

THE GENESIS OF DEUTERONOMY.

THE Book of Deuteronomy occupies a position of singular importance in the criticism of the Old Testament inasmuch as upon one's conclusions concerning its date depend largely his views concerning the origin of the Pentateuch, indeed the whole course of Israel's religion and history. The Book of Deuteronomy in fact is the real basis of Pentateuchal criticism—the true starting-point of the new theory of reconstruction. This was the opinion of Graf,¹ who in order to show the late origin of the Priestly Laws in Exodus—Numbers says, "We must have a definite standpoint from which we can look with steady eye both forwards and backwards. This definite standpoint is the time of the appearance of Deuteronomy." Dillmann² declares that "Deuteronomy must be the starting-point, partly because its character and date are most certainly determined, partly because the decision of the other codes really depends upon their relation to Deuteronomy." Wellhausen³ also allows that "Deuteronomy is the starting-point not in the sense that without it nothing could be done, but in the sense only that being established on historical grounds, it requires the Priester-codex, also on historical grounds, to be placed after it." The same view is shared by others. Thus Kittel⁴ regards Deuteronomy "as the fixed point from which we can work both backwards and forwards";

¹ *Die Geschichtlichen Bücher des Alten Testaments*, 1866, p. 4.

² *Die Bücher Numeri, Deuteronomium und Josua*, 2. Aufl., 1883, p. 599.

³ *Prolegomena zur Geschichte Israels*, 4. Ausg., 1895, p. 14.

⁴ *A History of the Hebrews*, translated by Taylor, vol. i., 1895, p. 48.

Westphal,¹ as "the Ariadne's thread" in the historical problem of the Pentateuch; Cornill,² as the one "fixed point" in determining the dates of the different documents; Addis,³ as "the fixed point from which all other points in the chronology of the Hexateuch must be determined"; Buhl,⁴ as the firm "basis of operation"; and similarly, Klostermann⁵ and others.

The history of the criticism of Deuteronomy is brief. In 1805 De Wette⁶ argued for the first time on internal grounds that the kernel of Deuteronomy was written in the reign of Josiah, king of Judah. A half-century after, Riehm⁷ practically set at rest the question of Deuteronomy's separate existence. Twenty-two years later, Graf⁸ fixed the late date of its publication, viz., the eighteenth year of King Josiah. Since Graf there has been a remarkable unanimity of opinion among Old Testament scholars in favour of its 7th century origin, some assigning its composition to the reign of Manasseh,⁹ others to the early years of Josiah,¹⁰ but both agreeing that the date of its publication is the eighteenth year of King Josiah (621 B.C.).

Graf¹¹ pronounced (in 1866) this one of the most universally recognised conclusions of historical criticism con-

¹ *Les Sources du Pentateuque*, ii., Le Problème Historique, 1892, p. xxiv.

² *Einleitung in das Alte Testament*, 2. Aufl., 1892, p. 31.

³ *The Documents of the Hexateuch*, Part I., 1893, p. lxxiv.

⁴ *Ueber die bleibende Bedeutung des Alten Testaments*, 1896.

⁵ *Neue kirchliche Zeitschrift*, 1892, p. 421. Cf. De Wette, *Beiträge*, i., 1806, p. 167 f.; *Studien und Kritiken*, 1837, p. 953; Kleinert, *Das Deuteronomium und der Deuteronomiker*, 1872, p. 3.

⁶ *Dissertatio qua Deut. a prioribus Pentateuchi libris diversum alius cujusdam recentioris auctoris opus esse monstratur*, Jena, 1805.

⁷ *Die Gesetzgebung Moses im Lande Moab*, 1854.

⁸ *Die Geschichtlichen Bücher des Alten Testaments*, 1866.

⁹ Time of Manasseh: Ewald, Riehm (earlier, in 1854), Bleek, W. R. Smith, Kittel, Valetton, Kautzsch, Byle, Montet, Wildeboer, Driver, and others.

¹⁰ Early years of Josiah: De Wette, George, von Bohlen, Langerke, Knobel, Graf, Schrader, Reuss, Kayser, Kuenen, Dillmann, Cheyne, Wellhausen, Stade, Cornill, Montefiore, Bandissen, Holzinger, and others.

¹¹ *Ut supra*, pp. 1, 2.

cerning which scholars are of one mind. Writing a year later, Rosenberg,¹ remarks, "That Deuteronomy was composed in Josiah's time is almost an axiom already in the theological world." More recently Carpenter² asserts, "The Book of Deuteronomy can be assigned with practical certainty to a given date"; adding, "it thus provides in a peculiar manner the key to the criticism of the whole Pentateuch." Steuernagel³ opens his study of Deuteronomy's origin and growth with the claim that "it is one of the surest results of the new critical investigation that the law-book of Moses which lay at the basis of Josiah's reformation of religion is closely allied to our Deuteronomy, though not identical with it." Bacon⁴ further alleges that "Deuteronomy as an attempt to formulate the *Torah* of Moses, as then understood, at a period not long previous to 620, has, since De Wette, acquired the force of an axiom among critics." While Wellhausen⁵ more recently maintains that "concerning the origin of Deuteronomy there exists still but little doubt."

There does exist, however, considerable doubt still, we believe, as to whether the new view is the correct one. For not only is the *ordinary* opinion still in favour of an early date, as Andrew Harper⁶ allows, but also in the opinion of many *specialists* it is doubtful whether, all things considered, the 7th century really accounts best for its origin. One may even speak with considerable justification of the *discontent of criticism* concerning it. Klostermann,⁷ for example, complains that the age and place of Deuteronomy should be more carefully investigated before definite

¹ *Die Mosaische Echtheit der Königs-Urkunde in Deut.* 17. 14-20, 1867, p. 5.

² *The Modern Review*, iv., 1883, art. "The Book of Deuteronomy," p. 253.

³ *Der Rahmen des Deuteronomiums*, 1894, p. 1.

⁴ *The Genesis of Genesis*, 1892, p. 46.

⁵ *Prolegomena zur Geschichte Israels*, 4. Ausg., 1895, p. 9.

⁶ *The Book of Deuteronomy (Expositor's Bible)*, 1895, p. 4.

⁷ "Beiträge zur Entstehungsgeschichte des Pents.," in the *Neue kirchliche Zeitschrift*, 1892.

conclusions are drawn. Hommel¹ boldly declares that "it has yet to be proved that we have any right to assume that Deuteronomy first came into existence at the time in which it was discovered, *i.e.* in the latter half of the 7th century B.C., or, in other words, some 650 years after the death of Moses." While Vos² ventures to demand criticism to establish "that the Code does not fit into the historical situation by which, according to its own testimony, it was called forth."

Others, opposed to the Wellhausen view, date it either earlier or later than the seventh century. Thus, certain writers³ assign it to the reign of Hezekiah in order to account for the reformation ascribed to him in 2 Kings 18. 4f. König⁴ places it shortly after 722 B.C.; Delitzsch,⁵ just anterior to Isaiah; Schlatter,⁶ in the time of Jehoshaphat; Vater, in the time of David and Solomon; Kleinert,⁷ in the time of Samuel; Stähelin, in the period of the Judges. On the other hand, there are those who would assign to the book of Deuteronomy a later date in the development of Hebrew literature. For example, Vatke⁸ and Horst⁹ make Deuteronomy the *result* rather than the cause of Josiah's reformation, the former placing it in the last ten years of Judah's existence as a kingdom.

¹ *The Ancient Hebrew Tradition*, transl. by McClure and Crosslé, 1897, p. 10.

² *The Mosaic Origin of the Pentateuchal Codes*, 1886, p. 90.

³ Riehm (later), Oettli (*Das Deut. und die Bücher Josua und Richter*, 1893, pp. 19, 20); Westphal (*Les Sources du Pentateuque*, II., *Le Problème Historique*, 1892, p. 305); Vaihinger (*Real-Encyc.*, xi., p. 315 f.); and J. von Bunsen (*Bibelwerk*, Abtheilung II., *Bibelurkunden*, I. 1860, p. 270 f.).

⁴ *Einleitung in das Alte Testament*, 1893, pp. 215, 217.

⁵ Cf. his "Pentateuch-kritische Studien" in the *Zeits. für Kirchliche Wissenschaft*, etc., 1880-2; and also his *New Comm. on Genesis*, Eng. transl., vol. i, 1888, p. 40.

⁶ *Einleitung in die Bibel*, 2. Aufl., 1894, p. 58.

⁷ *Das Deuteronomium und der Deuteronomiker*, 1872 ff., 136-7, 153-4.

⁸ *Biblische Theologie*, vol. i., 1835, p. 504 f.

⁹ Cf. art. "Études sur le deutérome," *Revue de l'Histoire des Religions*, xxiii., 1891.

Vernes¹ and D'Eichthal² place it after the Exile in the Persian period, claiming that it was composed in the interests of the reform carried out by Ezra and Nehemiah. Also the more recent writers, Staerk³ and Steuernagel, who trace in Deuteronomy certain ancient "thou" and "ye" sources, are likewise opposed to the date assigned to it by the Wellhausen hypothesis.

Yet, notwithstanding all the doubts which have been raised from time to time concerning the 7th century origin of the book, men are still content to carry on the critical battle concerning P's date, on the tacit assumption that D's date is fixed, apparently forgetting that the ground on which they stand contending is unsafe.⁵

This is, in our judgment at least, the real *status quo* of the criticism of the Pentateuch to-day. It is to a re-examination, therefore, of the entire question of Deuteronomy's origin that we devote our attention in the following study.

In a problem of this character, to which there are at least two very possible solutions—either the Mosaic or 7th century origin,—it is of course quite natural that men who take different standpoints come to different conclusions. It was a Dutch philosopher who said, "Stand within a circle and it looks concave; stand without and it appears convex." Similarly with Deuteronomy. Looked at from the standpoint of the 7th century, it seems to have been written expressly with a view to meet 7th century needs; whereas looked at from the standpoint of a new-born nation

¹ Cf. *Sur la Composition et l'Origine du Deut.*, 1887. An examination of D'Eichthal.

² *Mélanges de Critique Biblique*, 1886, pp. 94 and 291.

³ *Das Deuteronomium, sein Inhalt u. seine literarische Form*, 1894.

⁴ *Die Entstehung des deuteronomischen Gesetzes*, 1896.

⁵ Wellhausen (*Proleg.*,⁴ p. 14, 1895) is careful not to condition the entire validity of his arguments for the post-exilic origin of P on the date assumed for Deuteronomy, yet he treats the latter as a fact.

it appears to be the most appropriate instruction possible in the mouth of the nation's Begetter. No one of course would assert that it is necessary to believe in the new hypothesis in order to test it. The only essential is that the critic assume the attitude of an earnest inquirer, whose chief and only aim is carefully and judicially to examine the facts. On this point all fair-minded men are agreed. Indeed, there is much in common between the two opposing schools of criticism. For example, almost everybody would admit that the book of Deuteronomy is a popular law-book; that it is prophetic; that it was not intended for the desert but for Palestine; that it is Mosaic in spirit; that it contains ancient material, and that it stands closely related to the book of Covenant (Exod. 20. 23-23. 33). And further, almost any one would be willing also to admit that some part of Deuteronomy was contained in the "book" found by Hilkiah in Josiah's eighteenth year (2 Kings 22. 8), and that as a law-book it was well adapted to the needs of Josiah's age. The question really at issue, therefore, is none of these things. Neither is it one of authorship, primarily, though that to some is an important matter; neither is it one of unity, though the unity of Deuteronomy is easier to demonstrate than that of some other Old Testament books; nor yet a question of the origin of the *kernel* only, for after a book has been analyzed and disintegrated, it is much simpler to account for the origin of a part than of the whole; but the real question in the criticism of Deuteronomy, for us at least, is its *date*. When was it composed? What was the motive? Was it written late and put into the mouth of Moses *in order to bring about a reformation*? In its conception and genesis was it written long after Moses with the *intention to reform*, or is it rather an ancient law-code *carrying with it the potentiality of reform*? In other words, is the book of Deuteronomy the product of *Mosaism* or of 8th century

Prophecy? And if ancient, does it contain nothing but what is demonstrably ancient? These are the primary questions at issue, and the points above all others to be kept constantly in mind in the following discussion.

I.

THE BASIS OF CRITICISM.

The fundamental justification of criticism in attempting to change the traditional date of Deuteronomy's composition lies in the *facts* themselves. The problem we have set before us accordingly involves a re-examination of these facts. This we propose to conduct along three different lines of investigation quite independent of one another, viz., *A*, Deuteronomy and its relation to the middle books of the Pentateuch; *B*, Deuteronomy and its relation to the historical and prophetic books of the Old Testament; *C*, Deuteronomy's witness to itself.

A. Deuteronomy and its relation to the middle books of the Pentateuch. Herein lies the primary justification of criticism. Variations exist between Deuteronomy and the other books of the Law which can only with the greatest difficulty be reconciled.¹ Were they numerous, and could they be shown to be actual discrepancies or contradictions either in history or law, they would necessarily have a most important bearing both upon the unity of the Pentateuch and the origin of its component parts. On the other hand, if the variations are unimportant, or if in the majority of cases they are obviously doubtful, then the greatest caution must be used in deducting conclusions from them. Indeed, the examination of such facts requires the utmost care. For in any code of Law, be it Hebrew or be it Roman,

¹ Dr. Driver, in his *Critical and Exegetical Commentary on Deuteronomy*, 1895, pp. xxxiv. ff., having collected the most striking variations between Deuteronomy and the preceding books of the Pentateuch, discusses them *seriatim*.

apparent discrepancies may seem to exist when in fact none can with certainty be demonstrated. "Each case must be considered with reference to its own particular circumstances."¹

1. *Discrepancies in History.* Are the following variations real discrepancies? (1) Concerning the appointment of judges (Deut. 1. 9-13 and Exod. 18. 13-26). In Deuteronomy *Moses* suggests to Israel the choosing of wise men to assist him in judging the people, whereas in Exodus *his father-in-law, Jethro*, first suggests the idea, whereupon *Moses* chooses them without consulting Israel. The variation here obviously enough is not a real discrepancy, because incompleteness of statement is not necessarily a defect. The author's *motives* must be studied. In Deuteronomy it is evident that the author is too intent upon his object to enter into unimportant details; for example, later in the same chapter he does not pause to say that the spies searched out the *whole* country of Palestine as far as Hamath (cf. Num. 13. 21-25), but simply states that they went "unto the valley of Eshcol and searched it out" (Deut. 1. 24). So in the case before us the author might have inserted the name of Jethro for the sake of completeness, but, being unnecessary from his standpoint, it would have only lessened (by entering into details) the cogency of his argument and weakened the force of his oratory. (2) Concerning the plan of sending spies (Deut. 1. 22, 23, and Num. 13. 1-3). In Deuteronomy the plan of sending spies is represented as having been made by the people; in Numbers as due to the commandment of the Lord. Thus in Deuteronomy it is stated that the suggestion had the approval of *Moses* (1. 23), but it is not stated that it had

¹ Cf. Lord Mackenzie's *Studies in Roman Law*, pp. 1, 23, 28, quoted by the anonymous author (now known to be James Sime) of *Deuteronomy the People's Book*, 1877, pp. 279-80. Cf. also Knötel on Wolf's self-contradictions in *Homer. Bibliotheca Sacra*, Oct., 1897, p. 697.

Jehovah's also. It is, however, almost unthinkable that the author of Deuteronomy here endeavours to represent Moses as taking advantage of the people through possible ignorance on their part that the plan was also approved of by God. The two accounts are separately incomplete rather than discrepant. (3) The grounds given for preventing Moses from entering Canaan (Deut. 1. 37, 38; cf. 3. 26, 4. 21; and Num. 20. 12; cf. 27. 13, 14). In Deuteronomy Moses is prohibited from entering Canaan on account of the people; in Numbers, on account of his presumption in striking the rock in Kadesh. But both codes teach plainly that *Israel* sinned (Deut. 1. 37) in chiding with Moses (Num. 20. 3) through rebellion (Num. 20. 10) and by striving with the Lord (Num. 20. 13); and, what is equally important, both codes explicitly affirm that Moses was prevented from entering Canaan on account of *his own* presumption (Num. 20. 12, Deut. 32. 50, 51—the latter denied to D on insufficient grounds). The time element in both passages (Deut. 1. 37, 38, Num. 20. 12) is uncertain. It cannot be shown that in the one case the event is connected with the second year of the Exodus, whereas in the other with the thirty-ninth. (4) The time spent in Kadesh (Deut. 1. 46, 2. 1, 14, and Num. 14. 28-37). According to Deuteronomy it might be thought to appear that Israel spent the thirty-eight years in the wilderness *away from* Kadesh (2. 14) in wandering about Edom (2. 1); while in Numbers the thirty-eight years were spent *in* Kadesh (14. 28 f.). But, on the contrary, both codes agree that Israel "abode" an indefinite period in Kadesh (Num. 20. 1, Deut. 1. 46); and both teach quite explicitly that Israel spent a long time away from Kadesh "in the wilderness" wandering (Num. 14. 33, "thirty-nine years"; Deut. 2. 1, "many days").¹ And besides this, we are not justified

¹ Kittel (*A History of the Hebrews*, vol. i., transl. by Taylor, pp., 231-288), remarks on this point: "The sources are unanimous as to Israel's having

perhaps in confounding "Kadesh" in Deuteronomy 1. 46, Numbers 13. 26, 20. 1, 14, etc.,¹ with "Kadesh-barnea" in Deuteronomy 2. 14, Numbers 32. 8, 34, 4, etc. Kadesh was the *region about Kadesh-barnea*—a wilderness like the desert of Bered (cf. Gen. 16. 14, Ps. 29. 8). Moses himself may have spent some time in the immediate vicinity of Kadesh-barnea where the fountains of water were, but for the sake of pasturage Israel's hosts would be forced to scatter throughout the neighbouring wilderness. (5) Moses' fasting in the Mount (Deut. 9. 9 and Exod. 32.-34.). In Deuteronomy Moses is described as having fasted on the occasion of his *first* visit to the Mount; in Exodus, on the *second* visit only (Exod. 34. 28).² The difficulty is, Deuteronomy implies that Moses fasted on both occasions (9. 9, 10. 10), whereas Exodus records the second instance only; another case in which one account is *more complete* than the other but not necessarily at variance. (6) The terms of Moses' intercession (Deut. 9. 25-29). The difficulty here is not that any discrepancy exists between Deuteronomy 9. 25-29 and any other parallel passage, but rather why "the terms of Moses' own intercession," as here reproduced, are borrowed not from either Exodus 32. 31 f. or Exodus 34. 9, 28, but from Exodus 32. 11-13. This, however, involves the hypothesis of a *third* visit to the mountain, which, as we have seen, is unwarranted. Moreover,

dwelt a long time in Kadesh and the neighbourhood before setting out for the field of Moab."

¹ The only apparent exception is Num. 20. 16, in which קָדֵשׁ (translated "city") is to be taken as a word of broader significance, embracing the idea of "encampment," "surrounded place," or "fortified camp" (cf. H. C. Trumbull, *Kadesh-Barnea*, 1884, pp. 83, 84).

² Dr. Driver (*Critical Comm. on Deut.*, 1895, p. xxxvi.) supposes that, "according to Exod. 32.-34., Moses was *three* times in the mount (32. 1 f., 32. 31, 34. 4)"; but in one of these passages (Exod. 32. 31) the return of Moses is "unto the Lord" (presumably in prayer), not unto the Lord (in the mount). This interpretation is confirmed by the use of the word הָיָה (32. 34), "go," not הָיָה, "go, get thee down," as in 32. 7 (cf. 34. 29). Moses was, therefore, very probably but *twice* in the mount.

the circumstances connected with the intercession mentioned in Deuteronomy 9. 25-29 (as in Exod. 32. 30-32) do not demand that we regard it as an intercession *in the mount*. (7) The ark of the covenant (Deut. 10. 1-5 and Exod. 25. 10 f.; cf. Exod. 34. 1-4, 28, 37. 1 f.). Two difficulties exist here: first, as to *who* made the ark, Moses or Bezaleel (but it is hardly necessary to show that Moses may still have *made* it, though Bezaleel performed the manual labour); second, as to the *time* when Moses received and executed the divine command to make it. In Deuteronomy 10. 1-5 Moses is commanded to make the ark *after* the destruction of the calf; he obeys, and reascends the mount to receive the new tables of the law. In Exodus 25. 10 f., on the other hand, he was commanded to do so apparently during his first sojourn in the mount, *before* the episode of the golden calf, but its fulfilment was delayed till his second return from the mount.¹ There is a real difficulty here, but unimportant because the expression "at that time," in Deuteronomy 10. 1, renders it very uncertain as regards *when* the command was actually given. There is also a degree of uncertainty as to *time* in Exodus 25. 10, 37. 1, though the contexts relieve the difficulty to a large extent. The chronology of events is very probably as follows: God commanded Moses to make an ark when He was with him in the mount on the first visit (cf. Exod. 24. 12, 18, 25. 10), and at the same time designated Bezaleel to make it (Exod. 31. 2, 7). Moses then descended from the mount, the tables are broken at the sight of the golden calf, the people are punished, and, after long communion with God in the tabernacle (Exod. 33. 9-11), Moses is bidden to make two other tables. He does so, and, at God's command, leaves orders with Bezaleel for the ark to be constructed, and goes again up into the mount (Deut.

¹ Cf. J. E. Carpenter's article, "The Book of Deuteronomy," in the *Modern Review*, iv., 1883, p. 264; also Driver's *Comm. on Deut.*, 1895, p. xxxvi.

10. 1, Exod. 34. 1). On the second visit Moses receives the tables, brings them down, and puts them into the ark which Bezaleel had meanwhile made and prepared (Deut. 10. 5). The accounts contained in Exodus 36.-40. respecting the construction of the tabernacle, ark, altar, etc., are not necessarily chronological, but are arranged by the historian rather in order of their importance—tabernacle, ark, altar, the priestly attire, etc. Hence the records given in the two codes are not necessarily discrepant, but mutually supplementary; our difficulty in interpreting them being due largely to our inability to grasp the motives and varying situations of the author, be he one or more. (8) Israel's journeyings in the wilderness (Deut. 10. 6, 7 and Num. 33. 31-33, 38). One difficulty here is the present position of verses 6 and 7 in Deuteronomy 10. They better belong between verses 11 and 12, where they very possibly originally stood. Or these verses (6 and 7), being of a parenthetical character (not including verses 8 and 9 as in R.V.), it is even quite possible that they never really belonged to the original text of Deuteronomy. Second, the stations are not mentioned in the same order (cf. Deut. 10. 6, 7, and Num. 33. 31-33). However, the two accounts are not necessarily parallels; neither do they claim to be catalogues of Israel's movements at any given or definite time; nor in truth can the names of the places be identified. A third difficulty is the fact that, according to Deuteronomy 10. 6, Aaron dies in *Moserah*, whereas, according to Numbers 33. 38, he dies in *Mount Hor*. But nothing is known concerning the place called Moserah, and until we have evidence that there was no place in Mount Hor with that name, we cannot justly claim that there is a discrepancy between the account in Deuteronomy and that in Numbers. (9) The consecration of the tribe of Levi (Deut. 10. 8, 9, Exod. 28.-29., Lev. 8., Num. 3. 5-10). According to Deuteronomy 10. 8, 9, the consecration of the

tribe of Levi must be dated much later than the other passages in Exodus, Leviticus, and Numbers would imply. Here again the troublesome point is one of *time*. But aside from the ambiguous expression, "at that time" (v. 8), which is too indefinite to build a theory of "divergent traditions" upon, the difficulty is quite removed, as in the former instance, by placing verses 6 and 7 between verses 11 and 12.

2. *Variations in Law.* (a) Modifications in Deuteronomy of the laws of JE (Exod. 20-23). Dr. Driver¹ points out four of importance: (1) Concerning Hebrew bondmen and bondwomen (Exod. 21. 2-11 and Deut. 15. 12).² In this case the supposition is that the law of Deuteronomy originated in a later stage of society than that of Exodus. Thus in Exodus a bondman and his wife, after serving six years, are granted freedom in the seventh (vv. 2, 3); but a "daughter" sold by her father as a maid-servant is not allowed to go free as the men-servants do (v. 7). In Deuteronomy 15. 12 (cf. v. 17), on the other hand, a Hebrew man or a Hebrew woman, after serving six years, are likewise allowed to go free and without limitation. Up to this point the two versions of this law in Exodus and Deuteronomy correspond and are parallel. The law, however, concerning "a daughter" sold by her father as a maid-servant (Exod. 21. 7-11, which is quite another paragraph), *has no parallel in Deuteronomy 15. 12 f.*, hence cannot, in our judgment, be considered modified to suit a later stage of society. (2) Asylum for manslaughter (Exod. 21. 13 and Deut. 19. 1-3). From Exodus 21. 14 (cf. 1 Kings 1. 50 f., 2. 28) it is obviously to be inferred that, in the desert at least, Israel's asylum for manslaughter was Jehovah's altar (אֲבִיבֵי); in Deuteronomy, on the contrary, definite cities are set apart. But Exodus 21. 13 also provides that

¹ *A Critical and Exegetical Commentary on Deuteronomy*, 1895, pp. xxxvii. f.

² Cf. Kleinert's *Das Deuteronomium u. der Deuteronomiker*, 1872, pp. 55 f.

a "place" (מִקְוִים, not a מִזְבֵּחַ) shall be appointed, whither the man-slayer may flee. Deuteronomy 19. 7, 9, goes a step further, and provides for three cities definitely to be set apart as places of refuge, with other possible three besides these three. There is confessedly a modification here, but not one which requires two hundred, or even two, years to account for it—only a different standpoint and a new motive. (3) The law of seduction (Exod. 22. 15, 16 (Eng. 16, 17), and Deut. 22. 28, 29). In this instance two difficulties are thought to exist: first, the *position* of the law; second, the *price* paid to the father as a compensation for the loss of a daughter. In Exodus the law stands at the close of a list of cases specifying pecuniary compensations for injury to property, implying that a seduced daughter is looked upon in Exodus as so much loss of *property* to her father; in Deuteronomy seduction is regarded rather as an offence against the laws of *moral purity*. In Exodus, again, the price (מִתְּוֵה) of a virgin is indefinite and variable; whereas in Deuteronomy it is a fixed fine of fifty shekels of silver. But first, the *order* in Exodus is not so significant, inasmuch as the law of seduction stands not only at the *close* of a list of cases relating to pecuniary compensations for injury to property, but at the *beginning* also of a list of regulations concerning moral purity. And second as to the price of a virgin, it is not known how much a מִתְּוֵה was; it may have fluctuated, or it may always have been fifty shekels of silver. (4) The Sabbatical year (Exod. 23. 10, 11, and Deut. 15. 1-6). In Exodus the provisions obviously are purely *agricultural*; in Deuteronomy, on the other hand, it is thought that these agricultural provisions are applied so as to form a check on the power of the creditor. But this modification cannot be said to be obvious, inasmuch as there is no hint of *land* or *agriculture* in the law of Deuteronomy. They are rather two independent laws touching the same general principle,

but codified under different circumstances and with different aims, both too utopian to be very late.

(β) Contradictions between the laws of D and P.¹ *Contradictions* are, if real, of much more serious character than either discrepancies or modifications, and argue strongly in favour of the new theory of the origin of the Pentateuch. (1) Concerning Priests and Levites (Deut. 18. 1a, 6-8 and Num. 16. 10, 35, 40). In Numbers a sharp distinction is drawn between priests (sons of Aaron) and common Levites: in Deuteronomy, on the contrary, priests and Levites are not distinguished carefully. The force of any possible contradiction between these passages, however, is broken by the fact that Deuteronomy 18. 6-8, as a matter of fact, does not invest a Levite with *priestly* but *Levitical* functions (cf. v. 7). Moreover, the book of Deuteronomy throughout teaches that not *all* the tribe, but *only* the tribe of Levi may exercise priestly functions, thus restricting the exercise of priestly prerogatives to one tribe. This, too, was perfectly consonant with the teaching of Leviticus and Numbers, because in the tribe of Levi were included both priests and common Levites. Furthermore the expression in Deuteronomy 18. 5, "him and his sons for ever," implies a *hereditary* priesthood, which is absolutely inexplicable apart from Leviticus and Numbers. (2) The maintenance of the priests and Levites (Deut. 18. 3 and Lev. 7. 32-34). On the supposition that these two accounts are meant to be parallel laws (which is not altogether certain), the variation concerning priestly dues is significant. In Deuteronomy "the shoulder and the cheeks and the maw" are specified as the priest's perquisites in a peace-offering; but in Leviticus "the wave breast and the

¹ That criticism should claim to have discovered "irreconcilable contradictions" between Deuteronomy (which *ex hypothesi* is the prophetic ideal of the 7th century) and P (which legalizes the praxis of pre-exilic times) is, of course, not impossible.

heave shoulder" (cf. Num. 18. 8-19). That is to say, both Deuteronomy and Leviticus agree that the priests' portions shall consist of a *shoulder* (all the different Hebrew terms employed being equivalent to this in meaning, cf. Lev. 7. 32, R.V. *marg.*); but as to the other parts, Leviticus 7. 34 prescribes "the wave breast," whereas Deuteronomy 18. 3, "the two cheeks and the maw (?)." The word translated "maw" is doubtful, being *ἄπαξ λεγομένον*. It is, nevertheless, difficult to say that "the wave breast" = "the two cheeks and the maw." Perhaps the priestly dues in Deuteronomy were not intended to stand parallel to those prescribed in Leviticus, but were meant to be given *in addition* to them. So Schultz,¹ following Jewish tradition from Philo and Josephus on down. This interpretation is confirmed by the clause, "The Lord is their inheritance, as He hath said unto them" (Deut. 18. 2), which implies not only the prior existence of a statute on the subject of priestly maintenance (cf. Num. 18. 20), but also that Israel was *already* acquainted with it.² (3) The country Levite and Levitical cities (Deut. 18. 6 and Num. 35. 1-8). The Deuteronomic passage describes the Levite as a "sojourner," having no settled residence, and, as some think, destitute of adequate maintenance; whereas in Numbers forty-eight cities are assigned to the tribe of Levi as places of residence. But it is not to be inferred from the latter passage (Num. 35. 1-8) that these forty-eight cities should be occupied by Levites exclusively. On the contrary, the Levites were not the sole occupants of the fields and towns assigned to them; they lived rather *among their brethren*, the other Israelites, having inheritance assigned to them

¹ *Das Deuteronomium erklart*, 1859, p. 59.

² W. L. Alexander (*The Pulpit Comm.*, "Deuteronomy," new edit., 1897, p. xxiv.) regards the relation of these laws as not discordant for the reason that "in either case the portions assigned to the priests were a gift from the people, distinct from and in addition to what the priest claimed as a part of his *inheritance from the Lord*."

for residence, and suburbs for their cattle. Hence the description, "The Levite within thy gates" (Deut. 12. 12, 18; 14. 27, etc.), which implies "not that the Levite was homeless, but that his home was within the precincts of one of the cities of Israel."¹ The regulation in Deut. 18. 6-8, therefore, is in all probability to be interpreted as a *special* law (in addition to that in Num. 35. 1-8, which is general) providing for any Levite not employed at the central sanctuary, who might sincerely choose to serve in holy rather than in secular (not necessarily semi-idolatrous) things, and who might come from "out of all Israel where he sojourned"—*i.e.* out of any of the forty-eight cities in which the tribe of Levi had residence either permanently or temporarily—and wish to serve in the central sanctuary. Such an one might come, according to the law of Deuteronomy, unto the place which the Lord should choose, minister like his brethren the Levites (not the priests), and receive like portions to eat, beside (and this is of special importance) the "private sources of his income," *i.e.* his inherited patrimony—*viz.* in the forty-eight Levitical cities. For what was a Levite's "patrimony" but his inheritance from God?² (4) Firstlings (Deut. 12. 6, 17-19; 15. 19, 20 and Num. 18. 18). In Deuteronomy the firstlings of oxen and sheep are to be eaten at the central sanctuary by the owner and his household; in Numbers the firstlings are to be brought unto the Lord (18. 15), and, having been duly dedicated, their flesh is placed by law at the disposal of the priests (18. 17, 18). But not *all* of their flesh was given to be eaten by the priests, as clearly appears from the clause, "as the wave breast and as the right shoulder are thine" (18. 18); nor in Deuteronomy,

¹ So W. L. Alexander, *Idem*, p. xxvi., who quotes Keil, *Comm. on Joshua*, p. 211, and Kitto, *Cyclopædia*, vol. ii., p. 826.

² Cf. W. H. Green, *Moses and the Prophets*, 1891, pp. 82, 83, n. 1.

on the other hand, that the people are to eat *all* of it.¹ In other words, according to Numbers, the flesh of firstlings is not to be eaten by the priests alone ; nor, according to Deuteronomy, by the owner alone. The contradiction, therefore, between these separate laws is only apparent. (5) Tithes (Deut. 14. 22-29 and Num. 18. 21-28). In Numbers 18. 21-24 the tithes of the heave offerings are assigned to the Levites, a tenth of which the Levites are commanded to offer as their heave offering through Aaron the priest unto the Lord (18. 26-28). In Deuteronomy a *yearly* tithe is enjoined to be consumed by the owner, his household, and the Levite within his gates (14. 22-27) ; and in addition every *third* year a tithe to be laid up within their gates for the Levite, the stranger, the fatherless, and the widow (14. 28, 29). The variation in statement here between Deuteronomy and Numbers is confessedly very confusing ; but, at the same time, it is not as contradictory as the language of two passages in the *legal* portion of Deuteronomy itself (viz. Deut. 14. 22 and 26. 12). In the first the author speaks of a *yearly* tithe only ; in the second, of a *triennial* ; e.g. "the third year, the year of tithing," in language which implies that the author knew of no other tithe. Yet no one, in view of the contexts, concludes that the two passages are contradictory (cf. 14. 28). So also with the case in hand. The apparent contradiction between the law of Numbers and that of Deuteronomy arises from the failure to see that Deuteronomy recognises the right of the Levites to partake of the tithes received from the people, in view of the fact that their inheritance is the Lord (cf. Deut. 10. 9 ; 18. 2). (6) The release of Hebrew slaves (Deut. 15. 12-18 and Lev. 25. 39-43). In Deuteronomy it is enjoined, in the case of a Hebrew who

¹ Cf. W. L. Alexander, *Idem*, p. xxiii. Curtis, *The Levitical Priests*, 1877, p. 40. Also Douglas' Essay on "The Deuteronomical Code" in the *Lex Mosaica*, 1894, p. 91.

has been sold to his brother and has served him six years as a slave (עֶבֶד), to release him in the seventh year; in Leviticus, on the other hand, if *through poverty* a man has been sold to his brother, the buyer is forbidden to make him serve as a slave (עֶבֶד), but is commanded to treat him as a *hired servant* (שָׂכִיר) and as a sojourner (תּוֹשָׁב), and dismiss him in the year of jubilee. The two laws clearly treat of different and independent cases, and accordingly, having nothing to do with each other, cannot be said to conflict. The true parallel to Leviticus 25. 39-43 is to be found in Deuteronomy 24. 14, 15, where, in terms similar to Leviticus, the command is given not to oppress the *hired servant* (שָׂכִיר) who is poor (עָנִי) or needy (אֲבִיוֹן), making likewise no distinction between a brother Hebrew and any stranger dwelling within Israel's gates. (7) The flesh of an animal dying of itself (Deut. 14. 21 and Lev. 17. 15). In Leviticus the Israelite, or the stranger, who eats that which has died of itself (נִבְלָה) is required to wash his clothes and be unclean until the evening (nothing being explicitly said whether such flesh should be eaten or not, but perfectly obvious that a *prohibition* and not a *permission* is in view, inasmuch as an action that must be atoned for by purification cannot be spoken of as allowed);¹ in Deuteronomy, on the contrary, laws of diet are prescribed for the Israelites, among which it is explicitly stated that the flesh of an animal dying of itself shall not be eaten by an Israelite (which is quite consonant with the implication contained in Lev. 17. 15, 16), because Israel is to be a holy people; such flesh either to be given to the stranger or sold to the alien (but without specifying who the stranger or the alien might be). From which it is clearly obvious that the variation is unimportant, not even approximating the nature of a contradiction. (8) The paschal sacrifice (Deut.

¹ Cf. Prof. Hommel's comment on *Nebhelah* in the *Expos. Times*, July, 1897, p. 473.

16. 2 and Exod. 12. 3-6). According to Exodus, when the Passover was instituted in Egypt, Israel were bidden to take a lamb (אֶשֶׁת) from among the sheep (בְּשָׂרִים) and from among the goats (עֵי); according to Deuteronomy, on the other hand, Israel are commanded, in celebrating the Passover, to sacrifice to Jehovah flock (צֹאן) and herd (בָּקָר). The alleged difference between the two accounts consists in this: in Exodus 12. 3-6 the paschal sacrifice is limited to a lamb; in Deuteronomy 16. 2 it may be either a sheep or an ox. But the word for lamb (אֶשֶׁת) cannot be restricted. It may mean either a lamb or a young goat,¹ i.e. one of the צֹאן or בָּקָר. Furthermore, in both passages the sheep are described, not as pasturing alone, but, in keeping with Oriental custom even to-day, *along with* cattle both large and small.

These are the only important variations existing between Deuteronomy and the other books of the Pentateuch. We recognise the difficulty involved in attempting to harmonize some of them. At the same time we appeal to the common everyday judgment of thinking men, and ask, with all seriousness, Is there a single variation among them all which is deserving of the name "contradiction"? Is it true that among them there are "discrepancies which cannot be reconciled"? Do they, after all that has been said, necessarily "bear witness to the existence of divergent traditions in our present Pentateuch"? The writer confesses that, though liberally inclined, he feels the deductions made from them by criticism are not fully warranted by the facts. Moreover, he experiences a certain unsatisfactoriness in making discrepancies the basis of procedure on any theory. For even if real discrepancies and contradictions actually existed between Deuteronomy and the other books of the *Torah*, that fact does not necessarily

¹ So Dillmann, *Die Bücher Exodus u. Leviticus*, 2. Aufl., 1880, p. 101.

imply that they are due to difference of authorship. The author might quite as easily have made such slips himself as the editor or editors. A single writer is capable of unadjusted and even of conflicting conceptions and statements. Beside, it is one of the easiest of tasks to point the finger at *apparent* discrepancies. Apparent contradictions may indeed be found in Deuteronomy alone.¹

On this point, therefore, we conclude, not with Carpenter,² that "the history of Israel's law codes is in fact an epitome of the history of Israel's religion," in that "they represent successive stages of belief and practice," but that variations, quite as great and difficult (to us) to harmonize as those just discussed above, might exist in a code drawn up by a *single* hand and promulgated in a *single* lifetime; for in every case the alleged conflict partakes of the character of a critical *inference* based upon a more or less doubtful interpretation of the passages in hand.

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¹ *E.g.* 7. 22 and 9. 3 (Dillmann); 19. 1-10 and 4. 41-43 (Wellhausen, *Die Composition des Hexateuchs*, 2. Ausg., 1889, p. 207, n.); 5. 5 and 5. 4; 10. 4; 4. 12, 15, 36 (Kosters); 7. 7 and 10. 12 (D'Eichthal, *Mélanges de Critique Biblique*, 1886, p. 292); 2. 14-16 and 8. 2-4; 9. 2-7 (Carpenter); 31. 2 and 34. 7 (Kayser, *Das vorexilische Buch*, etc., 1874, pp. 145-6); also 7. 3 and 21. 10-14; 11. 2 f. and 2. 15, etc.

² *Ut supra*, p. 253; cf. Kleinert, p. 77, and Driver, pp. xxxix.-xli.