

WAS THE LAW AND THE PROPHETS TWO-THIRDS
OF THE OLD TESTAMENT CANON?

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A dozen times in the New Testament and about four times in the Dead Sea Scrolls, the expression is used, "The Law and the Prophets" or a very similar phrase. The most exalted things are said about these collections. They are of more striking witness than a resurrection from the dead—Luke 16:31. They are eternal as the heavens, not a jot or tittle shall fail—Matt. 5:17, 18. Such statements have caused many students to come to the conclusion that the Old Testament canon is regarded as fixed and immutable in the New Testament. It has been held that these expressions of a two fold canon are equal to the terminology of the threefold division in Luke 24:44. The Dead Sea Scrolls do not show a threefold division at all, but their contemporary, the prologue to Ecclesiasticus, evidences a threefold division in 132 B.C. as does Josephus at about A.D. 90.

What is the meaning of these varying expressions? Orthodox Protestant students have equated all of them as merely variant names for the Hebrew Old Testament canon of our 39 books. The writer has previously argued that the twofold terminology came first and the three fold developed from that.

Liberal scholars for many years have held a development view of the Old Testament canon. They base much on the threefold division as reported in the Talmud of the fourth century A.D. Their claim is that the Pentateuch was canonized in Ezra's time, about 400 B.C., the prophets soon after at about 200 and the Writings—eleven books in the Hebrew Bible—were not canonized until the Council of Jamnia in A.D. 90.

An additional problem arises in that the Septuagint includes seven extra books and additional portions of others. How may this be explained? Orthodox Protestants have said that this usage was probably not original in the LXX and in any case was not accepted in the early church. Liberals have held that the more inclusive LXX canon was due to the practice of the Alexandrian Jews which the Christian Church uncritically took over. This is the so-called Alexandrian theory. The Roman Church, of course, accepts these apocryphal books on the basis of alleged tradition.

This whole field is now being seriously re-examined. The Dead Sea Scrolls do show that the division into two parts, the Law and the Prophets, is pre-Christian and requires explanation. There has also been an attack upon the significance and even historicity of the Council of Jamnia (by Jack Lewis of Harding College, "What do we mean by Jabneh?" *Journal of Bible and Religion*, Vol. 32, 1964, pp. 125-132). It will not do just lightly to by-pass this discussion and go on accepting a Council which is admittedly dubious. Also, as pointed out by Floyd Filson in his book *Which Books Belong in the Bible?* it is not careful

scholarship to assume that the original LXX canon differed from the Hebrew canon merely because our LXX copies of the fourth century include extra books. The whole concept of a differing Alexandrian canon is being called in question, and rightly so.

In this situation a new theory is being advanced to explain the alleged difference between the Hebrew and Christian canon. It has been ably developed by Albert Sundberg, Jr. (*The Old Testament of the Early Church*) and in the writer's opinion will probably be the ruling view in critical circles in the foreseeable future. In brief the view accepts the threefold development view of the Jewish canon. First the Pentateuch was canonized at 400 B.C., then the Prophets at 200 B.C., finally the Writings were accepted at A.D. 90.

However, Sundberg makes much of the fact that the Christian Church split away from Judaism at around 70 A.D. when Jerusalem fell. He argues that this fact explains why the two groups share the same Law and Prophets. But the Christian Church did not close its third division at the same time nor with the same books as did the Jews.

The Jews at A.D. 70 had a fixed canon of Law and a fixed Canon of Prophets. They also had an amorphous collection of other books that at Jamnia was settled as the eleven Writings. The Christians of A.D. 70 had the same Law and Prophetic books as the Jews. They also had an amorphous collection of other books that were more or less accepted and were finally adopted in the LXX copies and in the Council of Augustine's day to make the more inclusive canon of Catholicism. This view appears at first sight to explain neatly the difference between the LXX and Hebrew canon. Unfortunately it does not take into account all the facts and furthermore it builds on the threefold development view of the canon which is itself based on critical positions of the past. Some of these positions are now being abandoned leaving this view without adequate support in important points.

We should like to discuss this view with regard to three major points. First, what was the extent of the sections designated Law and Prophets in the first century? Second, did the early Christian Church in fact include an amorphous collection of books in its Old Testament canon? Third, is the threefold development theory of the Old Testament canon still justified in the light of new evidence? Our emphasis at present will be on the first two points as we have discussed the third at length elsewhere.

To begin with, we ask the question, what was the extent of the sections designated Law and Prophets in the New Testament? This question Sundberg does not specifically answer. He follows R. Pfeiffer and many others (op. cit. p. 38) in the assumption that the division of the Law, Prophets and Writings as held in our Hebrew Bibles today were the same in extent in the first century A.D. He offers no proof. No proof

can be offered. The first list of the Old Testament books agreeing with the divisions of our Hebrew Bible is in the Talmud coming from about A.D. 400. The first list of the Old Testament books of any sort comes from Melito Bishop of Sardis at A.D. 170 and it departs widely from the Talmud order and division. It seems extremely odd that the majority of Old Testament critical scholars make the bold assumption that there was no shift in the order of the Hebrew books and their division from the first century to the fifth. Even more strange is their approach to the witness of Josephus.

Josephus does not give us a list, but he does give us the number of books in his three divisions—5, 13, and 4. This is in sharp contrast to the later Talmud listing of 5, 8, and 11. Yet instead of adopting Josephus' witness for the first century situation or even facing Josephus' testimony, Sundberg virtually ignores it. He adequately presents Josephus' listing as including the Pentateuch in the first division; the books of Psalms, Proverbs, Ecclesiastes, and Song of Solomon in the last division and the others (with or without Esther) in the second division (op. cit. p. 134). But his comment is "Even Josephus seems to reflect a tripartite division of the Scriptures, though his divisions are highly irregular" and "while the number of the books is the same, Josephus' order remains peculiar to him." Other authors of similar bent make the same astonishing assumption. The assumption is that Josephus of the first century exhibits an odd order because he does not follow the Talmud of the 5th century!! We may not be able to tell why these two authorities differ, but it would seem to be poor methodology indeed to argue for the first century situation on the basis of the later Talmud listing and then castigate Josephus' contemporary listing as irregular and peculiar. Why not accept his listing as decisive when there is no contradicting evidence from the times?

Actually Josephus' listing is not as strange as it seems. Josephus assembles the 5 books of Moses and in another division Psalms, Proverbs, Ecclesiastes, and Song of Solomon, apparently. In Sundberg's presentation out of 22 early Christian lists, there are 16 that associate these four books, Psalms, Proverbs, Ecclesiastes, and Song of Solomon, together (pp. 58, 59). This would seem to argue that some principle associated these four books and that same principle may be evidenced in the listing Josephus followed. There is no warrant for by-passing Josephus' witness on the divisions of the Hebrew Bible.

But if Josephus' witness is followed, Sundberg's theory is seen to be highly questionable and the threefold development theory falls to the ground.

Consider the threefold development theory. Would any serious critical writer believe that Josephus' second division was canonized in 200 B.C.? That division according to Sundberg includes "Joshua, Judges, I-IV Kings, Isaiah, Jeremiah, Lamentations, Ezekiel, the Twelve, Ezra, Chronicles, Daniel, Job, Ruth (or if Josephus counted Esther, he may have

counted Jeremiah and Lamentations as one work and thus exactly have paralleled the contents of the Jamnia canon)" (p. 134). Naturally orthodox scholars find no difficulty in the early canonization of these books (and also Psalms, Proverbs, Ecclesiastes, and Song of Solomon). But the hinge of the critical theory is the dating of Daniel after the second division was closed. To have Josephus' second division admitted as standard and canonized by 200 B.C. would put Daniel early and would be revolutionary indeed for criticism.

Furthermore, consider Sundberg's theory that the third division was not canonized until Jamnia. If Josephus' second division was already accepted why was Ezekiel questioned? Indeed this is a problem on either Sundberg's or Pfeiffer's view and the case of Ezekiel proves that Jamnia was not elaborating a canon but dealing with old problems as Christians and Jews both have done many times. Does Luther's questioning of James indicate that the Christian Church had no New Testament canon before the Reformation? Also why was Proverbs questioned at Jamnia? The New Testament evidence for Proverbs is clear and it is quoted with the formula "Scriptures saith" in the Zadokite document, portions of which were found in the Dead Sea Caves. The Psalms are surely quoted as authoritative in the New Testament and even the new scroll of Psalms, which includes some surprises, is taken by P. Skehan to be derived from our well-known Psalter (Patrick Skehan, "The Biblical Scrolls from Qumran and the Text of the Old Testament" BA XXVIII, No. 3 [Sept. 1965] p. 100). Sundberg cites Jamnia as refusing Sirach "and any books written after his time" (op. cit. p. 114). How does this fit with the inclusion of Daniel (written, according to the critics, after Sirach) and the exclusion of Tobit which is now thought by some to have been much earlier than Sirach? Clearly other factors entered into the original canonization of books than mere chronology. The scholars of Jamnia were actually rehashing old problems.

We should make a further point. Josephus was not a Jamnia scholar. Josephus first fought the Romans before A.D. 70, then turned about and became a friend of the Romans against the Jews. His witness given at A.D. 90 is hardly a synopsis of Jamnia. He speaks as if the 22 book canon were long established. "It is become natural to all Jews, immediately and from their very birth, to esteem these books to contain divine doctrines, and to persist in them, and, if occasion be, willingly to die for them." (Against Apion, 1:8). This he says just after enumerating the 22 books. In view of this evidence it seems impossible for Sundberg and others to maintain that there were 11 books of the Writings as listed by the Talmud which were uncertain in their canonicity as late as A.D. 70.

Furthermore, Sundberg gives no evidence from the Rabbis that a large group of other Jewish writings were clamoring for the canonicity in the first century. His discussion of the Qumran material leaves something to be desired. He mentions the many non canonical pieces found at Qumran. He says then that "it is not possible at the present state of

investigation to state the exact relation of the extra-canonical works to those of the Hebrew canon" (p. 97). He quotes others—B. J. Roberts and J. Carmignac—to the effect that no line of canonization was clearly drawn (p. 98). The writer is not prepared to admit this. The Qumran scribes may well have used a wide literature, but only the canonical literature is quoted as authoritative or commented on. The opinion of Roberts and Carmignac may be questioned. That the Jews of the first century used many books is undoubtedly true. But that they had no limits to the third division of their canon before Jamnia is contradicted by Josephus' explicit testimony and is not proved by Qumran evidence. We turn now to Sundberg's second point: the early church also had an amorphous third division of its canon which was not closed for years and which at last included more than the 22 books of Jamnia.

The first point of interest is that actually the early church had no third division of any kind amorphous or not! The only reference to a threefold division in Christian circles is in Luke 24:44 a reference quite in accord with Josephus and not usual to the New Testament or later usage. As mentioned above, Sundberg lists 22 early Christian listings from Melito to Augustine and none of them is divisible into three parts except one of Jerome's listings which *could* be divided like the contemporary Talmud listing of the Jews whom Jerome had come to know and appreciate. All the other Christian listings exclude a threefold division of the type of either Josephus' or the Talmud. Strange, then that the Christians took over a fixed Law and Prophets and struggled to bring order out of an amorphous third division!

The second remarkable point is that the 22 Christian listings with few exceptions follow the number of the books in the Jewish canon of Josephus and the later Talmud. It just is not true that the early church was not interested in canon or had no definite Old Testament canon. The books are listed by many authors and frequently the number of the books is given as corroborative evidence. The authorities giving a larger canon like the later LXX copies are all 4th century. They are Pseudo Chrysostom, Augustine (though he speaks variously in various places) and the Councils of Rome, and Hippo which Augustine influenced. The others are largely earlier and they exclude the apocryphal books except that Jeremiah sometimes includes Baruch and the Epistle. Sometimes II Esdras is included which is in some cases merely a name for Nehemiah, sometimes a copy of Ezra-Nehemiah, with some additions. In view of these facts it seems hardly possible to claim that the early Christian Church had a canon differing from the canon of the Jews. The Church did indeed know and use other books and this doubtless becomes the basis for the larger Catholic canon based on tradition, but the early Christian authors are plain enough on these matters.

Sundberg is aware of these facts and presents them in handy form. His excuse for not abiding by the natural conclusion is curious. He says all these early authors were under Jewish influence.

Melito of Sardis (170 A.D.) is admitted as presenting a 22 book canon probably under Jewish influence. Esther is omitted. Why we do not know. The old theory is that there are Greek additions to Esther at the beginning and therefore the Jews when queried would not recognize this book. It will be remembered that the Jews named their books by the first words of the book. Melito says he went to Palestine to get an authoritative opinion. It is of passing interest that a huge prominent Jewish synagogue has been excavated at Sardis dating from near Melito's time. Quite probably Melito and the Jewish community had many questions between them. One can hardly think that he was under undue Jewish influence. He seems to have had a mind of his own and a desire to investigate adequately.

Origen says "But it should be known that there are 22 canonical books as the Hebrews have handed them down." Sundberg argues from various expressions of Origen's writing that he was merely stating the Hebrew opinion not his own. His arguments seem hardly convincing. The very wording of Origen's statement shows he was in agreement with the Jewish sources.

Athanasius also is said to show Jewish influence. His words are unequivocal. Actually the pervasive Jewish influence which Sundberg cites is good evidence against his conclusion. It just is not true that the Jews went one way and the Christians another after A.D. 70 without influence of the one group on the other. The Hebrew canon was known and held authoritative, Melito the first witness being explicit. The fact that Athanasius shows a looser usage in this manner of quotation should teach us not to depend too much on quotations by the Fathers. They did not have concordances, memory is faulty, and practice inconsistent. Sundberg strangely alleges that Athanasius was trying to bring the Church back from a broader view to the Jewish view. We wonder what Melito was trying to do two centuries earlier? Gregory of Nazianzus, Cyril of Jerusalem, Epiphanius of Salamis also allege the Jewish canon. Tertullian, not mentioned by Sundberg, gives the number as held by the Jews.

Sundberg theorizes that these men used the Jewish listing of books, but in study used the LXX codices with their extra books. Origen and Epiphanius give both a transliterated Hebrew name and the Greek name of each book. We must note that Sundberg assumes that the early LXX codices included the apocrypha as did the later ones. Actually the Chester Beatty manuscript did. We have no earlier evidence.

That the Church counted 22 books, Sundberg attributes partly to numerology. Twenty-two books are desired, there being 22 letters in the Hebrew alphabet. This number again is of Hebrew influence as was the variant 27 (counting the final forms of 5 letters extra). This alleged correlation of Jewish thought with Christian usage was not a flashback, but was the natural thing for a Church which had adopted a Jewish book for its rule of faith.

Sundberg similarly treats the Western Fathers. Hilary of Poitiers, (died A.D. 368), is straightening out his earlier usage. Jerome is influenced by his Jewish teachers. Only Augustine gives us "the full description of the canon of the Old Testament of the church" (p. 157)—though Sundberg does not quote Augustine's variant usage where he denies Maccabees to be canonical. Rufinus first sided with Jerome then reacted and agreed with Augustine. This only shows that by the latter time a broader view was coming to prominence.

Sundberg can not prove his point with any more certainty than Roman theologians have been able to do. The Early Church did not have a flexible canon. It had the Jewish Canon, and the Jewish canon was not new with Jamnia. It was as old as the prophets that wrote it.

There are two further considerations I should like to add. First, Sundberg is at once both too loose and too free in his treatment of New Testament quotations. It is true that the church Fathers quote somewhat loosely and sometimes quote the apocrypha as inspired whereas they state elsewhere that they are not. We may learn from this that such expressions as "the Scripture (i.e. the Writing) saith" or "it is written" or "it saith" perhaps should not be overemphasized. But there are numerous New Testament statements ascribing the Old Testament writings to God or God's Spirit by the hand of the prophet. Such phrases are not used of the non-canonical books. That there are allusions to such books and that the history of such books is used does not mean that these books were semi-canonical, but only that they were considered profitable and in places true.

The most extreme case has been overemphasized—the quotation of Enoch in Jude. No list of any Church Father includes Enoch as canonical. Sundberg does not mention that the New Testament three times quotes Greek profane authors without in the slightest implying their canonicity. In Titus 1:12 a Cretan is quoted and actually called a prophet. Yet the quotation is obviously for illustration only. The same may be claimed of the treatment of Enoch in Jude 14. The phrase Enoch the Seventh from Adam occurs more than once in the book of Enoch; it is not an Old Testament phrase. It seems to identify the quotation as from the book of Enoch rather than from the historical patriarch Enoch. That the quotation is said to prophesy certain things need mean no more than Paul does when he cites a Cretan prophet. It is not a clear case of quoting Enoch as canonical in view of similar citations in Paul. We must not allow scholars to make too much of this word of Jude. At the same time we can admit that this quotation may have led some early Church Fathers to vacillate in their use of Enoch and make more of it than was necessary. In their careful treatment and sober listings Enoch was uniformly excluded.

The other addendum I would give is that the divisions of the so-called council of Jamnia are often quoted without noting the nature of the arguments. Why was Proverbs questioned? Obviously because it has

an apparent contradiction in 26:4, 5. The book had been accepted as canonical, but how could it be with this problem? Likewise Ezekiel had a problem of a variant temple worship. Ecclesiastes and the Song of Solomon have a problem of the nature of their material. These are problems such as Luther found in James. And in the case of James the implication is that these books were already considered canonical. This must be admitted by all for Ezekiel. It should be admitted for the others. There is here therefore no place for a definitive action of a fictitious Council. The whole 22 books were accepted. But the rejection of Sirach by the men of Jamnia was on other grounds. They were recent (Sirach was well known to be 180 B.C.) and the implication is they were after the era of prophecy. All the valid Old Testament books were known to be early. The Dead Sea Scrolls give further evidence on this point.

The Dead Sea Scrolls have not decided all questions of canonicity it is true, but they have added some new facts. Sundberg himself (p. 38) admits that Chronicles was written at 400 B.C. not 250 B.C. as critics long have thought. Why then was this book not included among the prophets like its counterparts Samuel-Kings? Ecclesiastes is now found in a copy of 150 B.C. Its editor (Muilenberg) dates the original as at least 250 B.C. Why was it still questioned by the Jamnia scholars when the Apocalyptic Daniel was not? And if Daniel was Maccabean and Enoch about contemporary why was one of these apocalyptic books accepted and the other rejected? Job is now found in a copy of 200 B.C. written in paleo Hebrew script and has a pre-Christian Targum. Why was it placed in the third division rather than the second if chronological considerations were decisive? These and other questions are raised by the Dead Sea material and the threefold development theory does not have the answers. The old orthodox view that the canon consisted of the books of prophets as I would hold or of prophets and men known to be inspired as some say, is still in line with all the facts although it does not fit the conclusions of destructive criticism.

As mentioned earlier, I have previously alleged that the "Law and the Prophets" of the Dead Sea Scrolls and the New Testament comprised the whole Old Testament in a twofold division. Dr. Allan A. MacRae suggests that the threefold division was possibly the consequence of liturgical factors. I am now not sure that the twofold division was earlier. After all, the prologue to Ecclesiasticus is contemporary with the Dead Sea Scrolls, and it shows the threefold usage. Critics say it is an inchoate third division. One can hardly prove that, if Josephus' third division comprising only 4 books is taken as a standard. But in any case I now feel it equally possible to hold that the twofold division was a variant practice followed by the Dead Sea community and by the Christian Church and the practice paralleled the Rabbinic practice of dividing into 3 sections, which practice eventually was solidified in the Talmud arrangement. None of the Early Christian witnesses suggest a threefold division. The New Testament uses the expression Law and

Prophets yet cites books as authoritative from books appearing in the Talmudic third division. All is clear and all the facts are accounted for if we say that the Law and the other books listed by fathers of the Early Church were the "Law and the Prophets" of the New Testament and the "Law" and "books of the Prophets" of the Dead Sea Scrolls. The idea that Christ and the Apostles only held two thirds of the Old Testament to be canonical in the first century has many facts against it and no positive evidence in its favor.

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