

## LEGISLATION IN GENERAL

THE main legislative section of Deuteronomy, chapters xii–xxvi, is generally known as the Deuteronomic Code.<sup>1</sup> Wellhausen looked on these chapters, and only these, as the original book, written shortly before 621 BC and discovered, by accident or design, by Hilkiyah in the temple. All who follow in the same tradition regard this as the kernel of the book in its earliest form, though many believe that considerably more was also original. These facts make the dating of this section of special importance.

It is said that other codes are embedded in the Pentateuch, belonging to widely separated periods. The earliest of these, the so-called 'Book of the Covenant',<sup>2</sup> namely Ex. xx–xxiii, is assigned to E or to JE, and may therefore be referred to as the JE Code.

It is now usual to refer to Lv. xvii–xxvi as the Holiness Code (H), although formerly it was taken to be an integral part of the Priestly Code. Opinions vary as to the date, whether before or after Deuteronomy, before or after Ezekiel.<sup>3</sup>

Finally there is the Priestly Code (P), dated during or after the exile. This includes the rules for the priesthood in Ex. xxv–xxxi, xxxv–xl; Lv. i–xi, xxvii; Nu. i–v, xxv–xxxvi, and several smaller sections. The relative dating of the four codes, J, E, D, P, was an essential feature in Wellhausen's theory. Driver in various places expressed considerable uncertainty as to the limits of J and E, and often took refuge in the formula JE to cover both, but vigorously defended the sequence JE, D, P. Although this is now abandoned

<sup>1</sup> So A. C. Welch, *Code*; Driver (*ICC*, p. 131), 'A Code of special Laws'.

<sup>2</sup> This title is taken from Ex. xxiv. 7; but some scholars think that the words there refer only to the Decalogue. Both the date and the exact limits are variously fixed by different writers. The above limits are adopted by Driver, who gives the date as between 900 BC and 750 BC.

<sup>3</sup> H. H. Rowley places it in the sixth century BC. Welch, *Framework*, p. 3, says H 'must be earlier' than Deuteronomy. See also E. Robertson, *OTP*, p. 60.

by many scholars, it still holds its own in popular textbooks,<sup>1</sup> and therefore must be taken seriously.

The next chapter will be occupied with this relative dating. In the present one the Deuteronomic Code as a whole will be compared and contrasted with other early Semitic codes, which will help us to see more clearly its scope and purpose. The comparison between the code of Hammurabi (c. 1700 BC)<sup>2</sup> and the Mosaic law has often been made with a view to showing the independence of the latter.<sup>3</sup> A wider comparison with the Egyptian, Hittite and Assyrian laws, showing parallels and differences, is made in G. Ricciotti's *Histoire d'Israel*.<sup>4</sup>

The Hittite laws go back to the fourteenth or fifteenth century BC.<sup>5</sup> The recently discovered codes of Eshnunna and Lipit Ishtar,<sup>6</sup> both earlier than that of Hammurabi, are similar in type and contain some laws almost identical and others with local differences.

The study of these codes has convinced scholars of the ancient character of many laws embedded in Deuteronomy and elsewhere in the Pentateuch. Such are seen to be, without any doubt, part of a common Semitic inheritance. At the same time, the particular form which they assume shows signs of an early adaptation to Hebrew religious ideas. (See pp. 81 f.)

The word 'code' is certainly convenient to describe the content of Dt. xii–xxvi provided that care is taken as to the meaning imported into it.<sup>7</sup> The description of its contents as 'statutes, judgments and commandments' (xii. 1, xxvi. 16, 17) will be considered below (p. 72). All are included in the word *Tôrāh* (law) used in iv. 44, which has a wider range of meaning than the English word 'law' or the Greek *νόμος*.

<sup>1</sup> e.g. H. Cunliffe-Jones, *Deuteronomy*, S.C.M., 1951.

<sup>2</sup> Or somewhat later.

<sup>3</sup> For example by H. Grimme, *The Law of Hammurabi and Moses*, London, 1907; and more recently by M. David, *Oudtestamentische Studien*, Deol VII, Leiden, 1950.

<sup>4</sup> *Histoire d'Israel*, Paris, Vol. 1, 1947, pp. 240–249.

<sup>5</sup> See G. R. Gurney, *The Hittites*, Second Edition, London, 1954, p. 24. Regarding Assyrian laws, see *ANET*, p. 180.

<sup>6</sup> Assembled and translated, with Hammurabi's Code, in *ANET*, ed. J. B. Pritchard, Princeton, 1950.

<sup>7</sup> Many scholars do not think the word is strictly applicable to Hammurabi's laws, which they look upon as only a collection of case-laws.

*Tôrāh* is derived<sup>1</sup> from *yārah*, and can mean (i) teaching of any kind, human (Pr. i. 8) or divine, (ii) a precept or 'law' in the English sense, (iii) a *corpus* of laws and instructions, and in particular the Mosaic law, or (iv) any part or the whole of the divine revelation (Ps. cxix. 1).

In Deuteronomy it is found in the singular only,<sup>2</sup> and generally in an inclusive sense, though its semantic range varies with the context.

With these cautions we proceed to compare the Deuteronomic code with that of Hammurabi, with which it contains much in common but with important differences.

1. The two codes differ in *scope* and in *general character*. That of Hammurabi is legal and secular; it sets out to protect the rights of Babylonian society, the free men (*awelum*), the semi-free men (*mushkenum*), and to some extent the slaves. It lays down laws of property, marriage and inheritance; defines the legal rights of employers and employed in various trades; and prescribes fines and penalties for damage or misdemeanour.

Deuteronomy contains some laws of this kind, but there is less class distinction, and its whole tone is deeply religious. The name of Yahweh occurs 189 times; the statutes and judgments are those of Yahweh their God, which they are to observe to do with all their heart and soul (xv. 5, xvii. 10, xxvi. 16). The analysis at the end of this chapter shows that of the 342 verses which make up these chapters in the EV more than half are moral or religious statutes, whilst ninety-three are taken up with specific commands related to the approaching settlement in the land.

Even where a law, as in xxii. 24, is almost the same as in Hammurabi's code, instead of coldly prescribing the penalty the offence is seen in its moral aspect, and the law is said to be in order to 'put away evil from among you'. The whole is permeated with exhortations, warnings and promises of blessing such as are never found in the Babylonian code.

<sup>1</sup> For other and less satisfactory derivations see N. W. Porteous, in *Studies in O.T. Prophecy*, Edinburgh, 1950, pp. 147–150. See also Bentzen, *Introduction*, I, pp. 213ff.

<sup>2</sup> Deuteronomy is sometimes described as a collection of *tôrāth*; but this is not the way it describes itself. For the use of *tôrāh* in the prophets see p. 138.

2. They differ in *arrangement*. Hammurabi's laws are arranged in groups, e.g. there are sections on dowries (171-184), buildings (228-233), the hire of boats (234-240), etc. In Deuteronomy there is little system,<sup>1</sup> or perhaps it should be said, system of a different kind.<sup>2</sup> The stream of words flows on, as befits a discourse, with various turnings, and not as in a formal document. It is not 'codified divine law, but the preaching of the law'.<sup>3</sup>

The arrangement is therefore governed<sup>4</sup> by the lawgiver's dominant religious motive and the various matters which required his attention. Caution should therefore be exercised before passages (e.g. xvi. 21ff., see Hertz *in loc.*) are put down to later insertions, when they may be merely digressions.

3. The *form* is different. In Hammurabi the laws follow a standard pattern. They begin with 'If . . .' followed by a suppositious offence framed in the third person, which is followed by the action to be taken, or the penalty to be enforced; for instance, 'If a man steal a man's son who is a minor, he shall be put to death.'<sup>5</sup> Certain laws in Deuteronomy, e.g. that of manstealing (xxiv. 7), are cast in this form, and may be classed as 'judgments' (see p. 72).

But the greater part consists of precepts and commands in the second person, mixed in with exhortations, reminders and appeals; so that the whole takes on the character of a discourse. For instance, referring to xv. 12-18, von Rad comments: 'What place is there for language like that in a law? This is the style used in addressing a "thou" who is present and listening.'<sup>6</sup>

4. The difference of purpose affects the whole *mode of address*. The style in Hammurabi's code is strictly impersonal, as befits a legal system of general application. Not so in Deuteronomy, where every second sentence reminds us that we are listening to an old and honoured leader speaking to the people whom he has led,

<sup>1</sup> 'No logical arrangement', says R. H. Pfeiffer, *Introduction*, p. 232. Cf. Welch, *Code*, p. 185.

<sup>2</sup> Cf. J. Pedersen, *Israel*, I-II, p. 27.

<sup>3</sup> Von Rad, *Studien*, p. 10 'Nicht kodifiziertes Gottesrecht, sondern . . . gepredigtetes Gesetz.'

<sup>4</sup> See H. M. Wiener, 'The arrangement of Dt. xii-xxvi', in *Postluminous Essays*, ed. H. Loewe, London, 1932, pp. 26-36.

<sup>5</sup> This is a common form of early Semitic jurisprudence.

<sup>6</sup> *Studies*, ET, p. 21.

and reminding them of the experiences they have shared together. The people are bidden to 'remember' their bondage in Egypt (xvi. 12); they are reminded of their former request 'in Horeb, in the day of the assembly' (xviii. 16); they are told to remember 'what the Lord thy God did unto Miriam' (xxiv. 9), and 'what Amalek did unto thee' (xxv. 17).

The form of address is personal and intimate, thus the things which 'we do' (xii. 8), or which 'I command thee this day' (xiii. 18);<sup>1</sup> in places it approaches a dialogue 'when . . . thou shalt say' (xvii. 14) or 'if thou say . . .' (xviii. 21). We seem to hear Moses speaking, while the people listen and respond.<sup>2</sup>

5. The two codes differ as to *the community concerned*. The laws of Hammurabi deal with a people among whom trade and industry are well developed and class distinctions strongly marked. Trades and crafts are regulated on a commercial basis, and money fines are fixed to indemnify property owners who suffer injury or loss. We know enough about the Babylonia of that period to recognize that these were in fact the conditions when those laws were promulgated, after centuries of monarchic rule. In the later years of the Hebrew monarchy the conditions approximated to these.

The background of Deuteronomy is different. Here are no laws to compensate for loss caused by careless builders (Hammurabi 228-233), or for injury to health due to incompetent physicians (215-225). The legislation is fitted to a simple agricultural people, deeply interested in their cattle,<sup>3</sup> where food and raiment are the chief concern. There are laws concerning cultivation, and they had cultivated the land in Goshen; but there are no traces of a developed civilization like that of Babylonia, nor of the luxuries and fashions which grew up in Israel under the monarchy and were rebuked by Isaiah. The local 'elders' still have a large share in the administration of the law.<sup>4</sup>

The people look forward to a place among the nations but they have not yet attained it.<sup>5</sup> There is no king to lead them forth to

<sup>1</sup> See also xii. 20, 30, 32, xv. 5, 9, xix. 7.

<sup>2</sup> 'Moses speaks, the people listen. This stamps the character of the whole book' (von Rad, *Gottesvolk*, p. 3).

<sup>3</sup> xii. 6, 15, 17, 21, xiv. 21, 23, xv. 14, 19, xvi. 2, xvii. 1, xviii. 3, 4, xxii. 1-4.

<sup>4</sup> xix. 12, xxi. 2-4, 6, 19f., xxii. 15-18, xxv. 7-9.

<sup>5</sup> xvii. 14.

battle; the national and civic life as developed by Solomon, together with the subsequent struggles between north and south, are all apparently unknown.

6. The discourse of Dt. xii–xxvi is interspersed with notes of *time and place*, such as are found in the prologue and epilogue to Hammurabi's law, but not in the code itself.

For instance, '... this day ... ye are not as yet come ... when ye go over Jordan ... then it shall come to pass' (xii. 8–11, RV), 'when the Lord thy God shall enlarge thy border' (xii. 20, cf. xix. 8), 'when the Lord thy God shall cut off the nations from before thee' (xii. 29); or 'that shall be in those days' (xvii. 9, xxvi. 3).

It is the same with regard to places: Jordan is to be crossed (xii. 10), the nations already in the land are named (xx. 17), and a list is given of those who may or may not enter their community (xxiii. 3, 7).

The facts on which these contrasts are based are not in dispute, but the conclusions drawn from them vary greatly.

There is now general agreement that many of the laws are ancient, going back to the beginning of Israel's existence as a nation, and it is also widely recognized that the laws and exhortations of Deuteronomy were once delivered orally, whether the orator was Moses, or Samuel (Robertson), or a group of country Levites (von Rad). Moses' own 'declaration' of the law is expressly stated in Dt. i. 5, whether we believe it or not; after which came the writing (xxxii. 9). Joshua also is said to have delivered a statute orally, and then to have committed it to writing (Jos. xxiv. 25, 26), and Samuel likewise (1 Sa. x. 25). It seems certain that in Israel writing and oral teaching went hand in hand from the beginning (cf. Ex. xvii. 14).<sup>1</sup>

The oratorical style of the book, the introduction of brief notes of time and place, the appeals to memory of the past and to present conditions, all presume that Moses is the speaker and the tribes on the banks of Jordan the people addressed. This may be an elaborate fiction or it may be a true tradition, but it needs to be taken duly into account.

The difference between the religious tone of the Mosaic law and the old Semitic codes will be seen more clearly when the

<sup>1</sup> This theme is developed by E. Nielsen, *Oral Tradition*, pp. 39ff.

individual laws, and the form they take, come to be considered in the next chapter.

#### THE SETTING

A few remarks may be added upon the setting in which chapters xii–xxvi find themselves. Whether or not chapters v–xi were part of the original Deuteronomy, the closing verses of chapter xi form a very suitable introduction to what follows. The reference in xi. 21 to length of days in the land is echoed in xii. 1, the promise to drive out the nations in xi. 23 is echoed in the command to destroy their shrines in xii. 2; again, xi. 31 says 'ye shall pass over Jordan' and is followed by 'when ye go over Jordan' in xii. 10; the command in xi. 32 to observe to do the 'statutes and judgments' immediately introduces xii. 1, 'These are the statutes and judgments, which ye shall observe to do.'

It should be noticed also that Dt. xxvii. 1 takes up the story where chapter xi leaves it. Ebal and Gerizim are still in view (xi. 29, xxvii. 4), Jordan will soon be crossed (xi. 31, xxvii. 3), the law which has been 'set before' the people (iv. 44, xi. 32) must soon be inscribed on stones (xxvii. 2–4). We have here what seems a very natural sequence,<sup>1</sup> but if chapters v–xi and xxvii are later additions, it takes on the character of a clever artifice. Wellhausen himself was not afraid to attribute to the authors of Deuteronomy that element of fraud which his theory requires, but in this he has few followers today.

#### ANALYSIS OF THE LEGISLATION

As we come to examine the legislation in detail, it will be convenient to classify the laws into groups.

The Decalogue which is repeated in chapter v is clearly distinguished from the laws in chapters xii–xxvi. The former, revealed in Horeb, is designated the 'ten words' (*d<sup>e</sup>bhārīm*) (iv. 13, v. 22; cf. Ex. xxxiv. 28); the latter, set before the people at the end of the wilderness wanderings (xi. 31, 32), are introduced as 'statutes and judgments' (xii. 1), to which in xxvi. 17 the word

<sup>1</sup> A somewhat similar sequence can be discerned in Ex. xx–xxiv; the Decalogue (Ex. xx; cf. Dt. v), the 'judgments' (Ex. xxi. 1; Dt. xii. 1) and the writing (Ex. xxiv. 4; Dt. xxxi. 9).

'commandments' is added. These terms provide a handy means of classification.

1. Of the three words used in xxvi. 17, that which it is possible to define most closely is 'judgments' (*mišpāṭim*).<sup>1</sup> Here the idea is 'that of a *judicial decision*, made authoritatively once, and constituting a rule, a precedent applicable to other similar cases in future.'<sup>2</sup> This is sometimes called 'case-law', and when we turn to Ex. xxi. 1, and find the word 'judgments' there used, it is interesting to find that the verses which follow in xxi-xxii. 17 exactly fit in with this description, and assume the same form as the laws in Hammurabi's code (see p. 68).<sup>3</sup> We shall therefore, in what follows, class under the heading of 'judgments' those clauses which possess this form and character.

2. The term 'statutes'<sup>4</sup> (*huqqim*) is derived from a root meaning to 'engrave' or 'inscribe' and so comes to mean that which is prescribed as a permanent rule of conduct as in Lv. x. 9; Dt. xvi. 12.<sup>5</sup> Such rules may be either moral or ceremonial, but the meaning differs from that of a 'judgment' in that the keeping of the rule is a matter for the conscience rather than for the judge.

The contents of Ex. xxii. 21-xxiii. 19 could be fitly described as statutes; they are framed in the form 'thou shalt . . .', convey a moral obligation, and their breach involves, not a legal penalty, but the divine displeasure. A distinction is drawn between statutes and judgments in 1 Ki. vi. 12, where Solomon is bidden to 'walk in' the statutes of God and to 'execute' His judgments (cf. Ezk. xi. 12).

The statutes, or 'apodictic' laws, are Yahwistic in tone and peculiar to Israel.

3. The third word, found in xxvi. 17 but not in xii. 1, is 'commandments' (*mišvōth*). This is a more general term, and the English word 'commandments' is a fair equivalent of the Hebrew, which can be used of any command of God or of man. We can

<sup>1</sup> Dt. iv. 1 (20), and in the singular i. 17 (12).

<sup>2</sup> Driver, *ICC*, p. 62. Laws of this character are generally found to belong to the common Semitic stock of legal precepts. Cf. A. Alt, *Die Ursprünge des Israelitischen Rechts*, Leipzig, 1934.

<sup>3</sup> As regards Ex. xxii. 18-20 see p. 78.

<sup>4</sup> iv. 1 (28).

<sup>5</sup> The EVV translate the same word elsewhere as 'custom' (Jdg. xi. 39) or 'ordinance'.

therefore apply it to certain specific instructions, such as that to appoint cities of refuge, which can be fulfilled at a certain time, so differing from the rules of conduct which come under the former heads.

Psalms cxix shows what flexible use can be made of these and various other words to denote the divine way of life; nevertheless they can serve our purpose as categories under which the laws may be classified.

Another line of division is between those laws to which something more or less closely parallel, sometimes even identical, is found elsewhere in the Pentateuch, and those, on the other hand, which are peculiar to Deuteronomy. By means of these distinctions and others concerning subject matter, the individual laws have been ranged in groups in the three following chapters, to which we have affixed the letters A to M. In the appendix to this chapter the contents of chapters xii-xxvi are divided into seventy-nine sections, to each of which is appended the letter indicating the table under which it will be found.

In the AV the laws occupy 345 verses, of which 196 deal with matter peculiar to Deuteronomy.

Those classed as judgments occupy forty-seven verses and have a special importance of their own. In the chapter which follows we shall deal with these, and then with such 'statutes' as have parallels in the JE and P 'codes'.

#### APPENDIX TO CHAPTER V

### ANALYSIS OF THE LEGISLATION

The letters refer to the tables<sup>1</sup> where the sections are found.

- |      |       |  |
|------|-------|--|
| xii. | 1-4   | Destruction of Canaanite sanctuaries (F, K). |
|      | 5-28  | Sacrifices and offerings (E).                |
|      | 29-32 | Avoidance of Canaanite practices (F).        |

<sup>1</sup> These tables will be found on the following pages: A, p. 77; B, p. 78; C, p. 85; D, p. 88; E, p. 90; F, p. 98; G, p. 101; H, p. 103; J, p. 104; K, p. 110; L, p. 112; M, p. 114.

- xiii. 1-18 Temptation to idolatry (B, F).  
 xiv. 1, 2 Disfigurement for dead (D).  
 3-20 Clean meats (E).  
 21a Animal found dead (C).  
 21b Kid in mother's milk (C).  
 22-29 Tithes and firstlings (E).  
 xv. 1-11 Year of release (H).  
 12-18 Release of Hebrew slave (A).  
 19, 20 Consecration of firstlings (C).  
 21-23 Blemished firstling (G).  
 xvi. 1-17 Pilgrim feasts (C).  
 18 Judges and officers (M).  
 19, 20 Justice (C).  
 21, 22 Pillars and Asherim (F).  
 xvii. 1 Blemished offering (E).  
 2-7 Apostasy (A, F).  
 8-13 Supreme tribunal (M).  
 14-20 Possible king (M).  
 xviii. 1-5 Priestly dues (E, J).  
 6-8 Country Levite (J).  
 9-14 Passing through fire, wizardry (D, F).  
 15-22 Promise of a prophet (M).  
 xix. 1-10 Cities of refuge (A, M).  
 11-13 Wilful murder (A).  
 14 Landmark (G).  
 15-20 False witness (B).  
 21 Lex talionis (A).  
 xx. 1-15 Laws of battle (L).  
 16-20 Extermination of previous inhabitants (K).  
 xxi. 1-9 Man found slain (J).  
 10-14 Beautiful captive (L).  
 15-17 Right of firstborn (B).  
 18-21 Incorrigible son (B).  
 22, 23 Hanging (G).  
 xxii. 1-4 Straying cattle (C).  
 5 Mixed clothing (G).  
 6, 7 Mother bird (H).  
 8 Battlements (H).  
 9, 11 Prohibited mixtures (D).

- xxii. 10 Ox and ass (G).  
 12 Fringes (E).  
 13-21 Slandered wife (B).  
 22-24 Adultery (B).  
 25-27 Rape (B).  
 28, 29 Seduction (A).  
 30 Incest (D).  
 xxiii. 1, 2 Exclusion from congregation (G).  
 3-8 Membership in the congregation (K).  
 9-14 Cleanliness in camp (L).  
 15, 16 Runaway slave (H).  
 17 Prostitution (D).  
 18 Hire of prostitution (F).  
 19, 20 Usury (C).  
 21-23 Vows (E).  
 24-25 Standing crops (H).  
 xxiv. 1-4 Bill of divorce (H).  
 5 Release of bridegroom (H).  
 6 Pledge of millstone (H).  
 7 Manstealing (A).  
 8, 9 Leprosy (E).  
 10, 11 Debtor's house (H).  
 12, 13 Pledge garment (C).  
 14, 15 Withholding wages (D).  
 16 Fathers and children (H).  
 17a, 18 Justice for stranger (H).  
 17b Widow's raiment (H).  
 19-22 Gleanings (D).  
 xxv. 1-3 Forty stripes save one (H).  
 4 Ox treading corn (H).  
 5-10 Levirate marriage (H).  
 11, 12 Immodest action (B).  
 13-16 Just weights (D).  
 17-19 War with Amalek (K).  
 xxvi. 1, 2 Firstfruits (C).  
 3-11 Presenting firstfruits (C, J).  
 12-15 Presenting tithes (J).