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## THE MAIN PROBLEM OF DEUTERONOMY

HAROLD M. WIENER, M.A. LL.B.  
OF LINCOLN'S INN, BARRISTER-AT-LAW

THE work of the last few years has now cleared the ground for a fresh consideration of the authorship of the great speeches of Dt.<sup>1</sup> The documentary theorists have laid very great stress on this portion of their hypothesis. A representative dictum may be quoted from Professor J. A. Paterson:—

“This book was long the storm-centre of Pentateuchal criticism, orthodox scholars boldly asserting that any who questioned its Mosaic authorship reduced it to the level of a pious fraud. But Biblical facts have at last triumphed over tradition, and the non-Mosaic authorship of Deuteronomy is now a commonplace of criticism” (Enc. Brit. [11th ed.], s.v. “Deuteronomy,” vol. viii. p. 117).

If it be asked why so much importance is attached to the late dating of the book, the answer may be given in part in the words of a recent writer, who, after contending for the critical dating, shows its importance:—

“And now observe what follows. The book of Deuteronomy is by far the greatest support of miracle in the whole of the O. T.; the most serious argumentative support, that is; for though every miraculous narrative is in some degree or other a support of miracle, the proneness of the human mind toward marvels is so well known, especially among races at so rudimentary a stage of development as the Israelites when they conquered Canaan, that we should naturally explain the miracles of the books of Exodus and Numbers as ancient legends — legends with a background of truth no doubt, but not literal realities. It is the book of Deuteronomy which stands in the way of this conclusion — which insists that the miracles of the

<sup>1</sup>In this discussion I use many abbreviations, among which may be mentioned: BS=Bibliotheca Sacra; SBL=Studies in Biblical Law (London: David Nutt, 1904); EPC=Essays in Pentateuchal Criticism; OP=Origin of the Pentateuch; PS=Pentateuchal Studies (all Bibliotheca Sacra Co., Oberlin; Elliot Stock, London.

Exodus and of Mount Sinai are literal truths, designed by God himself for the instruction of the Israelites first, of all mankind afterwards. If, however, the book of Deuteronomy was written six centuries after the Exodus, can the argument contained in it stand? Evidently not; the testimony in it, strong if Moses be supposed to be the true author of it, becomes weak when we see that it was written long after his date" (John Rickards Mozley, *The Divine Aspect of History*, vol. i. p. 223).

In other words, the speeches of Dt, if genuine, are fatal to the rationalist case and to the whole evolutionary theory.<sup>1</sup> To mention only three points: they establish the historical nature of the Hebrew tradition, the early origin of monotheism, and the truly miraculous character of the Hebrew revelation. So long as they stand, there can be no disputing the existence of the lawgiver, or doubting that he believed in one exclusive God Who had spoken from Sinai, or denying that he foretold the exile. But while the speeches of Dt are important for all these things and many others, they do not stand alone in their probative force; and even since Mozley wrote, the progress of research has established by other means the truth of much that the documentary theorists hoped to overthrow by their attitude toward Deuteronomy. To-day there are other storm-centers of Pentateuchal criticism. The Exodus is one; and here matters have come to a decision. When the critics at last sallied forth to dispute the demonstration of its historical position, the hollowness of their claims was made manifest to all. Not one of them has dared to send in a word of reply to the article that appeared in the BS for October, 1918. But there are no such things as "legends" which report the truth so accurately that an event that occurred thirty-one centuries ago can be placed to the very day. Here in the books of Ex and Nu we have been proved to have contemporary history which is true to the most exacting scientific standards; and such trouble as exists has been shown to be due to deterioration of the text

<sup>1</sup>In this connection, see especially J. Orr, *The Problem of the Old Testament* (1906), p. 271.

through accidental and editorial causes in the many vicissitudes of its long tradition.

As to monotheism, evidence has come from the tombs of Egypt to show that it was older than Moses; and we have been able to trace probable lines of transmission by which the thought of the Egyptian Pharaoh became familiar to the Hebrew lawgiver.<sup>1</sup> It is only necessary to read the twentieth chapter of Ezekiel to realize that the prophet and his hearers had certain knowledge that the exile had been foretold before the end of the wilderness period.

It is, then, with the consciousness that the real substratum of the theory has been washed away, that we proceed to the examination of the critical arguments. In doing so it is unfortunately necessary to repeat much of what has been published before, but this will be done as shortly as possible.

Recent research has given ground for the belief that at an early period of its history the Pent consisted not of a single scroll or of a small number of scrolls, but of a whole library of short writings. Thus Gen i 1 - ii 3 formed one such writing, and in ii 4a the LXX has still preserved the original form of its colophon, "This is the book of the generation," etc.; another writing has a colophon in v 1a, "This is the book of the generation of Adam," etc. Many colophons are preserved in Lev and Nu.<sup>2</sup> This library underwent accidental damage; and when it was sought to piece it together in the form of a single scroll many writings were in a fragmentary state. To this fact we owe such a passage as Nu vii 89. Unfortunately, too, the true order was entirely lost, with the result that an erroneous arrangement was often adopted. In some cases

<sup>1</sup> See *The Religion of Moses*, BS, July, 1919 (republished in pamphlet form).

<sup>2</sup> This is the answer to the argument based by G. M. L. de Wette on the last verse of Nu (*Dissertatio Critica*). I have used the print of this in his *Opuscula Theologica* (1830), and this argument will be found on p. 152. So too with König's argument on pp. 10 f. of his edition of Deuteronomy.

editorial attempts were made to remedy the loss caused by damage to the library, by composing supplementary matter. A great example of this is provided by the concluding chapters of Ex. The original account of the construction and erection of the Tabernacle had been lost. Accordingly these chapters were composed, on the basis of the existing material, to fill the lacuna which was felt to exist. Again, in some cases where the surviving fragments would not read, recourse was necessarily had to rewriting; and that is responsible for, e. g., the present form of the itinerary of Nu xxxiii. Careful investigation has made it possible to recover the true relative order of some of the misplaced narratives. It has also been found that there are some fragments of what should be the Nu narrative in Dt iv 41-43; x 6f. Evidently they had effected lodgments between different "books" at a time when the Mosaic speeches were transmitted in short books. Indeed, it is even possible that the separation of Dt i 6-iv 40 from v 1b ff. was due in the first instance to the method of transmission.

For the English reader the fourth section of the introduction to S. R. Driver's "Deuteronomy" (1895) is still the most convenient presentation of the documentary case, and accordingly that will be made the main foundation of the discussion.<sup>1</sup> He begins by setting out the discrepan-

<sup>1</sup>German progress is interesting to note. C. Steuernagel, in *Deuteronomium und Josua* (1900), of which the Dt part appeared in Feb. 1898, thinks it no longer necessary to offer any proof that the Mosaic dress of the speeches is a mere literary device. Similarly A. Bertholet, *Deuteronomium* (1899), pp. ix f. But in 1917 E. König (*Das Deuteronomium*) finds himself compelled to devote a section of his Introduction to a defense of the MT of the book against the textual critics (pp. 1-8), and another (pp. 10-16) to an argument that the book is not Mosaic, in which, as we shall see, he abandons many of the critical contentions as a result of his perusal of some parts of PS. And even then he had not read my reply to his *Moderne Pentateuchkritik* in the BS for 1914-15, SBL, EPC, or Dr. Orr's discussion in his *Problem of the Old Testament*.

cies in statements of fact between Dt and the earlier books in nine numbered paragraphs (pp. xxxv f.). Of these the first two are quite devoid of cogency. It is true that in Ex xviii 13-26 the plan of appointing judges is suggested by Jethro, while this is not mentioned in Dt i 9-13; but variations of this kind in narratives of the same event by the same person are of everyday occurrence. Again, in Dt i 22-23 the mission of the spies is represented as entirely due to a suggestion made by the people, and in Nu xiii 1-3 it is referred to a command of God; but Orientals habitually think and speak in this fashion even to the present day, and it is certain that no Easterner would see any discrepancy.<sup>1</sup> That leaves *seven* discrepancies; and of these the *five most serious* are due to the course of transmission of the Pent as explained by the library theory. We have seen reason to hold that the Pent was once a series of short writings which underwent damage, and were arranged in the wrong order partly by accident and partly by erroneous design. Hence a fragment of a Nu itinerary slipped in between two portions of Dt (at x 6 f.). Its interpolation makes the words "at that time" in 8 apply not to the verse that originally stood immediately before them (5), but to the statements of the fragment which refer to a period many years later. When this is recognized, the difficulty disappears. The derangement of the text of Nu, which has been discussed so often and so fully, has made it seem as if in that book the Israelites had spent 38 years at Kadesh, and has shifted the disobedience of Moses to the 39th year.<sup>2</sup> The damage sustained by the

<sup>1</sup> See OP, p. 103.

<sup>2</sup> See EPC, pp. 114-138; BS, Oct. 1918, Oct. 1919, etc. König has silently jettisoned these critical arguments in his Deuteronomium. The true order of the Nu narrative is Nu xii; xx 1, 14-21; xxi 1-3; xlii - xlv; xvi - xviii; xx 2-13, 22a; xxi 4b-9; then a lacuna followed by xx 22b-29; xxi 4a. Nu xxxiii 40 is a gloss to be omitted with bw. In xx 1, "third" should be read with B\* (*vid.*) p for MT "first"; in xxxiii 38, "first" should be substituted with the Syriac and Sahidic for "fifth"; and in xx 23, we should restore "in the mountain country of the land of Moab"

library of short writings led to supplementing. Hence the addition of the concluding chapters of Ex to replace an earlier account of which an isolated fragment has survived in Nu vii 89.<sup>1</sup> Lastly, the same cause was responsible for such rewriting as was necessary to piece together and utilize some damaged scraps of the library; and to this we owe the present form of the Nu itinerary (chap. xxxiii), which differs from Dt x 6 f.<sup>2</sup> Thus we are left with only two discrepancies of fact between Dt and the earlier books (Driver's 5 and 6); and neither of these is regarded by König as sufficiently cogent to be worth mentioning! Dt (ix 9) states that Moses fasted on the occasion of his first forty-day visit to the mount, while the present text of Ex is silent on the point. "Obviously," says Driver, "Dt may relate what is passed by in silence in Ex; but the variation is remarkable." I confess that I, for one, can see nothing remarkable in it. It will hardly be contended that any Hebrew historian conceived of Moses as partaking of food during his communion with God on Mount Sinai; and without such a conception no discrepancy exists. Finally, in ix 25-29 the terms of Moses' prayer on either his second or third visit to the mount are borrowed from Ex xxxii 11-18, which refers to the first. I have shown elsewhere that the passage is not chronological, and need not repeat the argument.<sup>3</sup> One further comment may, however, be made. Putting aside Dt altogether, it is clear, on internal grounds, that the text of Ex xxxii-xxxiv is in an unsatis-

(BS, April, 1919, p. 78). This is also the answer to Sir G. A. Smith's contention: "The two documents trace very different routes for Israel from Kadesh to the border of Moab" (Deuteronomy [1918], p. xix); and Mozley's: "It is also noticeable that the account of the relations of the Israelites and Edomites given in Dt ii 1-8 and 28, 29, is quite different from, and inconsistent with, the account of those relations as given in Nu xx 14-21" (*op. cit.*, vol. 1. p. 222). The Dt passages refer to an incident 38 years later than that recorded in Nu.

<sup>1</sup> See BS, April, 1918, pp. 262 ff.

<sup>2</sup> See BS, April, 1919, pp. 193 ff.

<sup>3</sup> EPC, pp. 148 ff.

factory state. As is usual in such cases, nobody has ever been able to explain all its difficulties.<sup>1</sup> Both these variations, such as they are, relate to this passage. No fair-minded man would deny the Mosaic authenticity of speeches which are otherwise beyond challenge, on the ground that, when compared with a passage the text of which has notoriously suffered, they supply a self-evident detail which is not mentioned in that account, and attribute to a subsequent visit a prayer offered nearly 40 years before their delivery, assigned by the damaged narrative to the first.<sup>2</sup>

<sup>1</sup> See BS, April, 1918, pp. 254 f.

<sup>2</sup> An extraordinary argument is advanced by Sir G. A. Smith (*op. cit.*, p. xx): "But the most critical of the divergences as to fact which Deuteronomy exhibits is one from *both* JE and P—that on the amount and character of the Law promulgated to all Israel on Sinai-Horeb. Deuteronomy states that the Ten Commandments, iv 13, and the Ten Commandments only—he added *no more*, v 22—were the words of the Covenant at Horeb; the people also were too terrified to hear more so the Lord delivered His further commands to Moses alone (v 25–32), who did not communicate these to the people till the eve of crossing the Jordan and they form Deuteronomy's Code, chs. xii–xxvi, the basis of the Second Covenant in Moab. But JE assigns to Horeb the far longer and more detailed Code, Ex xx 23–xxiii 19, and states that—not the Decalogue but—this, written out as *the Book of the Covenant* and publicly read, formed the basis of Israel's covenant with God at Horeb, Ex xxiv 3–8." In this matter Dt entirely agrees with Ex, as Sir George himself has to admit. In Ex xix 5 we find the first proposal for a covenant. Then God spoke the Ten Commandments only, and xx 19 ff. tells us that the people were too terrified to hear more. "And the Lord spake unto Moses, Thus shalt thou speak to the children of Israel," etc. (ver. 22). But then Sir George contradicts Dt. He says that Moses did not communicate these to the people. Dt, however, says that he did: "And I commanded you at that time all the things which ye should do" (i 18; cp. xii 21, which expressly refers to one of them as having been communicated). And Sir George notes on the first-named passage: "A summary reference to all the instructions given at Horeb: cp. Ex xviii 20; xxiv 3, 7, etc." Of these Ex xxiv is the passage that Dt is supposed to contradict! No wonder this contention is not advanced by Driver and König.

I come now to the supposed discrepancies between the laws of Dt and the earlier books, set out by Driver on pages xxxvii-xxxix in two lists, dealing respectively with the parts of Ex-Nu assigned by the documentary theorists to JE (4 paragraphs), and those attributed to P (8 paragraphs). As with the alleged discrepancies on matters of fact, so with the laws, some of the difficulties are due to a method of treatment that is contrary to all human experience. No lawyer could possibly endorse many of the contentions of the critics. That they have survived to the present time is simply due to the higher critical control of the press and the universities. I exposed a number of them in my SBL, but the policy of the conspiracy of silence prevented this book from having its due effect.

1 (Driver's JE 3). Rape and seduction are universally treated as entirely different offenses, and for good reason. Rape is a crime of violence; seduction, on the other hand, implies the maiden's consent, and *volenti non fit injuria*. Hence in the English law of to-day rape is a felony punishable with penal servitude for life, while seduction is not a crime at all. The only remedy is an action by the master or parent for loss of the girl's service either by her confinement or otherwise.<sup>1</sup> Will it be believed that it is sought to discredit the Mosaic authorship of the Pentateuchal legislation on the ground that it makes a similar distinction between seduction and rape, or, as Robertson Smith calls it, "violence to a maiden"? Yet here is Driver's contention:-

"In Ex xxii 15 f. (16 f.) the law of seduction stands at the close of a list of cases of pecuniary compensations for injury to property: the offense is consequently treated as one of pecuniary loss to the father, who must be compensated by the seducer purchasing the damsel as wife for the full price (*mōhar*) of a virgin. In Dt the correspond-

<sup>1</sup>It must further appear that there was a service at the time of the original wrongful act and at the time of the subsequent accruing injury. If there is no service at the former date the whole foundation of the action falls. In the eye of the law the father has suffered no wrong.

ing law (xxii 28 f.) appears not among laws of property, but among laws of moral purity; and though it is still provided that the offender shall marry the damsel and make compensation to the father, a fixed fine takes the place of the variable *mōhar*" (*op. cit.*, pp. xxxvii f.).<sup>1</sup>

The law of Dt, of course, deals with rape; that of Ex, with seduction.

2 (Driver's JE 4). Ex xxiii 10 f. contains a tillage regulation; Dt xv 1-6, a law of debt.

"Had both laws been framed by Moses, it is difficult not to think that in formulating Dt xv 1-6 he would have made some allusion to the law of Ex xxiii 10 f., and mentioned that, *in addition to* the provisions there laid down, the sabbatical year was to receive also this new application."

No lawyer or lawgiver would dream of muddling up two things so entirely different as tillage and debt. The one thing has nothing on earth to do with the other. Indeed, the only feeling such arguments arouse is one of the utter hopelessness of expecting any passable work from men who seek to treat laws thus. For a full discussion of these matters, see SBL, pp. 12 f.

3 (Driver's P 6). A freeman, even an insolvent freeman, is not a slave: neither is a slave a freeman. That may appear a somewhat trite and obvious remark, but it entirely disposes of one of the main critical contentions. In all ancient societies slavery arose in various ways, of which birth and capture in war were among the most frequent. In most, but not in all, insolvency also gave rise to slavery; but in some, as in Rome and Israel (as regards Israelites), an intermediate condition was recognized. In ancient Rome the '*nexi*,' as they were called, remained freemen, but had to yield themselves to their creditors in *de facto* servitude. In Egypt, as we learn from Gen, a succession of bad harvests led to the enslavement of a large number of the free population (Gen xlvii

<sup>1</sup>The answer to the further point made by W. R. Smith as cited in Driver's footnote, will be found in SBL (pp. 24 f.) and need not be repeated.

13-26<sup>1</sup>). Moses enacted a law which was intended to prevent any such result in Israel: "If thy brother be waxen poor with thee and sell himself unto thee," then, and only then, certain consequences are to follow (Lev xxv 39-42). Now it is obvious that only a freeman could wax poor and sell himself. A man who was already a slave could not possibly wax poor and sell himself. This legislation applies to only one class of persons (insolvent Israelite freemen), and has nothing whatever to do with slaves. Insolvency was to result in forced labor till the year of the jubilee, but in no loss of civil or religious status in any other respect. Ex and Dt, on the other hand, have a law which is applicable to slaves and not to freemen. "If thou buy a Hebrew slave" (Ex xxi 2), then, and only then, certain rules are to operate. A Hebrew *slave*, be it observed, not a freeman. Dt xv 12 ff., like Ex xxi, refers to slaves, not to freemen.<sup>2</sup> At first sight the language used presents difficulties to those who are not lawyers. But any jurist who went into the matter carefully would soon find that the language employed, especially the reference to the bondmaid, in addition to the Ex passage, left him

<sup>1</sup> See Kittel, *Biblica Hebraica*, on ver. 21.

<sup>2</sup> The Pent introduces us to the following methods of acquiring slaves: (i) birth, Gen xiv 14, xvii 27, Ex xxi 4, etc.; (ii) purchase, Gen xvii 12, Lev xxii 11, etc.; (iii) gift, Gen xx 14, xxix 24; (iv) capture in war, Gen xiv 21, xxxiv 29, Nu xxxi, etc.; (v) kidnaping (Joseph; subsequently prohibited, Ex xxi 16); (vi) crime, Gen xliii 18, xlii, Ex xxii 2 (3); (vii) insolvency, Gen xlvii 19. Lev xxv deals with Israelites falling within class (vii), but does not touch any of the other six classes. Ex and Dt cover (ii) and possibly (vi), but leave the other classes (including (vii)) unaffected. It must also be remembered that Hebrew slaves were not necessarily or even probably Israelites. The expression presumably includes descendants of the slaves of the patriarchs who had been circumcised, and slaves drawn from any other Hebrew race (such as Edomites). The Law distinguishes between five classes: (1) Israelite freemen; (2) non-Israelite freemen; (3) insolvent Israelites subject to certain compulsory service, but not to slavery proper; (4) Hebrew (not necessarily Israelite) slaves; (5) non-Hebrew slaves.

no alternative but to understand this as applying to the purchase from his master of a Hebrew who was already a slave. For the rest I would invite all who are interested in the subject to study the discussion on pages 5-11 of SBL, and in particular to note how the passage quoted from Muirhead's "Historical Introduction to the Private Law of Rome" throws light on the historical background, sequence of thought, and arrangement of Lev xxv 25-55.<sup>1</sup>

The foregoing matters have been treated first because they are purely legal, and no other element enters into their consideration. The matters now to be considered involve other elements as well.

4 (Driver's JE 1). In the MT, Ex xxi 7 ff. provides that a girl sold by her father as a handmaid is not to fall under the law of male slaves, but the LXX and Vulgate read "bondwomen." Here MT represents a later text, due to the law which immediately precedes. Dt xv 12 relates to the sale of "thy brother an Hebrew man or an Hebrew woman." Coming back to this question after 15 years, I find that the discussion in SBL (pp. 28 ff.) does not sufficiently emphasize one point, i. e. the distinction between these concubines and other women slaves. Even with the Massoretic reading, and of course *a fortiori* with the Greek and Latin text, Ex xxi 7 ff. does not deal with any class of maidservant except a daughter sold by her father as the concubine of the purchaser or his son. A female slave purchased from any other person than her father is not within its provisions. The only question, therefore, is, whether a girl to whom Ex xxi 7 ff. applies could fall within Dt xv 12 ff. Obviously not, for the case of Ex xxi 7 ff. is in reality a form of marriage, and the purchase is from the father. Dt xv 12 ff., on the other hand, relates to the purchase of slaves, male or female, primarily for servile purposes, and not from a father, but from a master. These two laws are enacted for entirely different classes;

<sup>1</sup> König, Deuteronomium, p. 16, note, quotes, Wie steht's um den Pentateuch 4=OP, pp. 10 f. But he does not notice that this is answered on pp. 68 f.=OP, pp. 79 f.

and there is no antinomy between them.<sup>1</sup> This is so whether we retain the Hebrew text of Dt xv 12 or accept B's "the Hebrew and the Hebrewess," which limits the law to the case of the purchase of a slave wife with her husband,<sup>2</sup> i.e. the case specified in Ex xxi 3b — a reading that is probably to be preferred.

5 (Driver's JE 2). It is contended that in Ex xxi 13 the asylum for manslaughter is the altar of the Lord, and that the connection with the following verse proves this. In Dt xix, on the other hand, cities of refuge are appointed for the purpose. Leaving aside the interpretation of the Ex passage for the moment, it should be noted that in reality this rests on the Wellhausen confusion between horned altars and cairn altars, on which the articles "Altar" and "Sanctuary" in the "International Standard Bible Encyclopaedia" and the sixth chapter of EPC should be consulted. Driver was a little more cautious, but such a

<sup>1</sup> Driver also refers to p. 184 of his Commentary, where, in Ex xxi 6, judgment is administered at the sanctuary, and the ear of the slave is pinned to the door or doorpost. I have so often refuted this point and shown that a stone or mound will not grow a door or doorpost on being called a sanctuary, that I need do no more here than refer to the long discussion in BS, April, 1919, pp. 210 ff. Dr. C. F. Burney, *Judges* (1918), pp. 117, 330, puts forward another wild and irresponsible conjecture. According to him, Elohim in Ex xxi 6; xxii 7 f. (8 f.), means the household gods (teraphim), which on p. 420 are explained as some kind of idol, a figurehead or bust. How could one of these objects try a case or deliver a judgment? Presumably the only priest of a household god would be the householder himself, who of course was a party to the case. J. Hempel, *Die Schichten des Deuteronomiums* (1914), p. 210, writes of the "local sanctuary," or the "house numen." A cairn does not acquire a door or doorpost on being called a local sanctuary, and a house numen could not try cases. Hempel's book shows great promise, but is unfortunately rendered of little value by his failure to study with sufficient thoroughness the modern opposition to the Wellhausen school.

<sup>2</sup> Philo's "If there be sold to thee one of thy brothers, let him serve six years," etc., appears to be an instance of free quotation. K 4, 109, omit the expression "thy brother" in Dt xv 12. It may be a gloss.

writer as Sir G. A. Smith tumbles into the pitfall at every step. Thus he writes: "The cardinal distinction of the Code of Deuteronomy is the law of the One Altar and Sanctuary . . . along with the necessary consequences of this in new, or modified, laws . . . on the cities of Asylum or Refuge" (Deuteronomy, p. xxiv); and he is never tired of telling us, that, according to the earlier legislation, "the man who slew his brother accidentally might find asylum at any of the many altars which it sanctions" (p. 158; cp. 236, 240). The truth, of course, is that Ex xx 24 sanctions cairn altars of earth or unhewn stones to be used by laymen, without priestly assistance, for the slaughter of burnt offerings and peace offerings, and of oxen and sheep for food purposes. They were not sanctuaries or anything remotely resembling them. Absolutely different in appearance and use, etc., was the great altar of burnt offering. Unlike the lay altars, this was raised and had horns, which could not possibly be formed of earth or unwrought stone. I need not repeat the differences again, but their importance in this connection may be made clear by examples.

A steals B's cattle and accidentally kills a man. If Smith were right, it would be open to him to make a mound of stones, kill one of the stolen beasts there, and so take sanctuary (Ex xxi 37 (xxii 1) with 13 f.). On Smith and Driver's interpretation of Ex xxi 13, nobody could touch him, even though there were no horns for him to grasp. Obviously this is absurd. On the other hand, when we turn to the historical instances (1 K i 50; ii 28), we find that the altar to which men fled for sanctuary was a horned altar standing in front of the House of God at the religious capital, raised from the level, unlike the cairn altars, and served by priests.

It remains to consider the true meaning of the Ex passage. The text of RV is as follows:—

"13 And if a man lie not in wait, but God deliver him into his hand; then I will appoint thee a place whither he shall flee. 14 And if a man come presumptuously upon

his neighbor, to slay him with guile; thou shalt take him from mine altar, that he may die."

Now if the "place" of 13 which is to be appointed in the future for the manslayer is identical with the altar of the very next verse from which the murderer is to be taken, the draftsmanship is simply abominable. Why the mystification? The natural thing would have been to assign the altar at once in 13, not to refer to it as a "place I will appoint," and then to assume in the next breath that the appointment has already taken place and that everybody knows perfectly well that it is "mine altar." If the Hebrew is to stand, we must regard the meaning as "thou shalt take him even from mine altar"; but even this is awkwardly expressed, and it is not surprising to find that there are important ancient variants. The Old Latin is extant in the Lyons Heptateuch, which gives 14 as follows: "Quod si quis insidiabitur proximo suo occidere eum dolo, et refugerit ad altare meum, inde sumis eum occidere."<sup>1</sup> Here *sumis* is an intra-Latin miswriting of *sumes*. Otherwise the text gives an admirable sense.<sup>2</sup> It seems to me to be the original as it is undoubtedly the best drafted and the most perspicuous. The altar is of course entirely different from the place, and no lawyer reading this text would confuse them. The difficulty will have arisen through accidental damage to the words "and flee to." When these had fallen out, the Hebrew text ran: "to slay

<sup>1</sup> U. Robert Pentateuchi Versio Latina Antiquissima e codice Lugdunensi 1881.

<sup>2</sup> In inserting the words *et refugerit* it has the support of the whole pre-Hexaplar LXX. The Syro-Hexaplar obelizes the phrase. In reading "to my altar" it agrees with the Sahidic and I qu x; while HP 71 and Philo in one quotation read "on mine altar" (ἐπι with the genitive), which seems to have arisen from an incomplete correction of ἐπι with the accusative (= "to my altar") into ἀπο with the genitive (= "from"). In another place Philo quotes the passage "and flee to [ἐπι with the accusative] God." This is a paraphrase, but suggests that what he was paraphrasing was the reading "to my altar." In omitting "from my altar," the Latin has the support of I and Philo in one quotation.

him with guile my altar thence thou shalt take him." That could not stand, and was emended into the nearest thing that made sense, "my altar thence" (מזבחי משם) becoming "from my altar" (מעם מזבחי); but the change was not impressed in full on all versional copies, the Latin in particular continuing to exhibit the true text which had been rendered by its original the LXX. With its restoration all difficulty disappears.

Now these are the whole of the matters on which Dr. Driver relies on pages xxxvii ff. to prove "modifications which cannot be reasonably accounted for, except upon the supposition that the laws of Dt originated in a later stage of society than the laws of Ex." On pages xlvi ff. the supposed differences between the laws of Dt and Ex are adduced to prove the lapse of a considerable interval of time. Subject to some trifling textual corruptions, the whole edifice rests on nothing more substantial than the incompetence of philological theologians to handle the most elementary legal questions. I invite the documentary theorists to place the laws, together with the present discussion, before the law faculties of their several universities, and ascertain whether or not my contentions are sound.

It is somewhat more difficult to deal with the remaining seven paragraphs, relating to supposed discrepancies between Dt and P. In treating of matters like insolvency and crime we are handling problems that fall within the everyday experience of modern communities, but this is not so where the sacrificial law is involved. Moreover, the priesthood were naturally most interested in the matters that concerned their own profession, and glossed these laws most freely. But when all allowances have been made, it still remains true that this legislation has been treated by the critics in a way that has never befallen any other. When ordinary legal methods are applied we can find a reasonable and natural solution in all cases where the text is sound, though there may be uncertainty as to some textual and sacrificial details.

6 (Driver's P 7). "In Lev xvii 15 the flesh of an animal dying of itself (*nebēlāh*) is not to be eaten by the Israelite or by the 'stranger'; in Dt xiv 21 it is prohibited for the Israelite, but permitted to the 'stranger.'"

The provisions of these laws are as follows:-

"And every soul that eateth that which dieth of itself . . . whether he be homeborn or a stranger, he shall wash his clothes, and bathe himself in water, and be unclean until the even: then shall he be clean" (Lev xvii 15).

"Ye shall not eat of anything that dieth of itself: thou mayest give it unto the stranger that is within thy gates, that he may eat it; or thou mayest sell it to a foreigner" (Dt xiv 21).

Here the contradiction is directly due to the documentary theory. On the face of it, Lev xvii is a chapter containing camp laws, while Dt clearly relates to the settlement in Canaan. No difficulty whatever exists if these laws be understood as referring to the respective periods to which they profess to relate. And this is confirmed if we look at the real scope of the laws. In the wilderness the stranger who partook of this food was to wash his clothes and be unclean until evening; in Canaan this was not to apply. That is the whole difference.

But it may be asked why the Law should have made a distinction in this matter between the two periods. This is precisely one of those cases where the washing out of the background makes it impossible to answer with certainty, but plausible explanations lie on the surface. Between the bulk of the strangers in the wilderness and their successors in Canaan there are three notable distinctions: (1) In the wilderness most of the strangers belonged to the "mixed multitude," i. e. they were closely connected with Israel by blood, and all had voluntarily chosen to accept the protection of Israel's God. This was not necessarily the case in Canaan. This difference implies that in the desert there was a greater claim to their obedience. (2) In the wilderness everybody would know what everybody else was doing. This would render the enforcement of the law an easy matter. In Canaan, on the other hand,

strangers might be concentrated in the foreign quarter of a town, so that knowledge of their actions in such a matter would be unobtainable. (3) In the wilderness the close association with the Israelites, due to sharing the same camp, would involve far greater risks of contagion and would infringe the principle of the holiness of the camp. This would hardly apply with the same force where the strangers lived in special quarters of towns. There is a unity and homogeneity about camp life that is lacking in settled habitations.

It may be conjectured that in the Mosaic age the third reason, with its doctrine of camp holiness, was the most cogent.

7 (Driver's P 8). "In Ex xii 3-6 the paschal sacrifice is limited to a lamb: in Dt xvi 2 it may be either a sheep or an ox."

He adds a reference to his note on Dt xvi 7:-

"*'And thou shalt boil'* or perhaps *cook*. בשל means regularly to *boil* (xiv 21; 1 S ii 13, 15, etc): hence it is difficult to feel assured that it can be fairly translated otherwise here; and it is in any case remarkable that the term employed in Dt is the one which is used in P (Ex xii 9) to denote the process that is *not* to be applied to the paschal sacrifice."

Both these points are due to the same mistake, and show how difficult it is for any layman to make an accurate statement on any law. In both passages Driver quite unsuspectingly uses the term "paschal sacrifice" of the killing in Egypt. But it was not a sacrifice at all. Had it been possible to offer a ritual sacrifice on Egyptian soil, the whole of the long controversy with Pharaoh would be baseless (see especially Ex viii 22 (26)). Sacrifice could be offered to the God of Israel in the desert or on Israelite soil.<sup>1</sup> On the other hand, once the Israelites were freed

<sup>1</sup> See particularly the case of Naaman, who got over the difficulty by taking earth from Palestine to Damascus for sacrificial purposes (2 K v 17); and cp. all the passages that state or imply: (1) that sacrifice could not be offered to God on foreign territory, and (2) that Israelites in exile would necessarily sacrifice to the ob-

from the Egyptian servitude, it was provided that they *should* offer an oblation for the Passover. Hence the difference between the two laws. Boiling was the correct treatment of a ritual sacrifice (Lev vi 21 (28); Nu vi 19; 1 S ii 13-15). It was therefore not to be applied to the Passover killing in Egypt, which was *not* a true ritual sacrifice: on the other hand, it was necessarily the correct treatment of the paschal sacrifices of freedom. And, again, in a permanent provision for every year it was desirable to allow greater latitude in the choice of an animal than was necessary on the one historical occasion — especially as in Egypt a hurried departure was to follow, so that it was to be eaten in haste (Ex xii 11).

In plain language the supposed discrepancies come to this: A paschal sacrifice was to be treated in the manner appropriate to a ritual sacrifice: the non-sacrificial slaughtering in Egypt was not to be so treated, because it was not a ritual sacrifice. In Egypt, where a hurried meal was to be followed by an anxious flight, a small animal was chosen to avoid waste. On the other hand, in the paschal sacrifices in Canaan, where these conditions did not prevail, the sacrificant could follow his own convenience in the choice of his animal.

8 (Driver's P 2). The fatal inability to make an accurate statement on any legal point, and the old trouble of understanding the laws regarding slaughter and sacrifice, are responsible for another matter:—

“Dt xviii 3 (the shoulder, the cheeks, and the maw to be the priest's perquisite in a peace-offering) is in direct contradiction with Lev vii 32-34 (the breast and the right thigh to be the priest's due in a peace-offering).”

It is the case that Lev vii 32-34 deals with the priest's due in a peace offering. It is not the case that Dt xviii 3 refers to peace offerings. The expression used is “sacrifice the *jects* of local worship (EPC, pp. 220 ff.). This is the necessary application in the sacrificial sphere of the theological doctrine that God has assigned other objects of worship to other peoples (see *The Religion of Moses*, pp. 34 f.=BS, July, 1919, pp. 356 f.).

sacrifice," and the word is precisely the same as in Ex xx 24 and Dt xii 15, 21, etc. Every peace offering was a sacrifice, but not every sacrifice, — *and still less every slaughtering* — was a peace offering. On the ordinary principles of legal construction, Dt xviii would not be taken as referring to the same class of offerings as Lev vii.

A careful examination of the laws has, however, led me to the view that one word in Lev xvii is a gloss. When it is removed, all difficulties disappear. To make these points clear it will be best to set out the material texts together, uniformly using the word "slaughter" for the ambiguous Hebrew word which may mean kill or sacrifice. The Hebrew word for "altar" contains the same root, and means literally "slaughterplace." It will be remembered that before and during the Egyptian period we meet with instances of killing that were clearly not sacrificial in character (Gen xviii 7; xxvii 9-14; xliii 16; Ex xxi 37, etc.; see EPC, pp. 175 ff.), and that in Egypt sacrifice was impossible (*supra*, pp. 62 f.).<sup>1</sup> We then get the following enactments:—

(1) Ex xx 24: "A slaughterplace of earth shalt thou make to me, and mayest slaughter on it thy burnt offerings and thy peace offerings, thy flock and thine herd."

<sup>1</sup> König, Deuteronomium, p. 121, note, contends that in all these passages we have a sacrifice. He has overlooked many considerations: (1) Sacrifice could only be offered in the desert or in Canaan. That is conclusive for Gen. xliii 16 and Egypt; (2) It would be a mockery of all religion to suggest that the Law contemplates sacrifices by the cattle thieves in Ex xxi 37; (3) Hebrew antiquity certainly assigned no such position to women as to permit them to undertake ritual sacrifices; (4) The language of Ex xx 24 clearly provides for the killing not merely of burnt offerings and peace offerings, but also of sheep and cattle, which were neither; (5) Apparently König thinks that the gift of the blood to God constituted a sacrifice, but Dt xii 21 ff. expressly provides that in non-sacrificial slaughter the blood was to be poured out on the ground "as I commanded thee"—a reference to Ex xx—and compares the case of animals killed in the chase. The meaning is that this was to be done at a slaughterplace, or altar; and 1 S xiv 32-35 shows the law in operation.

That is surely clear enough. Certain specified sacrifices may be slaughtered there, and also domestic animals to be consumed as food.

(2) Lev xvii modifies this for the desert period, for the reason stated in verse 7: "And they shall no more slaughter their slaughterings unto the he-goats," etc. In other words, it was found by experience that the law of Ex opened the door to a form of apostasy. Accordingly it was provided that "What man soever there be of the house of Israel, that killeth an ox, or lamb, or goat, in the camp, or that killeth it without the camp, and hath not brought it unto the door of the tent of meeting, to offer it as an oblation unto the Lord before the tabernacle of the Lord: blood shall be imputed unto that man," etc. (3 f.). This is plainly a camp law and nothing else, designed for the period of the desert, where the he-goats were supposed to hold sway<sup>1</sup> (as contrasted with the Baals of the settled land). Then and then only was it feasible to bring all animals to the door of the tent of meeting.

(3) Dt necessarily modified this state of affairs to fit in with the entirely different conditions of settled life in Canaan: "When the Lord thy God shall enlarge thy border . . . if the place . . . be too far from thee, thou mayest slaughter of thy herd and of thy flock . . . as I have commanded thee, and thou mayest eat within thy gates, after all the desire of thy soul" (xii 20 f.).

Observe, this law only applies "if the place be too far from thee." It makes no difference to the obligation of those who dwelt within easy reach of the sanctuary. They were still bound to follow the practice instituted by Lev xvii. And here everything depends on one word in Lev xvii 5. According to nearly all our authorities these slaughterings were to be peace offerings, and would then presumably pay the due of offerings of this class, but k omits the word "peace offerings," which comes in here in rather a belated fashion. The omission is confirmed by

<sup>1</sup> Cp. Isa. xlii 21, xxxiv 14, which show the connection between "he-goats" and uninhabitable land.

the fact that HP 77 misplaces the word, reading "of peace offering a sacrifice." This will be due to the correction of an ancestor of this MS by the insertion of the word, which was then taken into the text at the wrong point. That gives the reading "they shall slaughter them as slaughterings to the Lord," i. e. Dt xviii 3 would apply. But the Temple priesthood wrote a mistaken gloss on Lev xvii 5; and the effect was to give them a larger due on these food slaughterings than they would otherwise have received. It will, however, be seen that on broad principles of justice it would only be fair that a lighter due should be payable on food slaughterings than on sacrifices. But for the proximity of the sanctuary the sacrificant would have been able to kill for food, under the provisions of Ex xx 24 and Dt xii 21, without paying any due whatever; and while the use of the sanctuary for the purpose would necessarily entail the payment of some due to the priest, it was only equitable that it should be made as light as possible.

9 (Driver's P 3). "Dt xviii 6 is inconsistent with the institution of Levitical cities (Nu xxxv 1-8); it implies that the Levite has no settled residence, but is a 'sojourner' in one of the cities ('gates') of Israel . . . its terms . . . harmonize with other passages of Dt in which the country Levite is represented as destitute of adequate maintenance, and is placed in the same category with the 'stranger, the fatherless, and the widow.'"

And on page 218 he writes:-

"The 'Levites' are represented in this verse, not as resident in their appointed cities, but as 'sojourning'—the word (גֵּר) is used of temporary, not of permanent residence—in the cities of Israel without distinction. Hence the institution of Levitical cities cannot well have formed an element in the condition of things contemplated by the present law."

Now here he comes into direct conflict with Dr. Brown, who assigns two meanings to the Hebrew verb. The first is sojourn: the second is "abide, nearly or quite=dwell Jer xliii 5; cf. Lam iv 15; Jer xlix 18, 33" (Lexicon, p. 158a). I do not think that either of the two lexicog-

raphers has quite appreciated the force of the word. It appears to me to be applicable to any residence, however permanent in character, which did not carry with it what in modern terms we should call full citizenship.<sup>1</sup> It would be used of any man who was not an integral part of the native local organization, possessing not merely the right of property, but also the right of government. The patriarchs were sojourners in Canaan, not because they possessed any intention of living in another country, but because they were a foreign element, not enjoying the same political rights as the native population or incorporated in it. The word is used in Jer xliii 5 of the remnant of Judah establishing a permanent residence in their own land of Judah, because at that time the land was under foreign domination. Hence these men were not in the same position as ordinary free native citizens of an independent state living under their own form of government. In fine, it seems to me that a freeman permanently resident even on land in his own ownership would be designated a *ger* if, by reason of his origin or of the conditions prevailing, his rights were not these of a free native living in an independent organization of his own tribal unit.

And that seems to me to be the reason why the word is correctly used of Levites *even if they dwell in Levitical cities*. These cities were never regarded as a tribal lot or inheritance. "Among the children of Israel they shall *not* inherit an inheritance" (Nu xviii 23 f.). According to Nu xxxv 2 these cities were given to the Levites from the inheritance of their possession to dwell in. That is to say, out of the inheritance of a particular tribe, cities were allocated as property for the Levites. As property (*dominium*) — not in sovereignty (*imperium*). The Levites could enjoy all the rights of ownership, yet this did not constitute an inheritance. The reason is that the Hebrew "inheritance" is a technical word, conveying these ideas

<sup>1</sup>See International Standard Bible Encyclopaedia, s.v. "Stranger."

of political sovereignty and full rights.<sup>1</sup> And to make the difference clear we must glance at the nature of those rights and the tribal organization.

In the Mosaic age the children of Israel were not a nation, but a loose aggregation of tribes. All appointments were strictly tribal. Judges and officers were appointed according to tribes (Dt i 13, 15; xvi 18). The tribal feeling was so intense that even the full right of intermarriage did not exist. The heiress of a piece of land could not marry outside of her tribe (Nu xxxvi). I have long thought that the failure of Moses to establish a permanent central executive was probably due to the mutual jealousies of the tribes. In the period of the Judges we find little cohesion, and sometimes even intertribal war. In those circumstances the mere ownership of the land of cities by persons who were not an integral portion of the tribe which held the surrounding country did not confer full rights. At that period the Levites could not marry heiresses of the surrounding tribe, or become tribal judges or officers, or serve as soldiers. They were, and remained, an extraneous element, endowed with rights and duties of their own, but not participating in the full rights and duties of the tribesmen in whose midst they dwelt; and the verb *נ* is rightly applied to this state of things, despite their property rights and the permanence of their domicile. For these reasons I think that this law is not incompatible with the existence of Levitical cities. The sojourning may have been in one of them or in any other city of Israel, for the language used covers them all, and it is not to be supposed that all Levites were expected by Moses to be always domiciled in Levitical cities and not elsewhere. The only basis of Driver's objection here is his misunderstanding of the Hebrew word.

10 (Driver's P 1). "In Lev-Nu a sharp distinction is drawn — and enforced under stringent penalties (Nu xvi

<sup>1</sup> Cp. Lev xxv 32 ff., where the word "possession," not "inheritance," is applied to these cities; cp. Nu xxxv 1 ff., where the "possession," not the "inheritance," is given to the Levites.

10, 35, 40) — between the priests and the common Levites: in Dt it is implied (xviii 1a) that *all* members of the tribe of Levi are qualified to exercise priestly functions; and regulations are laid down (xviii 6-8) to meet the case of any member coming from the country to the central sanctuary, and claiming to officiate there as priest."

I have dealt with the points on priests and Levites at great length in PS, pp. 231 ff., and hope to add some fresh material in a future number of the BS. Here it is only possible to summarize the main points.

The desert arrangements were adapted to desert conditions. With the whole people concentrated in a camp it was practicable for one man with his two sons to discharge the sacrificial work of the priesthood. But they could not transport the sanctuary, and the tribe of Levi was set apart to perform this duty under the supervision of the members of the priestly family. After the rebellion of Korah some change, which cannot now be traced with clearness, was made in the arrangements. This involved throwing additional priestly duties on the Levites, while reserving for the family of Aaron the priesthood for everything of the altar and for that within the veil (Nu xviii 5, 7). No other duties are expressly reserved.

With the settlement, conditions necessarily changed. The fixing of the Tabernacle at Shiloh automatically deprived the Levites of the chief part of their original work. At the same time the concentration of all priestly functions within a small area necessarily ceased, for it must be remembered that the sacrificial functions constituted only a small part of the work of the priesthood. The leprosy laws, for example, could be administered only by a staff of priests scattered all over the country. This staff could not possibly be provided by a single family. Probably if we had a purer text of Nu it would be clear that this and other duties had been shared by the Levites either from their first separation or else from the time of Korah's rebellion; but in the present state of the text we cannot be sure. It is, however, absolutely plain that Dt adopts the only pos-

sible solution in the changed circumstances. Then we come to Dt xviii 6-8. According to a d m, a country Levite coming to the capital is to have the same right of ministry as all his brethren. A glossator has added the word "Levites," thereby changing the meaning of the passage; but if the text preserved in the Greek MSS is correct, the Levite probably received the full priesthood. That, of course, need not mean that he was permitted to perform *every* duty. It may be that some or all of the duties connected with the altar and within the veil were still reserved for the descendants of Aaron. Or, again, it may be that Dt xviii 6-8 was understood to have a wider force and to give the Levite the same rights as the descendants of Aaron. On nice points of legal construction certainty is impossible. In the view of the Pent—Nu as well as Dt—priestly functions of many kinds were to be exercised all over the country, and by Levites as well as priests. As, apart from cleaning (of which we are told nothing), the work within the veil consisted solely of the High Priest's duties there on the Day of Atonement, we may be certain that it was not shared by either the Levites or the Aaronites. As to the duties connected with the altar we cannot be sure. Nu makes it clear that all other priestly duties could be discharged by Levites.

11 (Driver's P 4). "In Dt xii 6, 17 f.; xv 19 f. the firstlings of oxen and sheep are to be *eaten by the owner himself* at a sacred feast to be held at the central sanctuary: in Nu xviii 18 they are assigned absolutely and expressly to the *priest*."

In my pre-textual days I investigated this question and published my results in the London *Churchman* for July, 1906. I now see that the state of the text is responsible for the difficulty.

A close examination of the occurrences of the expressions denoting "holy," "hallow," etc., in the Mosaic legislation, brings to light the fact that the words of this group are used technically in two or three slightly different senses. Thus holy things might be used in a wide

sense to include most holy things that fell to the priest, as well as things on a lesser plane of holiness. In the narrower sense, when applied to animals, it denoted generally, but not exclusively, animals that were holy by operation of law, as distinguished from some voluntary act of the owner. Where physically unblemished, such "holy things" were to be withdrawn from ordinary use and sacrificed. Firstlings were to be brought to the religious capital, but this does not appear to have applied to tithe animals. Then Nu v 9, 10, would apply. The owner retained the flesh, subject to giving a contribution to the priest.<sup>1</sup> If, therefore, Nu xviii originally gave the whole of all the firstlings to the priest, it contradicted Ex xiii 2; Lev xxvi 26; and Nu v 9 f., all of which were assigned by the documentary critics to their P, as well as Dt, with which these passages agree. Moreover, Nu xviii does not order the Israelites to make any fresh contribution. It is a passage addressed to Aaron, not to the people at all, and simply deals with the disposition of what they were to bring under the existing law. Had an original legislator wished to give the firstlings in their entirety to the priests, he must have issued a command to that effect to the people.

All our textual authorities have here been more or less conformed to the Hebrew, but the alterations are not uniform; and by piecing together the evidence of the various witnesses we get an inkling of what has happened. In Nu xviii 18, RV reads: "And the flesh of them shall be thine, as the wave breast and as the right thigh, it shall be thine." The Old Latin has "et carnes erint tibi: pectus et brachium dextrum tibi erint." There is here no comparison with the wave breast and the thigh. On the contrary, while the text is not quite clear, it seems to go back to something that gave the priest *the breast and thigh only*. In omitting the first "as," the Latin is supported by B\*<sup>2</sup>;

<sup>1</sup> On the difference of the effects of holiness on animals and land, respectively, see the Churchman, 1906, pp. 554 f.

<sup>2</sup> Mrs. Gibson renders the *Didascalia* (fol 31a) thus: "and their flesh shall be pure to thee, the end of the wave breast and the

in omitting the second, by A gn dpt Arm. It cannot, therefore, reasonably be doubted that the comparison was unknown to the LXX. Further, the words "to thee shall be," at the end of the verse, are omitted by m; while Ay H M a ejsyz Sah Eth reverse the order of the two words. So we may cancel them as a late insertion. That leaves "and their flesh thine shall be [Arabs 1 omits "thine shall be"] the breast and the right thigh," which cannot be original. We cannot, of course, recover the true text by guessing, but its general drift seems clear. It gave the priest the breast and the thigh only.<sup>1</sup>

This inquiry has a bearing on the textual problem. The Sam Pent shows a very late form of text. It has always been difficult to explain this, as it seemed very improbable that the Samaritans would have adopted new Jerusalem readings after the schism. But if the Jewish priests had introduced readings that conferred larger dues on their own order, it is easy to understand that there would have been a strong professional motive for imitation at Shechem. Currents of theological thought, and the desire to safeguard monotheism from possible ambiguities arising out of the use of the word "Baal" in the sacred text, may also have played their part. Accordingly the hypothesis of a later revision of the Sam in the light of the Temple text can no longer be dismissed as improbable.

12 (Driver's P 5). "In Nu xviii 21-24 the tithe is assigned to the Levites, who in their turn (v 26-28) pay right forefoot shall be thine." The "pure" seems to go back to a mistaking of *καθα* for *καθαρα*. Apparently, however, this was an insertion in the Greek from which the text was taken; and it was understood what the priest's due had originally been.

<sup>1</sup>Some other variants point towards textual change as responsible for the present form of this section. In Nu xviii 8, LXX has "from all holy things"—not, as MT, "even all." Striking confirmation is further provided by Neh x 37 (36). Here the repetition of "firstlings of our cattle" by "firstlings of our herd and our flock" is suspicious, and savors of an addition. HP 71 lacks the addition, stopping with the words "as it is written in the Law."

a tenth to the priests: in Dt it is, in two years out of three, to be consumed by the offerer and his household at a sacred feast (xiv 23), and in the third year to be applied to the relief of the poor (xiv 28 f.) — in both cases the members of the priestly tribe sharing only together with other destitute persons in the offerer's bounty."

The idea that Nu xviii 21 ff. could be the work of an original lawgiver binding the Israelites to bring a tithe suffers from the same technical difficulty as the corresponding view as to firstlings. Accordingly some years ago I suggested that the passage referred only to "the tithe of the children of Israel which they heave," i. e. applied only to the third-year tithe. There are, however, difficulties in this view; and, having regard to what we have seen in the case of the other dues, I now think it more probable that the text of Nu has undergone alteration. The greatest difficulty was experienced after the exile in inducing the Israelites to pay a tithe to the Levites, and the Biblical passages bearing on the matter are very suggestive. The cause of the change appears to lie in the alteration in the position of the Levites.

As we have seen, they were originally sacred porters, who (probably after the Korah rebellion) had conferred on them all the rights and duties of priests except certain matters within the veil and relating to the altar. On the original wording of Dt xviii 6-8 they would, on coming to minister at the capital, share in the priestly dues. In the country they would enjoy the triennial tithe, the Levitical cities, the right to share in certain pilgrimage festivities, and whatever might come to them from the Israelite's charity, together with any dues paid for the performance of the priestly duties they discharged in the country. In the whole preëxilic period the Law stood thus, the only important change being the transfer of the high priesthood from the family of Aaron to the Levitical non-priestly family of Zadok. Ezekiel, however, laid it down that the Levites who had been unfaithful should forfeit the full priestly right, and exercise an inferior ministry (chap.

xliv).<sup>1</sup> Consequently they were no longer entitled to portions to eat, and there was no enactment in the Law which would provide adequate subsistence for them.

At this point two passages on tithes should be quoted:—

“Will a man rob God? yet ye rob me. But ye say, Wherein have we robbed thee? In tithes and offerings. Ye are cursed with the curse; for ye rob me, even this whole nation. Bring ye *the whole tithe* into the storehouse, that there may be meat in mine house” (Mal iii 8–10a).

“And I perceived that the portions of the Levites had not been given them; so that the Levites and the singers, that did the work, were fled every one to his field. Then contended I with the rulers, and said, Why is the house of God forsaken? And I gathered them together, and set them in their place. Then brought all Judah the tithe of the corn and the wine and the oil unto the treasuries” (Neh xiii 10–12).

It is clear that both those passages differ essentially from Dt. The idea of bringing the whole vegetable tithe to the temple treasurehouse for the Levites is entirely inconsistent with any fair reading of Dt xiv; and the explanation that two (or in the third year even three) tithes were commanded by the Law is purely harmonistic. That such a provision had become necessary may be granted. It is, however, impossible not to understand the attitude of the people who refused to accept this innovation, and it is not surprising to find that these passages witness to the difficulty with which it was enforced.

There is yet another passage that calls for mention; but unfortunately the text is in a very unsatisfactory condition, and the variants in HP make it probable that when the larger Cambridge LXX appears, large portions will be found to be additions—viz. Neh x 38–40 (LXX, 37–39). In the MT, part of that passage contemplates—not a bringing of the whole tithe by the people to the temple treasury but—a tithing by the Levites in the country towns, under the safeguard of priestly inspection, and a subsequent transport of the tithes by the Levites. On the

<sup>1</sup> PS, pp. 277 ff.

other hand, the words "and a tithe of our land to the Levites" (ver. 38) seem to imply the theory of Neh xiii and to conflict with the end of the verse. They are, however, wanting in HP 71. This passage does not necessarily reflect a view that tallies in all respects with that of Neh xiii.

Now it is with this later view, that a complete tithe is to be given to the Levites, that the present text of Nu xviii agrees. Bearing in mind the clear language of Dt, the difficulty of supposing that any original lawgiver would introduce a fresh tax in this way, the fact that in two other matters our textual witnesses suggest the relatively late adoption of readings that benefited the priesthood, and the completely changed position of the Levites after the exile as a result of Ezekiel's activity, I venture to think that in all probability Nu xviii has undergone alteration. If a provision giving the priest the breast and right thigh of a firstling could be altered into a gift of the whole animal, then surely a gift of an entire tithe may go back to an earlier text dealing with the limited portions of the tithe that would fall to the Levite under the law of Dt. This of course is a mere conjecture. The alteration, if alteration there has been, is now represented in all our witnesses. Either it was made by Nehemiah's covenant, to which the text of Nu has been accommodated, or else the alteration is earlier and was sanctioned by the covenant. In favor of the conjecture two considerations may be urged: (1) It is entirely in line with the evidence in other passages; and (2) all the other supposed discrepancies between Dt and the earlier books rest on mere mistakes of interpretation or textual corruption.<sup>1</sup>

<sup>1</sup>Lev xxvii 32 f. recognizes an animal tithe. This was a pre-Mosaic institution; for Jacob, whose wealth consisted of animals, had instituted the tithe (Gen xxviii 2). Under the Mosaic law the tithe animals would be withdrawn from ordinary use and sacrificed locally. There is no command to bring them to the capital.

O. Eissfeldt's *Erstlinge und Zehnten im Alten Testament* (1917) is painstaking, but suffers from the adoption of the documentary and evolutionary theories and neglect of textual criticism.

That completes Driver's legal arguments. They make a very strong case against the MT of Nu xviii and a couple of glosses, but they do not raise even the shadow of a presumption against the Mosaic authenticity of the Deuteronomic speeches.

König's "Deuteronomium" (p. 15) makes two other points. In Dt xvi 8 all labor is prohibited on the seventh day of the Feast of Unleavened Bread. In Lev xxiii 8b and Nu xxviii 25b, only *servile* work is prohibited. That is true of MT, but the Greek cursives show that both the latter half-verses are due to late legal glossing. In Lev xxiii 8, d n omit the half verse; in Nu xxviii 25, b<sub>2</sub> reads simply, "And the seventh day shall be a holy convocation." - These annotations are due to later refinements.

König also says that in Dt xvi 15 the Feast of Booths has only seven days, but in Lev xxviii 36 and Nu xxix 35 it has eight. That is an error. Lev xxiii 34 and Nu xxix 12 both distinctly limit the Feast of Booths, i.e. the pilgrimage festival, to seven days. The eighth day was neither part of the pilgrimage festival nor a feast of booths. The Israelite was under no duty either to vary his food or his habitation or to celebrate it at the capital.<sup>1</sup>

Driver relied on a number of arguments from silence. These were answered by me on pages 170 ff. of PS and have consequently been jettisoned *en bloc* by König. Driver then adduces some minor considerations (p. xlii).

It is probably true that the expression "unto this day" in Dt iii 14 could not have been used by Moses; but on page 55 Driver himself admits that verses 14-17 "are not an original part of the text of Dt but have been inserted by a later hand." The presence of commentary of this character merely throws into relief the absence of post-Mosaic touches in the original text of the speeches. An argument is also founded on the use of the phrase "at that time" in ii 34; iii 4, 8, 12, 18, 21, 23, for events that had occurred within some months of the date of the speech. In part this is due to the faulty Massoretic reading "fifth"

<sup>1</sup> See, further, the argument in PS, pp. 191-193.

for "first" in Nu xxxiii 38.<sup>1</sup> But the real answer is that nobody but a contemporary Hebrew could say what length of time was necessary to justify the use of such a phrase. In reality Driver is here attempting to force the Hebrew language of three thousand odd years ago into the molds into which modern English has run. That is utterly unscientific.

"Chapters v 3 and xi 2-7 point in the same direction. The writer, though aware as a fact (viii 2, 4) of the 40 years' wanderings, does not appear fully to realize the length of the interval, and identifies those whom he addresses with the generation that came out of Egypt in a manner which betrays that he is not speaking as a contemporary" (p. xlii).

Driver does not seem to have thought this out. While it is true that all the men of 20 years and upwards at the time of the defeat of the southern invasion had died by the end of the period of wandering, it must be remembered that this was not the case with the youths under that age. Such events as the hurried night flight and the giving of the Law at Sinai might even impress themselves on children who were very young.<sup>2</sup> They would certainly never be forgotten by boys of five or six. These would be only about 45 at the end of the wanderings, and a man who was then 58 would have been 18 at the time of the Exodus. Practically all the men in the forties and fifties, who were doubtless the elders and leaders of the people, would have recollections of greater or less volume and distinctness to which the appeal is made.

The antiquarian notices in ii 10 ff. are of course due to a commentator.

"The expression, 'when ye came forth out of Egypt' . . . in xxiii 5 (4), of an incident quite at the *end* of the 40 years' wanderings (cf. iv 45b, 46b), could not have been used naturally by Moses, speaking less than six months afterwards, but testifies to the writer of a later age, when the 40 years had dwindled to a point."

<sup>1</sup> See BS, Oct. 1919, pp. 478-480.

<sup>2</sup> The present writer remembers one incident that occurred when he was exactly two years old.

This rests on a misunderstanding. The expression occurs in a law relating to the *tenth* generation of would-be proselytes, and the language is colored by this. The lawgiver here naturally falls into the point of view of the people living at that time, who could not have used such an expression as "in our days" to refer to the Mosaic age.

An argument is based on the use of the words "beyond Jordan" for the country east of the river in Dt i 1, 5; iii 8; iv 41, 46, 47, 49. It seems to me unquestionable that we must draw a distinction between two different usages—the expression "beyond Jordan," *in combination with* some further geographical qualification, and the same expression used absolutely. The former gives no clue to the speaker's position. It is a phrase embracing the whole of the country lying on one side of the Jordan. "Across the Jordan eastwards (westwards)" means the territory lying on the east (west) of the Jordan. This may be proved from Josh xii, where we find "across the Jordan eastward" in verse 1, and "across the Jordan westward" in 7. I imagine that nobody would argue from these phrases that verse 1 was composed on the west of the river and 7 on the east. This accounts for the usage in these passages of Dt. On the other hand, where the expression "beyond Jordan" is used *without any further definition*, it means the side of the Jordan remote from the speaker or writer, i.e. West Palestine if spoken in the East, and *vice versa*. It is so employed of West Palestine in Dt iii 20, 25; xi 30, by Moses speaking on the East.

Then Driver relies on the law regarding the place of sacrifice. This has been answered at great length in the sixth chapter of EPC and the BS for April, 1919. König<sup>1</sup> is distinctly nearer to my position, but has not made a thorough study of those discussions. Hence he is still under the influence of errors I have refuted. On the tent of meeting, he may be referred to my reply to him.<sup>2</sup> What answer could he make to the following: Do you really be-

<sup>1</sup> *Op. cit.*, pp. 14 f.

<sup>2</sup> BS, Oct. 1914, pp. 596-607.

lieve that the tent of Ex xxxiii 7-11 was the covering of the Ark and that consequently Moses was in the habit of leaving it bared and unguarded when he took the tent outside the camp for his own purposes?

Ten considerations are adduced by Driver (pp. xlv ff.) to date Dt. One has already been refuted, viz. the supposed differences between its laws and Ex xxi-xxiii. Five others (Nos. 5, 6, 7, 9, and 10) have no probative force whatever. All are subjective. Some professor says, "Moses could not have written or thought like this, or have foreseen that"; and thereupon this dictum is copied into one book after another as the latest and most infallible truth. The law of the kingdom (Driver's 2) is peculiar to the later texts. I have shown elsewhere<sup>1</sup> that the king was unknown to the LXX. It is true that in Dt xvii 8-13 "the constitution of the supreme tribunal is not *prescribed* but represented as *already known*" (Driver's 3). That is because it had been working for many years. In the first instance Moses sat alone in this capacity, but later we find him with associates.<sup>2</sup> Driver urges (No. 4) that the forms of idolatry alluded to, especially the worship of the host of heaven (iv 19; xvii 3), point to a date not earlier than the second half of the 8th century B. C. But the worship of the sun and moon in Canaan is admittedly ancient. We do not know whether Astarte was associated with the planet Venus, but in any case star worship was very ancient in Babylonia, whence the Hebrews had come,<sup>3</sup> and we know that in Israel the host of heaven were regarded as supernatural beings. "I beheld the Eternal sitting on his throne, and all the host of heaven stood by him on his right and on his left" (1 K xxii 19). The antiquity of this conception is attested by the divine title "Baal of hosts," which, as the variants show, has

<sup>1</sup> See PS, pp. 158 ff.

<sup>2</sup> See at length BS, Oct. 1914, pp. 596-607, where the growth of the institution is fully traced.

<sup>3</sup> See J. Hehn, *Die biblische und die babylonische Gottesidee* (1913), pp. 5 f.

been removed from the Hebrew of Ex xxxii 27; Josh vi 17; Jud xvi 28. It is only necessary to read the whole of Dt iv 19 to see that it is aimed at all possible rival cults. Lastly, it is asked (Driver's 8), whether, if Isaiah had known of Dt xvi 22, prohibiting the erection of an obelisk, he would have adopted it (xix 19) as a symbol of the future conversion of Egypt to the true faith? The answer is easy. Long before Moses, there had existed a form of covenant made with a pillar, an altar, and sacrifices (Gen xxxi). This form was adopted at Sinai. Isaiah uses technical language to explain that Egypt shall be as completely God's people as Israel, which had become so by virtue of the token covenant with Abraham and the witness or pillar covenant at Sinai. Altar and pillar, token and witness, sacrifice, oblation, and vow, therefore appear in this passage (ver. 19-24), with the result that Egypt becomes God's people.<sup>1</sup> And then Driver asks whether Isaiah could have said (xxii 12) that God called to a practice (of making baldness) prohibited in Dt xiv 1 if he had known that passage. He has mistaken the meaning of the prohibition. "Ye shall not make baldness *between your eyes*" cannot refer either to the shaving of the head or to shaving of hair generally. The legislator must be taken to mean what he has said, and to prohibit the shaving of portions of the eyebrows nearest to the nose. Presumably there was a contemporary custom of inflicting this disfigurement as a sign of mourning. Now there was another custom of shaving the head (Ezk vii 18). It is to this that Mic i 16; Jer xvi 6 refer. When, therefore, Isaiah speaks of the Lord calling to shaving without specifying the part to be shaved, the natural inference is that he is referring to such shaving as was customary and lawful, not to such as was unlawful.

Various attempts have been made to divide Dt into singular and plural sources. These merely show their authors to be incapable of sympathizing with Hebrew methods of expression.

<sup>1</sup> See at length SBL, chap. II.

Driver had an argument from style comprising, *inter alia*, 70 numbered paragraphs (pp. lxxviii ff.). An answer to this will be found in PS, pp. 195 ff. König has read that, and as a result has reduced his argument from style to *seven* considerations, or *less than one tenth*. In reply to him it may be said that the Hebrew word for "I" used in Dt is due to rhetorical considerations. So are the phrases "observe to do" and "with thy whole heart and thy whole soul." These are eminently suitable in speeches of this character, but would not be in place in, let us say, Gen i. The preference for the verbal ending *-ûn* is probably to be attributed to the same cause, but it may also be due to better textual transmission.<sup>1</sup> Dt uses "Horeb," not "Sinai," in the speeches; but a study of the occurrences of the two names in the Pent shows that they are not synonymous. Horeb was the name of the whole range, and the Israelites were in Horeb. The actual peak of the giving of the Law was Sinai. Moses ascended Mount Sinai while the people remained in other parts of Horeb. The Pent does not use the words promiscuously, but varies its choice according to the meaning to be expressed. Dt uses שֵׁבֶט only for tribe (about 19 times); while Nu employs this word only 5 times and מִטָּה in about 107 cases. I think that the Nu phenomena are partly due to rewriting and commentary, but it is easy to see that in speeches a particular term might be preferred for reasons of euphony. The technical term "cities of refuge" is used in Nu xxxv 9 ff. and not in Dt. That amounts to saying that in a technical passage the apt term is used while it is avoided in popular speeches and narratives. That, then, is also devoid of probative force. The middle books use the phrase "he shall be cut off from among his people," while Dt says, "Thou shalt remove the evil from thy midst"; but the difference is the same as that which leads a man to speak of a deep valley when he is on the mountain, but a high mountain when he is in the valley. In formulating the

<sup>1</sup> See BS. Oct. 1914, pp. 620 ff.

ordinary law the penalty is specified from the point of view of the offender: in speaking to the people, stress is laid on the action they are to take. That is all, and it is difficult to understand how such an argument ever came to be advanced.

Thus when we carefully examine the arguments that have been collected in the work of more than a century of criticism, we find that not a shadow of a case can be made against the authenticity of the Mosaic speeches.<sup>1</sup>

<sup>1</sup> Lack of space, unfortunately, prevents my dealing with the positive evidence of date. On this I would refer to OP, SBL, EPC, PS, *passim*; the International Standard Bible Encyclopaedia, *s.v.* "Pentateuch" and "Deuteronomy"; J. S. Griffiths, *The Problem of Deuteronomy* (1911), pp. 97-105; J. Orr, *The Problem of the Old Testament*, pp. 255-270; Murray's *Illustrated Bible Dictionary* (1908), *s.v.* "Law in OT."