THE LAWS OF DEUTERONOMY AND THE ARGUMENTS FROM SILENCE.

A considerable portion of the case made by the higher critics against the authenticity of the laws of Deuteronomy rests on arguments from silence. It is the object of the present article to refute these, but in order to do so quite fairly it will be well to state them first in the words of some representative critical writer. To this end two passages of Dr. Driver's argument in his edition of Deuteronomy are subjoined.

"The 'Tent of Meeting,' with its appurtenances, which figures so largely in P (Ex. xxv-xxxi, xxxv-xl,—together with many allusions elsewhere); the distinction between the priests, the sons of Aaron, and the common "Levites", so often and emphatically insisted on in the same source; the Levitical cities, and the year of Jubile; the elaborately developed sacrificial system of P; the meal-offering,[1] the guilt-offering,[2] and especially the sin-offering[3]—all these are never mentioned in Deut.: the atoning efficacy of sacrifice, on which such stress is laid in the sacrificial laws of P, is alluded to once in Deut. (xxi, 8b), and that in a law for which there is in P no parallel; the great Day of Atonement (Lev. xvi), in which the Levitical system of sacrifice and purification (Lev. i-xv) culminates, is in Deut. passed by in silence."[4]

In a foot-note on the above passage Dr. Driver adds the following remarks:

"The Tent of Meeting is mentioned in Deut. xxxi. 14f., but in a passage belonging not to D, but to JE. Nor, even there, does it appear as the centre of a great sacrificial organization. The non-mention of the sin-offering beside the burnt- and peace-offering in xii. 6, 11 is very remarkable. . . . It is also singular that *korbān,* P's very common, and most general term for offering (including sacrifices), never occurs in Deut."

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[1] מנחה [2] אשם [3] חטאת

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

The second passage runs as follows:

"It is also undoubtedly true that the aim of Deut. is very different from that of P: the one is intended (chiefly) for the guidance of the priests, the other is addressed to the people; the one represents the priestly point of view, the other that of the prophets; the one lays down a complete code of ritual observances, which certainly does not fall within the scope of the other. Still if P were written by Moses,—or even compiled by another hand under his direction,—it is inconceivable that in recapitulating at the close of his life the laws which he desired the Israelites to observe, he should have thus held himself aloof from a body of law, in the compilation of which he had (*ex hyp.*) been so intimately concerned, ignoring institutions which he had represented as of central significance in his system, and contradicting regulations which he had declared to be invested with the highest sanctions. Not only does Deut. not contain (in any sense of the word) a *résumé* or "recapitulation" of the laws of P, but the author does not even do what, supposing him to have been interested in a great ceremonial system, would have been consonant with the general plan of his work, and at the same time of the utmost value to future generations of Israelites: he does not, even in general terms, refer to the system which (*ex. hyp.*) he had prescribed, for the purpose of summarizing its leading principles, or of defining the place which ceremonial institutions should hold in a spiritual religion. On the contrary, his attitude towards it shows that its most characteristic ideas are alien to his mind, and have no place in his scheme of religion."[5]

It is only fair to remember that these passages were written at a time when Dr. Driver believed that contradictions could be established between the laws of Deuteronomy and other portions of the Pentateuch.[6] Not unnaturally, therefore, they are coloured by this belief. Moreover, in estimating them we must also consider that Dr. Driver's mind was influenced by the old (and in my view quite untenable) idea that if Deuteronomy be genuine it is a recapitulation

[5] *Ibid.*, pp. xl-xli.

[6] See as to this *Studies in Biblical Law, passim* and the *Churchman*, July, 1906, pp. 422-430, and September 1906, pp. 548-555.

of the Law. But, even so, we must say that in view of other passages [7] in his book, Dr. Driver is not altogether self-consistent. Why complain, for instance, that "a manual addressed to the people and intended for popular use" which "does not embrace a complete *corpus* of either the civil or the ceremonial statutes that were in force when it was written"[8] makes no mention of the land laws,[9] or of such technical details as the meal-offering, the guilt-offering, the sin-offering, and the theory of sacrifice?

As, however, Dr. Driver's arguments rest on fundamental misconceptions of the character and objects of the Mosaic legislation, the best answer is to deal with the larger aspects of the question, explaining incidentally the particular points that give trouble. The issues between us are far wider than any question of the mention or non-mention of a particular law or sacrifice. In the view of the whole critical school the Pentateuch is at best an ordinary book, at worst a field for practising their quaint arithmetical exercises. In my view it is not primarily a piece of literature at all; it is a piece of statesmanship and must be judged as such.[10] While, therefore, I recognise that it is impossible for anybody now to dive into the mind of Moses so far as to be able to assign precise reasons for the position of each individual command in the whole complex body of legislation, I believe that attention to the considerations that must have been present to the law-giver's mind, aided by a careful study of many points that have hitherto escaped notice, will enable us not merely to answer Dr. Driver's arguments, but also to throw

[7] Pp. xxvi-xxvii, xxx.

[8] *Ibid.*, p. xxvi.

[9] There must have been some land laws in existence when the book was written on any hypothesis of its origin.

[10] It will be understood that in saying this I do not touch any question of inspiration. The Pentateuch being intended to influence the conduct of human beings, we are entitled to examine the means adopted to secure this end, and in doing so we are in no wise encroaching on the domain of theology. Moreover, when I speak of Moses as giving laws, I must not be taken as intending to express any doubt as to the inspiration he enjoyed.

new light on problems that have hitherto remained unsolved.

If we would understand the Pentateuch as a piece of statesmanship, we must first consider what object Moses had in view, and what were the circumstances that conditioned his work. About his ideal there can be no doubt. It was to make the children of Israel a nation holy to the Lord, their God. This was really a two-fold task. He had to make the Hebrew tribes a nation. He had also to make them a holy nation. The first part of that ideal and the means he took to accomplish it, I do not propose to develop here. It has not sufficient bearing on the subject of this paper; and its proper consideration would involve tracing the forces that had been at work for centuries to make the Israelites of the Mosaic age. But the latter part—the making of a holy nation—is the key of all the institutions that puzzle the critics. It meant not merely that the Israelites must be taught to worship the Lord as their God, and the One and Only God, but that rules must be laid down to make them "clean" and "holy" in accordance with the notions of that age.[11] Moreover, it was necessary to stamp the impress of the peculiar relationship between God and Israel on every portion of the legislation.

Turning next to the surrounding circumstances various limitations at once become noticeable. Nobody would expect to find in the Pentateuch rules that were utterly unsuited to the social and economic state of Israel in the days of Moses. That, then, is one limitation; there are others not less important. It is one thing to lay down laws, another to procure obedience to them. A law-giver, who enacts rules that run counter to the thoughts and wishes of his subjects, only makes it certain that his work will become a dead letter. "John Marshall has delivered his judgment, let him now enforce it if he can." So spoke President Jackson, of

[11] It was of course also necessary to provide a number of rules to deal with matters that arise in every society, such as theft, but as no question arises on these they may for our present purpose be left out of consideration.

the United States, of a decision of the Supreme Court, and less exalted individuals than heads of States have often reduced laws to impotence. A case in point may be quoted from the legislation of the Pentateuch. We know from Jeremiah that though the law commanding the manumission of Hebrew slaves six years after their purchase was observed for a short time after the re-discovery of the book of the Law, it was speedily broken again. A third limitation is to be found in the habits and ideas of the age. There is progress in legal ideas and devices as in other human thoughts and inventions. Thus a system of procedure that depends largely on writing will be unknown or impracticable in an age when writing is not in common use.[12] In such an age, too, there can have been no such thing as a law of forgery. But there are two points to which particular attention must be drawn, because a grasp of them is important to the proper appreciation of the Mosaic legislation. The first is that ancient law knows nothing of any remedy for apprehended wrong. If I have good ground for believing that my neighbour is about to trespass on my land, a mature system of law may in certain circumstances allow me to obtain—not merely damages for the injury his past trespasses may have caused, but also—an injunction, that is an order to prevent his doing so. If he disobeys that, he will be sent to prison.[13] The injunction is unknown to early law, and is alien to its ideas. The want of such a remedy is very obvious in the

[12] It is abundantly clear that writing was widely diffused in the Mosaic age, but it is not less clear that it was not in extensive use among the Israelites. In this respect their position in Egypt may not inappropriately be likened to that of the barbarian invaders of the Roman Empire in the midst of the Romanised natives of the various provinces. See *Studies in Biblical Law,* pp. 66-7.

[13] In criminal law there is machinery for preventing breaches of the peace, but it is sufficient for our present purpose merely to notice the more perfect civil remedy of the injunction, which is applicable in the case of certain civil wrongs. It will be understood that in my remarks the injunction must be taken as simply a type of possible machinery for preventing apprehended wrong irrespectively of whether that wrong would now be regarded as civil or criminal or both in any given modern community.

Mosaic legislation. A man ill-treats his servant or slave. If the injury is very bad a remedy is given. The slave is to go free. But in other less severe cases what is to be done? For lack of adequate machinery the courts can do nothing, and so we find merely appeals to the individual's religion or conscience, or to public opinion. Thus in the case of insolvent debtors who were *de facto* though not *de jure* slaves [14] we read "Thou shalt not rule over him with rigour, but shalt fear thy God." (Lev. xxv. 43). "He shall not rule with rigour over him in thy sight." (Lev. xxv. 53). This example also illustrates my second point, which is even more important. It is not only impossible adequately to safeguard for the future the slave who has been somewhat maltreated by his master; no satisfactory punishment is provided for the offence already committed. Why? Because there was no strong central government, no police, little or nothing of what we mean by "the state". Before Moses there had been no central government at all. After him the central government was either weak or in abeyance till the foundation of the kingdom. "In those days there was no king in Israel, every man did that which was right in his own eyes." Many consequences flowed from this. In ancient Israel as in all early societies, criminal law was the business of the private individual, not of the state. Theft was punished by such reparation in property as would overcome the feeling of vengeance which would otherwise have led to bloodshed. The punishment of a murderer was primarily the business of the avenger of the blood, and the most that law could hope to do was to step in and regulate the feud.[15] In other spheres, too, we see the absence of the central power. An excellent example is afforded by the sabbath year. The twenty-fifth chapter of Leviticus gives us the land laws and also the rules relating to the sabbath year. A modern legislature would have no difficulty about such an enactment. Punishments would be provided for all persons who should

[14] See *Studies in Biblical Law*, pp. 5-11.

[15] *Studies in Biblical Law*, chapter iv.

cultivate their land in the seventh year; an army of officials would watch over the execution of the law; and the man who dared break it would have to reckon with the courts. But in the Mosaic age the necessary machinery was not merely non-existent; it was impossible,—though, for people who had seen the Egyptian system of administration it was perhaps not quite inconceivable. The only substitute available was an appeal to religion, and accordingly the discourse in the next chapter contains threats of exemplary punishment by God in the event of non-observance of the law. The case is the more interesting because the discourse is silent about the jubilee laws which are also to be found in the preceding chapter. They—in contrast to the laws of the sabbath year—were jural laws, that is, laws which the courts were intended to enforce: and there would be powerful human motives and influences at work to secure their observance. Hence an appeal to religion was not so necessary.

A fourth limitation of a law-giver's power—the last I propose to notice—is to be found in the nature of the difficulties which may be experienced in procuring sufficient proof of an offence. Moses was desirous of preventing abuses of the incapacity of a blind man. But from the nature of the case there would be a difficulty about evidence. The blind man could not identify the offender. Hence here, too, we find appeals to religion. "Thou shalt not put a stumbling block before the blind, but shalt fear thy God."[16] "Cursed be he that maketh the blind to wander out of the way."[17]

[16] Lev. xix. 14. The first part of this verse, "thou shalt not curse the deaf," also illustrates the remarks in the text.

[17] Deut. xxvii. 18. Perhaps this principle is seen even more clearly in the first of the twelve curses, "Cursed be the man that maketh a graven or molten image . . . and setteth it up in secret." It could not be contended that the law-giver limited the curse to secret idols, because he had no objection to public images. But the latter could be dealt with under the ordinary law, while in the former the question of evidence made this difficult or impossible. In all the twelve curses there is some practical difficulty in the way of action by the courts. The

On the other hand, while the task of the legislator was rendered more difficult by all the limitations we have just considered, it was partly aided by a method that, so far as I know, is unique. Many peoples have had laws that they have attributed to some deity, but I am acquainted with no other instance in which laws are presented in the form of a sworn agreement of a peculiar type—called by the Hebrews a covenant—between the nation and a god. Now there are obvious differences between sworn agreements made with God and similar agreements made by men. Either of two men may break his oath, but in the covenants with God only the people could prove false to their word. Again, if two men enter into an agreement, they may call on One who is outside the agreement to enforce its observance by punishing whichever of the two may break his covenant: but in a covenant with God the only question of that nature that could arise would be, How will He reward obedience or punish its opposite? Hence in each of the great covenants with God, we find after the terms of the agreement a discourse intended to procure obedience setting forth the results of observance of the covenant and of the reverse. As this takes the place of a jurat in an ordinary oath, I have ventured to term it a quasi-jurat. An excellent instance of it may be found in the discourse of Lev. xxvi, to which reference has already been made. As an aid to the task of Moses to secure obedience we may suppose its effect to have been considerable.[18]

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difficulty of proof in the case of some of the offences is a common-place with lawyers even at the present day. The repeated commands not to wrong strangers, widows and orphans are due to a similar cause. It is evident that all three classes would experience difficulties in obtaining justice.

[18] See as to the covenants *Studies in Biblical Law,* chapter ii. I cannot refrain from noticing one of the other very characteristic instruments of persuasion employed by Moses—the appeal to history. It is used with great oratorical effect in its subtlest form in such a passage as Deut. xiii. 6. "And that prophet . . . shall be put to death: because he hath spoken rebellion against the LORD your God, which brought you out of the land of Egypt and redeemed thee out of the

We may now proceed to apply these preliminary observations to the legislation of the Pentateuch. It will be easiest at once to dismiss from consideration those decided cases in which some difficulty arose and was solved, as for instance, the question what was to be done where men were disqualified by ceremonial impurity from celebrating the Passover at the proper time. Such cases are sufficiently explained by their historical setting; and Englishmen and Americans are too familiar with the operation of a system under which law is made by the courts as cases arise for decision to require any lengthy discussion of this feature. The curses, too, have already been noticed. But with regard to the rest of the rules the position was more difficult. They were not all equally likely to find ready obedience. Some were from this point of view practically indifferent, if I may so express myself—that is, the people would obey and the courts could easily enforce any rule that was reasonably adapted to the requirements of the age.[19] For instance the land laws, the law of succession and most of the "dooms" contained in Ex. xxi. ff. would not be likely to meet with opposition. In many cases it is important to have some uniform rule, and the exact nature of the rule is less important. But in other instances Moses had to reckon with more or less potent human feelings which would be ranged against him. Thus the mitigation of the blood feud by the institution of cities of refuge would be likely to run counter to a strong desire either for vengeance or for compensation: and the rule that a Hebrew slave was to be manumitted after six years' service is in violent opposition to one of the most

house of bondage." Surely everybody must appreciate the appeal to the gratitude and the historic pride of the people—and of every individual member of that people—involved in these words, and their consequent power to dispose men to watch over the enforcement of the Law.

[19] Every law is occasionally broken, but there is a difference easily apprehended between a law which becomes a dead letter, and another law which, though habitually observed, is occasionally broken. Thus in this country the bulk of the inhabitants observe the law which forbids the unjustifiable taking of human life, but there are some murderers, and of these only a portion are successfully brought to justice.

abiding sentiments of human nature—the desire for gain. These considerations necessarily dominated the form of the legislation, which we may (with the exceptions already noted) arrange for convenience in four groups. These four groups consist of:—

(1) The terms of the covenant at Sinai contained in Ex. xix-xxiii, together with Ex. xxxiv. 10-26 (in which it was renewed after the episode of the golden calf) and Num. xxxv. 9-34 (containing the law of cities of refuge as foreshadowed in Ex. xxi. 13).

(2) Leviticus xxv-xxvi containing what may fairly be called the land covenant.

(3) The covenant of Deuteronomy.

(4) The rest of the legislation.

First as to the second group. It would seem that the land having been promised to Abraham in a covenant, the laws specifically relating to the land necessarily became terms of that covenant. Accordingly Lev. xxv and xxvi contain agricultural regulations, the law of land tenure (including the tenure in Levitical and other cities), closely related laws for the relief of distressed peasants, and rules designed for making the land a fitting abode for God's Sanctuary.[20] The arrangement and connection of thought are here obvious.

The other two covenants are equally easy to understand. The contents of Ex. xxi. ff. appear to be designed primarily for judges and heads of families to commit to memory. It is broadly true that these chapters contain the private law—including as above explained the criminal law—enacted in the Mosaic age, and in addition certain brief religious and

[20] When this is grasped Dr. Driver's point as to the non-mention of the jubilee and Levitical cities falls to the ground. Indeed, as the sabbath year is not mentioned in Deuteronomy, while it occurs in Exodus and Leviticus, we should on critical principles be jusitfied in arguing that Deuteronomy must be earlier than JE, and that it was not till after Deuteronomy that the sabbath year was introduced by literary forgers. A place for everything and everything in its place is a maxim by which no critic has ever dreamt of testing the Mosaic legislation.

other rules that it behoved every head of family to know by heart. The style is extraordinarily terse—as in other ancient codes that were committed to memory—and well suited for the purpose suggested. Deuteronomy, on the other hand, was intended for public reading to the people. It, too, was written in a style that was singularly well adapted to its purpose, and therefore very different from that of Ex. xxi. ff., since it is one thing to compose a speech which shall impress men's minds and mould their opinions by its argumentative and oratorical power, and quite another to frame legal rules in a form suited for memorising.

From this the following generalisation may be made. Taking the great body of jural law—*i. e.* laws for the courts as contrasted with moral precepts, sacrificial rules, etc.—and including the outlying provinces of jurisprudence, such as constitutional law, laws of war, administrative law—we find land laws in the land covenant, private law in Exodus, public law and those rules of private law which depended for their validity on the force of public opinion or were designed to mould that opinion in Deuteronomy.[21] To this generalisation there are—subject, of course, to what has been said about the decided cases—only two classes of exceptions. The first consists of repetitions or apparent repetitions. The second of a very few rules of jural law, which are found in Leviticus and Numbers. On examination, the apparent repetitions turn out to be due very largely to the anticipated difficulty of securing obedience to rules that were opposed to strong human feelings.[22] The other class of exceptions is trifling in bulk and consists of Num. xxx and a few verses in Lev. xviii, xix and xx. Without wishing to push our gen-

[21] This motive is very strikingly illustrated by such a passage as Deut. xxi. 18-21 (law of rebellious sons), where the thought of the influence of the proceedings on public opinion is actually expressed "and all Israel shall hear and fear" and also by the phrase "thus shalt thou put the evil from the midst of thee." In the latter, moreover, we see the idea of the unity of the people well brought out. See further *Studies in Biblical Law,* chapter v.

[22] *Op. cit.,* pp. 107-9.

eralisation too far, we may go some way towards understanding these instances even on the materials we have. Numbers xxx lays down the law relating to oaths and vows—methods of entering into business and other engagements that were more important in early societies than at the present day—and is significantly addressed to the "heads of the tribes of the children of Israel". We do not know enough of the constitution of the courts in early Israel to be certain what this meant. But the rules laid down in this chapter are far more detailed than most of the jural laws, and this, combined with the heading, suggests that the whole subject was outside the competence of the ordinary courts, or at any rate that the rules it contains were intended primarily for a more limited audience than that to which Ex. xxi. ff. was addressed. The passages in Leviticus will be considered later.

The remaining contents of Ex. xxi. ff. may be classified roughly under three heads as dealing with either sacred seasons or sacrifice or moral and religious duties. In every one of these cases it is true that we have a sort of *précis* (fitted for oral transmission) of the principal matters that every head of a household should know, but it is also true that every sort of detail is, so far as possible, omitted.[23] Everything that was too bulky—as for example the list of forbidden animals—was dealt with in one or more of three ways. Either it was relegated to Deuteronomy,[24] or it was included in what may fairly be called the priestly section of the Pentateuch, or finally it was placed in a chapter that appears to

[23] It is almost universally recognised now that Ex. xx. 24-6 deals with lay sacrifice, and hence it appears most appropriately in its present position. Deut. xvi. 21-2 deals with the same subject, and it is impossible to say with any certainty why it should not have been put in Exodus. It would be easy to hazard a conjecture, but, as already explained, it would not be possible to account exactly for the position of every individual precept; and unsupported conjectures on small points of detail would only have the effect of obscuring the broad outstanding principles that are obviously true.

[24] Here we may conveniently notice that Deuteronomy contains many [illegible] relatively small details, e. g. xxii. 5-12.

have been intended for public use—Lev. xix. It should be noticed that this chapter is specifically addressed to "all the congregation of the children of Israel" (cf. Ex. xii. 3) and that in form it largely recalls the characteristics of poetry.

We do not know enough of the customs and ways of thought of the Mosaic age to deal with these divisions of the subject with as much certainty and detail as the jural laws. Thus in Deuteronomy we find the rule "Thou shalt not sacrifice unto the LORD thy God an ox or a sheep wherein is a blemish, any evil-favouredness" (xvii. 1). We can see that it is thoroughly in accordance with what we know of the nature of Deuteronomy that a broad general principle should be enunciated there, leaving the details for the priestly teaching, but it would be pure guess-work to attempt to assign any reason for its presence in Deuteronomy rather than in Exodus. On the other hand, it will be easy when we have considered the characteristics of the fourth great group of the legislation to see by an example what means were employed by Moses to put forward the rules relating to particular subjects in the form best suited to secure obedience without laying too great a strain on the memory or capacity of the ordinary Israelite.

In examining the fourth group we see that here not less than in the other three cases certain great principles stand out. First, it is here that we must look for what in analytical jurisprudence would be termed occasional (as opposed to general) commands, or commands which are not laws at all. All transitory precepts—commands to do a thing once for all—are naturally omitted from the three covenants. Under this head fall the commands to consecrate a priesthood, to construct the dwelling with its appurtenances, to divide the land. It is clear that nothing would be gained by including such matters in one of the great covenants, while the insertion of what was transitory could only weaken the force and permanent value of those remarkable collec-

tions. But when we subtract the occasional commands, we find that we may conveniently arrange what remains under three heads: (1) regulations internal to the priestly tribe and the sanctuary; (2) sacrificial details, and particularly procedure; (3) matters so technical and complicated that they could not be put before the people without the teaching of some class specially trained for the purpose. These groups overlap. The part to be played by a priest in connection with some sacrifice might be viewed as a matter internal to the priestly tribe, or as a sacrificial detail, or as something too technical to be conveniently embodied in a book that was to be read to all; but that does not make it any the less useful to have some such general principles enunciated.

The first of our three heads causes no difficulty. Such subjects as the internal organisation of the priestly tribe, the national sacrifices commanded in Num. xviii. xxix., the details of the ritual to be observed by the priests would not naturally find a position in any collection intended for popular or judicial use.[25] But the second head brings us to a distinction which is quite unknown to Biblical criticism—the distinction between substantive law and procedure, which may best be made clear by examples. I have a right to the enjoyment of my property — that is substantive law; but if X interferes with that right, the particular steps I may take to obtain legal redress (as by issuing a writ and going through all the necessary subsequent stages of an action) are procedure. So, too, with sacrifice. The Israelite is to offer the first of the first-ripe fruits of his land at the house of the Lord. That is substantive law. But the details of treatment of the first-ripe fruits when presented are mere procedure. Two further points should be noted as being germane to the present discussion. There may often be a great difference between substantive law and procedure from the

[25] This disposes of Dr. Driver's argument from the silence of Deuteronomy as to the distinction between priests and Levites.

point of view of securing obedience. Thus, an Israelite might be tempted not to offer a particular offering; but if he decided to make the offering, he would have no motive for departing from the prescribed procedure.[26] Secondly, he would have very little choice in the matter. The priest would be there to see that he did the right thing. It is very striking that in the sacrificial code contained in Lev. i-vii all the rules about peace-offerings, burnt-offerings and meal-offerings are concerned with procedure. It is assumed that the offerings will be brought, and we are told what, on this assumption, is to be done with them,—how they are to be sacrificed, what dues must be paid and so forth. The basis of all these regulations is to be found in the words "when any man of you bringeth near a *corban* (offering regarded from the point of view of being presented at the religious centre) to the LORD." No information can be gleaned from these chapters as to when any one of the offerings in question was to be brought.[27] In Num. xv. 3ff. we are given rules for the offering of meal-offerings and drink-offerings with certain sacrifices. These rules are from one point of view something more than mere procedure; but it is clear that they have the same ancillary and subordinate character.

[26] We may also take a slightly more complicated example from the jural laws, one which has been the cause of some trouble to the critics. I am to let a purchased Hebrew slave go after six years of service. That is substantive law, and, moreover, law which I may be strongly tempted to evade or resist if opportunity offers, for it involves great loss for me. But assume a different state of affairs. Suppose that I am ready to let my slave go, but that he elects to stay with me for ever under the provisions of Ex. xxi. 5, 6. The steps to be taken under that law are mere procedure. Not only could there be no strong motive for attempting to evade its provisions, but there would be a natural desire on my part to have everything in order, so that I could prove my right to the possession of the slave if any question should subsequently be raised. Hence the observance of the substantive law is earnestly enjoined in Deut. xv. 12-18 (especially verse 18, "It shall not seem hard to thee," etc.), but the details of the procedure are not repeated.

[27] Lev. i. 2. A solitary exception to the generality of this statement should perhaps be made in view of the cakes and wafers of Lev. vii. 12-14, but these may not have been technically meal-offerings, since they do not go wholly to the priest like ordinary meal-offerings. Lev. ii. 3.

It is clear also that the priest would explain to the sacrificant the necessity of observing them and in the last resort compel obedience by refusing the sacrifice.[28] In point of fact the evidence of the other books would tend rather to make us believe that meal-offerings were offered long before the date to which the critics assign D.[29] But before I pass from procedure and similar ancillary matters I must make one remark. Lay sacrifice necessarily involved rules for lay procedure, and accordingly we find in Exodus and Deuteronomy a few very simple regulations which were obviously intended to govern lay practice (*e. g.*, Ex. xx. 24-6). I merely mention this to avoid the possibility of being misunderstood.

In striking contrast to the sacrifices of which we have spoken stand the sin-offering and guilt-offering. The Pentateuch instead of assuming that they will be brought, lays down the occasions on which they are to be brought (*e. g.* Lev. iv.). We have here substantive law as well as procedure. This inevitably suggests that these are new sacrifices which were unknown in Israel before the age of Moses. But they are also extremely technical and detailed, and it is probably for that reason that we find them wholly contained in portions of the Law which would reach the people only through the priests. But be that as it may, Dr. Driver's surprise that they are not mentioned in Deut. xii. is entirely unreasonable. The portion of that chapter to which he

[28] These considerations dispose of Dr. Driver's points with regard to the silence of Deuteronomy as to the sacrificial system and the meal-offering; also of the non-use of *corban* (a technical word which is only applicable to what is specifically brought near to the priest, and which would be thoroughly out of place in a popular collection), and of the general silence as to the theory of atonement by sacrifice. It should also be noticed that Deuteronomy is silent as to *bikkurim*, although they were admittedly older than this legislation. Ex. xxiii. 16, 19, xxxiv. 22, 26.

[29] See Amos iv. 5, v. 22, 25; 1 Ki. viii. 64; 2 Ki. xvi. 13, 15 (in both of which verses the drink-offering also appears, though that is not mentioned in Deuteronomy either); Judges xiii. 19, 23, and cf. note 28, p. —, as to *bikkurim*.

refers is devoted not to a catalogue of existing sacrifices,[30] but to a command that certain sacrifices were to be brought to the religious centre. In the case of the sin-offering and guilt-offering the command was unnecessary, since they could not by any possibility be offered without a priest. An ordinary animal sacrifice could be offered by a layman, at any rate in certain cases, but only a priest could make atonement for sin. The Pentateuch never contemplates any unlawful priesthood, and it never provides any check on the power of the priests, which was consequently abused. Hence —particularly if these were new sacrifices—no danger of their being offered anywhere but at the religious centre could reasonably be foreseen. It is the duty of a legislator to provide for anticipated evils, not to draft regulations which shall look symmetrical on paper.

The last of the three overlapping groups of the priestly legislation consists of technical matters and details. Of these the law of leprosy is an admirable example. It will be seen at a glance that the regulations are far too specialised and complicated to be administered by a chance elder. Again, matters relating to Nazirites, the rules as to jealousy, prohibited degrees of relationship and many other matters were too elaborate and technical to be enforced or even taught without the assistance of a special class. And this leads me to speak of the occasional rules of jural law which are to be found in Lev. xviii-xx. Chapter xviii contains but one verse which may be a jural law (verse 29). The penalty is expressed in the words "shall be cut off from among their people." In view of such passages as xx. 3, "I will cut him off from among his people", it is impossible to say with certainty whether this verse contains a direction to the courts or not. A perusal of the whole chapter shows that the power of the courts is not the force on which reliance is

[30] See note 29, p. —. Moreover, *bikkurim* and *reshith* (first-ripe fruits and first-fruits) are not mentioned here, although they certainly existed. See further Deut. xviii. 4, xxvi. 1-11.

primarily placed to secure obedience to the commandments embodied in it, but it is quite easy to understand how the secondary means of obtaining obedience came to be mentioned in a short exhortation to observe the commands there laid down. In the case of chapter xix. the exceptions to the principles enunciated above are merely formal, not real. In verses 5-8 we find rules relating to peace-offerings, and it is said that if one eat of a peace-offering at all on the third day "that soul shall be cut off from his people." This probably means that the death penalty is to be inflicted, but the context makes it clear that the passage is primarily a rule of sacrifice, and only incidentally a jural law. Similarly verse 20 requires, not that the courts shall take action in a specified case, but that they shall take no action; "they shall not be put to death . . . and he shall bring his guilt-offering." In so far as this is a rule prohibiting the courts from acting, it may be regarded as jural law, but obviously in the main it is a sacrificial law. Chapter xx. also contains some jural laws, but they are mixed up with commands to which no penalty is attached and with laws of God which are to be enforced by such sentences as "they shall die childless." A comparison of the jural laws with the provisions on the same topics contained in Exodus and Deuteronomy admirably illustrates the manner in which Exodus is confined to the tersest possible utterances, and how, where detailed rules were desirable, the priests were, if possible, used for their transmission. The legal contents of this chapter are entirely concerned with offences that stand in special relation to religion;—giving children to Molech, witchcraft, and sexual offences. A glance at the following table will bring out two points that I have endeavoured to emphasize; first, the extreme terseness of the Sinaitic covenant document and its suitability for memorising; and secondly, the tendency to put details that were connected with religion not in one of the covenants, but in portions of the Law that were to be taught by the priests.

Ex. xxi. 17 (a jural law)	5 words.	Lev. xx. 9	16 words.
Ex. xx. 14 (command)	2 "	Lev. xx. 10	15 "
Ex. xxii. 19(18) (jur. law)	6 "	Lev. xx. 15-16	27 "
Ex. xxii. 18(17) (comm'd)	3 "	Lev. xx. 27	16 "

With regard to the relation of this chapter to Deuteronomy it should be added that two passages in this chapter (verses 2-5 and 11) have parallels in that book (Deut. xviii. 10 and xxii. 30). In both cases the jural laws are to be found in Lev. xx., and Deuteronomy merely lays down commands which would influence public opinion. Further, some of the other jural laws contained in this chapter are directed against crimes that are also dealt with in the curses of Deuteronomy. The other offences mentioned are also kindred to those denounced in Deuteronomy and Exodus. So that altogether when this chapter is carefully examined, it affords an interesting illustration of what has already been said, viz:—that principles and matters intended to influence public opinion are found in one or other of the two covenants, while religious details are dealt with by the priestly teaching.

It will now be obvious why there is no occasion in Deuteronomy to mention the distinction between priests and Levites, and why it is not to this book that we must look for sacrificial details. One point, however, calls for special notice. Dr. Driver has obviously been struck by the fact that the Day of Atonement is not mentioned in Deuteronomy. I believe that the views held by the critics have in this instance been coloured very largely by their knowledge of modern Judaism. At present the Jewish year does culminate in the Day of Atonement; indeed, (and this curiously illustrates a point that I wish to make) that institution has such a grip of the Jew that it is the last observance that he throws off. The great Fast is kept by many a man who habitually neglects sabbaths, festivals, dietary laws, and all the other Jewish observances. But we must not allow ourselves to think that therefore it should be dwelt on repeatedly in the Pentateuch. On the contrary there was every reason

why it should be passed over lightly. It laid no particular strain on the people and required no great sacrifice of time, labour or property. It occurred only once a year; it was therefore not so likely to be broken as the weekly Sabbath. It called for no migration from home; and hence it was not as burdensome as any one of the three festivals. It involved no loss of property; and it was consequently far less onerous than the law of firstlings. Where, indeed, was the temptation to break it? To this must be added two further remarks. It is true that the Israelite was to rest and afflict his soul on that day; but it is noteworthy that he is not required to take other action of any kind either by bringing a sacrifice or by offering some special prayer or by making a pilgrimage. No doubt in Lev. xxiii. 27 we find the words "ye shall offer an offering made by fire unto the LORD," but the reference here would seem to be not to any offerings of individual Israelites, but to the public or general offering ordained in Num. xxix. 8. On the other hand a glance at Lev. xvi. shows that that chapter contains elaborate directions as to the ceremonial to be observed at the religious centre. Important as the Day of Atonement undoubtedly was, it is clear that it could not originally have played any great part in the life of the individual or required much from him. The other remark I wish to make goes to the root of many observations of the critics. They have assumed that Deut. xvi. contains a calendar.[31] Even on their

[31] Cf. Mr. Carpenter in the *Oxford Hexateuch* I, pp. 53-4, "The calendar of the annual feasts is repeated no less than four times. It is ordained in nearly parallel terms in the two collections of Covenant-words Ex. xxiii and xxxiv. It is enjoined with rich hortatory additions in Deut. xvi. It is elaborately expounded in Lev. xxiii, where two new items of high significance are added to the list."

With regard to Ex. xxxiv it will be seen that on the renewal of the covenant which had been avoided by the worship of the golden calf, certain ordinances of the Sinaitic covenant were recapitulated. The point to notice is that jural laws which would be enforced by the courts, and the Decalogue, which had been spoken by God, are omitted, while stress is laid on what may be called religious precepts in a narrow sense. So far as can be judged, it would seem that some of these were par-

own theories this is manifestly untrue, because no mention is made of either Sabbaths or New Moons in that chapter. Hence it would be impossible to draw any conclusion from the fact that the Day of Atonement is not mentioned. But an examination of the chapter shows that it is mainly directed to insuring three annual pilgrimages to the religious capital on the three great Festivals and to giving the necessary incidental directions, so that any mention of an occasion on which the Israelite was not to make a pilgrimage or bring an offering would be utterly out of place.[32]

In conclusion we may illustrate the practical application of what has been said by examining the distribution of the provisions relating to firstlings. First, the great historical event of the slaying of the first-born and consequent deliverance from Egypt is made the occasion of a command to the people to sacrifice all firstlings (Ex. xiii. 1ff.). It requires no great imagination to realise the effect of this appeal to the gratitude and the historical consciousness of the people. Then, when the people have proved false to their covenant with God, advantage is taken of the renewal of the compact to impress upon them the obligation once more (Ex. xxxiv. 19ff.). In the law of redemption we naturally find some provisions about the redemption of firstlings (Lev. xxvii. 26-7), and in Numbers we meet with enactments regulating the due payable to the priests (Num. v. 9-10), and its subsequent disposition (Num. xviii. 15-18). Lastly in the great popular book of Deuteronomy, which on the eve of the entry into Canaan lays stress on the law of the religious capital, we find commands to sacrifice the firstlings there and not

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ticularly burdensome—like the law of firstlings, the Sabbath and the pilgrimage Festivals—while there must have existed very considerable danger of others being broken owing to the circumstances of the age and the disposition of the people—*e. g.* the prohibition of idolatrous worship.

[32] With regard to Dr. Driver's argument as to the non-mention of the Tent of Meeting, I would point out that it was a Tent and not designed to be permanent, so that it would not naturally find a place in Deuteronomy by the side of the Ark and the priesthood.

locally (Deut. xii., xv. 19ff.).[33] It would be easy, did space permit, to take other examples and work them out similarly.

It may seem to some that I have wandered unnecessarily far from the subject with which I started, or, at any rate, that I have chosen the longest road. In such a criticism there would be a measure of truth; but yet it would be only a measure. It is impossible to read the works of the higher critics without seeing that most of their case rests on their exhaustive ignorance of legal matters. It is submitted that the true way of dispelling that ignorance is by bringing legal training and legal knowledge to bear on the manifold problems of the Mosaic legislation.

[33] See the *Churchman* for July, 1906, pp. 427-430.

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