known Turkey red with the madder-root which grows in the neighbourhood; and we are reminded that it was a purple-seller of Thyatira, Lydia, who was the first-fruits of Europe to the Gospel. But the bronze-workers, whose trade was another staple of the place in the first century, and who seem to have supplied the writer of the Apocalypse with the characteristic figures of the letter to this Church, have completely disappeared, and with them the other trades, the organization of which in guilds seems to have formed the basis of the city's constitution.

The Pentateuch and Ancient Law.

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THERE seems to be one point of view—viz., that of modern jurisprudence—which has not received the attention it has deserved from those who have written on the subject of the "Higher Criticism," especially when dealing with the Pentateuch. Have the theories of modern jurisprudence anything to say with regard to the date of the Pentateuch? Certainly they will not tell us when or how it was compiled, or how many writers there were; but what these theories will enable us to do is to say approximately to what period in the history of the nation its laws, statutes, and customs belong. The religion of Israel has been compared with that of other nations, and from that comparison conclusions have been drawn and the relative age of ceremonies has been determined. These conclusions have had their influence in the determination of the date of passages, and perhaps of books, of the Old Testament. Yet it is much to be desired when there are two sets of factors for the determination of any question both should be allowed their full value. But so far as I know this has not been done by the Higher Critics in the case of the Jewish Law. Those theories which modern jurists have, with great care and painstaking effort, put together have not been studied, nor has any weight

attached to their conclusions. It is much to be wished that some jurist, whose work would be received as authoritative, would do for the Law of Moses and Jewish law in general what has been done for Hindoo and Mohammedan laws.

Taking Sir Henry Maine's "Ancient Law" as a text-book, I will try and show some reasons why the laws which we find in the Pentateuch should be considered as belonging to the early history of the Hebrew people.

We get an example of one step forward when Jethro, the father-in-law of Moses, advises him to appoint judges under him. The people had brought their causes to Moses, and the sentence he gave they received as if it came direct from God. "It is certain," says Maine, "that in the infancy of mankind no sort of legislature nor even a distinct author of law is contemplated or conceived of. Law has scarcely reached the footing of custom; it is rather a habit. It is, to use a French phrase, 'in the air.' The only authoritative statement of right and wrong is a judicial sentence after the facts, not one presupposing a law which has been violated, but one which has been breathed for the first time by a higher power into the judge's mind at the moment of adjudication."

Now, when one man has to judge all causes there is no need of a body of law, but directly his duties are handed over to others, then, unless there are to be widely different judgments of the same set of circumstances, laws, or at least principles for guidance, must be given. So it is in this particular case, for soon after the appointment of judges we get the laws which they are to administer. It is further to be noted that the Sanhedrin traced its parentage to those who were appointed by Moses on the advice of Jethro. These judges became what Sir Henry Maine calls a "juristical oligarchy," and in time claimed to monopolize the knowledge of the laws and to have the exclusive possession of the principles by which quarrels or lawsuits are decided. So far, then, we have the foundation of the administration of a system of laws, and clearly this must come very early in the history of any nation.

But we reach a step further when we come to the code of laws which are ascribed to Moses. In the Pentateuch there are said to be three codes given by the same legislator to the people of Israel. Yet in the point to which I shall shortly refer they are all alike, and all must be classed as ancient. Now, Maine says that codes make their appearance at periods much the same everywhere in point of time—*i.e.*, the same relative period of progress in nations. And if we take the Twelve Tables of Roman Law as our guide we can see how far back in the period of history the laws of Moses must go. To quote Maine again, when speaking of these early codes: "Quite enough, too, remains of these collections, both in the East and in the West, to show that they mingled up religious, civil, and merely moral ordinances without any regard to differences in their essential character; and this is consistent with all we know of early thought from other sources, the severance of law from morality, and of religion from law, belonging very distinctly to the later stages of mental progress." If the three codes belong to different periods in the nation's history, we may expect them to be marked by some degree of progress, unless we say at once that the Jews show no progress at all from a juristical point of view. It is in just such a question as this that the trained jurist's opinion would be invaluable. He would be able to say whether there was really any advance made, or whether they belong essentially to the same period. At all events, all three bear this mark of age, that they contain moral, religious, and civil ordinances all mingled together. This point ought not to be omitted when drawing conclusions from the other factors in the problem, for if the religious and ceremonial contents of these codes point one way and the legal point another, the more complex does the problem become. The jurist must be allowed his say and his considerations given their due weight, otherwise one important factor is omitted.

We get another light on the age of a code of law from its penal legislation. In all ancient codes the proportion of penal legislation is great. Maine goes so far as to say this: "It may

be laid down, I think, that the more archaic the code, the fuller and minuter is its penal legislation." "Torts, then, are copiously enlarged upon in primitive jurisprudence. It must be added that sins are known to it also. . . . It is also true that non-Christian bodies of archaic law entail penal consequences on certain classes of omissions, as being violations of Divine prescriptions and commands. The law administered at Athens by the Senate of Areopagus was probably a special religious code, and at Rome, apparently from a very early period, the Pontifical jurisprudence punished adultery, sacrilege, and perhaps murder. There were, therefore, in the Athenian and Roman States laws punishing sins. There were also laws punishing *torts*."

The Law of Moses is certainly minute in its penal legislation. True it is that, compared with other codes, we find it much more merciful, yet still it is severe as compared with modern law. The death penalty comes frequent and often. The difference is made in the case of killing a thief (if he is caught in the act) as to whether the theft was committed by night or by day. The thief is to restore fourfold what he has taken, or if he cannot pay the fine he himself might be sold; and so on with all kinds of torts or wrongs. The general rule was the *lex talionis*, though, according to Josephus ("Ant.," iv. 8), a money payment might be substituted if the one who had suffered the wrong so desired, and the one who suffered was also allowed to estimate the value of the wrong.

Again, there are sins, many punishable by death, such as, for example, "breaking the Sabbath" or "making idols," together with many others. More need not be written on this head, for we have only to read over the parts of the law relating to punishment to see how exactly it corresponds with what Maine says of other codes, which we know were formed early in the history of the nations who possessed them.

There is an omission in the Law of Moses, which was supplied later on, which also tends to prove that the code of Jewish law was early in the history of the nation—viz., the power of making a will. It is perfectly true that in the case of movables

or personal property, as we can see from the cases of Abraham and Jacob, the father had some power of bestowal, but there is not that freedom of the disposition of property that we might have expected. Not till a nation has made some advance is the power of making a will freely granted. There is, however, one case of succession, that of the daughter of Zelophehad, which was the cause of directions being given as to the succession of immovables (Num. xxvii. 5-11). There it is laid down that the succession, on the failure of male issue, was to pass to the female issue. If there were no issue at all, the property was to pass to the last holder's brethren—that is, his brothers ; failing his brothers, it was to pass to his father's brethren—that is, to his uncles and cousins. But this was a case which had a further important issue. It is well known that in the early history of nations the tribe and family have rights as against the individual. It might be that heiresses would marry into other tribes, and then their portion would go with them into the tribe that received them. And so we find that the chiefs of the family of Gilead pointed this out to Moses (Num. xxxvi. 1-12). In order to protect the rights of the family, it was then ordained that heiresses should marry one of the family of the tribe of her father. Inheritances were not to pass from tribe to tribe. [I have, however, seen it stated that this law was binding only during the early period of the settlement in Canaan, and Selden ("De Synedriis," lib. iv., cap. iv., n. 1, and "De Successione in Bona," cap. xviii.) is quoted as an authority.] It is interesting, however, to note, by the way, that this question arose in the tribe of Manasseh, who were settled on the eastern side of Jordan, and we can easily believe that such an occurrence should arise and be disposed of at once, and that it would be the law in similar cases. But if it be true that this law soon ceased to operate, then we can point to its cession as a mark of progress, and if this point of progress was reached before, say, the reign of Josiah, then those who hold the late compilation of the Pentateuch will have to account for the inclusion of a law which had ceased to be operative.

According to Maine, it was late before the Jews were allowed the power of making a will, and he attributes its introduction to their contact with the Romans, and even then it seems to be limited in its scope. He says : " Again the original institutions of the Jews, having provided nowhere for the privileges of testatorship, the latter Rabbinical jurisprudence, which pretends to supply the *casus omissi* of the Mosaic Law, allows the power of testation to attach when all the kindred entitled under the Mosaic system to succeed have failed or are undiscoverable."

No one can read the civil ordinances of the Law of Moses and fail to notice the great amount of space that is given to what is called status or personal condition. The more ancient the law is, so much the more will it enter, even to minute details, into the status of men. Therefore we may expect to find, and we do find, that the law regarding those who were priests should be full of particulars. It deals fully with his status. Again, we find the law full of detail as regards the slave.

There is one set of rules for those who were slaves from birth or had become so through crime (such as theft) or as prisoners of war, and those who had become so through debt (see Exod. xxi. 2 *et seq.*, Deut. xv. 12-16, and Lev. xxv. 39-43). Take, as another example, the power given to the head of the family. We see this power in its completeness in the Patria Potestas of the Roman law, but in the Mosaic system it was possible for a father to sell his children, and the punishment, even by the law, of undutiful children tended to enhance the power of the head of the family. We see another example of this power in the relations of husband and wife. Under the Law of Moses we get a singular example of this power, for we find that under certain conditions the husband had power to set aside his wife's vows (Num. xxx. 8). When the power enters into the domain of religion we can see that it must have been very great.

All these things come in modern jurisprudence under the head of the law of Persons or Status. It is true that we find in archaic systems the law of persons and the law of things mingled together so that there is no means of rigorously apply-

ing modern classifications to them; yet in the Law of Moses we do get some idea of the status of individual members of the community.

Now, according to Maine, the movement of progressive societies is *from Status* (using the word to signify personal conditions only, and avoiding those conditions which are the immediate or remote result of agreement) *to Contract*. But how little we find in the Mosaic Law about Contract. There is Sale, of course, Pledge, and Deposit, but how meagre the details are! There is not that minute description that we must surely have expected if the Pentateuch was compiled at a late date. If the Pentateuch was compiled after David and Solomon, then, because of the contact with other nations, because of the trade that was then established, and which was continued afterwards with nations that we now know conducted their business with much carefulness, how is it that a document which sets forth not only religious ordinances, but civil laws as well, fails just at the point where those who have made a special study of the history and the progress of ancient law would have led us to expect some detail? We must come either to the conclusion that the Jews were not a progressive race (the proof that this is not so can be found in Jer. xxxii. 9-12, where there is a conveyance of land far more modern than anything in the Mosaic Law), and that the contact with other nations, which trade brings, made no impression on them, or else we must come to the conclusion that the portion of the Pentateuch dealing with the civil law rightly belongs to the period of the history of the Israelites where it is placed—viz., in the infancy of the nation. I do not want to forget that I am only bringing forward one set of factors, but it is without doubt an important set, and if, as seems to be assumed to be the case, the other set of factors gives an altogether different result, then the problem becomes more complex, and the work of adjustment more difficult; yet there will arise some who will be able to solve these difficulties and show us the truth. Let us only be careful that nothing which throws any light on this subject is omitted, and that a whole set of factors is not ignored, as it seems to have been in the past.