

## LAW IN THE SCRIPTURE PART I - THE OLD TESTAMENT

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George Nedungatt, who was the professor of theology of law for so many years at PIO, Rome discusses various aspects of Law in the Scriptures in two Parts. This Part I discusses various features of the theology of law contained in the Old Testament. Having examined the key terms - Thora, Nomos, Lex and Law - the author exposes the literary form of law and then presents the Codes of the Pentateuch before making an assessment of the significant Ancient Middle Eastern Codes to see their influence on the OT Codes. It is followed by the discussion on The Law of Talion. The article concludes with a critical consideration of the Theological Meaning of Attributing the Laws of the Pentateuch to Moses, and Scholion: "Man" and The Use of Inclusive Language.

Since the soul of theology is sacred scripture (Vatican Council II, Revelation, 24), theology of law must be rooted in biblical theology. We have to study the divine revelation enshrined in the Old Testament, which was the scripture used by Jesus and the early Church. Nearly half of the Pentateuch consists of laws which are not only religious and moral but secular. Today they would be regarded as state law. This fact needs to be viewed in a historical perspective.

The prophets insist that one cannot please God with sacrifices or be heard in prayer if one neglects justice and law. This is a basic theme running through the prophets and the psalms. "Seek justice, rescue the

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oppressed, defend the orphan, plead for the widow" (Is 1:17). "They take over the goods of others; ... they do not defend the rights of the needy" (Jer 5:26,28). And the psalmist exhorts: "Give justice to the weak and the fatherless; maintain the right of the afflicted and the destitute" (Ps 82:3). Cult is no substitute for law, but law is no substitute for cult either. The Decalogue starts with the commandment about the cult of the one God, whose law requires regard for the rights of others, of one's neighbour.

We shall start with the rich legal terminology used in the OT (1). We shall then examine the literary form of the laws (2), and analyse the five codes in which the laws of the Pentateuch are distributed (3). For a fuller understanding of the OT laws they need to be studied against the backdrop of the legal codes of the ancient Middle East, which probably influenced the laws of the people of Israel (4). Of particular interest is a law called the law of talion (5). Finally, we shall enquire about the theological meaning of attributing all the laws of the Pentateuch to Moses (6).

### **1. Terminology: *Thora, Nomos, Lex, Law***

The OT has a rich juridical vocabulary, already an indication of the importance law had in the life of the people of Israel. We shall first examine the terms used for law in the Hebrew Bible and then those used in its Greek translation, the Septuagint. The corresponding vocabulary used in Latin and in some modern languages will need to be compared with the biblical terms.

The holy scripture Jesus used was the Hebrew Bible. When a "lawyer" (that is, an expert on the *Law of Moses*) asked what he should do "to inherit eternal life," the answer was given citing the *Law* (Lk 10:26) of Moses (Deut 6:5): "You shall love the Lord your God with all your heart, and with all your soul, and with all your might ... and your neighbour as yourself" (Mt 22:37-39; Mk 12:30,31; Lk 10:27). *Eternal life* is sought in *law*, which prescribes *love*. Surely we are in a different cultural world, in which "law" prescribes love! In fact the word "lawyer" used in English translations of the Gospel of Matthew is rendered better in German with "Schriftgelehrter" ("Bible scholar" or "biblical theologian"). The original Hebrew word for "law" is *Torah*, which has a density of meaning that is not rendered by its equivalents in other languages: *nómos* (Greek), *lex* (Latin), *legge* (Italian), *loi* (French), *ley* (Spanish), *Gesetz* (German), *law* (English), etc. In Sanskrit *dharma* has a comparable richness and density of meaning (religion,

justice, law, ethics, virtue, righteousness, abiding by the social order) but its basic connotations are different.

### 1.1. The Hebrew Terminology

In the Hebrew Bible, at least six terms are used to indicate law and its synonyms. The first of these is 'Torah' (written also as "Thorah").

1) **Torah:** This word is generally translated as "law," but this is an inadequate approximation, which can even be misleading in some contexts. Indeed the following seven meanings of *Torah* can be distinguished:

- (a) indicating a way, teaching, instruction in general;
- (b) indicating the way of God, divine revelation;
- (c) the norm of successful action, the practical ideal, standard of moral behaviour;
- (d) the law of God for his people, the law given through Moses as the prophetic mediator between Yahweh and the people of Israel;
- (e) the Pentateuch, the five books of the Hebrew Bible, containing the law of God. In the phrase "Law and the Prophets," the word "Law" refers to the Pentateuch containing the law of Moses;
- (f) the Decalogue, considered as the synthesis and quintessence of the Pentateuch, or the law of God for his people in a nutshell;
- (g) the entire Hebrew scriptures inasmuch as the books following the Pentateuch, namely the *nebiim* ("Prophets") and the *ketubim* (the "Writings"), are regarded as the fuller development of and commentary on the Pentateuch.

Owing to such overflowing richness of meaning "Torah" can hardly be translated with one word. Hence, like dharma in Sanskrit, perhaps it is best left untranslated in its original as Torah. Other Hebrew words used as synonyms of Torah are the following.

- 2) *Édôt*: oath of the covenant (*berît*), binding words, "testimony;"
- 3) *Dābār*: word, authoritative pronouncement. The Decalogue is 'ten words' of God;
- 4) *Hoq*: royal statute, precept of the king, decree, written law of protocol;

- 5) *Miṣwah*: commandment, authoritative injunction;
- 6) *Miṣpat*: the sentence of a judge or tribunal, a judicial decision, a judgement (Ex 21:1);
- 7) *Berît*: covenant obligation, covenant.

All these synonyms recur in most of the stanzas of psalm 119/118, which is a lengthy eulogy of the Torah, the Law of God. Most of these terms have also been packed into a single stanza in psalm 19/18: 7-10 as follows.

The *law* of the Lord is perfect, reviving the soul;  
 The *decrees* of the Lord are sure, making wise the simple;  
 The *precepts* of the Lord are right, rejoicing the heart;  
 The *commandment* of the Lord is clear, enlightening the eyes;  
 The *fear* of the Lord is pure, enduring for ever;  
 The *ordinances* of the Lord are true and righteous altogether.  
 More to be desired are they than gold, even much fine gold;  
 Sweeter also than honey and drippings of the honeycomb.

In Ps 19/18 the psalmist first praises God for the gift of the beautiful and wonderful creation and then thanks him for the perfect gift of the Law using most of its synonyms. They correspond to the various aspects and components of Law (*jus*) dealt with in the juridical science. But the devout Jew of the OT did not think of Law in purely juridical terms, but primarily in religious terms: spiritual, theological, and liturgical. Such is also the attitude of the devout Jew today. The gift of the Law is celebrated at the feast of Pentecost. Besides, every Jewish boy completing twelve years (cf. Jesus in the temple at twelve years Lk 2:42) formally accepts the Torah and becomes as he crosses to age thirteen, *bār-miṣwah* (literally, "son of the commandment") subject to all the obligations arising from the Torah. The *bār-miṣwah* is also *bār-berît*, a conception that points to the fact that the commandment imposes an obligation arising from *berît*, the covenant. After the destruction of the temple and with the Babylonian exile and the rise of the Deuteronomical School, there was a tendency to concentrate on and exalt the Law and insist on the observance of its minutiae to win God's favour. This led to an extremist view, according to which Law was seen as the very source of "righteousness" in a juridical sense, a view which St. Paul will combat resolutely.

## 1.2. Greek Terminology

Several terms are used in the Greek bible (LXX) also to translate those of the Hebrew bible. "Torah" occurs in the Hebrew bible 220 times, of which 200 times it is translated with "nómos" in the LXX.

- a) *Nómos*. This Greek term is used regularly to render the Hebrew "Torah" in its seven different meanings. The Syriac word *nāmousa* comes from Greek "nómos." Syriac has also *ourāyta*, which has the same Semitic root as the Hebrew word Torah. The Syriac *nāmousa* and *ourāyta* correspond, in contents, rather to Torah than to "nómos."
- b) *Entolé*. "Commandment," corresponding to the Hebrew *Hoq*. In the NT, John uses this word to express the "new commandment," which stands for the New Law.
- c) *Próstagma*. "Command," or "order," or "injunction."
- d) *Synétheia*. "Custom," (Latin: "consuetudo"), or "usage," or "mores" (cf. 1 Cor 11:16)
- e) *Dikaiôma*. "Judgement" or "judicial sentence," corresponding to the Hebrew *mišpat* (Rom 1:32).
- f) *Thémis*. Superhuman ordinance (cf. 2 Mac 6:20). *Thémis* belongs under what is of *fas* as distinct from *lex* in Roman law (see below).

## 1.3 Latin Terminology

In Latin, "*lex*" corresponds to the Greek "nómos." However, *lex* has less religious density and range than *nómos jus*. In "*lex*" juridical overtones predominate.

*Fas* (< *fanum*, temple, shrine) is religious law. The English word "profane" gives a clue: it points to what is outside or over against *fanum*, hence irreligious. While *lex* comprises what is allowed or forbidden by human authority, *fas* denotes what is allowed by the gods or the higher powers, and *nefas* what is forbidden.

Other Latin juridical terms include *praeceptum*, *mandatum*, *decretum*, *judicium*, etc.

Note that the semantic poverty of the Latin "*lex*" is in part responsible for it being misunderstood during the Protestant Reform, which saw a radical contrast between the law (*lex*) and the *gospel*.

### 1.4. Modern Languages

The terms used to translate the Hebrew “Torah” into the modern languages mentioned above are conceptually as poor as the Latin “lex,” if not poorer. To cite an authority: “While the translation of this term (*Torah*) as ‘Law’ is not strictly correct, because it merely covers the meaning of *Torah* as ‘commandment’ (*mišwah*), nevertheless, the use of ‘Law’ for the whole of *Torah* is significant.”<sup>1</sup> The New Revised Standard Version warns the reader in its brief introduction to the Pentateuch: “Though we often call these books ‘The Law,’ *Torah* does not mean ‘law’ but ‘teaching.’” In the OT law is basically the revelation and expression of the sovereign will of God who establishes a rule of conduct for Man.<sup>2</sup>

When we use the word “law” to render “Torah,” we should be aware of its conceptual poverty or inadequacy to render these nuances. There is no antinomy between law and love. God’s word is God’s law, expressive of his eternal and infinite love. But the word of God is no idle utterance (*flatus vocis*). It is a creative and saving word beckoning the human heart and leaving it restless till it rests in the Creator.

### 2. The Literary Form of Law

The fact that the concept of Law (*Torah*) is very rich with several layers of meanings points to the historical circumstances and the vicissitudes of life of the people of Israel. In fact without reference to history we cannot properly understand the law of any people. The bible uses a literary device according to which all legislation contained in the Pentateuch proceeds from the mouth of God speaking to or through Moses, God’s mouthpiece. However, literary criticism and historical criticism since the second half of the eighteenth century have established that the Pentateuch legislation is a collection of various codes that originated in different periods of history stretching across several centuries. According to Albrecht Alt, the leading expert on the origins of Israelite law, “The canonical picture of the simultaneous origin of the legal codes in the time of Moses has given way to a theory of their origin at various different points in the course of Israel’s spiritual history.”<sup>3</sup>

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<sup>1</sup>W. D. Davies, “Law in First Century Judaism,” IDB, III, p. 91.

<sup>2</sup>M. O’Connell, “The Concept of Commandment in the Old Testament,” TS 21 (1960) 361-403.

<sup>3</sup>A. Alt, “The Origins of Israelite Law,” in *Essays in Old Testament History and Religion*, trans. R. A. Wilson (Oxford: 1966) p. 83.

Before looking at these codes and analysing their contents we have first to take note of their literary form. According to Alt, the OT laws can be divided into two kinds on the basis of their literary form: "apodictic law" and "casuistic law."

*Apodictic law*: a law that commands or prohibits absolutely, in second person singular or plural (e.g. Thou shalt not kill; thou shalt not steal) but without adding any legal sanction or punishment for its violation. The precepts of the Decalogue are apodictic laws (Ex. 20:2-17).

*Casuistic law*: a law that establishes the juridical solution of a case. A case is expounded in the third person (e.g. If a man kills another man,... ; or when someone steals an ox,...; or whoever does this,...), and a legal provision of justice is supplied (he must be put to death; he must pay, etc.).

As examples of casuistic laws we may cite the following:

1) "If a thief is found breaking in, and is beaten to death [by the owner of the house], no bloodguilt is incurred: but if it happens after sunrise, bloodguilt is incurred" (Ex 22:2).

Breaking into a house by night is not like breaking in by day and therefore it is dealt with differently. The thief or robber may be killed with impunity in the former case, but not in the latter since during the day outside help [from neighbours or state police] is presumed to be available.

2) "When individuals quarrel and one strikes the other with a stone or fist so that the injured party, though not dead, is confined to bed, but recovers and walks around outside with the help of a staff, then the assailant shall be free of liability, except to pay for the loss of time, and to arrange for full recovery" (Ex 21: 18-19).

This case deals with the infliction of an injury that is not mortal. The circumstances of the case are spelled out in six conditional clauses, and the juridical provision is set out in three principal clauses. The style is sober and concise, not an extra word is used. We have here the sentence of a court, a *mišpat*, the product of actual jurisprudence in a criminal case. It is not a piece of legislation made in view of an imagined or hypothetical case, but the result of justice meted out in a concrete case, which then set a precedent and subsequently became normative law for the courts. This casuistic law had its origin in the judicial application of the apodictic law "Thou shalt not kill."

Law courts functioned in their primitive form in the assembly of the elders "at the gate" of the city (Dt 21:19; 22:15; Ruth 4:1).<sup>4</sup>

The distinction between apodictic law and casuistic law as expounded by Alt is generally recognized to be broadly valid. But it is all too neat to be applicable in each and every one of the laws of the Pentateuch. It has therefore been modified somewhat by subsequent studies.<sup>5</sup> Thus one writer uses the term "conditionally formulated law" for a law containing a condition expressed in Hebrew with *ki* ("if," or "when" or "in case"); but if the law is expressed with "whoever," the same writer would classify it as apodictic law.<sup>6</sup> This procedure also is open to criticism as being too literalist. While Alt's distinction between apodictic and casuistic laws is still broadly valid and helpful, it is not to be taken too literally or used without discernment.

In origin, apodictic laws are, according to Alt, very ancient and stem from the patriarchal period; they had their origin in the family and tribal tradition. But casuistic laws have a different origin, namely jurisprudence. Alt writes:

There is not a single one of the laws given in casuistic form, either within or without the Book of the Covenant, which could not be used as it stands in the work of the ordinary courts. Purely sacral law, which has as its particular object the regulation of dealings with God in cult, is completely ignored in the casuistic ordinances; the only matters they legislate for are those which we can see at once were within the competence of the local secular jurisdiction: the law of slavery, murder, compensation for bodily injuries, damage to stock and crops, the misappropriation of goods given in trust, marriage laws.<sup>7</sup>

The casuistic laws contain the judgements of tribunals. Some of these laws are similar or identical to the laws of the Babylonians or Assyrians. Ancient Near Eastern laws were mostly casuistic laws.

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<sup>4</sup>G. Liedke, *Gestalt und Bezeichnung alttestamentlicher Rechtssätze* (WMANT, 39), 1971.

<sup>5</sup>E. Gerstenberger, *Wesen und Herkunft des 'apodiktischen Rechts'* (WMANT 20) 1965; John Bright, "The Apodictic Prohibition: Some Observations," *JBL* 92 (1973) 185-204"; Alberto Soggin, *Introduction*, "Criticism of Alt's Theories," (pp. 170-172).

<sup>6</sup>Werner H. Schmidt, *Old Testament Introduction* (New York: The Crossroad Publishing Company), reprint (Bombay: St Paul Publications) 1992. See Chapter 9: "Old Testament Law," pp. 126-136, at p. 127.

<sup>7</sup>Alt A., "The Origins of Israelite Law," p. 92.

Some of these laws were probably borrowed or received by Israel. They have influenced its legislation after its occupation of Palestine, through a process of inculturation (see below, 5. Relation to the ancient Middle Eastern codes).

### 3. The Codes of the Pentateuch

The Old Testament legislation is contained in the first five books, the Pentateuch. It consists of five codes which had their historical origin in different epochs. By codes is meant a body of laws that had some unity and independent existence as a collection. These ancient codes were not like the modern codes, *The Code of Napoleon* or *The Code of Canon Law* of the Latin Church, or *The Code of Canons of the Eastern Churches*, products of systematic work of codification. The ancient codes were rather collections of laws. The five codes of the Pentateuch are: the Decalogue, the Code of the Covenant, the Deuteronomic Code, the Code of Holiness, and the Priestly Code. The last two belong to the Priestly source; some authors do not distinguish them as two separate codes.

#### 3.1. The Decalogue (Ex 20:2-17; Dt 5:6-21)

The Ten Commandments are the ten "words" Yahweh gave to the people of Israel through Moses. "When he had finished speaking with Moses on the mountain of Sinai, he gave him the tablets of the Testimony (*édôt*), tablets of stone inscribed by the finger of God" (Ex 31:18). As in the case of the Twelve Tables of Roman law, the historical origin of the Decalogue is lost in the mists of antiquity. It was probably put together orally ("codified") as a unit at the time of Moses (Ex 20: 2-17), but later it underwent a Deuteronomic redaction (Dt 5:21). According to textual criticism, its link with the Sinai account in Exodus 20 is contrived and artificial. Martin Noth says, the Decalogue is "from a literary aspect ... a secondary passage in the account of the theophany on Sinai ... It represents in any case a self-contained and independent entity which originally certainly had its own tradition-history."<sup>8</sup> Even after the Decalogue was inserted in the written Bible, its formulation had a development: thus in the Deuteronomic redaction women are mentioned before things as the object of

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<sup>8</sup>Martin Noth, *Exodus, Old Testament Library*, (SCM-Canterbury Press, 1962) pp. 154-155.

covetousness, which is forbidden in the tenth commandment (compare Ex 20:17 and Dt 5:21).<sup>9</sup>

In modern terminology, the ten commandments are a mixture of "canon law" and "civil law." The first three commandments are "religious laws" dealing with the worship of only one God, avoidance of iconography (images made for idolatry), and the Sabbath rest. The following seven are "ethical/moral" laws. All these commandments are addressed to the "men" of the *q'hal Yahweh* ("the people of God"): the direct *subject* of the law is individual men, not women nor children. This is quite clear in commandment 9/10, which forbids to covet another's wife (as David did). As regards the fourth commandment (Ex 20:12, Dt 5:16) what it enjoins is not obedience to parents by young children (though it will be interpreted in this sense later on, as in Eph 6:1-3), but "honour" to be shown to aged parents by their adult sons. "Parents who have grown old are to be protected from harm and encroachments by their grown children (Ex 21:15, 17; Prov 19:26; 28:24, etc.)."<sup>10</sup> For young children, the law is their father and his rod (Prov 23:13,14), not the fourth commandment, which is addressed to the "men" of the Exodus. "Honour [*not* obey] your father and mother, so that your days may be long [i.e., you also may reach a ripe age] in the land that the Lord your God is giving you [i.e., after reaching Palestine]" (Ex 20:12). Instead, those who beat their aged father and cast out their aged mother (Prov 19:26) or rob them (28:24) do not "honour" them but sin against the fourth commandment.

The fifth commandment is "Do not murder" (in Hebrew *rsh*), which is more precise than the usual rendering "Do not kill" (in Hebrew *mwt*). In fact several laws of the covenant code prescribe the killing of the culprit (Ex 21:12-26). Thus a son who strikes or curses his father or mother is to be killed (21:15, 17); a disobedient son is to be stoned (Ex 21: 20); men captured in a war are to be killed (Dt 20: 13). What is forbidden is not homicide but the killing of the innocent, which is murder. The campaign for the abolition of the death penalty cannot be

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<sup>9</sup>Norbert Lohfink, *Theology of the Pentateuch: Themes of the Priestly Narrative and Deuteronomy*, trans. Linda M. Mahoney (Edinburgh: T & T Clark, 1994), "The Decalogue in Deuteronomy 5" (pp. 248-264). "There are more than twenty differences between the Exodus and Deuteronomy versions of the Decalogue" (p. 251), which are chiefly "preaching expansion" and changes taking the shape "of a 'Sabbath decalogue' fashioned during the Exile" (p. 264).

<sup>10</sup>Werner H. Schmidt, *Old Testament Introduction* (New York: The Crossroad Publishing Company), reprint (Bombay: St Paul Publications, 1992), see Chapter 9: "Old Testament Law," pp. 126-136, at 132.

based on the fifth commandment, which is often cited erroneously as "Do not kill."

Laws forbidding adultery or bearing false witness have "men" as their subject. In fact women had no legal standing in a court of law as witnesses. As regards adultery, the blame was usually put in later times on the female partner only. The husband of an unfaithful wife was liable to be accused of being a pimp if he did not repudiate her. At first only men were directly bound by the laws of the Decalogue, but later these laws were understood to apply to others also indirectly or through participation, especially in the covenant context. Finally, they were universalised and interpreted by Christians as articulations or explications of natural law.

The Decalogue is a code or collection of ethical (moral) and juridical laws. They are formulated in the second person singular "Thou." No penalty or sanction is attached to violations. A positive sanction attached to the fourth commandment is perhaps a later sapiential addition. The Decalogue is a collection of "apodictic" laws (Alt), or "imperfect laws" (according to Roman law a "perfect" law prescribes also the penalty in case of its violation). The Decalogue is not the product of the administration of justice. It is a collection of concise legal principles that condense the legal wisdom of tradition, which was sacralised and sanctioned in the Sinaitic covenant. Originally, they existed probably as independent sets of one to four commandments (1 and 2, 3, 4, 5 to 7, 8 and 9); later the first and the ninth were divided into two to reach the number ten. The number ten was counted off on the ten fingers as a mnemonic formula in a manner comparable to the Buddhist tradition of *daśasikkhāpadāni*, "the ten commandments for mendicant monks."<sup>11</sup>

The third commandment of the Decalogue to keep holy the day of the Sabbath has for its motivation Yahweh's rest on the seventh day after six days of creation work (Ex 20: 8-11).<sup>12</sup> The Sabbath rest was unknown in the patriarchal age. It is mentioned as operative during

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<sup>11</sup>In Buddhism, the morality of the monks consists of tenfold (*daśaśīla*) abstentions from: 1) harming or killing living beings; 2) stealing; 3) lying; 4) abuse of the senses, especially sex; 5) intoxication with drinks and drugs; 6) taking meals after midday; 7) public entertainments; 8) use of garlands, ornaments and perfumes; 9) sitting or sleeping in a comfortable furniture; 10) accepting money. The first five *śīlas* concern also laypeople, while the fourth *śīla* takes the form of celibacy for the monks.

<sup>12</sup>P. A. Barker, "Sabbath," DOTP, pp. 695-706.

the Exodus when there was no manna to be gathered in the desert on the seventh day. As Yahweh rests, so also his people should rest (Ex 16:22-30). The Sabbath rest is obligatory for all, even resident aliens, slaves and beasts (Ex 23:12) under pain of death (31:12-17). Even kindling fire (for cooking) violates the Sabbath rest (35:2-3). A man who gathered firewood on the Sabbath was stoned to death by order of the Lord (Num 15:32-36). The seventh day of the week was originally a day of obligatory rest,<sup>13</sup> not of worship in community or individually. The "holy assembly" mentioned in Lev 23:3 is for communal reading and the study of Scripture. The synagogue worship on the Sabbath day is a later development; in fact synagogue is not attested in the OT, and its origin is unclear.<sup>14</sup> It was common in Jesus' time as we learn from the New Testament (Mt 12:9; Mk 1:21; Lk 4:16).

The Ten commandments are presented in the OT as conditions to be fulfilled by Israel to enjoy God's favour and communion with him in a covenant relationship. The Decalogue is sacral law. It was to be read to the people every seventh year during the feast of the Booths (Dt 31:9-13). This does not mean that the Decalogue had a liturgical origin, as some have thought. "The Decalogue for its part suggests the conclusion that the cult was hardly the place of origin of particular laws, but became only subsequently a domicile for these (see the admittance liturgies, Psalms 15; 24:3f.)."<sup>15</sup> Since the Ten Commandments were thought of as uttered by God himself (Ex 20:1, 18, 24: 1-18; Dt 5:4), they acquired a unique importance. The other laws are presented as pronounced by Moses and regarded as further determinations of the Decalogue. The two tablets on which God is said to have written the Decalogue are called "the tablets of the covenant" (Dt 9:15).

### 3.2. The Covenant Code (Ex 20:22 – 23:19 / 33)

Some writers identify the Covenant Code with "the Book of the Covenant" mentioned in Exodus (24:7), but more probably this

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<sup>13</sup>Saturday, the day of Saturn (corresponding to *Śani* in Indian astrology), was regarded as an inauspicious day in antiquity (J. Morgenstern, "Sabbath," IDB 4: 135-141). Hence no work was to be done and no journey was to be undertaken. Saturn was identified in Greek mythology with the god Chronos. For the Romans Saturn was the god of the Capitoline Hill and of agriculture.

<sup>14</sup>Geoffrey Wigod, "Synagogue," *The Encyclopedia of Judaism* (Jerusalem: The Jerusalem Publishing House, 1989) pp. 678-680.

<sup>15</sup>Werner H Schmidt, *Old Testament Introduction* (New York: The Crossroad Publishing Company), reprint (Bombay: St Paul Publications, 1992), see Chapter 9: "Old Testament Law," (pp. 126-136), at p. 133.7.

designation refers to the Decalogue. The Code of the Covenant is a collection of laws that reflect the new life situation (*Sitz im Leben*) of the Israelites who settled down in Canaan as seminomads. Theirs was an agricultural economy with orchards, vineyards (23:10-11), oxen and donkeys (21:28-37; 23:4,5) dealt with in the Covenant Code. The laws dealing with them can be dated to the period starting with the thirteenth century, while some other laws regarding marriage, adoption, tribal relations, etc. are older having originated during the patriarchal period. For the greater part the Covenant Code develops laws to safeguard the stipulations of the Decalogue with material borrowed or "received" from Israel's cultural environment during the time of Joshua (Josh 24:25,26) and the Judges. On the whole these laws are to be dated to a time prior to the monarchy, but some may be of later origin in the early monarchic period and several were later updated for "aggiornamento."

The Covenant Code (CC) may be divided as follows, although not all authors adopt the same divisions:

1. Narrative (historical) setting ..... 20:18-21
2. Theological prologue: worship of one God, no idol  
worship; the altar ..... 22
3. Laws (21:1 - 23:19):
  - a) Laws regarding slaves ..... 21:1-11
  - b) Offences to be punished with death penalty ..... 12-17
  - c) Legal provisions for bodily injuries to humans  
and animals. .... 18-36
  - d) Property damage and compensation ..... 22:1-15
  - e) Laws regarding social and religious behaviour ..... 16-31
  - f) Justice and benevolence for all, including  
aliens and enemies ..... 23: 1-9
  - g) Sabbatical year, Sabbath, and three annual festivals .... 10-19
4. Theological epilogue: promise of divine  
protection and blessings ..... 20-33

This structure of the Covenant Code is not the result of a systematic codification. It was a gradual growth reflecting a change from a nomadic way of life to a sedentary one. Law follows life. An overriding concern of the Covenant Code is to establish a clear differentiation of the religion of Israel from the Canaanite religion (20:22-26; 23:10-19), while inculcating kindly behaviour toward the aliens (22:25) who have survived the bloody Israelite conquest of the

promised land (23:23). The first half of the code (21:2-22:16) consists chiefly of casuistic laws, some of which impose the death penalty. The second half (22:17-23:9) is more heterogeneous and contains some prohibitive apodictic laws (22, 18, 28-23:3, 6-9). The paraenetic motivation "You know the heart of an alien, for you were aliens in the land of Egypt" is probably a late addition. Clauses like "I will surely heed their [oppressed widow or orphan] cry" (22:23, 27) elevate even the social laws to the religious sphere. A positive legal sanction is contained in the concluding epilogue of the Covenant Code with its promise of divine protection and blessings (23:20-33).

The Covenant Code marks a juridical attempt to execute the laws of the Decalogue. Laws imposing the death penalty do not contradict the fifth commandment not to "murder" but come within the purview of its authentic interpretation. The casuistic laws have grown from life experience and jurisprudence. For example, Ex 21:7-11 contains a legal provision for freeing a slave girl. The law is formulated with three conditional clauses, and in case none of these verifies, she is to be freed from slavery.

Several laws of the CC are borrowed from or are adaptations of the cuneiform law of the ancient Middle East (see below) through a process of reception or inculturation. In the actual redaction, the CC figures as the fuller legal portion of the Sinai Covenant (Ex 19:1-24:11). But this connection is textually artificial. According to Dt 4:13; 5:2 and 22 it is the Decalogue that had that function at Sinai. According to Cazelles, the original position of the CC was the covenant Moses made with the people at Moab (Dt 29:1); but some others think that it was the renewal of the covenant Joshua made at Sichem (Josh 24:1-24). Probably the CC was still in formation then. In any case, the theological significance of the link of CC with Sinai is clear: the law of the people of God is an exigency of the covenant between God and his people.

The later codes of the Pentateuch will add greater precision to the provisions of CC: compare, for example, slavery and liberation from slavery in Ex 21:2-7 with Dt 12-18 and Lv 25:39-46. This evolution or development points not only to the inevitable lacunae of any legislation but also to the new social and political conditions of life of the people of Israel.

For theology of law, the book of Exodus provides a classic model to understand the relation between 'gospel and law.' The election of Israel was not conditional on obedience to the law (20:2), but

derived solely from the mercy and kindness of God (19:4). Nevertheless, obedience to the will of God is required of the people of God to fulfil the purpose of election: "if you obey my voice and keep my covenant, you shall be my treasured possession out of all the peoples" (19:5). The grace of election has its follow-up in the observance of the law.<sup>16</sup>

### 3.3. The Deuteronomic Code (Dt 12-26)

Deuteronomy, the last of the five books of the Pentateuch or Torah, means literally "second legislation." It is second in theological relation to the Decalogue, which is the first law given at Sinai. But historically the name Deuteronomy refers to a mistaken interpretation of the expression "a copy of this law" to be made for the king (Dt 17:18).

In form, Deuteronomy is a series of homilies Moses delivered to the people of Israel in a paraenetic tone. In reality, it is the work of scribes during the seventh century BCE. Before assuming the present redactional form and position in the book of Deuteronomy, the Deuteronomic Code (DC) was, according to the common opinion of scholars, the "Book of the Law" discovered in the temple (2 Kings 22:8) during the reform of King Josiah (622-621 BCE), though in a basic form Deuteronomy goes further back to late eighth century BCE. The DC has close parallels to the stipulations of the treaties of the Assyrian King Esarhaddon (681-668 BCE) with vassals so as to suggest the literary dependence of the DC.

Many laws of the DC reflect the conditions of life under the monarchy and later periods. Historically, the DC represents the reform of King Josiah in 621 BCE. After the loss of kingship and the temple cult during the Babylonian exile (587 BCE), the Deuteronomist scribes focused on the Torah with a legalistic stress.<sup>17</sup> The DC is set in a narrative framework evoking the Sinai covenant (1-11) and it concludes with Moses' song and the blessing he imparts before death (31-34). The whole is presented as Moses' farewell address to the people, while in the other books of the Pentateuch God speaks to Moses. The intent of the DC is both theological and pastoral. Its motto

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<sup>16</sup>Brevard S. Childs, *Introduction to the Old Testament as Scripture* (Philadelphia: Fortress 1979) p. 177.

<sup>17</sup>M. Weinfeld, *Deuteronomy and the Deuteronomistic School* (Oxford: Clarendon Press) 1972; reprint (Winona Lake: Eisenbrauns) 1992; Albertz Rainer, *A History of Israelite Religion in the Old Testament. Period 1: From the Beginnings to the End of the Monarchy*, trans. from the German by John Bowden (Louisville/Westminster: Knox) 1994.

is one God, one people (not merely twelve tribes), one cult, in one kingdom [no mention of the division into a northern and a southern kingdom], under one king, with one prophet. And its agenda is to inculcate deep and undivided devotion to the one God. While older laws were addressed to the individual, Deuteronomy addresses itself to the people of Israel as a whole, using “you” in the singular or “you” in the plural. The relationship between God and Israel is a covenant relationship: “Yahweh Israel’s God, Israel Yahweh’s people.” This relationship is created by a prior act of God, “election” (*bahar*), which is not due to Israel’s merit but God’s merciful love (Dt 7:7-8). And God’s merciful love is the inspiration of many “humanitarian laws” (15:1-18; 22:1-8; 23:15-25; 24:6, 10-22; 25:1-4) in the DC. The main division of the DC is as follows:

- Dt 12 Worship of one God in one place: centralised cult and liturgy
- Dt 13 Warning against worship of other gods and against idolatry
- Dt 14 Regulations of ritual purity in food: clean and unclean foods; tithes
- Dt 15 Sabbatical year and remission of debts and of bondage; firstborn of livestock
- Dt 16 The annual festivals of the Passover, of Weeks, of Booths (1-16)
- Dt 17 Offices of judges, priests, kings (Dt 16:18-20; 17; 18)
- Dt 19 Law of asylum in cities of refuge; law of witnesses
- Dt 20 Laws on war
- Dt 21 Unknown killers, female captives, right of the firstborn; rebellious sons, etc.
- Dt 22 Laws regarding animals, dress, non-virginal brides, girls promised in marriage
- Dt 23 Those to be excluded from the assembly; sanitary laws and rules of ritual purity;
  - No interest to be charged on loans; vows
- Dt 24 Marriage and divorce; miscellaneous laws on loans, aliens, etc
- Dt 25 Levirate marriage; miscellaneous laws
- Dt 26 First fruits and tithes; concluding exhortation (26:16-19)

The DC upholds the primacy of the love of God most impressively by explicating the first commandment of the Decalogue: “You shall love the Lord your God with all your heart, and with all your soul, and with all your might” (Dt 6:5). What the first commandment requires is not only the exclusion of the worship of alien gods (Ex 20:3; 22:20; 34:14), but to love and serve God with one’s whole heart, with an undivided heart (cf. 1 Cor 7:34). Far from losing sight of the hierarchy

of laws, as has been misunderstood sometimes, the DC prescribes the love of God as the "first or greatest" commandment.

Love of God is practised in the first place by the observance of the divine commandments and laws, which is the fruit of the fear of God. For the Deuteronomist love of God and fear of God are not antithetical but identical: there is no love without law sustaining it. Law is the expression of love. It has been rightly said, 'love,' like 'fear' (i.e., the reverent acknowledgement of God, Dt 6:2, 13, 24, etc.), points to a kind of behaviour which can be commanded (6:5f.; 10:12f.) — and commanded as a grateful response to God's love (7:8: 10:15, etc.).<sup>18</sup> God's love is not a discrete act that exhausted itself in time-space once for all in the past with the "election" of Israel and the covenant at Sinai with the elders of the people present there; no, it is rather an ever enduring act even unto the present day. Hence the "today" of Deuteronomy is more than a mere rhetorical or homiletic device. It has a theological meaning. Deuteronomy puts the following words in the mouth of Moses.

Not with our fathers ["ancestors": NRSV] did the Lord make this covenant, but with us, who are all of us here alive today (5:3) ... When you heard the voice out of the darkness, while the mountain was burning with fire, you approached me, all the heads of your tribes and your elders; and you said, ...Tell us everything that the Lord our God tells you, and we will listen and do it (Dt 5:23, 27).

This "today" is a liturgical present which encapsulates sacred history. God's salvific act and the human response transcend their historical contingency so as to be available today, in the liturgical present. Thus there is a profound link between law and liturgy. There are also liturgical curses ('*arûr*: "cursed be"), pronounced by the community on offenders, which excluded them from the community (Dt 27:11-26). But it is not clear whether this exclusion implied death penalty; if it did not, these liturgical laws represent an earlier, nomadic way of life. Four blessings are pronounced for obeying the law (Dt 28:3-6) and four curses for disobedience of the law (Dt 28:16-19).

Note 1. That these liturgical *blessings* (*barûk*, Hb, "blessed be") are different from the *beatitudes* (Mt 5: 3-11) which are *macarisms* — Gk *makarios*, Hb '*asrê*, "blessed" (NRSV). The blessings are the opposite

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<sup>18</sup>Werner H. Schmidt, *Old Testament: An Introduction* (New York: The Crossroad Publishing Company), reprint (Bombay: St Paul Publications, 1992) p. 151.

of “woes” (Lk 6:24), they are good wishes to be “happy” enjoying divine gifts. According to Greek thought, gods are *makarioi*, in Latin *beati*, blessed (happy). According to the bible God creates Man to give him a share in his own *beatitudo*. The Gospel beatitudes (Mt 5: 3-11) are eschatological, while those of Dt 28:3-6 are intended for the present life. Mary is blessed because she believed (Lk 1:45), so is Simon Peter (Mt 16:17) and so are the vigilant servants (24:46), while woe betide Judas (26:24) and the Pharisees (23:13-23). The curses of the Law (Dt 28:16-19) on the other hand are like the curse Jesus pronounced on the fruitless fig tree, which withered (Mk 11:21).

*Note 2.* According to DC, for the administration of justice there were to be judges and officials in every town. They were not to accept bribe (Dt 16:18-20); they were to refer intricate cases to the higher court of “priests and the judge” in Jerusalem (17:9). It was by following this legal tradition that later in the Apostolic times the question of circumcision, unresolved in the Church of Antioch, was referred to the Church of Jerusalem (Acts 15: 2), which resolved it with final authority (15: 28).

### 3.4. The Holiness Code (Lev 17-26)

The Holiness Code (HC) originated after the fall of Jerusalem (587 BCE) during the Babylonian exile and later times. It is the work of priests, who being deprived of the temple cult turned their attention to the Torah, of which they were the official custodians, teachers and interpreters. They elaborated on the Torah seeing in it the chief means of preserving the identity of the people of Israel in an alien land amidst foreign religions and gods. Both the Holiness Code and the Priestly Code are their magisterium or teaching from the chair of Moses. The HC is the most consistent legal section of the Priestly Source (P) and is the most recent of the five codes of the Pentateuch. Its interest is exclusively religious and cultic. It has used and developed and revised very ancient material (Lev 18 and 19) and has incorporated later material taken from the regulations of DC. Like DC this code is also in the form of homilies of Moses and is paraenetic in tone. In reality HC is the result of a gradual juridical and liturgical development. Among its more important regulations the following may be noted:

Lev 17 Central sanctuary, prohibition to drink blood (development and revision of Dt 12)

Lev 18 Incest forbidden; the Canaanite mores in this matter are not

to be imitated.

Lev 19 Honour parents: "You shall each revere your mother and father" (3). Sabbath and the other commandments of the Decalogue. Against idol worship (4). "You shall not take vengeance or bear a grudge against any of your people, but you shall love your neighbour as yourself" (17).

Lev 23 Sabbath and the first fruits. The Festivals: of Weeks, of Trumpets, of Atonement, of Booths (cf. Ex 23:14-19; 34:18-22; Dt 16)

Lev 25 Sabbatical year (Ex 23:10,11) and the Year of Jubilee. Land bought as bond is to be returned only in the jubilee year, not in the sabbatical year (cp. Dt 15:1-11).

Lev 26 Blessing for obeying the laws, and curses for disobedience (cf. Dt 28)

The name Holiness Code comes from the repeated assertion "You shall be holy, for I the Lord am holy, and I have separated you from the other peoples to be mine" (Lev 20:26; 21:8, 23; 22:32). The "self-declaration formula," that is, "I am Yahweh your God" recurs in the HC. Israel is to be different from other nations not only in worship but in ethical behaviour, too: Israel is not to follow the way of the nations but the way of God by observing his Torah. The holiness proposed by HC is not an otherworldly holiness cut off from real life. In fact the law "You shall love your neighbour as yourself" (Lev 19:18) is found in the HC, though who one's neighbour was not defined and remained a matter of varied interpretation down to New Testament times. Jesus interpreted it linking it with the first and greatest commandment as constituting an integral unity (Lk 10:25-37). He will call it his commandment / a new commandment (Jn 13:34; 15:12) by pointing to his own self-sacrificing love as the exemplar and criterion of neighbourly love.

### **3.5. Priestly Code (dispersed in the Priestly Source)**

The Priestly Code (PC) is not located in one place in the OT like the others but is dispersed in the Priestly Source (P), which is spread over all the five books of the Pentateuch. The legal material is found chiefly in Leviticus and Numbers. The primary purpose of the PC is to regulate worship with detailed norms and rites or rubrics. The PC comes from various epochs. In part PC is pre-exilic: Lv 1-7 (sacrifices), Lev 11-15 (ritual purity). In part it is post-exilic: particularly, the feast of the Pasch and the unleavened bread. Lev 16 (the Day of Atonement), Num 15, 28, 29 (various offerings and sacrifices), Num 5

(unclean persons), 6 (Nazirites), and 19 (rite of the red heifer) also belong to the cultic laws of the PC.

Before concluding this section let us note that the Pentateuch contains besides the above mentioned five codes also minor epitomes of these same codes. For example, there is the "Yahwist Ritual Decalogue" (Ex 34:11-26), which summarises the cultic norms that are contemporary with the Covenant Code. There are also catechetical and liturgical collections (Lev 19, Dt 27:15-26) as well as legislative texts of Priestly origin (Num 4:18; 8; 15; 27; 31; 35, etc).

Finally, we can distinguish three phases in the development of Israelite law. For example, "Thou shalt not kill" (Ex 20:13), originally an apodictic law of the oral tradition, grows when a sanction gets attached to it: "Whoever kills a man shall be put to death" (Lev 24:17). The law then gets diversified with reference, firstly, to the *manner* of killing: if it is not premeditated or deliberate murder, there is to be no capital punishment (Ex 21:13; 22:2); and, secondly, to the *object* of killing: killing a slave by beating him to death is punished but not with capital punishment (Ex 21:20) – but if the slave survived the beating by a day or two, there is no punishment at all, "for the slave is the owner's property" (Ex 21:21). For killing another's animal, it is enough to "make restitution for it, life for life" (Lv 24:18). Similarly, the prohibition of adultery, originally an apodictic law (Ex 20:14), becomes a casuistic law by having a punishment attached to it, which varies in relation to the various partners, consenting or not, human or animal, all involved being put to death (Lv 20:10-21).

Historically, the laws of the Pentateuch had their origin in a period stretching over more than five centuries. They reflect the evolution of the religious and moral life of the people of Israel. According to Weinfeld, a certain tendency towards "secularisation" can be observed in their evolution: for example, the reference to God in the rite of acquiring a slave in perpetuity (Ex 21:6) disappears (Dt 15:17). However, there is no instance of a clear contradiction of a previous juridical provision.<sup>19</sup> De Vaux wrote: "The monarchy was a religious institution. ... Israelite law, even where it concerned profane matters,

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<sup>19</sup>M. Weinfeld, *Deuteronomy and the Deuteronomistic School* (Oxford: Clarendon Press) 1972; reprint (Winona Lake: Eisenbrauns) 1992; Albertz Rainer, *A History of Israelite Religion in the Old Testament. Period 1: From the Beginnings to the End of the Monarchy*, trans. from the German by John Bowden (Louisville/Westminster: Knox) 1994.

remained religious law."<sup>20</sup> In fact the Old Testament does not distinguish the law of Israel as secular law and religious law or as "civil law" and "canon law."

The prescriptions regarding the tabernacle and the conquest of Palestine were time bound, some others applied only to specific groups such as priests, Nazirites, judges, and soldiers, etc.<sup>21</sup> After the destruction of the temple in 70 C.E. the authors of the Jewish apocalyptic literature maintained that there were 613 commands of the law including 248 positive injunctions and 365 prohibitions (among the latter 39 listed the works forbidden on the Sabbath), a norm canonized by the Babylonian Talmud. However, only about a hundred of them were regarded as applicable to *all* the Jews at the time of the Tannaim. Martin Noth writes:

Individual precepts in the last resort may be of the most varied origin, having their roots partly in primitive legal provisions of the ancient Near Eastern civilisations, partly in customs and views of nomadic tribes, partly in the special circumstances and antecedents of Israelite prehistory; yet at the same time, through their common inclusion in the individual laws and law books of the Old Testament, they have eventually grown together into a certain unity.<sup>22</sup>

#### 4. Ancient Middle Eastern Codes

There were several legal codes in the ancient Middle East (or Near East), which were anterior to the codes of the Pentateuch. And some of them also influenced the laws of the Pentateuch. These ancient Middle Eastern codes are called cuneiform law (*Keilschriftrecht*, in German) from their writing in wedge-shaped characters (Latin *cuneus* = wedge), which were used by the ancient Akkadians, Assyrians, Babylonians, Persians and others. The following table lists these codes starting with

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<sup>20</sup>R. de Vaux, *Ancient Israel: Its Life and Institutions*, trans. John McHugh, (London: Darton, Longman and Todd, 2<sup>nd</sup> ed., 1965) p. 271; See also chapter ten, "Law and Justice," pp. 143-163. Original: *Les institutions de l'Ancien Testament*, 2 vols., (Paris: Cerf) 1958, 1960.

<sup>21</sup>Solomon Schechter, *Aspects of Rabbinic Theology*, 1909; repr., (Jewish Lights: Woodstock, Vt., 1993) pp. 140-142.

<sup>22</sup>Martin Noth, *The Laws in the Pentateuch and Other Studies*, trans. D. R. Ap. Thomas, (Oliver and Boyd: Edinburgh-London, 1966) p. 9 (See pp. 1-107): "The Laws in the Pentateuch: Their Assumption and Meaning."

the most ancient and indicating, where known, the king who issued the law, the country or city of origin, and the approximate date.<sup>23</sup>

Code	King	Country / City	Date
1. Code of Ebla	??	Ebla	2500-2300
2. Code of Ur-Nammu	Ur-Nammu	Sumer / Ur	2090
3. Code of Eshnunna	Bilama	Amorites / Eshnunna	1925
4. Code of Lipit-Ishtar	Lipit-Ishtar	Sumero-Akkadia/Isin	1860
5. Code of Hammurabi	Hammurabi	Babylonia / Babylon	1700
6. The Hittite Code	??	Hatti	1500/1450
7. The Assyrian Code	??	Assyria / Ashur	1350

#### 4.1. The Code of Ebla

The Code of Ebla is the most ancient Sumerian law code of the Middle East. It was discovered in the 1970's by Italian archaeologists. Ebla, situated in the northwest of Syria and called today in Arabic *Mardikh*, flourished as an empire between 2500 and 2300 BCE at a time when farther east in the Indus Valley flourished the Harappan civilization (3000-2000/1500 BCE) centred in Mohenjo-daro. Ebla declined, had a revival, and then vanished. Archaeology unearthed 7000 well-preserved clay tablets which contain the political, legal and economic records of Ebla. Among them is a huge tablet recording a treaty between Ebla and the kingdom of Ashur. Some of the laws that have been deciphered determine compensation to be paid for damages (injury, kidnapping, etc.).<sup>24</sup>

#### 4.2. The Code of Ur-Nammu.

Ur-Nammu (2112-2095) was the founder of the third dynasty of Ur, the ancient city of the Sumerians, the birthplace of Abraham (Gen 16:2). A portion of the Code of Ur-Nammu has been discovered. It consists of

<sup>23</sup>See, J. B. Pritchard, *Ancient Near Eastern Texts Relating to the Old Testament*, 3 ed., (Princeton University Press: Princeton, 1969) pp. 159-197; Idem, *Ancient Near Eastern Texts: Supplementary Texts and Pictures Relating to the Old Testament*, (Princeton University Press: Princeton, 1969) pp. 523-525.

<sup>24</sup>Michael C. Astour, "A Reconstruction of the History of Ebla" in Cyrus H. Gordon and Gary A. Rendsburg, eds., *Eblaitica IV: Essays on the Ebla Archives and Ebla Language* [Publications of the Center for Ebla Research at New York University 2], (Winona Lake, Indiana: Eisenbrauns, 2002) pp. 57-195 (history of Ebla and bibliography, pp. 172-195). See also, Kenton L. Sparks, *Ancient Texts for the Study of the Hebrew Bible* (Hendrickson: Peabody, 2005) p. 34.

two fragments of a tablet containing dozens of norms about family law, inheritance, commerce and taxes.

#### **4.3. The Code of Eshnunna.**

In the ancient agricultural economy landed property and cattle were important. Eshnunna's code has two articles about the ox that gores: "If an ox gores an[other] ox and causes its death, both ox owners shall divide among themselves the price of the live ox and also the equivalent of the dead ox" (§ 53). "If an ox is known to gore habitually and the authorities have brought the fact to the knowledge of its owner, but he does not have his ox dehorned, and it gores a man and causes his death, then the owner of the ox shall pay two-thirds of a mina of silver" (§ 54). This law can be compared to the following provision in the Code of the Covenant, which is a close parallel. "If someone's ox hurts the ox of another, so that it dies, then they shall sell the live ox and divide the price of it; and the dead animal they shall also divide. But if it was known that the ox was accustomed to gore in the past, and its owner has not restrained it, the owner shall restore ox for ox, but keep the dead animal" (Ex 21:35, 36). This law is almost identical with that of the Code of Eshnunnu, though there are minor changes in the latter code, which are mere refinements.

#### **4.4. The Code of Hammurabi**

The Code of Hammurabi is a rather ample legal text. Hammurabi was the sixth king of the Amorite dynasty of Babylonia and reigned between 1728 and 1686. Towards the end of his long reign of forty-three years, Hammurabi, after great conquests, in his capacity as "the Shepherd of his people," codified the public and private law of his empire. He placed the code under the patronage of Shamash, the god of the sun. The Code of Hammurabi has 282 paragraphs. It contains the customary law common also to the patriarchs of Israel. For example, Abraham and Jacob beget children from the maids of their sterile wives (Gen 16:1-4; 30:1-5). Such legal provisions are found also in the Code of Hammurabi (CH § 144-147). The son begotten of a slave does not have the same rights as the son born of one's wife (CH § 170), a norm which is applied also in the OT in the case of Hagar and Ishmael (Gen 21:10; Gal 4:30). "However, the common features do not arise from literary dependence, but from the fact that conditions of life

and social structures partly correspond," as is noted by Rolf Rendtorff.<sup>25</sup>

#### 4.5. The Hittite Code.

The Hittites were an ancient people, who spoke an Indo-European language and established a powerful empire in Asia Minor and Syria, which flourished from about 1900 to 1200 BCE. Abraham buried his wife Sarah in Hittite territory in a cave in a field near Mamre. He bought the field from the Hittites for four hundred shekels of silver after making a contract with them according to Hittite law (Gen 23:3-20: cf. Ez 16: 3, 45).

#### 4.6. The Assyrian Code.

The Pentateuch reflects also this code. For example, the legal dispositions for the violation of a virgin (Dt 22:28,29) are similar to those of the Assyrian Code (articles 55 and 56).

Regarding the influence of these ancient Middle Eastern Codes on the OT legislation, it is to be noted that not every similarity is due to direct, textual borrowing or implies dependence. However, it is beyond doubt that the juridical tradition represented by these ancient Middle Eastern codes has influenced the formation of the legislation of the Pentateuch. In the first half of the second millennium B. C., the dynasty of the Hyksos reigned in the whole of Palestine and the neighbouring regions. Their legal culture was passed on to the Canaanites, who in turn influenced the Israelites in several ways. One sign is the repeated biblical prohibition and condemnation of marriage with the Canaanites. Similarity of laws need not imply legal reception, but the parallels at least point to a common source, namely, the ancient common customary law of the biblical orient. Legal reception and evolution exclude the all too simplistic view that the OT laws were all made in heaven or that they were in origin *jus divinum*.

In conclusion two important differences between the cuneiform law and the legislation of the Pentateuch may be noted. First, the cuneiform law consists entirely of secular law, and is couched almost always in casuistic form (including the adjectival "whoever" clause and similar variations). It does not concern itself with the moral conscience, but is pragmatic, and is addressed to the judges of the tribunal. It does not deal with cult or temple or priests. In contrast, the

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<sup>25</sup>Werner H. Schmidt, *Old Testament: An Introduction* (New York: The Crossroad Publishing Company), reprint (Bombay: St Paul Publications, 1992), 92.

legislation of the Pentateuch is distinguished for its religious sense and the moral imperative binding on the conscience, as is the case chiefly with the apodictic laws. This kind of law with its imperative of the Thou/You is unknown to the cuneiform law. It is not improbable that the Hebrew law is indebted for its apodictic style to the ancient Egyptian law, which consisted of the decrees and edicts of the Pharaohs. According to Egyptian philosophy (or theology) of law, in the person of the Pharaoh spoke God himself, and therefore an edict of the Pharaoh was law. This seems to account for the striking absence of any ancient law code and jurisprudence in Egypt, where the earliest legal texts date from the fourth century B.C.<sup>26</sup>

Secondly, the law of the Pentateuch (or the law of Moses) is the most humanitarian of all ancient legal codes. This is due not only to its primarily religious and ethical character and prophetic guidance but also to the development of law. The Pentateuch represents the last of all the ancient Middle Eastern legislation and as such could benefit from hindsight as well as experiential jurisprudence.

One particular legal norm that is common to the Mosaic law and to the ancient Middle Eastern law is the law of talion, which is often much misunderstood. It deserves to be studied closely for what it really was, namely an ancient form of administering penal justice in terms of mathematical equality between the offence committed and the penalty inflicted.<sup>27</sup>

## **5. The Theological Meaning of Attributing the Laws of the Pentateuch to Moses**

The entire legislation of the Pentateuch, including the laws that originated historically after the time of Moses, is attributed to him as the mouthpiece of God and legislator. As a matter of historical fact, however, the laws of the Pentateuch originated during a long period of nearly a thousand years. This raises two questions: first, the historical truth of the attribution; second, its theological meaning.

A more general problem is the Mosaic authorship of the Pentateuch itself. The Talmud understood the Mosaic authorship as secretarial work: "The Holy One, blessed be He, dictated, and Moses wrote

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<sup>26</sup>A. Théodoridès, "The Concept of Law in Ancient Egypt," in *The Legacy of Egypt*, ed., J. R. Harris, (Clarendon: Oxford, 2<sup>nd</sup> ed., 1971) pp. 291-322; A. Schafik, "Traces de 'codification' en Égypte ancienne (à la basse époque)," *Revue internationale des droits de l'antiquité* 40 (1993) 11-26.

<sup>27</sup>George Nedungatt, "The Law of Talion an Ancient Law of Jurisprudence," *Iustitia* 4, No. 2 (2014) 279-298.

down." A similar idea is that the Quran was dictated by God, an idea found in the Quran itself and is generally shared by Muslims. Traditionally the Christians also believed that Moses was literally the author of the Pentateuch. But this certainty got a rude shock in the eighteenth century with the progress of Protestant biblical scholarship. The progress achieved in the twentieth century by biblical scholarship has enabled also Catholic theologians and the magisterium itself to modify the traditional stand and adopt a more critical one.

A response of the Biblical Commission, dated 27 June 1906 and confirmed by Pope Pius X, excluded the opinion that "the Pentateuch did not have Moses for author but was composed mostly from later sources." However, this official magisterium did not require belief that "Moses wrote everything down by his own hand or dictated to scribes," but allowed for the use of earlier written and oral sources by Moses as well as later minor modifications by inspired authors after the death of Moses: such were glosses, correction of scribal errors, and updating of terms and language.<sup>28</sup> Later, the same Biblical Commission in a letter dated 16 January 1948 and addressed to the Archbishop Cardinal Suhard of Paris, admitted "a progressive increase of Mosaic laws due to the social and religious conditions of later times."<sup>29</sup> Such changes of view can be verified very clearly by comparing the two articles "loi" in the *Dictionnaire de la Bible* and in the *Dictionnaire de la Bible. Supplement*. Authorship raises questions not only about writing and dictating but also of literary genre including pseudepigraphy.

Pseudepigraphic literature has appeared in all epochs, even in the late twentieth century like the forged *Hitler Diary* published in the 1980's. Behind the once flourishing pseudepigraphic literature, whether biblical called the Apocrypha<sup>30</sup> or extrabiblical, several motives were at play.<sup>31</sup> Fraud, malice and treachery were not the only motives, nor the main ones for their creation. Nor were the heretics the only producers

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<sup>28</sup>AAS 39 (1906-1907) 377-378; DzSch 3394-3397; EB 2 ed, 181-184.

<sup>29</sup>AAS 40 (1948) 45-48; DzSch 3862-3864; EB 2 ed, 577-579.

<sup>30</sup>For biblical pseudepigrapha see James Charlesworth, ed., *The Old Testament Pseudepigrapha*, 2 vols., (New York: Doubleday) 1983; Edgar Hennecke and Wilhelm Schneemelcher, eds., *New Testament Apocrypha*, trans. R. McL. Wilson, 2 vols., (Westminster Press: Philadelphia) 1963-1964.

<sup>31</sup>W. Speyer, *Die literarische Fälschung im heidnischen und christlichen Altertum* (München, 1971).

of biblical pseudepigraphy called the Apocrypha.<sup>32</sup> In fact there are also "canonical apocrypha."<sup>33</sup> Most of the Pentateuch was written after the time of Moses by priests and scribes who attributed their writings to him. Hence, from a literary point of view the first five books of the Bible may be said to be pseudepigrapha! Note that Deuteronomy was crafted in the seventh century.

Now, how to evaluate critically this literary phenomenon of pseudepigrapha? To start with, we have to put aside our modern eye glasses or mentality and think of the different world of antiquity. There Plato teaches that the "noble falsehood" (popularly called the "white lie") is ethically honourable.<sup>34</sup> And truth is not exclusively or principally the Aristotelico-Scholastic conformity of the mind with the thing ("*adæquatio mentis ad rem*"); instead truth is regarded as coherence and consistency (cf. consistency as the criterion of truth in philosophy).

Antiquity had also different views of authorship. For example, an excellent proverb that is worthy of Solomon is Solomonic. A psalm as devotional and inspiring as the one of David, is Davidic. And David is regarded as the author of the book of psalms in the Old Testament although it contains psalms ascribed to Asaph and some others. Similarly, a law that coheres with the legal tradition of Moses is regarded as Mosaic. The laws of the Pentateuch acquire thus, by their attribution to Moses, a transliterary and transhistoric significance: they become divine law. This constitutes a problem concerning *ius divinum*.

In the NT, the Sermon on the Mount in the Gospel of Matthew and the farewell discourse of Jesus in the Gospel of John are mostly reconstructions, not textual citations. However, they are not regarded as pseudepigrapha: the Church believes and receives them as representing Jesus' authentic teaching, even if not *ipsissima verba Domini*. Regarding certain books of the New Testament Raymond E. Brown writes:

As for the Deutero-Pauline epistles (the Pastorals, Ephesians and Colossians) and the Catholic epistles, the designation of the authors as Paul, James, Peter, John, and Jude probably represents a claim to

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<sup>32</sup>This is Speyer's position, which, however, is aprioristic, apologetic, and mistaken.

<sup>33</sup>B. M. Metzger, "Literary Forgeries and Canonical Pseudepigrapha," JBL 91 (1972) 3-24.

<sup>34</sup>To say a lie to save one's country (republic or *patria*) is "noble falsehood" (Plato, *The Republic*, 382c, 414b).

apostolic adherence rather than an objective designation of apostolic writing.<sup>35</sup>

Analogous is the case of the Didache and the *Apostolic Constitutions* and the *Canons of the Apostles*.<sup>36</sup> During many centuries in the past the *Apostles' Creed* was thought to have been composed by the Apostles themselves, each one contributing one article. However, the most ancient version of this creed can be dated no earlier than the last decades of the second century.<sup>37</sup> From the point of view of authorship, these creeds and canons of the Apostles are not different from the NT apocrypha like the Gospel of Peter or the Gospel of Philip or the Acts of Thomas.<sup>38</sup> They are, however, valuable for critical historiography as has been recognized by recent scholarship.<sup>39</sup> The real difference consists in the fact that the Spirit-led community received the former but rejected the latter. This reception is the guarantee of salvific truth, not of literary or human authorship, which is secondary.

When we apply these considerations to the OT laws, the paternity of the laws enacted during the period of the monarchy yields to the legislative authority of Moses, regarded as the only lawgiver of Israel under and from God. The OT laws are not state laws, nor are the kings of Judah or of Israel legislators like other sovereigns. Strictly, even Moses is not a legislator but only a mediator of the law given by God, the only sovereign legislator of the people of God. "The Lord is our

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<sup>35</sup>Raymond E. Brown, *The Churches the Apostles Left Behind* (New York: Paulist Press, 1984) p. 16. This is a scholarly opinion shared by many, although some would nuance it by allowing at least some input from these Apostles which went into the making of these apostolic traditions.

<sup>36</sup>Kurt Aland, "The Problem of Anonymity and Pseudonymity in Christian Literature of the First Two Centuries," *JTS* 12 (1961) 39-49; "Noch einmal: Das Problem der Anonimität und Pseudonymität in der christlichen Literatur der ersten beiden Jahrhunderte," in *Pietas: Festschrift für Bernhard Kötting*, Ernst Dassmann und K. Suso Frank, eds., (Jahrbuch für Antike und Christentum, Ergänzungsband 8), (Aschendorffsche Verlagsbuchhandlung: Münster), pp. 121-139; Arnold Meyer, "Religiöse Pseudepigraphie als ethisch-psychologisches Problem," *ZNW* 35 (1936) 262-279.

<sup>37</sup>The *Apostles' Creed* was a local creed used in the Church of Rome originally at baptism and eventually also in the Eucharist. It was later taken over by the Council of Nicea (325) in the formulation of its creed but omitting "communio sanctorum" (Denzinger-P.H., n. 9, p. 16).

<sup>38</sup>Luigi Moraldi (ed.). *Apocrfi del Nuovo Testamento* (Turin: UTET) 1971.

<sup>39</sup>For a convenient summary of the recent reevaluation of the New Testament apocrypha, see George Nedungatt, S.J., "The Apocryphal Acts of Thomas and Christian Origins in India," *Gregorianum* 92 (2011) 533-557.

judge, the Lord is our lawgiver [not "ruler," as in NRSV], the Lord is our king: he will save us" (Is 33:22). The prophet proclaims that the only lawgiver (the only judge, the only king) is Yahweh, and salvation will come from him and no one else. The lawgiver is also saviour, *yešûa*, the name that will be given to Jesus, the lawgiver of the NT.

The historical critical method was a healthy reaction to historical positivism. It opened a new epoch in the history of biblical interpretation, although it has also its limits, as has been signalled by the Pontifical Biblical Commission.

The historical-critical method is the indispensable method for the scientific study of the meaning of ancient texts. ... It is a *historical* method, not only because it is applied to ancient texts – in this case, those of the Bible – and studies their significance from a historical point of view, but also and above all because it seeks to shed light upon the historical processes which gave rise to biblical texts, diachronic processes that were often complex and involved a long period of time. At the different stages of their production, the texts of the Bible were addressed to various categories of hearers or readers, living in different places and different times.

It is a *critical* method, because in each of its steps (from textual criticism to redaction criticism) it operates with the help of scientific criteria that seek to be as objective as possible.<sup>40</sup>

At the *theological* level, the significance of the attribution of the entire legislation of the Pentateuch to Moses can be understood in the covenant situation of Israel. To cite once again Martin Noth:

The Old Testament quite clearly associates the conceptions of 'covenant' and 'law' with one another in a definite relationship. ... The Old Testament has consequently dated practically all laws too early, and compressed into a single act, or at least into a short space of time, what in reality came into being during the course of a long history of successive laws and law books. The tradition has thus quite rightly expressed the actual connection of 'covenant' and 'law'; it has merely brought together into a single act what took a

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<sup>40</sup>*L'interprétation de la Bible dans l'Église* (15 April 1993 / 21 September 1993, published on 18 November 1993. See Murphy, p. 694 (nn.1723, 1724). For the entire document see pp. 685-774, nn. 1703-1985. For the original, which is in French, *L'interprétation de la Bible dans l'Église*, see *Biblica* 74 (1993) 451-528. Reproduced in EV 13.

long time before it developed into this permanent state of affairs as a consequence of that act.<sup>41</sup>

Although the entire legislation of the Old Testament was not linked to the Sinai covenant as its *historical* source, it was so linked *theologically* inasmuch as law was conceived as the exigency of the covenant. This "theology of the law" has been taught by the word of God availing itself of the technique of pseudepigraphy. What is decisive is not the technique itself but the word of God, which eternally transcends centuries and unites in a unique moment disjunct events of sacred history (Dt 5:3).

Such a theological conception of law is shared by several biblical scholars. The following citation from John L. McKenzie can be a fair summary of what we have seen about law in the Old Testament.

It is immediately obvious to any reader of the Pentateuch that the Israelite collections are all attributed to the revelation of Yahweh mediated by Moses. Our understanding of this conception must be such as to take account of the known facts of the derivation of many of the 'judgments' from the common customary law of the ancient Near East and of the literary origins of the DC (Deuteronomic Code), the HC (Holiness Code), and the PC (Priestly Code) centuries after Moses; and in fact it is now extremely difficult to maintain a Mosaic date for the CC (Code of the Covenant). It is not a matter of defending the position that the Israelite collections are collections of divinely revealed positive law, but of ascertaining the theological meaning of the attribution. This significance lies in the Israelite belief that the obligation of their law flowed from the covenant, that life under law was the duty which Yahweh's covenant promises laid upon them. All law was ultimately the will of Yahweh and was endowed to a degree with the supreme obligation which was imposed upon Israel through Moses. All law became a part of the covenant tradition; Yahweh, in revealing his moral will to Israel, had given His own sanction to law. Thus, Noth, followed by de Vaux and several others, has insisted that there is no distinction in Israel between secular and religious law. All law is viewed as a religious duty and imposes a sacred obligation.<sup>42</sup>

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<sup>41</sup>Martin Noth, *The Laws in the Pentateuch and Other Studies*, trans. D. R. Ap. Thomas, (Oliver and Boyd: Edinburgh-London, 1966) p. 39. See pp. 1-107: "The Laws in the Pentateuch: Their Assumption and Meaning."

<sup>42</sup>John L. McKenzie, "Law," art, in idem, *Dictionary of the Bible*, p. 499.