It is not their goodness, nor their courage, nor their constancy; nor is it the suffering, so heroically endured, which affords the explanation:

> I asked them whence their victory came,
> They, with united breath,
> Ascribed their conquest to the Lamb,
> Their triumph to His death.

And what are they doing now, and what is to be their future? "Therefore are they before the Throne of God; and they serve Him day and night in His Temple; and He that sitteth on the Throne shall spread His Tabernacle over them. They shall hunger no more, neither thirst any more; neither shall the sun strike upon them, nor any heat: for the Lamb which is in the midst of the Throne shall be their shepherd, and shall guide them unto fountains of waters of life: and God shall wipe away every tear from their eyes."

J. MONRO GIBSON.

THE GENESIS OF DEUTERONOMY.

IV.

The Laws Peculiar to Deuteronomy.

HAVING now examined the main reasons assigned for thinking that Deuteronomy is a programme of reform, we wish at this point to offer two or three additional arguments to justify our rejection of this new view.

Our first is, that the laws *peculiar* to Deuteronomy possess no marked signs that they were written *with the intention to reform*.[1] Certain laws in the book of Deuteronomy, in all about twenty-five and wholly within the

[1] Cf. Bissel's article on "The Independent Legislation of Deuteronomy," in the *Journal of the Society of Bibl. Lit. and Exegesis*, June-December, 1883, pp. 67–89.

legal section of the code (chaps. 12.–26.), are not to be found elsewhere in the entire Pentateuch. In the strictest sense of the word, therefore, they are *peculiar* to Deuteronomy; and, other things being equal, ought to exhibit as well as, if not better than, any others the true character of the code. *Ex hypothesi*, they ought to partake of a practical and reformatory character, and, in a sense, be the most characteristic of all the laws contained in the Deuteronomic kernel.[1] If, however, these laws show only the *potentiality* to reform, and especially if, from the standpoint of the seventh century, they are confessedly without any very practical value, or are *ideal* only, then their alleged late codification in the interests of reform becomes a matter of great uncertainty.

But Wellhausen insists that as a code Deuteronomy is practical.[2] So Driver,[3] Ryle,[4] and many others. Indeed, it is hardly consistent to claim in one paragraph that the kernel of Deuteronomy was written as a last resort in order to reform a nation so deeply sunken in idolatry and sin that no other means seemed capable, and ascribed to Moses because every other prophetic method had failed, and then in the next paragraph to throw out, one after another, the majority of these twenty-five laws *peculiar* to Deuteronomy, as "taken from older (no longer existing) law-books," or, as being the "accepted applications of long-established principles," or, as "the formulation of ancient customs

[1] For an analogous use of this argument, but for a different purpose, cf. Gray, *Hebrew Proper Names*, 1896, pp. 194, 208 ff.

[2] He says (*Die Composition des Hexs.*[2] 1889, p. 205): "As a matter of course, Deuteronomy (like JE) has a much more practical and realistic character than Q (= P); the affairs of the world are naturally (except in chap. 20) treated as they exist, and not from the clouds, as Q."

[3] Driver (*Deut.* pp. xxvi., xlviii.) speaks of the Deuteronomic laws as in the author's judgment "necessary for Israel to know," and "as simply a consequence of the more varied needs of society," etc.

[4] Ryle (*Canon of the O.T.* 1892, p. 60), as a prophetic code, "adapted to the requirements of that later time."

expressed in Deuteronomic phraseology," or as "already known"; for this cuts the nerve of the foremost claim of criticism, which is that the kernel of Deuteronomy is a programme of reform. On the contrary, if Deuteronomy 12.–26. (which is the legal section) was written with the intention to reform, as criticism claims it was, then it is logically necessary to suppose that the laws *peculiar* to Deuteronomy 12.–26. would illustrate as well, or better than any other, the reformatory character of the code. Let us glance at these laws in their order:

1. *Deuteronomy* 13. 1–18—*a law concerning seduction to idolatry.* That such a law carries with it the *potentiality* to reform, and that, put into Moses' mouth, it harmonizes with the other utterances of the great lawgiver, is freely granted; the point at issue is, What called it forth in the seventh century? How account for the *form* of the law? It is clothed in *futures*, and *2nd person singulars*; gives an extraordinary reason, in *v.* 3, for a late author to put into Moses' mouth (viz., "to prove Israel"); and is somewhat drastic for Josiah's age. Verses 15 and 16 (Heb. 16, 17) would, if put into execution, have blotted out of existence the remnant of Judah that then remained.

2. *Deuteronomy* 17. 8–13 (cf. 16. 18–20; 19. 17)—*the supreme tribunal composed of Levitical priests and judges.* This law is treated as "the accepted application of a long-established principle."[1] No one claims that it was actually codified in the interests of a reformation. The only use made of this law by criticism is to show, on the basis of 2 Chronicles 19. 8–11 (which, Kuenen and Driver allow, "deserves credit" as true history), that the book of Deuteronomy must be later than the time of Jehoshaphat, who, it is claimed, first created a supreme court. If this, however, is to be accepted on the authority of the Chronicler, then, on the same authority (2 Chron. 19. 3) we are

[1] Driver, *Deuteronomy*, p. lvi. n.

justified in arguing, *ad hominem*, that in Jehoshaphat's time "the groves" were taken away out of the land in the interests of centralization of worship. But this proves too much, and accordingly *v.* 3 is denied to the Chronicler.[1] Even *vv.* 8–13 in 2 Chronicles 19. prove too much,[2] for Jehoshaphat is declared to have appointed "Levites" and "priests" as judges; but in Deuteronomy 17. 9; 19. 17 (cf. 21. 5) these expressions are explained as late interpolations.[3] On the authority of 1 Chronicles 23. 4; 26. 29, David, also, established judges (שֹׁפְטִים).

3. *Deuteronomy* 17. 14–20—*the law of the kingdom.* Deuteronomy *commanded* the establishment of a bench of judges; it only *permitted* the founding of a kingdom. This fact in itself is obscure on the new theory, both laws being *peculiar* to the Deuteronomist. The latter law, criticism claims, was intended "to check the moral and religious degeneracy which the monarchy, as a fact, too often displayed,"[4] and "to guard against admixture with foreigners and participation in foreign policy";[5] hence reformatory. But here again certain facts point in the opposite direction; thus (*a*) the very first stipulation, that Israel shall not set "a stranger" over them as king, is quite opposed to a late date. There is not the slightest evidence that Israel or Judah ever wished to set "a stranger" over them as king.[6] The motive of the law was apparently a religious one, which can best be accounted for in a time when Israel as yet had no kings. It is not enough to say, with Driver, that the

[1] *Introduction to Literature of O.T.* 5 edit. p. 494; 6 edit. p. 526.

[2] Cf. Kleinert, *Untersuchungen*, 1872, p. 141; also Bissel, *J. B. Lit. and Exeg.*, 1883, p. 67 f.

[3] So Wellhausen, *Die Comp.*[2] p. 353, and Cornill, *Einleitung*,[2] 1892, p. 34.

[4] Driver, *Deuteronomy*, p. 210.

[5] Robertson Smith, *OTJC.*[2] p. 365.

[6] Cf. Delitzsch, *Zeitschrift für kirkl. Wissenschaft u. kirkl. Leben*, xi., 1880, p. 565.

nucleus of the law (*v.* 15) may be ancient, and that it has been expanded by the Deuteronomist, for such a law would have quite lost its value after the establishment of the House of David. (*b*) It is further stipulated that the king shall not multiply horses to himself or cause the people to return to Egypt for the purpose of multiplying horses (*v.* 16). This can hardly mean that Israel shall not participate in foreign policy with Egypt, as Robertson Smith infers;[1] for in that case it is difficult to understand the import of the final clause, "ye shall henceforth return no more that way" (*v.* 16*b*). Such a sentence is not the language of a reformer (cf. Deuteronomy 28. 68), but is well suited to the desert or Moab. At Kadesh-barnea Israel actually threatened to return to Egypt (Num. 14. 4; cf. Ex. 13. 17). As for "horses," Egyptian kings had horses in Moses' time, as well as the Assyrians in the seventh century. (*c*) The stipulation concerning the multiplication of "wives," "silver" and "gold" reminds one of Solomon, but quite as easily of Oriental monarchs in general. Kuenen[2] imagines that the author first borrowed his facts from the tradition concerning Solomon, and then warns Israel against the errors into which he fell. But there was no need, so far as history informs us, for such a warning in Josiah's age. Besides, if the Deuteronomist is here actually describing Solomon, and weaving into "an ancient law," which he wished to preserve, a picture of Solomon's folly by such a glaring anachronism, he surely proves himself a bungling literary artist as well as an unscrupulous reformer. Solomon was not different from other Oriental monarchs of early times. *E.g.* Amenhotep III. of Egypt, a king of the XVIII. dynasty (accordingly before the Exodus), took into his *harem* two wives of the daughters of the king of Babylonia; in consequence of which, through the introduction of new religious ideas by these marriages, his son

[1] *OTJC.* p. 365. [2] Kuenen, *Religion of Israel*, ii. 1882, pp. 33, 34.

and successor, Amenhotep IV., made an attempt to bring about in both Upper and Lower Egypt a reformation of the ancient Egyptian religion.[1] How such an event may have affected the people in Goshen is difficult to say. (*d*) But the chief point in this law still remains to be considered: "And it shall be when he sitteth upon the throne of his kingdom that he shall write him a copy of this law in a book out of that which is before the priests the Levites" (*v.* 18). A copy of what law? Deuteronomy? Quite impossible! (Cf. Deut. 31. 24–26.) No late writer, even on the critical hypothesis (except one after the exile), could have put such words into Moses' mouth intending to reform. Hence the very point of the entire law, which as a reformatory code would make it adapted to the needs of the seventh century, is *ex hypothesi* inexplicable. Most critics, therefore, assign this verse, wholly or in part, to a redactor of post-exilic times.[2]

4. *Deuteronomy* 18. 9–22, *law of the prophets.* This law is a warning against falling into the magic of the Canaanites (18. 9); plus a promise that a line of prophets will succeed Moses, accompanied by a test as to how true and false prophets may be distinguished. The form of the law is such, and its teaching is so admirably adapted to the needs of Israel on entering Canaan, that one wonders why any one should still claim for it a late origin. For example, all forms of heathen divination are condemned, and then the author adds (*v.* 14), "But as for thee, the Lord thy God hath not suffered thee so to do"; but this, on the new theory, must be false in face of what is stated

[1] Cf. Dawson, *Modern Science in Bible Lands*, 1888, p. 369. The same view is held also by Steindorff.

[2] So Wellhausen, *Die Comp.*[2] p. 194; Cornill (*Einleit.* p. 34); Dietsel (*J. P. Theol.* v. p. 266A). ; cf. Holzinger (*Einleit. in den Hex.* 1893, p. 264). Driver (*Deut.* p. 212) passes over it in silence. For the true explanation of the "law of the kingdom," cf. Rosenberg, *Die Mosaische Echtheit der Königs-Urkunde im Deut.* 17. 14–20; *Dissertation*, 1867, pp. 26–28, 51, 55.

in 2 Kings 16. 3, 17. 17, 21. 6, 23. 10. The probabilities are, that a reformer of the seventh century would have omitted Deuteronomy 18. 14*b*. Moreover, the promise of a נָבִיא spoken of in *vv.* 15 and 18, which is probably to be taken, primarily, in a collective sense, is not so important to a nation which has already had its Elijahs and Hoseas, as to a people about to lose their first and only prophet. Besides, the test of true prophecy, in *v.* 22, is a very primitive one, and far below the teaching of Jeremiah 18. 7–10. A still further proof of the inappropriateness of this law to reform is obvious from the fact that criticism is more and more inclined to exclude it, wholly, or in part, from the original kernel of Deuteronomy.[1] On the other hand, it should not be lost sight of, that the case of Balaam was fresh in Moses' memory when Deuteronomy is purported to have been spoken.

5. *Deuteronomy* 19. 14—*removing a neighbour's landmark* (cf. 27. 17). The law is obviously primitive. No claim, indeed, has ever been made that it suits Josiah's age, or that it is reformatory; for such an encroachment upon a neighbour's rights was not uncommon from the earliest times.[2] The first portion of the verse, however, is employed by Kittel[3] to show that, when this law was written, Israel were already in Palestine. But the second portion of the same verse shows quite as plainly that they were not yet in possession of Palestine. Besides, the landmarks spoken of are those which have been set up, not by their "fathers" (אֲבוֹת), but by "them of old time" (רִאשֹׁנִים), *i.e.* by the aborigines of Palestine. A strange expression for a late historian to use!

6. *Deuteronomy* 20. 1-20—*the law of military service*

[1] *E.g.* Cornill (*Einleit.* p. 34) rejects *vv.* 14–22. Wellh. (*Proleg.*[1] p. 403) speaks of *v.* 22 as "vague and unpractical."

[2] Cf. Driver, *Deuteronomy*, p. 234.

[3] Kittel, *Hist. of the Hebrews*, i. p. 36.

(cf. 24. 5). The aim of this law is not to check barbarity in war, but to regulate the constituency of the army. The prime object is stated in the first verse, viz., that, with God on their side, they are not to fear. It is repeated in verse 4. The strong spirit of trustful confidence expressed in this law (especially in *vv.* 1–9), the presence and exhortation of the *priests* to the army before they enter into the engagement (*vv.* 2–4), but especially the utopian character of *vv.* 1–9, all bespeak its early origin. This is also recognised by criticism.[1] The latter half, too, of this law (*vv.* 10–20), is equally unsuitable to the seventh century. It prescribes what Israel shall do when warring (*a*) against foreigners outside of their own territory (*vv.* 10–15), and (*b*) against the inhabitants of Canaan, namely, the Hittites, and the Amorites, etc. (*vv.* 16–20). It is quite inconceivable that a late writer should have preserved such a law for its reformatory value ; or, in a post-Davidic age, have made a discrimination of this sort between modes of foreign and civil warfare. Driver's suggestion that it is a law "in harmony with his philanthropic nature, which he desired to see revived," is hardly satisfactory, to say the least.[2] The law is obviously early.

7. *Deuteronomy* 21. 1-9 — *expiation of an untraced murder.* This law is also confessedly archaic ;[3] its object being to make atonement for innocent blood shed in an unknown way. Thus the city nearest to the body of the dead shall furnish a heifer to be slain in a rough valley by the priests, the sons of Levi, who are commanded to strike

[1] Thus Cornill (*Einleit.* pp. 35 f.) and Wellhausen (*Die Comp.*[2] p. 194), reject it as not belonging to the original kernel of Deuteronomy. Driver (*Deuteronomy*, p. lxi.) also concedes that "the law of military service implies a simpler state of society than the age of the later kings."

[2] Driver, *Deuteronomy*, p. lxi. Cf. Bissel's discussion of the assumptions underlying this statute (*e.g.*, Num. 1. 3, 26. 2, 31. 6). *Journal Bibl. Lit. and Exeg.* 1883.

[3] Driver, *Deuteronomy*, p. 241.

off its neck. But, if confessedly ancient, why revived in the seventh century? To this question no satisfactory answer can be given. To say, with Dillmann, that it is an older fragment, possessing the Deuteronomic stamp, is as unsatisfactory as the more recent attempts to place it wholly, or in part (on account of "the priests" mentioned in *v.* 5), after the exile.[1] The law is evidently not of a reformatory character.

8. *Deuteronomy* 21. 10–14—*treatment of female slaves.* This is a law defining Israel's rights when victorious in war over foreign nations. It is exceedingly primitive in its stipulations, is never claimed to be reformatory, and, indeed, is quite unsuited to the conditions of the seventh century. "The case contemplated is manifestly that of warfare with *foreign* nations, after Israel is settled in Palestine (*v.* 10, "when thou *goest forth*," etc.), not with the nations of Canaan, with whom no intermarriages are to be contracted (7. 3)."[2]

9. *Deuteronomy* 21. 15–17—*primogeniture.* This law secures the rights of the firstborn in cases of polygamy, when the firstborn is the son of the less beloved wife. It is based upon the patriarchal idea that the first son born inherited inalienable birthrights (cf. Gen. 24. 36, 25. 5, 31–34). The custom of the patriarchs is thus established by law in the interests of the nation, and, as far as Israel's history informs us, it was observed from Moses on. There is no proof whatever that the rights and privileges of primogeniture needed to be reinvested with kingly sanction in order to reform the prevailing customs of later times.

10. *Deuteronomy* 21. 22, 23—*the body of one hanged.* The reference is to criminals, who, having been put to death for sins worthy of death, are hung upon trees in order that their

[1] Cf. Wellhausen, *Die Comp.*[2] p. 353; Holzinger, *Einleit. in d. Hex.* p. 265.

[2] So Driver, *Deuteronomy*, p. 244.

bodies, exposed to public gaze, might become a terror to evil-doers. (Cf. Josh. 10. 26; 2 Sam. 4. 12.) In such cases the law provides that their bodies, thus exposed before the eyes of God and man during the day, shall at nightfall be taken down and buried, that the land be not defiled. How accurately this requirement was carried out in Israel, we have already seen from Joshua 8. 29, 10. 27, "both old passages."[1] And here again there is no historical reason for supposing that it was codified in Judah's crumbling era of decay. Hanging itself was an ancient Egyptian custom (cf. Gen. 40. 22).

11. *Deuteronomy* 22. 5—*sexes not to interchange garments.* According to Robertson Smith,[2] this is one of the many precepts in Deuteronomy which, though trivial and perhaps irrational to the modern eye, "disclose to the student of Semitic antiquity an energetic protest against the moral grossness of Canaanite heathenism." It is, accordingly, claimed by criticism that this is an ancient law which has been taken up and codified by the Deuteronomist. But the question still remains, Why by him? And to this no satisfactory answer has been given; certainly, not because there was special need of reform in this regard according to history.

12. *Deuteronomy* 22. 6, 7—*birds' nests.* This is one of the many humanitarian laws to be found in the book of Deuteronomy (cf. 25. 4). The same spirit, however, is shown in Leviticus 22. 27, 28. Here, if the eggs or the young ones are taken, the mother is to be let go free. Israel is thus to regard with sanctity the parental relation of birds, that it may go well with them as a nation, and that they may prolong their days. This is curious law to have received its present form at the hands of a reformer!

[1] Cf. Kleinert, *Untersuchungen*, p. 96 f. Also Holzinger, *Einleit. in d. Hex.* p. 299.

[2] W. Robertson Smith, *OTJC.*[2] p. 365.

13. *Deuteronomy* 22. 8—*battlements.* This is another of the laws contained in the Deuteronomic code which no one claims is either reformatory or necessarily late. The law contemplates the construction of stone houses with flat roofs. In building such houses the command is given to construct parapets on the roofs to protect one from falling off. Tent-life for Israel is evidently a thing of the past; for, at least, Reuben, Gad, and the half tribe of Manasseh are already settled in their possessions. Had the other laws of Deuteronomy been intended for a people who were destined to remain in the desert, such a law appearing among them would have been absurd; on the other hand, that such a law was deemed necessary after five centuries of settled life and experience in Canaan is equally unreasonable, and lessens the practicalness of the code as a whole.

14. *Deuteronomy* 22. 13–21—*slander against a newly married maiden.* Another of the laws peculiar to Deuteronomy, confessedly adapted to the customs of "a primitive-minded people,"[1] and bearing linguistic proof of its probable early codification (cf. the use of הַנַּעַר for הַנַּעֲרָה in *vv.* 15 (twice), 16, 20, 21, *along with* the actual use of the feminine form in *v.* 19—its only occurrence in the Pentateuch).

15. *Deuteronomy* 23. 1–8 (Heb. 2–9)—*conditions of admittance into the theocratic community.* For example, it is stipulated that eunuchs, mutilated in the service of a heathen deity or otherwise; Amorites and Moabites to the tenth generation; Edomites and Egyptians to the third generation, shall not enter the congregation of the Lord. Certain features of this law, when treated as a unity, point to an early origin; thus, the command not to abhor an Egyptian, in *v.* 7 (Heb. 8), is far more practical in Moses' or Joshua's time than at any subsequent date; "a mixed

[1] Driver, *Deuteronomy*, p. 255.

multitude" went up out of Egypt (Exod. 12. 38).[1] On the other hand, the strong antipathy for the Moabite, in *v.* 3 (4), shows clearly that the author was unfamiliar with the genealogy of David (cf. Ruth 4. 13–22); while the narrow exclusiveness of the entire law is opposed to the spirit of eighth-century prophets (cf. Isa. 2. 3; Mic. 4. 2).[2]

16. *Deuteronomy* 23. 15, 16 (16, 17)—*humanity to runaway slaves.* This is a law providing for fugitive slaves, who, in attempting to escape the merciless treatment of their masters, flee for protection to the land of Israel. To all such it is granted to dwell where they please. There is little doubt as to the antiquity of this law, or to its practical character, if given early. Surely to none would such a law speak with greater force than to those who had themselves just escaped from slavery. There is confessedly nothing reformatory about it.

17. *Deuteronomy* 23. 17, 18 (18, 19)—*against religious prostitution.* This law is aimed at the immoral and repulsive custom of the Canaanites prostituting themselves to their gods and goddesses, a law which has historically been violated ever since the time of Israel's conquest of Canaan. Compare, for example, the sensual and heathen practices of the Egyptians to-day, at Ṭanṭa in the Delta. That this law was enforced by Josiah (2 Kings 23. 7), is no proof that it then first became a law. There were Sodomites in Rehoboam's time (1 Kings 14. 24); a little later Asa banished them from the land (1 Kings 15. 12), and those which remained, after his apparent enforcement of the law, his son Jehoshaphat removed (1 Kings 22. 46, *Heb.* 47). The law is reformatory, but there is no proof that it was called into existence for the first time in the seventh

[1] So Oettli, *Das Deuteronomium u. die Bücher Jos. u. Richter*, 1893, p. 17. Also Douglas, *Lex Mosaica*, p. 71.

[2] Geiger (*Urschrift*, p. 98 f.) is quoted by Dillmann, iii. p. 348, as rejecting this entire section as a post-exilic interpolation. So others.

century. The evidence just furnished would rather point to a much earlier date.

18. *Deuteronomy* 23. 24, 25 (25, 26)—*regard for and freedom to eat of one's neighbour's crop.* The passer-by may pluck grapes or grain as he crosses the property of his neighbour, but he is forbidden to carry away any in his vessel. The command is obviously rudimentary, and belongs to an earlier age than that of Josiah's reformation.

19. *Deuteronomy* 24. 1–4—*a special law in case of divorce.* This law prevents a man from taking back his divorced wife in case she has been meanwhile married to another man. The Mohammedan law of to-day, on the contrary, requires that the woman divorced shall have been married to some other man, and by him again divorced before her former husband can take her back. The date of the law is indeterminable, but it seems to assume the right of divorce prescribed in Leviticus 21. 7, 14, 22. 13; Numbers 30. 9 (10).

20. *Deuteronomy* 24. 16 — *individual responsibility.* "The fathers shall not be put to death for the children, neither shall the children be put to death for the fathers: every man shall be put to death for his own sin" (cf. Jer. 31. 29, 30; Ezek. 18. 20). Considerable stress is laid upon this law, as it emphasizes the idea of individual responsibility. But it is useless for those who believe in the Mosaic origin of the Decalogue (even its briefest form), to insist that the idea of individualism is of late birth. The Ten Commandments teach individual responsibility. Their language is that of the second person singular, "Thou shalt not." On the other hand, there is no necessary conflict between the clause, "visiting the iniquities of the fathers upon the children unto the third and fourth generation of them that hate me" (Deut. 5. 9), and the law before us; because, in the former case, the reference is

to the providence of God operating in society; whereas here we have a principle of administration in matters of state justice. Amaziah very possibly knew of this law (cf. 2 Kings 14. 6).

21. *Deuteronomy* 25. 1–3—*moderation in bastinado—forty stripes the maximum.* This mode of punishment was common in Egypt, and the frequent and excessive use of it there must have left a deep impression upon Israel. There is little or no reason for thinking that its origin among the Hebrews was late, or that clemency was desired in Josiah's age. The expression, "cause to lie down" (*v.* 2), would rather confirm one in the belief that the author had the Egyptian mode of punishment in mind.[1]

22. *Deuteronomy* 25. 4—*threshing-ox not to be muzzled.* A humanitarian law, doubtless ancient, and adapted to all ages; showing, however, no traces of a reformatory character, or suited especially to the requirements of the seventh century.

23. *Deuteronomy* 25. 5–10—*levirate marriage.* This law is evidently based upon a very ancient patriarchal custom (cf. Gen. 38. 8–26), which required that an Israelite should marry his sister-in-law, in case she had no son, and raise up seed to his deceased brother; the motive being that his brother's name may not be lost in Israel (cf. *v.* 6). Here the duty is made obligatory; and for an example of its observance we need look no further than the book of Ruth (cf. chap. 4. 1 f.).

24. *Deuteronomy* 25. 11, 12—*modesty in women.* Mutilation is here enjoined for indecent conduct—a law much older than the seventh century, and illustrating the *in*humanity of some of the Deuteronomic laws (cf. 19. 21).

[1] Cf. Wilkinson-Birch, 1878, i. pp. 305, 308, and Riehm's *Handwörterbuch des bibl. Alterthums*,[1] pp. 899, 914 (quoted by Driver); also Berger's *Criminal Code of the Jews*, according to the Talmud, Massechoth Synhedrim, 1880, pp. 122 f. (quoted by Bissel).

25. *Deuteronomy* 26. 12–15—*thanksgiving at the payment of the triennial tithe.* This is one of the most interesting of all the laws peculiar to the book of Deuteronomy. Its decisive characteristic lies in the expression, וְלֹא נָתַתִּי מִמֶּנּוּ לְמֵת, "nor have I given thereof TO the dead" (*v.* 14), which very probably reflects the Egyptian custom of placing food on small tables in the grave with the dead, "for the use of the departed spirit in its journey to the underworld." [1]

These are the laws "peculiar" to Deuteronomy. So many of them are confessedly "ancient," and so few really adapted to the requirements of the seventh century, that it is exceedingly doubtful whether the code as a whole was written with the *intention* to reform. On the other hand, even those laws *not* "peculiar" to Deuteronomy, and which have a counterpart in the other codes of JE or P (*e.g.* concerning cleanliness in the camp, leprosy, pledges, asylum for manslayer, slavery, tithes and the like), are so similar to these in character, that we dare not claim for them more than an inherent potentiality to reform.

Another reason for denying that the book of Deuteronomy was composed *in order to reform*, is the obvious fact that the *parenetic* portion is not intended to reform but to warn. The hortatory element in Deuteronomy is a conspicuous part of the book, and equally, or even more important, than the laws themselves.[2] Now the question here is not, Whom does the author represent Moses as exhorting? for naturally it is Israel on the plains of Moab, as every one allows; but rather this, *In doing so does the author put into Moses' mouth such exhortations as would tend especially to bring about a reformation of the conditions existing in*

[1] Cf. Wilkinson-Birch, *Ancient Egypt*, 1878, iii. p. 432; Oort, *Theolog. Tijdschrift*, 1877, p. 354 f.; Wellhausen, *Arab. Heidenthum*, p. 162; Dillmann, iii. p. 362; and Driver, *Deuteronomy*, p. 292.

[2] So Dillmann also (III. p. 601), and Driver (*Deut.* p. 19).

his own time? We think not, for these reasons: (*a*) In Manasseh's, Ammon's, or Josiah's time, a conversion of the *court* was necessary. What the nation needed was something to arouse the *royalty*; the book of Deuteronomy, on the contrary, is confessedly intended for the *people*.[1] It is "the people's book." As a reformer the Deuteronomist could hardly have hoped to have reformed the State by an appeal to the people. (*b*) The seventh century needed a reformation of *religion*, not merely of worship, an awakening of the national conscience, not the simple abandonment of high places; above all, a reformation of *forms* and *ceremonies* (cf. Jer. 3. 16; 7. 4, 21-23; 9. 26).[2] And yet the Deuteronomist never alludes, directly or indirectly, to Israel's need of *religious reformation*, but over and over again warns them against falling into the sin of the Canaanites whom they are about to dispossess. (*c*) The basis of appeal, also, is better adapted to early circumstances and conditions; the author appeals to their own personal remembrance of the past: *e.g.*, remember your servitude in Egypt (5. 15; 15. 15; 16. 12; 24. 18, 22); remember what Amalek did unto thee by the way (25. 17), and what the Lord did unto Miriam (24. 9)—motives which would hardly have survived five centuries of oral transmission, and been emphasized so strongly by a reformer. (*d*) Again, the personal ring of certain exhortation—*e.g.*, the accusation of rebellion from the day they had left Egypt until they came to the plains of Moab (9. 7, 24)—is that of a writer who fully grasped the relation of Moses to the people, and who most vividly appreciated the authority which his sixty years of seniority over the generation whom he addressed in Moab afforded him as prophet and lawgiver. (*e*) Finally, the passage contained in Deuteronomy 30. 11-20 ("For this commandment which I command thee this

[1] So Wellhausen, explicitly, *Die Comp.*[3] 1889, p. 204.
[2] Cf. Robertson, *The Early Religion of Israel*, 1892, pp. 455 f.

day is not too wonderful for thee"), which, D'Eichtal[1] thinks, in some respects is the most remarkable in the whole book, is psychologically improbable from the pen of a late writer who is supposed to be putting it into Moses' mouth. The literary art involved in supposing such a case is quite too wonderful.

Our final reason for denying that the author of Deuteronomy wrote with the *intention of reforming*, is the fact that many of the most recent results of criticism itself are opposed to such an idea. More and more criticism is recognising that only the smallest fragment of the book of Deuteronomy is really suitable to the circumstances of the seventh century. For example, Wellhausen[2] says, "He who maintains the unity of Deuteronomy cannot place its composition in the time of Josiah; that is certain." It seems reasonable at first sight to suppose, with Dillmann, Kuenen, Driver and others, that the original kernel of Deuteronomy consisted of approximately chaps. 5.–28.; but then the logic of criticism drives one, with Wellhausen, Cornill, and Stade, to the safer conclusion that it could not have contained more than chaps. 12.–26. And even here there is no sure foundation on which to rest; for, as Wellhausen[3] remarks, "Also Deuteronomy 12.–26. is very strongly worked over, and not alone in the parenetic portions." Thus chaps. 21.–25. are so different in character from the remainder of the kernel that they must have come from a different source. The marks of dual authorship are too strongly visible in chap. 12., also, to think of it as a unity; chap. 14. 1–21 is too similar to P to be pre-exilic; 15. 4–6 are a clear contradiction of *v.* 11; and 20. 3, 4 and 26. 16–19 are not probably from the original Deuteronomist; so claim such critics as

[1] Cf. *Mélanges de Critique Biblique*, 1886, p. 312.
[2] *Die Comp.*[2] 1889, p. 353.
[3] *Idem*, p. 352.

Stade, Wellhausen, Cornill, Vater, Holzinger, and many others. The sum total, therefore, which criticism allows with certainty to have belonged to the original programme of reform is chaps. 12. 1–28 (in part); 13.; 14. 22–29; 15. 1–3, 7–23; 16.; 17. 1–13; 18. 1–14; 19.; 20. 1–2, 5–20; 26. 1–15, or about 167 verses out of 959; or, less than one-fifth of the whole book. This very evidently lessens the force of the claim that Deuteronomy is a code of reform, which is our only justification for employing this mode of argument.[1]

[1] The following shows the gradual diminution which the "original kernel" of Deuteronomy has undergone: De Wette, in his epoch-making dissertation on the *Origin of Deuteronomy*, published in 1806, admitted, with few exceptions, the whole of the book to be the work of one writer; Knobel, writing considerably later, limited its size to chaps. 1. 1–31, 14; Ewald to chaps. 1.–30.; Graf and Dillmann, 4. 44–28. 68; Kuenen, the same, omitting chap. 27. More recently Montet to chaps. 1.–30., excepting chap. 27.; A. van Hoonocker to chaps. 1.–26. and 28.; Andrew Harper to chaps. 1.–26.; Kayser and Westphal to chaps. 5.–26., 27. 9, 10, and chap. 28.; Reuss and Driver to chaps. 5.–26., and chap. 28.; W. R. Smith to chaps. 4. 44–26. 19; Kleinert to chaps. 5.–26.; Wellhausen narrows the original kernel to chaps. 12.–26., allowing for various interpolations; Cornill and Stade, to the same, excepting large portions of chaps. 12. 14. 15. 18. 20., and all of chaps. 21.–25.; Kautzsch (*Abriss*, 1897, p. 59), to 4. 44–49; 5. 1–10. 5, 10–22; 11. 1–28; 12. 1–26. 15; 28. 1–68; 31. 9–13, and claiming that *Ur-Deuteronomium* had at least two thorough and complete redactions during the Babylonian exile; Staerk and Steuernagel (also Briggs, *The Higher Criticism of the Hexateuch*,[2] 1897, p. 242 f.) discover on closer analysis that the kernel of Deuteronomy is composed of two independent codes, one of which was written in the second singular, and the other in the second plural. Steuernagel, quite independently of Staerk, has discovered, further, that the singular and plural sources are themselves no longer a unit or even original (pp. 67, 72). He imagines that they have been compiled out of different sources as follows (p. 73): First, there was the *Grundgesetz*, or law relating to the centralization of the cultus to the temple in Jerusalem. This was united with certain *Gerichtssprüche*, which together formed a *Grundsammlung*. This last received two independent redactions; first, by the redactor of the *Aeltestenquelle*, who united the *Grundsammlung* with certain other sources (p. 68), after which the author of the *plural* source made further additions; second, by the author of the *singular* source, who took the *Grundsammlung*, and added certain portions partly foreign, partly original. These two collections, the plural and the singular, were then taken, and by D^R, who was the chief redactor, welded together, and with a few new additions form the Deuteronomy of Josiah. A few other additions may have been made later in the time of the exile, or even after the exile, and thus we get our book of Deuteronomy. (Cf. Steuernagel,

2. *Criticism claims, further, that Deuteronomy is dependent upon JE* (*Exod.* 20. 24–23. 33; 13. 3–16; 34. 10–26), *but knows nothing of P* (*Exod., Lev., Numb.*). That is to say, the three codes of Law (viz. JE, D, and P) reflect the ideal or practice of three distinct periods in Israel's history: JE, that of the ninth century B.C., D the seventh, and P the fifth. Not one generation, therefore, of thirty-eight years in the desert, but several generations, separate D from JE, during which "the social and political organization of the community had materially developed, and the code of Exodus had ceased to be adequate to the nation's needs." It is further alleged that "the legislative kernel of the book (chaps. 12.–26. 28) may be described broadly as a revised and enlarged edition of the 'Book of the Covenant' . . . adapted to meet the needs of a more developed state of society, for which the provisions of Exodus were no longer adequate." But "in neither its historical nor its legislative sections can Deuteronomy be shown to be dependent upon the source which has been termed P."[1]

Restricting our immediate inquiry to the relation of JE to D, the question at issue is, not whether traces of JE may not be found in D, or that some of the laws of JE may not be more fully stated in D, for that is granted on all sides, but rather, is Deuteronomy 12.–26. a revision or enlargement

Die Entstehung des deuteronomischen Gesetzes, kritisch und biblisch-theologisch. Untersucht, Halle, 1896.

Such a theory of Deuteronomy's composition and growth obviously reduces the reformatory motive underlying its codification to the minimum.

[1] So Driver, *Deuteronomy*, pp. xlvi., xix., xxxviii. Similarly, Ewald (*Hist. of Israel*, Eng. transl. iv. p. 222 f.); Graf (*Die Geschichtlichen Bücher*, etc., p. 20 f.); Kayser (*Das vorexilische Buch*, etc., 1874, p. 136 f.); Kleinert (*Untersuchungen*, 1872, pp. 47, 52 f., 77 f.); Wellhausen (*Proleg.*,[1] Eng. transl., p. 32, *Die Comp.*[2] p. 204 f.); Dillmann (iii. pp. 291, 603–5); Kuenen (*Ondezoek*,[2] p. 163 f., *Hexateuch*, p. 110); Cheyne (*Jeremiah*, p. 71); Carpenter (*Mod. Rev.* iv. 1883, p. 261); Oettli (*Deut. Jos. u. Richter*, pp. 13, 16); A. Harper (Deuteronomy, *Expos. Bible*, pp. 27, 28). Cf. A. B. Davidson (*Expository Times*, Jan. 1898, p. 187), who says: "Deuteronomy in short virtually *is* these chapters (Exod. 21.–23.)—Moses' last words—expanded and placed in a homiletic setting."

of Exodus 20. 24–23. 33, and so different in character as to *necessitate* the conclusion that it represents a later stage of society? A critical comparison of these two codes will show, we believe, that this is not required; and for these reasons:

1. *One-third of the laws contained in the Book of the Covenant* (*Exod.* 20. 24–23. 33) *find no place in the legal kernel of Deuteronomy*; yet these are of a permanent and practical value, which quite forbids their having been set aside in the seventh century for those contained in Deuteronomy. They relate, for example, to compensations for various kinds of injuries: injury to one's body (Exod. 21. 18–27), injury caused by a goring ox (21. 28–32); to digging a pit, into which an ox might fall (21. 33, 34); ox goring ox (21. 35, 36); theft (21. 37–22. 3, Eng. 4); pasturing in another man's field (22. 4, Eng. 5); fire set in another's corn (22. 5, Eng. 6); property in keeping, stolen, dying of itself, or torn to pieces (22. 6–12, Eng. 7–13); borrowed property injured (22. 13, 14, Eng. 14, 15); lying with a beast (22. 18, Eng. 19); cursing God אֱלֹהִים or the ruler נָשִׂיא of the people (22. 27, Eng. 28); the Sabbatic year (23. 10, 11); the Sabbath (23. 12). Surely practical statutes of this character can scarcely be said to have been abandoned by the Deuteronomist because "the social and political organization of the community" had so materially developed that they were no longer adequate. One need only compare them with the new enactments which the Deuteronomist substituted in their place to see the falsity of such a claim. Thus it is difficult to see why the Deuteronomist should have rejected the law against feeding in another man's field (Exod. 22. 4, Eng. 5), and yet legislated as to how a man should regard another's crops (Deut. 23. 25, 26). Or, why he should have omitted the many laws in JE concerning *goring* oxen (Exod. 21. 28–36), and yet legislated concerning the *threshing* ox (Deut. 25. 4). There is here certainly no proof that the Deuteronomist was endeavouring "to meet

the needs of a more developed state of society." A similar difficulty is felt in accounting for his omission of religious regulation; *e.g.*, the Sabbath (Exod. 23. 12); or, if chaps. 5–11 be included in the original kernel, why he *retained* the injunction to extirpate the Canaanites (cf. Exod. 23. 31–33, and Deut. 7. 2–4).[1]

2. *The order of the laws common to JE and D is different.* If D is an "enlarged edition" of JE, then we should expect the laws in the two codes to follow about the same sequence. On the contrary, the order is quite different. Thus, taking the laws which are common to both the Book of the Covenant and Deuteronomy, the order is, respectively, as follows:—

1. Altar (Exod. 20. 24–26) = Place of sacrifice (Deut. 12. 2–28).

2. Slaves (21. 2–6) = Exhortations against idolatry (12. 29–31).

3. Asylum for manslayer (21. 12–14) = Flesh of beasts dying of themselves (14. 21).

4. Smiting and cursing parents (21. 15, 17) = Seething a kid (14. 21).

5. Man stealing (21. 16) = Slaves (15. 12–18).

6. Seduction (22. 16, 17) = Firstlings (15. 19–22).

7. Witch (22. 17) = Blood of sacrifices (15. 23).

8. Exhortations against idolatry (22. 19) = Three feasts (16. 1–17).

9. Stranger widows and orphans (22. 20–23) = Just judgments (16. 19, 20).

10. Usury (22. 24) = Worshipping other gods (17. 2–7).

11. Pledge (22. 25, 26) = Witch (18. 10).

[1] It is not enough to answer (as Driver, *Deut.* p. xxxii.), because "it formed an element in the older legislation," and "afforded the author a means of expressing indirectly his profound abhorrence of practices which he knew to be subversive of holiness." The same would apply to stealing, which he omitted.

12. Firstfruits (22. 28; 23. 19) = Asylum for manslayer (19. 1–13).

13. Firstlings (22. 29) = False witness (19. 15–21).

14. Flesh torn of beasts (22. 30) = Rebellious son (21. 18–21).

15. False witness (23. 1) = Animals straying or fallen (22. 1–4).

16. Just judgment (23. 2–3, 6–8) = Seduction (22. 28, 29)

17. Animals straying or fallen (23. 4, 5) = Usury (23. 20, 21).

18. Worshipping other gods (23. 13) = Pledge (24. 6, 10–13.

19. Three feasts (23. 14–17) = Man stealing (24. 7).

20. Blood of sacrifices (23. 18) = Stranger, orphans and widows (24. 17, 18).

21. Seething a kid (23. 19) = Firstfruits (26. 1–11).

In other words, instead of following the order of the laws in JE (1, 2, 3, 4, etc.), the Deuteronomist makes (with one exception—the first) a new and independent order of his own, viz. 1, 5, 12, 14, 19, 16, 11, 2, 20, 17, 18, 21, 6, 3, 13, 9, 15, 10, 8, 7, 4.

3. *Verbal coincidences between JE and D are exceedingly rare.* In the original, resemblances in style and verbal coincidences are the exception rather than the rule. Apart from three or four clauses more or less complete, and a brief sentence or two, like "Thou shalt not seethe a kid in its mother's milk," which are too insignificant to furnish a criterion, there are very few resemblances in language between JE and D.[1] And it is hardly common sense to say that the Deuteronomist worked over the Book of the Covenant until it is no longer recognisable.

4. It is generally agreed that the composite code JE is largely Ephraimitic; the Deuteronomist, of course, was a

[1] Slight resemblances exist between Deut. 14. 21*b*; 16. 16, 19, on the one side, and Exod. 23. 19*b*, 17, 15*b*, 8, on the other, and no others.

Judæan. Now this being so, is it reasonable to suppose that a Judæan would revise and enlarge the laws of an Ephraimite?

5. Again, JE is legal and concise; D is expanded and hortatory. The substance of the laws, *common* to both codes, is practically the same. Is it, therefore, logical to say that in the ninth century Israel was given a purely legal code, and that two centuries elapsed before they were revised and given a parenetic setting? Indeed, can criticism affirm, with any degree of certainty, that of two codes of law of unequal size the briefer is the earlier, and the more expanded the later?[1]

The other claim under this head pertains to D's relation to P. That "D knows nothing of P,"[2] and "moves on without displaying the smallest concern or regard for the system of P"[3] are statements which require qualification. (1) Deuteronomy 14. 1–21 is almost identical with Leviticus 11. 2–23," as is evident from a comparison of contents and language.[4] Reasons are not wanting also for thinking that Leviticus 11. 2–23 is earlier than Deuteronomy 14. 1–21, inasmuch as the clean animals are only defined in Leviticus 11. 3, whereas in Deuteronomy 14. 4–6 they are not only defined, but named. Two attempts are made to escape this ugly obstacle: (*a*) to assign Leviticus 11. 2–23 to H, an *earlier* stratum of P (as Driver);[5] or (*b*) to deny Deuteronomy 14. 1–21 to the original kernel of Deuteronomy (as Kautzsch[6] and others)—both unwarrantable. (2) Another section which resembles the priestly laws of P (Lev. 21. 20) is Deuteronomy 23. 2–15 (Eng. 1–14).[7] (3) Furthermore,

[1] Steuernagel (*Der Rahmen des Deuteronomiums*, 1894, p. 25n.) refutes the idea that Deuteronomy took the place of the "Book of the Covenant."

[2] Kayser, *Das vorexilische Buch*, p. 133.

[3] Driver, *Deuteronomy*, p. xiv.

[4] Cf. Wellhausen, *Die Comp.*,[2] 1889, p. 206. Also Driver, *Deuteronomy*, p. 157.

[5] *Deuteronomy*, p. 157.

[6] *Abriss*, 1897, p. 59.

[7] Cf. Wellhausen, *idem*, p. 207.

Deuteronomy 12. 1 ff. implies a previous law on the subject of a central sanctuary such as is found in Leviticus 17. 4 f. Hence it is plain that D is not entirely ignorant of the laws of P.[1]

3. *The other claim made by criticism is to the effect that Deuteronomy's literary influence is observable first in the prophecies of the prophet Jeremiah.* Vatke[2] asserts that Jeremiah is the earliest witness for the late origin of Deuteronomy; Colenso,[3] Zunz,[4] and Montet,[5] on account of similarity of style, that Jeremiah himself may have assisted in the composition of the book. Carpenter,[6] that from the time of its publication the whole conception of Israel's history and religion was modified. Driver,[7] that while "the early prophets, Amos, Hosea, and the undisputed portions of Isaiah, show no certain traces of its influence, Jeremiah exhibits marks of it on nearly every page. Ezekiel and Deutero-Isaiah are also evidently influenced by it. If Deuteronomy were composed between Isaiah and Jeremiah, these facts would be exactly accounted for." Zunz[8] has pointed out sixty-six of the most important passages echoed in Jeremiah, and from these sixty-six Driver[9] has selected eighteen as "specimens" to show "the influence, theological and literary, which Deuteronomy, after its promulgation, speedily acquired."

At first sight these parallels are striking, and seem to be

[1] Cf. on this point, Dillmann, iii. pp. 340, 605 f.; Kleinert, *Untersuchungen*, pp. 52 f., 77 f.; Nöldeke, *Jahrbücher für protest. Theologie*, i. p. 350; Klostermann, *Neue kirkliche Zeitschrift*, iii. 1892, pp. 421–458, who shows that Deuteronomy is the last addition to the Pentateuch. Also Curtiss, *Levitical Priests*, 1877, pp. 33 ff., all of whom agree that P is prior to D. The trend of the French School of Vernes and Havet is also in this direction.

[2] *Biblische Theologie*, p. 220 f.

[3] *The Pentateuch*, etc., iii. p. 618; vii. pp. 225–227; and *Appendix*, pp. 86–110.

[4] *Zeits. der deutsch. Morgenländsche Gesellschaft*, xxvii. p. 670 f. (*ZDMG*).

[5] *Le Deutéronome et la Question de l'Hexateuque*, 1891, p. 193 f.

[6] *Modern Review*, iv. 1883, p. 257.

[7] *Deuteronomy*, p. xlvii.

[8] *ZDMG*, 1873, pp. 671–673.

[9] *Deuteronomy*, pp. xciii. f

conclusive, but on closer examination they prove delusive. The following reasons justify this conclusion: (1) Of the eighteen parallel passages selected and emphasized by Driver, only *one* (18. 20) falls *within* the legal kernel (Deut. 12.–26.). Of the other seventeen remaining, twelve occur in chaps. 4. and 28., which, according to many, were written considerably later than 621 B.C., and, therefore, cannot be said to have influenced Jeremiah. (2) On the other hand, it is only natural to think that Jeremiah and the prophets of the exile should have been influenced, to some extent at least, by the newly discovered "book of the law" which Hilkiah found. But why exclude JE? (3) The influence of Deuteronomy on Jeremiah can easily be overstated; *e.g.*, the prophet practically refutes the teaching of his alleged contemporary concerning the importance of a central sanctuary, when he rebukes Israel for trusting in the temple (cf. Jer. 7. 15), and opposes diametrically the repeated teaching of the Deuteronomist, when he declares that God gave Israel no commandments concerning burnt offerings or sacrifices when He brought them out of the land of Egypt (cf. Jer. 7. 22, 23). (4) Finally, the part of criticism is to show, *not* Jeremiah's dependence on Deuteronomy, but rather the Deuteronomist's dependence on Hosea and the other prophets of the eighth contury, of whom he is claimed to be "the spiritual heir."[1] From a literary standpoint the latter is impossible.

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[1] Driver, *Deuteronomy*, p. xxvii.