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COMMITMENT, CRAFT, AND THE GOLDEN CALF: LESSONS IN THE BOOK OF EXODUS FOR LEGAL EDUCATION

PETER MARGULIES*

INTRODUCTION

A good lawyer is part mechanic and part prophet. The mechanic metaphor suggests the virtues of process: analysis, execution, persuasion, and negotiation, while the prophet's commitment goes to substance: the motivations and aspirations that drive the practice of a craft. While some lawyers' commitments may center upon wealth maximization, history has suggested that lawyers are deeply committed to social justice, the integrity of the legal system, and fairness to individuals.

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2 See Kronman, supra note 1, at 11–13 (stating that, historically, the idealized figure was the lawyer-statesman); Margulies, supra note 1, at 2363–64 (discussing some of the concerns that legal services have when serving the interests of clients); see also David L. Gregory, The Religious, the Ethical, the Communal, and the Future, 41 Cath. U. L. Rev. 651, 661–63 (1992) (book review) (discussing the importance of values and commitments in legal practice). Without a connection to shared commitments, the grave sanctions that the law imposes lose legitimacy, becoming a form of bureaucratic violence. See Milner S. Ball, The Word and the Law 161 (1993) ("Where, however, the law itself is the problem, enforcing the law only aggravates the wrong."); Robert M. Cover, The Supreme Court 1982 Term—
The interaction of craft and commitment is a two-way process. When commitments conflict, the application of craft is crucial for reconciling disparate goals. Commitment, uninformed by craft, can become an incandescent and insidious idol.

Talk of idols can illustrate the importance of this dialogue between craft and commitment in religiously affiliated or "faith-linked" law schools. Other schools may feel free to offer lip service to the centrality of this interaction, but faith-linked law schools have no such luxury. If faith-linked law schools have a special mission, it is to model how craft informs commitment in the creation of viable and just human institutions.

To articulate the contours of this mission, this article offers an interpretation of the path-breaking "law book" of the three Abrahamic religions—the Book of Exodus. At the crucial juncture of Exodus, God gives the Ten Commandments to Moses only to discover the impatient Israelites worshipping the golden calf. To resolve this dilemma, Moses must use craft to reconcile his commitment to divine justice with his devotion to his people. His solution reveals the importance of both craft and commitment for the flourishing of law. Analysis of this...
interaction in *Exodus* can offer guidance to faith-linked law schools at the start of the new millennium.

The first part of this article will discuss craft and commitment as portrayed in *Exodus*, while the second part will examine the role of faith-linked law schools in furthering this interaction between craft and commitment. Inspired by the theme of emigration and deliverance in *Exodus*, the second part will look at modern-day journeys in two faith-linked contexts.

The first faith-linked context to be focused upon is the asylum jurisprudence of Judge John Thomas Noonan of the Ninth Circuit Court of Appeals, who has written widely about the impact of Catholic teaching on the practice of law and legal principle. Upon examination, it will be demonstrated that Judge Noonan’s asylum jurisprudence constitutes a form of reflective craft that reconciles commitments to human dignity and legal integrity. More importantly, it will show how his craft offers a compelling example of the way faith-linked law schools should treat doctrinal teaching.

Second, this article will recount the story of a refugee detained by the Immigration and Naturalization Service (INS) at the Krome Detention Center in Miami, Florida. More specifically, it will illustrate how this refugee pushed an INS attorney, as well as a law professor and his students, to rethink the relationship between craft and commitment. Ultimately, this Article will conclude that clinics and other kinds of community service can also teach the reflective commitment that keeps faith with the message of *Exodus*.

I. *EXODUS AND THE RELATIONSHIP OF CRAFT AND COMMITMENT*

The story of the Jews’ flight from Egypt and their entrustment by God with the Ten Commandments should serve as a starting point for this analysis. This account given in *Exodus* centers upon the seeking of refuge from oppression and
the creation of law in that refuge. A better starting point on the mission of faith-linked law schools would be difficult to find.

*Exodus* offers legal educators some powerful lessons about commitment and craft. It reveals two broad strands of commitment. The first, and better known, is the commitment to the normative integrity of the law. Normative integrity refers to fairness, equality, and the absence of the corruption that decimates these virtues. The second commitment is the commitment to humanity, with all of humanity’s weaknesses and imperfections. This commitment counsels kindness, consideration of special circumstances, and the rejection of rigidity and cruelty in the application of legal rules. Legal education should foster the understanding that commitments to normative integrity and humanity are interdependent in a just legal system.

Students should also learn, as *Exodus* illustrates, that commitments only survive with the help of craft. Commentators who relegate craft to an inferior status often seem more

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7 The resonance of *Exodus* has extended throughout the ages. The Old and New Testaments, as well as many of the world’s legal systems, spring from the teachings of *Exodus*. The central struggle of American law and politics, which is the continuing battle of African-Americans for justice and equality, takes *Exodus*’ narrative of liberation as a central text. See Paul Gilroy, *The Black Atlantic: Modernity and Double Consciousness* 207–08 (1993) (discussing the influence of *Exodus* and other Old Testament narratives on civil rights leaders such as Martin Luther King, Jr.); David Luban, *Legal Modernism* 253–55 (1994) (same); see also Michael Walzer, *Exodus and Revolution* 61–66 (1985) (discussing the influence of *Exodus* on subsequent theories of political action).

8 See Noonan, *supra* note 5, at 8–9 (discussing the evils of corruption, including bribery).

9 The commitments to normative integrity and to humanity should be viewed as a counterpart of the distinction between law and equity. See, e.g., Ultramares Corp. v. Touche, 174 N.E. 441, 447–48 (N.Y. 1931) (analyzing the difference between the equitable standard contract rescission, where the concern is to avoid harshness to an injured party, and the higher legal standard for maintenance of an action for misrepresentation, where the objective is to set clear standards of conduct).

10 Of course, these commitments can conflict. A microscopic inquiry into individual circumstances will invariably uncover some factors that excuse compliance with the law, leaving few rules standing. Conversely, the law can create harshness by treating unlike cases in a mechanical fashion. Finding the right balance of these commitments in individual cases is an art, not a science. Cf. Joseph W. Bellacosa, *A Millennial Renewal of the “Spirit of the Bar,“* 100 DICK. L. REV. 505, 507–08 (1996) (noting the dialectic between lawyers’ human and professional selves); Steven L. Winter, *Legal Storytelling: The Cognitive Dimension of the Agon Between Legal Power and Narrative Meaning*, 87 Mich. L. Rev. 2225, 2261–76 (1989) (following Karl Llewellyn in arguing that the lawyer’s “situation sense,” not logical deduction from legal rules, is the best guide to just decisions).
interested in the spontaneity of action than in the preservation of commitments over time.\textsuperscript{11} This can be detrimental since craft molds commitments into viable human institutions. Without craft, commitments either lose their energy or, as in many revolutions, consume the people who espouse them.\textsuperscript{12} As Exodus demonstrates, however, craft can also become an end in itself, obscuring commitments instead of fulfilling them. Students should learn both craft's virtues and its vices.

To further this learning, two broad strands of craft can be identified in Exodus. The first strand is executory craft, which involves the serving of one commitment as effectively as possible. With this goal in mind, executory craft also includes choosing the right time, the right forum, and the right metaphor\textsuperscript{13} to make an

\textsuperscript{11} Cf. Ball, supra note 2, at 79–80 (drawing a distinction between religion and revelation, and describing religion as a “self-limiting fixation”). Ball is in good company in making this distinction between commitment and craft. Robert Burt develops a similar point in distinguishing sharply between Justice Brandeis, the prophet, and Justice Frankfurter, the high priest of law. See Burt, supra note 4, at 125–29. The late Robert Cover also made a similar distinction when he posited a distinction between “myth” and “history.” He viewed myth as “the part of reality we create and choose to remember in order to reenact. It is intensely personal and committed. History is a countermove bringing us back to reality, requiring that we test the aspiration objectively and prudentially.” Robert Cover, The Folktales of Justice: Tales of Jurisdiction, in Narrative, Violence, and the Law: The Essays of Robert Cover 173, 187 (Martha Minow et al. eds., 1992) (emphasis added). This dichotomy, wherever one finds it, seems overly stark. Ball's separation between revelation and religion neglects the fact that human beings often encounter revelation in books like Exodus, written by a number of authors over time in a conscious attempt to anchor faith in daily practice. Professor Burt's counterposing of the Justices does not allow sufficient room for Brandeis's consummate legal craft, or for Frankfurter's commitment to causes like the defense of the vilified anarchists Sacco and Vanzetti. Similarly, Cover's distinction between myth and history obscures the overlap between the two. Without a sense of history or craft, myth cannot be created, remembered, or reenacted. Furthermore, what is called “reality” or history would be very different without the power of myth and commitments.

\textsuperscript{12} See Albert O. Hirschman, Shifting Involvements: Private Interest and Public Action 100 (1982) (discussing how commitments in politics “often develop a momentum of their own and take off in directions unanticipated by the original sponsors and often unwelcome to them. This is the story of most revolutions . . .”); Peter Margulies, Democratic Transitions and the Future of Asylum Law, 71 U. Colo. L. Rev. 3, 26 & n.74 (2000) (noting instances when action against oppression consumed its own most prominent actors, or led to an even greater source of oppression).

\textsuperscript{13} See Lon L. Fuller, Legal Fictions 24 (1967) (“Metaphor is the traditional device of persuasion. Eliminate metaphor from the law and you have reduced its power to convince and convert.”); Winter, supra note 10, at 2256–57 (discussing the connection between metaphor and Karl Llewellyn's conception of legal craft as “situation sense”).
argument. Therefore, executory craft is necessary to the flourishing of institutions, but not sufficient in situations where commitments conflict.

The second strand of craft is reflective craft, which focuses upon the difficult process of reconciling commitments, and sometimes acknowledging that commitments cannot be reconciled. To see how craft and commitment interact in *Exodus*, one should be made familiar with its story.

*Exodus* begins with an account of the enslavement of the Jews in Egypt by the cruel Pharaoh and the birth of Moses. Through the wit and courage of his mother and the kindness of the Pharaoh's daughter, who adopted infant Moses as her own son, Moses narrowly escaped Pharaoh's decree to kill the first-born male of every Jewish family. Reared as an Egyptian prince, Moses came to know of his Jewish heritage and hate the slavery that his people endured. This became especially apparent when Moses decided to flee Egypt after killing an Egyptian who had beaten a Jewish slave.

Years later, God appeared to Moses in the form of a burning bush and commanded him to seek the deliverance of his people in Egypt. Although Moses, aided by his brother Aaron, made a compelling case for his people's freedom, Pharaoh's heart had been hardened by God. God then sent the plagues, including one which struck down the Egyptians' first-borns, but allowed

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14 Part of this process is focusing on examples, including what lawyers call "hard cases." See Paul R. Tremblay, The New Casuistry, 12 GEO. J. LEGAL ETHICS 489, 492 (1999) ("Casuistry starts with paradigm cases, examples upon which most observers will readily agree, and reasons analogically from those agreed-upon cases to more complex cases representing ethical conflict."). For an incisive analysis of a particularly wrenching clash of commitments, see David B. Wilkins, Race, Ethics, and the First Amendment: Should a Black Lawyer Represent the Ku Klux Klan?, 63 GEO. WASH. L. REV. 1030, 1043 (1995), which argues that African-American lawyers have a special duty to refrain from undertaking certain kinds of representation. A crucial aspect of the crafts of advocacy and adjudication is resolving these hard cases in a manner which preserves the continuity of the legal system while allowing for change. See BRIAN Z. TAMANAHA, REALISTIC SOCIO-LEGAL THEORY: PRAGMATISM AND A SOCIAL THEORY OF LAW 167-75 (1997) (discussing the process of legal change).

15 See *Exodus* 1:8-11, 2:1-2.

16 See id. at 1:22, 2:5-10.

17 See id. at 2:11 (recounting how Moses witnessed one of his friends being struck by an Egyptian).

18 See id. at 2:12, 15.

19 See id. at 3:1-22.

20 See id. at 7:1, 6-13.
the angel of death to pass over the houses of Jews. Pharaoh let the Jews escape but pursued them to the Red Sea. The Red Sea then parted, allowing the Jews to escape and leaving the Egyptians who followed to perish. Following this incident, the Jews wandered in the wilderness for forty years, sustained by their still-fragile faith in God and by the manna that God bestowed on them for nourishment.

When God convened with Moses to convey the Ten Commandments, which are the foundation of the three Abrahamic religions, the people grew restive. Aaron, seeking to placate them, ordered them to fashion a golden calf to worship. Seeing this as a violation of the Ten Commandments, God sought to exterminate the Jews, but Moses then persuaded God to relent. As punishment, however, God ordered the death of many of those who fomented the rebellion, sparing only Aaron as the Jews continued their journey into the Promised Land.

Books of the Old Testament after Exodus described how the Jews finally entered the Promised Land of Canaan. Moses glimpsed the Promised Land from a mountaintop, but died a lonely death before he could enter.

Craft and commitment interact at every juncture of the Exodus narrative. They are evident at the very start of Exodus with the recounting of Moses' birth when his mother saved him by sending him down the river in a makeshift ark. This showed

25 See id. at 19:3, 20:1, 32:1.
26 See id. at 32:2–6.
27 See id. at 32:7–10.
28 See id. at 32:11–14.
29 See id. at 32:25–35.
30 See id. at 33:1–6.
31 For details of this account, see generally Leviticus, Numbers, Deuteronomy, and Joshua.
32 See Deuteronomy 34:1–12.
33 Hannah Arendt, the Jewish political philosopher who has powerfully explored the links between birth, hope, and human action, cites to the New Testament's news that a child is born as its central text. See HANNAH ARENDT, THE HUMAN CONDITION 247 (1958) ("It is this faith in and hope for the world that found perhaps its most glorious and most succinct expression in the few words with which the Gospels announced their 'glad tidings: 'A child has been born unto us.'"). While Moses is a prophet and lawgiver, not the son of God, the parallels between the Old
her commitment to God since she entrusted her infant son to
His ministrations, freeing him to float on the water from which
life emerges. Here, however, as throughout Exodus, craft
temps commitment. This is evident when Moses' sister Miriam
followed the progress of the ark by concealing herself in the
bushes by the riverbank, while Moses' mother sent her
makeshift boat toward the spot where she knew Pharaoh's
daughter went regularly to bathe. By saving and adopting
Moses, Pharaoh's daughter showed her commitment to
humanity.

When Moses grew into manhood as a prince of Egypt, he
inherited a sense of commitment from both his adopted and
biological mother. As a prince, Moses could have easily turned
his back on his people when he learned of his ties to the enslaved
Israelites. Instead, he "visited his kinsmen and witnessed their
forced labor." Angered by the cruelty and injustice of the Jews'
enslavement, Moses killed an Egyptian who had beaten a Jew.
At this juncture, craft makes its first appearance as a hedge
against the consequences of commitment when Moses killed the
Egyptian only after he had looked around to see if anyone was
watching. Here, craft is ineffectual as Moses' deed became
known. Moses then fled Egypt, after Pharaoh sought to kill
him.

The relationship between Moses' lack of craft and his
and New Testament in the treatment of birth and its possibilities for law are
Testament's depiction of Moses as "the precursor of Christ").

The God of the Old Testament is sometimes called Jehovah or Yahweh.
When commentators use these names, the author includes them.

See MARTIN NOTH, EXODUS: A COMMENTARY 25–26 (1962) ("[Moses' mother
decided to] expose the... child to an uncertain fate... This 'uncertain fate'—as the
story with all its later developments intends us to understand—in fact means
Yahweh, but this is said neither explicitly nor obviously."). The water imagery here
is a recurrent feature in stories from antiquity about great kings and leaders. See
id. at 26–27 (noting similar themes in accounts from ancient Mesopotamia and the
historian Herodotus).

Exodus tells us that Moses receives his name because it means "drawn out of
the water," here through God's providence. See Exodus 2:10 ("When the child grew,
she brought him to Pharaoh's daughter, who adopted him as her son and called him
Moses; for she said, 'I drew him out of the water.'").

Id. at 2:11.  
39 See id. at 2:11–12. 
40 See id. at 2:12. 
41 See id. at 2:14–15.
commitment to remedying injustice returns to the fore when God appeared to Moses in the form of a burning bush. In this situation, Moses told God that he lacked the craft to be an effective advocate for the Jews.42 While God clearly was annoyed by Moses' proclivity for airing his reservations before doing God's will,43 Moses' lack of craft here demonstrated his commitment. Moses understood that the power of his message comes not from his own strength, but from his commitment to sacred law.44 At the same time, his reservations revealed a commitment to humanity that could trump divine commands. These reservations showed that true commitment flows from human insight and judgment, not from a default position assumed by a passive vehicle of God's will.45

Commitment involves the whole person, including the character traits, idiosyncrasies, and disabilities that make people human. God's relationship with Moses is closer, but also more volatile, than His relationship with any other character in the Old Testament.46 God also loves the Jews despite what He

42 See id. at 4:1–9. Moses responds by saying, "If you please, Lord, I have never been eloquent, neither in the past, nor recently, nor now that you have spoken to your servant; but I am slow of speech and tongue." Id. at 4:10. Some experts have interpreted this passage as indicating that Moses had a disability that affected his speech, such as a lisp or stammer. See KIRSCH, supra note 33, at 7. But see 1 SHEMOTH, COMMENTARY 50–51 (A. J. Rosenberg trans., 1995) (“Is it possible that a prophet whom the Lord met face to face and who received the Torah from His hand stammered? . . . Since [Moses] was to speak in public as God's representative, his speech should be perfect.”). As other commentators note, however, the fact that Moses is not too quick to speak is in many ways a strength. See, e.g., 2 THE PENTATEUCH: EXODUS 44 (Samson Raphael Hirsch ed., 1989) (discussing the meaning of Moses' disability).

43 Indeed, because of an unrelated dispute involving the failure to circumcise a child, God sought to ambush and kill Moses shortly thereafter. This attempt would have seriously changed the Exodus narrative if it had been successful. See Exodus 4:24–26.

44 See 2 THE PENTATEUCH: EXODUS, supra note 42, at 44 (observing that Moses' "utter lack of confidence in himself and his ability, is in itself the most vivid proof of the divine origin of all that which was done and spoken by Moses, the most vivid proof that the Torah was indeed given through Moses, but not by, or out of Moses").

45 See KIRSCH, supra note 33, at 44 (“Moses not only keeps complete consciousness, but also keeps and expresses the fullest independence of his own will and his own ideas . . . This proves [that] . . . the Godly never comes over into the sphere of the Human to such a degree that the human element in man is completely 'possessed' and becomes the passive instrument of the Godly without retaining a will of its own.”).

46 God's relationship with Moses sometimes seems like a prequel to Neil Simon's The Sunshine Boys, in which two characters share respect, affection, and an
calls their "stiff-necked" ways. After all, if God had wanted a perfect specimen to do his bidding, He could have sent an angel. A commitment to humanity, however, means a commitment to abiding imperfection, as well as the possibility of grace.

Faced with Moses' reservations about his speaking ability, God is willing to complement his commitment with craft of God's own devise. The Lord counters Moses' objections by arguing that Moses can rise to the task with His help: "Who gives one man speech and makes another deaf and dumb? Or who gives sight to one and makes another blind? Is it not I, the Lord? ... It is I who will assist you in speaking and will teach you what you are to say." When Moses continues to hesitate, God loses patience and asks, "Have you not your brother, Aaron the Levite? I know that he is an eloquent speaker." God commands Moses to speak to Aaron and decrees to Moses that Aaron will "speak to the people for you: he shall be your spokesman."

Aaron's role as Moses' "mouth" embodied the complex interaction of craft and commitment in Exodus. At least one commentator has argued that God's impatience with Moses stems from God's apprehension that His message will be diluted as it passes from the prophet Moses to the advocate Aaron.

With God communicating with [the Jews] directly, they would have heeded the divine words. But now, by Aaron receiving the communication through Moses, and the people then receiving it from him, it would be a communication of a different grade that it would otherwise have been. The level of communication would not be as lofty as it would have been by having [the Jews] hear it through Moshe directly.
Another commentator has noted how the craft of rhetoric can become routine, mired in a re-upholstery of the "opinion, the ideas, views, desires and efforts which . . . [people] already have." Rhetoric can bolster the status quo and silence appeals to a heightened sense of justice. In this manner, the craft of an advocate always entails agendas that can conflict with commitment.

These concerns about the conflict between craft and commitment ripen later in the Exodus narrative. The Jews, after their liberation from slavery, were weary from wandering in the wilderness. They became angry about the delays in reaching the Promised Land and Moses' disappearance to commune with God. Aaron sought to mollify them by bidding them to assemble from their jewelry a golden calf, which they proceeded to worship. In this episode, Martin Buber noted that Aaron displayed lawyer-like virtues. In the conflict between Moses' representatives and the impatient people, Buber described Aaron "as [a] go-between." On this account, Aaron urged the construction of the golden calf as a form of "mediation" between Moses and the Jews. Such mediation, unfortunately, broke one of the Ten Commandments: the prohibition against idolatry. Aaron, acting as the "mouth" of Moses, undermined commitment here, leaving craft to spin off on its own idolatrous path. Yet, this dim view of craft would be, at best, only a partial picture of craft in Exodus. As in the case of Moses' mother putting him in the ark, craft and commitment can serve

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63 See KIRSCH, supra note 33, at 46 n.15.
65 See Exodus 16:1–3.
66 See id. at 32:1.
67 See id. at 32:2–6.
68 See MARTIN BUBER, MOSES: THE REVELATION AND THE COVENANT 152 (1946) (discussing how Aaron provided advice when this dilemma presented itself).
69 Id. at 152.
71 See BUBER, supra note 58, at 119 (noting that this prohibition was "the starting point" in the tablets given to Moses); see also Exodus 20:2–4 ("You shall not carve idols for yourselves in the shape of anything in the sky above or on the earth below or in the waters beneath the earth . . . .").
72 BUBER, supra note 58, at 59.
73 See id. at 151–52.
each other. The collaboration of Moses and Aaron in winning the freedom of the Jews with God's help was the core example of this relationship between craft and commitment. It seems after all that the authors of Exodus took pains to insert Aaron to celebrate the importance of craft in building institutions.

For much of Exodus, indeed, Moses served not just as a prophetic figure, but also as an exemplar of the incompleteness of commitment without craft. For Martin Buber, Moses' speech impediment signaled the eternal gap either between God and humanity, or between people and perfect justice. As Buber noted, "Moses possesses no mastery over freely coursing speech. He has been created thus and has been chosen thus." In this way, "a barrier is raised between him and the human world." Thus, commitment without craft is ultimately an unworldly exercise. It creates not ties between persons through thriving institutions, but instead alienation and subsequent loneliness. Indeed, the search for perfect justice can destroy the world, as the history of bloody political commitments in this century amply reveals.

The apex of the interaction between commitment and craft in Exodus came when God prepared to destroy the Jews upon seeing their lack of commitment to His commandments as illustrated by their worship of the golden calf. Here, Moses took what was best in his brother Aaron's skills to balance a commitment to law with a commitment to humanity. Moses could have easily insisted on the logic of a commitment to divine law at this juncture, which would have required the destruction of the Jews for violating the Ten Commandments. This was God's initial argument in the aftermath of the golden calf episode, as God recalled His vow that all those who worship idols

64 Scholars tend to think that Aaron was a later addition to Exodus, perhaps serving as the embodiment of the institution-building that the Levite priests practiced in Israel. See NOTH, supra note 35, at 46 (asserting that this appearance of Aaron is a "secondary addition, made . . . during the transmission of the [biblical] tradition").

65 See BUBER, supra note 58, at 59.
66 Id.
67 Id.
68 See id. ("He who has to establish the covenant between the people and [God] is, so to speak, not accepted fully into the covenant of his tribe. Teacher, prophet, law-giver; yet in the sphere of the word he remains insurmountably lonely. . . .")
69 See Exodus 32:3–11.
would be destroyed.\textsuperscript{70} A merely executory sense of craft would have turned murderous here, selecting the most effective way to exterminate the Jews. Moses' craft caused the situation to take a different turn.

Instead of agreeing to the logic of law, Moses counseled against the wholesale destruction of his people.\textsuperscript{71} Moses first invoked God's purpose in delivering the Jews from bondage, and how the destruction of the Jews would frustrate that purpose:

Why, O Lord, should your wrath blaze up against your own people, whom you brought out of the land of Egypt with such great power and with so strong a hand? Why should the Egyptians say, "With evil intent he brought them out, that he might kill them in the mountains and exterminate them from the face of the earth?"\textsuperscript{72}

Moses next argued, according to the commentaries, that all vows, including divine ones, are made to be broken when fulfillment of the vows would engender harsh and unjust results. On this account, a rigid obeisance to harsh rules is itself a kind of slavery, one that degrades divine law into the decrees of a despotic Pharaoh.\textsuperscript{73} Yet Moses, displaying his craft, also invoked a commitment to law. He argued in the following passage that if God makes rules, He must bind Himself as well as His human subjects to their observance. Moses offers to absolve God of His vow to destroy idol-worshipers, arguing:

O Lord of the world! Hast not Thou given us the law of absolution from a vow, whereby power is given to a learned man to absolve any one from his vows? . . . [E]very judge who desires to have his decisions accounted valid, must subject himself to the law, and Thou who hast prescribed the law of absolution from vows through a learned man, must subject Thyself to this law, and through me be absolved from Thy vow.\textsuperscript{74}

Faced with Moses' arguments, "the [L]ord relented in the punishment he had threatened to inflict on his people."\textsuperscript{75} The

\textsuperscript{70} See id. at 32:7–11.
\textsuperscript{71} See id. at 32:11–14.
\textsuperscript{72} Id. at 32:11–12.
\textsuperscript{73} See Noonan, supra note 5, at 8, 14.
\textsuperscript{74} Ginzberg, supra note 46, at 403.
\textsuperscript{75} Exodus 32:14. Cf. Kirsch, supra note 33, at 266 (noting that Moses, "who had complained to Yahweh that he was slow of speech now proved himself to be a clever and highly effective advocate").
Jews were punished, but they were not destroyed.

*Exodus* offers students and teachers a virtual seminar in the interaction of craft and commitment. With commitment, normative integrity emerges in God’s giving of the Ten Commandments to Moses. As illustrated by Moses’ bloody punishment of the idolatrous Israelites, such commitment is never easy.⁷⁶ Commitment to humanity, however, is also manifested when Moses invoked this commitment to soften God’s anger at the Jews after the golden calf episode.⁷⁷

In *Exodus*, craft both undermines and aids commitment. Executory craft is typified in the golden calf episode, where tangibles supplant faith in the unseen. As the golden calf episode demonstrated, craft can become an idol. To counter this tendency, students need to also learn the reflective craft evidenced in *Exodus*, as demonstrated by Moses arguing with God to spare the Jews after their idolatry. Confronted by two commitments—to divine law and to humanity—Moses decided to use craft reflectively as he honored both commitments, doing violence to neither.⁷⁸

All in all, the prophet’s practice offers a lesson for contemporary legal education, particularly education in schools affiliated with world religions that take *Exodus* as part of their sacred canon. Honoring law and humanity through craft is the best justification for the special place that lawyers occupy in American culture. Imparting this kind of reflective craft to students is the crucial challenge for today’s faith-linked law schools.

II. KEEPING FAITH WITH *EXODUS* IN CONTEMPORARY LEGAL EDUCATION

Faith-linked law schools and scholars who identify themselves in similar terms have a spectrum of options for meeting the challenges of *Exodus*. In this section, two such options will be elucidated, each linked with the themes of

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⁷⁶ See Walzer, supra note 7, at 55–66 (discussing Moses’ harsh treatment of the idolaters).
⁷⁷ See Exodus 32:11–14.
migration, refuge, and justice that *Exodus* developed. The first approach, exemplified in the asylum law opinions of Judge John Thomas Noonan, involves reconciling legal doctrine with a commitment to humanity. The second approach, illustrated by the case of a Somali refugee represented by the St. Thomas University School of Law Immigration Clinic, entails the use of clinical programs to teach students how commitment and craft play out in the practice of law.

A. *Humanity, Doctrine, and Craft in Judge Noonan’s Asylum Jurisprudence*

The contributions of Judge John Thomas Noonan of the Ninth Circuit Court of Appeals in the area of refugee rights demonstrate the use of reflective craft to balance commitments to humanity with the rule of law. Support for refugees’ rights is unequivocal in religious teaching, which Judge Noonan has acknowledged as a source of his commitments. Asylum for those seeking refuge from oppression is a core element of Catholic doctrine. Indeed, concern for the dislocation and vulnerability of refugees dates back to the *Book of Exodus* itself, where Moses famously proclaimed that he has been a “stranger in a foreign land.”

Immigration law presents a challenging problem in the reconciliation of commitments to normative integrity and humanity. On the one hand, American immigration law clearly forbids entry or continued presence in this country without the required documents. On the other hand, various forms of affirmative relief, including grants of asylum, operate to take individual circumstances into account and avoid injustice. Asylum law grants refugee status to those persons who can

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79 *See* Noonan, *supra* note 5, at 12 (suggesting that religious instructions will lay the foundation of kindness, which is so desperately needed in today’s justice system).

80 *Exodus* 2:22.

81 *See* 8 U.S.C. § 1181(a) (1994) (providing that “no immigrant shall be admitted into the United States unless at the time of application for admission he (1) has a valid unexpired immigrant visa or was born subsequent to the issuance of such visa of the accompanying parent, and (2) presents a valid unexpired passport or other suitable travel document or document of identity and nationality . . . .”)

82 Judge Noonan argues that such values are central to the mission of a Catholic law school, whose graduates, he envisions, will know the value of simple “kindness” and will not be restricted by “bureaucratic rigidity and regularity and purposeless enforcement of rules.” Noonan, *supra* note 5, at 8.
prove that they have a "well-founded fear" of persecution based on race, religion, national origin, membership in a particular social group, or holding a particular political opinion, if they return to their country of origin.\textsuperscript{83} Yet, even in asylum law, formalistic interpretation can frustrate humanitarian purposes.\textsuperscript{84} Judge Noonan has employed craft to reconcile a commitment to immigration control with a commitment to humanitarian sentiments.

For example, in \textit{Lazo-Majano v. INS},\textsuperscript{85} which was a case involving a woman who was raped, beaten, and tortured over time by a Salvadoran army sergeant,\textsuperscript{86} Judge Noonan wrote the first significant opinion holding that a survivor of gender-based oppression was entitled to asylum.\textsuperscript{87} In \textit{Lazo-Majano}, the appellant had endured appalling cruelty.\textsuperscript{88} For instance, her torturer placed live hand grenades against her forehead, forced

\textsuperscript{83} \textit{See} 8 U.S.C. § 1101(a)(42) (Supp. IV 1998). \textit{See also} DEBORAH E. ANKER, LAW OF ASYLUM IN THE UNITED STATES 290–411 (3d ed. 1999) (providing commentary on the various grounds of refugee status). This does not mean that immigration controls have been applied neutrally, without regard to race, national origin, or other factors that would be suspect in other areas of law. Under the plenary power doctrine, Congress has been free to use such factors, and historically has done so, through now-repealed legislation such as the Chinese Exclusion Act of the last century, which stripped thousands of lawful immigrants of their status. \textit{See generally} Tanya K. Hernandez, \textit{The Construction of Race and Class Buffers in the Structure of Immigration Controls and Laws}, 76 OR. L. REV. 731 (1997) (discussing the influence of race on immigration policy); Kevin R. Johnson, \textit{Race, the Immigration Laws, and Domestic Race Relations: A "Magic Mirror" into the Heart of Darkness}, 73 IND. L.J. 1111 (1998) (discussing same).

\textsuperscript{84} \textit{See} Daniel Kanstroom, \textit{Surrounding the Hole in the Doughnut: Discretion and Deference in U.S. Immigration Law}, 71 TUL. L. REV. 703, 731–45 (1997) (criticizing deference to administrative agencies that attach little importance to fairness or humanitarian objectives); Peter Margulies, \textit{Democratic Transitions and the Future of Asylum Law}, 71 U. COLO. L. REV. 3, 4–26 (2000) (discussing the threat to asylum stemming from excessive deference to the State Department view that conditions in asylum-seekers' countries of origin have improved, when the State Department view relies on formal criteria like a change in rulers or an uneventful election, rather than actual conditions "on the ground" for refugees).

\textsuperscript{85} 813 F.2d 1432 (9th Cir. 1987), overruled in part on other grounds, \textit{Fisher v. INS}, 79 F.3d 955 (9th Cir. 1996) (en banc).

\textsuperscript{86} \textit{See id.} at 1433.


\textsuperscript{88} \textit{See Lazo-Majano}, 813 F.2d at 1433.
her to eat her own shredded identity card, and pummeled her in
the face until a blood clot formed in her eye. The problem
Judge Noonan confronted is that the Refugee Act did not make
persecution based on gender an express ground for asylum.

The most common ground for asylum, which is persecution
based on political opinion, was not an obvious choice in 
Lazo-Majano. Here, the appellant was just an average person, not a
prominent political advocate. Judge Noonan, however, was
able to liken the applicant's resistance to a political opinion.
More specifically, he espoused the view that no person should be
humiliated in such a manner. To vindicate the humanity that
gender oppression obscures, Judge Noonan was even willing to
consider credible and persuasive evidence not in the record, and
take into account changes in the law that reduced the
impact of stereotypes.

Judge Noonan's commitment to humanity, his disdain for
mechanical rules, and his sense of reflective craft are evident not
only on issues of gender and asylum, but also throughout his

69 See id.
60 See 8 U.S.C. § 1158(b)(1) (Supp. IV 1998) (providing that asylum is granted if
an "alien is a refugee within the meaning of section 1101(a)(42)(A) of this title"). An
alien may be considered a refugee if he or she fears persecution due to "race,
religion, nationality, membership in a particular social group, or political opinion." 8
61 See Marquez v. INS, 105 F.3d 374, 378 (7th Cir. 1997) (noting that political
opinion is the most common statutory ground upon which eligibility for political
asylum is based).
62 See Lazo-Majano, 813 F.2d at 1434–36 (explaining why the person who
sought asylum had a political opinion).
63 See id. at 1435.
64 See id. at 1435–36.
65 Courts have also invoked the desperation of refugees as an analogy outside of
immigration law to support changes in rules that would otherwise be unduly harsh. See
People v. Tomlins, 107 N.E. 496, 497 (N.Y. 1914) (ruling that the duty of retreat
in self-defense doctrine did not require a person attacked in his own home to retreat
from his dwelling before using deadly force). In that case, Judge Cardozo observed
that a person in this plight "is under no duty to take to the fields and the highways,
a fugitive from his own home." Id. Cardozo's insight has special resonance for
women attacked in their homes by intimate partners. See Weiand v. State, 732 So.
2d 1044, 1058 (Fla. 1999) (holding that self-defense doctrine does not require retreat
from home prior to using deadly force if necessary to repel an attack by a co-
habitant).
66 See Lazo-Majano, 813 F.2d at 1435 (considering reports of persons being
tortured upon deportation to El Salvador that were not in the record).
67 See Fisher v. INS, 79 F.3d 955, 967–973 (9th Cir. 1996) (en banc) (Noonan,
J., dissenting) (urging remand of a case involving gender and asylum to allow
application of new INS guidelines on gender).
asylum jurisprudence. For example, in *Kazlauskas v. INS*, a case involving issues of religious freedom, this commitment led Judge Noonan to a broader understanding of what constitutes "persecution" in asylum cases. In the dissenting opinion in *Kazlauskas*, he voiced his belief that the immigration judge ignored the applicant's family's subjection to recurrent house arrest and the applicant's harassment as a child by his school teachers. Furthermore, Judge Noonan contended that animus toward the family's religious beliefs did not rise to the level of persecution under the Refugee Act. While the majority apparently wanted to see physical scars as emblems of persecution, Judge Noonan considered emotional and spiritual harm to be sufficient evidence of persecution.

**B. The Case of the Reluctant Refugee: Learning Craft and Commitment in Law School Clinics**

Religious belief and physical scars also figure in the asylum narrative offered here as an example of the value of clinical education in teaching reflective craft. This story took place not in the desert locale of *Exodus*, but in the tropics. There, the INS operates a detention facility called Krome, which is southwest of Miami in the fringes of the Everglades. Krome is a low-lying encampment where the crisp sounds of INS officers taking target practice greet visitors in the parking lot. Final asylum hearings at Krome have high stakes. Namely, if detainees win, they secure asylum and an opportunity to become lawful permanent residents of the United States. On the other
hand, if they lose, INS quickly puts them on a plane back to their country of origin, allowing them to face potential threats.

A compelling case from Krome was referred to the St. Thomas University School of Law Immigration Clinic. The case involved a Somali refugee who shall be called Delara Mohamed for the purposes of this article. Ms. Mohamed was a young woman who witnessed her father’s killing by soldiers of General Aidid, the Somali leader who had defied the United Nations forces intervening in Somalia in the early 1990s. The soldiers who killed Ms. Mohamed’s father had also tried to rape her, and had bayoneted her when she resisted. While Ms. Mohamed told us that she had scars on one of her breasts, and on her ankle from this attack, she cautioned that, as a strict Moslem sworn to vows of modesty, she could not show her scars to anyone or discuss them in open court.

Ms. Mohamed’s refusal to show or discuss her scars was a tremendous impediment to the students’ and my own sense of executory craft. Although the fundamental commitment was to effectively represent asylum claimants, their ability to effectuate that commitment was severely hampered. Since her scars were important evidence of past persecution, crucial for prevailing on her asylum claim, Ms. Mohamed’s beliefs were preventing effective representation.

In retrospect, the impatience exhibited with Ms. Mohamed’s beliefs was ironic. While St. Thomas University is a diocesan

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104 The author started the Immigration Clinic in 1992 and currently co-teaches it with his colleague, Professor Linda Kelly.

105 I related this story in a recent article on empathy in clinical work. See Peter Margulies, Re-Framing Empathy in Clinical Legal Education, 5 CLINICAL L. REV. 605, 634 (1999) (discussing the necessity of empathy for a client’s religious commitments).

106 See id. at 634.

107 See id.

108 See id.

109 To the extent that Ms. Mohamed’s refusal to show or testify in detail about her scars meant that her harrowing story as presented at her asylum hearing would be incomplete, this situation posed a conflict between client wishes and the imperatives of effective legal storytelling. For an incisive study of this conflict, see John B. Mitchell, Narrative and Client-Centered Representation: What is a True Believer to Do When His Two Favorite Theories Collide?, 6 CLINICAL L. REV. 85, 97–104 (1999), which analyzes the sources of conflict between “narrative and client-centered representation.”

110 Ms. Mohamed may have been willing to permit a doctor to examine her. In the expedited schedule for hearings at Krome, however, getting a doctor in time would have been quite difficult.
institution, those working with Ms. Mohamed reacted as if her position was merely one of personal etiquette—an issue of taste that should bow to the imperatives of case processing. This narrow focus on craft neglected the fact that Ms. Mohamed’s beliefs were a constitutive element of her humanity. “Effective representation” without respect for those beliefs was little more than worship of craft unmoored from crucial commitments—an echo of the Israelites’ assembly of the golden calf.111

Realizing the importance of Ms. Mohamed’s religious commitments did not, however, make her asylum case any easier to win. Without testimony about her scars, she might have found herself and her commitments on the next plane back to Somalia, where the respect accorded to commitments varies with the caliber of the bullets accompanying them. Ultimately, our client came up with a rather unorthodox solution.112 The INS attorney in the asylum case was a woman.113 Our client told us she would allow herself to be examined by the INS attorney in private, and would allow the INS attorney to report about the results of her examination to the court.114

To appreciate the novelty of Ms. Mohamed’s suggestion, it is useful to know more about the particular blend of craft and commitment displayed by the INS trial attorney at Krome.115 The INS trial attorney’s job is, for the most part, to see to it that asylum applicants lose as many hearings as possible, as quickly as possible, so that the federal government pays as little as possible for their maintenance in detention facilities. There is a craft to the role of this type of attorney, even if this craft seems a little emotionally cold.

The INS trial attorney’s craft flows from the adversarial


112 See Margulies, supra note 105, at 634 (discussing Ms. Mohamed’s “unorthodox solution”).

113 See id.

114 See id.

115 I have great respect for INS attorneys, who include a former professor at the St. Thomas immigration Clinic, as well as Clinic alumni. As this paragraph explains, however, I have little evidence that INS attorneys are disposed routinely to support asylum claimants’ positions and corroborate their testimony.
nature of asylum hearings. Once the asylum seeker has testified before an immigration judge, the attorney endeavors to discredit her on cross-examination. The task of impeachment may involve making a great deal out of seemingly minor issues. For example, the asylum application form, known as the I-589, requires each asylum-seeker to list past residences. In completing this section of the I-589, an asylum seeker might fail to list a street address for her former residence in her country of origin. This omission would be particularly likely if the asylum seeker were from a rural area in a third-world country, where street addresses are not ubiquitous. True to the cross-examiner's maxim, "False in one, false in all," the INS trial attorney might highlight this absent address as evidence that the asylum seeker was also offering incomplete information about the rest of her claim.116 For some immigration judges, lack of a street address would render the asylum-seeker incredible.

The INS attorney in this case, who shall be called Betty Johnson for the purposes of this article, was good at her craft. Indeed, other refugee lawyers warned me about her. Given Ms. Johnson's reputation, it seemed perverse to even consider Ms. Mohamed's suggestion that Ms. Johnson's assistance be enlisted. One additional fact, however, cut in a different direction: Ms. Johnson was the person who had referred this case to the Immigration Clinic.117

It turned out that Ms. Mohamed who, like many Somalis, spoke English, had struck up an acquaintance with Ms. Johnson in the cramped quarters reserved for Immigration Court at Krome. The upshot was that Ms. Johnson, instead of viewing Ms. Mohamed as an unwanted intruder, viewed her in the human terms with which Exodus describes the immigrant, as "a stranger in a foreign land."118 Ms. Mohamed believed that when

116 See generally Peter Margulies, Difference and Distrust in Asylum Law: Haitian and Holocaust Refugee Narratives, 6 ST. THOMAS L. REV. 135, 137-44 (1994) (discussing attacks on credibility of Haitian refugees). The stark routine involved in impeaching asylum claimants parallels routines in other areas of law. See, e.g., JOSEPH, supra note 2, at 105, in which one lawyer noted:
[Corporate clients] want a document, a piece of paper, that's it. It's not a whole lot different from a form will. You go into the computer, pull out a prior deal, move provisions around, fill in the names of the parties, change some words here and there. Suggest a few more hours of work to put in, quote, the nuances, and you're told no, sorry. They'll go somewhere else.
117 See Margulies, supra note 105, at 634.
118 Exodus 2:22. The acquaintance between Ms. Mohamed and Ms. Johnson
push came to shove, Ms. Johnson would help. Yet, Ms. Johnson could well have viewed her acquaintance with Ms. Mohamed in a much less expansive light, as requiring only the referral that she had already made. Therefore, the question remained whether Ms. Johnson, given her long-standing commitment to efficient immigration enforcement, could find room for another commitment in her conception of craft.

Nonetheless, the risk was taken.\(^{119}\) Ms. Johnson examined Ms. Mohamed. At the asylum hearing, she reported her findings in detail to the immigration judge. In essence, her findings corroborated Ms. Mohamed’s account.\(^{120}\) After the immigration judge announced that asylum was won, an impromptu party ensued in the courtroom.\(^{121}\) Ms. Mohamed embraced Ms. Johnson, and the judge beamed.\(^{122}\) At least for those moments, the sounds of celebration drowned out the sounds of target practice taking place nearby.

Ms. Mohamed’s story has little in common with *Exodus*. Ms. Mohamed’s Promised Land was not Palestine, but Seattle, where a cousin and a large Somali community awaited her. This author and his students, all males, were poor stand-ins for Moses’ mother and devoted sister. Ms. Johnson, an experienced professional, was not in the habit of seeing herself as an Egyptian princess. Yet, Ms. Mohamed’s obstinate faith in her own humanity, and in the humanity of those around her, seemed in a modest fashion to partake of the spirit of prophecy. Pushed by Ms. Mohamed’s commitment, everyone reflected on and revised their conceptions of craft. While the ordinary course of business beckons daily, we will never be quite the same again.

leavened the impersonal view of the “other” that often triumphs in large bureaucratic organizations. Cf. Amy R. Mashburn, *Pragmatism and Paradox: Reinhold Niebuhr’s Critical Social Ethic and the Regulation of Lawyers*, 6 GEO. J. LEGAL ETHICS 737, 757 (1993) (arguing that in large communities, ethical concerns wane because “individuals no longer relate to one another in a personal—or ‘organic’—manner”).

\(^{119}\) In taking this approach, my students and I acted consistently with commentary urging a greater client role in developing legal strategy. See generally Alfieri, supra note 54; Mark Spiegel, *Lawyering and Client Decisionmaking: Informed Consent and the Legal Profession*, 128 U. PA. L. REV. 41 (1979).

\(^{120}\) Ms. Johnson did not turn her back completely on her commitment to efficient immigration enforcement. She noted some inconsistencies regarding dates in our client’s story. She framed her presentation, however, in a way that signaled she did not regard these inconsistencies as dispositive.

\(^{121}\) See Margulies, *supra* note 105, at 634.

\(^{122}\) See *id*.
The reflective commitment discussed here never comes easily. As *Exodus* reveals, human beings yearn for routine. This is true even when, as in the case of the Israelites worshiping the golden calf, they should know that something very much out of the routine, something that creates new commitments, is near. The risks born of commitment, from Moses’ mother’s launching of the makeshift ark carrying her son on the river to Ms. Mohamed’s trusting Ms. Johnson, respond to special challenges. The golden calf’s construction, with its reversion to the routine of making things instead of keeping faith, is all too typical of the way in which society and persons schooled in the law fall back on routine as a hedge against risk.

Yet, as *Exodus* reveals, craft need not have such a mechanical nature. Craft can be reflective, not routine, helping to make sense of the commitments in tension with each other, such as commitments to law’s integrity and to concern for persons. Moses models this reflective craft when he persuaded God to spare the Jews after the golden calf episode in order to show concern for human weakness and vindicate the liberating purpose of God’s intervention on behalf of the Jews enslaved in Egypt. In the more modern context of migration and law, Judge Noonan models a similar reflective commitment in expanding narrow definitions that disadvantage refugees. Ms. Mohamed pushed Betty Johnson, myself, and my students to live up to Judge Noonan’s example, as we tried to preserve our client’s faith and life, as well as uphold the integrity and underlying purposes of immigration law.

Faith-linked law schools can honor the lessons of *Exodus* by questioning legal doctrine in the name of concern for persons and public purposes, and by adding a community service dimension to their curricula through clinics and other programs that offer students an opportunity to develop reflective commitments. Moses and Aaron are no longer with us, in a physical sense. Their physical reality, however, matters far less than our memory of their example. That memory can inspire a renewed dedication to teaching commitment and craft for the community of faith-linked law schools. The urgency of that task is the crucial lesson of *Exodus*. 