more plausible to assume that Paul was a 'good' Jew than to assume that Christ-following Jews had broken away from their Jewish faith. Rather than being 'the creator of a Gentile Christianity that rejected Judaism and the Law as operative', Paul was actually 'the champion of the restoration of Israel', whose cause was the inclusion of Gentiles *as* Gentiles, which required that Jews remain Jews—and for Nanos, Jews were distinguished by Torah-observance.<sup>23</sup>

If assuming Paul is Torah-observant renders his teaching plausible and not subtle, misleading or dishonest, such an assumption is a valid, perhaps the most valid, historical reading, as Nanos would claim. If Paul only obeyed the Torah when it was expedient, in order to communicate to Jews that he shared their convictions when he actually

20. Mark D. Nanos, 'Was Paul a "Liar" for the Gospel? The Case for a New Interpretation of Paul's "Becoming Everything to Everyone" in 1 Cor 9:19-23', *RevExp* 110 (2013), pp. 591-608 (594).

21. Nanos, 'Paul's Relationship to Torah', p. 139; Nanos, 'Was Paul a "Liar"', p. 592; Nanos, *Mystery*, p. 9.

22. Nanos, *Mystery*, pp. 174-75.

23. Nanos, *Mystery*, p. 175.

did not, then Paul was hypocritical.<sup>24</sup> On Nanos's reading, however, Paul, in observing Torah, was not acting out of step with his own convictions as a Jew who followed Christ.

Nanos's position on Paul and the law is complicated,<sup>25</sup> but much of it is summed up in a 2014 article that describes the Jewish lifestyle that Paul requires of his non-Jewish converts. On the basis of Rom. 2.25-29, Nanos argues, 'non-Jews can practice many of the elements of Judaism, the Jewish way of life developed by and for Jews; and they can do so without being or becoming Jews, just as Jews can choose not to think or behave in these ways.'<sup>26</sup> What makes Jews different from Gentiles, however, is circumcision: 'Circumcision sets the covenant people apart to God's Guidance; it is thereafter their covenant obligation to protect it [i.e. the covenant] by living accordingly.'<sup>27</sup> Moreover, all human beings

24. This is the argument of Nanos (see 'Paul's Relationship to Torah'; and 'Was Paul a "Liar"').

25. Nanos's claims regarding Gentile obligation to Torah have developed since his monograph on Romans (written in 1996). In that book, he argued, 'the gentile would now through Christ Jesus have a new relationship with Israel that made it necessary to respect the "rules of behaviour" that had been developed in Judaism to define the minimal requirements of Law and custom for the "God-fearing" gentile wishing to associate with God and his people' (cited in *Mystery*, p. 23 n. 5). Since Gentiles were not 'under' Torah, the obligatory 'minimal requirements' involved obedience to only some of the laws of Torah. Nanos claims that the apostolic decree of Acts 15 is representative of these minimal halakhic standards. In his 2014 article, he seems to have broadened his position about Gentile obligations from minimal halakhic standards. He claims, 'Paul is opposing the transformation of non-Jews into Jews, signified by circumcision, but that is not the same thing as opposing the adoption of Jewish behavior by these non-Jews, which Paul's letter assumes that they have begun to do and promotes that they should do' (Mark D. Nanos, 'Paul's Non-Jews Do Not Become "Jews", But Do They Become "Jewish"? Reading Romans 2:25-29 within Judaism, alongside Josephus', *Journal of the Jesus Movement in its Jewish Setting* 1 (2014), pp. 26-53 (51).

26. Nanos, 'Paul's Non-Jews', p. 30. This understanding of Jewish ethnic identity is strongly tied to kinship and parallels the modern conception of ethnicity, although Nanos seems to place equal weight on circumcision as ethnically definitive (see the following note). For an alternative position, see Love L. Sechrest, *A Former Jew: Paul and the Dialectics of Race* (LNTS, 410; London: T. & T. Clark, 2009), who claims that Jewish ethnic identity in Paul's day was primarily based on religion.

27. Nanos, 'Paul's Non-Jews', pp. 45-46. This argument's weakness may be evident in that circumcision did not distinguish Jewish women—and this is relevant, since, even in Galatians, Paul has women specifically in mind (Gal. 3.28).

have an obligation to Torah, for Torah ‘represents how all humans should behave’<sup>28</sup> in that it represents God’s own standards for the proper life and worship of his people. Rather than simply turning away from idolatry, Gentiles who believe in Christ ‘should learn to internalize Jewishness [*sic*] as the highest value for themselves, albeit remaining non-Jews because of the propositional claims of the gospel that members from the nations, which they represent, are now turning to the One God of the Jews, as expected at the arrival of the age to come.’<sup>29</sup> The objection might be raised, however, that Paul strongly opposes circumcision for Gentile Christians. Nanos explains, however, that this does not entail a rejection of the norms of Old Testament law, saying,

Paul’s opposition to these non-Jews undertaking proselyte conversion *to become Jews* ethnically (circumcision signifying the completion of that ethnic ‘conversion’ rite) should not be mistaken as opposition to these non-Jews beginning to observe *Judaism*, which *he actually promotes*. His letters consist precisely of instruction in the Jewish way of life for non-Jews who turn to Israel’s God as the One God of all the nations; he enculturates them into God’s Guidance (Torah) without bringing them under Torah technically, since they do not become Jews/Israel. They are non-Jews who are learning, by way of Paul’s instructions, to practice Judaism!<sup>30</sup>

His case is probably overstated, because readers of Paul’s letters will notice that Paul does not give precisely the same instructions, or even generally similar instructions, to all of his assemblies.<sup>31</sup> It is also important to note that Paul does not merely tell them to follow the Jewish norms of their communities (although this is how Nanos reads Romans 13), but rather, Paul gives them individualized instructions that

Therefore, it is unlikely that Paul opposed circumcision alone due to its ethnic implications, as women’s ethnicity also factored into the implications of the gospel.

28. In context, the quotation is, ‘When such righteous concern to live in genuine faithfulness to God rather than hypocrisy is demonstrated by a non-Jew it represents the equivalent of acting like a Jew should—protecting the righteous ideal of Torah-defined behavior for the circumcised—and, indeed, it represents how all humans should behave.’

29. Nanos, ‘Paul’s Non-Jews’, p. 51.

30. Nanos, ‘Paul’s Non-Jews’, p. 51.

31. Consider that Paul explicitly forbids the Corinthians from eating meat sacrificed to idols, but in Rom. 14.2-3, he actually forbids those abstaining from passing judgment on those who eat.

are meant to be applicable to their particular circumstances. However, while it may be the case that Paul does not merely tell the believers that he is addressing to follow the general Jewish norms operative in their cities,<sup>32</sup> Paul consistently offers rationalization and justification for his instructions on the basis of the Old Testament law. Consider again the example from Eph. 6.1-3, where Paul exhorts children to obey their parents in the Lord because this is the first commandment with a promise. His readers evidently have some sort of obligation to the law, for, otherwise, Paul's justification of this command makes little sense. Consider the following passage:

For it is not the hearers of the law who are righteous in God's sight, but the doers of the law who will be justified. When Gentiles, who do not possess the law, do instinctively what the law requires, these, though not having the law, are a law to themselves. They show that what the law requires is written on their hearts, to which their own conscience also bears witness; and their conflicting thoughts will accuse or perhaps excuse them (Rom. 2.13-15 NRSV).

Without trying to sort through all of the theological issues associated with this passage, there are nevertheless several important reflections that can be made. First, the work of the law is 'written on the hearts' of those who instinctively keep the law, even if they do not have the written law. Secondly, it is those who do the law, whether from instinct or awareness of the Old Testament law, who are righteous and will be justified on the day of judgment. Thirdly, the law makes known God's will (2.18) and is the embodiment of knowledge and the truth (2.20). Fourthly, breaking the law amounts to dishonoring God (2.23). And fifthly, the one who keeps the law is the one whose circumcision is by the Spirit, not by the letter, whose praise is from God, not from humans (2.27-29). In this passage, Paul is not merely relativizing outward, ethnic boundary-markers—though this may be part of his point—he is also explicitly assigning value to the keeping of the law, whether by Jews or Gentiles. So, while not accepting all of Nanos's claims regarding Paul and the law, I agree with him on the basis of this passage that a non-Jew can keep the law without being a Jew, and that for a non-Jew to keep the requirements of the law would be a good

32. Even this standard would have been subject to a large degree of diversity. There is little evidence for a general set of standards for all of Diaspora Judaism in Paul's time. See Rudolph, *Jew to the Jews*, p. 116; cf. Nanos, *Mystery*, p. 3, who mentions 'Judaism(s)'.

thing. Whether or not most interpreters agree with Nanos's reading of Romans 2,<sup>33</sup> one point is important for the debate regarding Paul and the law: keeping the law is a good thing for either Jews or Gentiles. Conversely, breaking the law, for either Jews or Gentiles, is a bad thing. In regards to the debate about Paul and the law, Nanos's critical insight is this: Paul's positive assessment of the law is due to the fact that Christ has not nullified the obligation of God's people to obey God's law. In regard to Christian ethics, Christians, even non-Jewish Christians, have an obligation to follow the law.

### *Critical Engagement with Rosner and Nanos*

I will mention briefly one attendant weakness of both Rosner's and Nanos's positions. Rosner claims that, in Christ, the law is completely repudiated as a law-covenant. It should no longer be followed as a matter of covenant fidelity—which would amount to legalism.<sup>34</sup> However, Rosner's claim cannot explain the role of the law for Christian Jews, especially during Paul's own time. The book of James, for instance, speaks about 'the perfect law, the law of liberty', and 'the royal law according to the scripture' (Jas 1.25; 2.8 NRSV). The weakness of Rosner's explanation is that it portrays Jewish Christians of the first century as if they simply do not get the gospel and its implications for the ongoing role of the law.

Nanos, however, while making sense of Jewish Christians, does not give a compelling explanation as to why Gentiles must not be circumcised. He claims that Paul's insistence was due to the 'inherent compromise of monotheism' that would be implied in proselyte conversion: if Gentiles had to become Jews in order to worship God, then God would not be the God of the Gentiles, but of the Jews only.<sup>35</sup>

33. Rosner, understandably, does not (see *Paul and the Law*, pp. 94-95).

34. 'For Paul, the essence of the law as law-covenant or legal code is its call for something to be done in order to find life, and this path has failed' (Rosner, *Paul and the Law*, p. 72.).

35. Nanos, *Mystery*, p. 176. Here 'monotheism' refers strictly to recognition of the Shema's claim that God is the one God of all nations. I will use the term in this sense throughout, though it should be noted that Nanos has expressed hesitation with the term (in a personal correspondence with him). Nanos gives an extended defense of his claims about the possible compromise of monotheism (see *Mystery*, pp. 179-201).

Nanos is claiming that Paul's critique revolves around the issue of ethnocentricity, which is a social problem, rather than legalism, which is a soteriological problem.

Nanos claims that Paul's opposition to the law refers to a social problem. However, it is doubtful whether a potential 'compromise of monotheism' explains Paul's opposition to circumcision. If the problem Paul opposed in circumcision was a social problem, then why would Paul not pursue the simpler social solution that all Gentiles should be circumcised. This solution would actually solve all of the social issues Nanos identifies in *The Irony of Galatians*. However, Nanos claims that Paul does not accept this solution, because for Gentiles to become Jews would compromise the oneness of God as the God of both Jews and Gentiles. He claims the promise of Gentiles coming to worship the God of the Jews would not be fulfilled—because the Gentiles would no longer be Gentiles but Jews.<sup>36</sup> However, this is not necessarily true. A Gentile who comes to worship the God of the Jews could become circumcised and yet remain an individual who has come to worship the God of the Jews—it is the individual's past of ignorance and idolatry, not their present self-identification with the people of God, that holds ethnic import.

If this is correct—that the promises implicit in the Shema would not be compromised by a Gentile convert to Judaism—then Paul's strict aversion to circumcision requires some sort of further explanation. It is at just this point that the soteriological problem of legalism makes so much sense of Paul's arguments: Gentiles should not be circumcised because doing so would undermine their status as God's people by undermining the basis for that status.

In Gal. 5.3, Paul vehemently opposes circumcision for the Galatians, because this would obligate them to obey the entirety of the Torah. On Nanos's reading, however, the Galatians *should* follow the Torah, but they *should not* be circumcised, as this would obligate them to follow the Torah (Gal. 5.3).<sup>37</sup> For Nanos to claim that all Christ-followers must observe the Torah—except that non-Jews must not be circumcised—undermines his own explanation of Gal. 5.3. Far from being a petty

36. Nanos, 'Paul's Non-Jews', p. 51.

37. According to Nanos (*The Irony of Galatians*, p. 3), in Gal. 5.3, Paul ridicules the 'naïveté' of the Galatians, 'declaring that if they are to become proselytes they should calculate also that this will oblige them to keep the whole Torah'.

inconsistency, the explanation he gives for this verse is critical to his entire study of Galatians, because his reading of Gal. 5.3 provides his answer to the pivotal question: why does Paul oppose circumcision? Nanos's answer to this question—that Paul opposes circumcision for social reasons—cannot hold water. Legalism need not and should not be thought a Jewish or Torah-specific problem, but that does not mean that it is not a problem. Paul opposes circumcision for non-Jews in Christ, but the compromise of monotheism does not provide a compelling enough explanation.

In summary, despite drawbacks to each proposal, both Rosner and Nanos have made important claims about the obligations of Christ-followers to the Old Testament law. Rosner has shown that Paul negatively criticizes the law within the context of legalism, while Nanos has shown that Christians, Jews or Gentiles, are in some sense obligated to follow the law. The next section will describe briefly why I believe these two insights, which appear to be mutually exclusive, are both crucial to a proper view of Paul and the law.

### *The Difficulty of Integrating these Positions*

Nanos points out that Paul assesses the law positively because Christians, Jews or Gentiles, are *obligated* to follow the law. The reason this claim is important to maintain is that it takes seriously the fact that Paul did not find anything inherently wrong with either Judaism or the Jewish way of life, including Torah-observance. When examining Paul's view of the law, it is also important to recognize that the Torah is the only alternative Paul knows to paganism.

However, Rosner explains Paul's negative assessment of the law in terms of legalism. The reason this claim is important to maintain is that, while Paul's instructions for Christians exhibit the ongoing influence and importance of the Jewish way of life, including Torah-observance in some sense, Christians are not obligated by Paul to follow the letter of the law, because salvation is in the end a matter of faith. Nanos cannot agree with Rosner, because, on Rosner's view, the law has been fulfilled in Christ and is therefore no longer applicable to Christians. The law, in this view, may be followed selectively, but not as a matter of conscience—to keep the law as a matter of conscience is to not fully trust Christ.

In Acts 15, the apostolic decree forbids Gentiles from eating meat with blood. If, however, the law did not demand the obligatory obedience of Christians as a matter of conscience, why, I ask, was it appropriate for the apostles to demand this ritual requirement for Gentile Christians? Paul himself evidently endorsed their requirements, according to Acts. The best way to answer this question is to accept, with Nanos, that there is nothing wrong with Torah-observance as a matter of conscience, and that the only alternative to paganism that Jews would have known would have been a Torah-defined lifestyle. Repentance from paganism in the first century meant, for Paul and the other apostles, the adoption of Torah as the norm or law by which actions ought to be governed. This is the sense in which Jews and Gentiles alike are obligated to follow the law. However, in terms of ethics, this does not mean that Christians today must not eat rare steak; but it does mean that Christians today have an obligation to fulfill the law. While this may seem contradictory, I will outline below the way a common-law perspective on the Old Testament law can account for this. First, however, in order to demonstrate how it is unlikely these two positions can otherwise be integrated, I will now explain how the positions are tied to divergent understandings of Judaism and its soteriological status in light of the work that Jesus did.

In Rosner's view, as mentioned above, the law can be tied to legalism because there is something wrong or incomplete with the law, and thus with Judaism, *because of what Jesus did*.<sup>38</sup> Jesus has made salvation by faith alone available, and therefore, the perfect obedience that the law demanded has been fulfilled. Since it is fulfilled, God's people do not need to try to achieve it. In Nanos's view, however, nothing has changed about the law; it was never the means of salvation, and its status has not changed. There are now simply grounds for accepting Gentiles as Gentiles, because Paul believes that Jesus has inaugurated the eschatological period in which this inclusion is appropriate.

Rosner claims that Christians are not obligated to follow the law, although it is a source of ethical and prophetic guidance for us. And so Christianity, while sharing a history with Judaism, is not essentially Jewish. For Nanos, neither Paul nor God rejects the law as a covenant. The law has an ongoing role in defining and guiding the covenant

38. Rosner, *Paul and the Law*, p. 69.

relationship between Yahweh and his people. Because of this ongoing role, Paul would have had scruples about disobeying the law. In Romans 2, moreover, Paul explicitly assigns value to the keeping of the law by both Jews and Gentiles. However, as I argued above, Rosner's view assigns an implicitly negative value to any strict adherence to the law as a matter of covenant fidelity; because salvation is through Christ and not through the law, following the law is merely to be considered an evangelistic expedience, not a matter of duty even for Jewish Christians.<sup>39</sup> Christianity on Rosner's view, then, not being essentially Jewish through a Torah-defined lifestyle, is in fact *essentially* Gentile. This difference of opinion about the role of the law, I would argue, is due to a difference of opinion about the theological significance of Judaism.

Rosner's and Nanos's positions both maintain divergent eschatological and soteriological views of Judaism. For Rosner, Judaism without Christ is essentially another form of paganism—there is no salvation to be found in Judaism apart from Christ on this view.<sup>40</sup> For Nanos, on the other hand, Judaism has always been the social, ethnic and *religious* identity of God's people, the children of Abraham. The fact that Paul extends the gospel to Gentiles does not change the status of Jews, but of Gentiles. Gentiles have been welcomed to participate in Judaism, not the other way around.<sup>41</sup>

Rosner's view *retrospectively* re-evaluates Judaism as incomplete without faith in Christ;<sup>42</sup> Nanos's view *prospectively* re-evaluates Gentiles and welcomes them to join the community, the religion of Judaism, even if they remain Gentiles. On one view, Judaism maintains

39. That is, the law should not be viewed as a 'path to life' (Rosner, *Paul and the Law*, p. 70).

40. Cf. Rosner, *Paul and the Law*, pp. 64-73. Note, however, that many who hold to something like this generalized view maintain the ongoing importance of the Jewish people in God's eschatological plan. This is especially the view taken by premillennial dispensationalists.

41. Consider that a significant part of Nanos's argument in *Mystery* is the (weak) faith that non-Christian Jews have in Israel's God.

42. I am adapting here the language used by Douglas A. Campbell, *The Quest for Paul's Gospel: A Suggested Strategy* (JSNTSup, 274; London: T. & T. Clark, 2005), p. 134. However, I would point out that the retrospective-prospective distinction here could be flipped around depending on what is in view. Campbell also identifies the close connection between views of Jewish Law and Judaism itself (pp. 132-45).

its centrality in God's redemption; on the other, Judaism is ousted by an essentially Gentile Christianity. These two attitudes towards Judaism are probably incommensurable, even though they no doubt represent opposite poles on a spectrum of views. Debates about Paul and the law, I would argue, take place within the context of broader incongruities regarding Judaism itself. For this reason, I will propose taking a different tack when it comes to the issue of Paul and the law. Rather than arguing over Judaism's role relative to the movement that came to be known as Christianity, I propose that we reconsider the role of the law itself within Paul's thought as a first-century Jew, and within the communities that he established, which themselves were mixed communities that had to exercise a degree of internal accommodation as they followed Christ together.

In my approach, I do not need either to accept or to reject either position on Judaism's soteriological status. Despite this, I can still account for the fact that Paul upholds the ongoing importance and normativity of the Old Testament law tradition—an insight from Mark Nanos—as well as the fact that Paul simultaneously does not instruct his readers to do exactly what many previous laws within that system required—something Nanos has difficulty accounting for.<sup>43</sup> Moreover, I can explain Paul's negative assessment of the law in terms of legalism—an insight from Brian Rosner—and his positive assessment of the law in terms of its enduring status as the norm for God's people, now made up of Jews and Gentiles brought together in some sense—something Rosner, in my opinion, has trouble explaining.<sup>44</sup> Nanos can account for the continuity; Rosner can account for the discontinuity. Nanos can account for the positive assessment of the law; Rosner can account for the negative assessment of the law. This article acknowledges that both insights are necessary, and the next section presents an argument that could, in theory, be integrated with either

43. See the comments above about Nanos's evolving view of the law's role in Paul's assemblies.

44. While Rosner effectively demonstrates the role of the law in Paul's ethical instruction and prophetic/typological interpretation, his explanation of why the law plays this role in ethics relies on a kind of natural law/natural theology argument—that is, that creation evidences something about the law without the guidance of special revelation. Moreover, the law itself is *replaced* by a new law (see Rosner, *Paul and the Law*, p. 128.).

Nanos's or Rosner's views—because it is not inherently tied to a position on the theological significance of Judaism.

I would also point out that such differences of opinion are not limited to the soteriological status of Judaism, but also—perhaps more so in some circles—to the *eschatological* status of Judaism. This question has played a prominent role in debates over millennial views and reflects a parallel issue to that being discussed in this article. Views on the millennium often take place within the broader backdrop of views about Judaism.<sup>45</sup> I do not address the issue of eschatology in this study because of scope, but it is an important and tightly related issue that deserves further investigation. Thus, the question—whether a common-law perspective could be useful despite divergent views on eschatology—must be left for another study.

The final section of this article will sketch a way forward in this debate by offering an insight from contemporary legal theory that makes it possible to bring together the best insights of Rosner and Nanos on this issue.

#### *Common Law and the Possibility of Integration*

I believe a way forward in this debate may lie in the difference between statutory and common-law legal systems. I want to propose that the reason we have so much difficulty understanding what Paul does with the law is that we assume that biblical law is statutory law, and then we unconsciously impose this statutory framework on Paul's writings. To explain the difference between statutory and common-law systems, I will briefly compare both systems as discussed in a recent article by Joshua Berman regarding Old Testament law, and then I will discuss the explanatory power of this way of understanding Paul's teaching on the law.

45. For a good discussion on this, see William W. Combs, 'Paul, the Law, and Dispensationalism', *Detroit Baptist Seminary Journal* 18 (2013), pp. 19-39; H. Wayne House, 'The Future of National Israel', *BSac* 166 (2009), pp. 463-81; Craig A. Blasing, 'Premillennialism: A Progressive Dispensational View', *CTR* 11.1 (2013), pp. 63-70 (43); Michael G. Vanlaningham, 'An Evaluation of N. T. Wright's View of Israel in Romans 11', *BSac* 170 (2013), pp. 179-93. For a discussion that shows the clear intersection of issues regarding salvation, the eschaton and Judaism, see Michael A. Rydelnik, 'The Jewish People and Salvation', *BSac* 165 (2008), pp. 447-62.

*Berman and the ANE Common-Law Tradition*

Joshua Berman argues in a 2014 article that ‘the way in which we moderns think about the word ‘law’ is largely a product of intellectual currents that arose in the late nineteenth century’—namely a ‘*statutory* approach to jurisprudence’.<sup>46</sup> The model that predominated in the earlier half of the nineteenth century, he explains, was the ‘*common-law* approach to jurisprudence’; ‘reengaging the common-law tradition’, he argues, ‘will enable us to see how modern assumptions about law permeate discussions of biblical law and how these assumptions are a function of time and place’.<sup>47</sup>

On the statutory approach, Berman explains, there is a straightforward relationship between the law and legal texts: the law is contained or realized in codified texts. There are two key features of codified texts: ‘(1) *The law emanates from a sovereign... (2) The law is a finite, complete system. Only what is written in the code is the law.*’<sup>48</sup> Today, the statutory approach to law is very widely assumed to be the intuitive approach, Berman claims. Even though it has roots going back to classical Greece, he argues that it was not the concept of law prominent in the ancient Near East. Instead, he argues that the Old Testament law, in the same way as the Laws of Hammurabi,<sup>49</sup> is best understood within a common-law rather than statutory-law framework.<sup>50</sup>

In a common-law approach, (1) judges adjudicate disputes based on community values and traditions; (2) *law*, therefore, is coextensive with the ongoing judgments of the judges. However, the key to this approach as well as the reason it fits the biblical data so well is that on a

46. Joshua Berman, ‘The History of Legal Theory and the Study of Biblical Law’, *CBQ* 76 (2014), pp. 19-39 (20).

47. Berman, ‘History’, p. 20.

48. Berman, ‘History’, p. 21.

49. Berman demonstrates that the Neo-Babylonian composition, *King of Justice*, explicitly refers to the Laws of Hammurabi, handling the same kinds of court cases, and yet, the author does not offer the same remedies in *King of Justice* as those stipulated by the Laws of Hammurabi. He explains, ‘The author of *King of Justice* venerates [the Laws of Hammurabi]. He borrows its language to extol his protagonist, and its laws determine the structure of his narrative. Nonetheless, this author also engages in legal revision of [the Laws of Hammurabi], seemingly undermining its authority.’ Berman, ‘History’, p. 30.

50. Cf. Jackson, ‘Legalism and Spirituality’, p. 248.

common-law view, '[sanctioned legal] texts did not become the *source* of law, but rather a *resource* for later jurists to consult'.<sup>51</sup> The law, then, is 'a system of reasoning', rather than the circumscribed extent of God's will for his people in codified form.<sup>52</sup> This can be seen in the judgment rendered by Solomon in 2 Kgs 3.16-28; he hears the case from the two prostitutes about the one son who is dead and the other son who is kidnapped. Instead of consulting the book of the law, he makes a judgment about this new situation, and his judgment is the law. The reason the psalms exhort the king to meditate on God's law is not so that the king can memorize each exact stipulation in order to know the precise extent of the law. Rather, the law is supposed to shape the king so that the king himself can determine the law in new situations not addressed by the law—the goal is wisdom, not simply the plugging-in of codes and facts.

Berman claims that the common-law approach to law is a better model from which to examine the data than a statutory model. While the documentary hypothesis, on the one hand, points to differences between the Covenant Code and Deuteronomy as evidence of competing legal visions, a common-law perspective, on the other hand, does not need to posit historical circumstances that we do not have solid evidence for (such as Jahwists, Elohist, etc.). What we see, rather, is that 'Deuteronomy reworks the Covenant Code openly without seeking to discard it', because 'changed historical circumstance leads to the evolution of the law, yet without the need of jettisoning earlier, revered texts'.<sup>53</sup>

In summary, while statutory law is a complete and circumscribed system that emanates from a sovereign, common law is inherently incomplete or developing,<sup>54</sup> and continually proceeds from judges. Statutory law maintains a strict distinction between legislation and

51. Berman, 'History', p. 22.

52. Berman, 'History', p. 21.

53. Berman, 'History', pp. 31-32.

54. See W.J. Waluchow, *A Common Law Theory of Judicial Review: The Living Tree* (Cambridge: Cambridge University Press, 2007), who advocates a 'Living Tree' view of the Canadian constitution. Cf. Elliot N. Dorff and Arthur Rosett, *A Living Tree: The Roots and Growth of Jewish Law* (Albany, NY: SUNY Press, 1988), p. 14, who write, 'Jewish tradition compares Jewish law to a living tree'.

interpretation; common law, to some degree, fuses the two.<sup>55</sup> If Berman is correct in his claims about the common-law perspective needed to rightly appreciate Old Testament law, I argue that this perspectival shift holds significant implications for the way we understand Paul's use of the law. As a direct consequence of this shift, the way Paul's writings function as a source for Christian ethics would be directly impacted.

Consider, for example, the impact a common-law approach has on the legislative process in Canada regarding discrimination law. Denise Reaume argued in a 2002 article that, while all law is intended to govern behavior, a statutory-law approach to discrimination law is highly inefficient.<sup>56</sup> Reaume's view deserves elaboration, as it bears similarities to Paul's use of the law.

#### *Reaume's Top-Down and Bottom-Up Models of Legislation*

Reaume articulates the distinction between two ends of a spectrum of lawmaking procedures: top-down and bottom-up. While every system will incorporate aspects of both models, some problems demand a response that leans toward one or the other end of the spectrum. She explains, 'Both models in their ideal form include both a general moral theory governing human interaction and more precise rules regulating concrete action'.<sup>57</sup> The first model, she explains, 'operates in a top-down fashion, and is associated with the legislative approach to norm creation. The second exemplifies a bottom-up methodology, and is based on the common-law process'.<sup>58</sup>

The top-down model begins with an overarching moral theory, and then proceeds to legislate about every relevant situation or behavior. This approach is not unlike the approach to Christian ethics that strictly claims that indicatives drive imperatives, or theology guides behavior. Reaume explains,

According to this approach, theorizing is mostly the job of the legislature. If the legislature properly fulfills its function of working out a comprehensive moral theory and drafting the specific rules necessary

55. Frederick Schauer, 'Is the Common Law Law? Review of the Nature of the Common Law, by Melvin A. Eisenberg', *California Law Review* 77 (1989), pp. 455-71 (455).

56. Denise Reaume, 'Of Pigeonholes and Principles: A Reconsideration of Discrimination Law', *Osgoode Hall Law Journal* 40.2 (2002), pp. 113-44.

57. Reaume, 'Of Pigeonholes and Principles', p. 121.

58. Reaume, 'Of Pigeonholes and Principles', p. 116.

to deal with all possible fact situations, there should be little need for [judges] to engage with the large moral principles underlying the rules.<sup>59</sup>

In other words, if the legislators figure out the theory, judges can simply apply it. This model of lawmaking is idealistic, explains Reaume, because it assumes that a set of laws can anticipate every possible context in which the law ought to have a say. She argues,

A more realistic approach would acknowledge that full determinacy in these matters is not possible. We can neither fully anticipate all the fact situations likely to arise for consideration, nor the value judgments to be made about them. A lawmaker may still strive under these conditions to articulate a comprehensive system of values in a determinate way and draft a body of precise rules instantiating them, but the scheme will be based on current knowledge and values. Gaps will appear in the framework as new situations arise.<sup>60</sup>

A top-down model is especially inefficient when it comes to certain problems, especially those that Christian ethicists refer to as sin. For example, concerning negligence, Reaume states, ‘Given the boundless ingenuity of the human species in finding new ways to harm one another, this [top-down] approach to negligence would have been madness’.<sup>61</sup> It would be impossible to legislate beforehand every law necessary to restrain negligence.

On the other hand, ‘[the bottom-up] model holds that although we may agree on and be deeply committed to certain abstract values or principles, we cannot anticipate all the fact situations in which they may be implicated, nor can we fully map out a comprehensive view of the concrete consequences implicated by those values.’<sup>62</sup> The bottom-up model conforms basically to the common-law legal system. This model seeks to determine what it means to uphold certain values in a particular case. Justice, equality and liberty are abstractions that all legal systems value, but their meaning is inherently contestable. Reaume outlines the bottom-up process in this way: first, the abstract principles or values are applied to paradigm cases in which all parties ideally agree on the outcome. Then, a process of reflection and reasoning is engaged to determine why this particular outcome upholds the abstract values. She

59. Reaume, ‘Of Pigeonholes and Principles’, p. 119.

60. Reaume, ‘Of Pigeonholes and Principles’, pp. 119-20.

61. Reaume, ‘Of Pigeonholes and Principles’, pp. 143-44.

62. Reaume, ‘Of Pigeonholes and Principles’, p. 117.

explains, ‘Normally, decision making in these paradigm cases will yield relatively precise rules that cover the standard features of cases thought to be paradigmatic’.<sup>63</sup> As a range of paradigmatic cases is reviewed, the contours of the abstract value or principle begin to take shape. This process may involve reconsidering cases that were originally thought to be paradigmatic, because ‘reformulation will make the original abstract principle more determinate in ways that may expand or contract initial judgments about its application’.<sup>64</sup> Analogous cases are also considered, and rules are incrementally extrapolated as to the appropriate lines of analogy. Reaume summarizes,

Within this model, the process of norm creation is an ongoing matter in which any case might be an opportunity for extension by analogy or other reshaping of the principle. Mere rule application is therefore not easily distinguished from changing or adapting the rule to meet changing needs or understandings of the problems at hand.<sup>65</sup>

However, the bottom-up model does raise many questions of authority that are avoided in a top-down model. According to Reaume, ‘If the standing weakness of the bottom-up method is its susceptibility to a challenge of its legitimacy when the overeager principle seeker becomes too ambitious, the comparable weakness of the top-down model is its inflexibility when faced with unanticipated situations.’<sup>66</sup> These models, I would argue, might also helpfully be compared as deductive and inductive. The top-down model begins with a general theory and deductively applies it to the concrete facts. The bottom-up model begins with the concrete facts, makes determinations about them, and then proceeds towards a general theory, which is inherently adaptable to the input of new concrete facts.

A helpful example of how these models might apply to Christian ethics is divorce. Often people want to take a top-down approach to divorce, figuring out the precise rules and theory before taking concrete facts into consideration—that is, until they have to deal with real people. A bottom-up approach might be more helpful, as, in this approach, Christians can still maintain, with Jesus, that divorce and remarriage have never reflected the way things are supposed to be. A

63. Reaume, ‘Of Pigeonholes and Principles’, p. 117.

64. Reaume, ‘Of Pigeonholes and Principles’, p. 117.

65. Reaume, ‘Of Pigeonholes and Principles’, p. 118.

66. Reaume, ‘Of Pigeonholes and Principles’, pp. 120-21.

bottom-up approach, however, can also take account of the complexities of sinful situations more seriously and wisely than an overarching theory is capable of doing—which is arguably Paul’s motivation in 1 Corinthians 7 in extending the teaching of Jesus. Rather than simply referring to the instructions codified in the New Testament—as if those instructions were statutory laws—a wise Christian judge ought to take responsibility for determining the appropriate decision based not only on the sources in the New Testament, but also on the concrete facts of the situation itself.

The reason a bottom-up approach to ethics is preferable is because the problem with which we have to contend is sin. In this sense, Christian ethics can learn much from Reaume’s theoretical considerations. In her article, she promotes a bottom-up approach to discrimination law, because discrimination—like all sin, we might add—is ‘a problem of human interaction that is fluid and constantly manifesting itself in new forms such that we have no clear sense of all the circumstances in which it might arise in future [*sic*] or what to do about them’.<sup>67</sup>

If Jesus and Paul have anything to teach us about Christian ethics, it is that codified laws cannot finally solve the problem of sin. In fact, law not only assumes that sin exists and thus depends on it for meaningfulness, but law itself actually contributes to the manifestation of sin (Rom. 7.7-11). Laws may account for sins, but law cannot account for sin. This is why Paul says, ‘But now, we have been freed from the law, because we died to that which held us, in order for us to serve in newness of spirit, and not in oldness of letter’ (Rom. 7.6, my translation).

#### *Common Law and the Possibility of Integration*

I argue that Berman’s insights could be profitably adopted for studying New Testament traditions of governing laws or norms,<sup>68</sup> and Reaume’s reflections on the concomitant legislative process involved in common law could be illuminating for Christian ethics. While needing closer textual examination, as well as fuller historical information regarding

67. Reaume, ‘Of Pigeonholes and Principles’, p. 122.

68. Similarly, Jackson (‘Legalism and Spirituality’, p. 249) argues, ‘the distinction between the role and functions of legislation and adjudication assists in understanding the thorny question of the relationship of Jesus to the law in the New Testament’.

Second Temple and Greco-Roman views,<sup>69</sup> a few points can be made in favor of the common-law perspective. First, if Berman is right about Old Testament law functioning more like a common-law than statutory approach, I argue that the common-law approach should be our starting point. We should not assume that Paul saw Old Testament law as statutory law, nor should we assume that he intended his instructions to function as a kind of statutory law for his audience then or now.<sup>70</sup> Secondly, a common-law perspective may help illuminate some theological difficulties, such as the relationship between the law of the Old Covenant and the law that God writes on his people's hearts in the New Covenant. From a common-law perspective, they both share a common source and a common trajectory rooted in common values. This is a useful point when considering why it is that Christians generally feel obligated to uphold the Decalogue, except for the Sabbath law; the obligation derives from the common-law tradition, and the deviation regarding Sabbath law derives from the novel context in which the same law tradition is operative. Thirdly, if the New Testament documents, and specifically the moral instructions contained therein, are understood as a critical installation in a much bigger common-law tradition, then there are important ethical implications regarding the way Christians apply New Testament instructions to their behavior in the present day, as discussed above in conversation with Reaume. Fourthly, a common-law perspective elucidates why it is that what we call Old Testament 'law' is largely composed of narrative material.<sup>71</sup> While distinction is traditionally drawn between *halakhah*

69. To test this thesis, I would need to further examine Second Temple literature, as well as Greco-Roman legal traditions. For example, I would need to discern when the explicit distinction between *halakhah* and *haggadah* arose. However, Jesus' teaching, I would argue, does resemble a common-law tradition, and Paul explicitly places himself within the Jesus tradition, even as he continues to shape that tradition through contextualized instructions.

70. That is, in the sum of Pauline literature, drinking is not prohibited, only drunkenness, and therefore, drunkenness is always bad, but drinking is never bad. This kind of approach allows for non-value-driven loopholes.

71. In Exodus, 'Law and narrative are interwoven almost seamlessly... In fact, they are so closely linked that law actually becomes narrative in the mouths of Israelites, who must perpetuate through speech and reiteration, the memory of the redemption from Egypt for future generations' (Nanette Stahl, *Law and Liminality in the Bible* [JSOTSup, 202; Sheffield: Sheffield Academic Press, 1995], p. 95). Cf. Bernon P. Lee, *Between Law and Narrative: The Method and Function of*

and *haggadah*, Berman's article highlights the fact that the terminology of legal theory may be just as appropriate as this rabbinic terminology. And fifthly, in regard to Paul and the law, a common-law view of Paul's moral instructions allows us to integrate the key insights of Nanos and Rosner. On the one hand, Christians are obligated to follow the law in that the tradition of the apostles is the same tradition that the Decalogue and all other biblical law belongs to, and all of it derives from the instructions of the original lawgiver—God. On the other hand, what it means to follow the law in a new situation need not mean strict adherence to the literal meaning of all previous legal stipulations as if the law were statutory law. This is not a question of whether or not the law demands perfect obedience; rather, that question itself is meaningless if biblical law is a common law that requires judgment about its applicability to novel situations. Legalism, then, corresponds to treating a common-law tradition as if it were a statutory-law tradition.<sup>72</sup> Statutory law allows for objective, technical justification of our behavior; common law, by contrast, demands our attempt to exercise faithfulness to a tradition.

Nanos could adopt a common-law perspective in order to explain Paul's critique of the law, that is, why he so vigorously opposes circumcision and certain actions in his novel context. Rosner could adopt a common-law perspective in order to explain Paul's positive estimation of the law's ongoing value for Christian ethics. The reason this approach is superior, however, is that, in adopting a common-law perspective to solve the paradox of Paul and the law, neither side need accommodate their strong stances on the theological significance of Judaism.

*Abstraction* (Gorgias Dissertations in Biblical Studies, 51; Piscataway, NJ: Gorgias, 2010); Peter J. Tomson, *Paul and the Jewish Law: Halakha in the Letters of the Apostle to the Gentiles* (CRINT, I; Minneapolis: Fortress Press, 1990).

72. See also Jackson ('Legalism and Spirituality', p. 259), who argues, 'legal doctrine and adjudication are two quite different phenomena, in which rules *are* sufficient in the former, but are *not* sufficient in the latter. Rule-centeredness is therefore not an evil in itself; it is only an evil when applied in the wrong context.' A relationship between people, he argues, is spiritual, and thus must not be ruled by law (p. 260). Also, he claims, 'Legalism is the activity of dealing strictly through the use of rules with a situation that calls for more than the application of mere rules', and therefore, 'legalism *cannot* be rightly applied in a situation where rules *are* a sufficient means of the resolution of a question' (p. 259).

*Conclusion*

This article is a tentative exploration of the possibility of moving a heavily-entrenched debate forward by re-examining the conception of the nature of law in early Christianity. This approach holds great explanatory power, although it is in need of further research into the primary sources. However, it does provide a way of appreciating the important contributions of both Mark Nanos and Brian Rosner. We can acknowledge with Nanos that Paul could not imagine obedience to God apart from the law, the Torah. His own obedience involved being a faithful Jew following the Jewish messiah. And Paul also envisioned and prescribed Torah-oriented obedience for his Gentile converts. They could not remain in their pagan way of life, and the only alternative that Paul would have known to paganism was Judaism.<sup>73</sup> We can also see, with Rosner, that Paul did not view the law as merely a set of strict codes that circumscribed obedience for God's people for all times, in all places. Rather, the law itself is part of a trajectory of ethical behavior, a common-law tradition that begins not at Sinai but as far back as creation itself.

Bringing both views together, we can see the potential impact on Christian ethics: Christians are obligated to fulfill or uphold the tradition of the law as a common-law tradition, which has a definite shape and trajectory towards certain values, but must be continually re-contextualized in new situations in order to uphold the implicit values of the law—which are the reasons that God made the law in the first place. Christians are not obligated to fulfill the law as a statutory-law system, where what counts is strict observance of the letter of the law in the most technical sense. It would be a mistake to assume that the only alternative to Nanos's ideal, keeping the letter of the law, is Rosner's solution, overthrowing and replacing the law entirely. If the law is a common law, we can maintain both.

73. Romans tolerated a diversity of cultic expressions, but only within the overall orientation of submission to Roman domination. See Kathy Ehrensperger, *Paul at the Crossroads of Cultures: Theologizing in the Space-Between* (LNTS, 456; New York: Bloomsbury, 2013), pp. 178-86.