WEST-SEMITIC CURSES AND THE PROBLEM OF
THE ORIGINS OF HEBREW LAW 1)

BY

STANLEY GEVIRTZ
Chicago

INTRODUCTION

In his study, Die Ursprünge des israelitischen Rechts, 2) the late Professor

1) The substance of this study was presented in the form of a paper read before the meeting of the Society of Biblical Literature and Exegesis held in New York City in December, 1959.

2) Kleine Schriften zur Geschichte des Volkes Israel, I (München, 1953), 278-332 (originally published as a separate monograph in 1934).
Albrecht ALT distinguished two major traditions in Hebrew law. This distinction was based on whether the law was stated categorically or conditionally. Categorically formulated law, termed apodictic, most readily recognized in the Decalogue, has the classic form, "Thou shalt (not)...!"; conditionally formulated law, termed casuistic, has the classic form, "When/If... then...." 1) ALT expressed the opinion (ibid., pp. 294 ff.) that Hebrew casuistic law had been borrowed from, or was at least based upon Canaanite proto-types, while Hebrew apodictic law was original and unique in Israel. This opinion, heartily endorsed by W. F. ALBRIGHT 2), was inspired by the observation that the conditional statement is the most frequently encountered style of juristic formulation in the ancient Near East; whereas law, enunciated in categorical terms, appeared to be peculiar to the Hebrew Bible.

The theory did not go unchallenged. Professor Benno LANDSBERGER, for example, expressed doubt concerning the significance placed upon the distinction by ALT, and suggested, instead, that the variations in form had been motivated by what he termed, "the living, sermonic style" 3). More specific criticism was advanced by I. RAPAPORT 4) and T. J. MEEK 5), who pointed out that, though rare, and by no means as frequent as in the Old Testament, categorical legal statements are nevertheless to be found in other law codes of the ancient Near East as well, and that the criterion of style alone, therefore, could not be enlisted to determine which enactments in the Old Testament were uniquely Israelite. This, in turn, was countered with an observation by George E. MENDENHALL that the categorically formulated laws to which (RAPAPORT and) MEEK referred were not strictly parallel in form, since they were expressed in the third person, rather than as among Hebrew laws—particularly those of the Decalogue—in the second. He was able, nevertheless, to support the general conclusion of the non-uniqueness of Hebrew

1) For examples of apodictic legislation see Ex. xx 2-17, xxiii 6-9, 14-17; Lev. xviii 6-23; Deut. v 7-21, etc.; for examples of casuistic legislation see Ex. xxi 7 ff.; Lev. xx 10 ff.; Deut. xix 4 ff., etc.