

CHAPTER VII

LEGISLATION PECULIAR TO DEUTERONOMY

THE laws so far examined occupy rather less than half of chapters xii-xxvi, 149 verses out of 345. The remainder, which are peculiar to Deuteronomy, fall naturally into two parts: (a) judgments and statutes of permanent obligation, and (b) specific commands and instructions, often with some note of time attached to them. The former of these will be the subject of this chapter.

Whether these laws were new or old when Deuteronomy was written, they represent the selection of the author, and therefore should form a guide as to his aim and purpose, and indicate the needs of the people for whom the book was compiled.

Table F. Prohibition of idolatry

Subject	Deuteronomy
1. Destruction of Canaanite sanctuaries ¹	xii. 1-4
2. Avoidance of Canaanite practices ¹	xii. 28-32
3. Temptation to idolatry	xiii. 1-18
4. Pillars and 'asherim	xvi. 21, 22
5. Hire of prostitution	xxiii. 18
To these may be added:	
6. Apostasy (see Table A)	xvii. 2-7
7. Wizardry (see Table D)	xviii. 9-14

¹ These might have been included in earlier lists in view of the partial parallels in JE (Ex. xxiii. 34, xxxiv. 12ff.) and P (Nu. xxxiii. 52ff.). They are, however, conveniently considered here. The injunctions assume that the Canaanites are still in possession of the land.

They include the judgments in Table B (p. 78), the prohibition of Canaanite idolatry (Table F), laws of purity (Table G), of clemency (Table H) and concerning priests (Table J). The laws of warfare, which relate specially to the conquest, are left over to the next chapter (Table L).

THE PROHIBITION OF IDOLATRY

Consider first how the gods of the Canaanites are described. They are those of 'the nations which ye shall possess' (xii. 2, 29, 30), or of 'the people which are round about you' (xiii. 7), or 'other gods' (xiii. 2, xvii. 3). In the preceding discourse they are called 'other gods, which ye have not known' (xi. 28), and in the Song 'gods that came up of late' (xxxii. 17, rv). Very significant is the entire absence of any mention of Ba'al or Ba'alim, whether in the legislation or the discourse. Yet from the days of the judges onwards (Jdg. ii. 11, 13, vi. 25) defection from Yahweh was known as Ba'al-worship.

It was so in the days of Ahab (1 Ki. xviii), of Athaliah (2 Ki. xi) and of Hosea (ii. 8, 13, 17, xi. 2, xiii. 1). This difference of language can scarcely be accidental, and that of Deuteronomy appears the more primitive.

On the other hand, the reference to sun worship cannot be advanced as a sign of late date.¹ For the name Beth-shemesh ('temple of the sun') and the Ras Shamra tablets bear witness that it was practised by the Canaanites (as well as by the Egyptians), so that this argument does not hold.

There is archaeological evidence that the Canaanite religion had spread its crude and depraved practices beyond Palestine and into Egypt in the fourteenth century BC.² The warnings are therefore appropriate to that era.

In Dt. xiii. 1-18, xvii. 2-5 the death penalty is decreed for apostasy or for the incitement thereto. It is hard to conceive of such laws being planned or revived during the reign of Manasseh, and there is no mention of them in connection with Josiah's reform.³ Driver remarks that 'the time when they could have been

¹ Driver, ICC, p. xlvi.

² See pp. 110f.

³ 'According to this rule hardly any city of the monarchic time would have survived': Pedersen, *Israel*, III-IV, p. 27.

enforced had long passed away, they had consequently only an *ideal value*.¹ But, as H. M. Wiener said in reply, idealists may state a law, but they do not lay down a procedure. In both these passages a procedure is prescribed, and that in chapter xiii implies primitive conditions.

Besides this they are cast in the 'judgment' form, and allied with other archaic laws by the formula 'so shalt thou put the evil away from the midst of thee' (xiii. 5, cf. xxi. 21, xxii. 21f.).

The lawgiver evidently relies upon the co-operation of the people to carry out the law even if it entails civil warfare (xiii. 15).

Kennett truly says that the background here is not that of the later monarchy when the people themselves were sunk in idolatry. On the contrary, it shows 'considerable communities of idolaters living among them, and that the religion of Jehovah is seriously menaced by that of other gods'.² He uses this to support a post-exilic date for Deuteronomy,³ but these conditions existed more obviously before the conquest of Canaan was complete.

The wording of Dt. xii. 2-4 is either early or is intentionally made to appear so.⁴ The worship of the previous inhabitants was being carried out on every high hill and under every green tree, with the accompaniment of 'pillars'⁵ and 'asherim'. The complete destruction of these is the first item upon the legislative programme, and it is regarded as practically possible; the land must be cleared of them before acceptable worship can be offered to Yahweh.⁶ Gideon's action (Jdg. vi. 25-32) suggests that he knew of some such injunction; and his father's defence of it implies the thought that his son was doing right.

Conditions were different when Josiah was king. His reform began with the cleansing of the *temple*, for there the two religions

¹ ICC, p. xxxii.

² *Deuteronomy and the Decalogue*, p. 6.

³ Pedersen, who also favours a post-exilic date, uses the same argument (*Israel*, III-IV, pp. 583ff.).

⁴ The phrasing is similar to that in Ex. xxiii. 24 and xxxiv. 13. In Dt. xii. 29 also the occupation of the land lies in the *future*.

⁵ The word *massēbā* may mean (a) a memorial stone (e.g. Gn. xxviii. 18), (b) as here, an idolatrous symbol, or (c) an Egyptian obelisk (Je. xliii. 13). See *BDB Lexicon*. These meanings should not be confused.

⁶ Welch emphasized that the Israelites, as conquerors, would be disposed to erect altars to Yahweh on *new* ground. 'Not one of their leading shrines can be proved to have a Canaanite origin' (*Code*, pp. 212, 213).

had been *mingled*: but in Deuteronomy compromise is not in question; the choice lies between 'the absolute Yahweh on the one side, and all the vain gods of the surrounding nations on the other'.¹ The warning in xii. 32 seems very plain, but if it be part of the original book it was sadly disregarded by the various 'editors' who are supposed to have made their own additions.

The injunction in Dt. xvi. 21, 22 is in harmony with xii. 3; 'pillars and asherim' in association were, from the beginning, regarded as alien and evil (e.g. Ex. xxxiv. 13)². This law contemplates the making of more than one Yahweh altar, and therefore, like Dt. xxvii. 1-8, creates a difficulty for those who hold the centralizing theory.³

The warnings against various forms of wizardry in Dt. xviii. 9-14, if ancient, would explain Saul's action as stated in 1 Sa. xxviii. 3, namely that he had 'put away those that had familiar spirits, and the wizards, out of the land'.

Whilst the above heathen practices are condemned, the *kēmārīm*, the *bāmôth* and *bēth-bāmôth*, and the horses given to the sun, which were special objects of Josiah's reform, are not even mentioned.

MORAL AND RELIGIOUS LAWS

Table G lists a small group of laws, with no sign of a late origin.

1. A blemished firstling must not be offered to Yahweh, but

Table G. Laws of purity

Subject	Deuteronomy
1. Blemished firstling	xv. 21-23
2. Landmark	xix. 14
3. Hanging	xxi. 22, 23
4. Mixed clothing	xxii. 5
5. Exclusion from the congregation	xxiii. 1, 2

¹ Pedersen, *Israel*, III-IV, p. 586

² Cf. Lods, *Israel*, p. 204.

³ See p. 134. Von Rad describes the rule as 'pre-Deuteronomic': *Studies*, p. 18.

may be eaten at home, 'as the gazelle and as the hart'.¹

2. The landmark law is found in the Hittite code, and was probably known to the patriarchs. It reappears in Dt. xxvii. 17.

3. The body of a criminal which, after execution, was exposed to shame by hanging, was to be removed before sundown. This rule was observed by Joshua (Jos. viii. 29, x. 27, and cf. Jn. xix. 31; Gal. iii. 13).

4. Among the surrounding nations heathen rites, including exchange of garments, were mixed with immorality.

5. These laws, according to von Rad, are 'certainly very old'.²

The phenomenon we have already noticed meets us here again. We have a group of laws just as old as those in the JE code, supplementary indeed, but without any sign of belonging to a later age or changed conditions.

LAWS OF CLEMENCY

In Table H we have a miscellaneous collection of laws the complete irrelevancy of which to Josiah's reform is a serious objection to Wellhausen's dating.³ 'What has bird-nesting to do with reform?' has been asked.

These laws supplement those in JE, but none requires a different age or conditions. The law of Dt. xv. 1-11, which concerns a debt, needs to be distinguished from that which follows in 12-18, which concerns persons sold into bondage. It is described by von Rad as 'an ordinance belonging to the very oldest divine law.'⁴ There is nothing to differentiate the various laws, based on the sabbatic principle, as regards age. With the optimistic tone contrast Is. iii. 14, 15.

The case of the runaway slave is dealt with in Hammurabi's law (16), which requires him to be restored under pain of death. That law also sanctions divorce under certain circumstances and provides for compensation. As before, new elements of moral consideration and care for the weak are found in the Mosaic law. The law⁵ of

¹ See p. 92.

² *Studies*, p. 21.

³ See Orr, *POT*, p. 268.

⁴ *Studies*, p. 15. He uses these words only of verse 1. In his view the verses which follow are preaching, though verse 2 is 'certainly pre-deuteronomic'.

⁵ See p. 81.

Table H. Laws of clemency

Subject	Deuteronomy
1. Year of release	xv. 1-11
2. Care of mother bird	xxii. 6, 7
3. Battlements	xxii. 8
4. Runaway slave	xxiii. 15, 16
5. Standing crops	xxiii. 24, 25
6. Bill of divorce	xxiv. 1-4
7. Release of bridegroom	xxiv. 5
8. Pledges of millstone	xxiv. 6
9. Debtor's house	xxiv. 10, 11
10. Fathers and children	xxiv. 16
11. Widow's raiment	xxiv. 17b
12. Forty stripes save one	xxv. 1-3
13. Ox treading corn	xxv. 4
14. Levirate marriage	xxv. 5-10

xxiv. 16 was observed by king Amaziah, and that of levirate marriage was known to the patriarchs (Gn. xxxviii. 8).

PRIESTLY LAWS

We have already seen that the laws which Deuteronomy has in common with H and P recognize priests and sacrifices.

In chapter xviii we have before us two paragraphs the import of which has been long and hotly debated, and which, on this

Table J. Priestly laws

Subject	Deuteronomy
1. Priestly dues	xviii. 1-5
2. Country Levite	xviii. 6-8
3. Man found slain	xxi. 1-9
4. Presenting firstfruits	xxvi. 1-11
5. Presenting tithes	xxvi. 12-15

account, claim careful attention. The statement has frequently, but quite inaccurately, been made that 'in D . . . all members of the family of Levi are priests',¹ and therefore that Deuteronomy is earlier than the Priests' code which limits the priesthood to the sons of Aaron. An analysis of the passages in which priests and Levites are mentioned in Deuteronomy is sufficient of itself to dispose of this statement.²

1. The word 'priest' (alone) occurs six times (xvii. 12, xviii. 3, xx. 2, xxvi. 3, 4), and in the plural 'priests' once (xix. 17).

2. 'Priests the Levites' is used three times (xvii. 9, xviii. 1, xxiv. 8), and 'priests the sons of Levi' once (xxi. 5). That these expressions apply to priests, and do not confound them with other Levites, is proved by the use of the former by the Chronicler (2 Ch. xxiii. 18, xxx. 27) and the latter by Malachi (Mal. ii. 7, 8, iii. 3).³ The authors of these books were well aware that all Levites were not priests.

¹ Oesterley and Robinson, *Introduction*, p. 54. W. Robertson Smith is even more definite. 'Deuteronomy knows no Levites who cannot be priests, and no priests who are not Levites; the two ideas are absolutely identical' (*op. cit.*, 360). On the other side may be set the views of Dillmann, Delitzsch, Kittel, and others who recognize the distinction (see Orr, *POT*, p. 186n.).

² See Welch, *Code*, pp. 89-98, where the various passages are sorted out and commented upon; Orr, *POT*, pp. 180-192; and G. E. Wright, 'The Levites in Deuteronomy', *VT*, iv, 1954, pp. 325-330.

³ In Jos. iii. 3 'the priests the Levites' are clearly the same as the 'priests' in iii. 8. In 1 Ki. viii. 4 priests and Levites are distinguished.

3. Levite alone is used by itself six times (xii. 19, xiv. 29, xvi. 14, xxvi. 11, 12, 13); and with the added words 'within' or 'from' 'thy gates' five times (xii. 12, 18, xiv. 27, xvi. 11, xviii. 6); and 'Levites' once (xviii. 7).

Taking these together the words are used separately nineteen times (seven 'priest' and twelve 'Levite') and in combination only four times, and in the latter case the same combination is used of the priests by quite late writers.

This is sufficient to prove that in Deuteronomy priests and Levites are not 'identical', and to cause surprise that such a statement should ever have been made.

This is not all. In Deuteronomy the 'priest' invariably occupies a position of authority, and is held up to honour;¹ while the Levite is seen as a dependant and an object of compassion.

The priests sit side by side with the judge to pronounce sentence (xvii. 9, xix. 17), and rebellion against their verdict is punishable with death (xvii. 12). They are the teachers of the law (xxiv. 8),² and the book of the law is in their keeping (xvii. 18). When the army goes forth to war, the priest gives his blessing (xx. 3), and again as part of the ritual for the expiation of a murder (xxi. 5). The priest receives his 'due' of the offerings and sacrifices (xviii. 3, 4) and stands beside the altar of the Lord to receive the firstfruits (xxvi. 3, 4).³ In all these cases the priests are singled out from other members of the tribe.

In contrast to this the 'Levite' always occupies a subordinate position. He is not to be 'forsaken' by his richer brother (xii. 19, xiv. 27) but permitted to share in the family feasts alongside of 'the fatherless and the widow' (xii. 12, 18, xiv. 27, xvi. 11, 14, xxvi. 12, 13).⁴ Therefore not every Levite is a priest, though the reverse statement remains true that every priest is a Levite;⁵ and this imparts a priestly character to the whole tribe (xxxiii. 8-11). Unlike the other tribes, Levi has 'no inheritance' in the distribution of

¹ Deuteronomy 'exalts the authority of priests above all other authority, even the king and the prophet': Bentzen, *op. cit.*, II, p. 44.

² Cf. xxvii. 9, xxxi. 9-13. In xxxi. 25, 26 the Levites are given the custody of the book.

³ See further E. Robertson, *OTP*, pp. 69ff.

⁴ Had all Levites been altar-priests provided with a living at local sanctuaries, these provisions would have been unnecessary and out of place.

⁵ Similarly, all bishops are 'clergy', but not all clergy are bishops.

the land (xii. 12, xiv. 27, 29); the Levite therefore has a right to share in the tithe (xiv. 27, 29), and to minister to 'the LORD his God' (xviii. 7) and have like portions with his brethren.

This brings us to the consideration of xviii. 1-5, the first verse of which has been pressed into service to show that Deuteronomy equates priests with Levites. Translated literally the opening words are 'the priests the Levites, the whole tribe of Levi'. When two expressions in Hebrew stand thus in apposition the second may be either (a) an expansion of the former,¹ or (b) its equivalent. The AV and RV mg. here adopt the first of these meanings and therefore render 'the priests the Levites, and all the tribe of Levi';² whereas the RV substitutes *even* for *and*, which leaves the question open. Hertz paraphrases, 'The tribe of Levi, including both the priests and the general body of Levites'; and in view of the distinctions which we have noted above, and which are observed in the verses that follow, this is surely the right interpretation. In xvii. 18 just above 'the priests the Levites' could not possibly mean the whole tribe of Levi.

The words which follow in verse 2, namely 'the LORD is their inheritance, as he hath said unto them', suggest an instructive parallel.

The only place where such words are recorded is in Nu. xviii. 20, 24. There they are addressed first to Aaron (20) as here applied first to 'the priests the Levites'; and then they are, as here, extended to the whole tribe (24). The distinction is maintained in the remainder of Dt. xviii. 1-8. Verse 3³ relates to the 'priest's' due, and verse 5 states the hereditary character of his office (cf. Ex. xxviii. 43), after which verses 6-8 deal with the Levites' 'portions'.

In conformity with his theory, Wellhausen equated the 'Levite'

¹ In Dt. xvii. 1, where the same grammatical form occurs, this mode of rendering is clearly necessitated, and the RV rightly concurs with AV in rendering 'or any evil-favouredness'.

² So G. E. Wright: 'A careful study of Dt.'s use of the phrase "the priests the Levites" and of other contexts where the word "Levite" appears alone, has led me to the conclusion that the AV is correct after all in its interpretation of Dt. xviii. 1.' *Art. cit.*, p. 326.

³ This is not the same as in Lv. vii. 31. The Mishnah refers the words in Leviticus to the sacrifices of the altar, and those in Deuteronomy to animals killed at home. Whatever the solution, the words in 1 Sa. ii. 13 (note RV mg.) imply that it was fixed by regulation.

of Dt. xviii. 6 with the 'priests of the high places' of 2 Ki. xxiii. 8, 9, and maintained that this was a compassionate ordinance inserted by the Deuteronomist to provide for them when the high places were abolished. Such exegesis may be ingenious, but it is obviously artificial; it also does violence to the text in both places.

The two cases differ in every point. In the former the Levite is a worshipper of Yahweh, and is admitted to privileges; the 'priests of the high places' are treated as idolaters and degraded. The former comes 'with all the desire of his heart', the latter do not come at all; the Levite is to be given 'like portions to eat' at the sanctuary, the degraded priests ate 'unleavened bread' at home!

Welch observes that the priestly laws in Deuteronomy 're-produce certain conditions which prevailed in the life of the nation during the period immediately preceding and following the rise of the kingdom'.¹ He quotes the strange story of Micalah (Jdg. xvii)² who received a Levite into his house to be his priest, and the yearly sacrifice at Bethlehem (1 Sa. xx. 6).

The Deuteronomic laws concerning priests have been contrasted, and not without reason, with those found in Exodus-Numbers. But when it is remembered that the latter profess to instruct the priests and Levites in their duties for the service of the tabernacle, and for its transportation with its furnishings from one camping-ground to another in the wilderness, whereas Deuteronomy ranges over a wider field, is addressed to lay people, and legislates for changed conditions, the difference is explained. The laws in Deuteronomy imply an unsettled and transitional period such as actually ensued. The Aaronite priests may have adhered to the tabernacle (Jos. xviii. 1, xxii. 12, 13), and some priestly functions may have been delegated to Levites. With David's accession we begin to hear of Levitical singers, and preparations for the temple and its ordered ritual; but of these there is no sign in the Deuteronomic legislation.

Chapter xxi. 1-9 prescribes a ritual for the expiation of an untraced murder, the primitive character of which, both in itself

¹ *Code*, p. 99.

² The author of Judges reminds the reader that then every man was a law unto himself.

and in the underlying ideas, is acknowledged by all.¹ In this ritual the city 'elders', the 'judges' and the 'priests the sons of Levi' all have their part. The prominent part played by the 'elders',² the most primitive form of government, in the Deuteronomic legislation, is another evidence for its early date. It is their affair in this case to provide an animal and to share in the sacrifice, elsewhere to bring a culprit to justice (xix. 12), to deal with a stubborn son (xxi. 18-20), to adjudge and administer chastisement (xxii. 17), and to supervise the procedure of the levirate law (xxv. 7, 8, 9). This group of duties must have been laid down in early times.

The co-operation of the priests with the judges here, as in the central tribunal (xvii. 8-12), and of priests and 'officers' in xx. 3, 5, all belong to the days of the theocracy, before there was a king in Israel. E. Robertson has given a list³ of nineteen separate rules in which this combination of religious and civil law is seen, such as 'would reasonably be expected at the period of the establishment of a monarchy'.

The laws come to an end with two liturgical formulae, one for the presentation of firstfruits (xxvi. 3-11) and one for the offering of tithes (xxvi. 12-15).

The ordinance of firstfruits and the relation of Dt. xxvi. 1, 2 to Ex. xxiii. 19 has already been noted (p. 85); the formula is peculiar to Deuteronomy. As the result of a searching examination, Welch⁴ concluded that it must go back to the beginning of the kingdom or the time of the judges.⁵ Yet it is full of phrases in characteristic Deuteronomic style; and it cannot be thought likely that a devout reformer would change into his own wording an ancient and time-honoured formula. The words in verse 1, 'when thou art come in unto the land', and in verse 3, 'the priest that shall be in those days', show that Moses is still supposed to be the speaker.

The profession in 13-15 is also archaic. Verse 14 may be directed against a Canaanite funeral custom of consecrating part of the

¹ See Welch, *Code*, pp. 144-152. Driver comments on its 'archaic character'.

² See Nu. xxii. 7 for example.

³ *OTP*, pp. 63ff.

⁴ *Code*, pp. 25-34.

⁵ Cf. von Rad, *Studies*, p. 23.

offering to the deity of vegetation.¹ Thus the priestly laws also are well suited to the period of the occupation.

This concludes the examination of the judgments and statutes peculiar to Deuteronomy; and what have we found? Here are stern laws for the destruction of Canaanite shrines and avoidance of Canaanite modes of worship, scattered bits of old Semitic case-law, moral and humanitarian precepts and some directions concerning offerings in which we read of priests and Levites. What actuated the author in collecting these laws, whether new or old, together?

We look in vain for anything to connect them with the conditions in seventh-century Judah. Their appearance, viewed separately or as a whole, is utterly unlike a considered programme of reform.

But they fall naturally into their place if set before the children of Israel as they were about to enter the land of promise.

¹ H. Cazelles makes this suggestion from a study of the Ras Shamra texts in 'Sur un rituel du Deutéronome', (Dt. xxvi. 14), *RB*, v, 1948, pp. 54-71.