

## CHAPTER VI

## THE CODES COMPARED

THE laws which are peculiar to Deuteronomy will be examined in the two following chapters; in the present one we consider those which have something parallel to them elsewhere in the Pentateuch. They fall easily into two groups, which will be considered separately.

1. The *judgments* are set out in Tables A and B (see pp. 77, 78). Their interest for our present purpose consists in the fact that many of them are found also in other ancient codes,<sup>1</sup> as well as in JE.

2. The *statutes* are set out in Tables C, D and E (see pp. 85, 88, 90). Here we miss the advantage of comparison with Hammurabi's code, but we have material which concerns the mutual relationship of JE, D and P.

Driver's view of this relationship will give us an excellent starting-point for our investigation. According to this the Deuteronomic Code 'is an *expansion* of the laws in JE (Ex. xx. 22–xxiii. 33, xxxiv. 10–26, xiii. 3–16); it is, in several features, *parallel* to the Law of Holiness; it contains *allusions* to laws—not indeed always the same as, but—similar to the ceremonial institutions and observances codified in the rest of P.

'The dependence of Deuteronomy upon JE on the one hand, and its *independence* of P, on the other, which is thus established for the legislative sections of the book, is maintained, in exactly the same manner, through the *historical* sections. . . . The two sets of passages (JE and P) *were not yet combined into a single work*, and the author only made use of JE.'<sup>2</sup> Today many scholars think in terms of 'strata' than of 'codes'; yet the question of dating by the comparison of the laws is still a matter of importance.

As we proceed to examine the laws one by one and compare

<sup>1</sup> See Pritchard, *ANET*, pp. 159–198.

<sup>2</sup> Driver, *ICC*, p. xiv. The italics are his. In similar fashion Rowley says, 'Deuteronomy shows knowledge of the J and E parts of the first four books, both in history and legislation, but not of the P part' (*Growth*, p. 45).

them with the corresponding parts in JE, H and P we shall find that the facts do not support these assertions so far as the laws are concerned. The appendix at the end of this chapter proves that the same is true regarding the historical parts. No doubt the above propositions are now out-dated, but they nevertheless require refutation because, as remarked above (pp. 11, 15), they are still being widely taught, and made the ground for the late dating of Deuteronomy and the Priestly Code. At the same time the process of examination will bring to light some weighty reasons for the early character of the Deuteronomic law.

Table A. Judgments with parallel in JE

Subject	Dt.	JE	H	Ham.
1. Release of Hebrew slave	xv. 12–18	xxi. 2–6		Cf. 117
2. Apostasy	xvii. 2–7	xxii. 20	Cf. Lv. xx. 45	
3. Manslaughter <sup>1</sup>	xix. 4–6	xxi. 13		207, 208
4. Wilful murder <sup>1</sup>	xix. 11–13	xxi. 12, 14	Lv. xxiv. 17	
5. Lex talionis	xix. 21	xxii. 24, 25	Lv. xxiv. 19, 20	196, 197, 200
6. Seduction <sup>2</sup>	xxii. 28f.	xxii. 16f.	Cf. Lv. xix. 20	
7. Manstealing <sup>3</sup>	xxiv. 7	xxi. 16		14

<sup>1</sup> See also Table M. The Hittite law distinguishes between manslaughter and murder in exactly the same terms (Pedersen, *Israel*, I–II, p. 396).

<sup>2</sup> A similar law exists in Assyrian codes. See G. R. Driver and J. C. Miles, *The Assyrian Laws*, Oxford, 1935, and Pritchard, *ANET*, p. 185.

<sup>3</sup> The Hittite code requires, not death, but ample restitution. Other slight differences between the Hittite and Babylonian codes show how in the patriarchal age custom already varied from place to place.

## THE JUDGMENTS

The laws of Ex. xxi. 2-xxii. 17 (JE) clearly come under this head. We have included also xxii. 18-20 because they exact a penalty, though dealing with moral offences and framed in the second person. It needs only a glance to see that they contain nothing to connect them with the Israelite monarchy; and there is good reason to think of them as much older. According to Albright,<sup>1</sup> 'it is now becoming a truism that the background of the Book of the Covenant lies in the Bronze Age, not in the Iron, i.e. it must go back substantially to the Mosaic Age.'

The judgments which are found in both Deuteronomy and JE are set out in Table A, those peculiar to Deuteronomy in Table B, and those peculiar to JE in Table X. Hammurabi's laws are numbered as in J. Kohler and F. E. Peiser, *Hammurabi's Gesetz*, Leipzig, 1904.

Table B. The Judgments (no parallel in JE)

Subject	Dt.	H	Ham.
1. Temptation to idolatry	xiii. 1-18.		
2. False witness	xix. 15-20.		Cf. Ham. 1-4
3. Right of firstborn	xxi. 15-17.		Cf. 168-170
4. Incurable son	xxi. 18-21.		Cf. 186
5. Slandered wife	xxii. 13-21.		Cf. 131
6. Adultery <sup>2</sup>	xxii. 22-24.	Lv. xx. 10	129
7. Rape <sup>2</sup>	xxii. 25-27.		130
8. Immodest action	xxv. 11f.		48

<sup>1</sup> OTMS, p. 39.

<sup>2</sup> A betrothed damsel is regarded as a wife. Laws 6 and 7 also in Hittite and Law 8 in Assyrian codes.

Table X. The Judgments in JE but not in Deuteronomy

Subject	Exodus	Hammurabi
1. Daughter sold into concubinage	xxi. 7-11	Cf. 117, 183, 184
2. Smiting father or mother	xxi. 15	195 <sup>1</sup>
3. Cursing father or mother	xxi. 17	
4. Injury through a quarrel	xxi. 18f.	206
5. Injury to a servant or woman (see A.5)	xxi. 20-27	196, 197, 199, 200
6. Injury from a goring ox	xxi. 28-32, 35, 36	250, 251, 252 <sup>2</sup>
7. Injury from an open pit	xxi. 33, 34	
8. Theft	xxii. 1	6, 8
9. Burglary	xxii. 2-4	21
10. Cattle feeding astray	xxii. 5	57
11. Crops damaged by fire	xxii. 6	Cf. 55, 56 <sup>3</sup>
12. Trust property stolen	xxii. 7-9	125
13. Trust property damaged	xxii. 10-13	Cf. 263-267
14. Borrowed property damaged	xxii. 14f.	Cf. 263-267
15. Witchcraft	xxii. 18	
16. Bestiality	xxii. 19 <sup>4</sup>	

<sup>1</sup> No mention of mother; the penalty is the loss of a hand.

<sup>2</sup> Also found, in identical terms, in the earlier code of Eshnunna.

<sup>3</sup> These laws relate to damage by water, through imperfect canals.

<sup>4</sup> Cf. Dt. xxvii. 21.

Of the thirty-one laws in these lists twenty-two have something analogous to them in the older codes. These refer to matters concerning property or human rights, such as could come before a civil court, and prescribe a penalty.

Most of the remaining nine deal with moral and religious matters, with which the old law codes had no concern. Confining attention for the present to the former we see both likeness and differences between Hammurabi and the Israelite laws. The proper inference is, not that the Hebrew law is derived from the Babylonian, but that both represent the formulation of old and widespread Semitic customs, pre-Mosaic in their origin, which may well have been already in force in the patriarchal period.

The *distribution* of these laws is revealing, namely twelve verses of Deuteronomy in Table A, twenty-eight in Table B and forty-four verses of JE in Table X. This is not as it should be according to the documentary theory.<sup>1</sup> If the Deuteronomic code were an 'expansion' of that in JE why should more than three-quarters of it have been omitted? Had burglary and theft ceased? Would not the laws protecting a slave (Ex. xxi. 22f., 26f.) have made a special appeal to an author who elsewhere is so concerned to protect the weak?

Again, why should the old laws in Table B (2-7), similar in type to the others, have remained so long unrecorded? Of those in Table A which are repeated, why are the order and wording and connection all changed?

We are forced to the conclusion that the legislation of Deuteronomy is not an 'expansion' of the Covenant code.

Neither can it be attributed, as some scholars have maintained, to the old Canaanite civil law. There are marked differences between the Deuteronomic laws and those found in the Ras Shamra tablets; the absence of specifically Canaanite features in the former suggests that it was fixed before the settlement in Canaan, and there are signs of strong reaction against Canaanite influence.

The real fact is that these thirty-one laws, distributed through

<sup>1</sup> The statement that 'nearly every law in the shorter document (viz. Ex. xxi-xxiii) is reproduced' in Deuteronomy (Oesterley and Robinson, *Introduction*, p. 43) is manifestly incorrect. The actual proportion is less than a third, viz. thirty verses in Tables A and C against sixty-seven in X and Y.

these three tables (A, B and X), are all alike ancient and belong to the same category; they are supplementary, not successive; parts of a larger whole, as is proved by their collection together in Hammurabi's code.

A second matter for study is the different form which a law, when found in Hammurabi's code, assumes in the Hebrew law.

A careful examination made by W. Kornfeld<sup>1</sup> of the laws for the goring ox in Ex. xxi. 28-32 and of the laws for adultery in Dt. xxii. 22-27 with those of Hammurabi and Eshnunna shows that, whilst alike in several points such as the distinction between a 'son' and a 'servant', and between the cognizance or ignorance of the ox's propensities on the part of the owner, the Hebrew law contains certain unique features. For instance, (i) in Ex. xxi. 31f. the sexes are treated equally, (ii) in Ex. xxi. 22, 23, communal procedure is substituted for a fixed fine (cf. Dt. xxii. 24), (iii) in Ex. xxii. 8 (note rv) the divine sanction is sought, (iv) in other places (e.g. xxi. 13) the standard form is departed from and the first and second person is used. Kornfeld regards these as Mosaic modifications of the older Semitic law.<sup>2</sup>

If such are the modifications introduced into the laws of JE, let us consider what changes are made when an old law is restated in Deuteronomy.

1. The equal treatment of the sexes is found in Dt. xv. 12, although absent in Ex. xxi. 2.
2. Communal procedure is to be seen in Dt. xix. 17, xxi. 19, xxii. 17, 18.
3. The divine name is introduced in Dt. xv. 15 and divine sanction sought in Dt. xix. 17 (cf. Ex. xxii. 8).
4. The mode of direct address is used in Dt. xix. 19, 20, xxii. 21, 22, 24.

It appears, therefore, that the changes made by Deuteronomy in the old laws follow the same pattern as those made in the laws of

<sup>1</sup> 'L'adultère dans l'Orient antique', *RB*, lvii, 1950.

<sup>2</sup> Albright says that the Book of the Covenant illustrates how Semitic case-law was 'transformed by the religion of Moses', *OTMS*, p. 40. Pedersen (*Israel*, 1-11, pp. 400ff.) remarks that in the Hebrew laws the principles of 'guilt', of 'simple restitution' and of 'care for the weak' receive greater prominence than in other Semitic codes.

Ex. xxi, xxii. The natural inference is that the same cause has been at work in each case.<sup>1</sup>

Let us now examine how certain laws appearing in both Exodus and Deuteronomy differ in form.

1. *The lex talionis*, both in Exodus and Deuteronomy, is not prescribed but assumed, and applied to different cases. The difference in form is slight and irrelevant.

2. The law against *manstealing* in Hammurabi refers to 'a man's (i.e. freeman's) son', in Exodus it is general and in a primitive form, in Deuteronomy we have 'any of his brethren the children of Israel'.

3. When comparing the laws for the *release* of those sold into bondage care is required to distinguish the separate cases, which differ in the three codes.<sup>2</sup>

Hammurabi's law (117) provides for their release after three years 'if a man sell his wife, his son or his daughter'.

Ex. xxi. 2-7 falls into three sections: (i) 'A Hebrew man' bought as a slave shall 'go out free' after six years. (ii) A rider is added about his wife and children (3, 4). (iii) A procedure is laid down 'if he say, I love my master' and wishes to serve voluntarily (5, 6). The section which follows (7-11) has no parallel in Deuteronomy (see Table X.1), and deals with the case of a daughter sold into concubinage.

Dt. xv. 12-17 also falls into three sections: (i) 'Thy brother, an Hebrew man or an Hebrew woman' who has been sold, must be released after six years (12). (ii) He is to be furnished with generous supplies (13-15). (iii) Procedure is laid down for voluntary service (16-18).

Here we see that in Ex. xxi. 2-4 the law preserves the ancient form except that 'thou' creeps into verse 2, so connecting it with the preceding verse.

In Deuteronomy the law is applied to both sexes, the word 'brother' is introduced, the memory of Egypt is invoked, and the words added 'therefore I command thee this thing today'. The

<sup>1</sup> New elements appearing in Deuteronomy are, 'the priests and the judges, which shall be in those days' (xix. 17) and the 'elders of the city' (xxi. 19, xxii. 17).

<sup>2</sup> When this is done it is apparent that there is no discrepancy.

old law is thus absorbed into the exhortation of the preacher.

4. In Hammurabi's law, *manslaughter*, if declared upon oath to be 'without intent', involves a fine, greater for a freeman than for a slave (207, 208).

Ex. xxi. 13 is quite different; it runs, 'And if a man lie not in wait, but God deliver him into his hand; then I will appoint thee a place whither he shall flee.'

In Dt. xix the law is absorbed in the regulations for the cities of refuge, which are intended for the time 'when the Lord thy God hath cut off the nations, whose land the Lord thy God giveth thee, and thou succeedest them' (1).<sup>1</sup> The changes follow the same pattern as before.

The nine laws which remain for consideration have no strict parallel in Hammurabi's code, though laws regarding seduction, immodest action and bestiality are found in other codes.<sup>2</sup>

Three of these deal with civil offences and prescribe a penalty; death for murder (A.4), mutilation for immodest interference (B.8) and compensation for loss through an unguarded pit (X.7).

Three more deal with moral offences. The rules (A.6) concerning seduction with consent in Ex. xxii. 16f. and Dt. xxii. 28f. partly overlap and partly supplement each other. The law of Ex. xxi. 7 exacts the death penalty for *cursing* father or mother (B.3), the curse being the moral equivalent of a blow. The third is the law against bestiality (Ex. xxii. 19).

The remaining three are religious. Ex. xxii. 18, using the second person, condemns a witch to death.<sup>3</sup> In Ex. xxii. 20 the penalty for sacrificing 'to any god, save unto the Lord only' is that he be 'devoted' (rv mg.). Dt. xvii. 2-7 also enacts the death penalty for apostasy, but in a form so different as to show that it is not copied from the JE law. It exhibits the characteristic features noted by Kornfeld (see p. 81); both sexes are included (2), communal action is prescribed, and the religious aspect is emphasized; that which in Ex. xxii. 20 is an outward act is here treated as a transgression of the 'covenant' (2).<sup>4</sup>

<sup>1</sup> See p. 119 below.

<sup>2</sup> ANET, pp. 168, 196, 197.

<sup>3</sup> 1 Sa. xxviii. 9 implies that this law existed in the time of Saul.

<sup>4</sup> Cf. Dt. xv. 12, 13. The calling of 'witnesses' is ancient custom. Cf. Ham. 106, 123.

The words 'which I have not commanded' should probably be regarded, here and elsewhere in Deuteronomy, as proceeding from Moses as the speaker.<sup>1</sup> The general setting is archaic; the words 'thy gates which the Lord thy God giveth thee' point to the occupation of the land.

Lastly, the rules in Dt. xiii, enacting death as a penalty for temptation to apostasy, are unique in the Pentateuch and will be considered further under Table F (p. 98). They also possess the features noticed by Kornfeld.

We may sum up the evidence arising from these comparisons as follows:

1. The judgments which deal with civil causes in both JE and D are founded upon primitive Semitic customs of a widespread character, and go back to the patriarchal age or earlier.
  2. The evidence is opposed to the hypothesis that the code of Deuteronomy was an 'expansion' of the JE code. They possess features in common, and are of the same general type; in the main they supplement each other.
  3. The features in which the laws in JE differ from the older forms in the other Semitic codes are also found in Deuteronomy, sometimes with the addition of exhortations referring to the land which Yahweh is giving to Israel.
  4. Negatively, there is no sign in the Deuteronomic forms of adaptation to the monarchic period, nor any hint of the author's acquaintance with Israel's later history.
- Positively, there is good reason to believe that all these judgments were fixed in their present form in the earliest period of Israel's history.

#### THE STATUTES

The comparison of Deuteronomy with the JE code is concluded by considering the laws in Table C which are common to both, and in Table Y which are peculiar to JE. Most of the statutes in Deuteronomy have no parallel in JE and will be found in subsequent tables.

The comparison in general follows the same pattern as with the judgments, and confirms the conclusions already reached. The

<sup>1</sup>J. Reider, *in loc.* Cf. Dt. iv. 2, xii. 32 (Heb. xiii. 1), xix. 7. By contrast, where the command is that of Yahweh see Dt. xxvi. 16.

laws in the two codes are either nearly identical or supplement one another, and the background is the same, except for clearer anticipations of the land of promise.

**Table C. Statutes common to Deuteronomy and JE**

Subject	Dt.	JE (Ex.)	H or P
1. Animal found dead	xiv. 21a	xxii. 31	Cf. Lv. xi. 40 (P), Lv. xvii. 15 (H)
2. Kid in mother's milk	xiv. 21b	xxiii. 19b (cf. xxxiv. 26b)	
3. Consecration of firstlings	xv. 19, 20	xxii. 30 (cf. xxiv. 19, 20)	Ex. xiii. 2b (P). Cf. Lv. xxvii. <sup>1</sup> 26 (P); Nu. xviii. 15-18 (P)
4. Pilgrim feasts	xvi. 1-17	xxiii. 14-18. (cf. xxxiv. 22-24)	Ex. xii. 1-20 (P); Lv. xxiii (H). Cf. Nu. xxviii. 16-29 (P), xxix. 12 -end (P)
5. Justice	xvi. 19f.	xxiii. 6-8	Cf. Lv. xix. 15 (H)
6. Straying cattle	xxii. 1-4	xxiii. 4f.	Cf. Lv. vi. 3 (P)
7. Usury	xxiii. 19, 20	xxii. 25	Lv. xxv. 36f. (H)
8. Pledged garment	xxiv. 12f.	xxii. 26f.	
9. Justice for stranger	xxiv. 17a, 18	xxii. 21, xxiii. 9	Cf. Lv. xix. 33 (H)
10. Firstfruits	xxvi. 1, 2	xxiii. 19a (cf. xxii. 29a)	Nu. xviii. 12, 13 (P)

<sup>1</sup>This supplements Dt. xv. 19; what has already been sanctified to Yahweh cannot be 'sanctified' or set apart as a vow.

Table Y. Statutes in JE but not in Deuteronomy

Subject	JE (Ex.)
1. Vengeance for vexing the widow and fatherless	Ex. xxii. 22-24
2. Rulers must be respected	Ex. xxii. 28
3. Firstripe fruits and liquors, firstborn son <sup>1</sup>	Ex. xxii. 29
4. Avoidance of evil	Ex. xxiii. 1-3
5. Fallow year <sup>2</sup>	Ex. xxiii. 10, 11
6. Sabbath	Ex. xxiii. 12
7. Need of circumspection	Ex. xxiii. 13

A careful examination of the laws in Table C will reveal nothing to show adaptation to later conditions as we pass successively from JE to Deuteronomy and from Deuteronomy to P.

As one example, the law of firstlings (C.3) finds its simplest expression in Ex. xiii. 2 (P).

As another, the laws of justice in Dt. xvi. 19 (C.5) are quite primitive in form,<sup>3</sup> two of which are found with slight additions in Dt. xxiii. 6, 8. The wording is different in Lv. xix. 15, but not the substance. The same is true of the laws in C.6, 7, 8, 9; the changes are small and do not affect date. The rider in Dt. xxiii. 20 permitting usury on a loan to the foreigner would have its primary application to merchants travelling through the country,<sup>4</sup> of which there were many. Such trading involves no hard dealing with a poor brother.

A special interest attaches to the law in C.2, the only one in which the terms are absolutely identical. The Ras Shamra tablets

<sup>1</sup> There is nothing in Deuteronomy concerning 'liquors' or the 'firstborn son'. On firstfruits see above.

<sup>2</sup> This must not be confused with Dt. xv. 1-6. The seven-year principle is adopted in both, but in Exodus the soil and in Deuteronomy the debtor is the subject.

<sup>3</sup> 'Obviously derived from an old exemplar for judges' (von Rad, *Studies*, p. 18).

<sup>4</sup> See comments on this verse by Hertz.

have revealed that to seethe a kid in its mother's milk was a Canaanite fertility charm; this explains its appearance in Ex. xxxiv. 26, in a passage (12-26) which commences with a warning against Canaanite practices.

Where a law in P differs from that in JE or Deuteronomy, this is not a matter of its age, but is usually due to its occurrence among instructions designed for the use of priests, whereas the laws of Deuteronomy were addressed to the people at large.

The three pilgrim feasts (*haj*)<sup>1</sup> in C.4 need separate mention. These are mentioned by Hosea (ii. 11, ix. 5) and Amos (v. 21, viii. 10); and earlier still Jeroboam I devised a feast of his own to prevent the northern tribes from going up to Jerusalem (1 Ki. xii. 32).

The institution of the Passover is related in Ex. xii. 1-20 (P), where rules for its observance are given which are partly assumed, partly repeated in Dt. xvi. This is the natural order. A. C. Welch has shown<sup>2</sup> the absurdities introduced by Wellhausen's theory, that the passover was once a simple agricultural festival taken over from the Canaanites, that its connection with the Exodus was first stated in Deuteronomy, and afterwards elaborated by P. On this theory, the passover was for long celebrated locally; then under Josiah a revolution was wrought, and, in spite of well-established custom, the tribes were made to come up to Jerusalem; and finally, after the exile, when respect for the law was at its highest, and at a time when it was easier than ever to assemble at Jerusalem, Ex. xii was composed, reversing the Deuteronomic law, and transforming it back again into a domestic feast. No wonder that Welch exclaims, 'Is such a hypothesis credible?'<sup>3</sup>

An indication of the early date of Dt. xvi. 1-5 may be seen by the use of the earlier form *Abib* in verse 1, and in the command in verse 7 to return to their 'tents', which could at first have been literally fulfilled.<sup>4</sup>

The twelve verses in Table Y which are not repeated in Deuteronomy are of the same type as those in Table C, and the documentary theory has no explanation to offer for their omission.

<sup>1</sup> The word survives in Arabic *haj*, the term used for the Mecca pilgrimage.

<sup>2</sup> *Code*, pp. 62-78.

<sup>3</sup> *Code*, p. 72.

<sup>4</sup> See Ryder Smith, 'The Stories of Shechem: Three Questions', *JTS*, xlvii, 1946, pp. 33-38.

This completes the comparison of the laws of Deuteronomy with those of JE, and puts the reader in a position to evaluate the result.

The changes and omissions, the alterations in the order and setting, and the notable absence of any reference to the conditions of the later monarchy, all militate against Wellhausen's theory of successive codes and their dating.

**Table D. Statutes common to D and H only**

Subject	Dt.	H. (Lv.)
1. Disfigurement for dead	xiv. 1, 2	xix. 28, cf. xxi. 5
2. Passing through fire, wizardry <sup>1</sup>	xviii. 9-14	xviii. 21, xix. 26, 31, xx. 1-6
3. Prohibited mixtures	xxii. 9, 11	xix. 19
4. Incest	xxii. 30	xx. 11ff.
5. Prostitution	xxiii. 17	xix. 29, cf. xx. 13
6. Withholding wages	xxiv. 14f.	xix. 13
7. Gleanings	xxiv. 19-22	xix. 9f., xxiii. 22
8. Just weights	xxv. 13-16	xix. 35f.

DEUTERONOMY COMPARED WITH H

Table D contains twenty-two verses of Deuteronomy which have parallels with H, but not with the other codes; and Table E sixty-four verses which have parallels with P, some with H also.

The comparison with H is of less importance for our purpose

<sup>1</sup> This section is exhortation rather than law (see von Rad, *Studies*, p. 22). The death sentence of Ex. xxii. 18 is not repeated. (See above, Table Y.) Lv. xx. 4 and 11 decree the death penalty, and in form approximate to 'judgments'.

because of the widely divergent opinions concerning the date of its contents.<sup>1</sup>

Generally speaking we may say that those parts of H which are not addressed to the priests resemble the laws and exhortations of Deuteronomy.<sup>2</sup>

The contents partly coincide and in part are complementary; the conditions reflected are the same.

DEUTERONOMY COMPARED WITH P

We now come to compare the laws in Deuteronomy with those in P. The parallels are set out in Table E; the laws are seen to be all of a priestly character. This is a logical necessity, seeing that it was a principle of the documentary analysis to assign the priestly legislation in the first four books to P.

The content of this group is considerable; in fact the table shows that Deuteronomy has more verses (64) with parallels in P than those which are common to JE (37). What then comes of the oft-repeated statement that Deuteronomy 'shows knowledge of JE but not of P'?<sup>3</sup>

Wellhausen began with the assumption that the ceremonial law was the latest stage in the religious development. Few scholars today would endorse this view, but many follow him in asserting 'contradictions' between Deuteronomy and P, and that P is the later document, originating in the exile. On this Welch pertinently remarked that if the priests had lived under the Deuteronomic code all their lives and administered its regulations in the temple, it would be strange indeed if, when they came to draft a new set of laws, they ignored the distinctive features of the Deuteronomic code.<sup>4</sup>

<sup>1</sup> At one time no one had the least doubt that H was later than D; in 1934 Oesterley and Robinson were convinced that it was earlier (*Introduction*, p. 53). Today opinions vary.

<sup>2</sup> 'As a collection of older statutes, which have been interspersed with parenthesis, the Holiness Code is very closely akin to Deuteronomy' (von Rad, *Studies*, p. 36).

<sup>3</sup> Driver is not quite consistent, for he admits 'allusions' to the institutions of P (see p. 76 above).

<sup>4</sup> *Framework*, p. 6.

Table E. Statutes parallel with P<sup>1</sup>

Subject	Dt.	H	P
1. Burnt offerings <sup>2</sup>	xii. 5-28 (6, 11, 27)	Lv. xvii. 3-9. Cf. xxii. 18ff., xxiii. 12-27	Lv. i
2. Heave offerings	xii. 5-28 (6, 11, 17)		Ex. xxv. 2; Lv. vii. 14, 32; Nu. xviii. 8, xxx. 29, 41
3. Tithes	xii. 5-28 (6, 11, 17), xiv. 22-29		Lv. xxvii; Nu. xviii
4. Firstlings (see Table C)	xii. 5-28 (6, 17), xiv. 23 (xv. 19-23)		Lv. xxvii. 26; Nu. iii. 41
5. 'Sacrifices' or 'Offerings by fire'	xii. 5-28 (6, 11, 27), xviii. 1		Lv. ii. 3, vii. 5-10
6. Vows	xii. 5-28 (6, 11, 17, 26), xxiii. 21-23	xxii. 18-22	Lv. xxvii; Nu. xxx. 2ff.
7. Freewill offerings	xii. 5-28 (6, 17), xvi. 10, xxiii. 21-23	xxii. 18-23, xxiii. 8	Nu. xv. 3, xxix. 39
8. Clean meats	xii. 15, 21, 22, xiv. 3-20	xvii. 13, xx. 25	Lv. xi
9. Blemished offering	xvii. 1	xxii. 17-24	Lv. i. 3; Ex. xii. 5
10. Priestly dues (see also Table J)	xviii. 1-5	Cf. Lv. xxiii. 20	Lv. vii. 28ff; Nu. xviii. 9f.
11. Fringes	xxii. 12		Nu. xv. 37-41
12. Leprosy	xxiv. 8f.		Lv. xiii, xiv

<sup>1</sup> To those may be added 3, 4 and 10 in Table C.

<sup>2</sup> The fact that Dt. xii. 5-28 deals with seven forms of sacrifice, some of which are mentioned again, accounts for the references in Deuteronomy not appearing in sequence. Regarding Dt. xii. 29-32, see Chapter VII, p. 98.

Let us proceed to examine these laws in detail. The contents fall under three heads, (a) the sacrifices and offerings (1-7), (b) clean meats (8), and (c) divers rules (9-12).

### a. Sacrifices and offerings

It is important to observe the setting of xii. 5-28, placed between the injunction to destroy the Canaanite sanctuaries (1-4) and that to avoid sharing in the Canaanite practices (29-32). The people addressed are assumed to be about to cross the Jordan in order to dwell 'in the middle of a Canaanite population which was still celebrating its own national rites'.<sup>1</sup>

There is a spirit of optimism and a freshness of style in the passage which corresponds to this setting and the circumstances it presumes.

How different it is from the mournful notes of Hosea concerning sacrifice (ix. 4), the satire of Amos (iv. 4, 5), or the bitter words of Isaiah, 'Bring no more vain oblations' (i. 13). Here is something original; it is no 'prophetic reformulation' of old laws.

In fact it does not lay down the laws of sacrifice; it assumes that they exist, and that they are known to the people or to their priests; its object is to prevent the offerings being brought to pagan altars, and to emphasize their communal and joyful character (12, 18).

We look in vain, however, for laws about burnt offerings and peace offerings in JE; instead, we find them in P (Lv. i-iii); and what is written about the flesh and blood in Dt. xii corresponds quite well with the Levitical law.

The same is true of tithes, which were certainly ancient (Gn. xiv. 20). They are nowhere mentioned in the JE code, but the rules are found in Lv. xxvii. 28-32 and Nu. xviii. 21ff., both of which are P. What is written in Dt. xiv. 22ff. and xxvi. 12ff. appear to be later than, and supplementary to, these.<sup>2</sup>

The 'heave-offering' also is introduced as something familiar, and the use of the word (*ḥūmāh*) in 2 Sa. i. 21 testifies to its antiquity. Yet apart from Deuteronomy the rules are all found in

<sup>1</sup> Welch, *Code*, p. 31.

<sup>2</sup> The various directions regarding tithes are difficult to harmonize on any hypothesis. The LXX calls the tithes of Dt. xxvi. 12 a 'second tithe' (cf. Tobit i. 7). See Hertz on Dt. xiv. 22 and Welch, *Code*, pp. 35ff.



P. There is clearly something wrong with a system of dating which squares so badly with these facts.

There is a likeness between Lv. xvii and Dt. xii which can scarcely be accidental. Both require animal sacrifices to be brought to Yahweh's altar, and both allow exceptions. Both inculcate, in similar terms, reverent treatment of the blood, which may not be eaten with the flesh (Lv. xvii. 12-14; Dt. xii. 23-25). The exhortation to keep 'the statutes and judgments' is found in Lv. xviii. 1-5 at the end, and in Dt. xii. 1 at the beginning. Warnings against heathen practices are given in Lv. xvii. 7, xviii. 3, as in Dt. xii. 29-32.

In Lv. xvii. 13 permission is granted to kill anything 'taken in hunting'; in Dt. xii. 22 it is extended to animals from the flock and herd 'even as the roebuck and the hart is eaten'.<sup>1</sup> If the historical setting of each passage be allowed to speak for itself, the meaning is plain. In the wilderness, animal sacrifices must be brought to the door of the tabernacle, excepting what is taken in the chase. In the land of Canaan this liberty is expanded. Domestic animals may be slaughtered at home, even as the 'roebuck and the hart', typical of the chase. They are selected as well-known wild game. But when were they so? Not, it would seem, in the days of Solomon, when they were reckoned as delicacies (1 Ki. xiv. 23), but a natural choice when the people had just passed through the hill country of Moab where both animals were common.

What is simple and straightforward when Lv. xvii and Deuteronomy are read in the context of the narrative becomes difficult and far-fetched when Deuteronomy is regarded as a seventh-century reform, and xii. 15 is interpreted as a concession by the reformer, rendered necessary by the limitation which he had imposed upon the people to bring their offerings no longer to the high places but to a single sanctuary. It is scarcely to be believed that, if this had been the author's meaning, he would have expressed himself so obscurely.

### b. Clean meats

The list of clean and unclean meats in Dt. xiv. 3-20 corresponds closely (but with additions in verse 5) to that in Lv. xi. This would

<sup>1</sup> Cf. xv. 22.

be expected if both be early, but raises difficulties if Deuteronomy belongs to the seventh century.<sup>1</sup>

Most of the fauna mentioned in this section have been identified with reasonable certainty, and the fact stands out that they inhabit, some of them exclusively, the region stretching from Egypt, through the Sinai peninsula, to the mountainous region to the south and east of the Dead Sea.<sup>2</sup> The most natural inference is that the lists originated in the period to which the record assigns them.

Special interest attaches to the seven species of game found only in the list in Deuteronomy, 'the hart, and the gazelle, and the roebuck, and the wild goat, and the pygarg, and the antelope, and the chamois' (xiv. 5, RV).<sup>3</sup>

Dr. Masterman<sup>4</sup> found that the 'pygarg' and 'chamois' (probably a wild sheep) were known to the Bedouin as animals haunting the mountainous parts of Edom, the 'wild goat' also inhabiting this region. There could have been little point in specifying these at a time when they were mostly out of the reach of the inhabitants of Judaea.

### c. Divers rules

Little needs to be added on the four other passages in Table E.

The simple words of Dt. xvii. 1 are suitable as addressed to the people at large, the more precise rules in H and P being written for the priests. Dt. xviii. 1-5 will be considered further in Table J. The Mishnah interprets verse 3 as referring to animals slaughtered at home for domestic use.

The provision regarding fringes in Dt. xxii. 12 is stated more fully in Nu. xv. 37-41, where it occurs between two narrative portions; there is nothing to suggest a disparity of date.

<sup>1</sup> Driver at one time assigned Lv. xi to P, but afterwards wavered in this opinion. In the *ICC*, Deuteronomy, p. 163, he suggests that the list there was borrowed from an earlier source. Phoenician tariffs of sacrifice, with lists of an analogous character, have been found which, though late, refer back to the second millennium BC (Bentzen, *op. cit.*, 1, p. 220).

<sup>2</sup> See G. C. Aalders, *Pentateuch*, London, 1949, pp. 95-97, and articles by E. W. G. Masterman in *HDB* (Shorter Edition).

<sup>3</sup> It should be observed that the 'gazelle' of the RV is the 'roebuck' in AV, and the 'roebuck' of RV is the 'fallow-deer' of AV. The 'wild goats' of 1 Sa. xxiv. 2 are not the same as the wild goat here.

<sup>4</sup> See *HDB* (Shorter Edition), s.v.

Finally, in Dt. xxiv. 8f. is a brief word about leprosy; the people are bidden to 'take heed . . . and do all that the priests the Levites shall teach you, as I commanded them'. These words assume that the priestly law was already in existence; and yet it is found in Lv. xiii, xiv (P).

Can it still be said that the author of Deuteronomy knew nothing of P?

This ends our inquiry into those laws in the four 'codes' of JE, H, D and P which contain common elements, and puts us in a position to supplement and expand the conclusions stated above concerning the judgments. It has to be admitted that the Wellhausen scheme breaks down upon a close examination of the laws.

1. The absolute dating has no foundation. There is nothing specific to connect the laws of JE with the early monarchy, those of Deuteronomy with 621 BC, nor those of P with the exile.

On the contrary, laws of great antiquity are found in all these, and some are peculiar to each—rather they bear the appearance of contemporary layers of material.

2. The statement that Deuteronomy xii–xxvi is an 'expansion' of the JE code is misleading. A few of the old laws and precepts are repeated, more of the same type are omitted; where a law is modified there is no sign that it has been adapted to the needs of the seventh century. The material peculiar to Deuteronomy includes much that is demonstrably old, and nothing manifestly of a late origin.

The two groups of laws appear to be complementary and roughly contemporary.<sup>1</sup>

3. The argument for the chronological sequence JE, D, P, fares no better; it cannot rightly be said that Deuteronomy shows dependence on JE and ignorance of P; it has some elements in common with both, rather more with the latter.

The laws of Lv. xi concerning food reappear in Dt. xiv in a different form, but one which shows no difference of period. Deuteronomy asserts the existence of a priestly law concerning leprosy, and assumes the existence of laws of sacrifice, such as are found in P.

<sup>1</sup> 'It is at least possible that we should allow for contemporary strata representing local usage': G. W. Anderson, *OTMS*, p. 303. The difference in the laws is not 'evidence of different epochs', Bentzen, *Introduction*, II, p. 22.

4. The laws of Dt. xii–xxvi follow naturally upon the preceding discourse in chapters v–xi and appear quite suitable to the place and occasion stated in iv. 44–49. The parenetic additions also, where they occur, belong to the period when the deliverance from the bondage of Egypt was a living memory, and are quite different from the exhortations which Isaiah addressed to a disillusioned and sophisticated people.

Looked at positively, the Deuteronomic legislation agrees well with what is stated in iv. 44–xi. 32. Many of its laws are just as ancient and primitive in form as those of JE. The parenetic additions are eminently suitable if spoken by Moses to the whole congregation, appealing to the experiences of Egypt and the wilderness, and warning them against the lure of the Canaanite mode of worship.

We have still to consider the greater part of the legislation, the statutes which are peculiar to Deuteronomy and its specific commands and institutions.

#### APPENDIX TO CHAPTER VI

#### HISTORICAL MATTER IN DEUTERONOMY

The assertion, frequently repeated, that Deuteronomy relies solely upon JE<sup>1</sup> for its historical data will not stand close examination.

1. Several place names occur first in Deuteronomy (see Chapter IV). Three others, four probably, are previously found in P only, namely Hazeroth (i. 1; Nu. xxxiii. 17), Ezion-geber (ii. 8; Nu. xxxiii. 35), Aroer (ii. 36; Nu. xxxii. 34); and Laban if the same as Libnah (i. 1; Nu. xxxiii. 20).

<sup>1</sup> Cf. H. H. Rowley, *Growth*, p. 29. S. R. Driver's statement that there are 'only three facts . . . for which no parallel can be found in JE' (*ICC*, p. xvii) is unusually rash. Beside those three (Dt. i. 23, x. 3, 22) he himself in the commentary calls attention to others (e.g. iii. 27, 28, iv. 36, xviii. 2) found only in P, and to much which is not found at all in the previous narrative (e.g. ii. 16–25, iii. 23–29, xxv. 18).

2. In chapters i-iv are the following, based only on P.
  - (i) Dt. i. 8, 'to their seed after them' (Gn. xvii. 8, xlviii. 4).
  - (ii) Dt. i. 23, the number of the spies (Nu. xiii. 3).
  - (iii) Dt. i. 36-38. Only P records that Moses and Aaron were debarred from the promised land as a punishment (Nu. xx. 12, xxvii. 13ff.) whereas Caleb and Joshua were both allowed to enter (Nu. xiii, xiv *passim*).
  - (iv) Dt. ii. 14, the *wasting* of the older generation (Nu. xiv. 33).
  - (v) Dt. iii. 12, 13 repeats what is in Nu. xxxii. 33ff.
  - (vi) Dt. iii. 27. The promise 'is not mentioned in JE'<sup>1</sup> but is in Nu. xxvii. 18.
  - (vii) Dt. iii. 28. The 'charge' to Joshua (Nu. xxvii. 19).
  - (viii) Dt. iv. 3, 'all the men that followed Baal-peor the LORD thy God hath destroyed them' (Nu. xxv. 8f.).
  - (ix) Dt. iv. 32 reproduces Gn. i. 27.
  - (x) Dt. iv. 41-43 assumes the command in Nu. xxxv. 14.

3. The following come in Dt. v-xi:

- (i) Dt. viii. 2, 'Forty years in the wilderness', Nu. xiv. 33f.
- (ii) Dt. x. 1. The command to make the ark, Ex. xxxv. 10.
- (iii) Dt. x. 3. 'Acacia wood', Ex. xxxvii. 1.
- (iv) Dt. x. 6, 7. The journeyings and Aaron's death (Nu. xx. 28, xxxiii. 38f.).
- (v) Dt. x. 8. The separation of Levi (Nu. iii. 6).
- (vi) Dt. x. 9. The promise to Levi (Nu. xviii. 20).
- (vii) Dt. x. 22. The number seventy (Gn. xlvi. 27).

4. Among the few historical data of the legislation and the final chapters occur the following:

- (i) Dt. xvi. 3, 'in haste' (Ex. xii. 11).
- (ii) Dt. xviii. 1, 2, 'as the LORD hath spoken' (Nu. xviii. 20).
- (iii) Dt. xxiv. 8, 'as I commanded them' (Lv. xiii, xiv).
- (iv) Dt. xxxii. 44, Hoshea (Nu. xiii. 8).
- (v) Dt. xxxiii. 8, Urim and Thummim (Ex. xxviii. 30; Lv. viii. 8).

The list would be longer except for adjustments in the analysis. Thus Driver assigns Dt. xxxii. 48-52 (cf. Nu. xxvii. 12ff.) to P,

<sup>1</sup> S. R. Driver, *in loc.*

whilst Dt. i. 19 (Nu. xx. 1), Dt. ix. 9 (Ex. xxiv. 18b), Dt. ix. 10a (Ex. xxxi. 18), Dt. xi. 6, 'sons of Eliab' (Nu. xvi. 1), are excluded from P only by excision of a phrase or the careful placing of a limit.

When it is remembered how much smaller are the narrative portions of P than those of JE it will be seen that there is little disparity between the proportion of the facts finding a place in each.

The value of this evidence is sometimes minimized by the conjecture that JE may once have contained facts now found only in P. This, of course, is possible, as it is equally so that what is now found in JE may once have been in P, if ever the two were separate. But this is conjecture; the facts are given above.