The Supposed Discrepancies in the Pentateuchal Legislation.

By HAROLD M. WIENER, M.A., LL.B.

PART II.

FORTUNATELY our long discussion of firstlings makes it possible to deal with tithes more shortly than would otherwise be the case. Dr. Driver states his difficulty thus:

> "In Num. xviii. 21-24 the tithe is assigned entirely to the Levites, who in their turn (vers. 26-28) pay a tenth to the priests: in Deuteronomy it is, in two years out of three, to be consumed by the offerer and his household at a sacred feast (xiv. 23), and in the third year to be applied to the relief of the poor (xiv. 28 *et seq.*),—in both cases the members of the priestly tribe sharing only together with other destitute persons in the offerer's bounty" ("Deuteronomy," xxxix).

The passage in Numbers dealing with tithes fully illustrates what has been said as to the principles governing the use of language in tax acts. It falls into two divisions: the first (vers. 21-24) is addressed to Aaron, apparently not merely as the chief of the tribe of Levi, but also as the head of the whole priesthood, responsible in that capacity for the arrangements of the tent of meeting. It is *not* addressed in any way to the children of Israel. It orders no new tithe to be brought. It deals simply with "the tithe of the children of Israel, which they heave"[1] (contribute) "as a *terumah* unto the LORD." The second portion of the passage, on the other hand, is an enactment for taxation. Accordingly, Moses is commanded in the most unambiguous terms to speak to the Levites,—that is, to the persons who were to pay the tax,—"and say unto them, When ye take of the children of Israel the tithe which I have given you from them for your inheritance, then ye shall heave a *terumah* of it," etc.

The only question, therefore, that can arise on this passage is as to the identity of "the tithe which the children of Israel

[1] The verb corresponding to terumah—heave-offering.

heave." What did they "heave"? For that we must turn to Deuteronomy. There we find it laid down that vegetable produce was to be tithed. In two years out of three it was to be consumed by the peasant at the religious capital together with the firstlings. No rule appears to be laid down for the payment of the *terumah* in those cases, and, as there was no sacrifice involved, probably at most there would only be a meal-offering, which would go to the priest. But in the third year the destination of the tithe was different. It was then to go to the Levite, the stranger, the fatherless, and the widow. At first sight it might be thought that the mention of the stranger, etc., was in conflict with the provisions of Numbers, but closer examination of the latter shows that this is not so. The provisions in Numbers are *internal* to the Levitical tribe: they deal with the destination of the tithe when received, not with the amount payable. All "the tithe which the children of Israel heave" is to go to the Levites (subject to their again tithing it); but obviously the chapter does not profess to deal with those portions of the tithe which the children of Israel do not heave—*i.e.*, with portions given to the stranger, etc.[1]

The last of Dr. Driver's numbered paragraphs is concerned with the Passover sacrifice:

> "In Exod. xii. 3-6 the paschal sacrifice is limited to a lamb: in Deut. xvi. 2 it may be either a sheep or an ox" ("Deuteronomy," xxxix).

---

[1] It may be well to notice a point on the law of tithes which has troubled the critics. The tithe considered in the text was a vegetable tithe. Lev. xxvii. 32, 33 recognises an animal tithe. This means that the tithe animals were withdrawn from ordinary uses and sacrificed. The institution was clearly pre-Mosaic, for Jacob had promised to tithe "all that Thou shalt give me" (Gen. xxviii. 22), and his wealth and that of his immediate descendants consisted of animals. Hence the slight mention of it in the Mosaic legislation in contrast with the emphasis laid on the vegetable tithe, which was a new enactment adapted to the agricultural state into which Israelitish society was to pass. The object of the Mosaic legislation was to secure obedience, and emphasis is therefore laid on new laws, but not on existing institutions. An interesting illustration of this is to be found in the case of New Moons. Their observance was clearly very ancient in Israel (1 Sam. xx. 18, etc.), but for that very reason the Mosaic legislation merely treats them incidentally. It must be remembered that the Pentateuch *never* codifies what may be called the existing common law.

It is only necessary to glance at Exodus to see that this argument is at best very weak; for the command in question is given in *Egypt*, and it may therefore reasonably be supposed that it refers primarily to the Passover of the Exodus, and that Deuteronomy is an intentional extension of the law, rendered desirable by the fact that it was meant as a permanent enactment, and not as a rule to regulate one particular occasion. But if we go more closely into the matter, we find that no other explanation will fit the data.

1. The law of Exodus contemplates slaughter of the paschal lamb by every man at his own house, as is evident from the following verses:

> "The whole assembly of the congregation of Israel shall kill it at even, and they shall take of the blood and put it on the two side-posts and on the lintel, and *upon the houses wherein they shall eat it* (Exod. xii. 6, 7)."

Clearly, there is here no room for a priest or a central sanctuary. We have in this passage an unmistakable command that every man should kill the lamb at his own house, and there dispose of blood and flesh. The provisions of Deuteronomy are quite different:

> "And *thou shalt sacrifice the passover* unto the LORD thy God . . . *in the place which the LORD shall choose to cause His name to dwell there. . . . Thou mayest not sacrifice the passover within any of thy gates*, which the LORD thy God giveth thee: but *at the place which the LORD thy God shall choose to cause His name to dwell in, there thou shalt sacrifice the passover* at even, at the going down of the sun, at the season that thou camest forth out of Egypt. And *thou shalt seethe and eat it in the place which the LORD thy God shall choose: and thou shalt turn in the morning and go unto thy tents* (Deut. xvi. 2, 5-7)."

A comparison of these passages makes it wholly impossible that the ceremony enjoined by the Exodus law should be regarded as being performed at the religious centre. In the one case the Israelite is to kill the lamb in his house and eat it there; in the other it is to be sacrificed and eaten "at the place which the LORD thy God shall choose." It cannot, therefore, fairly be said that the Exodus law is designed for use in

Jerusalem,[1] though it might perhaps be held that Deuteronomy contemplates the sacrifice as taking place at each man's temporary residence in Jerusalem, and not necessarily at the Temple.

2. There is another passage in P which is hopelessly at variance with the idea that the Passover might be killed and eaten at home on the anniversary of the deliverance from Egypt. In Num. ix. 6 *et seqq.* we are told of the case of "certain men, who were unclean by the dead body of a man, so that they could not keep the passover on that day." These men said to Moses, "Wherefore are we kept back, that we may not *bring near the corban* of the LORD in its appointed season *among* the children of Israel?" (v. 7). Now "bring near" and "corban" are both technical terms denoting use of the religious centre, and could not be used of domestic slaughter or sacrifice. Thus this passage proves that P, like D, recognises the rite as one that involved attendance at the religious centre, not as an act that could be performed at home.[2]

It must, therefore, be admitted that the passage in Exodus refers only to the Passover in Egypt,[3] and is perfectly consistent with Deuteronomy.

Dr. Driver also refers to his note on xvi. 7, "and thou shalt boil," as instancing a further contradiction. He says that the Hebrew word used

> "means regularly to *boil* (xiv. 21; 1 Sam. ii. 13, 15, etc.), hence it is difficult to feel assured that it can be fairly translated otherwise here; and it is in any case remarkable that the term employed in Deuteronomy is the one which is used in P (Exod. xii. 9) to denote

---

[1] Fully to appreciate the force of this argument we must remember that, according to the higher critics, P, the writer to whom Exod. xii. 6, 7 is assigned, assumes centralization of worship.

[2] It is worth noting that on the critical hypothesis P in this passage of Numbers contradicts P in Exodus, for Exod. xii. 46 (P, supported by verses 21-27, mainly J, but partly P) clearly contemplates a domestic ceremony. We found a similar antinomy in the priestly document (as interpreted by the critics) when we were considering firstlings.

[3] It is important to recognise that it thus affords clear evidence of Mosaic date. Nobody, it is obvious, would forge laws for use in Egypt centuries after the Exodus.

> the process that is *not* to be applied to the paschal sacrifice ("eat not of it raw, or *boiled in water*, but roast with fire") ("Deuteronomy," pp. 193, 194).

It has already been pointed out that Exodus deals with a domestic meal in Egypt, while Deuteronomy commands a sacrifice at the religious centre of Israel. It is, therefore, not at all remarkable that the form of dressing meat, which, as we learn from Dr. Driver's references to Samuel, was usual in sacrifices at the religious centre, should be commanded in the latter case, while expressly prohibited for the domestic ceremony.

On pp. xliii, xliv Dr. Driver argues that the law respecting the place of sacrifice in chapter xii. must be post-Mosaic.[1] Unlike most of his fellow-critics, he has succeeded in realizing that "the house of the LORD" was not identical with an altar of earth or stones (p. 137). Perhaps it is not too much to hope that he will some day cap this notable achievement by recognising that the converse proposition is also true, and that an altar of earth or stones is not a house; but for the present the influence of the Wellhausen School is still strong upon him. When he comes to the law of slavery, he cannot quite resist the spell which compels the members of that school to engage in the unique pastime of pinning a slave's ear to the door or door-post of an altar, mis-called a sanctuary. Thus, he writes:

> "In Exod. xxi. 6 the slave is to be brought 'unto God,' *i.e.* to the sanctuary at which judgment is administered, and then led (probably by the judge) to the door or door-post (whether of the sanctuary, or of his master's house, is not clearly expressed), where the ceremony symbolizing his perpetual servitude is performed by his master" ("Deuteronomy," p. 184).

I have dealt with this at length elsewhere,[2] but it is interesting to trace the effect that the Wellhausen theory has had in this instance. It is wholly untrue that judgment was administered at the "sanctuary." In point of fact it was administered

[1] See an article by the present writer in the CHURCHMAN for December, 1905, entitled "The Jewish Attitude towards the Higher Criticism," in which this subject is discussed in detail.

[2] "Studies in Biblical Law," pp. 25-27.

at the gate. The sanctuary, being an *altar* (Exod. xx. 24), could have neither door nor door-post, and there is no word about the master's house. It is thus perfectly true that there is no clear expression indicating either door or door-post. Obviously, the door or door-post, when mentioned in connection with the administration of justice, would, to every contemporary Israelite, mean the door or door-post of the gate. Consequently, it is scarcely ground for surprise that neither the sanctuary nor the master's house is clearly expressed.[1]

We must attribute to the same pernicious influence the patent contradiction between the exegetical note on pp. 145, 146 and the philological note on the former of those two pages. In the exegetical note we are told that

> "by ancient custom in Israel, slaughter and sacrifice were identical (*cf.* phil. note, below): the flesh of domestic animals, such as the ox, the sheep, and the goat was not eaten habitually; when it was eaten, the slaughter of the animal was a sacrificial act, and its flesh could not be lawfully partaken of, unless the fat and blood were presented at an altar. . . . So long as local altars were legal in Canaan (Exod. xx. 24), domestic animals slain for food in the country districts could be presented at one of them: with the limitation of all sacrifice to a central sanctuary, the old rule had necessarily to be relaxed; a distinction had to be drawn between slaughtering for food and slaughtering for sacrifice; the former was permitted freely in all places . . . the latter was prohibited, except at the one sanctuary."

All this is in a note on Deut. xii. 15, 16: "Notwithstanding thou mayest kill and eat flesh within all thy gates," etc. But in the philological note on the word translated "kill" Dr. Driver says:

> "The context shows that it . . . denotes *to slaughter* simply." So v. 21; 1 Sam. xxviii. 24; 1 Kings xix. 21.

But if it simply means "to slaughter" in Samuel and Kings, —that is, in the days of Saul and Elisha,—there is an end of the theory that Deuteronomy in the days of Manasseh or Josiah

[1] Justice was not administered by a single judge, as Dr. Driver must know when not under the influence of the Wellhausen theory. It is not apparent whether he would be of opinion that one of the judges was to lead the slave to the door.

"relaxed" the "old rule" by which "flesh could not be lawfully partaken of, unless the fat and blood were first presented at an altar."

Dr. Driver's theories about "sanctuaries" present some interesting instances of critical methods. He asserts that chapter xii. orders all sacrifices and offerings to be brought to the religious capital. Therefore, any sacrifices not so ordered to be brought in chapter xii.—as, for instance, animal tithes and meal-offerings did not exist in the time of Deuteronomy. Yet we find meal-offerings mentioned long before the date to which Dr. Driver assigns Deuteronomy—*e.g.*, in Amos.

Again, according to the critics, Deuteronomy only recognises a single altar. Therefore, if Deuteronomy recognises a plurality of altars—as it in fact does in xvi. 21, 22—the passage "may be borrowed from an earlier statute-book" (p. 203). Dr. Driver has, of course, been misled into identifying altars of earth or unhewn stones erected to the Lord with local heathenish sanctuaries, and then saying that "in Deuteronomy they are formally declared illegal, legitimate sacrifice being expressly restricted to the single sanctuary" (p. 138). Yet there is not a word in Deuteronomy directed against legitimate altars of the Lord, and, as we have just seen, they were recognised in a passage which "may be borrowed from an earlier statute-book," but which, in Dr. Driver's opinion, "presupposes by its wording the law of Exod. xx. 24" (p. 203). The latter law must, therefore, have been in force at the time. Thus, not merely does the Deuteronomist never prohibit lawful altars, but on Dr. Driver's own showing he actually negatives the idea of any such prohibition being intended by presupposing their existence and issuing a command for their regulation.

Note on the Failure of the Higher Critics to Detect the Legal Effects of Holiness on Animals.

One of the minor causes of the difficulties experienced in understanding the legislation of the Pentateuch is undoubtedly to be found in the use of technical terms of which the meaning is very imperfectly understood. It is true that attempts have been made to

fathom the meaning of these terms, but it is too often the case that, owing to inexperience and lack of training, the authors of these attempts sin against the most elementary canons of research.

In particular there are three errors into which they are prone to fall. First, they fail to ask themselves how the rules which contain these technical terms worked. Hence they frequently put forward views which are seen to be untenable the moment an endeavour is made to realize the position of anybody who had to act on them. Secondly, they do not distinguish between things that are essentially unlike; and, as a necessary consequence, they do not see that the rules governing their treatment must be different, and must colour or be coloured by the meaning of the terms sought to be elucidated. Thirdly, they overlook the important truth that the usage of any term is conditioned by the knowledge, the position, and the objects of the writer who uses it. This is particularly true of the terms of legal or sacrificial art. The use of a technical expression by a poet, a historian, or a prophet, in a metaphorical or popular sense may be justifiable, or even admirable; while a looseness in the author of a legal rule would be quite unpardonable. The first two errors may be very simply illustrated from the provisions as to "holy" things.

As an animal is essentially different from a house or a field, it is impossible that the laws governing the holiness of both should be identical. "All the firstling males that are born of thy herd and of thy flock thou shalt make holy unto the LORD thy God: thou shalt do no work with the firstling of thine ox, nor shear the firstling of thy flock. Thou shalt eat it before the LORD thy God year by year in the place which the LORD shall choose, thou and thy household. And if it have any blemish . . . thou shalt not sacrifice it unto the LORD thy God. Thou shalt eat it within thy gates," etc. (Deut. xv. 19-22).

Which of the processes here contemplated could possibly be performed on a house or a field?

Perhaps it may be thought that in making these remarks I am unnecessarily labouring what is already obvious. Unfortunately that is not the case. Dr. Hoffman (*Magazin für die Wissenschaft des Judenthums*, 1880, p. 137) pointed out that in Lev. xxvii. 30, 31 the tithe belonged not to the Levites, but to the LORD. In reply, Professor von Baudissin (*Geschichte des Alttestamentlichen Priesterthums*, p. 37, note) relied on the words used in verse 21 of a *field* as showing the legal effects of holiness on these *animals*. Yet I do not gather that he was prepared to argue that the possession of the animal was to be the priest's till the year of the jubilee. This, however, would be the only logical conclusion on the assumption that you can argue from immovable objects to living animals, but it is the *reductio ad absurdum* of the method employed.