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The Independent Legislation of Deuteronomy.

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THE importance of the Book of Deuteronomy in all discussions touching the age and origin of the Pentateuch cannot well be over-estimated. Leading critics, indeed, like De Wette¹ and Graf,² have regarded it as decisive battle-ground. Lying in the midst of the supposed development of Pentateuchal literature from Moses to Ezra, it ought to show, if it appear anywhere, positive evidence of the evolution then in progress. It ought to show this especially in its legislation, which, as the name "Deuteronomy" imports, forms the body, and is undoubtedly the main object of the work. It ought to show it most of all in such laws as are original with this book, and intrinsically represent it.

It is said of the Pentateuchal codes in general that they but reflect, in their several parts, the changing social and ethical standard of the Hebrew people during many hundred years previous to the Exile. If this be true, and they are in no sense ideal or prophetic in character,

¹ *Lehrbuch der historisch-kritischen Einleitung*. Neu bearbeitet von Schrader, Berlin, 1869, pp. 322 ff., 322 ff.; and *Studien u. Kritiken*, 1837, p. 953: "The view taken of Deuteronomy is for the criticism of the Pentateuch decisive."

² *Die Geschichtlichen Bücher des Alten Testaments*, p. 4 f.; cf. also Kleinert, *Das Deuteronomium*, p. 3: "Denn zwar dieses erkennt De Wette an, und hat damit für seine Nachfolger einen Fingerzeig gegeben, dessen Nichtbeachtung fast immer der kritischen Untersuchung zur Schädigung gereicht hat: dass in dem Deuteronomium das *δὸς μοι ποῦ στῶ* für die ganze kritische Frage über den Pentateuch gegeben ist." Wellhausen, on the other hand, with a good deal of unnecessary bravado, rules the whole matter out of the discussion as something already settled. He says (*Geschichte*, p. 9): "Ueber den Ursprung des Deuteronomiums herrscht noch weniger Zweifel; in allen Kreisen, wo überhaupt auf Anerkennung wissenschaftlicher Resultate zu rechnen ist, wird anerkannt, dass es in der Zeit verfasst ist, in der es entdeckt . . . wurde."

the peculiar product of a superhuman revelation, or inspiration at the genesis, and throughout the progress of a much more limited development, the fact should appear most plainly, not in the features that are common to all of them, but rather in such as are exceptional and individual. There are some laws, as for example that regarding public worship, or that of the feasts, which, in a form more or less modified, appear in each of the three great divisions of the Pentateuchal legislation. In such cases there is ample room for discussion, in fact, imperative need of it, on a host of questions quite apart from the main question. It must first of all be determined whether these diverse forms are, as alleged, the result of widely varying circumstances of place and time, or may fairly be regarded as evidence simply of another point of view within the same period, and on the part of the same legislator. Where, however, a law is found in but one of these divisions, and in but one form, the area of debatable ground is greatly lessened. We are then prepared at once to test our critical theory concerning the age of the document, and to do it under circumstances of the least embarrassment.

Now, it is well known that no inconsiderable portion of the Deuteronomic laws are of this character. And it is a highly significant fact in itself, since it is just what we might expect on the traditional hypothesis, that this code chronologically concludes the legislation of the Pentateuch. But it is also of value as furnishing a capital opportunity to prove the validity of a favorite tenet of many modern critics.

Out of the full score of these early laws original with Deuteronomy, and confined to it, there are some, it is true, of such a nature that a chronological test can only with difficulty be applied to them. But with the majority it is quite otherwise. Their response to such a test is both immediate and categorically direct. The only question remaining to be asked, *i.e.*, for those who will press a question of this sort, is whether these laws are seriously meant, or, like the so-called "Blue Laws" of Connecticut, are but *quasi* statutes, whose originator was satisfied if they were founded on fact, and were not easily distinguishable from fact.

The first example of a law peculiar to Deuteronomy is that concerning *seduction to idolatry*. It occupies the entire thirteenth chapter, and appears in three sections: (1) as applying to false prophets (vv. 2-6); (2) to individual members of the community whom it rigorously singles out from the most intimate relationships (vv. 7-12); and (3) to whole cities which might become infected with the crime

(vv. 13-19). The close logical connection, both of the subject and its treatment with what immediately precedes, is the first thing that attracts attention.

The Deuteronomic code, opening with the twelfth chapter, begins with a command addressed to the people to totally destroy idolatry and remove every vestige of it from the land which the Lord their God is giving them as a possession (xii. 2-4). Next follow directions respecting their own place of worship. There is to be but one such place, and the Lord himself will designate it (xii. 5-28). Then comes the present law prohibiting under penalties, the severest known to the Pentateuch, efforts from any quarter to draw away the people into heathenism. In these three phases of the law, together with a later section (xvii. 2-5) on the punishment of Hebrew idolaters, we have what seems intended to be a complete presentation of the subject as well in its positive as its negative side. And it is not easy to see how any code could have more fully met the requirements of the case on the supposition that the Israelitish people are what and where they purport to be. It offers, by far, the most developed form of Pentateuchal legislation on this theme. That of the middle books, notwithstanding the fact that it is supposed to have originated during the Exile, when the popular spirit of opposition to idolatry really culminated, is not only less comprehensive but much less stringent. And what more natural? The gigantic evil against which a struggle, unsuccessful for a full millennium was to be undertaken, now fairly confronted them. Every part of the law breathes the spirit of originality and of initiatory movement. There are two allusions to the exodus from Egypt (vv. 6, 11). The crossing of the Jordan is in immediate prospect; participial forms and the future tense of the verb characterize every reference to the promised land.

On the contrary, there is nothing in the times of King Josiah, eight centuries later, where critics would anchor our code, save his singular zeal for purity of worship, that could suggest the origin of such a statute in his time. He did, it is true, slay on their own altars some priests of the high places of Samaria (II. Kings xxiii. 20); but the history of that period furnishes no occasion for the peculiar specifications of our law touching idolatrous *prophets* (vv. 2-6); and its form, in other respects, especially in its allusions to Canaanitish neighbors, would have been an anachronism at so late a day. It is universally admitted that the reforms of Josiah were largely inspired and directed by this law. But how is it to be accounted for, unless by the account it gives of itself? On no principle of development could it have been

the spontaneous product of the age wherein it wrought so mightily. The reformation in the days of Hezekiah and other earlier kings is also evidence against it. If, however, from the period of the Conquest, it had existed and lain comparatively dormant, but now, when the divided kingdom was hastening to its fall, under the divine Providence it had come to its inherited right and its legitimate influence, the prodigious effects produced may be readily understood. There is many an analogous fact in the history of Christianity. In the vegetable world, too, as is well known, there are plants that reach their bloom only after lengthy periods of seeming unproductiveness. But there is no period when the flower is not present in germ, or that all the energies of the plant are not steadily working towards it.

The next independent law of Deuteronomy relates to the *appointment of judges and officers* (xvi. 18), "Judges and officers shall ye appoint for yourselves in all your gates." By "judges," magistrates seem to be meant, and by "officers," their assistants. In a second passage (xvii. 8-13) it is further enjoined that if these local magistrates find any case brought before them for decision too difficult, they — the judges or elders, not the people — may carry it up to the central place of worship and submit it to the Levitical priests or to the judge, *i.e.*, supreme magistrate who might be ruling in those days; a verdict thus obtained should be irreversible. The law obviously contemplates a settled order of things in the land of Canaan. It does not, however, presuppose it. The cities referred to are those which the Lord their God is *on the point of giving* them (נִרְתָּן). It shows, no doubt, an advance as it respects the institutions of the wilderness (Ex. xviii. 13-26; cf. Numb. xi. 16, 17, 24-29), but an advance along the same line. The original provision for seventy elders is so extended as to adapt it to circumstances in immediate prospect. The dignity and the civil power which, up to this time, had inhered in Moses and the high priest are now to be vested in the priests of the central sanctuary and the chief magistrate of the nation.

And this arrangement seems actually to have been carried out, at least in its main features, in the post-Mosaic history, by Joshua (viii. 33, xxiv. 1), during the time of the Judges (cf. Ruth iv. 1-9), and in the life of Samuel. It is maintained, however, that in this whole matter our author simply imputes to Moses something that must have originated at a much later day. Even so conservative a critic as Riehm¹ affirms that the existence in his time of a court of appeal is

¹ *Gesetzgebung Moses*, p. 62; *Wörterbuch*, s.v. "Gerichtswesen."

presupposed by the writer of Deuteronomy. And inasmuch as the history gives us no account of an institution like it before the reign of Jehosaphat (II. Chron. xix. 8-11) five centuries later, we must conclude that the law relating to judges and officers was made after his day. To this reasoning and conclusion alike we are quite unprepared to subscribe. For, in the first place, if anything is taken for granted in the Deuteronomic law of the higher court, it is the possibility, and the custom of appeal, not the existence of this very court. With such a general custom the people had been familiar at least for a generation, the harder questions having all along been carried to Moses and Aaron, and after Aaron's death to Moses and Eleazer (Numb. xxvii. 2). This practice was now to be continued, the highest civil authority acting for the lawgiver. In the second place, the court instituted by Jehosaphat was, in some of its features, a totally different affair from the one before us. It was composed of priests *and* Levites, instead of Levitical priests. It had a civil as well as ecclesiastical head acting at one and the same time. Our law presents them as acting independently. The civil head is represented by a family chief of Judah (נָגִיד), an official unknown to Deuteronomy in this connection, with whom are associated also some of the chiefs of the fathers of Israel; while the high priest is the ecclesiastical head. In the third place, we find David, a hundred and fifty years before the time of Jehosaphat, apparently guided in his appointment of officials by the Deuteronomic code (I. Chron. xxiii. 1-4, xxvi. 29-32). It might, indeed, be objected that this account of what David did is found only in the much depreciated history of the Chronicler. But if the second of his books be competent authority for the alleged acts of Jehosaphat, the first should be thought no less so for those of David.

The law for the *punishment of Hebrew idolaters* (xvii. 2-5) has been already casually mentioned in connection with that concerning *seduction to idolatry*. Like the latter, it professes to be anticipatory legislation (v. 2); and there would be no further need of calling attention to it, were it not for a peculiar species of idolatry to which it refers: "And hath gone and served other gods and worshipped them as the sun or the moon or any of the host of heaven which I have not commanded" (v. 3). The worship of the heavenly bodies, Sabæanism, is here recognized as a possibility. But from the historical books of the Old Testament (II. Kings xxi. 3 ff.; II. Chron. xxxiii. 3 ff.), we learn that the public introduction of such worship *in Judah* took place in the reign of Manasseh at the beginning of the

seventh century before Christ. It is accordingly held that the present law would be out of place in the time of Moses, the tacit assumption, of course, being that a law never precedes, but always follows, the outbreak of the crime against which it is directed.

But, were such a principle to be admitted in the present case, the conclusion reached would by no means follow, since there is overwhelming evidence that this particular form of idolatry had been known to the Israelites from the beginning. The kingdom of *Israel* had practised it long before the time of Manasseh, as witnessed to by the Books of Kings (II. Kings xvii. 16). Amos, too (v. 26 f.), during the reign of Jeroboam II., makes direct reference, as is now acknowledged by the best authorities, to the worship of Saturn in the northern kingdom, naming the planet both by its Accadian and its Assyrian title.¹

It is indisputable, moreover, that sun, moon, and star worship was one of the most primitive and universal forms of idolatry among the leading nations with which the Hebrews during the Mosaic period came in contact. It lay at the basis of the Baal and Astarte cultus of their Canaanitish neighbors. Its prevalence in Egypt is proved by the monuments.² And how seriously Abraham's Chaldæan ancestry was devoted to it, appears from the fact that in the wedge-shaped inscriptions of their day, the uniform ideographic representation of the divinity was a star.³ Hence, so far from finding it strange that we meet with an alleged Mosaic law of this sort in Deuteronomy, we should think it strange if under the circumstances supposed it were not there.

¹ See Riehm's *Wörterbuch*, s.v. "Assyrien," "Sonne," "Sterne"; also Schrader, *Die Keilinschriften*, etc. 2te Aufl., p. 442, and in *Studien und Kritiken*, 1874, pp. 324-322. Hommel, too (*Die Vorsemitischen Culturen* i. (2), p. 204), speaks of the renowned temple of the goddess of the Moon, which the old king of Ur, Ur-bagas (c. 2870 B.C.), and his son Dungi built; and still further (p. 209), of a temple of the Sun at Larsa, the Ellasar of Gen. xiv. 1. Rawlinson, in *The Religions of the Ancient World* (p. 145), says of the religion of the Phœnicians, "That Shamas or Shemesh, 'the Sun,' was worshipped separately from Baal has been already mentioned. In Assyria and Babylonia he was one of the foremost deities; and his cult among the Phœnicians is witnessed to by such names as Abed-Shemesh, which is found in two of the native inscriptions. . . . The sun-worship of the Phœnicians seems to have been accompanied by a use of sun-innages of which we have perhaps a specimen in the accompanying figure which occurs on a votive tablet found in Numidia."

² Cf. Ebers, s.v. "Egypten," in Riehm's *Wörterb.*; also s.v. "Gebet," *idem*.

³ *Idem.*, s.v. "Assyrien." Cf. Rawlinson, *Ancient Mon.*, i., pp. 125, 127.

Besides, the form of the statute is not to be overlooked: "And hath gone and served other gods . . . which I have not commanded." A certain kind of worship then had been enjoined. We cannot well be mistaken in supposing that the second of the ten commandments is specially referred to. "Thou shalt have no other gods before me," and especially the clause, "Thou shalt not make unto thee any graven image or any likeness of that which is in heaven above" (Ex. xx. 3, 4). And we are confirmed in this view by what is said in a previous chapter of Deuteronomy (iv. 19), where the writer, indirectly commenting on the giving of the law at Horeb, alludes to this very thing, *i.e.*, interprets the second commandment, as it would seem in this sense: "And lest thou lift up thine eyes unto heaven, and when thou seest the sun and the moon and the stars, all the host of heaven, shouldst be led to worship and serve them." So that the force of the concluding words of our law, "worship any of the host of heaven which I have not commanded," may fairly be said to be, "which I have elsewhere already forbidden."

We come next in order to the *law of the king* (Deut. xvii. 14-20). Fault has often been found with the original political constitution of the Hebrew people, as formulated in the Pentateuch, on the ground of its impracticability. It was, to some extent, impracticable and for a very natural reason. A pure theocracy would be wholly practicable only among unfallen or perfectly sanctified men. But it is not to be regarded as a defect of the Mosaic constitution that it put forward so unique and noble an ideal; that it pursued it till its practicability at that time, and under the circumstances that then prevailed, was fully demonstrated; or, further, that from the first it foresaw the exigencies that would arise (Gen. xvii. 16, xxxvi. 31, xlix. 10), and made provision for them by means of statutes designed to regulate and limit what might not be wholly prevented. The law of the king, as we find it recorded in Deuteronomy, is, on its face, framed in anticipation of a juncture to arise. It looks forward to a period when the Canaanites shall have been dispossessed, their land apportioned, and Israel definitely settled in it (*cf.* יושב, יריש, בא). The demand for a king would then arise. It would come from the people. Permission is granted to comply with this demand conditionally, and directions given in detail, concerning the manner of the sovereign's choice, the title he shall bear (מלך not שליט or מושל), the government of his household, his income, his relative position among his brethren, the succession and other matters, in a way to set him wholly apart from any contemporaneous kings, so, indeed, as to show that he

was to be a king under the peculiar conditions of a government that must still be recognized as, in the end, theocratic. The law, in short, is Mosaic in the finest shading of its phraseology. It is true that some temptations and evil practices of kings in general—in the event proving to be also those of later Israelitish kings, like Solomon—seem to have been directly in mind throughout, and guarded against. But with the knowledge of what the kings of Egypt and Canaan were, what less could have been expected of such a man as Moses, to say nothing of the fact that our book represents him as a prophet.

On the other hand, there are features of this law which plainly preclude the theory of its supposed origin, near the close of the seventh century, B.C. What sense in such a supposition in the injunction that a foreigner was not to be set up as king? Already, for centuries, the succession had been firmly established in the family of David.¹

Or, in forbidding to lead the people back again to Egypt? Such a return had not been thought of since the first crossing of the Jordan; although so familiar a subject in the *mouthis of the people* in Moses' time (Ex. xvi. 3; Numb. xi. 5, xiv. 4).

It is true that we do not find Samuel, when long after the subject of a king is broached by the discontented people (I. Sam. viii. 1 ff.), quoting this law. And there is excellent reason for his not doing so. He is looking at the matter and speaking of it from the point of view of his petitioners. He calls attention to the additional and oppressive burdens the new office will entail on them; to the more than questionable spirit and form in which their request is made. It is true that he feels obliged to condemn the project, as it is brought before him, just as Gideon had already done (Judges viii. 22–23); and that, finally, in those particular circumstances—as in any circumstances if the best thing were wanted—the request for a king is conceded under protest. But there is just as little reason on this ground for holding that Samuel was unacquainted with the Deuteronomic law of the king, as there is for holding that Hosea was not acquainted with it, who

¹ Delitzsch (*Zeitschrift für kirchliche Wissenschaft*, etc., 1880, p. 565) has sufficiently answered the point made by Prof. Robertson Smith (*Answer to the Amended Libel*, p. 26), who refers to Is. viii. 5, "wonach die syrisch-ephraimitische Ligue die Davidische Dynastie zu beseitigen und einen Syrer Ben-Tab'el zum Könige von Juda zu machen gedachte, indem er dabei bemerkt, dass eine Partei in Juda dieses Vorhaben begünstigte. Aber woher weiss er dass so gewiss? Es ist nichts als auf streitiger und mehr als unwahrscheinlicher Deutung von Ies. 8, 6 beruhende Vermuthung."

also says (xiii. 11) that God gave to Israel a king in his anger; or that St. Stephen (Acts xiii. 21) was ignorant both of Samuel's and of Hosea's words, because in his reference to the choice of Saul as king he says not a word of there being any opposition to it. The *people* of Samuel's time, it is evident, knew of the law; they do not overlook the advantage they have in it in the appeal they make. They use its language almost word for word in Hebrew, "make us a king to judge us like all the nations" (I. Sam. viii. 5; *cf.* Deut. xvii. 14). And it has been noticed that the whole context is saturated with Deuteronomic expressions and ideas.¹

Not inferior in importance to this law of the king, among the independent statutes of the present code, is that relating to *the prophet*

¹ *Cf.* Sime, *Kingdom of All Israel* (London, 1883), pp. 35-38; and Prof. Green in the *Sunday School Times* for Oct. 6, 13, 1883. The ingenious theory of Ewald adopted by Riehm (*Gesetzgebung Moses*, p. 81 ff.), that in the specification of our law that the king "shall not multiply horses to himself, nor cause the people to return to Egypt, to the end that he may multiply horses," the hiring out of Israelites as mercenaries to the Egyptian king is meant; and that such a state of things might well have existed in the time of Manasseh is utterly lacking in documentary support. The only passage that even looks in this direction is the threatening contained in Deut. xxviii. 68, that in case of unfaithfulness the people shall be carried down to Egypt in ships. Aside from this there is not a hint of such a possibility in the biblical books. And it is impossible to suppose that if a project so repugnant to the Jewish spirit and institutions had been entertained, it would have been so completely overlooked.

Moreover, in the narrative of the crowning of Joash, c. 878 B.C. (II. Kings xi. 12), there is a notable allusion to a law of some kind that was committed to him. It is said of the high-priest on that occasion that he brought forth the king's son, and put the crown and the testimony upon him. On the word הערות Thenius says (*Com., in loco*) that it was not an ornament, not a phylactery on the crown, not the royal insignia, but the law, a book in which Mosaic regulations had been written. This conclusion is certainly in harmony with the uniform employment of the word in the Old Testament. And Kleinert (*Deuteronomium*, p. 97), with other first-rate authorities supposes that our Deuteronomic law of the king is specially meant. Whether this be so, or as seems more likely, it be the entire code of Deuteronomy that is referred to (*cf.* Deut. xvii. 18, 19), there can be little doubt that it was considered the proper thing to do to put a written copy of some portion of the Pentateuchal law in the hands of the king on his accession. And since this is one of the very things enjoined in the statute we are now considering, it is to be inferred that the custom arose in this way through the mediation of the priests, in whose hands it was kept.

(xviii. 15-19). "A prophet from the midst of thee, from thy brethren like myself, shall the Lord thy God raise up unto thee," etc. It is most singularly introduced in connection with a prohibition of magic, to which, in fact, it holds a subordinate position. Moses is the speaker. He assumes as something well understood, that this prophet had been already provided for at the giving of the law in Sinai, although we have no other record of such a provision. He declares that when he comes he will be the mouth-piece of Jehovah to Israel, and that whoever refuses to hear him, it will be required of him.

Nowhere is the personality of the great mediator of the Sinaitic covenant more distinctly impressed on an utterance of the Pentateuch. Now, let it be supposed that it was not he. Let us look for a moment at the hypothesis, that it is some unknown prophet or priest of many centuries later who is speaking here, as if he were Moses. What must have been the man's temerity to press his impersonation to the extent that he not only makes the supposititious law-giver say that the coming prophet will be like himself, but refer to an event in his own and their past history, concerning which the Pentateuch is silent, and the people of that later day were probably ignorant? How strange the working of his mind, especially if he were himself a prophet, that he should introduce in so dubious a connection, *i.e.*, as subordinate to a law on magic, the matter of Hebrew prophecy, and the culmination of it too, an institution surpassed by no other in its grandeur and importance.

It is not to be supposed that critics who reject the Mosaic authorship of these laws will, with Delitzsch and others, see in the present one a direct, not to say exclusive, prophetic reference to the Messiah. They would rather choose to hold, it is likely, that if there be a latent allusion to such a possible outcome of prophecy, it is simply the product of a wholly natural hope and aspiration of the Jewish mind. But, if this be so, and we have before us simply an *ex post facto* reference to Hebrew prophets and prophecy in general, as they had come to be, and to be known long before the conjectured date of Deuteronomy, it is certainly a surprising and well-nigh incredible circumstance. The almost surreptitious manner of its introduction, as we have said, puzzles us. It presents, moreover, but a single one of the prophet's many-sided functions. It characterizes men like Samuel, Gad, and Elijah, Obadiah, Amos, and Jonah as being like Moses, which would set everybody to thinking of more respects in which they were quite unlike him. It speaks of a prophet, has the office prin-

cipally in mind, when more than a score and a half of them, differing from one another as widely as Elisha and Jeremiah had already appeared, whose activities had extended over a period of five hundred years. It offers as a criterion to prove the claims of such as might give themselves out for prophets, the fulfilment or non-fulfilment of their predictions; when such seers of the distant future as Isaiah and Micah were then upon the stage, for whom so specific a test would have been as inappropriate as it was fitting for the sporadic prophets and their imitators in the early days.

We meet next, in the series of laws now under review, with one against the *removing of landmarks* (Deut. xix. 14): "Thou shalt not remove the boundary line of thy neighbor which those going before have placed as a boundary in thy inheritance which thou shalt inherit in the land the Lord thy God is giving thee for a possession." The reference, plainly, is to the fraudulent displacement of boundaries separating one's landed property from that of his neighbor. How serious a breach of equity it was regarded may be inferred from the circumstance that it is one of the acts singled out in the 27th chapter of this book for special execration. The important point now to be considered, however, is a supposed anachronism of the writer in representing Moses as saying, **אשר גבלו ראשנים** "which those going before have set as a boundary." It is rendered by some, "which the forefathers," or "thy forefathers set as a boundary," and is accordingly regarded as a clear *lapsus pennæ* of our *quasi* legislator of the Exodus. But there is not only no necessity for this rendering, there is, as it seems to us, no propriety in it. The word **ראשנים** is found without the article or any pronominal or other limitation. It means simply "predecessors," and might justly be employed in such a connection by one who was legislating not for any particular emergency, but for the whole future of the covenant people. And that it is used in this sense here and not in that of "forefathers" who had already departed, the context is conclusive proof. The "boundaries" spoken of are those of the land which the Lord their God is on the point of giving them (**נותן**). This participle is as characteristic a feature of all references to the land of Canaan in our code as **יבחר** is of the formula by which the central sanctuary is designated. And the criticism that would impute to our law-giver, whoever he may be, the folly of expressing, within the limits of a single verse, ideas so contradictory as that the Israelites had long been settled in Canaan, and that they had not yet entered it, condemns itself.

¹ Note the significant change in phraseology in Prov. xxii. 28. Cf. also Hos. v. 10.

But to possess and occupy Canaan meant a long and bitter conflict. It is natural, therefore, to find no inconsiderable part of our code devoted to military operations and rules of war. How captives are to be treated, cleanliness in camp, what cities are to be spared and what destroyed, the demolition of heathen shrines. These are some of the timely topics treated by our law-giver on the eve of the conquest. Of a like nature is the one we now take up, regarding *preparation for battle* (Deut. xx. 1-9, xxiv. 5). It is most unique in character, and bears in every part the evidence of strict historic truthfulness.

First, there is an appeal for courage in view of superior members and strength. He who had brought them out of Egypt would be with them. Should they see horses and chariots, they were not to be afraid of them. Afraid of horses and chariots! Childish admonition if it be not childlike and genuine! In Hezekiah's and in Josiah's time the land already swarmed with them. Ahab alone was master of a good two thousand chariots of war (*cf.* Is. ii. 7). And next, the very process of entering on a campaign is simply detailed. It is assumed, in harmony with Numbers (i. 3), that the whole male population, over twenty years of age, and capable of bearing arms is at the place of muster. It is assumed, further, in accord with instructions of the same book (xxvi. 2), that full lists of those subject to military duty are in the hands of the Shoterim. It is also assumed that a priest specially designated for the purpose (הכהן), again in dependence on the Book of Numbers (xxxii. 6), where Phinehas acted in this capacity, will be present to hearten and inspire the host with his trumpet and his brave words. It is assumed that the Shoterim, who have the muster-rolls, are empowered, not only to address the assembled levies, retain or dismiss at will such as are found eligible or ineligible for active service (with v. 6, *cf.* Lev. xix. 3 f.), but also to divide and subdivide them into battalions and companies, set them in battle array, and place suitable leaders at their head.¹ The entire arrangement, in short, is peculiarly primitive, and appropriate only to the earliest periods of the commonwealth. After the rise of king, court, and mighty men of war, after Saul's second year, when three thousand chosen men were made the nucleus of a standing army, especially after David's day, when royal body-guards were customary, and foreign mercenaries began to be employed, such an arrangement would have been antiquated and impossible.

¹ שר is clearly the object, not the subject, of פקדו. It is required both by the context and by the fact that this verb is not used intransitively.

The *treatment of hostile cities that are not of Canaan* is also made the subject of special legislation in our code (xx. 10-14, 19, 20), and the manner of its introduction is full of meaning. The law-giver had just been speaking of Canaanitish cities, which in sharp discrimination he refers to as "the cities of these nations here" (xx. 15), *i.e.*, lying over against their encampment in the fields of Moab. For them there was one law of procedure. It had been indicated in previous deliverances to which he now refers (v. 17), but it is not alone the peculiar introduction of the subject that is significant. The whole outlook of the legislation is equally so. With what propriety, for example, could a writer of King Josiah's time, three hundred years after the division of the kingdom, a hundred after the final captivity of Israel, when many a fortress of Judah was already in possession of Assyrian troops, in the midst of the moral decadence and political disintegration that are reflected in the prophecy of Jeremiah, preface a command to exterminate the Canaanites, with another specifying how foreign cities were to be besieged and their prospective spoils appropriated? Especially on what principles of psychology could it be anticipated that under circumstances like these a romancing legislator of the later day, without a hint of an impending catastrophe to the polity and people to which he himself belonged, would coolly bethink himself of so small a matter as the fruit-bearing trees that might be growing around the beleaguered towns of imaginary foreign foes, and sedulously enjoin that they be spared for food?

In the ceremonial of *purification for murder*, the murderer being unknown, recorded in Deut. xxi. 1-9, we have a remarkable example of the utmost simplicity of form united with a singularly active consciousness of the sacredness of human life, and the solidarity of human responsibility concerning it.¹ Where, but amidst the simplicity of primitive times, should we find the authorities of different cities determining jurisdiction after a method so rudimental as actual measurement? The entire scene, in its homely picturesqueness, makes the impression of the very beginnings of political existence. The gathering by a perennial stream, an appointed substitute for the unknown criminal in leading, the hand-washing in token of non-complicity with the crime, the touching declaration breaking into prayer: "Our hands shed not this blood and our eyes saw not the deed. Forgive, O Jahveh, thy people Israel, whom thou hast redeemed, and lay not innocent blood to the charge of thy people Israel," are all of the same simple character. If,

¹ Cf. Gen. iv. 10, the Jahvist; ix. 6, P.C.

at first, we seem to be witnessing a sacrifice (*cf.* כָּפַר, v. 8), we soon find that this is not the case. The fundamental elements of a sacrifice are wanting. There is no altar. The blood is not shed. The victim's neck is simply broken (*cf.* Ex. xiii. 13). It is an execution. Justice has done its work as far as it is possible to do it under these circumstances. The murdered man has been avenged by the whole community acting as his גּוֹאֵל. The same form of words, in fact, that in a previous chapter brought to a close the execution of a wilful homicide (xix. 13) also concludes this ceremony.

The next two topics treated in the independent code of Deuteronomy, that of *female captives* (xxi. 10-14) and a *disobedient son* (xxi. 18-21), offer but indefinite indications of their age. Still, the former implies a state of things like that which existed only on the eve of the Conquest, and for a short time after it. The captives referred to cannot be Canaanitish women with whom marriage was forbidden; and the acquisition of foreign territory and spoils, as we have seen, ceased to be a subject of aspiration, and could not have been one of legislation after the reign of David. While the latter harmonizes perfectly with its historic surroundings as well as with the other codes with which it is associated (Ex. xxi. 17; Lev. xx. 9), and seems to be definitely referred to in some passages of the Chokma literature. (Prov. xix. 18, falsely rendered in the A. V.: *cf.* xxx. 17; Ecclus. iii. 1-16.)¹

A peculiar regulation concerning *the bodies of persons who had been hung* is met with in Deut. xxi. 22, 23. It is enjoined that they be buried on the day of execution, in order that they may not pollute the land. While in itself containing nothing out of harmony with a supposed Mosaic date, there is a positive confirmation of such date in the Book of Joshua. In two notable instances this appointed successor of Moses is reported as acting in studied consistency with this law (viii. 29, x. 27). It is true that much of the Book of Joshua is alleged to have been written by the author of Deuteronomy, but these two passages are not included by the majority of critics in that part of it, but admitted to be among its oldest portions.²

A law requiring that in the case of building "a new house," a parapet for safety be made around the roof (xxii. 8), might imply either previous and customary life in tents, or that the new-comers would find

¹ It is an interesting fact, and not without significance, that the old Babylonian family customs were very similar to those here indicated. If a son refused to obey his father *or his mother*, various severe punishments might be visited upon him, even to selling him as slave. *Cf.* Hommel, *ibid.*, p. 416.

² See Kleinert, *ibid.*, p. 96 f.

in Canaan houses already built, as, in fact, is directly stated elsewhere (xix. i). An occasion for the introduction of the subject here may possibly have been the fact that the tribes of Reuben, Gad, and the half-tribe of Manasseh, were then in process of providing homes for their families and shelter for their flocks east of the Jordan (Numb. xxxii. 16) antecedent to the passage of the river.

Among the many provisions of the Deuteronomic code inculcating humanity, or conceived especially in a humane spirit, is that regarding a complaint of unchastity previous to marriage, preferred by a husband against a newly-married wife (xxii. 13-21). One main object of it seems to have been to protect an otherwise helpless woman against the brutality of a selfish and unscrupulous lord to whom she was legally bound. The rigorous punishment inflicted on the plaintiff, if he failed to make out his case, the fine (עניש, cf. Ex. xxi. 22), the beating (cf. Deut. xxv. 1-3), and the denial of the right of future separation on any terms (xxiv. 1-4), brings the statute into line with other enactments of the present code, and bespeaks for it the same origin. An extended law for a somewhat similar case is found in Numbers (v. 11-31); but the legal process is wholly dissimilar, and the complaining husband there goes unpunished. Riehm holds¹ that in the codification of the Deuteronomic law we have evidence that the one found in Numbers was already considered antiquated, and that hence the former belongs to a much later period. But the two cases are different enough in their nature to require different laws. Both of the laws are apparently based on old-time customs. The Deuteronomic seems to be more changed, and, possibly, with special reference to that of Numbers, supplementing it, as it were, with the needed moral background and standard by which a one-sided application might be avoided. Without superseding it for the special case it had in view, it emphasizes in its heavy penalties for the baseless slanders of a husband a principle of equity there unrecognized, but which, expressed or unexpressed, should always be understood to rule in similar circumstances.

Israel was considered as forming a peculiar *congregation* (קהל)²

¹ *Gesetzgebung*, etc., p. 67.

² This term is found nowhere else in the Pentateuch except in Numb. xvi. 3, xx. 4, where it is used, in the one instance by the promoters of Korah's rebellion, and in the other by the people who murmur at Moses in the wilderness of Zin. In itself, it is thought to indicate a late origin for a document in which it occurs; and its appearance in Joel is one of the reasons given for assigning that work to the period of the Exile. But there were good reasons for its employment in the

of the Lord, and it is not strange that we find at the beginning of its national life a law defining and restricting its bounds (Deut. xxiii. 2-9). With a mixed multitude swarming in its camp, a more opportune moment for such a law than just before the Conquest there could not well have been. The first provision concerns persons unmanned by castration or other mutilation of the reproductive organs. Held in honor by contemporaneous people, they failed to meet the totality of the divine claim; as they were unable also, in some instances, to comply with the requisition of the Abrahamic covenant whose seal was circumcision.

Yet such a law would scarcely have been suggested to the imagination of a man eight centuries later. Even Samuel mentions eunuchs as among the prospective servants of Israelitish kings (I. Sam. viii. 15). And so we find them at the court of Ahab (I. Kings xxii. 9), of Joram (II. Kings viii. 6, ix. 32), and in the kingdom of Judah employed with honor by the very successor of Josiah (II. Kings xxiv. 12, 15). Israelites, it is likely, they were not; but foreign slaves. Still, their employment is no slight symptom of altered circumstances. And we are not surprised to see Isaiah (lvi. 3 ff.)¹ advancing to a far more spiritual view, making, in fact, the transition to that new economy in which the queen of Ethiopia's eunuch becomes a distinguished trophy of this same "ecclesia of the Lord."

But, from a special subordinate class, our law goes on to mention nationalities that are eligible or ineligible to the privilege of Jewish citizenship. And here the impress of its time upon the document becomes still more decided. The attitude assumed by our law-giver towards these nations does not seem unnatural, if he be Moses. But no writer in his senses could have seriously taken it after the time of Solomon. Because of their treatment of Israel on their march from Egypt (Numb. xx. 18 ff., xxii. 5) the Ammonite and Moabite are forever shut out from citizenship among the chosen people. The

middle books of the Pentateuch under the historical circumstances mentioned; and there is no good reason why, later, Moses should not himself have adopted the word and filled it with a better spirit. Moreover, the principle that rules in this whole section is thoroughly Levitical. Its requirements are quite analogous to those respecting the qualifications of a priest (Lev. xxi. 17 ff.), as also of all offerings made to the Lord (xxii. 18 f. 24). And it is not the first time that the Deuteronomic code has shown a marked advance beyond that of the middle books in the sentiment that Israel was to be a consecrated, priestly nation (with Lev. xvii. 15, cf. Deut. xiv. 21).

¹ Schultz (*Com., in loco*) has called attention to the coloring of the language in the context as seeming to show a dependence on Deuteronomy.

Edomite is admitted to it after a short probation ; so, too, the Egyptian, — the former on the ground of kindred blood, the latter on that of hospitality to the Hebrew strangers.

Turn now to the earliest prophets. There is scarcely one of them who is not found facing in a contrary direction. So it is with Hosea (vii. 16, viii. 13), with Joel (iv. 19), with Amos (iii. 9), and especially Isaiah, in the first forty chapters of whose prophecy there are nearly as many denunciations of Egypt. And Edom ! Considering their historical relations to Israel, nothing could be more friendly than the tone in which our law alludes to them. But we find absolutely no echo of it in any subsequent period, even down to the time of the Maccabees (I. Macc. vi. 31). Saul fought with them (I. Sam. xiv. 47) ; David, for a time, made them tributary (II. Sam. viii. 14). Under Joram they regained their independence. They were the heartiest allies of Syria and Ephraim against Ahaz (c. B.C. 740) ; and never did their traditional hatred show itself more conspicuously than in the siege and capture of Jerusalem (B.C. 588), when, in the language of the Psalmist, they cried out, "Raze it, raze it to the foundation thereof !" (Ps. cxxxvii. 7). All the more important prophets from Obadiah and Joel to Ezekiel hold a position towards Edom which is the exact antithesis of that of the Deuteronomic law. Which one of them, or what man of their time could possibly have been the author of it ?¹

We come next to a brief regulation touching runaway slaves of foreign masters seeking refuge in Israel (xxiii. 16, 17). They are not to be given up, but allowed to dwell unmolested wherever they will. The law is stamped with no indubitable marks of Mosaic origin. If fitness of political and moral relationships is to be the criterion, it might be adjusted to almost any age of the world, from B.C. 1800 to the present time. If a theory of interpolations is to be allowed free play, there is many a period of Israelitish history subsequent to Moses when it might have been fitly interjected among the Pentateuchal laws. But why may it not be Mosaic, as it claims ? It breathes his spirit. It is most apposite to the circumstances of Israel, as themselves fugi-

¹ We find a similar, if a less marked, change of feeling with respect to Moab indicated in the later times. The story of Ruth, the Moabitess, was probably written not long after the death of David. The scenes it described occurred a full hundred years earlier (Ruth i. 1). And, although the history represents this people as more or less inimical to Israel or Judah down to the latest periods, still the spirit of the Book of Ruth is clearly reflected in the great prophet of King Josiah's day, who, after predicting their overthrow, declares : "Yet will I bring again the captivity of Moab in the latter days, saith the Lord" (xlviii. 47, cf. xlix. 6, 7, 18).

tered upon by the former wife. This, as the words "after that she has been defiled" (*cf.* Numb. v. 20) indicate, it looked upon as a form of adultery and not to be tolerated. The law tends directly to the preservation of the original tie; and, in case it is severed, plainly encourages a single life in view of a possible later reunion. It does not rise to the plane of Malachi (ii. 13-16), who declares that God "hates putting away." But neither, on the other hand, does it misrepresent a Moses of the exodus, or go beyond what might have been expected of a legislation that followed and flowed out of the ten commandments.¹

Punishment by flogging (Deut. xxv. 1-3) seems to have been resorted to in Israel chiefly for gross offences against sexual morality (Lev. xix. 20; Deut. xxii. 18). The spirit of the Deuteronomic law respecting it is thoroughly national in its recognition of the Israelitic election and brotherhood. At the same time the mode of inflicting the punishment by making the offender lie flat upon his face is thoroughly Egyptian, and positively out of harmony with the later rabbinical practice.²

Levirate marriage, legally sanctioned first in Deuteronomy (xxv. 5-10); had no doubt prevailed in its main features from the earliest times. In the narrative of Judah's sin with his daughter-in-law (Gen. xxxviii.), assigned by critics to the document JE., we find the practice already in force to the extent that any breach of it is regarded as a serious crime. Accordingly, the Levitical regulation (Lev. xviii. 16), forbidding marriage with a deceased brother's widow, is obviously to be limited to cases where there were children, as also the Jews of our Lord's time understood it.³ And not only is our law in its place in the age of Moses with respect to that which goes before it, but also that which follows. The story of Ruth, whose scene is laid in the period of the Judges, is evidently not a little modified by it. The detailed proceedings of Boaz, his singular care to follow a certain fixed order, his appeal to the regular legal tribunal of his city, and the motive he urges for his conduct, in which he uses almost the very language of our code, to "raise up the name of the dead upon his in-

¹ The last remark is fully supported by what is known from the monuments of ancient Babylonian customs. If a man would separate from his wife, who had not been untrue to him, he was obliged to pay her a sum of money so large that very few could have availed themselves of the legal right. *Cf.* Hommel, *ibid.*, p. 417.

² See *The Criminal Code of the Jews according to the Talmud Massechath Synhedrin*, by Berger. Lond., 1880, p. 122 f.

³ *Versus* Riehm, *Gesetzgebung*, etc., p. 68.

heritance," give at least a color of probability to the theory that the law of Deuteronomy was already a recognized authority in Palestine.

The next independent ordinance of our code *prescribing punishment for a gross act of immodesty* on the part of a woman (xxv. 11, 12) offers no internal characteristics by which its age might be even approximately fixed, unless it be the form of the punishment. The offending hand was to be cut off. It is the only instance in the Pentateuch where mutilation is directly enjoined. So unusual and severe a retribution for such an act would scarcely have been thought of in the later time.

The *commission for the destruction of Amalek*, found in Deuteronomy (xxv. 17-19), there can be little doubt, refers directly to Ex. xvii. as its basis and original. An entire clause of the Hebrew, and the most essential one, is repeated word for word. The appeal, moreover, is made in a way to indicate an event still fresh in remembrance: "Remember¹ that which Amalek did to thee in the way as ye came out of Egypt." And still another side-light appears in an allusion to the present circumstances of Israel: "So it shall come to pass that when the Lord thy God hath given thee rest from all thine enemies round about, in the land which the Lord thy God is giving thee to possess as an inheritance, thou shalt wipe out the remembrance of Amalek from under heaven; forget it not."

If now, on the other hand, we follow the biblical history of the relations of Israel to Amalek, subsequent to this supposed period of the Exodus, we shall see how impossible and absurd it would have been for such directions to be seriously promulgated as late as the reign of Josiah or even that of Solomon. After their first defeat in a sharply-contested battle with Joshua at Rephidim (Ex. xvii. 8-16), we find them joining the Canaanites in a successful attack on Israel at Hormah (Numb. xiv. 43-45). Later Balaam, in his prophecy, for some reason not clearly known, hails them as the "first of the nations," but predicts their total overthrow (Numb. xxiv. 20). Another hundred years follow, and, as allies of the Ammonites and Moabites, they make a partially successful foray upon the coasts of Israel (Judges iii. 13). Then Gideon successfully warred with them. But it was not till the days of Israel's first king that the Pentateuchal commission really began to be executed. In two great campaigns Saul broke their strength, wasted their land, and put to death their king (I. Sam. xiv. 48, xv. 2-33). The entire history of this war is pervaded by the

¹ The infin. abs., like the emphatic imperative in Greek, Gesen. § 131, 4, b., is used.

spirit of the ancient code. Samuel's words to the king are: "Thus saith Jehovah of hosts, 'I am punishing (visiting judicially, פִּקְדוֹתַי) that which Amalek did to Israel. . . . Now go and cut off Amalek and utterly destroy all, that he has'" (Sam. xv. 2, 3). And thoroughly as Saul did his work, it did not satisfy the terms of his commission. David dealt the hostile remnant a heavy blow after their capture of Ziklag, and in Hezekiah's time, still a century before the date assigned by some to the Deuteronomic code, so reduced and feeble had they become that five hundred Simeonites are able to complete their overthrow and extinction (I. Chron. iv. 43). After this time the name of Amalek disappears from history.

Our code is brought to a fitting close by a peculiar formula of acknowledgment and thanksgiving. It is professedly given to be used immediately subsequent to the conquest and quiet occupation of the promised land. Critics are not satisfied with this account which the document gives of itself, and see in its strong liturgical cast positive marks of a later day. Kleinert, however, among others, takes exception to this opinion as being unworthy of an age in which the knowledge of the Vedas has ceased to be a monopoly.¹ It may be added that such an objection is unworthy of an age that has brought to light the stores of information contained on Egyptian and Assyrian monuments. This one simple liturgical ceremonial of Deuteronomy we are able, in fact, to match with many far more elaborate ones, in different tongues, that date from even an earlier period.² The wonder is, indeed, not that we have this one simple, prescribed formula of thanksgiving for the individual Israelite in his periodical visits to the central sanctuary, but that, in all the biblical literature before the Exile, it stands so much alone. We have really nothing of a precisely similar character with which to compare it. And in view of the consideration that prayer, in some form, must date

¹ *Das Deuteronomium*, p. 104.

² See especially an inscription from the tomb of Beni-Hassan, of the 12th Egyptian dynasty, in Warrington's *When was the Pentateuch Written*, p. 18 f.; also, the prayer of Menkaura to Osiris, dating as far back as the 5th dynasty (Wilson's *The Egypt of the Past*, London, 1881, p. 93), and the philosophical precepts of Ptah-hotep (*ibid.*, p. 107 f.), computed to be five thousand years old; and cf. Rawlinson, *The Religions of the Ancient World*, p. 60 f., and 24, where he says of the religion of ancient Egypt that its "worship was conducted chiefly by means of rhythmic litanies or hymns, in which prayer and praise were blended, the latter predominating." For still other specimens of this liturgical worship see *Records of the Past*, vol. ii., pp. 105, 134; vol. iv., pp. 99-104; vol. vi., pp. 99-101; vol. viii., pp. 131-134.

back to the beginnings of human history, it would seem the height of captiousness to characterize the ceremonial before us as an anachronism in the age of Moses.¹

Such, now, are the independent laws of Deuteronomy, the primary and essential elements, as we may suppose, of this remarkable code. And such are a few of the more patent internal characteristics by which its age as a whole, and in its several parts, might be approximately inferred. That they are demonstrative need not be held; that, however, they show an overwhelming weight of probability in favor of Mosaic origin throughout cannot well be denied. Such an origin, in fact, is directly or implicitly claimed by the great majority of the statutes brought under review, and especially by those that are of chief importance. If it be denied in the case of the rest, is it too much to demand that adequate reasons be given for wrenching them from the ancient mould in which we find them imbedded?²

Mosaic claims, we are well aware, are often summarily dealt with in these days; but sometimes, perhaps, without sufficiently pondering the consequences. The alternative here, at least, does not lack in startling effects. If not Moses, then some one who would be thought to be Moses, or to write in the spirit of Moses. In either case, an antique flavor, Mosaic sanction is wanted. But why? If the critical theories prevailing in many quarters be adopted, there was no Moses who was worthy of such pains. And why, especially, such an excess of Mosaic coloring in a purely legal document, so that it might almost be thought that the laws were a conceit to magnify the half-mythical hero, instead of the name of Moses being used to give weight to the laws.

If not Moses, we ask again, then who? Some king of Judah or

¹ The fact that the firstfruits are to be brought in the hands in a basket, forestalls any objection that might arise on the ground that we have here prescribed a different disposition of the firstfruits from that enjoined in another place (xviii. 4; cf. Numb. xviii. 12 f.).

² So, too, Bleek, in a similar connection (*Einleitung in das Alte Testament*. Vierte Auflage, bearbeitet von J. Wellhausen, Berlin, 1878, p. 35): "Wir sehen also, wie ein bedeutender Theil der Gesetze und Anordnungen des Pentateuchs, sowohl dem Inhalte als der Form nach, dem Mosaischen Zeitalter angehören muss. Da wir nun als ein feststehendes sicheres Ergebniss gefunden haben, dass so bedeutende Theile des Gesetzbuches von Moses herrühren, dass also auf jeden Fall das Wesentlichste der darin enthaltenen Gesetzgebung ihm angehört, so sind wir nicht berechtigt, ihm einzelne der sich darin findenden und auf ihn zurückgeführten gesetzlichen Anordnungen abzusprechen, wenn sie nicht bestimmte Spuren eines abweichenden Characters und einer späteren Zeit an sich tragen."

Israel? The history furnishes no example of a royal legislator; enough, of those who broke and trampled upon the laws of their fathers. Possibly, some prophet then? Which prophet? His modesty in concealing his name and adopting as pseudonym that of the leader of the Exodus is only equalled by the way in which he introduces the subject of prophecy in his work, as incidental to a law regulating magical arts. But why not a priest, possibly Hilkiah himself, who first introduces our code to the attention of his king? Critics are by no means agreed among themselves whether the code is of priestly or prophetic origin; it is too little pronounced in either direction. Priestly, in any decisive features, it is far enough from being; quite the reverse, if its uniform point of view be taken account of. The point of view from beginning to end is conspicuously that of a tender father of his people, emphatically Mosaic, in short, and nothing else. And that it is genuine, and not assumed for effect, the latest results of biblical archeology unite with the best results of literary criticism in strongly confirming.¹

¹ The reasoning employed in this paper, to show that the independent legislation of Deuteronomy is Mosaic, bears with equal force against the theory that it has undergone any special revision, in a period subsequent to Moses. There is neither in form, spirit, or language, any valid evidence whatever of any such revision in the series of laws we have passed under review.