

***TRIAL LAWYERS
AND THE BIBLICAL BASIS FOR WHAT WE DO***

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The laws we follow today have a rich history in the Bible. In fact, Biblical laws are the basis of our entire modern day civil justice system. These Biblical laws emphasize justice, the rights of the poor, and even environmental protection. These are righteous causes. Today, trial lawyers are an integral part of the civil justice system which has its roots in the Bible.

**TRIAL LAWYERS WORK IN A JUSTICE SYSTEM
BASED ON THE BIBLE**

In the Bible, there are many laws which society is to live by. These laws include prohibitions against specific wrongs and remedies for these wrongs. Many of these same rules dealing with wrongs and remedies are in use today. At the very least, they form the basis of our modern tort system. Trial lawyers are working in the modern day justice system which is based on the Bible. In fact, we are an important part of this system.

God's laws dealing with specific wrongs and remedies were given to Moses in the Old Testament. The laws dealt with such things as negligence, strict liability, compensatory damages, and even punitive damages. Yes, even punitive damages are Biblical, since they have their roots in the Bible!

The most obvious correlation between Biblical laws and our civil laws today is found in the Ten Commandments. The Eighth Commandment states "thou shalt not

steal.” The Ninth Commandment states “thou shalt not bear false witness against thy neighbor.” Ex. 20:14-15. Today, we have criminal laws against stealing and lying. Both stealing and lying can also result in liability in our civil justice system in the form of fraud. There are numerous other correlations between the laws given in the Bible and the laws which form our modern day civil justice system.

These Biblical laws and their relationship to our modern civil justice system are best described by Edmund Fudge, J.A., J.D., in his excellent paper “*The Law of Moses and Modern Tort Law*” Copyright 2006. In this paper, Fudge discusses God’s law as given to Moses and how it relates to our modern civil justice system. Fudge explains below: that,

The Law of Moses anticipated particular negligent acts or omissions that resulted in civil liability. Four specified circumstances involved:

- * Digging a pit but failing to cover it (Ex. 21:33-34);
- * Allowing animals to trespass on to the property of another and do harm (Ex. 22:5);
- * Kindling a fire but negligently allowing it to get out of control and harm a neighbor’s property (Ex. 22:6); and
- * Building a flat roof on which people foreseeably would spend time, but failing to construct protective parapets to prevent their falling off the sides (Deut. 22:8).

Edmond Fudge, *The Law of Moses and Modern Tort Law*, (2006)

Today, just as in the time of Moses, these acts can also result in civil liability. Many of these acts are common in our modern day civil justice system and are taught in all law schools. The similarity between the Bible’s law and our current civil laws is obvious.

Fudge correctly noted that there were various degrees of negligence and liability under the law of Moses. He writes:

Degrees of negligence

.... An act that foreseeably might cause injury resulted in greater liability than a similar act where no injury was foreseeable. Likewise, one who had notice of a dangerous condition but made no attempt to correct it could be held liable for what we would call gross negligence. These distinctions are illustrated in laws pertaining to a goring ox, as stated in Exodus 21:28-32. When an ox gores a man or a woman to death, *the ox shall be stoned*, and its flesh shall not be eaten; but the *owner* of the ox shall *be clear*.

But if the ox has been accustomed to gore *in the past*, and its owner has been *warned* but has not kept it in, and it kills a man or a woman, the *ox shall be stoned*, and its *owner shall be put to death*. If a ransom [money damages in lieu of execution] is laid on him, then he shall give for the redemption of his life whatever is laid upon him.

Fudge, *supra*, at page 7.

In the Biblical justice system, as in our justice system today, different degrees of negligence require different degrees of liability. Today as in Biblical times, foreseeability is a key element to liability. Not surprisingly, these two systems are strikingly similar.

Fudge has also recognized that the bold concept of strict liability can be found in the Law of Moses. He explains:

“STRICT LIABILITY”

The Law of Moses also included the concept of strict liability. If a man borrowed a neighbor’s chattel and it was hurt or destroyed while in the borrower’s custody and control, the borrower was required to make full restitution (Ex. 22:14). Liability here does not require either negligence or evil intent. Nor is this a matter of *res ipsa loquitur*, for even an intervening cause does not exculpate the person held strictly liable. Fudge, *supra*, at page 7.

This is the basis for our modern day concept of strict liability. Today, as in Biblical times, strict liability can give rise to a tort.

DAMAGES

“As in our legal system today, the person who caused harm, injury or death to the person or property of another, whether intentionally or negligently, faced a considerable range of possible damages under the Law of Moses.” Fudge, *supra*, at page 7.

Monetary damages

“Monetary damages under the Mosaic code were compensatory, punitive and sometimes both. Compensatory damages could include general damages (restitution) or special damages (medical expenses; lost wages). Punitive or exemplary damages ranged from a statutory 20% for most torts to 200-500% of the value lost in cases of conversion. Two causes of action provided for open-ended punitive damages, which were determined by the plaintiff’s demand and the judgment of the court.” Fudge, *supra*, at page 7

Compensatory (general damages). “General damages were most common and were usually measured on the basis of actual restitution of the chattel that had been lost or destroyed. (This rule did not hold in the case of gross negligence...)” ...

[W]hen a man causes a field or vineyard to be grazed over, or lets his beast loose and it feeds in another man’s field, he shall make *restitution* from the beast in his own field and in his own vineyard (Ex. 22:5).” Fudge, *supra*, at page 7.

“When fire breaks out and catches in thorns so that the stacked grain or the standing grain or the field is consumed, he that kindled the fire shall make *full restitution* (Ex. 22:6).

When a man leaves a pit open or when a man digs a pit and does not cover it, and an ox or an ass falls into it, the owner of the pit shall *make it good*; he shall give money to its owner, and the dead beast shall be his (Ex. 21:33-34).” Fudge, *supra*, at page 8.

...

Compensatory (special damages). “If two men fought physically and one man injured the other, the injured man had a civil cause of action even though the one who caused the injury was not criminally liable. In such a case, the defendant was to pay the injured man’s medical expenses until he recovered fully. He also was to reimburse the plaintiff for all his lost wages. See (Ex. 21:18-19). Fudge, *supra*, at page 8.

In reviewing these passages, a learned reader will notice that the modern day concept of compensatory damages is very similar to the law in the Bible as given to Moses. In both time periods, different types of conduct subjected wrongdoers to different amounts of compensatory damages. These damages ranged from simple restitution to payment for lost wages and medical bills. Yes - payment for lost wages and medical bills which are so common in our modern day civil justice system actually have their roots in the Bible.

“Punitive damages (standard 20%). We have previously seen that the Law of Moses sometimes blended our categories of tort, crime and breach of contract. In cases involving injury to person or property, the general rule of damages for situations not otherwise covered seems to have been restitution of actual value plus punitive damages of 20%. If the plaintiff had no relative to collect the judgment, the award went to the priest instead.*Numbers* 5:58. Fudge, *supra*, at page 8.

“Punitive damages (statutory prescriptions). The Law of Moses also prescribed statutory punitive damages for actions arising out of intentional conversion of chattels In the case of animals, damages varied with the type of chattel lost.

If a man steals an ox or a sheep, and kills it or sells it, he shall pay *five oxen* for an ox, and *four sheep* for a sheep. He shall make *restitution* If the stolen beast is found alive in his possession, whether it is an ox or an ass or a sheep, he shall pay *double* (Ex. 22:1-4).

If a thief stole property from someone’s dwelling, the civil penalty was restitution of the stolen item’s value, *doubled* (Ex. 22:7). Breaches of trust not otherwise covered carried a statutory penalty of twice the actual restitution, “whether it is for ox, for ass, for sheep, for clothing, or for any kind of lost thing” (Ex. 22:9).” Fudge, *supra*, at page 8.

“Punitive damages (open-ended). At least two circumstances allowed for open-ended damages with no statutory ceiling. The first was an action for wrongful death involving gross

negligence. The second was personal injury to a pregnant woman that resulted in a miscarriage.

In the case of wrongful death resulting from gross negligence, the Law of Moses provided for open-ended punitive damages as an alternative to capital punishment. If a man allowed an animal to roam loose which he knew to be dangerous and the animal killed a person, the beast was to be destroyed and its owner executed (Ex. 21:29). Capital punishment could be avoided, however -- and surely it actually was, most of the time -- if the defendant paid monetary damages to the survivor(s) in an appropriate sum. The determination of appropriateness depended on the demand of the plaintiff and the finding of the court: "If a ransom [for his life, in the form of punitive damages] is laid on him," the Law said, "then he shall give for the redemption of his life whatever is laid on him" (Ex. 21:30). Fudge, *supra*, at page 9

"The other case of open-ended punitive damages involved the situation in which two men fought physically and somehow injured a pregnant woman so that she suffered a miscarriage. This gave rise to a cause of action in favor of the woman's husband. The person who caused the death of the fetus was to be "fined according as the woman's husband shall lay upon him; and he shall pay as the judges determine" (Ex. 21:22). Fudge, *supra*, at page 9.

In today's world, there is much criticism of punitive damages. Most of the criticism comes from those who don't understand the public benefit of these damages or from the wrongdoers themselves. As we know, these damages are designed to protect the public and stop the wrongful conduct from happening again. Today, as in Biblical times, punitive damages are a very important part of the law.

Professor Fudge's excellent paper shows how our modern day civil justice system relates to the justice system given to Moses by God. There are so many similarities that it is obvious that the system we use today had its beginnings in the Bible. Trial Lawyers are a very important part of a system that has its roots in the Bible.

TRIAL LAWYERS FOCUS ON JUSTICE

Justice is the most important thing in our court system today. The Bible also emphasized justice in its court system. Trial lawyers are involved in seeking justice for their clients on a daily basis. This is a righteous cause. Several Biblical scriptures about justice are cited below.

Amos 5:15¹

Hate evil, love good; maintain justice in the courts.

Deuteronomy 16:19-20

Do not pervert justice or show partiality... Follow justice and justice alone...

Psalms 11:7

For the LORD is righteous, he loves justice...

Isaiah 61:8

For I, the LORD, love justice...

Psalms 106:3

Blessed are they who maintain justice, who constantly do what is right.

Amos 5:22-24

But let justice roll on like a river, righteousness like a never-failing stream!

Proverbs 28:5

Evil men do not understand justice, but those who seek the Lord understand it fully.

Micah 6:8

He has showed you, O man, what is good. And what does the LORD require of you? To act justly and to love mercy and to walk humbly with your God.

Matthew 23:23

Woe to you, teachers of the law and Pharisees, you hypocrites! ... But you have neglected the more important matters of the law—justice, mercy and faithfulness...

As can be seen from above, the Bible emphasizes justice in both the Old and New Testament. The Bible required that justice be maintained in the courts. It further states that the evil do not understand justice, but those who maintain justice are blessed. Even

¹ Unless otherwise noted, all Bible verses are taken from the New International Version.

Jesus referred to the importance of justice as it relates to the law. Trial lawyers seek and help maintain justice on a daily basis and should continue to do so.

TRIAL LAWYERS HELP THE POOR

In many cases, trial lawyers represent the poor and downtrodden of society. Many times, we are the only ones in our society who will help them hold wrongdoers accountable. It is Biblical to hold these wrongdoers accountable for their wrongful acts to the poor and downtrodden. The Bible has much to say about helping the poor in court and in other ways. In fact, there are several thousand verses in the Bible dealing with the poor and God's response to injustice. Helping the poor in any way is a righteous cause.

The Bible clearly illustrates Jesus' teachings on the poor. First, let's see what Jesus said about the poor.

Luke 6:20

Looking at his disciples, he said: "Blessed are you who are poor, for yours is the kingdom of God."

Luke 4:18

The Spirit of the Lord is on me, because he has anointed me to preach good news to the poor....

Matt. 25:35, 40

For I was hungry and you gave me something to eat, I was thirsty and you gave me something to drink, I was a stranger and you invited me in, I needed clothes and you clothed me, I was sick and you looked after me, I was in prison and you came to visit me. The King will reply, I tell you the truth, whatever you did for one of the least of these brothers of mine, you did it for me.

The poor were obviously very important to Jesus. He stated that they are blessed and that he came to preach the good news to them. He also stated that what you do to the poor is what you do to Him. The poor had a special place in his ministry.

The scripture is even more clear that the poor are not to be oppressed in our court system. They are to receive justice like everyone else. Trial lawyers help them seek justice when no one else will. The scriptures below are absolutely on point.

Proverbs 22:22

Do not exploit the poor because they are poor and do not crush the needy in court ...

Exodus 23:6

Do not deny justice to your poor people in their lawsuits.

Proverbs 31:8

Speak up for those who cannot speak for themselves, for the rights of all who are destitute.

Isaiah 3:13-15 (New Living Translation)

The LORD takes his place in court. He is the great prosecuting attorney, presenting his case against his people! The leaders and the princes will be the first to feel the LORD's judgment. "You have ruined Israel, which is my vineyard. You have taken advantage of the poor, filling your barns with grain extorted from helpless people. How dare you grind my people into the dust like that!" demands the Lord, the LORD Almighty.

Isaiah 11:3-5(The Living Bible)

His [Jesus'] delight will be obedience to the Lord. He will not judge by appearance, false evidence, or hearsay, but will defend the poor and exploited. He will rule against the wicked who oppress them.

Isaiah 1:17

[L]earn to do right! Seek justice, encourage the oppressed. Defend the cause of the fatherless, plead the case of the widow.

Proverbs 29:7

The righteous care about justice for the poor, but the wicked have no such concern.

Deuteronomy 24:14

Do not take advantage of a hired man who is poor and needy, whether he is a brother Israelite or an alien living in one of your towns.

Proverbs 14:31

He who oppresses the poor shows contempt for their Maker, but whoever is kind to the needy honors God.

Psalms 82:1-4 (New Living Translation)

God presides over heaven's court; he pronounces judgment on the judges: How long will you shower special favors on the wicked? Give fair judgment to the poor and the orphan;

uphold the rights of the oppressed and the destitute. Rescue the poor and helpless; deliver them from the grasp of evil people.

The rights of the poor in the court system are emphasized in the Bible over and over. It specifically states that the poor should not be exploited in court, nor should the needy be crushed. The Bible commands us not to deny justice to our poor people in their lawsuits. Scripture says that the Lord will act as a great prosecuting attorney to prosecute those who have crushed the poor, and that Jesus will defend the poor and the exploited.

The rights of the poor are very important in the Bible. Trial lawyers work for the poor and downtrodden. Without trial lawyers, they would have nowhere else to turn to receive justice in the courts. Trial Lawyers speak up for those who cannot speak for themselves.

Professor Susan Pace Hamil makes many excellent points in her article *The Least of These*. She describes our Biblical duties concerning the poor much better than I can. She explains:

The Bible has a great deal to say about how individual people and their communities must treat the poor, powerless and needy among them. The book of Genesis (1:27, 4:9, 9:5-6), revealing that God created all people in His image, equates the unjust treatment of fellow human beings as a wrong committed against God Himself, for God's image may be seen in even the poorest and neediest people among us. In other words, to sin against the poor is to sin against God.

Later Old Testament books expand the protections that must be provided for poor and powerless people. In addition to commanding that they be treated justly, which requires far more than courtroom justice, God also requires that safety nets be created to allow poor and powerless people a minimum opportunity to meet their basic needs and improve their lives. Certain rights to harvest from the land of others and secure ownership of their own land (which was the way to secure economic well-being in the ancient world) are among specific examples in the Bible but are not meant to be the only opportunities required, so that the poor and powerless can try to improve their lives.

The New Testament further emphasizes the importance of the Old Testament's requirements that poor and powerless people have these minimum protections. In the Gospels of Matthew (5:17, 7:12, 22:37-40), Mark (12:29, 40) and Luke (1:46-55, 3:11-14, 4:16-21, 6:31-36, 16:19-31, 20:47), Jesus declares that He has come to fulfill the Old Testament Scriptures, and His teachings show that the moral requirements of the Old Testament protecting poor and powerless people apply to all Christians. In addition to identifying the love of God and the love of neighbors (even those with no wealth or status) as the two greatest commandments, and announcing that He has come "to preach the good news to the poor" and "release the oppressed," Jesus showed special compassion and concern for the poorest and neediest people of society throughout His earthly ministry. At the very least, Jesus calls for social structures that protect poor people from economic oppression and allow them a minimum opportunity to improve their lives.

Susan Pace Hamil, *The Least of These*, pamphlet, (2002).

Professor Hamil is exactly right. The poor deserve to be free of economic oppression. Trial lawyers help the poor get economic justice and help hold wrongdoers accountable that engage in economic oppression. Trial lawyers do this by representing them in the civil court system that has its roots in the Bible.

TRIAL LAWYERS PROTECT THE ENVIRONMENT

Another Biblical basis for what trial lawyers do is in the area of environmental protection. Yes, environmental protection is also discussed in the Bible. This is also a righteous cause and deserves more attention. God created the earth and put man on it. Man is expected to take care of His creation. Some scriptures on this point are as follows:

Genesis 1:1

In the beginning God created the heavens and the earth.

Genesis 2:15

The LORD God took the man and put him in the Garden of Eden to work it and take care of it

Psalms 24:1

The earth is the LORD's, and everything in it, the world, and all who live in it;

Matthew 5:35

...or by the earth, for it is his footstool; or by Jerusalem, for it is the city of the Great King.

As can be seen from above, the environmental protection that some trial lawyers are involved in has roots in the Bible. The Bible tells us to take care of the earth that God created. The earth belongs to God and it is His footstool. When big polluters damage the environment, they are damaging what God made for man to enjoy. Trial lawyers are involved in a civil justice system that helps protect the environment by holding polluters accountable. This too is a righteous cause and has its roots in the Bible.

CONCLUSION

As can be seen from above, our modern day civil justice is based upon the Bible. The Bible emphasizes justice, the rights of the poor, and environmental protection. Trial lawyers are involved in all of these. Trial lawyers are an integral part of a civil justice system which has its roots in the Bible.