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ARTICLE VII.

CRITICAL NOTE.

OBSERVATIONS ON DR. KYLE'S SOLUTION OF THE
PENTATEUCHAL PROBLEM.

DR. KYLE'S fine article on the Pentateuchal problem in the January number of this Review will have set many scholars thinking about the topics with which he deals. While full consideration must be reserved pending the more complete publication of the materials which he promises, it may not be too soon to offer some observations.

Dr. Kyle touches the subject of covenants (pp. 33 f.). I, for one, should like to see him and others devote far more space and far more consideration to what is one of the most important as well as the most unique features alike of the contents and of the form of the Pentateuch. Let me endeavor to sketch as shortly as may be the underlying ideas and the points of view from which the covenants should be considered.

In a modern civilized community the whole of the machinery of business is based on a single idea, viz. that the state will, through its courts, enforce lawful agreements into which men may have entered in an appropriate manner; and it is broadly true that the requirements as to manner are merely those which are considered adequate to prevent fraud. Thus if a man employs a shepherd, the latter will know that when the time for payment arrives he will receive his money or, in default, be in a position to invoke the help of the state. He will also know that the certainty of his being able to take the latter course will probably make it unnecessary, and that his master will duly pay his debt. This is a very simple case, but it will be seen that precisely the same notion lies at the bottom of the most complicated operations of modern business; indeed, of every transaction except the simplest in-

stances of barter or purchase for cash. The overwhelming majority of the transactions for which we receive or pay money rest on this one conception—that the state through its courts will, if necessary, compel the due observance of lawful agreements properly made.

Subtract the power of the state, and what remains? Some pieces of paper or parchment or the memory of some spoken words entirely devoid of binding force. It may be that some contracting parties would choose, through some motive of honor or interest, to carry out their obligations. It is certain that many of them would not.

In times and places in which men live without a strong state organization, the question of how to provide an adequate sanction to induce the performance of such obligations is very serious. A most common solution is to rely on a supernatural power or powers. Hence the oath. It is a promise, coupled with an appeal to one or more gods to enforce the promise by punishing its breach. As a natural result we frequently find an elaborate jurisprudence of oaths in early legislations. This in large measure takes the place of the jurisprudence of contract in more mature systems (see Num. xxx.; *Studies in Biblical Law*, pp. 56–59).

Sometimes the ceremony is more than a simple oath. Where other rites are added we call it a covenant. Let it be clearly understood what is meant by the word. A covenant is a sworn agreement, made with appropriate rites, between two or more parties. These rites might be directed to one or more purposes. They might be thought to secure more fully that interest of the supernatural powers in the transaction on which reliance was placed to secure its binding force, or they might be intended to supply clearer evidence of the terms of the agreement; but in essence the conceptions of the nature and purpose of the covenant are always the same. A and B wish to enter into a binding promise to do or to refrain from doing something. They therefore adopt a form which, in their belief, will draw down supernatural penalties in the event of a breach of that promise. Where

that form consists of an oath plus other rites we call it by a Hebrew word which is translated covenant.

Such a covenant was made between Jacob and Laban (Gen. xxxi.; see *Studies in Biblical Law*, pp. 65-69, and "The Text of Genesis xxxi.," *Bibliotheca Sacra*, Jan. 1916). Close parallels may be found among other peoples, and so far we are not dealing with anything unusual.

But in the Old Testament this institution receives a development which, to the best of my knowledge, is absolutely unique. This covenant idea is taken and (with the necessary modifications) made the basis of a relationship between a deity and a people. Each enters into special obligations and receives special rights in respect of the other. The agreements are embodied in written instruments such as might have been adopted for an important contract made between men, and as nearly as possible the same ceremonies are followed to make them binding (see Ex. xix.-xxiv.; *Deuteronomy*; *Studies in Biblical Law*, chap. ii.).

Now, in order to focus attention on the material points, I will ask my readers to put to themselves the following questions:—

Is there any other instance in thought or in history (1) of a deity and a nation becoming linked together through formal agreements embodying in the clearest and most unmistakable language the ideas of offer and acceptance and mutuality? or

(2) of a philosophy of history in which a nation can exercise free will on such a matter, but only once, and then irrevocably binding all future generations (see Deut. xxix. 10-15)? or

(3) of a legislation being given, not merely or chiefly as commands of the law-giving power, but as *terms* of agreements made between a god and a people (see Lev. xxvi. 46; Deut. xxix. 1 [xxviii. 69])? or

(4) of legal instruments being converted into a special literary form?

If there be parallels, let them be produced; but if there be none, does not the thought of the Old Testament on these

and kindred points call for far more complete and searching study than it has yet received?¹

The covenant phenomena appear to me to lie right athwart the subject matter of Kyle's investigations. There are great differences between a covenant to which only men are parties and one in which God binds Himself. In the former, there is a supernatural being outside the covenant to whom appeal can be made, and either of the two contracting parties may break his oath and become liable to the contingent consequences. In the latter, there is no such outside authority, and breach of God's oath is unthinkable; so that the penalties or rewards can apply only to the human beings concerned. Hence a difference in literary form. In an oath made between human parties, we shall find at the end an invocation of the Divine Power to enforce the observance: in the documents of the covenants between God and Israel, we find at the end a promise of rewards and punishments, contingent on Israel's conduct with reference to its sworn obligations (see Ex. xxiii. 20-33; Lev. xxvi.; Deut. xxviii.). "But when the covenants are not simply promises by God, but bilateral agreements, imposing obligations on Israel, we find at the end of each declaration (that is, in the place where, if the agreement were between men, we should expect a jurat) something which corresponds to a jurat, and which I shall term a quasi-jurat. It always consists of inducements to observe the covenant, mingled promises and threats. As there is no third party who can enforce the covenant, He who alone has the power to judge, to punish, and to reward, announces how He will require compliance or non-compliance with the terms of the agreement. In the covenant at Sinai we find a quasi-jurat in Ex. xxiii. 20-33. In Deuteronomy it consists of the great blessing and curse (xxviii.). The style adopted is always sufficiently characteristic for the critics to allege either that the passage belongs to D, or that it has received additions or modifications from the Deuteronomistic school, or else that it has points of contact with D. . . . Moreover, this style

¹On the whole subject, see *Studies in Biblical Law*, chap. II.

appears to be frequently adopted when God renews or confirms a covenant. . . . The plain truth is that when God utters a promise or a threat, appropriate language and rhythm are employed" (Studies in Biblical Law, pp. 68 f.).

The covenant conception appears to influence the language in another way. If legislation is presented in the form of a contract, expressions may be used which are apt when applied to the provisions of an agreement, but would be meaningless if employed of laws enacted in any other way. For instance, an English lawyer can speak of the witnessing part of a deed, but the expression would have no sense if transferred to an Act of Parliament. But if a law were presented as a portion of a deed, it might be possible for him to use the phrase. I believe that something like this has happened in the use of some of the technical Hebrew terms. Thus I should regard the employment of the word "testimony" as arising out of the covenant idea. Unlike Kyle, I regard the Ark of the Testimony as the box which contained the testimony or witness to the covenant, and hold this to be the origin of the phrase. The practice of calling laws testimonies seems to have sprung from their implication with covenants in the writings of Moses.

Many years ago when I began my Biblical researches I conducted investigations like Kyle's and underwent the same experience of being unable to effect an absolutely clean division between the various terms. I have already indicated my view that they have been affected by the covenant conception, and I too came to similar conclusions as to the use of the word "covenant" itself (see Kyle, p. 34). But there are other causes. In some cases minute exactness in the use of the terms would be absurd. Thus at the end of the judgments of Ex. xxi. ff. we find some precepts which most plainly are *not* judgments. The word "judgments," however, is strictly applicable to the great bulk of the rules contained in this section. It would therefore be pedantic to argue that either the introductory phrase should have been something like "these are the judgments and other matters which," etc., or else

that the remaining precepts are not in place. The use of language here is thoroughly intelligible in accordance with the ordinary practice of mankind; and that is sufficient completely to justify it.

A further difficulty is created by the fact that the Hebrew terms are not always or necessarily coextensive in meaning with any English equivalent. Elsewhere I have pointed to an instance of this (*op. cit.*, p. 62), and doubtless when Kyle publishes the whole of the Old Testament materials such matters will receive due attention, as well as the instances where technical terms are used loosely in non-legal passages with non-technical significance.

One further matter seems to require thorough sifting. How far have the present difficulties or irregularities in the use of technical terms been caused by accidents to the text or the work of glossators? But on this point, too, we may hope that Kyle will shed further light.

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