

CHAPTER XIII.

AUTHORITATIVE INSTITUTIONS—THEIR EARLY DATE

Connection of this with the preceding—Reasons for postponing consideration of forms, (1) because practice is not a sure index of profession, and (2) because external forms, even when authorised, are not sufficient index of the truth of which they are signs—Mode of procedure as before—Three things to be distinguished, Law, Codification of Law, Writing of Law-books, on all of which the Biblical theory allows a latitude of view—Points at which the Biblical and the modern view are at variance—The conclusions of the modern theory, (1) Law not of Mosais origin, (2) Codes so inconsistent that they must be of different dates—Position similar to that before assumed—Presumption that Moses gave definite laws—The Covenant, how signalised—Proofs from prophetic writers; from Psalms; from admitted historical books—Conclusion that a Norm or Law, outside of prophets and superior to them, was acknowledged—What was it?

UP to this point the object of our inquiry has been to determine, as far as possible, what the religion of Israel was, in its essential and internal elements, at the earliest period to which we have access. We have examined the testimony given by the earliest admitted written sources to the nature of the religion at the date to which they belong, and have endeavoured to estimate the value of this class of witnesses for the determination of the religion of an antecedent and early time. Without relying on disputed books, we have found that

those which are admitted confirm in many ways the statements of those which are not primarily taken into account. The earliest writing prophets, though not appealing to the authority of books, appeal to admitted and undeniable facts which are asserted in these books; and our conclusion has been, that whereas the modern theory is obliged to overstrain those admitted facts of history and experience which have a show of being in its favour, and to underrate those which seem to oppose it, the Biblical theory is confirmed in the main, and that the religion of Israel had, at a much earlier stage than the modern critical writers admit, the purer and more ethical character which they would relegate to a later time.

We come now to consider whether in outward form also and positive institutions the religion of Israel had not, before the time of the earliest writing prophets, or before the time at which modern critical writers place such an organisation, a more defined shape and authoritative arrangement than the modern historians allow. The two things are closely connected. Religious belief and practice always act and react upon one another. According to the Biblical view, as there was an early revelation of spiritual truth, so there was an early institution of law and religious observance. On the modern view also the two things are intimately related. Wellhausen says,¹ "All writers of the Chaldean period associate monotheism in the closest way with unity of worship;" and it is a fundamental element of his theory that the process of centralisation and spiritualisation which marks the development of the law and worship went on under prophetic influence and *pari passu* with the development of prophetic thought and teaching.²

¹ Hist. of Israel, p. 27.

² Ibid.; cf. p. 26 with 47, 81, 103.

It might seem at first sight that it would have been more proper to begin with outward observances, which are so obvious and give so tangible a representation of a people's religious belief; and then to reason from them to the essential character of the religion. There are, however, these two considerations to be taken into account. (1) In the first place, outward observance is not always, nor indeed generally, a faithful indication of religious profession; and when we are in search, as we are in this case, of a religion which claims to have been positively given with definite fundamental principles as well as formal institutions, it would be unfair to rest either upon the moral practice or the religious usages of a people making profession of such a religion. Forms may be perverted, obscured, or corrupted, and the life of the people is pretty certain to fall short of their faith. We might, for example, from the mere observance of facts and phenomena gather what was the "state of religion," as we use the phrase, in any given age of the Christian Church, but we would not be safe, from the mere contemplation of any age, in drawing a conclusion as to the essential character of Christianity. To argue from custom or observance in religion to the requirements and essence of religion would, in the case before us, be begging the question, which is virtually as to whether or not there was an ideal or positive religion to start with. By examining, as we have done, first of all the writings of the prophets, we gain some guiding light on this the fundamental point. And (2) in the second place, outward rites and ceremonies, in a special manner, do not furnish a sufficient indication of the truth of which they are symbols or concomitants. In such rites there has often been a carrying over and adaptation of old customary

observances, which are in this transference invested with a new meaning. Many of the observances of Christendom are of this description; even the sacraments of the New Testament rest, as symbolic ordinances, upon earlier usages, although in the Gospel they are invested with new meaning. So also it is well known that some of the observances that are now characteristic of Islam were adopted and adapted from pre-existing Arabian usages. In any of these cases, to argue from the forms, without knowing what they were meant to signify, would be manifestly and grossly unfair. It would be similar to the false reasoning, which we have had occasion to notice already, from the primary or etymological signification of a word, without taking note of the sense in which, at a given time and in a particular context, it is employed. And it is necessary now to enter this *caveat*, because, as we shall have occasion to notice, this mode of reasoning is not a little relied on in the treatment of this subject. Certain observances of the Israelite religion, which are represented by the Biblical writers as commemorative or symbolical of national religious facts, have the outward forms of old observances or popular customs, and several of them are connected with the cycle of the natural year; and the conclusion is drawn, that down to a very recent period the sacred festivals signified nothing more than the bare outward form expressed. Hence the necessity of determining, first of all, as we have endeavoured to do, whether in religious conceptions and beliefs Israel had not at a much earlier period passed beyond the elements of a mere naturalistic faith. Hence also the necessity of caution in reasoning from the mere outward concomitants and expressions of religion to the essence of the thing signified.

No doubt a certain prepossession, on the one side or the other, arising out of the preceding inquiry, attends us as we enter on this part of the subject. If we admit the conclusion that the religion of Israel was gradually evolved or developed from an animistic stage, we shall scarcely expect to find in the pre-prophetic period institutions of a high moral significance; but if, on the contrary, we are satisfied that the religion was in its earlier and fundamental stage of a more ethical and exalted character, it will not surprise us to find, in the period referred to, a set of religious institutions in keeping with and expressing the higher class of conceptions. We shall, however, endeavour to consider this part of the subject independently of any conclusions already reached; and in doing so, to follow the same method of procedure as before. From the known and admitted we shall seek to make our way to the unknown or disputed; endeavouring from clear indications of the records which are unquestioned to make out the state of religious ordinances of their time, and the testimony which they may give to a greater antiquity. And here again what is primarily to be determined is, not the date of certain books in which the formal statement and prescription of outward observances are contained, but the existence of the institutions, or the knowledge of the prescriptions at the time and on the part of the writers whose dates are known. If we shall find that the witnesses who are available testify to the existence of laws and ordinances such as are found in the documents whose date is unknown, there is a strong presumption that these ordinances are the things we are in search of; and even if the documents in which they are embodied should be of late composition, they will to us still retain substantially their historical value.

In the inquiry now before us there are three things which are easily distinguishable, and which ought to be kept distinct in our minds. These are, (*a*) the origin of laws and observances, (*b*) the codification of laws, or the formal ratification of observances, and (*c*) the composition of the books in which we find the laws finally embodied or the ordinances described. Laws and institutions may grow out of custom, or they may be matter of formal enactment; but in either case they may exist for a longer or shorter time without being embodied in written prescriptions. Again, the writing down of such prescriptions may be a gradual process, and result in the formation of more than one code; but even after laws are codified and institutions enacted, all experience proves that they may undergo modification. Finally, the writing of a book or books, in which codes or collections of laws and prescriptions of observances are strung upon a historical thread may quite conceivably be a work later than the formation of separate codes, and much later than the origination of the laws or ordinances.

A full investigation into all these subjects would take us very far afield; but we are kept within limitations by the nature of our present inquiry, and also by the circumstances of the case. We are not called upon, for example, to go into the abstract question of the origin of law and institutions, any more than in the former part of our inquiry we had to investigate the origin of religion. The Biblical writers maintain that from a certain historical period onwards—viz., from the time of Moses—Israel had a certain body of positive institutions (just as they assert that from Abraham's time they had a pure faith); and that these institutions are embodied in certain law-books which are preserved to us. Our inquiry is therefore

limited to a certain time, and concentrated upon certain subjects. It is also important to observe that, on all the three points just indicated, in so far as they are elements of the inquiry into the history of the religion of Israel, various views may be held, and that the Biblical theory, within certain limitations, leaves room for great latitude of view on details. (a) Religious observances, such as sacrifice, are spoken of as matters of course, and existing before there was formal legislation in regard to them. Even the so-called Grundschrift or Priestly Code does not exclude sacrifices from the patriarchal age, nor represent them as originating in the time of Moses. Nor is there anything either in history or in the nature of the case to make it improbable that usage at a certain point was stamped with the authority of law. (b) Further, if we take the statements of the law-books themselves, we are led to the conclusion that the laws therein contained were written down at different times. Moses is said to have written this and that, and in regard to many more, it is not said who wrote them at all. In regard to the collections of laws in particular—while it is said that Moses wrote the laws of the book of the Covenant and the Deuteronomic Code—it is not said that he wrote the Levitical laws, nor are we told who wrote them. (c) And finally, the books of the Pentateuch, as composite productions, containing both law and history, are anonymous compositions, and may have assumed their present form after the laws had existed for a time as a separate code or codes. It is greatly to be lamented that so much has been made of the mere question of the authorship of these books containing the laws. Although other books, which are also anonymous, are accepted as materials for history, although the books of the Pentateuch, with supreme in-

difference, say nothing about their authorship, it has been tacitly assumed that their whole value stands or falls with their Mosaic or non-Mosaic authorship. A broad distinction is evident between the questions, By whose instrumentality or authority was law given? and, By whose hands were books written which contain the law? The essential question is not as to the early or late date of the books of the Pentateuch, but as to the relation in which the legislation of the Pentateuch stands to the whole development of the history.

On this deeper question of the origin and religious meaning of the laws and institutions the two theories are as much opposed as we have seen them elsewhere. For just as, in the matter of religious conception and belief, the earlier phase is toned down by the modern historians to a naturalistic level, so in the matter of law the element of early positive enactment is minimised to the lowest possible degree. Custom and usage are made to account for the origin of a great part of the laws; for ages the nation is supposed to have been without authoritative law; and the actual amount of influence exerted by Moses is so explained away as to be almost inappreciable. On the other hand, though the Hebrew writers do not say anything as to who wrote the law-books, they assert positively that the law laid down in these books is Mosaic. Moreover, the theories being opposed as to the character of the Mosaic religion, their interpretation of the institutions will vary. To a deity who might be worshipped anywhere, who was circumscribed in the place of his abode, and who was merely a storm or sun or fire god, a kind of service might be appropriate that would be without proper significance in the worship of a deity who was in his central attributes

holy, and in his nature spiritual. The Mosaic or pre-prophetic religion will determine the significance (if not the outward form) of the Mosaic or pre-prophetic institutions.

It is clear that to determine the point in dispute, we must appeal, if possible, to some independent testimony outside the laws themselves or the books in which they are contained; and that the value we shall attach to these legislative books will depend on the conclusions to be drawn from such independent sources. The only use that can be made of the laws themselves in the controversy, is to compare them with one another and with the prophetic and historical literature whose authority is admitted. Such a comparison has in fact been the task of criticism. As a result, the modern historians claim to have proved, (1) that the history of the time succeeding Moses, and down to a comparatively late period, does not show that the laws claiming to be Mosaic were in force, but shows, on the contrary, that the practice of the best men of the nation was inconsistent with them; from which the inference is drawn, that these laws were not up to that time in existence; and (2) that the laws themselves which are called Mosaic, when examined and compared, are so inconsistent with one another that they cannot all have been in force at the same time; particularly there are three codes discernible, which indicate three distinct modes of observance, and must have belonged to three historical periods, widely separated, which periods can be determined by comparing the requirements of the respective codes with the practice prevailing at different times in the history. In short, gradual growth by development is to be made to explain the origin of institutions, just as it explained the origin of religious conceptions; and this

growth is to be exhibited within the field in which we have the means of testing conclusions by historical documents. Accordingly, just as we had to inquire into the elements of the Mosaic religion of Jahaveh, and trace the connection of the pre-prophetic with the prophetic religion, so here we have to inquire into the origin of the laws, and the consistency of the codes which are contained in the Pentateuch, in order to determine whether, or to what extent, they may be held to be, or proved not to be, Mosaic. In the present chapter we confine ourselves to the inquiry whether there is any presumptive or any positive proof that Moses gave to Israel such a positive legislation as the law-books exhibit.

It occurs at once as a striking thing that the uniform tradition is, that Moses gave laws and ordinances to Israel. And that it is not a blind ascription of everything to some great ancestor, may be gathered from the fact that there are ordinances and customs which are not traced to him. The Sabbath is made as old as the creation; circumcision is a mark of the covenant with Abraham; sacrifices are pre-Mosaic; and the abstaining from the sinew that shrank is traced to the time of Jacob. The body of laws, however, that formed the constitution of Israel as a people, is invariably referred to Moses. There must be some historical basis for the mere fact that all the three successive codes, as they are called, dating, as is alleged, from periods separated from one another by centuries,¹ are ascribed to Moses; whereas another alleged code, found in the book of Ezekiel, never obtained authoritative recognition. The persistence with which it is represented that law, moral and ceremonial, came from Moses, and the accept-

¹ The separate codes will be more particularly described in the next chapter.

ance of the laws by the whole people as of Mosaic origin, proves at least that it was a deeply seated belief in the nation that the great leader had given some formal legal constitution to his people. It seems to me that it is trifling with a great subject to say, in the same breath, that Moses could scarcely have been even the author of the whole of the Decalogue, and also that he "was regarded as the great lawgiver, and all laws which God was considered to have sanctioned were placed under his name, that being the regular and only method of conferring authority upon new enactments."¹ The testimony of a nation is not to be so lightly set aside: it is the work of criticism to explain and account for tradition, not to give it the lie. And all the circumstances of the time make it abundantly probable that the tradition rests upon some good foundation.

Moses and his people came out of a country that had been long civilised, and in which ritual and legislation were particularly attended to. They came into a land which, as we now know, possessed civilisation and education before they appeared in it, and they not only secured a footing, but gained supremacy and maintained it, believing all the time that they were divinely guided. Now, if the tribes whom Moses led had any unity at all, if they did not wander aimlessly into Canaan, if they had the least feeling of the necessity of adhering closely together in the face of the inhabitants whom they dispossessed,² such a unity and cohesion would be produced or fostered by the possession of definite laws or customs, marking them off from their neighbours, and binding them together into one. Mere common belief, especially of the elementary kind which modern writers allow to them, would not have sufficed to separate them from the Canaanite inhabi-

¹ Allan Menzies, *National Religion*, p. 17 f.

² See Note XXIV.

tants in such a way as to ensure their ultimate supremacy; a common tradition must be put into practical shape and active operation by common observances. Even if the work of Moses was merely the consolidation of common observances prevailing prior to the Mosaic age, these must have been stamped with special authority, supplemented by special institutions, and raised to the dignity of definite ordinance, if there is any truth at all in the unanimous ascription of law to Moses. Moreover, if ever there was a crisis in the history of Israel at which the setting up of formal institutions, the laying down of formal rules for national guidance, was naturally to be expected, it was at this stage. It is strange indeed that critical historians of Israel should postulate the putting forth of "legislative programmes" at various later points in Israel's history, and should be so unwilling to admit the same for the time of Moses. For just as individuals in their early life, when moved by a high purpose, sketch out for themselves careers and lay down rules of conduct and principles of action, it was surely the most natural thing in the world for the great leader of Israel to trace out a programme of conduct, and hedge it round with precautionary measures, at a time when his nation was to pass from a nomadic to a more settled life, and when they were liable to be led away by various temptations from the simplicity of their primitive faith. Any one who can recall his plans and resolutions formed in early life, or who has perchance preserved juvenile journals or memoranda, will admit that in such circumstances there is a natural tendency to run into minute details, which the exigencies of actual life afterwards modify or even render impracticable. The First Book of Discipline, drawn up by Knox and his associates at the Reformation in Scotland, is a striking historical

instance of such a programme.¹ So that, if in the post-Mosaic history of Israel we find little mention of many of the enactments ascribed to Moses and the early Mosaic time, this need not surprise us when we bear in mind the totally new environments of life of the people, and the common frailties of human nature. How much more may be implied in the undoubted fact that the succeeding books take little account of the detailed legislation of the Pentateuch, we need not here consider. Enough has been said to prove in a general way that a certain amount of legislation must be ascribed to Moses. If his name stands for any fact at all in the history of Israel, if in any conceivable way he made an abiding impression upon his people, it was by producing, or by cementing an already existing intimate relation between their consciousness and the national God. This relation the Biblical writers call a covenant.² Critical writers can hardly avoid using the expression, and are bound to admit the fact, by whatever name it may be called. They tell us that the compact amounted to this, "Israel was to be Jahaveh's people, and Jahaveh Israel's God." Is it conceivable that at a period such as that in which this compact is placed, at a time when the nation needed outward props and helps, a time when forms of worship and observance were the most natural and unavoidable, even a bare covenant like this should have been unaccompanied with any ceremonial to keep it alive in the national consciousness, and impress its significance upon their lives? Can we believe that Moses taught the people that the God whom they could not see was "just and righteous," that by being just and

¹ Story's Church of Scotland, Past and Present. See particularly vol. ii. p. 437, *foot*.

² See Note XXII., and compare above, p. 313.

righteous they could best please Him, that, in a word, "Moses set up the great principle that the true sphere of religion is common life,"¹ and yet that he left a people such as they were without any ordinances of worship, and without any laws for the guidance of their daily life? A people, too, who at that very time, and in the power of their faith, were asserting their individuality! A "peculiar" people, as such a covenant necessarily made them, must have distinctive outward marks; a "holy" nation, on the very lowest ideas of holiness, must be separated from what is unclean; a "holy" deity, still on the most elementary conception of the term, must be fenced off by some restrictions, must be revered by some sacred ceremonial. The very idea of a covenant, if it does not even imply sacrifice, is intimately associated with it (Ps. l. 5). Whether the ceremonies were adaptations of old customs or new institutions, if such a definite thing as a covenant stands at the threshold of the national history, then to deny to Moses the organisation of Israel on the basis of definite observances, not only of a moral but also of a ceremonial character, is altogether an excess of arbitrariness, and leaves the unvarying tradition of later time without any adequate explanation or support.

But more precise and direct proof may be drawn from the prophetic and other accepted literature of the time to which we are confining ourselves. We may not have, indeed, unequivocal "references" to the books of the Law, or to the codes in which certain laws are contained; nor do we find full accounts of the observances of the minute ceremonial and liturgical prescriptions of the Pentateuch. It has been too much the habit of apologetic writers to look for positive citations of the books of the Pentateuch,

¹ Allan Menzies, *National Religion*, p. 24.

or to argue from the use of certain expressions in prophetic or historical books that the legislative books in which such or similar expressions also occur were then in existence and were thus consciously referred to.¹ But critical writers have gone to the other extreme in arguing that where a law or ordinance is not mentioned by historical or prophetic authors, it was not known to them, and therefore had no existence in their day. We shall have to test the value of this argument in the sequel; in the meantime we have to look at the testimony borne by the prophetic and other books on this subject.

From the whole tone of the prophetic literature we may argue in a general way that there was in the times of the earliest writing prophets a universal recognition of a well-known *norm* or rule of conduct as possessed by the nation, though sadly dishonoured so far as concerns its observance. The attitude of reproof taken up by the prophets, and the absence of gainsaying on the part of the people whom they addressed, prove the recognition of some authoritative norm lying at the threshold of the nation's history, according to the principles laid down by St Paul (Rom. iii. 20), that through the law is the knowledge of sin, and (v. 13) that sin is not imputed where there is no law.² An argument of this kind is not indeed sufficient to establish the Mosaic origin of all the legislation of the Pentateuch; it may not even necessarily lead to the conclusion that formal codes were in existence at all; but it warrants the conclusion, not merely that guidance was given to the people, from time to time as occasion required, by prophetic or priestly men, but

¹ See before, chapter v. p. 108.

² So De Wette reasoned in a Review of Vatke in Theol. Stud. u. Krit. for 1837, p. 1003.

that some standard of obedience and religious observance was acknowledged as set up for permanent appeal and authority.

But we can go much further than this. The manner in which the earliest prophets refer to such an authority—if language is to retain its ordinary meaning at all—implies principles of action embodied in concrete recognised laws. When Amos threatens Judah, “because they have rejected the law of the Lord, and have not kept His statutes” (Amos ii. 4), whether he is thinking of books or not, he is certainly thinking of certain standing principles objectively regarded as regulative of moral and religious life. Law or Torah may conceivably have been at first, as the critics assert, no more than instruction conveyed from time to time by prophet or priest; and this matter we shall consider in the next chapter. But the conjunction of the word “statutes” leaves no room for doubt that the prophet referred to an objective and concrete norm. Torah *may* be teaching, but statutes are determinate things, not given once and then forgotten, but set up as a standing rule. Moreover, the sins for which Israel in the sequel of the same chapter is reprovèd, though all of a moral kind, are just such sins as are condemned in the moral parts of the Pentateuchal codes. This prophet has no doubt, and his hearers dare not deny, that the oppression of the poor, the retaining of pledges,¹ the perversion of justice, and the like, are violations of rules which every one admitted to be binding upon the nation. It is particularly to be noticed that the sins for which Israel and Judah are threatened are more precise and special than those breaches of the most elementary laws of humanity against which the prophetic reproofs

¹ Amos ii. 8. Comp. Exod. xxii. 26.

of other nations, Damascus, Philistia, Tyre, Edom, Ammon, and Moab, are directed; and that it is precisely in Judah, where "law" and "statutes" would be best known and most universally acknowledged, that their violation is singled out for reprobation.¹

The case is similar with the prophet Hosea. "They have wandered from me," he says (vii. 13): "they have transgressed my covenant and trespassed against my law" (viii. 1). The sins for which he reproves the men of Israel of his time are just such sins as the moral laws of the Mosaic legislation condemn;² and we have in one passage a clear indication that written law, and that of considerable compass, was known and acknowledged in his days. The passage (Hosea viii. 12), much as it has been commented upon, and sought to be explained away in this connection, cannot be taken to give any other sense that is at all reasonable. Whether we read, with the Revised Version, "though I write for him my law in ten thousand precepts," or, with the margin, "I wrote for him the ten thousand things of my law"—whether, that is to say, we take the words as positive or hypothetical, as referring to the past, or to the present or future—the prophet indicates a thing that his hearers would regard as either done, or natural to be done, and that thing is the writing of law in a copious manner, and the writing done directly by divine authority.

The manner in which Wellhausen gets rid of this passage is exceedingly characteristic. He says:³—

¹ I do not press the allusions in Amos iv. 4, 5, although an argument might be drawn for the recognition of ritual laws, which are there represented as exaggerated or perverted.—See Bredenkamp, *Gesetz u. Propheten*, p. 82.

² See the whole of Hosea iv.

³ *Hist. of Israel*, p. 57.

“In another passage (viz., this) we read, ‘Ephraim has built for himself many altars, to sin; the altars are there for him, to sin. How many soever my instructions (*torothái*) may be, they are counted those of a stranger.’ This text has had the unmerited misfortune of having been forced to do service as a proof that Hosea knew of copious writings similar in contents to our Pentateuch. All that can be drawn from the contrast, ‘instead of following my instructions they offer sacrifice’ (for that is the meaning of the passage), is that the prophet had never once dreamed of the possibility of cultus being made the subject of Jehovah’s directions.”

Here, to begin with, Wellhausen omits in his citation the significant word “write,” a proceeding which, looking to the question involved, is, at the least, not ingenuous; for the word so rendered cannot be toned down to the general sense of “prescribe.” And then, if all that the passage means is what he says, “instead of following my instructions they offer sacrifice,” is it not a very remarkable way of saying it, and does not the mention of “writing,” in this subsidiary fashion, prove all the more strongly that written instructions (*torothái*, and where are such to be found if not in some code or other?) were familiar and well known? Not in this fashion does Wellhausen pass by significant words in a verse when these can be turned to the support of his theory. The fact that “writing” occurs to the prophet where he does not base his main argument upon it, is the strong point; and thus, occurring in the connection in which it stands, this single passage suffices to establish the existence of written law of considerable compass at the time of Hosea. And as if to assure us that ritual ordinance was as well known as moral precept, and as if to anticipate Wellhausen’s remark that “the prophet never once dreamed of the possibility of cultus being made the subject of Jehovah’s direction,” the prophet goes on in the following

verse to say, "As for the sacrifices of *mine* offerings, they sacrifice flesh and eat it." The occurrence of the single suffixal *mine* here, as in Isaiah i. 12, "to tread *my* courts," in a passage in which that prophet is by modern critics maintained to deny the divine authority of all sacrificial service, are much more convincing proofs to the contrary than formal statements would have been. Both these prophets rebuke the performance of sacrifice as it went on in their day, and we need not wonder at the sharpness of the rebukes. But at the same time, both of them, in claiming Temple and offerings as belonging rightly to Jahaveh, tacitly confirm the supposition, which is most natural in itself, that Israel up to their time had a law of worship which was undisputed, and that the Temple, set apart to the outward service of the national God, was provided with an authoritative order and ritual.¹

These indications in the earliest writing prophets are entirely against the supposition that it was through the influence of the prophets that the codes of law came into existence, as they are against the idea that law was regarded by them as a thing still in flux, and given out from time to time by either prophet or priest as occasion demanded. Any references that are found to laws or ordinances in the prophetic writings are always of the nature of references to things existing and well known in their times. If, in a few passages, the law or laws are spoken of as having been given by prophetic mediation, it will be found that the references (as in Ezra ix. 10, 11) will apply to Moses, who is regarded as a prophet and the leader of the prophets.² In any case, the law or norm is regarded as a thing antecedent to the prophets, and having a divine sanction and authority apart from themselves.

¹ See Note XXV.

² Deut. xviii. 15; Hosea xii. 13.

Passing beyond the prophetic books—and we have only glanced at the earliest of these—we might find the same conclusion confirmed in a very striking way by an examination of the Psalms, in which God's law, statutes, and commandments are referred to in such a manner as to suggest positive, well-understood things as the guides of religious conduct, the comfort of a religious life. Here, however, the dates and authorship of the compositions are so much disputed, that, with the limitations we have imposed on our inquiry, we must content ourselves with a brief reference. When all has been done that modern criticism can do to relegate the bulk of the Psalms to a late period, and make the Psalter the book of praise of the post-exilian synagogue, there still remain, even in the accepted pre-exilian Psalms, certain expressions which cannot be explained away. Even so thorough-going a critic as Hitzig accepted the latter part of Psalm xix., with its praise of the law, as Davidic, although Cheyne¹ has recently pronounced it to be late. But if any part of the Psalter is to be ascribed to David at all, it is the 18th Psalm; and, not to speak of other references it contains to God's "ways" and His "word," it is not easy to see what precise meaning can be attached to v. 22, "For all His judgments were before me, and I did not put away His statutes from me," if there was no body of positive religious principles of action existent in his day. The "uncritical" English reader should, however, be reminded here that it is not on linguistic considerations, but on the grounds of a higher criticism—*i.e.*, of a theory of the religious development—that so many of the Psalms are assigned to a late date.

¹ The Book of Psalms; or, The Praises of Israel. A new translation with commentary (1888).

Let us next consider what conclusion is to be drawn from the undisputed portions of the books of Judges and Samuel. Though they do not give us much information as to legal observances, and are usually claimed as proving that the Deuteronomic and Levitical codes were unknown at the periods to which they refer, there are certain indications in them pointing unmistakably to the conclusion that there was a recognised order of some kind in those days. It is self-evident that the Tabernacle at Shiloh could not have existed, nor have formed the centre of worship, without some recognised ritual. Even should it be proved that the practices of Eli's sons mentioned in the book of Samuel were inconsistent with the requirements of the Levitical code, this is no more than might have been expected from such men. The wonder would be if the practices of men such as they are depicted were in keeping with any conceivable authoritative rule at all. The point, however, now insisted on is, that the Shiloh worship must have been invested with authority; and therefore that the idea of authoritative law for ceremonial was familiar by that time. And so the sacrifices offered by Samuel, even should it be proved that his manner of performing them contradicts the requirements of the codes, imply a recognised and authoritative law or rule of sacrifice. They are offered to Jahaveh and in connection with the national recognition of Him, and must therefore have been regarded as sanctioned and accepted by Him. In other words, at that time there was some received legislation. So in the period of the Judges there are indications that the people were acquainted with some standard of authority, and accustomed to conceptions involving national obligations.

There is, for example, the incidental mention of the ark

in Judges xx. 27, 28. It is true this occurs in a portion of the book which is pronounced to be late. But even if we had not this mention at all, we come upon the ark again at the opening of the book of Samuel, where it is the centre of the worship for the time; and we should be bound to explain whence it came, and how it had acquired this dignity. The very brevity of the allusion however, in Judges, is proof that the writer looked upon the ark as a national institution; and if the statement has any historic value at all, it proves the possession by Israel of some outward bond of religious life. In other words, they were not at this time merely a number of isolated tribes, related in some loose way to one another, and owning one common tribal god; but they had, previous to this time, been accustomed to regard themselves as one people, and, as a mark of their unity, had some form of outward worship. We must therefore go back to the time preceding the Judges for some account of this feature of their religious life; and no Biblical writer gives the least hint of the existence of anything like it in the early patriarchal age. The reference to Phinehas, the son of Eleazar, the son of Aaron, who ministers at the ark, indicating a hereditary priesthood in the family of Aaron, of course does not suit the modern theory. It is simply called by Wellhausen¹ "a gloss which forms a very awkward interruption." Much more to his purpose is the statement (in xviii. 30) that Jonathan, the son of Gershom, the son of Moses, became a priest to the Danites, as a proof that there was no regular Aaronic priesthood—although it is added in the next verse that "Micah's graven image" was at Dan "all the time that the house of God was in Shiloh." At all events we have here, in

¹ Hist. of Israel, p. 237.

these two incidental allusions, sufficient to carry us back to a period antecedent to the Judges for an explanation of the religious position of the people at that time. The ark of God, a priesthood, whether hereditary or not, a house of God at Shiloh—all these imply much more than they express. The priest must have a function, the house of God some ritual, an ark some history. These things could not have been borrowed from the Canaanites the moment the conquest was secured. Even such matters as the distinction of clean and unclean animals, the prohibition of certain foods, and the treatment of lepers, which may, and probably do, go back to pre-Mosaic times, imply regulation, ceremony, and, in many cases, the offering of sacrifices. All these, however, are just the things that would be taken under the sanction of the covenant, which was to set apart a holy people, and made matters of prescription by a legislative founder like Moses. For it is always to be remembered that by this time certainly the Israelite tribes were in possession of the Jahaveh religion. These outward arrangements, whatever their origin, were associated with their worship of Him as their only God; and as that religion, on any explanation of it, was the characteristic mark separating them from their neighbours, it is surely most extraordinary to suppose that the outward concomitants of the religion should present no difference from the worship of the peoples around them.

Again, it is maintained by Wellhausen and his school that the tribe of Levi was originally a secular tribe like the others, and associated with the kindred tribe of Simeon, whose fate it shared in being dispersed in Israel; and it is maintained that the Levitical guild was a growth of much later time, when priestly development had far advanced. Now the story of Micah in the book of Judges is

much relied on by the critics for the state of religion¹ at this early period. In that story (chap. xvii.) a young man of the family of Judah, who was a Levite, departs from Bethlehem-Judah to sojourn where he could find a place, and comes to Micah, who hires him to be his priest. It is added: "Then said Micah, Now know I that the Lord will do me good, seeing I have a Levite to my priest." And again, in the 19th chapter, which is allowed to contain archaic matter, we find a certain Levite sojourning on the farther side of the hill-country of Ephraim. Now it might be said, these are simply members of the extinct tribe of Levi. But it does seem remarkable that in both cases they should be seen sojourning—moving about, in fact—as the Levites, according to the legal requirement, might be expected to do. And more remarkable is the fact that they are specially called Levites—though why the tribal designation is kept up when the tribe is absorbed is not clear; and most remarkable of all that Micah, steeped to the lips in superstition, should believe that good was sure to come to him because he had a Levite for a priest. On the theory of the Old Testament writers, the fact, notwithstanding all the surrounding superstition, is easily explained. There was a tribe of Levi without territory, with a priestly or *quasi*-priestly function, the members of which were held in repute on that account. On the new theory, we meet with a feature of the life of that rude age that calls for an explanation, and fails to find it. To my mind such an incidental notice is a very strong corroboration of the history which declares that a tribe of Levi was set apart for sacred functions; and considering the age in which the events occurred, a more convincing proof of the accuracy

¹ See chapter ix. p. 231.

of the book than an elaborate attempt to show that all the requirements of the Levitical law were in force. The discovery of a fact like this, in the darkness and ignorance of those times, sends us back to a time antecedent to the Judges for the proper basis of the religious constitution of Israel.

The references we thus find in undoubtedly early compositions, though not perhaps numerous, yet just because they are incidental and indirect, establish a very strong presumption that the pre-prophetic religion was backed up by a well-recognised system of positive enactments, and account for the persistent ascription of code after code to Moses. There are other considerations, pointing in the same direction, which should not be left out of account. There is, *e.g.*, the remarkable fact that, during the whole of the regal period, we never hear of the kings making laws, while there is a constant reference to law, in some sense or other, as an authoritative thing in the nation. The solitary instance that is recorded (1 Sam. xxx. 25) only proves the rule. Again, there is the undisputed fact that a recognised priesthood existed in Israel from very early times. It is hardly conceivable that such an order should have existed without formal regulation and prescribed functions; and as the critical historians refer to priestly circles the very earliest collection of laws, contained in the book of the Covenant, and admit that the priests always appealed to the authority of Moses, the inference does not seem unwarranted that a priestly law, of some extent and of a definite description, formed part of the constitution given to Israel by the great lawgiver.

It is, it must be confessed, somewhat remarkable that so little is said of Moses by the earlier prophets, though some have overstated the matter, and have drawn from it

a conclusion which is quite unwarranted. Ghillany,¹ *e.g.*, mentions it as a circumstance hitherto unnoticed, that the name of Moses, except in the post-exilic Malachi (iv. 4) and Daniel (ix. 11, 13), does not occur in any of the prophets; or at least he had not discovered the name anywhere else in the prophets—not even in Ezekiel. Elsewhere² he says that Moses, so renowned among the Jews after the captivity, is only named five times altogether in the whole prophetic literature, and that of all the prophets who lived before B.C. 622, the year in which the so-called Mosaic law was found in the Temple, not one mentions Moses as a lawgiver or appeals to his authority. Only in one of the prophets before that period (Micah vi. 4) is there found an exception; and this passage is declared to be an interpolation. It is clear, however, that Hosea, though he does not name him, directly refers to Moses when he says that by a “prophet” the Lord brought Israel out of Egypt (xii. 13). Jeremiah also must have had Moses in mind when he said, “Since the day that your fathers came forth out of the land of Egypt unto this day, I have even sent unto you all my servants the prophets, daily rising up early and sending them” (Jer. vii. 25, &c.) Moreover, in Isa. lxiii. 11, Moses is expressly named. The inference, however, from such texts, is rather against than in favour of the modern theory.³ So precarious is the argument from silence, that one is almost tempted to maintain the paradox that the things which are least mentioned were the most familiar. The historical fact stands undoubted, that, from first to last, legislation

¹ Die Menschenopfer der alten Hebräer, p. 27.

² Theologische Briefe von Richard von der Alm, vol. i. p. 179 ff.

³ König, Hauptprobleme, p. 16; Delitzsch, Comm. on Genesis, Eng. trans., vol. i. p. 11 f.

was ascribed to Moses; and if the critics should succeed in making out from this silence that the earlier prophets knew little or nothing of Moses, then it is all the more difficult to explain how a person so unknown and undistinguished should have had invariably the immense work of legislation ascribed to him. Much rather should we say that the work of Moses was so familiar to the national mind that there was no need to mention him by name; a mere reference to Egypt or Sinai was to the popular mind more than a verbal mention. We know how in other Scriptures, which are not from the hands of prophets, the highest place is assigned to Moses as an organ of divine revelation (Exod. xxxiii. 11; Num. xii. 6-8; Deut. xxxiv. 10). Such passages are surer indications than express mention of his name, that Moses was in the estimation and recollection of the nation "the most exalted figure in all primitive history";¹ and account satisfactorily for the constant ascription to him of the legislation. Still we come back to what is better than verbal references, the underlying assumption in the earlier prophets and extra-legislative literature, that there was an objective and undisputed norm, to whose authority prophets, priests, and people alike acknowledged submission. The question, therefore, which now presses itself upon us for solution is, What was the law or norm which is thus referred to?

¹ Ranko, *Universal History*, translated by Prothero, p. 31.