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A table of contents for *Bibliotheca Sacra* can be found here:

[https://biblicalstudies.org.uk/articles\\_bib-sacra\\_01.php](https://biblicalstudies.org.uk/articles_bib-sacra_01.php)

## ARTICLE V.

"ISRAEL'S LAWS AND LEGAL PRECEDENTS."<sup>1</sup>

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## I.

UNDER the title of "Israel's Laws and Legal Precedents," Dr. Charles Foster Kent, Woolsey Professor of Biblical Literature in Yale University, has published a portly volume setting forth the views of the Wellhausen school on the origin of the Pentateuchal legislation. The size and character of the work are such that it can hardly be allowed to pass unnoticed in this Review, but the task of dealing with it is of such a nature that brevity is unfortunately out of the question.

Although he has made himself responsible for a big book on Israelitish law, Dr. Kent, like the other members of his school, is entirely devoid of any tincture of legal knowledge or training. He cannot distinguish a freeman from a slave, a house from an altar, rape from seduction, a yearly tax from a single ransom for souls. He has no acquaintance with legal literature. He does not even know the meanings of the ordinary English legal terms that he uses. He resembles his friends, too, in another matter. No reliance at all can be placed on any statement made by him. His representations may in any particular case turn out to be true or they may be false: but there is no *a priori* probability one way or the other:

<sup>1</sup> Israel's Laws and Legal Precedents. By Charles Foster Kent, Ph.D., Woolsey Professor of Biblical Literature in Yale University. 8vo. London: Hodder & Stoughton; New York: Charles Scribner's Sons. 1907.

Vol. LXV. No. 257. 7

indeed, from our study of the work, we are not certain that we ought not to go further, and say that the false statements on matters of fact probably greatly outnumber those that are true. Perhaps some instances of this should be given at once.

On page 10 we read the following amazing sentence: "The Old Testament itself, as is well known, does not directly attribute to Moses the literary authorship of even a majority of its laws." This statement is of course false on the face of it: so Dr. Kent pauses to the extent of a semicolon, and then proceeds to contradict it thus: "the passages that place them in his mouth belong to the later editorial framework of the legal books." Now, first, "the later editorial framework," if any, is part of the Old Testament; but, secondly, it is not true that the passages in question all belong to what Dr. Kent regards as "later editorial framework." Take, for instance, Deuteronomy xii. Such passages as "to the place which the LORD your God shall choose out of all your tribes," etc., "for ye are not as yet come to the rest and to the inheritance," "thither shall ye bring *all that I command you*," and so on, indicate the literary authorship attributed as clearly as possible. And Dr. Kent himself says as much a few pages later when treating of Deuteronomy. "The whole," he writes (pp. 31-32), "is presented in the form of a farewell address in the mouth of Moses. In him, as their first great representative, the prophets are made to rise above the temporal and local conditions that called them forth, and to proclaim, with divine authority and in specific terms, the principles, humane, political, social, ethical and religious that underlay all their teachings." This, being interpreted, means that, in the view taken by Dr. Kent on these particular pages, all the laws of Deuteronomy and most of the rest of the book are attributed to Moses—albeit by a literary forgery. Or turn to Numbers

xxxv. and read the provisions contained therein. Phrase after phrase is intelligible only on the hypothesis that the children of Israel have not yet entered the land of promise. Nor does Dr. Kent attempt to dispute these facts. He prints these passages and others like them without any attempt to suggest that the innumerable phrases in question are not integral portions of the laws as originally drafted.

Here is another instance of Dr. Kent's statements of fact. According to the Law (Lev. xxiii. 34; Num. xxix. 12), the first day of Tabernacles falls on the fifteenth day of the seventh month. Now, in common with the rest of his school, Dr. Kent makes these passages late, and wishes it to be believed that during the earlier period the date was not fixed. Unfortunately for him there is a passage in the first book of Kings which disposes of this theory. "Jeroboam," we read, "ordained a feast *in the eighth month, on the fifteenth day of the month, like unto the feast that is in Judah . . . and he went up unto the altar which he had made in Bethel on the fifteenth day in the eighth month, even in the month which he had devised of his own heart*" (1 Kings xii. 32-33). The meaning is not obscure. Jeroboam held his feast on the right day of the month, but "in the month which he had devised of his own heart," i. e. precisely one month later than the *then date of the feast in Judah*. How does Dr. Kent deal with this? On page 261 he writes of Tabernacles: "Its date is left indeterminate in the pre-exilic codes. . . . In 1 Kings xii. 32 it is stated that Jeroboam arranged that this feast should be observed in Northern Israel in the eighth instead of the seventh month, as was the custom in Judah." The exact date in 1 Kings (fifteenth day), it will be observed, is here ignored. On the next page (262), under the heading "The Sacred Calendar of the Post-exilic Hierarchy," we are told of the great

festivals that "exact dates were *now*<sup>1</sup> fixed for each," the passage in Kings having been forgotten. On page 272 we get yet another account—or rather two other accounts—in a delightfully self-contradictory sentence. "Ezekiel was the first to fix the feast of tabernacles on the fifteenth of the seventh month, xlv. 25, although the reference in 1 Kings xii. 32, if it is pre-exilic, would indicate that this date was already established in Judah." How Ezekiel could be the first to fix a date if it had been already established is not explained. Nor are we told how, if Ezekiel had been the first to fix a date which was already established, it was possible later for a post-exilic writer *now*, i. e., apparently, for the first time, to fix this exact date. As to the suggestion—if Dr. Kent really intends it—that 1 Kings xii. is not pre-exilic, it should be noticed what this implies. It means that somebody deliberately invented the whole story about Jeroboam's festival, well knowing that there was not a word of truth in it. It need scarcely be added that there is not a particle of foundation for any such position.

Some more instances may be taken from Dr. Kent's other remarks about Tabernacles on page 261: "At first it was apparently celebrated for only a day or two and at the local sanctuaries, cf. Judg. xxi. 19, 1 Sam. i. 3; but the Deuteronomic lawgivers extended it to a week and transferred it to the temple at Jerusalem. . . . Thus Solomon chose it for the dedication of his temple, 1 Kings viii. 2, 65." This passage contains more than one blunder. In the first place, "the local sanctuaries" is due to Dr. Kent's inability to distinguish between an altar and the House of the Lord. Both his references (Judges xxi. 19; 1 Sam. i. 3) are to Shiloh, the House where the Ark was situated, which, at the dates to which he

<sup>1</sup> Our italics.

refers, was the religious capital of Israel. Secondly, when Dr. Kent says that Tabernacles "was *apparently* celebrated for only a day or two," he really means that there is no evidence at all to justify this idea, but that it is what he chooses to believe. Thirdly, when he writes that the Deuteronomic lawgivers *extended* it to a week, he is contradicting his own reference to 1 Kings viii. 65, which runs as follows: "So Solomon held the feast at that time, and all Israel with him, a great congregation from the entering in of Hamath unto the brook of Egypt, before the LORD our God, *seven days and seven days, even fourteen days.*" The extra days were due to the dedication, but it is abundantly clear that there was no room for anybody who lived after Solomon to extend the festival to seven days. And, fourthly, this chapter of Kings proves that a *transfer* to the Temple at Jerusalem would have been equally impossible for a lawgiver who lived subsequently to Solomon, inasmuch as in his days the festival was already celebrated there by all Israel "from the entering in of Hamath unto the brook of Egypt."

These examples have been taken almost at random, and could be multiplied indefinitely; but so many instances of Dr. Kent's unreliability in matters of fact will come before us in the course of this article that it is unnecessary to insist upon it further at this moment. We proceed to consider some of his other characteristics.

In the appendix at the end of the book there is something which Dr. Kent calls a "Selected Bibliography." The principles (if any) of the selection are not at all clear, but it is not with this matter that we would deal. One portion of the bibliography is headed "Other Ancient Codes." Now nobody who has any acquaintance with, for example, the Roman law, to which a number of the items in Dr. Kent's

bibliography relate, could believe, after reading his book, that he has studied these works. At one time we were of opinion that he might perhaps be acquainted with their covers: but a curious blunder affords some evidence that in one instance, at any rate, Dr. Kent has penetrated a portion of the title-page. There is an excellent edition of Justinian's Institutes, by Dr. Moyle, and Dr. Kent desired to include this in his "Selected Bibliography." The date he gives is 1890, which, though he does not say so, is the date of the *second* edition of the book. Our own copy belongs to the third edition, and the only copy of the second edition we have been able to consult is no longer in its original cover. But it is not likely that in a point of this kind there is any difference between the different editions. Now, on the cover, the third edition bears the legend "Imperatoris Justiniani Institutiones," but the title-page has the fuller inscription "Imperatoris Justiniani Institutionum Libri Quattuor." Dr. Kent, who either knows no Latin or else handles the language with the recklessness that characterizes his biblical work, appears to have looked at the title-page, and, finding the first three words of the title in larger type than the rest, seems to have thought them an adequate designation of the book. Accordingly he prints "Imperatoris Justiniani Institutionum," a *genitivus pendens*, which is neither Latin nor English.

However, whether or not that be the correct account of the appearance of this remarkable title in the "Selected Bibliography," we must point out that, corresponding to this portion "Other Ancient Codes," there are a number of sentences scattered about the book in which Dr. Kent appears to assume an acquaintance with legal literature which he does not possess. Thus he writes (Preface, p. vi): "Nowhere in all legal literature can the genesis and growth of primitive law

be traced so clearly as in Israel's codes thus restored." If and in so far as this may be intended to be a statement of fact, it is untrue, and would have been seen by Dr. Kent to be untrue had he taken the trouble to acquire some acquaintance with the literature relating to ancient law: if and in so far as it may be intended as an expression of opinion, it is unsound, and would have been recognized by the Doctor as unsound in the like event: if and in so far as it is intended to be a mere puff, comparable to the commendations that auctioneers bestow on the goods they sell, it is out of place in a book that should be scientific. In any case it inevitably produces a painful impression, which is deepened by such sentences as that which follows the one we have just quoted: "They [i. e. Israel's codes thus restored] also represent the most important corner-stones of our modern English laws and institutions and therefore challenge and richly reward the study of all legal and historical students." What exactly Dr. Kent may intend to convey when he calls something the corner-stone of a law or institution, we cannot pretend to know: but from his remark about all legal and historical students he apparently means that English law is in some way founded on the Hebrew codes. If this be his meaning, the statement is utterly false. The influence of the Pentateuchal legislation on English laws and institutions has been exceedingly slight.

Again, on page 12, we read: "In the light of these studies, and of analogies among other kindred peoples, it is thus possible to trace definitely the processes by which Israel's individual laws came into being." This sentence is almost true if it be read in the opposite sense to that intended by Dr. Kent. It is, in fact, the case that, in the light of legal studies and by the help of the comparative method, it is possible to go a long way towards tracing the origin and growth of Israelitish law:



but that origin and growth are entirely different from what Dr. Kent conceives them to have been. In point of fact, *legal studies render the Mosaic authenticity of the Pentateuchal legislation matter of scientific certainty.* A very good instance of the way in which the growth of the law is made plain by comparative legal studies is to be found in the law of homicide, and accordingly we shall deal with this in some detail later on; but for the moment we would draw attention to another result of Dr. Kent's lack of legal knowledge. It constantly happens that he fails to detect passages that are of importance in legal history. The plan of his book is to collect the relevant materials on each separate legal topic, but it is astonishing how seldom he succeeds in doing so. He deals with murder, but he omits the case of Cain, with its important instance of outlawry as the punishment; with rape, but Dinah and the blood feud, so well attested all the world over, may be sought in vain; with adultery, and he leaves out all the instances in Genesis; with theft, but Rachel's action and Benjamin's alleged offense have never occurred to him; with tithes, but he says nothing of Genesis xxviii. 22; with the instruction of children, but he does not notice Exodus xiii. 8, 14, 15—and so on almost *ad infinitum.*

After what has been said it will occasion no surprise if we add that, on reading the book, we have been led to think that in many cases Dr. Kent had not the vaguest understanding of the laws on which he professed to be commenting. This is the more obvious as, for some obscure reason, he has often printed his own paraphrase in the text in preference to a translation. Thus, on page 90, we find Leviticus v. 1 rendered as follows: "If any one sin when under oath as a witness by failing to give information concerning what he hath seen or known," etc. This is not a translation, nor does even Dr. Kent think

that it is, for he explains in his note that the literal meaning is “and heareth the voice of the oath, and is a witness whether he hath seen or known, if he do not give information,” etc. To the present writer even this “literal” translation does not appear very satisfactory, for the word “oath” is inadequate, as a rendering of the Hebrew and the text means the voice of *an* “oath” (if that term be used): but it must be observed that the paraphrase entirely begs the question of the meaning of the text. There is an instance of an adjuration or curse—the verb corresponding to the Hebrew word Dr. Kent here translates “oath” is used—in Judges xvii. If, in that case, Micah had not confessed immediately, he would apparently have been within the language of Leviticus v. 1; but nobody could guess that from Dr. Kent’s “translation,” which, moreover, has the additional demerit of begging the further question whether witnesses were originally put on oath.

Another example of Dr. Kent’s methods is to be found on page 174, where he renders Deuteronomy xvii. 8 thus: “If a case involving bloodshed or conflicting claims, or the plague of leprosy—subjects of dispute within thine own city—be too difficult for thee to decide”; and in his note he admits that the Hebrew means: “If there arise a case too hard for thee in judgment, between blood and blood, between plea and plea, and between stroke and stroke.” This is the more extraordinary, since, on page 88, he prints another version of the same text, which means something totally different from the rendering on page 174. It runs: “If a question involve bloodshed or conflicting claims, or the plague of leprosy,—questions of controversy within thy city too difficult for thee to decide,—then,” etc. This means that no question involving any of the matters specified, however simple it might be, could be decided locally, and is as incompatible with his other trans-

lation as with the Hebrew text. In neither place does he offer any explanation whatever of the grounds for his paraphrase, including the strange reference to leprosy: though, on page 88, in dealing with the literal rendering, he speaks of "a stroke, like a plague, especially leprosy,"—whatever that may mean.

Perhaps this is a convenient place for mentioning another of Dr. Kent's extraordinary views. For Exodus xxxiii. 5 we read (p. 151): "So the Israelites despoiled themselves of their ornaments from Mount Horeb<sup>o</sup>nward, and with these Moses made a tent." It is a pity that Dr. Kent did not think fit to inform us by what process of alchemy Moses converted the ornaments into materials of which a tent could be constructed.

We shall notice but one more of Dr. Kent's strange characteristics—his neglect of those scholars with whom he does not agree. This by no means exhausts the list of his disqualifications: but their enumeration grows tedious. We are concerned to prove that his book is a masterpiece of worthlessness; but, once we have done that, the reasons for his incompetence are relatively unimportant, and accordingly we shall pass on at once to the task of dealing with the book in detail: yet it would be wrong not to call attention to the most glaring instance of his prejudice in this respect. There is, among modern students of the Pentateuch, one writer whose abilities place him far above the Wellhausens and the Kuenens, the Robertson Smiths and the Drivers—Professor A. Van Hoonacker of Louvain. This scholar has contributed two very important monographs on some of the subjects with which Dr. Kent has attempted to deal. They are: "Le Lieu du Culte dans la Législation rituelle des Hébreux" (1894), and "La Sacerdoce lévitique dans la Loi et dans L'Histoire des Hébreux" (1900). We cannot find that Dr. Kent so much as claims to have heard of the earlier work, a careful study of which might

have saved him from many bad blunders. The second he mentions in his "Selected Bibliography": but he does not say that he has even looked inside the book. We have failed to find any references to it even in those portions of his work where we should most expect them: and, in view of his behavior with regard to legal literature, the presence of a name in his "Selected Bibliography" cannot be held to raise any presumption that Dr. Kent is acquainted with the contents of the book.

Dr. Kent's volume is composed of introduction, annotated texts, and appendices. The rest of this article will be devoted, first, to dealing with the annotated texts; and, secondly, to some remarks on some of the general questions raised by the introduction. As the constant exposure of blunders grows wearisome, the course adopted will be to deal in some detail with the first division, which is headed "Personal and Family Laws" (omitting, however, minor blunders), and then to make a selection of important blunders from the rest of the book.

## II.

On page 51, "Israel's primitive laws," we read, "contain no references to the king or state or even to judges." How has Dr. Kent enabled himself to make this statement? (1) He has altered Exodus xxi. 22, to omit the reference to the judges (p. 117). (2) He has ignored Exodus xxii. 28b, which he translates (p. 79): "Thou shalt not curse a ruler of thy people," adding a note that "Evidently in the mind of the primitive lawgiver the civil rulers are regarded as the earthly representatives of the divine King." It is difficult to understand how he would reconcile a reference to civil rulers with the statement that there is no reference to the state. (3) He has ignored Exodus xviii. 13 ff., which, on page 86, he heads

"Primitive Codes," and presumably attributes to the author or authors of "Israel's primitive laws." (4) In Exodus xxi, 6 he translates *Elohim* by "God," and refers it to "the family gods or penates placed in early times beside the door" (p. 62) ! and (5) in Exodus xxii. 7 (8) he again renders *Elohim* by "God," and explains it of the sacred oracle used by a priest at "one of the sanctuaries" (p. 69). With regard to these two latter points we would venture to quote what we have said elsewhere in reference to Exodus xxi.

"The first remark which occurs is that, whatever may have been the origin of the Pentateuch, this law at present stands in a book that admittedly prohibits both images and the worship of all powers save One, and was placed and retained in its present position by a man or men who believed absolutely in those two doctrines. If this law is Mosaic—and the evidence for the authenticity of the whole of the Mosaic legislation is overwhelming—*cadit quaestio*. But on the critical assumption the case is not less strong: for it must be remembered that all the supposititious editors who dealt with this passage were monotheists, and had absolutely no scruples about garbling or cutting out anything they disliked. It follows that they, at any rate, did not take this view of the meaning.

"Secondly, the word *Elohim* occurs elsewhere in a legal passage (Ex. xxii. 7 and 8 (E. V. 8 and 9)). Does Mr. Addis believe that certain cases of theft were tried by the spirit of the doorpost? Kautzsch alleges that in this passage and in 1 Sam. ii. 25 *Elohim* 'has no other sense than that of "Deity."' We shall deal with the passage from Samuel immediately, but does this writer believe that God tried cases of theft either in Person or by means of an image? And if so, what was the procedure?

"Thirdly, this theory involves making Eli say to his sons (1 Sam. ii. 25): 'If a man trespass against a man, the spirit of a doorpost [or, according to Kautzsch, "God"—Hebrew *Elohim*] shall judge him; but if a man trespass against the Lord, who shall intercede for him?' It is true that one critic,—the late Dr. Kuenen,—with characteristic indifference to the known facts, wished to translate *Elohim* in this passage by 'God,'<sup>1</sup> and understand it of the oracles of the various sanctuaries'; but (a) this rests on the confusion implied in the word 'sanctuaries,' (b) we know that the great majority of

<sup>1</sup> Religion of Israel, E. T., vol. ii. p. 84.

cases were, in fact, tried by the elders,<sup>1</sup> and (c) justice was administered in the gates" (Notes on Hebrew Religion, pp. 24-25).

Sect. 1. *Honor and Obedience Due Parents.*—Dr. Kent here sets out Ex. xxi. 15, 17; Deut. v. 16; xxi. 18-21; xxvii. 16; Lev. xix. 3a; xx. 9, and in his note he writes: "Semitic law never went as far as the Roman, which gave to the father absolute power of life and death over his children." In point of fact, we meet with the absolute power of life and death more than once in the book of Genesis. The case of Abraham and Isaac may be set aside, for it may perhaps be argued that the divine command makes it impossible to generalize from that case, but there are other instances. The strongest is Reuben's "Slay my two sons, if I bring him not to thee" (xlii. 37). This power apparently extended over *all* members of the household. Thus Judah without any trial orders that Tamar shall be burnt (xxxviii. 24), and Jacob says to Laban, "With whomsoever thou findest thy gods, he shall not live" (xxxii. 32). Dr. Kent ignores all these passages. Parallels to this are to be found in abundance all the world over. (See Post Grundriss der ethnologischen Jurisprudenz, vol. i. pp. 170-173; ii. 135.) In Israel, as elsewhere, the course of legal his-

<sup>1</sup>Kuenen (*op. cit.*, vol. ii. p. 83) supposes that some exceptional cases were outside the jurisdiction of the ordinary judge, and accounts in this way for Exodus xxii., but this breaks down when applied to Eli's speech. It is untrue that all transgressions against men, however serious, were judged by the priest. Nor does Eli's speech in any way suggest exceptional circumstances. In point of fact, the ordinary criminal justice of the country was not administered either by "God," or an image, or an oracle, or even the spirit of a doorpost. For example, we have an account of the trial of one Naboth (1 Kings xxi.), which has not received the attention it deserves. The account is also valuable because it shows the Deuteronomic law of evidence (two witnesses) and the Levitical law of blasphemy in operation before the dates to which Deuteronomy and Leviticus are assigned by the critics.

tory ran parallel to the development of the Roman rule, as to which see Moyle on Justinian Institutes, bk. i. tit. 9. It is clear that in the days of Moses the paternal power had to some extent undergone limitation by custom, for Exodus xxi. 15 and 17, as well as Deuteronomy xxi. 18-21 and Leviticus xx. 9, imply that the death penalty was executed in the case of offenses against the parents only after trial before the ordinary courts, and not in the exercise of domestic jurisdiction. On the other hand, the custom of sacrificing children appears to have endured to a late period (see, e. g., Jer. xix. 5), without being subjected to the jurisdiction of the courts.

Sect. 3. *Relatives between whom Marriage is Illegitimate.*—This need not be discussed in detail; but it should be noticed that Dr. Kent omits all reference to the case of Reuben (Gen. xxxv. 22; xlix. 4).

Sect. 4. *Marriage with a Captive*, Deut. xxi. 10-14.—Dr. Kent here writes: "The Babylonian law also made the same provisions regarding female slaves, if they had borne children to the master." His reference is to Hammurabi, sect. 137. In point of fact, the provisions are different, and the cases to which they apply are also different. Deuteronomy deals with a captive, Hammurabi with a woman who has brought a marriage portion, and who therefore cannot have been a captive in war. Deuteronomy provides that her husband is to let her go free if he has no delight in her, whilst Hammurabi only contemplates the case of a woman who has borne children, and enacts that until they are grown up she is not to be free to go where she will. There are also other differences, but enough has been said to show that there is no justification at all for Dr. Kent's statement.

Sect. 7. *Marriage after Seduction*, Ex. xxii. 15 (16); Deut. xxii. 28.—We have here a very bad mistake: Deuteronomy

deals with a form of rape, Exodus with seduction: but Dr. Kent has confused the two here and again in sect. 87. (See, further, *Studies in Biblical Law*, pp. 23-25.)

Sect. 12. *Rights of Hired Servants*.—Exodus xii. 45 and Leviticus xxv. 40 are here omitted without explanation.

Sects. 13-21.—A group of sections relating to *slaves*. It will be convenient here simply to point out the main blunders and give references, as they have mostly been exposed time after time. (1) Dr. Kent is wholly unable to distinguish between a slave and an insolvent freeman falling into bondage through poverty. (See *Studies in Biblical Law*, pp. 5-11.) (2) As before mentioned, Dr. Kent mistranslates *Elohim* in Exodus xxi. 6 as "God." (3) He is also quite ignorant of the numerous ways in which slavery originated in Hebrew antiquity (and indeed in almost all early communities),<sup>1</sup> and omits the passages in Genesis that bear on the subject. (4) He further omits from his discussion of the religious position of slaves the fundamental commands of Genesis xvii. 12-14.

Sect. 22. *Rights and Duties of Resident Aliens*.—Numbers xxxv. 15 and Leviticus xxiv. 10-23 (which latter is legally by far the most interesting and important of the passages relating to aliens) are omitted without a word of explanation. (See *Studies in Biblical Law*, pp. 84-94.) It is clear from sect. 62 that Dr. Kent has not the slightest comprehension of the case of Shelomith's son in Leviticus xxiv.

Sect. 27. *Conveyance of Real Property*.—Dr. Kent writes: "There is no evidence that, in the long period preceding Nehemiah, the law of the year of jubilee, which provided that all land should revert to its hereditary owners, was known; and the proof that it was not in force is conclusive." The

<sup>1</sup> Birth, crime, insolvency, kidnapping, capture—or slaves could be acquired from others by purchase or gift.



proof that it was known is contained in Ezekiel vii. 12, 13; xli. 16-17, and an examination of these passages shows that it was in force. (See, further, *Studies in Biblical Law*, pp. 94-99; Churchman,<sup>1</sup> May, 1906, pp. 282-293.) Dr. Kent's statements are the more remarkable as, on pages 132-133, he contradicts what he has here written: "The earliest allusion, however, in the O. T. to such institution, is found in Ezek. xli. 17, where land given by the prince is to revert to him *in the year of release*. Whether the prophet refers to an already established institution or possibly here gives a suggestion which was later developed into the law of the year of jubilee cannot be definitely determined. On the whole, the exile, with its changed conditions, inspiring new regulations and experiments, as Ezekiel's elaborate program testifies, appears to furnish the background and date of the law of the year of jubilee." This is rather strange after the "no evidence" and "conclusive proof" of the earlier passage.

Sect. 30. *The Law of Primogeniture*.—Dr. Kent begins with Deuteronomy xxi. 15-17, but omits to notice the classical instance of the first-born son of a less loved wife being postponed to the son of the better loved wife (Gen. xlviii. 22; xlix. 4; 1 Chron. v. 1-2), where, however, there was other justification. He also leaves out the other passage in Genesis (xxv. 5, 6) which, together with these texts, gives us the historical background of this law, showing that among the ancient Hebrews the father had some power of disposing of his goods among his children in his lifetime in such a way as to prevent equality. Then he proceeds to write: "This law was disregarded by David, who appointed Solomon as his successor, even though he was not his oldest son, 1 Kings i.

<sup>1</sup>The Churchman, edited by the Rev. W. H. Griffith Thomas, D.D. London: Elliott Stock.

11-13." We have here a confusion between sovereignty and succession to movable property. The law of course had no reference at all to the former.

Sect. 31. *Rights of Daughters to Inherit.*—Dr. Kent here asserts: "It was only in the latest period of O. T. history that daughters were recognized as legal heirs." (For proof that this law is Mosaic, see *Studies in Biblical Law*, pp. 98-99; Churchman, May, 1906, pp. 287-289.) On the preceding page Dr. Kent writes: "In the earlier times the property passed to the male heirs, and upon them devolved the obligation to support the mother and the unmarried sisters. If there were no sons, the father's brothers assumed the duties of parents and inherited the property of the deceased." This is pure fiction. The earliest evidence is to the effect that in default of sons a slave could inherit, to the exclusion of the collateral relations (Gen. xv. 2-4).

This completes our survey of the main blunders made by Dr. Kent in his first division (pp. 51-74). We have here dealt with this simply because it stood first. The other divisions are equally bad. We proceed to deal with some other topics.

The division of booty has provided Dr. Kent with an opportunity to display his inability to discriminate between different sets of facts. On page 12 he writes: "In 1 Samuel xxx. 24, 25, for instance, there is a most instructive example showing that the law regarding the distribution of booty, which Numbers xxxi. 27 attributes to Moses, first arose as the result of a decision given by David after an expedition against the Amalekites." The facts—and consequently the decisions—in the two cases are wholly dissimilar. In Samuel the question was whether men who had started on an expedition but had been overcome by exhaustion on the road were entitled to

share in the spoils. David determined that they were; and accordingly they shared equally with the others, each man receiving the same benefit whether he had been compelled to stay behind or not. In Numbers a division is ordered not between various portions of the expeditionary force, but between that force on the one hand and the congregation on the other. The booty is to be divided into two halves: and it is obvious that each of the members of the congregation would as a result receive a very different quantity from that which fell to each member of the fighting force. So that in reality we have different facts giving rise to different rules and consequently to different results. There is really nothing technical about the matter: and any clear-headed layman who had taken the trouble to read the relevant passages carefully must have avoided Dr. Kent's blunder.

On pages 149-150 Dr. Kent repeats once more some of the blunders about the Ark that we have recently exposed elsewhere (see Notes on Hebrew Religion, pp. 28-31), and we shall therefore not linger on this topic, except to point out that Dr. Kent alters the biblical text without so much as hinting that he has done so; for in Numbers x. 33 he omits the expression "the covenant of," and does not even say that this is present in the original.

We now come to a group of questions relating to places of sacrifice that we would gladly pass over, because we have so often exposed the blunders of the Wellhausen school in this respect: but recent correspondence with an eminent critic has satisfied us that it is still necessary to emphasize and elaborate the true position in regard to these matters.

1. On page 211 Dr. Kent writes: "Until the Deuteronomic code was promulgated, apparently every animal killed for food was slaughtered at some local sanctuary" (cf. p. 213). This

is untrue. Non-sacrificial slaughter is mentioned or contemplated in each of the following passages: Gen. xviii. 7; xxvii. 9-14; xliii. 16; Ex. xxi. 37 (xxii. 1); 1 Sam. xxv. 11; xxviii. 24; 1 Kings xix. 21. Moreover, in Judges vi. 19, Gideon "made ready a kid." This, together with some broth (and other gifts), was subsequently burnt as a sacrifice. Had it been true that all slaughter was at that time sacrificial, both the kid and the animal from which the broth was made must have been sacrificed *twice over*, once when they were killed and once when they were consumed by fire.

2. Dr. Kent entirely misunderstands Exodus xx. 24 (p. 158). He believes that it refers to "every place where I cause My Name to be remembered," and interprets this as referring to "sacred places," where God "had revealed Himself." The historical instances prove beyond all possibility of doubt that this is wrong. There is no revelation in 1 Samuel xiv. 33-35 (Saul's altar after Michmash). The house of Jesse had a family sacrifice (1 Sam. xx. 6, etc.). This involves the use of an altar, but again no special revelation can be suggested. And the same remark applies to Adonijah's stone (1 Kings i. 9) and Naaman's earth (2 Kings v. 17). The law clearly authorizes lay sacrifice for certain limited purposes at *altars* (not houses) of earth or stone in "all the place where I cause My Name to be remembered," i. e. (after the desert age) in the land of Canaan.<sup>1</sup>

<sup>1</sup>The Hebrew is usually translated "in every place," but may at least equally well be rendered "in all the place." (See, for a linguistic discussion, S. Leathes, *The Law in the Prophets*, pp. 290-292.) That this was the meaning attached to the law in pre-exilic times appears clearly from Naaman's requiring *Canaanitish* earth to be able to sacrifice to God (2 Kings v. 17) (a passage that also proves that a plurality of lay altars on Canaanitish soil was regarded as lawful by Elisha). So, too, 1 Samuel xxvi. 19, "Go, serve other gods," shows that it was held that sacrifice could be performed to Israel's God only

3. Dr. Kent of course omits the passages which prove that side by side with these lay altars the legislator of Exodus recognized a House of the Lord whither all Israel were to repair three times a year: "Thou shalt observe the feast of weeks, of the *bikkurim* [a kind of first-fruits] of wheat harvest. . . . The first of the *bikkurim* of thy ground thou shalt bring into the House of the LORD thy God" (Ex. xxxiv.). ". . . and the feast of harvest, the *bikkurim* of thy labours, of that which thou sowest in the field. . . . The first of the *bikkurim* of thy ground thou shalt bring into the House of the LORD thy God" (Ex. xxiii.). It is abundantly clear that if *bikkurim* are offered at the House and on the feast of weeks, the feast of weeks must have been celebrated at the House. Further, these texts are coupled with commands that all males shall appear before God three times in the year, and weeks was one of the three. It follows that the other two "appearances" must have been similar to the "appearance" on weeks, and must therefore have taken place at the House.

4. Dr. Kent has never realized that the plurality of lay altars sanctioned by Exodus is further recognized in Deuteronomy xvi. 21.

These remarks completely dispose of the whole of Dr. Kent's ideas about "sanctuaries"; and, as the blunders have already been exposed so frequently and in so much detail, we need not linger: but in passing from the subject we may notice one omission of some importance. The lay altars were entirely different in materials, form, and appearance from the altars of burnt offering of Tabernacle and Temple or the altars of heathen high places. It is only necessary to contrast the data as to the latter class with the descriptions of Saul's Michmash in his land (cf. Hos. ix. 4), though, of course, he could be worshiped by vow and prayer all the world over (2 Sam. xv. 7-12, etc.). As to Isaiah xix., see *Studies in Biblical Law*, pp. 81-82.

altar, Elijah's erection on Carmel, and the altars used by Moses, Joshua, etc., in order to see this. Now in 1 Kings i. 50; ii. 28 (i. e. before the erection of the Temple), we find the *horns* of an altar mentioned. This could not have been an altar of the lay type, because a stone or mound could have no horns. Even omitting the testimony of Chronicles, it follows that at that date there was before the Ark an altar conforming to the type laid down in Exodus xxvii., side by side with the lay altars so frequently met with in that period.

On pages 172 f., Dr. Kent sketches the origin of the priesthood in Israel, but he quite forgets to notice the passages relating to Eli. Accordingly we read: "Hebrew history furnishes many suggestions regarding the origin of the priesthood. . . . In time, however, the ceremonial and other restrictions placed upon the chief priest of the nation limited the free exercise of the kingly functions. Among some early peoples the chief ruler was shorn of all real military and civil power, and became only the head of the national cult. Other kings, like David and Solomon, appointed certain royal priests and conferred upon them the priestly functions which originally belonged to the head of the nation," etc. Even when the whole of the supposed priestly sections of the Pentateuch are wiped out, it is clear from Samuel that the priesthood was older than the monarchy; while Deuteronomy x. 6 and the story in Judges xvii. and xviii. prove that, long before the monarchy came into existence, the priestly character of the house of Aaron and of the Levites was well recognized. But there appears to be another confusion in Dr. Kent's mind, which has probably something to do with his theories of the priestly origin. He apparently believes that the individual sacrifices were slain by *priests* in the supposititious priestly code. Thus he writes (p. 174): "The story of the young

Levite, who was employed by Micah the Ephraimite, Judg. xvii. 18, as well as the references in 1 Sam. to the activity of Eli and his sons, would seem to indicate that originally the sons of Levi were simply the guardians of the sacred objects like the Ark and the Urim and Thummim and, later, of the local shrines; and that the sacrifices were slain by the individual offerers," etc. He need go no further than the fifth verse of Leviticus i. to discover that the sacrifices were slain by the individual offerers even in "P."

Sect. 150.—Dr. Kent here prints Deuteronomy xviii. 1a and 2 under the misleading title "Prohibition against the Levites Holding Property." He of course omits "the patrimony" of xviii. 8, which proves that this view of the passage is impossible, and proceeds to add the following: "This law was doubtless intended to anticipate exactions by the priestly judges and to prevent the alienation of temple property for private ends." There are many reasons why this is impossible: but, in addition to the reference just given, it will be sufficient to point out that the passage in no wise prohibits the acquisition—or the alienation—of any form of property, movable or immovable, by the Levites. It is, however, characteristic that in the very next section Dr. Kent prints xviii. 8, and admits that it implies family possessions.

*Object of Cities of Refuge*, sect. 53, and *Murder*, sect. 83.—On this topic the biblical information is fairly complete, and it is possible to trace the history of the law in the light of the comparative material. The first stage known to us is presented by the history of Cain, which Dr. Kent does not notice. This presents us with an institution found in many ancient societies—the Roman *sacratio capitis*, and see Post Grundriss, vol. i. pp. 163 ff., 352 ff., on *Friedloslegung*. The offender is expelled from the tribal community, and left to wander over

the earth a vagabond liable to death at the hands of any who may meet him. Next comes Genesis ix. 6, laying down the law of blood revenge. But it must be observed that in this passage no distinction is made between various forms of homicide. All taking of human life pardonable or unpardonable falls within the terms of the verse. (Cf. Post Grundriss, vol. i. pp. 237 f.; vol. ii. p. 333.)

The next stage is one of singular human interest, for it stands in close relation to an incident in the life of the great lawgiver. Moses once slew a man, not in enmity or having lain in wait. God appointed him a place whither he might flee and live, and there he remained until the death of Pharaoh. All this is very vividly mirrored in the Mosaic law of homicide. A distinction is for the first time drawn between wilful murder and manslaughter, and places are appointed for the protection of those who had committed the latter offense, while the rôle of Pharaoh is assigned to the chief hereditary office-bearer of the Mosaic theocracy—the high priest. Similar institutions meet us elsewhere, but it would fall beyond the scope of this article to discuss them, or to point out the statesmanship with which the provisions of this law are nicely adjusted to fit in with, and yet neutralize, the prevailing sentiment of blood revenge. But attention must be drawn to the terms in which the distinction is laid down. Being entirely new, the principle of dividing homicide could only be made clear to the people with difficulty. The human mind, especially in early times, apprehends the concrete far more readily than the abstract. Hence, as in other archaic legislations, we find a number of concrete cases laid down: and this has led a comparative jurist like Dareste to express the opinion that Numbers xxxv. is the most *archaic* portion of the Pentateuchal legislation (Études D'Histoire du Droit, pp. 28–29, note; cf. p. 23). To the



present writer this review appears to need some qualification. Thus the extraordinary simile in Deuteronomy xxii. 26 ( a ravished maiden compared to a murdered man) shows that it was equally difficult for Moses to convey to the mind of his people the idea of compulsion as affecting criminal liability; but undoubtedly Dareste's view of the passage is in the main sound.

We must now turn to another feature of the development. In archaic law many offenses that are treated in a mature system as crimes, i. e. as offenses punishable by the state, are viewed from an entirely different standpoint. The desire of the early legislator is to restrain and regulate the sentiment of revenge, and set bounds to the activities of injured persons who strive to exact reparation in ways that are not beneficial to the community. In the case of homicide we see that in the Mosaic age it was treated as matter for private feud: but side by side with this there is another idea growing up. In Numbers xxxv. we find it laid down that blood polluteth the land, and the Israelites are commanded not to defile the land which they inhabit, in the midst of which God dwells. This idea finds further expression in Deuteronomy: "Thou shalt *put away the innocent blood from Israel*, that it may go well with thee" (xix. 13); "Forgive, O LORD, *thy people Israel, . . . and suffer not innocent blood [to remain] in the midst of thy people Israel*. And the blood shall be forgiven *them*," etc. (xxi. 8). We have here expressions of the sense that the community in its corporate capacity has some responsibility for the prevention of crime, that murder is no longer merely the affair of the deceased's family. And our materials take us yet one step further. When the monarchy arose we find that the king, as the highest organ of the state, began to feel that it was his duty to punish murderers, and that, if he failed in that, blood-

guiltiness would rest on him. This idea finds expression in David's language in 2 Samuel iii. 28 f. (perhaps, too, in iv. 1) and xiv. 9, and most clearly in 1 Kings ii. 31-33.

Now what does Dr. Kent make of all this? The case of Cain he omits, and of course he does not notice the passages from Samuel and Kings. He transcribes Genesis ix. 5-6, but obviously without any comprehension of the meaning: and he knows nothing of the growth of the sense of corporate responsibility. But he places Genesis ix. 5-6 between Exodus, Deuteronomy, and Leviticus on the one hand, and Numbers xxxv. on the other. It is only too evident that he has not devoted any thought to the curious doctrines as to the history of the law that are involved in sandwiching a passage that does not distinguish the various classes of homicide between others that do.

On page 233 Dr. Kent deals with Exodus xxx. 11-16. He writes: "According to Neh. x. 33 the annual temple tax consisted of one-third of a shekel. The present law evidently comes from a period later than the great reformation of 400 B. C." "The present law," it should be observed, contemplates something which is neither annual nor a tax. On the taking of the census—which was *never* an annual performance—each Israelite was to give a ransom for his life, "that there be no plague among them, when thou numberest them." This idea should probably be brought into connection with the narrative of David's census (2 Sam. xxiv.), but, whether that be so or not, the underlying motive is palpably different from that expressed in Nehemiah; and a ransom paid on a single occasion is absolutely unlike an annually recurring payment.

We shall close this section of the article with a consideration of Dr. Kent's treatment of the law relating to first-fruits (pp. 229-231).

The Pentateuch has two different terms, *reshith* and *bikkurim*, both of which are usually rendered "first-fruits," though in the Revised Version the latter is sometimes translated "first-ripe fruits." It has been questioned whether these two terms express the same or different things: but when the legal evidence is closely examined no doubt is possible. *Reshith* is by far the wider word: it is used of oil, wine, corn, wool, fruits of the ground, honey, leaven, and dough or meal—the exact meaning of the Hebrew word is disputed (Num. xviii. 12; Deut. xviii. 4; xxvi. 2–10; Lev. ii. 11–12; Num. xv. 17–21). Apparently the fundamental law relating to it is to be found in Exodus xxii. 28 (29), which provides that "thy fullness and thy tear thou shalt not delay," rendered by R. V.: "Thou shalt not delay [to offer of] the abundance of thy fruits and thy liquors." *Bikkurim*, on the other hand, in the Pentateuchal legislation, appears to be confined to things that are sown, especially wheat (Ex. xxiii. 16, 19; xxxiv. 22, 26; Lev. ii. 14; xxiii. 20). Certainly it is not wide enough to satisfy the requirements of Exodus xxii., where the language used ("thy fullness and *thy tear*") clearly points to liquids such as oil and wine. But there are other points of difference. In the case of each offering we have one dated ceremony, and *the dates are seven weeks apart*. A sheaf or omer—again the meaning of the Hebrew is doubtful—of *reshith* of corn was to be waved on "the morrow after the sabbath" (Lev. xxiii. 9–14), and seven weeks later the feast of weeks was to be celebrated, when bread of *bikkurim* was offered (Lev. xxiii. 20). This is in harmony with the fact that the feast of weeks is frequently associated with *bikkurim*, and is even called "the day of the *bikkurim*" in one place (Num. xxviii. 26). Further, even when *reshith* of cereals was offered, it is clear that the method of preparation was different. Thus in Leviticus xxiii.

the national offering of *reshith* consists of corn, but the offering of *bikkurim* takes the form of bread. This distinction reappears in Leviticus ii. 11-16, from which it is clear that individual offerings were differently presented, *reshith* not coming up on the altar nor being technically a meal-offering, while *bikkurim* of corn were presented parched and bruised with oil and frankincense, and constituted a meal-offering, part of which was burnt as an offering made by fire.

Dr. Kent, of course, knows nothing of these distinctions, and does not appear to have given the matter a moment's thought. To him *reshith* and *bikkurim* are alike first-fruits, and he does not even mention the fact that different words are used in the Hebrew. As usual, too, a whole host of important passages are omitted from his section on the subject (e. g. Ex. xxii. 28 (29); Num. xviii. 12, 13; Lev. xxiii. 12-20), while he includes Leviticus xix. 24, which has no bearing on first-fruits. Further we were led to suspect that Dr. Kent had no notion that any of the passages related to national offerings; but, as he was silent on the subject, we had no proof till we reached page 246, where, in defiance of Leviticus xxiii. 9-20, as well as Numbers xxviii., xxix.; 1 Kings xviii. 29; 2 Kings xvi. 15, and others passages, he calmly writes: "The public sacrifices consisted simply of burnt- and sin-offerings, with occasional peace-offerings"!

The exposure of blunders like these on nearly every page of the commentary might be continued almost indefinitely: but we apprehend that we have said enough to make clear beyond all possibility of doubt the true character of the work before us.

### III.

We cannot attempt in the space at our disposal to deal with the introduction in any detail. Nor is this necessary, for it is largely based on the blunders expressed in the body of the

volume, and it everywhere displays the boundless incompetence and recklessness that we have already noticed. To illustrate: on page 14 we find Dr. Kent's confusion as to the place of sacrifice paraded to prove that the Pentateuchal legislation is composite. On page 18 we read: "The permission to build altars and offer sacrifices at many different places (Ex. xx. 24-25) suggests either greater antiquity than even Exodus xxxiv. 26, or else the less restricted usage of Northern Israel"—a passage that (apart from other faults) is written in obvious disregard or oblivion of the fact that Exodus xxiii. 19 (attributed to the *same* "code" as Exodus xx. 24-25) is identical with Exodus xxxiv. 26. On page 25 we find the following astounding sentence written in reference to Exodus xxi. 1-xxii. 20 and the code of Hammurabi: "Both codes seek only to guard against crimes and to anticipate the more common cases of dispute, and thus to establish principles and precedents to guide judges in deciding similar questions." Whatever Dr. Kent may mean by "crimes," the statement is wholly false as regards both "codes." If he would read Exodus xxi. 2 ff.—the first law in the supposed "code" to which it belongs—he would discover that it was promulgated neither to guard against "crimes" nor "to anticipate the more common cases of dispute," but for the benefit of Hebrew slaves who had been sold to fresh masters. As to Hammurabi, many of the provisions relating to royal officers—to take the first instance that occurs to us—are enacted for the benefit of the king, and not for the reasons supposed by Dr. Kent. But the sentence is shockingly erroneous in other respects. The primary object of every jural law is to furnish a rule to be applied in cases falling within it, not "to establish principles and precedents to guide judges in deciding *similar* questions." Moreover, as with rare exceptions the jurisdiction of courts

can be invoked only where an offense has been committed or a dispute has arisen, the naïveté of the sentence, apart from its blunders, shows that Dr. Kent has no conception of what a law is.

We have shown so fully that there is no topic related to Hebrew (or any other) law on which Dr. Kent is qualified either by his abilities or by his attainments or by his methods to express any opinion whatever, that we should be prepared to close this review here: but the intrinsic interest and importance of the questions handled tempt us to touch upon some of them.

To undertake to tackle any question of Israelitish law without legal training, and access to the comparative material, is like attempting to demolish a first-class modern fortress with no more potent weapon than a pea-shooter. We shall endeavor just to outline the methods in which these may be applied to one or two selected topics.

The Mosaic authenticity of the Pentateuchal legislation being disputed, we may ask what the comparative method has to teach us on the subject. And, first, as to the topics of jural law that are treated. Dr. Kent has dared to include in his "Selected Bibliography" Maine's "Ancient Law," a world-famous book, of the contents of which our author is phenomenally ignorant. We extract from it a passage that was written as the result of an inductive study of several ancient legislations, but *without reference to the Pentateuch*.

"Nine-tenths of the civil part of the law practised by civilised societies are made up of the Law of Persons, of the Law of Property and of Inheritance, and of the Law of Contract. But it is plain that all these provinces of jurisprudence must shrink within narrower boundaries, the nearer we make our approaches to the infancy of social brotherhood. The Law of Persons, which is nothing else than the Law of Status, will be restricted to the scantiest limits as long as all forms of status are merged in common subjection to Paternal Power, as long as the Wife has no rights against her Husband, the Son none

against his Father, and the infant Ward none against the Agnates who are his Guardians. Similarly, the rules relating to Property and Succession can never be plentiful, so long as land and goods devolve within the family, and, if distributed at all, are distributed inside its circle. But the greatest gap in ancient civil law will always be caused by the absence of Contract, which some archaic codes do not mention at all, while others significantly attest the immaturity of the moral notions on which Contract depends by supplying its place with an elaborate jurisprudence of Oaths. There are no corresponding reasons for the poverty of penal law, and accordingly, even if it be hazardous to pronounce that the childhood of nations is always a period of ungoverned violence, we shall still be able to understand why the modern relation of criminal law to civil should be inverted in ancient codes" (Ancient Law, pp. 368-369).

Let this passage be carefully considered, for every word of it is true of the Mosaic legislation. The commonest cases of property in and succession to land are treated in Leviticus xxv., and the case of Zelophehad's daughters—of course regarded as late by Dr. Kent and his compeers. "The immaturity of the moral notions on which Contract depends" is attested not merely by an "elaborate jurisprudence of oaths" (Num. xxx.), but perhaps even more significantly by such scanty contract law as exists. The perpetual dependence on religion, and not on the power of the courts, in such matters as the position of hired servants and pledge, affords the best evidence of the archaic conditions for which the legislation is designed. In the light of these facts—and others like them—Dr. Kent's dictum as to Exodus xxi. 1-xxii. 20 may be read with amusement: "A study of the Hebrew code in the light of the needs of early Hebrew society, leads to the conclusion that it is not a fragment of a large code, but that the early code, with the probable exception of five laws, is preserved in its original and complete form"! (p. 25).

But, after all, the Pentateuch does not present us with jural laws standing alone. They are involved with precepts of a

different nature. What have the comparative materials to teach us on this head?

"There is no system of recorded law, literally from China to Peru, which, when it first emerges into notice, is not seen to be entangled with religious ritual and observance. The law of the Romans has been thought to be that in which the civil and Pontifical jurisprudence were earliest and most completely disentangled. Yet the meagre extant fragments of the Twelve Tables of Rome contain rules which are plainly religious or ritualistic:—

"Thou shalt not square a funeral pile with an adze.

Let not women tear their cheeks at a funeral.

Thou shalt not put gold on a corpse."

Maine, *Early Law and Custom*, pp. 5-6.

A careful study of the extant fragments of the Roman Twelve Tables, we may remark in passing, would have led Dr. Kent to omit or materially to modify his comments on the form of the Pentateuchal legislation, just as a perusal of the first chapter of Maine's "Ancient Law" would have prevented his writing about the word "judgments" in the Pentateuch and Hammurabi in the way he has done (p. 23).

But it is easy to provide many other parallels which not only make for the antiquity of the Mosaic legislation but also destroy the notions as to the relation of Israel and Babylon for which Dr. Kent's manifest ignorance is responsible. Thus he writes (pp. 47-48): "The distinctions between clean and unclean food, and the laws of ceremonial purity were shared in common." In so far as this dictum is true it may be paralleled from any good book on archaic religion. We may quote a sentence of Maine's as to the early Hindu law-books: "They contain much more ritual than law, a great deal more about the impurity caused by touching impure things than about crime, a great deal more about penalties than about punishments" (*Early Law and Custom*, p. 18). The following extracts from Darmesteter's introduction to the Zendavesta are particularly apposite:—



"The first object of man is purity, *yaozdau*: 'purity is for man, next to life, the greatest good.'

"Purity and impurity have not in the *Vendîdâd* the exclusively spiritual meaning which they have in our languages: they do not refer to an inward state of the person, but chiefly to a physical state of the body. Impurity or uncleanness may be described as the state of a person or thing that is possessed of the demon; and the object of purification is to expel the demon.

"The principal means by which uncleanness enters man is death, as death is the triumph of the demon.

"When a man dies, as soon as the soul has parted from the body, the *Drug Nasu* or *Corpse-Drug* falls upon the dead from the regions of hell, and whoever thenceforth touches the corpse becomes unclean, and makes unclean whomsoever he touches" (*Sacred Books of the East*, vol. iv. pp. lxxxv f.).

"Not only real death makes one unclean, but partial death too. Everything that goes out of the body of man is dead, and becomes the property of the demon. The going breath is unclean, it is forbidden to blow the fire with it, and even to approach the fire without screening it from the contagion. . . . Parings of nails and cuttings or shavings of hair are unclean, and become weapons in the hands of the demons unless they have been protected by certain rites and spells. Any phenomenon by which the bodily nature is altered, whether accompanied with danger to health or not, was viewed as a work of the demon, and made the person unclean in whom it took place. One of these phenomena, which is a special object of attention in the *Vendîdâd*, is the uncleanness of women during their menses. The menses are sent by *Ahriman*, especially when they last beyond the usual time: therefore a woman, as long as they last, is unclean and possessed of the demon: she must be kept confined, apart from the faithful whom her touch would defile, and from the fire which her very look would injure; she is not allowed to eat as much as she wishes, as the strength she might acquire would accrue to the fiends. Her food is not given to her from hand to hand, but is passed to her from a distance, in a long leaden spoon. *The origin of all these notions is in certain physical instincts, in physiological psychology, which is the reason why they are found among peoples very far removed from one another by race or religion.*<sup>1</sup> But they took in Persia a new meaning as they were made a logical part of the whole religious system.

"A woman that has been just delivered of a child is also unclean, although it would seem that she ought to be considered pure amongst the pure, since life has been increased by her in the world, and she has enlarged the realm of *Ormazd*. But the strength of old instincts overcame the drift of new principles. . . .

<sup>1</sup> Our italics.

"Logic required that the sick man should be treated as an unclean one, that is, as one possessed. Sickness, being sent by Ahriman, ought to be cured like all his other works, by washings and spells. In fact, the medicine of spells was considered the most powerful of all, and although it did not oust the medicine of the lancet and that of drugs, yet it was more highly esteemed and less mistrusted. The commentator on the Vendidad very sensibly observes that if it does not relieve, it will surely do no harm, which seems not to have been a matter of course with those who heal by the knife and physic. It appears from the last Fargard that all or, at least, many diseases might be cured by spells and Barashnûm washing. It appears from Herodotus and Agathias that contagious diseases required the same treatment as uncleanness: the sick man was excluded from the community of the faithful, until cured and cleansed according to the rites.

"The unclean are confined in a particular place apart from all clean persons and objects. . . . All the unclean, all those struck with temporary death, the man who has touched dead matter, the woman in her menses, or just delivered of child, the leper, or the man who has made himself unclean for ever by carrying a corpse alone, stay there all the time of their uncleanness" (*op. cit.*, pp. xcii ff.).

The applicability of these passages is too obvious to call for comment.

We should have wished, had space permitted, to deal further with this question of authenticity by taking some of the individual rules and institutions and showing how they support Mosaic authenticity. The order, too, is another interesting subject on which Dr. Kent writes at random, and we should have liked to touch on the matter, but we can only find room to deal briefly with one or two aspects of the Hammurabi question. "The remarkable correspondence between many of these individual laws," writes Dr. Kent, "and those of Hammurabi, favors the conclusion that the principles underlying them, if not the detailed contents and form, were in part derived from the older code through the Canaanites" (p. 24). The "remarkable correspondence" has no existence in fact, and the "conclusion" rests on nothing more substantial than Dr. Kent's ignorance. No value can be attached to his allegations as to parallels, variations, etc. Thus he writes (p. 25):

Vol. LXV. No. 257. 9

"The penalty for stealing an ox in the Hebrew code is five oxen (Ex. xxii. 1), but in Hammurabi's code thirty, or if the owner was a poor man, ten-fold its value" (sect. 8). But he does not add—because he does not know—that manifold restitution for theft is to be found in archaic law all over the world (see Post Grundriss, vol. ii. pp. 430 ff.). Everywhere the reason is the same. Theft gives rise to the blood feud and this weakens and injures the community. So the lawgiver steps in with a heavy bribe to induce the aggrieved person to submit his case to the courts, instead of taking the remedy into his own hands: and the feeling of vengeance supplies the measure of the damages offered. In point of fact there is but one thing that is somewhat unusual about Hammurabi's rule—the high amount of damages payable: and in this respect Exodus conforms much more nearly to what is usual elsewhere. There is in truth nothing distinctive about the Hebrew rule.

We must limit ourselves to two more instances. The punishment for kidnapping (Ex. xxi. 16, and Hammurabi, sect. 14) is cited by Dr. Kent as an example of close agreement. But to this there are numerous parallels, including, e. g., the law of the Guatemalan natives. (See Post Grundriss, vol. ii. p. 355.) The reason is not far to seek. The offense itself naturally gives rise to the blood feud: but its nature is so injurious to the community that when the lawgiver steps in, he, while checking the feud, maintains and legalizes the death-penalty in order to protect society. Similar needs give rise to similar rules. Our other case is equally instructive. Exodus xxii. 4 (5) (which Dr. Kent misstates and therefore does not cite in this connection) is very similar to Hammurabi, sect. 57, but the following passage of an old Hindu law-book resembles *both* laws more closely than they resemble each other:—

"19. If damage is done by cattle, the responsibility falls on the owner. 20. But if [the cattle] were attended by a herdsman, [it

falls] on the latter. 21 [If the damage was done] in an unenclosed field near the road, [the responsibility falls] on the herdsman and on the owner of the field. 22 Five Māshas [are the fine to be paid] for [damage done by] a cow, 23. Six for a camel or a donkey, 24. Ten for a horse or a buffalo, 25. Two for each goat or sheep. 26. If all is destroyed, [the value of] the whole crop [must be paid and a fine in addition]." (Gautama xii. 19-25; cf., also, Manu viii. 239-241.)

The origin of such rules is easy to understand. The problem they solve must arise in every-day life wherever pastoral and agricultural occupations are pursued together, and the main outlines of the best solution are so obvious that they must have suggested themselves to able men in all countries. There is nothing distinctive about law of this kind. It is to be found in every community which includes both men who tend animals and men who till land.

And here we must take our leave of Dr. Kent and his disgraceful publication. We have sought to set forth his leading characteristics impartially, without exaggeration, but also without extenuation, for in a case like this the plainest language is also the best. The exposure of errors which are likely to mislead the public is, sometimes, a duty which must be resolutely undertaken.