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RELEVANCE AND LAW: COMPARATIVE LEGAL SEMIOTICS

Bernhard Grossfeld*

"On three things does the world stand:
1. on Torah,
2. and on the Temple service,
3. and on deeds of loving kindness."1

I. INTRODUCTION

The interaction between religion and law is a basic characteristic of our cultural history.2 In the Jewish/Christian tradition this starts with the main commandment:

"Love the LORD your God with all your heart and with all your soul and with all your strength."3

And as God created man in his "image" according to his "likeness"4 the concept of love is transferred into "Love your neighbor as yourself."5

For Martin Luther (1483 – 1546) this relation was the core of his theology6 that lead him to believe in "justification through faith."7 The tradition was taken up in the preamble of the German Constitution from 1949, referring to the German people as "conscious of their responsibility towards God.” It is also reflected in the constitutional protection of “human dignity” and “human rights” (Art. 1).8

Reality or hope?

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1. Mishnah Abot 1: 2 II B.
3. Dt. 6:5.
4. Gen 1:26s.
5. Lev 19:18; Mt 22:38; Lk. 10: 27s; Gal. 5:14.
8. Cf. also Gen 1:27.
II. COMPARATIVE LAW

The time honored interdependence of religion and law is an important subject of comparative law. One of the prime themes is the comparison between the law of the First and of the Second Testament. At first glance, this does not seem to offer particular difficulties. The terms “God” and “neighbor” sound familiar, the “ten words” and the common appreciation of the “Psalms” for individual prayers indicate closeness between both texts. Jesus told that “not the smallest letter or the smallest part of a letter will pass from the law.” Many Catholic churches try to show the historical connections by the “stump of Jesse” (Jesse was the father of David). The statue stands for the proposition that Jews and Christians have the same root (starting in Jesse).

This runs parallel to an anthropological approach towards law. Roberto MacLean, for instance, introduces Eve as the example for a human being that dares to ask questions about order against all hopes of finding the answer (“that are totally impossible to solve”). He comes to the conclusion, that “law is just another way to love people” and proposes that “love is invincible to sort out anything, even in law and justice.” Small wonder that we find the quote: “Justice is the political form of love.” Wystand H. Auden’s poem Law like Love stands in these lines:

“Like love we don’t know where or why,
Like love we can’t compel or fly,
Like love we often weep,
Like love we seldom keep.”

But doubts about the “parallelism” come up, when we consider the change from “Sabbath” (last day of the week) to “Sunday” (first day of the week) and when we look at different concepts of “clean” and “un-
clean” on interests and compound interests. Equally important might be the change of symbols: From the “letter of the law” to the “body of Christ” as the new law from the cross. Changing symbols – as the “language of the soul” – create different narrative contents.

III. HIDDEN THEOLOGY

Notwithstanding these ideas, the separation of religion and law is frequently hailed as the “trademark” of Western law since the area of “enlightenment” (17th-18th century). But the ongoing discussion about the standing of letters (Protestant sola scriptura) and metaphors (Catholic “idolatry”) in law reminds us that there continues to be a kind of hidden theology behind concepts of law: Law has not fully given up its “grounding in the realm of the sacred.” Notwithstanding all functionalisms (now often criticized) it has remained an “oracle” and judges continue to act as “diviners,” as “intermediaries” between the oracle and the world.

As with all oracles, the higher the rank of the signs used for them, the deeper is their impact. Thus, religion and law are both sign-dependent. This starts with particular words and letters and is strengthened by “ceremony and ritualization.” They associate symbolically with other institutions “that are themselves revered” and enlist “emotion in the service of persuasion.”

27. Infra 28.
34. Oscar G. Chase, Law p. 36.
35. Id. p. 33.
36. Id. p. 114.
IV. GEOGRAPHY

"The land of Israel is holier than all lands."

"The cities surrounded by a wall are more holy than it [the land]."

Geographical aspects color basic assumptions for law to start from. Holy places require a corresponding treatment. A prime example for this proposition is the land of Israel that even enjoys the “Sabbatical Year:”

“Let the land, too, keep a Sabbath for the Lord. For six years you may sow your field. . . But during the seventh year the land shall have a complete rest, a Sabbath for the Lord.”

“Seven weeks of years shall you count – seven times seven years – so that the seven cycles amount to forty-nine years. Then, on the tenth day of the seventh month let the trumpet resound; . . . This year you shall make sacred . . . It shall be a jubilee year for you, when every one of you shall return to his own property” (Jubilee Year).

The law seems to turn around the distribution of land and it connections with a particular family – a human universal: “The earth is a vast dreaming organism.”

The holiness of the land corresponds to the holiness of the people living there; Adam is “taken from the ground,” Israel is “a holy nation,” and as such has to stay “clean”; Gentiles and he who is made unclean by a corpse do not enter there [the rampart of the Temple mount].

V. CULTURAL DATA STRUCTURE

“For the harmony of the world is made manifest in Form and Number, and the heart and soul and all poetry of Natural Philosophy are embodied in the concept of mathematical beauty.”

The hidden theology–concept seems to offer a “strategic approach” to

38. Mishnah Kelim 1:6 B.
39. Mishnah Kelim 1:7 A.
41. Lev. 25:3s.
42. Lev. 25:8ss.
48. Lev 11:44s.
49. Mishnah Kelim 1:8 F.
cope with an organized chaos. Is there in the background a kind of algorithmic structure (symbol of order) “created with the aid of knowledge of scientific truth?” The “one” God and the “seven” days week could indicate the importance of such data structure (or of cybernetics) for basic legal concepts and their religious roots. The term “data structure” seems to be appropriate because we are apparently “trying to decipher culture” in view of the “invisible geometry” of conflicts. Could this indicate a kind of hidden common thread we are looking for in comparative law? May be! I will approach the question as a matter of comparative legal semiotics.

VI. NUMBERS

“Calculations of the equinoxes and reckoning the numerical value of letters are the savories of wisdom.”

We might feel an emotional resistance towards the allusion that in law we are “servants” to numbers and to numerical circles. How does this square with our “legal dreams?” However, the craft side of law is often associated with reason, with logic and analytical skills. Good mathematicians are generally expected to be good lawyers. Marcus Cohn recommended the study of Jewish real property law because “these norms help to train the brain.”

A similar idea stands behind the mos mathematicorum of the European Middle Ages (12th century). It was triggered by the Arabic numbers that drifted into Europe from Palermo (Sicily) and Vich in Northern Spain (near Barcelona). It got a firm basis with Leonardo Fibonacci’s (1180-1250) book on the new mathematics (Liber Abaci, 1202) and found its visual expression in the deus geometra of the French-Lorraine bible moralisée (from about 1215): God creates the world with a golden circle from the chaos. He appears as the eternal mathematician: Dum Deus calculat facit mundum (Leibnitz 1646 – 1716) – “While God was counting he made the world.”

52. Mackey Radio, 306 U. S. 86, 94 (1939); In the Matter of Walter, 619 F.2d (Ct of Customs and Patent) 758, 765; In re Schrader, 22 F.3d (Fed. Cir.) 290 (1994)
53. Gen. 2: 2s.
57. The Mishnah Abot 3:18B.
58. The Mishnah Baba Batra.
60. Cf. Bernhard Grossfeld, Comparative Legal Semiotics, fn. 52.
This view is quite understandable: Numbers reflect precise dimensions of space and time (as decisive factors in law). They start somewhere, go anywhere and meet eternity; thus, they indicate an eternal objectivity. They are ever present before and beyond our understanding; we cannot "grasp" them. By the same token, they indicate authority and religious precision. Small wonder that they are often regarded as "holy" and that they lead to the "Holy Scripture."

VII. BABYLON

"Following ancient great and eternal laws we all have to complete the circles of our existence."  

Thus, law seems to be derived from eternal celestial circles, from a heavenly geometry (deus geometra) in the Babylonian tradition. Just consider the reference to "the golden compasses prepared in God's eternal love." Therefore, the law comes from the one God as "the light of the world," as the "sun of justice." That corresponds to the fact that our terms for God also refer to light, to brightness. Just compare deus/divine (Latin), and dios/theos (Greek) with devas (Sanskrit) and day (English). Also, we might remember that our alphabet started in the Babylonian temple economy as numbers first: from one into eternity There is only one in the beginning; everything begins with this "loneliest number," and – correspondingly – there is only one God to whom St. Paul refers: 

"For there is no distinction between Jew and Greek; the same LORD is LORD of all, enriching all who come before him."

This structure is still active in Hebrew writing where letters stand for numbers: From Alef (1) to j (10) and from there to k (100) and t (400). Letters create a mathematical atmosphere.

VIII. POWER OF WRITING

"A fence for wisdom is silence."
It seems to be common opinion today that the invention of the arithmetical-alphabetical writing had profound consequences of how we see the world and how we see what is “in order.” Denise Schmandt-Besserat tells us:

“In literate composition participants are no longer merely associated or juxtaposed but are intricately connected by a network of meaning derived from each character’s strategic situation, position, order, orientation, size, and gesture. Figures are no longer repeated to cover a space; instead they are “syntactically” positioned in order to tell a story. The contemporaneous trained eye could instantaneously “read” the scene, because art had become a visual language FalseLike the words in a sentence, the size, position, order, direction, and orientation of the icons could be manipulated in order to tell an infinite number or stories.”

This is her conclusion:

“The development of a comprehensive written visual language caused civilization to grow more complex. Literacy makes for larger organizational and political unit, allowing empires to push their domination farther afield. With a tighter control over goods, literate economies could reach new dimensions. Trade extended its network to ever more distant places. Writing made possible the mastery of complex materials into organizes syntheses such as the codification of laws, resulting in the articulation an accumulation of knowledge. Literacy gives cultures the privilege of knowing their past. Since the West is the heir of the ancient Mesopotamian tradition, the interface between art and writing in the ancient Near East still resonates in the way we communicate today.”

The Jewish and the Christian religions are both based on “scripture,” they are called “book religions.” Letters are “algorithms” – symbols of order which we can “decipher.” But different writings might create different feelings. Why would we otherwise stress the fact that the First Testament is written in Hebrew and the Second Testament in Greek, later in Roman letters?

IX. SIGNIFICANT NUMBERS

“The generative categories of acts of labor [prohibited on the Sabbath] are forty less one.”

This leads us to the next question: What does it mean that God is “named” by letters like “JHWH” (= 10-5-6-5 = 26)? Is there beyond a literal, even a numerical structure in God? Are numbers a quality of God that need not be “created,” that they were, are and will be “with God?”

73. Denise Schmandt-Besserat, When Writing Met Art. From Symbol to Story, Austin 2007, p. 59, see also p. 105.
74. Ibid. p. 105.
75. The Mishnah Shabbat 7:2 A.
76. Cf. Jh. 1:1. This brings us to the ongoing discussion whether mathematics is discovered or invented: Reuben Hersh, On Platonism, Newsletter of the European
A. First Testament

It goes without saying that the arithmetically structured writing leads to cultural data structures. The religious impetus on law started with the introduction of the Sabbath – data structure (7) as the symbol for legal obedience. From the very beginning, the days of creation are precisely counted (“the first day,”78 “the second day,”79) and a rhythmical “order” is expressed by the seven days week,80 indicating a complete circle.81 This, however, is only a matter of first impression.

Beyond that we meet an extensive data structure (not just of and far before Kabbala:82) One God, four rivers in the Paradise,83 ten creative words (“be it”):84 “By ten acts of speech was the world made.”85 Indeed, God created the world according to “measure, number and weight.”86 Later we arrive at Bar Mizvah (thirteen years). For the Temple the Mishnah lists thirteen acts of prostration, thirteen gates, thirteen tables, and thirteen shofar chests;87 Maimonides (1138 – 1204) formulated the “13 principals of faith” as the “foundations of Judaism.” This numerical rhythm is followed by the forty years88 in the desert and the forty days between the birth of a boy and bringing him to the Temple.89

A new concept supplanted part of the old when Abraham “bargained” with God about Sodom and Gomorra using sets of five: Fifty, forty-five, forty, thirty, twenty, and ten.90 This leads to the numerical value of JHWH (26 = 5 x 5 +1),91 to the Ten Commandments (2 x 5 = cross number 1),92 to the “ten holinesses”93 and to David’s fight with Goliath: David (the eights [!] son of Jesse)94 brought ten loaves95 and ten cheeses96 to his three brothers at the front. There “he chose for himself five smooth stones from the brook” for his sling.97 He came “in the name
of the Lord of hosts."\textsuperscript{98} The first stone hit Goliath and killed him.\textsuperscript{99}

This brings us to Solomon's seal (the five-pointed star – the pentagram, expressing the "golden rule"), to the five books of the Torah, and from there to the "quintessence" – to the inner core of order ("quinta" – five). This "quintessential" (!) data structure leads us right away to the ten commandments with 613 letters (cross number 10) and to the "glory of the ten" in the Mishnah. (Abot 5:1 – 5:21). "Ten things were created on the eve of the Sabbath,\textsuperscript{100} the numbers 8 to 10 refer to "letters," "writing," and "the tables of stone" (of the Ten Commandments).\textsuperscript{101} This continues to the "ten degrees of holiness"\textsuperscript{102} and from there to the 613 (cross number ten) rules of Maimonides' Mishne Torah\textsuperscript{103} with 248 (cross number five) prescriptions and 365 prohibitions (again cross number five). According to the present standard, today can be observed 271 (cross number ten) rules: 194 (cross number five) positive and seventy-seven (cross number five) negative rules.

\textbf{B. Second Testament}

Quite a few of these numbers became part of the Christian tradition, forming a similar data structure. This starts with the seven days of the week and the Ten Commandments. The German Civil Code, for instance, requires seven members to create a legal association (Herein).\textsuperscript{104} Important holidays still today cover an "octave" ("the octave of Christmas") to remember the Hanuka festival\textsuperscript{105} (cf. JHWH = 10-5-6-5 = 26 = cross number 8). The Last Supper had thirteen participants.\textsuperscript{106} Jesus was presented in the Temple forty days after his birth.\textsuperscript{107} He spent forty days in the desert\textsuperscript{108} and ascended into heaven (Ascension Day) forty days after resurrection (Easter). Today forty appears in the "quarantaine," which we might need for our pets when crossing borders. As the Hebrew alphabet (alef = 1 – tau = 400) and the Latin alphabet are basically arithmetical systems\textsuperscript{109} letters appear as part of an even wider data structure: This favors "rational" reasoning.

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\textsuperscript{98} 1 Sam 17:45.
\textsuperscript{99} 1 Sam 17:49.
\textsuperscript{100} Mishna Abot 5:6 IX.
\textsuperscript{101} Ex. 32:15f.
\textsuperscript{102} Mishna Kelim 1:6 A.
\textsuperscript{103} Cf. Isadore Twersky, The Code of Maimonides (Mishne Torah), New Haven 1982.
\textsuperscript{104} § 56.
\textsuperscript{106} Mt. 26:20; Mr. 14:17; Lk. 22:14.
\textsuperscript{107} Lk. 2:22.
\textsuperscript{108} Mt 4.2; Mk 1:13; Lk. 4:1.
\textsuperscript{109} Denise Schmandt-Besserat, How Writing Came About, \textit{supra} fn. 59.
X. CULTURAL CONTEXT

This brings us into the wide field of comparative legal semiotics.\textsuperscript{110} For judicial decisions societies provide a binding source of knowledge to assure the neutrality and consistency of results.\textsuperscript{111} Do signs form an interaction between religion and law? In this respect signs cannot be seen in isolation. For a fair evaluation we have to take into account that they operate in a particular geographical and historical context and that they compete with other signs and pictures.

A. GEOGRAPHY

Jewish law starts with the concept of the “Holy Land.”\textsuperscript{112} It is centered on this particular country, on this particular people and it has most of its roots in this very place (“Zion” – ancient Jerusalem). “Israel” therefore stands for the land and for the people.

This is different with Christian law. When the Second Testament was written, the temple was destroyed. For many Palestine was no longer the place of religious inspirations.\textsuperscript{113} Just consider that St. Paul came from Tarsus;\textsuperscript{114} he had a Hebrew (Saul) and a Roman name (Paulus).\textsuperscript{115} He lived, spoke, and wrote in a Roman-Greek environment; He was a Roman citizen.\textsuperscript{116} He had his “enlightenment” on the way to Damascus\textsuperscript{117} – the international trading center of the time. The situation for many Jews seems to have been similar – and many Christians were converted non-Jews. The center of Christianity soon moved from Jerusalem to Antioch\textsuperscript{118} (where they were first called “Christians”)\textsuperscript{119} and from there to Rome.\textsuperscript{120} Thus, the traditional rules were transferred into different environments.

B. SEMIOTIC SYSTEMS

“\textit{And the Word became flesh.”\textsuperscript{121} Even more important may be that language and writing of the First and of the Second Testament differ. Semiotic systems are not just neutral transmitters: they are creators of meaning.\textsuperscript{122} Jesus spoke Aramaic, thus,

\begin{itemize}
\item \textsuperscript{111} Oscar G. Chase, Law, Culture, and Ritual, New York/London 2005, p. 31.
\item \textsuperscript{112} Doron Mendels/Arye Edrei, Zweierlei Diaspora. Zur Spaltung der antiken jüdischen Welt, Göttingen 2010.
\item \textsuperscript{113} Acts 9:3.
\item \textsuperscript{114} Acts 13:9.
\item \textsuperscript{115} Acts 16:37.
\item \textsuperscript{116} Acts 9:11.
\item \textsuperscript{117} Acts 11:19-26, 15:30-34.
\item \textsuperscript{118} Acts 11:26.
\item \textsuperscript{119} Acts 28:16.
\item \textsuperscript{120} John 1: 14.
\item \textsuperscript{121} Cf. 10 + 5 = Gott. Die Macht der Zeichen (Daniel Tyradells/Michal S. Friedlander), Berlin 2004.
\end{itemize}
he translated the Hebrew text of the First Testament into another (though closely related) language.

The perspective changed more dramatically with the Second Testament. It is told in Greek and written in the Greek alphabet: A two-times different semiotic structure. The Greek culture and its pictures took over: The Hebrew name “Jesus” was widened to “Jesus Christ” (Christ – Messiah). Consequently, the standing of the “letter of the law” changed – and with it the pictures “surrounding” it. The “stories” were seen and explained in a new environment. Thus, the First and the Second Testaments lack the same “footing.” The tradition of numbers might have continued, but the data structure’s environment and its relative position got dramatically different.

A prime example is the change from Sabbath to Sunday. The number seven continued to indicate religious precision, but the underlying patterns and pictures changed. From the last day to the first day of the week, from the remembrance of creation to the remembrance of salvation. This is a prime example for the power of information systems (Semiotics) to construe our life and to push it into different directions.

By the same token, the change in language had a deep impact on the power of interpretation. For the First Testament in Hebrew, it stayed in Jerusalem and in Babylon (the Babylon Talmud); for the Second Testament it moved from Antioch (Greek and Greek letters) to Rome (Latin and Latin letters) and with Martin Luther from there to Wittenberg (German) – a battle of signs. Small wonder that these developments produced different results. This change of emphasis may be explained by the fact that the Bible (scripture) is commonly called “Holy Scripture” – pushing letters into the foreground, “book religion.”

C. Pictures

We can take for granted that the Old and the New Testaments are alphabet-intertwined. But, notwithstanding this common basis, it goes without saying that the revolution in semiotics had dramatic consequences: Religion and law are both sign-dependent. Other cultural views invaded the understanding and the handling of the Bible. The Greek world of pictures entered the scene and was taken for granted: God was imagined with human features (“father”), having a son that could die and reappear. The Greek semiotic mythology colored religious concepts – the point of view changed.

XI. STANDING OF LETTERS

"All signs are hieroglyphs, images of the intent, illocution an thought that invisibly precedes expression."

A. HEBREW LETTERS/GREEK LETTERS

As letters have an impact of how we see the world, writing styles might create different results. Just consider the difference between Hebrew and Greek letters. Hebrew letters stand for consonants only, not for vowels; Greek letters stand for consonants and vowels alike. In addition, there are no signs indicating vowels in the Hebrew text of the Torah, a device that in our mind might remove ambiguity. This “lack,” however, gives actual flexibility to an eternal law. It is also a constant invitation to search an accurate interpretation within a spectrum of possibilities. By the same token, however, it might lead to a more rigorous “literal” approach and towards an emphasis on textual refinements. Thus, Greek and the Latin alphabets are not as “open;” they appear to be more “complete.” This leads to different techniques of interpretation.

B. LETTERS AS NUMBERS

This trend is strengthened by the fact that every Hebrew letter can be and is often first read as numbers. Consequently, law is frequently equated to a kind of social mathematics with stricter consequences:

“The Talmudic dialectic can be compared to an inquiry into pure science, particularly in the sphere most closely resembling Talmudic study – that of mathematics. Where one wants to know the truth, one cannot rely on inaccurate measurements or on evidence that is not completely certain. One has to prove the matter conclusively point by point. The entire structure is not acceptable until it is completely sound”.

The particular position of letters can already be seen from the fact, that in the Hebrew language, numbers and scripture are all written rps = 200/80/60 = cross number seven = all. Consequently — according to a traditional understanding — the Torah contains all that can be known.


The Greek and the Latin alphabet also follow an arithmetic pattern, but they do not establish such stringent relations between numbers and letters.\textsuperscript{127} Thus, the “mathematical” impact is not as stringent.

C. From Letters to Words

These differences may lead to other ways of understanding. In addition, the lack of punctuation in Hebrew writing may make the text more conducive to a lyrical song: there are no unnatural stops, but rather more circular flows. This may explain the central role of the Cantor in the synagogue who “introduces” the vowels. Therefore, his singing is – according to the traditional view – not to be disturbed by musical instruments.\textsuperscript{128} “Every jot and tiddle”\textsuperscript{129} is thus exactly and clearly borrowed from the manual strokes of the handwritten, kosher Torah scroll. Precise letters turn into precise words! Consider the Cantor singing “shema” (SH’MA = literally “to hear”).\textsuperscript{130}

“Give ear, o my people, to my law; incline yours ears to the words of the mouth.”\textsuperscript{131}

Singing makes the law perfect. It serves a didactic role, is a “teaching through songs.”\textsuperscript{132} And even more important: It adds an emotional atmosphere of holiness and togetherness. Thus, law builds emotional bridges, “creates” a sense of identity and togetherness within a particular community.

D. Religious Letters

“Ten things were created on the eve of the Sabbath at twilight and these are they:
1. . .
8. letters,
9. writing
10. and the tables of stone [of the ten commandments, Ex. 32:15f.].”\textsuperscript{133}

The standing of religious letters could also be different from secular ones. What do we mean when we talk about the “Holy Scripture:” The letter or the meaning? There could be differences in degree.

Under the classical view, Jews are “an extended family”\textsuperscript{134} that ac-

\begin{itemize}
\item[127.] But see Shawn J. Bayern, Rational Ignorance, Rational Closed-Mindedness, and Modern Economic Formalism in Contract Law, California L. Rev. 97 (2009) 943.
\item[129.] Mt 5:1.8.
\item[130.] Dt. 6:4.
\item[131.] Ps 78:1.
\item[132.] Matthew E. Gordley, Teaching Through Song in Antiquity, Tübingen 2011.
\item[133.] Mishna Abot 5:6 A/B.
\end{itemize}
cepted a covenant with God. Scripture is a "family" affair and Bar Mitzvah is a literary test. The Hebrew letters are – according to the Bible – God’s own handwriting.

“When the LORD had finished speaking to Moses on Mount Sinai, he gave him the two tablets of the commandments the stone tablets inscribed by God’s own finger.”

“Cut two stone tablets like the former, that I may write on them the commandments that you broke.”

“Now the tablets were the work of God, and the writing was the work of God engraved on the tablets.”

“The LORD delivered to me two tablets of stone written with the finger of God, and on them were all the words which the LORD had spoken to you on the mountain from the midst of the fire in the day of the assembly.”

“The LORD then wrote on them, as he had written before, the Ten Commandments which he spoke to you on the mountain from the midst of the fire on the day of the assembly.”

God communicates with men through visual signs. He embodied his rule in a particular semiotic form to dwell in the world. The letters of the Torah represent his eternal presence as a “light unto the nations” to remind men of their special connection with and their responsibility towards God. The observance of HIS letters provides the ultimate redemption of the world. Jewish tradition envisions bringing the Messiah through observance of the law.

Therefore, Jewish letters are not manmade. They are “Holy” and everybody must be conscious of their extreme sanctity. In Isaac Singer’s view, they are filled with “holiness” and “eternity.” The name of the Lord (10-5-6-5 = 26) is not to be written in other than Hebrew letters! We see a literary ritual leading to a strong emphasis on textual reasoning. Just consider how letters in the Torah are treated. The scribe (“Sofer”) who creates a Torah scroll performs a work of the highest art, regulated by very many (about 4000) rules. If one letter is wrong, the whole Torah will be destroyed. Letters are to be treated properly and with spiritual purity. You should not touch the letters in the Torah with

135. Ex 18.
136. Ex 31:18
137. Ex 34:1.
139. Dt. 9: 10.
140. Dt. 10:4.
144. Samuel J. Levine, Reflections, supra fn. 135, p. 1216.
your hands; you should use the “Jad” instead. The “mezzuza” contains parchment with scriptural readings and reminds us to write God’s commands “on the door frames of your houses and on your gates.”147

There is a beautiful custom in the religious education of a child: It kisses a drop of honey which has been placed on a copy of the Bible.148 In this way, the youngster tastes the letter which is “sweeter than honey, than honey from the comb.”149 A reminder of this might be seen in Catholic churches, where the priest – during the mass – kisses the Bible after having read from the Second Testament.

E. DESECRATION

The differences to the Christian concept of “scripture” are startling. The most dramatic example is the tetragram put by Pilate on top of the cross:150 It read: “Jesus the Nazorean, the King of the Jews,” written in Hebrew, Latin, and Greek. But the Hebrew version could be read as a reference to the “JHWH” tetragram (“Jeschu Hanozri W(u)melech Hajehudim”).152 Accordingly, the chief priests protested against the desecration. The tetragram as a symbol for the invisible in an unnamed eternity now stood for a picture in space and time. The letters changed their meanings and their impacts.

F. SECULAR LETTERS

This tendency towards change is in line with the fact that Greek letters have no religious significance of their own: They are just man made; they are not holy. Also, Jesus came from a Galilean background “distant from the intense urban and religious life of Jerusalem” “among the relatively simple folk.”153 His father was a “carpenter,”154 though with an Egyptian “experience” (pictorial hieroglyphs?). His mother, Mary, conceived him by the “word” of the “Holy Spirit” – against the letter of the law, represented by Joseph (the “righteous” man).158

As his parents had not made it to Jerusalem, he was born in the middle of “shepherds;” his first disciples were farmers and fisher-men; he wrote “on the ground with his fingers” (the sand writer);159 he used a pictorial

147. Dt. 6:9.
149. Ps. 19:10.
153. David Klinghoffer, Why the Jews p. 43.
156. Lk. 1:38: “May it be done according to your word”; cf. Lk. 1:45.
157. Lk. 1:35; Mt 1:18, 20.
158. Mt 1:19.
159. Jh. 8:6, 8.
term for GOD — “Our father in heaven”\(^{160}\) — and taught in “parables.”\(^{161}\) Instead of the letter, the body and blood of Christ are treated as sacred (corporal ritual). St. John tells us that, “\textit{In the beginning was the word}” — and not the letter (as we might add). The word, the “true light,” “came into the world” and it “became flesh” (not letters).\(^{162}\) Thus, the new law came from the cross as the new “tree of life.” The “letter of the law” was no longer regarded as holy; it could be replaced by other letters (first Greek, later Latin, German and so on). The holy body took the place of holy letters.

The Apostles Paul and Barnabas reported in Antioch that God “had opened the door of faith to the Gentiles.”\(^{163}\) This changed the semiotic environment dramatically with severe consequences for “Jews by nature” and “sinners from among the Gentiles” alike:\(^{164}\) In the Christian’s eyes, the law lost its religious status; it did not stand for eternal justice any more.\(^{165}\)

\section{G. Tongues from Heaven}

\textit{“Law can do only what a particular language makes possible.”}\(^{166}\)

This leads to the story of the Day of Pentecost, fifty days after Easter (Passover). The original idea was to celebrate the day when the tablets of the law were given to Moses at Sinai.\(^{167}\) But the Christian symbols for this day are not letters, but tongues (“in the beginning was the word”),\(^{168}\) coming from heaven:

“Then there appeared to them divided tongues, as of fire, and one sat upon each of them. And they all were filled with the Holy Spirit and began to speak with other tongues, as the Spirit gave them utterance”,\(^{169}\) and

“everyone heard them speak in his own language.”\(^{170}\) “We hear them speaking in our own tongues the wonderful works of God.”\(^{171}\) Therefore, Christians feel more governed by the “holy spirit” from within than by “holy letters.”\(^{172}\) Accordingly Jesus, criticized that “you search the Scriptures, for in them you think you have eternal life.”\(^{173}\)

\begin{footnotes}
\item[160.] Mt 6:9.
\item[161.] Mk 4:33-34.
\item[162.] Jh. 1:1-9.
\item[163.] Acts 14:27.
\item[164.] Gal 2:15.
\item[165.] Gal 2:19-20.
\item[166.] Steve Wexler, quoted from Sharron Gu, The Boundaries of Meaning and the Transformation of Law, Montreal 2006.
\item[167.] Ex 31:18.
\item[168.] Jh. 1:1.
\item[169.] Acts 2:36.
\item[170.] Acts 2:11.
\item[171.] Acts 2:11.
\item[173.] Jh. 5:39.
\end{footnotes}
H. Idolatry

The cultural standing of Hebrew letters is defined by the fact that God himself created them: they are the authentic means to express the invisible God's law. Pictures are forbidden; they are regarded as leading to idolatry.174

“The Levites shall proclaim aloud to all the men of Israel: ‘Cursed be the man who makes a carved or molten idol – an abomination to the LORD, the product of a craftsman’s hands – and sets it up in secret’! And all the men shall answer ‘Amen.’”175

I. Other Letters

This strength of letters is weakened by the Christian concept that the “word became flesh.”176 Letters lose their monopoly, have to compete with the pictures of “Jesus Christ” and the “Holy Trinity” (multitude in unity).

St. Paul was even more critical of letters. He was born in Tarsus in a Greek speaking and writing environment.177 His “Damascus” event178 happened in a place where five different alphabets competed with each other: The Greek, the Roman, the Babylonian, the Jewish, and the Arabic. Each variety was controlled by particular priests that “handled” and “monopolized” the interpretation. St. Paul, thus, experienced life within an inhomogeneous culture that did not share his religious feelings.179 Quite understandably, he trusted more in a “face to face” exchange of meanings:180 “Now we are rid of the Law, . . . free to serve in the new spiritual way and not in the old way of a written law.”181

St. Thomas de Aquino (1225-1274) made this the center of his theology in his “Adoro te devote, latens Deitas.”182 Only the “word” can be trusted: Sed auditu solo tuto creditor.183 The impact is particularly strong on Catholics, less on Protestants (sola scriptura), but it is still different from the “holiness” of letters in view of the secular status of the Greek and Roman alphabets.

J. Complexity

The issue is even more complex, as a hidden theology continues to “color” Western law. This starts with Jesus’ remark:

174. Ex 20:4-6; Dt. 5:8-10.
175. Dt. 27:14s.
179. Kent Greenwalt, The Implications, supra fn., p. 137s.
180. 1 Kor. 13:12. Cf. Gen. 32:31; Ex 33:11;Num 128; Dt. 5:4, 34:10”.
182. “Humbly, I pray to you, hidden God”.
183. “Only hearing brings the faith”.
“Do not think that I came to destroy the Law or the Prophets. I did not come to destroy but to fulfill. For assuredly, I say to you, till heaven and earth pass away, one jot or one title will by no means pass from the law till all is fulfilled. Whoever therefore breaks one of the least of these commandments and teaches men so, shall be called least in the kingdom of heaven; but whoever does and teaches them; he shall be called great in the kingdom of heaven. For I say to you, that unless your righteousness exceeds the righteousness of the Scribes and the Pharisees, you will by no means enter the kingdom of heaven.”

The new complexity is expressed by St. John: “For the law was given through Moses, but grace and truth came through Jesus.”

K. SIGN OF THE CROSS

Very probably, the Christian symbol, the Holy Cross, has a letter background. The Roman cross looked like the last letter of the Hebrew alphabet, the Tau (T). This letter stands for the interaction of heaven and earth, for “salvation” (therefore, it became the symbol for the monastic Franciscan Order). Thus, Christians could turn it immediately into a religious symbol for death (earth) and resurrection (heaven). Indeed, pictures from the early Middle Ages show a Tau-like sign of the Cross (cf. Matthias Gruenewald’s picture). Only later it got the present form: It reflects the dimensions of the golden rule taken from the pentagram (Salomon’s seal).

XII. DIFFERENT LAW

“If you have learned much Torah, do not puff yourself upon that account, for it was for that purpose that you were created.”

“The stone tables of the legal people only serve written letters, but they do nothing for salvation.”

A. JEWISH LAW

The basic idea is that divine letters express men’s dependence and that they emphasize men’s relations and obligations towards God, the overall ruler, the creator and sustainer of the world. God then creates the law; his will is the source of the Torah as the “Divine Code.” Nobody

185. Jh. 1:17.
188. Mishnah Abot 2:8B.
189. Martin Luther, quoted from Johannes Heckel (Gottfried G. Krodel, transl.), Lex Charitatis, p. 83.
190. David Klinghoffer, Why the Jews p. 29.
can change God’s law: “For the Lord is our judge, the Lord is our legislator, the Lord is our king.” Every command shall be carefully observed “neither adding to it nor subtracting from it.” A heavenly balance of discipline and freedom!

The study of law, therefore, stands above everything else: “All things that may be desired are not to be compared to it.” To study it is “on a higher level than performing the commandments.” The ultimate purpose is not utilitarian – “its sole aim is to seek out the truth.” It “embraces the entire world and what lies beyond it.” Every subject lies within the compass of Torah.

Consequently, “the authority of the Talmud lies in its use of the rigorous method in its search for truth with regard to the entire Torah – in other words, with regard to all possible subjects in the world, both physical and spiritual.”

B. Ratio Scripta

Greek or Latin letters – both derived from the Phoenician Alphabet (including vowels) – never achieved such sacred aura. With the holy signs law lost its celestial aura, it was seen as a mundane rule among men, obtained a relative status. The Roman law thus became a secular ratio scripta, produced by fallible human beings; it was not regarded as being eternal, as being “the rock” of life. It had not to be handwritten following elaborate rules. The Bible became the first book to be printed by Gutenberg; its letters can be freely touched.

Not astonishing, with another feeling towards letters the concept of law changes.

Let’s listen to what David taught Solomon:

“And keep the charge of the Lord your God: to walk in His ways, to keep His statutes, His commandments, His judgments, and His testimonies, as it is written in the Law of Moses, that you may prosper in all that you do and wherever you turn.”

For Christians, the picture of the Last Supper took the central position instead: It does not invite to legal interpretations as letters do.

The change in the status of letters from celestial to mundane brought a change in emphasis, as can be seen by the interpretation of the Sabbath.

195. Proverbs 8:11.
197. Ibid. p. 3.
200. 1 K 2:3.
The Sabbath is the most distinctive of all Jewish institutions. According to the traditional view, the observance of this day as holy is central for the people's loyalty to the law:

"Then God blessed the seventh day and sanctified it." Therefore the children of Israel shall keep the Sabbath, to observe the Sabbath throughout their generations as a perpetual covenant. 

Jesus, however, brought another emphasis. When he was going through grain fields, his disciples began to pluck heads of grain. Therefore, the Pharisees addressed him and he answered: "The sabbath was made for man, not man for the Sabbath. That is why the Son of Man is lord even of the Sabbath." Jesus healed a "sick man" on a Sabbath and a man "born blind" on another Sabbath. This lead to the "functional" conclusion: "Man was not made to serve law, but law was made to serve man."

Consequently, St. Paul wrote in Greek that Christians had become "dead to the law;" even Martin Luther's sola scriptura did not completely bridge the distance. The power of data structures!

C. Differences

We may draw a conclusion. The strength of the letter stands for the strength of the law. In this respect the First and the Second Testaments differ from each other, not quite - but substantially. Consequently, the Talmudic tradition is more textual, more legalistic than the Christian. In Jewish law, the literal grip of hermeneutics is stronger; It puts "divine" letters before "human" functions. The concepts of form and substance differ. When Christians "secularized" the letter, they opened the gates for a (more) secular view of the law.

XIII. Comparisons

Now the question comes up: Can we compare a religious law expressing God's eternal will with a secular law based on human understandings of order? Can we apply a "functional" approach as it is the standard

203. Gen 2:3.
204. Ex 31:16.
205. Mk. 2:27; cf. Lk. 6:1-5.
206. Jh. 5:5-9; Lk. 6:6-10.
207. Jh. 9:1-41. For a general discussion see Chaim Saiman, Jesus' Legal Theory , supra fn. 163, p. 106ss.
208. Supra fn. 1, p. 310.
211. Ken Greenwalt, ibid., p. 133.
technique in mainstream Comparative Law?214

A. Uniqueness

The question touches the special biblical standing of Jewish law as expressed by Moses to all Israel in the desert east of the Jordan:215

"Therefore, I teach you the statutes and decrees as the Lord, my God, has commanded me, that you may observe them in the land you are entering to occupy. Observe them carefully, for thus will you give evidence of your wisdom and intelligence to the nations, who will hear of all these statutes and say: 'This great nation is truly a wise and intelligent people.' For what great nation is there that has gods so close to it as the Lord, our God, is to us whenever we call upon him? Or what great nation has statutes and decrees that are as just as this whole law which I am setting before today?"216

He added:

"Think! The heavens, even the highest heavens, belong to the Lord, your God, as well as the earth and everything on it. Yet in his love for your fathers the Lord was so attached to them as to choose you, their descendants, in preference to all other peoples, as indeed he has now done."217

Can we put such unique (geographically and ethnically) law on the same level with other laws when "comparing" them? What about different concepts of time (the darkest of riddles): Eternity versus temporality? The eternality of the Torah aiming into the endless future218 versus the foreseeable future of human concepts of order? Are we even tempted to read the First Testament from the perspective of the Second, to prioritize the Second over the First – and misunderstand it?219 In view of the emotions involved, the danger is always present and often we might not be aware of it. How does the Jewish God equal the Christian God (the Trinity)?220 Can we functionalize the difference?

B. Concept of Law

The comparative aspect is highly controversial. Amihai Radzyner deals with it in his article "Between Scholar and Jurist: The Controversy over the Research of Jewish Law Using Comparative Methods at the Early Time of the Field."221 He starts with Yitzhak ha-Levi Herzog’s re-

216. Dt. 4:5-8.
217. Dt. 10:14s.
220. Bernhard Lang, The Hebrew God, supra fn.2.
fusal to talk about “Jewish Law” “in comparison with English law.” Radzyner himself prefers the term “Jewish Law” over “Hebrew Law,” as the latter might indicate a correspondence “to the areas of law that make up the corpus juris of the other legal systems today.” Herzog rejects as inconceivable a comparative method that suggests conceptual similarities between Jewish law of divine origin and other legal systems or even borrowing from them. He only admits foreign legal terminology to explain Jewish legal institutions. Others, however, favors the comparative approach as an instrument to meet “the unity of mankind.”

C. INTERPRETATION

From here we immediately run into the next problem: Are the methods of interpretation comparable? The rational of rules in revealed letters are to be found in the inner structure of these texts as understood in a tightly knit community. It is held together by many rules protecting the quality to be part of a religiously defined group, e. g. by concepts of purity (kosher) – not just with food. Another decisive factor is the role of the Cantor singing the Torah. Can these invisible sources of law (“poetic justice”) be evaluated by outsiders from abroad?

Chaim Saiman discusses the question with regard to rules governing the Sabbath and the parable of the Good Samaritan. He sees the difference as follows:

“While Jesus accuses the rabbis of worrying about how to tithe mint, dill, and cummin, thus forgetting the weightier matters of the law, the Mishna proudly discusses in which situations ‘savory, hyssop and thyme’ are deemed food and thus subject to the laws of tithing.”

Indeed, Jesus and the Pharisees used different modes of legal interpretation. Chaim Saiman comes to the conclusion that this reflects a consistent set of systemic differences about the interpretation of legal

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223. Ibid, p. 190.
226. Cf. Lev 11; Dt. 14:3-21a. Cf. the rules in Maimonides, Mishne Torah 180-203.
228. For the role of music see Bernhard Grossfeld/Jack A. Hiller, Music and Law, 42 The International Lawyer 1147 (2008).
231. Jesus’ Legal Theory p 106.
233. Referring to Mt 23:23: “Woe to you, scribes and Pharisees, hypocrites! For you tithe mint and dill and cummin, and have neglected the weightier matters of the law, justice and mercy and faith; these you ought to have done, without neglecting the others”.
234. Ibid. p. 121.
D. Functional Method

The controversial status of a comparative law approach is more than just a "Jewish" characteristic. It has a broader background in the present discussion about the functional method in comparative law in general.\footnote{237} The question immediately comes up whether a religious law can be "functionalized." Is it based on human rationality or it is a sensitive expression of cultural identity and ethnic dreams – no further questions asked? What do we know about another people’s dreams? Every culture is entitled to protect its taboos – not withstanding how others see their own world.

XIV. CONCLUSION

"We escaped with our lives
like a bird from the fowler's snare;
the snare was broken and we escaped."\footnote{238}

My tentative answer is that notwithstanding differences in degree, there seems to be a common understanding that law as a "creative gift" frees us to face chaotic struggles of life and to meet perplexing situations that change with geography and time. But somewhere our geographic, temporal, and semiotics senses wither away. We run into difficulties, to "adapt the words to the images" "to the specters of the unseen."\footnote{239} It brings us into a "necessary conversation with the shrouded humanism and spectral poetic drive of these historical sources."\footnote{240} Thus, due to cultural differences in pictures, language, letters, and numbers, the world and the "functions" in it can be seen differently – and we have to accept this as part of a sensitive comparative law approach.

Our work has to be done with humility, first removing "the sandals from the feet"\footnote{241} John Sexton explains as follows;

"Perhaps the most profound impact of globalization on the enterprise of legal education can be captured in the word ‘humility’. Discovering a premise that unconsciously shapes one’s thinking is a dramatic moment intellectually, and the repetition of such discoveries should instill intellectual humility and a reluctance to assume that there is a single right answer."\footnote{242}
We should not try to see foreign functions according to our own understandings and our cultural patterns.\textsuperscript{243}

Does life adapt to letters or do letters adapt to live? Was the Sabbath "made for man" or was "man made for the Sabbath"?\textsuperscript{244} The answer depends on assumptions outside our control. Notwithstanding all our endeavors to build on empirical standards, there are questions in comparative law which we have to leave unanswered when trying to build bridges and this is what comparative law is all about. Fortunately, however, we meet human universals stemming from the same "image"\textsuperscript{245} and the same "breath of life,"\textsuperscript{246} though "colored" by different geographic and semiotic conditions. In this respect, there is still much to do in "Comparative Aspects of 'Religion and Law.'" But we are not going to give up - we are plugging on trying to meet partners across cultures\textsuperscript{247}. Let us dream together the "poetry" of "law and justice"\textsuperscript{248} as a human universal\textsuperscript{249} - with mutual respect.\textsuperscript{250} This is what we can learn from "religion and law!"

\begin{itemize}
\item \textsuperscript{244} Mk 2:27.
\item \textsuperscript{245} Gen. 1:26.
\item \textsuperscript{246} Gen. 2:7.
\item \textsuperscript{247} Cf. Bernhard Grossfeld, Dreaming Law. Comparative Legal Semiotics, 2010.
\item \textsuperscript{249} Josef Kohler, quoted from Bernhard Grossfeld, Josef Kohler, supra fn. 210, p. 391.
\end{itemize}
Articles