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ART. VI.—THE MOST FORMIDABLE PENTATEUCHAL DIFFICULTY OBIATED.

MANY find their simple faith in the Moses who “wrote of” the Saviour, and to whom the Saviour bore witness, dazed and dismayed by the portentous array of critical talent enlisted in impugning the grounds of that belief. My present object is to endeavour so to strengthen “the shield of faith,” that it may meet and turn the hostile points of critical weapons—too numerous to be dealt with individually in the brief space at my command. In this hope I invite attention to a single period of patriarchal history, the Jacob-Joseph period, and to a single section of Mosaic law—the “judgments” which follow Exod. xxi. 1 as far as xxii. 20. The only extern authority which I shall adduce is that of the late eminent legal antiquary, Sir H. Maine, who writes from a standpoint absolutely neutral as regards theological prepossessions and critical theories.

The most formidable objection raised against Mosaic legislation is, “how to account for three codes by the same lawgiver to the same people in the course of forty years (the first being the Sinaitic, of which the section Exod. xxi.-xxii. 20 as above forms an imbedded part, and the last the Deuteronomic), especially for three codes, the first of which, as compared with the last, shows so wide a social contrast in the conditions of human life”? Now, attentive readers will see that it is only in respect of the “judgments” of this section that so great a backwardness exists as compared with the more advanced conditions of Deuteronomy. The section Exod. xxii. 21 to end of xxiii. reveals no such contrast, but is in harmonious consistency with Deuteronomy, many of the special provisions of which (notably those of the three great Festivals, Exod. xxiii. 14-19) it anticipates. In short, these earlier “judgments” are, as I shall show, not, in respect of their origin, Mosaic, but adopted by Moses into the Sinaitic covenant-laws from the close of the patriarchal period, when they originated.

The reasons for that adoption were sufficient, nay, imperative, at the time, as I shall further show. Now, from Exod. xxi. 2 to xxii. 20, we have a series of “judgments” highly peculiar and characteristic of a primitive society, the broader features of which I will sketch anon. But I first refer to Sir H. Maine, merely premising that, if any part of the Mosaic law is genuinely antique, it ought to present the features which he recognises as primary in “ancient law.” I shall further show that it does so. “In the infancy of mankind,” says that eminent authority (“Ancient Law,” p. 8), “law has

scarcely reached the footing of a custom, it is rather a habit. The only authoritative statement of right and wrong is a judicial sentence after the facts, not one presupposing a law which has been violated, but one which is *breathed by a higher Power into the judge's mind at the moment of adjudication*"; and he notices that "parities of circumstances were probably commoner in the simple mechanism of ancient society than they are now." The idea of a "sentence breathed by a higher Power into the judge's mind<sup>1</sup> at the moment," etc., is remarkably in keeping with the word for "judges" being the same as the name for God Himself, mostly, but not always with the article prefixed (*Elôhîm* or *Ha-elôhîm*). There is, indeed, another word rendered "judges," of which I speak below; but this sacred title designates the *ordinary* judges. This is strikingly confirmed by Jethro's words to Moses, "Be thou to the people *to God-ward*," and Moses, just before, to Jethro, "The people come unto me *to inquire of God*. I make them know *the statutes of God*," etc. (Exod. xviii. 19, and verses 15, 16), where the whole relates to the judicial function.<sup>1</sup> Take, again, the opening prayer of Ps. lxxii., which anticipates a kingdom of peace founded in righteousness: "Give the king *Thy judgments*, O God"—the king being the high judiciar of his realm, *i.e.*, "give him, by Divine *afflatus*, at the moment the decisions he is to utter on the facts laid before him." Poetry here preserves to us, as often, the archetypal idea of primitive justice<sup>2</sup>—exactly that laid down by Sir H. Maine. Again, compare Solomon's petition for wisdom "to judge Thy people" in 1 Kings iii. 9, with that king's recorded judgment, exemplary and typical, and the comment on it in the sequel—a case exactly in point. (1) No written law applies to it. (2) The facts come before the king. (3) On them he pronounces, as if from the inspiration of the moment; and (4) "The *wisdom of God*" is therefore recognised as "within him *to do judgment*" (ver. 28). Such

<sup>1</sup> Referring to the ancient codes of Solon and the East, Sir H. Maine says ("Ancient Law," p. 16), "Quite enough remains of these collections both in the East and in the West to show that they mingled up religious, civil, and merely moral ordinances without any regard to differences in their essential character; and this is consistent with all we know of early thought from other sources. The severance of law from morality, and of religion from law, belong very distinctly to the *later* stages of mental progress." He might have added that Plato, in his treatise on "Laws," preserves the same habit of prefixing or intermixing hortatory matter, religious or moral, with positive injunction which so strongly characterizes the Book of Deuteronomy.

<sup>2</sup> The title of this psalm is also remarkable—"A Psalm for Solomon." It thus gives the ideal character of a royal judge qualified for his function by Divine aid. The same idea meets us in the *themistes* of Homeric song, given by Zeus to the hero king (*Il.*, xii. 454), and kept by the latter (*i.* 238-9).

exactly are the judgments of Exod. xxi. foll.—not promulgations of statutes to provide for future cases, but literal “judgments” upon past facts, which then pass naturally into precedents. Thus, the very earliest known stage of law, in which it is “not yet a custom,” is realized before us. Every sentence of that venerable compilation has its root in facts of real life at the moment, and presents an idyl of a primitive society, matching, as I will presently show, the incidents, habits of thought, and often the actual phrases, of the patriarchal record. Let us, then, read the sentences back into the facts of origin, and thence construct a picture of the society so established. It is one peculiar and self-contained, with home-bred slaves of the native race, *not aliens*, like Eliezer of Damascus and Hagar the Egyptian—slaves become so by purchase—but whose rights are jealously tendered, and attract not merely a large, but the most prominent share, of judicial notice. Can anyone point to a legal compilation elsewhere, in which the slave is the foremost figure? I shall further show why this was, so to speak, the “burning question” of the primitive society at the time—families of Hebrew blood being forced into the servile condition by their multiplying more rapidly than the profitable subdivision of properties could follow. But I would notice first, that the society is evidently straitened for room; and this lack of due territorial area in which to expand is a cause of the prevalence of slavery. They live so closely packed that there is no margin of mutual avoidance. Neighbours and neighbours’ cattle seem unable to keep out of each other’s way. Thus, two men fight, but their combat is either in the house itself, or so close to it, that a chance-blow lights upon the housewife and does her a serious mischief (xxi. 22). *A* opens a pit and *B*’s beast walks into it; or *A*’s beast is found grazing in *B*’s field or vineyard. *A* lights a fire out of doors and it catches *B*’s harvest-field (xxi. 33; xxii. 5, 6). A prominent figure, too, is the vicious ox, who seems a standing peril to society, and may gore indiscriminately man or wife, son or daughter, slave or handmaid, and is to be stoned, as a measure of public safety. Such a beast establishes a character for vice, and is marked by witnesses, and delated as an old offender (xxi. 28-36). All this bespeaks close quarters, and a total absence of that free range to which we were accustomed in the patriarchal life,<sup>1</sup>

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<sup>1</sup> In Gen. xxxiv., Hamor and Shechem find “the land large enough” both for themselves and for the immigrant house of Israel, with its large train of flocks and herds and pastoral servants; and in Gen. xxxvii. Joseph follows his brethren and their flocks from Hebron to Shechem, and thence to Dothan, *i.e.*, from southern into middle Palestine, without let or hindrance or any sense of trespass.

and to which, later, the wilderness set absolutely no bounds but those of subsistence.

The society is one in which theft is common, but is not capitally or corporally punished. A thief can probably find a market for his theft not far off, or may himself disappear (xxii. 1, 3, 7, 8). He may be caught "breaking up"—or, in our phrase, "breaking into"—a domicile, or may rob it and be caught subsequently; in order to appreciate which conditions we must remember the total absence of all police in ancient oriental societies (xxii. 2, 3, 4). Observe also that the first section of these "judgments" is marked throughout by the predominance of the third person, with the significant exception of the first sentence of all, "If *thou* buy," etc. (xxi. 2), and with a few others, xxi. 13, 14 (on which I shall speak later on), *ib.* 23; xxii. 18 (this last I think probably a corruption of the text); whereas the second section observes "thou and thee," "you and ye," throughout. Notice also the absence of the "stranger" and "sojourner," or "that sojourneth," so prominent not only in the later Pentateuch, but in the very next as also the previous sections of this same Covenant law (xxii. 21; xxiii. 9; *cf.* xx. 10). Agricultural life is represented (xxii. 5, 6), but on the whole pastoral interests predominate. But although the society does not notice the "stranger" as yet, a "strange nation" is near enough to furnish a slave-market (xxi. 8, 16), and people live not in tents but in houses with wooden doorposts (xxii. 7; xxi. 6). The community is one in which, wholly primitive as the social state is, hurts are curatively treated, and one may almost say in which the doctor's fee is paid (xxi. 19). Now, all these features, some of them highly contrasted and all peculiar, are met in one period only of Israel's early history, viz., that in which "the people increased abundantly and multiplied" in Egypt, "and the land was filled with them" (Exod. i. 7). There was the "strange nation" at their gates to whom the slave-wife or kidnapped boy might be sold—the only nation of antiquity early renowned for high therapeutic skill and a medical profession. When a folk so increase within narrow limits it is no novel experience that a large proportion falls into poverty, and therefore in an ancient society would become slaves. They would become such to neighbours of their own race rather than to the stranger. Hence the large and foremost space on our canvas occupied by the slave and his or her rights and wrongs. The crime of "stealing and selling" a man is familiar to us from Joseph's case, "sold to the Ishmaelites," and, later, describing himself as "stolen away out of the land of the Hebrews" (Gen. xxxvii. 28; xl. 15). Notice also the decision (Exod. xxii. 10-13), "If a man deliver

unto his neighbour . . . any beast to keep, and it die. . . . If it be stolen from him he shall make restitution unto the owner. If it be torn in pieces . . ." closely reflecting Jacob's angry words to Laban (Gen. xxxi. 39): "That which was torn of beasts I brought not unto thee; I bare the loss of it . . . stolen by day or by night;" while the provision of an "oath of Jehovah" between the owner and the custodian finds a parallel in the Galeed-Mizpah covenant and oath, although prospective rather than retrospective, with solemn invocation of the patriarchal Deity (*ib.* 47-53). Again, the "torn beast" to be "brought for witness" has a not remote analogy to Joseph's own case, in which the evidence is the coat dipped in blood (Gen. xxxvii. 31-33; *cf.* Exod. xxii. 13), as though the next thing to the torn body. The same or similar aspects of fact, the same modes of thought, and even close resemblance of phrase, appear thus in the "judgments" and in the narrative. And these items concur in pointing to the land of Goshen, where the facts of recent patriarchal story would needs be racy of the soil; and, imbedded in the traditions of folk-lore, would mould the mental habits of the community, and guide the decisions of the judge. In them therefore, so far as preserved, we have the actual judgments fitting the facts of life as led in Goshen; and here alone do we find a congested society under simple rudimentary conditions, and offering a striking contrast to the greater complexity of Deuteronomy.

Again, turn yet another page, and we find the brief "Sinaitic" code, which closes at Exod. xxiii. 19, succeeded by an address didactic, promissory and hortatory. The coming out from Egypt has already (xxiii. 15) become an epoch in national history, and now we have the promise of the angel guide, the casting out of the Amorite, etc., enemy, and a "land" to be "inherited" from their overthrow (xxiii. 20-26). All this marks a new chapter in a people's life. Moreover, the pastoral element now almost disappears from the material basis of this new chapter in the manual of duty. That basis becomes dominantly agricultural, exactly reversing the position of these elements in xxi.-xxii. 20. Yet more: in Exod. xxxiv. we have a recapitulation of nearly all the laws of this "Sinaitic" code proper; but of those older Goshen judgments not one there reappears which at Sinai were adopted, as it were, provisionally, into the first Mosaic *corpus juris*. Of that adoption we find traces in the theocratic *dictum* of xxi. 13, "I will appoint thee a place whither he" (the non-murderous homicide) "may flee" (the only trace of futurition in the entire section), and in "thou shalt take him from Mine altar that he may die"; as also in the stern and strong monotheism of xxii. 20, the point of junction, as beforesaid, of

the old and the new jurisprudence, "He that sacrificeth . . . save unto Jehovah only, shall be devoted" (*hherem*, the most intense word in the Mosaic vocabulary). These are set like two seals on the more ancient and rudimentary "judgments" taken over (probably in part only) under the shadow of Mount Sinai as an evidence of unbroken continuity in the people's life. For as He who declared Himself as "Jehovah" identified Himself with the "El Shaddai" of the patriarchal age (Exod. vi. 3), and as the sacrifice of the covenant at Sinai was perhaps the last under the patriarchal ritual (xxiv. 4, 5), while the "record" of the "name" remains a consecration of patriarchal worship (xx. 24b), so in the civil and social sphere the laws, or some of them, which had guided the early life of the people passed under the great seal of the theocracy by the hand of Moses, its Prime Minister.

But there was a yet more urgent reason why these sentences of olden justice—which so exactly vindicate the term "judgments" applied to them (Exod. xxi. 1), and of which, although the scope was limited and narrow, the principles underlying were durable and broad—should not lapse from the jurisprudence of the wilderness. When, at Jethro's suggestion, Moses chooses his judicial subordinates, he is to "teach them ordinances and laws . . . and the work that they must do" (Exod. xviii. 20,<sup>1</sup> 21). The only available material existing for this would then be this Goshen Code, the native growth of the race, and familiar already in many of its applications. Thus, so far as it met the cases which arose, it would be *in viridi observantia* when the Law which incorporated it was given. Of course it would soon be in practice silently antiquated, but it might yet well claim, for the sake of the memories embalmed in it, a place among the sacred *deposita* of the race.

Of course I cannot touch here upon the large mass of miscellaneous laws which lie between those of the Sinaitic Covenant and Deuteronomy. But this pre-Mosaic stratum of law thus discovered wholly turns the flank of the objection of three codes, with wide social disparities, in forty years. The older elements of the Sinaitic jurisprudence have a seniority of perhaps two centuries to the later ones of Deuteronomy, and the gap between the two, instead of being a paradox, becomes the most natural feature they could possibly present. No satisfactory analysis of Exod. xxi.-xxiii. has yet appeared. Critics are content to label it "Sinaitic," and to take it as though one continuous whole, although the change of the

<sup>1</sup> It seems clear that these verses should be transposed. "Teach them ordinances." "Them" relates to the newly-chosen puisne judges.

person of the verb from third to second might have put them on their guard. And surely no one can contemplate such a case as the two men fighting, and the house-mother miscarrying by reason of a chance blow (xxi. 22), without feeling sure that we have here an adjudication upon facts presented as if a prospective law.

And all this is true if we view Moses merely as a hero law-giver of the human calibre. Nay, more than this may even so be urged. He had lived in Egypt, amidst the most highly-organized society known to the ancient world; he had since had a large experience outside it; he could not be ignorant of the social standard already reached in Canaan, nor without some power of forecasting the conditions under which life would have to be lived by his people there bereft of his leadership. How idle it seems, then, with his past experience, his nomothetic genius, and his power of forecast, to impeach his laws on the ground of the advance which they imply and the social progress which they assume. Cut short in his mission, with his great work yet pending, it was his business to be in advance of his age; for only so could he permanently influence for good the ages after him.

The archaic character of what are termed above the "Goshen judgments," *i.e.*, as compared with the others ascribed to Moses, is further confirmed by the cast of language, in which are the following antiquated words or phrases (xxi. 3, 4): "Came in . . . go out, *by himself*," where the margin shows the literal sense, "in his body." This occurs nowhere else in the Bible. Further, the word for body, *gaph*, is unknown in that sense elsewhere, and *only once* found, *viz.*, Prov. ix. 3, but there plural and signifying there "heights"; add ver. 10, *shear*, lit. "flesh," but only here in sense of "alimony"; and *ónah*, "cohabitation," unknown elsewhere. The (ver. 13) Hebrew phrase for "deliver into his hand" is equally strange. Most remarkable of all is *asón*, "mischief," found in verses 22, 23, but elsewhere only in Jacob's words of Benjamin, "mischief befall him" (Gen. xlii. 4, 38; xliv. 29.) This strongly confirms the local colouring as that of the domestic usage of the later patriarchal period. Also "to buy" ["endow," A.V.] (a wife, xxii. 16), *mahar*, is a verb unknown elsewhere, while from it is derived the *móhar*, "dowry," of ver. 16, found in Gen. xxxiv. 12, again in the story of Jacob's domestic life, and 1 Sam. xviii. 25, only. In Exod. xxi. 22 the word *pelilím*, "judges," or rather "arbiters," is likewise extremely rare, in fact, only twice elsewhere, and that in poetry. In Exod. xxi. 6, xxii. 8, the word for "judges" is, as noticed above, the same as "gods"; and the only later instance of that usage, except in poetry (Ps. lxxxii. 1, 6), is (1 Sam. ii. 25) in Eli's words to his



sons. Yet more curiously, the well-known Hebrew word from which the Book of Judges is so entitled is nowhere found in this ancient section, although occurring in the earlier narrative, Exod. ii. 14, and thrice in Deuteronomy. Thus the phraseology concurs remarkably with the facts, and both together form a highly cogent proof that the "judgments" of Exod. xxi., xxii. embody venerable decisions of the time of Jacob and his immediate descendants, including, probably, some by Joseph himself, incorporated by Moses, and stamping his laws and records with unbroken continuity, just as the transport of Joseph's bones for interment in Canaan form a material *vinculum* of unbroken patriarchal memory.

Such a single conclusion thus firmly established carries a weight of plenary satisfaction to the timid believer. One section of the law thus fixed in history is a corner-stone which radiates strength into the whole fabric of which it forms part. We have got down here to the primæval granite, the oldest stratum, I believe, of the whole record, whether the rest be esteemed Mosaic or not by our higher critics. Given a literary work carried on by a contemporary Moses, as part of the Exodus itself, and the section which we have been examining, fits exactly into its place. On any other theory it becomes a task of greater difficulty, the further we descend the stream of history, to account for its being where we find it. I therefore bid the faint-hearted brother be of good cheer; the truth will vindicate itself in God's good time.

For, indeed, the famous argument of Paley in his *Horæ Paulinæ* may, to a large extent, be paralled here. The "judgments" we have been examining and the social state resulting from a population becoming gradually congested, together with the incidents of the later patriarchal life which match those judgments, confirm one another. They are, as regards especially the characteristics of that social state, rather results which occur to us on reflection than broad and prominent features on the surface of the narrative. And they confirm one another, for the most part, in such an indirect and artless way, without any appearance of design either in the author of the narrative, or in the compiler of the "judgments," as to yield a strong argument for the authenticity of both, without assuming beforehand the authenticity of either.

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