"Some Results of Modern Criticism of the Old Testament"—I.

MANY of those who read the articles by the Dean of Ely that appeared under this title in the *Guardian*[1] must have felt regret at finding that so moderate a writer should lend his authority to the higher critical practice of repeating current statements without regard to the work of their opponents. This is the more disappointing because at the outset Dr. Kirkpatrick appears to admit that there are no assured results. "*It lies*, then," he writes,[2] "*in the very nature of the subject that it should be difficult—and, indeed, impossible—to give a definite and dogmatic answer to the question, 'What are the assured results of modern criticism of the Old Testament?'* The evidence will appeal with different force to different minds. Much must depend on the standpoint from which the questions are approached." What precisely these sentences are intended to convey may very well be a subject of debate. To the present writer they appear to mean that Dr. Kirkpatrick is very doubtful about the wisdom of pinning himself down to any concrete propositions. And this may well be so. For there are, in fact, two sets of phenomena which make it impossible to talk of "assured results." In the first place, the divisive critics are not agreed among themselves. It is, of course, true that the disciples of Wellhausen always claim that their view is supported by the consentient testimony of all scholars; but this consensus is only obtained by leaving out of account the work of everybody who disagrees with them. And the second reason appears to be indicated by Dr. Kirkpatrick himself in the sentences quoted, when he speaks of the different force with which the evidence appeals to different minds and the importance of the standpoint. The fact is that nine-tenths of the critical work consists of writings by men who are not specialists in the subjects with which they deal, and that trained experts would give a very

[1] May 15 and 22, 1907. [2] P. 807. My italics.

different account of the matter. This has been so often emphasized in these pages that it will be sufficient on the present occasion to outline some of the causes that render modern critical work of so very little value, and merely to give references to the old familiar points, drawing our present illustrations as far as possible from new material. That is the only course practicable in dealing with general statements of the kind made by Dr. Kirkpatrick, because some of his averments would require a volume, not an article, for their refutation. I am thinking of such clauses as "that the Prophets, not the Law, must be taken as the starting-point in Hebrew history."

First, then, as I have repeatedly pointed out, the higher critics, although dealing with what is avowedly an old law book, have never taken the trouble to consult any independent lawyer. There appears to be doubt in some minds as to the accuracy of this statement. Accordingly, I may properly quote a letter I received from a higher critic, together with my reply. My correspondent wrote: "I must admit that I am naturally impressed when I find legal men of repute abroad, who have studied the subject impartially, endorsing the methods and the essential conclusions of recent criticism." To which I replied as follows: "I understand you to say that 'legal men of repute abroad, who have studied the subject impartially, endorse the methods and the essential conclusions of recent criticism.' May I have a reference to these men and their works? I am acquainted with some writers of whom you may be thinking; but, as they avowedly take over the conclusions of the higher critics ready-made, without *any* study (impartial or other) of the grounds of those conclusions, they could scarcely be covered by your description. Most of the legal work that I have seen on the Pentateuch is exceedingly superficial, and adopts the views of either critics or rabbis or both without independent investigation." The reply to that letter contained no references; indeed, my correspondent was most careful not to allude to the subject again. And if any reader of the CHURCHMAN should find himself confronted with such a statement, I should be

obliged by his obtaining references and sending them to me. The matter can then be investigated, and the work of the "legal men of repute abroad" can be subjected to proper tests.

I propose now to give a few illustrations of the effect of legal knowledge on Pentateuchal studies, beginning with the patriarchal age. "It can hardly be doubted," writes Dr. Kirkpatrick,[1] "that the narratives of the patriarchal period took shape gradually in oral tradition, and were more or less coloured by the religious ideas of later ages. That Abraham, Isaac, and Jacob were real persons, and not simply personifications of tribes, need not be questioned; that characteristics of tribe and race have been embodied in their portraiture is extremely probable." Legal studies affect these statements. By an application of the comparative method it is possible to show the minute accuracy of many of the narratives in Genesis. Evidence comes unexpectedly from the ends of the earth to corroborate out-of-the-way details of the history. Take, for instance, the story of Jacob's service for Rachel. This form of marriage—called by the Germans *Dienstehe*, service-marriage—is said by Post to be universal. The service is a regular substitute for the bride-price (Hebrew *Mohar*) when the suitor is too poor to find the price in any other way. Sometimes the bridegroom becomes the slave of the bride's family for good. Among other communities the service only endures for a term of years. Instances are quoted ranging from six months to seven years.[2] And so, in the light of the comparative evidence, it becomes clear that Jacob, Laban, Leah, and Rachel were individuals, not tribes. What sense could the story of the service bear if we were dealing with tribes?[3] The evidence is, of course, cumulative. It is not one touch that is corroborated, but many. Here, for instance, are parallels to some of the covenants:

[1] *Guardian*, May 22, 1907, p. 846.

[2] A. H. Post, "Grundriss der Ethnologischen Jurisprudenz," i. 318-320; P. Wilutzky, "Vorgeschichte des Rechts," i. 183-185.

[3] *A fortiori* what would the narrative mean if, as some writers maintain, it were an astral myth?

En général, lorsqu'il y a prestation de serment solennel ou ordinaire, chacun, suivant la quantité de ses terres, fournit la victime et vient au lieu de la cérémonie. Lorsque chaque contractant a prêté serment, alors, au nom de cet individu, le préposé aux serments offre, collectivement, le vin et les chairs de la victime (Le Tcheouli, translated by E. Biot, Paris, 1851, vol. ii., p. 361, Bk. XXXVI., 44).

There is a note to this in Commentary B (composed in the second century A.D.), which runs as follows:

Quand la prestation de serment est faite, on fait sortir le vin et les pièces découpées de la victime. Au nom de celui qui les fournit, le préposé aux serments sacrifie aux esprits lumineux. Alors celui qui n'est pas sincère doit être malheureux.

Quand on fait une convention par serment, *entre les princes*, on commence la cérémonie du serment par le vase de jade, appelé *Touï*. Aussitôt il (le garde de droite) fait le service de ce vase (il le passe aux contractants). Il assiste le représentant de l'esprit pour prendre l'oreille du bœuf, pour manier le bois de pêcher et la plante *Lie* (Tcheouli, Bk. XXXII., 29; Biot, ii., pp. 247-248).

Note in Commentary B: Le garde de droite donne le vase à ceux qui doivent se frotter les lèvres du sang de la victime, en signe de fidélité à leur serment. Le représentant de l'esprit qui préside à la convention, coupe l'oreille du bœuf immolé, et reçoit le sang, etc. (p. 248).[1]

It is extremely significant that the name "Patkai" (which is an abbreviation of Pat kai seng kan[2]) originated on the pass at the part above indicated, in consequence of an oath there ratified between the Ahom Raja "Chudangpha"[3] on the north side with Súrúnphai, the Nora Raja of the south side, whereby each bound themselves to respect the Nongyangpáni as the boundary, and that between them, ere separating, they erected two sculptured monuments, as memorials of the treaty, on each bank of the river.

Previous to this period the range there was called "Doikaurang" Doi = Mountain, Kau = nine, and rang = united—namely, the place of "nine united hills," or where nine ranges converge, which latter singularly confirms all we know of the place already (S. E. Peal in *Journal of Asiatic Society of Bengal*, 1879, vol. xlviii., part ii., No. 2, p. 75).[4]

Or, again, take Joseph's "with whomsoever thou findest thy gods, he shall not live" (Gen. xxxi. 32). There are abundant parallels to death as the punishment in cases of theft,[5] as also to slavery (Gen. xliv.).[6] The succession of a slave to his childless

[1] I owe these references to J. Kohler, *Zeitschrift für vergleichende Rechtswissenschaft*, vi., p. 383, *note* 2.

[2] Pat = cut, Kai = fowls, Seng = oath, Kan = taken.

[3] Chudangpha's Ambassador was the Bor Gohain Tiatanbing, and that of the Nora Raja, Tasinpou, date A.D. 1399-40.

[4] I owe this reference to Klemm Ordal und Eid in Hinterindien, *Zeitschrift f. vergl. Rechtsw.*, xiii., p. 130. For other parallels compare P. Wilutzky, *Vorgeschichte des Rechts*, ii., 144-145; Friedrichs *Universales Obligationenrecht*, 16.

[5] Post, *Grundriss*, ii., 427-428, 442; Hammurabi, § 6.

[6] Post, *op. cit.*, i., 359; ii., 427-428, 442. "Studies in Biblical Law," p. 102.

master, to the exclusion of that master's relatives (Gen. xv.), appears to be very rare, but a parallel is found even to that among the Waniamwesi.[1]

But, then, may it not be argued that the legal conditions were common to the post-Mosaic period and the patriarchal age? Can it not be said that in legal matters "the narratives are more or less coloured by the ideas of later ages?" The answer—which is important—is in the negative. There are, of course, no sufficient materials for writing a history of Hebrew law in Biblical times, but, so far as it goes, the evidence of the Book of Genesis will not fit in with the critical theories. Perhaps the most interesting case is the conveyance of the field of Machpelah to Abraham, a passage attributed by the critics to the supposititious exilic or post-exilic "P." Like every other legal transaction in the Book of Genesis, and unlike every Babylonian legal tablet, it is conspicuous for the absence of writing. When it is contrasted with the very modern form of conveyance with which we meet in Jeremiah xxxii., it at once becomes evident that it represents a much more primitive stage of legal development. The instance is peculiarly important, because we are asked to believe that "P" (who is supposed to have been very much under Babylonian influence) forged or inserted the narrative of the purchase of the cave of Machpelah for the purpose of giving validity to the claim of the Israelites to the land of Canaan. Now, had that been so it is evident that a writer who, according to the critics, is distinguished by a peculiarly lawyer-like style would never have failed to mention every particular that was material to the complete validity of the transaction according to the ideas of his own age. Nor can it be said that he would have been deterred by any scantiness of information or any scruples as to the truth, for *ex hypothesi* he was an admitted master of fiction, wholly devoid of anything that we should regard as historical conscience.

[1] Kohler in *Zeitschrift für vergleichende Rechtswissenschaft*, xv., 43. For later Jewish law see Prov. xvii. 2, xxx. 23. As to the relative treatment of Isaac and Abraham's other sons (Gen. xxv. 5 *f.*), see Post, *Grundriss*, i., 147.

The law of homicide also presents us with some interesting testimony. The story of Cain the outlaw, subject to death at the hands of any man who met him, reveals a legal institution well known to students of early law.[1] But here it is important to notice that it brings us face to face with an earlier state of law than that postulated by the Mosaic legislation. The blood feud is not yet recognized. It is not yet the duty of the avenger of the blood alone to exact retribution for the crime. The murderer is expelled from the religious and social community, and left as an outcast from the peace and protection of the tribe, to encounter single-handed any stranger or enemy—the terms are synonymous in early times—he may meet. Nor is the position much better for the higher critics if we turn to "P": "Whoso sheddeth the blood of man, by man shall his blood be shed." That is not the law of "JE" or "D" or "P" with the place appointed for refuge in certain cases of homicide. The distinction between murder and other classes of homicide has not yet been drawn.[2]

Another matter that has probably never been considered by any higher critic is the history of the *patria potestas*—the legal power of a father over his children. As at Rome, so among the ancient Hebrews, the *jus vitæ necisque* was at first quite unlimited.[3] We have several instances of this, the most striking being Judah's conduct to his daughter-in-law (xxxviii. 24), who had passed into his *potestas* by her marriage, and Reuben's treatment of his children (xlii. 37). It is to be noted that in neither case is there any suggestion of a trial. The *paterfamilias* acts with plenary authority. But in both Rome and ancient Israel this power underwent curtailment. It is true

[1] See Post, *Grundriss*, i., 163-165, 352-354; ii., 248. Kulischer in *Zeitschift f. vergl. Rechtsw.*, xvii., 3; "Studies in Biblical Law," 105.

[2] Here, again, there are universal parallels to the course of legal history as depicted in the Bible. The distinction is elsewhere later than the treatment of all cases of homicide as being on the same footing. See Post, *op. cit.*, i. 237 *et seq.*, ii. 333 *et seq.*

[3] For a succinct account of the history of the *patria potestas* with the *jus vitæ necisque* at Rome, see Moyle on "Justinian Institutes," i., tit. 9. The parallel is sometimes extremely close. There are countless parallels among other peoples.

that the power to sell or pledge children endured to the end of Old Testament times (Neh. v. 5), and probably the paternal power was in many ways extremely extensive till a very late period,[1] but the family jurisdiction in cases of wrong-doing had been greatly curtailed before the days of Moses. I am not thinking merely of the provisions of Deut. xxi. 18-21. If they were all we had, the critics might reasonably suggest that the relative dates of "D" and "JE" would account for the alteration. But it is clear that in Exod. xxi. 15, 17, offences against parents are no longer regarded as matters for the domestic tribunal, but are included within the competence of the ordinary courts of elders. Times have changed since the days of Judah and Tamar.

Passing now to the legislation, limitations of space require that I should confine myself to one or two points. I take slavery first, because legal knowledge here disposes of many critical arguments. It is sometimes said that Exod. xxi.-xxiii. must be post-Mosaic, because it recognizes slavery. What has Genesis to teach us on this head? In the patriarchal period we find at least *seven* methods by which slavery might originate or slaves be acquired. They are (i.) birth; (ii.) purchase (Gen. xiv. 14, xvii. 12, etc.); (iii.) gift (xx. 14); (iv.) capture in war (xiv. 21, xxxiv. 29); (v.) kidnapping (Joseph); (vi.) insolvency (xlvii. 19); and (vii.) crime (xliii. 18, xliv.). To all these there are numerous parallels the world over; but as the critics have alleged that slavery is impossible in a pastoral society, it may be well to refer them for parallels to Nieboer's "Slavery as an Industrial System," pp. 261-293. Dr. Nieboer thinks that the existence of the slave-trade is sometimes sufficient to cause pastoral nomads to become a slave-holding society (pp. 289-290). It would be impossible for one who has made no independent study of the subject to offer any opinion on this theory; but it may be noted that the story of Joseph sufficiently evidences the fact that the slave-trade influenced the Hebrews of the patriarchal

[1] Especially in religious matters. The power to sacrifice children appears to have long survived.

age to some extent. That argument, therefore, falls to the ground. A second matter, in which legal knowledge overturns the critical position as to slavery—viz., the relations of Exod. xxi. and Lev. xxv.—has been frequently dealt with before, and need not be laboured further here.[1] Yet a third question is affected by a grasp of the social conditions—the question of the numbers of the Israelites. While there is reason to suppose that textual corruption is responsible for the present condition of the numbers, it must be admitted that all calculations respecting the natural increase of the patriarchs which leave out of consideration the fact that the Hebrews were a slave-holding society are fundamentally vicious. We know from Gen. xvii. 10-14, 27, that some, at any rate, of the slaves were regarded as belonging to the people, and the narrative in Gen. xiv. proves their use in war.

Before passing away from the laws I would enter a protest against one other dictum. "It cannot be doubted"—Dr. Kirkpatrick quotes the words from Dr. Driver—"It cannot be doubted that Moses was the ultimate founder of both the national and the religious life of Israel; and that he provided his people not only with at least the nucleus of a system of civil ordinances . . . but also, etc. . . . It is reasonable to suppose that the teaching of Moses on these subjects is preserved, in its least modified form, in the Decalogue and the 'Book of the Covenant' (Exod. xx.-xxiii.)."[2] Assuming Dr. Driver's premises for the purposes of argument, I desire to point to the radical vice of his procedure. When the comparative historical method is available, it cannot be regarded as "reasonable," according to any scientific standard, quietly to pass it over and substitute mere baseless guesses for the results it would bring.

While it is impossible to give details here without exceeding reasonable limits and becoming too technical, it may be said generally that by taking the provisions of the Pentateuch and

[1] "Studies in Biblical Law," pp. 5-11; *Bibliotheca Sacra*, January, 1907, pp. 9-10; CHURCHMAN, March, 1907, p. 155.

[2] *Guardian*, May 22, p. 846.

comparing them with the testimony of other ancient systems it is possible to show that they mirror a very archaic and undeveloped state of society, and that they would have been inadequate (and in part also obsolete and unintelligible) in the days of, say, Solomon. Indeed, we may go further. The difficulties that at present surround the Pentateuchal legislation are largely due to the fact that in the days of Ezra and Nehemiah a system of ancient law had to be applied by men who were neither lawyers nor historians to a community which in its atmosphere, state of development, and social needs differed very remarkably from that for which the Mosaic legislation was originally designed. The procedure of the higher critics is the more astonishing as they often admit that "P" contains much that is early and can only be understood in the light of savage parallels. It is strange that it never occurred to them to follow up this admission to its logical conclusion. Surely it should have led them to test the laws by referring them to the work done by scholars in other fields of ethnology, instead of arbitrarily assigning dates on the ground of what appeared "reasonable."[1]

Keble and "The Christian Year."

By the Rev. Canon COWLEY-BROWN, M.A.

IT is a striking testimony to the merits of "The Christian Year" that it awakes a responsive chord in minds altogether dissimilar. Men at the opposite poles of religious thought have felt the influence of this fascinating book. The lines for morning and evening are found in almost every hymnal. For the most various minds "The Christian Year" has an undying charm.

[1] For discussions of the legal arguments of the critics, see "Studies in Biblical Law"; the various papers I have contributed to the Churchman; also *Princeton Theological Review*, April, 1907, 188-209.