THE RIDDLE OF THE TORAH: SUGGESTING A SOLUTION.¹

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The word Torah, which in its general sense means teaching, in its special sense and used as a proper noun, is the Hebrew name for the first five books of the Old Testament, the ‘five books of Moses’, or the Pentateuch to give it its Greek dress and less euphonious name. It is rendered in Greek by Ὁ νόμος and in English by ‘the Law’. In Talmudic times (say from A.D. 250 to 500) the denotation of Torah was extended to include the whole canon of the Old Testament, for in deriving the doctrine of resurrection from the Torah, Sanhedrin cites verses from Joshua, Psalms, and Isaiah as Torah.² We are concerned here with its meaning as the ‘five books of Moses’, or the ‘five-fifths of the Law’ as the Jews term them. But Torah to the Jew does not mean the written word only. He has always believed, and the belief is essential to his view of the development of his Law, that from the first there were two forms of Torah existing side by side, which had equal validity, the Written Torah and the Oral Torah,³ both having been communicated to Moses at Sinai. The famous Tanna’ite legalist Shammai said in response to an inquiring Gentile, who wished to become a proselyte: “We have two Torahs, the Written Torah and the Oral Torah”. The Gentile said, “I believe thee as to the Written Torah but not as to the Oral”. He offered to be converted on condition that he was taught only the Written Torah. Shammai rebuked him and drove him away.⁴ R. Hagai in the name of R. Samuel b. Nahman, said:

¹ A lecture delivered in the John Rylands Library, on the 10th of March, 1943.
³ ותירה הָּשָּׁמַרְנִים וְתָרְכֹּן שָׁמְרֵם
⁴ Shabbath, 31a.
"Some things were communicated by word of mouth and some by writing and we could not know which is the more valuable save that it is said: For the Lord said unto Moses, Write thou these words, for after the tenor of these words I have made a covenant with thee and with Israel (Ex. 34: 27). This proves that the oral precepts are superior."¹ The Palestinian Talmudists thus interpreted this Exodus passage as indicating that the Oral Law was both prior in time to the Written Law and more valuable. There was a similar belief amongst Babylonian Talmudists. Thus whilst R. Eleazar said that the Torah was mainly written and to a less extent oral, R. Johanan contended that it was mostly oral and to a less extent written.² The importance attached to the Oral Law is significant, and I would ask you to bear it particularly in mind in view of an argument that will be laid before you later in this lecture.

There was a tendency, then, strongly evident in Talmudic times, to stress the importance of the Oral Law side by side with the Written Law, and even to exalt it above the Written Law. This tendency persisted and gained strength in later times. It developed to such an extent, indeed, that it could be said of Saadya Gaon (who died in A.D. 942) that it was one of his great merits that he was instrumental in re-directing the interest and attention of his compatriots to the Written Law, since in his time the Written Law was being neglected in favour of the Oral Law. The Jewish scholars of that age delighted more in the discussions and disputations offered in the Talmud. Yet the Talmud itself averred, and later commentators such as Rashi insisted, that the only wealth worth while was the Torah, and ignorance of it was the direst poverty;³ and the famous R. Meir is quoted as saying: "Whosoever is busied in Torah for its own sake merits many things, and not only so, he is worth the whole world."⁴

However we may look at it, there is a curtain of mystery surrounding the origin of the Torah. It is not easy for us to follow the Torah in history to its far-off beginnings in time,

¹ Pal. Tal. Peah, II, 6, cf. Megillah, IV, 1. ² Gittin, 60b. ³ Cf. Yebamoth, 92b; Qiddushin, 49b; and Rashi's comments on those passages. ⁴ Pereq R. Meir.
for it is very clear that Israel traced its acceptance of Law so far back in the past that it reached the realm of the supernatural. But as we journey up-stream towards the source of the Torah, as we enter the dim shadows which enshroud its beginnings, we find the twin streams of the divine Law, the Written and the Oral, flowing side by side. When we ascend till we can go no farther, they are still there flowing in their separate channels to meet us, that double source of the Torah concerning which Jewish tradition is so strong. It must be expected that the channel of the Written Word would produce a smaller stream, for in a religious polity laws reach the statute book only after careful sifting and mature consideration. Its progress will be slow and fitful since advance is made from one codification to another with considerable intervals of time between, and it may be expected to come to a full stop in a moderate period of time, since the gradual sanctification of what has already been fixed in writing retards increasingly the current and ultimately makes fresh additions and fresh progress impossible. The stream is brought to a dead halt.

This is not the case with the other stream, that of the Oral Law. No such restrictions impede its course. It is unfettered by the limitations imposed by the statute book. It thrives on the disagreements of the legalists. It allows for differences in the interpretation of the words of the Written Law and for manifold amplifications and extensions. It relates new conditions to the old and devises fresh precepts which may have but a very attenuated hold on the Written Law. It constitutes the dynamic element in the Torah. It is averse to committing itself to writing for its very existence is bound up with its instability and flexibility. The memory, in the early stages at least, is the prime medium in its transmission. Registration of its decisions in writing, in later times at least, is forced on it only when the burden of its accumulations renders this imperative. And when this happens the codification has the same slowing-up effect as can be witnessed in the case of the Written Law. The Oral Law was essentially what the Jews have termed midrash, a Hebrew word meaning either 'investigation' or the result of investigation, 'comment'. From out of all
the activity which enfolded the Oral Law a process of distillation
of legislation by agreement of authorities and by general ac-
ceptance after considerable trial of its operation, was continually
taking place, and by this means the midrash of Oral Law found
its way into the Written Law and became part of accepted and
recorded law. Indeed, the Written Law in its earlier stages
grew by the slow and intermittent absorption of midrashic
elements from the Oral Law.

The Oral Law itself, at a very early stage, broke into two
channels, the legalistic interpretation, or midrash halakhah, and
the ethical or homiletical interpretation, the midrash haggadah.¹
The individual halakhah was a precept resulting from inquiry
into the Law. Haggadah was capable of embracing in its con-
tent all knowledge, except of course legalistic, which could be
harnessed to the exposition of the Torah. The task set before
the Oral Law was, indeed, heavy. It had to supplement the
Written Law, and as the Jew had to regulate his life and conduct
under all circumstances in accordance with the Law of God,
it had perpetually to face fresh problems, and consequently the
ramifications of the Oral Law have proved endless. Rabbinic
tradition maintained that everything was to be found in the
Torah. According to the interpretation of R. Joshua b. Levi,
the Bible, the Mishnah, the Talmud and all exegesis, even such
new points as a perspicacious student of the Law may learn in
the future, were all communicated to Moses on Mount Sinai.²
A custom which is not proved from the Torah, it was held,
is nothing else than the result of an erroneous conclusion.³
There is the famous saying of R. Ben Bag Bag regarding the
Torah: “Turn it over and turn it over again, for all is in it,
and in it is thine all”.⁴

The canon of the Hebrew Scriptures was certainly com-
pleted by the end of the first century of our era. The canon
of the prophetic books was completed by about 200 B.C. and
the Torah of Moses before the time of Ezra, for Ezra, we are

¹ Halakhah, literally a ‘going’ or ‘walking’, means a rule of conduct. Haggadah, literally a ‘telling’ or ‘communication’, is used to cover all homi-
letical interpretation, including ethical, historical, legendary, etc., matter.
³ Cf. Sopherim, 14b.
told, was an ‘expert scribe’ in the Torah of Moses. Ezra brought the Torah to Jerusalem in 444 B.C. Even the most radical of modern critics allow only for minor alterations and additions after his death. In reality it was almost certainly completed many centuries before his death, as we have tried to show in a previous lecture.¹ It is very probable, then, that long before Ezra’s date the infiltration from the Oral Law into the Written Law had of necessity ceased, and the Oral Law was left with no outlet for its legalistic crystallizations, so it continued flowing full flood, expanding to a river of great proportions and broadening its channel. By the first and second centuries of our era attempts were being made by such scholars as R. Akiba and R. Meir to systematize its voluminous matter. But the task was by now impeded. Instinctively it was felt that the writing down of the Oral Law endangered its character and indeed threatened its very existence. Hence there had grown up a legend that there was a prohibition against the writing down of the Oral Law. In various passages of the Talmud recollection is made of such a prohibition. Thus, according to R. Jehudah b. Nahmani: “The words of writing must not be recited orally, and the oral words must not be written down” ² Strack has pointed out that this conception was a relatively late development.³ Still, for the Talmudic age it was a burning question. Thus R. Johanan b. Nappaha (third century A.D.) said: “Who writes halakhoth is like one who burns the Torah, and who learns from such is unrewarded”.⁴ A similar argument against writing down haggadoth was also pressed, but it had less force. What, however, was clearly banned, in the popular imagination at least, was the writing down of the Oral Law for public use. The Written Law had by now assumed its final form and its sacredness was stressed. It was clearly intended that there should be no rival to the sacred written word in the service of the synagogue. It was for this reason that it was forbidden to make

¹ The Priestly Code: Bul. of J. Rylands Library, XXVI, 2, 1942.
³ H. L. Strack, Einleit. in d. Talmud, Leipzig, 1908, pp. 10 ff.
⁴ Plural of halakhah.
⁵ Temurah, 14b.
use of a written Aramaic translation (Targum) of the Torah in public worship. In the Palestinian Talmud, it is recorded that R. Samuel b. Isaac on one occasion entered a synagogue and saw a sofer reading the Aramaic translation from a book. He admonished him with the words: "It is forbidden to you; for what has been received orally should be transmitted orally and what has been given in writing can only be read from a book". This hypersensitiveness in regard to the writing down of Targum and of midrash, both halakhah and haggadah, was directed, as we have seen, against the public use of transcripts. It is evident that in the preparation by the officiant for the public service, or for private use and study, the written form was essential, and, as far as evidence goes, there was no great reluctance shown, except perhaps in some quarters, to write down for such purposes the fruits of the Oral Law. Collections of halakhoth were being compiled, and R. Jehudah, known as ha-Nasi', made the famous collection of halakhoth termed the Mishnah—a word that means 'repetition' or 'second law'. No person, of course, ever composes a law-code; he can only compile it, and R. Jehudah made use in his compilation of similar collections made by his predecessors, notably that of R. Meir, who in turn was a pupil of R. Akiba. The Mishnah became the authoritative code of the period and, like the Torah before it, it became in due course the subject of special study in the great Jewish schools of Palestine and Babylonia. As the result of this intensive study of the Mishnah, the fruits of which were collected into a body of writing known as the Gemara (or 'completion'), there evolved two Talmuds each a combination of the Mishnah and a Gemara. The Babylonian Gemara is about three times as large as the Palestinian, and the Baby-

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1 Megillah, IV, 1. The text has ספות משלוח חומרים ("a Sopher handing out (reciting) a translation"). According to Krauss (Synagogale Allertümer, Berlin—Wein, 1922, pp. 134, 179) ספות is identical with סופר, one who reads the Torah to the public by profession, i.e. the interpreter or meturgeman. Krauss suggests reading instead of the ספות of the text, משלוח משלוח משלוח a root for which he skilfully finds the meaning to evolve in Pal. Tal. Shabbath, XV, 1; Lam. Rabbah, IV, 20. Accordingly it was not a question of making public use of a written Targum but of 'evolving' the Targum out of the Scroll of the Law. The interpreter must not look into the Scroll when reciting, as by so doing he might give the impression that the Targum was part of the Torah.
lonian Talmud is the Talmud par excellence. It should be mentioned also that the Mishnah was really a selection of the most important halakhoth. There were many hundreds of others left out.

The codification of halakhoth of the Oral Law in the Mishnah was the precursor of other codifications which made their appearance from time to time in Jewish communities in various countries down the ages. But we turn for our purpose to the last important codification which has been made—that of Joseph Karo (1488-1575)—and named the Shulhan 'Arukh (or 'set table'). Karo had laboured for the greater part of his life in the study of the Oral Law. He had made a commentary on the Mishnah Torah of Maimonides, then taking that famous and highly esteemed codification, the Turim of Jacob ben Asher as his basis and model, he laboured to trace the halakhoth through their chain of authorities to their origin, gathering the results together in a great work, the Beth Joseph. On this he had spent over twenty years of hard study and an additional twelve years in its revision. It was with the desire to make a students' manual out of his larger work that he decided to compose a digest (the Shulhan 'Arukh), giving the decisions in categorical form without the nexus of discussions and authorities. This presentation of halakhoth appealed to the scholars of his day and generation and it became the authoritative code for the Jews of Spain, and when it was revised to include the special halakhoth of the French and German jurists, it became the authoritative code of Jewry and has remained so to the present day.

From our brief consideration of the Mishnah and the Shulhan 'Arukh, these two great codifications which mark the beginning and, for the time being at least, the end of the codifications of Oral Law, we learn an important lesson. Both have this distinctive feature in common—and it appears that the success of each is somehow due to it—that they are content to state the laws as categorical decisions. That the Jew is ready to accept, as final and authoritative, precepts presented in this form is testified to by the success of both over other collections, which

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1 This form is commonly known as the Mishnah form.
left the decision open by an appeal to a chain of authorities or by submitting alternative decisions. But, of course, it was not merely that. Both Jehudah ha-Nasi’ and Joseph Karo had great reputations for profound learning and for life-long study of Oral Law, and it was recognized that their works rested on the shoulders of distinguished predecessors. They were, in fact, the quintessence of the legalistic wisdom of generations of sages. The Mishneh Torah of Maimonides had the same categorical form of statement, but it was not accepted in the same way. The Mishneh Torah was indeed written with the express purpose of becoming Jewry’s authoritative code. Maimonides makes this clear in his introduction to the work. “I call this treatise the Mishneh Torah for a man should read first the Written Law, and then he can read this book and he will know the Oral Law, and he does not need any other book.” But even the great reputation of Maimonides could not clothe his Mishneh Torah with the essential authority, by which alone he could achieve the aim he had in view.

To sum up: if we examine the course of development of Jewish Law where it comes under our observation in the clear light of history, we note that the Written Law has ceased to develop at a relatively early stage and with it have come to an end the infiltrations from the Oral Law. We note also that the Oral Law has a long and spacious development and that when it eventually comes to be written down the current of its progress slows up, but even then never quite ceases. Through the labours of successive generations of Rabbis a large number of legal decisions and interpretations accumulated. Some found general acceptance, others, without sufficient basis of authority, were rejected. In the case of the first of these two classes, a time eventually comes when a precept of Oral Law can be stripped of its supporting chain of authorities and presented as final, taking on the form of Written Law.¹ It was by such distillations from the Oral Law that the Written Law in its earlier stages expanded. In all these expansions of Written and Oral Law it was never thought by the Jewish doctors that

¹ It then appears to become a hōq (statute). In the first stage it was merely a mishpat (judgment).
any new thing was contributed. All that was produced was there from the beginning. They were merely making explicit what was implicit in the Torah. "Turn it over and turn it over again for all is in it."

The Oriental attitude to life is conservative, and there is abundant evidence that such was the Hebrew outlook. As we pass from generation to generation in the long course of history from Bible times to our own (or at least, to fairly recent years) we see a civilization maintained at much the same level—the same occupations, the same processes of manufacture, the same implements, the same customs, the same methods. In Palestine we find (until recently) a land where the stimulus to change had long ceased to operate and a blessed stagnation had resulted in a drowsy changelessness. And within an essentially conservative community, there is no more rigidly conservative element than the religious. The Hebrew Scriptures, from their inception to their formation into a canon, have been controlled by an attitude of mind which has never changed. The same treatment has been meted out to the Scriptures from the first. In so far as there has been evolution it has been an evolution controlled and directed by forces whose character has been unalterably fixed, and whose influence has been insistently operative without change of direction. If we pick up the threads of this evolutionary process in the later stages, we can follow them back up-stream towards the fountain-head with the sure knowledge that we will find the same evolutionary process in operation in the upper reaches of the stream. The Israelites knew how to conserve the essential and the best of the reflections of their sages on God and on man's relationship to Him, as preserved in the Torah, Written and Oral. The treasures of the past were never discarded to make room for the riches of the present. And here I cannot do better than quote the words of Dr. Caster who wrote of his people: "The tendency is to preserve the older and join on to it the results

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1 This conservatism is stressed by S. Krauss in the Preface to his Talmudische Archeologie (Leipzig, 1910). He does not need to make any distinction between the Babylonian and Palestinian Talmuds in his task, and both link up directly with the Old Testament as far as their archaeology is concerned.
of later developments. We do not relinquish the past at the expense of the present, but utilize the present to strengthen the past. The fences round the Law double and treble in course of time but not one of the old fences is given up. We add prayer to prayer in the development of our liturgy, but we do not substitute one for the other. With the strong safeguard of this innate conservatism we see in the traditions of the Hebrews a factor of immense importance, and one that cannot be lightly dismissed. A definite weakness in modern Old Testament criticism is to attempt to explain what has been created and moulded by Oriental minds by means of Western processes of reasoning and on the basis of Western methods of interpretation.

And now to assist us in our task and to point the way to us, we have the firm Hebrew tradition that the Torah from the first was in two forms, written and oral. On the analogy of later developments we are prepared then to find at the fountain-head a nucleus of Written Law to which will be attached some elements of the Oral Law; for if the Written and the Oral Laws had equal validity from the first, as Jewish tradition so stoutly maintains, the nucleus of the Law, if it is to be a true nucleus, should exhibit elements of both.

We need have no hesitation in deciding where to look for our nucleus of the Torah. Rabbinic tradition is insistent that the Ten Commandments, the Decalogue, formed the foundation on which the Torah rested. According to the Palestinian Talmud, Hananiah, nephew of R. Joshua, said that on the tables of the Law after each commandment the laws derived from it were engraved, and R. Simon b. Lakish introduced in this connection the simile of the sea with a few great waves and a large number of small waves interspersed. This conveys the idea, early held and widely propagated in later Rabbinic circles, that the Ten Commandments served as rubrics for the rest of the 613 commandments of the Torah, which were summarized and arranged accordingly.

2 Sheqalim, VI, 1.
3 Philo, for instance, in a treatise on the special laws (as distinct from the Ten Commandments) strove to arrange almost all the Mosaic laws under the heading of the Ten Commandments.
We have the Decalogue in two forms as given in Exodus 20: 2-17, and Deuteronomy 5: 6-21. That the 'Ten Words' were given originally in shorter form is generally recognized by modern scholarship. It might be said that Jewish belief is disposed to support this, since there is a Rabbinic tradition, to which R. Haninah b. Gamaliel has given voice, that five commandments were written on each table, although according to other sages they were complete on each table.¹ There was a further belief that the laws were so arranged as to correspond on the two tables. Thus the first law stood opposite to the sixth, the second opposite to the seventh, and so on.² Only a visualization of the commandments in shorter form would seem to make this possible. The original form of the Ten Words would be simple.

Thou shalt have no other gods before me.
Thou shalt not make unto thee a graven image.
Thou shalt not take the name of the Lord, thy God, in vain.
Remember the Sabbath day to keep it holy.
Honour thy father and thy mother.
Thou shalt not kill.
Thou shalt not commit adultery.
Thou shalt not steal.
Thou shalt not bear false witness (against thy neighbour).
Thou shalt not covet.

That the additional matter which is found in the Decalogue has been added later is made the more probable by the fact that there is variation in respect of it in the two forms of the Decalogue. We could not expect to find differences in the shorter and basic form of the commandments, and there is none. The first three commandments are the same in both Exodus and Deuteronomy. The fourth commandment as given in Deuteronomy adds: "as the Lord, thy God, commanded thee". It adds also "ox and ass" before "cattle". It adds further, as reason for the observance of the Sabbath: "that thy manservant and maidservant may rest as well as thou". It gives, moreover, a different reason for its institution, namely, the commemoration of the bringing out of the people from

¹ See previous note. ² Mekhilta, Ex. 20: 16.
Egypt. In the fifth commandment Deuteronomy adds the haggadic comment, "that it may be well with thee", to the promise of length of days. In the tenth Deuteronomy adds "field" to the list of things not to be coveted. Now these additions, made in both Decalogues, to the primary form of the commandments are our first examples of the incidence of Oral Law on the Written Law, and, interestingly enough, they are part halakhic and part haggadic. A good example of halakhic expansion is seen in the fourth commandment. In its primary form the commandment enjoined that the Sabbath Day should be kept holy. This was interpreted to mean, in one aspect at least, the doing of no work, but no definition was given of work. Attempts to evade the full effect of the commandment by having work done by other members of the household, such as sons or daughters, or slaves, or strangers or beasts of burden, led to a closer definition of its scope, clearly the result of the operation of Oral Law.

Now why was an element of the Oral Law introduced into the Decalogue? Why was it necessary, for instance, to include a definition of the nature of the images man was not to make? Or why the haggadic addition ascribing the reason for the second commandment to God's jealousy and emphasizing the effects of God's displeasure? Or why the list of persons and animals brought under the scope of the Sabbath law and the two different reasons given for its institution, or the list of things not to be coveted as given in the tenth Commandment? These halakhic and haggadic additions detract from the generality of the commandments to which they are attached and by closer definition tend to limit their scope. They could to all seeming have been included equally well in such a piece of legislation as the Book of the Covenant which follows close on the Exodus Decalogue, and embraces, as we shall see, similar expansions of the com-

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1 Only three kinds of labour which come within the Sabbath ban are specified in the Torah: kindling of fire (Ex. 35: 3), the going out of one's place (Ex. 16: 29), and the gathering of faggots (Num. 15: 32-6). The Sopherim later distinguished 39 main classes of work (תשבחות) with numerous subdivisions.

2 The wife is not included in the list of the household since she is one with her husband. The twain are one flesh.
mandments. It is, as we have already observed, a tradition, drawn from the account of the giving of the Law on Mount Sinai, that the Law was given in two forms, written and oral, and that both have equal validity. There was even a disposition, sufficiently marked in later times, to give pre-eminence to the Oral Law. If the Decalogue had been restricted to the primary abbreviated form in which it is presumed to have been originally written on the tables of stone, as Written Law with no semblance of Oral Law attaching to it, it would have had, ipso facto, a predominance which was clearly not intended. But the elements of the Oral Law preserved in the Decalogue, and forming part of it, affirmed the equal status of the Oral Law with the Written. The twin streams thus set out together from the same fountain-head.

The Decalogue in its general arrangement falls into two divisions. The first five commandments are concerned with man’s relationship to God, and the second five with man’s relationship to man. In the first pentad there are stressed the exclusion of other gods, the ban on image-making, due reverence for God’s name, the observance of the Sabbath day because of its association with God, and the respect due to parents who are agents of God in the creation of their children. In the second pentad are listed the crimes against society—murder, adultery, theft, false witness, covetousness. Of these the last-named seems, on the face of it, the least heinous, and its inclusion with the other major crimes seems rather surprising. But in the East in all places and in all periods of time it is the eye of envy, the ‘evil eye’, which stirs into operation demonic agencies, which work terrible mischief. The Talmud has frequent reference to it. It is often said there that the tribe of Joseph was immune against the evil eye.¹ The tenth

¹ Thus R. Johanan said: “I come from the stock of Joseph over whom the evil eye has no power”. The reason given in the Talmud is that the eye which desired not to enjoy what did not belong to it (Joseph and Potiphar’s wife) cannot be influenced by the evil eye (Berakhoth, 20a). Belief in the evil eye (אַרְעַיִית) comes frequently to the surface in the Talmud. In Baba Metzia (107b) it is related how Rab once went to a graveyard, and after operating some charms, said: “Ninety-nine of those buried here have died from the effects of the evil eye and only one from natural causes”. It is also said of Simeon b. Camaliel
commandment, viewed in this light, forbids an offence as grave as any of the others. Since the commandments of the Decalogue were listed by God their violation inevitably involved the extreme penalty.  

It is evident that in the first of the two divisions of the Decalogue much that the worshipper should know of his relationship to his God has not been expressed. Neither in the preamble to the Decalogue, nor in the first three commandments is man told how God is to be worshipped. There is a suggestion of it only in the fourth commandment. The means of approach to God are presumably so familiar that it is not deemed necessary to introduce them here, and when reference is made to them later it will be in order to stress their departure from the familiar or to indicate a proper selection from alternatives. For these we have to look to the expansions of those laws which are derived from the Oral Law. Attention has been drawn from time to time to a number of so-called decalogues, which, in addition in the same tractate that he would not allow his son to be raised from the scholar's place to the teacher's seat, fearing the evil eye (B 84b). Animals and inanimate objects had to be safeguarded for the same reason: see Tosephta Shabbath, IV, 5; Shabbath 67a; Baba Metzia 30a, 107a. The legal position in respect of the evil eye was that damage caused by it was claimable damage (Baba Bathra, 2b). It is the bringing into play the power of evil spirits that constitutes the most serious aspect of the evil eye! "Any act or condition that in itself may excite the envy of the spirits is subject to the evil eye: taking a census, or even estimating the size of a crowd, possession of wealth, performing an act which is normally a source of pride or joy, all evoke its pernicious effects. . . . Even animals and plants were subject to the evil eye: a man who admired his neighbour's crop was suspected of casting the evil eye upon it" (J. Trachtenberg, *Jewish Magic and Superstition*, New York, 1939, p. 55). In Baba Bathra (2b) it is said that a man is forbidden to stand about in his neighbour's field when the corn in it is in the ear. The explanation given of the prohibition was lest injury be done to it by casting on it the evil eye. It is worth noting, too, that עין (eye) is often joined with רמך, thus 1 Ki. 20: 6; Ezek. 24: 16, 21, 25; Lam. 2: 4, and רמך is the verb used in the tenth commandment.

(For many of the Talmud references in this footnote and elsewhere I am indebted to Mr. P. R. Weis.)

1 The death penalty for the breaking of the Commandments of the Decalogue, in their most rigid interpretation as serious offences, is clearly indicated: thus for the first, Deut. 4: 3; the second, Deut. 4: 23 f.; the third, Lev. 24: 15 f.; the fourth, Ex. 35: 2; the fifth, Lev. 20: 9; the sixth, Lev. 24: 17; the seventh, Lev. 20: 10; the eighth, Ex. 21: 16; the ninth, Deut. 19: 16-21; the tenth, Lev. 20: 27; Ex. 22: 17.
to the Decalogue in its two forms, are found embedded in the
Pentateuch. Thus it has been pointed out that in Deuteronomy
27: 15-26 there is an ethical Decalogue, which has in places
echoes of the primary Decalogue, also that there is another
in Exodus 34 which, since Wellhausen, has been called the
Ritual Decalogue. Traces of others seem to appear in Exodus
22 and 23 and so on. But far from being original and in-
dependent Decalogues these should rightfully be regarded as
midrashic expansions of the basic Decalogue or of its parts.
Thus in these midrashic Decalogues we find that the means of
approach of the worshipper to God, which are either assumed
or implied in the first two commandments, are here given closer
definition and regulation. The altar is introduced, its conse-
cration, its structure, the offerings to be made on it, its use as
a place of refuge, followed by the setting forth of the appropriate
times to make the offerings and to hold the set feasts. The
proclamation of the set feasts may, however, be regarded as a
natural expansion of the fourth commandment, the Sabbath
law.¹ Such midrashic Decalogues, which may well have had
their origin at different shrines before the advent of centraliza-
tion of worship in Jerusalem, are much on the same footing
as the Book of the Covenant to the consideration of which we
now turn.

To discover the earliest extensions of the Decalogue we
would naturally look to the adjacent context, especially to the
vicinity of the Exodus Decalogue, which has suggested itself
as the earlier form. Following closely on the Exodus Decalogue
we find a small corpus of legislation which is embraced in the
portion of text, Exodus 20: 22 to the end of chapter 23,
although some scholars think it ends at verse 19 of that chapter.

¹ This is almost the scheme of Philo. Let me quote from M. Waxman:
"Philo tries to arrange systematically almost all Mosaic laws under the heads
of the Ten Commandments. For instance (in his work On the Special Laws)
under the first two Commandments he brings in all the laws connected with
the worship of God, such as those concerning priests and sacrifices; under that
of the Sabbath, all laws dealing with the day of rest and all festivities; under
the seventh commandment all laws bearing on marriage and divorce. Under
the other three prohibition of murder (Philo changes the order), stealing and
lusting, all civil and criminal laws."—Hist. of Jewish Lit., I, p. 95.
This is the legislative section generally known as the Book of the Covenant. It is the view of a number of Old Testament scholars that it does not occupy its rightful place here, and that a more suitable place for it can be found elsewhere. But I think it should be stressed that the more closely one examines the Torah, the more convinced one becomes that there is nothing haphazard in its arrangement. Certain chronological considerations seem to have controlled the general arrangement of the parts within the whole. Into the arrangement of the elements of the parts other considerations appear to have entered. The internal arrangement of the Book of the Covenant has also been the subject of criticism since it would appear to follow no recognizable system. This is undoubtedly so, if we regard the Book of the Covenant as an independent law-code devised for a community of its own. But if it is, as we hope to show, a running midrash to the Decalogue, the case is very different. As a proof that it is a midrash we may draw attention to its use of the particle נל. In the halakhic Midrashim, Sifra, Sifre, and Mekhila, the method of treatment is to quote a Scriptural law and then to state some special case to which the law can be applied. This is the procedure observable also in analogous midrashic expansions in the Pentateuch. After the general law is stated in concise form, it is often followed by sections dealing with special cases, which are introduced by the particle נל (here translated 'if'). Such sections form the midrash to the general law, which in the case of the Book of the Covenant may be taken from the Decalogue, or from one of these natural extensions to the first three commandments which introduce the altar and the other means for the worship of God, to which we have had occasion to refer. This use of נל to mark fresh halakhic sections is characteristic of the Book of the Covenant.

The Book of the Covenant begins with a preamble. In Exodus 20:22 we read, "And the Lord said unto Moses: thus shalt thou say unto the children of Israel, Ye yourselves

1 The Book of the Covenant has been dealt with very fully by J. Morgenstern in Hebrew Union College Annual, Vols. V (1928) to IX (1932).
2 The subordinate conditions within the sections are introduced by נל or ננה.
have seen that I have talked with you from heaven". This preamble is not without its significance. What it obviously wishes to convey is that what follows is the result of that talk. In other words what follows is part of the Oral Law. Then after indicating the first commandment it proceeds to amplify this commandment, or it may be rather the second commandment, with a prohibition against the making of gods of silver or gold. Then it turns to the altar—the altar of earth (24a) and what is to be offered upon it (24b). In the next verses we have the altar of stone and the prohibition of hewn stones in its formation (25), and the approach by steps to the altar (26). In chapter 21: 2-6, we have a midrash ¹ to the fourth commandment which provides six days for labour and the seventh for rest for the slave as well as for the master. The midrash to this in v. 2 is to the effect that the slave shall serve six years and in the seventh he shall go out free for nothing. Then follow all matters appertaining to his release. If he has married meantime, what of his wife and his children? What happens if he refuses to be released? The vv. 7-11 form a supplement to the foregoing and provide for the case where a man has sold his daughter to be a maidservant. Her position if espoused by her owner or his son, or if supplanted by another wife. In vv. 12-15 we come to the sixth commandment and deal with the case of a man who smites his fellow. There is laid down what happens to the smiter if he causes death. Murder and manslaughter are distinguished and the penalty for smiting father and mother, not necessarily to the extent of causing death. In v. 16 we pass on to expansions of the eighth commandment—the case of a man stealing his fellow. V. 17, the cursing of father or mother, is a midrash to the fifth commandment, or to v. 15 of this chapter. Vv. 18-25 are a midrash to the preceding section, vv. 12-17. They lay down what happens if a man is smitten but does not die (18, 19), when a slave is mortally injured (20), or when a slave is injured, but not mortally, and the case of injury to a pregnant woman. There follows

¹ The term midrash, as used in Jewish circles, means generally comment of a homiletic character—in other words midrash haggadah. I am using the term here in the sense of midrash halakhah.
here the enunciation of the *lex talionis* (22-5). In vv. 26, 27 we see how this law is modified in the case of a slave. Vv. 28-37 deal with injuries caused by or to animals—to wit, oxen. The responsibility of the owner, in the case of death or injury to a free man (28-31), to a slave (32). What happens if a man kills an ox (23-4), or an ox kills another ox (35-6).

Chapter 21: 37—22: 14 \(^1\) is a midrash either to 21: 16 or to the eighth commandment. Thus 21: 37—22: 1 deals with the theft of animals, then follow other types of theft—the thief caught in the act of breaking in (2), theft of field produce (4, 5), animals stolen or injured when in the possession of a bailee (9-12), or of a borrower. The small section, vv. 15-16, the seduction of an unmarried woman is a midrash to the seventh commandment. V. 17, ‘Thou shalt not suffer a sorceress to live’, is a midrash to the tenth commandment, which, as we have tried to show, appears to be directed against evil spirits, called into action by the evil eye. V. 19, the penalty for sacrificing to a strange god, is a midrash to the first commandment. V. 20, the regard to be paid to a stranger because the Israelites were strangers in the land of Egypt, is apparently a midrash to the preamble to the Decalogue, and v. 27, against reviling God or cursing a ruler of the people, is a midrash to the third commandment. Vv. 21-6 provide for the protection of the widowed, the fatherless, and the poor. Extortion in lending money is forbidden. They contain haggadic elements, as, for instance, the reason given for returning before nightfall a garment taken in pledge. In some aspects they may be regarded as a midrash to the ninth commandment.

In chapter 23: 1-3, which deals with false report and unrighteous witness, we have a midrash to the ninth commandment, and vv. 4, 5, the restoring of an ox that has gone astray, seems to be a midrash haggadah to the tenth commandment, or a midrash halakhah to the seventh. Vv. 6-9, the insistence on even-handed justice, on non-acceptance of bribes, and on no oppression of strangers, may be a midrash to an epilogue to the Decalogue which enjoined under penalty the strict observance of the laws. The so-called Ethical Decalogue concludes on such a note (Deut.

\(^1\) In English version, 22: 1-15. We follow the Hebrew text.
27: 36). The section, vv. 10-19, which is concerned with the Sabbatical year and the three great festivals of the Jewish calendar, is a midrash to the fourth commandment. The concluding portion, vv. 20-33, is a haggadic midrash in which it is said that the Lord will appoint an angel to bring the people into the place he has prepared for them. Obedience to him will ensure triumph in the struggle against alien nations, and happiness and prosperity if the gods of these nations are ignored and no covenant is made with them. ¹

We have, then, in the Book of the Covenant a midrash to the Decalogue. All the commandments come within its scope. Its place in the text of the Pentateuch, closely following the Decalogue, as well as the words of its preamble, indicate that it was regarded as amongst the first fruits of the Oral Law. It comes presumably from a very early period and may well be, in conjunction with the Decalogue, the first law code to which Moses' name can be attached.

It is not, of course, possible in this lecture to examine all the legislation of the Torah, but a superficial examination of the Law of Holiness (Leviticus 17-26) shows that it is of the same character as the Book of the Covenant. It, too, has the midrashic ṭ, and is a midrash on intermediate legislation basing ultimately on the Decalogue. The probable process of halakhic development may, however, be indicated. The very first stage is the small number of midrashim included in the Decalogue itself. To these attention has already been drawn in what has preceded. The second stage would seem to be represented by a codification of midrashim on the Decalogue such as we have in the Book of the Covenant. This codification serves as the text for a new set of midrashim, which, by a process of distillation and authoritative acceptance, find their way from the Oral Law into the pages of the Written Law. We must remember that in all this there can be no question of the adulteration or debasement of the Written Law, but rather was it an enrichment since the Oral Law was ever regarded as the equal, and even in some periods of Jewish history as the superior of the Written Law.

¹ The relationship of the Book of the Covenant to the Decalogue is set out in the table supplied as an Addendum.
Law. The existence of a number of midrashic decalogues would seem to indicate that the same process was going on at a number of different religious centres, clearly the sanctuaries, or high places, which were spread over the land prior to the centralization of worship in Jerusalem.

Combined with midrash halakhah there is found, as we might expect, a considerable amount of midrash haggadah. As might be expected also it follows after halakhah, as it is in general a later development. It forms the tail-piece of codes as in the Book of the Covenant. It is the strongest element in the Gemaras of the Talmuds. It is the concluding portion in the midrash elements attached to some commandments in the Decalogue. It need not of course be always the last portion, although it is most likely to be the latest portion, of any midrashic codification. If we regard Hebrew legislation as a development from a nucleus the outer covering may be expected to be haggadic. Deuteronomy, as we believe and have tried to show in previous lectures in this place, is the latest codification of law in the Pentateuch, made at or about the time of the centralization of worship in the newly-created Temple in Jerusalem as the necessary legal complement to the institution of the kingdom when ‘all Israel’ became one nation. And Deuteronomy consists of a corpus of legislation in a haggadic framework. And that incidentally was the form of the Torah prior to the inclusion of Deuteronomy. The legislation of Exodus and Leviticus is included in a haggadic framework consisting of Genesis and part of Exodus on the one side, and most of Numbers on the other. After Deuteronomy was included the framework of the new whole was probably extended to include the haggadic additions, Joshua and Judges.

We have been discussing the unfolding of Torah by gradual halakhic accretions to the Written Law emanating from the Oral Law. But there is much in the Pentateuch that still calls for explanation. The duplicate narratives in the haggadic framework, especially Genesis, the duplications, often more, of laws, the number of midrashic decalogues, the consequent inconsistencies, even in some cases contradictions, how did they arise? This is a point we can only deal with very briefly as the time at our disposal will not allow of more.
The settlement of the Israelites in Canaan had the effect of dividing the country into religious communes. Each commune might be expected to have at least one sanctuary dedicated to its God. When a contingent of the tribe of Dan migrated northwards their first concern was to secure a priest to minister to them. That the tribes would enter the Promised Land with a basic law-code, to which the name of their great law-giver was attached, is reasonably certain—else how could they have maintained the tribal bond and ultimately achieved a national unity? We know of the existence of these ancient shrines and their names are familiar to us, Shechem, Shiloh, Gibeon, Nob, Ophrah, Beersheba and many others. This basic legislation would perforce have to be expanded to provide regulation for the new conditions of life. Local application of legislation gave scope for the rapid development of the Oral Law. The expansions of the basic law would vary with the different districts. At each of the sanctuaries there would come appeals for decisions on disputed points of law and conduct, on interpretation of statutes, on new cases uncovered, to all seeming at least, by the scope of a law. That the sanctuary would require an organization to deal with all such matters referred to its officials for decision, seems evident. The chief priest of the sanctuary would be the final authority, but it is not likely that he would deal himself with all references. He would, like Moses, delegate to subordinates. He would have also his consultative body, his *beth din*, his elders, his scribes. Decisions formulated to cover special cases would be used to govern other similar cases when they arose. Decisions which were at first tentative would pass by general acceptance into authoritative ruling and afterwards into firm law. Just as we find in later Jewish history the Babylonian and Palestinian schools producing two bodies of supplementary law, the Talmuds, which, because of the geographical separation of the schools, showed distinct features, so each sanctuary would develop its legislation from the basic code in its own way in accord with regional conditions and needs. The Oral Law thus operated regionally, and we can well understand how the duplications, inconsistencies and contradictions had their origin.

1 Judges 18: 11 ff.
In addition to the administration of law and order in the community, the sanctuary had to provide for the education of its ordinands and possibly for numbers of the laity as well. Each sanctuary would have its school where its ordinands would be taught to read and write the Hebrew language, to study the Law, the liturgy, the ritual, the traditions, the calendar. Language teaching requires texts, and what was more likely to be used than written traditions? The stories of the patriarchs, the hardships of their forefathers in the ‘house of bondage’, the wanderings in the desert, the giving of the Law, the insettling in the Promised Land, and so on and so forth, were of never-failing interest and value. But the pupil would be taught other things as well. He would learn of the literatures of other nations. He knew that the Lord was the creator of the world and he would wish to learn how the creation of the world was planned and executed. He would learn geography from a rude map, for maps were in use at earlier times than those of which we speak. The table of nations in Genesis x. may well have been compiled, and the boundaries of the tribes would almost certainly be drawn, with the aid of maps. He would learn also genealogical lists tracing back the national, tribal and family trees to very early times—such genealogical lists, e.g., as form the basis of the Book of Genesis, or more elaborate ones such as are found in the opening chapters of Chronicles. He would wish to learn not only of the early history of the Israelites but of the origins of their laws, the reasons for prohibitions, the origins of festivals, and so on. In all this we can see how midrash haggadah had its rise and early development.

The problem of the Torah is an intriguing problem. Many solutions have been offered in the past and many more will be offered in the future. But no solution can hope to give satisfaction if it fails to take full account of the effect of their religion upon the life, conduct, and thought of the Hebrews, shaping their laws and determining the form and content of their teaching. The selfsame attitude of mind which produced the Torah is found amongst the Jews of to-day. We have every reason to believe that the process of gradual growth and expansion,
so evident in Jewish law, wherever and whenever it comes under observation, will have been maintained in those far-off days of the past from which all overt trace of its presence has been obliterated. Hebrew religious conservatism, than which there is no more steadfast, unwavering and unswerving force, ensures that this will have been so. The steady, unfolding nature of the process by which Jewish law and its 'hedge' expand lead us to infer a nucleus or kernel of legislation on which all is based and from which all proceeds. Hebrew tradition, the researches of modern scholars, and inherent probability, all point to the Decalogue as this nucleus. This legal kernel has proceeded to grow in many directions through expansive additions, the quintessence of juridical deliberations, the results of careful and deliberate sifting, justified by time and by the acceptance of generations of Hebrew worshippers. Who made the early midrashic deductions from the commandments of the Decalogue or the precepts of early codifications will never be known, for their names have not been given. Such deductions do not in general represent the considered opinions of individuals, however pre-eminent. Their claim to authority rested on their acceptance by a chain of legalists even although they have come down to us in Mishnah form as categorical pronouncements. And in arriving at and confirming such decisions Jewish legalists were following a well-defined path. It was indeed so well delimited that rules, originally seven in number, could be made for the interpretation of halakhoth.¹

In the several sanctuaries of the land the discipline inherent in their religious outlook controlled the formulation of precepts and secured a uniformity of treatment. In course of time to promote the centralization of worship the fruits of the sanctuaries were brought together, sifted out, and the Torah in its present form took shape. It is perhaps well to make it clear that I do not dispute the saner and more generally accepted results of modern literary analysis. If anything I provide them with a basis and an explanation.

¹In the second century of our era the number was enlarged to thirteen. At this time, too, the rules for the interpretation of haggadah were formulated. These were thirty-two in number.
In all these manifold operations we see the Law unfolding like the petals of a flower, with each codification becoming the nucleus of a new midrashic development. If we should illustrate the growth of the Law by the figure of a tree the Decalogue would be the seed, the Book of the Covenant the sapling, the Written Torah would be the trunk, and the Oral Law the widespread branches. The age-long process of growth, slow but majestic, never hastening, never resting, irrevocable, inevitable, still goes on although to the outward eye the great tree exhibits no change. And the Torah will still endure down the centuries carrying its message to Jews the world over,—and through the daughter religions, Christianity and Islam, to more than Jews—for the Torah is living and the Torah is eternal.

## ADDENDUM

### Table showing the Relationship of the Midrashic Decalogues and the Book of the Covenant to the Decalogue

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<th>Decalogue</th>
<th>Ethical</th>
<th>Ritual</th>
<th>Book of Cov.</th>
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<td>Commandments</td>
<td>Exodus Deuter.</td>
<td>Deuter.</td>
<td>Exodus</td>
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The Decalogue does not tell us how God is to be worshipped or the means to be employed to that end. Altar and offerings are presumably implied as the generally recognized intermediates of worship, but are not mentioned. The Sabbath Day is the only festival included; the great annual festivals are not alluded to. Also in the Decalogue there is no epilogue with its promise of rewards for obedience and penalties for disobedience which is a feature of later codifications as, e.g.: the Book of the Covenant, Ex. xxiii. 20-33; the Code of Holiness, Lev. xxvi; the Code in Deuteronomy, Deut. xxviii.