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ARTICLE III.

A NEW SOLUTION OF THE PENTATEUCHAL
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I HAVE no theory to present. In the course of the collating and arranging of materials on the subject of the Pentateuchal Law for the department of Biblical Theology and Biblical Archæology in Xenia Theological Seminary, some facts came under my notice to which I wish now to direct attention. Being primarily an archæologist rather than a critic, my method of research was archæological rather than critical; I pursued the simple and comprehensive method of going carefully over all the materials, noting and classifying the essential facts for use. Such a method anticipates nothing; certainly I did not anticipate the results which I am about to present; the final result, especially, was as surprising to me as it will be to others. Some of the simplest facts brought out by the investigation are, also, most surprising; I have hardly persuaded myself that they have always heretofore escaped notice by critics, but such seems to be the case. It is the old story of stumbling over diamonds, while chasing rainbows.

I wish to share the pleasure of discovery with my readers; so, to that end, will present the investigations as they were originally pursued, anticipating little or nothing, but allowing each item of interest to appear in its own place and making the comparison, which brought to me the greatest

surprise of all, only at the last, when it will be exactly in order.

A pleasant obligation, however, requires me to anticipate just enough to say that the investigations raised many legal questions. That I might make no mistake in legal nomenclature, and especially might not make great results to proceed from a mistaken legal interpretation, I sought the counsel and advice of my genial friend Samuel Scoville, Jr., Esq., of Philadelphia. The mass of evidence which the investigations cover is appalling even to a lawyer. I am deeply grateful to Mr. Scoville for his assistance, and desire here to acknowledge my debt to his patience as well as his learning; a debt which the readers of BIBLIOTHECA SACRA will also share, and I doubt not they will join with me in this expression of thanks.

INVESTIGATIONS.

The original investigations, under the caption "Materials of the Law," were pursued as follows:—

I. FIRST INVESTIGATION.

The legal terms of the Pentateuch noted and listed from a careful study of the text of all the laws.

It would be a useless consuming of time to put down here all the results of this investigation; such exactness and completeness of detail belongs only to the schools. It will serve the purpose of this presentation of evidence to give only such products of the research as have direct bearing upon the solution of the Pentateuchal Problem.

1. *General terms.* Of the legal terms of the Pentateuch there may be noted, first, some descriptive words, general terms, usually of no technical signification whatever, used in describing the laws as a whole or in part. There are a

number of such descriptive terms employed, usually in a general way, occasionally more specifically, in a half technical way, of the law or portions of the law. It will be sufficient to mention enough of these and such selection of them as will indicate clearly the class of legal terms to which they belong, and so differentiate them distinctly from some important legal terms to be mentioned later. Note the following:—

(1) Law.—Of these descriptive, general terms applied to the laws of the Pentateuch, by far the most common is the word “law” (Hebrew *torah*, from *yara*, “to cast,” then “to throw out the hand”; hence “to give directions,” and so, “a law”). It is used for a particular kind of law, as the Law of the Passover (Ex. xii. 49; cf. also Num. xv. 16, and Deut. xvii. 18–19). It is used for any kind of a law or laws (Ex. xviii. 16; xviii. 20). Again, it is used for a statute of the Ceremonial Law, as the Law of the Meat Offering (Lev. vi. 9 and 14 [Heb. vi. 2, 7]; cf. vi. 18 and 22 [Heb. vi. 11 and 15] and Num. xix. 14; cf. 21). It is used also for the whole law or a large portion of it, as in the addresses of Moses in Deut. i. 5; iv. 44.

(2) Words.—“Word” is of the widest application in many languages; it is not surprising that the Hebrews should use it to denote laws. It is usually employed in the Bible as a general term in the plural, *debarim*, “words,” in the more solemn sense of “utterances,” hence oracles. It is used in its most important sense of “utterances” especially in the Ten Commandments, as in Ex. xxiv. 3; xxxiv. 1, 27, and, especially, 28; Deut. v. 22; and x. 4 (“the ten words”). The word is used also more generally still of many laws, as in Ex. xxiv. 4 (“all the words”).

(3) Covenant.—The word “covenant” (Heb. *b'rith*) is,
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perhaps, the most significant of all the descriptive, general terms, applied to the law in the Pentateuch. Though its use is restricted, it has a deep ethical and theological significance in that it introduces the idea that the law or laws should be of the nature of a covenant between the lawgiver and the subjects. It is doubtless true that, in primitive times, courts were weak in authority and in power to enforce authority, and so the moral influence of a covenant was added for the enforcement of the mandates of the courts. This, however, does not fully explain the application of a covenant to the laws of God. This word is applied originally, in reference to the law, to the Ten Commandments, as in Ex. xxxiv. 28 ("And he wrote upon the tables the words of the covenant, the Ten Commandments"); also Deut. iv. 13, cf. Deut. v. 2; ix. 9, 11, 15, where the tables of the law are called "the tables of the covenant." The word "covenant" is also used to denote the whole body of laws at any time existing under the covenant, as in Ex. xxiv. 7 and 8, where the covenant at Sinai is made to include all the laws made under it at that time. Cf. also Ex. xxxiv. 4-10; Lev. xxvi. 25. In the expression "ark of the covenant," the word "covenant" refers to all the laws enacted under the covenant at Sinai (Num. x. 33, and many places).

(4) Testimony.—The word "testimony" (Heb. *'edho* or *'edhuth*) is another word of not much less deep moral significance than covenant. It is used to express God's laws for his people in such a way as to involve the conception that God is a witness, through his laws to his people, against those who disobey those laws. This word "testimony" is applied also first to the Ten Commandments (Ex. xxxi. 18, "Two tables of testimony, tables of stone, written with the finger of God"; cf. Ex. xxv. 16 and 21; xxxii. 15; xxxiv.

29; xl. 20). It occurs, also, in the same sense in the expression "ark of the testimony" (Ex. xxv. 22; and many places). So, also, in the expression "tabernacle of the testimony" (Num. i. 50, 53). Finally, this word "testimony" is used in a more general way, sometimes in the plural, to denote a part of the laws (Deut. iv. 45; vi. 17 and 20).

The use of these descriptive, general terms in reference to the law is so little fraught with difficulties, is so well understood, and will be so easily recognized that it is unnecessary to present more of these words here, or to discuss them further. The few thus presented will be quite sufficient to supply that element of contrast needed in differentiating these descriptive words from the more important class of terms next to be considered.

2. *Technical terms.* All the legal terms of the Pentateuch have heretofore been regarded as of the same kind, all being descriptive, general terms used without very exact discrimination between different kinds of laws, except where some individual law, as the Law of the "Burnt Offering," or the "Sin Offering," is mentioned. A most important fact developed by this investigation is that there are certain comprehensive legal terms used in the Pentateuch which are in the strictest sense technical legal terms. These technical terms are used to designate groups of laws. Sometimes they are placed at the beginning of the group, sometimes at the end, and sometimes once or more in the course of the group. Sometimes a group of laws is found to which no title is given, but which may easily be classified by comparison with other groups. Sometimes, also, a comprehensive title is added to a long passage involving several groups of laws, sometimes each with its own title, for which two or more technical terms are needed as a complete title. But wherever

these titles may be placed, and whatever they may be, they are always used with the most scrupulous accuracy; they are never used with inexactness, never substituted one for the other.

We will now examine the use of these technical legal terms that their character and significance may clearly appear. Presentation of all the evidence would make a book. It is thus impossible to present all the evidence at this time, but such and sufficient evidence will be presented as will make each kind of laws denoted by these technical terms perfectly distinct, and at the same time will bring forward any difficulties encountered in the investigation.

(1) Judgments.—The examination first of the use of the word “judgments” (Heb. *mishpat*, plural, *mishpatim*) will best introduce us to a knowledge of the circle of technical legal terms which are used in the Pentateuch. A strict adherence to the etymology of these technical terms, and thus to the literal meaning of them, reveals to us that they were most accurately used, and thus leads us to an understanding of their exact significance. This word “judgments” is from the Hebrew word *shaphat*, “to judge,” and means literally “judgings.” An examination of the lists of judgments with this definition in mind soon makes clear that these laws were real “judgings,” i.e. decisions of judges, which had come to be recognized as just and equitable and thus accepted commonly as law. They correspond very closely, in this respect, to the cases in the Year Book under English Law, or to the unwritten Common Law of England. They are usually, though not invariably, decisions of questions involving moral law. The Hebrew description of such laws is quite characteristic. In Deut. i. 16 we read: “And I charged your judges at that time, saying, Hear the causes between your brethren,

and judge righteously between every man and his brother, and the stranger that is with him." This pleonastic circumlocution of the Hebrew is the exact equivalent of our English expression "one with another." These were decisions, in cases of controversies, "one with another," usually involving some moral consideration, thus covering criminal cases, and civil cases, as well, which also imply some dispute between one person and another. Before examination of instances of the technical use of this word "judgments," it should be noted that all the instances of the use of this word are not in this technical sense. There is a wide and varied use of this word throughout the Old Testament, including the Pentateuch. The technical meaning and use of this word in the Pentateuch is entirely distinct from these various uses of the word, and will appear so now upon examination of the evidence.

The first group of laws in the Pentateuch to which this title is given is found in Ex. xxi.-xxiii. 19. The title is set at the head of the group in these words: "Now these are the judgments which thou shalt set before them" (Ex. xxi. 1). The exact character of the laws entitled "Judgments" appears clearly from the examination of this one group in detail. They are laws "one with another," and nearly all of them such as, because of the matters with which they deal, evidently literally "judgments," early decisions of judges, which were accepted as correct and here incorporated by the lawgiver in the laws of Israel.

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| Ex. xxi. 2-8, | Manumission of menservants and their families. |
| Ex. xxi. 7-11, | Redemption of a maidservant. |
| Ex. xxi. 12-14, | Homicide in different degrees. |
| Ex. xxi. 15, | Assault on a parent. |
| Ex. xxi. 16, | Kidnapping. |

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| Ex. xxi. 17, | Cursing of Father or Mother. |
| Ex. xxi. 18-19, | Assault. |
| Ex. xxi. 20-21, | Homicide of a Servant. |
| Ex. xxi. 22-25, | Injury to a Pregnant Woman received during a quarrel between other persons. |
| Ex. xxi. 26-27, | Mayhem. |
| Ex. xxi. 28-32, | The Law of Deodands and Damages, accruing from injuries caused by domestic animals. |
| Ex. xxi. 33-34, | The Law of Negligence. |
| Ex. xxi. 35-36. | Injury of one Domestic Animal by another. |
| Ex. xxii. 1, | Larceny. |
| Ex. xxii. 2-3, | Killing of a Burglar caught in the act. |
| Ex. xxii. 2-4, | Burglary. |
| Ex. xxii. 5, | Trespass by domestic animals. |
| Ex. xxii. 6, | Negligence in regard to fire. |
| Ex. xxii. 7-8, | Bailments. |
| Ex. xxii. 9, | Trespass and Recovery. |
| Ex. xxii. 10-13, | Bailments. |
| Ex. xxii. 14-15, | Bailment of domestic animals. |
| Ex. xxii. 16-17, | Seduction. |
| Ex. xxii. 18, | Witchcraft. |
| Ex. xxii. 19, | Bestiality. |
| Ex. xxii. 20, | Impiety and the penalty. |
| Ex. xxii. 21, | Rights of Aliens. |
| Ex. xxii. 22-24, | Wrongs to Widows and Orphans. |
| Ex. xxii. 25-27, | Loans and Pledges. |
| Ex. xxii. 28, | Contempt. |
| Ex. xxii. 29-30, | Tax Laws, "one with another," when the other is the community, the state. |
| Ex. xxii. 31, | Personal conduct and Food Laws. |
| Ex. xxiii. 1, | Slander and Perjury. |
| Ex. xxiii. 2, | Riot and Perversion of Justice. |
| Ex. xxiii. 3, | Perversion of Justice in behalf of the poor. |
| Ex. xxiii. 4-5, | Restoration of Lost Property. |
| Ex. xxiii. 6-9, | Perversion of Justice. |
| Ex. xxiii. 10-11, | Law as to Civil Holidays (Sabbatic Year), "one with another," when the other is the state. |
| Ex. xxiii. 12, | Law as to Civil Holidays (Sabbath). |
| Ex. xxiii. 13, | Blasphemy. |
| Ex. xxiii. 14-17, | Law as to Civil Holidays (Feasts). |
| Ex. xxiii. 18, | Blasphemy. |
| Ex. xxiii. 19, | Perversion. |

The title of this group of laws which we have seen at the beginning is repeated in Ex. xxiv. 3: "And Moses came and told the people all the words of the Lord and all the judgments." Thus it will be seen that the few verses of narrative which occur between the end of the list of judgments and this repetition of the title clearly belong with the judgments themselves.

The character of these "judgments" is clearly apparent from the examination of this whole list. They are, in all cases, laws "one with another," either one individual with another individual, or an individual with the congregation, the community, or the state. They are usually concerning things right or wrong in themselves, *mala in se*, and usually, also, very manifestly "judgings," decisions of judges that have been adopted by the lawgiver of Israel, and in every case they are such matters as were to be determined by the courts. This definition of "judgments" is confirmed by distinct statements, as Deut. xvii. 8 and 9: "If there arise a matter too hard for thee in judgment, between blood and blood, between plea and plea, and between stroke and stroke, being matters of controversy within thy gates; then shalt thou arise, and get thee up into the place which the Lord thy God shall choose; and thou shalt come unto the priests the Levites, and unto the judge that shall be in those days, and inquire; and they shall show thee the sentence and judgment."

This indicates that the cases for judgment were cases of controversy. Deuteronomy xvi. 18-19 also shows that judgments were administered by judges: "Judges and officers shalt thou make thee in all thy gates, which the Lord thy God giveth thee, throughout thy tribes; and they shall judge the people with just judgments. Thou shalt not wrest judgment; thou shalt not respect persons, neither take a gift; for a gift

doth blind the eyes of the wise, and pervert the words of the righteous." In Deut. xvii. 8-13, we have also a provision made for an appellate court. All these sidelights help to complete the vision of legal procedure in the matter of "judgments" which was followed in Israel. From the character of the laws in this long list of "judgments," and from the provision made for a system of courts, it begins to be apparent that the word "judgments," when applied to a group of laws as a title, is the technical legal term denoting a very distinct kind of laws. In fact, this technical sense of the word "judgments" is exactly observed throughout all the law books of the Pentateuch. In every instance where a group of laws is denominated "Judgments," it is found, upon examination, that each particular law in the group is of the character of these laws in Ex. xxi. to xxiii. 19, which we have just examined. No other kind of laws is ever found mingled among them. Some groups of laws have no title mentioned within the group. From the large number of groups entitled "Judgments," the character of these "judgments" becomes so clear that these groups having no title are easily assigned to their places. The examination of each group of laws in detail must await a larger publication of the evidence, but the principal groups of "Judgments," together with several other groups of laws, will be given at the end of this part of the investigation, and near the close of the whole discussion the sum of all the groups of laws will be exhibited in a diagram. All these groups of judgments, and other groups of laws yet to be shown, will become immediately apparent to any one who reads through the law books and notes these groups as indicated by the technical terms.

(2) Statutes.—Another technical legal term, which this examination of the law words of the Pentateuch brings to

light, is the word "statutes" (Heb. *khoq* or *khuqqa*, a word nearly always used, however, in the plural, *khuqqim*). This word, in the Hebrew, means "a thing established," a "decree"; hence "regulations," statutory "directions" given, infringement of which was not a thing *mala in se*, wrong in itself, but *mala prohibita*, wrong because of the statute. When once the technical meaning of judgments is fully apprehended, it is at once perceived that the word "judgments" is not meant to define all the ordinances by which a people is governed, and that all the ordinances which are not "judgments," matters "one with another," fall naturally into another class by themselves and are accurately described by this word "statutes," regulations concerning things not *mala in se* but *mala prohibita*.

Naturally this word "statutes" would be applied to every kind of regulation or decree, and, in fact, in the Pentateuch does include many kinds of regulations. Use is made of it especially for laws of procedure of every sort, and more particularly religious procedure. Its use includes all the directions and instructions concerning the construction of the tabernacle and its furniture, and the making of the vestments for the priests, the ceremonies of the investiture of the priests, and all the ceremonial laws. The distinctive character of these "statutes," when thus pointed out, is so familiar to us that, except for the sake of deepening the impression of it, it would not be necessary to give examples here. The description of the laws in the following groups will be sufficient to make the character of the "statutes" clear beyond any question:—

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| Lev. i. 3-17, | The law of the Burnt Offering. |
| Lev. ii. 1-3, | The law of the Meat Offering. |
| Lev. ii. 4-16, | The law of oblations. |
| Lev. iii. 1-17, | Oblation of the sacrifice of a peace offering. |

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| Lev. iv. 1-12, | Law of Sin Offering of ignorance, of the individual. |
| Lev. iv. 13-21, | Law of Sin Offering, of the whole congregation. |
| Lev. iv. 22-26, | Law of Sin Offering, of the ruler. |
| Lev. iv. 27-35, | Law of Sin Offering, of the common people. |
| Lev. v. 1-19, | Law of the Trespass Offering, for concealing guilty knowledge, for touching an unclean thing, in making oath, in sacrilege, and in sins of ignorance. |
| Lev. vi. 1-13, | Law of the Trespass and Burnt Offerings. |
| Lev. vi. 14-23, | Law of the Meat Offering. |
| Lev. vi. 24-30, | Law of the Sin Offering. |
| Lev. vii. 1-27, | Law of the Trespass Offering. |
| Lev. vii. 28-34, | Law of the Peace Offering. |
| Lev. vii. 35-36, | Law of the Portion of the Priests. |

Examination of the complete list of all the laws called "statutes," like the complete list of those laws called "judgments," must await a larger presentation of the subject. The principal groups of "statutes" will be given, together with the principal groups of "judgments," at the close of this part of the investigation, and the sum of all the "statutes" will also be included in the diagram to follow.

Examination of the preceding lists of "judgments" and "statutes" makes very clear the peculiar character of the "statutes" as directions concerning things not familiar, and not to be known as duty except by these "statutes." This characteristic stands out in marked contrast to the peculiarities of the "judgments," which were familiar as common decisions of judges, and recognized at once on general principles of justice and equity. Some special passages which bring out still more clearly the distinction between "judgments" and "statutes" may here be passed under our notice before going on to the consideration of the next technical term. In Lev. x. 11 we read: "And that ye may teach the children of Israel all the statutes which the Lord has spoken unto them

by the hand of Moses." Here is a special injunction to "teach" "statutes." It is true that the whole law including the judgments was taught, and especially to the rising generation. But such a special injunction to teach the statutes becomes significant when the character of the statutes is observed; like all special regulations of lawgivers, they must be learned, whereas "judgments" were commonly known to the people. It is exactly as is the case with each citizen in a well-regulated nation of to-day, he goes along his way trying to do what is right and having no need to learn the laws that apply to the ordinary upright conduct of life. But if he have a case in court, he must hire a lawyer to tell him how to proceed. Or if he conduct any public business, he must read over a lot of directions and regulations. So Israelites needed to be especially taught "statutes," unfamiliar directions about things not right or wrong in themselves.

Another passage (Deut. iv. 5-6) makes still more emphatic the distinction between "judgments" and "statutes": "Behold, I have taught you statutes and judgments, even as the Lord my God commanded me, that ye should do so in the land whither ye go to possess it. Keep, therefore, and do them; for this is your wisdom and your understanding in the sight of the nations, which shall hear all these statutes, and say, Surely this great nation is a wise and understanding people." Why would the "nations" wonder at the "statutes," though nothing is said of their wondering at the judgments? When the technical character of these terms is understood, the reason is very plain. A "judgment," being "common law," in accord with recognized principles of justice and equity, principles which lie imbedded in the human mind everywhere and secure that uniformity of ideas concerning justice found the world over, would be familiar to

the "nations," and hence would excite no wonder. But the "statutes," all that wonderful ceremonial system, and the religious and hygienic and sociological regulations of the people of Israel, would excite wonder. An American going to Germany does not feel at all strange or ignorant in the presence of the ordinary applications of justice to matters civil or criminal, the "judgments" of the land, but he will be truly moved to "wonderment" at the list of things *verboten*, the regulations of German *Kultur*. Indeed, a traveler has something of the same experience in every new land to which he goes.

(3) Commandments.—The word "commandments" (Heb. *mitsvah*, plural *mitsoth*, from *tsavah*, "to command"), is of very frequent use in the Old Testament, but especially in the Pentateuch. It is frequently used as a general, descriptive term without any technical signification. As such it refers to any kind of law or to all the laws, especially as involving moral principles (Lev. xxvii. 34: "These are the commandments, which the Lord commanded Moses for the children of Israel, in Mount Sinai"). Aside from this general use as a descriptive term, the word "commandments" has also a technical use as a legal term, to denote those most fundamental laws called the Ten Commandments. Neither of these three technical terms, "Judgments," "Statutes," "Commandments," corresponds exactly to any particular class of laws among us, but the word "Commandments," in its technical use for the Decalogue, corresponds more nearly to our fundamental laws, like the Constitution of the United States or the Magna Charta of England. This word is used in its technical sense in Ex. xxiv. 12 ("And the Lord said unto Moses, Come up to me into the mount, and be there: and I will give thee tables of stone, and a law, and commandments

which I have written; that thou mayest teach them"); also in Deut. v. 31 (Heb. v. 28); vi. 1.

It will be noticed that this word is not quite so strictly employed as a technical term to denote certain laws as are the other technical terms of the Pentateuch. "Judgments" and "statutes," when used as titles of groups of laws in the Pentateuch, are never used as mere descriptive terms, but always strictly in their technical sense. On the other hand, not only is the word "commandments" used sometimes as a descriptive, general term in the Pentateuch, but also, sometimes some other word is employed in place of this technical term "commandments" to denote specifically the Ten Commandments (e.g., *d'bariam*, "words"; *b'rith*, "covenant"; Deut. iv. 10: "Specially the day that thou stoodest before the Lord thy God in Horeb, when the Lord said unto thee, Gather me the people together, and I will make them hear my words, that they may learn to fear me all the days that they shall live upon the earth, and that they may teach their children"; cf. Ex. xxxiv. 28). *Toroth*, "laws," seems, also, sometimes to be used in place of the technical term "commandments," as probably in Lev. xxvi. 46: "These are the statutes and judgments and laws, which the Lord made between him and the children of Israel in Mount Sinai by the hand of Moses."

With these few exceptions in the use of the word "commandments," and the occasional substitution of "words," "covenant," and "laws," to denote specifically the Ten Commandments, there is a very exactly technical and exclusive use of these three technical legal terms, "commandments," "judgments," and "statutes," throughout all the four books containing the laws of the Pentateuch. Wherever a group of laws is entitled "Judgments," then only "judgments" are found in that group, and the character of these "judgments"

is always the same and clearly differentiated from any other kind of laws. They are prevailing laws arising from the early decisions of judges, thus literally "judgments," which came, in time, to be a body of laws similar to the common law of England; they are invariably concerning matters "one with another," either one individual with another individual, or an individual with the congregation, the community, or the state; they usually concern matters right or wrong in themselves, *mala in se*; but whatever variation there may be in some of these characteristics, they are always laws concerning such matters as are administered by courts of law, with provision for appellate hearing of difficult cases. No other laws than such as these are ever found in these groups of laws entitled "judgments."

If a group of laws is entitled "Statutes," then only regulations and directions given by the lawgiver, and not to be anticipated on any ordinary principles of justice and equity, are found in that group. These "statutes" are never matters "one with another," but present monitory directions to the people. They do not concern matters right or wrong in themselves, *mala in se*, but things only right or wrong because of the "statutes," *mala prohibita*.

The word "commandments," as we have seen, is sometimes used as a general, descriptive term. It is also used to designate certain groups of laws as a technical term, and always the Ten Commandments only will be found in the group of laws so entitled. Its use, however, is very infrequent compared with the use of the other technical terms.

These facts concerning the use of these technical terms, "commandments," "judgments," "statutes," are enough to establish their technical signification, but still greater emphasis is given to the technical use of these words, when it is

noted that there are frequently larger groups of laws, to which a comprehensive title is given employing two or sometimes three of these technical terms. When this occurs, it is found that, in every instance, all these kinds of laws mentioned in the title are found in that group, and no others. Other words are sometimes used to describe these various kinds of laws, but these technical terms are never used for any other kinds of laws than is indicated by the technical meaning of these various terms. The groups of laws that are occasionally found to which no title is given are easily classified according to the various characteristics of the laws denoted by these technical terms.

By the definite statements concerning the significance of these technical terms and concerning the unvarying uniformity in the use of them in the Pentateuch, it is not to be understood that there are no instances of peculiar use of these words. There are some such instances; considering the variety and character of the lists of laws, the wonder is that so few instances of peculiar use of these words require special consideration. There really are very few such cases, and most of these present difficulties that are so easily resolved upon a moment's consideration that they need not be mentioned in any consideration of the subject, except a complete publication of each instance of evidence in the whole Pentateuch. A few instances, however, of the peculiar use of these technical legal terms present such difficulties as to merit brief notice here.

At Marah, there was a miracle wrought for the sweetening of the water, of which we have account in Ex. xv. 23-26. The incident is made the occasion of legal enactment for the future guidance of the people. This enactment is called both a "statute" and a "judgment" (A.V. "ordinance," but

Heb. *mishpat*). This seems at first sight a confusion of terms, and an exception to the uniformity of the technical use of these terms, "statutes" and "judgments." In reality it is not so: it is such a discriminating use of terms as tends to strengthen the case for the exact technical use of these words. The instructions concerning the sweetening of the waters were strictly "directions," "regulations," arbitrary enactments of the lawgiver, not "judgments," i.e. decisions of judges, not a matter "one with another," not such a thing as would come under the jurisdiction of the courts, and so is properly called a "statute." But there is added to this a penalty for disobedience of the people in the future, and a promise of great reward for obedience, which at once give to the "statute" the general character also of a "judgment." While the far-reaching blessings of the promise, and the execution of the penalty, belong exclusively to the "Supreme Judge," yet the determination of the disobedience might often rightly pass before the courts of the people. So this law is called also a "judgment."

There are only a few instances of this kind employing both terms, "statutes" and "judgments," of which this instance is the most notable. In some instances the form of expression is changed to read "a statute of judgment." Here again examination of the use of this expression, instead of showing any looseness in the use of the technical term, only serves to make more emphatic the discriminating use of words which had such definite technical meaning that such a circumlocution of expression was necessary in order to be exact. The law of the Cities of Refuge in Num. xxxv. 9-34 is called a "statute of judgment" (Num. xxxv. 29). This law was certainly in the first instance a "statute." For, so far from being a decision of the judges, it was an arbitrary enactment of the

law-making power making special provision for the mitigation of the common "judgment" concerning homicide. No judge of a court could recognize a city of refuge as having any place in criminal jurisdiction without a special "statute." This law was a special provision for mitigating the harshness of the common "judgment" in the case of homicide, and so was properly called "statute." But at the same time it had to do altogether with a matter "one with another," between an individual and another individual, and also an individual and the state, a matter wrong in itself, i.e. homicide, and so, with painstaking discrimination in the use of legal terms and exactness of their technical meaning, is called "a statute of judgment."

But are there no exceptions to the strict use of these technical terms? I do not find any instances that seem to me to be really so. There are a few that, at first sight, present much the aspect of real exceptions; some may consider them to be such. I will mention the most important of them, with my own opinion concerning them, and leave the decision of each case to the reader.

In Deut. vii. 11-13 it is said: "Thou shalt therefore keep the commandments, and the statutes, and the judgments, which I command thee this day, to do them; wherefore it shall come to pass, if ye hearken to these judgments, and keep, and do them, that the Lord thy God shall keep unto thee the covenant and the mercy which he swore unto thy fathers," etc. A first hasty reading of this passage is almost certain to leave the impression on the mind that here the word "judgments" is used in the latter part of the passage as a term to denote all the three kinds of laws, "commandments," "judgments," "statutes," mentioned in the former part of the passage. It may be so; but it does not seem to me to be

so upon careful consideration of the sense of the passage. The Lord here gives the ground upon which he will keep his part of the covenant of works. But the covenant of works rested upon the doing of righteousness by those under the covenant; the doing of righteousness was formulated in the commandments, but the practical formulation of them for the obedience of the people, was in the "judgments." The doing of righteousness was not at all in the keeping of the ritual regulations, "statutes" ("obedience is better than sacrifice"). God never said to the Israelites, Follow the ceremonial regulations, "statutes," and I will keep my covenant with you. So this instance of the use of the word "judgments" seems to me not only not an exceptional but a most discriminating use of the technical term.

In Deut. iv. 5-6 it is said: "Behold, I have taught you statutes and judgments, even as the Lord thy God commanded me, that ye should do so in the land whither ye go to possess it; keep, therefore, and do them; for this is your wisdom and your understanding in the sight of the nations, which shall hear all these statutes, and say, Surely this great nation is a wise and understanding people." Here, again, a first reading might very easily leave the impression on the mind that the writer in the latter part of the passage had abbreviated the expression, "statutes and judgments," used in the first part of the passage, to the word "statutes," and had used this word in a general, descriptive way covering both kinds of laws. Here, also, it seems to me there is rather a nice discrimination in the use of these technical terms, than any exception to their technical use. The "nations" would not wonder at the "judgments" of Israel, because those "judgments" were almost entirely "common law," well-known decisions of judges, for the most part readily recog-

nizable upon common principles of justice and equity resting upon the moral intuitions. Not so the "statutes"; those were regulations about unfamiliar things, or new and remarkable "regulations" about things which may have been familiar before the "statute." It was the wonderful ceremonial system and the directions for the symbolical tabernacle, embodying as they did Israel's religion, which distinguished this people above all others in the world. These were the objects of wonder. The Israelites were directed to keep both "judgments" and "statutes," but it was the keeping of these "statutes" about which the "nations" would express such amazement.

I have expressed myself as entirely willing to allow each one to reach his own conclusion about the reality of exceptions to the use of these technical terms. It is not of great importance whether there be any exceptions to the technical use of these legal terms or not. It is not upon absolute uniformity in the use of these technical terms, but upon the degree of uniformity that the argument rests. The prevailing uniformity in the technical use of these words is beyond question. It is this prevailing technical use which gives such striking characteristics to all the divisions of the law effected by it as to be unaffected by a few exceptions. So, if any find these or some other instances of the peculiar use of technical terms to be real exceptions, I have no objection to offer. I am, indeed, surprised to find no exceptions. Such exceptions would not be unreasonable. There are certainly technical terms in English and American Law. And these terms are not infrequently used in rather a loose way by many literary writers. This does not affect the technicality of the terms. Any one would make himself ridiculous by setting up the

claim that they had ceased to be technical terms, because occasionally used by writers in a not very technical way.

The results of this first investigation may be summed up thus: The lists of laws in the Pentateuch are not always denominated at all, but are usually so, and wherever they are denominated, the titles "Judgments," "Statutes," and "Commandments," are used with the greatest accuracy; "Judgments" and "Statutes," with unvarying technicality. As the word "Commandments" has also a descriptive use, even in lists of laws, its technical use is not so immediately manifest, but clearly appears upon examination.

The principal lists of groups of laws according to the significance of these technical terms are as follows:—

1. *Lists of Judgments.*

| | |
|-----------------------------------|------------------------------------------------------|
| Ex. xxi. — xxiv. 8: | Title xxi. 1 and xxiv. 3. |
| Lev. xxiv. 10—23: | No title, but with the expression "Judgment of Law." |
| Num. xxxv. 9—34: | Title xxxv. 24. |

2. *Lists of Statutes.*

| | |
|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ex. xxv. — xxvii. 19: | Without title. |
| Ex. xxvii. 20—21: | Title xxvii. 21. |
| Ex. xxviii. 1—43: | Title xxviii. 43. |
| Ex. xxix. 1—46: | Title xxix. 9, 28. |
| Ex. xxx. 1—16: | Without title. |
| Ex. xxx. 17—21: | Title xxx. 21. |
| Ex. xxx. 22—38: | Without title. |
| Lev. i. — xvi. : | Twenty-two short lists of Statutes, some without titles, but all manifestly of the same Statutory Character. |
| Lev. xvii. 1—16: | A part of the Law of Holiness which has both "Judgments" and "Statutes." This has title "Statute" xvii. 7. Other brief passages occur with this title. |
| Lev. xix. 19: | |
| Lev. xxiii. 1—44: | Title xxiii. 14, 21, 31, 41. |
| Lev. xxiv. 1—4: | Title xxiv. 3. |
| Lev. xxiv. 5—9: | Title xxiv. 9. |
| Num. xv. 1—15: | Title xv. 15 (A. V. "Ordinance"). |

2. *Lists of Statutes (continued).*

| | |
|--------------------|------------------|
| Num. xviii. 8-19: | Title xviii. 19. |
| Num. xviii. 20-24: | Title xviii. 23. |
| Num. xix. 1-10: | Title xix. 10. |
| Num. xix. 11-22: | Title xix. 21. |
| Num. xxx. 1-16: | Title xxx. 16. |

3. *Lists of Judgments and Statutes.*

| | |
|-------------------|-------------------------------|
| Lev. xviii. 1-30: | Title xviii. 5 and xviii. 26. |
| Lev. xix. 1-37: | Title xix. 37. |
| Lev. xx. 1-27: | Title xx. 22. |
| Lev. xxv. 1-55: | Title xxv. 18. |
| Lev. xxvi. 1-45: | Title xxvi. 43. |
| Num. ix. 1-14: | Title ix. 3. |
| Deut. iv. 1-12: | Title iv. 1 and 8. |
| Deut. iv. 14-24: | Title iv. 14. |
| Deut. iv. 1-49: | Title iv. 1, 45. |
| Deut. xii. 1-32: | Title xii. 1. |

4. *List of Commandments and Judgments.*

| | |
|-----------------------|------------------|
| Num. xxii.-xxxvi. 13: | Title xxxvi. 13. |
|-----------------------|------------------|

5. *List of Commandments and Statutes.*

| | |
|------------------|---------------|
| Deut. iv. 25-40: | Title iv. 40. |
|------------------|---------------|

6. *Lists of Judgments, Statutes, and Commandments.*

| | |
|------------------------|-------------------------------------------------------------|
| Lev. xvii.-xxvi.: | Title xxvi. 15. |
| Deut. iv. 44-xxvi. 19: | Title iv. 45, "Testimonies, Statutes, and Judgments." |
| | Title v. 1-2, "Statutes, Judgments, and Covenant." |
| | Title vi. 1, "Commandments, Statutes, and Judgments." |
| | Title vii. 11, "Commandments, Statutes, and Judgments." |
| | Title viii. 11, "Commandments, Judgments, and Statutes." |
| | Title xi. 1, "Statutes, Judgments, Commandments." |
| | Title xxvi. 16-17, "Statutes, Commandments, and Judgments." |
| Deut. xxvii.-xxxii.: | Title xxx. 15-16, "Commandments, Statutes, and Judgments." |

7. *List of Statutes, Judgments, and Laws.*

Lev. 1.-xxvi. 46: Title xxvi. 46.

8. *Lists of Statutes of Judgments.*

Num. xxvii. 1-11: Title xxvii. 11.

Num. xxxv. 1-34: Title xxxv. 29.

II. SECOND INVESTIGATION.

A second subject for investigation arises at once when the various kinds of laws have been noted and the lists of each kind collected together; it concerns the literary form in which these different kinds of laws are cast. Does each kind of laws appear in a different literary form, or are all the kinds expressed in the same way? This query has already been the subject of investigation by another and in part observed by many others. In April, 1907, Harold M. Wiener, Esq., of London, published, in the *Princeton Review*, an article in which three different literary forms in the expression of laws in the Pentateuch were pointed out.¹ The same facts had been referred to by the same author in "Studies in Biblical Law," published in 1904. I acknowledge my indebtedness to Mr. Wiener for those fundamental facts which he pointed out, and in part for the nomenclature which I have adopted in the investigation which I am about to record. The material has, however, been passed in careful review anew and all the facts verified. For the use which I make of the facts, and for the conclusions which are reached, I am responsible.

The following literary forms are to be noted in these groups of "commandments," "judgments," "statutes," which have been indicated in the foregoing investigation:—

1. *Mnemonic.* Portions of these laws are expressed in a very brief, terse manner. Rarely is a descriptive word or phrase introduced. A poetic tendency is also to be discerned;

¹ Republished in *Pentateuchal Studies* (1912), pp. 170-194.

indeed, it can scarcely be ignored. There is a balancing of clauses, the parallelism so characteristic of Hebrew poetry. Thus something of a rhythmic character is given to the law so expressed. The Ten Commandments are in part very distinctly in this literary form, and the "Judgments" generally manifest these characteristics. In many places they are strikingly distinct, so much so that they appear as clearly in the English as in the Hebrew. Ex. xxi. 12-17:—

"He that smiteth a man, so that he die,
Shall be surely put to death.

And if a man lie not in wait, but God deliver him into
his hand,

Then I will appoint thee a place whither he shall flee.

But if a man come presumptuously upon his neighbor
to slay him with guile;

Thou shalt take him from mine altar, that he may die,

And he that smiteth his father, or his mother,
Shall be surely put to death.

And he that stealeth a man,
and selleth him,
or if he be found in his hand,

He shall surely be put to death.

And he that curseth his father, or his mother,
Shall surely be put to death."

See, also, Lev. xxiv. 17-21.

Two things suggest the name "Mnemonic" for these laws which appear in this literary form. The character of the laws themselves suggest it. Everybody needed to memorize the Ten Commandments. And the "Judgments" needed to be memorized by the judges as a modern magistrate needs to be very familiar with certain common laws, in order to hear the ordinary causes of men "one with another" without detaining to refer to written laws. These "judgments," being for the most part "judgings," decisions of judges, un-

doubtedly existed as common law passing from mouth to mouth before they were written down, and thus would acquire this mnemonic form. The literary form itself as well as the character of the laws point to a mnemonic intent exactly as do many arrangements of geographical facts, grammatical facts, historical facts, for use in primary schools. Wherever such are found, it is at once known that they were intended for memorizing by children. So, why should any one write laws in poetry or anything approaching to poetic form except that they might be memorized?

2. *Descriptive.* If "judgments" were common law and to be expressed tersely, with few or no descriptive words, then laws about unfamiliar things ought certainly not to be so expressed, but must introduce many descriptive words and phrases, and so be written in a descriptive style; otherwise, laws about unfamiliar things would not be intelligible to the people. Kautzsch (*Literature of the Pentateuch*, p. 108), says of the Documents to which he assigns these laws about unfamiliar things, "One of the most notable signs [of the Documents] is *the style*, with its unfailing breadth, its fondness for exhaustive details and 'juristic formulating' and even for pure schematism." Now, there are such unfamiliar subjects treated in the laws of the Pentateuch. Such were all the laws of the Ceremonial System. For, however much they may have resembled, in many things, familiar ritual, they differed much in significance and application, and so required careful description. The directions for the erection of the tabernacle and the making of its furniture and the vestments of the priests, together with the directions for the ceremonies and vestiture of the priests, were likewise unfamiliar. The fact that the tabernacle was in the main of Egyptian architecture, and its furniture and the vestments of the priests in

Egyptian style and of Egyptian appearance, and in most respects according to Egyptian customs, does not seriously alter the unfamiliar character of the directions; for the allusions necessary to change these things from the use of a polytheistic religion to the use of a monotheistic religion, and to embody the symbolism of things shown to Moses "in the mount," require description. In all the portions of the Pentateuch which record these things this descriptive style prevails. And this style is as plainly apparent in a translation of the Hebrew as is the mnemonic character of the "commandments" and "judgments." It may be observed in the following examples: Ex. xxv. 31-36 ("And thou shalt make a candlestick of pure gold; of beaten work shall the candlesticks be made; his shaft, and his branches, his bowls, his knops, and his flowers, shall be of the same. And six branches shall come out of the sides of it; three branches of the candlestick out of the one side, and three branches of the candlestick out of the other side; three bowls made like unto almonds with a knop and a flower in one branch; and three bowls made like unto almonds in the other branch, with a knop and a flower; so in the six branches that come out of the candlestick," etc.); see, also, Ex. xxviii. 6-13; xxx. 11-16; Lev. xiii. 29-59; xvi. 15-28.

3. *Hortatory.* In the Pentateuchal legislation we have now discovered laws for very familiar usage, mnemonic in form, and laws for careful study, more descriptive in style. It is evident that the one remaining use for laws, their adaptation to public address by statesmen who would give impulse to National movements, calls for another literary style quite as distinct and characteristic as are these that we have already noticed. The judge of to-day will use one style, brief, terse, pointed, in giving decisions from the bench; quite another

style in the explanation of statutes for the instruction of a class of students in a law school; and still another and very different style, if called upon to mold public opinion and give impulse to public action by a popular address concerning these same laws. Exactly so we have the mnemonic "commandments" and "judgments" for memorizing by the people and the judges, and the descriptive "statutes" for the instruction of the priests. So we have, also, in Deuteronomy the hortatory style of expression by which all these various kinds of laws were set forth in public address by the great lawgiver to give impulse to righteous activity in Israel, as they were about to enter the promised land. This hortatory style in the addresses of Moses in the Book of Deuteronomy is also clearly apparent in translation. No one can read the eloquent appeal for obedience in Deut. iv. 7-11 without feeling the influence of this hortatory style:—

"For what nation is there so great, who hath God so nigh unto them, as the Lord our God is in all things that we call upon him for? And what nation is there so great, that hath statutes and judgments so righteous as all this law, which I set before you this day? Only take heed to thyself, and keep thy soul diligently, lest thou forget the things which thine eyes have seen, and lest they depart from thy heart all the days of thy life; but teach them thy sons and thy sons' sons. Specially the day that thou stoodest before the Lord thy God in Horeb, when the Lord said unto me, Gather me the people together, and I will make them hear my words, that they may learn to fear me all the days that they shall live upon the earth, and that they may keep their children. And ye came near and stood under the mountain; and the mountain burned with fire unto the midst of heaven, with darkness, clouds, and thick darkness."

Or consider this inspiration of patriotism in Deut. xx. 1-4:—

"When thou goest out to battle against thine enemies, and seest horses, and chariots, and the people more than thou, be not afraid of them; for the Lord thy God is with thee, which brought thee

up out of the land of Egypt. And it shall be, when ye are come nigh unto the battle that the priest shall approach, and speak unto the people, and shall say unto them, Hear, O Israel; ye approach this day unto battle against your enemies; let not your hearts faint; fear not, and do not tremble, neither be ye terrified because of them; for the Lord your God is he that goeth with you, to fight for you against your enemies, to save you."

Or take this extract from the fearful description of the consequences of disobedience in Deut. xxviii. 15-68, especially 37-44:—

"And thou shalt become an astonishment, a proverb, and byword, among all nations whither the Lord shall lead thee. Thou shalt carry much seed out into the field, and shalt gather but little in; for the locust shall consume it. Thou shalt plant vineyards, and dress them, but shalt neither drink of the wine, nor gather the grapes; for the worms shall eat them. Thou shalt have olive trees throughout all thy coast, but thou shalt not anoint thyself with the oil; for thine olives shalt cast its fruit. Thou shalt beget sons and daughters, but thou shalt not enjoy them; for they shall go into captivity. All thy trees and fruit of thy land shall the locusts consume. The stranger that is within thee shall get up above thee very high; and thou shalt come down very low. He shall lend to thee, and thou shalt not lend to him; he shall be the head, and thou shalt be the tail."

It is not claimed that this distinction between the mnemonic, the descriptive, and the hortatory style is maintained in the highest degree in every sentence of these different parts of the Pentateuch. There are some "judgments" concerning comparatively unfamiliar things, and these are necessarily in descriptive style; there are "statutes" concerning most common portions of ritual which are very brief and terse, perhaps also intended for memorizing, and there are some passages in the addresses of Moses in Deuteronomy which lag far behind the highest flight of his oratory. In this investigation concerning style it is as in the first investigation concerning legal terms, it is not upon absolute uniformity of style that the argument rests, but upon the degree of uni-

formity. These different styles, mnemonic, descriptive, and hortatory, do indisputably prevail in these different parts of the Pentateuchal laws; this prevalence is all-sufficient.

III. THIRD INVESTIGATION.

A third investigation was made concerning the effect of these different kinds of laws and different uses of laws upon the vocabulary and literary style of the different parts of the Pentateuch, and upon the literary divisions of the Pentateuch thus afforded. Much has already appeared on this subject, but some questions remained to be considered more specifically.

1. *The vocabulary.* The result of the investigation into the technical legal terms of the Pentateuch, and the different uses to which the various portions of the Pentateuch were put, lead us at once to expect a very marked effect upon the vocabulary of these different portions of the law. "Judgments," chiefly concerning rights and wrong, oftentimes mentioning crimes and announcing penalties, and at other times presenting civil cases, naturally required words denoting such criminal and civil matters. And these being matters of common knowledge will not require many descriptive words to make the laws intelligible. On the other hand, "statutes" concerning things civil or religious about which the lawgiver announces arbitrary enactments, concerning things not right or wrong in themselves, *mala in se*, but only so because of the statutes, *mala prohibita*, call for vocabularies very different from those of the "judgments." The subject matter of these laws being less familiar, or not at all familiar, naturally requires the use of descriptive words that the laws may be clearly intelligible. The words denoting crimes and penalties, so characteristic of judgments, will be entirely wanting,

while terms denoting architectural ideas, as in the directions for the tabernacle, or stuffs and jewels, as in the furniture of the tabernacle and the vestments of the priests, or sacrifices and acts of devotion, as in the ceremonial law, will abound in these "statutes." The "commandments," because of their fundamental character, naturally require vocabularies somewhat peculiar to themselves; and because of their deeply moral character, they call for vocabularies more akin to the vocabulary of "judgments" than to that of the "statutes." The sum of all these considerations about the vocabularies of the different kinds of laws is this: Different subjects require different vocabularies to express them, quite as much as they require different technical terms to denominate them. Also, subjects differing so much from each other as to be so sharply differentiated by technical terms lead us to expect as great differences in vocabulary as do different authors. Certainly our criminal laws differ in vocabulary as much from the rubrics of religious worship, as Milton differs from Shakespeare, Goethe from Bismarck, Victor Hugo from Balzac, or any other two modern literati differ from each other.

2. *Purposes.* Different purposes also require different, very different, literary styles and vocabularies. It is a poor rhetorician who cannot adapt himself to his audience and occasion. How delightfully different are some of our great preachers in a sermonette to the children and in the usual sermon to the congregation which immediately follows. Sometimes the congregation wishes that the sermonette would continue all the way through. This difference may be just as marked, when the same subject is discussed with a different purpose in mind and even on similar great occasions. Compare President Wilson in his peace message to Congress (Jan. 22, 1917) with President Wilson in his war message

(April 2, 1917). How unlike the same person, though discussing the same great subject! How very different the style and the spirit and, in some measure, the vocabulary! But why should it be necessary to heap up evidence on this subject? What public speaker does not know that different purposes and different occasions require different styles and vocabularies quite as much as do different authors? Now different portions of the law were intended for different uses on very different occasions; some for the common daily use of judges on the bench, some for the guidance of the priests, used as books of reference by the educated priesthood; others still were intended for public address as in the exhortations of Moses to the people on the plains of Moab. These different uses and different occasions were so marked that they gave rise to some of the laws being mnemonic in form, that judges could easily remember them; others descriptive, that the priests could easily understand them, and others hortatory that the people should be moved to do them. With these facts in mind, it seems almost superfluous to lay emphasis upon the additional fact that these different purposes and different occasions will certainly result in great differences of literary style. The mnemonic "commandments" and "judgments," with their brevity and terseness and rhythm, present a style as clearly marked as is that of the Roman Laws of the "Twelve Tables." The descriptive expression of the law, the "statutes," necessarily becomes more verbose even sometimes florid in expression, and the addresses of Moses intended to inspire obedience and fine patriotism and incite spiritual fervor, necessarily take on the impassioned style of such statesmanlike oratory. Moreover these markedly different literary styles cannot but react upon vocabulary and change it still more, for style depends quite as much upon the

choice of words as upon the arrangement of words and the spirit of the author.

3. There are manifestly great differences of style and vocabulary in different parts of the Pentateuch. These differences have been at the basis of nearly all the critical discussions of the Pentateuch during the last century. Though historical difficulties have often been assigned as a reason for the divisions of the Pentateuch, the differences of style and vocabulary have furnished the criteria upon which the divisions have been made. These differences of style and vocabulary have been often, and very plausibly, accounted for by the supposition of different authors for different portions of the Pentateuch. That different authors would satisfactorily account for these differences in style and vocabulary is indisputable. Even on the most conservative views of the composition of the Pentateuch different authors have in some measure to do with these differences in style and vocabulary; for "commandments" announced by the voice of God from the summit of the mountain and "judgments," the decisions of judges recognized as common law, would not represent the style of Moses which, on this view, only appears in the "statutes," directions concerning the tabernacle and the ceremonial law, in narrative portions, and in the impassioned oratory of the addresses on the plain of Moab.

But far more than such differences of authorship, these different *subjects* of law, which so clearly appear, and these different *purposes* to which the laws were put, which are not less distinct one from another, make most complete and satisfactory explanation of the differences of style and vocabulary which have so often been pointed out. Thus the facts themselves of the giving and use of these laws in the Pentateuch, when carefully examined, furnish a complete solu-

tion of the problems of style and vocabulary which the laws present.

IV. FOURTH INVESTIGATION.

A fourth investigation was made, concerning the results of a comparison between the divisions afforded by these different kinds and uses of laws and the divisions presented by the Documentary Theory.

It is evident that if the groups of the various kinds of laws, "Commandments," "Judgments," "Statutes," were gathered together respectively, and there should be attached to each collection the narrative portions which serve to introduce and explain these "commandments," "judgments," and "statutes," and the occasion upon which they were given, there would result divisions of the Pentateuch with quite striking characteristics of vocabulary and style. If, again, the mnemonic, the descriptive, and the hortatory laws were gathered together respectively, together with the narrative portions which serve to introduce and explain them, these also would result in divisions with very striking literary characteristics. When these various divisions that have been named are actually made, it is found that the two sets of divisions are the same in substance. The "Commandments" and "Judgments" are the mnemonic laws; the "Statutes" are the descriptive laws; and the Book of Deuteronomy contains the hortatory presentation of the laws.

It is well known that the Documentary Hypothesis also presents certain divisions of the Pentateuch. According to this hypothesis there are certain main Documents as follows:—First among these Documents, because esteemed the oldest of them all, is the J Document, whose author is known as the Jahvist, because he used almost exclusively the name

Jehovah in speaking of God. Another Document is called the E Document, whose author is called the Elohists, because he refers to the Deity almost exclusively by the Hebrew word *Elohim*. These two very early Documents were later combined, according to the hypothesis, into one document, called, for convenience, the JE Document. It is in this combined document, according to the Theory, that the two authors J and E appear, for the most part, in the Bible as we have it. A second main document appearing in the Bible in its present form, according to this Documentary Hypothesis, is the P Document, the Priestly Writing, so called because its author is supposed to have been a priest or a company of priests. Finally, there is the D Document, which is the Book of Deuteronomy, and its author is called the Deuteronomist. There are also a number of smaller documents pointed out by the various advocates of the Documentary Theory, and there is a considerable element, not a document, contributed by a redactor or redactors, various editors who from time to time had to do with the publication of the sacred writings of the Hebrews. This last element is denominated R. In making comparison between the divisions of the Pentateuch afforded by these investigations and those divisions afforded by the Documentary Theory it will prove entirely satisfactory to all that the comparison be limited to the main documents of the Documentary Theory; the minor documents are so brief as not to affect the general results of the comparison, and the element supplied by the redactor serves simply to combine together the real documents. Comparison will be made, then, with the JE Document, together with such fragments of J and E as are still pointed out: the P Document, including H, the Holiness Code, incorporated with it; and the D Document. While, naturally, all critics do not wholly

agree in the assignment of passages to the various documents, there is quite general agreement concerning the main portions of the Pentateuch. In this comparison we will follow the divisions as they are given by Kautzsch in the "Literature of the Old Testament" (cf. p. 226), and as shown to the eye in the Polychrome Bible edited by Professor Haupt. According to the analysis of the Pentateuch just cited, there is assigned to the JE Document (including the fragments still assigned to J and E) the Book of Exodus, except chapters xxv.-xl., portions, amounting to about one half, of the Book of Numbers, and portions of Leviticus, especially of the Holiness Code. There is assigned to the P Document almost the whole of the Book of Leviticus (except portions of H), chapters xxv.-xl. of the Book of Exodus, and most of the remainder of the Book of Numbers not assigned to JE and to J and E. The D Document is the Book of Deuteronomy almost in its entirety. Only chapter xxxiii. and a few scattered fragments are given other assignment.

It only remains to compare these divisions of the Pentateuch according to the Documentary Hypothesis with the divisions afforded by the different kinds and uses of laws as developed in the preceding investigations. *These two sets of divisions are almost exactly identical.* There is a margin of uncertainty in the assignment of difficult passages by either process of division, and a few mistakes may be made in either case. Thus a certain amount of disagreement is reasonably to be expected in this comparison; *there is no more than that.* The accompanying diagram shows the main divisions afforded by the two methods, the divisions of the Documentary Theory above and the divisions of these investigations below. The extent of agreement is indicated by the chromatic scheme, agreement by red, disagreement by

| J-E Document (+ J and E) | P Document (+ H) | D Document. |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Exodus <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;"> 17 </div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;"> 20-24 </div> | | Deuteronomy <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;"> 32 </div> |
| Leviticus <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;"> 17-26 </div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;"> 27 </div> | | |
| Numbers <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;"> 29-31 </div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;"> 25-36 </div> | | |

Mnemonic Laws (Commandments & Judgments)
 Descriptive Laws. (statutes)
 Hortatory Laws (Commandments, Judgments & Statutes)

| | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Exodus <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;"> 19 </div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;"> 20-24 </div> | | Deuteronomy <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;"> 32 </div> |
| Leviticus <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;"> 17-26 </div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;"> 27 </div> | | |
| Numbers <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;"> 29-31 </div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;"> 25-36 </div> | | |

Red = Agreement
 Blue = Disagreement
 Red & Blue = Divided Agreement.

blue; divided agreement, that is agreement in part, or possible agreement and possible disagreement, by both red and blue. The results of the comparison are so plain that a cursory glance at the diagram will perceive that the JE Document, together with the scattered fragments assigned to J and E, is made up very exactly of the "commandments" and "statutes" found in Exodus, Leviticus, and Numbers, almost wholly mnemonic laws, with the addition of those narrative portions necessary to introduce and explain these collections of laws. The P Document is most exactly the "statutes" of Exodus, Leviticus, and Numbers, almost wholly descriptive laws, with the addition here, also, of the narrative portions belonging with these "statutes." The D Document contains, with almost perfect exactness, the hortatory expressions of the "commandments," "judgments," and "statutes" in the Book of Deuteronomy, and the binding thread of narrative that makes Deuteronomy such a graphic book.

To the whole agreement indicated by this comparison of the divisions according to the Documentary Hypothesis and the divisions afforded by these investigations there is but a single real exception, the thirty-third chapter of Deuteronomy, assigned by the Documentary Theory to some late author.

Naturally a fifth investigation would be expected here, a comparison of the peculiarities of vocabulary and style between the divisions of the Pentateuch according to this solution of these literary problems and the divisions afforded by the Documentary Theory. While logically such a comparison would make the discussion very complete, the presentation of it would be really a waste of time, for the simple reason, that, as the divisions indicated by these kinds and uses of laws are substantially identical with the divisions made by

the supposition of different authors according to the Documentary Theory, the peculiarities of vocabulary and style must, of necessity, be substantially the same also.

CONCLUSION.

These various investigations and this striking comparison with the Documentary Theory to which they lead do not directly disprove the Documentary Theory. They are not, indeed, directed immediately to that end. It is not so important to disprove any of the theories of the composition of the Pentateuch as it is to present a correct solution of the literary problems of style and vocabulary in the Pentateuch. I do not mean to belittle the efforts of those who have spent much time and great learning in attempts to disprove the Documentary Theory; their efforts are well directed, if they should prove successful. But merely to disprove the Documentary Theory, would not get us on very far; for that would leave the real Pentateuchal Problem of style and vocabulary still unsolved. The original purpose of these investigations was purely analytical, simply to discover what would be revealed by the classifying of the "Materials of the Law." The immediate purpose of the publication now is not to disprove any theory but to present that solution of the Pentateuchal Problem which these investigations have brought to light.

So I say with all frankness that these investigations do not directly disprove the Documentary Theory and are not directed to that end. *But they do far more.* They present only patent facts; yet these facts afford equally as good and complete explanation of the literary phenomena of style and vocabulary in the Pentateuch, as does the Documentary Theory. Thus it appears that there is something else besides that theory which satisfactorily meets the requirements of

these literary phenomena of the Pentateuch. Moreover, this it does *without calling in the aid of any suppositional element*, as unknown authors and unmentioned documents. It is a fundamental principle of the examining and interpreting of evidence that nothing is to be supposed, if the case is made complete by the evidence without any supposition. These investigations show that the case for the differences of style and vocabulary in the Pentateuch is complete without any suppositional element. It is, of course, admitted that no theory or explanation in life and literature is proved simply by the fact that it works, *but an explanation that works without calling in the aid of any suppositional element is more probable than one that invokes such aid*. Common sense does not take kindly to suppositions, when none are needed. Thus, in the presence of the evidence afforded by the kinds and uses of laws, indirectly the Documentary Theory, with its suppositions of unknown authors and documents as an explanation of the peculiarity of style and vocabulary in the Pentateuch, is ruled out.¹

¹ The discussion of difficulties and objections will appear in the April number.