

## ARTICLE II.

## THE GREAT PENTATEUCHAL DIFFICULTY MET.

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PART I.—A PRÆ-MOSAIC STRATUM OF PENTATEUCHAL  
LAW.

THE stock argument against the possibility of *all* the Pentateuchal laws being ascribed to Moses usually takes form as follows: "You have here, from the Sinaitic covenant-laws to those of Deuteronomy, both inclusively, in effect *three codes in forty years*, by the same legislator to the same people—all amidst substantially the same surroundings of the wilderness"; the third, or intermediate, being reckoned as constituted by those scattered groups of laws, chiefly in Leviticus xvi.—xxv., but found also occasionally in Numbers, to which the title "The Law of Holiness" is often given. The objector continues: "This is morally impossible, especially considering the wide disparity in social conditions evident between the Sinaitic and the Deuteronomic. Therefore, assuming the Sinaitic to proceed from Moses, the latter must be long posterior to him." I will, for argument's sake, at once concede the major premise here; although it may be argued with reason, that the teaching (*Torah*) of the wilderness forms one progressive whole, and that we moderns are ill-qualified to fix the limits within which its progress, especially having regard to its inspiration, was possible. That *Torah* has elements which wholly outrun those of a "code," and tend to falsify a criticism which regards it merely as such. But, making this concession with this reserve, I must leave for Part II. the

question which regards the relation borne to Exodus and Deuteronomy by the third or intermediate so-called "code," the Law of Holiness, symbolized sometimes as PH, and present the question as between the Sinaitic and Deuteronomic only. Assuming, then, that we cannot get both these into forty years, the question is, *Which* is the overlapping part? The critics say it is Deuteronomy—to that I demur. But let me first premise that the situations in which the two were given are radically different, in spite of the local surroundings being so nearly the same. For at Sinai the covenant is given on the assumption that the recipient Israel are to march straight thence upon Canaan, with Moses, who gave them that law, as their leader, and under him take possession, with him present to apply, interpret, or modify that law. Thirty-nine years later "all that generation" has died away, their disobedience having voided the promise; while Moses, for his failure in perfect obedience, is to die on the threshold of that heritage, and, in that crisis of the people's destiny, to hand over the leadership to a successor. Whatever they have become, they are no longer the young emancipates of that year One of freedom; and Joshua, the successor, has no legislative commission. Meanwhile nearly one-fourth of the Israelite total have won and are settling in their territory east of Jordan. Moses is called, on the whole suddenly, to prepare for a future which he is not to share, much less to lead. These are the conditions which called forth the Deuteronomic laws and exhortations—"the second covenant . . . in the land of Moab, beside" the one "made" with Israel "at Horeb" (Deut. xxix. 1), being the nucleus of the whole book, and, in respect of the great lawgiver, his last will and testament.

To return, then, to that covenant at Horeb and its laws—critics have hitherto taken them up *en bloc*, labeled them "Sinaitic," distributed them into Decalogue and subsidiary statutes, regulating worship and social duty, and have wholly

failed to make the true analysis by means of internal evidence, which reveals, as I shall presently show, an early *stratum* of præ-Mosaic antiquity. I refer to the "judgments," advisedly and most correctly so entitled, which Moses is to "set before" the people (Ex. xxi. 1). This præ-Mosaic section is somewhat carefully dovetailed, so to speak, into the "Sinaitic" laws proper at or about Exodus xxii. 20 (Heb. 19). From xxi. 2 then to xxii. 20 we have (perhaps only a portion of) a very ancient *corpus iuris*, couched almost wholly in the third person, with exceptions (xxi. 2, 13, 14, 23; xxii. 18) which I believe can all be accounted for, whereas from xxii. 20 onwards "thou" or "ye" is the uniform style. This former section has an order, method, and spirit of its own; besides a strong and remarkable local coloring.

Its "judgments" are transparently such—decisions each *pro re nata*, exactly like those *θέμιστες* of Homeric epos, which were delivered to the hero-king by Zeus himself (Homer, Il. i. 238-239; ix. 99-100), to be kept in store until occasion drew them forth. We may therefore translate them back into their facts of origin; and we have a series at once of highly idyllic pictures which illustrate a highly primitive and self-contained social life. And here the words of the late Sir Henry Maine are singularly apposite: "Parties of circumstances were probably commoner in the simple mechanism of ancient society than they are now, and in the succession of similar cases awards are likely to follow and resemble each other. Here we have the germ or rudiment of a custom, a conception posterior to that of *θέμιστες* or judgments. However strongly we, with our modern associations, may be inclined to lay down *a priori* that the notion of a custom must precede that of a judicial sentence, and that a judgment must affirm a custom or punish its breach, it seems quite certain that the historical order of the ideas is that in which I have placed them. . . . Law has scarcely

reached the footing of custom, it is rather a habit. . . . The only authoritative statement of right and wrong is a judicial sentence after the facts, not one supposing a law which has been violated, but one which is breathed for the first time by a higher power into the judge's mind at the moment of adjudication."<sup>1</sup> This last notion is exactly illustrated by the use of the term *Elohim* (with the definite article)="gods," for the judges, in Ex. xxi. 6; xxii. 8, 9, *bis*.<sup>2</sup>

I take each judgment, then, as a picture of fact, involving a scene of real life. That life knows nothing of the "stranger and sojourner." It is predominantly pastoral; although agriculture is recognized in the vineyard and the harvest field (xxii. 5, 6). Master and slave are of one race, the Hebrew; and the only outsider is the "strange people" of xxi. 8. That life—and this is the singular general fact to which a number of the incidents point—is one led at very close quarters. There is, if I may say so, no margin of mutual avoidance. The incidental trespasses seem nearly all to arise from man and man, or woman, or man and beast, etc., not having elbow-room enough to keep out of each other's way. Two men fight, either in a house or so close to it that the house mother comes in for a violent blow, with possibly serious hurt. A opens a pit and B's animal walks into it; or A's beast breaks loose and is found grazing in B's vineyard, etc. A lights a fire, perhaps to cook pottage for his reapers (2 Kings iv. 39, 40) out of doors, and it catches B's harvest ;<sup>3</sup> while the vicious ox that seems to have no adequate range of pasture, is a standing peril to the patriarchal society, and is supposed to gore indiscriminately man or wife, son or daughter, man-servant or maid-servant, or his own fellow-beast. As such he is to be stoned—the only offender for which that

<sup>1</sup> Ancient Law, pp. 5, 8.

<sup>2</sup> Cf. Deut. i. 17, "The judgment is God's"; and Ex. xviii. 19, "Be thou to the people to God-ward," cf. v. 15.

<sup>3</sup> For קציר "thorns" here (xxii. 6) read קציר "harvest."

penalty is precisely enjoined; while, if he is an old offender, his assaults are watched, his character known and debated, and his owner then held responsible (Ex. xxi. 22, 28-36; xxii. 5, 6). People live not in tents but in houses, with wooden door-posts and doors apparently, from xxii. 7; xxi. 6. A thief is likely to be "found," or can find a ready market for what he steals, may be caught "breaking up," or may rob a house and be caught afterward (xxii. 1, 2, 7). To estimate these conditions we must remember the total absence of police in ancient society. All this then suggests a community somewhat closely packed. It is one, moreover, racy with reminiscences of patriarchal story. Can any one read Ex. xxii. 10-13, "If a man deliver unto his neighbor any animal, "to keep; and it die, or be hurt, . . . If it be stolen from him, he shall make restitution to the owner. . . If it be torn in pieces, let him bring it for witness," etc., without recalling Jacob's angry diatribe to Laban, "That which was torn of beasts I brought not unto thee; I bare the loss. Of my hand didst thou require it . . . stolen by day or by night" (Gen. xxxi. 39)? And does not the last provision, of "bringing that which is torn in pieces for a witness," recall vividly the analogous case of Joseph's coat, "dipped in blood," and exhibited to the desponding father, with his words, "Joseph is without doubt rent in pieces" (Gen. xxxvii. 31-33)? Similar is the tenor of the law against "stealing a man and selling him," Ex. xxi. 16; cf. Gen. xxxvii. 28; xl. 15 (Joseph's own case). Finally, all primitive and patriarchal as is this society, it is yet one in which medical treatment for hurts is procurable, and in which medical fees are paid (Ex. xxi. 19). Nowhere in these laws do we contemplate a further and a distant future; as, "When thou art come into the land which Jehovah giveth thee," etc., which, with variety of phrase, so often occurs in the laws of Leviticus - Numbers - Deuteronomy. The only glimpse of futurity is the significant one of xxi. 13, "I

will appoint thee a place whither he [the homicide involuntary] shall flee"—perhaps a forecast of the law of the Gôël in Numbers - Deuteronomy. Nowhere is there any retrospect to a state of earlier bondage or sojourn. But turn the page and glance at the very next verse, xxii. 21 (Heb. 20), and we find, "Ye were strangers in the land of Egypt," and so xxiii. 9, 15. Then soon follows the Angel guide, and the prospect of "the place which I have prepared" (xxiii. 20), i. e. the Land of Promise.

Now these conditions all exactly suit one stage of Israel's history, and one only. Most of them are inconsistent with the free range of patriarchal life in Canaan, when "the land was large enough," alike for Jacob's household with its ample wealth of herds, and for their Hittite neighbors (Gen. xxxiv. 21). Still less do they fit the yet wider range of the wilderness, limited only by its means of sustenance, far larger probably then than now. That one stage is the later life of Goshen—the period of the people "increasing abundantly and multiplying" in that region, until "the land was filled with them" (Ex. i. 7; cf. Gen. xlvii. 27). They were between the Philistines on one side (xiii. 17) and the Egyptians on the other, within narrow limits therefore. When a population thus rapidly increases in a circumscribed area, it is no new experience that a considerable proportion become very poor. In ancient society the only resource was for the poor man to sell himself into slavery to the wealthier. Even in Yorkshire, after William the Conqueror's northern devastation, the Chronicle tells us that the people sold themselves for bread. This accounts for the prominent position of the slave of Hebrew blood, for the disproportionate predominance of his (or her) rights and wrongs; and for the tenderness with which, on the whole, the servile condition is regarded (xxi. 2-11, 20, 26, 27). There was the "strange people" at their very doors, to whom slave wife or kidnaped man might be sold (ver. 8, 16)—and that the one

people of the ancient world noted for high therapeutic skill and an established medical profession (Herodot. iii. 129; ii. 84). In that land reminiscences of Jacob and Joseph could never be far distant, would naturally mold the folk-lore and contribute to color the "judgments." In this period and in no other are all these curious, and in some respects singularly contrasted, features reconciled. Thus far I have regarded only the facts; let us next look at the language.

In xxi. 2, 3 we have for "by himself" the curiously archaic phrase "in his body," and here the word for "body" (*gaph*) is found nowhere else in that sense, and once only in another. In verse 10 we have (*seār*) "flesh" in the sense of "nourishment" or "alimony," again unique as so used. In the same verse the word for "cohabitation" (*'dnah*) is absolutely unique, and its verb of origin obsolete, supposed to be *on*, "to dwell." The verb for "betroth" occurs in that sense nowhere else (verses 8, 9). In verse 13 the phrase "bring into his hand," *as a phrase*, is unique, although its component words are well known.<sup>1</sup> In verse 22 we have again a curious feature of patriarchal coincidence. The word *asdn*, "mischief," there, occurs besides this in one section only of the Old Testament, viz., Gen. xlii. 4, 38; xliv. 29—Jacob's foreboding words over Benjamin, "If mischief befall him," etc. This is highly significant, especially when viewed in connection with the realistic traces of the same patriarch's family history above noticed. Further in xxii. 16 (Heb. 15) we have a verb *mahar*, "to buy" (a wife), unknown elsewhere, but having a rare derivative *mōhar* ("dowry," A. V.), found here, also in Gen. xxxiv. 12 and once besides only. The word recalls the primitive social state in which a man robbed a wife from his enemy or bought her from his friend. The significance of *Elohim* for "judges" has already been noticed. Deuteronomy xix. 17, where the

<sup>1</sup> The verb "bring," however, *בָּרַח*, is very rare; in pi. here only, in pu. only once in Psalms and once in Proverbs, in hitp. also once.

parties to a criminal charge are to "stand before Jehovah, before the priests and the judges," is in the same spirit; but only in poetry (Ps. lxxxii. 1, 6) is the precise term in this sense found elsewhere. In Ex. xxii. 28 (Heb. 27) it has not the article, and probably means "God"; although "judges," coördinated with "ruler," yields not a bad sense. Observe that the "judges," A.V., of xxi. 22, renders a wholly different word,<sup>1</sup> of which apparently "arbiters or umpires," called in specially *ad hoc*, is the meaning. Like *Elohim* for judges, it occurs elsewhere only in poetry (Deut. xxxii. 31; Job xxxi. 28). The word for "judge" (*shôphet*, pl. *shophetim*), so well known from later Hebrew history and law (e. g. Deut. xvi. 18), has no place in this *corpus iuris*, although it is found in Ex. ii. 14. That term gave not only its title to the book of Judges, but to the Carthaginian state, that of its chief rulers (*suffetes*, Latin); showing how early and how thoroughly that term was current among Semitic races, and thus confirming by its absence here the high antiquity of this venerable "code." Thus the linguistic evidence coincides with the realistic, and both together form an irrefragable induction. Now it is only in this section that "the wide disparity in social conditions," urged as above by the objector, i. e. as compared with those traceable in Deuteronomy, can be said to exist. On the contrary, the laws of the later section (xxii. 20–xxiii. 19) are largely taken over (some *verbatim*, e. g. xxiii. 19 b; cf. Deut. xiv. 21) into the laws of Deuteronomy. So indeed are some few of these former, e. g. the ear-boring ceremony for the permanent slave (Ex. xxi. 6; cf. Deut. xv. 16, 17); while the provision for involuntary homicide (Ex. xxi. 13) passes into slightly different later developments in Num. xxxv. 11 foll. and Deut. xix. 3 foll.; but the great majority of these provisions do not recur.<sup>2</sup> See

<sup>1</sup> שֹׁפֵט. The primary verb, שָׁפַט, has, however, a wide range, which makes the all but uniqueness of the derivative more remarkable.

<sup>2</sup> Except in the "Law of Holiness," of which later.

especially Exodus xxxiv., where, in a somewhat changed order, many precepts of the later section are repeated, but none of the former. I submit, therefore, that, under this analysis, the difficulty of legal institutions so widely differing from each other that forty years cannot possibly cover them, ceases to exist. We may safely claim for these Goshen "judgments" a seniority of at least a century to Moses' own early period, and therefore one of nearly two centuries to his latest.

What, then, it may be asked, was the motive of their inclusion in the "Sinaitic covenant" laws? I think we may discern two motives—one general to the race, the other special to its judicature. The first is that of preserving a continuity stamped on institutions. Under the same motive comes the covenant sacrifice of Sinai, the new Dispensation clothing itself *pro hac vice* in the forms of the old, in the patriarchal "pillars" (*matzsebôth*), subsequently banned (Deut. xvi. 22), and the probably chieftain-priesthood of ancient custom (Ex. xxiv. 4, 5). Under the same motive comes the declaration of identity between the Jehovah of that Dispensation and the El Shaddai of the Fathers (Ex. vi. 3); and probably also the *Mazzôth* festival taken over into the Paschal (xii. 11-20). The more special motive is that proper to the judicature itself. When Moses at Jethro's suggestion appoints the subordinate judges, he is to "teach them ordinances and laws, and shew them . . . the work that they must do" (Ex. xviii. 20).<sup>1</sup> With this old *corpus iuris* many of them would be already more or less familiar, and until the promulgation from Sinai, these "judgments" were the only material available for the purpose. Thus their preservation, as one of the most venerable *deposita* among the traditions of the race, seems amply vindicated. It is

<sup>1</sup> It seems clear that in this narrative verses 20, 21 should be transposed. The "teaching" would be needful for the officials, not, as it seems from the text, for the community.

not improbable that some of them, especially those which show merciful consideration, may be the oral pronouncements of Joseph himself; who, as Moses later, would most naturally act as chief *Kadi* to his own community; and by presiding over the *genesis* of its customs prevent its amalgamation with the "strange people," under the warping influences of a higher civilization.

The few deviations from the third person to the second are worth notice. I believe that one of these is Moses' own mark of hand in his adoption of this section into the covenant laws, viz., that in xxi. 13, 14, which I take to be a clause directly inserted by him, qualifying the absolute doom of verse 12 on homicide generally. It seems, as noticed before, to prepare us for the legislation concerning the Cities of Refuge. In the remaining cases we have, I think, either casual corruption or designed alteration of the text. Thus to read in verse 23, "Life shall be given for life," would call for the change of a single letter only;<sup>1</sup> and similarly in verse 2,<sup>2</sup> where "If a Hebrew servant be bought" would then be the rendering. The same subject is then preserved in all the clauses of this first statute of the servile *status* (ver. 2-6). As it stands, "thou" of verse 2 is really the same as the "master" of verse 4 foll. But I think it likely that some redactor in verse 2 changed the grammatical form designedly, intending at first to harmonize both the sections in the second person throughout; but subsequently shrank from the wholesale changes of text in detail which this would require, and pursued it no further. There remains only xxii. 18 (Heb. 17), and here the cause of the change is a little more complex. "Thou shalt not suffer a witch to live," is the brief text here; "suffer-to-live" being one verb. This rendering I regard as a distortion, if not a monstrosity, in Hebrew. The verb in this (pi.) form is always used of "*sar-*

<sup>1</sup> ונתתה for ונתכה.

<sup>2</sup> תקנה for יקנה.

*ing* alive”<sup>1</sup> what would *else* be destroyed or lost. I think that here probably mutilation preceded corruption. Suppose the text to have been, “a witch there shall not be [of the daughters of Israel],” resembling thus in form Deut. xxiii. 17. The latter words having been lost, some corrector tried to make sense of the truncated sentence by the change of a single letter,<sup>2</sup> relying for that sense on Lev. xx. 27, which pronounces a capital sentence on all such practitioners. Even if the Hebrew verb here were capable of the sense, the form thus found for a capital sentence would be utterly without parallel in the Old Testament. But these *minutiæ*, whatever may be thought of them, have unaffected the above argument, which deals with the broader features of fact and phrase alike; and shows that both are harmonized in a præ-Mosaic stratum of law, proceeding from the very infancy of the race of Israel, and stamped with precisely those primitive features which are common to the most ancient forms of law in other races.

#### PART II.—ORIGIN OF THE MIDDLE PENTATEUCH LAWS.

With the legislation concerning the sanctuary, its fabric, furniture, and the Levitical and priestly duties related to these, and the privileges and dues of those classes, I for the present am not concerned, unless so far as certain popular aspects of them may carry me. Probably because that legislation deals with a limited and privileged class, its formulation is far more precisely legal than most of the rest of the Pentateuch. But even these rules exhibit the tendency to “mingle up religious, civil and merely moral ordinances, without any

<sup>1</sup> The only seeming exceptions are, when examined, not really such. Nathan's “poor man” in 2 Sam. xii. 3, who (A. V.) “nourished up” his lamb, means that it would have died for lack of pasture, he having no land to graze, had he not brought it up by hand. Isaiah's surviving shepherd (Isa. vii. 21) manages to keep alive a heifer and two sheep, where all the rest have perished.

<sup>2</sup> תהיה for תחיה.

regard to differences in their essential character" ; and thus "show that the severance of law from morality, and of religion from law, belongs very distinctly to the *later* stages of mental progress."<sup>1</sup> This commixture is traceable everywhere in Pentateuchal law, unless it be in that which regards the mere mechanism of worship and ritual. But nowhere is it so copious as in that large amorphous mass of regulations known as "the Law of Holiness" and symbolized as PH. I have spoken above<sup>2</sup> of "three codes," but it is only to the Sinaitic and the Deuteronomic that the term code is ever approximately applicable. The other, although its *locus classicus* is in Leviticus xvii. and following chapters, yet may crop up anywhere, and does in fact meet us in small or large masses in various parts of Exodus-Leviticus-Numbers. To it, for instance, belong Ex. xvi. 23; xxxi. 13-17; xxxv. 2, 3, all of them *toroth* on the Sabbath; with which cf. Lev. xix. 3, 30; xxiii. 3; xxvi. 2, on the same; add to these the double decalogues of Ex. xx; Deut. v., the "Sinaitic" text of Ex. xxiii. 12; and the actual case of the offender stoned in Num. xv. 32-36, and we have thus the sabbatical ordinance in some form or other brought eleven times before us, not to mention the mere incidental references, such as Lev. xxiii. 38; xxiv. 8. This is the extreme case of an injunction multiplied, and extreme cases best show tendencies. Now a *torah* is properly a text for *teaching*. To teach the people their way of life was its object, and the teaching medium was the Levitical body. This idea lies at the root of their dispersion among the tribes in their cities. It is formally stated in Lev. x. 11 and specially formulated in xiv. 57, besides being rhapsodized in Deut. xxxiii. 10. Compare also the "teaching priest" of 2 Chron. xv. 3, and the *torah* there named as his function; also the "teachers" whom Isaiah (xxx. 20) speaks of as "removed into corners," and whose

<sup>1</sup> Sir H. Maine's Ancient Law, p. 16.

<sup>2</sup> See page 645.

restoration to their place and function in the public eye he promises. I assume this then to have been a living function when the law was given. In that early day the judges who aided Moses would also be teachers, and we saw how in Ex. xviii. 20 he began by teaching them himself. How could he otherwise oversee this teaching system than by issuing such *toroth*, or teaching texts, to the judge and to the Levite? But further, wherever teaching is a living function, a margin of individuality must be left to the teacher. He presents it as from himself; and as such presentations were popularized and multiplied, very diverse developments would ensue. Now the Sabbath may be taken as the cardinal instance of a duty, positive in its essence; but, as the practical seal set by the theocracy on the life of man, ranked coördinately with moral duties, and therefore requiring all the urgency and stringency both of inculcation and observance to keep it in that place of honor. We see how even among the degenerate and corrupt Israel of Amos' day (Am. viii. 5) it had not wholly lost its hold on practice. We may infer the efforts made in the early days of Levitical zeal to drive home the lesson, and we see in the "precept upon precept" of the Pentateuch concerning it that zeal embodied. It is not only diversely developed, but it is grouped differently; e. g. in Lev. xix. 3 with the honor due to parents, in xix. 30 and xxvi. 2 with reverence for the sanctuary. As a leading example of its diverse developments, take Ex. xxxi. 13-17, where we have a large assortment of them.

- (a) It is in verse 13 to be earnestly kept;
- (b) as a sign, throughout generations, "between me and you";
- (c) as an evidence that Jehovah is he who sanctifies;
- (d) It is in verse 14 holy *unto you*, besides repeating (a);
- (e) its defilement to be punished capitally;
- (f) the doing work violates it;
- (g) the "soul" that so violates it to "be cut off";

- (*h*) It is in verse 15 a Sabbath of rest (*shabbath shabbatôn*);
- (*i*) holiness to Jehovah;
- (*j*) repeats (*e*);
- (*k*) It is in verse 16 to be kept by the b'ne Israel;
- (*l*) to be observed (lit. "made") by their generations;
- (*m*) a perpetual covenant;
- (*n*) It is in verse 17, repeating (*b*) more strenuously, "a sign, etc., forever";
- (*o*) a memorial of creation and divine rest, as in the Fourth Commandment.

We have here then, I believe, an example of the many ways in which many minds would grasp and present and diffuse the same archetypal ideas. It is, I think, a mistake to view it as a legislative elaboration, an essay in repetition with diversity, by the lawgiver himself. So I might, although less diffusely, instance the law against "eating with the blood," limited to Leviticus-Deuteronomy, and there recurring some seven times, including twice within the "Law of Holiness"; in one of which it is actually expanded into a brief, reasoned essay. Indeed wherever a law, besides appearing in Ex. xx.—xxiii. and in Deuteronomy, makes a *third* appearance, it is this PH which yields mostly the embarrassing third member, always excepting those "Sinaitic" laws which are iterated in the Sinaitic Appendix of Ex. xxxiv. in which, however, we look in vain for any of the older Goshenic "judgments" of Ex. xxi. 2—xxii. 19. And this I take to be the *rationale* of that remarkable iteration of not all, but most, of the "Sinaitic" law proper, which that curious Appendix to the Covenant in Ex. xxxiv. contains. It presents those laws independently of the earlier, in order to stamp them as of Sinaitic origin, or at any rate as dating from the actual exodus, and belonging to the great deliverance. But to return to PH, it sometimes not only triplicates, but quadruplicates or more. Thus the law of the three annual festivals is found in Ex. xxiii. 14—17 (Sinaitic); xxxiv. 18 20, 22 25 (Sinaitic

Appendix); in Deut. xvi. 1-17, and in Lev. xxiii., as well as in Num. xxviii., xxix. where the whole law of holy seasons is detailed from the priestly standpoint. Again, in Lev. xi. 43-45 we have in extended form a law against certain heathenish defilements. In xviii. 26 foll. (PH) this appears considerably compressed, as if abridged by a teaching Levite for didactic use. In xx. 22-26 (also PH) it reappears, as though some brother who loved an ampler method, had compounded the two. One might fill a page with similar inter-references between Exodus and Leviticus or Exodus-Leviticus-Deuteronomy, or sometimes within Leviticus alone; not to mention the constant recurrence of such hortatory phrases as "Keep my statutes, judgments," etc., "Be ye holy unto me," "Not profane the Name," and the like; but above all of the master formula, "I am Jehovah" or "Jehovah-Elohim," with or without the extension "which brought you up," etc. This last indeed serves as a constant reminder that some actual "word of Jehovah" forms the theme of the teaching, and that the people had bound themselves at Sinai by "all the words which Jehovah commandeth, we will do" (Ex. xxiv. 3b). We may compare this standing form with that of commencing a Christian sermon with, "In the Name of the Father," etc., and with the ascription which concludes it, traceable continuously from the time and use of Eusebius himself, but probably much older.

Now if we ascribe this positive function, as a Mosaic institution, to the "Priest-Levites" of Deuteronomy, we see at once why such teaching, although popular in its scope, was likely to be yet priestly in its form. Hence the strong affinities with P, or the "Priests' Code," which PH shows. It could not in fact be otherwise; and we find, I think wherever we examine PH, that the ampler its development the more strongly pronounced are those affinities found to be; because the teacher's individuality would always partake of his priestly or Levitical character. His teaching would take

its color from his "cloth." Of course some highly broad and popular texts would be sown broadcast. But the more widely popular the audience, the more it would be necessary to apply these *toroth* to *groups*. A thousand such groups would be the fewest possible for even the six hundred thousand male adults reckoned at the exodus itself alone. But if we suppose a thousand teachers, each for a group, we see at once a thousand possible openings for individual presentments of the same general truth. Now this completely accounts for all, and more than all, the above-enumerated variations in the presentment of the sabbatical duty. But further, all teachers, especially when chosen on a genealogical basis, have not the same gifts of memory and power of ready expression. Writing probably first became popular as an aid of memory and elocution. The teachers whose natural gifts were feebler would soon find the value of this resource. They would inscribe their intended lesson, in the first age, probably on a clay tablet; later, on a scroll or skin. In many Levitical houses these would be preserved—probably representing *toroth* in every stage of development, from the naked text, or skeleton, such as we have in Lev. xix. 3, 4, 11–19, 26–33; or the same variously but simply developed, as the text, "Do no *tort* in judgment," in verse 15 with regard to persons; in verses 35, 36 with regard to weights and measures; or treated from a moral and spiritual standpoint, as kindness to "the stranger" in verses 33, 34; or from a ritualistic one, as in verse 5, and verses 20–22. Some again expand the same general principle into a large detail of cases, as e. g., "None of you shall approach to any near of kin . . . to uncover," etc., unfolded in twelve following "forbidden degrees" of kinship and affinity, and followed up by other intersexual and similar prohibitions, in Lev. xviii. 6–23. This "statute at large" of carnal abominations may easily have grown by successive additions; and is followed by hortatory comment, founded on the same

practices as pursued among the Canaanites "which were before you," and the "defilement of the land" thereby (verses 24-30). This comment involves many virtual repetitions, and resumes with slight variations the same theme. They are probably to be explained on the same principle as those from Ex. xxxi. 13-17 discussed above in reference to the Sabbath. Thus verse 6 states the principle, which verses 7-18 then pursue through its inflections; verses 19-23 add other cases *in pari materia*, thus completing a "law of abominations," as we might call it. These probably came from priestly repositories of teaching; and to them various "teaching priests" had strung on various comments of didactic emphasis. There came a time when an interest was found in collecting what remained of these original *toroth* in whatever form they existed—the *origines* of Levitical labors, treasured by the more careful of their successors. These seem to have been strung together just as they came to hand without sifting or arrangement. There is no reason to doubt that adequate care was exercised to insure their genuineness. But indeed forgeries and fictitious make-believes belong to a later age and other conditions. But there all care ended. It interested no one in what order they were filed, or what repetitions they involved. Thus large bulks of the priestly-regulative code too came to light with them; because every priestly house would retain more or less of these, as needed for the daily, monthly, etc., *praxis* of the calendar. But as teaching dropped into desuetude, its relics would be found here and there only; and would exist, where found, in all the degrees of development and hortatory comment which didactic use had imparted to them; and thus we have *toroth* in all their stages, growing gradually into the TORAH, and attesting by the title which it retained and popularized that teaching practice out of which it sprang. Another source of such *toroth* would be the judgments given by competent authority in the olden

time, especially by Moses or Eleazar; of which class the most clearly recognizable are those oldest of all, which I have shown reason for ascribing to the Goshen period, and not a few of which are found repeated in PH.<sup>1</sup> In PH are also repeated some few of the Sinaitic proper, but generally with less of verbal identity and with a freer handling. Thus the precepts regarding just judgment and the avoiding of undue influence in Ex. xxiii. 1-3, 6-8 are paraphrased in Lev. xix. 15, 16 with perhaps only two or three resemblant phrases. The law against "laying usury" on a "poor brother" in Ex. xxii. 25 is expanded with detail in Lev. xxv. 35-37. The "stranger" (*gêr*), protected in Ex. xxii. 21; xxiii. 9 (in this latter probably against judicial oppression), is the subject of Lev. xix. 33, 34, which contains the exact phrases of Ex. xxii. 21, with a further warm-hearted injunction to "love him as thyself." It seems likely that *all* these Sinaitic injunctions became teaching *toroth*. What we have in PH is probably only a small salvage out of a far greater number lost.

What is observed above of developments and comments is exemplified in the Decalogue itself. Its second, fourth, and tenth words were probably originally as brief as those from the sixth to the ninth now are. For teaching purposes adequate authority enriched and fortified them in detail as we have them; and the same in the fourth added those diverse developments which we see by comparing Ex. xx. 8-11 with Deut. v. 12-15. Again, within the (P) Priestly Code pure and simple we find the same rule of iteration with development, the complex growing out of the simple. Thus

<sup>1</sup> Thus cf. Ex. xxi. 2, 3 with Lev. xxv. 54b, where the precepts relating in Exodus to the seventh year are transferred to the jubilee; cf. verse 12 with Lev. xxiv. 17, 21b; cf. verse 17 with Lev. xx. 9; cf. verse 24 (*lex talionis*) with Lev. xxiv. 19, 20, and observe here the details abridged with the principle repeated; cf. xxii. 18 with Lev. xix. 26, 31; xx. 27; cf. xxii. 19 with Lev. xviii. 23; xx. 15, 16, where the scope is somewhat enlarged.

Lev. xxiii. 5-8 (PH) gives a bare outline of the joint feasts of Passover and *Mazzôth* for "the b'ne Israel," i. e. for popular teaching. In Num. xxviii. 16-19a (P) this lesson is repeated with an almost *verbatim* exactness; but to it thus rehearsed is tacked on a development of ritual for the whole seven days of the Paschal period. The same course precisely is followed with regard to the Feast of Trumpets in Lev. xxiii. 24, 25 and in Num. xxix. 1, 2a, to which latter the ritualistic *addenda* are, as before, then annexed. Only, the common portion in this last instance includes some varied or added phrases (shown by a close comparison of the Heb.) which fact points to a shorter *nucleus*, perhaps older than both, from which that common portion originated by diverse development, subsequently extended ritualistically in Numbers (P). Again, as regards the Feast of Weeks, Lev. xxiii. 18, 19 (PH) appoints some varied or added ritual, as compared with Num. xxviii. 27-30 (P); especially in respect of the numbers of bullocks and rams. Probably we have here two Levitical traditions preserved in different priestly houses, both alike genuine. We may compare the double Christian tradition for the reckoning of Easter.

Thus the Decalogue and P both alike yield confirmations of my view of didactic iteration with development as the source of PH; and the inextricable *melée* in which P and PH are now found is accounted for at the same time. The priest-Levites had two functions, the *hieratic*, regarding sacrificial office and sanctuary duties, and the *demotic*, related to teaching and including the judicial sphere. We see in that *melée* the results of this mixture of functions in the same persons. Of iteration with development in Deuteronomy I need barely speak. It is the norm of the whole book, although there the iterations are by one speaker to the people at large, not those gathered from many teachers addressing many groups. I may add that only the few grander outlines of duty would need to be thus broadly popularized (e. g. the Sabbath, as

above shown) by the priest-Levites. For most purposes the "teaching" would be addressed to the heads, princes, elders, etc., etc., in audiences more or less select, and would filter through them to the people at large. I quite recognize that some developments may be post-Mosaic. But there would never be a period when priest and prophet might not, if faithful, adequately authorize any such. I thus reach a *genesis* of Mosaic law which covers all the leading features of fact, and especially that most puzzling one, which has never been yet explained, the gross confusion, viz., which reigns among its elements. Take an instance from PH itself. In Lev. xxiii. 22 we find the law of "the Corner" (see Mishnah, *Peah*) wedged in between the ritual of "wave-offering" and the Feast of Trumpets. Obviously some Levitical reliquary of MSS. contained two of the three, or perhaps all three, as they stand; and some collector, of period unknown, incorporated them pell-mell. To talk of this as a "code" is an abuse of language; for the first element of codification is order, and the second the avoidance of needless repetitions. As regards this latter take Lev. xx. 10-21, as compared with the "prohibited degrees" of xviii. The addition of penalties is the main feature of difference between them. One *scriptorium* contained them as mere rules of conduct, the other as penal ordinances of law. The collector took both over, *malgré* the repetitions involved. And on this view we also reach a real and substantial meaning for such constant headings as "Jehovah said unto Moses, Speak unto the b'ne Israel, saying," etc. They represent facts of the people's life, at any rate initially. Of course if post-Mosaic accretions grew, the headings would become, so far, formulaic only. But these *toroth* were probably, up to Moses' death and later, scattered everywhere among the priest-Levite houses. They were not at his death in any sense a *corpus iuris*, as the Exodus Covenant-laws in a limited degree, and those of Deuteronomy more fully, probably were. They grew, by this

diffusion, into the materials of the great amorphous mass of law which the Middle Pentateuch now contains. The starting-point of all I take to be the Goshen judgments of Ex. xxi. 2-xxii. 20. These followed each other perhaps as the cases arose, which now shine through them and depict the life,—therefore fortuitously. Their fortuitous sequence seems to have influenced that of the Sinaitic laws proper, to which they stand prefixed; whereas in Deuteronomy some method, although incompletely developed, is traceable. They thus resemble the Roman *ius praetorium*, grounded on magisterial decisions as they accumulated, before it was sifted and arranged by the great jurists of the imperial period.<sup>1</sup> That process the Hebrew law never underwent. Some attempts to arrange, coördinate, and subordinate appear here and there in Leviticus - Numbers, but they spend and lose themselves like rivulets in desert sands. The genius of Hebrew prophecy, vast and wondrous in its scope and products, did not include the jurisprudential instincts of an Ulpian or a Gaius; besides which, the long periods of disorder under the judges and early monarchy were adverse to the exercise of such gifts, had they existed. The only long reign of peace was a consolidation of absolutism, and therefore hostile to the study of free institutions. The loss of all independence by the priestly tribe contributed further to weaken the only organ of the national mind which was capable of jurisprudential efforts. Consequently, when that mind turned to examine its original documents, they had become fossilized; and that mind itself had undergone a similar change. Then, their very *ataxia* had become venerable, and all critical instincts had become petrified into veneration. The human accidents and the divine essence were alike sacred, and were

<sup>1</sup> How greatly the classification of crimes under Roman law was influenced by original accidents of grouping, and to what singular anomalies they led, is noticed by Sir H. Maine at the close of his valuable treatise on "Ancient Law."

taken over in the lump into which they had drifted and frozen. The inadvertencies of an earlier age became the fetiches of the later, and any attempt to alter the haphazard stratification of these deposits would have been sacrilege.

But that disorder, in some respects regrettable, is now the most cogent refutation of attempts to assign the great bulk of it to a comparatively modern date, and is therefore invaluable. Who can seriously think of a priestly committee in Babylon, with all the ample leisure of two generations or more, formulating and bequeathing to posterity such an amorphous mass—*rudis indigestaque moles*—as that of the Middle Pentateuch which we have been considering? That instinct of order and method which should be paramount in the human mind, would seem to have forsaken it exactly at the crisis which should have evoked it most powerfully. And who again can seriously contemplate such a *corpus iuris* as the Deuteronomic, as formulated, if not originating,<sup>1</sup> in the period of the effeteness and decline of an Asiatic monarchy; when for centuries the national mind had been hardening into instincts and habits the very opposite of its broadly popular basis, its judges and officers chosen by the citizens in “all thy gates,” its administration and executive reposing everywhere on the support of spontaneous patriotism, its whole system animated by individuality, and its contemplation of the king as a future insertion in the framework of its polity, with prerogative controlled by law? In short the “Higher Critics” reduce the whole of Deuteronomy to a continuous anachronism and standing absurdity. Surely we may without presumption recognize in this wonderful chapter of seeming accidents the overwatching provi-

<sup>1</sup> “A prophetic reproduction of *an earlier legislation*” is the form lately given to the theory of a Deuteronomy which first appeared *temp.* Manasseh or Josiah. See Dictionary of the Bible, Ed. 2d, s. v. “Deuteronomy,” by Professor Driver of Oxford, p. 778 (a), carried out since further in the same writer’s “Deuteronomy” in the International Critical Commentary.

dence of the Divine Author, who, as "He makes the wrath of man to praise him," so finds in human carelessness, ignorance, and superstition the means of vindicating his own truth and his great prophet's mission at the end of more than three millenniums.

I assume in the foregoing pages a real Israel, a real Moses, a real sojourn in Goshen with real and peculiar features, a real covenant adopting and adapting older institutions, a real tribe of Levi with a real teaching function—assumptions, I suppose, which will seem to some sufficiently startling. And I venture the suggestion that the more we realize details in fact, the more difficulties tend to vanish,—as, I venture to hope, has now vanished the supreme difficulty of "three codes in forty years."