

CHAPTER VIII

COMMANDS AND INSTITUTIONS

THESE remain for consideration various commands and institutions, mainly of a civil character. Like the laws of the previous chapter, they are peculiar to Deuteronomy, and it is necessary to ask to what period in the nation's life are they most appropriate, and what they reveal as to the purpose of the author.

The instructions relate Israel to other peoples, surrounding or preceding them; lay down rules of warfare; concern institutions for the future.

Table K. Commands concerning other nations

| Subject | Deuteronomy |
|---|-------------|
| 1. Destruction of Canaanite sanctuaries (cf. Table F) | xii. 1-4 |
| 2. Extermination of previous inhabitants | xx. 16-20 |
| 3. Membership in the congregation | xxiii. 3-7 |
| 4. War with Amalek | xxv. 17-19 |

The nations prominent in the legislation are not those which concerned Israel in the seventh century. Egypt is referred to in retrospect, Syria and Assyria in the north are not in the field of vision, the author's concern is with those races which were in possession of the land which Yahweh had 'given' to Israel.

The order for the destruction of their shrines (xii. 2-4) has been dealt with in its religious aspect in Table F (p. 98). Egypt had been subject to Semitic influence in the seventeenth and sixteenth centuries before Christ, and there is archaeological evidence¹ that in the fourteenth century BC the worship of Canaanite gods was

¹ Albright, *Biblical Period*, pp. 6-10.

on the increase in the Delta region, with their 'ašērîm, q^edhešôth and other abominations. That Moses should warn against these would therefore be perfectly natural. Not only the shrines, however, but the nations themselves, were to be 'utterly destroyed', and a list of seven races is specified in Dt. xx. 17 (cf. vii. 1).

S. R. Driver says that 'the intention of these enumerations is obviously rhetorical, rather than geographical or historical.'¹ But is this really obvious? If von Rad and others are right in thinking that the laws of warfare go back to the earliest days of the 'holy war',² is it not more probable that they are intended to be taken literally? The frequent references³ to the 'nations which ye shall possess' show how large and important a place they take in the lawgiver's mind.

The list in Dt. xx. 17 is interesting in itself; it is not identical with any of the former lists in the Pentateuch, and is the first time that *seven* nations are mentioned. The first of these lists in Gn. xv. 19-21 (J) omits Hivites and adds others; none of those that follow in the Pentateuch⁴ contain the Girgashites. The author therefore is not copying the JE lists; the simplest explanation is that he wrote when the races still existed or were living memories.

The claim made to the possession of the land to the exclusion of all others 'would agree but poorly', Pedersen says, 'with conditions in the monarchical period'.⁵

Under David the Canaanites were merged into the Israelite unity and thus disappear, like the Perizzites and Girgashites, except as a memory (Ne. ix. 8).

The laws in xxiii. 3, 7 are 'certainly very old', says von Rad, judging both from their form and setting.⁶ The Edomites here, as in ii. 8, are to be treated as 'brethren', a condition which only existed before the monarchic period; from the time of Saul onwards enmity against Edom was continuous and bitter.

The case was different with Moab and Ammon. The apparent

¹ ICC, p. 97.

² *Studies*, pp. 45-59.

³ xii. 2, xv. 6, xviii. 9, 14, xxiii. 20, xxv. 19, xxvi. 19.

⁴ The full list, in varying order, is found in Jos. iii. 10 (D), xii. 8 (P), xxiv. 11 (D).

⁵ *Israel*, III-IV, p. 26.

⁶ *Studies*, p. 21. On the other hand Pfeiffer says, 'Why the author decreed that Edomites and Egyptians could be admitted to the nation, but never Moabites and Ammonites, remains an insoluble riddle' (*Introduction*). So it is, upon his dating, but not from the standpoint of the Mosaic period.

contradiction between the words in xxiii. 4, 'because they met you not with bread and with water in the way', and what is said in ii. 29 was noted above (p. 57).

The difficulty is only superficial; the king was unwilling to allow the Israelite host to pass through his territory; whilst the people of Ar on the border of Moab were not averse from making a little money out of them.¹ The king's refusal and his hiring of Balaam to curse the Israelites would at the time provide plenty of cause for bitterness.

Amalek also comes into the picture, the judgment to be executed being based upon an incident which the people are bidden to 'remember' (Dt. xxv. 17-19; Ex. xvii. 8-16). The record in Exodus is detailed, but it fails to mention the smiting of the weakest part of the Israelite host, the feeble, faint and weary, which imparted to the attack its peculiarly dastardly character. On this passage E. Robertson rightly remarks, 'It is obviously a live issue at the time of Deuteronomy.'²

It continued to be so with Samuel, and 1 Sa. xv. 2 is couched in similar terms. David also warred against Amalek (1 Sa. xxvii. 8, xxx, 2 Sa. i. 13ff.). In the time of the later monarchy the command would have seemed a sheer anachronism.

Table L. Rules of warfare

| Subject | Deuteronomy |
|----------------------------|-------------|
| 1. Laws of battle | xx. 1-15 |
| 2. Beautiful captive woman | xxi. 10-14 |
| 3. Cleanliness in camp | xxiii. 9-14 |

The laws of warfare contained in xx. 1-15 are evidently intended for use. It is therefore important to observe that they refer to *aggressive* warfare, and contemplate a career of conquest. The conquered people may be made tributary (10), spoil is to be gathered (14), the warfare may even be carried to 'cities . . . very

¹ See Reider on Dt. ii. 6, on similar tactics in modern times.

² *OTP*, p. 44.

far off' (15). Dillmann suggested that these laws were issued to check the barbarity with which warfare was carried on by the Assyrians and other ancient nations.¹ No doubt they contain notes of clemency, but who can imagine a prophet, after the fall of Samaria, laying down rules for aggressive warfare by Judah against countries far off?

With a greater show of reason von Rad regards them as a revival of ancient laws originating in the time when Yahweh was known as a 'man of war' (Ex. xv. 3), who went forth at the head of Israel's army (cf. Jdg. v. 5, 13, 20, 23) before there was a king to lead them. The proper period of the Holy War was the period of the old Israelite amphictyony, that is, the period of the Judges.² This can be seen by a comparison with the song of Deborah³ (Jdg. v) which reflects the same background. The exemptions⁴ of Dt. xx. 7, 8 are quite similar to those allowed by Gideon (Jdg. vii. 3). The instructions to spare fruit trees (xx. 19) would be specially applicable to a land which the people were about to inherit as their own. In a later age Elisha gave a contrary order to Jehoshaphat in respect of an enemy's country (2 Ki. iii. 19).

The 'priest' is to go with the army (xx. 2) as did Eleazar (Nu. xxxi. 6), and the priests at Jericho (Jos. vi), and Hophni and Phinehas against the Philistines (1 Sa. iv. 4). When the monarchy was established this custom fell into oblivion. The law of xxi. 10-14 has a parallel among the ancient laws of the Hittites; it commences with the same formula as xx. 1 and is of a piece with the rest; it carries with it the implication of success in aggressive warfare.

The regulation of xxiii. 9-14 also commences with the formula 'When the host goeth forth . . .', and has a very primitive appearance.⁵ The closing words concerning the presence of Yahweh in the camp (14) afford additional evidence that we are here still in the theocratic age.

¹ Quoted by S. R. Driver, *ICC*, p. 236.

² *Studies*, p. 46.

³ Probably dating back to the twelfth century BC.

⁴ Pfeiffer (*Introduction*, p. 238) describes the laws in Dt. xx as so 'Utopian and impracticable' in the days of the later monarchy, that some have regarded them as 'post-exilic dreams'. But the laying down of detailed procedure (e.g. xx. 10-14) has not the appearance of a dream.

⁵ Von Rad (*Studies*, p. 50) groups these laws with Dt. xxiv. 5 and says they 'contain what is very ancient', but, as he thinks, 're-interpreted'.

The only time to which these laws properly belong is that of the invasion. Conjectural reasons have been advanced for their revival, in the time of Manasseh, or after the exile, but with little semblance of probability.

Table M. Institutions

| Subject | Deuteronomy |
|-------------------------|--------------|
| 1. Judges and officers | xvi. 18 |
| 2. Supreme tribunal | xvii. 8-13 |
| 3. Possible king | xvii. 14-20 |
| 4. Promise of a prophet | xviii. 15-22 |
| 5. Cities of refuge | xix. 1-10 |

With xvi. 18 a new section commences which deals with the good government of the people and those placed in authority (xvi. 18-xviii). The preceding laws about tithes and offerings assume the existence of priests; here, looking to the future, is a command to *appoint* judges and officers, tribe by tribe. Various duties are assigned to them in the chapters which follow.

The cultic rules in xvi. 21, 22, xvii. 1 seem to interrupt the connection.¹ But the need to warn his people against Canaanite influence was never far from the legislator's mind, and reappears in xvii. 2-7.

We observe first that this ordinance displays no sign of connection with Josiah's reform.² 'Judges'³ are not mentioned in 2 Ki.

¹ A Rabbinic explanation of the connection is, 'He who appoints a judge who is unfit for his office, is as if he were to build an Asherah, a centre of heathen worship' (Hertz, *Deuteronomy*, p. 215). Von Rad calls these verses 'pre-Deuteronomic'; they are evidently ancient.

² See Welch, *Code*, pp. 164-172, on conjectural emendations of the text to render such a connection possible.

³ The Hebrew *šōphēt* is cognate with *mišpāt* (judgment). From all the references we conclude that they were civil officials entrusted with the administration of justice.

xxii, xxiii; and in 2 Ch. xxxiv. 12, 13 the 'officers'¹ are classed with scribes and porters as assisting the overseers in the restoration of the temple. It is sufficiently evident from the history that the institution must go much further back.

Neither was the institution new in the prophetic period. Zephaniah likens the judges of his day to 'evening wolves' (Zp. iii. 3); and Isaiah after denouncing the princes who 'judge not the fatherless, neither doth the cause of the widow come unto them' (Is. i. 23; cf. Dt. xxiv. 17) declares the promise, 'I will restore thy judges as at the first' (Is. i. 26). Such words can only refer to an ancient institution which had become corrupt.

The Chronicler, who refers to the history of the contemporary prophet Jehu the son of Hanani as one of his sources² for the reign of Jehoshaphat, records how that king 'set judges in the land throughout all the fenced cities of Judah' (2 Ch. xix. 5).

The parallels between Jehoshaphat's action and Deuteronomy are too many to be purely accidental. 'Officers' are appointed to assist the judges (2 Ch. xix. 11), there is to be a supreme tribunal presided over by a priest and a judge (2 Ch. xix. 11; cf. Dt. xvii. 9), to which causes are to be brought, described (2 Ch. xix. 10) in a way reminiscent of Dt. xvii. 8.

That the law as laid down in Deuteronomy is older than Jehoshaphat's time is manifest in various ways:

1. The form of Dt. xvi. 18 is quite general and the words 'according to thy tribes' (rv) point to an earlier period than the limitation to the tribe of Judah.

2. Jehoshaphat's institutions are prefaced with the statement that 'he brought them back to the Lord God of their fathers'. This implies an existing but broken law.

¹ The Hebrew *šōtēr* denotes one who keeps a record. The officers always appear as subordinate officials. In Ex. v. 6-19 they assist the 'overseers' in keeping 'the tale of bricks' and driving on the labourers. In Dt. xx. 5, 8, 9 they perform the role of non-commissioned officers. See also Dt. xxix. 10, xxxi. 28; Jos. iii. 2, viii. 33. Under David they performed both civil (1 Ch. xxvii. 29) and military duties (1 Ch. xxvii. 1). See G. T. Manley, '“Officers” in the Old Testament', *EQ*, xxix. 3, July 1957, pp. 149-156.

² Cf. 2 Ch. xix. 2 and xx. 34. Cf. W. F. Albright, 'The Judicial Reform of Jehoshaphat', *Alexander Mare Jubilee Volume*, ed. S. Lieberman, New York, 1950.

3. The list of names in 2 Ch. xix, clearly no invention, marks it as later than the general terms of Dt. xvi. 18.

4. The existence of judges is assumed in the laws of xxi. 1-9 and xxv. 1-3, both admittedly old.

5. Officers and judges appear together in the list of David's officials, probably taken from court records (1 Ch. xxiii. 4, xxvi. 29), and still earlier among the leaders of the people in the days of Joshua (see Jos. viii. 33, xxiii. 2 (D) and xxiv. 1 (E)).

The law which directs that judges and officers should be appointed fits in best at the beginning of the historical series.

Commenting upon the relation which Dt. xvi. 18-20¹ bears to the story of Moses' meeting with Jethro (Ex. xviii. 13-26; cf. Dt. i. 9-18)², Pedersen says that 'the Mosaic narrative no doubt deals with the same conditions as Deuteronomy'³; and indeed this can scarcely be denied.

THE CENTRAL TRIBUNAL

The establishment of a central tribunal (xvii. 8-13) follows on verses 2-7, which prescribe the death penalty (see p. 99) for apostasy, when proved by testimony after due inquiry. It is cast in the same archaic form, 'If...', and is followed by the same formula, 'thou shalt put away the evil...'. The form of the tribunal, 'the priests the Levites and... the judge that shall be in those days', inquiring at Yahweh's altar, emphasizes its primitive character.

With the rise of the kingdom the function of chief judge fell naturally to the king, and in the days of Samuel we see this process taking place, the people demanding a king to 'judge' them (1 Sa. viii. 5, 20). Absalom acts on this assumption (2 Sa. xv. 2-4). But Deuteronomy puts the supreme authority in the hands of 'the judge that shall be in those days'.

As is the case with the procedure of xxi. 1-9 (see p. 107), the

¹ Concerning Dt. xvi. 19, 20 see Chapter IV, Table C. The three rules in verse 19 are found previously in (a) Ex. xxiii. 6, (b) Dt. i. 17 and (c) Ex. xxiii. 8. They form the foundation of Hebrew justice.

² Upon this incident A. C. Welch remarks that the nation would never have credited a foreigner with this first attempt at organized life unless it had predated the time of the settlement (*Framework*, p. 192).

³ *Israel*, III-IV, p. 104.

collaboration of judge and priests betokens a time when their functions were not so sharply defined as they certainly were in the time of Jehoshaphat, when the chief priest was set over 'the matters of the LORD', and Zebadiah the son of Ishmael over 'the king's matters'.

From whatever aspect it is viewed, therefore, the injunction of Dt. xvii. 8-13 stands midway between the simple order in Ex. xviii. 26, that 'hard cases' should be brought before Moses himself, and the fully organized system depicted in 2 Ch. xix.¹

THE CHOICE OF A KING

From the provision of a high court the legislation passes to give counsel (concerning the choice of a king): 'when thou art come unto the land which the LORD thy God giveth thee, and shalt possess it, and shalt dwell therein' (xvii. 14).

R. H. Kennett comments: 'There is no king, but there is a probability that one will be elected, and, strange to say, it is necessary to insist that the king who may be elected by the community generally should be of Israelite birth.'²

It is not unnatural that the advocates of the post-exilic date of Deuteronomy should have fixed upon this passage as one which could not have been composed during the monarchy. So Pedersen³ writes, 'Not even the castigating prophets regarded the kingship as un-Israelitish... The idea of choosing an alien to occupy the throne of David can hardly have come within the horizon in the days of the kings, when the son regularly succeeded his father by virtue of his birth.'

It has been argued that the warning against riches and the multiplication of wives contains a reference to Solomon. Their application to Solomon is plain enough; but these were the temptations of any eastern monarch (cf. 1 Sa. viii. 11), and in later

¹ The possibility is not overlooked that an author of Deuteronomy might have deliberately so worded his law as to make it fit in with the 'Mosaic setting'. But as the cases multiply where this assumption is necessitated, the probability increases that what we find in the text is not the product of calculated fiction, but is due to a real historical connection.

² *Deuteronomy and the Decalogue*, p. 6. See above, p. 18.

³ *Israel*, III-IV, p. 586. Driver's comment is, 'the prohibition is a remarkable one' (*ICC*, p. 210).

days the wealth of Solomon was looked upon as a mark of divine favour.

If the warning was issued for a reigning monarch, for whose benefit was it intended? Surely not for Manasseh! There was little danger that he would return to Egypt.

The general tenor of the passage best suits a pre-monarchic date.

There is a 'noticeable silence' about the important functions attached to the kingship, and a 'complete absence of the Davidic tradition', as von Rad admits.¹ 'The situation exactly fits the time of Samuel,' says Robertson.² In many respects this is so; although in his day the people never sought to return to Egypt, as they did under Moses (Nu. xiv. 4), and a still earlier date is better. The words in 1 Sa. viii. 5 and x. 24 seem to show acquaintance with this passage.³ But the 'book of the law' of which the king was to procure a copy can scarcely be the same as 'the manner of the kingdom' (*mišpaṭ hamm'luká*) written by Samuel (1 Sa. x. 25). For if, as E. Robertson conjectures, Samuel were the compiler of Deuteronomy, why should he use, for the same thing, an entirely new and not very appropriate expression?⁴ It might possibly have been the 'testimony' which Jehoiada the priest handed to the young king Joash (2 Ki. xi. 12), though this must remain uncertain.

In any case, it is hard, if not impossible, to imagine a writer in 680 BC bold enough to command king Manasseh to secure a copy of his book from the priests and make it the object of his study!

A FUTURE PROPHET

The section xviii. 15-22 is better described as a prediction than a law; von Rad includes it in a list of 'sermon-like utterances'.⁵ It has been taken as indicating acquaintance with a long prophetic line.⁶ The use of the singular form, 'a prophet like unto me', militates against this interpretation. Later writers refer to the

¹ *Studies*, p. 62.

² *OTP*, p. 44.

³ This is admitted by S. R. Driver, but attributed not to Samuel but to the historian.

⁴ See C. R. North, *OTMS*, p. 52.

⁵ *Studies*, pp. 22, 23.

⁶ There is no substance in the objection once used that if the saying were pre-prophetic the author would have used the word 'seer' (*rō'eh*) rather than 'prophet' (*nābi'*). This was based on a misunderstanding of 1 Sa. ix. 9—the word *nābi'* was in use long before Samuel (cf. Nu. ix. 26; Jdg. iv. 4).

prophetic order as the 'prophets' (c.g. Ho. vi. 5; Am. ii. 11; 2 Ki. xvii. 13).

The author of Dt. xxxiv. 10 seems to have interpreted it of an individual, who had not yet appeared. According to Ibn Ezra, the reference was to Joshua, Moses' successor.¹ It is given an individual interpretation by Peter (Acts iii. 22) and by Stephen (Acts vii. 37). The introductory words xviii. 15-17 confirm this as the meaning.

In the days of Micaiah (1 Ki. xxii) and Isaiah (Is. xxx. 10) the false prophets were wont to prophesy 'smooth things', but here the reader is exhorted, 'thou shalt not be afraid of him' (22). The threat of death upon the prophet who spoke in the name of Yahweh without His authority also requires a date when it was at least possible of execution.

CITIES OF REFUGE

According to Wellhausen the cities of refuge formed a part of the seventh-century reform. The rules in Ex. xxi. 12-14 belonged, he said, to the period when every 'high place' was a sanctuary; and when these were abolished and worship centralized in Jerusalem, the appointment of special cities² as laid down in Dt. xix was necessitated.

It is not necessary here to enter into all the difficulties raised by this hypothesis; it will suffice to show that the passages in Exodus and Deuteronomy, if genuinely ancient, present no difficulty at all.

The law in Ex. xxi. 12-14 is cast in the old 'judgment' form, and like Hammurabi's law (207, 208) distinguishes accidental homicide from wilful murder. Hammurabi deals only with homicide, for which a fine is prescribed varying according to the status of the victim. The provision of a separate law for homicide is therefore of long standing. The Hebrew law requires that the wilful murderer shall be put to death, even if he clings to Yahweh's altar for sanctuary (Ex. xxi. 12, 14). The altar is presumed to exist, and to be traditionally regarded as affording sanctuary; the 'place' which Yahweh will 'appoint' must be something new.³

After the Amorite victories east of Jordan we read that Moses

¹ Reider, *Deuteronomy*, in *loc.*

² The mention of 'cities' is no argument for a late date; cities existed in Canaan long before the Israelite invasion.

³ See A. C. Welch, *Code*, p. 139.

'separated' (*yabhdil*) three cities, which are named and described, 'that the slayer might flee thither, which should kill his neighbour unawares' (Dt. iv. 41-43). Next in Dt. xix we find him issuing this command that three cities should also be 'separated' on the eastern side, 'when' they shall have successfully settled there (Dt. xix. 1).

The final stage is reached in Jos. xx, where, after reference to the command given to Moses, it is recorded that they 'assigned', or handed over for use, the three cities which Moses had separated on the east, and 'sanctified' three more on the eastern side, now named for the first time. The sequence is consistent and complete.

If anything more were needed to mark the early character of the command in Dt. xix it is found in verses 8 and 9, providing for the addition of a further triad, 'if the LORD thy God enlarge thy coast . . .' The possibility of such extension would have been inconceivable when the power of Assyria was at its zenith.

GENERAL REVIEW

This concludes the examination of Dt. xii-xxvi section by section, which has been carried through in detail, even at the risk of wearying the reader. The reason for this has been to avoid, so far as can be, the subjective element which would obtrude itself if selection had been made among the laws in order to prove a particular thesis.

On reviewing the legislation as a whole certain features emerge:

1. Pedersen describes its *purpose* thus: 'The main object of the book, in its present shape, is to protect the Israelitic community against Canaanite influence.'¹

This description fits in well with the opening verses of chapter xii, but it needs supplementing with the closing words in xxvi. 18, 'the LORD hath avouched thee this day to be his peculiar people, as he hath promised thee, and that thou shouldest keep all his commandments.' As we have seen, it contains the 'casuistic' laws for the direction of judges, moral precepts for the guidance of personal, domestic and social life, and specific commands for the community. 'In the book of Deuteronomy we have a combination of religious and civil law. It is such a law code as would

¹ *Israel*, I-II, p. 27.

reasonably be expected at the period of the establishment of a monarchy.'¹

When we turn back to the characteristic phrases considered in Chapter II we see that they point in the same direction. The book is intelligible and appropriate only when addressed to a people at the commencement of its national existence and about to settle in a new country.

2. That much of the legislation is *old*, going back even to the patriarchal age, is now generally admitted. What is equally true, but not so readily acknowledged, is that none of it is demonstrably new in the sense of belonging to the monarchic period. It is quite true, as von Rad and others have pointed out, that we can often discern an old law, stated in concise and archaic form, followed by interpretative comment, e.g. Dt. xv. 1 followed by verses 2-6. But the primitive law is sometimes demonstrably pre-Mosaic, and the comment is often cast in a Mosaic form, and there is nothing to stamp it as belonging to a much later age.

If the author be a reformer addressing the people of Judah groaning under the evils of Manasseh's rule, he is wonderfully successful in concealing the fact. He encumbers his programme of reform with a number of obsolete, impracticable and irrelevant laws; he betrays no hint of the divided kingdom, or of the promises to David; and whilst the possibility of a king is envisaged, the civil law entirely ignores his existence.

3. The dominant note in the legislation is *positive, confident and optimistic*. It looks forward to 'blessing in the land'. The idea that it is a program of reform, which Wellhausen developed in connection with his views of the religious development, cannot be sustained from an examination of the laws themselves.

The author of Deuteronomy issues laws which he expects to be obeyed; this is not the attitude of the reforming prophets, who call upon Israel to repent over laws that have been broken. This contrast with the prophetic utterances goes down to the very heart of the book, and colours the legislation throughout.

From this aspect also the only time which provides a suitable background for the legislation is the pre-prophetic period.

¹ Robertson, *OTP*, pp. 64f.