Ethics and Other Writings
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Collected Works of David Daube

Volume 4

Edited by
Calum Carmichael
The Contrariness of Speech and Polytheism

Fundamental rules in ancient codes of law are frequently absent because they are so taken for granted as not to need spelling out. Everyday language illustrates the same phenomenon. Like law in ancient codes, language is a mirror that distorts reality, the large becoming small and the small large. The coinage of words depends on the remarkable catching our attention—with the consequence that the unremarkable remains unspoken.

Jewish and Roman Philosophies of Law

Discusses criteria for distinguishing between a religious system of law and a secular one. Contrasts the social thrust, argumentation, presentation, and religious dimension of private Jewish law of the Hellenistic and Talmudic periods with Roman Law of the pre-classical, classical and Justinian periods (between 250 B.C.E. and 550 C.E.).

Standing in for Jack Coons

Illustrates from Roman Law (in the time of the Principate) how and why abstract terms (consensus, unlawfulness, loss) first came into use: the abstract or general remains unremarked upon because attention has been taken up with concrete matters. Expands his inquiry to consider how concepts of “time” and “space” first arose. Explains why when money was introduced gift-trade became regulated and subject to official adjudication. Outlines the process by which he discovered the origin and meaning of the Humpty Dumpty nursery rhyme.

Black Hole

Probes why suicide is alien to those who, in Greek and Hebrew antiquity, express much more radically than simply a wish to die, which often leads to suicide, the wish never to have been born. The wish never to have lived presupposes a looking back on one’s overall past and involves more sophisticated reflection than does the wish to die.
The Term Suicide

Argues that the key figure in the creation of the word “suicide” is John Donne who in the seventeenth century claimed that in certain instances it might not be wrongful to kill oneself. The traditional words for the act were inadequate and Donne coined “self-homicide.” Walter Charleton, in his translation of Petronius’s The Ephesian Matron, introduced the word suicide by way of mocking Donne’s position.

The Linguistics of Suicide

Attitudes to suicide as reflected in the language used to speak of it; from neutral expressions in the ancient world, to harsh ones in the middle ages, to softer ones with the advent of humanism. Ancient Greek pervades modern ways of talking about suicide. Uncovers the bizarre origin of the word.

On the So-Called Dispute Over Suicide

Addresses problems in an Egyptian text of the third millennium B.C. about two parables, one of which laments lost children and the other reflects (possibly) on a man considering suicide.

On an Incomplete Review

Corrects the mistaken account in the Proceedings of the British Academy 74 (1988) concerning the flight from Vienna of the medieval historian Walter Ullmann in 1938. Dissuading the latter from suicide, Daube recounts his role in bringing Ullmann to Cambridge and also some forty to fifty persons to England during the Second War World.

The Moment and the Flow of Time

Looks at the differences in the attitude to time or the effect of it. Explores the contrast between acting on the spur of the moment versus acting or reacting while conscious of previous occurrences. Reflects on how Greeks and Hebrews rate transient events (a suicide) over against how they assess the previous flow of time (a wish never to have been born). Examines words such as “time,” “a patient,” different art forms, and trends in science.

Section 2: Studies in Biblical and Talmudic Sources

God’s Moral Demands in the Old Testament

Argues that it took people a considerable time to realize that moral demands come from God, considers the rational character of the moral demands laid down in the Old Testament, and stresses that the latter sees the ultimate source and basis of all moral demands in the Divine Will.

Law in the Old Testament

Cites the reasons why it has had such lasting impact: its high moral content, its range combined with a bewildering disorder in how its rules are presented, and its special appeal to the individual conscience.

Law in the New Testament

Argues that the move away from literalism beginning with Jesus (and Rabbinic contempo-
raries) in interpreting Old Testament rules led to an increasing appeal on the part of his followers to his ways and conduct rather than to normative texts. The development reflects a perennial debate as to which is more preferable and effective, precept or example.

Bible and Talmud in Modern Judaism

Spells out the differences between the observant and the liberal branches of Judaism as flowing from their different understanding of the notion of revelation.

Forgiveness in Judaism

Details the understanding of forgiveness in Judaism: from passages in the New Testament that Rabbinic sources cast light on; passages from Talmudic literature which have had a great influence on the development of the concept of forgiveness; and from medieval notions, especially those found in liturgical texts. Looks at some modern trends in Judaism.

Some Remarks on the Prophet of Doom

Why this kind of prophet has, in some measure, an easy task, why he is so disliked, why he often wishes his predictions to come true, and why his actions border on civil disobedience. Appends a note on the origin of the term “filibuster” and its connection with civil disobedience.

Section 3: Studies in Classical Sources

The History of Rhetoric

Traces the history of the treatment of speech as a branch of scholarship and instruction from its rise in ancient Sicily down through the centuries (Korax and Teisias, Protagoras, Rhetoric of Alexander, Aristotle, Antonius, Cicero, the Church, the decline of disputations in the sixteenth century, and the interest in debate in the English Parliament in the nineteenth century).

Greek Forerunners of Simenon

Explores ethical and legal issues in Greek mythology. In taking up similar issues in his plays, Sophocles reveals familiarity with the rise of forensic science, the new craft of rhetoric for dealing with crimes that, on account of mitigating factors, are far from straightforward. The new way of exploring wrongdoing, in which extenuating factors begin to play a major role, is a product of the problems thrown up by the political turmoil in Sicily around 500 B.C.E. and the trials that followed. The changes in substantive and procedural laws in the wake of these trials made possible the composition of, in effect, the earliest detective story.

Freud on Greek Theogony

Freud derived the idea for his castration complex from a misreading of the Greek sources. Contrary to what he claimed, there is not a single instance in antiquity where a father castrates a son. There are many instances, however, where a son castrates a father. Rather than castrate their sons, fathers in ancient literature tend to kill them. Although it has been taken up with enthusiasm, the idea of the castration complex is consequently problematical.
Castration

Why ancient sources give no support to the Freudian notion that fathers seek to castrate their sons; outlines a brief history of circumcision and how its use may contribute to fear of castration.

Counting

Discusses texts, especially the story of how Aesop came to be released from slavery, where counting apples stands for erotic enumeration. Suggests that Balzac’s retelling of the story about Aesop’s release, which had disappeared in the Middle Ages from the common version of the life of Aesop, comes from oral tradition.

Ovid’s Sexual Frankness

Argues that in his Ovid: A Poet between Two Worlds, Hermann Fränkel’s own cultural milieu makes him fail to realize the true quality of Ovid’s sexually frank language.

The Finale of Horace’s ‘Satire’ 1.4

A line in Horace alludes to a doctrine among Jewish proselytizers of the time: the Jews constitute the majority as far as religion is concerned. Forming a single body throughout the world, they are superior to any other collective because each of the latter is riddled with dissenting views and factions.

The Mediocrity of Celsus

Quintilian describes Celsus, who lived in the reign of Tiberias and composed an outstanding medical treatise, as vir mediocri ingenio. Contrary to a common view, the phrase does not mean that Celsus was a person of ordinary abilities but refers to his versatile capacity to contribute to different areas of knowledge.

On Burning of Books in Antiquity

Explores some of the reasons for the burning of books recorded in biblical, Chinese, Greek, Roman and Talmudic sources.

SECTION 4: JOSEPHUS

Josephus on Suicide and Liability of Depositee

The concept of the soul or life as a deposit supports the view that in Jewish Law at the time of Josephus there was, for the guardian of a deposit, no liability for negligence. The depositee could nonetheless be liable for a breach of trust. It is important to distinguish between the notion of the soul as a deposit of God with a duty to guard it as against a loan from God with a duty to use it. There is some evidence in biblical and Talmudic sources for the idea that a person deposits his spirit with God.

‘I believe’ in Jewish Antiquities xi.237

Josephus’s retelling of the story of Esther is colored by his view of himself as a latter-day Esther. In dealing with “time-spanning sacred events,” he also sees himself as a latter day Joseph.
Three Legal Notes on Josephus After His Surrender

Vespasian authorizes rather than commands Josephus’s marriage. Josephus releases without ransom some 190 women and children from the ruins of the Temple in order to make them free persons, not just freed from bondage. In the aftermath of the destruction of the Temple Josephus goes out of his way to emphasize that his bride is a virgin because of the general rule that all the women in a city stormed by an enemy become unfit for priestly marriage.

Typology in Josephus

The transfer of features from the past to the present is commonplace in Scriptural and Rabbinic writings. Josephus, however, also manifests the reverse phenomenon when he incorporates into his retelling of biblical events and personages aspects of incidents and people in his own time. He so colors Old Testament figures (Jeremiah, Joseph, Daniel, Esther and Mordecai) by lending them his own traits that he creates a place for himself in salvation history. The negative assessment of Josephus by his co-religionists down through the centuries is not justified.

Human Rights: The Rabbis, Philo, and Josephus

Looks at vocabulary about human rights and sketches what Josephus has to say about what a Jew owes to any fellow human. The Rabbis and Philo seek to defend God against charges of discriminating against persons or groups and against the arbitrary treatment of accused persons. Fundamental claims about fairness transcend barriers of race and culture. Discusses the case of a slave who escapes from prison and some aspects of prison breaks in general; laws that are specifically designed to safeguard a person’s dignity; and the right to die.

Heine’s Belsatzar

Heinrich Heine’s deviation from Scripture in having the king of Babylon and his guests blaspheme God is traceable to Josephus’s interpretation of the incident. The latter is concerned not to give the Gentiles cause for anger should, as in the Bible, carousing (without blasphemy) before a god bring condign punishment.

Section 5: Studies in English and Other Literatures

King Arthur’s Round Table

Notes how frequently the transfer of an idea or symbol to a different setting creates a measure of awkwardness. The idea of parity among the knights at King Arthur’s Round Table derives from the legend about the Delphic Oracle’s counsel concerning the ranking of the Seven Sages of Delphi. While the idea works perfectly for the ancient sages at Delphi, there is a problem at the King’s table precisely because he is present in a superior capacity.

The Finale of the Summoner’s Tale

The gross humor of Chaucer’s story is a burlesque of the first Christian Pentecost in Acts 2. The story employs the idea of a circle having neither beginning nor end and also celebrates genuine justice.
Rabelais as Hebraist
While much attention has been devoted to the language of Rabelais, Rabelais as a Greek scholar, a Latin scholar, an antiquarian, a geographer, a philosopher, a theologian, a lawyer, an architect, and a doctor, almost none has been given to his standing as a Hebraist. “What view did Rabelais take of the value of Hebrew?”; “What use did he make of the Old Testament?”; “What was his attitude in regard to Jews?” and “How much, if any, Hebrew did he know?”

Shakespeare on Aliens Learning English
Reflects, through the prism of Shakespeare’s works, on the problems of the English language faced by refugees, foreigners, persons from regional parts of England, pedants, users of slang or vulgar language, and lovers. Discusses those plays in which there is no acknowledgement that different nationalities speak different languages.

Schlegel and Shakespeare
A spoof to suggest that Schlegel, not Shakespeare, is the author of the plays.

The Date of The Birth of Merlin
Finds support for dating the play The Birth of Merlin in the reign of James I by noting how a pun on the name Britain may allude to events in 1604 when James I was proclaimed “King of Great Britain, France and Ireland.”

Three Notes on Paradise Regained
Milton grasps the essential features of the Temptation narrative in the Gospels, as they are understood in the critical scholarship of the twentieth century. At the same time, he incorporates into his retelling of the biblical texts his own personal experiences. Milton, like Matthew, changes the order of the three temptations as found in Luke. In doing so, he radically alters Luke’s third temptation. Milton’s ideal of the magnanimous man as applied to Jesus inspired the climax of a speech by Fiesko in Schiller’s tragedy.

Nursery Rhymes and History
Interprets a number of nursery rhymes (Ba, Ba, Black Sheep, Jemmy Jedd, Georgie Podgie, Humpty Dumpty, Dr. Foster, Ride a Cock-horse, and Maikaefer, Flieg) in light of social customs, historical events and movements.

Section 6: Medical Ethics
Transplantation: Acceptability of Procedures and the Required Legal Sanctions
Discusses ethical and legal problems surrounding the transplantation of organs: definition of death, inviolability of the body, disfigurement, surgery as a lawful infliction of harm, and consent.

Sanctity of Life
Examines the topics of euthanasia, abortion, actions on account of wrongful life, and the cost of expensive medical procedures.
Organ Transplants: Cannibalism, Consent, and Control

Looks at issues concerning the transplantation of organs from a corpse (how it differs from cannibalism), transplantation from a living donor (exclusion of minors and prisoners as donors, problems of donees), exclusion of a donor giving an organ when it means the donor’s choosing to die for the donee, the definition of death, and the use of a corpse to save a Roman soldier’s life.

Legal Problems in Medical Advance

Reflects on experiments with live fetuses and with living persons (especially exceptions to informed consent); and highlights the maxim “out of sight, out of mind” as it applies to problems concerning the transplantation of organs and mutilating penalties in criminal law systems.

Genetic Problems

Discusses the possibility that in the future, because of test tube babies, there will be no parents and no children in our sense, and counters some of the scruples that are expressed against such an eventuality.

Medical and Genetic Ethics: Three Historical Vignettes

Discusses Rabbinic views on telling a patient the truth about his medical condition (with excursus on the conversation between Elisha and Hazael about Benhadad’s end); an ancient view of the risk of congenital defects; and attitudes to overpopulation in the Irish legend of The Life of Saint Gerald.

Medical Law and Morals

Technical manuals reveal Greek physicians’ awareness of their powers and responsibilities. Horace’s manual on poetry and Quintilian’s on rhetoric set out the mechanics of their respective arts and the requisite qualities of their practitioners. The structure of these two manuals derives from the medical literature of their time when profound reflection goes into the treatment of a patient. Discusses why it might be acceptable for anyone at any time to kill oneself to help another. Argues for and against professional secrecy, why a concern with privacy is not found in Jewish writings, and comments on the role of secrecy in contemporary American society.

Postscript

The verb *iauo* occurs frequently in the Iliad and Odyssey. It is usually translated as “to sleep” or “to spend the night.” As used by Homer, however, the meaning indicates the opposite: “to compulsively, doggedly, engage oneself, persist.”

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